



## TRACY CITY COUNCIL

### REGULAR MEETING AGENDA

**Tuesday, September 3, 2024, 7:00 P.M.**

Tracy City Hall Chambers, 333 Civic Center Plaza, Tracy

Web Site: [www.cityoftracy.org](http://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](http://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:*
  - **Online by visiting** <https://cityoftracyevents.webex.com> and using the following **Event Number: 2552 427 7534** and **Event Password: TracyCC**
  - ***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](mailto:Anonymous@example.com) when prompted to provide an email address.
  - **Join by phone by dialing +1-408-418-9388, enter 25524277534 #8722922# Press \*3 to raise the hand icon to speak on an item.**
- *Protocols for commenting via WebEx:*
  - *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.*
  - *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.*
  - *Comments received on Webex outside of the comment periods outlined above will not be included in the record.*

Date Posted: August 29, 2024

**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](http://www.cityoftracy.org)

Date Posted: August 29, 2024

## 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
2. Proclamation - National Hispanic Heritage Month

## ORDER OF BUSINESS

## 1. CONSENT CALENDAR

- 1.A. Approval of August 13, 2024 Special Meeting Minutes, August 20, 2024 Special Meeting Minutes, August 20, 2024, Regular Meeting Minutes and August 20, 2024, Closed Session Meeting Minutes.
- 1.B. Staff recommends that the City Council adopt a resolution (1) accepting the construction improvements for The Grand Theatre Center for the Performing Arts, completed by Best Contracting Services, Inc., (2) authorizing the City Clerk to file the Notice of Completion with the San Joaquin County Recorder's Office, and (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.
- 1.C. Staff recommends that the City Council adopt a resolution: approving a Professional Service Agreement with Nickerson Investigative Services, a sole proprietor, to conduct pre-employment background investigations to meet the Commission on Peace Officer Standards and Training for a three(3)-year term and a total not to exceed amount of \$150,000.
- 1.D. 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 Section 2.20.180(b)(4) and dispensing such requirements for the actions herein; and (2) approving a Master Service Agreement with Axon Enterprise, Inc. for the purchase, training, usage, and on-going maintenance of the Police Department's specified equipment and software services for a term of five years and for a total not-to-exceed amount of \$2,500,000.
- 1.E. Staff recommends that the City Council adopt a resolution: (1) determining that compliance with standard procurement processes is not in the best interests of the City pursuant to Tracy Municipal Code 2.20.180 (b)(4) and dispensing such requirement for the actions herein, and; (2) approving a Service Agreement with Motorola Solutions, Inc. for police communications maintenance with a total not to exceed amount of \$120,000 and for the term of 12 months effective retroactively from July 1, 2024.

- 1.F. Staff recommends that the City Council adopt a Resolution approving a Professional Service Agreement with CDW Government LLC, utilizing OMNIA Partners cooperative purchase agreement for Information Technology Solutions and Services, for a not to exceed amount of \$915,000 annually, for a term of four years.
- 1.G. Staff recommends that the City Council adopt a resolution (1) accepting offsite improvements for USLP Tracy Distribution Center as complete and assuming all future operations and maintenance, (2) authorizing the City Engineer to release improvement security in accordance with the Offsite Improvement Agreement, (3) authorizing the City Clerk to file the Notice of Completion with the San Joaquin County Recorder's Office, and (4) authorizing the City Clerk to accept (A) a fee dedication of land widening Grant Line Road (B) a public utility easement along Grant Line Road and (C) an emergency vehicle access easement, and file them with the San Joaquin County Recorder's Office.
- 1.H. Staff recommends that the City Council adopt a Resolution authorizing amendments to the City's Personnel Rules and Regulations to comply with recent legal updates, integrate best practices, address operational requirements, and enhance clarity.
- 1.I. Staff recommends that the City Council adopt a Resolution: 1) approving the award of the Mayor's Community Youth Support Network Reconnecting Our Youth grants for Fiscal Year 2024-2025 in the total amount of \$175,000 to six non-profit organizations; and 2) authorizing the execution of the funding agreements for each grant.
- 1.J. Staff recommends that the City Council adopt a Resolution (1) transferring \$54,746 from the Edgar Thoming Park Improvement Capital Improvement Project (CIP) 78191 to the City Hall Memorial Flag Poles Project (CIP 78192) to increase the budget, (2) awarding a construction contract to GCJ, Inc. of Stockton, California for CIP 78192 in the amount of \$148,085, and (3) authorizing the City Manager to approve change orders up to the contingency amount of \$14,808, if needed, pursuant to Tracy Municipal Code Section 2.20.090(b).
- 1.K. Staff recommends that the City Council adopt a resolution: (1) accepting the construction of the Sewer Connection at Lincoln and 11th Street Project by Tracy Grading & Paving, Inc., of Tracy, California as complete; (2) approving a retroactive increase of \$37,000 to the contingency amount for the Project; (3) authorizing the City Clerk to file the Notice of Completion with the San Joaquin County Recorder's Office, and (4) authorizing the City Engineer to release the bonds and retention payment.
- 1.L. Staff recommends that the City Council adopt a resolution approving and authorizing the execution of a Cooperative Agreement with the California Department of Transportation for the Project Initiation Document Phase of the Interstate 580/Corral Hollow Interchange Project, Capital Improvement Project 73198, for a total not-to-exceed amount \$130,000.

- 1.M. Staff recommends that the City Council adopt a resolution (1) appropriating \$340,000 from South San Joaquin County Fire Authority for the construction of the Fire Training Facility at the NEI Reservoir, (2) awarding a construction contract to GradeTech Inc. of Livermore, California, in the amount of \$3,441,656.01, (3) authorizing the City Manager to approve change orders up to the contingency amount of \$172,083, if needed, and (4) approving a total not-to-exceed Project budget of \$3,805,780.01.
2. ITEMS FROM THE AUDIENCE
3. REGULAR AGENDA
  - 3.A. Staff recommends that the City Council receive an update on the League of California Cities City Manager's Sales Tax Working Group: E-Commerce Policy Recommendations.
4. ITEMS FROM THE AUDIENCE
5. STAFF ITEMS
6. COUNCIL ITEMS
7. ADJOURNMENT

TRACY CITY COUNCIL - SPECIAL MEETING MINUTES

**August 13, 2024, 6:00 p.m.**

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

1. Mayor Young called the meeting to order at 6:17 p.m.
2. There were no actions taken pursuant to AB 2449.
3. Roll call found Council Members Arriola, Bedolla, Evans, Mayor Pro Tem Davis, and Mayor Young present. City Council had no declarations of conflicts.
4. ITEMS FROM THE AUDIENCE – Conrad Levoit voiced concerns regarding the striping changes and lane designs on Lowell and Lincoln and asked why the public was not included in the design changes and should be looked at with the public so that residents and schools are aware of the changes.

Barbara McFay expressed concerns regarding the feral cats and kittens and shared that members of the community are paying out of pocket for veterinary care for these cats, urged Council to create a campaign to better deal with the issue and come up with creative solutions.

Robert Tanner shared that he received a flier regarding the airport and wanted to share that any infrastructure updates are paid by the Federal Government with approval from the FAA and shared that the flier contains false information, and expressed concerns about a current Council Member that is also running for reelection, being against business and against the upcoming item.

Council Member Bedolla responded to Mr. Tanner.

Alice English shared that there will be a Planning Commission Meeting tomorrow (August 14) and it's an important meeting for the community to show for the Downtown Vision Plan and explained how Planning Commission works with the City Council.

5. DISCUSSION ITEMS

- 5.A. Staff recommends that the City Council conduct a "Town Hall" style workshop, and upon conclusion, discuss and provide direction, by motion, to staff on the development of an ordinance to modify the Business Tax under Chapter 6.04 of the Tracy Municipal Code.

Sara Castro, Finance Director provided the staff report and responded to questions.

Arturo Sanchez, Assistant City Manager explained the logistic instructions for the public and staff on how the Breakout session will work.

Breakout session began at 6:48 p.m.

Breakout session ended at 7:37 p.m.

Brian MacDonald, Director of Parks and Recreation shared feedback received for Proposal 1: Rate change to .0001 for all categories with \$100,000 maximum tax (submission from Chamber), there were 5 votes received on this item from the community members present. The Measure B Categories:

- 1) Retail/General Business
- 2) Manufacturing/Warehousing/Wholesaling
- 3) Contractor/Service
- 4) Professionals/Rentals

Norbert Ruijling, Chief Innovation Officer shared feedback received for Proposal 2: Overall rate reduction of 50% with a \$20,000 maximum tax, for the additional categories listed (submission from Chamber), there were 16 votes received on this item from the community members present. Includes all Measure B Categories above and:

- 5) Gasoline Sales; with a maximum tax of \$50
- 6) Cannabis; with a maximum tax of \$50
- 7) Car Dealerships; with a \$2500 maximum tax

Forrest Ebbs, Director of Community and Economic Development, shared feedback received for Proposal 3: Overall rate reduction by 40% (submission by City Staff), there was 1 vote received on this item from the community members present. Includes Measure B Categories 1 to 4.

JoAnn Weberg, Human Resources Manager shared feedback received for Policy Considerations, there were 15 of the 20 votes received for Option 7. Options were:

- 1) Should Council focus on total revenue?
- 2) Should Council focus on rates per category?
- 3) Should Council set maximum tax cap collected per category?
- 4) Should tax be an equal balance of all above 1 and 3?
- 5) Option 1 and 2 only.
- 6) Option 1 and 3 only.
- 7) Option 2 and 3 only.

Kimberly Murdaugh, Human Resources Director gathered other community feedback:

- Thinks there should be potential to modify the proposals, for instance proposal number 1 should have a .0003 across the board, that sentiment was echoed by an additional Community Member.
- HDL said during a meeting that there would be no cost to a business above the maximum of \$19,000 per year, thought they heard that in a meeting.
- Proposed a hybrid between proposals 2 and 3, 2 is good for business with a 40% to 50% reduction with a higher cap as proposed in proposal 2 such as \$50,000 or \$75,000.

- The caps that in proposal 2 do not help business that are required to file under each LLC that they have in the City of Tracy. For example, a real estate company may have a separate LLC for each rental property so each LLC is paying the business tax and may not exceed that cap, sentiment was echoed by another Community Member
- Could the City wait until the sales tax sharing reduction is voted into law, echoed by another Community Member.
- Encouraged business establishment rather than taxing existing businesses so they do not leave but expand in Tracy, focus on developing mechanisms where existing businesses flourish and attraction of new businesses.
- Sunset Ordinance and proposed a 10-year sunset to allow a revisiting of the sales tax at that time.
- The Chamber of Commerce after reviewing fiscal impacts of Options 1 and 2, the Chamber now supports Option 2 due to fiscal impacts to City and if cannot agree on a feasible tax, should go back out to voters.
- The proposed carveouts in Proposal 2 are critical.
- Proposing a retro credit for business tax paid in FY 23/24 based on the amended business tax ordinance for FY 24/25, the current perspective is that the City is not business friendly.
- Council should consider the impacts of the business tax on the donations to the Non-Profits that provide services that the City does not provide.

Michael Raitchel, Senior Accountant provided an overview of the Rate Calculator with the numbers that Council provided.

Council comments and questions continued. Council Members outlined the breakdown recommendations that they wanted to see presented in the Rate Calculator presentation.

Mayor Young called a recess at 8:57 p.m.

Meeting reconvened at 9:27 p.m.

Council questions and comments followed.

Ken Cefalo, owner of Main Street Music shared that the measure was misleading, and that it gave the impression that businesses would save money and raise money for the City, shared that most people are not business owners and did not consider that 75% to 80% of business do not hire employees, and shared several examples of business license holders that do not have employees. Mr. Cefalo expressed concerns that if businesses leave the ones that stay will also suffer because of lack of customers and urged Council to consider all that before they make a decision.

Jerry Stoller requested that Council not only “Think Inside the Triangle” but to also think outside the triangle.



Cliff Hudson shared that as a business owner in Tracy for 16 years and the current economic climate; labor, materials, gas, food prices are up and now business tax, shared that Tracy should be attracting business rather than making business reconsider coming to Tracy and urged Council to be thoughtful in this process and the long-term effects of this decision and must continue to move forward.

Council comments and questions continued.

Ken Cefalo asked how many businesses it takes to get to \$666,000 so not sure how much that cap is going to change things, urged Council to change the cap to \$25,000 to see what happens for Categories 1-4 and this model really does not indicate how many businesses are impacted.

Mikayla Toscas, representative from the Chamber of Commerce expressed concerns from business owners regarding inflation and taxes, Measure B was not presented clearly to the public and urged Council to consider when and if businesses relocate outside of Tracy and how will this impact the sales tax, Tracy is not business friendly, and the Chamber supports Proposal 2 and requested a tiered tax so that all businesses can be helped.

David Merriam, Plant Manager from Leprino Foods urged Council to decide the direction that the City wants to move in if the goal is to be a pro-business/business friendly City agrees with the lower tax proposal. If the priority of more revenue from existing business, then there needs to be some compromising and a realistic cap and expressed support for the proposals presented by Council Members Arriola, Evans and Mayor Pro Tem Davis.

Robin Lopez from Taylor Farms expressed support for the comments made by the previous speaker.

Alice English stated that several businesses have been lost due to the City taxes and with more homes being built, businesses are needed to support the growing population rather than people going into the Bay Area or other local cities for their shopping needs, urged Council to consider adopting the proposal that was made by Mayor Pro Tem Davis because better businesses and retail is needed that can support local jobs.

Council comments and questions continued.

Mayor Pro Tem Davis shared that Council should go with no cap on the low tax rate and market the community that shows a strong show of faith getting behind existing business and a strong message to the businesses that the City is trying to attract. Supports a .0003 rate, low taxation will drive more business. Council Member Evans expressed support.

**ACTION:** Motion was made by Council Member Bedolla and seconded by Council Member Arriola to bring back an ordinance for Council to consider a \$25,000 cap, 25% reduction for an estimated revenue of \$3.2 million.

Council comments and questions continued.

**ACTION:** Motion was amended by Council Member Bedolla and seconded by Council Member Arriola to bring back an ordinance for Council to consider a \$25,000 cap, 25% reduction for an estimated revenue of \$3.2 million with a sunset of three (3) years.

Council comments and questions continued.

**ACTION:** Alternate motion was made by Council Member Evans and seconded by Mayor Pro Tem Davis to consider a \$62,500 cap, rates as shown in column "F", for an estimated revenue of \$2.62 million with a sunset of three (3) years.

Council comments and questions continued.

**ACTION:** Friendly amendment was made by Council Member Bedolla changing the rate for Category 4 to .001,

Council comments and questions continued.

**ACTION:** Friendly amendment was made by Council Member Evans to changing the rate for Category 4 to .0008,

Council comments and questions continued.

Council Member Bedolla's friendly amendment was accepted by Council Member Evans to changing the rate for Category 4 to .001.

**ACTION:** Friendly amendment was made by Council Member Bedolla requesting that the cap be increased to \$70,000. Council Member Evans rejected.

Council comments and questions continued.

Bijal Patel, City Attorney reminded Council that there was still a motion and a friendly amendment on the floor.

Council Member Bedolla requested guidance as to rescinding a motion.

Ms. Patel clarified that yes, the motion maker can rescind the original motion and the motion second would also have to rescind their support.

**ACTION:** Council Member Bedolla rescinded original motion.

**ACTION:** Council Member Evans rescinded alternate motion and friendly amendments.

**ACTION:** Council Member Arriola rescinded second for original motion and for friendly amendment.

**ACTION:** Mayor Pro Tem Davis rescinded her second on Council Member Evans' alternate motion.

Council comments and questions continued.

**ACTION:** Motion was made by Council Member Arriola and seconded by Council Member Bedolla to consider a \$25,000 cap, 25% reduction for an estimated revenue of \$3.2 million with a three (3) year sunset.

Council comments and questions continued.

**ACTION:** Council Member Bedolla rescinded support for Council Member Arriola's motion.

Council comments and questions continued.

**ACTION:** Motion was made by Council Member Evans and seconded by Mayor Pro Tem Davis to amend Chapter 6.04 per the Tracy Municipal Code to what is reflected on the screen columns F to I, including a sunset of three (3) years. Roll call found all in favor, passed and so ordered.

	Categories	Rate	Cap	Tax
1	Retail/General Business	0.0005	65,000	1,049,079
2	Manufacturing/Warehousing/Wholesaling	0.0009	65,000	696,509
3	Contractor/Service	0.001	65,000	807,794
4	Professionals/Rentals	0.0015	65,000	492,035
5	Gasoline Sales; with a maximum tax of \$50	0.0005	50	850
6	Cannabis; with a maximum tax of \$50	0.0005	50	200
7	Car Dealerships; with a \$2500 maximum tax	0.0005	2,500	21,502
				<b>3.07 mil</b>

6. There were no Council Items.

7. ADJOURNMENT – Time: 11:23 p.m.

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

The above agenda was posted at the Tracy City Hall on August 8, 2024. 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

**August 20, 2024, 5:00 p.m.**

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

1. Mayor Young called the meeting to order at 5:00 p.m.
2. There were no actions taken pursuant to AB 2449.
3. Roll call found Council Members Evans, Mayor Pro Tem Davis and Mayor Young present. There was no declaration of conflicts.

Council Member Bedolla arrived at 5:04 p.m. and had no declaration of conflicts.

Council Member Arriola arrived at 5:07 p.m. and had no declaration of conflicts.

4. ITEMS FROM THE AUDIENCE – Sandy Taylor shared concerns regarding the City Attorney serving on suspended license and Council failing to honor the contract. Ms. Taylor stated she submitted a complaint to the Bar Association and shared her response received from the Bar Association regarding suspension.

Alice English spoke about a mailer regarding the Airport and stated she applauds Council Members Bedolla, Evans and Mayor Pro Tem Davis for their support for the Tracy Airport. Council Members go to Washington D.C. to fight for funding for roads, infrastructure and the Airport. Shared concerns regarding supporting developers like Tracy Hills and Ellis and needing to look out for all of Tracy and not just special interests.

Jimmy stated the obligation of the Sergeant at Arms is to uphold the first amendment rights of every citizen who engages in public discourse and spoke about the role of the Sergeant at Arms and ensuring every voice is heard.

Juana Dement stated as a prior Council Member she was one of the people who went to Washington and advocated for funds from the FAA to correct some of the issues. Last time Council was involved with anything to do with the Airport was when a movement was held by a developer who wanted to shorten the runway to build homes, spoke about the damage to the road to the Airport and suggested putting an item on the agenda regarding the road to the Airport. Ms. Dement asked if any Council has anything to do with the mailer. Mailers are attacking the same people. People are investigating and it will not look right if anything leads back to Council.

Tim Silva expanded on the mailer and stated the Airport is utilized for many beneficial uses and is a resource to the community. The FAA sees value of the Airport. Not a single dime came out of the City's general budget. Mr. Silva shared his disappointment and concerns regarding the mailer being misleading and added to single out certain Council Members is bizarre as many Council Members have worked on projects over the years.

5. DISCUSSION ITEMS

- 5.A. The City Council 1) discuss responses to the 2023-2024 San Joaquin County Civil Grand Jury's Report titled: "City of Tracy: Public Trust Still Not Restored" Case No. 0323 and, upon conclusion, and 2) adopt a Resolution approving the final form of response letter and authorizing the City Manager and City Attorney to jointly execute and transmit the response letter to the presiding judge.

Bijal Patel, City Attorney provided the staff report and responded to questions.

Midori Lichtwardt, City Manager provided the presentation and responded to questions.

Council questions followed regarding determining the process to respond to the findings and how Council's comments would be incorporated in the responses.

Pat Howell stated Tracy made the headlines in the Stockton Record for our disfunction on City Council and shared concerns regarding the City Attorney and the Grand Jury Findings and lawsuits against the City.

Juana Dement stated she has proof that someone sitting on the Grand Jury is connected to Mayor Young's campaign and need to find out if they recused themselves during the investigation of Tracy City Council. If they didn't then have poorly written Grand Jury Report. Ms. Dement spoke about the Grand Jury also investigating Stockton because they felt bullied by 209 Times and the founder of 209 Times told her the Grand Jury never talked to them. Grand Jury who wrote report did not do their job correctly and has been used as a political weapon.

Vannie Dart shared concerns regarding the Grand Jury Report adding the City Attorney has been attacked from day one and some of the Council Members. Why would we listen to a group of people on the Grand Jury that are tied to the Mayor. This report is nothing but a legal document to smear Council Members Davis, Evans and Bedolla and the City Attorney.

Dan Randall stated 27 months ago everything came to a stop and shared concerns regarding the City Attorney. Tracy is unfriendly to business, poor leadership. Thanked Mayor Young and Council Member Arriola as they tried to stop it. Mr. Randall shared his frustrations regarding delay in processing contracts.

Tim Silva praised what the City Attorney has been doing, has been holding developers accountable to their Development Agreements and they don't like that. Developers over run Tracy. Get City Attorney more staffing. Mr. Silva disagrees with the Grand Jury Report, shared concerns regarding the Mayor being unprofessional and wants a Council that is for the people not the developers.

Rosario stated he rejects the Grand Jury Report and shared concerns regarding pending infrastructure, business park, roads, neighborhoods, parks, schools. Council never makes conclusions properly. The City Attorney has made developers accountable and is making things move. Aquatic Center is starting to move. Why did it take three meetings to accept the land. Shared concerns about Council Members being targeted on social media and mailers and Mayor Young and Council Member Arriola working for developers.

Burnell Shull disagreed with the Grand Jury Report and shared concerns regarding a development only having one entrance and exit, stated there are reasons we got rid of City Manager and the City Attorney needs help. Ms. Shull asked why Council let all these houses come to the City, it is destroying our City.

Dotty Nygard stated it is disappointing when we have accusatory and attacking when we can have discussion and debate. Civil Grand Jury has a role and they do not take it lightly. Ms. Nygard explained the definition of the Civil Grand Jury and the system. Need to address it and debate where we can make changes. Want to see collaboration, good governance and trust.

Robert Tanner stated the Grand Jury Report is made up of a Judge and a number of people who have decided the report needed to be generated. City Attorney lost license for one month and yet the contract for the City Attorney said if she lost her license for any reason, she is gone but we had three people vote to keep her on so contract was violated. Gave her retroactive raise including the month she was not an Attorney. It is illegal all the way around. Needs to stop.

Alice English stated she agrees on training for the Brown Act. Referred to a past Grand Jury Report and members of the Grand Jury. This report is not fully transparent because only certain people were interviewed and did not mention about the \$600,000. Ms. English spoke about developers giving money to the Mayor and Council Member Arriola. They tried to get rid of the City Attorney. City Attorney works for the Council, not the other way around. Things happened way before the City Attorney came to Tracy.

Sandy Taylor reminded City Council that the response to the Grand Jury Report is directed by a subject of the investigation and shared concerns regarding the City Attorney continuing to work while suspended.

Karen Moore addressed recommendations in the Grand Jury Report. It is a good first step to have staff anonymously report problems. When Council Members are attacked we need to remember they were voted in by a majority of citizens so if attacking Council, voters are being attacked.

Jimmy stated he is a former City employee and the whistleblower who was fired after inspecting the shipping container dormitories that were illegally installed as part of the Tracy Emergency Homeless Shelter in 2022. Has cost upward of \$600,000 and cost reputation and public perception and shared his concerns regarding the Grand Jury Report.

Michel Bazinet stated the three Council Member majority publicly tars the integrity and ethics on the other two Council Members. The City Attorney is in complete denial regarding criticism directed at her and believes she only represents the Council majority. Nowhere has he seen Council agree that there is a problem in relationships, and may have contributed to it and will find ways to solve them.

Amir stated the Grand Jury Report is a joke and bias. The mailers are attacking the specific candidates. No one is ever going to be on the same page.

Mayor Young called for a 5-minute recess at 6:45 p.m.

Mayor Young reconvened the meeting at 6:57 p.m.

**ACTION:** Motion was made by Council Member Arriola and seconded by Council Member Evans to continue the special meeting to follow the regular meeting. Roll call found all in favor; passed and so ordered. Time: 7:01 p.m.

Special Meeting reconvened at 10:21 p.m.

Karin Schnaider, Assistant City Manager explained how staff will capture Council's consensus and recommendations regarding the findings and responses.

Bijal Patel, City Attorney responded to Council questions.

Midori Lichtwardt, City Manager responded to Council questions.

Council Member Evans provided an opening statement and referred to documents and records that with the support of Council he will be asking to include as part of Council's response to the Grand Jury Report. Mayor Pro Tem Davis supported inclusion into the response.

Mayor Young responded to Council Member Evans opening statement.

Ms. Patel asked Council Member Evans to rescind his motion he made and the second to be rescinded so it is not on the table and do not seek a vote on it so all Council can finish their opening comments and then decide how to make motions.

Council Member Evans rescinded his request for inclusion in the Council's response to the Grand Jury Report. Mayor Pro Tem Davis rescinded her support.

Midori Lichtwardt, City Manager explained the letter is the words and work of City Council and staff's intent is to help the City Council with the response to the Grand Jury Report. If Council provides opening statements, and upon consensus with the message Council wants to send, staff can help with the logistics of how that will go into the response letter or not.

Council Member Evans read out his general statement with attachments previously noted.

Mayor Pro Tem Davis read out her opening statement.

Council Member Arriola objected to the characterizations in Mayor Pro Tem Davis's statement.

Council discussed the following Grand Jury Report Findings and responses:

### **1.0 City Council**

#### **Findings**

***F1.1 Through their unprofessional behavior and inability to work cohesively, members of the Tracy City Council have been unable to govern effectively.***

Council Member Arriola - Agree  
Council Member Bedolla – Disagree Partially  
Council Member Evans – Disagree Partially  
Mayor Pro Tem Davis – Disagree Partially  
Mayor Young – Agree

The City Council disagrees partially with finding F1.1.

**Response to F1.1** - The City Council has adopted a Code of Conduct and Meeting Protocols to facilitate a professional and productive Council Meetings. The Code of Conduct, Section 3.6 Code of Conduct Compliance and Enforcement, provides the framework for the Council to address actions by fellow Council Members and/or Commissioners that may be considered unprofessional or prohibit the City Council's ability to govern effectively.

For meetings where four of the five Council Members were in attendance, the four City Council Members worked very well together. Although we disagreed on some items, we worked well and made great progress working together.

**ACTION:** Motion was made by Council Member Evans and seconded by Council Member Bedolla to adopt the response to the F1.1 finding from the Grand Jury as written. Roll call found Council Members Bedolla, Evans and Mayor Pro Tem Davis in favor; passed and so ordered. Council Member Arriola and Mayor Young opposed.



***F 1.2 Tracy City Council has violated the Brown Act in multiple ways: discussing personnel issues in an open meeting and posting personnel issues on an open Council agenda.***

Council Member Arriola - Agree  
Council Member Bedolla – Disagree Wholly  
Council Member Evans – Disagree Wholly  
Mayor Pro Tem Davis – Disagree Wholly  
Mayor Young - Agree

The City Council disagrees wholly with finding F1.2.

**Response to F1.2** - The City of Tracy, like all employers, is restricted in what information it can and should share regarding personnel matters. The City takes seriously its responsibility to respect the privacy rights of its current and former employees. The Brown Act affords certain protections pertaining to personnel matters. In addition, any written allegations of Brown Act violations have been formally addressed by the City Council.

**ACTION:** Motion was made by Council Member Bedolla and seconded by Council Member Evans to accept response to F1.2 as drafted. Roll call found Council Members Bedolla, Evans and Mayor Pro Tem Davis in favor; passed and so ordered. Council Member Arriola and Mayor Young opposed.

***F 1.3 Some Tracy City Council Members have created a toxic work environment within City Hall by spreading accusation of corruption and alleged illegal activities by upper management, staff and other Council Members.***

Council Member Arriola - Agree  
Council Member Bedolla – Disagree Wholly  
Council Member Evans – Disagree Wholly  
Mayor Pro Tem Davis – Disagree Wholly  
Mayor Young - Agree

The City Council disagrees wholly with finding F1.3.

To the extent that there is a perception of a toxic work environment, the City Council disagrees that more than one Council Member created such an environment.

The City of Tracy, like all employers, strives to foster a safe, respectful, and dignified workplace for its employees. It prides itself on having responsive and ethical professional staff. Staff will work to assure that additional and appropriate workplace training occurs.

**ACTION:** Motion was made by Council Member Evans and seconded by Council Member Bedolla to adopt the response to F1.3 as adopted. Roll call found Council Members Bedolla, Evans and Mayor Pro Tem Davis in favor; passed and so ordered. Council Member Arriola and Mayor Young opposed.

***F 1.4 Tracy City Council's behavior has resulted in poor morale within City Hall.***

Council Member Arriola - Agree  
Council Member Bedolla – Disagree Wholly  
Council Member Evans – Disagree Wholly  
Mayor Pro Tem Davis – Disagree Wholly  
Mayor Young - Agree

The City Council disagrees wholly with finding F1.4.

***F 1.5 The City Council created a void in City administration and leadership through the resignation of another City Manager. It should be noted that there have been six City Managers and four City Attorneys in the past five years.***

Council Member Arriola - Agree  
Council Member Bedolla – Disagree Wholly  
Council Member Evans – Disagree Wholly  
Mayor Pro Tem Davis – Disagree Wholly  
Mayor Young - Agree

The City Council disagree wholly with finding F1.5.

***F 1.6 The unprofessional Council behavior during Council meetings has negatively impacted the City's reputation, affecting new business development and recruitment of potential City employees.***

Council Member Arriola - Agree  
Council Member Bedolla – Disagree Wholly  
Council Member Evans – Disagree Partially  
Mayor Pro Tem Davis – Disagree Partially  
Mayor Young - Agree

There was no Council consensus on finding F1.6.

***F 1.7 Members of City Council attempted to undermine the ordinance requiring a supermajority vote to remove the City Manager to a simple majority vote.***

Council Member Arriola - Agree  
Council Member Bedolla – Disagree Wholly  
Council Member Evans – Disagree Wholly  
Mayor Pro Tem Davis – Disagree Wholly  
Mayor Young - Agree

The City Council disagrees wholly with finding F1.7.

***F 1.8 There are no established measurable performance goals and objectives for the City Manager and City Attorney; therefore, the City Council cannot conduct effective annual evaluations.***

Council Member Arriola – Disagree Partially  
Council Member Bedolla – Disagree Wholly  
Council Member Evans – Disagree Wholly  
Mayor Pro Tem Davis – Disagree Wholly  
Mayor Young – Disagree Partially

The City Council disagrees wholly with finding F1.8.

***F 1.9 Serving as Parliamentarian for Council meetings puts the City Attorney in a conflicting situation. Each decision by the Parliamentarian can be seen as partial to one side or the other.***

Council Member Arriola – Disagree Partially  
Council Member Bedolla – Disagree Wholly  
Council Member Evans – Disagree Wholly  
Mayor Pro Tem Davis – Disagree Wholly  
Mayor Young - Agree

The City Council disagrees wholly with finding F1.9.

City Council discussed continuing the item due to the late hour.

**ACTION:** Motion was made by Council Member Evans and seconded by Mayor Pro Tem Davis to continue item 5.A. to Tuesday, August 27, 2024, at 7:00 p.m. Roll call found Council Members Arriola, Bedolla, Evans and Mayor Pro Tem Davis in favor; passed and so ordered. Mayor Young opposed.

6. COUNCIL ITEMS – There were no Council items.

7. ADJOURNMENT – Time: 12:53 a.m. on Wednesday, August 21, 2024.

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

The above agenda was posted at the Tracy City Hall on August 17, 2024. The above are action minutes. A recording is available at the office of the City Clerk.

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

**August 20, 2024, 7:00 p.m.**

City Hall, 333 Civic Center Plaza, Tracy

Web Site: [www.cityoftracy.org](http://www.cityoftracy.org)

Mayor Young called the meeting to order at 7:15 p.m.

There were no actions taken pursuant to AB 2449.

Roll call and Declaration of Conflicts – Council Members Arriola, Bedolla, Evans, Mayor Pro Tem Davis and Mayor Young present. Mayor Young stated she has a conflict with item 3.B and will recuse herself and Mayor Pro Tem Davis would take over the meeting during that item.

Mayor Young led the Pledge of Allegiance.

Deacon Jack Ryan offered the invocation.

Midori Lichtwardt, City Manager presented Employee of the Month Award for August to Miranda Aguilar, Community and Economic Development Department.

1. CONSENT CALENDAR – Following the removal of Consent Item 1.G by Council Member Evans motion was made by Council Member Arriola and seconded by Council Member Evans to adopt the Consent Calendar. Roll call found all in favor; passed and so ordered.
  - 1.A. Adoption of June 25, 2024 Special Meeting Minutes, July 2, 2024 Regular Meeting Minutes and July 9, 2024 Special Meeting Minutes. – **Minutes were adopted.**
  - 1.B. Staff recommends that the City Council adopt a resolution (1) determining that compliance with standard procurement processes is not in the best interest of the City pursuant to Tracy Municipal Code Section 2.20.180(b)(4) and dispensing such requirement for the purchase of specified computer equipment and related services; and (2) approving a Subscriber Services Agreement with the County of San Joaquin to provide certain computer equipment and related services for a total not to exceed amount of \$57,007, for a one year term. – **Resolution 2024-129** determined that compliance with standard procurement process is not in the best interest of the City pursuant to TMC 2.20.180(b)(4) and dispensed such requirement and approved the Subscriber Services Agreement with County of San Joaquin.
  - 1.C. Staff recommends that the City Council adopt a resolution (1) approving a Professional Service Agreement with The Shalleck Collaborative, Inc., of Berkeley, California to provide engineering design services for The Grand Theatre Audio Visual Upgrades Project, for a total not-to-exceed contract amount of \$92,300, and for a term extending from August 20, 2024 to June 30, 2026, and (2) authorizing the City Manager to extend the contract term for one additional year, if needed. – **Resolution 2024-130** approved the Professional Services Agreement with The Shalleck Collaborative, Inc.

- 1.D. Staff recommends that the City Council adopt a resolution authorizing the City Manager to submit a claim to the San Joaquin Council of Governments for Transportation Development Act funds in the amount of \$6,706,900 for Fiscal Year 2023-2024 and to execute the claim and related documents. – **Resolution 2024-131** authorized the submittal of a claim to the San Joaquin Council of Governments for the Transportation Development Act funds.
- 1.E. Staff recommends that the City Council waive the second reading and adopt an Ordinance: (1) amending the zone district of the property at 2660 W. Byron Road (Assessor's Parcel Number 238-050-13) from medium density residential to medium density cluster, and (2) determining that the proposed zoning amendment is categorically exempt from the California Environmental Quality Act pursuant to Guidelines Section 15332. – **Ordinance 1347** was adopted.
- 1.F. Staff recommends that the City Council adopt a Resolution (1) accepting the Federal Aviation Administration's Airport Improvement Program Grant, in the amount of \$126,000; (2) appropriating the full grant amount to a Capital Improvement Project (CIP) 77595 for the Airport Pavement Maintenance Management Plan; and (3) appropriating \$14,000 from the General Fund to CIP 77595, to meet the grant's requisite 10% match requirement. – **Resolution 2024-132** accepted the Federal Aviation Administration's Airport Improvement Program Grant, appropriated funds to CIP 77595 for the Airport Pavement Maintenance Management Plan and appropriated funds from the General Fund to CIP 77595 to match grant's match requirement.
- 1.H. Staff recommends that the City Council adopt a resolution approving a Professional Services Agreement with Griffin Structures for project management services for the Clyde Bland Park BMX Pump Track Project for a total not-to-exceed amount of \$235,500. – **Resolution 2024-133** approved the Professional Services Agreement with Griffin Structures.
- 1.I. Staff recommends that City Council adopt a Resolution authorizing the City Manager to request from the San Joaquin Council of Governments Regional Early Action Planning grant funds 2.0 in the amount of \$1,129,000. – **Resolution 2024-134** authorized the City Manager to request from the San Joaquin Council of Governments Regional Early Action Planning grant funds 2.0.
- 1.J. Staff recommends that the City Council adopt a resolution (1) accepting Landscape Improvements for Retention Basin, Tracy Hills Phase 1B, Tract 4084, (2) authorizing the City Engineer to accept a One-Year Warranty Bond, and (3) authorizing the City Clerk to file the Notice of Completion with the San Joaquin County Recorder's Office. – **Resolution 2024-135** accepted the landscape improvements for Retention Basin, Tracy Hills Phase 1B, Tract 4084.
- 1.K. Staff recommends that the City Council adopt a resolution: 1) Determining that compliance with the standard procurement processes is not in the best interests of the City pursuant to Tracy Municipal Code 2.20.140(b)(6) and dispensing such requirement for the procurement of janitorial services for the City. (2) Approving a Professional Service Agreement with Madill Enterprises

for janitorial services for an initial term of three months and a total not to exceed amount of \$116,717. – **Resolution 2024-136** determined that compliance with standard procurement process is not in the best interest of the City pursuant to TMC 2.20.140(b)(6) and dispensed such requirement and approved the Professional Services Agreement with Madill Enterprises.

- 1.L. Staff recommends that the City Council adopt a resolution (1) accepting construction of the Tracy Hills Zone 5 Pump Station at the John Jones Water Treatment Plant, constructed by Valentine Corporation of San Rafael, California, as complete, (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 bonds and retention payment, and (4) authorize the Director of Finance to release the remaining unused project funds to Lennar Homes of California, LLC. – **Resolution 2024-137** accepted construction of Tracy Hills Zone 5 Pump Station at the John Jones Water Treatment Plant.
- 1.M. Staff recommends that the City Council adopt a resolution 1) determining that compliance with standard procurement processes are not in the best interest of the City pursuant to Tracy Municipal Code 2.20.140(6) and dispensing such requirement for the actions to be taken here, and 2) approving a Professional Service Agreement with Mark Thomas and Company, Inc. of Sacramento, California, for additional services related to the design and approval effort for the Corral Hollow and Linne Road Intersection Improvements, Capital Improvement Project 72104, for a two year term and for a not-to-exceed agreement amount of \$172,672. – **Resolution 2024-138** determined that compliance with standard procurement process is not in the best interest of the City pursuant to TMC 2.20.140(6) and dispensed such requirement and approved the Professional Services Agreement with Mark Thomas and Company, Inc.
- 1.N. Staff recommends that the City Council adopt a resolution 1) determining that compliance with standard procurement processes is not in the best interest of the City pursuant to Tracy Municipal Code 2.20.140(6) and dispensing such requirement for the actions herein, and 2) approving a Professional Services Agreement with CSG Consultants, Inc. for the Fiscal Year 2020-2021 Pavement Rehabilitation, Capital Improvement Project 73178, for an additional scope of work for the project, for a total not-to-exceed amount of \$73,114, with the term commencing retroactively on March 17, 2023, and ending on March 16, 2025. – **Resolution 2024-139** determined that compliance with standard procurement process is not in the best interest of the City pursuant to TMC 2.20.140(6) and dispensed such requirement and approved the Professional Services Agreement with CSG Consultants, Inc.
- 1.G. Receive an informational report regarding the Police Department's response to fireworks complaints and official city events during the July 4th weekend.

Sekou Millington, Police Chief and Octavio Lopez, Police Captain provided the staff report and responded to questions.

Council Member Evans pulled the item to highlight the success. Sacramento County has higher violations and asked if there was anything more to do about values of citations or looking at sensitive areas.

Bijal Patel, City Attorney responded to questions.

Council questions and comments followed.

Nicole Rodriguez with TNT Fireworks thanked the City for supporting the program. The nonprofit organizations understand it is a privilege to sell safe and sane fireworks and it is their biggest fundraiser of the year. The biggest competition they have is the illegal fireworks which take funds out of those organizations. Congratulated Police Department. Could not believe how different this July 4 was.

A resident who has lived in Tracy since 2011 stated she saw no improvement this year. Get debris falling on solar panels and roof. Surrounded by people shooting off illegal fireworks and it is not just 4<sup>th</sup> of July. Shared concerns about explosives being stored in garage. Appreciates the efforts and hopes there can be a resolution.

Conrad Levoit thanked the Police Department and Tracy City Center Association for the well-attended parade, thanked Tracy Chamber of Commerce for the July 4 event and shared support for the fireworks display at Legacy Fields.

**ACTION:** Motion was made by Council Member Arriola and seconded by Council Member Evans to accept the informational report regarding the Police Department's response to fireworks complaints and official city events during the July 4th weekend. Roll call found all in favor; passed and so ordered.

2. ITEMS FROM THE AUDIENCE – Richard Williams spoke about the loss of his father due to being struck at an uncontrolled crosswalk. Mr. Williams stated he previously submitted a petition and spoke about fatalities of pedestrians crossing the street, getting illuminated crosswalks installed throughout the City and making the streets of Tracy safe for all.

Ari Sarmento shared concerns regarding the funding being asked for and has not been allocated and asked why it has taken so long to do a study, and requested Council to review this issue and provide answers.

Midori Lichtwardt, City Manager responded to Mayor Young's question and stated staff will get an update to Council in a consent or discussion item, whichever is most appropriate.

Deborah Allen stated she was representing neighbors on Oakridge Drive, specifically from Brookview to Glenbriar Circle. There are speeders travelling from Brookview to Glenbriar Circle at a dangerous speed which is a 25 mile per hour zone. Children come from school and walk through Brookview to get to their homes. The mechanical data collected is skewed. Have collected traffic calming study and one person per residence has signed it.

Melissa Watkins shared concerns regarding a neighbor assaulting her and other neighbors and is dangerous. She hears a high pitch, and it hurts her head, and causes her neck to get stiff and the Police Department will not take her seriously. It has been on a nightly basis for two years. They stole all her information.

Vannie Dart stated people are saying the City Attorney gets paid more than our Governors. Her salary should be compared with what another City Attorney's make, not the Governor. Governor is a public servant. People voting should learn that all these attacks by mailers are frivolous and the City Attorney has nothing to do with it and serves the Council. She is not elected and not a public figure and suggested people do their research and don't be fooled by the mailers.

Karen Moore spoke about Diversity, Equity and Inclusion (DEI). We have had DEI failures and successes in this town and explained DEI. Recently there is a lot of static on social media about changes to roads that people in the neighborhood did not know about. Ms. Moore recommended the City look at Attorney General's recommendation for notifying the community.

Amir shared concerns over efforts to remove the City Attorney. Stated \$600,000 spent on containers for the homeless shelter is a misuse of public funds. Failure of the shelter and lack of scrutiny in the Grand Jury Report is just a bias and must be addressed. Report should have contained evidence exonerating those acting in the City's best interests and exposing those manipulating our City for personal gain. The right access to public records is crucial for transparency and accountability and key to public trust.

### 3. REGULAR AGENDA

#### 3.A. Staff recommends that the City Council receive the annual report by the Measure V Resident Oversight Committee presenting its findings regarding the use of Measure V funds.

Sara Castro, Finance Director introduced the item and responded to questions.

Wes Huffman, Chair of the Measure V Residents' Oversight Committee provided the report and responded to questions.

Council comments and questions followed.

Robert Tanner asked why Council is concerned with the Multi-General Recreational Center (MGRC) instead of the Aquatics Center. Mr. Tanner compared the cost of MGRC and the Aquatics Center and asked if \$31 million has already been spent.

Karen Moore stated she is excited for the amenities to be built and when she voted for Measure V, it included a library, money for roads and amenities but seems like everything except amenities is coming out of Measure V. Ms. Moore asked if the independent auditor handles the audit of the report and recommended looking at the Stack Center in Hayward, looking up all other



funding sources other cities are going for, and encouraged Council and staff to go to federal representatives and get more money if needed and use Prop 68.

Michel Bazinet stated the reports estimated lifetime Measure V revenues for \$263 million and that estimate is several years old. Hoped staff will provide a more recent estimate. Council should have the following information: How much money would be received over the life of Measure V, how much is allocated, how much has spent by project and how much is available by project and how much is available at the end of the project.

**ACTION:** Motion was made by Council Member Bedolla and seconded by Council Member Evans to accept the annual report by the Measure V Residents' Oversight Committee regarding the use of Measure V funds. Roll call found all in favor; passed and so ordered.

Mayor Young announced there was one email received from Kati Cauller regarding street light poles for Items from the Audience.

Mayor young recused herself from Item 3.B at 8:37 p.m.

3.B. Staff recommends that the City Council receive an informational report on the status of gaming tables and card rooms, including recent State legislation, and provide comments and/or direction to staff.

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

Council questions and comments followed.

Emmanuel Macalino, Stars Casino owner responded to Council questions.

Karen Moore stated she does not understand why politicians and representatives get in the way of free market, limiting competitions hurts consumers. Representatives are corrupted by lobbyists and money.

Keith Sharpe, Counsel for Stars Casino stated there has always been a moratorium in place and provided history of growth of the casino. There are several cities that have accomplished the two-table increase. The card room is interested in the reasons explained from the owner in getting the two extra tables as soon as possible.

Gabriela Machuca shared support for Stars Casino and increase of gaming tables..

Council comments continued.

**ACTION:** Motion was made by Council Member Arriola and seconded by Council Member Bedolla to accept the informational report on the status of gaming tables and card rooms, including recent State legislation, and provide direction to staff. Roll

call found Council Members Arriola, Bedolla, Evans and Mayor Pro Tem Davis in favor; passed and so ordered. Mayor Young recused herself from the item.

Mayor Young returned to the dais.

4. ITEMS FROM THE AUDIENCE – Mike Schober asked about introducing lights on basketball courts until 10:00 p.m.

Alice English spoke about the Grand Jury recommendations, during items from the audience we have a really bad habit started by the Mayor, there has always been discussion allowed which there shouldn't be. There should be no rebuttal from Council. When there is an agenda item, you have an opportunity to talk about it. The audience only has a limited time. Do rebuttals on your time. Have sat on other committees that do not do that.

5. STAFF ITEMS - None

6. COUNCIL ITEMS – Council Member Arriola requested an update on Cal Cities eCommerce legislation and skip the Finance Committee and go directly to City Council at the next meeting. Council Member Bedolla supported the request.

Council Member Arriola requested a Measure V funding update for any difference that was not in the report. Update on the difference for Finance Committee. Council Member Bedolla supported the request.

Mayor Young asked for the Measure V funding update for any difference that was not in the report to come back to Council also.

Karin Schnaider, Assistant City Manager stated the next Finance Committee meeting is September 24, 2024, in time to post for the October 1, 2024, Council meeting or October 15, 2024, for the Council meeting or go directly to Council.

Council Member Bedolla responded he was ok with going directly to Council.

Council Member Arriola asked for the update in this calendar year. Ms. Schnaider stated the earliest would be October 1, will aim for October.

Council Member Arriola requested an update on the funding allocations on cross walks safety concerns that Council heard from Mr. Williams. Council Member Bedolla supported the request.

Council Member Arriola clarified his request to come back globally, an item related to crosswalk safety. Council Member Bedolla supported the request.

Mayor Young asked will that include anything to do with the grant. That was part of the ask. They requested a grant and the City utilized it for another study and is there anything in motion for actual implementation.

Council Member Arriola asked the update to include funding sources and potential grants. Council Member Bedolla agreed with the request.

Mayor Pro Tem Davis requested updates on items she has requested since she has been on Council. What are we doing about empty commercial buildings, been asking for three and a half years. Where are we on warehouse environmental impact ordinance. Sent email recently regarding crosswalk safety near Monticello School, Sycamore at Windham and is waiting for a response on when the evaluations are going to be done by staff. Council Members Arriola and Evans seconded the request.

Council Member Evans stated he wants to know what is going on with the empty buildings and why we do not have anything on that. Have seconded that request before. Why hasn't it come before Council.

Karin Schnaider, Assistant City Manager responded she will look into that, she does not know the answer right now. On the warehouse item, Mr. Ebbs has been working with the LOCC partnering with Stockton and Fontana about the regulations. As a result, have begun the comparison process and the timeline is winter to bring back the comparisons to some of the Attorney General standards that have been implemented in Stockton and Fontana. Also watching a Bill that may be introduced as early as Friday that may disrupt all those plans. The warehouse is on our agenda and working with LOCC about policies. Cannot speak to the vacant commercial properties, it is in the Economic Development Strategic Plan as a priority. We are aware we have to bring that back. Will bring back information and policies regarding the crosswalks.

Mayor Pro Tem Davis stated this is very specific because a child almost got hit near Monticello School. Cars are not stopping at the stop light. This is something that is urgent and cannot wait. Went by the area and the sun blocks, don't see the stop sign, certainly would not see a child. Sent this out on August 8 and still waiting to find out about an evaluation staff is supposed to be doing. Do not want to see anyone get killed. In regard to the other requests made, she has been on Council almost four years, and think it is unacceptable that it takes this long for an item to come back. Items impact our community.

Council Member Evans stated on that topic, how does Council get visibility on when items are coming back. Getting tired of hearing items getting requested, what do we have to do to raise the status where staff will take action and bring it back.

Midori Lichtwardt, City Manager responded she sets the agenda other than Council directed items. There has been a number of things that have impacted staff's workload and have had to come back to Council that were not anticipated when putting together workplans. It is a matter of prioritizing these things. We do have other business that comes in for example the Grand Jury Report which was not anticipated and can take more than one pass. We will look at our priorities and try to get something back to you on all of these items. Do see Mayor Pro Tem Davis's August 8 crosswalk issue that was sent to her and the Police Chief and it is possible the Police Chief has more information but is not here so cannot provide an update.

Council Member Evans asked if there is a way to get visibility where we can see where things are on a weekly or monthly basis. Some sort of ranking.

Ms. Lichtwardt responded that would be bringing back an update to Council's Strategic Priorities and a separate list of additional asks in addition to the priorities.

Council Member Evans asked can it be a memo or something posted or more ongoing.

Mayor Pro Tem Davis stated she heard it could be given in a memo but have not received anything on these items.

Ms. Lichtwardt responded she would get with staff and either bring back an item or handled in a memo, but think it is something of interest to the entire public and makes sense to bring it back and if Council wants to reprioritize items we can get direction from Council at that time.

Council Member Bedolla asked staff to keep an eye on emails regarding trees that were removed on Bessie. Had a constituent ask when we are doing an inclusionary zoning ordinance or at least that discussion and also setting up soccer goals at some public parks for public use.

Mayor Young congratulated the first YARA graduation. There were 12 graduates that graduated as part of the PAL Program. Across California we had the first female whose name is Genesis so fitting she is the first female across California cohorts, Congratulations to the PAL Program. Congratulations to the Law Office of Jas Dhillon ribbon cutting.

Mayor Young requested support for receiving gift of art to come back as part of donation policy. Council Member Arriola supported the request.

7. ADJOURNMENT: Time: 9:23 p.m.

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

The above agenda was posted at the Tracy City Hall on August 15, 2024. The above are action minutes. A recording is available at the office of the City Clerk.

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Mayor

ATTEST:

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City Clerk

TRACY CITY COUNCIL - SPECIAL MEETING MINUTES

August 20, 2024, 9:00 p.m.

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

1. Mayor Young called the meeting to order at 9:25 p.m.
2. There were no actions taken pursuant to AB 2449.
3. Roll call found Council Members Arriola, Bedolla, Evans, Mayor Pro Tem Davis and Mayor Young present. City Council had no declaration of conflicts.
4. Items from the audience – None
5. Request to Conduct Closed Session: Time: 9:26 p.m.

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

*Patrick Vargas v. City of Tracy, et al.*  
USDC Case No. 2:22-cv-01454-WBS-KJN

There was no public comment.

**ACTION:** Motion was made by Council Member Arriola and seconded by Mayor Pro Tem Davis to recess to closed session. Roll call found Council Members Arriola, Evans, Mayor Pro Tem Davis and Mayor Young in favor; passed and so ordered. Council Member Bedolla absent from roll call.

6. Reconvene to Open Session – Time: 10:20 p.m.  
Mayor Young announced she had recused herself from closed session item 5.
7. Report of Final Action, if Any – There was no reportable final action.
8. Council Items and Comments - None
9. Adjournment – Time: 10:21 p.m.

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

The above agenda was posted at the Tracy City Hall on August 19, 2024. The above are action minutes. A recording is available at the office of the City Clerk.

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

Agenda Item 1.B

RECOMMENDATION

**Staff recommends that the City Council adopt a resolution (1) accepting the construction improvements for The Grand Theatre Center for the Performing Arts, completed by Best Contracting Services, Inc., (2) authorizing the City Clerk to file the Notice of Completion with the San Joaquin County Recorder’s Office, and (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.**

EXECUTIVE SUMMARY

This agenda item seeks the adoption of a resolution by the City Council accepting the construction improvements for the Grand Theatre Center of the Arts, Exterior Improvements, Phase 1 Roof Repair (Project), Capital Improvement Project (CIP) 71111, completed by Best Contracting Services, Inc. (Contractor) as complete, and authorizing the City Clerk to file a Notice of Completion. This would also authorize the City Engineer to release the Contractor’s improvement security in accordance with the existing contract and Tracy Municipal Code Section 12.36.080.

BACKGROUND AND LEGISLATIVE HISTORY

On August 3, 2021, the Mayor approved and awarded a construction contract (Contract), attached hereto as Attachment A, in the amount of \$161,872 to Best Contracting Services Inc., of Gardena, California, pursuant to Urgency Ordinance No. 1285, for the Grand Theatre Center for the Performing Arts, Exterior Improvements, Phase 1 Roof Repair, CIP 71111. The City Manager also had the authorization to approve project change orders up to the specified contingency amount of \$16,181 if needed.

On February 15, 2022, City Council approved an increase to the original budget to conduct a full tear out of the existing roof, as was deemed necessary by thermal scans, conducted at preliminary walkthrough by Engineering staff and the Contractor. The requested augmentation of an additional \$250,000 was approved by Resolution No. 2022-023, pursuant to which a Contract Change Order #1 (CCO) was approved on March 15, 2022 in the amount of \$224,188. On June 9, 2023, CCO #2 was approved at the department level for additional equipment to perform construction in the amount of \$1,750.00. The total approved CCO’s for the project total \$225,938.

In accordance with the Contract and Tracy Municipal Code Section 12.36.080, the Contractor furnished Improvement securities in the following amounts:

<b>Bond Type</b>	<b>Amount</b>
Faithful Performance Security	\$161,871.72
Labor and Material Security	\$161,871.72
Warranty Security	\$ 16,187.17

ANALYSIS

The Contractor has now completed all work required in accordance with the plans and specifications and the City Engineer has inspected the completed work and confirmed that all work conforms to the Project plans and specifications and has been completed within the time frame of the original contract. Subject to City Council's approval, a Notice of Completion for the CIP will be recorded with the San Joaquin County Recorder's Office. Filing the Notice of Completion by the City Clerk will finalize acceptance of the Project pursuant to Tracy Municipal Code Section 12.36.110. The Project carries a one-year Warranty Bond for all construction improvements.

Faithful Performance Bonds may be released upon acceptance of the improvements by the City. Labor and Material Bonds may be released thirty (30) days after recordation of the Notice of Completion, as the statute of limitations period expires in accordance with Civil Code 9356. The Warranty Bond may be released one (1) year after the City accepts the improvements and any warranty work is completed.

FISCAL IMPACT

The Grand Theatre, CIP 71111, is an approved Capital Improvement Project with a budget of \$2,991,000.

Final costs for the Project, as part of Phase I, were within the approved budget as follows:

A. Construction Contract Amount	\$ 161,872
B. Approved Change Orders	\$ <u>225,938</u>
Total Contract Costs	\$ 387,810

Design, construction management, inspection, and miscellaneous project management expenses are included in the overall project expenses below.

The following table lists current balances remaining in CIP 71111:

<u>Funding Source</u>	<u>Budget</u>	<u>Expensed</u>	<u>Available</u>
301 - General Projects	\$ 2,570,000	\$ 2,340,546	\$ 229,454
615 - Building Maintenance	\$ 421,000	\$ 391,277	\$ 29,723
<b>Totals</b>	<b>\$ 2,991,000</b>	<b>\$ 2,731,823</b>	<b>\$ 259,177</b>

PUBLIC OUTREACH / INTEREST

Not applicable.

COORDINATION

Coordination between the Engineering Division, the Building Safety Division, and The Grand Theatre Cultural Arts Division.

CEQA DETERMINATION

Prior to commencement of construction, the Project was determined to be categorically exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15301, which pertains to the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of an existing facility.

STRATEGIC PLAN

This agenda item supports the City of Tracy's Quality of Life Strategic Priority by enhancing City amenities to provide cultural arts programming and events that bolster quality of life.

ACTION REQUESTED OF THE CITY COUNCIL

Staff recommends that the City Council, by resolution, (1) accept the construction improvements for The Grand Theatre Center for the Performing Arts - completed by Best Contracting Services, Inc., (2) authorize the City Clerk to file the Notice of Completion with the San Joaquin County Recorder's Office, and (3) authorize 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.

Prepared by: Miguel Hernandez, Construction Project Manager

Reviewed by: Koosun Kim, PE, City Engineer  
Sara Castro, Finance Director  
Bijal M. Patel, City Attorney  
Karin Schnaider, Assistant City Manager

Approved by: Midori Lichtwardt, City Manager

Attachments:

Attachment A – Project Contract – Best Contracting Services Inc.



**AGREEMENT FOR PUBLIC IMPROVEMENTS**

**GRAND THEATRE CENTER OF THE ARTS EXTERIOR IMPROVEMENTS,  
PHASE 1 ROOF REPAIRS  
CIP No. 71111**

This AGREEMENT ("Agreement") is entered into between the CITY OF TRACY, a municipal corporation ("City"), and BEST Contracting Services, Inc. ("Contractor").

**RECITALS**

- A. In accordance with State law, including the Public Contract Code, and local law, including the Tracy Municipal Code, the City issued an invitation for competitive bids for this Project.
- B. In response to the invitation for bids, the Contractor submitted the Bid Forms, which are incorporated here by reference, and these were found by the City to be responsive to the invitation for bids.
- C. After reviewing all bids submitted in response to the invitation for bids, the City found the Contractor to be the Lowest Responsible Bidder, and the City Council awarded this Agreement to the Contractor pursuant to City Manager Approval.
- D. The Project is more specifically described in the Contract Documents, but generally includes the following items of work: *excavate and grade areas for the installation of three City Provided Self-contained pre-fabricated single occupant restroom structures, install one contractor supplied shade structure, install one multi-occupant pre-fabricated restroom structure with connections to existing water and septic systems, the installation of electrical conduits to support installed structures, construct decomposed granite walkways, construct minor concrete walkways and ADA compliant ramps, landscaping, and irrigation system modification, slurry seal of parking areas and striping.*

**NOW THEREFORE, THE PARTIES MUTUALLY AGREE AS FOLLOWS:**

- 1. **SCOPE OF WORK.** The Contractor shall perform, or cause to be performed, the Work described in the Contract Documents ("Work"), to the satisfaction of the City Engineer. Contractor shall perform additional work arising from changes ordered by the City in accordance with Section 2.3, "Modifications" of this Agreement.
- 2. **CONTRACT DOCUMENTS.**
  - 2.1. List of Contract Documents and Precedence. The Contract Documents consist of the documents listed below, beginning with the highest and ending with the lowest order of precedence. If there is a conflict between component parts of the Contract Documents, the document highest in precedence controls. See also General Provisions, Section 4.05, "Precedence of Contract Documents".
    - a. Change orders.
    - b. Project directives.

- c. Permits in the following order those issued by other agencies, those issued by the City.
- d. Agreement and Required Agreement Forms – Bid Bond, Faithful Performance and Labor and Materials Bonds, Warrantee Bond, Insurance Endorsements, Worker's Compensation.
- e. Project Specifications, in the following order - Addenda, Bid Proposal including all Bid Proposal Forms, Notice to Bidders, Special Provisions, Technical Provisions, Exhibits, General Provisions.
- f. Project Plans and Drawings.
- g. City Standard Specifications.
- h. City Standard Plans and City Parks and Streetscape Standard Plans.
- i. Reference Specifications, in the following order – Standard Specifications for Public Works Construction "Greenbook" (current edition), State of California Department of Transportation (Caltrans) State Standard Specifications (current edition).
- j. Reference Plans, in the following order – Standard Plans for Public Works Construction (current edition), State of California Department of Transportation (Caltrans) State Standard Plans (current edition).

2.2. Addenda. The following addenda are incorporated into the Contract Documents:

<u>No.</u>	<u>Date of Issue:</u>
<u>NONE</u>	_____
_____	_____

2.3. Modifications. The Contract Documents may not be modified orally or in any manner other than in writing in accordance with procedures prescribed in the Contract Documents. See General Provisions Sections 2.07, "Examination of Plans, Specifications, and Work Site", Section 2.08, "Requests for Clarification", Section 5, "Changes in Work", Section 8.15, "Time of Completion and Days Charged", and Section 10.06, "Claims". All such written modifications shall become part of the Contract Documents.

2.4. Entire Agreement. The Contract Documents comprise the entire integrated understanding between the City and Contractor concerning the Work to be performed for this Project. All prior negotiations or stipulations regarding this matter, which preceded or accompanied the executing of these Contract Documents are conclusively deemed to be superseded by these Contract Documents. The Contract Documents are complementary; what is called for in one is binding as if called for by all. To the extent that portions of the Contract Documents are not attached to this Agreement, they shall be deemed incorporated here by reference.

3. **CONTRACT AMOUNT**. The Contract Amount, is One Hundred Sixty One Thousand Eight Hundred Seventy One and Seventy Two Cents Dollars (\$161,871.72). City shall pay to Contractor, for the performance of the Work, the Contract Amount pursuant to the General Provisions, Section 10, "Measurement and Payment", subject to adjustment for unit price items, and as modified by the terms of the Contract Documents. The Contractor's compensation shall include all costs incurred by the Contractor in the performance of the

Work, including: furnishing all labor (including supervision), materials, equipment, tools, transportation, and services necessary (including the costs of any and all applicable taxes, patent rights, royalties, licenses, permits, and traffic control; including flagmen) to complete the Work (including costs to protect the Work, and all damages to the Work prior to acceptance of the Work by the City, unless otherwise specifically provided in the Contract Documents).

4. **CONTRACT TIME.** After the Contractor has provided all documents required by the Notice of Award, as identified in the Notice to Bidders, and following execution of the Agreement by the City, the City shall issue a Notice to Proceed to the Contractor. Contract time shall commence upon receipt date of the Notice to Proceed. Contractor shall commence work within ten calendar days of the receipt date specified in the Notice to Proceed. See General Provisions Sections 8.01, "Notice to Proceed", 8.02, "Commencement of Work", 8.15, "Time of Completion and Days Charged", and 8.17, "Delays and Extension of Time".
5. **LIQUIDATED DAMAGES.** If Contractor fails to complete the Work within the Contract Time, Contractor shall pay to the City, as liquidated damages and not as a penalty, the sum specified in the Notice to Bidders for each calendar day after the expiration of the Contract Time that the Work remains incomplete. See Notice to Bidders and General Provisions Section 8.16, "Liquidated Damages".
6. **CONTRACTOR REPRESENTATIVE.** At all times during the progress of the Work, Contractor shall have a competent foreman or superintendent ("Contractor Representative") on site with authority to act on behalf of the Contractor. The Contractor shall, at all times, keep the City Engineer informed in writing of (a) the name and telephone number of the Contractor Representative, and (b) the names and telephone numbers of all subcontractors performing the Work.
7. **IMPROVEMENT SECURITY.** Concurrently with the execution of this Agreement by the Contractor, and before the commencement of any Work, the Contractor shall furnish a Faithful Performance Bond, Labor and Material Bond, Warranty Bond, or other guarantees, in the required amounts as improvement securities, in a form substantially the same as that set forth in the Contract Forms or in an alternate form authorized by state law and approved by the City. See Division C, "Agreement and Agreement Forms" of the Project Specifications and General Provisions Section 3.07, "Contract Bonds".
8. **INSURANCE.** Concurrently with the execution of this Agreement by the Contractor, and prior to the commencement of any Work, the Contractor shall furnish evidence to the City that all of the insurance requirements required by General Provisions Section 3.08, "Insurance Requirements" have been satisfied.
9. **PERMITS, LICENSES, AND COMPLIANCE WITH LAW.** The Contractor shall obtain and maintain all necessary permits and licenses for the performance of the Work, as provided in General Provisions Section 9.06, "Permits and Fees".
10. **DEFAULT.** The default provisions set forth in General Provisions Section 8.12, "Default by Contractor and Termination of Control", shall apply.
11. **FINAL ACCEPTANCE OF WORK.** Prior to final acceptance of the Work by the City Council, the Contractor shall be solely responsible for maintaining the quality of the Work, and maintaining safety at the Project site. The Contractor's obligation to perform the Work shall

not be satisfied until after the City Engineer has made a written determination that all obligations under the Agreement have been satisfied, all outstanding fees and charges have been paid, and the City Council has accepted the Work as complete. See General Provisions Sections 8.20, "Final Acceptance" and 8.21, "Risk of Loss".

**12. WARRANTY.** The Contractor shall warrant the quality of the Work for a period of one year after acceptance of the Work by the City Council, and shall provide a Guarantee and Warranty Bond in the required amount, in accordance with the terms of the Contract Documents. In the event that during the one-year warranty period any portion of the Work is determined by the City Engineer to be defective as a result of an obligation of the Contractor under this Agreement, the Contractor shall be in default. See General Provisions Section 11, "Guarantee".

**13. LABOR REQUIREMENTS.**

13.1. Prevailing Wage. The California general prevailing wage rates determined by the Director of Industrial Relations are made a part of this Agreement. Nothing in the Contract Documents shall be interpreted in a manner conflicting with these rates. See General Provisions Section 9.05 (d), "Prevailing Wage".

13.2. Apprentices. Labor Code Sections 1777.5, 1777.6 and 1777.7 govern the employment of apprentices by Contractor or any Subcontractor. Contractor and any of his Subcontractors shall comply with these Labor Code requirements. Contractor shall have full responsibility for compliance regardless of any other contractual or employment relations alleged to exist. See General Provisions Section 9.05 (f), "Apprentice Program".

13.3. Wage Information. A copy of the general prevailing rates of per diem wager for each craft, classification or type of worker needed to perform the Agreement, as determined by the Director of the State Department of Industrial Relations, are available at the office of the City's Director of Development and Engineering Services, located at Tracy City Hall, 333 Civic Center Plaza. These will be made available to any interested party upon request.

13.4. Hours of Labor. The Contractor shall forfeit, as a penalty, to the City \$50 for each worker employed in the execution of the Agreement by him or by any Subcontractor for each calendar day during which any worker is required or permitted to labor more than 8 hours, in violation of Labor Code sections 1810-1815. See General Provisions Section 9.05 (c), "Hours of Labor".

13.5. Nondiscrimination. Contractor shall afford equal employment opportunities for all persons without discrimination because of race, color, religion, sex, sexual orientation, political affiliation, national origin, ancestry, age, marital status, or physical or mental disability. See General Provisions Section 9.05 (a), "Non-Discrimination".

**14. INDEPENDENT CONTRACTOR STATUS.** Contractor is an independent contractor. All persons working for or under the direction of the Contractor are the Contractor's employees, agents or Subcontractors, and they shall not be deemed agents, servants or employees of the City. See General Provisions Sections 9.01, "Contractor's Responsibility for the Work" and 9.02, "Contractor's Responsibility for Subcontracted Work".

- 15. 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. In the event that Contractor maintains or acquires such a conflicting interest, any contract (including this Agreement) involving Contractor's conflicting interest may be terminated by the CITY.
- 16. ATTORNEY'S FEES.** If any legal action is commenced to enforce this Agreement, the prevailing party is entitled to reasonable attorney's fees, costs, and expenses incurred.
- 17. INDEMNIFICATION.** Contractor shall indemnify, defend, and hold harmless the City (including its elected officials, officers, agents, and employees) from and against any and all claims (including all litigation, demands, damages, liabilities, costs, and expenses) resulting from or arising out of the performance of the Work by Contractor (including Contractor's agents, representatives, contractors, subcontractors, and employees), except only for those claims arising from the established willful misconduct or active negligence of the City. Contractor's indemnification shall specifically include, but not be limited to, all claims arising out of: contract claims, property damage, personal injury, and any infringement of patent rights or copyrights incidental to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product, or device not specified in the Contract Documents. Contractor's indemnification shall include any and all costs, expenses, court costs, attorneys' fees and liability incurred by the City in enforcing the provisions of this section, and in defending against such claims, whether the same proceed to judgment or not. Contractor shall reimburse City for any expenditures City incurs by reason of such matters.
- 18. ASSIGNMENT AND DELEGATION.**
- 18.1. Assignment of This Agreement. This Agreement and any portion thereof shall not be assigned or transferred, nor shall any of the Contractor's duties be delegated, without the written consent of the City. See General Provisions Section 3.04, "Assignment".
- 18.2 Assignment pursuant to Government Code. Pursuant to Government Code Section 4552, the Contractor shall assign to the City, all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Section 15) or under the Cartwright Act (Chapter 2 [commencing with Section 16700] of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services, or materials pursuant to the public works contract or the subcontract. This assignment shall be made and become effective at the time the City tenders final payment to the Contractor, without further acknowledgment by the parties. The Contractor further warrants that all goods, services, and materials provided to the City in accordance with this Contract are free and clear of all liens and encumbrances.
- 19. MISCELLANEOUS PROVISIONS.**
- 19.1. 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 respective party as follows:

To CITY:  
City of Tracy  
Development Services Dept.  
Attn: Paul Verma  
333 Civic Center Plaza  
Tracy, CA 95376

To CONTRACTOR:  
BEST Contracting Services, Inc.  
Attn: Sean Tabazadeh \_\_\_\_\_  
19027 S. Hamilton Avenue  
Gardena, CA 90248

COPY To:  
City of Tracy  
City Attorney's Office  
Attn: Leticia Ramirez  
333 Civic Center Plaza  
Tracy, CA 95376

Communications shall be deemed to have been given and received on the first to occur of: (1) actual receipt at the address designated above, or (2) three working days following the deposit in the United States Mail of registered or certified mail, sent to the address designated above.

- 19.2. 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.
- 19.3. Severability. In the event any 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 full force and effect.
- 19.4. Public Records. Public records are subject to disclosure under the California Public Records Act, Government Code Section 6250 *et. seq.*
- 19.5. 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.
- 19.6. Signatures. The individuals executing this Agreement represent and warrant that they have the right, power, legal capacity, and authority to enter into and to execute this Agreement on behalf of the respective legal entities of the Contractor and the City. This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

(Signatures on next page)

IN WITNESS WHEREOF the parties do hereby agree to the full performance of the terms set forth herein.

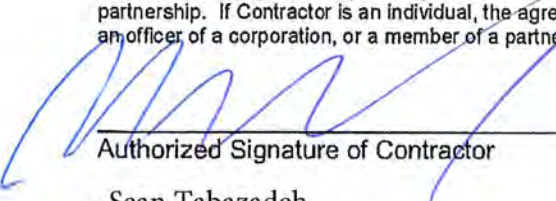
**CONTRACTOR:** BEST Contracting Services, Inc.  
Name of Contractor

19027 S. Hamilton Ave. Gardena, CA 90248  
Contractor's Address

95-3781209      456263      A, B, C17,  
Federal Employer ID No.      Contractor's License No.      Class of License & Exp. Date  
5/31/2022

If Contractor is a Corporation, the agreement must be signed by one corporate officer from each of the following two groups:  
Group A - Chairman, President or Vice President  
Group B - Secretary, Assistant Secretary, CFO or Assistant Treasurer

If Contractor is a partnership, the agreement must be signed by the partner or partners authorized to sign contracts on behalf of the partnership. If Contractor is an individual, the agreement must be signed by the individual. If the signature is by an agent other than an officer of a corporation, or a member of a partnership, a power of attorney must be submitted with the Agreement.



Authorized Signature of Contractor

Sean Tabazadeh

Name of Signatory (written out)

CEO/ Secretary

Title of Signatory

7/28/2021

Date



Authorized Signature of Contractor

Kayhan Fatemi

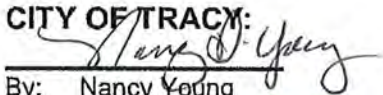
Name of Signatory (written out)

EVP

Title of Signatory

7/28/21

Date

**CITY OF TRACY:**  


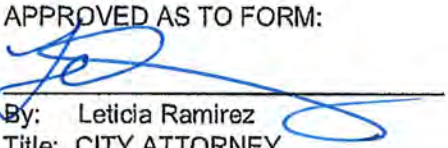
By: Nancy Young  
Title: MAYOR

Date: 8/3/2021  
(Approval Effective)

ATTEST: 

By: Adrienne Richardson  
Title: CITY CLERK

Date: 8/4/2021

APPROVED AS TO FORM:  


By: Leticia Ramirez  
Title: CITY ATTORNEY

Date: 8/3/2021

**END OF AGREEMENT**

**WORKERS' COMPENSATION CERTIFICATION**

Labor Code Section 1861

The Bidder hereby certifies as follows:

"I am aware of the provisions of Section 3700 of the Labor Code, which requires 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 and furnish proof of said insurance before commencing the performance of the work of this contract."

**Best Contracting Services, Inc.**

Name of Contractor

Signature of Contractor Representative

Dated:

7/28/21

**Kayhan Fatemi, Exec., V.P.**

**NOTE: THIS CERTIFICATION MUST BE COMPLETED AND RETURNED BY THE SUCCESSFUL BIDDER PRIOR TO THE START OF CONSTRUCTION.**



**BID PROPOSAL**

**BID TO:** The Honorable Mayor and City Council Members  
Attn: City Clerk  
City of Tracy  
333 Civic Center Plaza  
Tracy, California 95376

**FOR: GRAND THEATRE CENTER FOR THE ARTS EXTERIOR IMPROVEMENTS  
CIP 71111**

**BID FROM:**

Bidder's Company Name:	<u>BEST Contracting Services, Inc.</u>
Contact Person:	<u>Sean Tabazadeh, CEO/Secretary</u>
Business Street Address:	<u>19027 S. Hamilton Ave.</u> <u>Gardena, CA 90248</u>
City, State, Zip Code:	<u></u>
Phone No.:	<u>( 310 ) 328-6969</u>
Fax No.:	<u>( 310 ) 328-9176</u>
Email:	<u>estimating@bestcontracting.com</u>
Contractor License No.:	<u>#456263</u>
Date Bid Submitted:	<u>June 17, 2021</u>

Dear Mayor and City Council Members:

I, as bidder, declare that I have satisfied myself as to the actual conditions and requirements of the work by careful examination of the location of the proposed work, by examination of the plans and specifications including the Notice to Bidders, and by other measures, and that after submission of the bid, I will not dispute, complain or assert that there was any misunderstanding in regards to the nature or amount of work to be done.

I hereby certify that only those parties interested in this proposal as principals are named in this proposal and that this bid is genuine, and not sham, collusion, or made in the interest or in behalf of any person not named. I have not directly or indirectly induced or solicited any other bidder, person, firm or corporation to put in a sham bid, or refrain from bidding, and have not in any manner sought by collusion to secure for myself an advantage over any other bidder.

I agree that if this proposal is accepted, I will contract with the City of Tracy in the form of agreement proposed, will provide all bonds and insurance certificates as required by the agreement and will furnish all equipment and materials and perform all the labor required to

complete the work in accordance with the plans, specifications and other contract documents, for the unit or lump sum prices set forth in the Bid Schedule.

I have carefully checked all of the figures in the Bid Schedule and understand that the City shall not be responsible for any errors or omissions on my part in making up this bid. I agree that this bid may not be withdrawn for a period of 90 calendar days from the date of the bid opening and that the City reserves the right to reject any or all bids.

### **BIDDING REQUIREMENTS**

The work to be done and referred to here is in the City of Tracy, County of San Joaquin, State of California, and shall be constructed in accordance with all provisions of the project specifications and project plans including; any addenda; the Agreement; the Standard Specifications for Public Works Construction; "Greenbook", current edition; the Standard Plans for Public Works Construction, current edition; the Standard Specifications and Standard Plans of the California Department of Transportation, current edition; the Labor Surcharge and Equipment Rental Rates; and payment of not less than the latest issue of the State General Prevailing Wage Rates in effect on the date the work is performed.

For each of the various contract items of work designated on the Bid Schedule, the bidder shall set forth a unit or lump sum price which the bidder shall then use to calculate and designate a total cost for each item of work based upon the designated estimate of the quantities of work to be done, all in clearly legible figures in the respective spaces of the Bid Schedule provided for this purpose.

The bidder shall include in the unit or lump sum prices paid for the various contract items of work full compensation for conforming to the requirements of the Contract Documents and for completing all of the work required. No additional compensation shall be granted for any additional items unless categorized and approved as extra work under the terms of the agreement.

The estimate of construction quantities set forth in the Bid Schedule is approximate only, being given only as a basis for the comparison of bids, and the City does not expressly or by implication agree that the actual amount of work will correspond with those estimated quantities. The City reserves the right to increase the amount of any class or portion of the work or to omit portions of the work as may be deemed necessary or expedient by the Engineer.

If the City accepts this proposal and the bidder fails to enter into the contract and/or fails to furnish bonds as required by the specifications with sureties satisfactory to the City within ten (10) calendar days after the bidder has received notice from the City that the contract has been awarded, the City may, at its option, determine that the bidder has breached and abandoned the contract, and thereupon, the bid security accompanying this proposal shall be forfeited and become the property of the City.

The Notice to Proceed will not be issued until after the contract has been fully executed. The contractor shall commence the work under the contract within fifteen (15) days following the date of the Notice to Proceed, or as otherwise specified in the project specifications, and shall

diligently prosecute the project to completion within the time specified. The contract completion period is inclusive of the time needed for material delivery.

Bidder shall comply with the requirements of the California Labor Code, including sections 1770 *et seq.*, and pay not less than the prevailing rate of per diem wages as determined by the Director of the California Department of Industrial Relations. Copies of such prevailing rate of per diem wages are on file at the office of the city, which copies shall be made available to any interested party upon request. The Contractor shall post a copy of such determination at the job site.

In accordance with the provisions of Section 1860 of the Labor Code, prior to performing work on the Contract, each Contractor to whom a public works contract is awarded shall sign and file with the City the Worker's Compensation Certification included in the "Agreement and Agreement Forms" section of these specifications.

Bidder's attention is directed to General Provisions, Section 2, "Proposal Requirements and Conditions", which contains additional information and requirements pertaining to the submission of a bid, and which is incorporated here by reference.

Any protest of the proposed contract award must be submitted in writing to the City no later than 5:00 p.m. on the fifth business day following the date of the bid opening. See the General Provisions, Section 2.14 for bid protest procedures.

**BID SCHEDULE**

**GRAND THEATRE CENTER FOR THE ARTS EXTERIOR IMPROVEMENTS,  
PHASE 1 ROOF REPAIRS  
CIP No. 71111**

All applicable sales taxes, state and/or federal, and any other special taxes, patent rights or royalties are included in the price quoted in the bid.

In the case of a discrepancy between the product of the "Estimated Quantity" and the "Unit Price" with the "Item Total", the product of the "Estimated Quantity" and the "Unit Price" shall prevail and the figure shown as the "Item Total" shall be adjusted accordingly. In the case of a discrepancy between the sum of the figures in the "Item Total" column (adjusted per the previous sentence, if necessary) and the amount set forth as the "Total Base Bid Amount", the sum of the figures in the "Item Total" column shall prevail and the amount shown as the "Total Base Bid Amount" shall be adjusted accordingly.

**BASE BID ITEMS ARE AS FOLLOWS:**

Item No.	Item Description	Estimated Quantity	Unit	Unit Price	Item Total
1	Mobilization	1	LS	\$18,950.00	\$18,950.00
2	Demolition of Existing Roofing Material (including parapet areas)	6,004	SF	\$3.50	\$21,014.00
3	Demolition of Existing Coping	439	LF	\$3.10	\$1,360.90
4	Glass-Mat Roof Board, Furnish & Install	6004	SF	\$6.25	\$37,525.00
5	Thermoplastic Membrane Roofing, Furnish & Install	6004	SF	\$8.95	\$53,735.80
6	Painting and Coating	439	LF	\$8.68	\$3,810.52
7	Metal Coping & Miscellaneous Flashing, Furnish & Install	439	LF	\$24.50	\$10,755.50

BID SCHEDULE - CONTINUED NEXT PAGE:

**BID SCHEDULE, con't.**

Item	Item	Estimated		Unit	Item
No.	Description	Quantity	Unit	Price	Total
8	Roof Pads, Furnish & Install	385	SF	\$32.00	\$12,320.00
9	Replace Roof Drain (Contingent Bid Item)	1	EA	\$2,400.00	\$2,400.00

Total Base Bid Amount: \$ 161,871.72

**Notes:**

1. The Contract will be compared and awarded on the basis of the Total Base Bid Amount.
2. The City reserves the right to reject all bids for any reason whatsoever.
3. Issuance of the "Notice to Proceed" will constitute the beginning of the Contract.

**DESIGNATION OF SUBCONTRACTORS**

In accordance with the Subletting and Subcontracting Fair Practices Act, Public Contract Code sections 4100 et seq. (the "Subcontracting Act"), the Bidder hereby certifies and submits, as required by law, the following concerning subcontractors:

1. The portion of the work, which will be done by each such subcontractor.
2. The name and location of the place of business of each subcontractor who will perform work or labor, fabricate a portion of the work or improvement according to detailed drawings in the project plans, or render service to the Contractor in or about the construction of the work in an amount in excess of one-half of one percent (0.5%) of the Contractor's total bid; and

<u>Portion of Work to be Performed:</u>	<u>Subcontractor Name and Address</u>
1. <u>Roof Demo/ACM</u>	<u>B&amp;M Tear Off Inc.</u> <u>2420 Sand Creek Road, PBM 280</u> <u>Brentwood, CA 94513</u>  <u>DIR# 100009312</u> <u>LICENSE# 769864</u>
2. _____	_____ _____ _____  <u>DIR#</u> <u>LICENSE#</u>
3. _____	_____ _____ _____  <u>DIR#</u> <u>LICENSE#</u>
4. _____	_____ _____ _____  <u>DIR#</u> <u>LICENSE#</u>

(For additional Subcontractors, attach copies of this sheet as necessary)

**CITY BUSINESS LICENSE REQUIREMENT**

NOTE: It is understood and agreed that the bidder and all subcontractors will obtain a City of Tracy Business License before beginning any work.

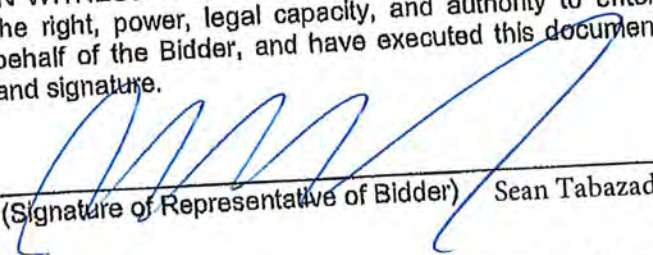
**NON-COLLUSION AFFIDAVIT**  
Title 23 United States Code Section 112 and  
Public Contract Code Section 7106

State of California )  
  ) ss.  
County of Los Angeles )

Sean Tabazadeh (name of person signing affidavit), being first duly sworn, deposes and says under penalty of perjury under the laws of the State of California, that he or she has the right, power, legal capacity, and authority to execute this Affidavit as CEO/Secretary (sole owner, partner, president, secretary, etc) of BEST Contracting Services, Inc. (legal name of Bidder), the Bidder,

that the Bid is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation; that the Bid is genuine and not collusive or sham; that the Bidder has not directly or indirectly induced or solicited any other Bidder to put in any false or sham Bid, and has not directly or indirectly colluded, conspired, connived, or agreed with any Bidder or anyone else to put in a sham Bid, or that anyone shall refrain from Bidding; that the Bidder has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the Bid price of the Bidder or any other Bidder, or to fix any overhead, profit, or cost element of the Bid price, or of that of any other Bidder, or to secure any advantage against the public body awarding the Contract or anyone interested in the proposed Contract; that all statements contained in the Bid are true; and, further, that the Bidder has not, directly or indirectly, submitted his Bid price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, or paid, and will not pay, any fee to any corporation, partnership, company association, organization, Bid depository, or to any member or agent thereof to effectuate a collusive or sham Bid.

IN WITNESS WHEREOF, the undersigned, as bidder, represent and warrant that they have the right, power, legal capacity, and authority to enter into and execute this document on behalf of the Bidder, and have executed this document by setting hereto their names, titles and signature.

  
(Signature of Representative of Bidder) Sean Tabazadeh, CEO/Secretary

Subscribed and sworn to before me, a Notary Public In and for the State of California,  
County of \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\*\*SEE ATTACHED NOTARY\*\*

Signature of Notary Public: \_\_\_\_\_

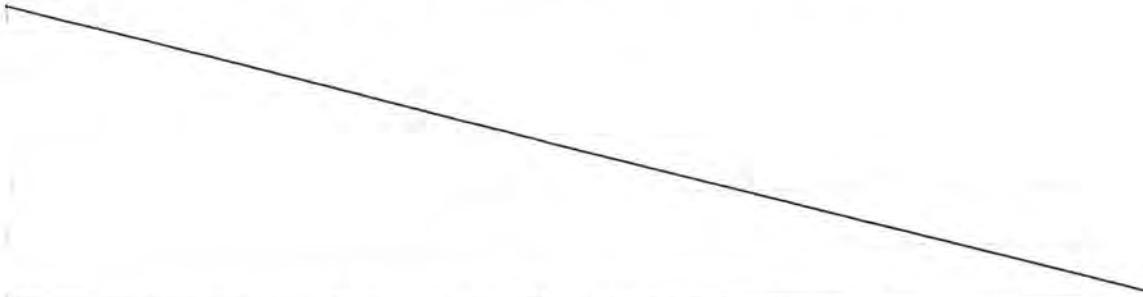
My Commission expires \_\_\_\_\_, 20\_\_\_\_ (Seal)

**NOTE: THIS AFFIDAVIT MUST BE COMPLETED AND RETURNED AS PART OF THE CONTRACTOR'S BID PROPOSAL.**

**CALIFORNIA JURAT WITH AFFIANT STATEMENT**

**GOVERNMENT CODE § 8202**

- See Attached Document (Notary to cross out lines 1-6 below)
- See Statement Below (Lines 1-6 to be completed only by document signer[s], *not* Notary)

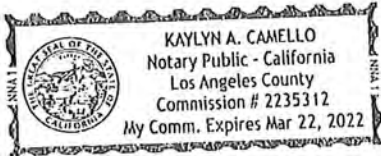


\_\_\_\_\_  
*Signature of Document Signer No. 1*                      *Signature of Document Signer No. 2 (if any)*

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California  
 County of Los Angeles

Subscribed and sworn to (or affirmed) before me  
 on this 17th day of June, 2021,  
 by Sean Tabazadeh  
 (1) \_\_\_\_\_  
 (and (2) \_\_\_\_\_),  
*Name(s) of Signer(s)*



proved to me on the basis of satisfactory evidence  
 to be the person(s) who appeared before me.

Signature Kaylyn A. Camello  
*Signature of Notary Public*

*Seal*  
 Place Notary Seal Above

**OPTIONAL**

*Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.*

**Description of Attached Document**

Title or Type of Document: Non Collusion Affidavit                      Document Date: 06/17/2021

Number of Pages: \_\_\_\_\_ Signer(s) Other Than Named Above: \_\_\_\_\_



**BIDDER'S QUALIFICATIONS**

The following statements as to the financial qualifications and experience of the Bidder are submitted as a part of this Bid and the Bidder guarantees the truthfulness and accuracy of the information. Pursuant to Public Contract Code 10165, financial statements and experience questionnaires are not public records and are not open to public inspection.

**Financial Data**

Reference is hereby made to the following bank or banks as to the financial responsibility of the bidder.

**NAME OF BANK**

**ADDRESS**

Bank of the West

300 S. Grand Avenue, Los Angeles, CA 90071

Acct # 045313186

Jill A. Meeks - Managing Director Tel # (213) 972-0655 Fax: (213) 312-7664

Email: Jill.meeks@bankofthewest.com

**Experience Data**

The Bidder has been engaged in the contracting business, under the present business name for 14 years. Experience in work of a nature similar to that covered in this Bid extends over a period of 39 years.

The Bidder as a Contractor has never failed to satisfactorily complete a contract awarded to him, except as follows: (Name all exceptions and reasons therefore):

N/A

**BIDDER'S REFERENCE**

List three (3) major projects which the Bidder has performed comparable work for a Governmental Agency or Developer within the last three (3) years. Providing a contact person and description of the project, or other such information that will demonstrate the ability to vigorously prosecute the work.

1.	USPS Oakland P&DC	1675 7th St., Oakland, CA 94615	2020
	PROJECT NAME	LOCATION	YEAR COMPLETED
	Ryan D. Price	(860) 285-7046   C: 860.490.8540 E: Ryan.D.Price@usps.gov	
	AGENCY CONTACT PERSON	TELEPHONE NO.	
BRIEF DESCRIPTION OF THE WORK AND/OR MANNER OF EXECUTION			
Reroof located at 1675 7th St., Oakland, CA 94615			
Start date: 7/1/2019			
End date: 2/5/2020			
\$1,370,000.00			

2.	Chaffey Joint UHSD Districtwide	Various School Sites	2019
	PROJECT NAME	LOCATION	YEAR COMPLETED
	William Vasquez	(626) 827-3002 E: william.vasquez@cjuhsd.net	
	AGENCY CONTACT PERSON	TELEPHONE NO.	
BRIEF DESCRIPTION OF THE WORK AND/OR MANNER OF EXECUTION			
Reroof located at Chaffey HS - 1245 N Euclid Ave, Ontario, CA 91762			
Alta Loma HS - 8880 Baseline Rd, Alta Loma, CA 91701 Etiwanda HS - 13500 Victoria St, Etiwanda, CA 91739			
Los Osos HS - 6001 Milliken Ave, Rancho Cucamonga, CA 91737 Montclair HS - 4725 Benito St, Montclair, CA 91763			
Colony HS - 3850 E Riverside Dr, Ontario, CA 91761			
Start date: 5/21/2019 End date: 10/15/2019 \$2,513,158.00			

3.	Corona Norco USD Various Sites		2020
	PROJECT NAME	LOCATION	YEAR COMPLETED
	Peace Aneke	(951) 736-5050 E:Peace.Aneke@c nusd.k12.ca.us	
	AGENCY CONTACT PERSON	TELEPHONE NO.	
BRIEF DESCRIPTION OF THE WORK AND/OR MANNER OF EXECUTION			
Reroof located at 2065 Temescal Ave., Norco, CA 92860			
& 300 Buena Vista Ave., Corona, CA 92882			
Start date: 11/18/2019			
End date: 6/1/2020			

**SIGNATURE OF BIDDER**

The terms and conditions of the final contract when executed shall control and supersede anything herein to the contrary or inconsistent with such contract.

The bidder hereby offers to furnish all labor, materials, equipment, transportation, and services necessary to complete the work on this project in accordance with the Contract Documents and to complete all requirements of the Contract Documents for the sums quoted in this Bid.

**Addenda:**

Bidder has received and examined all addenda issued during the bid period (if any) and agrees that all addenda shall be made a part of the Contract Documents. The bidder acknowledges receipt and incorporation of all impacts resulting from all addenda issued by inserting the number of each addendum below OR by signing and submitting with the bid proposal the signature page from each addendum.

Addendum Nos. NONE, \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_

**Bidder's Guarantee:**

In accordance with Public Contract Code Section 20170, accompanying this Bid is Bidders Bond (insert the word "Cash", "Cashier's Check", "Certified Check" or "Bidder's Bond" as the case may be) made payable to the City in the amount of Ten Percent (\$ 10%) equal to at least ten percent (10%) of the total amount of this bid, which is given as a guarantee that the undersigned will enter into a contract if awarded the work.

**Company Profile:**

The names of all persons interested in the foregoing bid as principals are as follows:

Note: If bidder or other interested person is a corporation, state legal name of corporation, also names of the president, secretary, treasurer and manager thereof; if partnership, state true name of firm, also names of all individual partners composing firm; if bidder or other interested person is an individual, state first and last name in full.

Firm Name: BEST Contracting Services, Inc.

Business Address: 19027 S. Hamilton Ave.

Gardena, CA 90248

**Names and Titles of Company Officers:**

- |    |                            |                      |
|----|----------------------------|----------------------|
| 1. | <u>Mojitaba Tabazadeh,</u> | <u>President</u>     |
| 2. | <u>Sean Tabazadeh</u>      | <u>CEO/Secretary</u> |
|    | <u>Fatemeh Tabazadeh</u>   | <u>Treasurer</u>     |
| 3. | _____                      | _____                |
| 4. | _____                      | _____                |

Licensed in accordance with the Contractors License Law, Business and Professions Code, Section 7000 *et seq.*, providing for the registration of contractors:

License No.: #456263, Date of license expiration: 5/31/2022.

**Proposal Execution:**

IN WITNESS WHEREOF, the undersigned, as bidder, represent and warrant that they have the right, power, legal capacity and authority to enter into and execute this document on behalf of the Bidder, and have executed this document by setting hereto their names, titles, and signatures. The representations made herein, including but not limited to the above contractor's license, expiration date and name of bidder, are true and correct, shall be complied with and are made under penalty of perjury.

1.   
Authorized Signature

Mojtaba Tabazadeh  
Printed Name

President

Title

2.   
Authorized Signature

Sean Tabazadeh  
Printed Name

CEO/Secretary

Title

June 17, 20 21  
Dated

Note: If Bidder is a corporation, the signature of two officers authorized to sign contracts on behalf of the corporation shall be set forth above; if Bidder is a partnership, the signature of the partner or partners authorized to sign contracts on behalf of the partnership shall be set forth above; and if Bidder is an individual, his signature shall be placed above. If signature is by an agent other than an officer of a corporation, or a member of a partnership, a Power of Attorney must be on file with the City of Tracy prior to opening bids or be submitted with the bid.

Subscribed and sworn to before me, a Notary Public in and for the State of California,

County of \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

**\*\*SEE ATTACHED NOTARY\*\***

Signature of Notary Public: \_\_\_\_\_

My Commission expires \_\_\_\_\_, 20\_\_\_\_ (Seal)

**CALIFORNIA JURAT WITH AFFIANT STATEMENT**

**GOVERNMENT CODE § 8202**

- See Attached Document (Notary to cross out lines 1-6 below)
- See Statement Below (Lines 1-6 to be completed only by document signer[s], *not* Notary)

\_\_\_\_\_

\_\_\_\_\_

*Signature of Document Signer No. 1*

*Signature of Document Signer No. 2 (if any)*

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California  
 County of Los Angeles

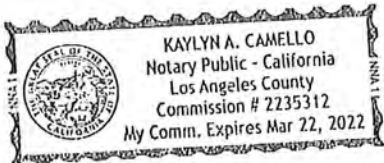
Subscribed and sworn to (or affirmed) before me

on this 17th day of June, 20 21,  
 by Sean Tabazadeh  
*Date Month Year*

(1) Sean Tabazadeh

(and (2) Moji Tabazadeh ),  
*Name(s) of Signer(s)*

proved to me on the basis of satisfactory evidence to be the person(s) who appeared before me.



Signature Kaylyn A. Camello  
*Signature of Notary Public*

*Seal*  
 Place Notary Seal Above

**OPTIONAL**

*Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.*

**Description of Attached Document**

Title or Type of Document: Signature of Bidder Document Date: 06/17/2021

Number of Pages: \_\_\_\_\_ Signer(s) Other Than Named Above: \_\_\_\_\_



LT

**State of California**  
**Secretary of State**

I, DEBRA BOWEN, Secretary of State of the State of California, hereby certify:

That the attached transcript of 1 page(s) has been compared with the record on file in this office, of which it purports to be a copy, and that it is full, true and correct.



**IN WITNESS WHEREOF**, I execute this certificate and affix the Great Seal of the State of California this day of

MAR 23 2007

*Debra Bowen*

DEBRA BOWEN  
Secretary of State

A0658529

**ENDORSED - FILED**  
In the office of the Secretary of State  
of the State of California

**MAR 19 2007**

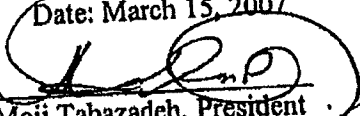
**CERTIFICATE OF AMENDMENT  
OF  
ARTICLES OF INCORPORATION OF  
BEST ROOFING & WATERPROOFING, INC.**

The undersigned certify that:

1. They are the President and Secretary, respectively, of Best Roofing & Waterproofing, Inc., a California corporation.
2. Article I of the Articles of Incorporation of this corporation is amended to read as follows: The name of this corporation is Best Contracting Services, Inc.
3. The foregoing amendment of Articles of Incorporation has been duly approved by the board of directors.
4. The foregoing amendment of Articles of Incorporation has been duly approved by the required vote of the shareholders in accordance with Section 902, California Corporation Code. The total number of outstanding shares of the corporation is 100. The number of shares voting in favor of amendment equaled or exceeded the vote required. The percentage vote required was more than 50%.

We further declare under penalty of perjury under the laws of the State of California that the matters set forth in this certificate are true and correct of our own knowledge.

Date: March 15, 2007

  
Moji Tabazadeh, President

  
Sean Tabazadeh, Secretary



10522840

ENDORSED-FILED  
In the office of the Secretary of State  
of the State of California

CERTIFICATE OF AMENDMENT  
OF  
ARTICLES OF INCORPORATION OF  
TABA DEVELOPMENT CO., INC.

MAR 26 1999

BILL JONES, Secretary of State

Mojitaba Tabazadeh and Sean Tabazadeh certify that:

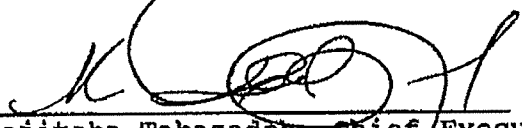
1. They are the Chief Executive Officer and Secretary, respectively, of Taba Development Co., Inc., a California corporation.

2. The Board of Directors of Taba Development Co., Inc. has approved the following amendment to Article I of the Articles of Incorporation of said corporation:

"I

The name of this corporation is Best Roofing & Waterproofing, Inc."

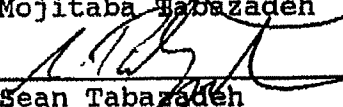
3. The amendment has been approved by the required vote of the shareholders in accordance with Sections 902 and 903 of the California Corporations Code. The corporation has only one outstanding class of shares. Each outstanding share is entitled to only one vote. The corporation has 100 shares outstanding, and, hence, the total number of shares entitled to vote with respect to the amendment was 100. All 100 shares were voted in favor of the Amendment.

  
Mojitaba Tabazadeh, Chief Executive Officer

  
Sean Tabazadeh, Secretary

Each of the undersigned declares under penalty of perjury that the matters set forth in the foregoing certificate are true and correct of her own personal knowledge, and that this declaration was executed on March 25, 1999.

  
Mojitaba Tabazadeh

  
Sean Tabazadeh







CONTRACTORS  
STATE LICENSE BOARD  
ACTIVE LICENSE



License Number: **456263**      Entity: **CORP**  
Business Name: **BEST CONTRACTING SERVICES  
INC**

License Class: **C39 B A C43 C17**

Expiration Date: **05/31/2022**      Website: **www.cslb.ca.gov**



**BIDDER'S BOND**

To Accompany Contract Proposal

KNOW ALL PERSONS BY THESE PRESENTS:

That we, the undersigned Best Contracting Services, Inc., as principal and The Hanover Insurance Company, as surety, are held and firmly bound unto the City of Tracy as OWNER in the penal sum of TEN PERCENT (10%) of the total amount of the bid of the principal, for the payment of which, well and truly to be made, we hereby jointly and severally bind ourselves, successors and assigns.

The condition of the above obligation is such that whereas the Principal has submitted to OWNER a certain BID, attached hereto and hereby made a part hereof to enter into a contract in writing, for the **GRAND THEATRE CENTER OF THE ARTS EXTERIOR IMPROVEMENTS, CIP 71111.**

NOW, THEREFORE

- (a) If said BID shall be rejected, or
- (b) If said BID shall be accepted and the Principal shall execute and deliver a contract in the Form of Contract attached hereto (properly completed in accordance with said BIDS including all required bonds for faithful performance and labor and material, as well as all required evidence of insurance) then this obligation shall be void, otherwise the same shall remain in force and effect.

In the event the City brings suit upon this Bond, surety shall pay reasonable attorney's fees and costs incurred by the City in such suit.

The Surety, for value received, stipulates and agrees that the obligations of said Surety and its BOND shall be in no way impaired or affected by any extension of the time within which the City of Tracy may accept such BID; and said Surety does hereby waive notice of any such extension.

IN WITNESS WHEREOF, the Principal and the Surety have hereunto set their hands and seals, and such of them as are corporations have caused their corporate seals to be hereto affixed and these presents to be signed by their proper officers, this day and year first set forth.

Best Contracting Services, Inc.  
By: [Signature] (L.S.) (Seal)  
(Principal)

The Hanover Insurance Company  
By: [Signature] (Seal)  
(Surety)

Sean Tabazadeh, CEO/Secretary

Patrick T. Moughan, Attorney-in-Fact

Subscribed and sworn to before me, a Notary Public in and for the State of California, County of \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Signature of Notary Public: \_\_\_\_\_ (Seal)

My Commission expires \_\_\_\_\_, 20\_\_\_\_

*\* SEE ATTACHED NOTARY \**

**IMPORTANT:** Surety companies executing BONDS must be authorized to transact Surety Insurance in the State of California. If Contractor is Partnership, all partners should execute BOND.

**CALIFORNIA JURAT WITH AFFIANT STATEMENT**

**GOVERNMENT CODE § 8202**

- See Attached Document (Notary to cross out lines 1-6 below)
- See Statement Below (Lines 1-6 to be completed only by document signer[s], *not* Notary)

\_\_\_\_\_

*Signature of Document Signer No. 1*

\_\_\_\_\_

*Signature of Document Signer No. 2 (if any)*

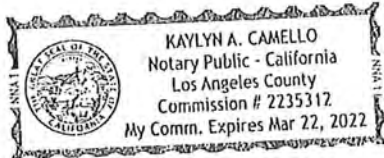
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California  
 County of Los Angeles

Subscribed and sworn to (or affirmed) before me  
 on this 17th day of June, 2021  
 by Sean Tabazadeh  
 (1) \_\_\_\_\_

(and (2) \_\_\_\_\_),  
*Name(s) of Signer(s)*

proved to me on the basis of satisfactory evidence  
 to be the person(s) who appeared before me.



Signature Kaylyn A. Camello  
*Signature of Notary Public*

*Seal*  
 Place Notary Seal Above

**OPTIONAL**

*Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.*

**Description of Attached Document**

Title or Type of Document: Bid Bond Document Date: 06/08/2021  
 Number of Pages: \_\_\_\_\_ Signer(s) Other Than Named Above: patrick Mougham

THE HANOVER INSURANCE COMPANY  
MASSACHUSETTS BAY INSURANCE COMPANY  
CITIZENS INSURANCE COMPANY OF AMERICA

POWER OF ATTORNEY

THIS Power of Attorney limits the acts of those named herein, and they have no authority to bind the Company except in the manner and to the extent herein stated.

KNOW ALL PERSONS BY THESE PRESENTS:

That THE HANOVER INSURANCE COMPANY and MASSACHUSETTS BAY INSURANCE COMPANY, both being corporations organized and existing under the laws of the State of New Hampshire, and CITIZENS INSURANCE COMPANY OF AMERICA, a corporation organized and existing under the laws of the State of Michigan, (hereinafter individually and collectively the "Company") does hereby constitute and appoint,

**Patrick T. Moughan, Mark D. Kiger, Alec D. Martinez, and/or Jing Guo Mason**

Of Global Risk, LLC of Los Angeles, CA each individually, if there be more than one named, as its true and lawful attorney(s)-in-fact to sign, execute, seal, acknowledge and deliver for, and on its behalf, and as its act and deed any place within the United States, any and all surety bonds, recognizances, undertakings, or other surety obligations. The execution of such surety bonds, recognizances, undertakings or surety obligations, in pursuance of these presents, shall be as binding upon the Company as if they had been duly signed by the president and attested by the secretary of the Company, in their own proper persons. Provided however, that this power of attorney limits the acts of those named herein; and they have no authority to bind the Company except in the manner stated and to the extent of any limitation stated below:

**Any such obligations in the United States, not to exceed Fifty Million and No/100 (\$50,000,000) in any single instance**

That this power is made and executed pursuant to the authority of the following Resolutions passed by the Board of Directors of said Company, and said Resolutions remain in full force and effect:

RESOLVED: That the President or any Vice President, in conjunction with any Vice President, be and they hereby are authorized and empowered to appoint Attorneys-in-fact of the Company, in its name and as it acts, to execute and acknowledge for and on its behalf as surety, any and all bonds, recognizances, contracts of indemnity, waivers of citation and all other writings obligatory in the nature thereof, with power to attach thereto the seal of the Company. Any such writings so executed by such Attorneys-in-fact shall be binding upon the Company as if they had been duly executed and acknowledged by the regularly elected officers of the Company in their own proper persons.

RESOLVED: That any and all Powers of Attorney and Certified Copies of such Powers of Attorney and certification in respect thereto, granted and executed by the President or Vice President in conjunction with any Vice President of the Company, shall be binding on the Company to the same extent as if all signatures therein were manually affixed, even though one or more of any such signatures thereon may be facsimile. (Adopted October 7, 1981 - The Hanover Insurance Company; Adopted April 14, 1982 - Massachusetts Bay Insurance Company; Adopted September 7, 2001 - Citizens Insurance Company of America)

IN WITNESS WHEREOF, THE HANOVER INSURANCE COMPANY, MASSACHUSETTS BAY INSURANCE COMPANY and CITIZENS INSURANCE COMPANY OF AMERICA have caused these presents to be sealed with their respective corporate seals, duly attested by two Vice Presidents, this 29<sup>th</sup> day of March, 2017.

The Hanover Insurance Company  
Massachusetts Bay Insurance Company  
Citizens Insurance Company of America

*John C. Roche*

John C. Roche, EVP and President



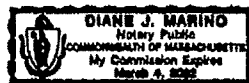
The Hanover Insurance Company  
Massachusetts Bay Insurance Company  
Citizens Insurance Company of America

*James H. Kawiecki*

James H. Kawiecki, Vice President

THE COMMONWEALTH OF MASSACHUSETTS )  
COUNTY OF WORCESTER ) ss.

On this 29<sup>th</sup> day of March, 2017 before me came the above named Vice Presidents of The Hanover Insurance Company, Massachusetts Bay Insurance Company and Citizens Insurance Company of America, to me personally known to be the individuals and officers described herein, and acknowledged that the seals affixed to the preceding instrument are the corporate seals of The Hanover Insurance Company, Massachusetts Bay Insurance Company and Citizens Insurance Company of America, respectively, and that the said corporate seals and their signatures as officers were duly affixed and subscribed to said instrument by the authority and direction of said Corporations.



*Diane J. Marino*  
Diane J. Marino, Notary Public  
My Commission Expires March 4, 2022

I, the undersigned Vice President of The Hanover Insurance Company, Massachusetts Bay Insurance Company and Citizens Insurance Company of America, hereby certify that the above and foregoing is a full, true and correct copy of the Original Power of Attorney issued by said Companies, and do hereby further certify that the said Powers of Attorney are still in force and effect.

GIVEN under my hand and the seals of said Companies, at Worcester, Massachusetts, this 8<sup>th</sup> day of June, 2021

CERTIFIED COPY

*Theodore G. Martinez*  
Theodore G. Martinez, Vice President

# CALIFORNIA ALL- PURPOSE CERTIFICATE OF ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California }

County of Los Angeles }

On 6/8/2021 before me, Ashley Greenberg, Notary Public  
(Here insert name and title of the officer)

personally appeared Patrick T. Moughan  
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) ~~is~~ are subscribed to the within instrument and acknowledged to me that ~~he~~ she/they executed the same in ~~his~~ her/their authorized capacity(ies), and that by ~~his~~ her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

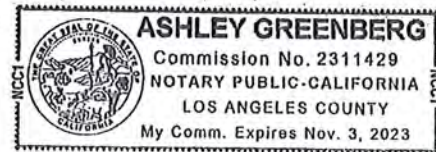
I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

*Ashley Greenberg*

Notary Public Signature

(Notary Public Seal)



## ADDITIONAL OPTIONAL INFORMATION

### DESCRIPTION OF THE ATTACHED DOCUMENT

(Title or description of attached document)

(Title or description of attached document continued)

Number of Pages \_\_\_\_\_ Document Date \_\_\_\_\_

### CAPACITY CLAIMED BY THE SIGNER

- Individual (s)  
 Corporate Officer

\_\_\_\_\_  
(Title)

- Partner(s)  
 Attorney-in-Fact  
 Trustee(s)  
 Other \_\_\_\_\_

## INSTRUCTIONS FOR COMPLETING THIS FORM

*This form complies with current California statutes regarding notary wording and, if needed, should be completed and attached to the document. Acknowledgments from other states may be completed for documents being sent to that state so long as the wording does not require the California notary to violate California notary law.*

- State and County information must be the State and County where the document signer(s) personally appeared before the notary public for acknowledgment.
- Date of notarization must be the date that the signer(s) personally appeared which must also be the same date the acknowledgment is completed.
- The notary public must print his or her name as it appears within his or her commission followed by a comma and then your title (notary public).
- Print the name(s) of document signer(s) who personally appear at the time of notarization.
- Indicate the correct singular or plural forms by crossing off incorrect forms (i.e. he/she/they, is /are ) or circling the correct forms. Failure to correctly indicate this information may lead to rejection of document recording.
- The notary seal impression must be clear and photographically reproducible. Impression must not cover text or lines. If seal impression smudges, re-seal if a sufficient area permits, otherwise complete a different acknowledgment form.
- Signature of the notary public must match the signature on file with the office of the county clerk.
  - ❖ Additional information is not required but could help to ensure this acknowledgment is not misused or attached to a different document.
  - ❖ Indicate title or type of attached document, number of pages and date.
  - ❖ Indicate the capacity claimed by the signer. If the claimed capacity is a corporate officer, indicate the title (i.e. CEO, CFO, Secretary).
- Securely attach this document to the signed document with a staple.

# CITY OF TRACY

## BUSINESS LICENSE TAX CERTIFICATE

"For Services Provided in the City of Tracy, California Only"



**2021-2022**

**TO BE POSTED IN A CONSPICUOUS PLACE  
AND  
NOT TRANSFERABLE OR ASSIGNABLE**

**Business Name** BEST CONTRACTING SERVICES, INC.

**Business Location** 19027 S Hamilton Ave  
Gardena, Ca 90248-4408

**Business Owner(s)** BEST CONTRACTING SERVICES, INC.

**Description** GENERAL CONTRACTOR

**Business Type** Contractor - General

BEST CONTRACTING SERVICES, INC.  
19027 S HAMILTON AVE  
GARDENA, CA 90248-4408

**Certificate #** 06016745

**Effective Date** August 16, 2021

**Expiration Date** June 30, 2022

**THIS BUSINESS LICENSE TAX CERTIFICATE DOES NOT  
PERMIT A BUSINESS THAT IS OTHERWISE PROHIBITED.**

For all inquiries regarding this license, contact HdL  
Business License Division at (209) 826-1827.

BEST CONTRACTING SERVICES, INC.:

Thank you for your payment on your City of Tracy Business License. **ALL CERTIFICATES MUST BE AVAILABLE FOR INSPECTION UPON REQUEST.** If you have questions concerning your business license, contact the Business Support Center via email at: [tracy@HdLgov.com](mailto:tracy@HdLgov.com) or by telephone at: (209) 826-1827.

Keep this portion for your license separate in case you need a replacement for any lost, stolen, or destroyed license. A fee may be charged for a replacement or duplicate license.

This certificate does not entitle the holder to conduct business before complying with all requirements of the Tracy Municipal code and other applicable laws, nor to conduct business in a zone where conducting such business violates law.

If you have a fixed place of business within the city limits of Tracy, please display the Business License tax certificate below in a conspicuous place at the premises. Otherwise, every BL tax certificate holder not having a fixed place of business in the City shall keep the BL tax certificate upon his or her person, or affixed in plain view upon any cart, vehicle, van or other movable structure or device at all times if required by the Collector.



BUSINESS LICENSING  
8839 N CEDAR AVE #212  
FRESNO, CA 93720-1832



**City of Tracy**  
**BUSINESS TAX CERTIFICATE**

BEST CONTRACTING SERVICES, INC.  
19027 S HAMILTON AVE  
GARDENA, CA 90248-4408

**License Number:** 06016745

**Date of Issue:** 08/16/2021

**CERTIFICATION OF SAFETY REQUIREMENTS FOR  
CONTRACTORS AND VENDORS**  
California Code of Regulations, Title 8, Section 1509

To work as a contractor or vendor with the City of Tracy, your organization is required to certify that it has an active on-the-job written Injury and Illness Prevention Program. This program is essential to make the job as accident-free as possible and to comply with Federal and State Safety Standards.

The undersigned hereby certifies that his/her organization has an active written Injury and Illness Prevention Program, as required by Cal-OSHA under California Code of Regulations, Title 8, General Industry Safety Orders, Section 3203 and/or Construction Safety Orders, Section 1509, that ensures compliance with, and enforcement of, current minimum Cal-OSHA Safety Standards, and that his/her organization has knowledge of these standards that are applicable to the job operations. This includes a program for ensuring employees have been trained to recognize hazards of their job.

The undersigned also hereby certifies that his/her organization has an active written Hazard Communication Program with evidence that all employees have been trained in safe use and handling of chemicals on the job site, and a file will be made available for review by the City of Tracy of each Material Safety Data Sheet (MSDS) on those chemicals kept on the site.

**Best Contracting Services, Inc.**

\_\_\_\_\_  
Name of Contractor

  
\_\_\_\_\_  
Signature of Contractor Representative

**Kayhan Fatemi, Exec., V.P.**

Dated: 7/28/11

**NOTE: THIS CERTIFICATION MUST BE COMPLETED AND RETURNED BY THE SUCCESSFUL BIDDER PRIOR TO THE START OF CONSTRUCTION.**

**GUARANTEE**

(To Be Submitted Prior to Project Acceptance  
Pursuant to Agreement, Section 12, "Warranty")

FOR THE  
CITY OF TRACY  
Tracy, California 95376

**GRAND THEATRE CENTER OF THE ARTS EXTERIOR IMPROVEMENTS  
CIP 71111**

We hereby guarantee that the work we have installed for **GRAND THEATRE CENTER OF THE ARTS EXTERIOR IMPROVEMENTS, CIP 71111** has been done in accordance with the Plans and Specifications and that the work installed will fulfill the requirements of the guarantee.

We agree to repair or replace any or all of our work, together with any other adjacent work which may be displayed in so doing that may prove to be defective in its workmanship or material within a period of one (1) year from the date of acceptance of the above-named work by the City of Tracy, without any expense whatsoever to the City of Tracy, ordinary wear and tear and unusual abuse or neglect excepted.

Within fifteen (15) days after being notified in writing by the City of Tracy of any defects in the work, we agree to commence and prosecute with due diligence all work necessary to fulfill the terms of this guarantee, and to complete the work within a reasonable period of time, and in the event of our failure to so comply, we collectively and separately, do hereby authorize said City of Tracy to proceed to have such work done at our expense and we will honor and pay the cost and changes therefore upon demand.

Dated: 7/28/21

By: \_\_\_\_\_

**Kayhan Fatemi, Exec., V.P.**

**NOTE: THIS CERTIFICATION MUST BE COMPLETED AND RETURNED BY THE SUCCESSFUL BIDDER PRIOR TO PROJECT ACCEPTANCE.**



Faithful Performance Bond

CITY OF TRACY  
Tracy, California

Bond Number 1088762

WHEREAS, Best Contracting Services, Inc. ("Principal") has entered into an "Agreement" with the City of Tracy ("City") for the project identified as: **GRAND THEATRE CENTER OF THE ARTS and CIP 71111**, the terms and conditions of which are incorporated herein by reference; and

WHEREAS, the terms of the Agreement require the Principal to submit performance security.

NOW, THEREFORE, Principal and The Hanover Insurance Company ("Surety"), are hereby held and firmly bound unto the City in the amount of <sup>One Hundred Sixty-One Thousand Eight Hundred</sup> ~~Seventy-One Dollars and seventy-two cents~~ dollars (\$ 161,871.72 ), for payment of which Principal and Surety hereby bind themselves, their heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH THAT, if Principal (or its heirs, executors, administrators, successors, or assigns approved by the City) performs the covenants, conditions, and obligations of the Agreement, including the obligation to indemnify, defend, and hold harmless the City, then this obligation shall be null and void; otherwise it shall be and remain in full force and effect.

The Surety's obligation under this bond shall arise after the City has provided written notice to the Surety, at the address set forth below, of the Principal's default under the Agreement, and the Principal's failure to cure the default in accordance with the terms of the Agreement.


The Surety hereby agrees, for value received, that its obligations under this bond shall in no way be impaired or modified by any modification to the Agreement by the City and the Principal, and the Surety hereby waives notice of any such modification.

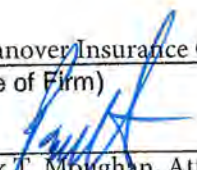
In the event suit is brought upon this bond, the surety shall pay reasonable attorneys' fees and costs incurred by the prevailing parties in such suit, which fees and costs shall be in addition to the face amount of the bond.

IN WITNESS WHEREOF, the undersigned represent and warrant that they have the right, power, legal capacity, and authority to enter into and execute this document on behalf of the Principal and the Surety, and have caused this document to be executed by setting hereto their names, titles, and signatures.

Principal: Best Contracting Services, Inc.  
(Name of Firm)

Surety: The Hanover Insurance Company  
(Name of Firm)

By:   
Title: Kayhan Fatemi, Executive Vice President  
Date: 7/13/21

By:   
Title: Patrick T. Moughan, Attorney-in-Fact  
Date: 7/13/2021

Address for Notices to Surety:  
5 Hutton Centre Dr. Suite 1060  
Santa Ana, CA 92707

NOTE: NOTARY ACKNOWLEDGMENT FOR SURETY AND SURETY'S POWER OF ATTORNEY MUST BE ATTACHED.

THE HANOVER INSURANCE COMPANY  
MASSACHUSETTS BAY INSURANCE COMPANY  
CITIZENS INSURANCE COMPANY OF AMERICA

POWER OF ATTORNEY

THIS Power of Attorney limits the acts of those named herein, and they have no authority to bind the Company except in the manner and to the extent herein stated.

KNOW ALL PERSONS BY THESE PRESENTS:

That THE HANOVER INSURANCE COMPANY and MASSACHUSETTS BAY INSURANCE COMPANY, both being corporations organized and existing under the laws of the State of New Hampshire, and CITIZENS INSURANCE COMPANY OF AMERICA, a corporation organized and existing under the laws of the State of Michigan, (hereinafter individually and collectively the "Company") does hereby constitute and appoint,

Patrick T. Moughan, Mark D. Kiger, Alec D. Martinez, and/or Jing Guo Mason

Of Global Risk, LLC of Los Angeles, CA each individually, if there be more than one named, as its true and lawful attorney(s)-in-fact to sign, execute, seal, acknowledge and deliver for, and on its behalf, and as its act and deed any place within the United States, any and all surety bonds, recognizances, undertakings, or other surety obligations. The execution of such surety bonds, recognizances, undertakings or surety obligations, in pursuance of these presents, shall be as binding upon the Company as if they had been duly signed by the president and attested by the secretary of the Company, in their own proper persons. Provided however, that this power of attorney limits the acts of those named herein; and they have no authority to bind the Company except in the manner stated and to the extent of any limitation stated below:

Any such obligations in the United States, not to exceed Fifty Million and No/100 (\$50,000,000) in any single instance

That this power is made and executed pursuant to the authority of the following Resolutions passed by the Board of Directors of said Company, and said Resolutions remain in full force and effect:

RESOLVED: That the President or any Vice President, in conjunction with any Vice President, be and they hereby are authorized and empowered to appoint Attorneys-in-fact of the Company, in its name and as it acts, to execute and acknowledge for and on its behalf as surety, any and all bonds, recognizances, contracts of indemnity, waivers of citation and all other writings obligatory in the nature thereof, with power to attach thereto the seal of the Company. Any such writings so executed by such Attorneys-in-fact shall be binding upon the Company as if they had been duly executed and acknowledged by the regularly elected officers of the Company in their own proper persons.

RESOLVED: That any and all Powers of Attorney and Certified Copies of such Powers of Attorney and certification in respect thereto, granted and executed by the President or Vice President in conjunction with any Vice President of the Company, shall be binding on the Company to the same extent as if all signatures therein were manually affixed, even though one or more of any such signatures thereon may be facsimile. (Adopted October 7, 1981 – The Hanover Insurance Company; Adopted April 14, 1982 – Massachusetts Bay Insurance Company; Adopted September 7, 2001 – Citizens Insurance Company of America)

IN WITNESS WHEREOF, THE HANOVER INSURANCE COMPANY, MASSACHUSETTS BAY INSURANCE COMPANY and CITIZENS INSURANCE COMPANY OF AMERICA have caused these presents to be sealed with their respective corporate seals, duly attested by two Vice Presidents, this 29<sup>th</sup> day of March, 2017.

The Hanover Insurance Company  
Massachusetts Bay Insurance Company  
Citizens Insurance Company of America

*John C. Roche*

John C. Roche, EVP and President



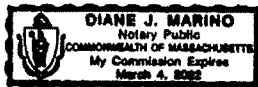
The Hanover Insurance Company  
Massachusetts Bay Insurance Company  
Citizens Insurance Company of America

*James H. Kawiecki*

James H. Kawiecki, Vice President

THE COMMONWEALTH OF MASSACHUSETTS )  
COUNTY OF WORCESTER ) ss.

On this 29<sup>th</sup> day of March, 2017 before me came the above named Vice Presidents of The Hanover Insurance Company, Massachusetts Bay Insurance Company and Citizens Insurance Company of America, to me personally known to be the individuals and officers described herein, and acknowledged that the seals affixed to the preceding instrument are the corporate seals of The Hanover Insurance Company, Massachusetts Bay Insurance Company and Citizens Insurance Company of America, respectively, and that the said corporate seals and their signatures as officers were duly affixed and subscribed to said instrument by the authority and direction of said Corporations.



*Diane J. Marino*

Diane J. Marino, Notary Public  
My Commission Expires March 4, 2022

I, the undersigned Vice President of The Hanover Insurance Company, Massachusetts Bay Insurance Company and Citizens Insurance Company of America, hereby certify that the above and foregoing is a full, true and correct copy of the Original Power of Attorney issued by said Companies, and do hereby further certify that the said Powers of Attorney are still in force and effect.

GIVEN under my hand and the seals of said Companies, at Worcester, Massachusetts, this 13<sup>th</sup> day of July, 2021

CERTIFIED COPY

*Theodore G. Martinez*  
Theodore G. Martinez, Vice President

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

**CIVIL CODE § 1189**



A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

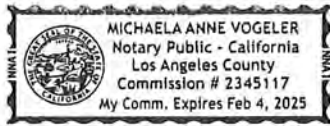
State of California )  
County of Los Angeles )

On July 15, 2021 before me, Michaela Anne Vogeler, Notary Public,  
*Here Insert Name and Title of the Officer*  
Kayhan Fatemi  
personally appeared \_\_\_\_\_  
*Name(s) of Signer(s)*

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature *Michaela Anne Vogeler*  
*Signature of Notary Public*

*Place Notary Seal Above*

**OPTIONAL**

*Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.*

**Description of Attached Document**

Title or Type of Document: Perf Bond  
Document Date: 7/14/21 Number of Pages: \_\_\_\_\_  
Signer(s) Other Than Named Above: Patrick T. Moughan

**Capacity(ies) Claimed by Signer(s)**

Signer's Name: Kayhan Fatemi Signer's Name: \_\_\_\_\_  
 Corporate Officer — Title(s): EVP  Corporate Officer — Title(s): \_\_\_\_\_  
 Partner —  Limited  General  Partner —  Limited  General  
 Individual  Attorney in Fact  Individual  Attorney in Fact  
 Trustee  Guardian or Conservator  Trustee  Guardian or Conservator  
 Other: \_\_\_\_\_  Other: \_\_\_\_\_  
Signer Is Representing: Best Contracting Services, Inc. Signer Is Representing: \_\_\_\_\_

# CALIFORNIA ALL- PURPOSE CERTIFICATE OF ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California }

County of Los Angeles }

On 7/13/2024 before me, Ashley Greenberg, Notary Public,  
(Here insert name and title of the officer)

personally appeared Patrick T. Moughan,  
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) (s) are subscribed to the within instrument and acknowledged to me that he she/they executed the same in his her/their authorized capacity(ies), and that by his her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

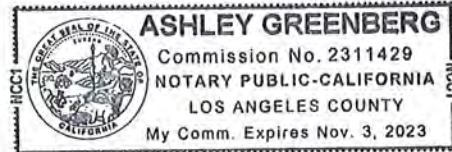
I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

*Ashley Greenberg*

Notary Public Signature

(Notary Public Seal)



## ADDITIONAL OPTIONAL INFORMATION

DESCRIPTION OF THE ATTACHED DOCUMENT

\_\_\_\_\_

(Title or description of attached document)

\_\_\_\_\_

(Title or description of attached document continued)

Number of Pages \_\_\_\_\_ Document Date \_\_\_\_\_

CAPACITY CLAIMED BY THE SIGNER

Individual (s)

Corporate Officer

\_\_\_\_\_ (Title)

Partner(s)

Attorney-in-Fact

Trustee(s)

Other \_\_\_\_\_

## INSTRUCTIONS FOR COMPLETING THIS FORM

*This form complies with current California statutes regarding notary wording and, if needed, should be completed and attached to the document. Acknowledgments from other states may be completed for documents being sent to that state so long as the wording does not require the California notary to violate California notary law.*

- State and County information must be the State and County where the document signer(s) personally appeared before the notary public for acknowledgment.
- Date of notarization must be the date that the signer(s) personally appeared which must also be the same date the acknowledgment is completed.
- The notary public must print his or her name as it appears within his or her commission followed by a comma and then your title (notary public).
- Print the name(s) of document signer(s) who personally appear at the time of notarization.
- Indicate the correct singular or plural forms by crossing off incorrect forms (i.e. ~~he~~/she/~~they~~, is /are ) or circling the correct forms. Failure to correctly indicate this information may lead to rejection of document recording.
- The notary seal impression must be clear and photographically reproducible. Impression must not cover text or lines. If seal impression smudges, re-seal if a sufficient area permits, otherwise complete a different acknowledgment form.
- Signature of the notary public must match the signature on file with the office of the county clerk.
  - ❖ Additional information is not required but could help to ensure this acknowledgment is not misused or attached to a different document.
  - ❖ Indicate title or type of attached document, number of pages and date.
  - ❖ Indicate the capacity claimed by the signer. If the claimed capacity is a corporate officer, indicate the title (i.e. CEO, CFO, Secretary).
- Securely attach this document to the signed document with a staple.

**Labor and Material Bond**

CITY OF TRACY  
Tracy, California

Bond Number 1088762

WHEREAS, Best Contracting Services, Inc. ("Principal") has entered into an "Agreement" with the City of Tracy ("City") for the project identified as: **GRAND THEATRE CENTER OF THE ARTS, CIP 71111**, the terms and conditions of which are incorporated herein by reference; and the terms of the Agreement require the Principal to submit payment (labor & material) security for the benefit of all "Claimants"; and

WHEREAS, the term "Claimants" is defined as any of the persons named in California Civil Code Section 3181, or their assigns.

NOW, THEREFORE, Principal and The Hanover Insurance Company ("Surety"), are hereby held and firmly bound unto the City, and all Claimants, in the amount of ~~One Hundred Sixty-One Thousand Eight Hundred Seventy-One Dollars and seventy two cents~~ One Hundred Sixty-One Thousand Eight Hundred Seventy-One Dollars (\$161,871.72), for payment of which Principal and Surety hereby bind themselves, their heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH THAT, if the Principal (or its heirs, executors, administrators, successors, or assigns approved by the City) and all of its subcontractors pay: (a) all Claimants, and (b) all amounts due under the California Unemployment Insurance Code with respect to work or labor performed under the Agreement, and (c) all amounts required to be deducted, withheld, and paid over to the California Employment Development Department from the wages of employees of the Principal and its subcontractors pursuant to California Unemployment Insurance Code Section 13020 with respect to such work and labor; then this obligation shall become and be null and void; otherwise it shall remain in full force and effect.

The Surety's obligation under this bond shall arise, and the Surety shall make appropriate payments, after the Surety has received written notice, at the address set forth below, of the Principal's failure to make payment in accordance with the obligations of the Agreement or this bond.

This bond shall inure to the benefit of the City and Claimants, as to give a right of action to any Claimant or their assigns in any suit brought upon this bond.

In the event suit is brought upon this bond, the surety shall pay reasonable attorneys' fees and costs incurred by the prevailing parties in such suit, which fees and costs shall be in addition to the face amount of the bond.

The Surety hereby agrees, for value received, that its obligations under this bond shall in no way be impaired or modified by any modification to the Agreement by the City and the Principal, and the Surety hereby waives notice of any such modification.

IN WITNESS WHEREOF, the undersigned represent and warrant that they have the right, power, legal capacity, and authority to enter into and execute this document on behalf of the Principal and the Surety, and have caused this document to be executed by setting hereto their names, titles, and signatures.

Principal: Best Contracting Services, Inc.  
(Name of Firm)  
By: [Signature]  
Title: Kayhan Fatemi, Executive Vice President  
Date: 7/13/21

Surety: The Hanover Insurance Company  
(Name of Firm)  
By: [Signature]  
Title: Patrick T. Moughan, Attorney-in-Fact  
Date: 7/13/2021

NOTE: NOTARY ACKNOWLEDGMENT FOR SURETY AND SURETY'S POWER OF ATTORNEY MUST BE ATTACHED.

Address for Notices to Surety:  
5 Hutton Centre Dr. Suite 1060  
Santa Ana, CA 92707

THE HANOVER INSURANCE COMPANY  
MASSACHUSETTS BAY INSURANCE COMPANY  
CITIZENS INSURANCE COMPANY OF AMERICA

POWER OF ATTORNEY

THIS Power of Attorney limits the acts of those named herein, and they have no authority to bind the Company except in the manner and to the extent herein stated.

KNOW ALL PERSONS BY THESE PRESENTS:

That THE HANOVER INSURANCE COMPANY and MASSACHUSETTS BAY INSURANCE COMPANY, both being corporations organized and existing under the laws of the State of New Hampshire, and CITIZENS INSURANCE COMPANY OF AMERICA, a corporation organized and existing under the laws of the State of Michigan, (hereinafter individually and collectively the "Company") does hereby constitute and appoint,

Patrick T. Moughan, Mark D. Kiger, Alec D. Martinez, and/or Jing Guo Mason

Of Global Risk, LLC of Los Angeles, CA each individually, if there be more than one named, as its true and lawful attorney(s)-in-fact to sign, execute, seal, acknowledge and deliver for, and on its behalf, and as its act and deed any place within the United States, any and all surety bonds, recognizances, undertakings, or other surety obligations. The execution of such surety bonds, recognizances, undertakings or surety obligations, in pursuance of these presents, shall be as binding upon the Company as if they had been duly signed by the president and attested by the secretary of the Company, in their own proper persons. Provided however, that this power of attorney limits the acts of those named herein; and they have no authority to bind the Company except in the manner stated and to the extent of any limitation stated below:

Any such obligations in the United States, not to exceed Fifty Million and No/100 (\$50,000,000) in any single instance

That this power is made and executed pursuant to the authority of the following Resolutions passed by the Board of Directors of said Company, and said Resolutions remain in full force and effect:

RESOLVED: That the President or any Vice President, in conjunction with any Vice President, be and they hereby are authorized and empowered to appoint Attorneys-in-fact of the Company, in its name and as it acts, to execute and acknowledge for and on its behalf as surety, any and all bonds, recognizances, contracts of indemnity, waivers of citation and all other writings obligatory in the nature thereof, with power to attach thereto the seal of the Company. Any such writings so executed by such Attorneys-in-fact shall be binding upon the Company as if they had been duly executed and acknowledged by the regularly elected officers of the Company in their own proper persons.

RESOLVED: That any and all Powers of Attorney and Certified Copies of such Powers of Attorney and certification in respect thereto, granted and executed by the President or Vice President in conjunction with any Vice President of the Company, shall be binding on the Company to the same extent as if all signatures therein were manually affixed, even though one or more of any such signatures thereon may be facsimile. (Adopted October 7, 1981 – The Hanover Insurance Company; Adopted April 14, 1982 – Massachusetts Bay Insurance Company; Adopted September 7, 2001 – Citizens Insurance Company of America)

IN WITNESS WHEREOF, THE HANOVER INSURANCE COMPANY, MASSACHUSETTS BAY INSURANCE COMPANY and CITIZENS INSURANCE COMPANY OF AMERICA have caused these presents to be sealed with their respective corporate seals, duly attested by two Vice Presidents, this 29<sup>th</sup> day of March, 2017.

The Hanover Insurance Company  
Massachusetts Bay Insurance Company  
Citizens Insurance Company of America

*John C. Roche*

John C. Roche, EVP and President



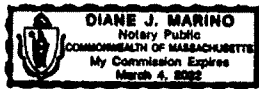
The Hanover Insurance Company  
Massachusetts Bay Insurance Company  
Citizens Insurance Company of America

*James H. Kawiecki*

James H. Kawiecki, Vice President

THE COMMONWEALTH OF MASSACHUSETTS )  
COUNTY OF WORCESTER ) ss.

On this 29<sup>th</sup> day of March, 2017 before me came the above named Vice Presidents of The Hanover Insurance Company, Massachusetts Bay Insurance Company and Citizens Insurance Company of America, to me personally known to be the individuals and officers described herein, and acknowledged that the seals affixed to the preceding instrument are the corporate seals of The Hanover Insurance Company, Massachusetts Bay Insurance Company and Citizens Insurance Company of America, respectively, and that the said corporate seals and their signatures as officers were duly affixed and subscribed to said instrument by the authority and direction of said Corporations.



*Diane J. Marino*

Diane J. Marino, Notary Public  
My Commission Expires March 4, 2022

I, the undersigned Vice President of The Hanover Insurance Company, Massachusetts Bay Insurance Company and Citizens Insurance Company of America, hereby certify that the above and foregoing is a full, true and correct copy of the Original Power of Attorney issued by said Companies, and do hereby further certify that the said Powers of Attorney are still in force and effect.

GIVEN under my hand and the seals of said Companies, at Worcester, Massachusetts, this 13<sup>th</sup> day of July, 2021

CERTIFIED COPY

*Theodore G. Martinez*  
Theodore G. Martinez, Vice President

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

**CIVIL CODE § 1189**

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

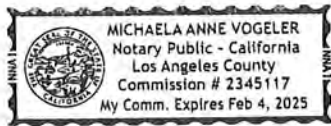
State of California )  
County of Los Angeles )

On July 15, 2021 before me, Michaela Anne Vogeler, Notary Public,  
*Here Insert Name and Title of the Officer*  
personally appeared Kayhan Fatemi  
*Name(s) of Signer(s)*

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature *Michaela Anne Vogeler*  
*Signature of Notary Public*

Place Notary Seal Above

**OPTIONAL**

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

**Description of Attached Document**

Title or Type of Document: Labor/Mat Bond  
Document Date: 7/14/21 Number of Pages: \_\_\_\_\_  
Signer(s) Other Than Named Above: Patrick T. Moughan

**Capacity(ies) Claimed by Signer(s)**

Signer's Name: Kayhan Fatemi Signer's Name: \_\_\_\_\_  
 Corporate Officer — Title(s): EVP  Corporate Officer — Title(s): \_\_\_\_\_  
 Partner —  Limited  General  Partner —  Limited  General  
 Individual  Attorney in Fact  Individual  Attorney in Fact  
 Trustee  Guardian or Conservator  Trustee  Guardian or Conservator  
 Other: \_\_\_\_\_  Other: \_\_\_\_\_  
Signer Is Representing: Best Contracting Services, Inc. Signer Is Representing: \_\_\_\_\_

# CALIFORNIA ALL- PURPOSE CERTIFICATE OF ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California }

County of Los Angeles }

On 7/13/2021 before me, Ashley Greenberg, Notary Public,  
(Here insert name and title of the officer)

personally appeared Patrick T. Moughan,  
who proved to me on the basis of satisfactory evidence to be the person(s) whose  
name(s) (is) are subscribed to the within instrument and acknowledged to me that  
(he) she/they executed the same in (his) her/their authorized capacity(ies), and that by  
(his) her/their signature(s) on the instrument the person(s), or the entity upon behalf of  
which the person(s) acted, executed the instrument.

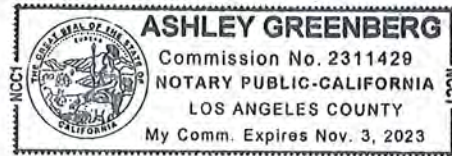
I certify under PENALTY OF PERJURY under the laws of the State of California that  
the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

*Ashley Greenberg*

Notary Public Signature

(Notary Public Seal)



## ADDITIONAL OPTIONAL INFORMATION

DESCRIPTION OF THE ATTACHED DOCUMENT

\_\_\_\_\_  
(Title or description of attached document)

\_\_\_\_\_  
(Title or description of attached document continued)

Number of Pages \_\_\_\_\_ Document Date \_\_\_\_\_

### CAPACITY CLAIMED BY THE SIGNER

- Individual (s)
- Corporate Officer
- \_\_\_\_\_ (Title)
- Partner(s)
- Attorney-in-Fact
- Trustee(s)
- Other \_\_\_\_\_

## INSTRUCTIONS FOR COMPLETING THIS FORM

*This form complies with current California statutes regarding notary wording and, if needed, should be completed and attached to the document. Acknowledgments from other states may be completed for documents being sent to that state so long as the wording does not require the California notary to violate California notary law.*

- State and County information must be the State and County where the document signer(s) personally appeared before the notary public for acknowledgment.
- Date of notarization must be the date that the signer(s) personally appeared which must also be the same date the acknowledgment is completed.
- The notary public must print his or her name as it appears within his or her commission followed by a comma and then your title (notary public).
- Print the name(s) of document signer(s) who personally appear at the time of notarization.
- Indicate the correct singular or plural forms by crossing off incorrect forms (i.e. he/she/they- is /are ) or circling the correct forms. Failure to correctly indicate this information may lead to rejection of document recording.
- The notary seal impression must be clear and photographically reproducible. Impression must not cover text or lines. If seal impression smudges, re-seal if a sufficient area permits, otherwise complete a different acknowledgment form.
- Signature of the notary public must match the signature on file with the office of the county clerk.
  - ❖ Additional information is not required but could help to ensure this acknowledgment is not misused or attached to a different document.
  - ❖ Indicate title or type of attached document, number of pages and date.
  - ❖ Indicate the capacity claimed by the signer. If the claimed capacity is a corporate officer, indicate the title (i.e. CEO, CFO, Secretary).
- Securely attach this document to the signed document with a staple.



**WARRANTY BOND**

(To Be Submitted Prior to Contract Execution  
Pursuant to General Provisions Section 3.07, "Contract Bonds")

CITY OF TRACY  
Tracy, California 95376

Bond Number 1088762

WHEREAS, Best Contracting Services, Inc. ("Principal")  
has entered into an "Agreement" dated \_\_\_\_\_, 20\_\_\_\_, with the City of Tracy ("City") for  
the project identified as: **GRAND THEATRE CENTER OF THE ARTS, CIP 71111** the terms and  
conditions of which are incorporated herein by reference; and

WHEREAS, the terms of the Agreement require the Principal to install and complete certain  
designated public improvements; and

WHEREAS, the Principal is required under the terms of said agreement to furnish a good and  
sufficient warranty bond for the faithful performance of said agreement pursuant to Government Code  
Sections 66499.1., 66499.4. and 66499.9. and Tracy Municipal Code Section 12.36.080, and

WHEREAS, Principal has completed the construction of various public improvements, consisting  
generally of the following scope of work:  
Grand Theatre Center for the Arts Exterior Improvements - CIP 71111 - Phase 1  
Roof

in accordance with the General Provisions, the Drawings and Specifications, which Contract Documents  
are by reference incorporated herein, and made a part hereof, and is referred to as the Plans.

NOW, THEREFORE, the condition of this obligation is such that, if Principal shall remedy any  
defects due to faulty materials or workmanship, and pay for any damage to other work resulting there  
from, which shall appear within a period of one (1) year from the date of substantial completion of the  
work, or acceptance of the project, provided for in the Plans, then this obligation to be void; otherwise to  
remain in full force and effect.

IN WITNESS WHEREOF, the Principal has duly executed this instrument and Surety above  
named, on July 13, 2021.  
Best Contracting Services, Inc. The Hanover Insurance Company

Principal: Kayhan Fatemi, Executive Vice President

Bonding Company: Patrick T. Moughan, Attorney-in-Fact

**NOTE: THE WARRANTY BOND SHALL BE SUBMITTED BY THE CONTRACTOR PRIOR TO THE  
EXECUTION OF THE AGREEMENT, CONCURRENTLY WITH THE FAITHFUL PERFORMANCE  
BOND AND LABOR AND MATERIAL BOND, PRIOR TO THE COMMENCEMENT OF ANY WORK.  
ALL APPLICABLE PROVISIONS OF THE CONTRACT DOCUMENTS SHALL BE MODIFIED TO  
REFLECT THIS REQUIREMENT.**

THE HANOVER INSURANCE COMPANY  
MASSACHUSETTS BAY INSURANCE COMPANY  
CITIZENS INSURANCE COMPANY OF AMERICA

POWER OF ATTORNEY

THIS Power of Attorney limits the acts of those named herein, and they have no authority to bind the Company except in the manner and to the extent herein stated.

KNOW ALL PERSONS BY THESE PRESENTS:

That THE HANOVER INSURANCE COMPANY and MASSACHUSETTS BAY INSURANCE COMPANY, both being corporations organized and existing under the laws of the State of New Hampshire, and CITIZENS INSURANCE COMPANY OF AMERICA, a corporation organized and existing under the laws of the State of Michigan, (hereinafter individually and collectively the "Company") does hereby constitute and appoint,

**Patrick T. Moughan, Mark D. Kiger, Alec D. Martinez, and/or Jing Guo Mason**

Of **Global Risk, LLC of Los Angeles, CA** each individually, if there be more than one named, as its true and lawful attorney(s)-in-fact to sign, execute, seal, acknowledge and deliver for, and on its behalf, and as its act and deed any place within the United States, any and all surety bonds, recognizances, undertakings, or other surety obligations. The execution of such surety bonds, recognizances, undertakings or surety obligations, in pursuance of these presents, shall be as binding upon the Company as if they had been duly signed by the president and attested by the secretary of the Company, in their own proper persons. Provided however, that this power of attorney limits the acts of those named herein; and they have no authority to bind the Company except in the manner stated and to the extent of any limitation stated below:

**Any such obligations in the United States, not to exceed Fifty Million and No/100 (\$50,000,000) in any single instance**

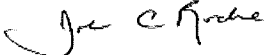
That this power is made and executed pursuant to the authority of the following Resolutions passed by the Board of Directors of said Company, and said Resolutions remain in full force and effect:

RESOLVED: That the President or any Vice President, in conjunction with any Vice President, be and they hereby are authorized and empowered to appoint Attorneys-in-fact of the Company, in its name and as it acts, to execute and acknowledge for and on its behalf as surety, any and all bonds, recognizances, contracts of indemnity, waivers of citation and all other writings obligatory in the nature thereof, with power to attach thereto the seal of the Company. Any such writings so executed by such Attorneys-in-fact shall be binding upon the Company as if they had been duly executed and acknowledged by the regularly elected officers of the Company in their own proper persons.

RESOLVED: That any and all Powers of Attorney and Certified Copies of such Powers of Attorney and certification in respect thereto, granted and executed by the President or Vice President in conjunction with any Vice President of the Company, shall be binding on the Company to the same extent as if all signatures therein were manually affixed, even though one or more of any such signatures thereon may be facsimile. (Adopted October 7, 1981 – The Hanover Insurance Company; Adopted April 14, 1982 – Massachusetts Bay Insurance Company; Adopted September 7, 2001 – Citizens Insurance Company of America)

IN WITNESS WHEREOF, THE HANOVER INSURANCE COMPANY, MASSACHUSETTS BAY INSURANCE COMPANY and CITIZENS INSURANCE COMPANY OF AMERICA have caused these presents to be sealed with their respective corporate seals, duly attested by two Vice Presidents, this 29<sup>th</sup> day of March, 2017.

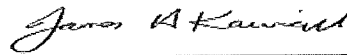
The Hanover Insurance Company  
Massachusetts Bay Insurance Company  
Citizens Insurance Company of America



John C. Roche, EVP and President



The Hanover Insurance Company  
Massachusetts Bay Insurance Company  
Citizens Insurance Company of America



James H. Kawiecki, Vice President

THE COMMONWEALTH OF MASSACHUSETTS )  
COUNTY OF WORCESTER ) ss.

On this 29<sup>th</sup> day of March, 2017 before me came the above named Vice Presidents of The Hanover Insurance Company, Massachusetts Bay Insurance Company and Citizens Insurance Company of America, to me personally known to be the individuals and officers described herein, and acknowledged that the seals affixed to the preceding instrument are the corporate seals of The Hanover Insurance Company, Massachusetts Bay Insurance Company and Citizens Insurance Company of America, respectively, and that the said corporate seals and their signatures as officers were duly affixed and subscribed to said instrument by the authority and direction of said Corporations.

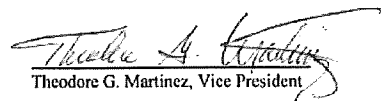


Diane J. Marino, Notary Public  
My Commission Expires March 4, 2022

I, the undersigned Vice President of The Hanover Insurance Company, Massachusetts Bay Insurance Company and Citizens Insurance Company of America, hereby certify that the above and foregoing is a full, true and correct copy of the Original Power of Attorney issued by said Companies, and do hereby further certify that the said Powers of Attorney are still in force and effect.

GIVEN under my hand and the seals of said Companies, at Worcester, Massachusetts, this 13<sup>th</sup> day of July, 2021

CERTIFIED COPY



Theodore G. Martinez, Vice President

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

**CIVIL CODE § 1189**



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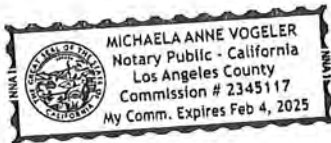
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County of Los Angeles )

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*Here Insert Name and Title of the Officer*  
personally appeared Kayhan Fatemi  
*Name(s) of Signer(s)*

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WITNESS my hand and official seal.



Signature *Michaela Anne Vogeler*  
*Signature of Notary Public*

*Place Notary Seal Above*

**OPTIONAL**

*Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.*

**Description of Attached Document**

Title or Type of Document: Warranty Bond  
Document Date: 7/14/21 Number of Pages: \_\_\_\_\_  
Signer(s) Other Than Named Above: Patrick T. Moughan

**Capacity(ies) Claimed by Signer(s)**

Signer's Name: Kayhan Fatemi Signer's Name: \_\_\_\_\_  
 Corporate Officer — Title(s): EVP  Corporate Officer — Title(s): \_\_\_\_\_  
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 Individual  Attorney in Fact  Individual  Attorney in Fact  
 Trustee  Guardian or Conservator  Trustee  Guardian or Conservator  
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Signer Is Representing: Best Contracting Services, Inc. Signer Is Representing: \_\_\_\_\_

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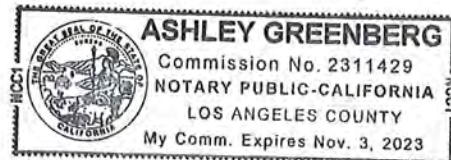
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WITNESS my hand and official seal.

*Ashley Greenberg*

Notary Public Signature

(Notary Public Seal)



## ADDITIONAL OPTIONAL INFORMATION

DESCRIPTION OF THE ATTACHED DOCUMENT

\_\_\_\_\_  
(Title or description of attached document)

\_\_\_\_\_  
(Title or description of attached document continued)

Number of Pages \_\_\_\_\_ Document Date \_\_\_\_\_

### CAPACITY CLAIMED BY THE SIGNER

- Individual (s)  
 Corporate Officer

\_\_\_\_\_  
(Title)

- Partner(s)  
 Attorney-in-Fact  
 Trustee(s)  
 Other \_\_\_\_\_

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- Print the name(s) of document signer(s) who personally appear at the time of notarization.
- Indicate the correct singular or plural forms by crossing off incorrect forms (i.e. ~~he~~/she/~~they~~- is /are ) or circling the correct forms. Failure to correctly indicate this information may lead to rejection of document recording.
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  - ❖ Indicate the capacity claimed by the signer. If the claimed capacity is a corporate officer, indicate the title (i.e. CEO, CFO, Secretary).
- Securely attach this document to the signed document with a staple.



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

07/14/2021

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).**

<b>PRODUCER</b> Global Risk, LLC 800 Wilshire Blvd., 2nd Floor  Los Angeles CA 90017	<b>CONTACT NAME:</b> Tami Mason
	<b>PHONE (A/C, No, Ext):</b> (213) 550-2253 <b>FAX (A/C, No):</b>
	<b>E-MAIL ADDRESS:</b> tmason@globalriskcap.com
	<b>INSURER(S) AFFORDING COVERAGE</b>
	<b>INSURER A:</b> Zurich American Insurance Co <b>NAIC #</b> 16535
	<b>INSURER B:</b> Steadfast Insurance Co      26387
	<b>INSURER C:</b> Indian Harbor Insurance Co      36940
	<b>INSURER D:</b>
	<b>INSURER E:</b>
	<b>INSURER F:</b>

**COVERAGES**      **CERTIFICATE NUMBER:** Cert ID 466      **REVISION NUMBER:**

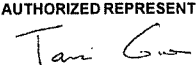
THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE 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 INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR  GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PROJECT <input type="checkbox"/> LOC OTHER:	Y	Y	GLO 9805197-09	12/01/2020	12/01/2021	EACH OCCURRENCE \$ 2,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000 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	<b>AUTOMOBILE LIABILITY</b> <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input checked="" type="checkbox"/> NON-OWNED AUTOS ONLY	Y	Y	BAP 9805196-09	12/01/2020	12/01/2021	COMBINED SINGLE LIMIT (Ea accident) \$ 2,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
C	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED      RETENTION \$			SXS0058041	12/01/2020	12/01/2021	EACH OCCURRENCE \$ 5,000,000 AGGREGATE \$ 5,000,000
A	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N	N/A	WC 9805198-09	12/01/2020	12/01/2021	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
B	Professional/Pollution			EOC 5852640-08	12/01/2020	12/01/2021	Each Occurrence \$ 5,000,000 Aggregate \$ 5,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

RE: Grand Theatre Center For The Arts Exterior Improvements - CIP 71111. City of Tracy, its officers, officials, employees or volunteers are included as Additional Insured subject to the terms of the attached endorsements. Waiver of Subrogation applies per the attached endorsements. Primary and Non-contributory Wording applies per the attached General Liability endorsement. 30 days' Notice, except ten days for non-payment, will be provided in the event of cancellation.

**CERTIFICATE HOLDER****CANCELLATION**

City of Tracy  333 Civic Center Plaza  Tracy CA 95376	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 
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**ZURICH**<sup>®</sup>

# Additional Insured – Automatic – Owners, Lessees Or Contractors

Policy No.	Eff. Date of Pol.	Exp. Date of Pol.	Eff. Date of End.	Producer No.	Add'l. Prem	Return Prem.
GLO 9805197-09	12/01/2020	12/01/2021		91769000	<b>INCL</b>	

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**Named Insured:** Best Contracting Services, Inc.

**Address (including ZIP Code):**

19027 S. Hamilton Ave.  
Gardena, CA 90248

This endorsement modifies insurance provided under the:

**Commercial General Liability Coverage Part**

**A. Section II – Who Is An Insured** is amended to include as an additional insured any person or organization whom you are required to add as an additional insured on this policy under a written contract or written agreement. Such person or organization is an additional insured only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by:

1. Your acts or omissions; or
2. The acts or omissions of those acting on your behalf,

in the performance of your ongoing operations or "your work" as included in the "products-completed operations hazard", which is the subject of the written contract or written agreement.

However, the insurance afforded to such additional insured:

1. Only applies to the extent permitted by law; and
2. Will not be broader than that which you are required by the written contract or written agreement to provide for such additional insured.

**B. With respect to the insurance afforded to these additional insureds, the following additional exclusion applies:**

This insurance does not apply to:

"Bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of, or failure to render, any professional architectural, engineering or surveying services including:

- a. The preparing, approving or failing to prepare or approve maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or
- b. Supervisory, inspection, architectural or engineering activities.

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "occurrence" which caused the "bodily injury" or "property damage", or the offense which caused the "personal and advertising injury", involved the rendering of or the failure to render any professional architectural, engineering or surveying services.

C. The following is added to Paragraph 2. Duties In The Event Of Occurrence, Offense, Claim Or Suit of Section IV – **Commercial General Liability Conditions:**

The additional insured must see to it that:

1. We are notified as soon as practicable of an "occurrence" or offense that may result in a claim;
2. We receive written notice of a claim or "suit" as soon as practicable; and
3. A request for defense and indemnity of the claim or "suit" will promptly be brought against any policy issued by another insurer under which the additional insured may be an insured in any capacity. This provision does not apply to insurance on which the additional insured is a Named Insured if the written contract or written agreement requires that this coverage be primary and non-contributory.

D. For the purposes of the coverage provided by this endorsement:

1. The following is added to the Other Insurance Condition of Section IV – **Commercial General Liability Conditions:**

**Primary and Noncontributory insurance**

This insurance is primary to and will not seek contribution from any other insurance available to an additional insured provided that:

- a. The additional insured is a Named Insured under such other insurance; and
  - b. You are required by written contract or written agreement that this insurance be primary and not seek contribution from any other insurance available to the additional insured.
2. The following paragraph is added to Paragraph 4.b. of the Other Insurance Condition of Section IV – **Commercial General Liability Conditions:**

This insurance is excess over:

Any of the other insurance, whether primary, excess, contingent or on any other basis, available to an additional insured, in which the additional insured on our policy is also covered as an additional insured on another policy providing coverage for the same "occurrence", offense, claim or "suit". This provision does not apply to any policy in which the additional insured is a Named Insured on such other policy and where our policy is required by a written contract or written agreement to provide coverage to the additional insured on a primary and non-contributory basis.

E. This endorsement does not apply to an additional insured which has been added to this policy by an endorsement showing the additional insured in a Schedule of additional insureds, and which endorsement applies specifically to that identified additional insured.

F. With respect to the insurance afforded to the additional insureds under this endorsement, the following is added to Section III – **Limits Of Insurance:**

The most we will pay on behalf of the additional insured is the amount of insurance:

1. Required by the written contract or written agreement referenced in Paragraph A. of this endorsement; or
  2. Available under the applicable Limits of Insurance shown in the Declarations,
- whichever is less.

This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations.

All other terms and conditions of this policy remain unchanged.

## WAIVER OF TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART  
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART

### SCHEDULE

**Name Of Person Or Organization:**

Any person or organization, where required by written contract

Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

The following is added to Paragraph **8. Transfer Of Rights Of Recovery Against Others To Us** of Section **IV – Conditions**:

We waive any right of recovery we may have against the person or organization shown in the Schedule above because of payments we make for injury or damage arising out of your ongoing operations or "your work" done under a contract with that person or organization and included in the "products-completed operations hazard". This waiver applies only to the person or organization shown in the Schedule above.



# Other Insurance Amendment – Primary And Non-Contributory



Policy No.	Eff. Date of Pol.	Exp. Date of Pol.	Eff. Date of End.	Producer No.	Add'l. Prem	Return Prem.
GLO 9805197-09	12/01/2020	12/01/2021		91769000	<b>INCL</b>	

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**Named Insured:** Best Contracting Services, Inc.

**Address (including ZIP Code):**

19027 S. Hamilton Ave.  
Gardena, CA 90248

This endorsement modifies insurance provided under the:

**Commercial General Liability Coverage Part**

1. The following paragraph is added to the Other Insurance Condition of Section **IV – Commercial General Liability Conditions**:

This insurance is primary insurance to and will not seek contribution from any other insurance available to an additional insured under this policy provided that:

- a. The additional insured is a Named Insured under such other insurance; and
  - b. You are required by a written contract or written agreement that this insurance would be primary and would not seek contribution from any any other insurance available to the additional insured.
2. The following paragraph is added to Paragraph **4.b.** of the Other Insurance Condition of Section **IV – Commercial General Liability Conditions**:

This insurance is excess over:

Any of the other insurance, whether primary, excess, contingent or on any other basis, available to an additional insured, in which the additional insured on our policy is also covered as an additional insured on another policy providing coverage for the same "occurrence", offense, claim or "suit". This provision does not apply to any policy in which the additional insured is a Named Insured on such other policy and where our policy is required by written contract or written agreement to provide coverage to the additional insured on a primary and non-contributory basis.

All other terms and conditions of this policy remain unchanged.



**ZURICH**<sup>®</sup>

# Coverage Extension Endorsement

Policy No.	Eff. Date of Pol.	Exp. Date of Pol.	Eff. Date of End.	Producer No.	Add'l. Prem	Return Prem.
BAP 9805196-09	12/01/2020	12/01/2021		91769000	<b>INCL</b>	

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

This endorsement modifies insurance provided under the:

**Business Auto Coverage Form  
Motor Carrier Coverage Form**

## A. Amended Who Is An Insured

1. The following is added to the **Who Is An Insured** Provision in **Section II – Covered Autos Liability Coverage**:

The following are also "insureds":

- a. Any "employee" of yours is an "insured" while using a covered "auto" you don't own, hire or borrow for acts performed within the scope of employment by you. Any "employee" of yours is also an "insured" while operating an "auto" hired or rented under a contract or agreement in an "employee's" name, with your permission, while performing duties related to the conduct of your business.
- b. Anyone volunteering services to you is an "insured" while using a covered "auto" you don't own, hire or borrow to transport your clients or other persons in activities necessary to your business.
- c. Anyone else who furnishes an "auto" referenced in Paragraphs **A.1.a.** and **A.1.b.** in this endorsement.
- d. Where and to the extent permitted by law, any person(s) or organization(s) where required by written contract or written agreement with you executed prior to any "accident", including those person(s) or organization(s) directing your work pursuant to such written contract or written agreement with you, provided the "accident" arises out of operations governed by such contract or agreement and only up to the limits required in the written contract or written agreement, or the Limits of Insurance shown in the Declarations, whichever is less.

2. The following is added to the **Other Insurance** Condition in the Business Auto Coverage Form and the **Other Insurance – Primary and Excess Insurance Provisions Condition** in the Motor Carrier Coverage Form:

Coverage for any person(s) or organization(s), where required by written contract or written agreement with you executed prior to any "accident", will apply on a primary and non-contributory basis and any insurance maintained by the additional "insured" will apply on an excess basis. However, in no event will this coverage extend beyond the terms and conditions of the Coverage Form.

## B. Amendment – Supplementary Payments

Paragraphs **a.(2)** and **a.(4)** of the **Coverage Extensions** Provision in **Section II – Covered Autos Liability Coverage** are replaced by the following:

- (2) Up to \$5,000 for the cost of bail bonds (including bonds for related traffic law violations) required because of an "accident" we cover. We do not have to furnish these bonds.
- (4) All reasonable expenses incurred by the "insured" at our request, including actual loss of earnings up to \$500 a day because of time off from work.

### C. Fellow Employee Coverage

The **Fellow Employee Exclusion** contained in **Section II – Covered Autos Liability Coverage** does not apply.

### D. Driver Safety Program Liability and Physical Damage Coverage

1. The following is added to the **Racing Exclusion** in **Section II – Covered Autos Liability Coverage**:

This exclusion does not apply to covered "autos" participating in a driver safety program event, such as, but not limited to, auto or truck rodeos and other auto or truck agility demonstrations.

2. The following is added to Paragraph 2. in the **Exclusions** of **Section III – Physical Damage Coverage** of the Business Auto Coverage Form and Paragraph 2.b. in the **Exclusions** of **Section IV – Physical Damage Coverage** of the Motor Carrier Coverage Form:

This exclusion does not apply to covered "autos" participating in a driver safety program event, such as, but not limited to, auto or truck rodeos and other auto or truck agility demonstrations.

### E. Lease or Loan Gap Coverage

The following is added to the **Coverage** Provision of the **Physical Damage Coverage** Section:

#### Lease Or Loan Gap Coverage

In the event of a total "loss" to a covered "auto", we will pay any unpaid amount due on the lease or loan for a covered "auto", less:

- a. Any amount paid under the **Physical Damage Coverage** Section of the Coverage Form; and
- b. Any:
  - (1) Overdue lease or loan payments at the time of the "loss";
  - (2) Financial penalties imposed under a lease for excessive use, abnormal wear and tear or high mileage;
  - (3) Security deposits not returned by the lessor;
  - (4) Costs for extended warranties, credit life insurance, health, accident or disability insurance purchased with the loan or lease; and
  - (5) Carry-over balances from previous leases or loans.

### F. Towing and Labor

Paragraph **A.2.** of the **Physical Damage Coverage** Section is replaced by the following:

We will pay up to \$75 for towing and labor costs incurred each time a covered "auto" of the private passenger type is disabled. However, the labor must be performed at the place of disablement.

### G. Extended Glass Coverage

The following is added to Paragraph **A.3.a.** of the **Physical Damage Coverage** Section:

If glass must be replaced, the deductible shown in the Declarations will apply. However, if glass can be repaired and is actually repaired rather than replaced, the deductible will be waived. You have the option of having the glass repaired rather than replaced.

### H. Hired Auto Physical Damage – Increased Loss of Use Expenses

The **Coverage Extension** for **Loss Of Use Expenses** in the **Physical Damage Coverage** Section is replaced by the following:

#### Loss Of Use Expenses

For Hired Auto Physical Damage, we will pay expenses for which an "insured" becomes legally responsible to pay for loss of use of a vehicle rented or hired without a driver under a written rental contract or written rental agreement. We will pay for loss of use expenses if caused by:

- (1) Other than collision only if the Declarations indicate that Comprehensive Coverage is provided for any covered "auto";
- (2) Specified Causes Of Loss only if the Declarations indicate that Specified Causes Of Loss Coverage is provided for any covered "auto"; or
- (3) Collision only if the Declarations indicate that Collision Coverage is provided for any covered "auto".

However, the most we will pay for any expenses for loss of use is \$100 per day, to a maximum of \$3000.

#### I. Personal Effects Coverage

The following is added to the **Coverage** Provision of the **Physical Damage Coverage** Section:

##### Personal Effects Coverage

- a. We will pay up to \$750 for "loss" to personal effects which are:
  - (1) Personal property owned by an "insured"; and
  - (2) In or on a covered "auto".
- b. Subject to Paragraph a. above, the amount to be paid for "loss" to personal effects will be based on the lesser of:
  - (1) The reasonable cost to replace; or
  - (2) The actual cash value.
- c. The coverage provided in Paragraphs a. and b. above, only applies in the event of a total theft of a covered "auto". No deductible applies to this coverage. However, we will not pay for "loss" to personal effects of any of the following:
  - (1) Accounts, bills, currency, deeds, evidence of debt, money, notes, securities, or commercial paper or other documents of value.
  - (2) Bullion, gold, silver, platinum, or other precious alloys or metals; furs or fur garments; jewelry, watches, precious or semi-precious stones.
  - (3) Paintings, statuary and other works of art.
  - (4) Contraband or property in the course of illegal transportation or trade.
  - (5) Tapes, records, discs or other similar devices used with audio, visual or data electronic equipment.

Any coverage provided by this Provision is excess over any other insurance coverage available for the same "loss".

#### J. Tapes, Records and Discs Coverage

1. The Exclusion in Paragraph B.4.a. of **Section III – Physical Damage Coverage** in the Business Auto Coverage Form and the Exclusion in Paragraph B.2.c. of **Section IV – Physical Damage Coverage** in the Motor Carrier Coverage Form does not apply.
2. The following is added to Paragraph 1.a. **Comprehensive Coverage** under the **Coverage** Provision of the **Physical Damage Coverage** Section:

We will pay for "loss" to tapes, records, discs or other similar devices used with audio, visual or data electronic equipment. We will pay only if the tapes, records, discs or other similar audio, visual or data electronic devices:

- (a) Are the property of an "insured"; and
- (b) Are in a covered "auto" at the time of "loss".

The most we will pay for such "loss" to tapes, records, discs or other similar devices is \$500. The **Physical Damage Coverage Deductible** Provision does not apply to such "loss".

#### **K. Airbag Coverage**

The Exclusion in Paragraph **B.3.a.** of **Section III – Physical Damage Coverage** in the Business Auto Coverage Form and the Exclusion in Paragraph **B.4.a.** of **Section IV – Physical Damage Coverage** in the Motor Carrier Coverage Form does not apply to the accidental discharge of an airbag.

#### **L. Two or More Deductibles**

The following is added to the **Deductible** Provision of the **Physical Damage Coverage** Section:

If an accident is covered both by this policy or Coverage Form and by another policy or Coverage Form issued to you by us, the following applies for each covered "auto" on a per vehicle basis:

1. If the deductible on this policy or Coverage Form is the smaller (or smallest) deductible, it will be waived; or
2. If the deductible on this policy or Coverage Form is not the smaller (or smallest) deductible, it will be reduced by the amount of the smaller (or smallest) deductible.

#### **M. Physical Damage – Comprehensive Coverage – Deductible**

The following is added to the **Deductible** Provision of the **Physical Damage Coverage** Section:

Regardless of the number of covered "autos" damaged or stolen, the maximum deductible that will be applied to Comprehensive Coverage for all "loss" from any one cause is \$5,000 or the deductible shown in the Declarations, whichever is greater.

#### **N. Temporary Substitute Autos – Physical Damage**

1. The following is added to **Section I – Covered Autos**:

##### **Temporary Substitute Autos – Physical Damage**

If Physical Damage Coverage is provided by this Coverage Form on your owned covered "autos", the following types of vehicles are also covered "autos" for Physical Damage Coverage:

Any "auto" you do not own when used with the permission of its owner as a temporary substitute for a covered "auto" you do own but is out of service because of its:

1. Breakdown;
2. Repair;
3. Servicing;
4. "Loss"; or
5. Destruction.

2. The following is added to the Paragraph **A. Coverage** Provision of the **Physical Damage Coverage** Section:

##### **Temporary Substitute Autos – Physical Damage**

We will pay the owner for "loss" to the temporary substitute "auto" unless the "loss" results from fraudulent acts or omissions on your part. If we make any payment to the owner, we will obtain the owner's rights against any other party.

The deductible for the temporary substitute "auto" will be the same as the deductible for the covered "auto" it replaces.

#### **O. Amended Duties In The Event Of Accident, Claim, Suit Or Loss**

Paragraph **a.** of the **Duties In The Event Of Accident, Claim, Suit Or Loss** Condition is replaced by the following:

- a. In the event of "accident", claim, "suit" or "loss", you must give us or our authorized representative prompt notice of the "accident", claim, "suit" or "loss". However, these duties only apply when the "accident", claim, "suit" or "loss" is known to you (if you are an individual), a partner (if you are a partnership), a member (if you are a limited liability company) or an executive officer or insurance manager (if you are a corporation). The failure of any

agent, servant or employee of the "insured" to notify us of any "accident", claim, "suit" or "loss" shall not invalidate the insurance afforded by this policy.

Include, as soon as practicable:

- (1) How, when and where the "accident" or "loss" occurred and if a claim is made or "suit" is brought, written notice of the claim or "suit" including, but not limited to, the date and details of such claim or "suit";
- (2) The "insured's" name and address; and
- (3) To the extent possible, the names and addresses of any injured persons and witnesses.

If you report an "accident", claim, "suit" or "loss" to another insurer when you should have reported to us, your failure to report to us will not be seen as a violation of these amended duties provided you give us notice as soon as practicable after the fact of the delay becomes known to you.

#### **P. Waiver of Transfer Of Rights Of Recovery Against Others To Us**

The following is added to the **Transfer Of Rights Of Recovery Against Others To Us** Condition:

This Condition does not apply to the extent required of you by a written contract, executed prior to any "accident" or "loss", provided that the "accident" or "loss" arises out of operations contemplated by such contract. This waiver only applies to the person or organization designated in the contract.

#### **Q. Employee Hired Autos – Physical Damage**

Paragraph **b.** of the **Other Insurance** Condition in the Business Auto Coverage Form and Paragraph **f.** of the **Other Insurance – Primary and Excess Insurance Provisions** Condition in the Motor Carrier Coverage Form are replaced by the following:

For Hired Auto Physical Damage Coverage, the following are deemed to be covered "autos" you own:

- (1) Any covered "auto" you lease, hire, rent or borrow; and
- (2) Any covered "auto" hired or rented under a written contract or written agreement entered into by an "employee" or elected or appointed official with your permission while being operated within the course and scope of that "employee's" employment by you or that elected or appointed official's duties as respect their obligations to you.

However, any "auto" that is leased, hired, rented or borrowed with a driver is not a covered "auto".

#### **R. Unintentional Failure to Disclose Hazards**

The following is added to the **Concealment, Misrepresentation Or Fraud** Condition:

However, we will not deny coverage under this Coverage Form if you unintentionally:

- (1) Fail to disclose any hazards existing at the inception date of this Coverage Form; or
- (2) Make an error, omission, improper description of "autos" or other misstatement of information.

You must notify us as soon as possible after the discovery of any hazards or any other information that was not provided to us prior to the acceptance of this policy.

#### **S. Hired Auto – World Wide Coverage**

Paragraph **7a.(5)** of the **Policy Period, Coverage Territory** Condition is replaced by the following:

- (5) Anywhere in the world if a covered "auto" is leased, hired, rented or borrowed for a period of 60 days or less,

#### **T. Bodily Injury Redefined**

The definition of "bodily injury" in the **Definitions** Section is replaced by the following:

"Bodily injury" means bodily injury, sickness or disease, sustained by a person including death or mental anguish, resulting from any of these at any time. Mental anguish means any type of mental or emotional illness or disease.

#### **U. Expected Or Intended Injury**

The **Expected Or Intended Injury** Exclusion in Paragraph **B. Exclusions** under **Section II – Covered Auto Liability Coverage** is replaced by the following:

##### **Expected Or Intended Injury**

"Bodily injury" or "property damage" expected or intended from the standpoint of the "insured". This exclusion does not apply to "bodily injury" or "property damage" resulting from the use of reasonable force to protect persons or property.

#### **V. Physical Damage – Additional Temporary Transportation Expense Coverage**

Paragraph **A.4.a.** of **Section III – Physical Damage Coverage** is replaced by the following:

##### **4. Coverage Extensions**

###### **a. Transportation Expenses**

We will pay up to \$50 per day to a maximum of \$1,000 for temporary transportation expense incurred by you because of the total theft of a covered "auto" of the private passenger type. We will pay only for those covered "autos" for which you carry either Comprehensive or Specified Causes of Loss Coverage. We will pay for temporary transportation expenses incurred during the period beginning 48 hours after the theft and ending, regardless of the policy's expiration, when the covered "auto" is returned to use or we pay for its "loss".

#### **W. Replacement of a Private Passenger Auto with a Hybrid or Alternative Fuel Source Auto**

The following is added to Paragraph **A. Coverage** of the **Physical Damage Coverage** Section:

In the event of a total "loss" to a covered "auto" of the private passenger type that is replaced with a hybrid "auto" or "auto" powered by an alternative fuel source of the private passenger type, we will pay an additional 10% of the cost of the replacement "auto", excluding tax, title, license, other fees and any aftermarket vehicle upgrades, up to a maximum of \$2500. The covered "auto" must be replaced by a hybrid "auto" or an "auto" powered by an alternative fuel source within 60 calendar days of the payment of the "loss" and evidenced by a bill of sale or new vehicle lease agreement.

To qualify as a hybrid "auto", the "auto" must be powered by a conventional gasoline engine and another source of propulsion power. The other source of propulsion power must be electric, hydrogen, propane, solar or natural gas, either compressed or liquefied. To qualify as an "auto" powered by an alternative fuel source, the "auto" must be powered by a source of propulsion power other than a conventional gasoline engine. An "auto" solely propelled by biofuel, gasoline or diesel fuel or any blend thereof is not an "auto" powered by an alternative fuel source.

#### **X. Return of Stolen Automobile**

The following is added to the **Coverage Extension** Provision of the **Physical Damage Coverage** Section:

If a covered "auto" is stolen and recovered, we will pay the cost of transport to return the "auto" to you. We will pay only for those covered "autos" for which you carry either Comprehensive or Specified Causes of Loss Coverage.

All other terms, conditions, provisions and exclusions of this policy remain the same.

**WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS ENDORSEMENT**

We have the right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against the person or organization named in the Schedule. (This agreement applies only to the extent that you perform work under a written contract that requires you to obtain this agreement from us.)

This agreement shall not operate directly or indirectly to benefit anyone not named in the Schedule.

Schedule

**ALL PERSONS AND/OR ORGANIZATIONS THAT ARE REQUIRED BY WRITTEN CONTRACT OR AGREEMENT WITH THE INSURED, EXECUTED PRIOR TO THE ACCIDENT OR LOSS, THAT WAIVER OF SUBROGATION BE PROVIDED UNDER THIS POLICY FOR WORK PERFORMED BY YOU**

This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated.

**(The information below is required only when this endorsement is issued subsequent to preparation of the policy.)**

Endorsement Effective: 12/01/2020

Policy No. WC9805198-09

Endorsement No.

Insured: Best Contracting Services Inc.

Insurance Company: Zurich American Insurance Company

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**Best Contracting Services, Inc.  
List of Project Contacts**

**Project:**

<b>NAME / TITLE:</b>	<b>OFFICE EXTENSION</b>	<b>CELL.#</b>	<b>E-MAIL ADDRESS:</b>	<b>AREA OF RESPONSIBILITY</b>
<b>Project Manager:</b> Maria Alimagno	221		<a href="mailto:malimagno@bestcontracting.com">malimagno@bestcontracting.com</a>	RFI'S, RFC'S, Project Schedules, Daily Reports, Field Reports, Field Coordination, Preconstruction Meeting
<b>Project / Contracts Administration</b> Myris Guballa	210		<a href="mailto:mguballa@bestcontracting.com">mguballa@bestcontracting.com</a>	Contracts, Project Correspondence, Change Orders. Labor Rates Administrative Documents, Pre-construction Meeting Notices Front End Required Contract Documentation, LOI/NOA/NTP
<b>Project Engineering:</b> Raymond Lobato	420	510-886-7240	<a href="mailto:rlobato@bestcontracting.com">rlobato@bestcontracting.com</a>	Shop Drawings, Submittals, LEEDS, Mock-ups Front End Technical Docs/Forms RFI's, RFCs, Instruction Bulletins, Const. Directives
<b>Billing</b> Joanna McNicholl	262		<a href="mailto:jmcnicholl@bestcontracting.com">jmcnicholl@bestcontracting.com</a>	All Billing / Drafts & Invoicing, SOVs
<b>Purchasing:</b> Chris Deroca	228		<a href="mailto:cderoca@bestcontracting.com">cderoca@bestcontracting.com</a>	Purchasing
<b>Labor Compliance:</b> Lita Pablo	232		<a href="mailto:lpablo@bestcontracting.com">lpablo@bestcontracting.com</a>	BEST Labor Compliance, Preconstruction Meeting, AP
<b>Close-Out Administrator</b> Ela Vogeler	256		<a href="mailto:evogeler@bestcontracting.com">evogeler@bestcontracting.com</a>	Warranties, Consent of Surety plus any special close-out docs specified per project

Best Contracting Services, Inc. (BCSI) appreciates the opportunity to service your construction needs and we look forward to working with your firm towards the successful performance and completion of this project to the mutual satisfaction of all parties involved.

**In the event your inquiry or call is not responded to after the first attempt, please contact our COO, Mr. Bob Mars immediately at: (310) 328-6969 - Ext. 244 or Cell# (310) 505-3643 you can also contact Mr. Mars via email [bmars@bestcontracting.com](mailto:bmars@bestcontracting.com)**

The above listed Points of Contact for (BCSI) will remain in force for the duration of the referenced project unless otherwise notified.



CONTRACTORS  
STATE LICENSE BOARD  
ACTIVE LICENSE



License Number: **456263**

Entity: CORP

Business Name: **BEST CONTRACTING SERVICES  
INC**

License Address: C39 B A C43 C17



Expiration Date: **05/31/2022**

[www.cslb.ca.gov](http://www.cslb.ca.gov)



# City of Tracy Agreement Routing

Please fill out form completely & write N/A if not applicable.

CITY OF TRACY

AUG 03 2021

CITY ATTORNEY

CONTRACTOR/COMPANY INFORMATION			
<b>Contractor/Company:</b>	BEST Contracting Services	<b>Email:</b>	estimating@bestcontracting.com
<b>Contact Person:</b>	Sean Tabazadeh	<b>Phone:</b>	310-328-6969

REQUESTING CITY DEPARTMENT			
<b>Department:</b>	Construction Management	<b>Phone:</b>	209-831-6460
<b>Project Manager:</b>	Paul Verma	<b>Admin:</b>	Andrea Cipponer
<b>Contract Type:</b>	PSA <input type="checkbox"/> GSA <input type="checkbox"/> Amendment <input type="checkbox"/>	Public Proj. <input checked="" type="checkbox"/>	SIA <input type="checkbox"/> OIA <input type="checkbox"/> Other <input type="checkbox"/>
<b>To be signed by:</b>	Mayor <input checked="" type="checkbox"/>	City Manager <input type="checkbox"/>	City Attorney <input type="checkbox"/> Department Head <input type="checkbox"/>
<b>Per signature authority:</b>	TMC §2.20.080	TMC §2.20.090	TMC §2.20.095 TMC §2.20.100

CONTRACT DESCRIPTION/INFORMATION				
<b>Project Name:</b>				
	<b>Approved by/Reso No. &amp; Date</b>	<b>Amount</b>	<b>Term</b>	<b>Total Amount</b>
<b>Original</b>	City Manager/ July 9, 2021	161,872.00		161,872.00
<b>Amendment No. 1 / Task Order</b>				
<b>Amendment No. 2</b>				
<input type="checkbox"/> Previously reviewed by City Attorney's Office.	Document Review No. <u>21-210</u> .			
<input type="checkbox"/> Exhibits A through <u>N/A</u> attached.	<input checked="" type="checkbox"/> Signed by other Party & confirmed corporate, LLC or LP status, if applicable. <i>To confirm Corp., LLC or LP status, please visit <a href="https://businesssearch.sos.ca.gov/">https://businesssearch.sos.ca.gov/</a></i>			
<input checked="" type="checkbox"/> Check if two originals are attached. The Clerk's Office will keep one original.				
<input type="checkbox"/> Check if document will need to be notarized.				
<input type="checkbox"/> Check if document will be recorded & list who will record the agreement: <u>N/A</u>				

INSURANCE REQUIREMENTS		
<i>All Insurance Certificates must include the corresponding Contract Name</i>		
<input checked="" type="checkbox"/> Insurance Certificate is attached.	<input type="checkbox"/> This is an Amendment or Task Order. Insurance Certificate is on file & current.	
<input checked="" type="checkbox"/> Is Endorsement included?	<input type="checkbox"/> Is Waiver of Subrogation attached?	Risk Manager Initials: <u>LM</u>
<input type="checkbox"/> Check if any modifications to insurance requirements & include email from Risk Manager approving modification.		

FINANCE & BUSINESS LICENSE INFORMATION			
<i>To locate the business license number and status, please visit <a href="https://tracy.hdlgov.com/Search/Index/BusinessLicense">https://tracy.hdlgov.com/Search/Index/BusinessLicense</a></i>			
<b>City Account #</b> <i>Funds are budgeted &amp; available</i>	CIP 71111	<b>Business License #</b>	B/L 06016745 6/30/2022

NOTES/SPECIAL INSTRUCTIONS	

CONTRACT CERTIFICATION & APPROVALS			
1. Department Head	<u>[Signature]</u>	Date	<u>7/29/21</u>
2. Risk	<u>[Signature]</u>	Date	<u>8/2/21</u>
3. Finance	<u>[Signature]</u>	Date	<u>08/03/2021</u>
4. City Attorney	<u>[Signature]</u>	Date	<u>8/3/2021</u>
5. City Clerk	<u>[Signature]</u>	Date	<u>8/5/2021</u>

Contract questions? Contact City Attorney's office (209) 831-6130. Insurance questions? Contact Risk Manager (209) 831-6169. Finance questions? Contact Finance Department (209) 831-6822. Business License Questions? Contact HDL ((209) 826-1827 or [request@hdlgov.com](mailto:request@hdlgov.com)).

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CITY ATTORNEY'S OFFICE

**TRACY CITY COUNCIL**

**RESOLUTION 2024-\_\_\_\_\_**

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**(1) ACCEPTING THE CONSTRUCTION IMPROVEMENTS FOR THE GRAND THEATRE CENTER FOR THE PERFORMING ARTS, COMPLETED BY BEST CONTRACTING SERVICES, INC., (2) AUTHORIZING THE CITY CLERK TO FILE THE NOTICE OF COMPLETION WITH THE SAN JOAQUIN COUNTY RECORDER'S OFFICE, AND (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.**

**WHEREAS**, on August 3, 2021, the Mayor approved and awarded a construction contract (Contract), pursuant to Urgency Ordinance No. 1285, to Best Contracting Services Inc., of Gardena, California (Contractor), in the amount of \$161,872 for Capital Improvement Project CIP 71111 Grand Theatre for the Performing Arts, Exterior Improvements, Phase 1 Roof Repair (Project); and

**WHEREAS**, on February 15, 2022, by Resolution No. 2022-023, the City Council approved a budget augmentation of an additional \$250,000 for CIP 71111 for the purposes of a full tear out and replacement of the existing roof; and

**WHEREAS**, on March 15, 2022, Contract Change Order (CCO) #1 was approved by the City Manager in the amount of \$224,188 for the removal and replacement of the roof at the Project site; and

**WHEREAS**, on June 9, 2023, CCO #2 was approved at the department level for additional equipment to perform construction in the amount of \$1,750.00, resulting in total approved CCO's for the Project of \$225,938; and

**WHEREAS**, the Contractor has asked the City to accept the completed improvements as related to the Project site and release, the improvement security furnished for this CIP; and

**WHEREAS**, the City Engineer has inspected the completed improvements for the Project site and has determined that the Contractor has constructed the Project improvements in conformity with approved plans and specifications and has submitted record drawings of the improvements; and

**WHEREAS**, pursuant to Tracy Municipal Code Section 12.36.110, the City seeks to accept the Project improvements as complete; and

**WHEREAS**, with the Project improvements complete, the City also seeks to file a Notice of Completion pursuant to Civil Code Sections 8184 *et seq.* for the Project site improvements with the San Joaquin County Recorder’s Office; and

**WHEREAS**, in accordance with the Project Contract and Tracy Municipal Code Section 12.36.080, the Contractor furnished Improvement securities in the following amounts:

<b>Bond Type</b>	<b>Amount</b>
Faithful Performance Security	\$161,871.72
Labor and Material Security	\$161,871.72
Warranty Security	\$ 16,187.17

; and

**WHEREAS**, Faithful Performance Bonds may be released upon acceptance of the improvements by the City; Labor and Material Bonds may be released thirty (30) days after recordation of the Notice of Completion, as the statute of limitations period expires in accordance with Civil Code 9356; and Warranty Bond may be released one (1) year after the City accepts the improvements and any warranty work is completed; now, therefore, be it

**RESOLVED:** That the City Council of the City of Tracy hereby accepts the construction improvements for The Grand Theatre Center for the Performing Arts, Exterior Improvements, Phase 1 Roof Repair, Capital Improvement Project 71111, completed by Best Contracting Services, Inc.; and be it

**FURTHER RESOLVED:** That the City Council authorizes the City Clerk to file a Notice of Completion for the Project and record said Notice of Completion with the San Joaquin County Recorder’s Office; and be it

**FURTHER RESOLVED:** That the City Engineer may release the Project Improvement securities in accordance with terms of the Contract; and be it

**FURTHER RESOLVED:** That prior to commencement of construction, the Project was determined to be categorically exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15301, which pertains to the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of an existing facility.

\*\*\*\*\*

The foregoing Resolution 2024-\_\_\_\_\_ was adopted by the Tracy City Council on the 3<sup>rd</sup> of September 2024 by the following vote:

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

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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

Agenda Item 1.C

**RECOMMENDATION**

**Staff recommends that the City Council adopt a resolution: approving a Professional Service Agreement with Nickerson Investigative Services, a sole proprietor, to conduct pre-employment background investigations to meet the Commission on Peace Officer Standards and Training for a three(3)-year term and a total not to exceed amount of \$150,000.**

**EXECUTIVE SUMMARY**

This agenda item seeks the adoption of a resolution approving a Professional Service Agreement (PSA) with Nickerson Investigative Services (Consultant) to conduct pre-employment investigative services in order to meet the standards of the Commission on Peace Officer Standards and Training (P.O.S.T.). The Consultant has been selected after a careful review and evaluation of all the proposals received in response to a Request for Proposals issued on May 30, 2024. After an evaluation of the responses, staff has determined that the Consultant demonstrated the competence and professional qualifications necessary for the performance of the required services.

**BACKGROUND AND LEGISLATIVE HISTORY**

The Tracy Police Department requires qualified investigators to provide comprehensive pre-employment background investigation services for all sworn and professional staff. These investigations must be conducted in accordance with the California Commission on Peace Officer Standards and Training (P.O.S.T.), which mandates pre-employment investigations for Police Officers and Public Safety Dispatchers.

After conducting a formal bidding process and evaluating all responses, staff now recommends entering into a three-year agreement with Nickerson Investigative Services, a sole proprietor, in the form attached hereto as Attachment A.

On May 30, 2024, the Tracy Police Department published a Request for Proposals on the City of Tracy website. The following three vendors providing pre-employment background investigations responded with proposals:

Nickerson Investigation Services	\$1,800 per sworn background, \$1,500 per professional staff background
Pena Investigations	\$2,850 per background + additional charges for Per Hour Investigative work, Per Hour travel cost, Daily Per Diem, Lodging, and Mileage. *No clarification for cost difference between sworn and professional Staff
Status Investigative Group	\$1,650 per sworn background, \$1,550 per professional staff background, \$750 per volunteer/intern background

Nickerson Investigative Services' proposal was the most responsive to the City's requirements as published in the formal Request for Proposals.

### ANALYSIS

The Tracy Police Department is comprised of 107 full-time sworn officers, 61 full-time professional staff, three(3) part-time reserve officers, and three(3) part-time professional employees.

In compliance with P.O.S.T., Tracy Police Department is required to conduct pre-employment background investigation services of sworn officers and public safety dispatchers. The Department conducts background investigations on all police personnel.

As noted above, on May 30, 2024, the Tracy Police Department published a Request for Proposals on the City of Tracy website and the City received three proposals. After careful review and evaluation of all proposals and pursuant to Tracy Municipal Code section 2.20.140(a)(2), Tracy Police Department determined the Nickerson Investigative Services demonstrated the competence and professional qualifications necessary for the performance of the required services.

Nickerson Investigative Services, owned by Michael Nickerson, provides P.O.S.T. compliant background investigations, possesses a California private investigator's license, provided required professional references, and has agreed to provide completed investigations within the specified 21-day time frame. Nickerson Investigative Services met all the specifications published within the Request for Proposal. Additionally, Nickerson Investigative Services has previously provided these services for the Tracy Police Department, and the Department has found his investigations and reports to be comprehensive and in compliance with P.O.S.T. requirements.

Investigator Nickerson has performed approximately 150 background investigations for the Tracy Police Department since 2019. He has demonstrated his ability to provide comprehensive investigations that are fully compliant with P.O.S.T. requirements. Investigator Nickerson completes investigations, typically, in 21 days or less which helps the Department avoid hiring delays in a competitive hiring market.

Upon receipt and review of the three(3) proposals, Nickerson Investigative Services provided the only proposal which met all requested requirements including possessing a Private Investigator License, resume(s) stating professional qualifications and competence, detailed experience performing background investigations, references, experience working with agency of similar nature and size, and a detailed budget to include any potential increases over a three(3)-year agreement term. Although not the lowest bidder, his proposed rates are competitive with other investigative firms performing similar work.

Proposer Pena Investigations' compensation proposal was the highest bid and included many additional fees on top of the base rate. The proposal was vague and did not specifically address many of the other components requested in the RFP. Pena Investigations demonstrated no experience working with Law Enforcement agencies conducting P.O.S.T. background investigations, did not provide information regarding a Private Investigator License for the firm or any personnel, and stated background investigations would take three(3) to six(6) weeks.

Proposer Status Investigative Group, although lowest bidder, did not articulate the firm's experience conducting background investigations for law enforcement agencies, professional



references were of previous employers not current or past clients, and did not provide Private Investigator License for investigator(s) assigned to Tracy Police Department.

Nickerson Investigation Services has provided background services since 2019 at a rate of \$1,800 for sworn police officer investigations, and \$1,500 for professional staff investigations. Total compensation fluctuates based on hiring. The previous compensation has been as follows:

FY19/20: \$11,588  
FY 20/21: \$20,454  
FY 22/23: \$64,107  
FY 23/24: \$39,492

Nickerson Investigations is not proposing any rate increases to their existing rate except for mileage reimbursement which is regulated by the Internal Revenue Service.

#### FISCAL IMPACT

A three(3)-year agreement has a total not to exceed of \$150,000. This not-to-exceed amount will cover all actual costs related to the pre-employment background investigations. An annual adjustment may be made to the mileage rate as regulated by the Standard Internal Revenue Service mileage rate.

This agreement is funded through the Police Department's operating budget.

#### PUBLIC OUTREACH/INTEREST

This is a routine operational item. No public outreach was conducted.

#### COORDINATION

This is a routine operational item and no coordination is necessary.

#### 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 priority for Public Safety.

#### ACTION REQUESTED OF THE CITY COUNCIL

Staff recommends that the City Council adopt a resolution approving a Professional Service Agreement with Nickerson Investigative Services, a sole proprietor, to conduct pre-employment background investigations to meet the Commission on Peace Officer Standards and Training for a three(3)-year term and a total not to exceed amount of \$150,000.

Agenda Item 1.C  
September 3, 2024  
Page 4

Prepared by: Beth Lyons-McCarthy, Support Operations Manager

Reviewed by: Sekou Millington, Chief of Police  
Sara Castro, Director of Finance  
Karin Schnaider, Assistant City Manager  
Bijal Patel, City Attorney

Approved by: Midori Lichtwardt, City Manager

ATTACHMENTS

A: Professional Services Agreement, Nickerson Investigative Services

**CITY OF TRACY**  
**PROFESSIONAL SERVICES AGREEMENT WITH**  
*Nickerson Investigative Services, Sole Proprietor*

This Professional Services Agreement (“Agreement”) is entered into between the City of Tracy, a municipal corporation (“City”), and Nickerson Investigative Services, a Sole Proprietor (“Consultant”). City and Consultant are referred to individually as “Party” and collectively as “Parties.”

**Recitals**

- A. City desires to retain the professional services of Consultant to conduct law enforcement pre-employment background investigations which meet the standards of the California Commission on Peace Officer Standards and Training (P.O.S.T). as further described herein and in Exhibit A.
- B. On May 30, 2024, the City issued a Request for Proposals (RFP) and solicited formal proposals for bids from at least three prospective contractors for the Scope of Work defined below. On June 10, 2024, Consultant submitted its proposal for the Scope of Work to the City. Pursuant to Tracy Municipal Code Sections 2.20.140(a)(2) and 2.20.130, the City has determined that Consultant demonstrated that it was the best qualified and most responsible proposer, and best fits the City’s needs for competence and professional qualifications necessary for the satisfactory performance of the Scope of Work defined below.
- C. After negotiations between the City and Consultant, the Parties have reached an agreement for Consultant’s professional services as set forth in this Agreement.
- D. This Agreement was approved on September 3, 2024 pursuant to Tracy Municipal Code Section 2.20.140(3), and City Council Resolution No. 24-\_\_\_\_\_].

NOW THEREFORE, for good and valuable consideration the sufficiency of which the Parties hereby acknowledge, the Parties mutually agree as follows:

1. **Scope of Work.** Consultant shall perform the professional services, tasks, and scope of work described in Exhibit A attached hereto and incorporated herein by this reference (“Scope of Work”). The Scope of Work shall be performed by, or under the direct supervision of, Consultant’s “Authorized Representative”: Michael Nickerson, Owner. Consultant shall not replace its Authorized Representative, nor shall Consultant replace any of the personnel listed in Exhibit A, nor shall Consultant use or replace any subcontractor or subconsultant, without the City’s prior written consent. The City may terminate this Agreement if Consultant makes any such change or uses or replaces any such subcontractor or subconsultant. Unless otherwise stated on Exhibit A, Consultant shall furnish, at its own expense, the materials, equipment, supplies, and other resources necessary to perform the Scope of Work. The City reserves the right to contract with other firms and/or consultants during the term of this Agreement to provide the City with the same or similar Scope of Work as described in Exhibit A.
2. **Time of Performance.** Time is of the essence in the performance of the Scope of Work under this Agreement and the timing requirements set forth herein shall be strictly adhered to unless otherwise modified in writing in accordance with this Agreement. If dates for performance are set out in Exhibit A, Consultant shall begin performance, and shall complete all required Scope of Work 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. If Exhibit A

indicates that Scope of Work shall only be performed upon request, or if the City otherwise communicates the same to Consultant, Consultant shall not perform said Scope of Work until the City requests such performance. Consultant shall submit all requests for time extensions to the City in writing no later than ten (10) days after the start of the condition which purportedly caused the delay, and not later than the date on which performance is due. The City may grant or deny such requests in its sole and absolute discretion.

**2.1 Term.** The term of this Agreement shall commence on September 4, 2024 and expire and terminate automatically on September 3, 2027 or earlier by termination pursuant to Section 6 of this Agreement ("Term"). Subject to the Not-To-Exceed Amount defined in Section 3.1, the Term of this Agreement may be extended with express written amendment incorporating this Agreement signed by both Parties and one of the following City approvals: (a) City Council approval or (b) City Manager approval. An administrative extension of this Agreement by City Manager shall be limited to an additional term of two year(s) and require written determination by the City Manager that Consultant has satisfactorily met all the requirements of this Agreement.

**3. Compensation.** City shall pay Consultant on a time and expense basis for Scope of Work performed under this Agreement at the billing rates set forth in Exhibit B, which is attached hereto and incorporated herein by this reference.

**3.1 Not to Exceed Amount.** Consultant's total compensation under this Agreement shall not exceed \$150,000, one hundred fifty thousand Dollars. Notwithstanding the foregoing, the payment of any funds under this Agreement shall be subject to the City of Tracy appropriation of funds for the Scope of Work. This Agreement shall automatically terminate in the event that such funds are not appropriated. Unless specifically stated otherwise or agreed to in writing and approved by City Council, the fees proposed by Consultant, as set forth in Exhibit B hereto, shall remain unchanged for the entire term of this Agreement and any extensions of this Agreement. It is understood and agreed that Consultant may not receive compensation up to the Not-to-Exceed Amount (or any other amount), and Consultant's total compensation under this Agreement will depend on the Scope of Work requested and approved by the City. 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 "Not-to-Exceed Amount" provided in this section without the City's prior written approval.

**3.1.1 City Budget Limitations.** This Agreement will terminate without penalty, liability or expense of any kind to City at the end of any fiscal year if funds are not appropriated for the next succeeding fiscal year for this Agreement. If funds are appropriated for a portion of the fiscal year, this Agreement will automatically terminate, without penalty, liability or expense of any kind at the end of the term for which funds are appropriated. City has no obligation to make appropriations for this Agreement in lieu of appropriations for new or other agreements. City budget decisions are subject to the discretion of the City Council. Consultant's assumption of risk of possible non-appropriation is part of the consideration for this Agreement.

**3.2 Invoices.** Consultant shall submit monthly invoice(s) to the City that describe in detail satisfactory to the City: the services performed, the times and dates of performance, and the names of the person(s) performing the Scope of Work.

**3.2.1** If Consultant is providing the Scope of Work 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 this Section may result in the City rejecting said invoice(s) and thereby delaying payment to Consultant.

**3.2.3** Consultant shall submit invoices no later than 90 days after completion of a portion of the Scope of Work. City has no obligation to pay invoices delivered greater than 90 days after the date of performance of the Scope of Work.

**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 and portions of Scope of Work described on the invoice(s) and approved by the City.

**3.4 Final Payment.** The acceptance by Consultant of the final payment made under this Agreement shall constitute a release of City from all claims and liabilities for compensation to Consultant for anything completed, finished or relating to Consultant's services or performance of the Scope of Work. Consultant agrees that payment by City shall not constitute nor be deemed a release of the responsibility and liability of Consultant or its employees, subcontractors, agents and subconsultants for the accuracy and competency of the information provided and/or services performed hereunder, nor shall such payment be deemed to be an assumption of responsibility or liability by City for any defect or error in the Services performed by Consultant, its employees, subcontractors, agents and subconsultants.

**3.5 Books and Accounts.** Consultant agrees to maintain books, accounts, payroll records and other information relating to the performance of Consultant's obligations under the Agreement, which shall adequately and correctly reflect the expenses incurred by the Consultant in the performance of Consultant's work under the Agreement. Such books and records shall be open to inspection and audit by the City during regular business hours for three years after expiration or termination of this Agreement.

**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, and reimburse the City for, any and all liabilities, obligations, losses, damages, injunctions, suits, actions, fines, penalties, claims, demands, administrative and judicial proceedings and order, judgments, remedial action requirements, costs and expenses of every kind or nature, and all costs and expenses incurred in connection therewith, including, without limitation, reasonable attorneys' fees and court costs ("**Claims**") arising directly or indirectly from or out of (including any and all related costs and expenses), relating or pertaining to or resulting from, in whole or in part, this Agreement; any act, omission, or event relating in any way to Consultant's obligations under this Agreement; and/or Consultant's breach of this Agreement, except to the extent such Claim is caused solely by the active negligence or willful misconduct of the City. In this Section 4, "City" means the City, its officials, officers, agents, employees and volunteers; "Consultant" means the Consultant, its employees, agents and subcontractors.

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

The provisions of this section survive the expiration 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 the Scope of Work 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 \$2,000,000 general aggregate and \$1,000,000 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 \$500,000 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 in 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 and, in any event, within five (5) days of such request.

**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 in its sole and absolute discretion, without cause, by giving ten (10) days' written notice to Consultant. Within five (5) days of such a termination, Consultant shall return and deliver to City all original documents relating to the Scope of Work in Consultant's possession or control, including, without limitation, preliminary drafts and supporting documents, and any other documents prepared by Consultant pursuant to this Agreement. The City shall pay Consultant for all services satisfactorily performed in accordance with this Agreement, up to the date the termination notice is given.

**7. Ownership of Work.** All original documents prepared by Consultant for this Agreement, whether complete or in progress, are the property of the City, and shall be given to the City at the completion of Consultant's Scope of Work, upon termination of this Agreement, or within five (5) days of any demand from the City. No such documents shall be revealed or made available by Consultant to any third party without the City's prior written consent.

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

**9. Conflicts of Interest.** Consultant (including its employees, agents, and subconsultants) shall not maintain or acquire any direct or indirect interest that conflicts with the performance of this Agreement. If Consultant maintains or acquires such a conflicting interest, the City may terminate any contract (including this Agreement) involving Consultant's conflicting interest. The Consultant represents that it is familiar with the local and state conflict of interest laws, and agrees to comply with those laws in performing this Agreement. The Consultant represents and warrants that the representations made by the Consultant concerning unfair competitive advantage and conflicts of interest in connection with its submissions in response to the City's procurement for this Agreement were true and accurate both when made and as of the date of this Agreement. Consultant represents and warrants that it has not and shall not offer or deliver any City officer, public official, or employee any gifts or donations in violation of Federal, State and/or local law.

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

**11. Notices.** All notices, demands, or other communications which this Agreement contemplates or authorizes shall be in writing and shall be personally delivered or mailed to the other party to the addresses listed below. Communications shall be deemed to have been given and received on the first

to occur of: (1) actual receipt at the address designated below, or (2) three working days after the deposit in the United States Mail of registered or certified mail, sent to the address designated below.

To the City:  
City of Tracy  
Attn: Accounts Payable  
1000 Civic Center  
Tracy, CA 95376

To Consultant:  
Nickerson Investigative Services  
Attn: Mike Nickerson  
P.O. Box 2414  
Oakdale, CA 95361

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

## 12. **General Provisions.**

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

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

**12.3 Waivers.** Waiver of a breach or default under this Agreement shall not constitute a continuing waiver or a waiver of a subsequent breach of the same or any other provision of this Agreement. No waiver shall be effective unless it is in writing and signed by the waiving party.

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

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

**12.6 Compliance with the Law.** Consultant shall comply with all applicable local, state, and federal laws, including, without limitation, those identified below, whether or not such laws are expressly stated in this Agreement.

**12.6.1 Prevailing Wage Laws.** Consultant is aware of the requirements of California Labor Code Section 1720, et seq., and 1770, et seq., as well as California Code of Regulations, Title 8, Section 16000, et seq., ("Prevailing Wage Laws"), which require the payment of prevailing wage rates; employment of apprentices (§ 1777.5), certified payroll records (§1776), hours of labor (§1813 and §1815), debarment of contractors and subcontractors (§1777.1) and the performance of other requirements on "public works" and "maintenance" projects. If the services being performed under this Agreement are part of a "public works" or "maintenance" project, as defined in the Prevailing Wage Laws, and if the total compensation is \$1,000 or more, Consultant agrees to fully comply with such



Prevailing Wage Laws. These prevailing rates are on file with the City and are available online at <http://www.dir.ca.gov/DLSR>. Consultant shall defend, indemnify and hold the City, its officials, officers, employees and agents, harmless from any and all claims, costs, penalties, or interests arising out of any failure or alleged failure to comply with the Prevailing Wage Laws.

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

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

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

**12.9 Successors and Assigns.** This Agreement shall inure to the benefit of and be binding upon the Parties hereto and their respective successors and assigns.

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

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

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

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

**12.14 Counterparts.** City and Consultant agree that this Agreement may be executed in two or more counterparts, each of which shall be deemed an original.

**12.15 Expenses for Enforcement.** Consultant and City agree that the prevailing party's reasonable costs, attorneys' fees and expenses, including investigation fees and expert witness fees,

shall be paid by the non-prevailing party in any dispute involving the terms and conditions of this Agreement.

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

*[Signature Page to Follow]*

As of the date of last signature below, the undersigned Parties agree to the full performance of the terms set forth in this Agreement and have caused this Agreement to be duly executed.

**City of Tracy, a Municipal Corporation**

By: \_\_\_\_\_  
Nancy Young  
Title: Mayor  
Date: \_\_\_\_\_

Attest:

\_\_\_\_\_  
Adrienne Richardson, City Clerk

Approved as to form:

\_\_\_\_\_  
Bijal M. Patel, City Attorney

**Nickerson Investigative Services, Sole Proprietor**

By: \_\_\_\_\_  
Michael R. Nickerson  
Title: Owner/Investigator  
Date: 07-11-2024

Federal Employer Tax ID No. 82-4456714

Exhibits:

- A Scope of Work
- B Compensation

## **EXHIBIT A - Scope of Work**

1. Conduct pre-employment background investigation services of peace officers, public safety dispatchers, animal control officers, code enforcement, police explorers, volunteers and chaplains, and all other professional staff assigned to the Tracy Police Department.
2. All backgrounds must meet the qualifications of the California Peace Officers Standard and Training (POST).
3. Background Investigations to be completed within 21 days with any delays being communicated to designated Police Captain, Police Support Operations Manager, or designees.

## EXHIBIT B - Compensation

P.O.S.T. Complaint Pre Employment Background Investigations:

Sworn Personnel: \$1,800.00

Non-Sworn (professional staff): \$1,500.00

Social Media Inquiries (as required by P.O.S.T): \$45.00

Standard I.R.S. rate (2024): \$.0.67 per mile

*\*The only expected fee increase during agreement term is any increase to mileage rate as issued by the Internal Revenue Service.*

*\*There will be no extra charge for requests for expedited background investigations.*

**TRACY CITY COUNCIL**

**RESOLUTION NO. 2024-**

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**APPROVING A PROFESSIONAL SERVICE AGREEMENT WITH NICKERSON INVESTIGATIVE SERVICES, A SOLE PROPRIETOR, TO CONDUCT PRE-EMPLOYMENT BACKGROUND INVESTIGATIONS TO MEET THE COMMISSION ON PEACE OFFICER STANDARDS AND TRAINING FOR A THREE(3)-YEAR TERM AND A TOTAL NOT TO EXCEED AMOUNT OF \$150,000.**

**WHEREAS**, the Tracy Police Department requires qualified investigators to provide comprehensive pre-employment background investigation services for all sworn and professional staff; and

**WHEREAS**, investigations must be conducted in accordance with the California Commission on Peace Officer Standards which mandates pre-employment investigations for Police Officers and Public Safety Dispatchers; and

**WHEREAS**, on May 30, 2024, Tracy Police Department published a Request for Proposals (RFP) and received three proposals; and

**WHEREAS**, from all three(3) proposals received only one proposal, Nickerson Investigative Services (Consultant), met all requested requirements including possessing a Private Investigator License, resume(s) stating professional qualifications and competence, detailed experience performing background investigations, references, experience working with agency of similar nature and size, and a detailed budget to include any potential increases over a (3) three-year agreement term; and

**WHEREAS**, Status Investigative Group, is the lowest bidder but did not articulate the firm's experience conducting background investigations for law enforcement agencies, professional references were of previous employers not current or past clients, and did not provide Private Investigator License for investigator(s) assigned to Tracy Police Department; and

**WHEREAS**, after careful review and evaluation of all proposals and pursuant to Tracy Municipal Code section 2.20.140(a)(2), it has been determined Nickerson Investigative Consultant demonstrated the competence and professional qualifications necessary for the performance of the required services, although not the lowest bidder, his proposed rates are competitive with other investigative firms performing similar work; and

**WHEREAS**, staff now recommends entering into a three-year professional service agreement (PSA) with the Consultant by and through the agreement attached hereto as Exhibit 1; and

**WHEREAS**, the City seeks to enter into a three-year agreement with Nickerson Investigative Services for a total not to exceed amount of \$150,000 to be funded through the Police Department’s operating budget.

**NOW, THEREFORE**, be it resolved as follows:

**RESOLVED:** That the City Council of the City of Tracy hereby finds the above recitals to be true and correct; and be it further

**RESOLVED:** That City Council does hereby approve a Professional Services Agreement with Nickerson Investigative Services, attached here to as Exhibit 1, for pre-employment background investigations which meets the standards of the Commission on Peace Officer Standards and Training (P.O.S.T.) for a three(3)-year term and for a total not to exceed amount of \$150,000.

\* \* \* \* \*

The foregoing Resolution 2024-\_\_\_\_\_ was adopted by the Tracy City Council on September 3, 2024 by the following vote:

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

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

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

EXHIBITS:

- (1) Professional Services Agreement with Nickerson Investigative Services

**CITY OF TRACY**  
**PROFESSIONAL SERVICES AGREEMENT WITH**  
*Nickerson Investigative Services, Sole Proprietor*

This Professional Services Agreement (“Agreement”) is entered into between the City of Tracy, a municipal corporation (“City”), and Nickerson Investigative Services, a Sole Proprietor (“Consultant”). City and Consultant are referred to individually as “Party” and collectively as “Parties.”

**Recitals**

- A. City desires to retain the professional services of Consultant to conduct law enforcement pre-employment background investigations which meet the standards of the California Commission on Peace Officer Standards and Training (P.O.S.T). as further described herein and in Exhibit A.
- B. On May 30, 2024, the City issued a Request for Proposals (RFP) and solicited formal proposals for bids from at least three prospective contractors for the Scope of Work defined below. On June 10, 2024, Consultant submitted its proposal for the Scope of Work to the City. Pursuant to Tracy Municipal Code Sections 2.20.140(a)(2) and 2.20.130, the City has determined that Consultant demonstrated that it was the best qualified and most responsible proposer, and best fits the City’s needs for competence and professional qualifications necessary for the satisfactory performance of the Scope of Work defined below.
- C. After negotiations between the City and Consultant, the Parties have reached an agreement for Consultant’s professional services as set forth in this Agreement.
- D. This Agreement was approved on September 3, 2024 pursuant to Tracy Municipal Code Section 2.20.140(3), and City Council Resolution No. 24-\_\_\_\_\_].

NOW THEREFORE, for good and valuable consideration the sufficiency of which the Parties hereby acknowledge, the Parties mutually agree as follows:

- 1. **Scope of Work.** Consultant shall perform the professional services, tasks, and scope of work described in Exhibit A attached hereto and incorporated herein by this reference (“Scope of Work”). The Scope of Work shall be performed by, or under the direct supervision of, Consultant’s “Authorized Representative”: Michael Nickerson, Owner. Consultant shall not replace its Authorized Representative, nor shall Consultant replace any of the personnel listed in Exhibit A, nor shall Consultant use or replace any subcontractor or subconsultant, without the City’s prior written consent. The City may terminate this Agreement if Consultant makes any such change or uses or replaces any such subcontractor or subconsultant. Unless otherwise stated on Exhibit A, Consultant shall furnish, at its own expense, the materials, equipment, supplies, and other resources necessary to perform the Scope of Work. The City reserves the right to contract with other firms and/or consultants during the term of this Agreement to provide the City with the same or similar Scope of Work as described in Exhibit A.
- 2. **Time of Performance.** Time is of the essence in the performance of the Scope of Work under this Agreement and the timing requirements set forth herein shall be strictly adhered to unless otherwise modified in writing in accordance with this Agreement. If dates for performance are set out in Exhibit A, Consultant shall begin performance, and shall complete all required Scope of Work 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. If Exhibit A



indicates that Scope of Work shall only be performed upon request, or if the City otherwise communicates the same to Consultant, Consultant shall not perform said Scope of Work until the City requests such performance. Consultant shall submit all requests for time extensions to the City in writing no later than ten (10) days after the start of the condition which purportedly caused the delay, and not later than the date on which performance is due. The City may grant or deny such requests in its sole and absolute discretion.

**2.1 Term.** The term of this Agreement shall commence on September 4, 2024 and expire and terminate automatically on September 3, 2027 or earlier by termination pursuant to Section 6 of this Agreement ("Term"). Subject to the Not-To-Exceed Amount defined in Section 3.1, the Term of this Agreement may be extended with express written amendment incorporating this Agreement signed by both Parties and one of the following City approvals: (a) City Council approval or (b) City Manager approval. An administrative extension of this Agreement by City Manager shall be limited to an additional term of two year(s) and require written determination by the City Manager that Consultant has satisfactorily met all the requirements of this Agreement.

**3. Compensation.** City shall pay Consultant on a time and expense basis for Scope of Work performed under this Agreement at the billing rates set forth in Exhibit B, which is attached hereto and incorporated herein by this reference.

**3.1 Not to Exceed Amount.** Consultant's total compensation under this Agreement shall not exceed \$150,000, one hundred fifty thousand Dollars. Notwithstanding the foregoing, the payment of any funds under this Agreement shall be subject to the City of Tracy appropriation of funds for the Scope of Work. This Agreement shall automatically terminate in the event that such funds are not appropriated. Unless specifically stated otherwise or agreed to in writing and approved by City Council, the fees proposed by Consultant, as set forth in Exhibit B hereto, shall remain unchanged for the entire term of this Agreement and any extensions of this Agreement. It is understood and agreed that Consultant may not receive compensation up to the Not-to-Exceed Amount (or any other amount), and Consultant's total compensation under this Agreement will depend on the Scope of Work requested and approved by the City. 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 "Not-to-Exceed Amount" provided in this section without the City's prior written approval.

**3.1.1 City Budget Limitations.** This Agreement will terminate without penalty, liability or expense of any kind to City at the end of any fiscal year if funds are not appropriated for the next succeeding fiscal year for this Agreement. If funds are appropriated for a portion of the fiscal year, this Agreement will automatically terminate, without penalty, liability or expense of any kind at the end of the term for which funds are appropriated. City has no obligation to make appropriations for this Agreement in lieu of appropriations for new or other agreements. City budget decisions are subject to the discretion of the City Council. Consultant's assumption of risk of possible non-appropriation is part of the consideration for this Agreement.

**3.2 Invoices.** Consultant shall submit monthly invoice(s) to the City that describe in detail satisfactory to the City: the services performed, the times and dates of performance, and the names of the person(s) performing the Scope of Work.

**3.2.1** If Consultant is providing the Scope of Work 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 this Section may result in the City rejecting said invoice(s) and thereby delaying payment to Consultant.

**3.2.3** Consultant shall submit invoices no later than 90 days after completion of a portion of the Scope of Work. City has no obligation to pay invoices delivered greater than 90 days after the date of performance of the Scope of Work.

**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 and portions of Scope of Work described on the invoice(s) and approved by the City.

**3.4 Final Payment.** The acceptance by Consultant of the final payment made under this Agreement shall constitute a release of City from all claims and liabilities for compensation to Consultant for anything completed, finished or relating to Consultant's services or performance of the Scope of Work. Consultant agrees that payment by City shall not constitute nor be deemed a release of the responsibility and liability of Consultant or its employees, subcontractors, agents and subconsultants for the accuracy and competency of the information provided and/or services performed hereunder, nor shall such payment be deemed to be an assumption of responsibility or liability by City for any defect or error in the Services performed by Consultant, its employees, subcontractors, agents and subconsultants.

**3.5 Books and Accounts.** Consultant agrees to maintain books, accounts, payroll records and other information relating to the performance of Consultant's obligations under the Agreement, which shall adequately and correctly reflect the expenses incurred by the Consultant in the performance of Consultant's work under the Agreement. Such books and records shall be open to inspection and audit by the City during regular business hours for three years after expiration or termination of this Agreement.

**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, and reimburse the City for, any and all liabilities, obligations, losses, damages, injunctions, suits, actions, fines, penalties, claims, demands, administrative and judicial proceedings and order, judgments, remedial action requirements, costs and expenses of every kind or nature, and all costs and expenses incurred in connection therewith, including, without limitation, reasonable attorneys' fees and court costs ("**Claims**") arising directly or indirectly from or out of (including any and all related costs and expenses), relating or pertaining to or resulting from, in whole or in part, this Agreement; any act, omission, or event relating in any way to Consultant's obligations under this Agreement; and/or Consultant's breach of this Agreement, except to the extent such Claim is caused solely by the active negligence or willful misconduct of the City. In this Section 4, "City" means the City, its officials, officers, agents, employees and volunteers; "Consultant" means the Consultant, its employees, agents and subcontractors.

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

The provisions of this section survive the expiration 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 the Scope of Work 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 \$2,000,000 general aggregate and \$1,000,000 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 \$500,000 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 in 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 and, in any event, within five (5) days of such request.

**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 in its sole and absolute discretion, without cause, by giving ten (10) days' written notice to Consultant. Within five (5) days of such a termination, Consultant shall return and deliver to City all original documents relating to the Scope of Work in Consultant's possession or control, including, without limitation, preliminary drafts and supporting documents, and any other documents prepared by Consultant pursuant to this Agreement. The City shall pay Consultant for all services satisfactorily performed in accordance with this Agreement, up to the date the termination notice is given.

**7. Ownership of Work.** All original documents prepared by Consultant for this Agreement, whether complete or in progress, are the property of the City, and shall be given to the City at the completion of Consultant's Scope of Work, upon termination of this Agreement, or within five (5) days of any demand from the City. No such documents shall be revealed or made available by Consultant to any third party without the City's prior written consent.

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

**9. Conflicts of Interest.** Consultant (including its employees, agents, and subconsultants) shall not maintain or acquire any direct or indirect interest that conflicts with the performance of this Agreement. If Consultant maintains or acquires such a conflicting interest, the City may terminate any contract (including this Agreement) involving Consultant's conflicting interest. The Consultant represents that it is familiar with the local and state conflict of interest laws, and agrees to comply with those laws in performing this Agreement. The Consultant represents and warrants that the representations made by the Consultant concerning unfair competitive advantage and conflicts of interest in connection with its submissions in response to the City's procurement for this Agreement were true and accurate both when made and as of the date of this Agreement. Consultant represents and warrants that it has not and shall not offer or deliver any City officer, public official, or employee any gifts or donations in violation of Federal, State and/or local law.

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

**11. Notices.** All notices, demands, or other communications which this Agreement contemplates or authorizes shall be in writing and shall be personally delivered or mailed to the other party to the addresses listed below. Communications shall be deemed to have been given and received on the first

to occur of: (1) actual receipt at the address designated below, or (2) three working days after the deposit in the United States Mail of registered or certified mail, sent to the address designated below.

To the City:  
City of Tracy  
Attn: Accounts Payable  
1000 Civic Center  
Tracy, CA 95376

To Consultant:  
Nickerson Investigative Services  
Attn: Mike Nickerson  
P.O. Box 2414  
Oakdale, CA 95361

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

## **12. General Provisions.**

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

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

**12.3 Waivers.** Waiver of a breach or default under this Agreement shall not constitute a continuing waiver or a waiver of a subsequent breach of the same or any other provision of this Agreement. No waiver shall be effective unless it is in writing and signed by the waiving party.

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

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

**12.6 Compliance with the Law.** Consultant shall comply with all applicable local, state, and federal laws, including, without limitation, those identified below, whether or not such laws are expressly stated in this Agreement.

**12.6.1 Prevailing Wage Laws.** Consultant is aware of the requirements of California Labor Code Section 1720, et seq., and 1770, et seq., as well as California Code of Regulations, Title 8, Section 16000, et seq., ("Prevailing Wage Laws"), which require the payment of prevailing wage rates; employment of apprentices (§ 1777.5), certified payroll records (§1776), hours of labor (§1813 and §1815), debarment of contractors and subcontractors (§1777.1) and the performance of other requirements on "public works" and "maintenance" projects. If the services being performed under this Agreement are part of a "public works" or "maintenance" project, as defined in the Prevailing Wage Laws, and if the total compensation is \$1,000 or more, Consultant agrees to fully comply with such

Prevailing Wage Laws. These prevailing rates are on file with the City and are available online at <http://www.dir.ca.gov/DLSR>. Consultant shall defend, indemnify and hold the City, its officials, officers, employees and agents, harmless from any and all claims, costs, penalties, or interests arising out of any failure or alleged failure to comply with the Prevailing Wage Laws.

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

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

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

**12.9 Successors and Assigns.** This Agreement shall inure to the benefit of and be binding upon the Parties hereto and their respective successors and assigns.

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

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

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

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

**12.14 Counterparts.** City and Consultant agree that this Agreement may be executed in two or more counterparts, each of which shall be deemed an original.

**12.15 Expenses for Enforcement.** Consultant and City agree that the prevailing party's reasonable costs, attorneys' fees and expenses, including investigation fees and expert witness fees,

shall be paid by the non-prevailing party in any dispute involving the terms and conditions of this Agreement.

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

*[Signature Page to Follow]*

As of the date of last signature below, the undersigned Parties agree to the full performance of the terms set forth in this Agreement and have caused this Agreement to be duly executed.

**City of Tracy, a Municipal Corporation**

By: \_\_\_\_\_  
Nancy Young  
Title: Mayor  
Date: \_\_\_\_\_

Attest:

\_\_\_\_\_  
Adrienne Richardson, City Clerk

Approved as to form:

\_\_\_\_\_  
Bijal M. Patel, City Attorney

**Nickerson Investigative Services, Sole Proprietor**

By: \_\_\_\_\_  
Michael R. Nickerson  
Title: Owner/Investigator  
Date: 07-11-2024

Federal Employer Tax ID No. 82-4456714

Exhibits:

- A Scope of Work
- B Compensation



## **EXHIBIT A - Scope of Work**

1. Conduct pre-employment background investigation services of peace officers, public safety dispatchers, animal control officers, code enforcement, police explorers, volunteers and chaplains, and all other professional staff assigned to the Tracy Police Department.
2. All backgrounds must meet the qualifications of the California Peace Officers Standard and Training (POST).
3. Background Investigations to be completed within 21 days with any delays being communicated to designated Police Captain, Police Support Operations Manager, or designees.

## EXHIBIT B - Compensation

P.O.S.T. Complaint Pre Employment Background Investigations:

Sworn Personnel: \$1,800.00

Non-Sworn (professional staff): \$1,500.00

Social Media Inquiries (as required by P.O.S.T): \$45.00

Standard I.R.S. rate (2024): \$.0.67 per mile

*\*The only expected fee increase during agreement term is any increase to mileage rate as issued by the Internal Revenue Service.*

*\*There will be no extra charge for requests for expedited background investigations.*

Agenda Item 1.D

RECOMMENDATION

**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 Section 2.20.180(b)(4) and dispensing such requirements for the actions herein; and**

**(2) approving a Master Service Agreement with Axon Enterprise, Inc. for the purchase, training, usage, and on-going maintenance of the Police Department's specified equipment and software services for a term of five years and for a total not-to-exceed amount of \$2,500,000.**

EXECUTIVE SUMMARY

This agenda item seeks approval of a resolution by the City Council making a determination that strict compliance with the bidding process is not in the best interests of the City for purchase, training, usage and ongoing maintenance of the Tracy Police Department's (TPD) tasers, body-worn cameras (equipment) and the cloud based evidence system known as Evidence.com (software) from Axon Enterprise, Inc. (Axon) because it is the sole supplier who can meet the City's requirements. The City is also requesting an approval of a Master Service Agreement (GSA) with the Vendor for the purchase of the equipment, software and related services for a term of five years and for a total not to exceed amount of \$2,500,000.

BACKGROUND AND LEGISLATIVE HISTORY

TPD currently has 107 sworn officers and 26 professional staff members who carry a taser and body-worn camera as standard-issued equipment. TPD has used Axon tasers, body-worn cameras, and used the related software known as Evidence.com since at least 2015. In 2019, the City renewed a new five-year agreement with Axon Enterprise, Inc. to include the purchase of Axon's Officer Safety Plan, its Taser 7 and body-worn camera called Axon3, as well as the cloud-based evidence system, Evidence.com. The contract included all costs associated with usage, on-going maintenance, equipment replacement, cloud-based evidence storage, and upgrades to all body-worn cameras every 2.5 years. An upgrade to the tasers was not included. The Department's tasers are five years old.

In 2019, Axon was confirmed to be the sole source vendor who offered Taser 7 and provided the data storage component, Evidence.com. Additionally, Axon offered the City the Officer Safety Plan, which provides the combined purchase of the taser and body-worn cameras.

The 2019 agreement has expired, and a new agreement is needed.

## ANALYSIS

TPD currently has 107 sworn officers who carry a taser and body-worn camera as standard-issued equipment. Additionally, the Department has 26 professional staff members who wear body-worn cameras as standard-issued equipment.

Through this agreement and by purchasing the Officer Safety Plan, the City will receive 107 taser/ body-worn camera combination plans for sworn officers, an additional 36 body-worn cameras for staff who do not carry tasers, ongoing maintenance and replacement of equipment, unlimited video cloud-based evidence storage, and additional services and integrations that allow the tasers to communicate with the body-worn camera to alert the camera to turn on when the weapon is drawn. The body-worn camera automatically integrates with TPD's Records Management System to auto- tag the case number and set the video retention date according to the City's retention schedule, and a redaction assistant. In addition, all taser cartridges, training, and maintenance are included in the agreement terms.

Only Axon body-worn cameras with Evidence.com secured "cloud-based" storage system fully meet the needs of TPD. The complete system provides an efficient and effective method of collecting and preserving evidence. Also unique to Axon is the built-in replacement/upgrade of cameras included in the purchasing of a multi-year service agreement. The agreement provides, at no cost, camera replacements at year 2.5 and year 5. The upgrade from Taser 7 to Taser 10 results in an increased \$6,420 annual cost compared to the City's past agreement with Axon.

After thorough review and testing, staff found the Taser 10 to provide more benefits in comparison to the current Taser 7 used by the Department. Some of these benefits include:

- Taser 10 can be deployed at close distances (point and shoot), eliminating the need to account for predetermined probe spread.
- Officers no longer have to decide whether to load a short or long-distance cartridge.
- The maximum deployment distance for Taser 10 is forty-five feet compared to Taser 7's twenty-five feet. This allows for greater cover, distance, and safety for the officer.

Axon will train and certify up to ten Taser 10 instructors in-house at no additional cost and officers will attend an 8-hour Taser 10 training.

As Axon is the exclusive vendor for Evidence.com and Taser 10, 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). This 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.

FISCAL IMPACT

The five-year agreement will not exceed \$2,500,000. The annual cost is as follows:

Year 1: \$500,678.12  
Year 2: \$445,794.93  
Year 3: \$445,794.93  
Year 4: \$445,794.93  
Year 5: \$445,794.93

A contingency of \$216,142 has been added to support departmental growth as new positions are added throughout the contract term.

The funding is provided through the TPD's operating budget.

PUBLIC OUTREACH/ INTEREST

This is an operational item for the Police Department. No public outreach was conducted.

COORDINATION

This is an operational item. No coordination is needed with any other City department.

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 is related to Council's strategic priority for Public Safety.

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 Section 2.20.180(b)(4) and dispensing such requirements for actions herein; and

(2) approving a Master Service Agreement with Axon Enterprise, Inc. for the purchase, training, usage, and on-going maintenance of the Police Department's specified equipment and software services for a term of five years and for a total not-to-exceed amount of \$2,500,000.

Agenda Item 1.D  
September 3, 2024  
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Prepared by: Beth Lyons-McCarthy, Support Operations Manager Reviewed by: Sekou

Millington, Chief of Police  
Sara Castro, Director of Finance  
Karin Schnaider, Assistant City Manager Bijal Patel, City Attorney

Approved by: Midori Lichtwardt, City Manager

Attachments:

Attachment A: Master Service Agreement Axon Enterprise, Inc



## Master Services and Purchasing Agreement for Customer

This Master Services and Purchasing Agreement ("**Agreement**") is between Axon Enterprise, Inc. ("**Axon**"), and the customer listed below or, if no customer is listed below, the customer on the Quote attached hereto ("**Customer**"). This Agreement is effective as of the later of the (a) last signature date on this Agreement or (b) date of acceptance of the Quote ("**Effective Date**"). Axon and Customer are each a "**Party**" and collectively "**Parties**". This Agreement governs Customer's purchase and use of the Axon Devices and Services detailed in the Quote Appendix ("**Quote**"). It is the intent of the Parties that this Agreement will govern all subsequent purchases by Customer for the same Axon Devices and Services in the Quote, and all such subsequent quotes accepted by Customer shall be also incorporated into this Agreement by reference as a Quote. The Parties agree as follows:

### 1. **Definitions.**

- 1.1. "**Axon Cloud Services**" means Axon's web services, including but not limited to, Axon Evidence, Axon Records, Axon Dispatch, FUSUS services and interactions between Axon Evidence and Axon Devices or Axon client software. Axon Cloud Service excludes third-party applications, hardware warranties, and my.evidence.com.
- 1.2. "**Axon Device**" means all hardware provided by Axon under this Agreement. Axon-manufactured Devices are a subset of Axon Devices.
- 1.3. "**Quote**" means an offer to sell and is only valid for devices and services on the offer at the specified prices. Any inconsistent or supplemental terms within Customer's purchase order in response to a Quote will be void. Orders are subject to prior credit approval. Changes in the deployment estimated ship date may change charges in the Quote. Shipping dates are estimates only. Axon is not responsible for typographical errors in any Quote by Axon, and Axon reserves the right to cancel any orders resulting from such errors.
- 1.4. "**Services**" means all services provided by Axon under this Agreement, including software, Axon Cloud Services, and professional services.

### 2. **Term.** This Agreement begins on the Effective Date and continues until all subscriptions hereunder have expired or have been terminated ("**Term**").

- 2.1. All subscriptions including Axon Evidence, Axon Fleet, Officer Safety Plans, Technology Assurance Plans, and TASER 7 or TASER 10 plans begin on the date stated in the Quote. Each subscription term ends upon completion of the subscription stated in the Quote ("**Subscription Term**").
- 2.2. Upon completion of the Subscription Term, the Subscription Term will automatically renew for an additional 5 years ("**Renewal Term**"). For purchase of TASER 7 or TASER 10 as a standalone, Axon may increase pricing to its then-current list pricing for any Renewal Term. For all other purchases, Axon may increase pricing on all line items in the Quote by up to 3% at the beginning of each year of the Renewal Term. New devices and services may require additional terms. Axon will not authorize services until Axon receives a signed Quote or accepts a purchase order, whichever is first.

### 3. **Payment.** Axon invoices for Axon Devices upon shipment, or on the date specified within the invoicing plan in the Quote. Payment is due net 30 days from the invoice date. Axon invoices for Axon Cloud Services on an upfront yearly basis prior to the beginning of the Subscription Term and upon the anniversary of the Subscription Term. Payment obligations are non-cancelable. Unless otherwise prohibited by law, Customer will pay interest on all past-due sums at the lower of one-and-a-half percent (1.5%) per month or the highest rate allowed by law. Customer will pay invoices without setoff, deduction, or withholding. If Axon sends a past due account to collections, Customer is responsible for collection and attorneys' fees.

### 4. **Taxes.** Customer is responsible for sales and other taxes associated with the order unless Customer provides Axon a valid tax exemption certificate.

### 5. **Shipping.** Axon may make partial shipments and ship Axon Devices from multiple locations. All shipments are EXW (Incoterms 2020) via common carrier. Title and risk of loss pass to Customer upon Axon's delivery to the common carrier. Customer is responsible for any shipping charges in the Quote.

### 6. **Returns.** All sales are final. Axon does not allow refunds or exchanges, except warranty returns or as provided by state or federal law.

### 7. **Warranty.**

- 7.1. **Limited Warranty.** Axon warrants that Axon-manufactured Devices are free from defects in workmanship and materials for one (1) year from the date of Customer's receipt, except Signal Sidearm and Axon-manufactured accessories, which Axon warrants for thirty (30) months and ninety (90) days, respectively, from the date of Customer's receipt. Used conducted energy weapon ("**CEW**") cartridges are deemed to have operated properly. Extended warranties run from the expiration of the one (1) year hardware warranty through the extended warranty term purchased.

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Title: Master Services and Purchasing Agreement between Axon and Customer

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- 7.2. **Disclaimer.** All software and Axon Cloud Services are provided "AS IS," without any warranty of any kind, either express or implied, including without limitation the implied warranties of merchantability, fitness for a particular purpose and non-infringement. Axon Devices and Services that are not manufactured, published or performed by Axon ("Third-Party Products") are not covered by Axon's warranty and are only subject to the warranties of the third-party provider or manufacturer.
- 7.3. **Claims.** If Axon receives a valid warranty claim for an Axon-manufactured Device during the warranty term, Axon's sole responsibility is to repair or replace the Axon-manufactured Device with the same or like Axon-manufactured Device, at Axon's option. A replacement Axon-manufactured Device will be new or like new. Axon will warrant the replacement Axon-manufactured Device for the longer of (a) the remaining warranty of the original Axon-manufactured Device or (b) ninety (90) days from the date of repair or replacement.
- 7.3.1. If Customer exchanges an Axon Device or part, the replacement item becomes Customer's property, and the replaced item becomes Axon's property. Before delivering an Axon-manufactured Device for service, Customer must upload Axon-manufactured Device data to Axon Evidence or download it and retain a copy. Axon is not responsible for any loss of software, data, or other information contained in storage media or any part of the Axon-manufactured Device sent to Axon for service.
- 7.4. **Spare Axon Devices.** At Axon's reasonable discretion, Axon may provide Customer a predetermined number of spare Axon Devices as detailed in the Quote ("**Spare Axon Devices**"). Spare Axon Devices are intended to replace broken or non-functioning units while Customer submits the broken or non-functioning units, through Axon's warranty return process. Axon will repair or replace the unit with a replacement Axon Device. Title and risk of loss for all Spare Axon Devices shall pass to Customer in accordance with shipping terms under Section 5. Axon assumes no liability or obligation in the event Customer does not utilize Spare Axon Devices for the intended purpose.
- 7.5. **Limitations.** Axon's warranty excludes damage related to: (a) failure to follow Axon Device use instructions; (b) Axon Devices used with equipment not manufactured or recommended by Axon; (c) abuse, misuse, or intentional damage to Axon Device; (d) force majeure; (e) Axon Devices repaired or modified by persons other than Axon without Axon's written permission; or (f) Axon Devices with a defaced or removed serial number. Axon's warranty will be void if Customer resells Axon Devices.
- 7.5.1. **To the extent permitted by law, the above warranties and remedies are exclusive. Axon disclaims all other warranties, remedies, and conditions, whether oral, written, statutory, or implied. If statutory or implied warranties cannot be lawfully disclaimed, then such warranties are limited to the duration of the warranty described above and by the provisions in this Agreement. Customer confirms and agrees that, in deciding whether to sign this Agreement, it has not relied on any statement or representation by Axon or anyone acting on behalf of Axon related to the subject matter of this Agreement that is not in this Agreement.**
- 7.5.2. **Axon's cumulative liability to any party for any loss or damage resulting from any claim, demand, or action arising out of or relating to this Agreement will not exceed the purchase price paid to Axon for the Axon Device, or if for Services, the amount paid for such Services over the twelve (12) months preceding the claim. Neither Party will be liable for special, indirect, incidental, punitive or consequential damages, however caused, whether for breach of warranty or contract, negligence, strict liability, tort or any other legal theory.**
- 7.6. **Online Support Platforms.** Use of Axon's online support platforms (e.g., Axon Academy and MyAxon) is governed by the Axon Online Support Platforms Terms of Use Appendix available at [www.axon.com/sales-terms-and-conditions](http://www.axon.com/sales-terms-and-conditions).
- 7.7. **Third-Party Software and Services.** Use of software or services other than those provided by Axon is governed by the terms, if any, entered into between Customer and the respective third-party provider, including, without limitation, the terms applicable to such software or services located at [www.axon.com/sales-terms-and-conditions](http://www.axon.com/sales-terms-and-conditions), if any.
- 7.8. **Axon Aid.** Upon mutual agreement between Axon and Customer, Axon may provide certain products and services to Customer, as a charitable donation under the Axon Aid program. In such event, Customer expressly waives and releases any and all claims, now known or hereafter known, against Axon and its officers, directors, employees, agents, contractors, affiliates, successors, and assigns (collectively, "**Releasees**"), including but not limited to, on account of injury, death, property damage, or loss of data, arising out of or attributable to the Axon Aid program whether arising out of the negligence of any Releasees or otherwise. Customer agrees not to make or bring any such claim against any Releasee, and forever release and discharge all Releasees from liability under such claims. Customer expressly allows Axon to publicly announce its participation in Axon Aid and use its name in marketing materials. Axon may terminate the Axon Aid program without cause immediately





AXON

**Master Services and Purchasing Agreement for Customer**

upon notice to the Customer.

8. **Statement of Work.** Certain Axon Devices and Services, including Axon Interview Room, Axon Channel Services, and Axon Fleet, may require a Statement of Work that details Axon's Service deliverables ("**SOW**"). In the event Axon provides an SOW to Customer, Axon is only responsible for the performance of Services described in the SOW. Additional services are out of scope. The Parties must document scope changes in a written and signed change order. Changes may require an equitable adjustment in fees or schedule. The SOW is incorporated into this Agreement by reference.
9. **Axon Device Warnings.** See [www.axon.com/legal](http://www.axon.com/legal) for the most current Axon Device warnings.
10. **Design Changes.** Axon may make design changes to any Axon Device or Service without notifying Customer or making the same change to Axon Devices and Services previously purchased by Customer.
11. **Bundled Offerings.** Some offerings in bundled offerings may not be generally available at the time of Customer's purchase. Axon will not provide a refund, credit, or additional discount beyond what is in the Quote due to a delay of availability or Customer's election not to utilize any portion of an Axon bundle.
12. **Insurance.** Axon will maintain General Liability, Workers' Compensation, and Automobile Liability insurance. Upon request, Axon will supply certificates of insurance.
13. **IP Rights.** Axon owns and reserves all right, title, and interest in Axon-manufactured Devices and Services and suggestions to Axon, including all related intellectual property rights. Customer will not cause any Axon proprietary rights to be violated.
14. **IP Indemnification.** Axon will indemnify Customer against all claims, losses, and reasonable expenses from any third-party claim alleging that the use of Axon-manufactured Devices or Services infringes or misappropriates the third-party's intellectual property rights. Customer must promptly provide Axon with written notice of such claim, tender to Axon the defense or settlement of such claim at Axon's expense and cooperate fully with Axon in the defense or settlement of such claim. Axon's IP indemnification obligations do not apply to claims based on (a) modification of Axon-manufactured Devices or Services by Customer or a third-party not approved by Axon; (b) use of Axon-manufactured Devices and Services in combination with hardware or services not approved by Axon; (c) use of Axon Devices and Services other than as permitted in this Agreement; or (d) use of Axon software that is not the most current release provided by Axon.
15. **Customer Responsibilities.** Customer is responsible for (a) Customer's use of Axon Devices; (b) breach of this Agreement or violation of applicable law by Customer or an Customer end user; (c) disputes between Customer and a third-party over Customer's use of Axon Devices; (d) ensuring Axon Devices are destroyed and disposed of securely and sustainably at Customer's cost; and (e) any regulatory violations or fines, as a result of improper destruction or disposal of Axon Devices.
16. **Termination.**
  - 16.1. **For Breach.** A Party may terminate this Agreement for cause if it provides thirty (30) days written notice of the breach to the other Party, and the breach remains uncured at the end of thirty (30) days. If Customer terminates this Agreement due to Axon's uncured breach, Axon will refund prepaid amounts on a prorated basis based on the effective date of termination.
  - 16.2. **By Customer.** If sufficient funds are not appropriated or otherwise legally available to pay the fees, Customer may terminate this Agreement. Customer will deliver notice of termination under this section as soon as reasonably practicable.
  - 16.3. **Effect of Termination.** Upon termination of this Agreement, Customer rights immediately terminate. Customer remains responsible for all fees incurred before the effective date of termination. If Customer purchases Axon Devices for less than the manufacturer's suggested retail price ("**MSRP**") and this Agreement terminates before the end of the Term, Axon will invoice Customer the difference between the MSRP for Axon Devices received, including any Spare Axon Devices, and amounts paid towards those Axon Devices. Only if terminating for non-appropriation, Customer may return Axon Devices to Axon within thirty (30) days of termination. MSRP is the standalone price of the individual Axon Device at the time of sale. For bundled Axon Devices, MSRP is the standalone price of all individual components.
17. **Confidentiality.** "**Confidential Information**" means nonpublic information designated as confidential or, given the nature of the information or circumstances surrounding disclosure, should reasonably be understood to be confidential. Each Party will take reasonable measures to avoid disclosure, dissemination, or unauthorized use of the other Party's Confidential Information. Unless required by law, neither Party will disclose the other Party's Confidential Information during the Term and for five (5) years thereafter. To the extent permissible by law, Axon pricing is Confidential Information and competition sensitive. If Customer receives a public records request to disclose Axon

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## Master Services and Purchasing Agreement for Customer

Confidential Information, to the extent allowed by law, Customer will provide notice to Axon before disclosure. Axon may publicly announce information related to this Agreement.

### 18. **General.**

- 18.1. **Force Majeure.** Neither Party will be liable for any delay or failure to perform due to a cause beyond a Party's reasonable control.
- 18.2. **Independent Contractors.** The Parties are independent contractors. Neither Party has the authority to bind the other. This Agreement does not create a partnership, franchise, joint venture, Customer, fiduciary, or employment relationship between the Parties.
- 18.3. **Third-Party Beneficiaries.** There are no third-party beneficiaries under this Agreement.
- 18.4. **Non-Discrimination.** Neither Party nor its employees will discriminate against any person based on race; religion; creed; color; sex; gender identity and expression; pregnancy; childbirth; breastfeeding; medical conditions related to pregnancy, childbirth, or breastfeeding; sexual orientation; marital status; age; national origin; ancestry; genetic information; disability; veteran status; or any class protected by local, state, or federal law.
- 18.5. **Export Compliance.** Each Party will comply with all import and export control laws and regulations.
- 18.6. **Assignment.** Neither Party may assign this Agreement without the other Party's prior written consent. Axon may assign this Agreement, its rights, or obligations without consent: (a) to an affiliate or subsidiary; or (b) for purposes of financing, merger, acquisition, corporate reorganization, or sale of all or substantially all its assets. This Agreement is binding upon the Parties respective successors and assigns.
- 18.7. **Waiver.** No waiver or delay by either Party in exercising any right under this Agreement constitutes a waiver of that right.
- 18.8. **Severability.** If a court of competent jurisdiction holds any portion of this Agreement invalid or unenforceable, the remaining portions of this Agreement will remain in effect.
- 18.9. **Survival.** The following sections will survive termination: Payment, Warranty, Axon Device Warnings, Indemnification, IP Rights, Customer Responsibilities and any other Sections detailed in the survival sections of the Appendices.
- 18.10. **Governing Law.** The laws of the country, state, province, or municipality where Customer is physically located, without reference to conflict of law rules, govern this Agreement and any dispute arising from it. The United Nations Convention for the International Sale of Goods does not apply to this Agreement.
- 18.11. **Notices.** All notices must be in English. Notices posted on Customer's Axon Evidence site are effective upon posting. Notices by email are effective on the sent date of the email. Notices by personal delivery are effective immediately. Notices to Customer shall be provided to the address on file with Axon. Notices to Axon shall be provided to Axon Enterprise, Inc., Attn: Legal, 17800 North 85th Street, Scottsdale, Arizona 85255 with a copy to [legal@axon.com](mailto:legal@axon.com).
- 18.12. **Entire Agreement.** This Agreement, the Appendices, including any applicable Appendices not attached herein for the products and services purchased, which are incorporated by reference and located in the Master Purchasing and Services Agreement located at <https://www.axon.com/sales-terms-and-conditions>, Quote and any SOW(s), represents the entire agreement between the Parties. This Agreement supersedes all prior agreements or understandings, whether written or verbal, regarding the subject matter of this Agreement. This Agreement may only be modified or amended in a writing signed by the Parties.



# AXON

## Master Services and Purchasing Agreement for Customer

Each Party, by and through its respective representative authorized to execute this Agreement, has duly executed and delivered this Agreement as of the date of signature.

**AXON:**

Axon Enterprise, Inc.

DocuSigned by:

Signature: \_\_\_\_\_

55DAE8B131A4424...

Name: Robert E. Driscoll Jr.

Title: Deputy General Counsel

Date: 7/12/2024 | 2:25 PM MST

**CUSTOMER:**

\_\_\_\_\_

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_



## Master Services and Purchasing Agreement for Customer

### Axon Cloud Services Terms of Use Appendix

#### 1. Definitions.

- a. **"Customer Content"** is data uploaded into, ingested by, or created in Axon Cloud Services within Customer's tenant, including media or multimedia uploaded into Axon Cloud Services by Customer. Customer Content includes Evidence but excludes Non-Content Data.
  - b. **"Evidence"** is media or multimedia uploaded into Axon Evidence as 'evidence' by an Customer. Evidence is a subset of Customer Content.
  - c. **"Non-Content Data"** is data, configuration, and usage information about Customer's Axon Cloud Services tenant, Axon Devices and client software, and users that is transmitted or generated when using Axon Devices. Non-Content Data includes data about users captured during account management and customer support activities. Non-Content Data does not include Customer Content.
  - d. **"Personal Data"** means any information relating to an identified or identifiable natural person. An identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person.
  - e. **"Provided Data"** means de-identified, de-personalized, data derived from Customer's TASER energy weapon deployment reports, related TASER energy weapon logs, body-worn camera footage, and incident reports.
  - f. **"Transformed Data"** means the Provided Data used for the purpose of quantitative evaluation of the performance and effectiveness of TASER energy weapons in the field across a variety of circumstances.
2. **Access.** Upon Axon granting Customer a subscription to Axon Cloud Services, Customer may access and use Axon Cloud Services to store and manage Customer Content. Customer may not exceed more end users than the Quote specifies. Axon Air requires an Axon Evidence subscription for each drone operator. For Axon Evidence Lite, Customer may access and use Axon Evidence only to store and manage TASER CEW and TASER CAM data ("**TASER Data**"). Customer may not upload non-TASER Data to Axon Evidence Lite.
  3. **Customer Owns Customer Content.** Customer controls and owns all right, title, and interest in Customer Content. Except as outlined herein, Axon obtains no interest in Customer Content, and Customer Content is not Axon's business records. Customer is solely responsible for uploading, sharing, managing, and deleting Customer Content. Axon will only have access to Customer Content for the limited purposes set forth herein. Customer agrees to allow Axon access to Customer Content to (a) perform troubleshooting, maintenance, or diagnostic screenings; and (b) enforce this Agreement or policies governing use of the Axon products.
  4. **Security.** Axon will implement commercially reasonable and appropriate measures to secure Customer Content against accidental or unlawful loss, access or disclosure. Axon will maintain a comprehensive information security program to protect Axon Cloud Services and Customer Content including logical, physical access, vulnerability, risk, and configuration management; incident monitoring and response; encryption of uploaded digital evidence; security education; and data protection. Axon agrees to the Federal Bureau of Investigation Criminal Justice Information Services Security Addendum for its digital evidence or records management systems.
  5. **Customer Responsibilities.** Customer is responsible for (a) ensuring Customer owns Customer Content; (b) ensuring no Customer Content or Customer end user's use of Customer Content or Axon Cloud Services violates this Agreement or applicable laws; and (c) maintaining necessary computer equipment and Internet connections for use of Axon Cloud Services. If Customer becomes aware of any violation of this Agreement by an end user, Customer will immediately terminate that end user's access to Axon Cloud Services.
    - a. Customer will also maintain the security of end usernames and passwords and security and access by end users to Customer Content. Customer is responsible for ensuring the configuration and utilization of Axon Cloud Services meet applicable Customer regulation and standards. Customer may not sell, transfer, or sublicense access to any other entity or person. Customer shall contact Axon immediately if an unauthorized party may be using Customer's account or Customer Content, or if account information is lost or stolen.



## Master Services and Purchasing Agreement for Customer

6. **Privacy.** Customer's use of Axon Cloud Services is subject to the Axon Cloud Services Privacy Policy, a current version of which is available at <https://www.axon.com/legal/cloud-services-privacy-policy>. Customer agrees to allow Axon access to Non-Content Data from Customer to (a) perform troubleshooting, maintenance, or diagnostic screenings; (b) provide, develop, improve, and support current and future Axon products and related services; and (c) enforce this Agreement or policies governing the use of Axon products.
7. **Axon Body Wi-Fi Positioning.** Axon Body cameras may offer a feature to enhance location services where GPS/GNSS signals may not be available, for instance, within buildings or underground. Customer administrators can manage their choice to use this service within the administrative features of Axon Cloud Services. If Customer chooses to use this service, Axon must also enable the usage of the feature for Customer's Axon Cloud Services tenant. Customer will not see this option with Axon Cloud Services unless Axon has enabled Wi-Fi Positioning for Customer's Axon Cloud Services tenant. When Wi-Fi Positioning is enabled by both Axon and Customer, Non-Content and Personal Data will be sent to Skyhook Holdings, Inc. ("**Skyhook**") to facilitate the Wi-Fi Positioning functionality. Data controlled by Skyhook is outside the scope of the Axon Cloud Services Privacy Policy and is subject to the Skyhook Services Privacy Policy.
8. **Storage.** For Axon Unlimited Device Storage subscriptions, Customer may store unlimited data in Customer's Axon Evidence account only if data originates from Axon Capture or the applicable Axon Device. Axon may charge Customer additional fees for exceeding purchased storage amounts. Axon may place Customer Content that Customer has not viewed or accessed for six (6) months into archival storage. Customer Content in archival storage will not have immediate availability and may take up to twenty-four (24) hours to access.  
  
For Third-Party Unlimited Storage the following restrictions apply: (i) it may only be used in conjunction with a valid Axon's Evidence.com user license; (ii) is limited to data of the law enforcement Customer that purchased the Third-Party Unlimited Storage and the Axon's Evidence.com end user or Customer is prohibited from storing data for other law enforcement agencies; and (iii) Customer may only upload and store data that is directly related to: (1) the investigation of, or the prosecution of a crime; (2) common law enforcement activities; or (3) any Customer Content created by Axon Devices or Evidence.com.
9. **Location of Storage.** Axon may transfer Customer Content to third-party subcontractors for storage. Axon will determine the locations of data centers for storage of Customer Content. For United States agencies, Axon will ensure all Agency Content stored in Axon Cloud Services remains within the United States. Ownership of Customer Content remains with Customer.
10. **Suspension.** Axon may temporarily suspend Customer's or any end user's right to access or use any portion or all of Axon Cloud Services immediately upon notice, if Customer or end user's use of or registration for Axon Cloud Services may (a) pose a security risk to Axon Cloud Services or any third-party; (b) adversely impact Axon Cloud Services, the systems, or content of any other customer; (c) subject Axon, Axon's affiliates, or any third-party to liability; or (d) be fraudulent. Customer remains responsible for all fees incurred through suspension. Axon will not delete Customer Content because of suspension, except as specified in this Agreement.
11. **Axon Cloud Services Warranty.** Axon disclaims any warranties or responsibility for data corruption or errors before Customer uploads data to Axon Cloud Services.
12. **TASER Data Science Program.** Axon will provide a quantitative evaluation on the performance and effectiveness of TASER energy weapons in the field across a variety of circumstances.

If Customer purchases the TASER Data Science Program, Customer grants Axon, its affiliates, and assignees an irrevocable, perpetual, fully paid, royalty-free, and worldwide right and license to use Provided Data solely for the purposes of this Agreement and to create Transformed Data. Customer shall own all rights and title to Provided Data. Axon shall own all rights and title to Transformed Data and any derivatives of Transformed Data.

Axon grants to Customer an irrevocable, perpetual, fully paid, royalty-free, license to use to TASER Data Science report provided to Customer for its own internal purposes. **The Data Science report is provided "as is" and without any warranty of any kind.**

In the event Customer seeks Axon's deletion of Provided Data, it may submit a request to [privacy@axon.com](mailto:privacy@axon.com). Where reasonably capable of doing so, Axon will implement the request but at a minimum will not continue to collect Provided Data from Customer.

13. **Axon Records.** Axon Records is the software-as-a-service product that is generally available at the time Customer purchases an OSP 7 or OSP 10 bundle. During Customer's Axon Records Subscription Term, if any, Customer will be entitled to receive Axon's Update and Upgrade releases on an if-and-when available basis.

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## Master Services and Purchasing Agreement for Customer

- 
- a. The Axon Records Subscription Term will end upon the completion of the Axon Records Subscription as documented in the Quote, or if purchased as part of an OSP 7 or OSP 10 bundle, upon completion of the OSP 7 or OSP 10 Term ("**Axon Records Subscription**")
  - b. An "**Update**" is a generally available release of Axon Records that Axon makes available from time to time. An "**Upgrade**" includes (i) new versions of Axon Records that enhance features and functionality, as solely determined by Axon; and/or (ii) new versions of Axon Records that provide additional features or perform additional functions. Upgrades exclude new products that Axon introduces and markets as distinct products or applications.
  - c. New or additional Axon products and applications, as well as any Axon professional services needed to configure Axon Records, are not included. If Customer purchases Axon Records as part of a bundled offering, the Axon Record subscription begins on the later of the (1) start date of that bundled offering, or (2) date Axon provisions Axon Records to Customer.
  - d. Users of Axon Records at the Customer may upload files to entities (incidents, reports, cases, etc) in Axon Records with no limit to the number of files and amount of storage. Notwithstanding the foregoing, Axon may limit usage should the Customer exceed an average rate of one-hundred (100) GB per user per year of uploaded files. Axon will not bill for overages.
14. **Axon Cloud Services Restrictions.** Customer and Customer end users (including employees, contractors, agents, officers, volunteers, and directors), may not, or may not attempt to:
- a. reverse engineer, disassemble, or decompile Axon Cloud Services or apply any process to derive any source code included in Axon Cloud Services, or allow others to do the same;
  - b. copy, modify, tamper with, repair, or create derivative works of any part of Axon Cloud Services;
  - c. access or use Axon Cloud Services with the intent to gain unauthorized access, avoid incurring fees or exceeding usage limits or quotas;
  - d. use Axon Cloud Serves as a service bureau, or as part of an Customer infrastructure as a service;
  - e. use trade secret information contained in Axon Cloud Services, except as expressly permitted in this Agreement;
  - f. access Axon Cloud Services to build a competitive device or service or copy any features, functions, or graphics of Axon Cloud Services;
  - g. remove, alter, or obscure any confidentiality or proprietary rights notices (including copyright and trademark notices) of Axon's or Axon's licensors on or within Axon Cloud Services; or
  - h. use Axon Cloud Services to store or transmit infringing, libelous, or other unlawful or tortious material; material in violation of third-party privacy rights; or malicious code.
15. **Axon Narrative.** AI-Assisted Report Writing feature. Axon may impose usage restrictions if a single user generates more than one hundred (100) reports per month for two or more consecutive months.
16. **After Termination.** Axon will not delete Customer Content for ninety (90) days following termination. There will be no functionality of Axon Cloud Services during these ninety (90) days other than the ability to retrieve Customer Content. Customer will not incur additional fees if Customer downloads Customer Content from Axon Cloud Services during this time. Axon has no obligation to maintain or provide Customer Content after these ninety (90) days and will thereafter, unless legally prohibited, delete all Customer Content. Upon request, Axon will provide written proof that Axon successfully deleted and fully removed all Customer Content from Axon Cloud Services.
17. **Post-Termination Assistance.** Axon will provide Customer with the same post-termination data retrieval assistance that Axon generally makes available to all customers. Requests for Axon to provide additional assistance in downloading or transferring Customer Content, including requests for Axon's data egress service, will result in additional fees and Axon will not warrant or guarantee data integrity or readability in the external system.
18. **U.S. Government Rights.** If Customer is a U.S. Federal department or using Axon Cloud Services on behalf of a U.S. Federal department, Axon Cloud Services is provided as a "commercial item," "commercial computer software," "commercial computer software documentation," and "technical data", as defined in the Federal Acquisition Regulation and Defense Federal Acquisition Regulation Supplement. If Customer is using Axon Cloud
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Services on behalf of the U.S. Government and these terms fail to meet the U.S. Government's needs or are inconsistent in any respect with federal law, Customer will immediately discontinue use of Axon Cloud Services.

19. **Survival.** Upon any termination of this Agreement, the following sections in this Appendix will survive: Customer Owns Customer Content, Privacy, Storage, Axon Cloud Services Warranty, Customer Responsibilities and Axon Cloud Services Restrictions.



## Master Services and Purchasing Agreement for Customer

### Axon Customer Experience Improvement Program Appendix

1. **Axon Customer Experience Improvement Program (ACEIP).** The ACEIP is designed to accelerate Axon's development of technology, such as building and supporting automated features, to ultimately increase safety within communities and drive efficiency in public safety. To this end, subject to the limitations on Axon as described below, Axon, where allowed by law, may make limited use of Customer Content from all of its customers to provide, develop, improve, and support current and future Axon products (collectively, "ACEIP Purposes"). However, at all times, Axon will comply with its obligations pursuant to the Axon Cloud Services Terms of Use Appendix to maintain a comprehensive data security program (including compliance with the CJIS Security Policy for Criminal Justice Information), privacy program, and data governance policy, including high industry standards of de-identifying Personal Data, to enforce its security and privacy obligations for the ACEIP. ACEIP has 2 tiers of participation, Tier 1 and Tier 2. By default, Customer will be a participant in ACEIP Tier 1. If Customer does not want to participate in ACEIP Tier 1, Customer can revoke its consent at any time. If Customer wants to participate in Tier 2, as detailed below, Customer can check the ACEIP Tier 2 box below. If Customer does not want to participate in ACEIP Tier 2, Customer should leave box unchecked. At any time, Customer may revoke its consent to ACEIP Tier 1, Tier 2, or both Tiers.
2. **ACEIP Tier 1.**
  - 2.1. When Axon uses Customer Content for the ACEIP Purposes, Axon will extract from Customer Content and may store separately copies of certain segments or elements of the Customer Content (collectively, "**ACEIP Content**"). When extracting ACEIP Content, Axon will use commercially reasonable efforts to aggregate, transform or de-identify Customer Content so that the extracted ACEIP Content is no longer reasonably capable of being associated with, or could reasonably be linked directly or indirectly to a particular individual ("**Privacy Preserving Technique(s)**"). For illustrative purposes, some examples are described in footnote 1<sup>1</sup>. For clarity, ACEIP Content will still be linked indirectly, with an attribution, to the Customer from which it was extracted. This attribution will be stored separately from the data itself, but is necessary for and will be solely used to enable Axon to identify and delete all ACEIP Content upon Customer request. Once de-identified, ACEIP Content may then be further modified, analyzed, and used to create derivative works. At any time, Customer may revoke the consent granted herein to Axon to access and use Customer Content for ACEIP Purposes. Within 30 days of receiving the Customer's request, Axon will no longer access or use Customer Content for ACEIP Purposes and will delete any and all ACEIP Content. Axon will also delete any derivative works which may reasonably be capable of being associated with, or could reasonably be linked directly or indirectly to Customer. In addition, if Axon uses Customer Content for the ACEIP Purposes, upon request, Axon will make available to Customer a list of the specific type of Customer Content being used to generate ACEIP Content, the purpose of such use, and the retention, privacy preserving extraction technique, and relevant data protection practices applicable to the Customer Content or ACEIP Content ("**Use Case**"). From time to time, Axon may develop and deploy new Use Cases. At least 30 days prior to authorizing the deployment of any new Use Case, Axon will provide Customer notice (by updating the list of Use Case at <https://www.axon.com/aceip> and providing Customer with a mechanism to obtain notice of that update or another commercially reasonable method to Customer designated contact) ("**New Use Case**").
  - 2.2. **Expiration of ACEIP Tier 1.** Customer consent granted herein will expire upon termination of the Agreement. In accordance with section 1.1.1, within 30 days of receiving the Customer's request, Axon will no longer access or use Customer Content for ACEIP Purposes and will delete ACEIP Content. Axon will also delete any derivative works which may reasonably be capable of being associated with, or could reasonably be linked directly or indirectly to, Customer.
3. **ACEIP Tier 2.** In addition to ACEIP Tier 1, if Customer wants to help further improve Axon's services, Customer may choose to participate in Tier 2 of the ACEIP. ACEIP Tier 2 grants Axon certain additional rights to use Customer

<sup>1</sup> For example; (a) when extracting specific text to improve automated transcription capabilities, text that could be used to directly identify a particular individual would not be extracted, and extracted text would be disassociated from identifying metadata of any speakers, and the extracted text would be split into individual words and aggregated with other data sources (including publicly available data) to remove any reasonable ability to link any specific text directly or indirectly back to a particular individual; (b) when extracting license plate data to improve Automated License Plate Recognition (ALPR) capabilities, individual license plate characters would be extracted and disassociated from each other so a complete plate could not be reconstituted, and all association to other elements of the source video, such as the vehicle, location, time, and the surrounding environment would also be removed; (c) when extracting audio of potential acoustic events (such as glass breaking or gun shots), very short segments (<1 second) of audio that only contains the likely acoustic events would be extracted and all human utterances would be removed.





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Content, in addition to those set forth in Tier 1 above, without the guaranteed deployment of a Privacy Preserving Technique to enable product development, improvement, and support that cannot be accomplished with aggregated, transformed, or de-identified data.

Check this box if Customer wants to help further improve Axon's services by participating in ACEIP Tier 2 in addition to Tier 1. Axon will not enroll Customer into ACEIP Tier 2 until Axon and Customer agree to terms in writing providing for such participation in ACEIP Tier 2.



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### Technology Assurance Plan Appendix

If Technology Assurance Plan ("TAP") or a bundle including TAP is on the Quote, this appendix applies.

1. **TAP Warranty.** The TAP warranty is an extended warranty that starts at the end of the one- (1-) year hardware limited warranty.
2. **Officer Safety Plan.** If Customer purchases an Officer Safety Plan ("OSP"), Customer will receive the deliverables detailed in the Quote. Customer must accept delivery of the TASER CEW and accessories as soon as available from Axon.
3. **OSP 7 or OSP 10 Term.** OSP 7 or OSP 10 begins on the date specified in the Quote ("OSP Term").
4. **TAP BWC Upgrade.** If Customer has no outstanding payment obligations and purchased TAP, Axon will provide Customer a new Axon body-worn camera ("BWC Upgrade") as scheduled in the Quote. If Customer purchased TAP, Axon will provide a BWC Upgrade that is the same or like Axon Device, at Axon's option. Axon makes no guarantee the BWC Upgrade will utilize the same accessories or Axon dock.
5. **TAP Dock Upgrade.** If Customer has no outstanding payment obligations and purchased TAP, Axon will provide Customer a new Axon Dock as scheduled in the Quote ("Dock Upgrade"). Accessories associated with any Dock Upgrades are subject to change at Axon discretion. Dock Upgrades will only include a new Axon dock bay configuration unless a new Axon dock core is required for BWC compatibility. If Customer originally purchased a single-bay Axon dock, the Dock Upgrade will be a single-bay Axon dock model that is the same or like Axon Device, at Axon's option. If Customer originally purchased a multi-bay Axon dock, the Dock Upgrade will be a multi-bay Axon dock that is the same or like Axon Device, at Axon's option.
6. **Upgrade Delay.** Axon may ship the BWC and Dock Upgrades as scheduled in the Quote without prior confirmation from Customer unless the Parties agree in writing otherwise at least ninety (90) days in advance. Axon may ship the final BWC and Dock Upgrade as scheduled in the Quote sixty (60) days before the end of the Subscription Term without prior confirmation from Customer.
7. **Upgrade Change.** If Customer wants to upgrade Axon Device models from the current Axon Device to an upgraded Axon Device, Customer must pay the price difference between the MSRP for the current Axon Device and the MSRP for the upgraded Axon Device. If the model Customer desires has an MSRP less than the MSRP of the offered BWC Upgrade or Dock Upgrade, Axon will not provide a refund. The MSRP is the MSRP in effect at the time of the upgrade.
8. **Return of Original Axon Device.** Within thirty (30) days of receiving a BWC or Dock Upgrade, Customer must return the original Axon Devices to Axon or destroy the Axon Devices and provide a certificate of destruction to Axon including serial numbers for the destroyed Axon Devices. If Customer does not return or destroy the Axon Devices, Axon will deactivate the serial numbers for the Axon Devices received by Customer.
9. **Termination.** If Customer's payment for TAP, OSP, or Axon Evidence is more than thirty (30) days past due, Axon may terminate TAP or OSP. Once TAP or OSP terminates for any reason:
  - 9.1. TAP and OSP coverage terminate as of the date of termination and no refunds will be given.
  - 9.2. Axon will not and has no obligation to provide the Upgrade Models.
  - 9.3. Customer must make any missed payments due to the termination before Customer may purchase any future TAP or OSP.



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**TASER Device Appendix**

This TASER Device Appendix applies to Customer’s TASER 7/10, OSP 7/10, OSP Plus, or OSP 7/10 Plus Premium purchase from Axon, if applicable.

1. **Duty Cartridge Replenishment Plan.** If the Quote includes "Duty Cartridge Replenishment Plan", Customer must purchase the plan for each CEW user. A CEW user includes officers that use a CEW in the line of duty and those that only use a CEW for training. Customer may not resell cartridges received. Axon will only replace cartridges used in the line of duty.
2. **Training.** If the Quote includes a TASER On Demand Certification subscription, Customer will have on-demand access to TASER Instructor and TASER Master Instructor courses only for the duration of the TASER Subscription Term. Axon will issue a maximum of ten (10) TASER Instructor vouchers and ten (10) TASER Master Instructor vouchers for every thousand TASER Subscriptions purchased. Customer shall utilize vouchers to register for TASER courses at their discretion however Customer may incur a fee for cancellations less than 10 business days prior to a course date or failure to appear to a registered course. The voucher has no cash value. Customer cannot exchange voucher for any other device or service. Any unused vouchers at the end of the Term will be forfeited. A voucher does not include any travel or other expenses that might be incurred related to attending a course.
3. **Extended Warranty.** If the Quote includes an extended warranty, the extended warranty coverage period warranty will be for a five- (5-) year term, which includes the hardware manufacturer’s warranty plus the four- (4-) year extended term.
4. **Trade-in.** If the Quote contains a discount on CEW-related line items and that discount is contingent upon the trade-in of hardware, Customer must return used hardware and accessories associated with the discount ("**Trade-In Units**") to Axon within the below prescribed timeline. Customer must ship batteries via ground shipping. Axon will pay shipping costs of the return. If Axon does not receive Trade-In Units within the timeframe below, Axon will invoice Customer the value of the trade-in credit. Customer may not destroy Trade-In Units and receive a trade-in credit.

<b>Customer Size</b>	<b>Days to Return from Start Date of TASER 10 Subscription</b>
Less than 100 officers	60 days
100 to 499 officers	90 days
500+ officers	180 days

5. **TASER Device Subscription Term.** The TASER Device Subscription Term for a standalone TASER Device purchase begins on shipment of the TASER Device. The TASER Device Subscription Term for OSP 7/10 begins on the OSP 7/10 start date.
6. **Access Rights.** Upon Axon granting Customer a TASER Device Axon Evidence subscription, Customer may access and use Axon Evidence for the storage and management of data from TASER Devices devices during the TASER Device Subscription Term. Customer may not exceed the number of end users the Quote specifies.
7. **Customer Warranty.** If Customer is located in the US, Customer warrants and acknowledges that TASER 10 is classified as a firearm and is being acquired for official Customer use pursuant to a law enforcement Customer transfer under the Gun Control Act of 1968.
8. **Purchase Order.** To comply with applicable laws and regulations, Customer must provide a purchase order to Axon prior to shipment of TASER 10.
9. **Apollo Grant (US only).** If Customer has received an Apollo Grant from Axon, Customer must pay all fees in the Quote prior to upgrading to any new TASER Device offered by Axon.
10. **Termination.** If payment for TASER Device is more than thirty (30) days past due, Axon may terminate Customer's TASER Device plan by notifying Customer. Upon termination for any reason, then as of the date of termination:
  - 10.1. TASER Device extended warranties and access to Training Content will terminate. No refunds will be given.
  - 10.2. Axon will invoice Customer the remaining MSRP for TASER Devices received before termination. If terminating for non-appropriations, Axon will not invoice Customer if Customer returns the TASER Device, rechargeable battery, holster, dock, core, training suits, and unused cartridges to Axon within thirty (30) days of the date of



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termination.

10.3. Customer will be responsible for payment of any missed payments due to the termination before being allowed to purchase any future TASER Device plan.



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### Axon Auto-Tagging Appendix

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If Auto-Tagging is included on the Quote, this Appendix applies.

1. **Scope.** Axon Auto-Tagging consists of the development of a module to allow Axon Evidence to interact with Customer's Computer-Aided Dispatch ("**CAD**") or Records Management Systems ("**RMS**"). This allows end users to auto-populate Axon video meta-data with a case ID, category, and location-based on data maintained in Customer's CAD or RMS.
2. **Support.** For thirty (30) days after completing Auto-Tagging Services, Axon will provide up to five (5) hours of remote support at no additional charge. Axon will provide free support due to a change in Axon Evidence, if Customer maintains an Axon Evidence and Auto-Tagging subscription. Axon will not provide support if a change is required because Customer changes its CAD or RMS.
3. **Changes.** Axon is only responsible to perform the Services in this Appendix. Any additional Services are out of scope. The Parties must document scope changes in a written and signed change order. Changes may require an equitable adjustment in fees or schedule.
4. **Customer Responsibilities.** Axon's performance of Auto-Tagging Services requires Customer to:
  - 4.1. Make available relevant systems, including Customer's current CAD or RMS, for assessment by Axon (including remote access if possible);
  - 4.2. Make required modifications, upgrades or alterations to Customer's hardware, facilities, systems and networks related to Axon's performance of Auto-Tagging Services;
  - 4.3. Provide access to the premises where Axon is performing Auto-Tagging Services, subject to Customer safety and security restrictions, and allow Axon to enter and exit the premises with laptops and materials needed to perform Auto-Tagging Services;
  - 4.4. Provide all infrastructure and software information (TCP/IP addresses, node names, network configuration) necessary for Axon to provide Auto-Tagging Services;
  - 4.5. Promptly install and implement any software updates provided by Axon;
  - 4.6. Ensure that all appropriate data backups are performed;
  - 4.7. Provide assistance, participation, and approvals in testing Auto-Tagging Services;
  - 4.8. Provide Axon with remote access to Customer's Axon Evidence account when required;
  - 4.9. Notify Axon of any network or machine maintenance that may impact the performance of the module at Customer; and
  - 4.10. Ensure reasonable availability of knowledgeable staff and personnel to provide timely, accurate, complete, and up-to-date documentation and information to Axon.
5. **Access to Systems.** Customer authorizes Axon to access Customer's relevant computers, network systems, and CAD or RMS solely for performing Auto-Tagging Services. Axon will work diligently to identify the resources and information Axon expects to use and will provide an initial list to Customer. Customer is responsible for and assumes the risk of any problems, delays, losses, claims, or expenses resulting from the content, accuracy, completeness, and consistency of all data, materials, and information supplied by Customer.



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### Axon Respond Appendix

This Axon Respond Appendix applies to both Axon Respond and Axon Respond Plus, if either is included on the Quote.

1. **Axon Respond Subscription Term.** If Customer purchases Axon Respond as part of a bundled offering, the Axon Respond subscription begins on the later of the (1) start date of that bundled offering, or (2) date Axon provisions Axon Respond to Customer. If Customer purchases Axon Respond as a standalone, the Axon Respond subscription begins the later of the (1) date Axon provisions Axon Respond to Customer, or (2) first day of the month following the Effective Date. The Axon Respond subscription term will end upon the completion of the Axon Evidence Subscription associated with Axon Respond.
2. **Scope of Axon Respond.** The scope of Axon Respond is to assist Customer with real-time situational awareness during critical incidents to improve officer safety, effectiveness, and awareness. In the event Customer uses Axon Respond outside this scope, Axon may initiate good-faith discussions with Customer on upgrading Customer's Axon Respond to better meet Customer's needs.
3. **Axon Body LTE Requirements.** Axon Respond is only available and usable with an LTE enabled body-worn camera. Axon is not liable if Customer utilizes the LTE device outside of the coverage area or if the LTE carrier is unavailable. LTE coverage is only available in the United States, including any U.S. territories. Axon may utilize a carrier of Axon's choice to provide LTE service. Axon may change LTE carriers during the Term without Customer's consent.
4. **Axon Fleet LTE Requirements.** Axon Respond is only available and usable with a Fleet system configured with LTE modem and service. Customer is responsible for providing LTE service for the modem. Coverage and availability of LTE service is subject to Customer's LTE carrier.
5. **Axon Respond Service Limitations.** Customer acknowledges that LTE service is made available only within the operating range of the networks. Service may be temporarily refused, interrupted, or limited because of: (a) facilities limitations; (b) transmission limitations caused by atmospheric, terrain, other natural or artificial conditions adversely affecting transmission, weak batteries, system overcapacity, movement outside a service area or gaps in coverage in a service area, and other causes reasonably outside of the carrier's control such as intentional or negligent acts of third parties that damage or impair the network or disrupt service; or (c) equipment modifications, upgrades, relocations, repairs, and other similar activities necessary for the proper or improved operation of service.
  - 5.1. **With regard to Axon Body, Partner networks are made available as-is and the carrier makes no warranties or representations as to the availability or quality of roaming service provided by carrier partners, and the carrier will not be liable in any capacity for any errors, outages, or failures of carrier partner networks. Customer expressly understands and agrees that it has no contractual relationship whatsoever with the underlying wireless service provider or its affiliates or contractors and Customer is not a third-party beneficiary of any agreement between Axon and the underlying carrier.**
6. **Termination.** Upon termination of this Agreement, or if Customer stops paying for Axon Respond or bundles that include Axon Respond, Axon will end Axon Respond services, including any Axon-provided LTE service.



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### Add-on Services Appendix

This Appendix applies if Axon Community Request, Axon Redaction Assistant, and/or Axon Performance are included on the Quote.

1. **Subscription Term.** If Customer purchases Axon Community Request, Axon Redaction Assistant, or Axon Performance as part of OSP 7 or OSP 10, the subscription begins on the later of the (1) start date of the OSP 7 or OSP 10 Term, or (2) date Axon provisions Axon Community Request Axon Redaction Assistant, or Axon Performance to Customer.
  - 1.1. If Customer purchases Axon Community Request, Axon Redaction Assistant, or Axon Performance as a standalone, the subscription begins the later of the (1) date Axon provisions Axon Community Request, Axon Redaction Assistant, or Axon Performance to Customer, or (2) first day of the month following the Effective Date.
  - 1.2. The subscription term will end upon the completion of the Axon Evidence Subscription associated with the add-on.
2. **Axon Community Request Storage.** For Axon Community Request, Customer may store an unlimited amount of data submitted through the public portal ("**Portal Content**"), within Customer's Axon Evidence instance. The post-termination provisions outlined in the Axon Cloud Services Terms of Use Appendix also apply to Portal Content.
3. **Performance Auto-Tagging Data.** In order to provide some features of Axon Performance to Customer, Axon will need to store call for service data from Customer's CAD or RMS.



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## Axon Virtual Reality Content Terms of Use Appendix

If Virtual Reality is included on the Quote, this Appendix applies.

1. **Term.** The Quote will detail the products and license duration, as applicable, of the goods, services, and software, and contents thereof, provided by Axon to Customer related to virtual reality (collectively, "**Virtual Reality Media**").
2. **Headsets.** Customer may purchase additional virtual reality headsets from Axon. In the event Customer decides to purchase additional virtual reality headsets for use with Virtual Reality Media, Customer must purchase those headsets from Axon.
3. **License Restrictions.** All licenses will immediately terminate if Customer does not comply with any term of this Agreement. If Customer utilizes more users than stated in this Agreement, Customer must purchase additional Virtual Reality Media licenses from Axon. Customer may not use Virtual Reality Media for any purpose other than as expressly permitted by this Agreement. Customer may not:
  - 3.1. modify, tamper with, repair, or otherwise create derivative works of Virtual Reality Media;
  - 3.2. reverse engineer, disassemble, or decompile Virtual Reality Media or apply any process to derive the source code of Virtual Reality Media, or allow others to do the same;
  - 3.3. copy Virtual Reality Media in whole or part, except as expressly permitted in this Agreement;
  - 3.4. use trade secret information contained in Virtual Reality Media;
  - 3.5. resell, rent, loan or sublicense Virtual Reality Media;
  - 3.6. access Virtual Reality Media to build a competitive device or service or copy any features, functions, or graphics of Virtual Reality Media; or
  - 3.7. remove, alter, or obscure any confidentiality or proprietary rights notices (including copyright and trademark notices) of Axon or Axon's licensors on or within Virtual Reality Media or any copies of Virtual Reality Media.
4. **Privacy.** Customer's use of the Virtual Reality Media is subject to the Axon Virtual Reality Privacy Policy, a current version of which is available at <https://www.axon.com/axonvrprivacypolicy>.
5. **Termination.** Axon may terminate Customer's license immediately for Customer's failure to comply with any of the terms in this Agreement.





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### Axon Application Programming Interface Appendix

This Appendix applies if Axon's API Services or a subscription to Axon Cloud Services is included on the Quote.

#### 1. **Definitions.**

- 1.1. **"API Client"** means the software that acts as the interface between Customer's computer and the server, which is already developed or to be developed by Customer.
- 1.2. **"API Interface"** means software implemented by Customer to configure Customer's independent API Client Software to operate in conjunction with the API Service for Customer's authorized Use.
- 1.3. **"Axon Evidence Partner API, API or Axon API"** (collectively **"API Service"**) means Axon's API which provides a programmatic means to access data in Customer's Axon Evidence account or integrate Customer's Axon Evidence account with other systems.
- 1.4. **"Use"** means any operation on Customer's data enabled by the supported API functionality.

#### 2. **Purpose and License.**

- 2.1. Customer may use API Service and data made available through API Service, in connection with an API Client developed by Customer. Axon may monitor Customer's use of API Service to ensure quality, improve Axon devices and services, and verify compliance with this Agreement. Customer agrees to not interfere with such monitoring or obscure from Axon Customer's use of API Service. Customer will not use API Service for commercial use.
- 2.2. Axon grants Customer a non-exclusive, non-transferable, non-sublicensable, worldwide, revocable right and license during the Term to use API Service, solely for Customer's Use in connection with Customer's API Client.
- 2.3. Axon reserves the right to set limitations on Customer's use of the API Service, such as a quota on operations, to ensure stability and availability of Axon's API. Axon will use reasonable efforts to accommodate use beyond the designated limits.

#### 3. **Configuration.** Customer will work independently to configure Customer's API Client with API Service for Customer's applicable Use. Customer will be required to provide certain information (such as identification or contact details) as part of the registration. Registration information provided to Axon must be accurate. Customer will inform Axon promptly of any updates. Upon Customer's registration, Axon will provide documentation outlining API Service information.

#### 4. **Customer Responsibilities.** When using API Service, Customer and its end users may not:

- 4.1. use API Service in any way other than as expressly permitted under this Agreement;
- 4.2. use in any way that results in, or could result in, any security breach to Axon;
- 4.3. perform an action with the intent of introducing any viruses, worms, defect, Trojan horses, malware, or any items of a destructive nature to Axon Devices and Services;
- 4.4. interfere with, modify, disrupt or disable features or functionality of API Service or the servers or networks providing API Service;
- 4.5. reverse engineer, decompile, disassemble, or translate or attempt to extract the source code from API Service or any related software;
- 4.6. create an API Interface that functions substantially the same as API Service and offer it for use by third parties;
- 4.7. provide use of API Service on a service bureau, rental or managed services basis or permit other individuals or entities to create links to API Service;
- 4.8. frame or mirror API Service on any other server, or wireless or Internet-based device;
- 4.9. make available to a third-party, any token, key, password or other login credentials to API Service;
- 4.10. take any action or inaction resulting in illegal, unauthorized or improper purposes; or
- 4.11. disclose Axon's API manual.

#### 5. **API Content.** All content related to API Service, other than Customer Content or Customer's API Client content, is considered Axon's API Content, including:

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- 5.1. the design, structure and naming of API Service fields in all responses and requests;
- 5.2. the resources available within API Service for which Customer takes actions on, such as evidence, cases, users, or reports;
- 5.3. the structure of and relationship of API Service resources; and
- 5.4. the design of API Service, in any part or as a whole.
6. **Prohibitions on API Content**. Neither Customer nor its end users will use API content returned from the API Interface to:
  - 6.1. scrape, build databases, or otherwise create permanent copies of such content, or keep cached copies longer than permitted by the cache header;
  - 6.2. copy, translate, modify, create a derivative work of, sell, lease, lend, convey, distribute, publicly display, or sublicense to any third-party;
  - 6.3. misrepresent the source or ownership; or
  - 6.4. remove, alter, or obscure any confidentiality or proprietary rights notices (including copyright and trademark notices).
7. **API Updates**. Axon may update or modify the API Service from time to time ("**API Update**"). Customer is required to implement and use the most current version of API Service and to make any applicable changes to Customer's API Client required as a result of such API Update. API Updates may adversely affect how Customer's API Client access or communicate with API Service or the API Interface. Each API Client must contain means for Customer to update API Client to the most current version of API Service. Axon will provide support for one (1) year following the release of an API Update for all depreciated API Service versions.



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### Axon Investigate Appendix

If the Quote includes Axon's On Prem Video Suite known as Axon Investigate or Third Party Video Support License, the following appendix shall apply.

1. **License Grant.** Subject to the terms and conditions specified below and upon payment of the applicable fees set forth in the Quote, Axon grants to Customer a nonexclusive, nontransferable license to install, use, and display the Axon Investigate software ("**Software**") solely for its own internal use only and for no other purpose, for the duration of subscription term set forth in the Quote. This Agreement does not grant Customer any right to enhancements or updates, but if such are made available to Customer and obtained by Customer they shall become part of the Software and governed by the terms of this Agreement.
2. **Third-Party Licenses.** Axon licenses several third-party codecs and applications that are integrated into the Software. Users with an active support contract with Axon are granted access to these additional features. By accepting this agreement, Customer agrees to and understands that an active support contract is required for all of the following features: DNxHD output formats, decoding files via the "fast indexing" method, proprietary file metadata, telephone and email support, and all future updates to the software. If Customer terminates the annual support contract with Axon, the features listed above will be disabled within the Software. It is recommended that users remain on an active support contract to maintain the full functionality of the Software.
3. **Restrictions on Use.** Customer may not permit any other person to use the Software unless such use is in accordance with the terms of this Agreement. Customer may not modify, translate, reverse engineer, reverse compile, decompile, disassemble or create derivative works with respect to the Software, except to the extent applicable laws specifically prohibit such restrictions. Customer may not rent, lease, sublicense, grant a security interest in or otherwise transfer Customer's rights to or to use the Software. Any rights not granted are reserved to Axon.
4. **Term.** For purchased perpetual Licenses only—excluding Licenses leased for a pre-determined period, evaluation licenses, companion licenses, as well as temporary licenses--the license shall be perpetual unless Customer fails to observe any of its terms, in which case it shall terminate immediately, and without additional prior notice. The terms of Paragraphs 1, 2, 3, 5, 6, 8 and 9 shall survive termination of this Agreement. For licenses leased for a pre-determined period, for evaluation licenses, companion licenses, as well as temporary licenses, the license is granted for a period beginning at the installation date and for the duration of the evaluation period or temporary period as agreed between Axon and Customer.
5. **Title.** Axon and its licensors shall have sole and exclusive ownership of all right, title, and interest in and to the Software and all changes, modifications, and enhancements thereof (including ownership of all trade secrets and copyrights pertaining thereto), regardless of the form or media in which the original or copies may exist, subject only to the rights and privileges expressly granted by Axon. This Agreement does not provide Customer with title or ownership of the Software, but only a right of limited use.
6. **Copies.** The Software is copyrighted under the laws of the United States and international treaty provisions. Customer may not copy the Software except for backup or archival purposes, and all such copies shall contain all Axon's notices regarding proprietary rights as contained in the Software as originally provided to Customer. If Customer receives one copy electronically and another copy on media, the copy on media may be used only for archival purposes and this license does not authorize Customer to use the copy of media on an additional server.
7. **Actions Required Upon Termination.** Upon termination of the license associated with this Agreement, Customer agrees to destroy all copies of the Software and other text and/or graphical documentation, whether in electronic or printed format, that describe the features, functions and operation of the Software that are provided by Axon to Customer ("**Software Documentation**") or return such copies to Axon. Regarding any copies of media containing regular backups of Customer's computer or computer system, Customer agrees not to access such media for the purpose of recovering the Software or online Software Documentation.
8. **Export Controls.** None of the Software, Software Documentation or underlying information may be downloaded or otherwise exported, directly or indirectly, without the prior written consent, if required, of the office of Export Administration of the United States, Department of Commerce, nor to any country to which the U.S. has embargoed goods, to any person on the U.S. Treasury Department's list of Specially Designated Nations, or the U.S. Department of Commerce's Table of Denials.
9. **U.S. Government Restricted Rights.** The Software and Software Documentation are Commercial Computer Software provided with Restricted Rights under Federal Acquisition Regulations and Customer supplements to them. Use, duplication or disclosure by the U.S. Government is subject to restrictions as set forth in subparagraph (c)(1)(ii) of the Rights in Technical Data and Computer Software clause at DFAR 255.227-7013 et. Seq. or 252.211-7015, or

Title: Master Services and Purchasing Agreement between Axon and Customer

Department: Legal

Version: 21

Release Date: 4/1/2024

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## Master Services and Purchasing Agreement for Customer

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subparagraphs (a) through (d) of the Commercial Computer Software Restricted Rights at FAR 52.227-19, as applicable, or similar clauses in the NASA FAR Supplement. Contractor/manufacturer is Axon Enterprise, Inc., 17800 North 85th Street, Scottsdale, Arizona 85255.



## Master Services and Purchasing Agreement for Customer

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### Axon Event Offer Appendix

If the Agreement includes the provision of, or Axon otherwise offers, ticket(s), travel and/or accommodation for select events hosted by Axon ("Axon Event"), the following shall apply:

1. **General.** Subject to the terms and conditions specified below and those in the Agreement, Axon may provide Customer with one or more offers to fund Axon Event ticket(s), travel and/or accommodation for Customer-selected employee(s) to attend one or more Axon Events. By entering into the Agreement, Customer warrants that it is appropriate and permissible for Customer to receive the referenced Axon Event offer(s) based on Customer's understanding of the terms and conditions outlined in this Axon Event Offer Appendix.
2. **Attendee/Employee Selection.** Customer shall have sole and absolute discretion to select the Customer employee(s) eligible to receive the ticket(s), travel and/or accommodation that is the subject of any Axon Event offer(s).
3. **Compliance.** It is the intent of Axon that any and all Axon Event offers comply with all applicable laws, regulations and ethics rules regarding contributions, including gifts and donations. Axon's provision of ticket(s), travel and/or accommodation for the applicable Axon Event to Customer is intended for the use and benefit of Customer in furtherance of its goals, and not the personal use or benefit of any official or employee of Customer. Axon makes this offer without seeking promises or favoritism for Axon in any bidding arrangements. Further, no exclusivity will be expected by either party in consideration for the offer. Axon makes the offer with the understanding that it will not, as a result of such offer, be prohibited from any procurement opportunities or be subject to any reporting requirements. If Customer's local jurisdiction requires Customer to report or disclose the fair market value of the benefits provided by Axon, Customer shall promptly contact Axon to obtain such information, and Axon shall provide the information necessary to facilitate Customer's compliance with such reporting requirements.
4. **Assignability.** Customer may not sell, transfer, or assign Axon Event ticket(s), travel and/or accommodation provided under the Agreement.
5. **Availability.** The provision of all offers of Axon Event ticket(s), travel and/or accommodation is subject to availability of funds and resources. Axon has no obligation to provide Axon Event ticket(s), travel and/or accommodation.
6. **Revocation of Offer.** Axon reserves the right at any time to rescind the offer of Axon Event ticket(s), travel and/or accommodation to Customer if Customer or its selected employees fail to meet the prescribed conditions or if changes in circumstances render the provision of such benefits impractical, inadvisable, or in violation of any applicable laws, regulations, and ethics rules regarding contributions, including gifts and donations.



Axon Enterprise, Inc.  
 17800 N 85th St.  
 Scottsdale, Arizona 85255  
 United States  
 VAT: 86-0741227  
 Domestic: (800) 978-2737  
 International: +1.800.978.2737

Q-588132-45468.824KP

Issued: 06/25/2024

Quote Expiration: 08/31/2024

Estimated Contract Start Date: 08/15/2024

Account Number: 110360

Payment Terms: N30

Delivery Method:

SHIP TO	BILL TO
Tracy Police Department - CA 1000 CIVIC CENTER DR TRACY, CA 95376-4079 USA	Tracy Police Dept. - CA 1000 CIVIC CENTER DR TRACY CA 95376-4079 USA Email:

SALES REPRESENTATIVE	PRIMARY CONTACT
Kyle Panasewicz Phone: +1 4803294734 Email: kylep@axon.com Fax: (480) 905-2071	Octavio Lopez Phone: 209-831-6556 Email: octavio.lopez@tracypd.com Fax:

Quote Summary

Program Length	61 Months
TOTAL COST	\$2,222,469.60
ESTIMATED TOTAL W/ TAX	\$2,283,857.90

Discount Summary

Average Savings Per Year	\$196,753.57
TOTAL SAVINGS	\$1,000,164.00

### Payment Summary

Date	Subtotal	Tax	Total
Aug 2024	\$487,175.52	\$13,502.61	\$500,678.13
Aug 2025	\$433,823.52	\$11,971.41	\$445,794.93
Aug 2026	\$433,823.52	\$11,971.41	\$445,794.93
Aug 2027	\$433,823.52	\$11,971.41	\$445,794.93
Aug 2028	\$433,823.52	\$11,971.46	\$445,794.98
<b>Total</b>	<b>\$2,222,469.60</b>	<b>\$61,388.30</b>	<b>\$2,283,857.90</b>

Quote Unbundled Price: \$3,222,633.60  
 Quote List Price: \$2,503,170.60  
 Quote Subtotal: \$2,222,469.60

Pricing

All deliverables are detailed in Delivery Schedules section lower in proposal

Item	Description	Qty	Term	Unbundled	List Price	Net Price	Subtotal	Tax	Total
<b>Program</b>									
B00022	BUNDLE - UNLIMITED PLUS	26	60	\$307.03	\$238.32	\$238.32	\$371,779.20	\$8,750.98	\$380,530.18
M00012	BUNDLE - OFFICER SAFETY PLAN 10 PLUS	107	60	\$393.27	\$297.90	\$273.48	\$1,755,741.60	\$51,106.12	\$1,806,847.72
<b>A la Carte Hardware</b>									
H00002	AB4 Multi Bay Dock Bundle	2			\$1,638.90	\$1,638.90	\$3,277.80	\$270.43	\$3,548.23
H00001	AB4 Camera Bundle	18			\$849.00	\$849.00	\$15,282.00	\$1,260.77	\$16,542.77
H00002	AB4 Multi Bay Dock Bundle	16			\$1,638.90	\$0.00	\$0.00	\$0.00	\$0.00
H00001	AB4 Camera Bundle	115			\$849.00	\$0.00	\$0.00	\$0.00	\$0.00
<b>A la Carte Software</b>									
73618	AXON COMMUNITY REQUEST	119	1		\$10.00	\$10.00	\$1,190.00	\$0.00	\$1,190.00
73478	AXON EVIDENCE - REDACTION ASSISTANT USER LICENSE	119	1		\$10.00	\$10.00	\$1,190.00	\$0.00	\$1,190.00
73682	AXON EVIDENCE - AUTO TAGGING LICENSE	119	1		\$10.00	\$10.00	\$1,190.00	\$0.00	\$1,190.00
73739	AXON PERFORMANCE - LICENSE	119	1		\$10.00	\$10.00	\$1,190.00	\$0.00	\$1,190.00
73680	AXON RESPOND PLUS - LICENSE	119	1		\$19.80	\$19.80	\$2,356.20	\$0.00	\$2,356.20
100801	AXON RECORDS - OSP LICENSE	119	1		\$39.00	\$39.00	\$4,641.00	\$0.00	\$4,641.00
BasicLicense	Basic License Bundle	9	1		\$15.00	\$15.00	\$135.00	\$0.00	\$135.00
ProLicense	Pro License Bundle	16	60		\$43.40	\$43.33	\$41,596.80	\$0.00	\$41,596.80
ProLicense	Pro License Bundle	135	1		\$40.00	\$40.00	\$5,400.00	\$0.00	\$5,400.00
<b>A la Carte Services</b>									
101208	AXON TASER 10 - 2 DAY INSTRUCTOR COURSE - INSIDE SALES	1			\$2,500.00	\$2,500.00	\$2,500.00	\$0.00	\$2,500.00
75014	AXON SIGNAL - PSO - INSTALLATION SERVICE ONSITE	1			\$3,000.00	\$3,000.00	\$3,000.00	\$0.00	\$3,000.00
101267	AXON VR - PSO - FULL INSTALLATION	1			\$12,000.00	\$12,000.00	\$12,000.00	\$0.00	\$12,000.00
<b>Total</b>							<b>\$2,222,469.60</b>	<b>\$61,388.30</b>	<b>\$2,283,857.90</b>



## Delivery Schedule

### Hardware

Bundle	Item	Description	QTY	Shipping Location	Estimated Delivery Date
AB4 Camera Bundle	100147	AXON BODY 4 - CAMERA - NA US FIRST RESPONDER BLK RAPIDLOCK	115	1	08/15/2024
AB4 Camera Bundle	100147	AXON BODY 4 - CAMERA - NA US FIRST RESPONDER BLK RAPIDLOCK	18	1	08/15/2024
AB4 Camera Bundle	100147	AXON BODY 4 - CAMERA - NA US FIRST RESPONDER BLK RAPIDLOCK	3	1	08/15/2024
AB4 Camera Bundle	100466	AXON BODY 4 - CABLE - USB-C TO USB-C	127	1	08/15/2024
AB4 Camera Bundle	100466	AXON BODY 4 - CABLE - USB-C TO USB-C	20	1	08/15/2024
AB4 Camera Bundle	74028	AXON BODY - MOUNT - WING CLIP RAPIDLOCK	127	1	08/15/2024
AB4 Camera Bundle	74028	AXON BODY - MOUNT - WING CLIP RAPIDLOCK	20	1	08/15/2024
AB4 Multi Bay Dock Bundle	100206	AXON BODY 4 - DOCK - EIGHT BAY	16	1	08/15/2024
AB4 Multi Bay Dock Bundle	100206	AXON BODY 4 - DOCK - EIGHT BAY	2	1	08/15/2024
AB4 Multi Bay Dock Bundle	70033	AXON - DOCK WALL MOUNT - BRACKET ASSY	16	1	08/15/2024
AB4 Multi Bay Dock Bundle	70033	AXON - DOCK WALL MOUNT - BRACKET ASSY	2	1	08/15/2024
AB4 Multi Bay Dock Bundle	71019	AXON BODY - DOCK POWERCORD - NORTH AMERICA	16	1	08/15/2024
AB4 Multi Bay Dock Bundle	71019	AXON BODY - DOCK POWERCORD - NORTH AMERICA	2	1	08/15/2024
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	100126	AXON VR - TACTICAL BAG	5	1	08/15/2024
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	100390	AXON TASER 10 - HANDLE - YELLOW CLASS 3R	107	2	08/15/2024
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	100390	AXON TASER 10 - HANDLE - YELLOW CLASS 3R	3	2	08/15/2024
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	100393	AXON TASER 10 - MAGAZINE - LIVE DUTY BLACK	107	1	08/15/2024
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	100393	AXON TASER 10 - MAGAZINE - LIVE DUTY BLACK	3	1	08/15/2024
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	100394	AXON TASER 10 - MAGAZINE - HALT TRAINING BLUE	8	1	08/15/2024
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	100395	AXON TASER 10 - MAGAZINE - LIVE TRAINING PURPLE	6	1	08/15/2024
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	100396	AXON TASER 10 - MAGAZINE - INERT RED	30	1	08/15/2024
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	100399	AXON TASER 10 - CARTRIDGE - LIVE	2140	1	08/15/2024
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	100400	AXON TASER 10 - CARTRIDGE - HALT	650	1	08/15/2024
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	100401	AXON TASER 10 - CARTRIDGE - INERT	300	1	08/15/2024
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	100611	AXON TASER 10 - SAFARILAND HOLSTER - RH	107	1	08/15/2024
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	100623	AXON TASER - TRAINING - ENHANCED HALT SUIT V2	2	1	08/15/2024
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	100681	AXON SIGNAL - SIDEARM SENSOR ONLY	107	1	08/15/2024
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	100748	AXON VR - CONTROLLER - TASER 10	5	1	08/15/2024
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	100832	AXON VR - CONTROLLER - HANDGUN VR19H	5	1	08/15/2024
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	101124	AXON VR - HOLSTER - T10 BLACKHAWK GREY - RH	4	1	08/15/2024
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	101125	AXON VR - HOLSTER - T10 BLACKHAWK GREY - LH	1	1	08/15/2024
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	101294	AXON VR - TABLET	5	1	08/15/2024
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	101300	AXON VR - TABLET CASE	5	1	08/15/2024
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	20018	AXON TASER - BATTERY PACK - TACTICAL	107	1	08/15/2024
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	20018	AXON TASER - BATTERY PACK - TACTICAL	19	1	08/15/2024
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	20018	AXON TASER - BATTERY PACK - TACTICAL	3	1	08/15/2024
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	20378	AXON VR - HEADSET - HTC FOCUS 3	5	1	08/15/2024
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	70033	AXON - DOCK WALL MOUNT - BRACKET ASSY	2	1	08/15/2024
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	71019	AXON BODY - DOCK POWERCORD - NORTH AMERICA	2	1	08/15/2024
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	71044	AXON SIGNAL - BATTERY - CR2430 SINGLE PACK	214	1	08/15/2024
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	74200	AXON TASER - DOCK - SIX BAY PLUS CORE	2	1	08/15/2024
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	80087	AXON TASER - TARGET - CONDUCTIVE PROFESSIONAL RUGGEDIZED	2	1	08/15/2024
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	80090	AXON TASER - TARGET FRAME - PROFESSIONAL 27.5 IN X 75 IN	2	1	08/15/2024
BUNDLE - UNLIMITED PLUS	100126	AXON VR - TACTICAL BAG	2	1	08/15/2024
BUNDLE - UNLIMITED PLUS	100681	AXON SIGNAL - SIDEARM SENSOR ONLY	26	1	08/15/2024
BUNDLE - UNLIMITED PLUS	100748	AXON VR - CONTROLLER - TASER 10	2	1	08/15/2024
BUNDLE - UNLIMITED PLUS	100832	AXON VR - CONTROLLER - HANDGUN VR19H	2	1	08/15/2024

Bundle	Item	Description	QTY	Shipping Location	Estimated Delivery Date
BUNDLE - UNLIMITED PLUS	101124	AXON VR - HOLSTER - T10 BLACKHAWK GREY - RH	1	1	08/15/2024
BUNDLE - UNLIMITED PLUS	101294	AXON VR - TABLET	2	1	08/15/2024
BUNDLE - UNLIMITED PLUS	101300	AXON VR - TABLET CASE	2	1	08/15/2024
BUNDLE - UNLIMITED PLUS	20378	AXON VR - HEADSET - HTC FOCUS 3	2	1	08/15/2024
BUNDLE - UNLIMITED PLUS	71044	AXON SIGNAL - BATTERY - CR2430 SINGLE PACK	52	1	08/15/2024
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	100399	AXON TASER 10 - CARTRIDGE - LIVE	330	1	08/15/2025
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	100400	AXON TASER 10 - CARTRIDGE - HALT	860	1	08/15/2025
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	100399	AXON TASER 10 - CARTRIDGE - LIVE	320	1	08/15/2026
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	100400	AXON TASER 10 - CARTRIDGE - HALT	860	1	08/15/2026
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	100210	AXON VR - TAP REFRESH 1 - TABLET	5	1	02/15/2027
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	101009	AXON VR - TAP REFRESH 1 - SIDEARM CONTROLLER	5	1	02/15/2027
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	101012	AXON VR - TAP REFRESH 1 - CONTROLLER	5	1	02/15/2027
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	20373	AXON VR - TAP REFRESH 1 - HEADSET	5	1	02/15/2027
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	73309	AXON BODY - TAP REFRESH 1 - CAMERA	110	1	02/15/2027
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	73689	AXON BODY - TAP REFRESH 1 - DOCK MULTI BAY	14	1	02/15/2027
BUNDLE - UNLIMITED PLUS	100210	AXON VR - TAP REFRESH 1 - TABLET	2	1	02/15/2027
BUNDLE - UNLIMITED PLUS	101009	AXON VR - TAP REFRESH 1 - SIDEARM CONTROLLER	2	1	02/15/2027
BUNDLE - UNLIMITED PLUS	101012	AXON VR - TAP REFRESH 1 - CONTROLLER	2	1	02/15/2027
BUNDLE - UNLIMITED PLUS	20373	AXON VR - TAP REFRESH 1 - HEADSET	2	1	02/15/2027
BUNDLE - UNLIMITED PLUS	73309	AXON BODY - TAP REFRESH 1 - CAMERA	26	1	02/15/2027
BUNDLE - UNLIMITED PLUS	73689	AXON BODY - TAP REFRESH 1 - DOCK MULTI BAY	4	1	02/15/2027
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	100399	AXON TASER 10 - CARTRIDGE - LIVE	320	1	08/15/2027
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	100400	AXON TASER 10 - CARTRIDGE - HALT	850	1	08/15/2027
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	100399	AXON TASER 10 - CARTRIDGE - LIVE	320	1	08/15/2028
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	100400	AXON TASER 10 - CARTRIDGE - HALT	860	1	08/15/2028
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	73310	AXON BODY - TAP REFRESH 2 - CAMERA	110	1	08/15/2029
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	73688	AXON BODY - TAP REFRESH 2 - DOCK MULTI BAY	14	1	08/15/2029
BUNDLE - UNLIMITED PLUS	73310	AXON BODY - TAP REFRESH 2 - CAMERA	26	1	08/15/2029
BUNDLE - UNLIMITED PLUS	73688	AXON BODY - TAP REFRESH 2 - DOCK MULTI BAY	4	1	08/15/2029

Software

Bundle	Item	Description	QTY	Estimated Start Date	Estimated End Date
Basic License Bundle	73683	AXON EVIDENCE - STORAGE - 10GB A LA CARTE	9	08/15/2024	09/14/2024
Basic License Bundle	73840	AXON EVIDENCE - ECOM LICENSE - BASIC	9	08/15/2024	09/14/2024
Pro License Bundle	73683	AXON EVIDENCE - STORAGE - 10GB A LA CARTE	405	08/15/2024	09/14/2024
Pro License Bundle	73746	AXON EVIDENCE - ECOM LICENSE - PRO	135	08/15/2024	09/14/2024
A la Carte	100801	AXON RECORDS - OSP LICENSE	119	08/15/2024	09/14/2024
A la Carte	73478	AXON EVIDENCE - REDACTION ASSISTANT USER LICENSE	119	08/15/2024	09/14/2024
A la Carte	73618	AXON COMMUNITY REQUEST	119	08/15/2024	09/14/2024
A la Carte	73680	AXON RESPOND PLUS - LICENSE	119	08/15/2024	09/14/2024
A la Carte	73682	AXON EVIDENCE - AUTO TAGGING LICENSE	119	08/15/2024	09/14/2024
A la Carte	73739	AXON PERFORMANCE - LICENSE	119	08/15/2024	09/14/2024
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	100801	AXON RECORDS - OSP LICENSE	107	09/15/2024	09/14/2029
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	101180	AXON TASER - DATA SCIENCE PROGRAM	107	09/15/2024	09/14/2029
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	20248	AXON TASER - EVIDENCE.COM LICENSE	107	09/15/2024	09/14/2029
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	20248	AXON TASER - EVIDENCE.COM LICENSE	2	09/15/2024	09/14/2029
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	20370	AXON VR - FULL ACCESS - TASER ADD-ON USER	107	09/15/2024	09/14/2029
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	73478	AXON EVIDENCE - REDACTION ASSISTANT USER LICENSE	107	09/15/2024	09/14/2029

Bundle	Item	Description	QTY	Shipping Location	Estimated Delivery Date
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	73618	AXON COMMUNITY REQUEST	107	09/15/2024	09/14/2029
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	73638	AXON STANDARDS - LICENSE	107	09/15/2024	09/14/2029
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	73680	AXON RESPOND PLUS - LICENSE	107	09/15/2024	09/14/2029
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	73682	AXON EVIDENCE - AUTO TAGGING LICENSE	107	09/15/2024	09/14/2029
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	73683	AXON EVIDENCE - STORAGE - 10GB A LA CARTE	1070	09/15/2024	09/14/2029
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	73686	AXON EVIDENCE - STORAGE - UNLIMITED (AXON DEVICE)	107	09/15/2024	09/14/2029
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	73739	AXON PERFORMANCE - LICENSE	107	09/15/2024	09/14/2029
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	73746	AXON EVIDENCE - ECOM LICENSE - PRO	107	09/15/2024	09/14/2029
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	73746	AXON EVIDENCE - ECOM LICENSE - PRO	1	09/15/2024	09/14/2029
BUNDLE - UNLIMITED PLUS	100801	AXON RECORDS - OSP LICENSE	26	09/15/2024	09/14/2029
BUNDLE - UNLIMITED PLUS	20370	AXON VR - FULL ACCESS - TASER ADD-ON USER	26	09/15/2024	09/14/2029
BUNDLE - UNLIMITED PLUS	73478	AXON EVIDENCE - REDACTION ASSISTANT USER LICENSE	26	09/15/2024	09/14/2029
BUNDLE - UNLIMITED PLUS	73618	AXON COMMUNITY REQUEST	26	09/15/2024	09/14/2029
BUNDLE - UNLIMITED PLUS	73638	AXON STANDARDS - LICENSE	26	09/15/2024	09/14/2029
BUNDLE - UNLIMITED PLUS	73680	AXON RESPOND PLUS - LICENSE	26	09/15/2024	09/14/2029
BUNDLE - UNLIMITED PLUS	73682	AXON EVIDENCE - AUTO TAGGING LICENSE	26	09/15/2024	09/14/2029
BUNDLE - UNLIMITED PLUS	73683	AXON EVIDENCE - STORAGE - 10GB A LA CARTE	260	09/15/2024	09/14/2029
BUNDLE - UNLIMITED PLUS	73686	AXON EVIDENCE - STORAGE - UNLIMITED (AXON DEVICE)	26	09/15/2024	09/14/2029
BUNDLE - UNLIMITED PLUS	73739	AXON PERFORMANCE - LICENSE	26	09/15/2024	09/14/2029
BUNDLE - UNLIMITED PLUS	73746	AXON EVIDENCE - ECOM LICENSE - PRO	26	09/15/2024	09/14/2029
Pro License Bundle	73683	AXON EVIDENCE - STORAGE - 10GB A LA CARTE	48	09/15/2024	09/14/2029
Pro License Bundle	73746	AXON EVIDENCE - ECOM LICENSE - PRO	16	09/15/2024	09/14/2029

Services

Bundle	Item	Description	QTY
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	100751	AXON TASER 10 - REPLACEMENT ACCESS PROGRAM - DUTY CARTRIDGE	107
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	101184	AXON INVESTIGATE - TRAINING - OPERATOR AND EXAMINER	8
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	101193	AXON TASER - ON DEMAND CERTIFICATION	1
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	11642	AXON INVESTIGATE - THIRD PARTY VIDEO SUPPORT	107
BUNDLE - UNLIMITED PLUS	101184	AXON INVESTIGATE - TRAINING - OPERATOR AND EXAMINER	2
BUNDLE - UNLIMITED PLUS	11642	AXON INVESTIGATE - THIRD PARTY VIDEO SUPPORT	26
A la Carte	101208	AXON TASER 10 - 2 DAY INSTRUCTOR COURSE - INSIDE SALES	1
A la Carte	101267	AXON VR - PSO - FULL INSTALLATION	1
A la Carte	75014	AXON SIGNAL - PSO - INSTALLATION SERVICE ONSITE	1

Warranties

Bundle	Item	Description	QTY	Estimated Start Date	Estimated End Date
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	100197	AXON VR - EXT WARRANTY - HTC FOCUS 3 HEADSET	5	08/15/2025	09/14/2029
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	100213	AXON VR - EXT WARRANTY - TABLET	5	08/15/2025	09/14/2029
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	100704	AXON TASER 10 - EXT WARRANTY - HANDLE	107	08/15/2025	09/14/2029
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	100704	AXON TASER 10 - EXT WARRANTY - HANDLE	3	08/15/2025	09/14/2029
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	101007	AXON VR - EXT WARRANTY - CONTROLLER	5	08/15/2025	09/14/2029
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	101008	AXON VR - EXT WARRANTY - HANDGUN CONTROLLER	5	08/15/2025	09/14/2029
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	80374	AXON TASER - EXT WARRANTY - BATTERY PACK T7/T10	107	08/15/2025	09/14/2029
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	80374	AXON TASER - EXT WARRANTY - BATTERY PACK T7/T10	19	08/15/2025	09/14/2029
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	80374	AXON TASER - EXT WARRANTY - BATTERY PACK T7/T10	3	08/15/2025	09/14/2029
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	80396	AXON TASER - EXT WARRANTY - DOCK SIX BAY T7/T10	2	08/15/2025	09/14/2029
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	80464	AXON BODY - TAP WARRANTY - CAMERA	107	08/15/2025	09/14/2029
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	80464	AXON BODY - TAP WARRANTY - CAMERA	3	08/15/2025	09/14/2029
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	80465	AXON BODY - TAP WARRANTY - MULTI BAY DOCK	14	08/15/2025	09/14/2029
BUNDLE - UNLIMITED PLUS	100197	AXON VR - EXT WARRANTY - HTC FOCUS 3 HEADSET	2	08/15/2025	09/14/2029

Warranties

Bundle	Item	Description	QTY	Estimated Start Date	Estimated End Date
BUNDLE - UNLIMITED PLUS	100213	AXON VR - EXT WARRANTY - TABLET	2	08/15/2025	09/14/2029
BUNDLE - UNLIMITED PLUS	101007	AXON VR - EXT WARRANTY - CONTROLLER	2	08/15/2025	09/14/2029
BUNDLE - UNLIMITED PLUS	101008	AXON VR - EXT WARRANTY - HANDGUN CONTROLLER	2	08/15/2025	09/14/2029
BUNDLE - UNLIMITED PLUS	80464	AXON BODY - TAP WARRANTY - CAMERA	26	08/15/2025	09/14/2029
BUNDLE - UNLIMITED PLUS	80465	AXON BODY - TAP WARRANTY - MULTI BAY DOCK	4	08/15/2025	09/14/2029

### Shipping Locations

Location Number	Street	City	State	Zip	Country
1	1000 CIVIC CENTER DR	TRACY	CA	95376-4079	USA
2	1000 CIVIC CENTER DR	TRACY	CA	95376-4079	USA

### Payment Details

Aug 2024						
Invoice Plan	Item	Description	Qty	Subtotal	Tax	Total
Annual Payment 1	B00022	BUNDLE - UNLIMITED PLUS	26	\$74,355.84	\$1,750.18	\$76,106.02
Annual Payment 1	M00012	BUNDLE - OFFICER SAFETY PLAN 10 PLUS	107	\$351,148.32	\$10,221.23	\$361,369.55
Annual Payment 1	ProLicense	Pro License Bundle	16	\$8,319.36	\$0.00	\$8,319.36
Upfront Costs/Gap Coverage	100801	AXON RECORDS - OSP LICENSE	119	\$4,641.00	\$0.00	\$4,641.00
Upfront Costs/Gap Coverage	101208	AXON TASER 10 - 2 DAY INSTRUCTOR COURSE - INSIDE SALES	1	\$2,500.00	\$0.00	\$2,500.00
Upfront Costs/Gap Coverage	101267	AXON VR - PSO - FULL INSTALLATION	1	\$12,000.00	\$0.00	\$12,000.00
Upfront Costs/Gap Coverage	73478	AXON EVIDENCE - REDACTION ASSISTANT USER LICENSE	119	\$1,190.00	\$0.00	\$1,190.00
Upfront Costs/Gap Coverage	73618	AXON COMMUNITY REQUEST	119	\$1,190.00	\$0.00	\$1,190.00
Upfront Costs/Gap Coverage	73680	AXON RESPOND PLUS - LICENSE	119	\$2,356.20	\$0.00	\$2,356.20
Upfront Costs/Gap Coverage	73682	AXON EVIDENCE - AUTO TAGGING LICENSE	119	\$1,190.00	\$0.00	\$1,190.00
Upfront Costs/Gap Coverage	73739	AXON PERFORMANCE - LICENSE	119	\$1,190.00	\$0.00	\$1,190.00
Upfront Costs/Gap Coverage	75014	AXON SIGNAL - PSO - INSTALLATION SERVICE ONSITE	1	\$3,000.00	\$0.00	\$3,000.00
Upfront Costs/Gap Coverage	BasicLicense	Basic License Bundle	9	\$135.00	\$0.00	\$135.00
Upfront Costs/Gap Coverage	H00001	AB4 Camera Bundle	18	\$15,282.00	\$1,260.77	\$16,542.77
Upfront Costs/Gap Coverage	H00001	AB4 Camera Bundle	115	\$0.00	\$0.00	\$0.00
Upfront Costs/Gap Coverage	H00002	AB4 Multi Bay Dock Bundle	2	\$3,277.80	\$270.43	\$3,548.23
Upfront Costs/Gap Coverage	H00002	AB4 Multi Bay Dock Bundle	16	\$0.00	\$0.00	\$0.00
Upfront Costs/Gap Coverage	ProLicense	Pro License Bundle	135	\$5,400.00	\$0.00	\$5,400.00
<b>Total</b>				<b>\$487,175.52</b>	<b>\$13,502.61</b>	<b>\$500,678.13</b>

Sep 2024						
Invoice Plan	Item	Description	Qty	Subtotal	Tax	Total
Invoice Upon Fulfillment	M00012	BUNDLE - OFFICER SAFETY PLAN 10 PLUS	107	\$0.00	\$0.00	\$0.00
<b>Total</b>				<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>

Aug 2025						
Invoice Plan	Item	Description	Qty	Subtotal	Tax	Total
Annual Payment 2	B00022	BUNDLE - UNLIMITED PLUS	26	\$74,355.84	\$1,750.18	\$76,106.02
Annual Payment 2	M00012	BUNDLE - OFFICER SAFETY PLAN 10 PLUS	107	\$351,148.32	\$10,221.23	\$361,369.55
Annual Payment 2	ProLicense	Pro License Bundle	16	\$8,319.36	\$0.00	\$8,319.36
<b>Total</b>				<b>\$433,823.52</b>	<b>\$11,971.41</b>	<b>\$445,794.93</b>

Aug 2026						
Invoice Plan	Item	Description	Qty	Subtotal	Tax	Total
Annual Payment 3	B00022	BUNDLE - UNLIMITED PLUS	26	\$74,355.84	\$1,750.18	\$76,106.02
Annual Payment 3	M00012	BUNDLE - OFFICER SAFETY PLAN 10 PLUS	107	\$351,148.32	\$10,221.23	\$361,369.55

Aug 2026						
Invoice Plan	Item	Description	Qty	Subtotal	Tax	Total
Annual Payment 3	ProLicense	Pro License Bundle	16	\$8,319.36	\$0.00	\$8,319.36
Total				\$433,823.52	\$11,971.41	\$445,794.93

Aug 2027						
Invoice Plan	Item	Description	Qty	Subtotal	Tax	Total
Annual Payment 4	B00022	BUNDLE - UNLIMITED PLUS	26	\$74,355.84	\$1,750.18	\$76,106.02
Annual Payment 4	M00012	BUNDLE - OFFICER SAFETY PLAN 10 PLUS	107	\$351,148.32	\$10,221.23	\$361,369.55
Annual Payment 4	ProLicense	Pro License Bundle	16	\$8,319.36	\$0.00	\$8,319.36
Total				\$433,823.52	\$11,971.41	\$445,794.93

Aug 2028						
Invoice Plan	Item	Description	Qty	Subtotal	Tax	Total
Annual Payment 5	B00022	BUNDLE - UNLIMITED PLUS	26	\$74,355.84	\$1,750.26	\$76,106.10
Annual Payment 5	M00012	BUNDLE - OFFICER SAFETY PLAN 10 PLUS	107	\$351,148.32	\$10,221.20	\$361,369.52
Annual Payment 5	ProLicense	Pro License Bundle	16	\$8,319.36	\$0.00	\$8,319.36
Total				\$433,823.52	\$11,971.46	\$445,794.98

Tax is estimated based on rates applicable at date of quote and subject to change at time of invoicing. If a tax exemption certificate should be applied, please submit prior to invoicing.

## Standard Terms and Conditions

### Axon Enterprise Inc. Sales Terms and Conditions

#### Axon Master Services and Purchasing Agreement:

This Quote is limited to and conditional upon your acceptance of the provisions set forth herein and Axon's Master Services and Purchasing Agreement (posted at <https://www.axon.com/sales-terms-and-conditions>), as well as the attached Statement of Work (SOW) for Axon Fleet and/or Axon Interview Room purchase, if applicable. In the event you and Axon have entered into a prior agreement to govern all future purchases, that agreement shall govern to the extent it includes the products and services being purchased and does not conflict with the Axon Customer Experience Improvement Program Appendix as described below.

#### ACEIP:

The Axon Customer Experience Improvement Program Appendix, which includes the sharing of de-identified segments of Agency Content with Axon to develop new products and improve your product experience (posted at [www.axon.com/legal/sales-terms-and-conditions](http://www.axon.com/legal/sales-terms-and-conditions)), is incorporated herein by reference. By signing below, you agree to the terms of the Axon Customer Experience Improvement Program.

#### Acceptance of Terms:

Any purchase order issued in response to this Quote is subject solely to the above referenced terms and conditions. By signing below, you represent that you are lawfully able to enter into contracts. If you are signing on behalf of an entity (including but not limited to the company, municipality, or government agency for whom you work), you represent to Axon that you have legal authority to bind that entity. If you do not have this authority, please do not sign this Quote.

## Exceptions to Standard Terms and Conditions

This is a contract renewal of contract #00060556.

BWC hardware contained in this quote at \$0 is considered a TAP refresh of the contract listed above. All TAP obligations of the contract listed above will be considered fulfilled upon execution of this quote.

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Signature

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Date Signed

6/25/2024





APPROVED AS TO FORM AND LEGALITY

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CITY ATTORNEY'S OFFICE

**TRACY CITY COUNCIL**

**RESOLUTION NO. 2024-**

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**1) DETERMINING THAT STRICT COMPLIANCE WITH THE BIDDING PROCESS IS NOT IN THE BEST INTEREST OF THE CITY PURSUANT TO TRACY MUNICIPAL CODE SECTION 2.20.180(B)(4) AND DISPENSING SUCH REQUIREMENTS FOR THE ACTIONS HEREIN; AND**

**(2) APPROVING A MASTER SERVICE AGREEMENT WITH AXON ENTERPRISE, INC. FOR THE PURCHASE, TRAINING, USAGE, AND ON-GOING MAINTENANCE OF THE POLICE DEPARTMENT'S SPECIFIED EQUIPMENT AND SOFTWARE SERVICES FOR A TERM OF FIVE YEARS AND FOR A TOTAL NOT TO EXCEED AMOUNT OF \$2,500,000**

**WHEREAS**, the Tracy Police Department (TPD) currently has 107 Sworn Officers and 26 professional staff members who carry a taser and/or body-worn camera as standard-issued equipment; and

**WHEREAS**, the City has been using Axon Enterprise, Inc. (Axon) tasers, body worn cameras, and cloud-based evidence system called Evidence.com since at least 2015; and

**WHEREAS**, the previous agreement with Axon has expired and it did not include an upgrade for the tasers; and

**WHEREAS**, the tasers (Taser 7) are five years old and after a thorough review and testing, staff found that Axon's newest model, Taser 10, will provide more benefits in comparison to the current Taser 7 used by the Department; and

**WHEREAS**, the staff has done due diligence and confirmed that Axon is still the exclusive supplier who can meet the City's requirements; and

**WHEREAS**, pursuant to the agreement with Axon, attached hereto as Exhibit 1, Axon will provide the City 107 taser/body-worn camera combination plans for sworn officers, 36 body-worn cameras for professional staff, ongoing maintenance and replacement of equipment, and unlimited video cloud-based evidence storage; and

**WHEREAS**, as per Axon's requirements, the City is using the agreement template provided by the Axon, which agreement has a heading of "Master Professional Services Agreement" (MPSA); and

**WHEREAS**, notwithstanding the name used by Axon, by its terms and conditions, the agreement is deemed to be a Master Services Agreement (GSA) under the Tracy Municipal Code; and

**WHEREAS**, the GSA provides additional services and integrations that allow the tasers to communicate with the body-worn camera to alert the camera to turn on when the weapon is drawn, the body-worn camera automatically integrates with the Department's Records Management System to auto-tag the case number and set the video retention date according to the City's retention schedule, and a redaction assistant; and

**WHEREAS**, Tracy Municipal Code Section 2.20.180(b)(4) authorizes the City Council to approve an exception to the contracting procedure for GSAs where the City Council finds compliance is not in the best interest of the City for the subject services; and

**WHEREAS**, the City seeks to enter into a five-year agreement with Axon Enterprise, Inc. for a total cost not to exceed \$2,500,000 to be funded through TPD's operating budget.

**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 for the City of Tracy finds, pursuant to Tracy Municipal Code Section 2.20.180(b)(4), compliance with the procedure is not in the best interest of the City for the commodities, equipment or general services set forth herein; and be it further

**RESOLVED:** That City Council does hereby approve a Master Services Agreement with Axon Enterprise Inc., attached hereto as Exhibit 1, for the purchase, training, usage, and on-going maintenance of the Police Department's Tasers, body-worn cameras, and cloud-based evidence system, Evidence.com, for a term of five years and for a total not-to-exceed amount of \$2,500,000; 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.

\* \* \* \* \*

Resolution 2024-  
Page 3

The foregoing Resolution 2024-\_\_\_\_\_ was adopted by the Tracy City Council on September 3, 2024 by the following vote:

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

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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

EXHIBITS:

(1) Master Services Agreement with Axon Enterprise Inc.



## Master Services and Purchasing Agreement for Customer

This Master Services and Purchasing Agreement ("**Agreement**") is between Axon Enterprise, Inc. ("**Axon**"), and the customer listed below or, if no customer is listed below, the customer on the Quote attached hereto ("**Customer**"). This Agreement is effective as of the later of the (a) last signature date on this Agreement or (b) date of acceptance of the Quote ("**Effective Date**"). Axon and Customer are each a "**Party**" and collectively "**Parties**". This Agreement governs Customer's purchase and use of the Axon Devices and Services detailed in the Quote Appendix ("**Quote**"). It is the intent of the Parties that this Agreement will govern all subsequent purchases by Customer for the same Axon Devices and Services in the Quote, and all such subsequent quotes accepted by Customer shall be also incorporated into this Agreement by reference as a Quote. The Parties agree as follows:

### 1. **Definitions.**

- 1.1. "**Axon Cloud Services**" means Axon's web services, including but not limited to, Axon Evidence, Axon Records, Axon Dispatch, FUSUS services and interactions between Axon Evidence and Axon Devices or Axon client software. Axon Cloud Service excludes third-party applications, hardware warranties, and my.evidence.com.
- 1.2. "**Axon Device**" means all hardware provided by Axon under this Agreement. Axon-manufactured Devices are a subset of Axon Devices.
- 1.3. "**Quote**" means an offer to sell and is only valid for devices and services on the offer at the specified prices. Any inconsistent or supplemental terms within Customer's purchase order in response to a Quote will be void. Orders are subject to prior credit approval. Changes in the deployment estimated ship date may change charges in the Quote. Shipping dates are estimates only. Axon is not responsible for typographical errors in any Quote by Axon, and Axon reserves the right to cancel any orders resulting from such errors.
- 1.4. "**Services**" means all services provided by Axon under this Agreement, including software, Axon Cloud Services, and professional services.

### 2. **Term.** This Agreement begins on the Effective Date and continues until all subscriptions hereunder have expired or have been terminated ("**Term**").

- 2.1. All subscriptions including Axon Evidence, Axon Fleet, Officer Safety Plans, Technology Assurance Plans, and TASER 7 or TASER 10 plans begin on the date stated in the Quote. Each subscription term ends upon completion of the subscription stated in the Quote ("**Subscription Term**").
- 2.2. Upon completion of the Subscription Term, the Subscription Term will automatically renew for an additional 5 years ("**Renewal Term**"). For purchase of TASER 7 or TASER 10 as a standalone, Axon may increase pricing to its then-current list pricing for any Renewal Term. For all other purchases, Axon may increase pricing on all line items in the Quote by up to 3% at the beginning of each year of the Renewal Term. New devices and services may require additional terms. Axon will not authorize services until Axon receives a signed Quote or accepts a purchase order, whichever is first.

### 3. **Payment.** Axon invoices for Axon Devices upon shipment, or on the date specified within the invoicing plan in the Quote. Payment is due net 30 days from the invoice date. Axon invoices for Axon Cloud Services on an upfront yearly basis prior to the beginning of the Subscription Term and upon the anniversary of the Subscription Term. Payment obligations are non-cancelable. Unless otherwise prohibited by law, Customer will pay interest on all past-due sums at the lower of one-and-a-half percent (1.5%) per month or the highest rate allowed by law. Customer will pay invoices without setoff, deduction, or withholding. If Axon sends a past due account to collections, Customer is responsible for collection and attorneys' fees.

### 4. **Taxes.** Customer is responsible for sales and other taxes associated with the order unless Customer provides Axon a valid tax exemption certificate.

### 5. **Shipping.** Axon may make partial shipments and ship Axon Devices from multiple locations. All shipments are EXW (Incoterms 2020) via common carrier. Title and risk of loss pass to Customer upon Axon's delivery to the common carrier. Customer is responsible for any shipping charges in the Quote.

### 6. **Returns.** All sales are final. Axon does not allow refunds or exchanges, except warranty returns or as provided by state or federal law.

### 7. **Warranty.**

- 7.1. **Limited Warranty.** Axon warrants that Axon-manufactured Devices are free from defects in workmanship and materials for one (1) year from the date of Customer's receipt, except Signal Sidearm and Axon-manufactured accessories, which Axon warrants for thirty (30) months and ninety (90) days, respectively, from the date of Customer's receipt. Used conducted energy weapon ("**CEW**") cartridges are deemed to have operated properly. Extended warranties run from the expiration of the one (1) year hardware warranty through the extended warranty term purchased.

Title: Master Services and Purchasing Agreement between Axon and Customer

Department: Legal

Version: 21

Release Date: 4/1/2024



- 7.2. **Disclaimer.** All software and Axon Cloud Services are provided "AS IS," without any warranty of any kind, either express or implied, including without limitation the implied warranties of merchantability, fitness for a particular purpose and non-infringement. Axon Devices and Services that are not manufactured, published or performed by Axon ("Third-Party Products") are not covered by Axon's warranty and are only subject to the warranties of the third-party provider or manufacturer.
- 7.3. **Claims.** If Axon receives a valid warranty claim for an Axon-manufactured Device during the warranty term, Axon's sole responsibility is to repair or replace the Axon-manufactured Device with the same or like Axon-manufactured Device, at Axon's option. A replacement Axon-manufactured Device will be new or like new. Axon will warrant the replacement Axon-manufactured Device for the longer of (a) the remaining warranty of the original Axon-manufactured Device or (b) ninety (90) days from the date of repair or replacement.
- 7.3.1. If Customer exchanges an Axon Device or part, the replacement item becomes Customer's property, and the replaced item becomes Axon's property. Before delivering an Axon-manufactured Device for service, Customer must upload Axon-manufactured Device data to Axon Evidence or download it and retain a copy. Axon is not responsible for any loss of software, data, or other information contained in storage media or any part of the Axon-manufactured Device sent to Axon for service.
- 7.4. **Spare Axon Devices.** At Axon's reasonable discretion, Axon may provide Customer a predetermined number of spare Axon Devices as detailed in the Quote ("**Spare Axon Devices**"). Spare Axon Devices are intended to replace broken or non-functioning units while Customer submits the broken or non-functioning units, through Axon's warranty return process. Axon will repair or replace the unit with a replacement Axon Device. Title and risk of loss for all Spare Axon Devices shall pass to Customer in accordance with shipping terms under Section 5. Axon assumes no liability or obligation in the event Customer does not utilize Spare Axon Devices for the intended purpose.
- 7.5. **Limitations.** Axon's warranty excludes damage related to: (a) failure to follow Axon Device use instructions; (b) Axon Devices used with equipment not manufactured or recommended by Axon; (c) abuse, misuse, or intentional damage to Axon Device; (d) force majeure; (e) Axon Devices repaired or modified by persons other than Axon without Axon's written permission; or (f) Axon Devices with a defaced or removed serial number. Axon's warranty will be void if Customer resells Axon Devices.
- 7.5.1. **To the extent permitted by law, the above warranties and remedies are exclusive. Axon disclaims all other warranties, remedies, and conditions, whether oral, written, statutory, or implied. If statutory or implied warranties cannot be lawfully disclaimed, then such warranties are limited to the duration of the warranty described above and by the provisions in this Agreement. Customer confirms and agrees that, in deciding whether to sign this Agreement, it has not relied on any statement or representation by Axon or anyone acting on behalf of Axon related to the subject matter of this Agreement that is not in this Agreement.**
- 7.5.2. **Axon's cumulative liability to any party for any loss or damage resulting from any claim, demand, or action arising out of or relating to this Agreement will not exceed the purchase price paid to Axon for the Axon Device, or if for Services, the amount paid for such Services over the twelve (12) months preceding the claim. Neither Party will be liable for special, indirect, incidental, punitive or consequential damages, however caused, whether for breach of warranty or contract, negligence, strict liability, tort or any other legal theory.**
- 7.6. **Online Support Platforms.** Use of Axon's online support platforms (e.g., Axon Academy and MyAxon) is governed by the Axon Online Support Platforms Terms of Use Appendix available at [www.axon.com/sales-terms-and-conditions](http://www.axon.com/sales-terms-and-conditions).
- 7.7. **Third-Party Software and Services.** Use of software or services other than those provided by Axon is governed by the terms, if any, entered into between Customer and the respective third-party provider, including, without limitation, the terms applicable to such software or services located at [www.axon.com/sales-terms-and-conditions](http://www.axon.com/sales-terms-and-conditions), if any.
- 7.8. **Axon Aid.** Upon mutual agreement between Axon and Customer, Axon may provide certain products and services to Customer, as a charitable donation under the Axon Aid program. In such event, Customer expressly waives and releases any and all claims, now known or hereafter known, against Axon and its officers, directors, employees, agents, contractors, affiliates, successors, and assigns (collectively, "**Releasees**"), including but not limited to, on account of injury, death, property damage, or loss of data, arising out of or attributable to the Axon Aid program whether arising out of the negligence of any Releasees or otherwise. Customer agrees not to make or bring any such claim against any Releasee, and forever release and discharge all Releasees from liability under such claims. Customer expressly allows Axon to publicly announce its participation in Axon Aid and use its name in marketing materials. Axon may terminate the Axon Aid program without cause immediately



## Master Services and Purchasing Agreement for Customer

upon notice to the Customer.

8. **Statement of Work.** Certain Axon Devices and Services, including Axon Interview Room, Axon Channel Services, and Axon Fleet, may require a Statement of Work that details Axon's Service deliverables ("**SOW**"). In the event Axon provides an SOW to Customer, Axon is only responsible for the performance of Services described in the SOW. Additional services are out of scope. The Parties must document scope changes in a written and signed change order. Changes may require an equitable adjustment in fees or schedule. The SOW is incorporated into this Agreement by reference.
9. **Axon Device Warnings.** See [www.axon.com/legal](http://www.axon.com/legal) for the most current Axon Device warnings.
10. **Design Changes.** Axon may make design changes to any Axon Device or Service without notifying Customer or making the same change to Axon Devices and Services previously purchased by Customer.
11. **Bundled Offerings.** Some offerings in bundled offerings may not be generally available at the time of Customer's purchase. Axon will not provide a refund, credit, or additional discount beyond what is in the Quote due to a delay of availability or Customer's election not to utilize any portion of an Axon bundle.
12. **Insurance.** Axon will maintain General Liability, Workers' Compensation, and Automobile Liability insurance. Upon request, Axon will supply certificates of insurance.
13. **IP Rights.** Axon owns and reserves all right, title, and interest in Axon-manufactured Devices and Services and suggestions to Axon, including all related intellectual property rights. Customer will not cause any Axon proprietary rights to be violated.
14. **IP Indemnification.** Axon will indemnify Customer against all claims, losses, and reasonable expenses from any third-party claim alleging that the use of Axon-manufactured Devices or Services infringes or misappropriates the third-party's intellectual property rights. Customer must promptly provide Axon with written notice of such claim, tender to Axon the defense or settlement of such claim at Axon's expense and cooperate fully with Axon in the defense or settlement of such claim. Axon's IP indemnification obligations do not apply to claims based on (a) modification of Axon-manufactured Devices or Services by Customer or a third-party not approved by Axon; (b) use of Axon-manufactured Devices and Services in combination with hardware or services not approved by Axon; (c) use of Axon Devices and Services other than as permitted in this Agreement; or (d) use of Axon software that is not the most current release provided by Axon.
15. **Customer Responsibilities.** Customer is responsible for (a) Customer's use of Axon Devices; (b) breach of this Agreement or violation of applicable law by Customer or an Customer end user; (c) disputes between Customer and a third-party over Customer's use of Axon Devices; (d) ensuring Axon Devices are destroyed and disposed of securely and sustainably at Customer's cost; and (e) any regulatory violations or fines, as a result of improper destruction or disposal of Axon Devices.
16. **Termination.**
  - 16.1. **For Breach.** A Party may terminate this Agreement for cause if it provides thirty (30) days written notice of the breach to the other Party, and the breach remains uncured at the end of thirty (30) days. If Customer terminates this Agreement due to Axon's uncured breach, Axon will refund prepaid amounts on a prorated basis based on the effective date of termination.
  - 16.2. **By Customer.** If sufficient funds are not appropriated or otherwise legally available to pay the fees, Customer may terminate this Agreement. Customer will deliver notice of termination under this section as soon as reasonably practicable.
  - 16.3. **Effect of Termination.** Upon termination of this Agreement, Customer rights immediately terminate. Customer remains responsible for all fees incurred before the effective date of termination. If Customer purchases Axon Devices for less than the manufacturer's suggested retail price ("**MSRP**") and this Agreement terminates before the end of the Term, Axon will invoice Customer the difference between the MSRP for Axon Devices received, including any Spare Axon Devices, and amounts paid towards those Axon Devices. Only if terminating for non-appropriation, Customer may return Axon Devices to Axon within thirty (30) days of termination. MSRP is the standalone price of the individual Axon Device at the time of sale. For bundled Axon Devices, MSRP is the standalone price of all individual components.
17. **Confidentiality.** "**Confidential Information**" means nonpublic information designated as confidential or, given the nature of the information or circumstances surrounding disclosure, should reasonably be understood to be confidential. Each Party will take reasonable measures to avoid disclosure, dissemination, or unauthorized use of the other Party's Confidential Information. Unless required by law, neither Party will disclose the other Party's Confidential Information during the Term and for five (5) years thereafter. To the extent permissible by law, Axon pricing is Confidential Information and competition sensitive. If Customer receives a public records request to disclose Axon

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Confidential Information, to the extent allowed by law, Customer will provide notice to Axon before disclosure. Axon may publicly announce information related to this Agreement.

### 18. **General.**

- 18.1. **Force Majeure.** Neither Party will be liable for any delay or failure to perform due to a cause beyond a Party's reasonable control.
- 18.2. **Independent Contractors.** The Parties are independent contractors. Neither Party has the authority to bind the other. This Agreement does not create a partnership, franchise, joint venture, Customer, fiduciary, or employment relationship between the Parties.
- 18.3. **Third-Party Beneficiaries.** There are no third-party beneficiaries under this Agreement.
- 18.4. **Non-Discrimination.** Neither Party nor its employees will discriminate against any person based on race; religion; creed; color; sex; gender identity and expression; pregnancy; childbirth; breastfeeding; medical conditions related to pregnancy, childbirth, or breastfeeding; sexual orientation; marital status; age; national origin; ancestry; genetic information; disability; veteran status; or any class protected by local, state, or federal law.
- 18.5. **Export Compliance.** Each Party will comply with all import and export control laws and regulations.
- 18.6. **Assignment.** Neither Party may assign this Agreement without the other Party's prior written consent. Axon may assign this Agreement, its rights, or obligations without consent: (a) to an affiliate or subsidiary; or (b) for purposes of financing, merger, acquisition, corporate reorganization, or sale of all or substantially all its assets. This Agreement is binding upon the Parties respective successors and assigns.
- 18.7. **Waiver.** No waiver or delay by either Party in exercising any right under this Agreement constitutes a waiver of that right.
- 18.8. **Severability.** If a court of competent jurisdiction holds any portion of this Agreement invalid or unenforceable, the remaining portions of this Agreement will remain in effect.
- 18.9. **Survival.** The following sections will survive termination: Payment, Warranty, Axon Device Warnings, Indemnification, IP Rights, Customer Responsibilities and any other Sections detailed in the survival sections of the Appendices.
- 18.10. **Governing Law.** The laws of the country, state, province, or municipality where Customer is physically located, without reference to conflict of law rules, govern this Agreement and any dispute arising from it. The United Nations Convention for the International Sale of Goods does not apply to this Agreement.
- 18.11. **Notices.** All notices must be in English. Notices posted on Customer's Axon Evidence site are effective upon posting. Notices by email are effective on the sent date of the email. Notices by personal delivery are effective immediately. Notices to Customer shall be provided to the address on file with Axon. Notices to Axon shall be provided to Axon Enterprise, Inc., Attn: Legal, 17800 North 85th Street, Scottsdale, Arizona 85255 with a copy to [legal@axon.com](mailto:legal@axon.com).
- 18.12. **Entire Agreement.** This Agreement, the Appendices, including any applicable Appendices not attached herein for the products and services purchased, which are incorporated by reference and located in the Master Purchasing and Services Agreement located at <https://www.axon.com/sales-terms-and-conditions>, Quote and any SOW(s), represents the entire agreement between the Parties. This Agreement supersedes all prior agreements or understandings, whether written or verbal, regarding the subject matter of this Agreement. This Agreement may only be modified or amended in a writing signed by the Parties.



AXON

Master Services and Purchasing Agreement for Customer

Each Party, by and through its respective representative authorized to execute this Agreement, has duly executed and delivered this Agreement as of the date of signature.

AXON:

Axon Enterprise, Inc.

DocuSigned by:

Signature:

55DAE8B131A4424...

Name: Robert E. Driscoll Jr.

Title: Deputy General Counsel

Date: 7/12/2024 | 2:25 PM MST

CUSTOMER:

\_\_\_\_\_

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_





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## Axon Cloud Services Terms of Use Appendix

### 1. Definitions.

- a. **"Customer Content"** is data uploaded into, ingested by, or created in Axon Cloud Services within Customer's tenant, including media or multimedia uploaded into Axon Cloud Services by Customer. Customer Content includes Evidence but excludes Non-Content Data.
  - b. **"Evidence"** is media or multimedia uploaded into Axon Evidence as 'evidence' by an Customer. Evidence is a subset of Customer Content.
  - c. **"Non-Content Data"** is data, configuration, and usage information about Customer's Axon Cloud Services tenant, Axon Devices and client software, and users that is transmitted or generated when using Axon Devices. Non-Content Data includes data about users captured during account management and customer support activities. Non-Content Data does not include Customer Content.
  - d. **"Personal Data"** means any information relating to an identified or identifiable natural person. An identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person.
  - e. **"Provided Data"** means de-identified, de-personalized, data derived from Customer's TASER energy weapon deployment reports, related TASER energy weapon logs, body-worn camera footage, and incident reports.
  - f. **"Transformed Data"** means the Provided Data used for the purpose of quantitative evaluation of the performance and effectiveness of TASER energy weapons in the field across a variety of circumstances.
2. **Access.** Upon Axon granting Customer a subscription to Axon Cloud Services, Customer may access and use Axon Cloud Services to store and manage Customer Content. Customer may not exceed more end users than the Quote specifies. Axon Air requires an Axon Evidence subscription for each drone operator. For Axon Evidence Lite, Customer may access and use Axon Evidence only to store and manage TASER CEW and TASER CAM data ("**TASER Data**"). Customer may not upload non-TASER Data to Axon Evidence Lite.
3. **Customer Owns Customer Content.** Customer controls and owns all right, title, and interest in Customer Content. Except as outlined herein, Axon obtains no interest in Customer Content, and Customer Content is not Axon's business records. Customer is solely responsible for uploading, sharing, managing, and deleting Customer Content. Axon will only have access to Customer Content for the limited purposes set forth herein. Customer agrees to allow Axon access to Customer Content to (a) perform troubleshooting, maintenance, or diagnostic screenings; and (b) enforce this Agreement or policies governing use of the Axon products.
4. **Security.** Axon will implement commercially reasonable and appropriate measures to secure Customer Content against accidental or unlawful loss, access or disclosure. Axon will maintain a comprehensive information security program to protect Axon Cloud Services and Customer Content including logical, physical access, vulnerability, risk, and configuration management; incident monitoring and response; encryption of uploaded digital evidence; security education; and data protection. Axon agrees to the Federal Bureau of Investigation Criminal Justice Information Services Security Addendum for its digital evidence or records management systems.
5. **Customer Responsibilities.** Customer is responsible for (a) ensuring Customer owns Customer Content; (b) ensuring no Customer Content or Customer end user's use of Customer Content or Axon Cloud Services violates this Agreement or applicable laws; and (c) maintaining necessary computer equipment and Internet connections for use of Axon Cloud Services. If Customer becomes aware of any violation of this Agreement by an end user, Customer will immediately terminate that end user's access to Axon Cloud Services.
- a. Customer will also maintain the security of end usernames and passwords and security and access by end users to Customer Content. Customer is responsible for ensuring the configuration and utilization of Axon Cloud Services meet applicable Customer regulation and standards. Customer may not sell, transfer, or sublicense access to any other entity or person. Customer shall contact Axon immediately if an unauthorized party may be using Customer's account or Customer Content, or if account information is lost or stolen.



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6. **Privacy.** Customer's use of Axon Cloud Services is subject to the Axon Cloud Services Privacy Policy, a current version of which is available at <https://www.axon.com/legal/cloud-services-privacy-policy>. Customer agrees to allow Axon access to Non-Content Data from Customer to (a) perform troubleshooting, maintenance, or diagnostic screenings; (b) provide, develop, improve, and support current and future Axon products and related services; and (c) enforce this Agreement or policies governing the use of Axon products.
7. **Axon Body Wi-Fi Positioning.** Axon Body cameras may offer a feature to enhance location services where GPS/GNSS signals may not be available, for instance, within buildings or underground. Customer administrators can manage their choice to use this service within the administrative features of Axon Cloud Services. If Customer chooses to use this service, Axon must also enable the usage of the feature for Customer's Axon Cloud Services tenant. Customer will not see this option with Axon Cloud Services unless Axon has enabled Wi-Fi Positioning for Customer's Axon Cloud Services tenant. When Wi-Fi Positioning is enabled by both Axon and Customer, Non-Content and Personal Data will be sent to Skyhook Holdings, Inc. ("**Skyhook**") to facilitate the Wi-Fi Positioning functionality. Data controlled by Skyhook is outside the scope of the Axon Cloud Services Privacy Policy and is subject to the Skyhook Services Privacy Policy.
8. **Storage.** For Axon Unlimited Device Storage subscriptions, Customer may store unlimited data in Customer's Axon Evidence account only if data originates from Axon Capture or the applicable Axon Device. Axon may charge Customer additional fees for exceeding purchased storage amounts. Axon may place Customer Content that Customer has not viewed or accessed for six (6) months into archival storage. Customer Content in archival storage will not have immediate availability and may take up to twenty-four (24) hours to access.  
  
For Third-Party Unlimited Storage the following restrictions apply: (i) it may only be used in conjunction with a valid Axon's Evidence.com user license; (ii) is limited to data of the law enforcement Customer that purchased the Third-Party Unlimited Storage and the Axon's Evidence.com end user or Customer is prohibited from storing data for other law enforcement agencies; and (iii) Customer may only upload and store data that is directly related to: (1) the investigation of, or the prosecution of a crime; (2) common law enforcement activities; or (3) any Customer Content created by Axon Devices or Evidence.com.
9. **Location of Storage.** Axon may transfer Customer Content to third-party subcontractors for storage. Axon will determine the locations of data centers for storage of Customer Content. For United States agencies, Axon will ensure all Agency Content stored in Axon Cloud Services remains within the United States. Ownership of Customer Content remains with Customer.
10. **Suspension.** Axon may temporarily suspend Customer's or any end user's right to access or use any portion or all of Axon Cloud Services immediately upon notice, if Customer or end user's use of or registration for Axon Cloud Services may (a) pose a security risk to Axon Cloud Services or any third-party; (b) adversely impact Axon Cloud Services, the systems, or content of any other customer; (c) subject Axon, Axon's affiliates, or any third-party to liability; or (d) be fraudulent. Customer remains responsible for all fees incurred through suspension. Axon will not delete Customer Content because of suspension, except as specified in this Agreement.
11. **Axon Cloud Services Warranty.** Axon disclaims any warranties or responsibility for data corruption or errors before Customer uploads data to Axon Cloud Services.
12. **TASER Data Science Program.** Axon will provide a quantitative evaluation on the performance and effectiveness of TASER energy weapons in the field across a variety of circumstances.

If Customer purchases the TASER Data Science Program, Customer grants Axon, its affiliates, and assignees an irrevocable, perpetual, fully paid, royalty-free, and worldwide right and license to use Provided Data solely for the purposes of this Agreement and to create Transformed Data. Customer shall own all rights and title to Provided Data. Axon shall own all rights and title to Transformed Data and any derivatives of Transformed Data.

Axon grants to Customer an irrevocable, perpetual, fully paid, royalty-free, license to use to TASER Data Science report provided to Customer for its own internal purposes. **The Data Science report is provided "as is" and without any warranty of any kind.**

In the event Customer seeks Axon's deletion of Provided Data, it may submit a request to [privacy@axon.com](mailto:privacy@axon.com). Where reasonably capable of doing so, Axon will implement the request but at a minimum will not continue to collect Provided Data from Customer.

13. **Axon Records.** Axon Records is the software-as-a-service product that is generally available at the time Customer purchases an OSP 7 or OSP 10 bundle. During Customer's Axon Records Subscription Term, if any, Customer will be entitled to receive Axon's Update and Upgrade releases on an if-and-when available basis.

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- a. The Axon Records Subscription Term will end upon the completion of the Axon Records Subscription as documented in the Quote, or if purchased as part of an OSP 7 or OSP 10 bundle, upon completion of the OSP 7 or OSP 10 Term ("**Axon Records Subscription**")
  - b. An "**Update**" is a generally available release of Axon Records that Axon makes available from time to time. An "**Upgrade**" includes (i) new versions of Axon Records that enhance features and functionality, as solely determined by Axon; and/or (ii) new versions of Axon Records that provide additional features or perform additional functions. Upgrades exclude new products that Axon introduces and markets as distinct products or applications.
  - c. New or additional Axon products and applications, as well as any Axon professional services needed to configure Axon Records, are not included. If Customer purchases Axon Records as part of a bundled offering, the Axon Record subscription begins on the later of the (1) start date of that bundled offering, or (2) date Axon provisions Axon Records to Customer.
  - d. Users of Axon Records at the Customer may upload files to entities (incidents, reports, cases, etc) in Axon Records with no limit to the number of files and amount of storage. Notwithstanding the foregoing, Axon may limit usage should the Customer exceed an average rate of one-hundred (100) GB per user per year of uploaded files. Axon will not bill for overages.
14. **Axon Cloud Services Restrictions.** Customer and Customer end users (including employees, contractors, agents, officers, volunteers, and directors), may not, or may not attempt to:
- a. reverse engineer, disassemble, or decompile Axon Cloud Services or apply any process to derive any source code included in Axon Cloud Services, or allow others to do the same;
  - b. copy, modify, tamper with, repair, or create derivative works of any part of Axon Cloud Services;
  - c. access or use Axon Cloud Services with the intent to gain unauthorized access, avoid incurring fees or exceeding usage limits or quotas;
  - d. use Axon Cloud Serves as a service bureau, or as part of an Customer infrastructure as a service;
  - e. use trade secret information contained in Axon Cloud Services, except as expressly permitted in this Agreement;
  - f. access Axon Cloud Services to build a competitive device or service or copy any features, functions, or graphics of Axon Cloud Services;
  - g. remove, alter, or obscure any confidentiality or proprietary rights notices (including copyright and trademark notices) of Axon's or Axon's licensors on or within Axon Cloud Services; or
  - h. use Axon Cloud Services to store or transmit infringing, libelous, or other unlawful or tortious material; material in violation of third-party privacy rights; or malicious code.
15. **Axon Narrative.** AI-Assisted Report Writing feature. Axon may impose usage restrictions if a single user generates more than one hundred (100) reports per month for two or more consecutive months.
16. **After Termination.** Axon will not delete Customer Content for ninety (90) days following termination. There will be no functionality of Axon Cloud Services during these ninety (90) days other than the ability to retrieve Customer Content. Customer will not incur additional fees if Customer downloads Customer Content from Axon Cloud Services during this time. Axon has no obligation to maintain or provide Customer Content after these ninety (90) days and will thereafter, unless legally prohibited, delete all Customer Content. Upon request, Axon will provide written proof that Axon successfully deleted and fully removed all Customer Content from Axon Cloud Services.
17. **Post-Termination Assistance.** Axon will provide Customer with the same post-termination data retrieval assistance that Axon generally makes available to all customers. Requests for Axon to provide additional assistance in downloading or transferring Customer Content, including requests for Axon's data egress service, will result in additional fees and Axon will not warrant or guarantee data integrity or readability in the external system.
18. **U.S. Government Rights.** If Customer is a U.S. Federal department or using Axon Cloud Services on behalf of a U.S. Federal department, Axon Cloud Services is provided as a "commercial item," "commercial computer software," "commercial computer software documentation," and "technical data", as defined in the Federal Acquisition Regulation and Defense Federal Acquisition Regulation Supplement. If Customer is using Axon Cloud
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Services on behalf of the U.S. Government and these terms fail to meet the U.S. Government's needs or are inconsistent in any respect with federal law, Customer will immediately discontinue use of Axon Cloud Services.

19. **Survival.** Upon any termination of this Agreement, the following sections in this Appendix will survive: Customer Owns Customer Content, Privacy, Storage, Axon Cloud Services Warranty, Customer Responsibilities and Axon Cloud Services Restrictions.



## Master Services and Purchasing Agreement for Customer

### Axon Customer Experience Improvement Program Appendix

1. **Axon Customer Experience Improvement Program (ACEIP).** The ACEIP is designed to accelerate Axon's development of technology, such as building and supporting automated features, to ultimately increase safety within communities and drive efficiency in public safety. To this end, subject to the limitations on Axon as described below, Axon, where allowed by law, may make limited use of Customer Content from all of its customers to provide, develop, improve, and support current and future Axon products (collectively, "ACEIP Purposes"). However, at all times, Axon will comply with its obligations pursuant to the Axon Cloud Services Terms of Use Appendix to maintain a comprehensive data security program (including compliance with the CJIS Security Policy for Criminal Justice Information), privacy program, and data governance policy, including high industry standards of de-identifying Personal Data, to enforce its security and privacy obligations for the ACEIP. ACEIP has 2 tiers of participation, Tier 1 and Tier 2. By default, Customer will be a participant in ACEIP Tier 1. If Customer does not want to participate in ACEIP Tier 1, Customer can revoke its consent at any time. If Customer wants to participate in Tier 2, as detailed below, Customer can check the ACEIP Tier 2 box below. If Customer does not want to participate in ACEIP Tier 2, Customer should leave box unchecked. At any time, Customer may revoke its consent to ACEIP Tier 1, Tier 2, or both Tiers.
2. **ACEIP Tier 1.**
  - 2.1. When Axon uses Customer Content for the ACEIP Purposes, Axon will extract from Customer Content and may store separately copies of certain segments or elements of the Customer Content (collectively, "**ACEIP Content**"). When extracting ACEIP Content, Axon will use commercially reasonable efforts to aggregate, transform or de-identify Customer Content so that the extracted ACEIP Content is no longer reasonably capable of being associated with, or could reasonably be linked directly or indirectly to a particular individual ("**Privacy Preserving Technique(s)**"). For illustrative purposes, some examples are described in footnote 1<sup>1</sup>. For clarity, ACEIP Content will still be linked indirectly, with an attribution, to the Customer from which it was extracted. This attribution will be stored separately from the data itself, but is necessary for and will be solely used to enable Axon to identify and delete all ACEIP Content upon Customer request. Once de-identified, ACEIP Content may then be further modified, analyzed, and used to create derivative works. At any time, Customer may revoke the consent granted herein to Axon to access and use Customer Content for ACEIP Purposes. Within 30 days of receiving the Customer's request, Axon will no longer access or use Customer Content for ACEIP Purposes and will delete any and all ACEIP Content. Axon will also delete any derivative works which may reasonably be capable of being associated with, or could reasonably be linked directly or indirectly to Customer. In addition, if Axon uses Customer Content for the ACEIP Purposes, upon request, Axon will make available to Customer a list of the specific type of Customer Content being used to generate ACEIP Content, the purpose of such use, and the retention, privacy preserving extraction technique, and relevant data protection practices applicable to the Customer Content or ACEIP Content ("**Use Case**"). From time to time, Axon may develop and deploy new Use Cases. At least 30 days prior to authorizing the deployment of any new Use Case, Axon will provide Customer notice (by updating the list of Use Case at <https://www.axon.com/aceip> and providing Customer with a mechanism to obtain notice of that update or another commercially reasonable method to Customer designated contact) ("**New Use Case**").
  - 2.2. **Expiration of ACEIP Tier 1.** Customer consent granted herein will expire upon termination of the Agreement. In accordance with section 1.1.1, within 30 days of receiving the Customer's request, Axon will no longer access or use Customer Content for ACEIP Purposes and will delete ACEIP Content. Axon will also delete any derivative works which may reasonably be capable of being associated with, or could reasonably be linked directly or indirectly to, Customer.
3. **ACEIP Tier 2.** In addition to ACEIP Tier 1, if Customer wants to help further improve Axon's services, Customer may choose to participate in Tier 2 of the ACEIP. ACEIP Tier 2 grants Axon certain additional rights to use Customer

<sup>1</sup> For example; (a) when extracting specific text to improve automated transcription capabilities, text that could be used to directly identify a particular individual would not be extracted, and extracted text would be disassociated from identifying metadata of any speakers, and the extracted text would be split into individual words and aggregated with other data sources (including publicly available data) to remove any reasonable ability to link any specific text directly or indirectly back to a particular individual; (b) when extracting license plate data to improve Automated License Plate Recognition (ALPR) capabilities, individual license plate characters would be extracted and disassociated from each other so a complete plate could not be reconstituted, and all association to other elements of the source video, such as the vehicle, location, time, and the surrounding environment would also be removed; (c) when extracting audio of potential acoustic events (such as glass breaking or gun shots), very short segments (<1 second) of audio that only contains the likely acoustic events would be extracted and all human utterances would be removed.



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Content, in addition to those set forth in Tier 1 above, without the guaranteed deployment of a Privacy Preserving Technique to enable product development, improvement, and support that cannot be accomplished with aggregated, transformed, or de-identified data.

Check this box if Customer wants to help further improve Axon's services by participating in ACEIP Tier 2 in addition to Tier 1. Axon will not enroll Customer into ACEIP Tier 2 until Axon and Customer agree to terms in writing providing for such participation in ACEIP Tier 2.



## Master Services and Purchasing Agreement for Customer

### Technology Assurance Plan Appendix

If Technology Assurance Plan ("TAP") or a bundle including TAP is on the Quote, this appendix applies.

1. **TAP Warranty.** The TAP warranty is an extended warranty that starts at the end of the one- (1-) year hardware limited warranty.
2. **Officer Safety Plan.** If Customer purchases an Officer Safety Plan ("OSP"), Customer will receive the deliverables detailed in the Quote. Customer must accept delivery of the TASER CEW and accessories as soon as available from Axon.
3. **OSP 7 or OSP 10 Term.** OSP 7 or OSP 10 begins on the date specified in the Quote ("OSP Term").
4. **TAP BWC Upgrade.** If Customer has no outstanding payment obligations and purchased TAP, Axon will provide Customer a new Axon body-worn camera ("BWC Upgrade") as scheduled in the Quote. If Customer purchased TAP, Axon will provide a BWC Upgrade that is the same or like Axon Device, at Axon's option. Axon makes no guarantee the BWC Upgrade will utilize the same accessories or Axon dock.
5. **TAP Dock Upgrade.** If Customer has no outstanding payment obligations and purchased TAP, Axon will provide Customer a new Axon Dock as scheduled in the Quote ("Dock Upgrade"). Accessories associated with any Dock Upgrades are subject to change at Axon discretion. Dock Upgrades will only include a new Axon dock bay configuration unless a new Axon dock core is required for BWC compatibility. If Customer originally purchased a single-bay Axon dock, the Dock Upgrade will be a single-bay Axon dock model that is the same or like Axon Device, at Axon's option. If Customer originally purchased a multi-bay Axon dock, the Dock Upgrade will be a multi-bay Axon dock that is the same or like Axon Device, at Axon's option.
6. **Upgrade Delay.** Axon may ship the BWC and Dock Upgrades as scheduled in the Quote without prior confirmation from Customer unless the Parties agree in writing otherwise at least ninety (90) days in advance. Axon may ship the final BWC and Dock Upgrade as scheduled in the Quote sixty (60) days before the end of the Subscription Term without prior confirmation from Customer.
7. **Upgrade Change.** If Customer wants to upgrade Axon Device models from the current Axon Device to an upgraded Axon Device, Customer must pay the price difference between the MSRP for the current Axon Device and the MSRP for the upgraded Axon Device. If the model Customer desires has an MSRP less than the MSRP of the offered BWC Upgrade or Dock Upgrade, Axon will not provide a refund. The MSRP is the MSRP in effect at the time of the upgrade.
8. **Return of Original Axon Device.** Within thirty (30) days of receiving a BWC or Dock Upgrade, Customer must return the original Axon Devices to Axon or destroy the Axon Devices and provide a certificate of destruction to Axon including serial numbers for the destroyed Axon Devices. If Customer does not return or destroy the Axon Devices, Axon will deactivate the serial numbers for the Axon Devices received by Customer.
9. **Termination.** If Customer's payment for TAP, OSP, or Axon Evidence is more than thirty (30) days past due, Axon may terminate TAP or OSP. Once TAP or OSP terminates for any reason:
  - 9.1. TAP and OSP coverage terminate as of the date of termination and no refunds will be given.
  - 9.2. Axon will not and has no obligation to provide the Upgrade Models.
  - 9.3. Customer must make any missed payments due to the termination before Customer may purchase any future TAP or OSP.



**Master Services and Purchasing Agreement for Customer**

**TASER Device Appendix**

This TASER Device Appendix applies to Customer’s TASER 7/10, OSP 7/10, OSP Plus, or OSP 7/10 Plus Premium purchase from Axon, if applicable.

1. **Duty Cartridge Replenishment Plan.** If the Quote includes "Duty Cartridge Replenishment Plan", Customer must purchase the plan for each CEW user. A CEW user includes officers that use a CEW in the line of duty and those that only use a CEW for training. Customer may not resell cartridges received. Axon will only replace cartridges used in the line of duty.
2. **Training.** If the Quote includes a TASER On Demand Certification subscription, Customer will have on-demand access to TASER Instructor and TASER Master Instructor courses only for the duration of the TASER Subscription Term. Axon will issue a maximum of ten (10) TASER Instructor vouchers and ten (10) TASER Master Instructor vouchers for every thousand TASER Subscriptions purchased. Customer shall utilize vouchers to register for TASER courses at their discretion however Customer may incur a fee for cancellations less than 10 business days prior to a course date or failure to appear to a registered course. The voucher has no cash value. Customer cannot exchange voucher for any other device or service. Any unused vouchers at the end of the Term will be forfeited. A voucher does not include any travel or other expenses that might be incurred related to attending a course.
3. **Extended Warranty.** If the Quote includes an extended warranty, the extended warranty coverage period warranty will be for a five- (5-) year term, which includes the hardware manufacturer’s warranty plus the four- (4-) year extended term.
4. **Trade-in.** If the Quote contains a discount on CEW-related line items and that discount is contingent upon the trade-in of hardware, Customer must return used hardware and accessories associated with the discount ("**Trade-In Units**") to Axon within the below prescribed timeline. Customer must ship batteries via ground shipping. Axon will pay shipping costs of the return. If Axon does not receive Trade-In Units within the timeframe below, Axon will invoice Customer the value of the trade-in credit. Customer may not destroy Trade-In Units and receive a trade-in credit.

<b>Customer Size</b>	<b>Days to Return from Start Date of TASER 10 Subscription</b>
Less than 100 officers	60 days
100 to 499 officers	90 days
500+ officers	180 days

5. **TASER Device Subscription Term.** The TASER Device Subscription Term for a standalone TASER Device purchase begins on shipment of the TASER Device. The TASER Device Subscription Term for OSP 7/10 begins on the OSP 7/10 start date.
6. **Access Rights.** Upon Axon granting Customer a TASER Device Axon Evidence subscription, Customer may access and use Axon Evidence for the storage and management of data from TASER Devices devices during the TASER Device Subscription Term. Customer may not exceed the number of end users the Quote specifies.
7. **Customer Warranty.** If Customer is located in the US, Customer warrants and acknowledges that TASER 10 is classified as a firearm and is being acquired for official Customer use pursuant to a law enforcement Customer transfer under the Gun Control Act of 1968.
8. **Purchase Order.** To comply with applicable laws and regulations, Customer must provide a purchase order to Axon prior to shipment of TASER 10.
9. **Apollo Grant (US only).** If Customer has received an Apollo Grant from Axon, Customer must pay all fees in the Quote prior to upgrading to any new TASER Device offered by Axon.
10. **Termination.** If payment for TASER Device is more than thirty (30) days past due, Axon may terminate Customer's TASER Device plan by notifying Customer. Upon termination for any reason, then as of the date of termination:
  - 10.1. TASER Device extended warranties and access to Training Content will terminate. No refunds will be given.
  - 10.2. Axon will invoice Customer the remaining MSRP for TASER Devices received before termination. If terminating for non-appropriations, Axon will not invoice Customer if Customer returns the TASER Device, rechargeable battery, holster, dock, core, training suits, and unused cartridges to Axon within thirty (30) days of the date of





## Master Services and Purchasing Agreement for Customer

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termination.

10.3. Customer will be responsible for payment of any missed payments due to the termination before being allowed to purchase any future TASER Device plan.



## Master Services and Purchasing Agreement for Customer

### Axon Auto-Tagging Appendix

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If Auto-Tagging is included on the Quote, this Appendix applies.

1. **Scope.** Axon Auto-Tagging consists of the development of a module to allow Axon Evidence to interact with Customer's Computer-Aided Dispatch ("**CAD**") or Records Management Systems ("**RMS**"). This allows end users to auto-populate Axon video meta-data with a case ID, category, and location-based on data maintained in Customer's CAD or RMS.
2. **Support.** For thirty (30) days after completing Auto-Tagging Services, Axon will provide up to five (5) hours of remote support at no additional charge. Axon will provide free support due to a change in Axon Evidence, if Customer maintains an Axon Evidence and Auto-Tagging subscription. Axon will not provide support if a change is required because Customer changes its CAD or RMS.
3. **Changes.** Axon is only responsible to perform the Services in this Appendix. Any additional Services are out of scope. The Parties must document scope changes in a written and signed change order. Changes may require an equitable adjustment in fees or schedule.
4. **Customer Responsibilities.** Axon's performance of Auto-Tagging Services requires Customer to:
  - 4.1. Make available relevant systems, including Customer's current CAD or RMS, for assessment by Axon (including remote access if possible);
  - 4.2. Make required modifications, upgrades or alterations to Customer's hardware, facilities, systems and networks related to Axon's performance of Auto-Tagging Services;
  - 4.3. Provide access to the premises where Axon is performing Auto-Tagging Services, subject to Customer safety and security restrictions, and allow Axon to enter and exit the premises with laptops and materials needed to perform Auto-Tagging Services;
  - 4.4. Provide all infrastructure and software information (TCP/IP addresses, node names, network configuration) necessary for Axon to provide Auto-Tagging Services;
  - 4.5. Promptly install and implement any software updates provided by Axon;
  - 4.6. Ensure that all appropriate data backups are performed;
  - 4.7. Provide assistance, participation, and approvals in testing Auto-Tagging Services;
  - 4.8. Provide Axon with remote access to Customer's Axon Evidence account when required;
  - 4.9. Notify Axon of any network or machine maintenance that may impact the performance of the module at Customer; and
  - 4.10. Ensure reasonable availability of knowledgeable staff and personnel to provide timely, accurate, complete, and up-to-date documentation and information to Axon.
5. **Access to Systems.** Customer authorizes Axon to access Customer's relevant computers, network systems, and CAD or RMS solely for performing Auto-Tagging Services. Axon will work diligently to identify the resources and information Axon expects to use and will provide an initial list to Customer. Customer is responsible for and assumes the risk of any problems, delays, losses, claims, or expenses resulting from the content, accuracy, completeness, and consistency of all data, materials, and information supplied by Customer.



## Master Services and Purchasing Agreement for Customer

### Axon Respond Appendix

This Axon Respond Appendix applies to both Axon Respond and Axon Respond Plus, if either is included on the Quote.

1. **Axon Respond Subscription Term.** If Customer purchases Axon Respond as part of a bundled offering, the Axon Respond subscription begins on the later of the (1) start date of that bundled offering, or (2) date Axon provisions Axon Respond to Customer. If Customer purchases Axon Respond as a standalone, the Axon Respond subscription begins the later of the (1) date Axon provisions Axon Respond to Customer, or (2) first day of the month following the Effective Date. The Axon Respond subscription term will end upon the completion of the Axon Evidence Subscription associated with Axon Respond.
2. **Scope of Axon Respond.** The scope of Axon Respond is to assist Customer with real-time situational awareness during critical incidents to improve officer safety, effectiveness, and awareness. In the event Customer uses Axon Respond outside this scope, Axon may initiate good-faith discussions with Customer on upgrading Customer's Axon Respond to better meet Customer's needs.
3. **Axon Body LTE Requirements.** Axon Respond is only available and usable with an LTE enabled body-worn camera. Axon is not liable if Customer utilizes the LTE device outside of the coverage area or if the LTE carrier is unavailable. LTE coverage is only available in the United States, including any U.S. territories. Axon may utilize a carrier of Axon's choice to provide LTE service. Axon may change LTE carriers during the Term without Customer's consent.
4. **Axon Fleet LTE Requirements.** Axon Respond is only available and usable with a Fleet system configured with LTE modem and service. Customer is responsible for providing LTE service for the modem. Coverage and availability of LTE service is subject to Customer's LTE carrier.
5. **Axon Respond Service Limitations.** Customer acknowledges that LTE service is made available only within the operating range of the networks. Service may be temporarily refused, interrupted, or limited because of: (a) facilities limitations; (b) transmission limitations caused by atmospheric, terrain, other natural or artificial conditions adversely affecting transmission, weak batteries, system overcapacity, movement outside a service area or gaps in coverage in a service area, and other causes reasonably outside of the carrier's control such as intentional or negligent acts of third parties that damage or impair the network or disrupt service; or (c) equipment modifications, upgrades, relocations, repairs, and other similar activities necessary for the proper or improved operation of service.
  - 5.1. **With regard to Axon Body, Partner networks are made available as-is and the carrier makes no warranties or representations as to the availability or quality of roaming service provided by carrier partners, and the carrier will not be liable in any capacity for any errors, outages, or failures of carrier partner networks. Customer expressly understands and agrees that it has no contractual relationship whatsoever with the underlying wireless service provider or its affiliates or contractors and Customer is not a third-party beneficiary of any agreement between Axon and the underlying carrier.**
6. **Termination.** Upon termination of this Agreement, or if Customer stops paying for Axon Respond or bundles that include Axon Respond, Axon will end Axon Respond services, including any Axon-provided LTE service.



## Master Services and Purchasing Agreement for Customer

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### Add-on Services Appendix

This Appendix applies if Axon Community Request, Axon Redaction Assistant, and/or Axon Performance are included on the Quote.

1. **Subscription Term.** If Customer purchases Axon Community Request, Axon Redaction Assistant, or Axon Performance as part of OSP 7 or OSP 10, the subscription begins on the later of the (1) start date of the OSP 7 or OSP 10 Term, or (2) date Axon provisions Axon Community Request Axon Redaction Assistant, or Axon Performance to Customer.
  - 1.1. If Customer purchases Axon Community Request, Axon Redaction Assistant, or Axon Performance as a standalone, the subscription begins the later of the (1) date Axon provisions Axon Community Request, Axon Redaction Assistant, or Axon Performance to Customer, or (2) first day of the month following the Effective Date.
  - 1.2. The subscription term will end upon the completion of the Axon Evidence Subscription associated with the add-on.
2. **Axon Community Request Storage.** For Axon Community Request, Customer may store an unlimited amount of data submitted through the public portal ("**Portal Content**"), within Customer's Axon Evidence instance. The post-termination provisions outlined in the Axon Cloud Services Terms of Use Appendix also apply to Portal Content.
3. **Performance Auto-Tagging Data.** In order to provide some features of Axon Performance to Customer, Axon will need to store call for service data from Customer's CAD or RMS.



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## Axon Virtual Reality Content Terms of Use Appendix

If Virtual Reality is included on the Quote, this Appendix applies.

1. **Term.** The Quote will detail the products and license duration, as applicable, of the goods, services, and software, and contents thereof, provided by Axon to Customer related to virtual reality (collectively, "**Virtual Reality Media**").
2. **Headsets.** Customer may purchase additional virtual reality headsets from Axon. In the event Customer decides to purchase additional virtual reality headsets for use with Virtual Reality Media, Customer must purchase those headsets from Axon.
3. **License Restrictions.** All licenses will immediately terminate if Customer does not comply with any term of this Agreement. If Customer utilizes more users than stated in this Agreement, Customer must purchase additional Virtual Reality Media licenses from Axon. Customer may not use Virtual Reality Media for any purpose other than as expressly permitted by this Agreement. Customer may not:
  - 3.1. modify, tamper with, repair, or otherwise create derivative works of Virtual Reality Media;
  - 3.2. reverse engineer, disassemble, or decompile Virtual Reality Media or apply any process to derive the source code of Virtual Reality Media, or allow others to do the same;
  - 3.3. copy Virtual Reality Media in whole or part, except as expressly permitted in this Agreement;
  - 3.4. use trade secret information contained in Virtual Reality Media;
  - 3.5. resell, rent, loan or sublicense Virtual Reality Media;
  - 3.6. access Virtual Reality Media to build a competitive device or service or copy any features, functions, or graphics of Virtual Reality Media; or
  - 3.7. remove, alter, or obscure any confidentiality or proprietary rights notices (including copyright and trademark notices) of Axon or Axon's licensors on or within Virtual Reality Media or any copies of Virtual Reality Media.
4. **Privacy.** Customer's use of the Virtual Reality Media is subject to the Axon Virtual Reality Privacy Policy, a current version of which is available at <https://www.axon.com/axonvrprivacypolicy>.
5. **Termination.** Axon may terminate Customer's license immediately for Customer's failure to comply with any of the terms in this Agreement.



## Master Services and Purchasing Agreement for Customer

### Axon Application Programming Interface Appendix

This Appendix applies if Axon's API Services or a subscription to Axon Cloud Services is included on the Quote.

#### 1. **Definitions.**

- 1.1. **"API Client"** means the software that acts as the interface between Customer's computer and the server, which is already developed or to be developed by Customer.
- 1.2. **"API Interface"** means software implemented by Customer to configure Customer's independent API Client Software to operate in conjunction with the API Service for Customer's authorized Use.
- 1.3. **"Axon Evidence Partner API, API or Axon API"** (collectively **"API Service"**) means Axon's API which provides a programmatic means to access data in Customer's Axon Evidence account or integrate Customer's Axon Evidence account with other systems.
- 1.4. **"Use"** means any operation on Customer's data enabled by the supported API functionality.

#### 2. **Purpose and License.**

- 2.1. Customer may use API Service and data made available through API Service, in connection with an API Client developed by Customer. Axon may monitor Customer's use of API Service to ensure quality, improve Axon devices and services, and verify compliance with this Agreement. Customer agrees to not interfere with such monitoring or obscure from Axon Customer's use of API Service. Customer will not use API Service for commercial use.
- 2.2. Axon grants Customer a non-exclusive, non-transferable, non-sublicensable, worldwide, revocable right and license during the Term to use API Service, solely for Customer's Use in connection with Customer's API Client.
- 2.3. Axon reserves the right to set limitations on Customer's use of the API Service, such as a quota on operations, to ensure stability and availability of Axon's API. Axon will use reasonable efforts to accommodate use beyond the designated limits.

#### 3. **Configuration.** Customer will work independently to configure Customer's API Client with API Service for Customer's applicable Use. Customer will be required to provide certain information (such as identification or contact details) as part of the registration. Registration information provided to Axon must be accurate. Customer will inform Axon promptly of any updates. Upon Customer's registration, Axon will provide documentation outlining API Service information.

#### 4. **Customer Responsibilities.** When using API Service, Customer and its end users may not:

- 4.1. use API Service in any way other than as expressly permitted under this Agreement;
- 4.2. use in any way that results in, or could result in, any security breach to Axon;
- 4.3. perform an action with the intent of introducing any viruses, worms, defect, Trojan horses, malware, or any items of a destructive nature to Axon Devices and Services;
- 4.4. interfere with, modify, disrupt or disable features or functionality of API Service or the servers or networks providing API Service;
- 4.5. reverse engineer, decompile, disassemble, or translate or attempt to extract the source code from API Service or any related software;
- 4.6. create an API Interface that functions substantially the same as API Service and offer it for use by third parties;
- 4.7. provide use of API Service on a service bureau, rental or managed services basis or permit other individuals or entities to create links to API Service;
- 4.8. frame or mirror API Service on any other server, or wireless or Internet-based device;
- 4.9. make available to a third-party, any token, key, password or other login credentials to API Service;
- 4.10. take any action or inaction resulting in illegal, unauthorized or improper purposes; or
- 4.11. disclose Axon's API manual.

#### 5. **API Content.** All content related to API Service, other than Customer Content or Customer's API Client content, is considered Axon's API Content, including:

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- 5.1. the design, structure and naming of API Service fields in all responses and requests;
  - 5.2. the resources available within API Service for which Customer takes actions on, such as evidence, cases, users, or reports;
  - 5.3. the structure of and relationship of API Service resources; and
  - 5.4. the design of API Service, in any part or as a whole.
6. **Prohibitions on API Content**. Neither Customer nor its end users will use API content returned from the API Interface to:
- 6.1. scrape, build databases, or otherwise create permanent copies of such content, or keep cached copies longer than permitted by the cache header;
  - 6.2. copy, translate, modify, create a derivative work of, sell, lease, lend, convey, distribute, publicly display, or sublicense to any third-party;
  - 6.3. misrepresent the source or ownership; or
  - 6.4. remove, alter, or obscure any confidentiality or proprietary rights notices (including copyright and trademark notices).
7. **API Updates**. Axon may update or modify the API Service from time to time ("**API Update**"). Customer is required to implement and use the most current version of API Service and to make any applicable changes to Customer's API Client required as a result of such API Update. API Updates may adversely affect how Customer's API Client access or communicate with API Service or the API Interface. Each API Client must contain means for Customer to update API Client to the most current version of API Service. Axon will provide support for one (1) year following the release of an API Update for all depreciated API Service versions.



## Master Services and Purchasing Agreement for Customer

### Axon Investigate Appendix

If the Quote includes Axon's On Prem Video Suite known as Axon Investigate or Third Party Video Support License, the following appendix shall apply.

1. **License Grant.** Subject to the terms and conditions specified below and upon payment of the applicable fees set forth in the Quote, Axon grants to Customer a nonexclusive, nontransferable license to install, use, and display the Axon Investigate software ("**Software**") solely for its own internal use only and for no other purpose, for the duration of subscription term set forth in the Quote. This Agreement does not grant Customer any right to enhancements or updates, but if such are made available to Customer and obtained by Customer they shall become part of the Software and governed by the terms of this Agreement.
2. **Third-Party Licenses.** Axon licenses several third-party codecs and applications that are integrated into the Software. Users with an active support contract with Axon are granted access to these additional features. By accepting this agreement, Customer agrees to and understands that an active support contract is required for all of the following features: DNxHD output formats, decoding files via the "fast indexing" method, proprietary file metadata, telephone and email support, and all future updates to the software. If Customer terminates the annual support contract with Axon, the features listed above will be disabled within the Software. It is recommended that users remain on an active support contract to maintain the full functionality of the Software.
3. **Restrictions on Use.** Customer may not permit any other person to use the Software unless such use is in accordance with the terms of this Agreement. Customer may not modify, translate, reverse engineer, reverse compile, decompile, disassemble or create derivative works with respect to the Software, except to the extent applicable laws specifically prohibit such restrictions. Customer may not rent, lease, sublicense, grant a security interest in or otherwise transfer Customer's rights to or to use the Software. Any rights not granted are reserved to Axon.
4. **Term.** For purchased perpetual Licenses only—excluding Licenses leased for a pre-determined period, evaluation licenses, companion licenses, as well as temporary licenses--the license shall be perpetual unless Customer fails to observe any of its terms, in which case it shall terminate immediately, and without additional prior notice. The terms of Paragraphs 1, 2, 3, 5, 6, 8 and 9 shall survive termination of this Agreement. For licenses leased for a pre-determined period, for evaluation licenses, companion licenses, as well as temporary licenses, the license is granted for a period beginning at the installation date and for the duration of the evaluation period or temporary period as agreed between Axon and Customer.
5. **Title.** Axon and its licensors shall have sole and exclusive ownership of all right, title, and interest in and to the Software and all changes, modifications, and enhancements thereof (including ownership of all trade secrets and copyrights pertaining thereto), regardless of the form or media in which the original or copies may exist, subject only to the rights and privileges expressly granted by Axon. This Agreement does not provide Customer with title or ownership of the Software, but only a right of limited use.
6. **Copies.** The Software is copyrighted under the laws of the United States and international treaty provisions. Customer may not copy the Software except for backup or archival purposes, and all such copies shall contain all Axon's notices regarding proprietary rights as contained in the Software as originally provided to Customer. If Customer receives one copy electronically and another copy on media, the copy on media may be used only for archival purposes and this license does not authorize Customer to use the copy of media on an additional server.
7. **Actions Required Upon Termination.** Upon termination of the license associated with this Agreement, Customer agrees to destroy all copies of the Software and other text and/or graphical documentation, whether in electronic or printed format, that describe the features, functions and operation of the Software that are provided by Axon to Customer ("**Software Documentation**") or return such copies to Axon. Regarding any copies of media containing regular backups of Customer's computer or computer system, Customer agrees not to access such media for the purpose of recovering the Software or online Software Documentation.
8. **Export Controls.** None of the Software, Software Documentation or underlying information may be downloaded or otherwise exported, directly or indirectly, without the prior written consent, if required, of the office of Export Administration of the United States, Department of Commerce, nor to any country to which the U.S. has embargoed goods, to any person on the U.S. Treasury Department's list of Specially Designated Nations, or the U.S. Department of Commerce's Table of Denials.
9. **U.S. Government Restricted Rights.** The Software and Software Documentation are Commercial Computer Software provided with Restricted Rights under Federal Acquisition Regulations and Customer supplements to them. Use, duplication or disclosure by the U.S. Government is subject to restrictions as set forth in subparagraph (c)(1)(ii) of the Rights in Technical Data and Computer Software clause at DFAR 255.227-7013 et. Seq. or 252.211-7015, or

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## Master Services and Purchasing Agreement for Customer

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subparagraphs (a) through (d) of the Commercial Computer Software Restricted Rights at FAR 52.227-19, as applicable, or similar clauses in the NASA FAR Supplement. Contractor/manufacturer is Axon Enterprise, Inc., 17800 North 85th Street, Scottsdale, Arizona 85255.



## Master Services and Purchasing Agreement for Customer

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### Axon Event Offer Appendix

If the Agreement includes the provision of, or Axon otherwise offers, ticket(s), travel and/or accommodation for select events hosted by Axon ("Axon Event"), the following shall apply:

1. **General.** Subject to the terms and conditions specified below and those in the Agreement, Axon may provide Customer with one or more offers to fund Axon Event ticket(s), travel and/or accommodation for Customer-selected employee(s) to attend one or more Axon Events. By entering into the Agreement, Customer warrants that it is appropriate and permissible for Customer to receive the referenced Axon Event offer(s) based on Customer's understanding of the terms and conditions outlined in this Axon Event Offer Appendix.
2. **Attendee/Employee Selection.** Customer shall have sole and absolute discretion to select the Customer employee(s) eligible to receive the ticket(s), travel and/or accommodation that is the subject of any Axon Event offer(s).
3. **Compliance.** It is the intent of Axon that any and all Axon Event offers comply with all applicable laws, regulations and ethics rules regarding contributions, including gifts and donations. Axon's provision of ticket(s), travel and/or accommodation for the applicable Axon Event to Customer is intended for the use and benefit of Customer in furtherance of its goals, and not the personal use or benefit of any official or employee of Customer. Axon makes this offer without seeking promises or favoritism for Axon in any bidding arrangements. Further, no exclusivity will be expected by either party in consideration for the offer. Axon makes the offer with the understanding that it will not, as a result of such offer, be prohibited from any procurement opportunities or be subject to any reporting requirements. If Customer's local jurisdiction requires Customer to report or disclose the fair market value of the benefits provided by Axon, Customer shall promptly contact Axon to obtain such information, and Axon shall provide the information necessary to facilitate Customer's compliance with such reporting requirements.
4. **Assignability.** Customer may not sell, transfer, or assign Axon Event ticket(s), travel and/or accommodation provided under the Agreement.
5. **Availability.** The provision of all offers of Axon Event ticket(s), travel and/or accommodation is subject to availability of funds and resources. Axon has no obligation to provide Axon Event ticket(s), travel and/or accommodation.
6. **Revocation of Offer.** Axon reserves the right at any time to rescind the offer of Axon Event ticket(s), travel and/or accommodation to Customer if Customer or its selected employees fail to meet the prescribed conditions or if changes in circumstances render the provision of such benefits impractical, inadvisable, or in violation of any applicable laws, regulations, and ethics rules regarding contributions, including gifts and donations.



Axon Enterprise, Inc.  
 17800 N 85th St.  
 Scottsdale, Arizona 85255  
 United States  
 VAT: 86-0741227  
 Domestic: (800) 978-2737  
 International: +1.800.978.2737

Q-588132-45468.824KP

Issued: 06/25/2024

Quote Expiration: 08/31/2024

Estimated Contract Start Date: 08/15/2024

Account Number: 110360

Payment Terms: N30

Delivery Method:

SHIP TO	BILL TO
Tracy Police Department - CA 1000 CIVIC CENTER DR TRACY, CA 95376-4079 USA	Tracy Police Dept. - CA 1000 CIVIC CENTER DR TRACY CA 95376-4079 USA Email:

SALES REPRESENTATIVE	PRIMARY CONTACT
Kyle Panasewicz Phone: +1 4803294734 Email: kylep@axon.com Fax: (480) 905-2071	Octavio Lopez Phone: 209-831-6556 Email: octavio.lopez@tracypd.com Fax:

### Quote Summary

Program Length	61 Months
TOTAL COST	\$2,222,469.60
ESTIMATED TOTAL W/ TAX	\$2,283,857.90

### Discount Summary

Average Savings Per Year	\$196,753.57
TOTAL SAVINGS	\$1,000,164.00

### Payment Summary

Date	Subtotal	Tax	Total
Aug 2024	\$487,175.52	\$13,502.61	\$500,678.13
Aug 2025	\$433,823.52	\$11,971.41	\$445,794.93
Aug 2026	\$433,823.52	\$11,971.41	\$445,794.93
Aug 2027	\$433,823.52	\$11,971.41	\$445,794.93
Aug 2028	\$433,823.52	\$11,971.46	\$445,794.98
<b>Total</b>	<b>\$2,222,469.60</b>	<b>\$61,388.30</b>	<b>\$2,283,857.90</b>

Quote Unbundled Price: \$3,222,633.60  
 Quote List Price: \$2,503,170.60  
 Quote Subtotal: \$2,222,469.60

Pricing

All deliverables are detailed in Delivery Schedules section lower in proposal

Item	Description	Qty	Term	Unbundled	List Price	Net Price	Subtotal	Tax	Total
<b>Program</b>									
B00022	BUNDLE - UNLIMITED PLUS	26	60	\$307.03	\$238.32	\$238.32	\$371,779.20	\$8,750.98	\$380,530.18
M00012	BUNDLE - OFFICER SAFETY PLAN 10 PLUS	107	60	\$393.27	\$297.90	\$273.48	\$1,755,741.60	\$51,106.12	\$1,806,847.72
<b>A la Carte Hardware</b>									
H00002	AB4 Multi Bay Dock Bundle	2			\$1,638.90	\$1,638.90	\$3,277.80	\$270.43	\$3,548.23
H00001	AB4 Camera Bundle	18			\$849.00	\$849.00	\$15,282.00	\$1,260.77	\$16,542.77
H00002	AB4 Multi Bay Dock Bundle	16			\$1,638.90	\$0.00	\$0.00	\$0.00	\$0.00
H00001	AB4 Camera Bundle	115			\$849.00	\$0.00	\$0.00	\$0.00	\$0.00
<b>A la Carte Software</b>									
73618	AXON COMMUNITY REQUEST	119	1		\$10.00	\$10.00	\$1,190.00	\$0.00	\$1,190.00
73478	AXON EVIDENCE - REDACTION ASSISTANT USER LICENSE	119	1		\$10.00	\$10.00	\$1,190.00	\$0.00	\$1,190.00
73682	AXON EVIDENCE - AUTO TAGGING LICENSE	119	1		\$10.00	\$10.00	\$1,190.00	\$0.00	\$1,190.00
73739	AXON PERFORMANCE - LICENSE	119	1		\$10.00	\$10.00	\$1,190.00	\$0.00	\$1,190.00
73680	AXON RESPOND PLUS - LICENSE	119	1		\$19.80	\$19.80	\$2,356.20	\$0.00	\$2,356.20
100801	AXON RECORDS - OSP LICENSE	119	1		\$39.00	\$39.00	\$4,641.00	\$0.00	\$4,641.00
BasicLicense	Basic License Bundle	9	1		\$15.00	\$15.00	\$135.00	\$0.00	\$135.00
ProLicense	Pro License Bundle	16	60		\$43.40	\$43.33	\$41,596.80	\$0.00	\$41,596.80
ProLicense	Pro License Bundle	135	1		\$40.00	\$40.00	\$5,400.00	\$0.00	\$5,400.00
<b>A la Carte Services</b>									
101208	AXON TASER 10 - 2 DAY INSTRUCTOR COURSE - INSIDE SALES	1			\$2,500.00	\$2,500.00	\$2,500.00	\$0.00	\$2,500.00
75014	AXON SIGNAL - PSO - INSTALLATION SERVICE ONSITE	1			\$3,000.00	\$3,000.00	\$3,000.00	\$0.00	\$3,000.00
101267	AXON VR - PSO - FULL INSTALLATION	1			\$12,000.00	\$12,000.00	\$12,000.00	\$0.00	\$12,000.00
<b>Total</b>							<b>\$2,222,469.60</b>	<b>\$61,388.30</b>	<b>\$2,283,857.90</b>

## Delivery Schedule

### Hardware

Bundle	Item	Description	QTY	Shipping Location	Estimated Delivery Date
AB4 Camera Bundle	100147	AXON BODY 4 - CAMERA - NA US FIRST RESPONDER BLK RAPIDLOCK	115	1	08/15/2024
AB4 Camera Bundle	100147	AXON BODY 4 - CAMERA - NA US FIRST RESPONDER BLK RAPIDLOCK	18	1	08/15/2024
AB4 Camera Bundle	100147	AXON BODY 4 - CAMERA - NA US FIRST RESPONDER BLK RAPIDLOCK	3	1	08/15/2024
AB4 Camera Bundle	100466	AXON BODY 4 - CABLE - USB-C TO USB-C	127	1	08/15/2024
AB4 Camera Bundle	100466	AXON BODY 4 - CABLE - USB-C TO USB-C	20	1	08/15/2024
AB4 Camera Bundle	74028	AXON BODY - MOUNT - WING CLIP RAPIDLOCK	127	1	08/15/2024
AB4 Camera Bundle	74028	AXON BODY - MOUNT - WING CLIP RAPIDLOCK	20	1	08/15/2024
AB4 Multi Bay Dock Bundle	100206	AXON BODY 4 - DOCK - EIGHT BAY	16	1	08/15/2024
AB4 Multi Bay Dock Bundle	100206	AXON BODY 4 - DOCK - EIGHT BAY	2	1	08/15/2024
AB4 Multi Bay Dock Bundle	70033	AXON - DOCK WALL MOUNT - BRACKET ASSY	16	1	08/15/2024
AB4 Multi Bay Dock Bundle	70033	AXON - DOCK WALL MOUNT - BRACKET ASSY	2	1	08/15/2024
AB4 Multi Bay Dock Bundle	71019	AXON BODY - DOCK POWERCORD - NORTH AMERICA	16	1	08/15/2024
AB4 Multi Bay Dock Bundle	71019	AXON BODY - DOCK POWERCORD - NORTH AMERICA	2	1	08/15/2024
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	100126	AXON VR - TACTICAL BAG	5	1	08/15/2024
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	100390	AXON TASER 10 - HANDLE - YELLOW CLASS 3R	107	2	08/15/2024
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	100390	AXON TASER 10 - HANDLE - YELLOW CLASS 3R	3	2	08/15/2024
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	100393	AXON TASER 10 - MAGAZINE - LIVE DUTY BLACK	107	1	08/15/2024
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	100393	AXON TASER 10 - MAGAZINE - LIVE DUTY BLACK	3	1	08/15/2024
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	100394	AXON TASER 10 - MAGAZINE - HALT TRAINING BLUE	8	1	08/15/2024
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	100395	AXON TASER 10 - MAGAZINE - LIVE TRAINING PURPLE	6	1	08/15/2024
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	100396	AXON TASER 10 - MAGAZINE - INERT RED	30	1	08/15/2024
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	100399	AXON TASER 10 - CARTRIDGE - LIVE	2140	1	08/15/2024
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	100400	AXON TASER 10 - CARTRIDGE - HALT	650	1	08/15/2024
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	100401	AXON TASER 10 - CARTRIDGE - INERT	300	1	08/15/2024
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	100611	AXON TASER 10 - SAFARILAND HOLSTER - RH	107	1	08/15/2024
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	100623	AXON TASER - TRAINING - ENHANCED HALT SUIT V2	2	1	08/15/2024
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	100681	AXON SIGNAL - SIDEARM SENSOR ONLY	107	1	08/15/2024
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	100748	AXON VR - CONTROLLER - TASER 10	5	1	08/15/2024
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	100832	AXON VR - CONTROLLER - HANDGUN VR19H	5	1	08/15/2024
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	101124	AXON VR - HOLSTER - T10 BLACKHAWK GREY - RH	4	1	08/15/2024
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	101125	AXON VR - HOLSTER - T10 BLACKHAWK GREY - LH	1	1	08/15/2024
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	101294	AXON VR - TABLET	5	1	08/15/2024
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	101300	AXON VR - TABLET CASE	5	1	08/15/2024
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	20018	AXON TASER - BATTERY PACK - TACTICAL	107	1	08/15/2024
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	20018	AXON TASER - BATTERY PACK - TACTICAL	19	1	08/15/2024
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	20018	AXON TASER - BATTERY PACK - TACTICAL	3	1	08/15/2024
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	20378	AXON VR - HEADSET - HTC FOCUS 3	5	1	08/15/2024
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	70033	AXON - DOCK WALL MOUNT - BRACKET ASSY	2	1	08/15/2024
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	71019	AXON BODY - DOCK POWERCORD - NORTH AMERICA	2	1	08/15/2024
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	71044	AXON SIGNAL - BATTERY - CR2430 SINGLE PACK	214	1	08/15/2024
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	74200	AXON TASER - DOCK - SIX BAY PLUS CORE	2	1	08/15/2024
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	80087	AXON TASER - TARGET - CONDUCTIVE PROFESSIONAL RUGGEDIZED	2	1	08/15/2024
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	80090	AXON TASER - TARGET FRAME - PROFESSIONAL 27.5 IN X 75 IN	2	1	08/15/2024
BUNDLE - UNLIMITED PLUS	100126	AXON VR - TACTICAL BAG	2	1	08/15/2024
BUNDLE - UNLIMITED PLUS	100681	AXON SIGNAL - SIDEARM SENSOR ONLY	26	1	08/15/2024
BUNDLE - UNLIMITED PLUS	100748	AXON VR - CONTROLLER - TASER 10	2	1	08/15/2024
BUNDLE - UNLIMITED PLUS	100832	AXON VR - CONTROLLER - HANDGUN VR19H	2	1	08/15/2024

Bundle	Item	Description	QTY	Shipping Location	Estimated Delivery Date
BUNDLE - UNLIMITED PLUS	101124	AXON VR - HOLSTER - T10 BLACKHAWK GREY - RH	1	1	08/15/2024
BUNDLE - UNLIMITED PLUS	101294	AXON VR - TABLET	2	1	08/15/2024
BUNDLE - UNLIMITED PLUS	101300	AXON VR - TABLET CASE	2	1	08/15/2024
BUNDLE - UNLIMITED PLUS	20378	AXON VR - HEADSET - HTC FOCUS 3	2	1	08/15/2024
BUNDLE - UNLIMITED PLUS	71044	AXON SIGNAL - BATTERY - CR2430 SINGLE PACK	52	1	08/15/2024
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	100399	AXON TASER 10 - CARTRIDGE - LIVE	330	1	08/15/2025
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	100400	AXON TASER 10 - CARTRIDGE - HALT	860	1	08/15/2025
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	100399	AXON TASER 10 - CARTRIDGE - LIVE	320	1	08/15/2026
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	100400	AXON TASER 10 - CARTRIDGE - HALT	860	1	08/15/2026
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	100210	AXON VR - TAP REFRESH 1 - TABLET	5	1	02/15/2027
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	101009	AXON VR - TAP REFRESH 1 - SIDEARM CONTROLLER	5	1	02/15/2027
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	101012	AXON VR - TAP REFRESH 1 - CONTROLLER	5	1	02/15/2027
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	20373	AXON VR - TAP REFRESH 1 - HEADSET	5	1	02/15/2027
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	73309	AXON BODY - TAP REFRESH 1 - CAMERA	110	1	02/15/2027
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	73689	AXON BODY - TAP REFRESH 1 - DOCK MULTI BAY	14	1	02/15/2027
BUNDLE - UNLIMITED PLUS	100210	AXON VR - TAP REFRESH 1 - TABLET	2	1	02/15/2027
BUNDLE - UNLIMITED PLUS	101009	AXON VR - TAP REFRESH 1 - SIDEARM CONTROLLER	2	1	02/15/2027
BUNDLE - UNLIMITED PLUS	101012	AXON VR - TAP REFRESH 1 - CONTROLLER	2	1	02/15/2027
BUNDLE - UNLIMITED PLUS	20373	AXON VR - TAP REFRESH 1 - HEADSET	2	1	02/15/2027
BUNDLE - UNLIMITED PLUS	73309	AXON BODY - TAP REFRESH 1 - CAMERA	26	1	02/15/2027
BUNDLE - UNLIMITED PLUS	73689	AXON BODY - TAP REFRESH 1 - DOCK MULTI BAY	4	1	02/15/2027
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	100399	AXON TASER 10 - CARTRIDGE - LIVE	320	1	08/15/2027
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	100400	AXON TASER 10 - CARTRIDGE - HALT	850	1	08/15/2027
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	100399	AXON TASER 10 - CARTRIDGE - LIVE	320	1	08/15/2028
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	100400	AXON TASER 10 - CARTRIDGE - HALT	860	1	08/15/2028
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	73310	AXON BODY - TAP REFRESH 2 - CAMERA	110	1	08/15/2029
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	73688	AXON BODY - TAP REFRESH 2 - DOCK MULTI BAY	14	1	08/15/2029
BUNDLE - UNLIMITED PLUS	73310	AXON BODY - TAP REFRESH 2 - CAMERA	26	1	08/15/2029
BUNDLE - UNLIMITED PLUS	73688	AXON BODY - TAP REFRESH 2 - DOCK MULTI BAY	4	1	08/15/2029

Software

Bundle	Item	Description	QTY	Estimated Start Date	Estimated End Date
Basic License Bundle	73683	AXON EVIDENCE - STORAGE - 10GB A LA CARTE	9	08/15/2024	09/14/2024
Basic License Bundle	73840	AXON EVIDENCE - ECOM LICENSE - BASIC	9	08/15/2024	09/14/2024
Pro License Bundle	73683	AXON EVIDENCE - STORAGE - 10GB A LA CARTE	405	08/15/2024	09/14/2024
Pro License Bundle	73746	AXON EVIDENCE - ECOM LICENSE - PRO	135	08/15/2024	09/14/2024
A la Carte	100801	AXON RECORDS - OSP LICENSE	119	08/15/2024	09/14/2024
A la Carte	73478	AXON EVIDENCE - REDACTION ASSISTANT USER LICENSE	119	08/15/2024	09/14/2024
A la Carte	73618	AXON COMMUNITY REQUEST	119	08/15/2024	09/14/2024
A la Carte	73680	AXON RESPOND PLUS - LICENSE	119	08/15/2024	09/14/2024
A la Carte	73682	AXON EVIDENCE - AUTO TAGGING LICENSE	119	08/15/2024	09/14/2024
A la Carte	73739	AXON PERFORMANCE - LICENSE	119	08/15/2024	09/14/2024
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	100801	AXON RECORDS - OSP LICENSE	107	09/15/2024	09/14/2029
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	101180	AXON TASER - DATA SCIENCE PROGRAM	107	09/15/2024	09/14/2029
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	20248	AXON TASER - EVIDENCE.COM LICENSE	107	09/15/2024	09/14/2029
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	20248	AXON TASER - EVIDENCE.COM LICENSE	2	09/15/2024	09/14/2029
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	20370	AXON VR - FULL ACCESS - TASER ADD-ON USER	107	09/15/2024	09/14/2029
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	73478	AXON EVIDENCE - REDACTION ASSISTANT USER LICENSE	107	09/15/2024	09/14/2029

Bundle	Item	Description	QTY	Shipping Location	Estimated Delivery Date
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	73618	AXON COMMUNITY REQUEST	107	09/15/2024	09/14/2029
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	73638	AXON STANDARDS - LICENSE	107	09/15/2024	09/14/2029
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	73680	AXON RESPOND PLUS - LICENSE	107	09/15/2024	09/14/2029
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	73682	AXON EVIDENCE - AUTO TAGGING LICENSE	107	09/15/2024	09/14/2029
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	73683	AXON EVIDENCE - STORAGE - 10GB A LA CARTE	1070	09/15/2024	09/14/2029
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	73686	AXON EVIDENCE - STORAGE - UNLIMITED (AXON DEVICE)	107	09/15/2024	09/14/2029
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	73739	AXON PERFORMANCE - LICENSE	107	09/15/2024	09/14/2029
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	73746	AXON EVIDENCE - ECOM LICENSE - PRO	107	09/15/2024	09/14/2029
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	73746	AXON EVIDENCE - ECOM LICENSE - PRO	1	09/15/2024	09/14/2029
BUNDLE - UNLIMITED PLUS	100801	AXON RECORDS - OSP LICENSE	26	09/15/2024	09/14/2029
BUNDLE - UNLIMITED PLUS	20370	AXON VR - FULL ACCESS - TASER ADD-ON USER	26	09/15/2024	09/14/2029
BUNDLE - UNLIMITED PLUS	73478	AXON EVIDENCE - REDACTION ASSISTANT USER LICENSE	26	09/15/2024	09/14/2029
BUNDLE - UNLIMITED PLUS	73618	AXON COMMUNITY REQUEST	26	09/15/2024	09/14/2029
BUNDLE - UNLIMITED PLUS	73638	AXON STANDARDS - LICENSE	26	09/15/2024	09/14/2029
BUNDLE - UNLIMITED PLUS	73680	AXON RESPOND PLUS - LICENSE	26	09/15/2024	09/14/2029
BUNDLE - UNLIMITED PLUS	73682	AXON EVIDENCE - AUTO TAGGING LICENSE	26	09/15/2024	09/14/2029
BUNDLE - UNLIMITED PLUS	73683	AXON EVIDENCE - STORAGE - 10GB A LA CARTE	260	09/15/2024	09/14/2029
BUNDLE - UNLIMITED PLUS	73686	AXON EVIDENCE - STORAGE - UNLIMITED (AXON DEVICE)	26	09/15/2024	09/14/2029
BUNDLE - UNLIMITED PLUS	73739	AXON PERFORMANCE - LICENSE	26	09/15/2024	09/14/2029
BUNDLE - UNLIMITED PLUS	73746	AXON EVIDENCE - ECOM LICENSE - PRO	26	09/15/2024	09/14/2029
Pro License Bundle	73683	AXON EVIDENCE - STORAGE - 10GB A LA CARTE	48	09/15/2024	09/14/2029
Pro License Bundle	73746	AXON EVIDENCE - ECOM LICENSE - PRO	16	09/15/2024	09/14/2029

Services

Bundle	Item	Description	QTY
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	100751	AXON TASER 10 - REPLACEMENT ACCESS PROGRAM - DUTY CARTRIDGE	107
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	101184	AXON INVESTIGATE - TRAINING - OPERATOR AND EXAMINER	8
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	101193	AXON TASER - ON DEMAND CERTIFICATION	1
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	11642	AXON INVESTIGATE - THIRD PARTY VIDEO SUPPORT	107
BUNDLE - UNLIMITED PLUS	101184	AXON INVESTIGATE - TRAINING - OPERATOR AND EXAMINER	2
BUNDLE - UNLIMITED PLUS	11642	AXON INVESTIGATE - THIRD PARTY VIDEO SUPPORT	26
A la Carte	101208	AXON TASER 10 - 2 DAY INSTRUCTOR COURSE - INSIDE SALES	1
A la Carte	101267	AXON VR - PSO - FULL INSTALLATION	1
A la Carte	75014	AXON SIGNAL - PSO - INSTALLATION SERVICE ONSITE	1

Warranties

Bundle	Item	Description	QTY	Estimated Start Date	Estimated End Date
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	100197	AXON VR - EXT WARRANTY - HTC FOCUS 3 HEADSET	5	08/15/2025	09/14/2029
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	100213	AXON VR - EXT WARRANTY - TABLET	5	08/15/2025	09/14/2029
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	100704	AXON TASER 10 - EXT WARRANTY - HANDLE	107	08/15/2025	09/14/2029
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	100704	AXON TASER 10 - EXT WARRANTY - HANDLE	3	08/15/2025	09/14/2029
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	101007	AXON VR - EXT WARRANTY - CONTROLLER	5	08/15/2025	09/14/2029
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	101008	AXON VR - EXT WARRANTY - HANDGUN CONTROLLER	5	08/15/2025	09/14/2029
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	80374	AXON TASER - EXT WARRANTY - BATTERY PACK T7/T10	107	08/15/2025	09/14/2029
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	80374	AXON TASER - EXT WARRANTY - BATTERY PACK T7/T10	19	08/15/2025	09/14/2029
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	80374	AXON TASER - EXT WARRANTY - BATTERY PACK T7/T10	3	08/15/2025	09/14/2029
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	80396	AXON TASER - EXT WARRANTY - DOCK SIX BAY T7/T10	2	08/15/2025	09/14/2029
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	80464	AXON BODY - TAP WARRANTY - CAMERA	107	08/15/2025	09/14/2029
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	80464	AXON BODY - TAP WARRANTY - CAMERA	3	08/15/2025	09/14/2029
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	80465	AXON BODY - TAP WARRANTY - MULTI BAY DOCK	14	08/15/2025	09/14/2029
BUNDLE - UNLIMITED PLUS	100197	AXON VR - EXT WARRANTY - HTC FOCUS 3 HEADSET	2	08/15/2025	09/14/2029



Warranties

Bundle	Item	Description	QTY	Estimated Start Date	Estimated End Date
BUNDLE - UNLIMITED PLUS	100213	AXON VR - EXT WARRANTY - TABLET	2	08/15/2025	09/14/2029
BUNDLE - UNLIMITED PLUS	101007	AXON VR - EXT WARRANTY - CONTROLLER	2	08/15/2025	09/14/2029
BUNDLE - UNLIMITED PLUS	101008	AXON VR - EXT WARRANTY - HANDGUN CONTROLLER	2	08/15/2025	09/14/2029
BUNDLE - UNLIMITED PLUS	80464	AXON BODY - TAP WARRANTY - CAMERA	26	08/15/2025	09/14/2029
BUNDLE - UNLIMITED PLUS	80465	AXON BODY - TAP WARRANTY - MULTI BAY DOCK	4	08/15/2025	09/14/2029

### Shipping Locations

Location Number	Street	City	State	Zip	Country
1	1000 CIVIC CENTER DR	TRACY	CA	95376-4079	USA
2	1000 CIVIC CENTER DR	TRACY	CA	95376-4079	USA

### Payment Details

Aug 2024						
Invoice Plan	Item	Description	Qty	Subtotal	Tax	Total
Annual Payment 1	B00022	BUNDLE - UNLIMITED PLUS	26	\$74,355.84	\$1,750.18	\$76,106.02
Annual Payment 1	M00012	BUNDLE - OFFICER SAFETY PLAN 10 PLUS	107	\$351,148.32	\$10,221.23	\$361,369.55
Annual Payment 1	ProLicense	Pro License Bundle	16	\$8,319.36	\$0.00	\$8,319.36
Upfront Costs/Gap Coverage	100801	AXON RECORDS - OSP LICENSE	119	\$4,641.00	\$0.00	\$4,641.00
Upfront Costs/Gap Coverage	101208	AXON TASER 10 - 2 DAY INSTRUCTOR COURSE - INSIDE SALES	1	\$2,500.00	\$0.00	\$2,500.00
Upfront Costs/Gap Coverage	101267	AXON VR - PSO - FULL INSTALLATION	1	\$12,000.00	\$0.00	\$12,000.00
Upfront Costs/Gap Coverage	73478	AXON EVIDENCE - REDACTION ASSISTANT USER LICENSE	119	\$1,190.00	\$0.00	\$1,190.00
Upfront Costs/Gap Coverage	73618	AXON COMMUNITY REQUEST	119	\$1,190.00	\$0.00	\$1,190.00
Upfront Costs/Gap Coverage	73680	AXON RESPOND PLUS - LICENSE	119	\$2,356.20	\$0.00	\$2,356.20
Upfront Costs/Gap Coverage	73682	AXON EVIDENCE - AUTO TAGGING LICENSE	119	\$1,190.00	\$0.00	\$1,190.00
Upfront Costs/Gap Coverage	73739	AXON PERFORMANCE - LICENSE	119	\$1,190.00	\$0.00	\$1,190.00
Upfront Costs/Gap Coverage	75014	AXON SIGNAL - PSO - INSTALLATION SERVICE ONSITE	1	\$3,000.00	\$0.00	\$3,000.00
Upfront Costs/Gap Coverage	BasicLicense	Basic License Bundle	9	\$135.00	\$0.00	\$135.00
Upfront Costs/Gap Coverage	H00001	AB4 Camera Bundle	18	\$15,282.00	\$1,260.77	\$16,542.77
Upfront Costs/Gap Coverage	H00001	AB4 Camera Bundle	115	\$0.00	\$0.00	\$0.00
Upfront Costs/Gap Coverage	H00002	AB4 Multi Bay Dock Bundle	2	\$3,277.80	\$270.43	\$3,548.23
Upfront Costs/Gap Coverage	H00002	AB4 Multi Bay Dock Bundle	16	\$0.00	\$0.00	\$0.00
Upfront Costs/Gap Coverage	ProLicense	Pro License Bundle	135	\$5,400.00	\$0.00	\$5,400.00
<b>Total</b>				<b>\$487,175.52</b>	<b>\$13,502.61</b>	<b>\$500,678.13</b>

Sep 2024						
Invoice Plan	Item	Description	Qty	Subtotal	Tax	Total
Invoice Upon Fulfillment	M00012	BUNDLE - OFFICER SAFETY PLAN 10 PLUS	107	\$0.00	\$0.00	\$0.00
<b>Total</b>				<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>

Aug 2025						
Invoice Plan	Item	Description	Qty	Subtotal	Tax	Total
Annual Payment 2	B00022	BUNDLE - UNLIMITED PLUS	26	\$74,355.84	\$1,750.18	\$76,106.02
Annual Payment 2	M00012	BUNDLE - OFFICER SAFETY PLAN 10 PLUS	107	\$351,148.32	\$10,221.23	\$361,369.55
Annual Payment 2	ProLicense	Pro License Bundle	16	\$8,319.36	\$0.00	\$8,319.36
<b>Total</b>				<b>\$433,823.52</b>	<b>\$11,971.41</b>	<b>\$445,794.93</b>

Aug 2026						
Invoice Plan	Item	Description	Qty	Subtotal	Tax	Total
Annual Payment 3	B00022	BUNDLE - UNLIMITED PLUS	26	\$74,355.84	\$1,750.18	\$76,106.02
Annual Payment 3	M00012	BUNDLE - OFFICER SAFETY PLAN 10 PLUS	107	\$351,148.32	\$10,221.23	\$361,369.55

Aug 2026						
Invoice Plan	Item	Description	Qty	Subtotal	Tax	Total
Annual Payment 3	ProLicense	Pro License Bundle	16	\$8,319.36	\$0.00	\$8,319.36
Total				\$433,823.52	\$11,971.41	\$445,794.93

Aug 2027						
Invoice Plan	Item	Description	Qty	Subtotal	Tax	Total
Annual Payment 4	B00022	BUNDLE - UNLIMITED PLUS	26	\$74,355.84	\$1,750.18	\$76,106.02
Annual Payment 4	M00012	BUNDLE - OFFICER SAFETY PLAN 10 PLUS	107	\$351,148.32	\$10,221.23	\$361,369.55
Annual Payment 4	ProLicense	Pro License Bundle	16	\$8,319.36	\$0.00	\$8,319.36
Total				\$433,823.52	\$11,971.41	\$445,794.93

Aug 2028						
Invoice Plan	Item	Description	Qty	Subtotal	Tax	Total
Annual Payment 5	B00022	BUNDLE - UNLIMITED PLUS	26	\$74,355.84	\$1,750.26	\$76,106.10
Annual Payment 5	M00012	BUNDLE - OFFICER SAFETY PLAN 10 PLUS	107	\$351,148.32	\$10,221.20	\$361,369.52
Annual Payment 5	ProLicense	Pro License Bundle	16	\$8,319.36	\$0.00	\$8,319.36
Total				\$433,823.52	\$11,971.46	\$445,794.98

Tax is estimated based on rates applicable at date of quote and subject to change at time of invoicing. If a tax exemption certificate should be applied, please submit prior to invoicing.

## Standard Terms and Conditions

### Axon Enterprise Inc. Sales Terms and Conditions

#### Axon Master Services and Purchasing Agreement:

This Quote is limited to and conditional upon your acceptance of the provisions set forth herein and Axon's Master Services and Purchasing Agreement (posted at <https://www.axon.com/sales-terms-and-conditions>), as well as the attached Statement of Work (SOW) for Axon Fleet and/or Axon Interview Room purchase, if applicable. In the event you and Axon have entered into a prior agreement to govern all future purchases, that agreement shall govern to the extent it includes the products and services being purchased and does not conflict with the Axon Customer Experience Improvement Program Appendix as described below.

#### ACEIP:

The Axon Customer Experience Improvement Program Appendix, which includes the sharing of de-identified segments of Agency Content with Axon to develop new products and improve your product experience (posted at [www.axon.com/legal/sales-terms-and-conditions](http://www.axon.com/legal/sales-terms-and-conditions)), is incorporated herein by reference. By signing below, you agree to the terms of the Axon Customer Experience Improvement Program.

#### Acceptance of Terms:

Any purchase order issued in response to this Quote is subject solely to the above referenced terms and conditions. By signing below, you represent that you are lawfully able to enter into contracts. If you are signing on behalf of an entity (including but not limited to the company, municipality, or government agency for whom you work), you represent to Axon that you have legal authority to bind that entity. If you do not have this authority, please do not sign this Quote.

## Exceptions to Standard Terms and Conditions

This is a contract renewal of contract #00060556.

BWC hardware contained in this quote at \$0 is considered a TAP refresh of the contract listed above. All TAP obligations of the contract listed above will be considered fulfilled upon execution of this quote.

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Signature

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Date Signed

6/25/2024



Agenda Item 1.E

RECOMMENDATION

**Staff recommends that the City Council adopt a resolution: (1) determining that compliance with standard procurement processes is not in the best interests of the City pursuant to Tracy Municipal Code 2.20.180 (b)(4) and dispensing such requirement for the actions herein, and; (2) approving a Service Agreement with Motorola Solutions, Inc. for police communications maintenance with a total not to exceed amount of \$120,000 and for the term of 12 months effective retroactively from July 1, 2024.**

EXECUTIVE SUMMARY

This agenda item seeks adoption of a Resolution approving a Service Agreement (GSA) with Motorola Solutions, Inc. (Consultant) for a 12-month term and for a total not to exceed amount of \$120,000. The compliance with the standard procurement procedures is not in the best interests of the City because the Tracy Police Department uses Motorola equipment for all its communication needs and Consultant is the exclusive vendor for all Motorola products, equipment, installation and maintenance services.

Until 2023, the City contracted with a local vendor, Delta Wireless, for these services but Delta Wireless closed its business in 2023. Consultant assumed responsibility over all accounts and contracts affected by the closure of Delta Wireless.

Due to the timing restrictions and continuous need for these services, the City executed a short term agreement, pursuant to Tracy Municipal Code 2.20.180(b)(4), with the Consultant. The current agreement with the Consultant expired on June 30, 2024, and the City has been using the Consultant since then.

Staff now recommends an interim 12-month agreement with the Consultant, to be effective retroactively from July 1, 2024 so that staff can evaluate its communication equipment and research interoperability solutions with other San Joaquin County agencies before committing to a long-term vendor.

BACKGROUND AND LEGISLATIVE HISTORY

The Police Department uses Motorola equipment for all police communication needs. This includes all portable police radios, vehicle radios, radio tower equipment, 9-1-1 Communication Center equipment, and all accessories including antennas, receivers, and voters.

Consultant is the exclusive vendor for all Motorola products, equipment, installation services, and maintenance services.

The current agreement between the City and Motorola Solutions, Inc. expired on June 30, 2024. As a result, a new agreement is necessary. Staff recommends entering into a 12-month agreement with Consultant in the form attached hereto as Attachment A.

Consultant is the exclusive provider for all Motorola equipment; however, agencies have access to a local authorized vendor who can sell and repair Motorola equipment. Up until 2023, the Tracy Police Department contracted with Delta Wireless as the local vendor. In October 2023, Delta closed its business, and the Consultant assumed responsibility over all accounts and contracts affected by the closure of Delta Wireless.

Due to timing and continuous need of these services, Motorola offered short term agreements with their customers, maintained service levels, and honored all fees as agreed upon with Delta Wireless. The City executed a short-term agreement, pursuant to Tracy Municipal Code 2.20.180(b)(4), with the Consultant.

Motorola Solutions, Inc. still allows agencies to conduct business with local authorized dealers for purchases and repairs of their equipment; however, now those vendors are authorized and dispatched for services exclusively through Motorola Solutions, Inc. rather than a private contract between the agency and the vendor.

### ANALYSIS

All Tracy Police Department police communication equipment is Motorola product. This includes 177 portable radios and 73 mobile/vehicle radios, all 9-1-1 Communication Center radio equipment, all police communication tower equipment, and all supporting accessories.

As Motorola Solutions, Inc. is the exclusive provider for Motorola equipment, a transition to another brand of equipment would be extremely costly as the entire inventory would need to be replaced to include equipment, hardware, software, installation costs, programming costs, and other similar expenses.

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.

Staff is currently evaluating its communication equipment and researching interoperability solutions with all San Joaquin County agencies to prepare for future purchases or upgrades to the Department's entire communications system. For this reason, staff recommends that a short-term agreement with Consultant of 12 months is best. As we have continued to use them since July 1, 2024, staff requests the City Council to retroactively commence the term from July 1, 2024.

### FISCAL IMPACT

The total not to exceed amount of this agreement is \$120,000. The funding is provided through the Police Department's operating budget in the General Fund.

PUBLIC OUTREACH/INTEREST

This is an operational item for the Police Department. No public outreach was conducted.

COORDINATION

This is an operational item. No coordination is needed with any other City department.

CEQA DETERMINATION

The proposed action is not a “project” under the California Environmental Quality Act (CEQA). 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 is related to Council’s strategic priority for Public Safety.

ACTION REQUESTED OF THE CITY COUNCIL

Staff recommends that the City Council adopt a resolution: (1) determining that compliance with standard procurement processes is not in the best interests of the City pursuant to Tracy Municipal Code 2.20.180 (b)(4) and dispensing such requirement for the actions herein, and; (2) approving a Service Agreement with Motorola Solutions, Inc. for police communications maintenance with a total not to exceed amount of \$120,000 and for the term of 12 months effective retroactively from July 1, 2024.

Prepared by: Beth Lyons-McCarthy, Support Operations Manager

Reviewed by: Sekou Millington, Chief of Police  
Sara Castro, Director of Finance  
Karin Schnaider, Assistant City Manager  
Kamalpreet Gill, Deputy City Attorney

Approved by: Midori Lichtwardt, City Manager

Attachments:

Attachment A: Service Agreement Motorola Solutions, Inc.





# SERVICE AGREEMENT

500 W Monroe Street  
Chicago, IL. 60661  
(888) 325-9336

Quote Number : QUOTE-2547810  
Contract Number: USC000857851  
Contract Modifier: R03-MAR-24 09:11:34

Date:03/03/2024

Company Name: TRACY POLICE DEPT, CITY OF
Attn:
Billing Address: 333 CIVIC CENTER PLAZA
City, State, Zip: TRACY , CA, 95376
Customer Contact: Beth Lyons-McCarthy
Phone: 209-831-6594

Required P.O. :

PO # :

Customer # :1000418344

Bill to Tag # :

Contract Start Date :01-Jul-2024

Contract End Date :30-Jun-2025

Payment Cycle :MONTHLY

Qty	Service Name	Service Description	Extended Amt
	SVC01SVC1420C	LOCAL INFRASTRUCTURE REPAIR	\$15,941.12
	LSV01S01107A	ASTRO SYSTEM ESSENTIAL PLUS PACKAGE	\$51,334.39
	LSV00Q00575A	LOCAL DEVICE REPAIR- CUSTOM SLA	\$15,941.12
	LSV00Q00572A	LOCAL DEVICE SUPPORT	\$24,583.33
		Subtotal - Recurring Services	\$9,647.54
		Subtotal - One-Time Event Services	\$0.00
		Total	\$107,799.96
THIS SERVICE AMOUNT IS SUBJECT TO STATE AND LOCAL TAXING JURISDICTIONS WHERE APPLICABLE, TO BE VERIFIED BY MOTOROLA			

### SPECIAL INSTRUCTIONS:

Essential Plus Includes:

MSI Dispatch  
MSI Onsite Sys Support-Std  
MSI Preventive Maintenance1  
MSI Repair and Return  
MSI Security Update Service  
MSI System Tech Support

Local response and local device repair for subscribers based on inventory list.

Local infrastructure repair is for end of life equipment and is commercial reasonable effort basis, upon parts availability.

LSV00Q00572A is for the annual codeplug update.

Please note the SUA is covered under current contract agreement: USC000378469

**I have received Applicable Statements of Work which describe the Services and cybersecurity services provided on this Agreement. Motorola's Terms and Conditions, including the Cybersecurity Online Terms Acknowledgement, are**



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attached hereto and incorporate the Cyber Addendum (available at [https://www.motorolasolutions.com/en\\_us/managed-support-services/cybersecurity.html](https://www.motorolasolutions.com/en_us/managed-support-services/cybersecurity.html)) by reference. By signing below Customer acknowledges these terms and conditions govern all Services under this Service Agreement.

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AUTHORIZED CUSTOMER SIGNATURE	TITLE	DATE
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CUSTOMER (PRINT NAME)

*Laura O'Brien*

CSM

7/10/24

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MOTOROLA REPRESENTATIVE(SIGNATURE)	TITLE	DATE
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Laura O'Brien

224-775-8254

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MOTOROLA REPRESENTATIVE(PRINT NAME)	PHONE
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Company Name : TRACY POLICE DEPT, CITY OF  
Contract Number : USC000857851  
Contract Modifier : R03-MAR-24 09:11:34  
Contract Start Date : 01-Jul-2024  
Contract End Date : 30-Jun-2025



# SERVICE AGREEMENT

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## Service Terms and Conditions

Motorola Solutions Inc. ("Motorola") and the customer named in this Agreement ("Customer") hereby agree as follows:

### Section 1. APPLICABILITY

These Maintenance Service Terms and Conditions apply to service contracts whereby Motorola will provide to Customer either (1) maintenance, support, or other services under a Motorola Service Agreement, or (2) installation services under a Motorola Installation Agreement.

### Section 2. DEFINITIONS AND INTERPRETATION

2.1 "Agreement" means these Maintenance Service Terms and Conditions; the cover page for the Service Agreement or the Installation Agreement, as applicable; and any other attachments, all of which are incorporated herein by this reference. In interpreting this Agreement and resolving any ambiguities, these Maintenance Service Terms and Conditions take precedence over any cover page, and the cover page takes precedence over any attachments, unless the cover page or attachment states otherwise.

2.2 "Equipment" means the equipment that is specified in the attachments or is subsequently added to this Agreement.

2.3 "Services" means those installation, maintenance, support, training, and other services described in this Agreement.

### Section 3. ACCEPTANCE

Customer accepts these Maintenance Service Terms and Conditions and agrees to pay the prices set forth in the Agreement. This Agreement becomes binding only when accepted in writing by Motorola. The term of this Agreement begins on the "Start Date" indicated in this Agreement.

### Section 4. SCOPE OF SERVICES

4.1 Motorola will provide the Services described in this Agreement or in a more detailed statement of work or other document attached to this Agreement. At Customer's request, Motorola may also provide additional services at Motorola's then-applicable rates for the services.

4.2 If Motorola is providing Services for Equipment, Motorola parts or parts of equal quality will be used; the Equipment will be serviced at levels set forth in the manufacturer's product manuals; and routine service procedures that are prescribed by Motorola will be followed.

4.3 If Customer purchases from Motorola additional equipment that becomes part of the same system as the initial Equipment, the additional equipment may be added to this Agreement and will be billed at the applicable rates after the warranty for that additional equipment expires.

4.4 All Equipment must be in good working order on the Start Date or when additional equipment is added to the Agreement. Upon reasonable request by Motorola, Customer will provide a complete serial and model number list of the Equipment. Customer must promptly notify Motorola in writing when any Equipment is lost, damaged, stolen or taken out of service. Customer's obligation to pay Service fees for this Equipment will terminate at the end of the month in which Motorola receives the written notice.

4.5 Customer must specifically identify any Equipment that is labeled intrinsically safe for use in hazardous environments.

4.6 If Equipment cannot, in Motorola's reasonable opinion, be properly or economically serviced for any reason, Motorola may modify the scope of Services related to that Equipment; remove that Equipment from the Agreement; or increase the price to Service that Equipment.

4.7 Customer must promptly notify Motorola of any Equipment failure. Motorola will respond to Customer's notification in a manner consistent with the level of Service purchased as indicated in this.

### Section 5. EXCLUDED SERVICES

5.1 Service excludes the repair or replacement of Equipment that has become defective or damaged from use in other than the normal, customary, intended, and authorized manner; use not in compliance with applicable industry standards; excessive wear and tear; or accident, liquids, power surges, neglect, acts of God or other force majeure events.

5.2 Unless specifically included in this Agreement, Service excludes items that are consumed in the normal operation of the Equipment, such as batteries or magnetic tapes.; upgrading or reprogramming Equipment; accessories, belt clips, battery chargers, custom or special products, modified units, or software; and repair or maintenance of any transmission line, antenna, microwave equipment, tower or tower lighting, duplexer, combiner, or multicoupler. Motorola has no obligations for any transmission medium, such as telephone lines, computer networks, the internet or the worldwide web, or for Equipment malfunction caused by the transmission medium.



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## Section 6. TIME AND PLACE OF SERVICE

Service will be provided at the location specified in this Agreement. When Motorola performs service at Customer's location, Customer will provide Motorola, at no charge, a non-hazardous work environment with adequate shelter, heat, light, and power and with full and free access to the Equipment. Waivers of liability from Motorola or its subcontractors will not be imposed as a site access requirement. Customer will provide all information pertaining to the hardware and software elements of any system with which the Equipment is interfacing so that Motorola may perform its Services. Unless otherwise stated in this Agreement, the hours of Service will be 8:30 a.m. to 4:30 p.m., local time, excluding weekends and holidays. Unless otherwise stated in this Agreement, the price for the Services exclude any charges or expenses associated with helicopter or other unusual access requirements; if these charges or expenses are reasonably incurred by Motorola in rendering the Services, Customer agrees to reimburse Motorola for those charges and expenses.

## Section 7. CUSTOMER CONTACT

Customer will provide Motorola with designated points of contact (list of names and phone numbers) that will be available twenty-four (24) hours per day, seven (7) days per week, and an escalation procedure to enable Customer's personnel to maintain contact, as needed, with Motorola.

## Section 8. INVOICING AND PAYMENT

8.1 Customer affirms that a purchase order or notice to proceed is not required for the duration of this service contract and will appropriate funds each year through the contract end date. Unless alternative payment terms are stated in this Agreement, Motorola will invoice Customer in advance for each payment period. All other charges will be billed monthly, and Customer must pay each invoice in U.S. dollars within twenty (20) days of the invoice date

8.2 Customer will reimburse Motorola for all property taxes, sales and use taxes, excise taxes, and other taxes or assessments that are levied as a result of Services rendered under this Agreement (except income, profit, and franchise taxes of Motorola) by any governmental entity. The Customer will pay all invoices as received from Motorola. At the time of execution of this Agreement, the Customer will provide all necessary reference information to include on invoices for payment in accordance with this Agreement.

8.3 For multi-year service agreements, at the end of the first year of the Agreement and each year thereafter, a CPI percentage change calculation shall be performed using the U.S. Department of Labor, Consumer Price Index, all Items, Unadjusted Urban Areas (CPI-U). Should the annual inflation rate increase greater than 3% during the previous year, Motorola shall have the right to increase all future maintenance prices by the CPI increase amount exceeding 3%. All items, not seasonally adjusted shall be used as the measure of CPI for this price adjustment. Measurement will take place once the annual average for the new year has been posted by the Bureau of Labor Statistics. For purposes of illustration, if in year 5 the CPI reported an increase of 8%, Motorola may increase the Year 6 price by 5% (8%-3% base).

## Section 9. WARRANTY

Motorola warrants that its Services under this Agreement will be free of defects in materials and workmanship for a period of ninety (90) days from the date the performance of the Services are completed. In the event of a breach of this warranty, Customer's sole remedy is to require Motorola to re-perform the non-conforming Service or to refund, on a pro-rata basis, the fees paid for the non-conforming Service. MOTOROLA DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

## Section 10. DEFAULT/TERMINATION

10.1 If either party defaults in the performance of this Agreement, the other party will give to the non-performing party a written and detailed notice of the default. The non-performing party will have thirty (30) days thereafter to provide a written plan to cure the default that is acceptable to the other party and begin implementing the cure plan immediately after plan approval. If the non-performing party fails to provide or implement the cure plan, then the injured party, in addition to any other rights available to it under law, may immediately terminate this Agreement effective upon giving a written notice of termination to the defaulting party.

10.2 Any termination of this Agreement will not relieve either party of obligations previously incurred pursuant to this Agreement, including payments which may be due and owing at the time of termination. All sums owed by Customer to Motorola will become due and payable immediately upon termination of this Agreement. Upon the effective date of termination, Motorola will have no further obligation to provide Services.

10.3 If the Customer terminates this Agreement before the end of the Term, for any reason other than Motorola default, then the Customer will pay to Motorola an early termination fee equal to the discount applied to the last three (3) years of Service payments for the original Term.

## Section 11. LIMITATION OF LIABILITY

Except for personal injury or death, Motorola's total liability, whether for breach of contract, warranty, negligence, strict liability in tort, or otherwise, will be limited to the direct damages recoverable under law, but not to exceed the price of twelve (12) months of Service provided under this Agreement.



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ALTHOUGH THE PARTIES ACKNOWLEDGE THE POSSIBILITY OF SUCH LOSSES OR DAMAGES, THEY AGREE THAT MOTOROLA WILL NOT BE LIABLE FOR ANY COMMERCIAL LOSS; INCONVENIENCE; LOSS OF USE, TIME, DATA, GOOD WILL, REVENUES, PROFITS OR SAVINGS; OR OTHER SPECIAL, INCIDENTAL, INDIRECT, OR CONSEQUENTIAL DAMAGES IN ANY WAY RELATED TO OR ARISING FROM THIS AGREEMENT OR THE PERFORMANCE OF SERVICES BY MOTOROLA PURSUANT TO THIS AGREEMENT. No action for contract breach or otherwise relating to the transactions contemplated by this Agreement may be brought more than one (1) year after the accrual of the cause of action, except for money due upon an open account. This limitation of liability will survive the expiration or termination of this Agreement and applies notwithstanding any contrary provision.

## Section 12. EXCLUSIVE TERMS AND CONDITIONS

12.1 This Agreement supersedes all prior and concurrent agreements and understandings between the parties, whether written or oral, related to the Services, and there are no agreements or representations concerning the subject matter of this Agreement except for those expressed herein. The Agreement may not be amended or modified except by a written agreement signed by authorized representatives of both parties.

12.2 Customer agrees to reference this Agreement on any purchase order issued in furtherance of this Agreement, however, an omission of the reference to this Agreement will not affect its applicability. In no event will either party be bound by any terms contained in a Customer purchase order, acknowledgement, or other writings unless: the purchase order, acknowledgement, or other writing specifically refers to this Agreement; clearly indicate the intention of both parties to override and modify this Agreement; and the purchase order, acknowledgement, or other writing is signed by authorized representatives of both parties.

## Section 13. PROPRIETARY INFORMATION; CONFIDENTIALITY; INTELLECTUAL PROPERTY RIGHTS

13.1 Any information or data in the form of specifications, drawings, reprints, technical information or otherwise furnished to Customer under this Agreement will remain Motorola's property, will be deemed proprietary, will be kept confidential, and will be promptly returned at Motorola's request. Customer may not disclose, without Motorola's written permission or as required by law, any confidential information or data to any person, or use confidential information or data for any purpose other than performing its obligations under this Agreement. The obligations set forth in this Section survive the expiration or termination of this Agreement.

13.2 Unless otherwise agreed in writing, no commercial or technical information disclosed in any manner or at any time by Customer to Motorola will be deemed secret or confidential. Motorola will have no obligation to provide Customer with access to its confidential and proprietary information, including cost and pricing data.

13.3 This Agreement does not grant directly or by implication, estoppel, or otherwise, any ownership right or license under any Motorola patent, copyright, trade secret, or other intellectual property, including any intellectual property created as a result of or related to the Equipment sold or Services performed under this Agreement.

## Section 14. FCC LICENSES AND OTHER AUTHORIZATIONS

Customer is solely responsible for obtaining licenses or other authorizations required by the Federal Communications Commission or any other federal, state, or local government agency and for complying with all rules and regulations required by governmental agencies. Neither Motorola nor any of its employees is an agent or representative of Customer in any governmental matters.

## Section 15. COVENANT NOT TO EMPLOY

During the term of this Agreement and continuing for a period of two (2) years thereafter, Customer will not hire, engage on contract, solicit the employment of, or recommend employment to any third party of any employee of Motorola or its subcontractors without the prior written authorization of Motorola. This provision applies only to those employees of Motorola or its subcontractors who are responsible for rendering services under this Agreement. If this provision is found to be overly broad under applicable law, it will be modified as necessary to conform to applicable law.

## Section 16. MATERIALS, TOOLS AND EQUIPMENT

All tools, equipment, dies, gauges, models, drawings or other materials paid for or furnished by Motorola for the purpose of this Agreement will be and remain the sole property of Motorola. Customer will safeguard all such property while it is in Customer's custody or control, be liable for any loss or damage to this property, and return it to Motorola upon request. This property will be held by Customer for Motorola's use without charge and may be removed from Customer's premises by Motorola at any time without restriction.

## Section 17. GENERAL TERMS

17.1 If any court renders any portion of this Agreement unenforceable, the remaining terms will continue in full force and effect.

17.2 This Agreement and the rights and duties of the parties will be interpreted in accordance with the laws of the State in which the Services are performed.

17.3 Failure to exercise any right will not operate as a waiver of that right, power, or privilege.



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17.4 Neither party is liable for delays or lack of performance resulting from any causes that are beyond that party's reasonable control, such as strikes, material shortages, or acts of God.

17.5 Motorola may subcontract any of the work, but subcontracting will not relieve Motorola of its duties under this Agreement.

17.6 Except as provided herein, neither Party may assign this Agreement or any of its rights or obligations hereunder without the prior written consent of the other Party, which consent will not be unreasonably withheld. Any attempted assignment, delegation, or transfer without the necessary consent will be void. Notwithstanding the foregoing, Motorola may assign this Agreement to any of its affiliates or its right to receive payment without the prior consent of Customer. In addition, in the event Motorola separates one or more of its businesses (each a "Separated Business"), whether by way of a sale, establishment of a joint venture, spin-off or otherwise (each a "Separation Event"), Motorola may, without the prior written consent of the other Party and at no additional cost to Motorola, assign this Agreement such that it will continue to benefit the Separated Business and its affiliates (and Motorola and its affiliates, to the extent applicable) following the Separation Event.

17.7 THIS AGREEMENT WILL RENEW, FOR AN ADDITIONAL ONE (1) YEAR TERM, ON EVERY ANNIVERSARY OF THE START DATE UNLESS EITHER THE COVER PAGE SPECIFICALLY STATES A TERMINATION DATE OR ONE PARTY NOTIFIES THE OTHER IN WRITING OF ITS INTENTION TO DISCONTINUE THE AGREEMENT NOT LESS THAN THIRTY (30) DAYS OF THAT ANNIVERSARY DATE. At the anniversary date, Motorola may adjust the price of the Services to reflect its current rates.

17.8 If Motorola provides Services after the termination or expiration of this Agreement, the terms and conditions in effect at the time of the termination or expiration will apply to those Services and Customer agrees to pay for those services on a time and materials basis at Motorola's then effective hourly rates.

17.9 This Agreement may be executed in one or more counterparts, all of which shall be considered part of the Agreement. The parties may execute this Agreement in writing, or by electronic signature, and any such electronic signature shall have the same legal effect as a handwritten signature for the purposes of validity, enforceability and admissibility. In addition, an electronic signature, a true and correct facsimile copy or computer image of this Agreement shall be treated as and shall have the same effect as an original signed copy of this document.

Revised Sept 03, 2022



## SERVICE AGREEMENT

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### Cybersecurity Online Terms Acknowledgement

This Cybersecurity Online Terms Acknowledgement (this "Acknowledgement") is entered into between Motorola Solutions, Inc. ("Motorola") and the entity set forth in the signature block below ("Customer").

**1. Applicability and Self Deletion.** This Cybersecurity Online Terms Acknowledgement applies to the extent cybersecurity products and services, including Remote Security Update Service, Security Update Service, and Managed Detection & Response subscription services, are purchased by or otherwise provided to Customer, including through bundled or integrated offerings or otherwise.

**NOTE: This Acknowledgement is self deleting if not applicable under this Section 1.**

**2. Online Terms Acknowledgement.** The Parties acknowledge and agree that the terms of the *Cyber Subscription Renewals and Integrations Addendum* available at <http://www.motorolasolutions.com/cyber-renewals-integrations> are incorporated in and form part of the Parties' agreement as it relates to any cybersecurity products or services sold or provided to Customer. By signing the signature block below, Customer certifies that it has read and agrees to the provisions set forth and linked on-line in this Acknowledgement. To the extent Customer is unable to access the above referenced online terms for any reason, Customer may request a paper copy from Motorola. The signatory to this Acknowledgement represents and warrants that he or she has the requisite authority to bind Customer to this Acknowledgement and referenced online terms.

**3. Entire Agreement.** This Acknowledgement supplements any and all applicable and existing agreements and supersedes any contrary terms as it relates to Customer's purchase of cybersecurity products and services. This Acknowledgement and referenced terms constitute the entire agreement of the parties regarding the subject matter hereof and as set out in the referenced terms, and supersedes all previous agreements, proposals, and understandings, whether written or oral, relating to this subject matter.

**4. Execution and Amendments.** This Acknowledgement may be executed in multiple counterparts, and will have the same legal force and effect as if the Parties had executed it as a single document. The Parties may sign in writing or by electronic signature. An electronic signature, facsimile copy, or computer image of a signature, will be treated, and will have the same effect as an original signature, and will have the same effect, as an original signed copy of this document. This Acknowledgement may be amended or modified only by a written instrument signed by authorized representatives of both Parties. The Parties hereby enter into this Acknowledgement as of the last signature date below.

Revised Sept 03, 2022

TRACY CITY COUNCIL

RESOLUTION NO. 2024-

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1) DETERMINING THAT COMPLIANCE WITH STANDARD PROCUREMENT PROCESSES IS NOT IN THE BEST INTERESTS OF THE CITY PURSUANT TO TRACY MUNICIPAL CODE 2.20.180 (B)(4) AND DISPENSING SUCH REQUIREMENT FOR THE ACTIONS HEREIN, AND;

(2) APPROVING A SERVICE AGREEMENT WITH MOTOROLA SOLUTIONS, INC. FOR POLICE COMMUNICATIONS MAINTENANCE WITH A TOTAL NOT TO EXCEED AMOUNT OF \$120,000 AND FOR THE TERM OF 12 MONTHS EFFECTIVE RETROACTIVELY FROM JULY 1, 2024

**WHEREAS**, the Police Department uses Motorola equipment for all police communication needs which includes all portable police radios, vehicle radios, radio tower equipment, 9-1-1 Communication Center equipment, and all accessories including antennas, receivers, and voters; and;

**WHEREAS**, until 2023, the City was contracted with a local vendor, Delta Wireless, for these services but Delta Wireless closed its business in 2023 and Motorola Services, Inc. (Consultant) assumed responsibility over all accounts and contracts affected by the closure of Delta Wireless; and

**WHEREAS**, due to the timing restrictions and continuous need of these services, the City executed a short-term agreement with the Consultant, pursuant to Tracy Municipal Code 2.20.180(b)(4) and the current agreement with the Consultant expired on June 30, 2024; and

**WHEREAS**, the City has been using Consultant after the agreement had expired out of necessity; and

**WHEREAS**, because Consultant is concurrently the exclusive provider for Motorola equipment, a transition to another brand of equipment would be extremely costly as the entire inventory would need to be replaced to include equipment, hardware, software, installation costs, programming costs, and other similar expenses; and

**WHEREAS**, Tracy Municipal Code Section 2.20.180(b)(4) authorizes the City Council to approve an exception to the contracting procedure for general services agreements where the Council finds compliance is not in the best interest of the City for the subject services; and



**WHEREAS**, City Council has determined that compliance with the City's competitive bidding procedures is not in the best interest of the City, in part, because Consultant is currently the exclusive provider for Motorola equipment and a transition to another brand of equipment would be extremely costly; and

**WHEREAS**, staff is evaluating its communication equipment and researching interoperability solutions with all San Joaquin County agencies to prepare for future purchases or upgrades to the Department's entire communications system; and

**WHEREAS**, the City seeks to enter into an interim 12-month agreement, effectively retroactively to July 1, 2024, with Consultant for a cost not to exceed \$120,000 to be funded through the Police Department's operating budget; and

**NOW, THEREFORE**, be it resolved as follows:

**RESOLVED:** That the City Council of the City of Tracy hereby finds the above recitals to be true and correct; and be it further

**RESOLVED:** That the City Council hereby approves that compliance with standard procurement processes is not in the best interests of the City pursuant to Tracy Municipal Code 2.20.180 (b)(4) and dispensing such requirement for the actions herein; and be it further

**RESOLVED:** That the City Council does hereby approve a Service Agreement with Motorola Solutions, Inc. in the form attached as Exhibit 1 for police communications maintenance with a total not to exceed amount of \$100,000 and for a term of 12 months, effective retroactively from July 1, 2024 to June 30, 2025.

\*\*\*\*\*

The foregoing Resolution 2024-\_\_\_\_\_ was adopted by the Tracy City Council on September 3, 2024 by the following vote:

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

---

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

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

Attachment:

Exhibit 1: Service Agreement Motorola Solutions, Inc.



# SERVICE AGREEMENT

500 W Monroe Street  
 Chicago, IL. 60661  
 (888) 325-9336

Quote Number : QUOTE-2547810  
 Contract Number: USC000857851  
 Contract Modifier: R03-MAR-24 09:11:34

Date:03/03/2024

Company Name: TRACY POLICE DEPT, CITY OF
Attn:
Billing Address: 333 CIVIC CENTER PLAZA
City, State, Zip: TRACY , CA, 95376
Customer Contact: Beth Lyons-McCarthy
Phone: 209-831-6594

Required P.O. :  
 PO # :  
 Customer # :1000418344  
 Bill to Tag # :  
 Contract Start Date :01-Jul-2024  
 Contract End Date :30-Jun-2025  
 Payment Cycle :MONTHLY

Qty	Service Name	Service Description	Extended Amt
	SVC01SVC1420C	LOCAL INFRASTRUCTURE REPAIR	\$15,941.12
	LSV01S01107A	ASTRO SYSTEM ESSENTIAL PLUS PACKAGE	\$51,334.39
	LSV00Q00575A	LOCAL DEVICE REPAIR- CUSTOM SLA	\$15,941.12
	LSV00Q00572A	LOCAL DEVICE SUPPORT	\$24,583.33
		Subtotal - Recurring Services	\$9,647.54
		Subtotal - One-Time Event Services	\$0.00
		Total	\$107,799.96
THIS SERVICE AMOUNT IS SUBJECT TO STATE AND LOCAL TAXING JURISDICTIONS WHERE APPLICABLE, TO BE VERIFIED BY MOTOROLA			

**SPECIAL INSTRUCTIONS:**

- Essential Plus Includes:
- MSI Dispatch
- MSI Onsite Sys Support-Std
- MSI Preventive Maintenance1
- MSI Repair and Return
- MSI Security Update Service
- MSI System Tech Support

Local response and local device repair for subscribers based on inventory list.  
 Local infrastructure repair is for end of life equipment and is commercial reasonable effort basis, upon parts availability.

LSV00Q00572A is for the annual codeplug update.

Please note the SUA is covered under current contract agreement: USC000378469

**I have received Applicable Statements of Work which describe the Services and cybersecurity services provided on this Agreement. Motorola's Terms and Conditions, including the Cybersecurity Online Terms Acknowledgement, are**



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attached hereto and incorporate the Cyber Addendum (available at [https://www.motorolasolutions.com/en\\_us/managed-support-services/cybersecurity.html](https://www.motorolasolutions.com/en_us/managed-support-services/cybersecurity.html)) by reference. By signing below Customer acknowledges these terms and conditions govern all Services under this Service Agreement.

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AUTHORIZED CUSTOMER SIGNATURE	TITLE	DATE
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CUSTOMER (PRINT NAME)		
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<i>Laura O'Brien</i>	CSM	7/10/24
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MOTOROLA REPRESENTATIVE(SIGNATURE)	TITLE	DATE
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Laura O'Brien	224-775-8254	
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MOTOROLA REPRESENTATIVE(PRINT NAME)	PHONE	
-------------------------------------	-------	--

Company Name : TRACY POLICE DEPT, CITY OF  
Contract Number : USC000857851  
Contract Modifier : R03-MAR-24 09:11:34  
Contract Start Date : 01-Jul-2024  
Contract End Date : 30-Jun-2025



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## Service Terms and Conditions

Motorola Solutions Inc. ("Motorola") and the customer named in this Agreement ("Customer") hereby agree as follows:

### Section 1. APPLICABILITY

These Maintenance Service Terms and Conditions apply to service contracts whereby Motorola will provide to Customer either (1) maintenance, support, or other services under a Motorola Service Agreement, or (2) installation services under a Motorola Installation Agreement.

### Section 2. DEFINITIONS AND INTERPRETATION

2.1 "Agreement" means these Maintenance Service Terms and Conditions; the cover page for the Service Agreement or the Installation Agreement, as applicable; and any other attachments, all of which are incorporated herein by this reference. In interpreting this Agreement and resolving any ambiguities, these Maintenance Service Terms and Conditions take precedence over any cover page, and the cover page takes precedence over any attachments, unless the cover page or attachment states otherwise.

2.2 "Equipment" means the equipment that is specified in the attachments or is subsequently added to this Agreement.

2.3 "Services" means those installation, maintenance, support, training, and other services described in this Agreement.

### Section 3. ACCEPTANCE

Customer accepts these Maintenance Service Terms and Conditions and agrees to pay the prices set forth in the Agreement. This Agreement becomes binding only when accepted in writing by Motorola. The term of this Agreement begins on the "Start Date" indicated in this Agreement.

### Section 4. SCOPE OF SERVICES

4.1 Motorola will provide the Services described in this Agreement or in a more detailed statement of work or other document attached to this Agreement. At Customer's request, Motorola may also provide additional services at Motorola's then-applicable rates for the services.

4.2 If Motorola is providing Services for Equipment, Motorola parts or parts of equal quality will be used; the Equipment will be serviced at levels set forth in the manufacturer's product manuals; and routine service procedures that are prescribed by Motorola will be followed.

4.3 If Customer purchases from Motorola additional equipment that becomes part of the same system as the initial Equipment, the additional equipment may be added to this Agreement and will be billed at the applicable rates after the warranty for that additional equipment expires.

4.4 All Equipment must be in good working order on the Start Date or when additional equipment is added to the Agreement. Upon reasonable request by Motorola, Customer will provide a complete serial and model number list of the Equipment. Customer must promptly notify Motorola in writing when any Equipment is lost, damaged, stolen or taken out of service. Customer's obligation to pay Service fees for this Equipment will terminate at the end of the month in which Motorola receives the written notice.

4.5 Customer must specifically identify any Equipment that is labeled intrinsically safe for use in hazardous environments.

4.6 If Equipment cannot, in Motorola's reasonable opinion, be properly or economically serviced for any reason, Motorola may modify the scope of Services related to that Equipment; remove that Equipment from the Agreement; or increase the price to Service that Equipment.

4.7 Customer must promptly notify Motorola of any Equipment failure. Motorola will respond to Customer's notification in a manner consistent with the level of Service purchased as indicated in this.

### Section 5. EXCLUDED SERVICES

5.1 Service excludes the repair or replacement of Equipment that has become defective or damaged from use in other than the normal, customary, intended, and authorized manner; use not in compliance with applicable industry standards; excessive wear and tear; or accident, liquids, power surges, neglect, acts of God or other force majeure events.

5.2 Unless specifically included in this Agreement, Service excludes items that are consumed in the normal operation of the Equipment, such as batteries or magnetic tapes.; upgrading or reprogramming Equipment; accessories, belt clips, battery chargers, custom or special products, modified units, or software; and repair or maintenance of any transmission line, antenna, microwave equipment, tower or tower lighting, duplexer, combiner, or multicoupler. Motorola has no obligations for any transmission medium, such as telephone lines, computer networks, the internet or the worldwide web, or for Equipment malfunction caused by the transmission medium.



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## Section 6. TIME AND PLACE OF SERVICE

Service will be provided at the location specified in this Agreement. When Motorola performs service at Customer's location, Customer will provide Motorola, at no charge, a non-hazardous work environment with adequate shelter, heat, light, and power and with full and free access to the Equipment. Waivers of liability from Motorola or its subcontractors will not be imposed as a site access requirement. Customer will provide all information pertaining to the hardware and software elements of any system with which the Equipment is interfacing so that Motorola may perform its Services. Unless otherwise stated in this Agreement, the hours of Service will be 8:30 a.m. to 4:30 p.m., local time, excluding weekends and holidays. Unless otherwise stated in this Agreement, the price for the Services exclude any charges or expenses associated with helicopter or other unusual access requirements; if these charges or expenses are reasonably incurred by Motorola in rendering the Services, Customer agrees to reimburse Motorola for those charges and expenses.

## Section 7. CUSTOMER CONTACT

Customer will provide Motorola with designated points of contact (list of names and phone numbers) that will be available twenty-four (24) hours per day, seven (7) days per week, and an escalation procedure to enable Customer's personnel to maintain contact, as needed, with Motorola.

## Section 8. INVOICING AND PAYMENT

8.1 Customer affirms that a purchase order or notice to proceed is not required for the duration of this service contract and will appropriate funds each year through the contract end date. Unless alternative payment terms are stated in this Agreement, Motorola will invoice Customer in advance for each payment period. All other charges will be billed monthly, and Customer must pay each invoice in U.S. dollars within twenty (20) days of the invoice date

8.2 Customer will reimburse Motorola for all property taxes, sales and use taxes, excise taxes, and other taxes or assessments that are levied as a result of Services rendered under this Agreement (except income, profit, and franchise taxes of Motorola) by any governmental entity. The Customer will pay all invoices as received from Motorola. At the time of execution of this Agreement, the Customer will provide all necessary reference information to include on invoices for payment in accordance with this Agreement.

8.3 For multi-year service agreements, at the end of the first year of the Agreement and each year thereafter, a CPI percentage change calculation shall be performed using the U.S. Department of Labor, Consumer Price Index, all Items, Unadjusted Urban Areas (CPI-U). Should the annual inflation rate increase greater than 3% during the previous year, Motorola shall have the right to increase all future maintenance prices by the CPI increase amount exceeding 3%. All items, not seasonally adjusted shall be used as the measure of CPI for this price adjustment. Measurement will take place once the annual average for the new year has been posted by the Bureau of Labor Statistics. For purposes of illustration, if in year 5 the CPI reported an increase of 8%, Motorola may increase the Year 6 price by 5% (8%-3% base).

## Section 9. WARRANTY

Motorola warrants that its Services under this Agreement will be free of defects in materials and workmanship for a period of ninety (90) days from the date the performance of the Services are completed. In the event of a breach of this warranty, Customer's sole remedy is to require Motorola to re-perform the non-conforming Service or to refund, on a pro-rata basis, the fees paid for the non-conforming Service. MOTOROLA DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

## Section 10. DEFAULT/TERMINATION

10.1 If either party defaults in the performance of this Agreement, the other party will give to the non-performing party a written and detailed notice of the default. The non-performing party will have thirty (30) days thereafter to provide a written plan to cure the default that is acceptable to the other party and begin implementing the cure plan immediately after plan approval. If the non-performing party fails to provide or implement the cure plan, then the injured party, in addition to any other rights available to it under law, may immediately terminate this Agreement effective upon giving a written notice of termination to the defaulting party.

10.2 Any termination of this Agreement will not relieve either party of obligations previously incurred pursuant to this Agreement, including payments which may be due and owing at the time of termination. All sums owed by Customer to Motorola will become due and payable immediately upon termination of this Agreement. Upon the effective date of termination, Motorola will have no further obligation to provide Services.

10.3 If the Customer terminates this Agreement before the end of the Term, for any reason other than Motorola default, then the Customer will pay to Motorola an early termination fee equal to the discount applied to the last three (3) years of Service payments for the original Term.

## Section 11. LIMITATION OF LIABILITY

Except for personal injury or death, Motorola's total liability, whether for breach of contract, warranty, negligence, strict liability in tort, or otherwise, will be limited to the direct damages recoverable under law, but not to exceed the price of twelve (12) months of Service provided under this Agreement.



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ALTHOUGH THE PARTIES ACKNOWLEDGE THE POSSIBILITY OF SUCH LOSSES OR DAMAGES, THEY AGREE THAT MOTOROLA WILL NOT BE LIABLE FOR ANY COMMERCIAL LOSS; INCONVENIENCE; LOSS OF USE, TIME, DATA, GOOD WILL, REVENUES, PROFITS OR SAVINGS; OR OTHER SPECIAL, INCIDENTAL, INDIRECT, OR CONSEQUENTIAL DAMAGES IN ANY WAY RELATED TO OR ARISING FROM THIS AGREEMENT OR THE PERFORMANCE OF SERVICES BY MOTOROLA PURSUANT TO THIS AGREEMENT. No action for contract breach or otherwise relating to the transactions contemplated by this Agreement may be brought more than one (1) year after the accrual of the cause of action, except for money due upon an open account. This limitation of liability will survive the expiration or termination of this Agreement and applies notwithstanding any contrary provision.

## Section 12. EXCLUSIVE TERMS AND CONDITIONS

12.1 This Agreement supersedes all prior and concurrent agreements and understandings between the parties, whether written or oral, related to the Services, and there are no agreements or representations concerning the subject matter of this Agreement except for those expressed herein. The Agreement may not be amended or modified except by a written agreement signed by authorized representatives of both parties.

12.2 Customer agrees to reference this Agreement on any purchase order issued in furtherance of this Agreement, however, an omission of the reference to this Agreement will not affect its applicability. In no event will either party be bound by any terms contained in a Customer purchase order, acknowledgement, or other writings unless: the purchase order, acknowledgement, or other writing specifically refers to this Agreement; clearly indicate the intention of both parties to override and modify this Agreement; and the purchase order, acknowledgement, or other writing is signed by authorized representatives of both parties.

## Section 13. PROPRIETARY INFORMATION; CONFIDENTIALITY; INTELLECTUAL PROPERTY RIGHTS

13.1 Any information or data in the form of specifications, drawings, reprints, technical information or otherwise furnished to Customer under this Agreement will remain Motorola's property, will be deemed proprietary, will be kept confidential, and will be promptly returned at Motorola's request. Customer may not disclose, without Motorola's written permission or as required by law, any confidential information or data to any person, or use confidential information or data for any purpose other than performing its obligations under this Agreement. The obligations set forth in this Section survive the expiration or termination of this Agreement.

13.2 Unless otherwise agreed in writing, no commercial or technical information disclosed in any manner or at any time by Customer to Motorola will be deemed secret or confidential. Motorola will have no obligation to provide Customer with access to its confidential and proprietary information, including cost and pricing data.

13.3 This Agreement does not grant directly or by implication, estoppel, or otherwise, any ownership right or license under any Motorola patent, copyright, trade secret, or other intellectual property, including any intellectual property created as a result of or related to the Equipment sold or Services performed under this Agreement.

## Section 14. FCC LICENSES AND OTHER AUTHORIZATIONS

Customer is solely responsible for obtaining licenses or other authorizations required by the Federal Communications Commission or any other federal, state, or local government agency and for complying with all rules and regulations required by governmental agencies. Neither Motorola nor any of its employees is an agent or representative of Customer in any governmental matters.

## Section 15. COVENANT NOT TO EMPLOY

During the term of this Agreement and continuing for a period of two (2) years thereafter, Customer will not hire, engage on contract, solicit the employment of, or recommend employment to any third party of any employee of Motorola or its subcontractors without the prior written authorization of Motorola. This provision applies only to those employees of Motorola or its subcontractors who are responsible for rendering services under this Agreement. If this provision is found to be overly broad under applicable law, it will be modified as necessary to conform to applicable law.

## Section 16. MATERIALS, TOOLS AND EQUIPMENT

All tools, equipment, dies, gauges, models, drawings or other materials paid for or furnished by Motorola for the purpose of this Agreement will be and remain the sole property of Motorola. Customer will safeguard all such property while it is in Customer's custody or control, be liable for any loss or damage to this property, and return it to Motorola upon request. This property will be held by Customer for Motorola's use without charge and may be removed from Customer's premises by Motorola at any time without restriction.

## Section 17. GENERAL TERMS

17.1 If any court renders any portion of this Agreement unenforceable, the remaining terms will continue in full force and effect.

17.2 This Agreement and the rights and duties of the parties will be interpreted in accordance with the laws of the State in which the Services are performed.

17.3 Failure to exercise any right will not operate as a waiver of that right, power, or privilege.



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17.4 Neither party is liable for delays or lack of performance resulting from any causes that are beyond that party's reasonable control, such as strikes, material shortages, or acts of God.

17.5 Motorola may subcontract any of the work, but subcontracting will not relieve Motorola of its duties under this Agreement.

17.6 Except as provided herein, neither Party may assign this Agreement or any of its rights or obligations hereunder without the prior written consent of the other Party, which consent will not be unreasonably withheld. Any attempted assignment, delegation, or transfer without the necessary consent will be void. Notwithstanding the foregoing, Motorola may assign this Agreement to any of its affiliates or its right to receive payment without the prior consent of Customer. In addition, in the event Motorola separates one or more of its businesses (each a "Separated Business"), whether by way of a sale, establishment of a joint venture, spin-off or otherwise (each a "Separation Event"), Motorola may, without the prior written consent of the other Party and at no additional cost to Motorola, assign this Agreement such that it will continue to benefit the Separated Business and its affiliates (and Motorola and its affiliates, to the extent applicable) following the Separation Event.

17.7 THIS AGREEMENT WILL RENEW, FOR AN ADDITIONAL ONE (1) YEAR TERM, ON EVERY ANNIVERSARY OF THE START DATE UNLESS EITHER THE COVER PAGE SPECIFICALLY STATES A TERMINATION DATE OR ONE PARTY NOTIFIES THE OTHER IN WRITING OF ITS INTENTION TO DISCONTINUE THE AGREEMENT NOT LESS THAN THIRTY (30) DAYS OF THAT ANNIVERSARY DATE. At the anniversary date, Motorola may adjust the price of the Services to reflect its current rates.

17.8 If Motorola provides Services after the termination or expiration of this Agreement, the terms and conditions in effect at the time of the termination or expiration will apply to those Services and Customer agrees to pay for those services on a time and materials basis at Motorola's then effective hourly rates.

17.9 This Agreement may be executed in one or more counterparts, all of which shall be considered part of the Agreement. The parties may execute this Agreement in writing, or by electronic signature, and any such electronic signature shall have the same legal effect as a handwritten signature for the purposes of validity, enforceability and admissibility. In addition, an electronic signature, a true and correct facsimile copy or computer image of this Agreement shall be treated as and shall have the same effect as an original signed copy of this document.

Revised Sept 03, 2022





## SERVICE AGREEMENT

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### Cybersecurity Online Terms Acknowledgement

This Cybersecurity Online Terms Acknowledgement (this "Acknowledgement") is entered into between Motorola Solutions, Inc. ("Motorola") and the entity set forth in the signature block below ("Customer").

**1. Applicability and Self Deletion.** This Cybersecurity Online Terms Acknowledgement applies to the extent cybersecurity products and services, including Remote Security Update Service, Security Update Service, and Managed Detection & Response subscription services, are purchased by or otherwise provided to Customer, including through bundled or integrated offerings or otherwise.

**NOTE: This Acknowledgement is self deleting if not applicable under this Section 1.**

**2. Online Terms Acknowledgement.** The Parties acknowledge and agree that the terms of the *Cyber Subscription Renewals and Integrations Addendum* available at <http://www.motorolasolutions.com/cyber-renewals-integrations> are incorporated in and form part of the Parties' agreement as it relates to any cybersecurity products or services sold or provided to Customer. By signing the signature block below, Customer certifies that it has read and agrees to the provisions set forth and linked on-line in this Acknowledgement. To the extent Customer is unable to access the above referenced online terms for any reason, Customer may request a paper copy from Motorola. The signatory to this Acknowledgement represents and warrants that he or she has the requisite authority to bind Customer to this Acknowledgement and referenced online terms.

**3. Entire Agreement.** This Acknowledgement supplements any and all applicable and existing agreements and supersedes any contrary terms as it relates to Customer's purchase of cybersecurity products and services. This Acknowledgement and referenced terms constitute the entire agreement of the parties regarding the subject matter hereof and as set out in the referenced terms, and supersedes all previous agreements, proposals, and understandings, whether written or oral, relating to this subject matter.

**4. Execution and Amendments.** This Acknowledgement may be executed in multiple counterparts, and will have the same legal force and effect as if the Parties had executed it as a single document. The Parties may sign in writing or by electronic signature. An electronic signature, facsimile copy, or computer image of a signature, will be treated, and will have the same effect as an original signature, and will have the same effect, as an original signed copy of this document. This Acknowledgement may be amended or modified only by a written instrument signed by authorized representatives of both Parties. The Parties hereby enter into this Acknowledgement as of the last signature date below.

Revised Sept 03, 2022

Agenda Item 1.F

RECOMMENDATION

**Staff recommends that the City Council adopt a Resolution approving a Professional Service Agreement with CDW Government LLC, utilizing OMNIA Partners cooperative purchase agreement for Information Technology Solutions and Services, for a not to exceed amount of \$915,000 annually, for a term of four years.**

EXECUTIVE SUMMARY

This agenda seeks adoption of a resolution approving a Professional Service Agreement (PSA) with CDW Government LLC (Vendor) which is obtained by using the OMNIA Cooperative Purchasing Agreement. The terms of the contract would be in addition to the terms set forth by Contract #23-6692-02 (Contract) between OMNIA **and** the Vendor. OMNIA is a contracting agency that serves education and government agencies nationally through competitively bid and award contract and purchasing solutions. The City of Tracy is an established customer with OMNIA and is authorized to make purchases using the OMNIA cooperative purchasing agreements, per Tracy Municipal Code, Section 2.20.220.

BACKGROUND AND LEGISLATIVE HISTORY

The Innovation and Technology Department received City Council budget authorization through the Fiscal Year 2023-2024 budget process for the replacement and purchase of technology. Staff recommends utilizing the Contract between OMNIA and CDW-G for FY2023/24 and FY2024/25 for an amount not to exceed \$915,000 annually, subject to budget availability. Subject to City Council approval, the City will enter into an agreement with the Vendor which will incorporate the Contract and also additional terms negotiated between the City and the Vendor. Staff has routinely made purchases from CDW-G and this is a vendor in good standing.

Leveraging the competitive pricing offered through this agreement empowers the City to procure technology at optimal rates. Adoption of this resolution to utilize this cooperative purchase agreement does not entail any commitment to make a purchase, and it carries no additional budgetary implications as the purchases would be made subject to the department's budgetary authority that the City Council has granted through the fiscal year budgetary approval process.

The IT Department supports more than 750 digital computers (see Table 1 below), printers, servers, mobile devices on a large and complex wired and wireless secure computer data network. This includes equipment specific in police vehicles and specialized devices for the Investigations unit to support the needs of the Police Department. Also, multi-media services and public access through Channel 26 require technology platforms that are reliable and accessible to the public and that require regular maintenance and replacement to ensure reliable service delivery. Each year due to the rising number of employees in Tracy, rising cost, and additional software features, the cost for technology purchases goes up.

Utilizing a competitive cooperative agreement from a reputable vendor for routine purchases ensures cost effective pricing and the timely availability of technology that meet the City's needs.

### ANALYSIS

The City has a large computer infrastructure network, that connects the various remote sites throughout the City, this includes the Grand Theatre, Animal Shelter, Wastewater and Water Treatment Plants, the Airport, Transit Station, Community Center, etc. The data center in City Hall is the hub of this network. This network uses approximately 200 network devices (see Table 1 below) and software to support this equipment. This infrastructure is what allows users access to email, software applications (Word, Excel, Computer-Aided Dispatch, Records Management Systems, etc.), network drives, the Internet, private and public Wi-Fi, VoIP phones, and all other hosted services.

It is crucial to replace hardware at the end of its economic life and to consistently apply software updates and patches to fortify dependable operations and maintain a robust level of cyber security to allow the network to function reliably and with the proper cyber security tools.

**TABLE 1 – Equipment summary**

<b>Equipment</b>	<b>2021/22</b>	<b>2022/23</b>	<b>Projected 2023/24</b>
<b>MDC's (Police mobile computers)</b>	64	68	75
<b>Citywide Computers</b>	501	603	635
<b>iPads</b>	107	130	140
<b>Desk Phones</b>	454	779	800
<b>Network Equipment</b>	192	202	212

(Table 1 can be found on page 110 of the Tracy Digital Budget Book)

Over the past few years, substantial financial resources (see Table 2 below) and personnel hours have been dedicated to updating and enhancing the software portfolio. This effort encompasses upgrading existing software to newer versions that offer higher productivity, migrating certain applications to the cloud, and introducing new software solutions. Notably, a considerable array of cybersecurity software has been incorporated to ensure compliance with audits and sustain a vigilant risk-aware stance. Also, investments in office productivity tools, such as digital document management and routing and digital signatures have increased.

**TABLE 2 – Budgeted Expenditures by Expense Type**

	<b>FY2022 Actuals</b>	<b>FY2023 Budget Amended</b>	<b>FY2024 Adopted</b>	<b>FY2025 Projected</b>	<b>FY2026 Projected</b>
<b>Expense Object</b>					
<b>Purchased Services and Supplies</b>	\$1,411,104	\$2,059,984	\$2,197,117	\$2,263,031	\$2,330,922

(Table 2 can be found on page 114 of the Tracy Digital Budget Book)

The current investment by the City in desktops, laptops, server equipment, and network infrastructure is a significant investment in assets. Scheduled replacements are determined based on the age and condition of the equipment, tracked through the City's IT asset inventory system. The equipment refresh strategy follows a five-year life cycle on average, resulting in the replacement of approximately one fifth of the equipment each year. The annual replacement cost varies, particularly when high-value components like internet Firewalls need refreshing.

In addition to traditional infrastructure, the City embraces cloud-based software solutions such as Outlook for email and cloud data storage for files and backups. Maintenance of software applications is ensured through agreements with vendors, covering version upgrades, patches, and support to address any problems or issues arising with the equipment or software.

In Fiscal Year 2024, the combined expenditure on hardware replacements and cloud software and services amounted to approximately \$2,197,117, as detailed in the budget book. Expectations indicate a gradual increase in this amount, driven by the City's expanding user count (and subsequent software license needs), a rising reliance on cloud storage and services, and the associated costs of these services.

The City has used CDWG for the purchase of various products and services in the past years with great results. Most of these purchases are below the \$50,000 threshold and thus use the standard 3-quote procurement process. CDW-G provides the lowest price in an overwhelming majority of these purchases.

Authorizing the use of this cooperative agreement will allow the City to procure products and services in a timely manner and to take advantage of the significant discounts in this agreement, as well as create efficiencies for staff in terms of fewer staff reports, contract routings, and requests for quotes, which impacts multiple departments across the City.

FISCAL IMPACT

The proposed purchase with CDWG for routine technology purchases has been approved in the 2023-2024 Fiscal Year budget and will be part of the budget request for Fiscal Year 2024-2025.

STRATEGIC PLAN

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

ACTION REQUESTED OF THE CITY COUNCIL

Staff recommends that the City Council adopt a Resolution approving a Professional Service Agreement with CDW Government LLC, utilizing OMNIA Partners cooperative purchase agreement for Information Technology Solutions and Services, for a not to exceed amount of \$915,000 annually for a term of four years.

Prepared by: Norbert Ruijling, Chief Innovation Officer

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

Approved by: Midori Lichtwardt, City Manager

Exhibits:

Exhibit A Contractor Affidavit and Agreement  
Exhibit B Compensation  
Exhibit C Master Intergovernmental Cooperative Agreement  
Exhibit D Scope of Work

CONTRACTOR AFFIDAVIT & AGREEMENT  
(EXHIBIT A)

*This affidavit must be signed, notarized and submitted with any bid requiring the performance of physical services. If the affidavit is not submitted at the time of the bid, the bid will be determined non-responsive and will be disqualified.*

By executing this affidavit, the undersigned contractor verifies compliance with O.C.G.A. §13-10-91, stating affirmatively that the individual, firm or corporation which is contracting with Cobb County, Georgia, has registered with, is authorized to use, and is participating in a federal work authorization program (an electronic verification of work authorization program operated by the U.S. Department of Homeland Security or any equivalent federal work authorization program operated by the U.S. Department of Homeland Security to verify information of newly hired employees, pursuant to the Immigration Reform and Control Act of 1986 (IRCA)). The undersigned contractor further attests that it will continue to use the federal Employment Eligibility Verification (EEV) work authorization program throughout the contract period.

The undersigned further agrees that should it employ or contract with any subcontractor(s) or should its subcontractor(s) employ other subcontractor(s) for the physical performance of services pursuant to the contract with Cobb County, Georgia, the contractor or subcontractor will:

- (1) Notify the County within five business days of entering into a contract or agreement for hire with any subcontractor(s);
- (2) Secure from any subcontractor(s) and/or their subcontractor(s) verification of compliance with O.C.G.A. § 13-10-91 on the attached Subcontractor Affidavit (EXHIBIT A-1) prior to the commencement of any work under the contract/agreement;
- (3) Secure from any subcontractor(s) and/or their subcontractor(s) a completed Immigration Compliance Certification (EXHIBIT A-2) prior to the commencement of any work under the contract/agreement;
- (4) Provide the subcontractor(s) with legal notice that Cobb County, Georgia, reserves the right to dismiss, or require the dismissal of, any contractor or subcontractor for failing to provide the affidavit and/or for failure to comply with the requirements referenced in the affidavit;
- (5) Maintain records of such compliance and provide a copy of each such verification to Cobb County, Georgia, at the time the subcontractor(s) is retained to perform such services or upon any request from Cobb County, Georgia; and
- (6) Maintain such records for a period of five (5) years.

731442  
 EEV (E-Verify) Program Number  
David C. Hutchins  
 BY: Authorized Officer or Agent  
 [Contractor Name]

03/26/2008  
 EEV Program Date of Authorization  
CDW Government LLC  
 Contractor Business Name

David Hutchins  
 Printed Name

10/11/2022  
 Date

SWORN AND SUBSCRIBED BEFORE ME  
 ON THIS THE 11th DAY OF October 2022 2

Notary Public Commission Expires: May 31, 2026  
*Effective 09-20-2013*

ELIZABETH HILTS  
 NOTARY PUBLIC  
 My Commission Expires May 31, 2026



**Exhibit A**  
**Response for National Cooperative Contract**

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**1.0 Scope of National Cooperative Contract**

Capitalized terms not otherwise defined herein shall have the meanings given to them in the Master Agreement or in the Administration Agreement between Supplier and OMNIA Partners.

**1.1 Requirement**

The Cobb County, GA (hereinafter defined and referred to as “Principal Procurement Agency”), on behalf of itself and the National Intergovernmental Purchasing Alliance Company, a Delaware corporation d/b/a OMNIA Partners, Public Sector (“OMNIA Partners”), is requesting proposals for Technology Product Solutions and Related Services. The intent of this Request for Proposal is any contract between Principal Procurement Agency and Supplier resulting from this Request for Proposal (“Master Agreement”) be made available to other public agencies nationally, including state and local governmental entities, public and private primary, secondary and higher education entities, non-profit entities, and agencies for the public benefit (“Public Agencies”), through OMNIA Partners’ cooperative purchasing program. The Principal Procurement Agency has executed a Principal Procurement Agency Certificate with OMNIA Partners, an example of which is included as Exhibit D, and has agreed to pursue the Master Agreement. Use of the Master Agreement by any Public Agency is preceded by their registration with OMNIA Partners as a Participating Public Agency in OMNIA Partners’ cooperative purchasing program. Registration with OMNIA Partners as a Participating Public Agency is accomplished by Public Agencies entering into a Master Intergovernmental Cooperative Purchasing Agreement, an example of which is attached as Exhibit C, and by using the Master Agreement, any such Participating Public Agency agrees that it is registered with OMNIA Partners, whether pursuant to the terms of the Master Intergovernmental Purchasing Cooperative Agreement or as otherwise agreed to. The terms and pricing established in the resulting Master Agreement between the Supplier and the Principal Procurement Agency will be the same as that available to Participating Public Agencies through OMNIA Partners.

All transactions, purchase orders, invoices, payments etc., will occur directly between the Supplier and each Participating Public Agency individually, and neither OMNIA Partners, any Principal Procurement Agency nor any Participating Public Agency, including their respective agents, directors, employees or representatives, shall be liable to Supplier for any acts, liabilities, damages, etc., incurred by any other Participating Public Agency. Supplier is responsible for knowing the tax laws in each state.

This Exhibit A defines the expectations for qualifying Suppliers based on OMNIA Partners’ requirements to market the resulting Master Agreement nationally to Public Agencies. Each section in this Exhibit A refers to the capabilities, requirements, obligations, and prohibitions of competing Suppliers on a national level in order to serve Participating Public Agencies through OMNIA Partners.

These requirements are incorporated into and are considered an integral part of this RFP. OMNIA Partners reserves the right to determine whether to make the Master Agreement awarded by the Principal Procurement Agency available to Participating Public Agencies, in its sole and absolute discretion, and any party submitting a response to this RFP acknowledges that any award by the Principal Procurement Agency does not obligate OMNIA Partners to make the Master Agreement available to Participating Procurement Agencies.

## **1.2 Marketing, Sales and Administrative Support**

During the term of the Master Agreement OMNIA Partners intends to provide marketing, sales, partnership development and administrative support for Supplier pursuant to this section that directly promotes the Supplier's products and services to Participating Public Agencies through multiple channels, each designed to promote specific products and services to Public Agencies on a national basis.

OMNIA Partners will assign the Supplier a Director of Partner Development who will serve as the main point of contact for the Supplier and will be responsible for managing the overall relationship between the Supplier and OMNIA Partners. The Director of Partner Development will work with the Supplier to develop a comprehensive strategy to promote the Master Agreement and will connect the Supplier with appropriate stakeholders within OMNIA Partners including, Sales, Marketing, Contracting, Training, and Operations & Support.

The OMNIA Partners marketing team will work in conjunction with Supplier to promote the Master Agreement to both existing Participating Public Agencies and prospective Public Agencies through channels that may include:

- A. Marketing collateral (print, electronic, email, presentations)
- B. Website
- C. Trade shows/conferences/meetings
- D. Advertising
- E. Social Media

The OMNIA Partners sales teams will work in conjunction with Supplier to promote the Master Agreement to both existing Participating Public Agencies and prospective Public Agencies through initiatives that may include:

- A. Individual sales calls
- B. Joint sales calls
- C. Communications/customer service
- D. Training sessions for Public Agency teams
- E. Training sessions for Supplier teams



The OMNIA Partners contracting teams will work in conjunction with Supplier to promote the Master Agreement to both existing Participating Public Agencies and prospective Public Agencies through:

- A. Serving as the subject matter expert for questions regarding joint powers authority and state statutes and regulations for cooperative purchasing
- B. Training sessions for Public Agency teams
- C. Training sessions for Supplier teams
- D. Regular business reviews to monitor program success
- E. General contract administration

Suppliers are required to pay an Administrative Fee of 3% of the greater of the Contract Sales under the Master Agreement and Guaranteed Contract Sales under this Request for Proposal. Supplier will be required to execute the OMNIA Partners Administration Agreement (Exhibit B).

### **1.3 Estimated Volume**

The dollar volume purchased under the Master Agreement is estimated to be approximately \$20 million annually. While no minimum volume is guaranteed to Supplier, the estimated annual volume is projected based on the current annual volumes among the Principal Procurement Agency, other Participating Public Agencies that are anticipated to utilize the resulting Master Agreement to be made available to them through OMNIA Partners, and volume growth into other Public Agencies through a coordinated marketing approach between Supplier and OMNIA Partners.

### **1.4 Award Basis**

The basis of any contract award resulting from this RFP made by Principal Procurement Agency will, at OMNIA Partners' option, be the basis of award on a national level through OMNIA Partners. If multiple Suppliers are awarded by Principal Procurement Agency under the Master Agreement, those same Suppliers will be required to extend the Master Agreement to Participating Public Agencies through OMNIA Partners. Utilization of the Master Agreement by Participating Public Agencies will be at the discretion of the individual Participating Public Agency. Certain terms of the Master Agreement specifically applicable to the Principal Procurement Agency (e.g., governing law) are subject to modification for each Participating Public Agency as Supplier and such Participating Public Agency may agree without being in conflict with the Master Agreement as a condition of the Participating Agency's purchase and not a modification of the Master Agreement applicable to all Participating Agencies. Participating Agencies may request to enter into a separate supplemental agreement to further define the level of service requirements over and above the minimum defined in the Master Agreement (e.g., governing law, invoice requirements, order requirements, specialized delivery, diversity requirements such as minority and woman owned businesses, historically underutilized business, etc.) ("Supplemental Agreement"). It shall be the

responsibility of the Supplier to comply, when applicable, with the prevailing wage legislation in effect in the jurisdiction of the Participating Agency. It shall further be the responsibility of the Supplier to monitor the prevailing wage rates as established by the appropriate department of labor for any increase in rates during the term of the Master Agreement and adjust wage rates accordingly. In instances where supplemental terms and conditions create additional risk and cost for Supplier, Supplier and Participating Public Agency may negotiate additional pricing above and beyond the stated contract not-to-exceed pricing so long as the added price is commensurate with the additional cost incurred by the Supplier. Any supplemental agreement developed as a result of the Master Agreement is exclusively between the Participating Agency and the Supplier (Contract Sales are reported to OMNIA Partners).

All signed Supplemental Agreements and purchase orders issued and accepted by the Supplier may survive expiration or termination of the Master Agreement. Participating Agencies' purchase orders may exceed the term of the Master Agreement if the purchase order is issued prior to the expiration of the Master Agreement. Supplier is responsible for reporting all sales and paying the applicable Administrative Fee for sales that use the Master Agreement as the basis for the purchase order, even though Master Agreement may have expired.

### **1.5 Objectives of Cooperative Program**

This RFP is intended to achieve the following objectives regarding availability through OMNIA Partners' cooperative program:

- A. Provide a comprehensive competitively solicited and awarded national agreement offering the Products covered by this solicitation to Participating Public Agencies;
- B. Establish the Master Agreement as the Supplier's primary go to market strategy to Public Agencies nationwide;
- C. Achieve cost savings for Supplier and Public Agencies through a single solicitation process that will reduce the Supplier's need to respond to multiple solicitations and Public Agencies need to conduct their own solicitation process;
- D. Combine the aggregate purchasing volumes of Participating Public Agencies to achieve cost effective pricing.

## **2.0 REPRESENTATIONS AND COVENANTS**

As a condition to Supplier entering into the Master Agreement, which would be available to all Public Agencies, Supplier must make certain representations, warranties and covenants to both the Principal Procurement Agency and OMNIA Partners designed to ensure the success of the Master Agreement for all Participating Public Agencies as well as the Supplier.

### **2.1 Corporate Commitment**

Supplier commits that (1) the Master Agreement has received all necessary corporate authorizations and support of the Supplier's executive management, (2) the Master Agreement is Supplier's primary "go to market" strategy for Public Agencies, (3) the

Master Agreement will be promoted to all Public Agencies, including any existing customers, and Supplier will transition existing customers, upon their request, to the Master Agreement, and (4) that the Supplier has read and agrees to the terms and conditions of the Administration Agreement with OMNIA Partners and will execute such agreement concurrent with and as a condition of its execution of the Master Agreement with the Principal Procurement Agency. Supplier will identify an executive corporate sponsor and a separate national account manager within the RFP response that will be responsible for the overall management of the Master Agreement.

## **2.2 Pricing Commitment**

Supplier commits the not-to-exceed pricing provided under the Master Agreement pricing is its lowest available (net to buyer) to Public Agencies nationwide and further commits that if a Participating Public Agency is eligible for lower pricing through a national, state, regional or local or cooperative contract, the Supplier will match such lower pricing to that Participating Public Agency under the Master Agreement.

## **2.3 Sales Commitment**

Supplier commits to aggressively market the Master Agreement as its go to market strategy in this defined sector and that its sales force will be trained, engaged and committed to offering the Master Agreement to Public Agencies through OMNIA Partners nationwide. Supplier commits that all Master Agreement sales will be accurately and timely reported to OMNIA Partners in accordance with the OMNIA Partners Administration Agreement. Supplier also commits its sales force will be compensated, including sales incentives, for sales to Public Agencies under the Master Agreement in a consistent or better manner compared to sales to Public Agencies if the Supplier were not awarded the Master Agreement.

## **3.0 SUPPLIER RESPONSE**

Supplier must supply the following information for the Principal Procurement Agency to determine Supplier's qualifications to extend the resulting Master Agreement to Participating Public Agencies through OMNIA Partners.

### **3.1 Company**

- A. Brief history and description of Supplier to include experience providing similar products and services.
- B. Total number and location of salespersons employed by Supplier.
- C. Number and location of support centers (if applicable) and location of corporate office.
- D. Annual sales for the three previous fiscal years.
  - a. Submit FEIN and Dunn & Bradstreet report.

- E. Describe any green or environmental initiatives or policies.
- F. Describe any diversity programs or partners supplier does business with and how Participating Agencies may use diverse partners through the Master Agreement. Indicate how, if at all, pricing changes when using the diversity program. If there are any diversity programs, provide a list of diversity alliances and a copy of their certifications.
- G. Indicate if supplier holds any of the below certifications in any classified areas and include proof of such certification in the response:
- a. Minority Women Business Enterprise  
 Yes       No  
 If yes, list certifying agency: \_\_\_\_\_
  - b. Small Business Enterprise (SBE) or Disadvantaged Business Enterprise (DBE)  
 Yes       No  
 If yes, list certifying agency: \_\_\_\_\_
  - c. Historically Underutilized Business (HUB)  
 Yes       No  
 If yes, list certifying agency: \_\_\_\_\_
  - d. Historically Underutilized Business Zone Enterprise (HUBZone)  
 Yes       No  
 If yes, list certifying agency: \_\_\_\_\_
  - e. Other recognized diversity certificate holder  
 Yes       No  
 If yes, list certifying agency: \_\_\_\_\_
- H. List any relationships with subcontractors or affiliates intended to be used when providing services and identify if subcontractors meet minority-owned standards. If any, list which certifications subcontractors hold and certifying agency.
- I. Describe how supplier differentiates itself from its competitors.
- J. Describe any present or past litigation, bankruptcy or reorganization involving supplier.
- K. Felony Conviction Notice: Indicate if the supplier
- a. is a publicly held corporation and this reporting requirement is not applicable;
  - b. is not owned or operated by anyone who has been convicted of a felony; or
  - c. is owned or operated by and individual(s) who has been convicted of a felony and provide the names and convictions.
- L. Describe any debarment or suspension actions taken against supplier

### **3.2 Distribution, Logistics**

- A. Each offeror awarded an item under this solicitation may offer their complete product and service offering/a balance of line. Describe the full line of products and services offered by supplier.
- B. Describe how supplier proposes to distribute the products/service nationwide. Include any states where products and services will not be offered under the Master Agreement, including U.S. Territories and Outlying Areas.
- C. Describe how Participating Agencies are ensured they will receive the Master Agreement pricing; include all distribution channels such as direct ordering, retail or in-store locations, through distributors, etc. Describe how Participating Agencies verify and audit pricing to ensure its compliance with the Master Agreement.
- D. Identify all other companies that will be involved in processing, handling or shipping the products/service to the end user.
- E. Provide the number, size and location of Supplier's distribution facilities, warehouses and retail network as applicable.

### **3.3 Marketing and Sales**

- A. Provide a detailed ninety-day plan beginning from award date of the Master Agreement describing the strategy to immediately implement the Master Agreement as supplier's primary go to market strategy for Public Agencies to supplier's teams nationwide, to include, but not limited to:
  - i. Executive leadership endorsement and sponsorship of the award as the public sector go-to-market strategy within first 10 days
  - ii. Training and education of Supplier's national sales force with participation from the Supplier's executive leadership, along with the OMNIA Partners team within first 90 days
- B. Provide a detailed ninety-day plan beginning from award date of the Master Agreement describing the strategy to market the Master Agreement to current Participating Public Agencies, existing Public Agency customers of Supplier, as well as to prospective Public Agencies nationwide immediately upon award, to include, but not limited to:
  - i. Creation and distribution of a co-branded press release to trade publications
  - ii. Announcement, Master Agreement details and contact information published on the Supplier's website within first 90 days
  - iii. Design, publication and distribution of co-branded marketing materials within first 90 days

- iv. Commitment to attendance and participation with OMNIA Partners at national (i.e. NIGP Annual Forum, NPI Conference, etc.), regional (i.e. Regional NIGP Chapter Meetings, Regional Cooperative Summits, etc.) and supplier-specific trade shows, conferences and meetings throughout the term of the Master Agreement
  - v. Commitment to attend, exhibit and participate at the NIGP Annual Forum in an area reserved by OMNIA Partners for partner suppliers. Booth space will be purchased and staffed by Supplier. In addition, Supplier commits to provide reasonable assistance to the overall promotion and marketing efforts for the NIGP Annual Forum, as directed by OMNIA Partners.
  - vi. Design and publication of national and regional advertising in trade publications throughout the term of the Master Agreement
  - vii. Ongoing marketing and promotion of the Master Agreement throughout its term (case studies, collateral pieces, presentations, promotions, etc.)
  - viii. Dedicated OMNIA Partners internet web-based homepage on Supplier's website with:
    - OMNIA Partners standard logo;
    - Copy of original Request for Proposal;
    - Copy of Master Agreement and amendments between Principal Procurement Agency and Supplier;
    - Summary of Products and pricing;
    - Marketing Materials
    - Electronic link to OMNIA Partners' website including the online registration page;
    - A dedicated toll-free number and email address for OMNIA Partners
- C. Describe how Supplier will transition any existing Public Agency customers' accounts to the Master Agreement available nationally through OMNIA Partners. Include a list of current cooperative contracts (regional and national) Supplier holds and describe how the Master Agreement will be positioned among the other cooperative agreements.
- D. Acknowledge Supplier agrees to provide its logo(s) to OMNIA Partners and agrees to provide permission for reproduction of such logo in marketing communications and promotions. Acknowledge that use of OMNIA Partners logo will require permission for reproduction, as well.
- E. Confirm Supplier will be proactive in direct sales of Supplier's goods and services to Public Agencies nationwide and the timely follow up to leads established by OMNIA Partners. All sales materials are to use the OMNIA Partners logo. At a minimum, the Supplier's sales initiatives should communicate:
- i. Master Agreement was competitively solicited and publicly awarded by a Principal Procurement Agency

- ii. Best government pricing
  - iii. No cost to participate
  - iv. Non-exclusive
- F. Confirm Supplier will train its national sales force on the Master Agreement. At a minimum, sales training should include:
- i. Key features of Master Agreement
  - ii. Working knowledge of the solicitation process
  - iii. Awareness of the range of Public Agencies that can utilize the Master Agreement through OMNIA Partners
  - iv. Knowledge of benefits of the use of cooperative contracts
- G. Provide the name, title, email and phone number for the person(s), who will be responsible for:
- i. Executive Support
  - ii. Marketing
  - iii. Sales
  - iv. Sales Support
  - v. Financial Reporting
  - vi. Accounts Payable
  - vii. Contracts
- H. Describe in detail how Supplier's national sales force is structured, including contact information for the highest-level executive in charge of the sales team.
- I. Explain in detail how the sales teams will work with the OMNIA Partners team to implement, grow and service the national program.
- I. Explain in detail how Supplier will manage the overall national program throughout the term of the Master Agreement, including ongoing coordination of marketing and sales efforts, timely new Participating Public Agency account set-up, timely contract administration, etc.
- J. State the amount of Supplier's Public Agency sales for the previous fiscal year. Provide a list of Supplier's top 10 Public Agency customers, the total purchases for each for the previous fiscal year along with a key contact for each.
- K. Describe Supplier's information systems capabilities and limitations regarding order management through receipt of payment, including description of multiple platforms that may be used for any of these functions.

- L. Provide the Contract Sales (as defined in Section 12 of the OMNIA Partners Administration Agreement) that Supplier will guarantee each year under the Master Agreement for the initial three years of the Master Agreement (“Guaranteed Contract Sales”).

\$ \_\_\_\_\_ .00 in year one  
\$ \_\_\_\_\_ .00 in year two  
\$ \_\_\_\_\_ .00 in year three

To the extent Supplier guarantees minimum Contract Sales, the Administrative Fee shall be calculated based on the greater of the actual Contract Sales and the Guaranteed Contract Sales.

- M. Even though it is anticipated many Public Agencies will be able to utilize the Master Agreement without further formal solicitation, there may be circumstances where Public Agencies will issue their own solicitations. The following options are available when responding to a solicitation for Products covered under the Master Agreement.

- i. Respond with Master Agreement pricing (Contract Sales reported to OMNIA Partners).
- ii. If competitive conditions require pricing lower than the standard Master Agreement not-to-exceed pricing, Supplier may respond with lower pricing through the Master Agreement. If Supplier is awarded the contract, the sales are reported as Contract Sales to OMNIA Partners under the Master Agreement.
- iii. Respond with pricing higher than Master Agreement only in the unlikely event that the Public Agency refuses to utilize Master Agreement (Contract Sales are not reported to OMNIA Partners).
- iv. If alternative or multiple proposals are permitted, respond with pricing higher than Master Agreement, and include Master Agreement as the alternate or additional proposal.

Detail Supplier’s strategies under these options when responding to a solicitation.



## CDW Government LLC Pricing Submission

Services/Solution Pricing Table of Contents
<a href="#">Catalog Pricing</a>
<a href="#">Cloud Service Providers</a>
<a href="#">Digital Velocity Services</a>
<a href="#">Cloud Managed Services</a>
<a href="#">ServiceNow Services</a>
<a href="#">Amplified IT Services</a>
<a href="#">Staff Augmentation Services</a>
<a href="#">Managed Services</a>
<a href="#">Other Professional Services</a>

For all hourly rates proposed by CDW•G in this pricing file and contained within our proposal, our offer is contingent on a 5% year over year escalation, on the contract's annual anniversary date, which will act as a not to exceed rate.

CDW•G has been very successful in managing labor rates during unstable market conditions including taking advantage of our vast in-house, in-market resources and certified, approved subcontract pool while also leveraging remote services, where practical and applicable. During the contract term, CDW•G reserves the right to propose changes to labor rate categories to reflect extraordinary market conditions which might impact labor rates and present to Cobb County and OMNIA Partners for review and approval. Cobb County and OMNIA Partners will review and approve such rates through a mutually agreed upon amendment no later than 30 calendar days upon presentation.

Services requiring a specific Statement of Work (SoW) must be mutually executed between the customer and CDW•G before work begins. We have provided a sample SoW in Appendix A.

OMNIA and its members/participating entities acknowledge that CDW•G is not the provider of the Cloud Services and in purchasing the Cloud Services, Cobb County, OMNIA, and its members/participating entities rely only on the Cloud Service Provider's service descriptions and the terms and conditions set forth in the Cloud Provider's Services Terms and Conditions. Accordingly, Cobb County and OMNIA Partners shall consider the Cloud Service Provider to be the party responsible for providing the Cloud Services and Cobb County, OMNIA Partners, and its members/participating entities, may be required to execute additional agreements, prior to provisioning/purchase of certain cloud offering.

For any service engagement, if there are applicable Travel and Expenses (T&E) charges, they will be agreed and mutually executed upon in a comprehensive Statement of Work. However, CDW•G will utilize its national footprint of service providers and in-market engineers. We also utilize remote technologies and services where applicable to mitigate such expenses.

Cobb County		
Category	Description	Discount % from CDW-G Advertised*
A	Accessories (A)	6.75%
B	Power, Cooling & Racks (B)	5.00%
C	Desktop Computers (C)	3.00%
C/DT	PC Compatible Desktop Computer (DT)	2.10%
C/DM	Apple Desktops (DM)	0.50%
D	Data Storage/Drives (D)	5.50%
E	Enterprise Storage (E)	5.00%
F	Point of Sale/Data Capture (F)	4.25%
H	Servers & Server Management (H)	4.00%
J**	Services (CDW Delivered) (J)	0.00%
L	Notebook/Mobile Devices (L)	2.50%
L/NM	Apple Notebooks (NM)	0.50%
L/NB	Notebook Computers (NB)	2.10%
L/NB/CBK	Chromebooks (CBK)	0.00%
L/RD	Tablets (RD)	2.25%
N	NetComm Products (N)	5.50%
O	Carts and Furniture (O)	5.00%
P	Printing & Document Scanning (P)	3.00%
Q**	Services (Partner Delivered) (Q)	3.00%
R	Client Configure-to-Order (R)	2.50%
S	Software (S)	4.00%
T	Collaboration Hardware (T)	4.25%
V	Video & Audio (V)	3.50%
W	Cables (W)	15.00%

CDW•G will provide Customer with a discount as a percentage off of CDW•G's Nationally Advertised Price (NAP) for the CDW•G defined Product Categories listed above, provided that Customer references this Agreement when placing an order with CDW•G.

Prices include lowest ground freight within the 48 contiguous United States when referencing this Agreement. All orders are subject to CDW•G's standard shipping policies in effect at the time of order placement. In those instances that call for express or overnight delivery, shipping costs will be pre-paid by CDW•G and added to the customer invoice.

We reserve the right to amend our price offering to accommodate the negotiated and mutually agreed upon Administrative Fees.

**Clarifications**

\* "Advertised Price" or "Nationally Advertised Price" or "NAP", refers to CDW•G's List Price, a publicly available and verifiable price at [cdwg.com](http://cdwg.com)

\*\* These are services tied to CDW•G internal taxonomy J and Q, which includes subset of offerings such as configurations, warranty, and specific installation services, and are not subject to a Statement of Work. These do not include the services broken out in the individual tabs, including other professional services, which require a mutually executed Statement of Work between CDW•G and Customer.

## Infrastructure as a Service

### Cloud Service Providers

Provider	Discount off MSRP
Amazon Web Services	0%
Google Cloud Platform	0%
Microsoft Azure	0%

### ServiceNow Solutions PaaS Offering

Option	Discount off MSRP
ServiceNow IT Service Management Professional – Unrestricted User 2	0% (5% off CDW•G NAP)
ServiceNow Integrated Risk Management Professional – IRM User	0% (5% off CDW•G NAP)

If there is a CDW•G Nationally Advertised Price (NAP) available for above offerings, OMNIA Members will receive a discount of 2% off CDW•G NAP. The NAP is publicly available pricing for hundreds of thousands of offerings available 24/7, which is competitively benchmarked with competitive market conditions and adjusted frequently to provide a transparent public auditable index.

If NAP doesn't exist, then CDW•G will rely on MSRP pricing available to CDW•G or based on CDW•G quoted price.

Cloud offerings are constantly evolving and increasingly complex, with a range of subscription and consumption-based offerings, SaaS, IaaS, PaaS, among others. CDW•G's pricing is based on publisher list price (MSRP), where available to CDW•G. In cases, where MSRP pricing is not available and/or the offering is unique, pricing will be based on CDW•G quoted price. This structure provides the necessary flexibility, to enable OMNIA Members/participating entities to make purchases offerings, as cloud offerings evolve, through life of our contract.

AWS, Azure, and GCP utilize price calculators for typical engagements and other variables to determine price specific to customer's needs.

For more information directly from each manufacturer, please visit the following links for more information:

[Azure](#)

[AWS](#)

[GCP](#)

## Digital Velocity Services

Role	Hourly Rate
DVS F-CTO	\$350.00
DVS Digital Strategy Consultant	\$305.00
DVS Digital Product Strategist	\$270.00
DVS Principal Engineer / Tech. Lead	\$350.00
DVS Architect	\$300.00
DVS Senior Engineer	\$250.00
DVS Engineer	\$225.00
DVS Associate Engineer	\$200.00
DVS Program Manager	\$245.00
DVS Sr. Technical Project Manager	\$230.00
DVS Technical Project Manager	\$205.00
DVS Project Coordinator	\$165.00

<b>ServiceNow Solutions Services</b>	
<b>Role</b>	<b>Hourly Rate</b>
ServiceNow Associate Project Manager	\$165
ServiceNow Associate Consulting Engineer	\$170
ServiceNow Engagement Manager	\$235
ServiceNow Business Process Consultant	\$255
ServiceNow Principal Consultant	\$275
ServiceNow Organizational Change Management Consultant	\$275
ServiceNow Integration Expert	\$250
ServiceNow Quality Assurance Expert	\$200
ServiceNow Solution Architect	\$255
ServiceNow Technical Consultant / Developer	\$220
ServiceNow Trainer	\$235

## Managed Services

Managed Service	Monthly Price*
Basic / Essential / Premium Support for AWS, GCP, and AZURE	Fees are based on a percentage of the customer's actual consumption of AWS, GCP, Azure services.
Basic Service - \$0K to \$10K	As Invoiced
Basic Service - \$10K to \$250K	As Invoiced
Basic Service - \$250K+	As Invoiced
Essential Service - \$0K to \$35K	As Invoiced
Essential Service - \$35K to \$75K	As Invoiced
Essential Service - \$75K+	As Invoiced
Premium Service - \$0K to \$100K	As Invoiced
Premium Service - \$100K to \$250K	As Invoiced
Premium Service - \$250K+	As Invoiced

\* If CDW•G is billing the customer for Basic consumption, no pricing uplift is applied.

### Pricing

**Basic**

Included with CDW billing for cloud consumption

**Stand-alone pricing (no consumption):**

- \$49/mo if under \$1,000
- 5% - \$1,001 to \$10,000
- 3% - \$10,001 to \$250,000
- 2.5% - \$250,001 +



**Essential**

- \$400/mo if under \$2,250
- 18% - \$2,251 to \$35,000
- 15% - \$35,001 to \$75,000
- 12% - \$75,001 +



**Premium**

**Pick 2**

- \$2,500/mo if under \$10,000
- 25% - \$10,001 to \$100,000
- 20% - \$100,001 to \$250,000
- 15% - \$250,001 +

**OS and DB Bundle**

- \$3,000/mo if under 10,000
- 33% - \$10,001 to \$100,000
- 28% - \$100,001 to \$250,000
- 23% - \$250,001 +



## Amplified IT SaaS Offerings\*

Option	Discount off MSRP
Gopher products	2%
Little SIS	2%

The offered pricing discount below applies to a la carte and bundle packages of Gopher applications.

SaaS items are priced at a 2% Discount off MSRP. Amplified IT MSRP can be found at the following link: <https://www.amplifiedit.com/msrp/>

## Amplified Services

### *Google for Education (GFE)*

Option	Discount off MSRP
GFE Audit - K-12	2%
GFE Audit - Higher Ed	2%
GFE KickStart Package	2%
GFE Support - Support Hours	2%
GFE Support - 20 Support Hours	2%
GFE Support - 40 Support Hours	2%
GFE Support - Adhoc Support Hours	2%
North American GFE Technical Collaborative	2%
GFE Training/Consultancy - Full Day Onsite	2%
GFE Chrome Checkup	2%

### *Amplified IT Training*

Option	Discount off MSRP
Amplified IT Admin Level 1 Certification Training - Self-Paced	2%
Amplified IT Admin Level 2 Certification Training - Self-Paced	2%
Amplified IT Admin Security Specialist Certification Training - Self-Paced	2%
Amplified IT Admin Security Bundle	2%

***\*These services are available to education entities only.***

<b>Staff Augmentation Services</b>				
<b>Role</b>	<b>Standard</b>	<b>Mid-Level</b>	<b>Senior</b>	
Infrastructure Architects	\$170.00	\$180.00	\$195.00	
Solutions Architects	\$175.00	\$195.00	\$215.00	
Site Reliability Engineers	\$185.00	\$195.00	\$205.00	
Network Administrators	\$100.00	\$115.00	\$125.00	
Network Engineers	\$135.00	\$150.00	\$165.00	
Network BAs/BSAs	\$130.00	\$135.00	\$140.00	
Systems Administrators	\$115.00	\$130.00	\$145.00	
Systems Engineers	\$140.00	\$155.00	\$170.00	
Systems BAs/BSAs	\$135.00	\$145.00	\$155.00	
Storage Engineers	\$165.00	\$160.00	\$195.00	
Virtualization Engineers	\$135.00	\$155.00	\$180.00	
Salesforce Administrators	\$125.00	\$155.00	\$185.00	
Salesforce Engineers	\$175.00	\$195.00	\$215.00	
Salesforce Developers	\$165.00	\$175.00	\$185.00	
ServiceNow Administrators	\$155.00	\$165.00	\$175.00	
ServiceNow Engineers	\$165.00	\$180.00	\$195.00	
ServiceNow Developers	\$150.00	\$165.00	\$180.00	
SolarWinds Engineers	\$165.00	\$180.00	\$205.00	
AWS Engineers	\$185.00	\$205.00	\$225.00	
AWS Developers	\$170.00	\$175.00	\$180.00	
Azure Engineers	\$180.00	\$195.00	\$215.00	
Azure Developers	\$135.00	\$145.00	\$160.00	
GCP Engineers	\$200.00	\$235.00	\$265.00	
GCP Developers	\$200.00	\$235.00	\$265.00	
Front-end Developers	\$165.00	\$170.00	\$175.00	
Back-end Developers	\$170.00	\$180.00	\$185.00	
Scala Developers	\$200.00	\$215.00	\$225.00	
Project Managers	\$135.00	\$150.00	\$165.00	
Scrum Masters	\$165.00	\$180.00	\$195.00	
DevOps Engineers	\$165.00	\$175.00	\$190.00	
Software Development Engineer in Test	\$170.00	\$180.00	\$195.00	
InfoSec Analysts	\$145.00	\$160.00	\$175.00	
Quality Assurance Analysts	\$140.00	\$150.00	\$160.00	
Quality Assurance Engineers	\$140.00	\$150.00	\$160.00	



Managed Services Application	
Item	Rate
Microsoft System Center Configuration Manager (SCCM) - Gold	\$517.50
Microsoft Active Directory - Small Environment 2-10 DCs - Gold	\$545.10
DHCP Support add to MS AD above	\$155.94
Microsoft Active Directory - Medium Environment 11-20 DCs - Gold	\$828.00
Microsoft Active Directory - Large Environment 21+ DCs - Gold	\$1,587.00
Microsoft Active Directory Federation Services (ADFS) - Gold	\$745.20
Mimix/iTERA for iSeries - Gold (Priced PER "a" and "b" side)	\$207.00
Managed Services Backup	
Item	Rate
IBM Tivoli Storage Manager Gold	\$2,070.00
Commvault RMS Backup Environment SM: 1-250 VMs - Gold	\$1,138.50
Cohesity RMS SM: 1-250 VMs - Gold	\$1,138.50
Commvault RMS Backup Environment Med: 251-600 VMs - Gold	\$1,656.00
Commvault RMS Backup Environment Large: 601-1000 VMs - Gold	\$2,070.00
Commvault RMS Backup Environment XL: 1000+ VMs - Gold	\$2,622.00
Veeam RMS SM: 1-250 VMs - Gold	\$1,138.50
Veeam RMS Med: 251-600 VMs - Gold	\$1,656.00
Veeam RMS Lrg: 601-1000 VMs - Gold	\$2,070.00
Veeam RMS XL: 1000+ VMs - Gold	\$2,622.00
EMC Avamar RMS SM: 1-250 VMs - Gold	\$1,138.50
EMC Avamar RMS Med: 251-600 VMs - Gold	\$1,656.00
EMC Avamar RMS Lrg: 601-1000 VMs - Gold	\$2,070.00
EMC Avamar RMS XL: 1000 VMs - Gold	\$2,622.00
EMC Data Domain - Gold	\$2,070.00
Microsoft System Center DPM - SM <100 - Gold	\$1,656.00
Microsoft System Center DPM - Med 100 - 500 - Gold	\$2,070.00
Microsoft System Center DPM - Lrg >500 Gold	\$2,622.00
Microsoft System Center DPM - XL - Gold	\$3,312.00
Managed Services OS	
Item	Rate
Windows O/S - Gold	\$77.63
Linux O/S (Red Hat/SUSE) - Gold	\$155.94
AIX O/S - Gold	\$295.32
IBM System I - Gold	\$1,242.00
Managed Services Security	
Item	Rate
Cisco ASA - Gold	\$560.28
Cisco Firepower Services (Per Sensor) - Gold	\$313.26
Cisco Firepower Threat Defense - Gold	\$614.10
Palo Alto Firewall wo Panorama - Gold	\$523.02
Palo Alto Firewall w Panorama - Gold	\$523.02
Palo Alto Panorama - Gold	\$253.92
Cisco Identity Services Engine (ISE) - Gold	\$513.87
Fortinet Firewall wo FortiManager – Gold	\$523.02
Fortinet Firewall w FortiManager – Gold	\$523.02
Fortinet FortiManager – Gold	\$253.92
Fortinet FortiAnalyzer – Gold	\$77.28
Cisco Umbrella - Gold (Per User)	\$0.84
Managed Services Virtualization	
Item	Rate
VMware ESXi - Gold	\$200.10
Nutanix AHV - Gold	\$200.10
Microsoft Hyper-V - Gold	\$200.10

Managed Services Storage	
Item	Rate
Controller: IBM Storage Virtualization (priced per controller) - Gold	\$1,035.00
Storage: Disk per 1 TB Raw [For first 100 TB] - Gold	\$16.56
Storage: Disk per 1 TB Raw [For TBs over 100 TB] - Gold	\$2.21
SAN Switch - Gold	\$227.70
Controller: NetApp (Priced per controller) - Gold	\$1,035.00
Controller: EMC (Priced per controller) - Gold	\$1,035.00
Controller: IBM (Priced per controller) - Gold	\$1,035.00
Managed Services UC	
Item	Rate
Call Control: Cisco Analog Voice Gateway-Gold	\$18.63
Call Control: Cisco CUCM/IM&P Server - Gold	\$517.50
Call Control: Cisco Unity Connection (UCONN) - Gold	\$379.50
Call Control: Cisco Voice Gateway - Gold	\$69.00
Call Control: Cisco Business Edition 6000 Lifeline - Gold	\$772.39
Call Control: Cisco Attendant Console (CUxAC) - Gold	\$517.50
Call Control: VistaPoint Attendant Console - Gold	\$517.50
Call Control: Cisco Call Manager Express - Gold	\$172.50
Call Control: Cisco Unified Border Element (CUBE) - Gold	\$172.50
Call Control: Cisco Prime License Manager (ELM/PLM) - Gold	\$138.00
Call Control: Cisco Prime Collaboration Deployment - Gold	\$138.00
911: Cisco Emergency Responder (CER) - Gold	\$379.50
Voice Mail: Cisco Unity Express - Gold	\$172.50
Notification: InformaCast from Singlewire - Gold	\$379.50
Call Experience Testing - 2CPH - Gold	\$472.10
Managed Services Contact Center	
Item	Rate
Contact Center: Exony Virtual Integration Manager (VIM) - Gold	\$450.00
Contact Center: Unified Contact Center Enterprise Server (UCCE) - Gold (Includes: CVP Call Server, CVP Reporting Server, CVP VXML Server, Call Server, Data Server. Administration Server (AW-HDS-DDS), Historical Data Server (HDS), Client Administrative WorkStation (Client AW), Central Controller, Dialer, Logger, CUIC, Rogger, and Peripheral Gateway (PG). )	\$434.70
Contact Center: Cisco / Calabrio Quality Management (QM) - Gold	\$434.70
Contact Center: Cisco / Calabrio Workforce Management (WFM) - Gold	\$386.40
Contact Center: Virtualized Voice Browser (VVB) - Gold	\$103.50
Contact Center: UCC Express (UCCX) / Finesse - Gold (Contact Center Express, Cisco Finesse, or IPIVR/VRU)	\$434.70
Contact Center: Cisco Unified Intelligence Center - Gold	\$432.54
Contact Center: SocialMiner - Gold	\$434.70
Contact Center: 2Ring Dashboards and Wallboards - Gold	\$434.70
Contact Center: Email Interaction Manager (EIM/WIM/CIM) - Gold	\$434.70
Contact Center: Enterprise Chat and Email (ECE) - Gold	\$434.70
Contact Center: eGain Analytics - Gold	\$386.40
Contact Center: ESNA Cloudlink - Gold	\$138.00
CVP: CVP Operations Console - Gold	\$386.40
CVP: SIP Proxy (CUSP) - Gold	\$193.10
CVP: Ingress Gateway - Gold	\$103.50
CVP: VXML Gateway - Gold	\$103.50
Bucher and Suter (Connector for Salesforce.com) - Gold	\$138.00
Managed Services UC Video	
Item	Rate
Cisco WebEx Meetings Server (CWMS) - Gold	\$379.50
Cisco WebEx Cloud Connected Audio - Gold	\$424.81
Cisco Meeting Place Express - Gold	\$379.50
UC Video: Cisco Meeting Server (CMS) - Gold	\$207.00
UC Video: Cisco Meeting Manager (CMM) - Gold	\$207.00
UC Video: Cisco Telepresence Content Server - Gold	\$379.50
UC Video: Expressway-C / Expressway-E - Gold	\$207.00
UC Video: Telepresence Management Suite (TMS) - Gold	\$517.50
Cisco Webex Hybrid Directory Connector - Gold	\$207.00
UC Video: PEXIP Infinity / Infinity Connect Management Node - Gold	\$207.00
UC Video: PEXIP Infinity / Infinity Connect Conferencing Node - Gold	\$207.00

UC Video: MSE Chassis - Gold	\$138.00
UC Video: MCU MSE Blade - Gold	\$103.50
UC Video: Gateway (GW) MSE Blade - Gold	\$103.50
UC Video: Endpoint Management - Gold	\$69.00
UC Video: Telepresence Server Blade - Gold	\$103.50
UC Video: Telepresence MCU - Gold	\$103.50
<b>Managed Additional Services</b>	
<b>Item</b>	<b>Rate</b>
Managed Services Engineering and Consulting	\$240.00

These rates are subject to re-evaluation after the initial 3-year contract term.

**Time and materials support - out of scope services**

Hourly price is \$240

Recurring services are subject to monthly minimum fees and time and materials support is subject to additional terms

Unscheduled after hours support is 2x hourly rate with a 2 hour minimum requirement

Managed Services Application requires a specific Statement of Work executed between the customer and CDW•G. Managed cloud

<b>Other Professional Services</b>	
<b>Role</b>	<b>Hourly Rate</b>
Associate Consulting Engineer	\$175.00
Consulting Engineer	\$215.00
Senior Consulting Engineer	\$225.00
Technical Lead / Principal Consulting Engineer	\$255.00
Enterprise Consulting Architect	\$255.00
Business Consulting Analyst	\$245.00
Project Administrator	\$165.00
Project Manager	\$210.00
Senior Project Manager	\$215.00
Enterprise Project Manager, PMO Lead	\$230.00
Program Manager	\$230.00
Technical Architect	\$350.00
Incident Responder/Forensic Analyst	\$350.00

Cobb County

**Contract # 23-6692-02**

*for*

Technology Product Solutions and Related Services

*with*

**CDW Government**

Effective: May 1, 2023

The following documents comprise the executed contract between the Cobb County, and CDW Government effective May 1, 2023:

- I. Executed Master Agreement
- II. Supplier's Response to the RFP, incorporated by reference

Reference Number	
Reference Depart.	Purchasing Department

Master Agreement

Owner: Cobb County Board of Commissioners  
100 Cherokee Street  
Marietta, GA 30090

Contractor: CDW Government LLC  
230 N. Milwaukee Ave  
Vernon Hills, IL 60061

Description: **TECHNOLOGY PRODUCT SOLUTIONS AND RELATED SERVICES:** The undersigned parties understand and agree to comply with and be bound by the entire contents of **Sealed Bid #23-6692 ("the RFP")** and the Contractor's Proposal submitted October 13, 2022, which is incorporated herein by reference.

**OMNIA PARTNERS, PUBLIC SECTOR:** Supplier agrees to extend Goods and/or Services to public agencies (state and local governmental entities, public and private primary, secondary and higher education entities, non-profit entities, and agencies for the public benefit) ("Public Agencies") registered with OMNIA Partners, Public Sector ("Participating Public Agencies") under the terms of this agreement ("Master Agreement").

Governing Law: This Agreement shall be governed by the laws of the State of Georgia. As to any dispute hereunder, venue shall be in the Superior Court of Cobb County, Georgia.

Term: This Agreement shall begin on May 1, 2023, the Effective Date, for a period of thirty-six months, and shall automatically terminate and renew for two (2) additional twelve (12) month periods and shall terminate absolutely on April 30, 2028, unless earlier terminated as provided herein. Pursuant to O.C.G.A. § 36-60-13, this Agreement shall terminate absolutely and without further obligation on the part of the County at the close of the calendar year in which it was executed and at the close of each succeeding calendar for which it may be renewed. The Parties reserve the right to renew, amend or extend the Agreement for additional terms. Either party may terminate this Agreement for convenience and/or due to lack of funding at the end of each annual term.

Price: Prices for services and equipment, if applicable, as stated in the Contractor's proposal

Billing: For purchases made by Cobb County Government, all original invoices shall be submitted directly to the Cobb County Finance Department. Invoices shall bill only for items received during the period covered by the invoice and shall clearly identify such items in accordance with invoicing guidelines in the Sealed Bid Proposal. For purchases made by participating public agencies, the Contractor shall comply with each agency's invoicing and billing requirements outlined on the applicable order.

{SIGNATURES ON NEXT PAGE}

IN WITNESS, WHEREOF, this Agreement has been executed by Owner and accepted by Contractor to be effective as of the date first above written.



Cobb County... Expect the Best!

Cobb County Board of Commissioners  
100 Cherokee Street  
Marietta, GA 30090

Lisa N. Cupid, Chairwoman  
Cobb County Board of Commissioners

5/5/23  
Date



**APPROVED**  
PER MINUTES OF  
COBB COUNTY  
BOARD OF COMMISSIONERS

3/14/23

CDW Government LLC  
230 N. Milwaukee Ave  
Vernon Hills, IL 60061

Authorized Signature

VP Contracting OPS  
Title

04/18/2023  
Date

FEDERAL TAX ID NUMBER

36-4230110

Approved as to form

County Attorney's Office

April 25, 2023  
Date



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## Cover Letter [RFP 5.1]

The proposer shall provide a cover letter describing a brief history of the Proposer and its organization. The letter will list the Principal or Officer of the organization who will be the County's primary point of contact during clarifications or negotiations. This individual must have the authority to clarify and/or negotiate all aspects on the scope of products and services on behalf of the Proposer. An officer authorized to bind the Proposer to the terms and conditions of this RFP must sign the cover letter.

---

See following page for our signed cover letter.

10/13/2022, at 12 pm EST



One CDW Way  
230 N. Milwaukee Avenue  
Vernon Hills, IL 60061  
P: 847.371.5800  
F: 847.465.6800  
Toll-free: 800.808.4239  
[cdwg.com/PeopleWhoGetIT](http://cdwg.com/PeopleWhoGetIT)

Cobb County Purchasing  
122 Waddell Street NE  
Marietta, Georgia, 30060

**RE: CDW Government LLC's Response to Cobb County Purchasing's Technology Product Solutions and Related Services**

Dear Evaluation Committee,

CDW Government (CDW•G) understands the objective of this RFP is for Cobb County and OMNIA Partners to enter a contract with a provider that can provide an extensive catalog of Technology Product Solutions and Related Services.

CDW•G was founded in 1998 and CDW was founded in 1984. Proposed here is CDW•G's complete catalog of IT products and services partners. These offerings feature three key differentiators that showcase why we are the best choice for Cobb County and OMNIA Partners:

- **CDW•G has extensive experience with multiple OMNIA Partners members.** We have multiple ongoing OMNIA contracts including Total Cloud Solutions - Region 4 ESC and OMNIA Information Technology Solutions, Products, and Services - City of Mesa, Arizona. CDW•G is uniquely positioned to successfully meet the needs of Cobb County and OMNIA Partners.
- **We are a national organization with a local focus.** CDW•G's national network of account managers has nurtured long-standing local relationships with Cobb County and OMNIA Partners Participating Entities across the county. This locally-focused customer strategy lines up with OMNIA's dedication to creating sustainable infrastructure at a local level to assist agencies with solving their mission critical challenges most effectively.
- **IT solutions are dynamic, as is CDW•G.** Our skilled consulting resources successfully architect and implement quality IT solutions that fit the needs of our customers. Throughout this proposal, customer success stories are highlighted to demonstrate CDW•G's proven proficiency in tailor-made IT solutions.

Additionally, our expertise is evidenced by our relationship with Cobb County and OMNIA Partners, and through our partnerships with leading industry manufacturers.

Should you have any questions regarding our response, please contact Eric Moore, Proposal Specialist, State and Local Government, at (765) 749-9981 or via email at [eric.moore@cdwg.com](mailto:eric.moore@cdwg.com). Joshua Greene, Senior Manager, Contract Negotiation will be the primary point of contract during negotiation. He has authority to clarify and/or negotiate all aspects on the scope of products and services on behalf of CDW•G. He can be reached at 317-569-4211 or at [joshgree@cdw.com](mailto:joshgree@cdw.com). CDW•G looks forward to continued collaboration with both Cobb County and OMNIA Partners on the Technology Product Solutions and Related Services contract.

Sincerely,  
*David C Hutchins*

**David Hutchins, VP Strategic Programs**  
CDW Government LLC

## Executive Summary [RFP 5.2]

The Proposer shall provide an Executive Summary that presents in brief, concise terms a summary level description of the contents of the proposal.

---

Aligned with OMNIA Partners, Cobb County seeks to establish an IT sourcing vehicle to facilitate the full range of solutions required to meet the varied needs of eligible Public Sector entities. At CDW•G, we realize the quick-paced, ever-evolving nature of technology creates complexity for State, Local, and Education entities, as well as the contract structure required to support these solutions.

Our Public Sector and technology expertise, history of success with OMNIA partners, and commitment to our customers combine to create a dynamic and relevant offering. We are uniquely positioned to deliver a comprehensive contracting solution - one that simplifies buying and removes the complexity of developing and implementing IT solutions.

### **An Established Partnership: OMNIA Partners & CDW•G**

For well over a decade, we've had the privilege of collaborating with OMNIA Partners to better aid our mutual public sector customers. Throughout this time, we've served over 8,000 customers across all 50 States within State, Local, and Education segments – demonstrating consistent increases in utilization and user expansion year after year. In fact, CDW•G is one of the largest technology solutions providers within the OMNIA Partners Contract Portfolio. With this established foundation, we can equip Cobb County to achieve accelerated awareness and adoption for any resulting agreement.

### **Public Sector Expertise with National Reach**

We realize a true solutions provider must go beyond fulfillment. Impactful IT solutions require a vendor who understands their customers' needs and experiences. Leading with our Customer-Centric philosophy, we've structured our organization to align with the segments we serve.

**Sales Organization.** Our account management teams specialize by geographic region and customer vertical (K-12, Hi Ed, State & Local) – facilitating an increased understanding and awareness of local markets, trends, current events, and ultimately their customers. Additionally, we deploy an in-market, field sales force to further grow customer intimacy through local engagement. This coverage model enables immediate customer reach and awareness for any resulting agreements, fostering a seamless contract launch and adoption.

**Solution Specialists.** Technology no longer simply supports operations. Rather, it offers paths to innovation and efficiency. However, to leverage this potential, members require experienced advisors and subject matter experts. In essence, members need a vendor who can help them navigate their options and select the solution that can bring their mission to life. With our customers' missions in mind, we've strategically invested to integrate these vertical-specific solutions specialists into our organization.

**Education.** CDW•G is now among the largest education technology solutions providers as a trusted IT partner to more than 15,000 K-12 schools, as well as approximately 3,000 colleges and universities. We employ Environment Advisors (LEAs) advising on the top issues in the changing 21st century classroom environment, as well as a team of K-12 Education Strategists comprising former educators, principals, teachers of the year, chief technology officers and instructional technologists.

**Public Safety.** Over 16 years ago, CDW•G created a practice dedicated to solutions, services, and capabilities for public safety and first responder agencies and constituents, with far-

reaching implications for personnel and the public alike. CDW•G's Public Safety Practice knowledge is anchored in hundreds of engagements across the US and has helped create unsurpassed technology know-how across the board, encompassing problem-solving skills, relationships with the industry's strongest partners and experience in best-practice solutions.

### Driving Local Impact: Commitment to the Community

For more than 30 years, our company and its coworkers have contributed millions of dollars and thousands of volunteer hours to improve the communities where we live and work. We recognize the critical role that corporations can play in all aspects of the local community they serve. While many corporations and companies claim community involvement to be an objective (usually one to gain recognition), social responsibility is embedded into our culture and integral to our day-to-day activities.

**Diversity, Equity, & Inclusion.** At CDW•G, we embed diversity and inclusion into the fiber of everything that we do. We ensure that all stakeholders have the resources required to perform at their highest level. To us, our efforts toward equity extend well beyond our employees and our organization; it is a social must.

**Business Diversity Partners.** CDW•G, not being a diverse prime, has the privilege, opportunity, and responsibility to partner with diverse business partners and bring them with us to every opportunity. Through our robust partner network, we can seamlessly integrate partners with the necessary capabilities into our business model with OMNIA Partners. This offers Partners access to all of the resources that we can offer while striving toward an equitable and inclusive society.

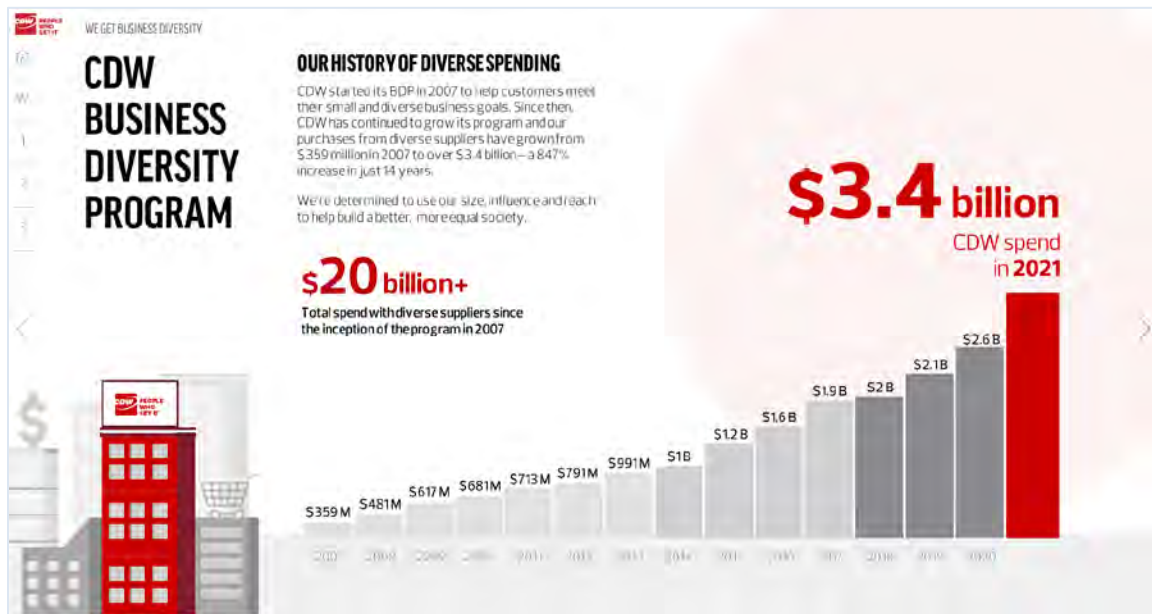


Figure 1: CDW•G Business Diversity Program

**Sustainability.** CDW•G has respect for the environment and there are many ways in which we act upon this value. These include seeking and receiving ISO 9001, 14001 and 28000 certifications for our distribution centers, which assures that operational aspects adhere to stringent quality standards and using the highest proportion of recycled materials allowed in our shipping containers. In our offices, we recycle paper and bottles, compost food waste and collect rainwater. Finally, our company and customers participate in the ReLeaf Program, which

tracks paper usage and then enables tree planting. As a shared value, Cobb County and OMNIA Partners members can be confident in our commitment to sustainability.

### **Conclusion**

We are excited at the prospect of our proposal to provide Cobb County and OMNIA Partners a comprehensive procurement solution. Through CDW•G's relentless focus, we can shepherd members through their IT journey while providing an unparalleled and authentic commitment to achieving their IT objectives now and into the future.

### **Summary of Contents of Proposal**

Within this proposal, we have included all the required forms and responded to all questions. We have provided an Executive Summary here giving a high level overview of why CDW•G is well positioned for this response. Additionally, we have provided examples of our robust catalog in the following 13 categories:

- Virtualization
- Physical Security
- Communication
- Cloud
- Infrastructure
- Data Management
- Visual Communications
- UCC (Unified Communications and Collaboration)
- Broadcast Studio
- Law Enforcement
- Mobility
- Asset Management
- Data Protection
- Energy and Water Conservation
- Financial Services
- Success Story: IT as a Service
- Other Services and Solutions

We have thoroughly outlined our experience as well as our service capability on a national contract such as this. Included within our pricing section are the various catalog pricing and vast amount of services our company can offer Cobb County and OMNIA Partners. We have shown our financial capability and strength through our Financial Liquidity Ratios as well as explanation of our financial stability. We have provided a thorough response to the National Contract Attachment A section, including our Supplier Response to Company, Distribution and Logistics, and Marketing and Sales Section. We have included a Sample SoW that would be custom built for any service engagements under this contract as well as all Affirmative Action Evidence and signed Addendums. We respectively have included our Proposed Exceptions to this contract we wish to negotiate with Cobb County and OMNIA Partners.



## Project Team

Respondents shall provide an organizational chart for the proposed project team, as well as the relevant background and experience for every proposed team member.

Below is an organization chart for Cobb County’s dedicated team.

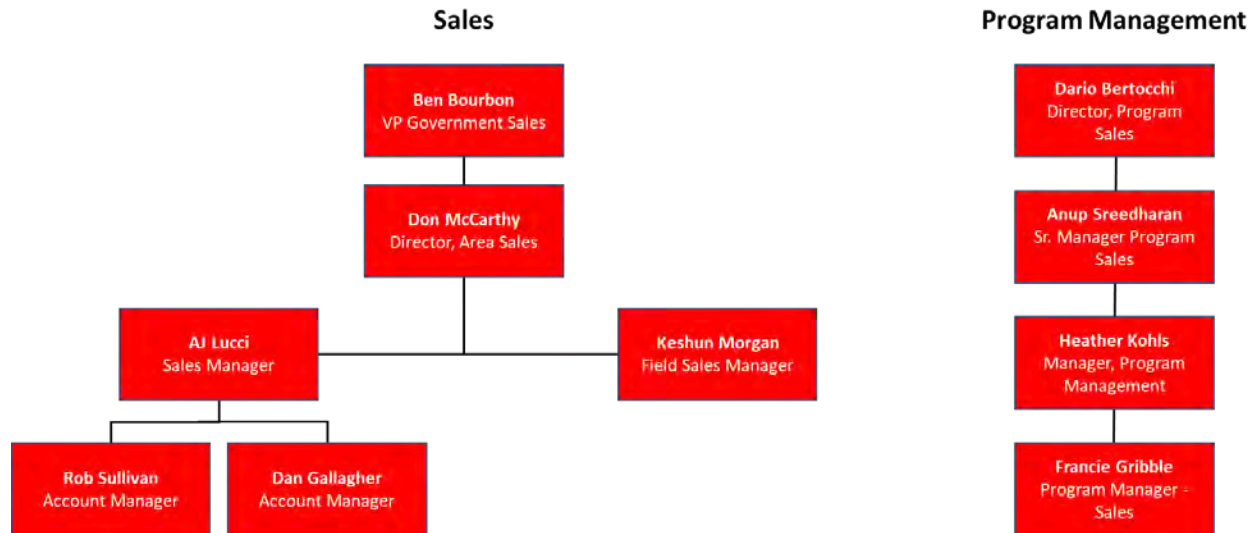


Figure 2: CDW•G Cobb County/OMNIA Organization Chart

### Sales

#### Ben Bourbon



Ben Bourbon is vice president of Federal sales for CDW Government (CDW-G), a wholly owned subsidiary of CDW and a leading provider of technology solutions to government, education and healthcare. Bourbon is responsible for the short- and long-term performance goals, strategic direction, business initiatives and talent development of the team serving Federal customers.

For the past 20 years, Bourbon has played an increasingly prominent and valuable role at CDW. He joined the company as an account manager in 1998 and quickly moved through the ranks. Since 2002, Bourbon has held several sales and field management positions within CDW-G and was promoted to director of Department of Defense sales in 2005, to vice president in 2012 and to his current position in 2017.

Bourbon earned a bachelor’s degree in marketing from North Park University in Chicago and a master’s degree in business administration from the University of Wisconsin-Madison.

**Don McCarthy**

Don McCarthy is a business professional with extensive sales and marketing leadership experience in the B2B technology industry. Proven success in balancing operational efficiencies and business growth. He has more than 20 years' progressive and stable experience with world-class organization. Take pride in the ability to effectively combine corporate objectives and values with personal and professional goals and work ethics. Build and foster strategic business relationships with internal and external clients, maintaining customer satisfaction at all levels. Effective builder and manager of high performing teams.

Specialties include sales pipeline management, sales planning, territory management, lead generation, customer acquisition, sales enablement, marketing strategy & planning, project management, partner management, P&L management, campaign management and data analysis, increasing ROI, email analysis.

**AJ Lucci**

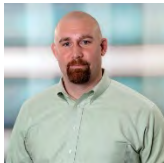
AJ Lucci is the State & Local Regional Manager for CDW Government for customers the Florida, Georgia, Tennessee & Alabama. Lucci is responsible for the region's Partner relationships, strategic direction, team development and overall performance. For more than 20 years Lucci has contributed in various roles in the Federal and State & Local as an Account Manager, Advanced Technology Account Executive, and his current Management role.

Lucci earned a Master of Business Administration (MBA) from Marquette University and a Bachelor of Science degree in Accounting, Business Administration from Carthage College.

**Rob Sullivan**

Robert Sullivan is the State and Local Executive Account Manager for CDW Government in the State of Georgia. For the last 12 years, Sullivan has been supporting State, County and City Agency's in Georgia. Sullivan is your dedicated account manager who is a single point of contact for all IT. During this time, he has effectively met the needs of his customers. From unified communications and data center optimization, to notebooks, software, services and more. Prior to coming CDW, Sullivan worked for the Village of New Lenox for 6 years as a Supervisor. Sullivan can relate to government budget and procurement policies from his time as government employee.

Sullivan attended the University of Illinois Urbana-Champaign.

**Dan Gallagher**

Dan Gallagher is the Advanced Technology Account Executive for CDW Government covering state and local customers in the State of Georgia. Gallagher has worked with Georgia Government in various roles at CDW-G for over 18 years. In the ATAEE role, Gallagher is responsible for bringing CDW-G's cybersecurity, cloud transformation, datacenter, and professional services practices to the government agencies throughout the state of Georgia. Gallagher works closely with technical, administrative, and contracting agencies in the State to facilitate strategic, transformational discussions in the interest of helping IT departments stay up to date on trends in the industry.

Gallagher earned a Bachelor of Science in Marketing from Northern Illinois University.

### **Keshun Morgan**



Keshun Morgan is the State & Local Field Sales Manager for CDW Government for customers across the Southeast from Texas to Florida. With CDW•G for nearly 20 years, Morgan has held a variety of roles for DoD Network Solutions Architect, to his current role. Morgan has a unique aptitude for understanding the immediate needs of a customer and determining which solution set would be suited to their current needs and long term goals. Morgan works closely with the rest of the account team, and Advanced Technology Account Executives to provide our customers a wealth of knowledge regarding the breadth of CDW•G's service portfolio. Morgan is based in Atlanta, GA.

Morgan earned a degree in Health Planning and Administration from the University of Illinois at Urbana-Champaign.

### **Program Management**

#### **Anup Sreedharan**

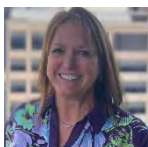


Anup Sreedharan is an experienced leader with US Public & Commercial Sector-Federal, State & Local, K-12, Hi-Ed, E-rate & Commercial segments. He is skilled in Program & Contract management, Strategy, Regulatory Compliance, Negotiations, Proposals, Capture & Pricing.

Sreedharan is a Certified Contract Management Expert (CCME), CF APMP, Six Sigma Green Belt, Change Management certified, Professional in Human Resources (PHR) and is responsible for management, innovation and success of 37 coworkers, managing 1000+ contracts across Public Sector with billions (\$) annual revenue under management. He is responsible for contract management & growth, M&A, dispute resolution, audits, relationship management, monitor regulatory impacts, performance management, pricing, commercial strategy, onboard new offerings into contract work stream, competency development, and all things contracts.

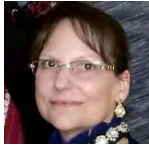
Sreedharan earned a Master of Business Administration (MBA) from the University of New Mexico and a Bachelor of Engineering, BE Computer Engineering from the University of Mumbai.

#### **Heather Kohls**



Heather Kohls is a senior executive with expertise in Public Sector Contracting, Civilian Agency Programs, Process Improvement and Sales Operations. She has proven success with program management including cradle to grave oversight on contracts, team program managers, and customer success support personnel. She currently manages the State and Local Program Management Team for CDW Government consisting of a staff of over a dozen CoWorkers.

Kohls earned her degrees in Business Marketing and Communications from North Central College, is a Certified CSM via the Scrum Alliance, and holds her AWS Cloud Practitioner Certification.

**Francie Gribble**

Francie Gribble is a Program Manager for CDW Government's State and Local Government contracts. Francie has over 20 years of government and commercial contract management experience. Francie's extensive formal training began at the Yongsan Army Installation in Seoul, South Korea for the 411<sup>th</sup> Contracting Support Brigade and continued under the Army's Internship Program at Fort Eustis, Virginia where she completed the program as a Contract Specialist with the equivalent of over 80 credit hours in Department of Defense acquisition management and leadership courses. She managed cradle-to-grave contract processes for IT hardware and software, construction, services, and supply acquisitions. Francie served as Contract Administrator for Oak Ridge Associated Universities in Oak Ridge, Tennessee, and later as Contracts Manager for RELYANT Global, LLC, where she negotiated and managed all contracts and subcontracts within the continental US.

Gribble earned a Master of Business Administration (MBA) degree from Murray State University. She also has a Master's Certificate in Contract Management from George Washington University. She is a Certified Professional Contract Manager.

**Segmentation of Teams**

CDW•G customer teams are built from the ground up with clearly defined roles, responsibilities and escalation paths – all sharing a common goal of exceptional customer service and satisfaction. Dedicated account teams serve their customers with exemplary service and customer satisfaction across State agencies, local governments and municipalities; public and private school districts / K-12; and institutions of higher education. We have account teams across SLED entities in the US. This segmentation allows a singular focus for each team and delivers a customized measure of support specific to each customer. Our teams are responsible for quotes, orders, pre- and post-sales consultation, and issue resolution over the life of the contract.

Each segment is further broken down by region and supported by local offices across the country. This regional, state, and local focus gives dedicated CDW•G Account Managers the opportunity to:

- Form meaningful long-term relationships with customers;
- Intimately understand their requirements, budgets and user community; and,
- Proactively provide an exceptional customer experience.

**State and Local Government** CDW•G's state and local government business unit is 233 coworkers strong serving the 50 states from the largest state agencies to the smallest rural community. Each state has a dedicated team assigned to ensure that each agency feels heard with personalized customer service. For example, the State of Georgia team is comprised of **7 inside Account Managers, 1 Advanced Technology Account Executive, and 2 Sales Managers.**

**K-12 (Public and Private School Districts)** CDW•G is one of the largest K-12 technology solutions providers and is a trusted IT partner to more than 15,000 K-12 schools. Our education strategists and learning environment advisors are former educators, principals, professors, chief technology officers and instructional technologists focused on addressing the unique needs and requirements and partnership with the world's leading IT innovators. Our K-12 team includes

regional managers, field account executives, solution architects, education strategists and dedicated account managers.

**Higher Education** CDW•G has approximately 225 coworkers across the U.S. dedicated to the higher education industry that understand the needs, challenges, and market best practices. We have 50+ student interns across college and university campuses that we train and develop for post-graduate career paths to thrive in the workplace. Our team has business relationships with approximately 3,000 colleges and universities, which allow us to understand challenges and map those to success. This combined experience allows us to provide colleges and universities across Georgia with custom higher education solutions along with managed services and full lifecycle support.

One clear advantage of the CDW•G approach is the opportunity for each account manager to be an expert within their sector, enabling them respond to the very specific needs of their customers which is especially impactful in these uncertain times.

- State and local account managers follow developing legislation and understand local procurement requirements and their ultimate impact on the ability to deliver robust solutions.
- Account managers in education understand the unique impact of the Family Educational Rights and Privacy Act (FERPA) and other privacy laws on technology solutions and services.
- Our healthcare account managers understand and incorporate the guidance of the Health Insurance Portability and Accountability Act (HIPAA) working with customers to define and implement robust IT solutions.

With **roughly 1,500 CDW•G coworkers**, supported by more than 7,500 coworkers throughout CDW, our segment and regional focus help ensure that our account teams are best prepared to support the local landscape in a way unmatched by other vendors.

## Company Background/Profile [RFP 5.3]

Provide information on company background to include the following:

a. Legal name, address, phone and fax numbers, e-mail, Federal ID#, and website address.

---

**Legal Name:** CDW Government LLC  
**Address:** 230 N. Milwaukee Ave, Vernon Hills IL 60061  
**Phone:** 847-371-5800  
**Fax:** 847-465-6800  
**Email:** eric.moore@cdwg.com  
**Federal ID#:** 36-4230110  
**Website Address:** [www.CDWG.com/PeopleWhoGetIT](http://www.CDWG.com/PeopleWhoGetIT)

b. Date business was established under current name.

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1998 CDW•G | 1984 CDW LLC.

c. Size of company including the total number of employees.

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CDW had nearly \$21B in annual net sales with a Fortune rank of 166. With 14,600 coworkers across the organization, we have offices throughout the United States, Canada, and the UK ensuring our reach is global. We can serve customers in nearly ever corner of the globe. We have 28 U.S Sales offices.

d. Type of ownership or legal structure of business

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Limited Liability Company; CDW•G is a wholly owned subsidiary of CDW LLC, which is a wholly owned subsidiary of CDW Corporation, a S Corp.

e. Has the company ever failed to complete work for which a contract was issued?

If yes, explain the circumstances.

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CDW•G has not failed to complete work for which a contract was issued.

f. Are there any civil or criminal actions pending against the firm or any key personnel related in any way to contracting? If yes, explain in detail. Are there any current unresolved disputes/allegations?

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To the best of our knowledge, there are no civil or criminal actions pending against CDW•G or any key personnel listed in this offer. There are no known unresolved disputes or allegations.

g. Has the firm ever been disqualified from working for any public entity? If yes, explain the circumstances.

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CDW•G has not been disqualified from working for any public entity.

h. If a Supplier requires additional agreements to be signed by a Participating Public Agency, include a copy of the proposed agreement(s) as part of Supplier's proposal.

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There may be instances where additional agreements would need to be signed by a Participating Public Agency.

Services requiring a specific Statement of Work (SoW) must be mutually executed between the customer and CDW•G before work begins. We have provided a sample SoW in Appendix A.

OMNIA and its members/participating entities acknowledge that CDW•G is not the provider of the Cloud Services and in purchasing the Cloud Services, Cobb County, OMNIA, and its members/participating entities rely only on the Cloud Service Provider's service descriptions and the terms and conditions set forth in the Cloud Provider's Services Terms and Conditions. Accordingly, Cobb County and OMNIA Partners shall consider the Cloud Service Provider to be the party responsible for providing the Cloud Services and Cobb County, OMNIA Partners, and its members/participating entities, may be required to execute additional agreements, prior to provisioning/purchase of certain cloud offering.

## CDW•G Offering

CDW•G understands that Cobb County and Omnia Partners are interested in a number of services as detailed in the following sections CDW•G has extensive experience with designing and implementing the services outlined in your requirements. We understand that these services are critical to Cobb County in order to address your Technology Product Solutions and Related Services requirements.

In the following sections, you will find examples of what CDW•G can offer to Cobb County. As we maintain both a broad and deep portfolio of solutions and services, these examples show only a sample of what we can provide. We would be pleased to discuss with Cobb County the full range of services available for categories listed below.

### Virtualization

Transform data center with virtualization to consolidate servers, reduce energy consumption, increase IT capacity, add system flexibility and prepare for cloud computing.

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#### Virtualization and CDW•G

Virtualization solutions can deliver tremendous cost savings to Cobb County and OMNIA Partners. By virtualizing their server workload, your customers can significantly reduce capital expenditures for hardware, minimize their hardware footprint and save on energy expenses. Plus, virtualization will lower the time and money they put into the ongoing maintenance of their server infrastructure.

Some customers may be concerned about system performance in a virtualized environment. However, a CDW-designed solution takes into account processing, memory, storage and networking to ensure your clients' virtualized systems work as well as — or even better than — physical ones.

Benefits of virtualization include:

- Reduced capital and operating costs
- Centralized management
- Quickened disaster recovery
- Minimized downtime
- Increased hardware utilization and efficiency

CDW's dedicated virtualization team performs over 600 assessments a year. Our team is highly trained in Cisco, EMC, Microsoft and VMware solutions and can help customers design a solution that meets their specific objectives. We work with customers to assess their unique needs and then help them plan, design, implement and even manage a custom solution. We can also manage virtualization licensing to help your client remain compliant.

Our offerings include:

- Server virtualization software:
  - CDW works with the best server virtualization software vendors in the industry, and can vet options to meet your customer's specific goals.
- Storage virtualization software:
  - By extending virtualization to storage resources, your customer can transform their data center from deeply siloed operations to highly automated resources.



- Network virtualization software:
  - This software allows your customer to manage their infrastructure.
- Assessments:
  - CDW can analyze your customer's unique environment and make recommendations for a virtualization solution that meets their specific goals.
- Professional and support services:
  - We help assess, implement and manage virtualization solutions to ensure your customers get the most return on their infrastructure investment.

## Physical Security

Security solutions seaports, airports, water and wastewater, transportation, critical infrastructure, perimeter defense, physical and logical access control, identity management, antiterrorism protection, automated alarms and alerts, integration with databases containing critical security information, cyber security and asset management, endpoint security and other network security and IT security.

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### We Get Video Surveillance and Physical Security

Physical security solutions protect people, property and premises. Today's modern video surveillance systems enable your organization to do more than deter or catch the bad guy. Video surveillance can now help you keep an eye on operational processes and generate data insights about your business.

Video surveillance is the foundation of modern physical security systems. Integrated with access control, environmental sensors and analytics, you can better defend against threats to people and property and respond more quickly to incidents that do occur.

Enhanced video surveillance (EVS) and other physical security systems can deliver valuable capabilities beyond just security. CDW can help you find the security solution that mitigates risk and aids business objectives.

CDW•G can provide the following:

#### Video Surveillance

Upgrade your video surveillance system to a modern solution enhanced with analytics that detect incidents in real-time and generate searchable metadata from recorded video.

#### Access Control

Modernize your building security with IP-enabled door controllers, readers and credentials – all integrated with your video surveillance for complete situational awareness.

#### Environmental Security

Deploy IP-based sensors that extend physical security monitoring to detect chemicals, atmospheric conditions, audio, vibrations, thermal signatures and more.

#### Amplified Services

Deploy new cameras and sensors, configure video management systems, and integrate it all with access control, data analytics, mass notification and other systems.

## Communications

Communication solutions to converge voice, data and video communications onto a single, secure IP-based network.

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In 1998, CDW•G realized the potential of unified communications through Voice over IP (VoIP) services and IP telephony solutions. We understood that the convergence of voice, video, and data on a single multi-service network meant reduced communications costs and higher productivity. Today we run our business offices and *Enterprise Command Center* (ECC) on Cisco's integrated Unified Communications architecture. We draw upon this first-hand, mission-critical operational experience when designing and installing our customers' converged network solutions. CDW•G has designed and installed over **one million VoIP and Cisco VoIP core network solutions** for our customers across our segments, many of which with at least 1,000 phones and end-users.

CDW•G has developed expertise in every aspect of Cisco's Collaboration business, including planning, network design, implementation, network management, and post-sales support. Our commitment to Collaboration solutions has enabled us to become the first Cisco partner worldwide to earn a Master Specialization in this field. CDW•G earned the Cisco Master Collaboration Partner Specialization in December 2008. We are also the first in Cisco's U.S. Central Area to obtain an Advanced Specialization in this technology as well. Cisco's Master Specializations are reserved for those partners with the highest levels of technical expertise and a proven track record of selling, deploying, and supporting Cisco solutions. We have completed over **5,000 Cisco Collaboration projects** to date involving **250,000+ phones**.

Supported by certified pre-sales specialists and services delivery teams, the Cobb County and OMNIA Partner's dedicated CDW•G account team will guide Cobb County and OMNIA Partners through the complex process of evaluating, selecting, and deploying a Unified Communications (UC) solution. Our Master Collaboration Partner Specialization uniquely qualifies us to deliver Cisco Collaboration assessment, planning, design, implementation, and managed services in each of the following UC solution areas:



- Telephony & VoIP
- Conferencing & Collaboration
- Messaging & Presence
- Contact Center

CDW•G has deep expertise in providing high-quality Cisco Unified Contact Center (UCC) solutions. We are a Cisco Advanced Technology Partner for UCC Enterprise and **one of the few Cisco Partners that can sell and service the entire Cisco Contact Center portfolio**. Products span the spectrum from pure IP solutions such as the Unified Contact Center Express to IP and TDM integrations with the Intelligent Contact Manager (ICM), which provide the advantages of a virtual agent pool while leveraging existing investments. Most importantly, our Contact Center analysts know the business of contact centers as well as the technology.

Cobb County and OMNIA Partners can benefit from our team of highly trained engineers who specialize in implementing Cisco Contact Center solutions. About half focus on Unified Contact Center Enterprise (UCCE), and the remainder focus on Unified Contact Center Express (UCCX). Our team has a great deal of experience implementing screen pops, developing self-service applications, implementing outbound dialing campaigns, implementing Quality

Management and Workforce Management solutions, and developing custom reports. **CDW•G has implemented over 500 Cisco contact centers with over 10,000 agents.**

## Cloud

Cloud solutions for scalable computing and storage capacity and rapid self-provisioning computing capabilities. This may include, but is not limited to, Cloud Infrastructure as a Service (IaaS), Cloud Software as a Service (SaaS) and Cloud Platform as a Service (PaaS).

As the move to cloud computing continues to accelerate, so does the need for cloud expertise. Identifying the best options, maximizing potential cost savings, migrating workloads, modernizing applications, and managing it all securely and effectively can challenge every organization and even the most seasoned IT professionals. At CDW, we offer the expertise and experience you need to design, orchestrate and manage a hybrid environment that’s ideally suited to your unique needs — one that’s productive, agile and secure, with governance in place to provide oversight to ensure you don’t overspend.

### The CDW•G Approach

Optimizing and expanding your cloud portfolio, including taking advantage of the benefits of multicloud, requires a partner with technology acumen and access. At CDW, we have the scale, experience, and integration with a variety of cloud partners to offer solutions and services that work best, both in the cloud and on-premises. And, as a full-stack partner, we listen, advise, design, implement and manage holistic, hybrid solutions that propel your organization forward. Our full-stack engineering services team focuses on digital transformation — from code and applications to cloud, data and security — to help you accelerate innovation.

## FULL STACK. FULL LIFECYCLE. FULL OUTCOMES.

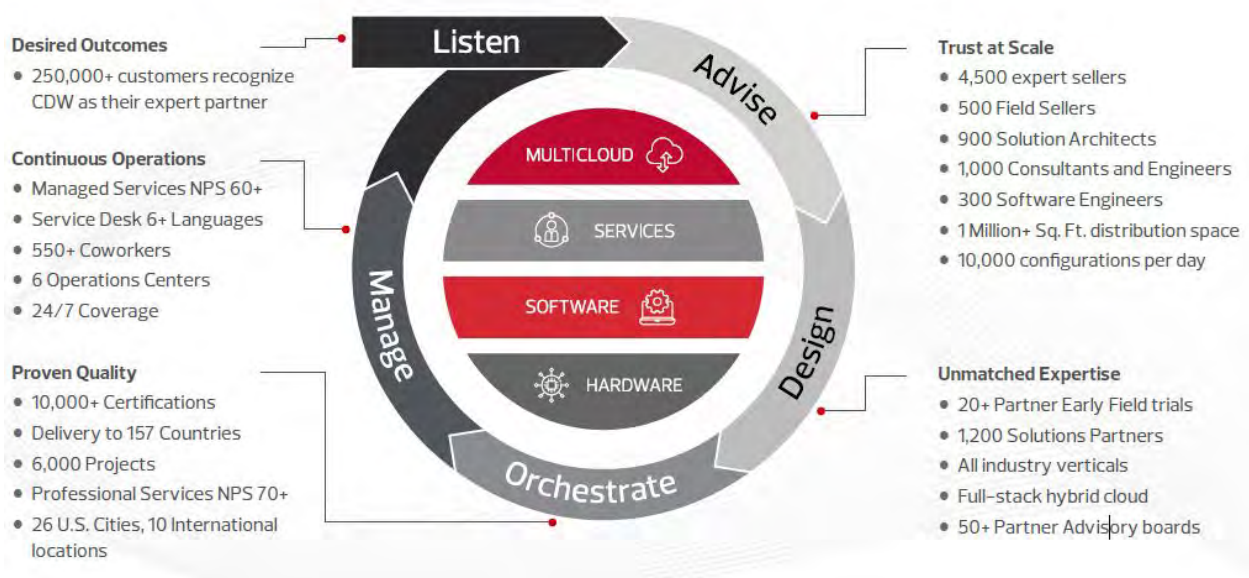


Figure 3: CDW•G Full Stack Depiction

Whether you're looking to build a secure hybrid environment, migrate more workloads to the cloud or optimize your costs, we can help you achieve your cloud computing goals. CDW works with more than 250,000 organizations of all sizes in all verticals, providing comprehensive advice, customized planning and scalable solutions.

Our large U.S. operational footprint has offices located in every region and two strategically located state-of-the-art distribution centers, providing the fastest possible deliveries to our 250,000+ customers. No matter where you are, you can count on our experienced cloud specialists to deliver personalized support every step of the way.

With 30 years of experience working with more than 250,000 customers, CDW provides you with an advanced level of IT partnership. We carefully listen to your needs and then help you achieve your desired outcomes. We also take a thoughtful approach to assisting you wherever you may be in your technology journey.

## Infrastructure

Infrastructure solutions such as data center management, network modernization and migration, desktop virtualization, risk and vulnerability management, and IT service management.

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### **Amplify the agility, scalability and performance of infrastructure**

Today's users require access to more and more data at faster and faster speeds. Applications must scale rapidly. To meet current business needs — and prepare for changes well before they happen — a strategic approach to planning and execution is a must-have. To answer current demands of complexity, speed and scale — to stay prepared for future developments — on-premises products, solutions and services are essential to delivering the full-on cloud experience. Organizations are turning to hybrid multicloud infrastructures to leverage the power of on-premises workloads, cloud-native builds and the vast possibilities of cloud vendor offerings.

It's an approach that comes with its own set of challenges, however. The adoption of rapidly evolving technologies requires companies to think long term even as they address their short-term needs. Solutions can prove costly, confusing and complex. Yet a partner's ability to apply comprehensive, long-view knowledge and experience can actually amplify the impact of the customer's investment. This is where CDW Amplified™ Infrastructure Services become indispensable.

### **How We Approach Amplified Infrastructure Services At CDW•G**

Whether your customer's environment is on-premises, a hybrid configuration or in the process of migrating to the cloud, CDW Amplified Infrastructure Services employ our smart, flexible portfolio to build a fully automated and managed infrastructure across the entire network.

Tapping the experience of more than 300 certified engineers, we apply comprehensive knowledge and a long-term view of the organization's needs and goals to design, orchestrate and manage the customer's infrastructure — a strategy-based ecosystem that scales, future proofs and amplifies the effectiveness of the data center architecture.

#### **Success Story: Fostering an Innovative Transition from On-Prem to the Cloud**

This customer was looking for a company that would be able to come in and migrate their locally hosted servers to the cloud. Our team worked with them to create a plan that was cost-effective but focused on moving their company forward in its IT goals. Working with CDW•G, the customer ended up moving forward with Microsoft Azure to migrate their servers to the cloud. Utilizing our Microsoft team, we were able to outline for the customer what the process would like and ultimately build out the reservations for the customer. The

customer had a grant fund check that needed to be invoiced before a specific date or lose the money altogether, which turned out to be another challenge.

The customer wanted to work with a knowledgeable partner and find a solution that would not break the bank.

**Engagement**

We were able to work with the customer and our Microsoft partners to migrate the servers to the cloud as well as work internally with our accounting department to make sure there were no issues in getting the grant check invoiced.

**Solution**

We were able to provide the customer with a Microsoft Azure Cloud Solution.

**Outcome**

They were able to migrate their data center to the cloud, mitigating the challenges of managing locally hosted servers, while utilizing in-house services to facilitate the migration.

CDW•G believes that application modernization transforms decision and IT strategy choices for the present enterprise. Strategies often are customized by application requirements of maturity readiness of development. By evaluating legacy applications, new development platforms, and infrastructure, we choose the best application modernization strategy to support new functionality and business value.

CDW•G offers the following application modernization strategies:

- Replatforming
- Rehosting
- Recoding
- Rearchitecting
- Reengineering
- Interoperability
- Replacement
- Retirement

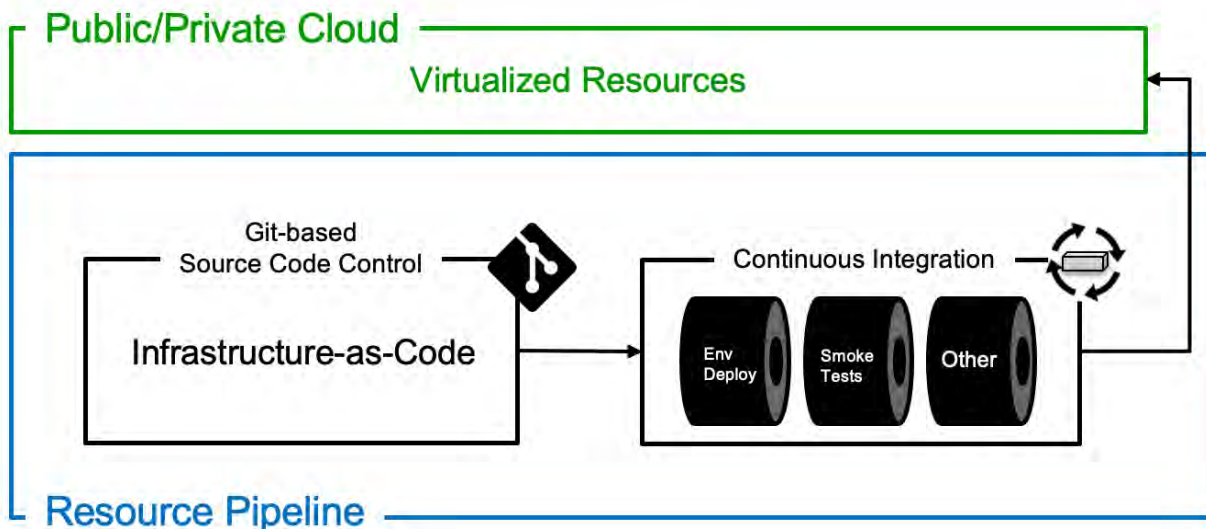
Depending on critical mission applications, our modernization engagement may start with a re-hosting strategy as a first phase and progress to the second phase of rearchitecting and re-engineering process. Most of our evaluations revolve around monolithic design, applications often hosted on-premises and following the waterfall model of Software Delivery Life Cycle (SDLC). Our expertise is in re-architecting customers' legacy applications into microservices and deployment to public clouds and private clouds. Microservices architecture follows DevOps methodology and automated Continuous Integration/Continuous Delivery pipeline releases approach.

CDW•G's new application development focus is on the cloud model. It includes microservices as well as cloud-native and event-driven architectures. We understand the following explanation regarding developing and deploying new applications is quite technical. However, we believe it's important to include within our proposal to show Cobb County and OMNIA Partners our deep cloud expertise and knowledge. This knowledge will be passed along to OMNIA Partners to ensure the cloud solutions deployed are efficient, and more importantly, work for their organization's business goals.

Most of our first redesigns focus on migrating legacy monolithic applications to microservices. After evaluating customer legacy applications, the new cloud application development model for rearchitecting monolithic applications is recommended. Cloud-native architecture and event-

driven serverless architecture are recommended for reengineering legacy applications and new application cloud development.

The core pattern at play is as follows:



**Figure 4. Private Cloud & Public Cloud Process**

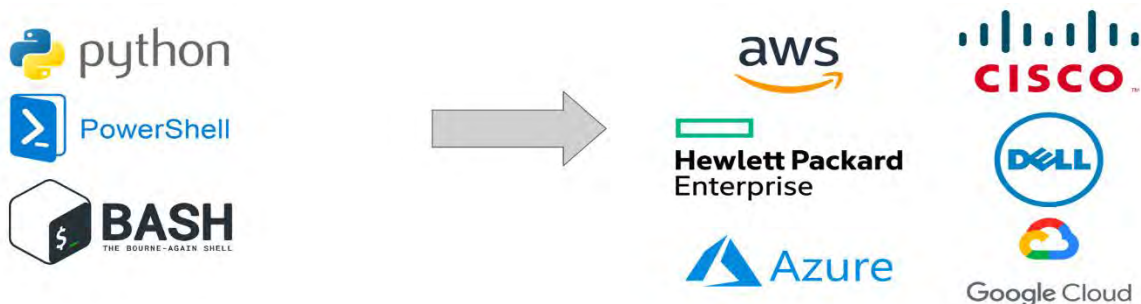
Modern IT operations organizations limit access to public and private consoles to eliminate the variability and human error that come with them. Instead, CDW•G advocates using tools like Hashicorp’s Terraform or Red Hat’s Ansible and code version control system (VCS) for continuous integration and continuous deployment (CI/CD) for Infrastructure-as-Code (IaC) and microservices. Namely, IaC and microservices image releases do not get run on individual local laptops but instead get checked into a Git-based source code repository such as GitHub, GitLab, or Bit Bucket. An automated (CI/CD) pipeline manages the IaC, and microservices code and microservices image build changes.

The combination of tools enables an IT organization to provide an accounting of IaC/ microservices changes in the source code control system by environment PROD and no-PRD. Code executions in the continuous integration environment, and the whole system works the same way regardless of the cloud target. The only difference between launching a new environment and application is cloud provided; AWS vs Azure vs GCP. The pipeline architecture is the same in either case. This approach allows for the Blue/ Green deployment of modernized applications with underlining infrastructure.

### Traditional Automation

Traditional automation techniques required an individual to acquire two sets of expertise in addition to being an expert on a particular virtualization platform. An individual has to learn a programming language like Python, PowerShell, or Bash. They then have to learn the API for each platform they are already functional experts.

While this still allows for integrating products with AWS, Azure, and GCP, only when combining these three expertise categories could this approach to automation begin to show a return on investment.



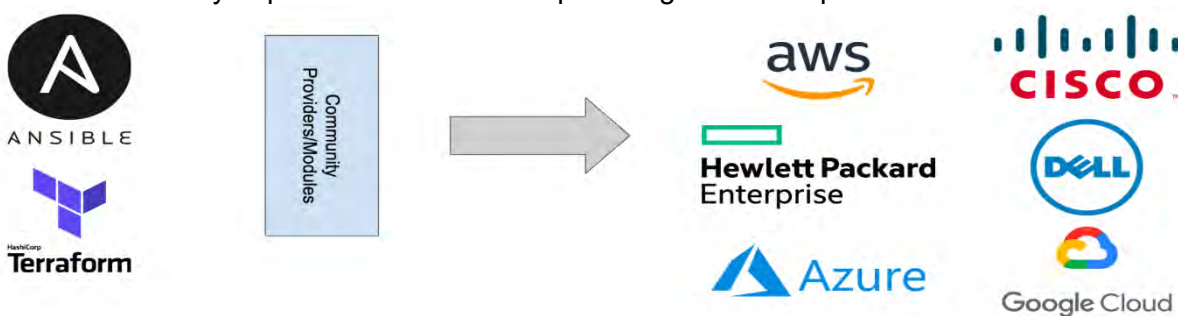
**Figure 5: Traditional Automation**

Innovation through Methods like Infrastructure as Code

Infrastructure as code (IaC) is the process of managing and provisioning computer data centers through machine-readable definition files, rather than physical hardware configuration or interactive configuration tools. IaC takes a different approach that significantly lowers the learning curve of cloud adoption and IaC is different in two key ways.

1. Instead of asking an individual to provide a prescriptive list of steps to create some virtualized resource, IaC uses a declarative model that simply asks an individual to describe what the end state should be. The specific of how that end state is achieved is a black box to the individual describing the end state. This black box is made possible by a community of experts that build abstractions called providers (Terraform) or modules (Ansible) that translate the details of a raw virtualization platform API.
2. Where IaC becomes more exciting is when a declaration is parametrized to create an organization-specific abstraction that can be reused over and over again. For example, network configurations are hardcoded and firewall rules are absent for the virtual machine that will get launched but imagine parametrizing both of those details and inviting a security team to participate in the creation of the reusable abstraction so that different policies are baked into the IaC.

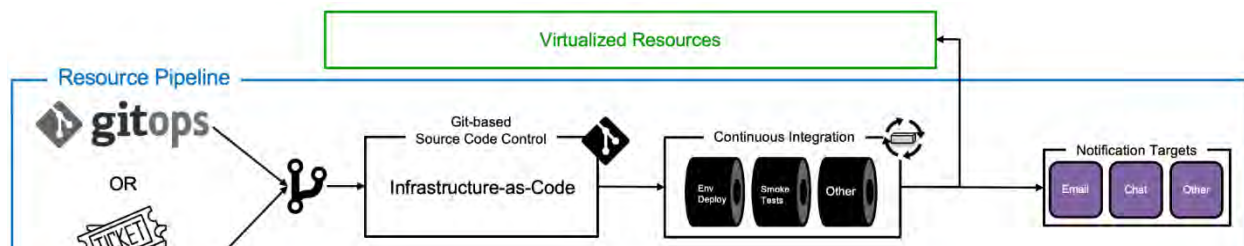
With IaC, engineers can utilize something declarative like Ansible or Terraform which relies on a communication library of providers/modules for providing the API expertise.



**Figure 6: Infrastructure as Code**

This is where the use of the source code control can enhance the base benefits of IaC. Experts on the virtualization platforms and security teams can jointly create these parametrized abstractions and check them into source code control. Non-experts can then check in files that set the parameters and reuse the organization-specific abstractions. Triggers can be set that when parametrized files get checked into source code control, it causes their execution in the continuous integration environment and subsequent creation of the virtualized resources in a cloud of choice.

Organizations might choose to put checkpoints at the source code control step, not allowing individuals to check-in parameter files without a manual review by an expert. Or organizations might choose to put checkpoints at the continuous integration step, not allowing the newly checked-in parameter file to be executed without a manual review. That level of automation or manual inspection is up to the comfort level of a particular organization and might even be different for different individuals within that organization. The target of the resource, whether public or private cloud, almost doesn't matter. All that changes in this approach between clouds are the IaC that gets written. What is consistent across deployments regardless of their targets is the accounting that happens at multiple steps and the reuse of expertise, including security, in the organization-specific abstractions.

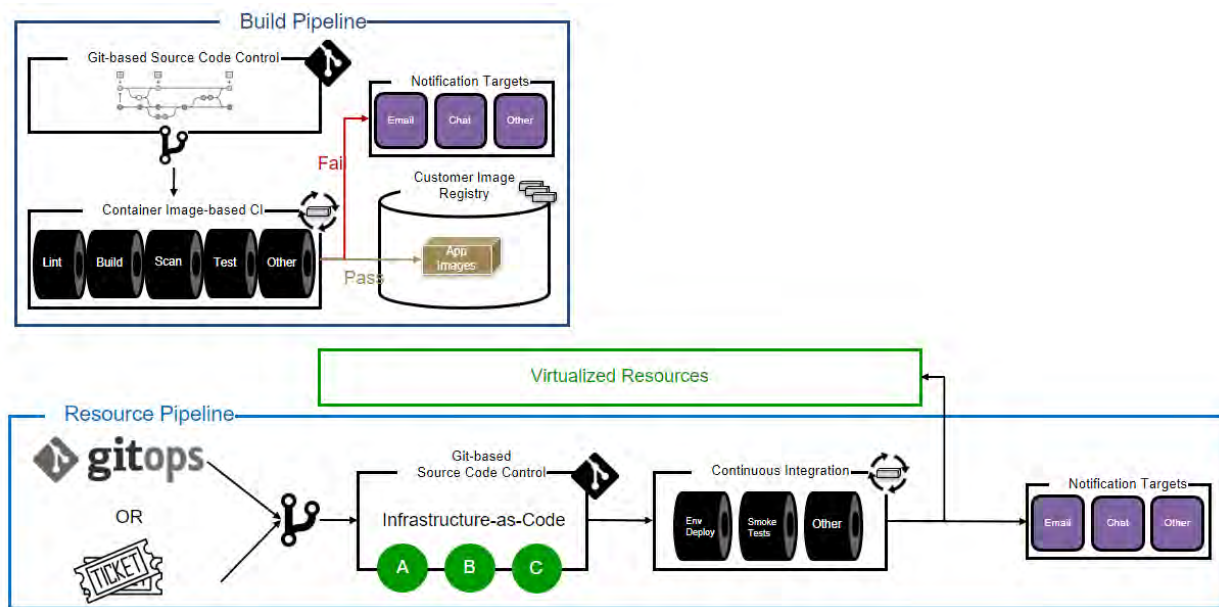


**Figure 7: Virtualized Resource Pipeline**

Some users may want to establish an environment built through the virtualization of resources without having to dig through the complexity of learning dense coding. In this scenario, we can establish a path to learning the details of source code control so that they can check in their parameter files.

Cobb County and OMNIA Partners should have the ability to choose how to consume their information where and when is best for them – and that they should be able to present it to whomever in their organization needs it in that same capacity. CDW•G's methodology includes an assessment, understanding, conceptualizing, and implementation approach that will help Cobb County and OMNIA Partners feel comfortable moving into the Cloud.





**Figure 8: Virtual Platform & Cloud**

While we understand Cloud is another person's data center, we also understand moving data anywhere that's not on-premises, may feel uncomfortable. Therefore, in addition to assessments and key conversations with technical leaders, we believe that a cultural conversation needs to be conducted inside an organization to help adopt the new solution.

When CDW•G works with a customer on a Cloud solution proposal, we have an initial conversation (generally started with a coworker from our sales team) and include our Solution Architects. We discuss what matters to that particular organization and conduct an assessment to determine the next best steps. This assessment includes determining which solutions can be migrated to the Cloud and which ones are better when left on-premises. Assessments include conversations, and assessing the physical environment, with the goal output being a clear and concise executive summary.

Following the assessment, our conversation with the customer continues to gain an understanding of their short-term and long-term goals. We create one, three, and five-year plans, taking into consideration many factors including the customer's culture.

Finally, we create a template for customers and build out Statements of Work (SoW) with a Bill of Materials (BoM). Service Level Agreements (SLAs) and best practices are discussed and mutually agreed upon. We understand customers may need additional support, so possible training for staff is discussed and determined.

CDW•G has a full-service capability when it comes to supporting organizations looking for private and public Cloud. From assessment, implementation, containerization, automation, and throughout the lifecycle of application modernization, we will support Cobb County and OMNIA Partners every step of the way.

### Local Focus and National Presence

Our customers are the center of all we do at CDW•G and the fuel behind our initiatives, solutions, and services. Part of our dedication to our customers is a sales and service force best suited to the needs of our State and Local Education customers. With a local presence and national reach throughout the US, our team is ready to continue serving Cobb County and

OMNIA Partners. As you may be aware, we have coworkers in offices and remote locations in or near every major city in the US.

**OMNIA Experience**

Our success on OMNIA contracts noted below will be material to our performance on the proposed contract. We can utilize our proven marketing skills and trusted account manager and other expert coworker networks to continue the contract’s growth.

Supplier	Contract Title	Contract Renewed Until	Potential Final Expiration	Lead Agency
	Total Cloud Solutions	09/30/2022	09/30/2022	Region 4 ESC - TX
	Information Technology Solutions & Services	02/28/2023	02/28/2025	City of Mesa, AZ

**Figure 9. Our Current OMNIA Contracts**

**Research and Development**

CDW•G has over 20 years of experience in delivering IT services for our public sector and education customers. During that time, we have made a substantial investment in training our service personnel, maintaining our OEM certifications, and developing new services. Our Services Offerings are supported by over 130 coworkers in our Research and Development division. This division works closely with customers, OEM partners, and our sales team to maintain the relevance of our current offerings while developing the next generation of services the market expects from a leading provider. As technology is constantly changing, CDW•G is refreshing and adding new services.

**Excellence in Delivering Cloud Solutions**

When it comes to Cloud, four factors set CDW•G apart from the competition.

1. CDW•G is customer-focused and vendor-neutral.
  - When it comes to solving our customer’s problems, our sales and technology solutioning team is concerned about providing a Cloud solution that is comprehensive, coherent, and cohesive.
  - These solutions solve our customers' current issues while taking into account future initiatives and goals for growth.
2. CDW•G is a one-stop-shop.
  - We offer a coordinated, thorough process that covers everything from designing to orchestrating to managing. Communication is at the heart of our process.
  - One specific way we ensure thorough communication with our customers is in our design and implementation of services. One Technical Solution Architect is responsible for all SOWs on a project. This maintains project-wide integrity and ensures that one active participant maintains high-quality historical customer knowledge.
3. CDW•G structures sales teams to ensure that each one has segment-specific knowledge.
  - If the member is a local school district, their sales team specializes in school districts.

- If the member is a state or local government, their sales team specializes in this area.
  - Our sales teams are deeply connected to their customers, with the average Account Manager having a decade of experience in their role.
4. CDW•G is a leader in the industry growing organically and through strategic acquisitions. In the last several years, we have acquired a number of companies that focus on Cloud solutions and professional and managed services.
- We are constantly evaluating which emerging technologies our organization needs to best serve the ever-evolving needs of our customers

Additionally, while many vendors provide “managed services,” very few offer the full lifecycle of services from assessment to design and implementation. Our managed services offerings are staffed and supported by our own badge offered engineers using tools and intellectual property developed in our innovation labs.

## Data Management

Data management solution which uses technologies such as thin provisioning, de-duplication and automated storage tiering to improve storage utilization.

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### Data Center Management and CDW•G

We know the data center better than just about anyone CDW brings a team of experts to every data center project. Our solution architects and data center specialists evaluate each customer's specific environment to create a custom solution to meet their goals. Our data center engineers apply decades of technical expertise to building the actual solution and offer ongoing support to keep it running at its best.

Our data center offerings include:

#### Hyperconverged infrastructure

Hyperconverged infrastructure combines servers, data storage, networking equipment and software into a single, unified computing system, allowing IT teams to manage their data center centrally.

#### Next-gen storage and backup

Data is growing at an unprecedented rate. A cohesive storage strategy helps your customers minimize costs, increase data security and maximize their data center solution. CDW's

hardware and software knowledge and nationwide expertise maximize customers' next-generation backup solutions by designing and implementing an integrated solution that makes business sense in every choice.

#### Virtualization

Virtualization improves data center performance, reduces costs and makes backups and redeployments easier.

#### Power and cooling

CDW's modular, scalable power and cooling solutions help keep data center energy costs low and prevent downtime caused by overheating and power outages.

#### Managed services

Managing a new data center is a big project. CDW can make it much easier. CDW Managed Services and CDW Aggregation Services save customers more than 20 percent on average — compared with an internal IT-managed infrastructure — and improve the overall quality of support.

### **Professional services**

Handling a data center can be a tough and time consuming task for an IT department. CDW can shoulder the burden of data center implementation, migration, integration, staff training and continued management so IT teams can contribute to more business-critical initiatives.

### **Configuration services**

CDW's certified configuration centers can provide a custom preconfigured data center solution that minimizes customer downtime and disruption.

## **Visual Communications**

Visual communications that integrate audio, video, voice and presentation capabilities.

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### **We Get Professional A/V**

From complex video wall solutions supporting mission critical operations centers, to training rooms and live broadcast systems, CDW•G's design services, leading partner portfolio, project management and integration services are committed to providing top quality Professional Audio-Visual (Pro A/V) services to State and Local Government customers.

From Blueprint to Design, CDW•G will deliver your Pro A/V solutions into a new state of readiness. CDW•G designs promote a collaborative and collegial atmosphere as well as better decision-making. Pro/AV is more than just a matrix of inputs and outputs. Discerning users require a new level of collaboration and integration. CDW•G delivers Pro A/V solutions supporting:

- Video Walls
- Digital Display and Projection Room
- Controls
- IPTV and Video Streaming
- Production and Media Management
- Broadcast Solutions
- Digital Signage
- Video Distribution Systems

Below is an example of a video wall designed for one of our emergency response clients.

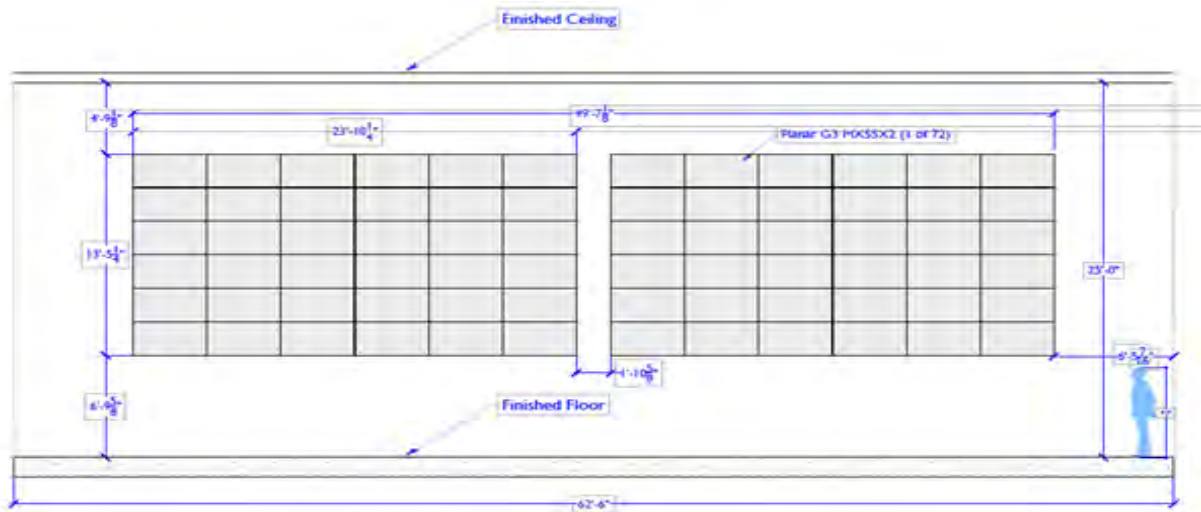


Figure 10: CDW•G Video Wall Design for Public Safety

Top partners include:



### Support for Video & AV Projects

CDW•G in conjunction with Exertis Broadcast can fulfill all your audio, video, voice and presentation capabilities. We offer, Pre-Sales Engineering, Installation Services, Programming Services and Fulfillment and Logistics Services.

Our process to fulfil your requirements involve the following steps

- Needs analysis
- Engineering
- BOM
- preSOW /Services Quote
- Installation
- Programming
- Commissioning
- Training

### Success Story: Walmart Custom Video Distribution Solution

CDW reached out to Exertis Broadcast's Team CDW looking for video distribution solution for Walmart's TV display walls.

#### Engagement

After reviewing the needs with Walmart, we realized a product did not exist in production with all the features Walmart required. Exertis Broadcast then worked directly with our partner Gefen to build them a HDMI splitter to Walmart's exact specifications. The custom splitter was built, and a proto-type hand delivered to Walmart within 4 weeks to meet tight testing deadlines.

Walmart tested and moved forward with deploying in all 4000+ stores. The Walmart TV display wall have never looked better and can all be managed remotely.

The customer wanted to work with a knowledgeable partner and find a solution that would not break the bank.

#### Solution

We were able to provide the customer with a custom video distribution solution.

#### Outcome

Custom AV and Video products built to client specifications. The Exertis Broadcast team can work with our manufacture partners to design and build hardware specific to CDW customer needs.

For more information on CDW•G and Exertis capabilities, please see the following sections under UCC (Unified Communications and Collaboration) and Broadcast Studio

## UCC (Unified Communications and Collaboration)

UCC video teleconferencing solutions that provide for critical infrastructure, emergency operations centers, command rooms, fusion centers, training rooms, and classrooms.

CDW•G offers on-premises, cloud-based and hybrid business communication solutions to help you create a flexible, scalable environment. No matter the environment – emergency operations centers, command rooms, fusion centers, training rooms, and/or classrooms, our vast video teleconferencing solutions help Cobb County and OMNIA Partners meet their business-critical needs. We have provided more detailed information regarding emergency operations centers and command rooms in our response to the Law Enforcement section. The needs for these types of rooms are so unique we have a dedicated Public Safety team built to address these types of engagements.

### Video Communication

We can help you equip, set up and manage immersive telepresence rooms as well as formal and informal videoconferencing hubs, including cloud video bridges — all from leading partners.

CDW partners with Cisco to help you radically improve the way you keep your business moving to the cloud and help keep innovation within your grasp. With our deep expertise in Cisco solutions and a team of experienced collaboration experts, we help you understand your opportunities to move to the cloud environment while maintaining the needed CUCM on-premises requirements and providing extended support.

For organizations that are ready to move to the cloud, Dedicated Instance is an add-on service within Webex Calling that provides a bridge allowing for a cloud experience that also supports requirements such as CUCM on-premises support. CDW will provide you with support to implement this service, ensuring you are set up to meet both cloud and on-premises requirements. CDW is the partner to help from day one implementation to extended support.

Managed Collaboration Anywhere Powered by Cisco Webex Calling with Dedicated Instance can help you achieve:

- Operational Efficiencies
- Agility
- Increased Performance

### Orchestrating the Right Solution

Moving calling to the cloud can be challenging for UCM customers. The cost and burden of replacing older endpoints, rebuilding complex dial plans and integrations can be greater than any savings that can be realized by moving to the cloud. Managed Collaboration Anywhere Powered by Cisco Webex Calling with Dedicated Instance provides UCM customers a non-disruptive, low-impact migration path to the cloud. With Webex Calling you have the flexibility to distribute users across multi-tenant and dedicated instance call control, and to adjust them over time as needed to address their cloud calling business requirements.

CDW helps you integrate your organization to the cloud, allowing both cloud and CUCM functionality to work together as one platform. CDW isn't just here for implementation; we partner with you to ensure a consistent experience you can expect by providing updates and changes with our extended support. CDW is here to help 24x7x365 through our customer portal, phone or email.

### Services Overview

The following services are included in Managed Collaboration Anywhere Powered by Cisco Webex Calling with Dedicated Instance Professional and Managed Services:

**Table 1: Managed Collaboration Anywhere Services**

Service Offered	Premium	Essential	Basic
Common Device	50%	50%	0%
CDW Services Portal	Included	Included	Included
Managed Services Customer Success Manager	Included	Included	Included
Incident/Problem Management	Included	Included	Included
PSTN Provider Incident Management	Included	Included	Included
Upgrade Management	Included	Included	Included
Firmware Management	Included	Included	T&M
Dial Plan Configuration Management	Included	Included	T&M
MACD Service	Unlimited	200 hrs/yr	T&M
Service Hours	100 hrs/yr	50 hrs/yr	25 hrs/yr

CDW•G has 20 years of managed services experience, 225 managed services analysts and engineers, and 1,000 global engineers.

Traditionally, IT organizations have been good at installing a new piece of technology but commonly fail at realizing the user adoption goals and potential of new tools. This can mean a huge financial investment goes down the drain. More importantly, the added user confusion and loss of productivity from a failed change is a huge risk. The problem hasn't consistently been one simple problem like business buy-in, technical issues, end-user training, or support staff being ready to troubleshoot problems. Instead, it has been because of a lack of targeted and coordinated planning, enablement, marketing, and communications. Our Adoption Services cover all of these aspects and bring them under a single plan and execution.

End-user enablement is about ensuring the end-user is ready to use Cisco Webex Meetings and Collaboration Meeting Rooms (CMR). This effort includes:

- End-user training
- Training guides

As part of the Adoption Management Planning for end-user enablement, CDW•G will validate and plan the following training sessions all to be delivered via Webex with up to 20 participants per session:

- For Cisco Webex Meetings General End-User, conduct up to one (1) 90-minute training session(s) for Webex Meetings (including Collaboration Meeting Rooms (CMR)), Webex Meetings Desktop App, and iOS/Android Mobile App
- For Cisco Webex Meetings Power End-User, conduct up to one (1) 120-minute training session(s) for Webex Meetings (including Collaboration Meeting Rooms (CMR)), Webex Meetings Desktop App, and iOS/Android Mobile App
- For Cisco Webex Meetings General End-User with Video Device training, conduct up to one (1) 90-minute training session(s) for Webex Meetings (including Collaboration Meeting Rooms (CMR)), Webex Meetings Desktop App, and iOS/Android Mobile App and Cisco Video Device

For this project, CDW•G defines a **General Cisco Webex End-User** as an individual who requires training to support normal tasks for scheduling and hosting Webex meetings. The following topics are included:

- Attending meetings
- Meeting controls
- Scheduling meetings
- Hosting meetings
- Sharing content
- Joining from desktop
- Joining from mobile
- Joining from video rooms

For this contract, CDW•G defines a **Power Cisco Webex End-User** as an individual who requires an advanced level of Cisco Webex to support additional tasks such as scheduling for others in the company (i.e., Administrative Assistant leveraging alternate host) or will be a department point of contact for Webex questions. During the end-user training for Power Users, advanced topics will be covered such as:

- Alternate hosts
- Uploading/sharing files
- Meeting recording
- Whiteboarding
- Hosting from desktop
- Hosting from mobile
- Hosting from video rooms
- Permissions and panels
- Engagement tools (chats/polls)



For this contract, CDW•G defines a **General Webex End-User with Video Device** as an individual who requires training to support normal tasks for scheduling and hosting of Webex Meetings as well as joining from video devices. The following topics are included:

- Attending meetings
- Meeting controls
- Scheduling meetings
- Hosting meetings
- Joining from desktop
- Joining from mobile
- Using Touch 10 controller
- On-screen controls/terms
- Managing single/dual self-views
- Single/dual views during calls
- Managing calls
- Contact profiles
- Layout adjustment
- Sharing content
- Attending scheduled meetings

### **Modernizing Today's Classrooms**

At CDW•G, one of our dedicated verticals is the education sector, both K-12 and Higher Education. We understand the unique needs of the education sector, and have specialized resources dedicated to modernizing today's classrooms to provide educators and students alike access to top quality immersive and integrative technologies to bolster their learning. CDW Blueprint to Design® is an ideal tool to help districts, schools and teachers reimagine their classrooms and building space to ensure they're maximizing learning outcomes. The program was created in 2017 and helps educators navigate the addition of classroom IT products and technology and create collaborative learning environments. And since then, more than 900 K-12 schools and universities have participated in the program, including the Rochester City School District, where CDW helped design a truly modern classroom.

Our K12 Strategist, teamed with the depth of our CDW Solution Architects and Account Team, work together to help educators figure out the best classroom design for their space, ensuring that each area has a purpose and takes advantage of the entire room. Since CDW•G is vendor neutral, and have a wide offering of different teleconferencing software, we recommend the best vendor for that given classroom, school, or district.

### **Broadcast Studio**

Broadcast studio solutions for staff that oversee communications and public broadcast efforts which provide integration (system design engineering), fabrication, budgeting, scheduling, engineering, architectural planning (technical grounding, power distribution and facility load requirements), and equipment specification (video, audio, network and storage technologies).

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CDW•G has broad capabilities across the broadcast space. While we have direct relationship with a number of top-of-the-line products in various AV categories, we have found the largest

benefit to our customers when we utilize our trusted partner Exertis Broadcast. While this is not an exhaustive list of what CDW•G can provide in this space, we felt it was a good encapsulation of our abilities.

One of the benefits CDW•G brings to Cobb County and OMNIA Partners is our ability to orchestrate a complete solution from video to audio to networking to storage. We work with a wide array of storage providers from Nutanix to Pure, and our architects are specially equipped with an understanding of all product lines to be able to provide the best solution. We like to think of our solution architect as puzzle masters – finding all the different pieces from various manufacturers and putting them together into a masterpiece for our customers.

Further outlined below in the Law Enforcement section, CDW•G's design services, leading partner portfolio, project management and integration services are committed to providing top quality Professional Audio-Visual (Pro A/V) services to State and Local Government customers.

From Blueprint to Design, CDW•G will deliver your Pro A/V solutions into a new state of readiness. CDW•G designs promote a collaborative and collegial atmosphere as well as better decision-making. Pro A/V is more than just a matrix of inputs and outputs. Discerning users require a new level of collaboration and integration. CDW•G delivers Pro A/V solutions supporting:

- Video Walls
- Digital Display and Projection Room
- Controls
- IPTV and Video Streaming
- Production and Media Management
- Broadcast Solutions
- Digital Signage
- Video Distribution Systems

Top partners include:



Through leveraging Exertis, we ensure our customers are receiving the most up to date knowledge and emerging technologies in the broadcast studio space. Like any engagement where we work with partners, the customer, in this case Cobb County and OMNIA Partners, will continue to have their single point of contact with their CDW•G Account Manager. The Account

Manager will bring together the customer and Exertis to full scope out the requirements of the project and ensuring alignment with the end goal.

Exertis Broadcast is CDW’s Video and Pro AV expert. Exertis Broadcast is staffed by industry experts who provide CDW with complete sales support and AV video workflow solutions including system design, needs analysis, demos, proof-of-concept, and on-site client consultation.



Exertis Broadcast has a team of sales, engineering, marketing and support staff dedicated to CDW. They work with CDW Account Managers, Business Development, Partner and Product Management, Solution Architects and Consultants daily to specify AV and video projects for their end users. Exertis Broadcast meets with the CDW end user for project needs analysis, providing a complete design of their video workflow.

Pre-sales engineers will also provide product demonstrations, assist with setting up and supporting proofs of concept, and consult with you to establish AV and video technology standards across the organization.

The Exertis Broadcast team provides post-sales support and training once the project is commissioned. They provide a full turnkey solution for many of our solutions including installation, commissioning, maintenance and training services.

Exertis Broadcast provides technical support for CDW’s Field Solution Architects and Inside Solution Architects for system review and design verification with their video and AV solutions. Exertis Broadcast can go onsite with or without CDW to support the project, provide needs analysis, presales support and consultation.

The Exertis Broadcast team works daily to grow CDW’s video and AV practice with the addition of new partners. We have added several partners over the past year to augment CDW capabilities.

New partners added in the last 12 months include:

**Table 2: Video and AV Partners**

New Partners			
<b>Allen &amp; Heath</b>	Atomos	Birddog	CADAudio
<b>Castus</b>	ClearCom	Clevertouch	Epiphan
<b>Focusrite</b>	Lume Cube	Mackie	Panopto
<b>PrompterPeople</b>	Vitect		

## Law Enforcement

Public safety solutions such as in-car video, body worn cameras, license plate recognition, mobile computing, city surveillance, and digital evidence management.

Technology has come a long way from being merely a convenience to being a must-have for public safety. Today's offerings can raise operational efficiency, ease the constraints of distance, speed critical communication and heighten safety for everyone. But transformation can be difficult. Between technology's rapid-fire changes and public safety's inherent rules, needs and challenges, you need a special kind of knowledge to make IT perform — without having to be an expert.



# Public Safety

### CDW•G for Public Safety: Expertise That Works

Your mission is safeguarding the public. Ours is helping you do it. We are a specialized practice devoted to public safety issues, with more than 10 years and hundreds of engagements to our credit. Our team of dedicated account managers will guide you to the most impactful choices, address all the requirements, policies and strategies you face every day, and show you how the pieces fit together.

First responders save lives and protect property every day. Technology challenges involving mobility, data interoperability and information sharing may hinder those efforts. But where does an agency start? What are their options? How do agencies obtain tech that works for wherever, whenever? The answers to these questions are the purpose of the CDW•G Public Safety Team.

At CDW•G, we collaborate with fire, police, emergency medical services, emergency management and other agencies to help them understand their options. A little guidance goes a long way, and our knowledge and expertise in deploying technology will support decision-makers in choosing public safety solutions.

Modern-day emergency management and first response requires fast and always-available access to information. Without it, police officers, first responders, and emergency personnel are at a disadvantage against criminals and natural disasters alike. Innovative digital solutions provide new, engaging approaches to fulfilling missions and keeping communities safe. Things are constantly changing but one constant that has remained throughout the last two decades is that Major Events Drive Digital Trends. Highlights in recent American History prove the axiom. Examples include;

- The 9/11 Attacks — Recommendations were brought forth from the 9/11 Commission Report but the standout topic in technology was Radio Interoperability
- Hurricane Katrina — Demonstrated the need for more resilient data and radio communications capabilities as well as more robust disaster recovery plans
- The active shooter at Virginia Tech University — Ushered in a mad dash to acquire citizen alert and notification systems
- The Boston Marathon Bombing — Revealed gaps in the ability to perform analytics on video and image big data
- Officer involved shootings and in-custody deaths in Ferguson, Mo., New York, Baltimore and Charlotte — Drove federal involvement resulting in proliferation of body worn camera deployments

- COVID 19-Pandemic and Civil Unrest — We are only beginning to comprehend the impact

## Covering the Spectrum of Capabilities

### Video

Cut travel time. Reduce resource allocations. Raise situational awareness and speed response. Do remotely what was once possible only in person.

- In-vehicle video, capture and management
- Body-worn cameras
- Interview room monitoring
- Fixed security
- Surveillance
- Analytics
- Collaboration and telepresence
- Case management
- Cloud solutions

### Mobility

Accelerate collaboration and communication from anywhere.

- Mobile data laptops and tablets
- Data collection and scanners
- Mobile printing
- GPS and automatic vehicle location
- Mobile access routers
- Wi-Fi solutions
- Advanced authentication
- Virtual private network mobile software
- Cloud solutions

### Data Center

Support growing data loads. Ensure enough bandwidth for increasingly complex communication. Keep it all secure.

- Servers and storage area networks
- Hyperconverged infrastructure
- Backup and recovery
- Virtualization
- Cybersecurity
- Unified communications
- Enterprise wireless
- Alert and mass notification systems
- Power and cooling
- Cloud solutions

**Digital Workspaces:** Creating a better user experience while streamlining device management and improving access to information

- Handheld and Mobile Data Terminals
- High Performance Workstations
- Mobile Gateways and Routers
- Virtual Desktop and Application Delivery

**Mission Effectiveness:** Digital Transformation yielding force multiplication, force protection, and delivering more rapid positive outcomes

- Cyber and Physical Security
- Collaboration, Data Center, and Cloud Strategies
- Communications Infrastructure, ESINet, Radio Backhaul
- Surveillance, Recognition, and Evidence Management

### **Command, Control & Intelligence**

- Mission Critical Operations Centers
- Data Visualization & Analytics
- Situational Awareness Platforms
- Mobile & Deployable Solutions

**Major Public Safety Events Drive Digital Trends.** CDW•G's Next Generation Public Safety approach addresses not only those trends from the past but aids agencies in preparing for whatever is next. Next Generation Public Safety is best described as a process of efforts towards Digital Transformation in Government and is a continual, phase-based effort from Assess & Envision through Planning & Design culminating in Implementation & Optimization. The achievable goals of Digital Transformation include:

- Decreased maintenance and improved operational efficiencies may relieve technology staff of mundane systems management tasks allowing for greater resource effort applied to evaluation, innovation and adoption activities.
- Long-term cost savings can be applied to new investments in deep learning and artificial intelligence. Elevating the safety and security posture and improving compliance adherence offers unquantifiable rewards and helps in eliminating distractions.

The overarching goal of Next Generation Public Safety Transformation is the development of a State-of-Readiness that provides the flexibility to adapt to future innovation. Rapidly absorbing those technologies today that are considered novel is a lofty goal. In the transformational era of tomorrow this capability becomes a general requirement. Nothing should be able to disrupt the digitally transformed agency.

It is today's technology challenges that propel our CDW•G Public Safety Team forward. Since 2005, the CDW•G Public Safety Team has been delivering technology solutions supporting mission critical environments in Emergency Management, Fire & Rescue, Emergency Medical, Law Enforcement as well as the Critical Infrastructure protection. Our focus has changed over the years to keep pace with the challenges of the day. The one thing has remained the same is that Public Safety agencies large and small turn to CDW•G to assist in developing solutions supporting Mission Critical operations.



Figure 11: CDW•G Public Safety Service Timeline

Public safety begins with an experienced and well-briefed sales team who comprise the primary point of contact for all of our customers. The sales teams are supported by a host of solution architects from a variety of disciplines and Public Safety Strategists that provide customers, CDW•G personnel and partners with subject matter expertise. Our comprehensive approach includes:

**Supply:** We have a large inventory of technology items you use every day

**Design/Build:** Our Solution Architects can help you through the myriad of choices with respect to designing the solutions necessary to develop the next generation of public safety tools

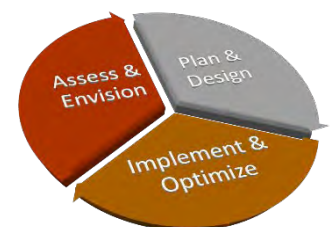
**Contracting:** Reduce the administrative cost, required span of control and headaches in your next project with a single agreement and responsible party delivering what you ask for

**Strategy Development/Envisioning:** Moving into real time policing, developing a new emergency operations center, security center or tactical operations center. Our Senior Strategist can help you develop and document a plan of action.

### We Get Mission Critical Operations

Historically, Mission Critical Operations in Public Safety Work have included emergency operations centers, dispatch or communication centers, fusion centers, and the standard agency data center. The last decade has given rise to a new breed of operation center including those supporting real time crime fighting, joint task force collaboration, cyber intelligence and excellence as well as network operations. Regardless, these centers are where people and advanced technologies intersect.

Enhanced situational awareness, data correlation and decision support systems combine to aid in visualizing a common operating picture in the next generation of Operation Centers. The end-game to this is force protection, force multiplication and the rapid delivery of positive outcomes. At the end of the day, next generation technologies widen the view of operations by integrating advanced data analytics with video surveillance systems, sensors and other technologies that gain better situational awareness.



CDW•G and its powerful partners expand the value of these technologies delivering hindsight, insight and foresight to Public Safety.

In preparing for the demands of tomorrow, a Next Generation approach is required to address the priorities of today. These must include future challenges. Solutions must also always work. It will not do for a critical solution to fail during a major response. The CDW•G and Partner designs keep that thought at the forefront.

CDW•G provides Technology Design/Build & Prime Contracting Services for the completion or rehabilitation of Mission Critical Operation Centers. We understand the importance of recognizing the unique needs of Law Enforcement, Emergency Management and Fire/Rescue. CDW•G provides solution sets which give our customers a near future-proof platform for placing critical information into the decision-making process.

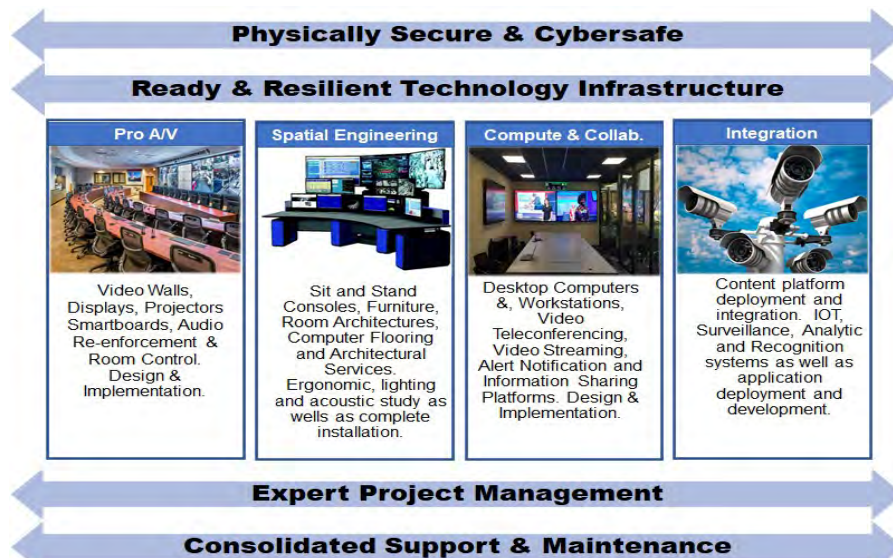


Figure 12: CDW•G Public Safety Offerings

## We Get Spatial Engineering

Our spatial design strategies consider how people are routed throughout your work center daily and during times of crisis to maximize optimal communication between operators and key stakeholders. When you choose to employ our experienced team of spatial engineering partners, we will work together determine the configuration that best supports your organization’s communication and collaboration objectives, ensuring continuity of operations and minimizing the impact of the upset condition. Our public safety console environment solutions are designed with the operator in mind.

An operator’s comfort is paramount to their productivity and overall health. Our ergonomically designed control room solutions encompass a variety of self-adjustable components and accessories, which are designed to be an extension of an individual’s day-to-day operations.

Our partner solutions enable greater environmental controls such as temperature and fan controls, height adjustments, lighting, and other elements to mitigate fatigue and improve operator alertness. Our situational lighting solutions enhance communication, awareness, and coordination, which support effective incident deployment strategies amid emergencies.



CDW•G and its partners provide ergonomic solutions and spatial engineering services to transform your next center into a state-of-the-art facility. We lead the overall center design/build efforts, in conjunction with industry leading partners. Partners we work with often include:



**Figure 13: CDW•G Spatial Engineering Sample**

## **We Get Situational Awareness**

CDW•G partners with leading software companies to provide for a myriad of solutions to help our customers solve their problems. Workflow management, citizen portals, asset and inventory management, dispatch, records management, and situational awareness platforms can all be implemented by CDW•G and its partners. A common operation picture (COP) is a continuously updated overview of an incident compiled throughout an incident's life cycle from data shared between integrated communication, information management, and intelligence and information sharing systems. The goal of a COP is real-time situational awareness across all levels of incident management and across jurisdictions. The objective of a COP for support in a coalition environment is to decrease the Decision Cycle Time (OODA loop - Observe, Orient, Decide, Act). Cobb County and OMNIA Partner Law Enforcement Agencies need their agents, analysts, first responders, and officers to be able to make decision quickly and efficiently, with accurate information. CDW•G understands this need and our applications help to orient data, create the Common Operating picture, and allow life-saving decisions to be made.

The needed data often exists in multiple legacy solutions, on the web and in an unstructured form. Making sense of the data and achieving the ability to turn data into actionable intelligence in real-time takes a great deal of integration.

CDW•G and its partners provide the platforms to get started quickly as well as the integration, development and orchestration expertise to move forward ahead of the pace of change. CDW•G has a long history of developing Microsoft-based solutions into usable applications for emergency management and law enforcement. Our recent acquisitions of IGNW, Aprtis, and Aeritae are evidence of CDW's continued commitment to providing world-class software development, integration and orchestration services.

CDW•G works with industry leading partners within the situation awareness platform, including:



## We Get Surveillance

Video surveillance capabilities have come a long way over the years. Legacy systems, made up of cameras and digital video recorders, primarily captured and replayed past events, limiting organizations to a reactionary security approach. Enhanced by analytics software, today's video surveillance solutions give organizations the tools they need to take proactive safety and security measures. The benefits now include utilizing surveillance to ease road congestion or monitor high pedestrian traffic areas, enhanced video surveillance enables digital transformation across every agency type, and more.

By integrating advanced data analytics software and Internet of Things (IOT) sensors with IP-based cameras and video management systems, CDW•G expands the value of surveillance technology. That means Cobb County benefits from not just hindsight, but also insight and foresight.



**HINDSIGHT:**

**WHAT HAPPENED?**

With traditional, forensics-based applications for video, you can investigate a recorded event, identify a bad actor, monitor facilities, analyze a complete process in a system or validate that a system worked as planned.



**INSIGHT:**

**WHAT'S HAPPENING NOW?**

Video analytics can elevate your security team's situational awareness and enable you to identify and react to events in real time. Analytics can unlock operational value by monitoring the flow of people, goods, or processes and triggering a response based on predetermined criteria.



**FORESIGHT:**

**WHAT WILL HAPPEN NEXT?**

With predictive analytics, you can leverage video data to identify trends and forecast events, giving your team foresight into the next threat and helping operations pinpoint future process flaws to improve decision-making.

Some of the leading manufacturers CDW•G partners within this space include:



**Mobility**

Mobility services to keep users connected, responsive and secure such as email protection, download prevention, containerize content on devices, self-destructing content, and content linked back to the user.

Procuring, configuring and refreshing mobile devices across different operating systems and carriers can be a challenge. From smartphones, tablets and notebooks to routers and point of sale systems, we can help you integrate your software and services to get the most out of your devices.

**Configuration and Activation**

CDW's configuration experts work with your IT staff and your carriers to ensure your enterprise mobile devices are automatically activated, enrolled and ready to use right out of the box. We

offer software configuration and imaging services for Windows, iOS or Android, and our tagging, tracking and laser etching services help you streamline asset management.

### **Procure and Provision**

Our Mobility Management Portal simplifies administration of devices, including selection, deployment, expense management and help desk services. Employees can order from a predefined catalog, perform upgrades or make changes to existing services — all in accordance with your internal mobile device policies.

### **Device as a Service (DaaS)**

DaaS gives your organization fully supported, customized devices for a monthly subscription fee, allowing you to shift procurement costs to an operating expense. We'll take care of managing technology refreshes, securing your devices, procuring management software, providing help desk services and recycling devices.

## **Why CDW•G**

### **Unmatched Expertise**

Our mobility experts have helped thousands of customers craft BYOD and mobile device policies from the ground up.

### **Flexible Financing Options**

We will work with you to determine the best financing method for your organization, be it a traditional purchase, lease or through a monthly subscription.

### **Industry-Leading Partnerships**

Our partnerships with the industry's top mobile providers give you access to the widest selection of devices, mobile OS and carriers — with top-notch customer service to boot.

### **Mobile App Development and Strategy**

Mobile apps are both an opportunity and a challenge for organizations looking to improve worker productivity and customer experiences. A solid mobile application strategy, from procurement to management to development, will put you ahead of the competition.

Our Enterprise Mobility Management (EMM) and workspace collaboration solutions can help you manage and secure your mobile environment across multiple devices and platforms.

### **Our Mobile and Productivity App Services**

The ubiquity of smartphones and tablets has changed the way organizations deliver information. We can help mobilize your operations to streamline workflows, boost productivity and reduce expenses. **App Strategy**

Before your organization selects off-the-shelf or customized apps, we'll help you develop a strategic view of your mobile app initiatives. We'll help you map deployment and development decisions based on your needs, budgetary constraints and IT infrastructure. Your custom app strategy will serve as a critical roadmap as you migrate to a more mobile environment.

### **Mobile Application Development**

Mobile app development allows your organization to meet stringent requirements around performance, functionality and user experience. Our partner network of tier 1 developers provides native, HTML5 or hybrid apps based on your needs. Additionally, we offer Mobile

Application Development Platforms (MADP) for organizations that want the tools to quickly create, deploy and maintain apps in house.

### **Your Custom App Store**

Give your employees a central point of access for the apps and tools they need to be productive. Your centrally managed and custom-branded app store can include both IT-approved, off-the-shelf apps and custom-developed mobile apps.

### **Content Sharing & Management**

The right file-sharing and online collaboration tools can help you tap into vital knowledge instantly and share it throughout your organization. Our cloud-based software as a service (SaaS) solutions can help encourage innovation and build relevant communities while maintaining the security of your corporate data. Choose from top partners such as Box, Google Workspace and Office 365.

### **Office Productivity Apps**

How can you get more from your employees and your budget? For many organizations, it means getting a little creative. It means embracing innovation. It means moving software to the cloud with SaaS productivity apps. We can help you select the right productivity app and design a customized, scalable solution that grows with your business.

### **Enterprise Portals**

Enterprise portals give your organization a single, secure place to store, organize, share and access information from almost any device. Web-based SaaS portals enable online collaboration — anywhere, anytime. We'll help you customize an enterprise portal that fits your needs, budget and business goals.

### **Strategies Designed for Growth**

Our collaborative approach to enterprise mobile apps prioritizes your objectives, budget and timeline. We'll help you design a comprehensive mobile app strategy with simple management tools, robust security and scalable features that evolve with new technologies.

### **Cross-Industry Expertise**

We have specialized teams across a number of industries — including retail, healthcare, energy and utilities, and K-12 and Higher Education. Our experts can help you mobilize existing workflows and unlock new strategies that transform the way your team works.

### **End to End Services and Support**

Our planning services and assessments ensure your productivity strategy is aligned with your business goals. We also offer full implementation, training and adoption services to help your employees mobilize faster, giving you a better return on your investment.

### **Mobility Management, Collaboration, and Security**

We provide a full range of proven mobile device management and collaboration tools as well as end-to-end security from the industry's leading providers. We help you simplify mobility management and mitigate risks so you can spend less time on tasks and more time on projects.

### **Enterprise Mobility Management (EMM)**

EMM takes the burden of day-to-day mobile management off IT's hands and empowers workers with uninterrupted access to the tools they need. Our mobility management and security

services include mobile device management, mobile application management, mobile content management, custom app stores and mobile device policy definition.

### **Mobile Workspaces**

Many clients are turning to mobile workspaces for secure mobility. We offer leading workspace solutions including desktop virtualization, application virtualization, EMM and file sharing, all supported by our professional services to ease selection and deployment.

### **Procurement and Expense Management**

In addition to simplified procurement of devices, our Mobility Management Portal provides help desk services — including phone, online chat and self-service support — as well as expense management services with custom reporting to ease the burden on your IT staff.

### **End-to-End Security**

With more than 15 years of experience with security solutions, our mobility and security teams work together to provide risk mitigation advice, including network and mobile security, data loss prevention and advanced threat protection technologies.

### **Streamlined Productivity**

Our custom solutions give you device management, app store and sign-on options, as well as the option to grant users access to legacy applications without the cost of mobile app development.

### **Simple Payments and Cost Controls**

With Mobile Expense Management, you can automate the tedious review, approval and payment process. You can also get insight into cost-saving opportunities and alerts about compliance issues.

### **Industry-Leading Partnerships**

We work with the industry's leading brands, giving you unmatched choice and expertise in selecting the best mobility management, collaboration and security solutions.

### **Work From Home (WFH)**

Work from home productivity involves more than just a functioning laptop. Networks need enough capacity and secure endpoints for workers to access their files and applications from anywhere, and employees need access to cloud applications to take full advantage of the collaboration tools available to them. CDW can help you build or expand your WFH strategy so employees can accomplish more in more places.

### **An example of a tool to work from home is Zoom**

Together, Zoom and CDW bring you the communications technology your business needs to evolve.

### **Business Communications**

CDW can help you develop a flexible collaboration solution based around your Zoom platform, to fit your user needs and goals.

### **Digital Workspace Consultation**

Available free of cost, CDW's collaboration workshop lets you explore your full Zoom capabilities and develop a customized communications strategy.

## Digital Workspace Services

Whether your communications are in the cloud, on-premises or a hybrid solution, CDW Amplified™ Workspace services meet you where you are, with comprehensive support.

## Asset Management

Asset management solutions to identify and manage installed software, hardware and license entitlements.

### We Understand IT Asset Management

IT Asset Management (ITAM) is a set of processes and tools that enables organizations to manage their IT assets on an ongoing basis, so that they can establish controls, gain visibility into their environment, optimize costs, and maintain license compliance.

At CDW, our wide range of IT Asset Management solutions is customized to assist Cobb County in maturing your own Asset Management practice, while always aligning to Cobb County's specific business goals.

These are the Elements of Successful Asset Management



Figure 14: Elements of Successful Asset Management

Our IT Asset Management Strategy Focuses on Four Solution Types:

### Project Based Engagement

#### Gain Visibility Into Your License Position.

This customized engagement helps ensure that you gain control of your software environment, by providing an Effective License Position (ELP). Great for True-Up and Renewal time!

### Maturity & Risk

#### Start Planning Your ITAM Strategy And Understand Your Risk

Identify the stakeholders, policies and inventory processes at the heart of your ITAM practice.

### Technology Platforms

#### Using Industry-Leading Platforms for Successful Asset Management.

Having access to accurate, real-time inventory data empowers better decision-making and drives business outcomes

### Ongoing Solutions

#### Our Ongoing Services Are Tailored to Your Business Needs – Increasing ROI

Customized engagements that ensure consistent visibility into assets and drive continuous improvement

## ITAM Maturity Assessment

With such a large portion of their IT budgets dedicated to software, organizations need a way to manage hardware and software assets on an ongoing basis. CDW's IT Asset Management (ITAM) practice offers a focused approach to tracking the location and configuration of IT assets, helping organizations not only optimize costs but also maintain license compliance, streamline contract negotiations, support mission-critical technology rollouts and prepare for digital transformation

CDW's Asset Management Maturity Assessment combined with our proven engagement framework allows us to help our customers:

- Define a vision for a successful practice
- Document recommendations on policy/process/procedures
- Build a roadmap for implementing your Asset Management practice
- Improve service levels
- Provide the ability to optimize costs and utilization of assets
- Ensure supply meets the demands of the business and that IT assets directly support specific business productivity requirements in the most efficient and reliable way possible
- Mitigate risks associated with governance practices, compliance requirements, and business continuity
- Provide the ability for true cost allocation

## Building Long-term Capability Through Technology

CDW recommends using an industry-leading Asset Management technology platform to manage and discover your environment. Our goal is to align the appropriate technology to help meet your business goals and drive IT initiatives. Our strategy includes:

- Understanding your existing investments in asset management
- If no asset management technology is in place, we can then assist in making technology recommendations, aligning resources for product demonstrations, and working with the vendor to set up proof of concept.
- Working with Cobb County to understand short and long-term business goals
- We can help Cobb County assess if your current investments are able to achieve these goals.
- Assessing additional applications
- We can help evaluate whether integration with specific business applications and/or systems are required to support you.

## Empowering Your Practice

Continuous improvement and internal communication are key in a successful ongoing Asset Management program. With an IT platform as the foundation, CDW can provide customized, ongoing consulting that can positively impact a customer's ROI.

## Ensure Proper Communication

With our partners at Universal Management Solutions (UMS), we can work with Cobb County to design an ongoing IT Asset Management (ITAM) strategy and support services- so you can focus on more strategic IT efforts.



## Ensure All Cobb County's Publishers Are Listed

We can ensure that Cobb County is spared the ongoing process of publisher contract management, or we can focus on just a short list of concerns. We can be flexible to accommodate Cobb County.

With visibility gained into the entire publisher environment, CDW will identify the redundant products in your environment, allowing for rightsizing your licensing investments

## Software Management and CDW

With assessments, technology validations, deployments, ongoing management and experts on-hand. CDW can help with every phase of the software solution. Our services and specialists include:

- **Test Assessment and Roadmap:** We develop a three-year roadmap for your customer's software environment with assessment and envisioning sessions, proofs of concept, health checks, product and licensing program comparisons, contract negotiation and image processing services.
- **Onsite Software Deployment:** Our experts install and configure Cobb County's on-premises software for desktops, notebooks, tablets, smartphones, servers and routers.
- **CDW Software Asset Management:** Hosted by CDW and powered by Snow Software, our license management service gives customers a clear view of the software being used across their devices.
- **Software Asset Management (SAM) Specialists:** Our certified SAM specialists analyze customers' licenses and provide reconciliation services to help them understand where gaps exist between entitled and employed licenses.
- **Licensing Account Executives:** Experts perform onsite reviews of the software environment. We use this information to recommend the best products and licensing programs for your budget, and help manage those assets throughout the contract.
- **Partner and Technical Specialists:** During initial consultation, our presales systems engineers answer any in-depth software, licensing and technical questions.

## Data Protection

Data protection to protect, backup, recover and archive data and applications.

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Data is your organization's most precious asset, but storing and protecting that data can be a challenge. Your IT team must contend with a laundry list of internal and external threats while also managing increasingly complex hybrid storage environments. Those tasks are made even more difficult when you consider the growing number of data-intensive applications your users depend on every day. Overcoming data protection and storage hurdles requires solutions and services that suit your needs and environment, as well as a trusted partner like CDW that can help you navigate your options.

Investing in storage through CDW can help address:

- Risk
- Agility
- Cost

Partnering with CDW for data protection and storage can help you achieve other key organizational and IT objectives, including:

- Mitigating risk
- Managing storage resources productively
- Supporting diverse user requirements
- Maintaining cost controls

### Why You Should Partner with CDW

Because every dollar counts, your organization needs to maximize the value of its data storage and protection investments. CDW's tenured and certified solution architects can build a customized plan that ensures you unlock the storage performance and resilience you need within your preferred budget and spending model. We also deliver:

- Vendor-agnostic expertise driven by our industry-leading partnerships
- A full-stack approach that supports you at every stage of your journey
- Dedicated support from a team that's worked with organizations of all sizes

### Energy and Water Conservation

Energy and water conservation solutions to deploy advanced metering infrastructure (AMI) systems designed to measure, collect, analyze and monitor usage real time. Examples of projects include automated meter projects, SCADA (Supervisory Control and Data Acquisition) projects, and security projects.

CDW has long been conscious of our impact on the environment especially regarding our energy consumption, and we have taken significant steps to effectively manage our consumption of resources and lessen our environmental impact.

#### ISO 14001:2015 Certification

Our environmental policy and Environmental Management System (EMS) define the structure, practices and procedures for our environmental program. As part of our commitment to continuous improvement, we regularly evaluate the efficiency of our use of natural resources. We seek to identify and address opportunities to improve by reducing waste to landfill through enterprise-wide recycling initiatives, implementing innovative packaging solutions, and integrating principles of environmental responsibility throughout our business.

All CDW distribution centers and two of our U.K. offices hold ISO 14001 certification, the international standard for Environmental Management. These certifications ensure consistency and effectiveness in our EMS and demonstrate our long-established commitment to managing our business responsibly.



**Figure 15: ISO 1400 Certification**

#### Energy Management – Carbon Emissions

At CDW, we look for opportunities to make meaningful reductions in our carbon footprint. Given the non-manufacturing nature of our operations, our facilities do not represent our greatest source of emissions. Rather, shipping and logistics functions present an opportunity for us to focus on carbon emission reductions through our relationships with value chain partners. Approximately 98% of our US shipments are delivered by carriers enrolled in the US EPA SmartWay Transport Partnership, which helps companies advance supply chain sustainability by measuring, benchmarking and improving freight transportation efficiency.

We also have programs aimed at consolidating freight volume and reducing the number of shipments and vehicles needed to complete a delivery, which enables our carrier partners to reduce carbon emissions.

### beGreen Program

CDW implemented a formal beGreen program to foster a culture of environmental responsibility that encourages coworkers to reduce, reuse and recycle. Our beGreen initiative provides coworkers with the platform to share ideas and take collective action to improve our environment. Areas of focus include:

- Coworker education
- Community awareness
- Recycling
- Resource conservation



Figure 16: CDW•G's beGreen Initiative

Our beGreen program continues to provide coworkers with a platform to share ideas and take collective action to protect our environment. The program is managed by a cross-functional team of coworkers from multiple CDW locations, and participation continues to be strong since its inception 13 years ago.

Reducing and eliminating waste through recycling, wherever possible, is ingrained throughout our organization. Our coworkers develop and lead efforts to help reduce waste to landfill from personal consumption and business use. Our dedicated beGreen staff continually looks for more ways to be environmentally responsible.

## Financial Services

Financing options such as lease, lease to own, lease with option to own, and IT as a Service.

CDW•G's Financing Solutions Team helps members navigate through all the available payment solution options (leasing, financing, subscriptions, etc.) CDW's Financial Partners provide to select the best option to fit the customer's needs. For members with a Master Lease Agreement established, we more than likely have a partnership in place with their provider, or can establish one, to extend their existing agreement to incorporate purchases from CDW•G. We are a recognized force with many of our Financing Partners, such as our 2017 HP PartnerOne Financial Services Partner of the Year Award and the 2019 Cisco Capital Central Partner of the Year Award. Often, we leverage relationships with our partners to offer more advantageous rates, terms, and structures. For members that have diversity requirements to meet, we can recommend WBE certified partners.

At CDW•G, we focus on providing the best solutions in the industry—not simply the latest solutions from a single provider. CDW•G can facilitate an agreement between Cobb County and a variety of leading financing companies that can help you obtain the payment terms that best fit your unique needs and budget requirements. Cobb County can secure a payment solution structure with maximized options and terms. Our Premier Financing Partners include:

- Arrow Capital Solutions
- Cisco Capital
- Dell Financial Services

- HPE Financial Services
- Lenovo Financial Services
- LEAF Commercial Capital, Inc.

## Success Story: IT as a Service

### United States Census Program



The Decennial Census is a once-a-decade activity that takes years of planning to carry-out the largest peacetime workforce mobilization in the US. CDW•G began developing and planning our technical and operational solution in 2015, well in advance of the 2017 contract award date. The US Census Decennial program mission is a Constitutionally mandated program established to accurately count each person in the US and count them only once. This is accomplished over a series of Census Field operations carried out across the USA and its territories with the final

objective to provide the complete Census report to the US President by end of year.

Since 2017 DW•G has been providing the US Census Bureau mobile technology under a large **Device-as-a-Service** prime contract. This contract includes full life-cycle technology management from leveraging CDW•G's ISO accredited secure supply chain practices to acquire, configure, test, ship and recover/disposition over 650,000 mobile devices. In addition to cellular assignment and activation, CDW•G also provides device security via Mobile Device Management with active tracking, monitoring and managing of the very large fleet of deployed devices. CDW•G also offers Program Management, Technical solution architecture (Win10 and iOS), Asset Management, Contract and Subcontract management, consolidated shipping and reverse logistics, and Tier 2/3 Help Desk support.

CDW/CDW•G have maintained performance throughout the COVID 19 pandemic and have shared with our Census customer our best practices utilized to ensure that there is no disruption in our services. We proposed 7 Small Business/Diverse suppliers and have subcontracted more than 20% of the program total to SB entities.

### Other Services and Solutions

Services and solutions not listed above that may be proposed by Offeror.

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As organizations face limited time, budgets and talent to tackle the ever-growing list of challenges running their day-to-day operations, IT leaders need a way to handle priority projects without overtaxing internal staff. CDW Staff Augmentation and Ad Hoc Support Services help meet the demands of your organization in unique ways. We provide skilled staff to augment your team with expertise in a wide range of technologies, offering an objective view of IT that ensures you'll always receive the right solution to your problems — not just the one that's convenient.

### CDW AMPLIFIED™ Services Portfolio

Cobb County and Omnia Partners will benefit from accessing a comprehensive set of services that offer an unparalleled breadth of services. Our portfolio of services includes data center, networking, hybrid cloud, end user workspace and collaboration, application development, data analytics, and technical support and service desk services. Our services are purpose-built, with pre-defined service descriptions, statements of work, deliverables, service level objectives, and

pricing. The benefit for your members is the ease they can transact with CDW•G from solution planning to service startup.

A summary of our entire Services portfolio is presented below.

**CDW AMPLIFIED™ Infrastructure Services** provide the expertise, tools, and resources to scale and future-proof Members' critical data center and network architecture. For example, our service engineering can help scale and optimize an existing on-premise data center to meet increasing application workload or design and implement a solution for migrating applications and infrastructure to a hybrid cloud solution. With the acquisition of Apris, CDW now provides ServiceNow services for the design, orchestration, and management of customer's ServiceNow applications, including ITSM, ITOM, SecOps, CSM, and HR Management. Our entire Infrastructure Services portfolio includes:

- Networks: Enterprise Data Center Networking, Software Defined Networks (SDN), Wireless Networking
- Hybrid Cloud: Hyperconverged/Private Cloud Deployments and Public Cloud solutions for Azure and AWS Services
- Operating System (OS): Management administration of virtual/physical server and OS, Infrastructure Application support, Database Services, and ServiceNow Services.
- Data Center: Power/Cooling, Storage, Compute, Data Protection, Virtualization, Software-defined Data Center and Networking

**CDW AMPLIFIED™ Workspace Services** provide a comprehensive approach for end users, educators, and students to work from anywhere, on any device, at any time. Our two configuration centers can support complex deployments, including staging, imaging, integration, kitting, and deploying up to 10,000 devices per day. Workspace Services also provides integrated solutions for managing the security risks to endpoint devices to remain productive and secure. Workspace Services includes:

- Collaboration: Voice, Video, Messaging, Conferencing, Contact Center, Productivity Applications, and Content Management.
- Endpoint Services: End User Compute, Mobility, Unified Endpoint Management & Security, and Managed Print Services

**CDW AMPLIFIED™ Security Services** help customers with ever-evolving security threats and maintains compliance with their industry and regulatory standards. Cybersecurity risks are higher than ever, and organizations require continuous defense, detection, and dynamic responses against evolving threats while maintaining industry compliance. CDW Amplified™ Security services provide independent evaluations of a customer's security posture and help fortify against identified weaknesses. Our security engineers can design comprehensive strategies and solutions for protecting critical IT resources and data. Our security engineers hold certifications in CISSP, CISA, CISM, CIPP, Ethical Hacking, ISO Auditing, and ITIL.

Our Professional Services can orchestrate advanced network defense techniques such as next-generation firewalls, advanced endpoint protection, content security, and access management. Security Services includes:

- Information Security: Risk and compliance assessment, penetration testing, and comprehensive security assessments, vCISO advisory services
- Detect and Respond: Security Incident Response services, Log aggregation and Correlation, Security Incident and Event Management (SIEM)
- Physical Security: Physical access controls, Video Surveillance, Environmental Sensors

- Secure Platform: Managed Next-Generation Firewall (NGDW), Intrusion Protection System (IPS), Identity and Access Management (IAM), and Network and Managed Zero-Day Endpoint Protection
- Managed Cloud SIEM with vulnerability and threat intelligence, advanced analytics, prioritized alerting and reporting, and end-to-end incident response

**CDW AMPLIFIED™ Development Services** help customers address their growing technical debt in their legacy application stacks and software delivery processes. Development Services provides modern, cloud-native technologies and industry-leading best practices to allow customers to develop applications that revolutionize their infrastructure and solve business issues. CDW Amplified™ Development Services help our customers modernize and streamline their application delivery with the following services:

- Software Engineering: Custom Software Design and Consulting, Application Architecture, Agile Development using DevOps, and software engineering utilizing Continuous Integration/Continuous Development (CI/CD) methodologies.
- Application Modernization: Refactoring legacy applications to modern application principles using containers, microservices, and event-based architectures.

**CDW AMPLIFIED™ Data Services** help customers make data-driven decisions by leveraging the benefits of a modernized data warehouse. Data Services also provides Artificial Intelligence (AI) and Machine Learning (ML) services for clients to develop actionable insights and realize the full benefit of their data warehouse. Data Services includes:

- Data Modernization: Builds solutions to modernize Data Warehousing applications using multiple vendor platforms
- Data Analytics: Creates advanced data visualizations and analytics solutions utilizing vendor platforms from Microsoft, AWS, Google, Splunk, and Tableau
- AI and ML: Builds and deploys AI/ML solutions for operationalizing customer data that can help predict and proactively respond to emerging market trends and demand

**CDW AMPLIFIED™ Support Services** deliver custom warranty, maintenance, and technical support services that augment a customer's IT staff so they can focus on maximizing business outcomes. Support Services includes:

- CDW Technology Support Service (CTS): Provides a 7x24 single point of contact support for technical and maintenance support on Cisco, Microsoft, and Palo Alto Networking products. Our expertise provides faster response times and more cost-effective solutions when compared to OEM branded technical support.
- E-Learning Technical Support: Our IT and AV support professionals provide a highly responsive Level 1 service desk for Educational institutions that rely on hybrid or remote learning for their student's educational needs.

### **Staff Augmentation Services:**

Many managed service providers offer IT staff augmentation as part of their service offerings. What differentiates CDW•G's Technical Resourcing is our 20+ years of experience providing IT services and solutions and our sole focus on Information Technology and Engineering resourcing. As an IT engineering company that provides advanced Application Services, DevOps, Cybersecurity, Cloud Architecture, and Big Data, we understand the skill sets and experience a member needs. Members can be confident in CDW•G's ability to identify candidates that meet the technical requirements of the role. This level of technical acumen uniquely positions us to help Members fill their most challenging IT staffing requirements seamlessly and expeditiously.

We use the same recruiting team to attract candidates for internal postings and customer positions. This provides us a competitive edge compared to other staffing firms that do not have the domain knowledge or bench of proven candidates. Our strength and value lies in providing a white-glove experience compared to other staffing MSPs. Our recruiters do not just gather and forward resumes from job postings. Instead, each recruiter discusses the role with the hiring manager to understand both the client culture and the soft and hard skills needed for a successful placement. Our goal is to respond with one to two quality candidates within a week of meeting the hiring manager. Our experience is we can fill 81% of the openings with one or two candidates, cutting down on time spent in multiple interviews .

### **Project Management Services**

CDW•G's Project Management Office's (PMO) mission is to drive excellence and leadership in Project and Program Management for all of our customers. We leverage a proven methodology based on the Project Management Institute's (PMI) standards and best practices while tailoring projects to meet business outcomes and requirements. Our PMO is an active member of the PMI Global Executive Council whose role is to lead and direct the future of the project management profession and ensure its continued growth and success. We have over 160 customer-facing Project and Program Managers, with over 70 being PMP Certified.

Our project methodology is scalable to any project size, customer-value driven, and flexible enough to integrate with your member's methods as needed. By being PMI aligned, we focus on communication, quality management, and continual improvement during all phases of the project. More information on these phases is described below.

- Project Initiation confirms the initial contract, the scope of work, resource requirements, prepares the kickoff meeting.
- Planning focuses on discovering and understanding requirements and stakeholders, communication plans, and delivers the project plan.
- Execution manages the design, implementation, testing, and migration of services, coordinating CDW engineers and the member's project resources.
- Closure finalizes the handoff to operational support, project closure documentation, and final project closure meetings. The closeout meeting is also the opportunity to review the customer's perspective of success and lessons learned during the project.
- Monitor and Control occur throughout the project's lifecycle to ensure that the project status, budget, and milestones are monitored and reported on a timely basis.

## Experience [RFP 5.4]

Include a list of the five (5) most relevant or comparable contracts completed by your firm during the past five (5) years with a public entity. For each contract, provide the following information.

- a. Scope of services/contract description.
- b. Dollar value of contract.
- c. Assigned project personnel.
- d. The contracting entity's contact person, current phone number, and current e-mail address as reference information.

<b>Reference 1</b>	<b>Client Name:</b>	Collier County, FL
<b>Scope of Services/Contract Description</b>		
Collier County utilizes the OMNIA Partners contract (formerly National IPA) for all goods and services that CDW is able to source for them. Typical manufacturers include, but are not limited to, Cisco, Vmware, CrowdStrike, NetApp, APC, Microsoft, and Dell.		
<b>Dollar Value of Contract</b>	\$4.3M Annually	
<b>Assigned Project Personnel</b>		
Name	Anson Hira, Advanced Technology Account Executive	
Name	Kyle Johnson, Executive Account Manager	
Name	AJ Lucci, Regional Manager	
<b>POC</b>		
Name	Mark Fowski	
Telephone	239-252-8322	
Email	mark.fowski@colliercountyfl.gov	

<b>Reference 2</b>	<b>Client Name:</b>	Orange County, FL
<b>Scope of Services/Contract Description</b>		
Orange County utilizes the Sourcewell contract for all goods and services that CDW•G is able to provide or source. CDW•G has provided professional services of advanced technology solutions including, but not limited to: MS Exchange, MS Active Directory, M365, VMware, Nutanix, Juniper, PeopleSoft, Security managed services, and Staff Aug personnel.		
<b>Dollar Value of Contract</b>	\$10.1M	
<b>Assigned Project Personnel</b>		
Name	Anson Hira, Advanced Technology Account Executive	
Name	Kyle Johnson, Executive Account Manager	
Name	AJ Lucci, Regional Manager	
<b>POC</b>		
Name	Mack RiCharde	
Telephone	407-836-5200	
Email	mack.richarde@ocfl.net	

<b>Reference 3</b>	<b>Client Name:</b>	Nashville Electric Service Board, TN
<b>Scope of Services/Contract Description</b>		
NES has approved the NIPA Corporative contract for all CDW•G purchases. They have been utilizing this contract since 2015. CDW•G has performed the following services for NES:		



ServiceNOW Integration, Splunk Installation and Data Migration, Nutanix install and configuration and Wireless Site Survey.	
<b>Dollar Value of Contract</b>	\$1.5M
<b>Assigned Project Personnel</b>	
Name	Robert Sullivan, Executive Account Manager
Name	Griffin Curcio, Executive Account Manager
Name	Austin Hudson, Nashville Advanced Technology Account Executive
<b>POC</b>	
Name	Matt Dodd
Telephone	615-747-3199
Email	hdodd@nespower.com0

<b>Reference 4</b>	<b>Client Name:</b>	City of Boca Raton
<b>Scope of Services/Contract Description</b>		
City of Boca Raton has leveraged the OMNIA Technology Contract through CDW•G for 90% of their IT Hardware and Software needs for more than 7 years. In addition, the city has utilized our Affiliate, Sirius, a CDW company, for nearly the same tenure as their primary IT professional services provider.		
<b>Dollar Value of Contract</b>	\$2.7M Annually	
<b>Assigned Project Personnel</b>		
Name	Ray Clyne, Advanced Technology Account Executive	
Name	Roger Heroux, Executive Account Manager	
Name	AJ Lucci, Regional Manager	
<b>POC</b>		
Name	Jolyn Avery	
Telephone	561-367-7062	
Email	javery@myboca.us	

<b>Reference 5</b>	<b>Client Name:</b>	City of Atlanta
<b>Scope of Services/Contract Description</b>		
The City of Atlanta has awarded CDW•G their hardware/software sourcing contract over the course of the past 14 years for four, consecutive contract cycles. CDW•G was the sole-awardee for two of the four contract awards, including the flagship contract. In addition to the Hardware/Software sourcing contract, CDW•G provides professional IT services for the city, including all agencies in the "General Fund", as well as Atlanta Department of Watershed management and Atlanta Department of Aviation, Hartsfield Jackson International Airport.		
<b>Dollar Value of Contract</b>	\$14.2M Annually	
<b>Assigned Project Personnel</b>		
Name	Dan Gallagher, Advanced Technology Account Executive	
Name	Mike Zorica, Executive Account Manager	
Name	AJ Lucci, Regional Manager	
<b>POC</b>		
Name	Errika Stewart	
Telephone	404-330-6204	
Email	estewart@atlantaga.gov	

## Product Information/Service Capability [RFP 5.5]

a. Provide detailed information on service capability and the availability of service centers for maintenance and repairs on a national level. Indicate how many authorized service centers will be available for each state. Will pick up and delivery services be available for service of large equipment items?

For today's State, Local, and Education leaders, the speed of digital priorities is critical to success. Yet, technical complexities can slow progress. Our full-stack engineering services team focuses on digital transformation — from code and applications to cloud, data and security — to help our SLED customers accelerate innovation, enhance citizen experiences and optimize collaboration, all while delivering agility and cost efficiencies. We maintain a working ecosystem of coworkers and partners to address the myriad service requirements of our customers.

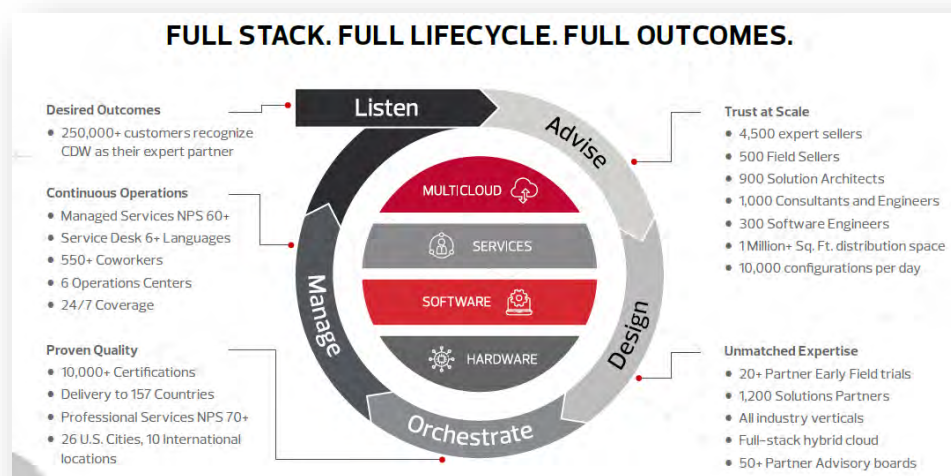


Figure 17: Full Stack Lifecycle

### Service Centers

Our operational footprint is abundantly national, with offices located in every region and two state-of-the-art distribution centers strategically located for the fastest possible service. In addition to our local branches, we have over 1,100 services professionals and a fast-growing network of trusted service and solutions partners.

The number of authorized service centers depends on many factors so we cannot give a definite number at this point. However, we can explicitly confirm we have authorized service centers available for any agency who wishes to purchase off this contract.

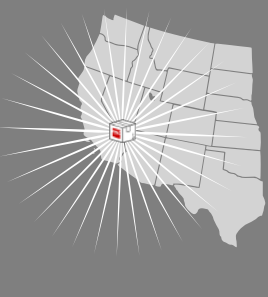

### Break-Fix

We typically provide break/fix services through our partner network, though we can do that through a managed service as well. The choice of partner network depends on a multitude of factors including location in the United States, brand of product, budget, turnaround time, etc. Our team is happy to discuss in further detail regarding a particular instance.

### Config. Centers

OMNIA Partners Members can rely on CDW•G to preconfigure their technology solutions and provide custom turnkey solutions for plug and play deployment. We offer a wide array of services to address the various tasks involved in configuration projects including hardware and software installation and configuration, domain integration, branding, labeling, asset management, delivery & distribution.

## Two State-of-the-Art Configuration Centers

 <p style="font-size: 24px; font-weight: bold; margin-top: 0;">Las Vegas, NV</p> <p>513k square feet Capacity for up to 10k+ configurations per day</p>	 <p style="font-size: 24px; font-weight: bold; margin-top: 0;">Vernon Hills, IL</p> <p>450k square feet Capacity for up to 10k+ configurations per day</p>			
ISO and PCI certified configuration centers				
ISO 9001 Quality	ISO 14001 Environmental	ISO 20243 Risk Management	ISO 27001 Information Security	ISO 28000 Secure Supply Chain

CDW•G operates redundant, environmentally controlled ISO and PCI certified centers in Vernon Hills, IL, and North Las Vegas, NV to provide faster delivery and reduced shipping expense. Our Distribution and Integration Centers have a combined one million sq. ft. including 75,000 sq. ft. dedicated to configuration and another 50,000 sq. ft. dedicated to staging. CDW can scale to meet your needs.

### Local Branches

CDW is headquartered just outside of Chicago, Ill., and we have 28-plus local branch offices throughout the United States and Canada. So, chances are, we're within driving distance of your office. And even if a customer is located in an area without a local branch, our network of trusted service providers — all trained to follow the same consistent approach, processes, methodologies and professional manner of CDW badged engineers — ensure that your organization will still get the full attention and resources it deserves.

Depending on the location and particulars of the system or product that needs servicing, costs can vary. Due to this complexity, our team will work with each agency as needs arise to provide a custom State of Work that includes costs to the customer.

### Pick-Up & Delivery

We can facilitate pickup and delivery services for an additional cost. Regarding delivery of large equipment, we maintain our own inventory and relationships with the top delivery providers to ensure timely and safe delivery. We also have direct relationships with major manufacturers where we can leverage their dropship channels for delivery.

In our experience, the type of pick-up services that our customers require vary. As a result, we require more details to document our process. However, we will work with all customers to accommodate requested pick-up services and their unique specifications.

## Configuration Services Overview

Cobb County and OMNIA Partners can rely on CDW•G to preconfigure their technology solutions and provide custom turnkey solutions for plug and play deployment. We offer a wide array of services to address the various tasks involved in configuration projects including hardware and software installation and configuration, domain integration, branding, labeling, asset management, delivery & distribution. Our Configuration Centers roll out 2,600,000 products every year - more than 10,000 custom units a day.

## Capabilities Overview

Our configuration team can provide many services, including:

- **Hardware Integration:** Including installation of memory, hard drives, NIC cards, video cards and a variety of other components.
- **Software Configuration:** Your computers, mobile devices and servers will come with OSs and apps pre-installed. We offer White Glove Service to prep and provision Chromebooks.
- **Custom Imaging:** Including image creation, maintenance and deployment, we can host a secondary server to connect to your SCCM or other image deployment server via VPN. Customizable options include pre- and post-imaging tasks like domain join and security upgrades.
- **Rack Configuration:** We mount and configure your network and security devices, rack-mount servers, chassis blade servers, storage, KVMs, UPSs and PDUs into a rack structure, then cable and label before shipping.
- **Mobility Services:** We configure and activate your tablets, phones, handhelds and Wi-Fi hotspots. Additionally, services that include MDM enrollment, App installations, IOS and Android updates are also available.
- **Custom Laser Engraving:** Your logos and other important information can be engraved onto notebooks, mobile devices and other equipment. We can laser engrave static content and/ or one field of dynamic content, such as the device serial number.
- **Asset Tagging and Reporting:** You have the option to use CDW/CDW•G-branded labels, customer-provided labels, or our team can build custom labels that we print on-demand, including UID/IUID identification labels for U.S. Government applications. Extensive information on your devices is available via the Order Reporting and Hardware Asset Management functions on your CDW Account Center.
- **Network and Security Device Configuration:** We configure firewalls, routers, switches, access points and IP phones for all the largest manufacturers. These services include system software/firmware upgrade or downgrade; uploading master configuration files; configuration of IP address, subnet mask and default gateway. All customization is based on your organization's unique specifications.
- **Burn-in Services:** We run your devices for 12 hours or more to ensure all components are working properly.
- **Custom Packaging:** This includes kitting, palletization, inserts and welcome letters and box labeling.
- **Buy and Hold Services:** This allows you to purchase products and have them held in a secure location anywhere from three months up to a year. CDW handles the configurations, customizations, logistics and shipping requirements to ensure your pre-defined deployment schedule is met.

## Configuration Services Project Management

CDW•G offers Configuration Services Project Management which works to ensure the success of projects and ongoing programs. Here are some of the key PM activities.

- Serve as the main point of contact (POC) for overall project communication, including escalations
- Communicates expectations and holds Internal CDW Services team accountable for meeting project timelines
- Establish and manage project schedule and expectations
  - The schedule is based on the customer's expected delivery and deployment dates and well as approved SLA and configuration volume commitment from the CDW Services Team
  - Schedules are subject to change. Schedule crashing may result in higher cost to meet increasing demand and/or it may not be feasible to meet requested deadlines due to insufficient planning and limited resource availability
- Manage rollout/delivery schedule
- Assign roles and responsibilities to members of the project team
- Conduct regular cadence calls with stakeholders (internal and/or external)
- Actively track and report status for open Configuration Services orders in the project
  - Order and status reports on an agreed to schedule
  - Format of reports can vary based on customer requirements and needs of the project
- Track and manage product availability for CDW Configuration Services to meet deployment schedule
- Manages escalated orders and changes in the schedule
- Escalate issues to management as needed

## Quality Assurance

All Configuration Center workers are trained on CDW•G's best practice quality assurance procedures that include a comprehensive check of each system we touch. First, we verify the compatibility of all components to be installed. Second, we verify that each component is installed properly, and the hardware installation is complete. Finally, we ensure that all hardware and software are functioning according to manufacturer specifications. Each step is completed by a qualified technician and verified by a QC technician. CDW is ISO 9001:2008 compliant and the names of the primary technician and QC technician are recorded for all orders. All team members are held accountable for adhering to our quality assurance procedures. If any issues are encountered, CDW•G will contact you immediately to resolve the issue.

CDW•G also offers a Burn-in Service (available in 12 hour increments) which includes running a diagnostic program (where applicable) to test basic functionality. This service is designed to reduce the number of items that fail after a short period of use.

Any defective or damaged devices that are discovered during the configuration or warehousing process will be removed from stock and replaced with new, functional devices. The damaged or defective devices will be returned to the manufacturer on CDW•G's behalf. This process will not require the customer's involvement and should happen transparently to the customer.

### **Additional notes for Imaging and Software configurations:**

CDW•G has a team of engineers, technicians and team leaders trained to work on image and software deployments. Customer specific deployment instructions are strictly followed to ensure your devices are imaged and configured your way.

## **Managed Services - Service Levels**

CDW's Managed Services offerings allow Cobb County and OMNIA Partners to contract for support of your networks, systems, databases, and select applications. Our modular approach to IT management allows you to select services that best support your individual organization goals and current capabilities.

CDW•G provides three levels of managed services:

- Advanced Monitoring
- Proactive Maintenance
- Availability Management

Each of the levels encompasses the previous levels (i.e. Silver includes Bronze). There is no loss in service when moving to a more comprehensive level, meaning that no operational tasks are lost when moving between levels.

### **Advanced Monitoring (Bronze)**

Advanced Monitoring includes comprehensive monitoring and alerting for supported technologies. In addition to basic availability monitoring of devices and services, CDW also provides error/exception monitoring, threshold monitoring and performance utilization monitoring. All monitoring data is available through a web-based reporting engine.

### **Proactive Maintenance (Silver)**

Proactive Maintenance includes patching services. CDW proactively monitors vendor patch availability, analyzes patch necessity and priority, and applies recommended patches to your system.

### **Availability Management (Gold)**

Availability Management includes break/fix engineering support and an SLA for device availability. CDW's SLA for all Gold level modules is a 99.9% monthly services uptime guarantee.

Additional details for all three service levels are outlined in the table on the following page.

**Table 3: Service Levels**

	GOLD	SILVER	BRONZE
24/7/365 Operations	•	•	•
Engineers on T&M Basis	•	•	•
Critical Service and Event Monitoring	•	•	•
SNMP Variables	•	•	•
Performance Thresholds	•	•	•
System Events	•	•	•
Client Alert Notifications	•	•	•
Performance Reporting	•	•	•
Proactive System Patching	•	•	
Hot Fixes	•	•	
Service Packs	•	•	
Firmware Updates	•	•	
Break/Fix Support	•		
Change Control	•		
Engineering Support	•		
99.9% Uptime SLA	•		
Life Cycle Management	•		
Predictable Monthly Fee	•		

b. Provide available payment terms and payment methods – purchase order, credit card (procurement card), etc. If credit cards are accepted, may credit card payment(s) be made online?

CDW•G accepts payment through:

- Credit Cards\* (American Express, Discover, MasterCard, Visa)
- Checks
- EDI
- EFT (Electronic Funds Transfer)
- Procurement Cards

With a credit card order, CDW•G requires the credit card information at the time you place the order. Please note that we do not accept credit cards for term accounts.

CDW•G’s standard payment terms are net 30 days from the date the invoice is issued.

While CDW•G appreciates prompt payment, we do not offer discounts for early payment. Prompt payment ensures that CDW•G is able to continue offering low prices while managing our costs.

Payments can be made to the following addresses:

CDW Government  
75 Remittance Drive  
Suite 1515  
Chicago, IL 60675-1515



## Pricing [RFP 5.6]

a. Suppliers shall provide pricing based on a discount from a manufacturer's price list or catalog. Prices listed will be used to establish the extent of a manufacturer's product lines, services, warranties, etc. that are available from Supplier and the pricing per item. Multiple percentage discounts are acceptable, if where different percentage discounts apply, different percentages are specified. Additional pricing and/or discounts may be included.

• Include an electronic copy of the catalog from which discount is calculated. Electronic price lists must contain the following: (if applicable) –

- Manufacturer part #
- Supplier's Part # (if different from manufacturer part #)
- Description
- Manufacturer's Suggested List Price and Net Price
- Net price to Cobb County, GA (net price shall include freight and any additional fees that may be charged such as credit card processing, administrative fees, etc.)

Media submitted for pricing must include the Supplier's company name, solicitation name and bid #, and the bid opening date on a Flash Drive.

b. Provide details of and propose additional discounts for volume orders, special manufacturer's offers, minimum order quantity, free goods programs, total annual spend, etc. (if offered).

c. If used, trade-ins, leasing/financing, or other offerings are available, provide applicable pricing and discounts.

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### Catalog Pricing

Cobb County		
Category	Description	Discount % from CDW•G Advertised*
A	Accessories (A)	6.75%
B	Power, Cooling & Racks (B)	5.00%
C	Desktop Computers (C)	3.00%
C/DT	PC Compatible Desktop Computer (DT)	2.10%
C/DM	Apple Desktops (DM)	0.50%
D	Data Storage/Drives (D)	5.50%
E	Enterprise Storage (E)	5.00%
F	Point of Sale/Data Capture (F)	4.25%
H	Servers & Server Management (H)	4.00%
J**	Services (CDW Delivered) (J)	0.00%
L	Notebook/Mobile Devices (L)	2.50%
L/NM	Apple Notebooks (NM)	0.50%
L/NB	Notebook Computers (NB)	2.10%
L/NB/CBK	Chromebooks (CBK)	0.00%
L/RD	Tablets (RD)	2.25%
N	NetComm Products (N)	5.50%
O	Carts and Furniture (O)	5.00%
P	Printing & Document Scanning (P)	3.00%
Q**	Services (Partner Delivered) (Q)	3.00%

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To the extent allowable, all information and documents hereby submitted in response to the Request for Proposal/Quote ("RFP/RFQ") furnished by Cobb County Purchasing are the Proprietary and Confidential property of CDW Government LLC ("CDW•G").

Cobb County		
R	Client Configure-to-Order (R)	2.50%
S	Software (S)	4.00%
T	Collaboration Hardware (T)	4.25%
V	Video & Audio (V)	3.50%
W	Cables (W)	15.00%

CDW•G will provide Customer with a discount as a percentage off of CDW•G’s Nationally Advertised Price (NAP) for the CDW•G defined Product Categories listed above, provided that Customer references this Agreement when placing an order with CDW•G.

Prices include lowest ground freight within the 48 contiguous United States when referencing this Agreement. All orders are subject to CDW•G's standard shipping policies in effect at the time of order placement. In those instances that call for express or overnight delivery, shipping costs will be pre-paid by CDW•G and added to the customer invoice.

We reserve the right to amend our price offering to accommodate the negotiated and mutually agreed upon Administrative Fees.

**Clarifications**

\* “Advertised Price” or “Nationally Advertised Price” or “NAP”, refers to CDW-G's List Price, a publicly available and verifiable price at cdwg.com

\*\* These are services tied to CDW•G internal taxonomy J and Q, which includes subset of offerings such as configurations, warranty, and specific installation services, and are not subject to a Statement of Work. These do not include the services broken out in the individual tabs, including other professional services, which require a mutually executed Statement of Work between CDW•G and Customer.

Infrastructure as a Service	
Cloud Service Providers	
Provider	Discount off MSRP
Amazon Web Services	0%
Google Cloud Platform	0%
Microsoft Azure	0%

Our Infrastructure as a Service portfolio of AWS, GCP, and Azure is offered in conjunction with our Managed Cloud as a Service.

ServiceNow Solutions PaaS Offering	
Option	Discount off MSRP
ServiceNow IT Service Management Professional – Unrestricted User 2	0% (5% off CDW•G NAP)
ServiceNow Integrated Risk Management Professional – IRM User	0% (5% off CDW•G NAP)

If there is a CDW•G Nationally Advertised Price (NAP) available for above offerings, OMNIA Members will receive a discount of 2% off CDW•G NAP. The NAP is publicly available

pricing for hundreds of thousands of offerings available 24/7, which is competitively benchmarked with competitive market conditions and adjusted frequently to provide a transparent public auditable index.

If NAP doesn't exist, then CDW•G will rely on MSRP pricing available to CDW•G or based on CDW•G quoted price.

<b>Digital Velocity Solutions</b>	
<b>Role</b>	<b>Hourly Rate</b>
DVS F-CTO	\$350.00
DVS Digital Strategy Consultant	\$305.00
DVS Digital Product Strategist	\$270.00
DVS Principal Engineer / Tech. Lead	\$350.00
DVS Architect	\$300.00
DVS Senior Engineer	\$250.00
DVS Engineer	\$225.00
DVS Associate Engineer	\$200.00
DVS Program Manager	\$245.00
DVS Sr. Technical Project Manager	\$230.00
DVS Technical Project Manager	\$205.00
DVS Project Coordinator	\$165.00

CDW•G's full-stack engineering services team, a part of a specialized group identified as Digital Velocity Solutions (DVS), focuses on digital transformation from code to cloud, and data center to database. The roles listed below are for the skilled engineers that make up this practice.

For this proposal, we are offering the following DVS roles:

- DVS F-CTO
- DVS Digital Strategy Consultant
- DVS Digital Product Strategist
- DVS Principal Engineer / Tech. Lead
- DVS Architect
- DVS Senior Engineer
- DVS Engineer
- DVS Associate Engineer
- DVS Program Manager
- DVS Sr. Technical Project Manager
- DVS Technical Project Manager
- DVS Project Coordinator

The responsibilities of each role are dependent on the statement of work breakdown in the specifics of the project. All of these roles work within the Digital Velocity Solutions team and uphold the go-to-market strategy of DVS.

Managed Services	
Managed Service	Monthly Price*
Basic / Essential / Premium Support for AWS, GCP, and AZURE	Fees are based on a percentage of the customer’s actual consumption of AWS, GCP, Azure services.
Basic Service - \$0K to \$10K	As Invoiced
Basic Service - \$10K to \$250K	As Invoiced
Basic Service - \$250K+	As Invoiced
Essential Service - \$0K to \$35K	As Invoiced
Essential Service - \$35K to \$75K	As Invoiced
Essential Service - \$75K+	As Invoiced
Premium Service - \$0K to \$100K	As Invoiced
Premium Service - \$100K to \$250K	As Invoiced
Premium Service - \$250K+	As Invoiced
* If CDW•G is billing the customer for Basic consumption, no pricing uplift is applied.	

### Pricing

#### Basic

Included with CDW billing for cloud consumption

**Stand-alone pricing (no consumption):**  
 \$49/mo if under \$1,000  
 5% - \$1,001 to \$10,000  
 3% - \$10,001 to \$250,000  
 2.5% - \$250,001 +



#### Essential

\$400/mo if under \$2,250  
 18% - \$2,251 to \$35,000  
 15% - \$35,001 to \$75,000  
 12% - \$75,001 +




**PEOPLE WHO GET AZURE**

#### Premium

<p style="text-align: center; margin: 0;"><b>Pick 2</b></p> <p>\$2,500/mo if under \$10,000                      25% - \$10,001 to \$100,000                      20% - \$100,001 to \$250,000                      15% - \$250,001 +</p>	<p style="text-align: center; margin: 0;"><b>OS and DB Bundle</b></p> <p>\$3,000/mo if under 10,000                      33% - \$10,001 to \$100,000                      28% - \$100,001 to \$250,000                      23% - \$250,001 +</p>
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ServiceNow Solutions	
Role	Hourly Rate
ServiceNow Associate Project Manager	\$165
ServiceNow Associate Consulting Engineer	\$170

ServiceNow Engagement Manager	\$235
ServiceNow Business Process Consultant	\$255
ServiceNow Principal Consultant	\$275
ServiceNow Organizational Change Management Consultant	\$275
ServiceNow Integration Expert	\$250
ServiceNow Quality Assurance Expert	\$200
ServiceNow Solution Architect	\$255
ServiceNow Technical Consultant / Developer	\$220
ServiceNow Trainer	\$235

A continuation of our ServiceNow solutions practice as listed above in our managed services category, this section of ServiceNow solutions related services pricing encompasses several roles that Cobb County and OMNIA Partners can successfully utilize in the creation and implementation of ServiceNow solutions initiatives and projects.

<b>Amplified IT SaaS Offerings*</b>	
<b>Option</b>	<b>Discount off MSRP</b>
Gopher products	2%
Little SIS	2%
<b>Amplified Services</b>	
<b>Google for Education (GFE)</b>	
<b>Option</b>	<b>Discount off MSRP</b>
GFE Audit - K-12	2%
GFE Audit - Higher Ed	2%
GFE KickStart Package	2%
GFE Support - Support Hours	2%
GFE Support - 20 Support Hours	2%
GFE Support - 40 Support Hours	2%
GFE Support - Adhoc Support Hours	2%
North American GFE Technical Collaborative	2%
GFE Training/Consultancy - Full Day Onsite	2%
GFE Chrome Checkup	2%
<b>Amplified IT Training</b>	
<b>Option</b>	<b>Discount off MSRP</b>
Amplified IT Admin Level 1 Certification Training - Self-Paced	2%
Amplified IT Admin Level 2 Certification Training - Self-Paced	2%
Amplified IT Admin Security Specialist Certification Training - Self-Paced	2%
Amplified IT Admin Security Bundle	2%

**\*These services are available to education entities only.**

Staff Augmentation			
Role	Standard	Mid-Level	Senior
Infrastructure Architects	\$170.00	\$180.00	\$195.00
Solutions Architects	\$175.00	\$195.00	\$215.00
Site Reliability Engineers	\$185.00	\$195.00	\$205.00
Network Administrators	\$100.00	\$115.00	\$125.00
Network Engineers	\$135.00	\$150.00	\$165.00
Network BAs/BSAs	\$130.00	\$135.00	\$140.00
Systems Administrators	\$115.00	\$130.00	\$145.00
Systems Engineers	\$140.00	\$155.00	\$170.00
Systems BAs/BSAs	\$135.00	\$145.00	\$155.00
Storage Engineers	\$165.00	\$160.00	\$195.00
Virtualization Engineers	\$135.00	\$155.00	\$180.00
Salesforce Administrators	\$125.00	\$155.00	\$185.00
Salesforce Engineers	\$175.00	\$195.00	\$215.00
Salesforce Developers	\$165.00	\$175.00	\$185.00
ServiceNow Administrators	\$155.00	\$165.00	\$175.00
ServiceNow Engineers	\$165.00	\$180.00	\$195.00
ServiceNow Developers	\$150.00	\$165.00	\$180.00
SolarWinds Engineers	\$165.00	\$180.00	\$205.00
AWS Engineers	\$185.00	\$205.00	\$225.00
AWS Developers	\$170.00	\$175.00	\$180.00
Azure Engineers	\$180.00	\$195.00	\$215.00
Azure Developers	\$135.00	\$145.00	\$160.00
GCP Engineers	\$200.00	\$235.00	\$265.00
GCP Developers	\$200.00	\$235.00	\$265.00
Front-end Developers	\$165.00	\$170.00	\$175.00
Back-end Developers	\$170.00	\$180.00	\$185.00
Scala Developers	\$200.00	\$215.00	\$225.00
Project Managers	\$135.00	\$150.00	\$165.00
Scrum Masters	\$165.00	\$180.00	\$195.00
DevOps Engineers	\$165.00	\$175.00	\$190.00
Software Development Engineer in Test	\$170.00	\$180.00	\$195.00
InfoSec Analysts	\$145.00	\$160.00	\$175.00
Quality Assurance Analysts	\$140.00	\$150.00	\$160.00
Quality Assurance Engineers	\$140.00	\$150.00	\$160.00

The market for qualified resources is more competitive than ever and finding reliable talent can be difficult. CDW•G's Staff Augmentation services take the hassle out of resourcing. We maintain relationships with thousands of qualified resources and provide organizations with the best candidates the first time around. Whether Cobb County and OMNIA Partners need a resource for just a few weeks, several months, semi-permanent, or permanently, our critical

TTM (Time to Market) solutions will help Cobb County and OMNIA Partners scale up or down rapidly depending on where they are in the project lifecycle.

<b>Managed Services Application</b>	
<b>Item</b>	<b>Rate</b>
Microsoft System Center Configuration Manager (SCCM) - Gold	\$517.50
Microsoft Active Directory - Small Environment 2-10 DCs - Gold	\$545.10
DHCP Support add to MS AD above	\$155.94
Microsoft Active Directory - Medium Environment 11-20 DCs - Gold	\$828.00
Microsoft Active Directory - Large Environment 21+ DCs - Gold	\$1,587.00
Microsoft Active Directory Federation Services (ADFS) - Gold	\$745.20
Mimix/iTERA for iSeries - Gold (Priced PER "a" and "b" side)	\$207.00
<b>Managed Services Backup</b>	
<b>Item</b>	<b>Rate</b>
IBM Tivoli Storage Manager Gold	\$2,070.00
Commvault RMS Backup Environment SM: 1-250 VMs - Gold	\$1,138.50
Cohesity RMS SM: 1-250 VMs - Gold	\$1,138.50
Commvault RMS Backup Environment Med: 251-600 VMs - Gold	\$1,656.00
Commvault RMS Backup Environment Large: 601-1000 VMs - Gold	\$2,070.00
Commvault RMS Backup Environment XL: 1000+ VMs - Gold	\$2,622.00
Veeam RMS SM: 1-250 VMs - Gold	\$1,138.50
Veeam RMS Med: 251-600 VMs - Gold	\$1,656.00
Veeam RMS Lrg: 601-1000 VMs - Gold	\$2,070.00
Veeam RMS XL: 1000+ VMs - Gold	\$2,622.00
EMC Avamar RMS SM: 1-250 VMs - Gold	\$1,138.50
EMC Avamar RMS Med: 251-600 VMs - Gold	\$1,656.00
EMC Avamar RMS Lrg: 601-1000 VMs - Gold	\$2,070.00
EMC Avamar RMS XL: 1000 VMs - Gold	\$2,622.00
EMC Data Domain - Gold	\$2,070.00
Microsoft System Center DPM - SM <100 - Gold	\$1,656.00
Microsoft System Center DPM - Med 100 - 500 - Gold	\$2,070.00
Microsoft System Center DPM - Lrg >500 Gold	\$2,622.00
Microsoft System Center DPM - XL - Gold	\$3,312.00
<b>Managed Services OS</b>	
<b>Item</b>	<b>Rate</b>
Windows O/S - Gold	\$77.63
Linux O/S (Red Hat/ SUSE) - Gold	\$155.94
AIX O/S - Gold	\$295.32
IBM System I - Gold	\$1,242.00
<b>Managed Services Security</b>	
<b>Item</b>	<b>Rate</b>
Cisco ASA - Gold	\$560.28
Cisco Firepower Services (Per Sensor) - Gold	\$313.26
Cisco Firepower Threat Defense - Gold	\$614.10
Palo Alto Firewall wo Panorama - Gold	\$523.02

Palo Alto Firewall w Panorama - Gold	\$523.02
Palo Alto Panorama - Gold	\$253.92
Cisco Identity Services Engine (ISE) - Gold	\$513.87
Fortinet Firewall wo FortiManager – Gold	\$523.02
Fortinet Firewall w FortiManager – Gold	\$523.02
Fortinet FortiManager – Gold	\$253.92
Fortinet FortiAnalyzer – Gold	\$77.28
Cisco Umbrella - Gold (Per User)	\$0.84
<b>Managed Services Virtualization</b>	
<b>Item</b>	<b>Rate</b>
VMware ESXi - Gold	\$200.10
Nutanix AHV - Gold	\$200.10
Microsoft Hyper-V - Gold	\$200.10
<b>Managed Services Storage</b>	
<b>Item</b>	<b>Rate</b>
Controller: IBM Storage Virtualization (priced per controller) - Gold	\$1,035.00
Storage: Disk per 1 TB Raw [For first 100 TB] - Gold	\$16.56
Storage: Disk per 1 TB Raw [For TBs over 100 TB] - Gold	\$2.21
SAN Switch - Gold	\$227.70
Controller: NetApp (Priced per controller) - Gold	\$1,035.00
Controller: EMC (Priced per controller) - Gold	\$1,035.00
Controller: IBM (Priced per controller) - Gold	\$1,035.00
<b>Managed Services UC</b>	
<b>Item</b>	<b>Rate</b>
Call Control: Cisco Analog Voice Gateway- Gold	\$18.63
Call Control: Cisco CUCM/IM&P Server - Gold	\$517.50
Call Control: Cisco Unity Connection (UCONN) - Gold	\$379.50
Call Control: Cisco Voice Gateway - Gold	\$69.00
Call Control: Cisco Business Edition 6000 Lifeline - Gold	\$772.39
Call Control: Cisco Attendant Console (CUxAC) - Gold	\$517.50
Call Control: VistaPoint Attendant Console - Gold	\$517.50
Call Control: Cisco Call Manager Express - Gold	\$172.50
Call Control: Cisco Unified Border Element (CUBE) - Gold	\$172.50
Call Control: Cisco Prime License Manager (ELM/PLM) - Gold	\$138.00
Call Control: Cisco Prime Collaboration Deployment - Gold	\$138.00
911: Cisco Emergency Responder (CER) - Gold	\$379.50
Voice Mail: Cisco Unity Express - Gold	\$172.50
Notification: InformaCast from Singlewire - Gold	\$379.50
Call Experience Testing - 2CPH - Gold	\$472.10
<b>Managed Services Contact Center</b>	
<b>Item</b>	<b>Rate</b>
Contact Center: Exony Virtual Integration Manager (VIM) - Gold	\$450.00
Contact Center: Unified Contact Center Enterprise Server (UCCE) - Gold	\$434.70



(Includes: CVP Call Server, CVP Reporting Server, CVP VXML Server, Call Server, Data Server. Administration Server (AW-HDS-DDS), Historical Data Server (HDS), Client Administrative WorkStation (Client AW), Central Controller, Dialer, Logger, CUIC, Rogger, and Peripheral Gateway (PG). )	
Contact Center: Cisco / Calabrio Quality Management (QM) - Gold	\$434.70
Contact Center: Cisco / Calabrio Workforce Management (WFM) - Gold	\$386.40
Contact Center: Virtualized Voice Browser (VVB) - Gold	\$103.50
Contact Center: UCC Express (UCCX) / Finesse - Gold (Contact Center Express, Cisco Finesse, or IPIVR/VRU)	\$434.70
Contact Center: Cisco Unified Intelligence Center - Gold	\$432.54
Contact Center: SocialMiner - Gold	\$434.70
Contact Center: 2Ring Dashboards and Wallboards - Gold	\$434.70
Contact Center: Email Interaction Manager (EIM/WIM/CIM) - Gold	\$434.70
Contact Center: Enterprise Chat and Email (ECE) - Gold	\$434.70
Contact Center: eGain Analytics - Gold	\$386.40
Contact Center: ESNA Cloudlink - Gold	\$138.00
CVP: CVP Operations Console - Gold	\$386.40
CVP: SIP Proxy (CUSP) - Gold	\$193.10
CVP: Ingress Gateway - Gold	\$103.50
CVP: VXML Gateway - Gold	\$103.50
Bucher and Suter (Connector for Salesforce.com) - Gold	\$138.00
<b>Managed Services UC Video</b>	
<b>Item</b>	<b>Rate</b>
Cisco WebEx Meetings Server (CWMS) - Gold	\$379.50
Cisco WebEx Cloud Connected Audio - Gold	\$424.81
Cisco Meeting Place Express - Gold	\$379.50
UC Video: Cisco Meeting Server (CMS) - Gold	\$207.00
UC Video: Cisco Meeting Manager (CMM) - Gold	\$207.00
UC Video: Cisco Telepresence Content Server - Gold	\$379.50
UC Video: Expressway-C / Expressway-E - Gold	\$207.00
UC Video: Telepresence Management Suite (TMS) - Gold	\$517.50
Cisco Webex Hybrid Directory Connector - Gold	\$207.00
UC Video: PEXIP Infinity / Infinity Connect Management Node - Gold	\$207.00
UC Video: PEXIP Infinity / Infinity Connect Conferencing Node - Gold	\$207.00
UC Video: MSE Chassis - Gold	\$138.00
UC Video: MCU MSE Blade - Gold	\$103.50
UC Video: Gateway (GW) MSE Blade - Gold	\$103.50
UC Video: Endpoint Management - Gold	\$69.00
UC Video: Telepresence Server Blade - Gold	\$103.50
UC Video: Telepresence MCU - Gold	\$103.50
<b>Managed Additional Services</b>	
<b>Item</b>	<b>Rate</b>
Managed Services Engineering and Consulting	\$240.00

These rates are subject to re-evaluation after the initial 3-year contract term.

### Time and materials support - out of scope services

Hourly price is \$240

Recurring services are subject to monthly minimum fees and time and materials support is subject to additional terms

Unscheduled after hours support is 2x hourly rate with a 2 hour minimum requirement  
Managed Services Application requires a specific Statement of Work executed between the customer and CDW•G. Managed cloud services operate in conjunction with a consumption-based model and are calculated on a solution-specific basis.

Other Professional Services	
Role	Hourly Rate
Associate Consulting Engineer	\$175.00
Consulting Engineer	\$215.00
Senior Consulting Engineer	\$225.00
Technical Lead / Principal Consulting Engineer	\$255.00
Enterprise Consulting Architect	\$255.00
Business Consulting Analyst	\$245.00
Project Administrator	\$165.00
Project Manager	\$210.00
Senior Project Manager	\$215.00
Enterprise Project Manager, PMO Lead	\$230.00
Program Manager	\$230.00
Technical Architect	\$350.00
Incident Responder/Forensic Analyst	\$350.00

Our project managers and consultants work directly with you to design and implement every facet of Cobb County and OMNIA Partners solutions. After assessing the current environment and business objectives, we'll produce a detailed project blueprint. Partnering with existing staff, CDW•G will oversee the full implementation of the solution. We will conduct a quality assurance methodology and troubleshoot as necessary. An in-depth closeout meeting to make sure Cobb County and OMNIA Partners are ready to take the reins. Our end-to-end support ensures that the solution can improve customer experience, increase efficiency, and free up your team to focus on what matters.

CDW•G services offer you an unusual combination of the close relationship and easy access of a local provider who understands Cobb County and OMNIA Partners environment inside and out, and the scale, efficiency, and resources of a multinational provider.

Our deep expertise across a full range of integrated technology solutions backed by deep industry specialization allows us to provide flexible, end-to-end services to our customers. Our on-demand resources assist and scale your IT team's needs, freeing them up to focus on delivering bottom-line value and innovation. CDW•G understands each solution is unique and For all hourly rates proposed by CDW•G in this pricing file and contained within our proposal, our offer is contingent on a 5% year over year escalation, on the contract's annual anniversary date, which will act as a not to exceed rate.

CDW•G has been very successful in managing labor rates during unstable market conditions including taking advantage of our vast in-house, in-market resources and certified, approved subcontract pool while also leveraging remote services, where practical and applicable. During the contract term, CDW•G reserves the right to propose changes to labor rate categories to reflect extraordinary market conditions which might impact labor rates and present to Cobb County and OMNIA Partners for review and approval. Cobb County and OMNIA Partners will review and approve such rates through a mutually agreed upon amendment no later than 30 calendar days upon presentation.

Services requiring a specific Statement of Work (SoW) must be mutually executed between the customer and CDW•G before work begins. We have provided a sample SoW in Appendix A.

OMNIA and its members/participating entities acknowledge that CDW•G is not the provider of the Cloud Services and in purchasing the Cloud Services, Cobb County, OMNIA, and its members/participating entities rely only on the Cloud Service Provider's service descriptions and the terms and conditions set forth in the Cloud Provider's Services Terms and Conditions. Accordingly, Cobb County and OMNIA Partners shall consider the Cloud Service Provider to be the party responsible for providing the Cloud Services and Cobb County, OMNIA Partners, and its members/participating entities, may be required to execute additional agreements, prior to provisioning/purchase of certain cloud offering."

For any service engagement, if there are applicable Travel and Expenses (T&E) charges, they will be agreed and mutually executed upon in a comprehensive Statement of Work. However, CDW•G will utilize its national footprint of service providers and in-market engineers. We also utilize remote technologies and services where applicable to mitigate such expenses.

For all non-cloud consumption-based offerings, our price list can be found at the following link:

[CDW Premium Page - Cobb County Purchasing Department \(cdwg.com\)](https://www.cdw.com/cobb-county-purchasing)

CDW•G is excited by the prospect of supporting Cobb County and OMNIA Partners in their mission to create a relevant yet flexible contract solution to provide IT solutions among public sector entities. To this effect, we've developed this page to fulfill the request for electronic price lists (where applicable) as outlined in the RFP.

On this landing page, evaluators can access solution information (Manufacturer Part #, CDW•G part #, Description, Nationally Advertised Price, and Price to Cobb County) by clicking on the "Contracts" page, then clicking the available link, and then selecting the category of interest for relevant solutions.

This price list includes, where applicable, manufacturer part number, offeror part number, description, manufacturers suggested list price and net price, and net price to OMNIA Partners.

Cloud offerings are constantly evolving and increasingly complex, with a range of subscription and consumption-based offerings, SaaS, IaaS, PaaS, among others. CDW•G's pricing is based on publisher list price (MSRP), where available to CDW•G. In cases, where MSRP pricing is not available and/or the offering is unique, pricing will be based on CDW•G quoted price. This structure provides the necessary flexibility, to enable OMNIA Members/participating entities to make purchases offerings, as cloud offerings evolve, through life of our contract.

AWS, Azure, and GCP utilize price calculators for typical engagements and other variables to determine price specific to customer's needs.

For more information directly from each manufacturer, please visit the following links for more information:

- [Azure](#)
- [AWS](#)
- [GCP](#)

### **SaaS Pricing for Gopher Products and Additional SaaS for Amplified IT**

The offered pricing discount above applies to a la carte and bundle packages of Gopher applications.

SaaS items are priced at a 2% Discount off MSRP. Amplified IT MSRP can be found at the following link: <https://www.amplifiedit.com/msrp/>

b. Subject to applicable law, Supplier represents that under this Agreement it will make reasonable commercial efforts to offer prices that are competitive with the prices Supplier offers to other similarly situated customers purchasing a comparable volume of the same products at the same time and under the same terms and conditions. When possible, our account teams will work with manufacturers to provide even deeper discounts to the competitive offering we are proposing. As we are leveraging our purchasing power in the marketplace, we are not at this time offering discounts on volume orders for this contract. This purchasing power allows us the ability to provide great prices, no matter if you purchase 1 item or 1,000 items.

c. We do not plan to include leasing or financing options at this time, though if Cobb County and/or OMNIA Partners is interested in learning more, we have an entire team and partner network who can provide financing options.

## **Financial Statements [RFP 5.7]**

Proposers shall submit a recent history of financial solvency and provide the following:

- Financial Statement: Include the most recent, independently certified financial statement. Financial statements must include a balance sheet and income statement.
  - Name and address of firm preparing the attached financial statement including a letter stating the independent audit or review has been performed by the firm.
  - State whether the Proposer has ever had a bankruptcy petition filed in its name, voluntarily or involuntarily. If yes, specify all relevant details.
-

CDW•G cannot supply a Dun & Bradstreet report as it violates our contract with Dun & Bradstreet. Cobb County and OMNIA Partners can obtain a report for CDW•G from Dun & Bradstreet.

CDW Government LLC's Dun & Bradstreet number is: 02-615-7235.

Our parent company, CDW Corporation, has a 5A3 D&B rating. CDW Corporation's Dun & Bradstreet number is: 80-806-8253

As a publicly owned company, our financial statements are publicly available. A link to our 10k report can be found here. [https://s23.q4cdn.com/113947819/files/doc\\_financials/2020/ar/CDW-2020-Annual-Report-Form-10K.pdf](https://s23.q4cdn.com/113947819/files/doc_financials/2020/ar/CDW-2020-Annual-Report-Form-10K.pdf)

Quarterly report link <https://investor.cdw.com/financials/quarterly-results/default.aspx>

CDW•G has not had a bankruptcy petition filed in its name, voluntarily or involuntarily.

As required with this RFP, we have included our Financial Ratio Evaluation Template, in which we scored a 3 on the Flash Drive. This document is titled *CDWG Response to Cobb County OMNIA\_RFP 23-6692\_Financial Ratio Evaluation Template*.

## National Contract [RFP 5.8]

- a. Include a detailed response to Attachment A, Exhibit A, OMNIA Partners Response for National Cooperative Contract. Responses shall highlight experience, demonstrate a strong national presence, describe how Supplier will educate its national sales force about the contract, describe how products and services will be distributed nationwide, include a plan for marketing the products and services nationwide, and describe how volume will be tracked and report to OMNIA Partners.
- b. The successful Supplier will be required to sign Attachment A, Exhibit B, OMNIA Partners Administration Agreement, Suppliers shall have any reviews required to sign the document prior to submitting a response. Supplier's response shall include any proposed exceptions to the OMNIA Partners Administration Agreement.
- 

a) We have included a detailed response to Attachment A, Exhibit A, OMNIA Partners Response for National Cooperative contract in the following section Supplier Response and included all applicable required forms in Appendix B: Required Forms. These sections thoroughly explain our experience, our strong national presence, how we will educate our national sales force, how products and services will be distributed nationwide, our marketing plan and how volume will be tracked.

b) We understand we will be required to sign Attachment A, Exhibit B, OMNIA Partners Administration Agreement, Suppliers shall have any reviews required to sign the document prior to submitting a response. We have provided our proposed exceptions in Appendix E: Exceptions. We look forward to negotiating in good faith with Cobb County and OMNIA Partners.

## Supplier Response [RFP 3.0]

Supplier must supply the following information for the Principal Procurement Agency to determine Supplier's qualifications to extend the resulting Master Agreement to Participating Public Agencies through OMNIA Partners.

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## Company [RFP 3.1]

A. Brief history and description of Supplier to include experience providing similar products and services.

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Founded in 1984, CDW LLC (CDW) is a leading provider of technology solutions to over 250,000 customers composed of small-, medium-, and large-sized public and private entities. CDW Government LLC (CDW•G) is a wholly owned subsidiary of CDW, incorporated in 1998 to address the specific needs of our government, education, and healthcare customers. Our unique company structure provides our customers products and services only a large national reseller can provide, combined with a local presence typical of a small business. We have a large manufacturer presence in our offices across the country and are blanketed in the field with our field account executives. To provide each customer with one contact who is knowledgeable of every nuance of their organization Account Teams are further segmented by agency type, Education (K12/High Ed) or Government. This allows us to provide each customer with one contact who is knowledgeable of every nuance of their organization.

CDW•G is one of the largest direct marketing resellers in the US, currently carrying more than 100,000 name-brand technology products from over 1,100 leading IT manufacturers. CDW•G

delivers more than just products; we deliver IT solutions and services in a manner consistent with procurement guidelines and customer preferences. We offer flexibility in how customers engage with and buy from us. We have the subject matter experts to advise on the right IT solutions and the purchasing avenues to accommodate efficient and seamless procurement. We pride ourselves on our innovation and ceaseless desire to deliver an excellent customer experience.

**B. Total number and location of salespersons employed by Supplier.**

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CDW•G currently employs more than 6,000 coworkers, part of our larger organization of 13,900 coworkers nationwide and in Canada, with more than 28 different locations. Located across the US, CDW•G has more than 1,225 Account Managers and 60 Advanced Technology Account Executives forming Account Teams segmented into five verticals: Higher Education, K-12 Education, Healthcare, Federal Government, and State & Local Government.

At CDW•G, we connect our customers to their technology and unlock additional value that goes beyond the business challenges they need to solve. As IT solutions have evolved, we recognize that their utilization now means different things across the nation. Whether it's State Agencies, Local Governments, Universities, or K-12 classrooms, we have adapted along with SLED customers' changing needs to help them maximize their investments and identify new ways to make the IT products and related services truly work for them.

Our sales force acts as the core of this effort. Employing an iterative approach to identifying, deploying, and adjusting IT solutions, our sellers and supporting teams ensure that customers have dynamic solutions addressing current and anticipated needs.

Our Account Teams are organized geographically enhancing their knowledge of the local landscape including key partnerships and local practices for contracting. Supporting our Account Teams are technology specialists and engineers, including segment-specific experts, like our K-12 Classroom Strategists. All of these coworkers will act as an extension of our Account Teams in support of Cobb County and OMNIA Partners.

Through their expertise in specific solution sets, our subject matter experts advise customers on the technology to make informed decisions in support of mission-critical objectives. Wherever Cobb County and OMNIA partners are located, CDW•G will meet these customers' needs.

Account Managers per segment:

- State and Local Government: ~225
- Higher Education: ~200
- K-12 Education: ~350
- Healthcare: ~250
- Federal Government: ~200

**C. Number and location of support centers (if applicable) and location of corporate office.**

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CDW•G Headquarters is located at 230 N. Milwaukee Ave., Vernon Hills, IL 60061. At CDW•G, our sales strategy is based on being a locally-focused organization with a national presence. We want OMNIA Partners to understand the breadth and depth of our organization. Our sales offices are widespread throughout the US., allowing our sales teams to be where OMNIA Partners are located.

CDW•G has two warehouses and more than 25 US sales offices, including a state-of-the-art 5,000 sq ft office in the Nashville area. Our office locations include:

**Table 4: CDW•G Office Locations**

Office Locations				
Chandler, AZ	Glendale, CA	Shelton, CT	Tampa, FL	Chicago, IL
Lincolnshire, IL	Vernon Hills, IL	Evansville, IN	Indianapolis, IN	Detroit, MI
Grand Rapids, MI	Minneapolis, MN	Las Vegas, NV	Cherry Hill, NJ	Eatontown, NJ
Cincinnati, OH	Cleveland, OH	Nashville, TN	Dallas, TX	Reston, VA
Bellevue, WA	Appleton, WI	Madison, WI	Milwaukee, WI	Wausau, WI
New York City, NY				

D. Annual sales for the three previous fiscal years.

CDW•G is a wholly-owned subsidiary of CDW LLC. CDW•G has a consistent history of demonstrating continued revenue growth, as shown in the table below. OMNIA Partners should take note of that CDW•G itself is financially stable, and has the ability to leverage additional financial stability through CDW LLC.

Net sales for the past three years have been the following

**Table 5: Annual Revenue**

CDW and CDW•G Annual Revenue		
Fiscal Year	CDW Total Revenue	CDW•G Revenue Contribution
2021	\$20.82 Billion	\$8.18 Billion
2020	\$18.47 Billion	\$8.13 Billion
2019	\$18.03 Billion	\$6.9 Billion

a. Submit FEIN and Dunn & Bradstreet report.

#### FEIN

CDW•G FEIN: 36-4230110

#### Dunn & Bradstreet Number:

We appreciate the Cobb County's request for our most recent Dunn & Bradstreet Business Report; however, providing copies of CDW•G's Dunn & Bradstreet Business Report creates a breach of contract with Dunn & Bradstreet, and as such, Cobb County can choose to directly obtain a copy of the report using CDW•G's Dunn & Bradstreet Number 02-615-7235.

E. Describe any green or environmental initiatives or policies.

CDW•G has long been conscious of our impact on the environment, especially regarding our energy consumption, and we have taken significant steps to effectively manage our consumption of resources and lessen our environmental impact.



CDW•G recognizes the need for responsible environmental management and conservation of resources and has demonstrated its commitment to environmental management and principles of sustainable development through its beGreen™ program. The beGreen™ program provides coworkers a platform to reduce, reuse and recycle to make CDW•G's operations leaner, more efficient and more environmentally responsible. Since the program's inception, we have seen overwhelming coworker participation in beGreen™. CDW•G has a cross-functional team of coworkers who contribute to program management and work to ensure the consistency and integrity of the beGreen™ program standards. CDW•G has recycling programs for paper, aluminum, glass, plastic, corrugate, batteries, and wooden pallets. Our dedicated beGreen™ staff continually looks for more ways to be environmentally responsible. beGreen™ focuses on several key areas:

#### Coworker education

- Community awareness recycling
- Resource conservation
- ISO14001

#### ISO 14001:2015 Certification

CDW•G has achieved the ISO 14001:2015 Environmental Management System (EMS) standard certification. The certification has been awarded to CDW•G's Vernon Hills, IL and North Las Vegas, NV distribution centers and attached offices. CDW•G's distribution centers use 100% recyclable packing material and shipping containers that also provide maximum protection for your IT assets. As part of our EMS, we conduct in-depth internal audits and self-assessments to support continual improvement. We review our significant environmental impacts each year and set targets to reduce them.

#### EPA Green Power Partnerships

CDW•G participates in the United States Environmental Protection Agency's (EPA) Green Power Partnership program. In 2008, we began purchasing 100% green power for our two data centers in the Madison, Wisconsin area through the Madison Gas and Electric (MGE) Green Power Tomorrow program. We purchase almost 12 million kilowatt-hours per year of renewable energy, making CDW•G the largest private buyer in MGE's Green Power Tomorrow program.



**Figure 18: CDW•G beGreen Initiative**

F. Describe any diversity programs or partners supplier does business with and how Participating Agencies may use diverse partners through the Master Agreement. Indicate how, if at all, pricing changes when using the diversity program. If there are any diversity programs, provide a list of diversity alliances and a copy of their certifications.

OMNIA Partners promote diversity and local business initiatives through their procurement requirements. There are many types of diverse supplier requirements, including minority- and women-owned businesses, small businesses, veteran owned businesses, and LGBT-owned businesses. OMNIA Partners' ideal vendor on this contract will empower and work with all types of diverse suppliers in the marketplace, not just one or two.

CDW•G does not hold small or diverse business certifications. Our focus is creating a meaningful sourcing plan with minority, small, local, veteran-owned, and other diverse suppliers. We have the privilege, opportunity, and responsibility to partner with diverse suppliers and bring them with us to Cobb County and OMNIA Partners opportunities. In our experience, customer diversity initiatives are not always met by one or two specific certifications.

In our experience, customer diversity initiatives are not always met by one or two specific certifications. CDW•G is an ideal partner because our diverse supplier network contains partners with the following certifications, among others:

- Minority Business Enterprise (MBE)
- Historically Underutilized Business (HUB)
- Women Business Enterprise (WBE)
- Lesbian Gay Bisexual Transsexual Business Enterprise (LGBTBE)
- Veteran Business Enterprise (VBE)
- US Business Leadership Network Disability Supplier Diversity Program (USBLN DSDP)
- Women-Owned Small Business (WOSB)
- Small Disadvantaged Business (SDB)
- Service-Disabled Veteran-Owned Small Business (SDVOSB)
- Small Business
- HUBZone

### Supplier Diversity Program

CDW•G's Supplier Diversity program goal aims increase procurement opportunities for direct and indirect spending with diverse businesses across the country. The CDW•G philosophy on diversity extends beyond our coworkers, the customers we serve, and the communities we live in to include our valued supplier partnerships. Our commitment to strategically partner with qualified businesses enables CDW•G to provide the best customer experience while contributing to economic growth in diverse communities.



One of our greatest points of pride at CDW•G is that in 2019, our diversity efforts were recognized and CDW•G was formally inducted into the Billion Dollar Roundtable. This is an exclusive group of U.S.-based companies that procure more than \$1 billion annually from minority- and women-owned businesses. To read more about this group, please see <https://www.billiondollarroundtable.org/>.

Our 2021 annual spend with small and diverse businesses via our Business Diversity Program grew to a record \$3.4 billion. These diverse businesses profited from increased revenue through CDW's creation of 29,254 jobs and more than \$1.7 billion paid in wages. Since launching our Supplier Diversity Program, total spending with small and diverse businesses is above \$20 billion.

Our Director of Business Diversity, Kristin Malek, was named one of DiversityPlus Magazine's Top 25 Women in Power Impacting Diversity 2021. Other accolades of diversity excellence in 2021 include:

- US Veterans Magazine Best of the Best Supplier Diversity Program
- Professional Women's Magazine Best of the Best Supplier Diversity Program
- Black EOE Journal Best of the Best Supplier Diversity Program
- HISPANIC Network Magazine Best of the Best Supplier Diversity Program
- Supplier Diversity Program Best of the Decade by MBN Diversity

One more important aspect of the CDW•G Business Diversity program is our support and participation in various organizations and events focused on developing relationships and business opportunities within diverse communities. CDW•G is a National Corporate Member of

the National Minority Supplier Development Council, Inc. and The Women's Business Enterprise National Council. We also support other organizations with a supplier diversity focus, such as the Chicago Minority Business Development Council, Inc., the Women's Business Development Center of Chicago, the Minority Business Development Agency of Chicago, and the National Veteran-Owned Business Association, and the National Gay & Lesbian Chamber of Commerce.

CDW•G contributes financially to these organizations and engages in advisory councils, attends and hosts events, and provides resources to support these organizations' focus on continued growth and success.

In addition, 50% of our Executive Council (our C-Suite executive board; i.e. CEO, COO, CFO, CIO, etc.) members are women.

### **Using CDW•G Diversity Partners**

CDW•G is continuously developing other diverse partnerships to meet our customers' needs. These relationships include, but are not limited to, product manufacturers, distributors, and service providers nationwide who support direct (Tier 1) and indirect (Tier 2) fulfillment through presales and service engagements. We recruit diverse and disadvantaged partners locally and regionally since customer spending goals are typically tied to local laws and require the partner to be certified within their city or state.

These various engagement models allow Participating Agencies the choice to engage with the diverse partner that suits their technology needs and where the diverse partner's business is best suited to provide support in the sales cycle.

We realize that each customer has unique targets that require a thoughtful and dynamic approach to strategic sourcing. Our Business Diversity program offers a broad and robust partner network.

The following are a few ways that CDW•G can support Participating Public Agencies in meeting their diverse supplier goals:

- Educate users on CDW•G's business diversity program and how to initiate a planning session
- Conduct customer-focused planning sessions with CDW•G Account Manager and supplier diversity program representative
- Utilize information gathered from planning sessions to develop custom plans to achieve customer goals around supplier diversity
- Perform ongoing engagement to adjust plans as necessary

More details on our Tier I and Tier II Programs can be found below.

### **Tier I Program**

CDW•G is continuously developing other diverse partnerships to meet customers' Tier I needs, which is where customer spending goes directly to the diverse firm. We offer an online registration tool where businesses can register for future opportunities with CDW•G. Our growing list of suppliers means that Cobb County and OMNIA Partners can count on CDW•G to deliver against their diversity spending targets. CDW•G has also partnered with diverse leasing companies to support Cobb County and OMNIA Partners Tier I spend requirements.

### **Tier II Program**

To foster even more opportunities for small, diverse businesses, we a Tier II Supplier Diversity Program in 2009 for its key manufacturing, distribution, and logistics partners. The program's

goal is simple: to further opportunities for competitive diverse companies to supply goods and services. In this model, CDW•G purchases the products from diverse suppliers and delivers them to our customers. CDW•G can provide Tier II reporting to customers that track their spending (typically for tax incentives), ensuring that suppliers meet contract compliance and obligations.

G. Indicate if supplier holds any of the below certifications in any classified areas and include proof of such certification in the response:

CDW•G does not meet any of the below certifications in any classified areas. Though not a woman-owned company, it is important to note that since January 1, 2019, CDW has been led by a woman executive—CEO Christine Leahy. Leahy has been with the company for 17 years, previously served as the company’s chief revenue officer, and was the company’s first general counsel.

Women comprise over half the U.S. population but remain underrepresented in leadership positions. Less than 10% of the top executives in Fortune 100 companies are women while only 6.6% of Fortune 500 CEOs are women.

Considering these statistics, along with a general underrepresentation of women in IT, CDW•G is setting the pace with Leahy as the second female CEO of a Fortune 500 company in Illinois, and with female leaders making up 40% of our executive leadership. Fairygodboss recognized CDW (and thus CDW•G), ranked 2nd, as one of the best places for women to work. At CDW•G, we aim for equity from the inside out, and our executives are leading by example.

CDW•G does not hold any certifications in any of the classified areas listed below.

**Table 6: Minority Certifications**

Category	Response
a. Minority Women Business Enterprise	No
b. Small Business Enterprise (SBE) or Disadvantaged Business Enterprise (DBE)	No
c. Historically Underutilized Business (HUB)	No
d. Historically Underutilized Business Zone Enterprise (HUBZone)	No
e. Other recognized diversity certificate holder	No

H. List any relationships with subcontractors or affiliates intended to be used when providing services and identify if subcontractors meet minority-owned standards. If any, list which certifications subcontractors hold and certifying agency.

As needed throughout the contract, CDW•G may look to bring on additional vendors. CDW•G has partnerships with more than 1,000 diverse organizations all across the US.

The way that CDW•G categorizes our subcontractors and affiliates is unique. CDW•G sometimes contracts with third parties to deliver services when there are constraints on our resources. Our Partner Services group manages these companies. These incorporate in-depth processes for determining who we work with. Our Partner Services team is comprised of Professional Service Managers and billable project managers who oversee partner management and project oversight. These service managers work directly and collaboratively with our operations team which is comprised of billing administrators and project coordinators that are engaged at the deal level. Each partner receives a review throughout the year ranging from quarterly to yearly depending on their level of engagement with CDW•G along with

engagement level surveys to manage and control quality. Partners are held to a minimum survey score to continue performing work for CDW•G.

Depending on the unique needs of each opportunity, the CDW•G Account Teams will work with OMNIA Partners to develop a solution that is both comprehensive and strategic to the specific partner. The partner chosen will be specialized based on the work and needs of the customer. Details of the chosen partner will be provided to the interested party during scoping. Many of our partners include certifications as defined in our Diversity Programs section above, and listed additionally below:

- Minority Business Enterprise (MBE)
- Historically Underutilized Business (HUB)
- Women Business Enterprise (WBE)
- Lesbian Gay Bisexual Transsexual Business Enterprise (LGBTBE)
- Veteran Business Enterprise (VBE)
- US Business Leadership Network Disability Supplier Diversity Program (USBLN DSDP)
- Women-Owned Small Business (WOSB)
- Small Disadvantaged Business (SDB)
- Service-Disabled Veteran Owned Small Business (SDVOSB)
- Small Business
- HUBZone

Post-scoping, our services projects follow our Project Management Engagement Methodology which includes a heavy emphasis on communication among the parties to the contract, especially between CDW•G and the customer. These communication points include regular meetings and reports to monitor status, risks, issues, and plans.

Our manufacturing partners (such as Cisco, HP, and Microsoft) are considered subcontractors when they perform services engagements with us. We work very closely with our manufacturing partners and have many of their badged workers in our locations working with our engineering teams and brand managers. In this way, our CDW•G teams stay current with our vendor partner offerings as well as plans for product end-of-life and new product introductions. Our sales teams meet with our manufacturing partners quarterly and participate in sales training regularly to stay up to date on their latest offerings and offer you the peace of mind that you have a knowledgeable sales staff supporting you.

#### I. Describe how supplier differentiates itself from its competitors.

---

Technology requires more than fulfillment – it warrants a vendor who provides quality products and customer experience. A significant priority in SLED IT initiatives is flexible, adaptive technology that can securely promote user needs. It's not enough to provide customers with access to products they want quickly and efficiently. Procurement officers need to understand their options, and SLED agencies need to know their products are securely sourced.

Our position as a leading technology solutions provider with extensive experience working with OMNIA Partners, a mature public sector practice, robust relationships with SLED customers across the nation, mature logistics capabilities, secure and responsible sourcing processes, a fully developed contract management department, and an in-depth marketing approach all combine to create a procurement solution that no other vendor can offer.

### OMNIA Partnership & Contract Experience

Not only is our sales force well-versed in growing contracts but they are experienced in promoting OMNIA Partners contracts, specifically. We believe the contract structure that Cobb County and OMNIA Partners offer combined with our expertise in promoting dynamic procurement solutions with our broad customer ecosystem offer a unique opportunity to optimize contract adoption and growth. Collectively, we can remove the complexity of procurement and technology that our customers often encounter.

Additionally, CDW•G’s program management department is singularly devoted to managing contracts. Its responsibilities are separate from those held by account managers. Members of the program management department work full-time to maintain contract compliance and administer contract procedures, including contract launch. CDW•G invests in these resources based on our understanding that contracts are complex sets of commitments. As depicted, we continuously evolve to support our key strategic relationship with OMNIA Partners. We look forward to the possibility of working with Cobb County to apply best practices and lessons learned from our OMNIA relationship to further this evolution.

### Public Sector Expertise

We have over 30 years of extensive experience in providing solutions to public sector customers across segments (federal, education, state and local). Our parent company, CDW LLC, was established in 1984, and CDW•G was established in 1998 in order to better serve our government, state & local, and education customers. CDW•G is now among the largest K-12 technology solutions providers as a trusted IT partner to more than 15,000 K-12 schools, as well as approximately 3,000 colleges and universities. Public sector business comprised roughly 40% of our total annual revenue in 2021. We maintain over 1,000 contracts in order to serve these customers efficiently and compliantly. Our portfolio demonstrates widespread adoption and relevance with customers actively transacting across all 50 states.



Figure 19: Distribution of 2021 Net Sales

### Blended Distribution Model

A significant advantage that differentiates CDW•G in the marketplace is our ability to deliver the right products, at the right value, right when you need them. Many of our competitors rely on what we refer to as “virtual warehouses.” This occurs when a reseller is entirely reliant on their distribution and OEM partners for packaging and shipping customer solutions. This introduces extended lead times and uncertainty in sourcing and supply chain security. At CDW•G, we have blended the best of our OEM’s and distribution partners’ fulfillment capabilities with our own distribution centers to optimize quick and accurate fulfillment.

### Onsite Inventories

In fact, many technology manufacturers choose CDW•G as their primary reseller because of our vast large, on-hand inventories and effective inventory management procedures. CDW•G has two large strategically located distribution centers controlled by a Warehouse Management

System (WMS) that ensures speed and accuracy throughout the order fulfillment and distribution processes. CDW•G's marketing and purchasing departments continuously monitor trends within the IT industry to ensure that we are stocking the latest technology for immediate shipment. With our secure supply chain, we also take proactive measures to reduce the risk of obsolescence and other inventory discrepancies that contribute to increased costs.

### **Strong Manufacturer and Distribution Partnerships**

Our delivery model combines manufacturers, distribution channel partners and leading carriers to facilitate quick product turnaround. As one of the largest direct market resellers, CDW•G has established very good working relationships with the major manufacturers in the technology industry. Our buying power attracts the industry's top manufacturers-and their best prices and rebates.

To supplement our direct purchasing model, CDW•G has strong affiliations with principal channel distributors. We have partnered with numerous distributors to supplement our direct purchasing model. Such partners include Tech Data, Ingram Micro, SYNNNEX, Avnet, Arrow Electronics, and D&H Distributing Company. They send us daily Electronic Data Interchange (EDI) downloads which provides visibility to inventory items and pricing broken down by local or remote facilities. Furthermore, our top three distribution partners provide real time inventory information which is subsequently available to members through our online catalog.

### **In-Depth Marketing Approach**

We also differentiate ourselves from our competitors through our in-depth marketing approach. We utilize an in-house marketing process based on strategy and we keep customer business outcomes in mind while we utilize our deeply rooted customer network as a function of our account management relationships. CDW•G will utilize a number of proven activities to publicize and promote this new Agreement. Our live touch approach includes a proactive communication program, as well as both inside and field sales teams meeting with eligible users.

Our customers rely on their account manager as an expert resource; this includes leveraging contracts. Most often, when a customer purchases from a specific contract, it is because of a direct suggestion from their account manager. CDW•G's sales and marketing plan combines past CDW•G marketing successes with a strategy to effectively capture net new business. We leverage our reporting capabilities to determine potential target customers. After determining targets, CDW•G can then educate them on the benefits of the new contract and grow net-new business. Through this method, the Cobb County, OMNIA Partners and CDW•G will gain traction with users faster than a supplier that does not have these existing relationships in place.

### **Contract Management**

Touched upon earlier, CDW•G is extremely dedicated to the quality and reliability of our procurement management process. Some vendors, even large suppliers, do not have a team dedicated to managing their contracts. Instead, these companies rely on the sales team to manage compliance issues and reporting. We can imagine that this results in delayed responses, unreliable support, and in worst cases, inaccurate reporting. A differentiator for CDW•G is our Program Management Department, a group of more than 100 coworkers devoted to the full scope of contractual sales, including managing contracts. Keeping our contract management within one group makes oversight and structured processes easy to implement. In turn, this eases oversight responsibilities to one central group and allows CDW•G to standardize our contract management processes and share best practices – in turn reducing risks and improving efficiencies. With an average of over ten years of industry experience and active participation in National Contract Management Association, CDW•G program managers are qualified to advise and serve our customers at all stages of the contract process.

J. Describe any present or past litigation, bankruptcy or reorganization involving supplier.

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As of the date of submission, there are no known present or past litigation, bankruptcy, or reorganization involving CDW•G.

K. Felony Conviction Notice: Indicate if the supplier

- a. is a publicly held corporation and this reporting requirement is not applicable;
  - b. is not owned or operated by anyone who has been convicted of a felony; or
  - c. is owned or operated by and individual(s) who has been convicted of a felony and provide the names and convictions.
- 

CDW•G is a publicly held company and this reporting requirement is not applicable.

L. Describe any debarment or suspension actions taken against supplier

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As of the date of submission, there are no known debarment or suspension actions taken against CDW•G.



## Distribution, Logistics [RFP 3.2]

A. Each offeror awarded an item under this solicitation may offer their complete product and service offering/a balance of line. Describe the full line of products and services offered by supplier.

---

For this response, CDW•G is pleased to offer all of the providers and services CDW•G offers. Our line of products and services can be found at [www.cdwg.com](http://www.cdwg.com).

B. Describe how supplier proposes to distribute the products/service nationwide. Include any states where products and services will not be offered under the Master Agreement, including U.S. Territories and Outlying Areas.

---

CDW•G provides nationwide delivery for our hardware products and has a robust system in place to secure timely delivery. A full description of our distribution centers can be found in the Description of Facilities section below.

Many of our top manufacturers and software publishers' representatives are onsite at CDW•G's sales offices to facilitate requests for information and assist with designing the best possible solutions.

- We receive detailed insight into supply chain availability, manufacturing delays, distribution shortages, and overstocks, as well as other disruptions related to supply and demand variability
- We often secure additional inventory to offset any known supply issues
- CDW•G works closely with our vendor partners to train and certify our account managers and technical staff and to deploy and manage technologies in customer environments
- CDW•G has received awards and recognition from our partners for developing and delivering exceptional solutions

Products and services will be offered to all states under the Master Agreement, including US Territories and Outlying Areas where allowable and applicable by local government regulations, CDW•G contractual limitations, and our relationships with the respective manufacturers.

Additionally, due to the relationships which CDW•G has with both OEM partners and shipping carriers, we ensure the traceability of products regardless of their origin. If products are shipped directly from a manufacturer location, our logistics and drop ship team maintain active communication with the manufacturer and the preferred carrier to not only ensure that the correct number and model of products are being shipped but that shipment schedules are being met.

We do not procure from gray market vendors and only work directly with manufacturers and their authorized sources. Our supply chain complies with industry standards to support the IT needs of public sector customers. Our catalog contains a vast range of manufacturers, so customers can expect transparency since we do not manufacture products ourselves. The Government Industry Data Exchange Program provides a report of counterfeit or suspected counterfeit products weekly. We cross-reference this list with our inventory and sales. To date, none (0%) of the products we've carried or sold have been classified as counterfeit. All of CDW•G's shipping and quality processes are based on the ISO 9001:2015 certification standards, of which we are certified.

C. Describe how Participating Agencies are ensured they will receive the Master Agreement pricing; include all distribution channels such as direct ordering, retail or in-store locations, through distributors, etc. Describe how Participating Agencies verify and audit pricing to ensure its compliance with the Master Agreement.

---

As with all of our contracts, this contract will be assigned a Program Management team led by a Program Manager who will ensure contract deliverables are met as well as ensure the correct contract price is maintained. The Program Manager regularly conducts self-audits to ensure pricing compliance and takes corrective action when needed.

### **Compliance**

Immediately upon award of a contract, the Program Manager reviews and disseminates the contract documents and all related proposal documents, recording all items that CDW•G will need to manage. The Program Manager is responsible for ensuring that CDW•G observes all legal statutes included in the contract as well as all business commitments. For example, if CDW•G commits to a pricing structure based on a certain discount from advertised pricing, it is the Program Manager's responsibility to record the pricing in the contract management software, which then locks the structure for purchases made under the contract. Since the Program Manager is often the person most familiar with the contract, they will also make recommendations for improvements and efficiencies based upon their constant analysis of the contract's provisions and trends with Cobb County and OMNIA Partners' use of the contract.

### **Automated Contract Management System**

Upon award, we will load the contract structure into our internal contract editor system which will then create a customer premium page with a distinct URL that will reflect the contracted price. Once the structure is loaded, no additional manual intervention is needed to maintain it. End users will be able to view and verify the contracted pricing through this unique URL without the need to log in with a password.

### **Distribution Channels**

CDW•G offers various distribution methods for our customers. It is of the utmost importance that our customers can purchase from us however is easiest from them. CDW•G works with several other companies to help to process, handle, and/or ship hardware products to customers. In addition to the manufacturer and distributor partners we work with, we have built strong relationships with industry well-known carriers such as FedEx Parcel, UPS Parcel, UPS Freight, FedEx Air Freight, CEVA LTL services (less than truckload), and local messenger services. We will provide Cobb County a Premium Page in which they can quickly and efficiently place and track the status of their orders.

As one of the largest direct market resellers, CDW•G has established very good working relationships with the major manufacturers in the technology industry. Our buying power attracts the industry's top manufacturers-and their best prices and rebates. Most manufacturers send us daily Electronic Data Interchange (EDI) downloads with pricing and product availability information. Also, we receive timely notification regarding product changes and lifecycles. To supplement our direct purchasing model, CDW•G has developed strong affiliations with principal channel distributors. They send us daily EDI downloads which allows us visibility to inventory items and pricing broken down by local or remote facilities. Furthermore, our top three distribution partners provide real time inventory information.

Our two distribution centers are located in close proximity to principal distributors; this enables us to obtain competitively priced, non-stocked items relatively quickly. CDW•G can secure non-of-stock product(s) from our local distribution network normally within 24 hours with a few more

obscure products taking up to 48 hours, depending on your requirements. The value-added benefits of our highly automated state-of-the-art distribution systems are that Cobb County and OMNIA Partners will receive the right products quickly, configured correctly and ready to use; this will enable your employees to maintain a high level of productivity and to better serve your customers.

Customers at any time can reach out to their dedicated Account Manager to place an order via phone or fax is that is the preferred method.

D. Identify all other companies that will be involved in processing, handling or shipping the products/service to the end user.

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We work with several, authorized, channel partners to deliver solutions to OMNIA Partners. These include OEMs, Publishers, Cloud Solution Providers, and Distribution Partners.

CDW•G works with several other companies to help to process, handle, and/or ship hardware products to customers. In addition to the manufacturer and distributor partners we work with, we have built strong relationships with industry well-known carriers such as FedEx Parcel, UPS Parcel, UPS Freight, FedEx Air Freight, CEVA LTL services (less than truckload), and local messenger services.

Depending on the unique needs of each opportunity, CDW•G will work with these resources in conjunction with Cobb County and OMNIA Partners to choose additional vendors that best fit based on the work and needs of the customer. Details of the chosen vendor will be provided to the interested party during scoping.

E. Provide the number, size and location of Supplier’s distribution facilities, warehouses and retail network as applicable.

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Unlike many solutions integrators, CDW•G operates physical warehouses as opposed to the virtual warehouse methodology. We have two large, strategically located distribution centers controlled by a state-of-the-art Warehouse Management System (WMS) that ensures speed and accuracy throughout the order fulfillment and distribution processes. We have a 450,000-square-foot distribution center located at our headquarters in Vernon Hills, IL, and a 513,000-square-foot distribution center located in North Las Vegas, NV. These locations facilitate quick distribution of products to our growing customer base throughout the country. The Vernon Hills distribution center focuses on distributing products to customers east of the Mississippi River while the Las Vegas distribution center primarily serves the western part of the United States.



**Our Configuration Centers are PCI Certified and Hold Several Iso Certifications:**

ISO 9001	ISO 14001	ISO 20243	ISO 27001	ISO 28000
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To the extent allowable, all information and documents hereby submitted in response to the Request for Proposal/Quote (“RFP/RFQ”) furnished by Cobb County Purchasing are the Proprietary and Confidential property of CDW Government LLC (“CDW•G”).

<b>Quality</b>	Environmental	Risk Management	Information Security	Secure Supply Chain
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We hold more than \$500M of inventory in our two in-house distribution centers that total almost one million square feet. Our ISO 9001-, 14001-, and 28000-certified, strategically located distribution centers provide speed, accuracy, and excellent geographic coverage across the US. Our product lineup includes desktops, notebooks, servers, peripherals, networking and communications equipment, software, accessories, plotters, network printers, desktop printers, and print supplies.

## Marketing and Sales [RFP 3.3]

A. Provide a detailed ninety-day plan beginning from award date of the Master Agreement describing the strategy to immediately implement the Master Agreement as supplier's primary go to market strategy for Public Agencies to supplier's teams nationwide, to include, but not limited to:

CDW•G has a long-standing relationship with OMNIA Partners (and previously with affiliates of OMNIA including NIPA and US Communities GPA). CDW•G is vendor agnostic. This is not our primary go to market strategy. We continue to lead and facilitate our growth strategy with numerous public entities which utilize the multiple OMNIA contracts CDW•G has been named to. CDW•G will continue to partner with OMNIA Partners through this contract, if awarded, and other contracts to identify additional members under this solicitation. CDW•G must abide with various regulations and requirements in multiple jurisdictions including some with mandatory use requirements, exclusions, or preference of public entities on utilization of specific contracts. We have included a cohesive marketing plan and pledge to continue focusing on the growth of this contract's awareness and success.

Beginning with the date a contract is executed, the CDW•G Team, in conjunction with our Executive Leadership, will work to implement the Master Agreement within our computer system and communicate it to the sales team. We will provide Cobb County and OMNIA Partners with specific dates of implementation upon award and with a firm understanding of the contract terms.

We maintain an ecosystem of coworkers committed to successfully managing all aspects of a contract through its entire lifecycle. From our Executive Leadership to the Contract Management group, our team of coworkers will collaborate to customize a detailed and effective plan to launch and grow this contract.

CDW•G has a successful contract launch history where we focus on five areas of the contract which are:



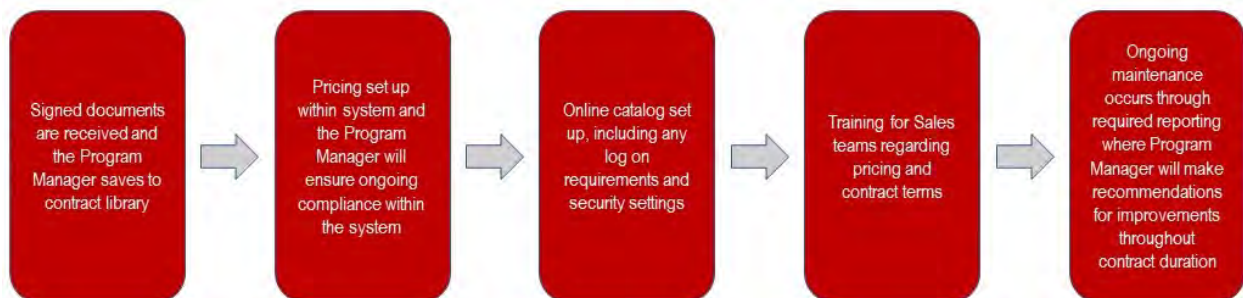
**Figure 20: Contract Launch Progression**

This methodology allows our coworkers to efficiently get brought up to speed about this new agreement and begin contract growth with Cobb County and OMNIA Partners.

Our process is as follows:

1. The Program Manager receives the executed Master Agreement and other relevant signed documents and saves CDW•G's contract library
2. The Program Manager sets up the pricing in our Contract Management System
3. The Program Manager works with our in-house eProcurement team to create a homepage specific for Cobb County and OMNIA Partners. ensuring contract-compliant pricing, as well as the various logins and security settings for OMNIA Partners.

4. The Program Manager oversees training for our sales teams supporting Cobb County and OMNIA Partners on the contract terms and deliverables.
5. The Program Manager will provide Cobb County and OMNIA Partners reports as required by the contract language and analyze the success of the program, making recommendations for improvements throughout the contract's duration.



**Figure 21: Program Management Growth Methodology**

We are excited to bring this proven growth methodology, also displayed in the depiction above, to the contract in partnership with Cobb County and OMNIA Partners.

i. Executive leadership endorsement and sponsorship of the award as the public sector go-to-market strategy within first 10 days

We maintain an ecosystem of coworkers committed to successfully managing all aspects of a contract through its entire lifecycle. From our executive leadership to contract management, our coworkers will collaborate to customize a detailed yet effective plan to launch and grow this contract. CDW•G has a successful contract launch history where we focus on five areas of the contract which are: Intake, Set-Up & Compliance, Education, Measure and Growth. By focusing on these areas specifically, we launch contracts to the CDW•G teams with the most powerful and applicable details to optimize the success of this new Agreement.

We bring leaders from across our public sector teams together with OMNIA Partners multiple times a year to review contract initiatives, joint goals, and customer feedback. Our ongoing effort in specific target accounts help increase contract utilization and drive contract adoption amongst nonparticipating agencies. We meet monthly to review the current state of the business and execution of our growth and marketing strategies.

CDW•G's leadership team is securely behind the growth and strategy of this program for both Cobb County, GA and nationwide. CDW•G executive leadership commits to endorse and sponsor the award within the first 10 days of the contract.

ii. Training and education of Supplier's national sales force with participation from the Supplier's executive leadership, along with the OMNIA Partners team within first 90 days

CDW•G's program management department is singularly devoted to managing contracts. Its responsibilities are separate from those held by account managers. Members of the program management department work full-time to maintain contract compliance and administer contract

procedures, including contract launch. CDW•G invests in these resources based on our understanding that contracts are complex sets of commitments.

CDW•G's Program Manager, Francie Gribble, has in-depth working knowledge of OMNIA Partners including the former cooperatives, National IPA and TCPN. She collaborates with CDW•G's marketing department to create awareness and training campaigns to enable our national sales force.

Over the first 90 days, in partnership with the OMNIA Partners team, Francie and other key members of the CDW•G executive leadership team will outline their strategy to implement this contract within our portfolio. With our experience on both OMNIA and other cooperative contracts, our robust implementation plan ensures we are able to bring our national sales force up to speed quickly,

Gribble will work directly with our sales leadership, Cobb County, and OMNIA Partners to develop and execute a training program for our sales force swiftly following contract signature. Training content will cover contract scope and operations, growth strategy endorsed by executive leadership, and the contract benefits. We expect this to happen within the first 30-45 days of contract signature.

The documentation Gribble compiles in conjunction with our marketing department will be customized depending on the needs and the region of the seller to ensure our messaging matches the customers within that geography.

Our sellers will then be equipped with relevant collateral to communicate with customers the benefits and strength of this contract. Curriculum development, trainings, and collateral creation will be completed within 90 days of contract award. However, CDW•G doesn't stop at 90 days. We have continuous, ongoing training with our national sales force for the life of the contract.

B. Provide a detailed ninety-day plan beginning from award date of the Master Agreement describing the strategy to market the Master Agreement to current Participating Public Agencies, existing Public Agency customers of Supplier, as well as to prospective Public Agencies nationwide immediately upon award, to include, but not limited to:

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Just as our contract management team leads contract launch and maintenance requirements, our sales force upholds strategic relationships with current and potential OMNIA customers. These relationships uniquely position us to develop and deliver an awareness and growth campaigns to members through a trusted advisor network. Our account teams have long-standing customer relationships in which they often become an extension of their customers' IT and purchasing teams. Our account managers speak with their customers weekly, if not daily. As a result, our customers turn to their account managers for purchasing recommendations, including which contracts to leverage. Within 90 days of contract award, we will leverage this trusted advisor network and our marketing capabilities (e.g., customer-facing collateral, email campaigns, call campaigns, social media, etc.) to quickly and effectively alert registered and potential customers of the new contract and its benefits.

i. Creation and distribution of a co-branded press release to trade publications

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To successfully implement a marketing plan, marketers must first know their audience and how to access them. CDW•G partners with various trade publications to access our target customers.

Within 90 days of contract launch, our marketing team will work with OMNIA Partners to develop content to disseminate to customers. Below, we have outlined potential avenues in which we can access target customers.

Publications. CDW•G partners with industry experts to publish sector-specific online and hardcopy magazines for State (StateTech) – shown in the graphic on the right, K-12 (EdTech Focus on K-12) and Higher Education (EdTech Focus on Higher Education). To successfully implement a marketing plan, marketers must first know their audience and how to access them, and these publications help access our target customers. All of the aforementioned publications deliver relevant content via print, blog, video case studies, and e-newsletters on topics including classroom, cloud, data center, hardware, software, security and services.



**Figure 22: State Tech Sample**

Additional publications include:

- CoSN
- EdTech Magazine: Focus on Higher Ed
- EdTech Magazine: Focus on K-12 Education
- EDUCAUSE
- GovExec
- GovTech
- NASCIO
- NASTD
- State Tech Magazine

### **Advertisements and Cobranding.**

CDW•G works with internal and external marketing teams to profile CDW•G and partner delivered technology productions, solutions and services on customized flyers that are easily accessed electronically or printed to hand out.

Custom flyers are created for all CDW•G contracts. The example below is for a statewide hardware contract with the State of Utah for PC Stores and following CDW•G guidelines was designed to bring value to those new to CDW•G as well as long-time agency users and partners, with information that includes:

- Quantified examples of CDW•G's experience and approach to serving the State;
- Samplings of our breadth and depth of industry partnerships
- Contract specifics where customers can find CDW•G delivered solutions and services; a
- Contact details for Account Managers and Field Account Executives

We are able to do the same thing for Cobb County on this contract and other OMNIA Partners, should you want to.





Meet the newest member of your technology team: CDW-G, your new partner under the PC Stores Contract for the State of Utah.

Count on CDW-G for one-stop simplicity in product procurement across 12 essential technology categories — including client computing, networking equipment and power and cooling solutions — plus our entire catalog of software offerings (under Contract No. MA2800). Utah's dedicated CDW-G account team provides unparalleled convenience and expertise for your technology procurement.

### WE GET IT.

-  **Nationwide public sector experience**
-  **20 years of service to Utah**
-  **Problem-solving experience focused on you**
-  **Individual attention from dedicated CDW-G account managers**
-  **Solutions that address every need**
-  **Convenient, state-of-the-art distribution center in Las Vegas**

### STRONG PARTNERSHIPS, STRONG RESULTS

This contract encompasses CDW-G's hardware portfolio, ensuring solutions that are crafted from the strongest offerings and vendors in the industry, including:

- Computers and accessories
- Desktop, office printers and plotters
- 3D printers
- Consumer electronics
- Apple branded products
- ID printers
- Audiovisual equipment and accessories
- Classroom devices
- Uninterruptible power supply (UPS)



For more details, reach out to your CDW-G account manager:

<p><b>Matt Olszewski</b> Executive account manager T: 847.419.8288 E: mattols@cdwg.com</p>	<p><b>Rick Martinez</b> Contract program manager T: 847.371.7182 E: richmar@cdwg.com</p>
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Figure 23: CDW-G Custom Flyers

## Social Media

CDW•G meets our customers where they are on today's technology horizon. The CDW Social Squad are employees educated on and active in social media. This Social Squad pushes customized content to and through social media outlets including relevant articles, emerging technology news, information on available contracts and upcoming events in customer-specific markets. We can customize this content to be relevant to Cobb County and OMNIA Partners.

With over 1,700 entries and counting across topics including Cloud, Data Center, Digital Workspace, Networking, Security, and Software, CDW's Solutions Blog delivers evocative and relevant content. Authored by our own subject matter experts, articles are written to help our customers navigate and digest the overwhelming amount of data that comes at them every day as they work to make better decisions for more effective and efficient solutions that meet their individual goals.

ii. Announcement, Master Agreement details and contact information published on the Supplier's website within first 90 days

---

We will create a customized tab on our OMNIA Partners Premium Page so customers can easily shop for featured products. It will be active on the first day the contract goes live and feature co-branded material with your organization's logo and message. This website will include up-to-date pricing on all eligible products. Authorized users and administrators access the information they need when they need it and benefit from real-time updates to inventory and price.

iii. Design, publication and distribution of co-branded marketing materials within first 90 days

---

Our standard contract launch process includes developing collateral to promote contract awareness and education among internal and external stakeholders. Content will focus on the administrative and strategic value of utilizing this new Agreement. Specifically, we will highlight the convenience of the online marketplaces, as well as the cost and time savings associated with consolidating transactional procurement needs by leveraging the new Agreement.

Possible outlets to disseminate content include our internal Corporate Communications, our Public Sector Publications (State Tech & Ed Tech), a sale-led communications campaign, and Social Media. We use Twitter, Facebook, and LinkedIn as avenues for marketing, education, updates and general communication with customers. Active social media helps customers stay informed with links, posts and articles of interest in the way that they choose to receive information. We also maintain an internal group that is focused on submitting and curating social media content called the Social Squad. It even has its own app available for Android. Social Squad members are encouraged to submit content on a number of topics, including industry news, products and deals, emerging technologies, product launches, featured partners, and more.

We are able and willing to participate in co-branding marketing opportunities with Cobb County and OMNIA Partners. For instance, a combined OMNIA and vendor branding logo can be created to include in social media advertisements, the Agreement's customized Premium Page, customer-facing digital and print one-pagers, and customer-facing emails.

Upon contract award, intend to conduct a collaborative kick-off meeting dedicated to developing our go-to-market strategy including the development and distribution of co-branded marketing materials within the first 90 days.

iv. Commitment to attendance and participation with OMNIA Partners at national (i.e. NIGP Annual Forum, NPI Conference, etc.), regional (i.e. Regional NIGP Chapter Meetings, Regional Cooperative Summits, etc.) and supplier-specific trade shows, conferences and meetings throughout the term of the Master Agreement

v. Commitment to attend, exhibit and participate at the NIGP Annual Forum in an area reserved by OMNIA Partners for partner suppliers. Booth space will be purchased and staffed by Supplier. In addition, Supplier commits to provide reasonable assistance to the overall promotion and marketing efforts for the NIGP Annual Forum, as directed by OMNIA Partners.

---

CDW•G has enjoyed participating in the NIGP Annual Forum in past years and will continue to do so with commercially reasonable efforts. We believe in the mission to “develop, support and promote public procurement” and look forward to sharing our best practices with other non-competing OMNIA Partners vendors.

vi. Design and publication of national and regional advertising in trade publications throughout the term of the Master Agreement

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CDW•G will advertise the contract in our own highly viewed publications and our contract specific email campaign. We will continue to promote the contract via avenues such as our EdTech and State Tech publication sites.

vii. Ongoing marketing and promotion of the Master Agreement throughout its term (case studies, collateral pieces, presentations, promotions, etc.)

---

CDW•G will market and promote the contract, through various avenues such as announcements in our publications, email campaigns, as well as on the contract's CDW•G premium page. We look forward to working with OMNIA Partners to develop our marketing strategies even further and propose a marketing strategy meeting to discuss a refreshed approached and specific goals/targets for the new contract. Below is a sample of the ongoing email campaign we currently conduct for our OMNIA agreement.

viii. Dedicated OMNIA Partners internet web-based homepage on Supplier's website with:

- OMNIA Partners standard logo;
  - Copy of original Request for Proposal;
  - Copy of Master Agreement and amendments between Principal Procurement Agency and Supplier;
  - Summary of Products and pricing;
  - Marketing Materials
  - Electronic link to OMNIA Partners' website including the online registration page;
  - A dedicated toll-free number and email address for OMNIA Partners
-

CDW•G currently hosts a dedicated web-page for our OMNIA agreements [www.cdwg.com/omniapartners](http://www.cdwg.com/omniapartners) including all contract documentation, marketing materials, products and pricing and relevant links. Upon award we will create a dedicated tab on this premium page.

The updated Premium Page will include the following:

- Cobb County and/or OMNIA Partners standard logo
- Copy of original Request for Proposal
- Copy of Master Agreement and amendments between Principal Procurement Agency and Supplier
- Summary of products and pricing
- Marketing materials
- An electronic link to OMNIA Partners' website including the online registration page
- A dedicated toll-free number and email address for Cobb County and/or OMNIA Partners
- Our team will review the tailoring of our current Premium Page with the OMNIA Partners team to ensure that the dedicated webpage meets all of the Participating Entities' needs.

C. Describe how Supplier will transition any existing Public Agency customers' accounts to the Master Agreement available nationally through OMNIA Partners. Include a list of current cooperative contracts (regional and national) Supplier holds and describe how the Master Agreement will be positioned among the other cooperative agreements.

---

As Cobb County and OMNIA Partners may know, CDW•G currently holds a significant number of cooperative purchasing contracts including OMNIA Partners, Public Sector (fkna NIPA), Association of Educational Purchasing Agencies (AEPA), and Sourcewell (fkna NJPA). CDW•G is solutions-focused, vendor agnostic and provides consultation to assist our customers to select the contract best suited for their specific procurement needs. For all of our national contracts, we have maintained the transparency of our contract portfolio to our customer and negotiated the removal of language such as "most favored customer" and requirements such as this. CDW•G continues to prove without a doubt that we can keep our commitment to making this contract prosperous amongst our portfolio of offerings. We have transitioned a number of customers and their solicitation opportunities to OMNIA Partners contracts, in the form of participating agreements. Moving forward, we will continue to loop new members into the contract and sustain the growth.

CDW•G currently holds a significant number of cooperative purchasing contracts including Omnia Partners/National Intergovernmental Purchasing Agency (National IPA), Association of Educational Purchasing Agencies (AEPA), and Sourcewell. CDW•G is solutions-focused and provides consultation to assist our customers to select the best contract vehicle suited for their specific procurement needs. We continue to maintain transparency of our contract portfolio to our customers and will work with customers upon their request to transition customers to ensure it is in the best interests of purchasing entities, CDW•G, OMNIA Partners, and customers.

D. Acknowledge Supplier agrees to provide its logo(s) to OMNIA Partners and agrees to provide permission for reproduction of such logo in marketing communications and promotions. Acknowledge that use of OMNIA Partners logo will require permission for reproduction, as well.

---

CDW•G acknowledges and agrees to provide its logo(s) to OMNIA Partners, Public Sector and agrees to provide permission for reproduction of such logo in marketing communications and promotions. We additionally acknowledge that use of OMNIA Partners, Public Sector logo requires permission for reproduction, as well.

The core component of CDW•G's brand identity is its corporate logo; therefore, we ask that you carefully consider the following guidelines when using it.

When using the CDW•G logo, you agree to the following:

1. You may use the logo(s) only in the exact form provided by CDW•G and only to accurately and actively link from a website that is under your control to the home page of CDW.com (or another address provided by CDW•G) and for no other purpose.
2. You may not incorporate the logo(s) into any other logo or design.
3. You may not to use the logo(s) in a way that suggests that you or your company or products are affiliated with CDW•G or its products or services in any way.
4. You may not display the logo(s) on any website that disparages CDW•G or its products or services, infringes any CDW•G intellectual property or other rights, or violates any law or regulation.
5. No other logo or design element should appear within 0.5 inches of the CDW•G logo.
6. You may not frame or alter the CDW•G website in any way.
7. At CDW•G's direction, you will immediately remove the logo(s).
8. Your limited right to use the logo(s) does not constitute a grant of any other right or license. All other rights are reserved by CDW•G.
9. CDW•G disclaims all warranties, express and implied, regarding the logo(s), including warranties against infringement. You agree to indemnify CDW•G from and against any and all claims and liabilities arising out of your use of the logo(s).

E. Confirm Supplier will be proactive in direct sales of Supplier's goods and services to Public Agencies nationwide and the timely follow up to leads established by OMNIA Partners. All sales materials are to use the OMNIA Partners logo. At a minimum, the Supplier's sales initiatives should communicate:

- i. Master Agreement was competitively solicited and publicly awarded by a Principal Procurement Agency
  - ii. Best government pricing
  - iii. No cost to participate
  - iv. Non-exclusive
- 

CDW•G confirms we will be proactive in direct sales to Public Agencies nationwide and our initiatives will, at a minimum, communicate points i-iv stated above.

- I. Master Agreement was competitively solicited and publicly awarded by a Principal Procurement Agency
  - II. Best government pricing
- 

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- III. No cost to participate
- IV. Non-exclusive

We are happy to create a contract announcement flyer with the new contract information. A sample from an existing agreement is included below. We would like to further discuss the inclusion of II and IV, and will revise our marketing pieces to include a mutually agreeable message that best represents the value of the contract.





## OMNIA PARTNERS AND CDW-G



**A WINNING PARTNERSHIP IN STRATEGIC SOURCING**

We are pleased to announce that CDW-G has been awarded a special contract with OMNIA Partners, for the sale of Information Technology Solutions and Services, under Agreement 2018011-01. Contract 2018011-01 is now available for OMNIA Partners participants for all of your technology needs.

---

**STRONG PARTNERSHIP, STRONG SOLUTIONS**

CDW-G and OMNIA Partners have worked collaboratively to help you successfully convert to the new program. If you have any questions about the transition or process, please contact your CDW-G account manager for additional assistance.

We look forward to serving you under our new agreement with OMNIA Partners.

**CONTRACT BENEFITS INCLUDE:**

- + Term: 3/1/18 to 2/28/23 with two, one-year renewals.
- + Competitive pricing across CDW-G's entire portfolio of products and solutions.
- + Access to a multitude of services and custom configurations, including equipment staging.
- + Pricing on products made by the following partners:

  
by Schneider Electric


  
Authorized Reseller

















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Figure 24: OMNIA Partners and CDW-G

F. Confirm Supplier will train its national sales force on the Master Agreement. At a minimum, sales training should include:

- i. Key features of Master Agreement
- ii. Working knowledge of the solicitation process
- iii. Awareness of the range of Public Agencies that can utilize the Master Agreement through OMNIA Partners
- iv. Knowledge of benefits of the use of cooperative contracts

---

CDW•G acknowledges and complies with the above requirement. CDW•G's Program Manager, Francie Gribble will work directly with our sales leadership, Cobb County, and OMNIA Partners to develop and execute a training program for our sales force. Training content will address all of these elements. Our sellers will then be equipped with relevant collateral to communicate with customers. Curriculum development, trainings, and collateral creation will be completed within 90 days of contract award.

At a minimum, training will include the following topics:

- I. Key features of Master Agreement
- II. Working knowledge of the solicitation process
- III. Awareness of the range of Public Agencies that can utilize the Master Agreement through OMNIA Partners

G. Provide the name, title, email and phone number for the person(s), who will be responsible for:

i. Executive Support

- 
- Name: David Hutchins
  - Title: VP, Strategic Programs and Sales Enablement
  - Email: David.hutchins@cdwg.com
  - Phone: 847-968-9782

ii. Marketing

- 
- Name: Lauren Bull
  - Title: Manager – Public Sector Field Marketing
  - Email: lbull@cdw.com
  - Phone: 847-968-0257

iii. Sales

- 
- Name: AJ Lucci
  - Title: Sales Manager
  - Email: ajlucci@cdwg.com
  - Phone: 312-705-9355



iv. Sales Support

---

- Name: Rob Sullivan
- Title: Executive Account Manager
- Email: robesul@cdwg.com
- Phone: 312-705-9505

v. Financial Reporting

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- Name: Francie Gribble
- Title: Program Manager
- Email: frances.gribble@cdwg.com
- Phone: 629-208-8229

vi. Accounts Payable

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- Name: \*\*we assign Accounts Payable personnel for each manufacturer, not per customer or per contract, contact details can be shared post award for a particular manufacturer if necessary
- Title:
- Email:
- Phone:

vii. Contracts

---

- Name: Francie Gribble
- Title: Program Manager
- Email: frances.gribble@cdwg.com
- Phone: 629-208-8229

H. Describe in detail how Supplier's national sales force is structured, including contact information for the highest-level executive in charge of the sales team.

---

The CDW•G customer support models starts with our account managers. As part of the CDW Experience, we organize our sales force differently from other companies in order to best serve our customers. First, our account managers are trained to become experts within the public sector segment they support – K-12, Higher Education, State & Local government, Federal government and Healthcare. The advantage is that they can address the very specific needs of their unique customers. To further equip our account managers to support their customers, CDW•G divides the salesforce into distinct geographic regions to ensure that sellers are prepared to support the local landscape in a way that is unmatched by other vendors, both small local and national companies.

Each member has a dedicated account manager who maintains overall responsibility for coordinating all CDW•G resources to achieve the highest standards of customer service. They are the first line of contact for orders, questions, and marketing implementation.

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CDW•G account managers, their supporting product specialists, and their sales managers understand the current technology trends and are specialized to only work with public-sector customers. This is one of the great benefits of partnering with CDW•G. OMNIA Partners members will have access to much more than a single resource; members will also have access to an entire sales and support team ready to address any member's need. CDW•G, from the executive level down to your account manager, is focused on ensuring that OMNIA Partner's members' needs are consistently and satisfactorily met.

To simplify the customer service process, we recommend OMNIA members bring any issues or inquiries to the attention of their dedicated account manager. Members' CDW•G account managers are the center of their customer service and support experience. CDW•G account managers' first step is always to listen. Then they evaluate and determine the best next steps. If the account manager cannot correct the issue, they will escalate it to their sales manager. If the sales manager cannot correct the issue, they will escalate it to the director. Escalation continues all the way up to the executive leader who oversees this contract, our Vice President of Government and Strategic Programs, Ben Bourbon and David Hutchins, respectively, until we provide a suitable solution to the performance issue. While this type of escalation is rare, we always work to sufficiently and expeditiously resolve any escalations. Usually, resolution is as simple as walking a few desks over to explain the situation.



**Figure 25: CDW•G's Escalation Process**

The beauty of this approach is that the customer does not have to manage the process, hunt down contacts or explain their issue many times over. They are kept in the loop on progress of the resolution, while their CDW•G team takes care of the rest. Because we designate an actual person and not a faceless inbox, they can reach out to their account manager whenever they feel necessary.

For mission critical issues, we follow the same path with expedited timelines. If problem resolution is specific to a coworker, such as performance of an account manager, the customer is encouraged to reach out to the coworker's manager, who will then take the appropriate steps to address. Contact information for your account manager, sales manager and customer relations can all be found easily in your cdw.com account center.

A follow-up step in our incident escalation process involves taking the incident resolution process one step further. Our sales teams work hand-in-hand with our Program Management team to ensure that for issues requiring significant escalation, we determine proactive measures

to prevent the problem from recurring. We want to understand why it happened to make sure it doesn't happen again. This is one of the reasons we are consistently lauded for outstanding customer service.

Beware of proposed incident escalation paths that go no further than issue resolution. Vendors that correct the problem but acknowledge it no further than incident escalation/resolution will be able to offer only temporary fixes. They won't understand the causes of where they failed to meet member expectations.

Cobb County and OMNIA Partners can be confident in this contract's level of Executive Sponsorship within CDW•G, as well. AJ Lucci, Sales Manager; Don McCarthy, Director SLG East, Ben Bourbon, Vice President of Government Sales; and Chris Webb, Director, Capture are all high-level, accessible, points of contact focused on the success of this Agreement.

Contact information for the highest level of the executive sales team is:

- Name: Don McCarthy
- Title: Director, Area Sales
- Email: Donamcc@cdw.com
- Phone: 847-419-6317

I. Explain in detail how the sales teams will work with the OMNIA Partners team to implement, grow and service the national program.

---

An OMNIA member's first point of contact with CDW•G is their dedicated account manager. As such, we understand how critical it is for our account managers understand the scope and benefits of the OMNIA agreement. In conjunction with the technical trainings offered to our CDW•G account teams, our Program Management team will train our sales teams regarding the OMNIA agreement with CDW•G. The diverse nature of our training program gives each account team confidence to support OMNIA members through the entire sales cycle from project inception, purchase, solution deployment, and post-sale support. Our account teams clearly and concisely deliver the value of the OMNIA agreement to non-members helping to drive increased adoption and contract growth.

Public sector customers are seeking a digital platform for quick and simple procurement of transactional items. Our account managers, across all segments and regions nationwide, will be poised and prepared to guide and educate members on this new procurement option.

Tenured CDW•G account managers are actively marketing the current City of Mesa OMNIA agreement to customers and are very familiar with its benefits, including product categories, administrative fee structure, and flexibility. While there will be subsequent trainings upon award, the Online Marketplace contract will easily be added to our account manager's repertoire to become an arrow in their OMNIA quiver. The ramp up time for our account managers will be far quicker than account managers who lack such familiarity with OMNIA agreements.

In addition to our Account Managers, our Business Development team is actively engaged with OMNIA Regional Managers and leaders in Partner Development and Strategic Accounts to review the state of our joint business, develop growth goals and strategies and execute prescriptively to drive business the OMNIA Partners portfolio. This new contract will fit seamlessly into the overall program allowing us to quickly develop and expand contract usage utilizing a proven model.

I. Explain in detail how Supplier will manage the overall national program throughout the term of the Master Agreement, including ongoing coordination of marketing and sales efforts, timely new Participating Public Agency account set-up, timely contract administration, etc.

As with all of our contracts, the Online Marketplace contract will be assigned a Program Management team led by a Program Manager (PM) who will ensure c contract compliance and administer contract procedures, including contract launch. The Program Manager regularly conducts self-audits to ensure pricing compliance and takes corrective action when needed.

Upon award, CDW•G’s Program Manager, Francie Gribble, will work directly with Cobb County and OMNIA Partners to stand-up all aspects of the new Agreement within our system (e.g., member lists, pricing, reporting, fee schedules, and other compliance requirements). We will load the contract structure into our internal contract editor system which will then create a customer premium page with a distinct URL that will reflect the contracted price. Once the structure is loaded, no additional manual intervention is needed to maintain it (this non- manual process only applies to catalog contract using CDW•G categories).

We also have processes in place to ensure that the contract prices proposed are maintained throughout the life of the contract. CDW•G will use automated internal systems as well as Program Management personnel to manage the proposed price structure.

After contract launch, the Program Management team is responsible for adding new members to the contract by linking their account to the new contract. Contract stand-up also includes creation of internal and external resources to aid our customers and sales teams in transitioning to the new Agreement.

Our ongoing marketing efforts will include the previously discussed topics – i.e., training, publications, attendance at events – to ensure this contract is continually being marketed from contract launch through completion.

J. State the amount of Supplier’s Public Agency sales for the previous fiscal year. Provide a list of Supplier’s top 10 Public Agency customers, the total purchases for each for the previous fiscal year along with a key contact for each.

Due to confidentiality reasons CDW•G does not release the financial information of Our customers. Should this contract be accepted, CDW•G can solicit each customer individually to determine whether their financial information may be shared.

The following are our 2021 top Public Agency OMNIA Customers:

**Table 7: CDW•G Top 10 Public Agency Customers**

Customer Name
NYC Dept Of Info Tech & Telecom
NYC Cyber Command
New York City Department of Education
NYPD
NYC HRA
MTA Headquarters
Kern County High School District
NYC Dept Of Health & Mental Hygiene
NYC Department of Education
NYPD

K. Describe Supplier’s information systems capabilities and limitations regarding order management through receipt of payment, including description of multiple platforms that may be used for any of these functions.

---

**eCommerce Platform – Web based**

Your customizable CDW•G web portal is available to authorized users 24 hours per day, provides real-time information, and facilitates researching, ordering and tracking purchases. Whether you are a first time shopper or an existing customer of CDW•G, we can ensure your order routes to the appropriate account management team that supports the shoppers entity, based on the contract being used.

**eProcurement Platform – Punch Out Catalog**

As a company, CDW•G is highly experienced in implementing B2B solutions. Since 2001, we have integrated with over 9,000 entities (13,000 customers) and work with over 80 different marketplaces, ERPs and SRMs. Our in-house staff of over 200 IT personnel are dedicated solely to our web, internal, and e-commerce IT systems. Our mature e-procurement practice also means Cobb County won’t have long to wait to begin using their system. By integrating quicker than our competitors, CDW•G simplifies procurement for eProcurement customers by allowing them to buy IT the way they need based on their specific requirements. CDW•G’s punch out offers the shopper dynamic price offerings, product information and availability while providing industry standard information back into our customers e-procurement platform, such as UNSPSC and contract information. CDW•G can support customers who wish to utilize Cobb County award(s) through an eProcurement platform.

**Application Programming Interface (API)**

CDW•G can review customer specific requests where order process automation is needed, but further customization is required. This process may include technologies such as JSON or SFTP, but may be accommodated based upon the scope of the project.

L. Provide the Contract Sales (as defined in Section 12 of the OMNIA Partners Administration Agreement) that Supplier will guarantee each year under the Master Agreement for the initial three years of the Master Agreement (“Guaranteed Contract Sales”).

\$\_\_\_\_\_.00 in year one

\$\_\_\_\_\_.00 in year two

\$\_\_\_\_\_.00 in year three

To the extent Supplier guarantees minimum Contract Sales, the Administrative Fee shall be calculated based on the greater of the actual Contract Sales and the Guaranteed Contract Sales.

---

While we cannot provide guaranteed minimum contract sales, CDW•G has a proven record of winning and growing OMNIA agreements, and the resources needed to do so. OMNIA Partners has our commitment to do the same here.

M. Even though it is anticipated many Public Agencies will be able to utilize the Master Agreement without further formal solicitation, there may be circumstances where Public Agencies will issue their own solicitations. The following options are available when responding to a solicitation for Products covered under the Master Agreement.

- i. Respond with Master Agreement pricing (Contract Sales reported to OMNIA Partners).
- ii. If competitive conditions require pricing lower than the standard Master Agreement not-to-exceed pricing, Supplier may respond with lower pricing through the Master Agreement. If Supplier is awarded the contract, the sales are reported as Contract Sales to OMNIA Partners under the Master Agreement.
- iii. Respond with pricing higher than Master Agreement only in the unlikely event that the Public Agency refuses to utilize Master Agreement (Contract Sales are not reported to OMNIA Partners).
- iv. If alternative or multiple proposals are permitted, respond with pricing higher than Master Agreement, and include Master Agreement as the alternate or additional proposal.

Detail Supplier's strategies under these options when responding to a solicitation.

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As an impartial solutions provider, our first and primary goal is to serve the needs of the customer from a technology and procurement perspective. We act in a consultative, objective manner to aid customers in developing the procurement strategy to best fit their needs. In honoring this commitment, we have maintained the transparency of our contract portfolio to our customers and negotiated the removal of language such as "most favored customer" and other requirements.

We commend Cobb County and OMNIA Partners for creating a contract vehicle to facilitate easy transactional buying at competitive pricing for its users. We certainly see the strategic fit this contract demonstrates within the SLED space and we will position this agreement when it best suits their procurement needs.

When responding to a solicitation that directly disclaims the terms and conditions of this Master Agreement, we will comply with all appropriate contractual terms. Subject to applicable law, we represent that under this Agreement we will make reasonable commercial efforts to offer prices that are competitive with the prices offered to other similarly situated customers purchasing a comparable volume of the same products at the same time and under the same terms and conditions.

Subject to applicable law, Supplier represents that under this Agreement it will make reasonable commercial efforts to offer prices that are competitive with the prices Supplier offers to other similarly situated customers purchasing a comparable volume of the same products at the same time and under the same terms and conditions.

## Appendix A: Sample SOW

See following pages for a Sample SoW that would need to be mutually agreed upon for all Service engagements.

# STATEMENT OF WORK

<b>Project Name:</b>		<b>Seller Representative:</b>
<b>Customer Name:</b>		
<b>CDW Affiliate:</b>		
<b>SOW Created Date:</b>		<b>Solution Architect:</b>
<b>Version:</b>		<b>Drafted By</b>

This statement of work (“**Statement of Work**” or “**SOW**”) is made and entered into on the last date that this SOW is fully executed as set forth below (“**SOW Effective Date**”) by and between the undersigned, [CDW Affiliate] (“**Provider,**” and “**Seller,**”) and [Customer Name] (“**Customer,**” and “**Client,**”).

This SOW shall be governed by that certain [Governing Agreement Name] between [CDW Affiliate] and [Customer Name], dated [Governing Agreement Date] (the “**Agreement**”). If there is a conflict between this SOW and the Agreement, then the Agreement will control, except as expressly amended in this SOW by specific reference to the Agreement. References in the Agreement to a SOW or a Work Order apply to this SOW.

## PROJECT SCOPE

### SERVICE DESCRIPTION

### GENERAL RESPONSIBILITIES AND ASSUMPTIONS

- Customer is responsible for providing all access that is reasonably necessary to assist and accommodate Seller’s performance of the Services.
- Customer will provide in advance and in writing, and Seller will follow, all applicable Customer’s facility’s safety and security rules and procedures.
- Customer is responsible for security at all Customer-Designated Locations; Seller is not responsible for lost or stolen equipment, other than solely as a result of Seller’s gross negligence and willful misconduct.
- This SOW can be terminated by either party without cause upon at least fourteen (14) days’ advance written notice.

## CONTACT PERSONS

Each Party will appoint a person to act as that Party’s point of contact (“**Contact Person**”) as the time for performance nears and will communicate that person’s name and information to the other Party’s Contact Person.



Customer Contact Person is authorized to approve materials and Services provided by Seller, and Seller may rely on the decisions and approvals made by the Customer Contact Person (except that Seller understands that Customer may require a different person to sign any Change Orders amending this SOW). The Customer Contact Person will manage all communications with Seller, and when Services are performed at a Customer-Designated Location, the Customer Contact Person will be present or available. The Parties' Contact Persons shall be authorized to approve changes in personnel and associated rates for Services under this SOW.

## CHANGE MANAGEMENT

This SOW may be modified or amended only in a writing signed by both Customer and Seller, generally in the form provided by Seller ("**Change Order**"). Services not specified in this SOW are considered out of scope and will be addressed with a separate SOW or Change Order.

In the event of a conflict between the terms and conditions set forth in a fully executed Change Order and those set forth in this SOW or a prior fully executed Change Order, the terms and conditions of the most recent fully executed Change Order shall prevail.

## PROJECT SCHEDULING

Customer and Seller, who will jointly manage this project, will together develop timelines for an anticipated schedule ("**Anticipated Schedule**") based on Seller's project management methodology. Any dates, deadlines, timelines or schedules contained in the Anticipated Schedule, in this SOW or otherwise, are estimates only, and the Parties will not rely on them for purposes other than initial planning.

## TOTAL FEES

The total fees due and payable under this SOW ("**Total Fees**") include both fees for Seller's performance of work ("**Services Fees**") and any other related costs and fees specified in the Expenses section ("**Expenses**").

## SERVICES FEES

## EXPENSES

## CUSTOMER DESIGNATED LOCATIONS

Seller will provide Services benefiting the locations specified on the attached Exhibit ("**Customer-Designated Locations**").

## PROJECT SPECIFIC TERMS

## SIGNATURES

In acknowledgement that the parties below have read and understood this Statement of Work and agree to be bound by it, each party has caused this Statement of Work to be signed and transferred by its respective authorized representative.

This SOW and any Change Order may be signed in separate counterparts, each of which shall be deemed an original and all of which together will be deemed to be one original. Electronic signatures on this SOW or on any Change Order (or copies of signatures sent via electronic means) are the equivalent of handwritten signatures.

**[CDW Affiliate Name]**

**[Customer Name]**

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**Mailing Address:**

**Mailing Address:**

**[Affiliate Address line 1]**

Street: \_\_\_\_\_

**[Affiliate Address line 2]**

City/ST/ZIP: \_\_\_\_\_

## EXHIBIT \_

### CUSTOMER-DESIGNATED LOCATIONS

Seller will provide Services benefiting the following locations (“Customer-Designated Locations”).

Location(s)

## Appendix B: Required Forms

See following pages for our signed forms required with this submission.

**BID SUBMITTAL FORM**



SUBMIT BID/PROPOSAL TO:

Cobb County Purchasing Department  
122 Waddell Street NE  
Marietta, GA 30060

**BID/PROJECT NUMBER: 23-6692**

**Request for Proposals**

**Technology Product Solutions and Related Services  
Cobb County Purchasing Department**

**DELIVERY DEADLINE: OCTOBER 13, 2022 BEFORE 12:00 (NOON) EST  
(NO BIDS/PROPOSALS WILL BE ACCEPTED AFTER THIS DEADLINE).**

Bid Opening Date: October 13, 2022 @ 2:00 P.M. in the Cobb County Purchasing Department, 122 Waddell Street NE, Marietta, Georgia, 30060.

**BUSINESS NAME AND ADDRESS INFORMATION:**

Company name: CDW Government LLC

Contact name: Eric Moore

Company address: 230 N Milwaukee Ave, Vernon Hills, IL 60061

E-mail address: eric.moore@cdwg.com

Phone number: 765-749-9981 Fax number: 847-465-6800

**NAME AND OFFICIAL TITLE OF OFFICER GUARANTEEING THIS QUOTATION:**

David Hutchins VP Strategic Programs  
(PLEASE PRINT/TYPE) NAME TITLE

SIGNATURE OF OFFICER ABOVE: David C Hutchins  
(SIGNATURE)

TELEPHONE: 847-968-9782 FAX: 847.465.6800

BIDDER WILL INDICATE TIME PAYMENT DISCOUNT: CDW•G does not offer Time Payment Discounts

BIDDER SHALL INDICATE MAXIMUM DELIVERY DATE (UNLESS OTHERWISE SPECIFIED IN BID SPECIFICATIONS)  
N/A

Bids received after the date and time indicated will not be considered. Cobb County reserves the right to reject any and all bids, to waive informalities, to reject portions of the bid, to waive technicalities and to award contracts in a manner consistent with the county and the laws governing the state of Georgia.

The enclosed (or attached) bid is in response to Bid Number **23-6692**; is a firm offer, **as defined by section O.C.G.A. (s) 11-2-205 of the code of Georgia (Georgia laws 1962 pages 156-178)**, by the undersigned bidder. This offer shall remain open for acceptance for a period of 90 calendar days from the bid opening date, as set forth in this invitation to bid unless otherwise specified in the bid documents.



*Cobb County...Expect the Best!*

## REQUEST FOR PROPOSALS

**Sealed Bid # 23-6692  
Technology Product Solutions and Related Services  
Cobb County Purchasing Department**

Bid Opening Date: October 13, 2022

**Pre-Proposal Meeting via WebEx: September 14, 2022 at 3:00 PM Eastern**

Join from meeting link

<https://cobbcounty.webex.com/cobbcounty/j.php?MTID=m6334e0c9e0f46364cc2157383bc375a6>

Meeting number (access code): 2317 292 4027

Meeting password: fxZKmmi3p93

Join by phone

+1-415-655-0004 US Toll

Proposals Are Received in the Cobb County Purchasing Department  
122 Waddell Street NE  
Marietta, GA 30060

**Before 12:00 (Noon) By the Bid Opening Date**

Proposal Will Be Opened in the Cobb County Purchasing Department at 2:00 pm  
122 Waddell Street NE  
Marietta, GA 30060

**VENDORS ARE REQUIRED TO SUBMIT THE ORIGINAL, TWO (2) COPIES & TEN (10) FLASH DRIVES OF BID  
(UNLESS OTHERWISE SPECIFIED IN BID SPECIFICATIONS)**

NAME: CDW Government LLC

ADDRESS: 230 N Milwaukee Ave, Vernon Hills, IL 60061

REPRESENTATIVE: David Hutchins

PHONE: 847-968-9782 FAX: 847.465.6800

E-MAIL david.hutchins@cdwg.com

**NOTE:** The Cobb County Purchasing Department will not be responsible for the accuracy or completeness of the content of any Cobb County Invitation to Bid or Request for Proposal or subsequent addenda thereto received from a source other than the Cobb County Purchasing Department.

**CONTRACTOR AFFIDAVIT & AGREEMENT  
(EXHIBIT A)**

***This affidavit must be signed, notarized and submitted with any bid requiring the performance of physical services. If the affidavit is not submitted at the time of the bid, the bid will be determined non-responsive and will be disqualified.***

By executing this affidavit, the undersigned contractor verifies compliance with O.C.G.A. §13-10-91, stating affirmatively that the individual, firm or corporation which is contracting with Cobb County, Georgia, has registered with, is authorized to use, and is participating in a federal work authorization program (an electronic verification of work authorization program operated by the U.S. Department of Homeland Security or any equivalent federal work authorization program operated by the U.S. Department of Homeland Security to verify information of newly hired employees, pursuant to the Immigration Reform and Control Act of 1986 (IRCA)). The undersigned contractor further attests that it will continue to use the federal Employment Eligibility Verification (EEV) work authorization program throughout the contract period.

The undersigned further agrees that should it employ or contract with any subcontractor(s) or should its subcontractor(s) employ other subcontractor(s) for the physical performance of services pursuant to the contract with Cobb County, Georgia, the contractor or subcontractor will:

- (1) Notify the County within five business days of entering into a contract or agreement for hire with any subcontractor(s);
- (2) Secure from any subcontractor(s) and/or their subcontractor(s) verification of compliance with O.C.G.A. § 13-10-91 on the attached Subcontractor Affidavit (EXHIBIT A-1) prior to the commencement of any work under the contract/agreement;
- (3) Secure from any subcontractor(s) and/or their subcontractor(s) a completed Immigration Compliance Certification (EXHIBIT A-2) prior to the commencement of any work under the contract/agreement;
- (4) Provide the subcontractor(s) with legal notice that Cobb County, Georgia, reserves the right to dismiss, or require the dismissal of, any contractor or subcontractor for failing to provide the affidavit and/or for failure to comply with the requirements referenced in the affidavit;
- (5) Maintain records of such compliance and provide a copy of each such verification to Cobb County, Georgia, at the time the subcontractor(s) is retained to perform such services or upon any request from Cobb County, Georgia; and
- (6) Maintain such records for a period of five (5) years.

<u>731442</u> EEV (E-Verify) Program Number	<u>03/26/2008</u> EEV Program Date of Authorization
<u>David C. Hutchins</u> BY: Authorized Officer or Agent [Contractor Name]	<u>CDW Government LLC</u> Contractor Business Name
<u>David Hutchins</u> Printed Name	<u>10/11/2022</u> Date

SWORN AND SUBSCRIBED BEFORE ME  
ON THIS THE 11th DAY OF October 2022    2

Notary Public Commission Expires: May 31, 2026  
*Effective 09-20-2013*

ELIZABETH HILTS  
NOTARY PUBLIC  
My Commission Expires May 31, 2026



**SUBCONTRACTOR AFFIDAVIT & AGREEMENT  
(EXHIBIT A-1)**

By executing this affidavit, the undersigned subcontractor verifies its compliance with O.C.G.A. § 13-10-91, stating affirmatively that the individual, firm or corporation which is engaged in the physical performance of services on behalf of Cobb County, Georgia, has registered with, is authorized to use, and is participating in a federal work authorization program (an electronic verification of work authorization program operated by the U.S. Department of Homeland Security or any equivalent federal work authorization program operated by the U.S. Department of Homeland Security to verify information of newly hired employees, pursuant to the Immigration Reform and Control Act of 1986 (IRCA)). The undersigned contractor further attests that it will continue to use the federal Employment Eligibility Verification (EEV) work authorization program throughout the contract period.

The undersigned further agrees that should it employ or contract with any subcontractor(s) or should its subcontractor(s) employ other subcontractor(s) for the physical performance of services pursuant to the contract with Cobb County, Georgia, the undersigned subcontractor will:

- (1) Notify the County within five business days of entering into a contract or agreement for hire with any subcontractor(s);
- (2) Secure from any subcontractor(s) and/or their subcontractor(s) verification of compliance with O.C.G.A. § 13-10-91 on this Subcontractor Affidavit form (EXHIBIT A-1) prior to the commencement of any work under the contract/agreement;
- (3) Secure from any subcontractor(s) and/or their subcontractor(s) a completed Immigration Compliance Certification (EXHIBIT A-2) prior to the commencement of any work under the contract/agreement;
- (4) Provide the subcontractor(s) with legal notice that Cobb County, Georgia, reserves the right to dismiss, or require the dismissal of, any contractor or subcontractor for failing to provide the affidavit and/or for failure to comply with the requirements referenced in the affidavit;
- (5) Maintain records of such compliance and provide a copy of each such verification to Cobb County, Georgia, at the time the subcontractor(s) is retained to perform such services or upon any request from Cobb County, Georgia; and
- (6) Maintain such records for a period of five (5) years.

N/A

EEV (E-Verify) Program Number

EEV Program Date of Authorization

BY: Authorized Officer or Agent  
[Subcontractor Name]

Subcontractor Business Name

Printed Name

Date

SWORN AND SUBSCRIBED BEFORE ME  
ON THIS THE \_\_\_\_ DAY OF \_\_\_\_\_, 202\_

Notary Public Commission Expires: \_\_\_\_\_

*Effective 09-20-2013*

**IMMIGRATION COMPLIANCE CERTIFICATION**  
*(Required to be completed by Contractors and all Subcontractors)*  
**(EXHIBIT A-2)**

I certify to the Cobb County Board of Commissioners that the following employees will be assigned to:  
Cobb County/OMNIA Technology Product Solutions and Related Services

*(Project Name/Description)*

<u>AJ Lucci</u>	<u>Dan Gallagher</u>	<u>Heather Kohls</u>
<u>Don McCarthy</u>	<u>Keshun Morgan</u>	<u>Francie Gribble</u>
<u>Rob Sullivan</u>	<u>Anup Sreedharan</u>	

I further certify to Cobb County, Georgia the following:

- The E-Verify program was used to verify the employment eligibility of each of the above-listed employees hired after the effective date of our contract to use the program;
- We have not received a Final Nonconfirmation response from E-Verify for any of the employees listed.
- If we receive a Final Nonconfirmation response from E-Verify for any of the employees listed above, we will immediately terminate that employee's involvement with the project.
- I have confirmed that we have an I-9 on file for every employee listed above and that to the best of my knowledge all the I-9s are accurate.
- To the best of my knowledge and belief, all of the employees on the above list are legally authorized to work in the United States.
- If any other employee is assigned to this Cobb County project, a certification will be provided for said employee prior to the employee commencing work on the project.

To the best of my knowledge and belief, the above certification is true, accurate and complete.

**Sworn to by:**

David C Hutchins  
Signature of Officer

David Hutchins, VP Strategic Programs p

Date 10/11/2022

**Employer Name & Address:**

CDW Government LLC

230 N Milwaukee Ave

Vernon Hills, IL 60061

SWORN AND SUBSCRIBED BEFORE ME  
ON THIS THE 11th DAY OF October, 2022

Notary Public  
Commission Expires: May 31, 2026



ELIZABETH HILTS  
NOTARY PUBLIC  
My Commission Expires May 31, 2026

*Effective 09-20-2013*



## **Attachment A**



### **Requirements for National Cooperative Contract To Be Administered by OMNIA Partners**

The following documents are used in evaluating and administering national cooperative contracts and are included for Supplier's review and response.

Exhibit A – Response for National Cooperative Contract

Exhibit B – Administration Agreement, Example

Exhibit C – Master Intergovernmental Cooperative Purchasing Agreement, Example

Exhibit D – Principal Procurement Agency Certificate, Example

Exhibit E – Contract Sales Reporting Template

Exhibit F – Federal Funds Certifications

Exhibit G – New Jersey Business Compliance

Exhibit H – Advertising Compliance Requirement

**Exhibit A**  
**Response for National Cooperative Contract**

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**1.0 Scope of National Cooperative Contract**

Capitalized terms not otherwise defined herein shall have the meanings given to them in the Master Agreement or in the Administration Agreement between Supplier and OMNIA Partners.

**1.1 Requirement**

The Cobb County, GA (hereinafter defined and referred to as “Principal Procurement Agency”), on behalf of itself and the National Intergovernmental Purchasing Alliance Company, a Delaware corporation d/b/a OMNIA Partners, Public Sector (“OMNIA Partners”), is requesting proposals for Technology Product Solutions and Related Services. The intent of this Request for Proposal is any contract between Principal Procurement Agency and Supplier resulting from this Request for Proposal (“Master Agreement”) be made available to other public agencies nationally, including state and local governmental entities, public and private primary, secondary and higher education entities, non-profit entities, and agencies for the public benefit (“Public Agencies”), through OMNIA Partners’ cooperative purchasing program. The Principal Procurement Agency has executed a Principal Procurement Agency Certificate with OMNIA Partners, an example of which is included as Exhibit D, and has agreed to pursue the Master Agreement. Use of the Master Agreement by any Public Agency is preceded by their registration with OMNIA Partners as a Participating Public Agency in OMNIA Partners’ cooperative purchasing program. Registration with OMNIA Partners as a Participating Public Agency is accomplished by Public Agencies entering into a Master Intergovernmental Cooperative Purchasing Agreement, an example of which is attached as Exhibit C, and by using the Master Agreement, any such Participating Public Agency agrees that it is registered with OMNIA Partners, whether pursuant to the terms of the Master Intergovernmental Purchasing Cooperative Agreement or as otherwise agreed to. The terms and pricing established in the resulting Master Agreement between the Supplier and the Principal Procurement Agency will be the same as that available to Participating Public Agencies through OMNIA Partners.

All transactions, purchase orders, invoices, payments etc., will occur directly between the Supplier and each Participating Public Agency individually, and neither OMNIA Partners, any Principal Procurement Agency nor any Participating Public Agency, including their respective agents, directors, employees or representatives, shall be liable to Supplier for any acts, liabilities, damages, etc., incurred by any other Participating Public Agency. Supplier is responsible for knowing the tax laws in each state.

This Exhibit A defines the expectations for qualifying Suppliers based on OMNIA Partners’ requirements to market the resulting Master Agreement nationally to Public Agencies. Each section in this Exhibit A refers to the capabilities, requirements, obligations, and prohibitions of competing Suppliers on a national level in order to serve Participating Public Agencies through OMNIA Partners.

These requirements are incorporated into and are considered an integral part of this RFP. OMNIA Partners reserves the right to determine whether to make the Master Agreement awarded by the Principal Procurement Agency available to Participating Public Agencies, in its sole and absolute discretion, and any party submitting a response to this RFP acknowledges that any award by the Principal Procurement Agency does not obligate OMNIA Partners to make the Master Agreement available to Participating Procurement Agencies.

## **1.2 Marketing, Sales and Administrative Support**

During the term of the Master Agreement OMNIA Partners intends to provide marketing, sales, partnership development and administrative support for Supplier pursuant to this section that directly promotes the Supplier's products and services to Participating Public Agencies through multiple channels, each designed to promote specific products and services to Public Agencies on a national basis.

OMNIA Partners will assign the Supplier a Director of Partner Development who will serve as the main point of contact for the Supplier and will be responsible for managing the overall relationship between the Supplier and OMNIA Partners. The Director of Partner Development will work with the Supplier to develop a comprehensive strategy to promote the Master Agreement and will connect the Supplier with appropriate stakeholders within OMNIA Partners including, Sales, Marketing, Contracting, Training, and Operations & Support.

The OMNIA Partners marketing team will work in conjunction with Supplier to promote the Master Agreement to both existing Participating Public Agencies and prospective Public Agencies through channels that may include:

- A. Marketing collateral (print, electronic, email, presentations)
- B. Website
- C. Trade shows/conferences/meetings
- D. Advertising
- E. Social Media

The OMNIA Partners sales teams will work in conjunction with Supplier to promote the Master Agreement to both existing Participating Public Agencies and prospective Public Agencies through initiatives that may include:

- A. Individual sales calls
- B. Joint sales calls
- C. Communications/customer service
- D. Training sessions for Public Agency teams
- E. Training sessions for Supplier teams

The OMNIA Partners contracting teams will work in conjunction with Supplier to promote the Master Agreement to both existing Participating Public Agencies and prospective Public Agencies through:

- A. Serving as the subject matter expert for questions regarding joint powers authority and state statutes and regulations for cooperative purchasing
- B. Training sessions for Public Agency teams
- C. Training sessions for Supplier teams
- D. Regular business reviews to monitor program success
- E. General contract administration

Suppliers are required to pay an Administrative Fee of 3% of the greater of the Contract Sales under the Master Agreement and Guaranteed Contract Sales under this Request for Proposal. Supplier will be required to execute the OMNIA Partners Administration Agreement (Exhibit B).

### **1.3 Estimated Volume**

The dollar volume purchased under the Master Agreement is estimated to be approximately \$20 million annually. While no minimum volume is guaranteed to Supplier, the estimated annual volume is projected based on the current annual volumes among the Principal Procurement Agency, other Participating Public Agencies that are anticipated to utilize the resulting Master Agreement to be made available to them through OMNIA Partners, and volume growth into other Public Agencies through a coordinated marketing approach between Supplier and OMNIA Partners.

### **1.4 Award Basis**

The basis of any contract award resulting from this RFP made by Principal Procurement Agency will, at OMNIA Partners' option, be the basis of award on a national level through OMNIA Partners. If multiple Suppliers are awarded by Principal Procurement Agency under the Master Agreement, those same Suppliers will be required to extend the Master Agreement to Participating Public Agencies through OMNIA Partners. Utilization of the Master Agreement by Participating Public Agencies will be at the discretion of the individual Participating Public Agency. Certain terms of the Master Agreement specifically applicable to the Principal Procurement Agency (e.g., governing law) are subject to modification for each Participating Public Agency as Supplier and such Participating Public Agency may agree without being in conflict with the Master Agreement as a condition of the Participating Agency's purchase and not a modification of the Master Agreement applicable to all Participating Agencies. Participating Agencies may request to enter into a separate supplemental agreement to further define the level of service requirements over and above the minimum defined in the Master Agreement (e.g., governing law, invoice requirements, order requirements, specialized delivery, diversity requirements such as minority and woman owned businesses, historically underutilized business, etc.) ("Supplemental Agreement"). It shall be the

responsibility of the Supplier to comply, when applicable, with the prevailing wage legislation in effect in the jurisdiction of the Participating Agency. It shall further be the responsibility of the Supplier to monitor the prevailing wage rates as established by the appropriate department of labor for any increase in rates during the term of the Master Agreement and adjust wage rates accordingly. In instances where supplemental terms and conditions create additional risk and cost for Supplier, Supplier and Participating Public Agency may negotiate additional pricing above and beyond the stated contract not-to-exceed pricing so long as the added price is commensurate with the additional cost incurred by the Supplier. Any supplemental agreement developed as a result of the Master Agreement is exclusively between the Participating Agency and the Supplier (Contract Sales are reported to OMNIA Partners).

All signed Supplemental Agreements and purchase orders issued and accepted by the Supplier may survive expiration or termination of the Master Agreement. Participating Agencies' purchase orders may exceed the term of the Master Agreement if the purchase order is issued prior to the expiration of the Master Agreement. Supplier is responsible for reporting all sales and paying the applicable Administrative Fee for sales that use the Master Agreement as the basis for the purchase order, even though Master Agreement may have expired.

## **1.5 Objectives of Cooperative Program**

This RFP is intended to achieve the following objectives regarding availability through OMNIA Partners' cooperative program:

- A. Provide a comprehensive competitively solicited and awarded national agreement offering the Products covered by this solicitation to Participating Public Agencies;
- B. Establish the Master Agreement as the Supplier's primary go to market strategy to Public Agencies nationwide;
- C. Achieve cost savings for Supplier and Public Agencies through a single solicitation process that will reduce the Supplier's need to respond to multiple solicitations and Public Agencies need to conduct their own solicitation process;
- D. Combine the aggregate purchasing volumes of Participating Public Agencies to achieve cost effective pricing.

## **2.0 REPRESENTATIONS AND COVENANTS**

As a condition to Supplier entering into the Master Agreement, which would be available to all Public Agencies, Supplier must make certain representations, warranties and covenants to both the Principal Procurement Agency and OMNIA Partners designed to ensure the success of the Master Agreement for all Participating Public Agencies as well as the Supplier.

### **2.1 Corporate Commitment**

Supplier commits that (1) the Master Agreement has received all necessary corporate authorizations and support of the Supplier's executive management, (2) the Master Agreement is Supplier's primary "go to market" strategy for Public Agencies, (3) the

Master Agreement will be promoted to all Public Agencies, including any existing customers, and Supplier will transition existing customers, upon their request, to the Master Agreement, and (4) that the Supplier has read and agrees to the terms and conditions of the Administration Agreement with OMNIA Partners and will execute such agreement concurrent with and as a condition of its execution of the Master Agreement with the Principal Procurement Agency. Supplier will identify an executive corporate sponsor and a separate national account manager within the RFP response that will be responsible for the overall management of the Master Agreement.

## **2.2 Pricing Commitment**

Supplier commits the not-to-exceed pricing provided under the Master Agreement pricing is its lowest available (net to buyer) to Public Agencies nationwide and further commits that if a Participating Public Agency is eligible for lower pricing through a national, state, regional or local or cooperative contract, the Supplier will match such lower pricing to that Participating Public Agency under the Master Agreement.

## **2.3 Sales Commitment**

Supplier commits to aggressively market the Master Agreement as its go to market strategy in this defined sector and that its sales force will be trained, engaged and committed to offering the Master Agreement to Public Agencies through OMNIA Partners nationwide. Supplier commits that all Master Agreement sales will be accurately and timely reported to OMNIA Partners in accordance with the OMNIA Partners Administration Agreement. Supplier also commits its sales force will be compensated, including sales incentives, for sales to Public Agencies under the Master Agreement in a consistent or better manner compared to sales to Public Agencies if the Supplier were not awarded the Master Agreement.

## **3.0 SUPPLIER RESPONSE**

Supplier must supply the following information for the Principal Procurement Agency to determine Supplier's qualifications to extend the resulting Master Agreement to Participating Public Agencies through OMNIA Partners.

### **3.1 Company**

- A. Brief history and description of Supplier to include experience providing similar products and services.
- B. Total number and location of salespersons employed by Supplier.
- C. Number and location of support centers (if applicable) and location of corporate office.
- D. Annual sales for the three previous fiscal years.
  - a. Submit FEIN and Dunn & Bradstreet report.

- E. Describe any green or environmental initiatives or policies.
- F. Describe any diversity programs or partners supplier does business with and how Participating Agencies may use diverse partners through the Master Agreement. Indicate how, if at all, pricing changes when using the diversity program. If there are any diversity programs, provide a list of diversity alliances and a copy of their certifications.
- G. Indicate if supplier holds any of the below certifications in any classified areas and include proof of such certification in the response:
  - a. Minority Women Business Enterprise
    - Yes       No
    - If yes, list certifying agency: \_\_\_\_\_
  - b. Small Business Enterprise (SBE) or Disadvantaged Business Enterprise (DBE)
    - Yes       No
    - If yes, list certifying agency: \_\_\_\_\_
  - c. Historically Underutilized Business (HUB)
    - Yes       No
    - If yes, list certifying agency: \_\_\_\_\_
  - d. Historically Underutilized Business Zone Enterprise (HUBZone)
    - Yes       No
    - If yes, list certifying agency: \_\_\_\_\_
  - e. Other recognized diversity certificate holder
    - Yes       No
    - If yes, list certifying agency: \_\_\_\_\_
- H. List any relationships with subcontractors or affiliates intended to be used when providing services and identify if subcontractors meet minority-owned standards. If any, list which certifications subcontractors hold and certifying agency.
- I. Describe how supplier differentiates itself from its competitors.
- J. Describe any present or past litigation, bankruptcy or reorganization involving supplier.
- K. Felony Conviction Notice: Indicate if the supplier
  - a. is a publicly held corporation and this reporting requirement is not applicable;
  - b. is not owned or operated by anyone who has been convicted of a felony; or
  - c. is owned or operated by and individual(s) who has been convicted of a felony and provide the names and convictions.
- L. Describe any debarment or suspension actions taken against supplier

### **3.2 Distribution, Logistics**

- A. Each offeror awarded an item under this solicitation may offer their complete product and service offering/a balance of line. Describe the full line of products and services offered by supplier.
- B. Describe how supplier proposes to distribute the products/service nationwide. Include any states where products and services will not be offered under the Master Agreement, including U.S. Territories and Outlying Areas.
- C. Describe how Participating Agencies are ensured they will receive the Master Agreement pricing; include all distribution channels such as direct ordering, retail or in-store locations, through distributors, etc. Describe how Participating Agencies verify and audit pricing to ensure its compliance with the Master Agreement.
- D. Identify all other companies that will be involved in processing, handling or shipping the products/service to the end user.
- E. Provide the number, size and location of Supplier's distribution facilities, warehouses and retail network as applicable.

### **3.3 Marketing and Sales**

- A. Provide a detailed ninety-day plan beginning from award date of the Master Agreement describing the strategy to immediately implement the Master Agreement as supplier's primary go to market strategy for Public Agencies to supplier's teams nationwide, to include, but not limited to:
  - i. Executive leadership endorsement and sponsorship of the award as the public sector go-to-market strategy within first 10 days
  - ii. Training and education of Supplier's national sales force with participation from the Supplier's executive leadership, along with the OMNIA Partners team within first 90 days
- B. Provide a detailed ninety-day plan beginning from award date of the Master Agreement describing the strategy to market the Master Agreement to current Participating Public Agencies, existing Public Agency customers of Supplier, as well as to prospective Public Agencies nationwide immediately upon award, to include, but not limited to:
  - i. Creation and distribution of a co-branded press release to trade publications
  - ii. Announcement, Master Agreement details and contact information published on the Supplier's website within first 90 days
  - iii. Design, publication and distribution of co-branded marketing materials within first 90 days



- iv. Commitment to attendance and participation with OMNIA Partners at national (i.e. NIGP Annual Forum, NPI Conference, etc.), regional (i.e. Regional NIGP Chapter Meetings, Regional Cooperative Summits, etc.) and supplier-specific trade shows, conferences and meetings throughout the term of the Master Agreement
  - v. Commitment to attend, exhibit and participate at the NIGP Annual Forum in an area reserved by OMNIA Partners for partner suppliers. Booth space will be purchased and staffed by Supplier. In addition, Supplier commits to provide reasonable assistance to the overall promotion and marketing efforts for the NIGP Annual Forum, as directed by OMNIA Partners.
  - vi. Design and publication of national and regional advertising in trade publications throughout the term of the Master Agreement
  - vii. Ongoing marketing and promotion of the Master Agreement throughout its term (case studies, collateral pieces, presentations, promotions, etc.)
  - viii. Dedicated OMNIA Partners internet web-based homepage on Supplier's website with:
    - OMNIA Partners standard logo;
    - Copy of original Request for Proposal;
    - Copy of Master Agreement and amendments between Principal Procurement Agency and Supplier;
    - Summary of Products and pricing;
    - Marketing Materials
    - Electronic link to OMNIA Partners' website including the online registration page;
    - A dedicated toll-free number and email address for OMNIA Partners
- C. Describe how Supplier will transition any existing Public Agency customers' accounts to the Master Agreement available nationally through OMNIA Partners. Include a list of current cooperative contracts (regional and national) Supplier holds and describe how the Master Agreement will be positioned among the other cooperative agreements.
- D. Acknowledge Supplier agrees to provide its logo(s) to OMNIA Partners and agrees to provide permission for reproduction of such logo in marketing communications and promotions. Acknowledge that use of OMNIA Partners logo will require permission for reproduction, as well.
- E. Confirm Supplier will be proactive in direct sales of Supplier's goods and services to Public Agencies nationwide and the timely follow up to leads established by OMNIA Partners. All sales materials are to use the OMNIA Partners logo. At a minimum, the Supplier's sales initiatives should communicate:
- i. Master Agreement was competitively solicited and publicly awarded by a Principal Procurement Agency

- ii. Best government pricing
  - iii. No cost to participate
  - iv. Non-exclusive
- F. Confirm Supplier will train its national sales force on the Master Agreement. At a minimum, sales training should include:
- i. Key features of Master Agreement
  - ii. Working knowledge of the solicitation process
  - iii. Awareness of the range of Public Agencies that can utilize the Master Agreement through OMNIA Partners
  - iv. Knowledge of benefits of the use of cooperative contracts
- G. Provide the name, title, email and phone number for the person(s), who will be responsible for:
- i. Executive Support
  - ii. Marketing
  - iii. Sales
  - iv. Sales Support
  - v. Financial Reporting
  - vi. Accounts Payable
  - vii. Contracts
- H. Describe in detail how Supplier's national sales force is structured, including contact information for the highest-level executive in charge of the sales team.
- I. Explain in detail how the sales teams will work with the OMNIA Partners team to implement, grow and service the national program.
- I. Explain in detail how Supplier will manage the overall national program throughout the term of the Master Agreement, including ongoing coordination of marketing and sales efforts, timely new Participating Public Agency account set-up, timely contract administration, etc.
- J. State the amount of Supplier's Public Agency sales for the previous fiscal year. Provide a list of Supplier's top 10 Public Agency customers, the total purchases for each for the previous fiscal year along with a key contact for each.
- K. Describe Supplier's information systems capabilities and limitations regarding order management through receipt of payment, including description of multiple platforms that may be used for any of these functions.

- L. Provide the Contract Sales (as defined in Section 12 of the OMNIA Partners Administration Agreement) that Supplier will guarantee each year under the Master Agreement for the initial three years of the Master Agreement (“Guaranteed Contract Sales”).

\$\_\_\_\_\_.00 in year one  
\$\_\_\_\_\_.00 in year two  
\$\_\_\_\_\_.00 in year three

To the extent Supplier guarantees minimum Contract Sales, the Administrative Fee shall be calculated based on the greater of the actual Contract Sales and the Guaranteed Contract Sales.

- M. Even though it is anticipated many Public Agencies will be able to utilize the Master Agreement without further formal solicitation, there may be circumstances where Public Agencies will issue their own solicitations. The following options are available when responding to a solicitation for Products covered under the Master Agreement.

- i. Respond with Master Agreement pricing (Contract Sales reported to OMNIA Partners).
- ii. If competitive conditions require pricing lower than the standard Master Agreement not-to-exceed pricing, Supplier may respond with lower pricing through the Master Agreement. If Supplier is awarded the contract, the sales are reported as Contract Sales to OMNIA Partners under the Master Agreement.
- iii. Respond with pricing higher than Master Agreement only in the unlikely event that the Public Agency refuses to utilize Master Agreement (Contract Sales are not reported to OMNIA Partners).
- iv. If alternative or multiple proposals are permitted, respond with pricing higher than Master Agreement, and include Master Agreement as the alternate or additional proposal.

Detail Supplier’s strategies under these options when responding to a solicitation.

**Exhibit C**  
**Master Intergovernmental Cooperative Purchasing Agreement, Example**

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**MASTER INTERGOVERNMENTAL COOPERATIVE PURCHASING AGREEMENT**

This Master Intergovernmental Cooperative Purchasing Agreement (this “**Agreement**”) is entered into by and between those certain government agencies that execute a Principal Procurement Agency Certificate (“**Principal Procurement Agencies**”) with National Intergovernmental Purchasing Alliance Company, a Delaware corporation d/b/a OMNIA Partners, Public Sector and/or Communities Program Management, LLC, a California limited liability company d/b/a U.S. Communities (collectively, “**OMNIA Partners**”), in its capacity as the cooperative administrator, to be appended and made a part hereof and such other public agencies (“**Participating Public Agencies**”) who register to participate in the cooperative purchasing programs administered by OMNIA Partners and its affiliates and subsidiaries (collectively, the “**OMNIA Partners Parties**”) by either registering on the OMNIA Partners website ([www.omniapartners.com/publicsector](http://www.omniapartners.com/publicsector) or any successor website), or by executing a copy of this Agreement.

**RECITALS**

**WHEREAS**, after a competitive solicitation and selection process by Principal Procurement Agencies, in compliance with their own policies, procedures, rules and regulations, a number of suppliers have entered into “**Master Agreements**” (herein so called) to provide a variety of goods, products and services (“**Products**”) to the applicable Principal Procurement Agency and the Participating Public Agencies;

**WHEREAS**, Master Agreements are made available by Principal Procurement Agencies through the OMNIA Partners Parties and provide that Participating Public Agencies may purchase Products on the same terms, conditions and pricing as the Principal Procurement Agency, subject to any applicable federal and/or local purchasing ordinances and the laws of the State of purchase; and

**WHEREAS**, in addition to Master Agreements, the OMNIA Partners Parties may from time to time offer Participating Public Agencies the opportunity to acquire Products through other group purchasing agreements.

**NOW, THEREFORE**, in consideration of the mutual promises contained in this Agreement, and of the mutual benefits to result, the parties hereby agree as follows:

1. Each party will facilitate the cooperative procurement of Products.
2. The Participating Public Agencies shall procure Products in accordance with and subject to the relevant federal, state and local statutes, ordinances, rules and regulations that govern Participating Public Agency’s procurement practices. The Participating Public Agencies hereby acknowledge and agree that it is the intent of the parties that all provisions of this Agreement and that Principal Procurement Agencies’ participation in the program described herein comply with all applicable laws, including but not limited to the requirements of 42 C.F.R. § 1001.952(j), as may be amended from time to time. The Participating Public Agencies further acknowledge and agree that they are solely responsible for their compliance with all applicable “safe harbor” regulations, including but not limited to any and all obligations to fully and accurately report discounts and incentives.

3. The Participating Public Agency represents and warrants that the Participating Public Agency is not a hospital or other healthcare provider and is not purchasing Products on behalf of a hospital or healthcare provider; provided that the foregoing shall not prohibit Participating Public Agency from furnishing health care services so long as the furnishing of healthcare services is not in furtherance of a primary purpose of the Participating Public Agency.

4. The cooperative use of Master Agreements shall be in accordance with the terms and conditions of the Master Agreements, except as modification of those terms and conditions is otherwise required by applicable federal, state or local law, policies or procedures.

5. The Principal Procurement Agencies will make available, upon reasonable request, Master Agreement information which may assist in improving the procurement of Products by the Participating Public Agencies.

6. The Participating Public Agency agrees the OMNIA Partners Parties may provide access to group purchasing organization (“**GPO**”) agreements directly or indirectly by enrolling the Participating Public Agency in another GPO’s purchasing program, provided that the purchase of Products through the OMNIA Partners Parties or any other GPO shall be at the Participating Public Agency’s sole discretion.

7. The Participating Public Agencies (each a “**Procuring Party**”) that procure Products through any Master Agreement or GPO Product supply agreement (each a “**GPO Contract**”) will make timely payments to the distributor, manufacturer or other vendor (collectively, “**Supplier**”) for Products received in accordance with the terms and conditions of the Master Agreement or GPO Contract, as applicable. Payment for Products and inspections and acceptance of Products ordered by the Procuring Party shall be the exclusive obligation of such Procuring Party. Disputes between Procuring Party and any Supplier shall be resolved in accordance with the law and venue rules of the State of purchase unless otherwise agreed to by the Procuring Party and Supplier.

8. The Procuring Party shall not use this Agreement as a method for obtaining additional concessions or reduced prices for purchase of similar products or services outside of the Master Agreement. Master Agreements may be structured with not-to-exceed pricing, in which cases the Supplier may offer the Procuring Party and the Procuring Party may accept lower pricing or additional concessions for purchase of Products through a Master Agreement.

9. The Procuring Party shall be responsible for the ordering of Products under this Agreement. A non-procuring party shall not be liable in any fashion for any violation by a Procuring Party, and, to the extent permitted by applicable law, the Procuring Party shall hold non-procuring party harmless from any liability that may arise from the acts or omissions of the Procuring Party.

10. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, THE OMNIA PARTNERS PARTIES EXPRESSLY DISCLAIM ALL EXPRESS OR IMPLIED REPRESENTATIONS AND WARRANTIES REGARDING ANY PRODUCT, MASTER AGREEMENT AND GPO CONTRACT. THE OMNIA PARTNERS PARTIES SHALL NOT BE LIABLE IN ANY WAY FOR ANY SPECIAL, INCIDENTAL, INDIRECT, CONSEQUENTIAL, EXEMPLARY, PUNITIVE, OR RELIANCE DAMAGES, EVEN IF THE OMNIA PARTNERS PARTIES ARE ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. FURTHER, THE PROCURING PARTY ACKNOWLEDGES AND AGREES THAT THE OMNIA PARTNERS PARTIES SHALL HAVE NO LIABILITY FOR ANY ACT OR OMISSION BY A SUPPLIER OR OTHER PARTY UNDER A MASTER AGREEMENT OR GPO CONTRACT.

11. This Agreement shall remain in effect until termination by either party giving thirty (30) days' written notice to the other party. The provisions of Paragraphs 6 - 10 hereof shall survive any such termination.

12. This Agreement shall take effect upon (i) execution of the Principal Procurement Agency Certificate, or (ii) registration on the OMNIA Partners website or the execution of this Agreement by a Participating Public Agency, as applicable.

**Participating Public Agency:**

**OMNIA Partners, as the cooperative administrator on behalf of Principal Procurement Agencies:**

Signature will be provided upon contract negotiation agreement

**NATIONAL INTERGOVERNMENTAL PURCHASING ALLIANCE COMPANY COMMUNITIES PROGRAM MANAGEMENT, LLC**

\_\_\_\_\_  
Authorized Signature  
\_\_\_\_\_  
Name  
\_\_\_\_\_  
Title and Agency Name  
\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature  
Sarah E. Vavra  
\_\_\_\_\_  
Name  
Sr. Vice President, Public Sector Contracting  
\_\_\_\_\_  
Title  
\_\_\_\_\_  
Date

**Exhibit F**  
**Federal Funds Certifications**

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**FEDERAL CERTIFICATIONS**  
**ADDENDUM FOR AGREEMENT FUNDED BY U.S. FEDERAL GRANT**

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**TO WHOM IT MAY CONCERN:**

Participating Agencies may elect to use federal funds to purchase under the Master Agreement. This form should be completed and returned.

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**DEFINITIONS**

**Contract** means a legal instrument by which a non-Federal entity purchases property or services needed to carry out the project or program under a Federal award. The term as used in this part does not include a legal instrument, even if the non-Federal entity considers it a contract, when the substance of the transaction meets the definition of a Federal award or subaward

**Contractor** means an entity that receives a contract as defined in Contract.

**Cooperative agreement** means a legal instrument of financial assistance between a Federal awarding agency or pass-through entity and a non-Federal entity that, consistent with 31 U.S.C. 6302-6305:

- (a) Is used to enter into a relationship the principal purpose of which is to transfer anything of value from the Federal awarding agency or pass-through entity to the non-Federal entity to carry out a public purpose authorized by a law of the United States (see 31 U.S.C. 6101(3)); and not to acquire property or services for the Federal government or pass-through entity's direct benefit or use;
- (b) Is distinguished from a grant in that it provides for substantial involvement between the Federal awarding agency or pass-through entity and the non-Federal entity in carrying out the activity contemplated by the Federal award.
- (c) The term does not include:
  - (1) A cooperative research and development agreement as defined in 15 U.S.C. 3710a; or
  - (2) An agreement that provides only:
    - (i) Direct United States Government cash assistance to an individual;
    - (ii) A subsidy;
    - (iii) A loan;
    - (iv) A loan guarantee; or
    - (v) Insurance.

**Federal awarding agency** means the Federal agency that provides a Federal award directly to a non-Federal entity

**Federal award** has the meaning, depending on the context, in either paragraph (a) or (b) of this section:

- (a)(1) The Federal financial assistance that a non-Federal entity receives directly from a Federal awarding agency or indirectly from a pass-through entity, as described in § 200.101 Applicability; or
- (2) The cost-reimbursement contract under the Federal Acquisition Regulations that a non-Federal entity receives directly from a Federal awarding agency or indirectly from a pass-through entity, as described in § 200.101 Applicability.
- (b) The instrument setting forth the terms and conditions. The instrument is the grant agreement, cooperative agreement, other agreement for assistance covered in paragraph (b) of § 200.40 Federal financial assistance, or the cost-reimbursement contract awarded under the Federal Acquisition Regulations.
- (c) Federal award does not include other contracts that a Federal agency uses to buy goods or services from a contractor or a contract to operate Federal government owned, contractor operated facilities (GOCOs).
- (d) See also definitions of Federal financial assistance, grant agreement, and cooperative agreement.

**Non-Federal entity** means a state, local government, Indian tribe, institution of higher education (IHE), or nonprofit organization that carries out a Federal award as a recipient or subrecipient.

**Nonprofit organization** means any corporation, trust, association, cooperative, or other organization, not including IHEs, that:

- (a) Is operated primarily for scientific, educational, service, charitable, or similar purposes in the public interest;
- (b) Is not organized primarily for profit; and
- (c) Uses net proceeds to maintain, improve, or expand the operations of the organization.

**Obligations** means, when used in connection with a non-Federal entity's utilization of funds under a Federal award, orders placed for property and services, contracts and subawards made, and similar transactions during a given period that require payment by the non-Federal entity during the same or a future period.

**Pass-through entity** means a non-Federal entity that provides a subaward to a subrecipient to carry out part of a Federal program.

**Recipient** means a non-Federal entity that receives a Federal award directly from a Federal awarding agency to carry out an activity under a Federal program. The term recipient does not include subrecipients.

**Simplified acquisition threshold** means the dollar amount below which a non-Federal entity may purchase property or services using small purchase methods. Non-Federal entities adopt small purchase procedures in order to expedite the purchase of items costing less than the simplified acquisition threshold. The simplified acquisition threshold is set by the Federal Acquisition Regulation at 48 CFR Subpart 2.1 (Definitions) and in accordance with 41 U.S.C. 1908. As of the publication of this part, the simplified acquisition threshold is \$250,000, but this threshold is periodically adjusted for inflation. (Also see definition of § 200.67 Micro-purchase.)

**Subaward** means an award provided by a pass-through entity to a subrecipient for the subrecipient to carry out part of a Federal award received by the pass-through entity. It does not include payments to a contractor or payments to an individual that is a beneficiary of a Federal program. A subaward may be provided through any form of legal agreement, including an agreement that the pass-through entity considers a contract.

**Subrecipient** means a non-Federal entity that receives a subaward from a pass-through entity to carry out part of a Federal program; but does not include an individual that is a beneficiary of such program. A subrecipient may also be a recipient of other Federal awards directly from a Federal awarding agency.

**Termination** means the ending of a Federal award, in whole or in part at any time prior to the planned end of period of performance.

The following provisions may be required and apply when Participating Agency expends federal funds for any purchase resulting from this procurement process. Per FAR 52.204-24 and FAR 52.204-25, solicitations and resultant contracts shall contain the following provisions.

#### **52.204-24 Representation Regarding Certain Telecommunications and Video Surveillance Services or Equipment (Oct 2020)**

The Offeror shall not complete the representation at paragraph (d)(1) of this provision if the Offeror has represented that it "does not provide covered telecommunications equipment or services as a part of its offered products or services to the Government in the performance of any contract, subcontract, or other contractual instrument" in paragraph (c)(1) in the provision at [52.204-26](#), Covered Telecommunications Equipment or Services—Representation, or in paragraph (v)(2)(i) of the provision at [52.212-3](#), Offeror Representations and Certifications-Commercial Items. The Offeror shall not complete the representation in paragraph (d)(2) of this provision if the Offeror has represented that it "does not use covered telecommunications equipment or services, or any equipment, system, or service that uses covered telecommunications equipment or services" in paragraph (c)(2) of the provision at [52.204-26](#), or in paragraph (v)(2)(ii) of the provision at [52.212-3](#).

(a) *Definitions.* As used in this provision—

*Backhaul, covered telecommunications equipment or services, critical technology, interconnection arrangements, reasonable inquiry, roaming, and substantial or essential component* have the meanings provided in the clause [52.204-25](#), Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment.



(b) *Prohibition.*

(1) Section 889(a)(1)(A) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115-232) prohibits the head of an executive agency on or after August 13, 2019, from procuring or obtaining, or extending or renewing a contract to procure or obtain, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. Nothing in the prohibition shall be construed to—

(i) Prohibit the head of an executive agency from procuring with an entity to provide a service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or

(ii) Cover telecommunications equipment that cannot route or redirect user data traffic or cannot permit visibility into any user data or packets that such equipment transmits or otherwise handles.

(2) Section 889(a)(1)(B) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115-232) prohibits the head of an executive agency on or after August 13, 2020, from entering into a contract or extending or renewing a contract with an entity that uses any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. This prohibition applies to the use of covered telecommunications equipment or services, regardless of whether that use is in performance of work under a Federal contract. Nothing in the prohibition shall be construed to—

(i) Prohibit the head of an executive agency from procuring with an entity to provide a service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or

(ii) Cover telecommunications equipment that cannot route or redirect user data traffic or cannot permit visibility into any user data or packets that such equipment transmits or otherwise handles.

(c) *Procedures.* The Offeror shall review the list of excluded parties in the System for Award Management (SAM) (<https://www.sam.gov>) for entities excluded from receiving federal awards for "covered telecommunications equipment or services".

(d) *Representation.* The Offeror represents that—

(1) It  will,  will not provide covered telecommunications equipment or services to the Government in the performance of any contract, subcontract or other contractual instrument resulting from this solicitation. The Offeror shall provide the additional disclosure information required at paragraph (e)(1) of this section if the Offeror responds "will" in paragraph (d)(1) of this section; and

(2) After conducting a reasonable inquiry, for purposes of this representation, the Offeror represents that—

It  does,  does not use covered telecommunications equipment or services, or use any equipment, system, or service that uses covered telecommunications equipment or services. The Offeror shall provide the additional disclosure information required at paragraph (e)(2) of this section if the Offeror responds "does" in paragraph (d)(2) of this section.

(e) *Disclosures.*

(1) Disclosure for the representation in paragraph (d)(1) of this provision. If the Offeror has responded "will" in the representation in paragraph (d)(1) of this provision, the Offeror shall provide the following information as part of the offer.

(i) For covered equipment—

(A) The entity that produced the covered telecommunications equipment (include entity name, unique entity identifier, CAGE code, and whether the entity was the original equipment manufacturer (OEM) or a distributor, if known);

(B) A description of all covered telecommunications equipment offered (include brand; model number, such as OEM number, manufacturer part number, or wholesaler number; and item description, as applicable); and

(C) Explanation of the proposed use of covered telecommunications equipment and any factors relevant to determining if such use would be permissible under the prohibition in paragraph (b)(1) of this provision.

(ii) For covered services—

(A) If the service is related to item maintenance: A description of all covered telecommunications services offered (include on the item being maintained: Brand; model number, such as OEM number, manufacturer part number, or wholesaler number; and item description, as applicable); or

(B) If not associated with maintenance, the Product Service Code (PSC) of the service being provided; and explanation of the proposed use of covered telecommunications services and any factors relevant to determining if such use would be permissible under the prohibition in paragraph (b)(1) of this provision.

(2) Disclosure for the representation in paragraph (d)(2) of this provision. If the Offeror has responded "does" in the representation in paragraph (d)(2) of this provision, the Offeror shall provide the following information as part of the offer:

(i) For covered equipment—

(A) The entity that produced the covered telecommunications equipment (include entity name, unique entity identifier, CAGE code, and whether the entity was the OEM or a distributor, if known);

(B) A description of all covered telecommunications equipment offered (include brand; model number, such as OEM number, manufacturer part number, or wholesaler number; and item description, as applicable); and

(C) Explanation of the proposed use of covered telecommunications equipment and any factors relevant to determining if such use would be permissible under the prohibition in paragraph (b)(2) of this provision.

(ii) For covered services—

(A) If the service is related to item maintenance: A description of all covered telecommunications services offered (include on the item being maintained: Brand; model number, such as OEM number, manufacturer part number, or wholesaler number; and item description, as applicable); or

(B) If not associated with maintenance, the PSC of the service being provided; and explanation of the proposed use of covered telecommunications services and any factors relevant to determining if such use would be permissible under the prohibition in paragraph (b)(2) of this provision.

#### 52.204-25 Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment (Aug 2020).

(a) *Definitions.* As used in this clause—

*Backhaul* means intermediate links between the core network, or backbone network, and the small subnetworks at the edge of the network (e.g., connecting cell phones/towers to the core telephone network). Backhaul can be wireless (e.g., microwave) or wired (e.g., fiber optic, coaxial cable, Ethernet).

*Covered foreign country* means The People's Republic of China.

*Covered telecommunications equipment or services* means—

(1) Telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities);

(2) For the purpose of public safety, security of Government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities);

(3) Telecommunications or video surveillance services provided by such entities or using such equipment; or

(4) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

*Critical technology* means—

(1) Defense articles or defense services included on the United States Munitions List set forth in the International Traffic in Arms Regulations under subchapter M of chapter I of title 22, Code of Federal Regulations;

(2) Items included on the Commerce Control List set forth in Supplement No. 1 to part 774 of the Export Administration Regulations under subchapter C of chapter VII of title 15, Code of Federal Regulations, and controlled-

(i) Pursuant to multilateral regimes, including for reasons relating to national security, chemical and biological weapons proliferation, nuclear nonproliferation, or missile technology; or

(ii) For reasons relating to regional stability or surreptitious listening;

(3) Specially designed and prepared nuclear equipment, parts and components, materials, software, and technology covered by part 810 of title 10, Code of Federal Regulations (relating to assistance to foreign atomic energy activities);

(4) Nuclear facilities, equipment, and material covered by part 110 of title 10, Code of Federal Regulations (relating to export and import of nuclear equipment and material);

(5) Select agents and toxins covered by part 331 of title 7, Code of Federal Regulations, part 121 of title 9 of such Code, or part 73 of title 42 of such Code; or

(6) Emerging and foundational technologies controlled pursuant to section 1758 of the Export Control Reform Act of 2018 (50 U.S.C. 4817).

*Interconnection arrangements* means arrangements governing the physical connection of two or more networks to allow the use of another's network to hand off traffic where it is ultimately delivered (e.g., connection of a customer of telephone provider A to a customer of telephone company B) or sharing data and other information resources.

*Reasonable inquiry* means an inquiry designed to uncover any information in the entity's possession about the identity of the producer or provider of covered telecommunications equipment or services used by the entity that excludes the need to include an internal or third-party audit.

*Roaming* means cellular communications services (e.g., voice, video, data) received from a visited network when unable to connect to the facilities of the home network either because signal coverage is too weak or because traffic is too high.

*Substantial or essential component* means any component necessary for the proper function or performance of a piece of equipment, system, or service.

(b) *Prohibition.*

(1) Section 889(a)(1)(A) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115-232) prohibits the head of an executive agency on or after August 13, 2019, from procuring or obtaining, or extending or renewing a contract to procure or obtain, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. The Contractor is prohibited from providing to the Government any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system, unless an exception at paragraph (c) of this clause applies or the covered telecommunication equipment or services are covered by a waiver described in FAR [4.2104](#).

(2) Section 889(a)(1)(B) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115-232) prohibits the head of an executive agency on or after August 13, 2020, from entering into a contract, or extending or renewing a contract, with an entity that uses any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system, unless an exception at paragraph (c) of this clause applies or the covered telecommunication equipment or services are covered by a waiver described in FAR [4.2104](#). This prohibition applies to the use of covered telecommunications equipment or services, regardless of whether that use is in performance of work under a Federal contract.

(c) *Exceptions.* This clause does not prohibit contractors from providing—

(1) A service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements;  
or

(2) Telecommunications equipment that cannot route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles.

(d) *Reporting requirement.*

(1) In the event the Contractor identifies covered telecommunications equipment or services used as a substantial or essential component of any system, or as critical technology as part of any system, during contract performance, or the Contractor is notified of such by a subcontractor at any tier or by any other source, the Contractor shall report the information in paragraph (d)(2) of this clause to the Contracting Officer, unless elsewhere in this contract are established procedures for reporting the information; in the case of the Department of Defense, the Contractor shall report to the website at <https://dibnet.dod.mil>. For indefinite delivery contracts, the Contractor shall report to the Contracting Officer for the indefinite delivery contract and the Contracting Officer(s) for any affected order or, in the case of the Department of Defense, identify both the indefinite delivery contract and any affected orders in the report provided at <https://dibnet.dod.mil>.

(2) The Contractor shall report the following information pursuant to paragraph (d)(1) of this clause

(i) Within one business day from the date of such identification or notification: the contract number; the order number(s), if applicable; supplier name; supplier unique entity identifier (if known); supplier Commercial and Government Entity (CAGE) code (if known); brand; model number (original equipment manufacturer number, manufacturer part number, or wholesaler number); item description; and any readily available information about mitigation actions undertaken or recommended.

(ii) Within 10 business days of submitting the information in paragraph (d)(2)(i) of this clause: any further available information about mitigation actions undertaken or recommended. In addition, the Contractor shall describe the efforts it undertook to prevent use or submission of covered telecommunications equipment or services, and any additional efforts that will be incorporated to prevent future use or submission of covered telecommunications equipment or services.

(e) *Subcontracts.* The Contractor shall insert the substance of this clause, including this paragraph (e) and excluding paragraph (b)(2), in all subcontracts and other contractual instruments, including subcontracts for the acquisition of commercial items.

The following certifications and provisions may be required and apply when Participating Agency expends federal funds for any purchase resulting from this procurement process. Pursuant to 2 C.F.R. § 200.326, all contracts, including small purchases, awarded by the Participating Agency and the Participating Agency's subcontractors shall contain the procurement provisions of

Appendix II to Part 200, as applicable.

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**APPENDIX II TO 2 CFR PART 200**

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(A) Contracts for more than the simplified acquisition threshold currently set at \$250,000, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

Pursuant to Federal Rule (A) above, when a Participating Agency expends federal funds, the Participating Agency reserves all rights and privileges under the applicable laws and regulations with respect to this procurement in the event of breach of contract by either party.

Does offeror agree? YES                     DH                     Initials of Authorized Representative of offeror

(B) Termination for cause and for convenience by the grantee or subgrantee including the manner by which it will be effected and the basis for settlement. (All contracts in excess of \$10,000)

Pursuant to Federal Rule (B) above, when a Participating Agency expends federal funds, the Participating Agency reserves the right to immediately terminate any agreement in excess of \$10,000 resulting from this procurement process in the event of a breach or default of the agreement by Offeror as detailed in the terms of the contract.

Does offeror agree? YES                     DH                     Initials of Authorized Representative of offeror

(C) Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 CFR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."

Pursuant to Federal Rule (C) above, when a Participating Agency expends federal funds on any federally assisted construction contract, the equal opportunity clause is incorporated by reference herein.

Does offeror agree to abide by the above? YES                     DH                     Initials of Authorized Representative of offeror

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

Pursuant to Federal Rule (D) above, when a Participating Agency expends federal funds during the term of an award for all contracts and subgrants for construction or repair, offeror will be in compliance with all applicable Davis-Bacon Act provisions.

Does offeror agree? YES                     DH                     Initials of Authorized Representative of offeror

(E) Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

Pursuant to Federal Rule (E) above, when a Participating Agency expends federal funds, offeror certifies that offeror will be in compliance with all applicable provisions of the Contract Work Hours and Safety Standards Act during the term of an award for all contracts by Participating Agency resulting from this procurement process.

Does offeror agree? YES                     DA                     Initials of Authorized Representative of offeror

(F) Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of "funding agreement" under 37 CFR §401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

Pursuant to Federal Rule (F) above, when federal funds are expended by Participating Agency, the offeror certifies that during the term of an award for all contracts by Participating Agency resulting from this procurement process, the offeror agrees to comply with all applicable requirements as referenced in Federal Rule (F) above.

Does offeror agree? YES                     DA                     Initials of Authorized Representative of offeror

(G) Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended—Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251- 1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA)

Pursuant to Federal Rule (G) above, when federal funds are expended by Participating Agency, the offeror certifies that during the term of an award for all contracts by Participating Agency member resulting from this procurement process, the offeror agrees to comply with all applicable requirements as referenced in Federal Rule (G) above.

Does offeror agree? YES                     DA                     Initials of Authorized Representative of offeror

(H) Debarment and Suspension (Executive Orders 12549 and 12689)—A contract award (see 2 CFR 180.220) must not be made to parties listed on the government wide exclusions in the System for Award Management (SAM), in accordance with the Executive Office of the President Office of Management and Budget (OMB) guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), "Debarment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

Pursuant to Federal Rule (H) above, when federal funds are expended by Participating Agency, the offeror certifies that during the term of an award for all contracts by Participating Agency resulting from this procurement process, the offeror certifies that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation by any federal department or agency. If at any time during the term of an award the offeror or its principals becomes debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation by any



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**CERTIFICATION OF COMPLIANCE WITH BUY AMERICAN PROVISIONS**

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Unless Supplier is exempt (*See FAR 25.103*), when authorized by statute or explicitly indicated by Participating Public Agency, Buy American requirements will apply where only unmanufactured construction material mined or produced in the United States shall be used (*see Subpart 25.6 – American Recovery and Reinvestment Act-Buy American statute for additional details*).

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**CERTIFICATION OF ACCESS TO RECORDS – 2 C.F.R. § 200.336**

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Offeror agrees that the Inspector General of the Agency or any of their duly authorized representatives shall have access to any documents, papers, or other records of offeror that are pertinent to offeror's discharge of its obligations under the Contract for the purpose of making audits, examinations, excerpts, and transcriptions. The right also includes timely and reasonable access to offeror's personnel for the purpose of interview and discussion relating to such documents.

Does offeror agree? YES                     *DH*                     Initials of Authorized Representative of offeror

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**CERTIFICATION OF APPLICABILITY TO SUBCONTRACTORS**

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Offeror agrees that all contracts it awards pursuant to the Contract shall be bound by the foregoing terms and conditions.

Does offeror agree? YES                     *DH*                     Initials of Authorized Representative of offeror

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**Offeror agrees to comply with all federal, state, and local laws, rules, regulations and ordinances, as applicable. It is further acknowledged that offeror certifies compliance with all provisions, laws, acts, regulations, etc. as specifically noted above.**

Offeror's Name: CDW Government LLC

Address, City, State, and Zip Code: 230 N Milwaukee Ave, Vernon Hills, IL 60061

Phone Number: 847-968-9782 Fax Number: 847.465.6800

Printed Name and Title of Authorized Representative: David Hutchins, VP Strategic Programs

Email Address: david.hutchins@cdwg.com

Signature of Authorized Representative: *David C Hutchins* Date: 10/11/2022

## **FEMA SPECIAL CONDITIONS**

Awarded Supplier(s) may need to respond to events and losses where products and services are needed for the immediate and initial response to emergency situations such as, but not limited to, water damage, fire damage, vandalism cleanup, biohazard cleanup, sewage decontamination, deodorization, and/or wind damage during a disaster or emergency situation. By submitting a proposal, the Supplier is accepted these FEMA Special Conditions required by the Federal Emergency Management Agency (FEMA).

“Contract” in the below pages under FEMA SPECIAL CONDITIONS is also referred to and defined as the “Master Agreement”.

“Contractor” in the below pages under FEMA SPECIAL CONDITIONS is also referred to and defined as “Supplier” or “Awarded Supplier”.

### **Conflicts of Interest**

No employee, officer, or agent may participate in the selection, award, or administration of a contract supported by a FEMA award if he or she has a real or apparent conflict of interest. Such a conflict would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of these parties, has a financial or other interest in or a tangible personal benefit from a firm considered for award. 2 C.F.R. § 200.318(c)(1); See also Standard Form 424D, ¶ 7; Standard Form 424B, ¶ 3. i. FEMA considers a “financial interest” to be the potential for gain or loss to the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of these parties as a result of the particular procurement. The prohibited financial interest may arise from ownership of certain financial instruments or investments such as stock, bonds, or real estate, or from a salary, indebtedness, job offer, or similar interest that might be affected by the particular procurement. ii. FEMA considers an “apparent” conflict of interest to exist where an actual conflict does not exist, but where a reasonable person with knowledge of the relevant facts would question the impartiality of the employee, officer, or agent participating in the procurement. c. Gifts. The officers, employees, and agents of the Participating Public Agency nor the Participating Public Agency (“NFE”) must neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts. However, NFE’s may set standards for situations in which the financial interest is de minimus, not substantial, or the gift is an unsolicited item of nominal value. 2 C.F.R. § 200.318(c)(1). d. Violations. The NFE’s written standards of conduct must provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the NFE. 2 C.F.R. § 200.318(c)(1). For example, the penalty for a NFE’s employee may be dismissal, and the penalty for a contractor might be the termination of the contract.

### **Contractor Integrity**

A contractor must have a satisfactory record of integrity and business ethics. Contractors that are debarred or suspended, as described in and subject to the debarment and suspension regulations implementing Executive Order 12549, *Debarment and Suspension* (1986) and Executive Order 12689, *Debarment and Suspension* (1989) at 2 C.F.R. Part 180 and the Department of Homeland Security’s regulations at 2 C.F.R. Part 3000 (Non-procurement Debarment and Suspension), must be rejected and cannot receive contract awards at any level.

### **Public Policy**

A contractor must comply with the public policies of the Federal Government and state, local government, or tribal government. This includes, among other things, past and current compliance with the:

- a. Equal opportunity and nondiscrimination laws
- b. Five affirmative steps described at 2 C.F.R. § 200.321(b) for all subcontracting under contracts supported by FEMA financial assistance; and FEMA Procurement Guidance June 21, 2016 Page IV- 7
- c. Applicable prevailing wage laws, regulations, and executive orders



### **Affirmative Steps**

For any subcontracting opportunities, Contractor must take the following Affirmative steps:

1. Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
2. Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
3. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
4. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises; and
5. Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.

### **Prevailing Wage Requirements**

When applicable, the awarded Contractor (s) and any and all subcontractor(s) agree to comply with all laws regarding prevailing wage rates including the Davis-Bacon Act, applicable to this solicitation and/or Participating Public Agencies. The Participating Public Agency shall notify the Contractor of the applicable pricing/prevailing wage rates and must apply any local wage rates requested. The Contractor and any subcontractor(s) shall comply with the prevailing wage rates set by the Participating Public Agency.

### **Federal Requirements**

If products and services are issued in response to an emergency or disaster recovery the items below, located in this FEMA Special Conditions section of the Federal Funds Certifications, are activated and required when federal funding may be utilized.

### **2 C.F.R. § 200.326 and 2 C.F.R. Part 200, Appendix II, Required Contract Clauses**

#### **1. CONTRACT REMEDIES**

Contracts for more than the federal simplified acquisition threshold (SAT), the dollar amount below which an NFE may purchase property or services using small purchase methods, currently set at \$250,000 for procurements made on or after June 20, 2018,4 must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms and must provide for sanctions and penalties as appropriate.

##### **1.1 Applicability**

This contract provision is required for contracts over the SAT, currently set at \$250,000 for procurements made on or after June 20, 2018. Although not required for contracts at or below the SAT, FEMA suggests including a remedies provision.

##### **1.2 Additional Considerations**

For FEMA's Assistance to Firefighters Grant (AFG) Program, recipients must include a penalty clause in all contracts for any AFG-funded vehicle, regardless of dollar amount. In that situation, the contract must include a clause addressing that non-delivery by the contract's specified date or other vendor nonperformance will require a penalty of no less than \$100 per day until such time that the vehicle, compliant with the terms of the contract, has been accepted by the recipient. This penalty clause should, however, account for force majeure or acts of God. AFG recipients should refer to the applicable year's Notice of Funding Opportunity (NOFO) for additional information, which can be accessed at FEMA.gov.

## 2. TERMINATION FOR CAUSE AND CONVENIENCE

- a. Standard. All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-Federal entity, including the manner by which it will be effected and the basis for settlement. See 2 C.F.R. Part 200, Appendix II(B).
- b. Applicability. This requirement applies to all FEMA grant and cooperative agreement programs.

## 3. EQUAL EMPLOYMENT OPPORTUNITY

When applicable:

- a. Standard. Except as otherwise provided under 41 C.F.R. Part 60, all contracts that meet the definition of “federally assisted construction contract” in 41 C.F.R. § 60-1.3 must include the equal opportunity clause provided under 41 C.F.R. § 60- 1.4(b), in accordance with Executive Order 11246, *Equal Employment Opportunity* (30 Fed. Reg. 12319, 12935, 3 C.F.R. Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, *Amending Executive Order 11246 Relating to Equal Employment Opportunity*, and implementing regulations at 41 C.F.R. Part 60 (Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor). See 2 C.F.R. Part 200, Appendix II(C).
- b. Key Definitions.
  - i. Federally Assisted Construction Contract. The regulation at 41 C.F.R. § 60-1.3 defines a “federally assisted construction contract” as any agreement or modification thereof between any applicant and a person for construction work which is paid for in whole or in part with funds obtained from the Government or borrowed on the credit of the Government pursuant to any Federal program involving a grant, contract, loan, insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee, or any application or modification thereof approved by the Government for a grant, contract, loan, insurance, or guarantee under which the applicant itself participates in the construction work.
  - ii. Construction Work. The regulation at 41 C.F.R. § 60-1.3 defines “construction work” as the construction, rehabilitation, alteration, conversion, extension, demolition or repair of buildings, highways, or other changes or improvements to real property, including facilities providing utility services. The term also includes the supervision, inspection, and other onsite functions incidental to the actual construction.
- c. Applicability. This requirement applies to all FEMA grant and cooperative agreement programs.
- d. Required Language. The regulation at 41 C.F.R. Part 60-1.4(b) requires the insertion of the following contract clause.

During the performance of this contract, the contractor agrees as follows:

**(1)** The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:

Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

**(2)** The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

**(3)** The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.

**(4)** The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

**(5)** The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

**(6)** The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

**(7)** In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

**(8)** The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or

purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: *Provided*, That if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

#### **4. DAVIS-BACON ACT**

- a. Standard.** All prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. §§ 3141-3144 and 3146-3148) as supplemented by Department of Labor regulations at 29 C.F.R. Part 5 (Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction). See 2 C.F.R. Part 200, Appendix II(D). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week.
- b. Applicability.** The Davis-Bacon Act applies to the Emergency Management Preparedness Grant Program, Homeland Security Grant Program, Nonprofit Security Grant Program, Tribal Homeland Security Grant Program, Port Security Grant Program, and Transit Security Grant

Program.

- c. Requirements.** If applicable, the non-federal entity must do the following:
- i. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.
  - ii. Additionally, pursuant 2 C.F.R. Part 200, Appendix II(D), contracts subject to the Davis-Bacon Act, must also include a provision for compliance with the Copeland “Anti-Kickback” Act (40 U.S.C. § 3145), as supplemented by Department of Labor regulations at 29 C.F.R. Part 3 (Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States). The Copeland Anti- Kickback Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to FEMA.
  - iii. Include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”).

Suggested Language. The following provides a sample contract clause:

Compliance with the Davis-Bacon Act.

- a. All transactions regarding this contract shall be done in compliance with the Davis-Bacon Act (40 U.S.C. 3141- 3144, and 3146-3148) and the requirements of 29 C.F.R. pt. 5 as may be applicable. The contractor shall comply with 40 U.S.C. 3141-3144, and 3146-3148 and the requirements of 29 C.F.R. pt. 5 as applicable.
- b. Contractors are required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor.
- c. Additionally, contractors are required to pay wages not less than once a week.

**5. COPELAND ANTI-KICKBACK ACT**

- a. Standard. Recipient and subrecipient contracts must include a provision for compliance with the Copeland “Anti-Kickback” Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”).
- b. Applicability. This requirement applies to all contracts for construction or repair work above \$2,000 in situations where the Davis-Bacon Act also applies. It DOES NOT apply to the FEMA Public Assistance Program.

- c. Requirements.** If applicable, the non-federal entity must include a provision for compliance with the Copeland “Anti-Kickback” Act (40 U.S.C. § 3145), as supplemented by Department of Labor regulations at 29 C.F.R. Part 3 (Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States). Each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to FEMA. Additionally, in accordance with the regulation, each contractor and subcontractor must furnish each week a statement with respect to the wages paid each of its employees engaged in work covered by the Copeland Anti-Kickback Act and the Davis Bacon Act during the preceding weekly payroll period. The report shall be delivered by the contractor or subcontractor, within seven days after the regular payment date of the payroll period, to a representative of a Federal or State agency in charge at the site of the building or work.

Sample Language. The following provides a sample contract clause:

Compliance with the Copeland “Anti-Kickback” Act.

- a. Contractor. The contractor shall comply with 18 U.S.C. §874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3 as may be applicable, which are incorporated by reference into this contract.
- b. Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clause above and such other clauses as FEMA may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.
- c. Breach. A breach of the contract clauses above may be grounds for termination of the contract, and for debarment as a contractor and subcontractor as provided in 29 C.F.R. §5.12.”

**6. CONTRACT WORK HOURS AND SAFETY STANDARDSACT**

- a. Standard. Where applicable (see 40 U.S.C. §§ 3701-3708), all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. §§ 3702 and 3704, as supplemented by Department of Labor regulations at 29 C.F.R. Part 5. See 2 C.F.R. Part 200, Appendix II(E). Under 40 U.S.C. § 3702, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. Further, no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous.
- b. Applicability. This requirement applies to all FEMA contracts awarded by the non- federal entity in excess of \$100,000 under grant and cooperative agreement programs that involve the employment of mechanics or laborers. It is applicable to construction work. These requirements do not apply to the purchase of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of

intelligence.

- c. Suggested Language. The regulation at 29 C.F.R. § 5.5(b) provides contract clause language concerning compliance with the Contract Work Hours and Safety Standards Act. FEMA suggests including the following contract clause:

Compliance with the Contract Work Hours and Safety Standards Act.

(1) *Overtime requirements*. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) *Violation; liability for unpaid wages; liquidated damages*. In the event of any violation of the clause set forth in paragraph (b)(1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (b)(1) of this section, in the sum of \$27 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (b)(1) of this section.

(3) *Withholding for unpaid wages and liquidated damages*. The Federal agency or loan/grant recipient shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of this section.

(4) *Subcontracts*. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (b)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (b)(1) through (4) of this section.

## **7. RIGHTS TO INVENTIONS MADE UNDER A CONTRACT OR AGREEMENT**

- a. Standard. If the FEMA award meets the definition of “funding agreement” under 37 C.F.R. § 401.2(a) and the non-Federal entity wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the non-Federal entity must comply with the requirements of 37 C.F.R. Part 401 (Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements), and any

implementing regulations issued by FEMA. See 2 C.F.R. Part 200, Appendix II(F).

- b.** Applicability. This requirement applies to “*funding agreements*,” but it DOES NOT apply to the Public Assistance, Hazard Mitigation Grant Program, Fire Management Assistance Grant Program, Crisis Counseling Assistance and Training Grant Program, Disaster Case Management Grant Program, and Federal Assistance to Individuals and Households – Other Needs Assistance Grant Program, as FEMA awards under these programs do not meet the definition of “funding agreement.”
- c.** Funding Agreements Definition. The regulation at 37 C.F.R. § 401.2(a) defines “funding agreement” as any contract, grant, or cooperative agreement entered into between any Federal agency, other than the Tennessee Valley Authority, and any contractor for the performance of experimental, developmental, or research work funded in whole or in part by the Federal government. This term also includes any assignment, substitution of parties, or subcontract of any type entered into for the performance of experimental, developmental, or research work under a funding agreement as defined in the first sentence of this paragraph.

## **8. CLEAN AIR ACT AND THE FEDERAL WATER POLLUTION CONTROL ACT**

- a.** Standard. If applicable, contracts must contain a provision that requires the contractor to agree to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act (42 U.S.C. §§ 7401-7671q.) and the Federal Water Pollution Control Act as amended (33 U.S.C. §§ 1251-1387). Violations must be reported to FEMA and the Regional Office of the Environmental Protection Agency. See 2 C.F.R. Part 200, Appendix II(G).
- b.** Applicability. This requirement applies to contracts awarded by a non-federal entity of amounts in excess of \$150,000 under a federal grant.
- c.** Suggested Language. The following provides a sample contract clause.

### Clean Air Act

1. The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.
2. The contractor agrees to report each violation to the Participating Public Agency and understands and agrees that the Participating Public Agency will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
3. The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

### Federal Water Pollution Control Act

1. The contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as



amended, 33 U.S.C. 1251 et seq.

2. The contractor agrees to report each violation to the Participating Public Agency and understands and agrees that the Participating Public Agency will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
3. The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

## 9. DEBARMENT AND SUSPENSION

- a. Standard. Non-Federal entities and contractors are subject to the debarment and suspension regulations implementing Executive Order 12549, *Debarment and Suspension* (1986) and Executive Order 12689, *Debarment and Suspension* (1989) at 2 C.F.R. Part 180 and the Department of Homeland Security's regulations at 2 C.F.R. Part 3000 (Non-procurement Debarment and Suspension).
- b. Applicability. This requirement applies to all FEMA grant and cooperative agreement programs.
- c. Requirements.
  - i. These regulations restrict awards, subawards, and contracts with certain parties that are debarred, suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs and activities. See 2 C.F.R. Part 200, Appendix II(H); and 2 C.F.R. § 200.213. A contract award must not be made to parties listed in the SAM Exclusions. SAM Exclusions is the list maintained by the General Services Administration that contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549. SAM exclusions can be accessed at [www.sam.gov](http://www.sam.gov). See 2 C.F.R. § 180.530.
  - ii. In general, an "excluded" party cannot receive a Federal grant award or a contract within the meaning of a "covered transaction," to include subawards and subcontracts. This includes parties that receive Federal funding indirectly, such as contractors to recipients and subrecipients. The key to the exclusion is whether there is a "covered transaction," which is any non-procurement transaction (unless excepted) at either a "primary" or "secondary" tier. Although "covered transactions" do not include contracts awarded by the Federal Government for purposes of the non-procurement common rule and DHS's implementing regulations, it does include some contracts awarded by recipients and subrecipients.
  - iii. Specifically, a covered transaction includes the following contracts for goods or services:
    1. The contract is awarded by a recipient or subrecipient in the amount of at least \$25,000.
    2. The contract requires the approval of FEMA, regardless of amount.

3. The contract is for federally-required auditservices.
  4. A subcontract is also a covered transaction if it is awarded by the contractor of a recipient or subrecipient and requires either the approval of FEMA or is in excess of\$25,000.
- d. Suggested Language. The following provides a debarment and suspension clause. It incorporates an optional method of verifying that contractors are not excluded or disqualified.

#### Suspension and Debarment

- (1) This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such, the contractor is required to verify that none of the contractor's principals (defined at 2 C.F.R. § 180.995) or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).
- (2) The contractor must comply with 2 C.F.R. pt. 180, subpart C and2 C.F.R. pt. 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.
- (3) This certification is a material representation of fact relied upon by the Participating Public Agency. If it is later determined that the contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the Participating Public Agency, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.
- (4) The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

## **10. BYRD ANTI-LOBBYING AMENDMENT**

- a. Standard. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. § 1352. FEMA's regulation at 44 C.F.R. Part 18 implements the requirements of 31 U.S.C. § 1352 and provides, in Appendix A to Part 18, a copy of the certification that is required to be completed by each entity as described in 31 U.S.C. § 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the Federal awarding agency.
- b. Applicability. This requirement applies to all FEMA grant and cooperative agreement programs. Contractors that apply or bid for a contract of \$100,000 or more under a federal grant must file the required certification. See 2 C.F.R. Part 200, Appendix II(I); 31 U.S.C. § 1352; and 44 C.F.R. Part 18.

c. Suggested Language.

Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352 (as amended)

Contractors who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the awarding agency.

- d. Required Certification. If applicable, contractors must sign and submit to the non-federal entity the following certification.

APPENDIX A, 44 C.F.R. PART 18 – CERTIFICATION REGARDING LOBBYING

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Contractor, CDW Government LLC, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. Chap. 38, Administrative Remedies for False Claims and Statements, apply to this certification and disclosure, if any.

David C Hutchins

Signature of Contractor's Authorized Official

David Hutchins, VP Strategic Programs

Name and Title of Contractor's Authorized Official

10/11/2022

Date

## 11. PROCUREMENT OF RECOVERED MATERIALS

- a. Standard. A non-Federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. See 2 C.F.R. Part 200, Appendix II(J); and 2 C.F.R. §200.322.
- b. Applicability. This requirement applies to all contracts awarded by a non- federal entity under FEMA grant and cooperative agreement programs.
- c. Requirements. The requirements of Section 6002 include procuring only items designated in guidelines of the EPA at 40 C.F.R. Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired by the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.
- d. Suggested Language.
  - i. In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired—
    1. Competitively within a timeframe providing for compliance with the contract performance schedule;
    2. Meeting contract performance requirements; or
    3. At a reasonable price.
  - ii. Information about this requirement, along with the list of EPA- designated items, is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.
  - iii. The Contractor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.”

## 12. DOMESTIC PREFERENCES FOR PROCUREMENTS

As appropriate, and to the extent consistent with law, CONTRACTOR should, to the greatest extent practicable under a federal award, provide a preference for the purchase, acquisition, or use of goods, products or materials produced in the United States. This includes, but is not limited to, iron, aluminum, steel, cement, and other manufactured products.

Applicability For purchases in support of FEMA declarations and awards issued on or after November 12, 2020, all FEMA recipients and subrecipients are required to include in all contracts and purchase orders for work or products a contract provision encouraging domestic preference for procurements.

Domestic Preference for Procurements As appropriate, and to the extent consistent with law, the contractor should, to the greatest extent practicable, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States. This includes, but is not limited to iron, aluminum, steel, cement, and other manufactured products. For purposes of this clause: Produced in the United States means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States. Manufactured products mean items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.”

## 13. ACCESS TO RECORDS

- a. Standard. All recipients, subrecipients, successors, transferees, and assignees must acknowledge and agree to comply with applicable provisions governing DHS access to records, accounts, documents, information, facilities, and staff. Recipients must give DHS/FEMA access to, and the right to examine and copy, records, accounts, and other documents and sources of information related to the federal financial assistance award and permit access to facilities, personnel, and other individuals and information as may be necessary, as required by DHS regulations *and* other applicable laws or program guidance. See DHS Standard Terms and Conditions: Version 8.1 (2018). Additionally, Section 1225 of the Disaster Recovery Reform Act of 2018 prohibits FEMA from providing reimbursement to any state, local, tribal, or territorial government, or private non-profit for activities made pursuant to a contract that purports to prohibit audits or internal reviews by the FEMA administrator or Comptroller General.

Access to Records. The following access to records requirements apply to this contract:

- i. The Contractor agrees to provide Participating Public Agency, the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.
- ii. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
- iii. The Contractor agrees to provide the FEMA Administrator or his authorized representatives access to construction or other work sites pertaining to the work being completed under the contract.
- iv. In compliance with the Disaster Recovery Act of 2018, the Participating Public Agency and the Contractor acknowledge and agree that no language in this contract is intended to prohibit audits or internal reviews by the FEMA Administrator or the Comptroller General of the United States.

## 14. CHANGES

- a. Standard. To be eligible for FEMA assistance under the non-Federal entity's FEMA grant or cooperative agreement, the cost of the change, modification, change order, or constructive change must be allowable, allocable, within the scope of its grant or cooperative agreement, and reasonable for the completion of project scope.
- b. Applicability. FEMA recommends, therefore, that a non-Federal entity include a changes clause in its contract that describes how, if at all, changes can be made by either party to alter the method, price, or schedule of the work without breaching the contract. The language of the clause may differ depending on the nature of the contract and the end-item procured.

## 15. DHS SEAL, LOGO, AND FLAGS

- a. Standard. Recipients must obtain permission prior to using the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials. See DHS Standard Terms and Conditions: Version 8.1 (2018).
- b. Applicability. FEMA recommends that all non-Federal entities place in their contracts a provision that a contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval.
- c. "The contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval.

## 16. COMPLIANCE WITH FEDERAL LAW, REGULATIONS, AND EXECUTIVE ORDERS

- a. Standard. The recipient and its contractors are required to comply with all Federal laws, regulations, and executive orders.
- b. Applicability. FEMA recommends that all non-Federal entities place into their contracts an acknowledgement that FEMA financial assistance will be used to fund the contract along with the requirement that the contractor will comply with all applicable Federal law, regulations, executive orders, and FEMA policies, procedures, and directives.
- c. "This is an acknowledgement that FEMA financial assistance will be used to fund all or a portion of the contract. The contractor will comply with all applicable Federal law, regulations, executive orders, FEMA policies, procedures, and directives."

## 17. NO OBLIGATION BY FEDERAL GOVERNMENT

- a. Standard. FEMA is not a party to any transaction between the recipient and its contractor. FEMA is not subject to any obligations or liable to any party for any matter relating to the contract.
- b. Applicability. FEMA recommends that the non-Federal entity include a provision in its contract that states that the Federal Government is not a party to the contract and is not subject to any obligations or liabilities to the non-Federal entity, contractor, or any other party pertaining to any matter resulting from the contract.
- c. "The Federal Government is not a party to this contract and is not subject to any obligations or liabilities to the non-Federal entity, contractor, or any other party pertaining to any matter resulting from the contract."

## 18. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS

- a. Standard. Recipients must comply with the requirements of The False Claims Act (31 U.S.C. §§ 3729-3733) which prohibits the submission of false or fraudulent claims for payment to the federal government. See DHS Standard Terms and Conditions: Version 8.1 (2018); and 31 U.S.C. §§ 3801-3812, which details the administrative remedies for false claims and statements made. The non-Federal entity must include a provision in its contract that the contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to its actions pertaining to the contract.
- b. Applicability. FEMA recommends that the non-Federal entity include a provision in its contract that the contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to its actions pertaining to the contract.
- c. "The Contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the Contractor's actions pertaining to this contract."

**Offeror agrees to comply with all terms and conditions outlined in the FEMA Special Conditions section of this solicitation.**

Offeror's Name: CDW Government LLC

Address, City, State, and Zip Code:  
230 N Milwaukee Ave, Vernon Hills, IL 60061

Phone Number: 847-968-9782 Fax Number: 847-465-6800

Printed Name and Title of Authorized Representative:  
David Hutchins, VP Strategic Programs

Email Address: david.hutchins@CDWG.com

Signature of Authorized Representative: *David C Hutchins*

Date 10/11/2022



**Exhibit G**  
**New Jersey Business Compliance**

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**NEW JERSEY BUSINESS COMPLIANCE**

Suppliers intending to do business in the State of New Jersey must comply with policies and procedures required under New Jersey statutes. All offerors submitting proposals must complete the following forms specific to the State of New Jersey. Completed forms should be submitted with the offeror's response to the RFP. Failure to complete the New Jersey packet will impact OMNIA Partners' ability to promote the Master Agreement in the State of New Jersey.

DOC #1	Ownership Disclosure Form
DOC #2	Non-Collusion Affidavit
DOC #3	Affirmative Action Affidavit
DOC #4	Political Contribution Disclosure Form
DOC #5	Stockholder Disclosure Certification
DOC #6	Certification of Non-Involvement in Prohibited Activities in Iran
DOC #7	New Jersey Business Registration Certificate
DOC #8	EEOAA Evidence
DOC #9	MacBride Principals Form

New Jersey suppliers are required to comply with the following New Jersey statutes when applicable:

- all anti-discrimination laws, including those contained in N.J.S.A. 10:2-1 through N.J.S.A. 10:2-14, N.J.S.A. 10:5-1, and N.J.S.A. 10:5-31 through 10:5-38;
- Prevailing Wage Act, N.J.S.A. 34:11-56.26, for all contracts within the contemplation of the Act;
- Public Works Contractor Registration Act, N.J.S.A. 34:11-56.26; and
- Bid and Performance Security, as required by the applicable municipal or state statutes.

**STATEMENT OF OWNERSHIP DISCLOSURE**

N.J.S.A. 52:25-24.2 (P.L. 1977, c.33, as amended by P.L. 2016, c.43)

**This statement shall be completed, certified to, and included with all bid and proposal submissions. Failure to submit the required information is cause for automatic rejection of the bid or proposal.**

**Name of Organization:** CDW Government LLC

**Organization Address:** 230 N Milwaukee Ave, Vernon Hills, IL 60061

**Part I Check the box that represents the type of business organization:**

- Sole Proprietorship (skip Parts II and III, execute certification in Part IV)
- Non-Profit Corporation (skip Parts II and III, execute certification in Part IV)
- For-Profit Corporation (any type)  Limited Liability Company (LLC)
- Partnership       Limited Partnership       Limited Liability Partnership (LLP)
- Other (be specific): \_\_\_\_\_

**Part II**

The list below contains the names and addresses of all stockholders in the corporation who own 10 percent or more of its stock, of any class, or of all individual partners in the partnership who own a 10 percent or greater interest therein, or of all members in the limited liability company who own a 10 percent or greater interest therein, as the case may be. **(COMPLETE THE LIST BELOW IN THIS SECTION)**

**OR**

No one stockholder in the corporation owns 10 percent or more of its stock, of any class, or no individual partner in the partnership owns a 10 percent or greater interest therein, or no member in the limited liability company owns a 10 percent or greater interest therein, as the case may be. **(SKIP TO PART IV)**

(Please attach additional sheets if more space is needed):

Name of Individual or Business Entity	Home Address (for Individuals) or Business Address

**Part III DISCLOSURE OF 10% OR GREATER OWNERSHIP IN THE STOCKHOLDERS, PARTNERS OR LLC MEMBERS LISTED IN PART II**

If a bidder has a direct or indirect parent entity which is publicly traded, and any person holds a 10 percent or greater beneficial interest in the publicly traded parent entity as of the last annual federal Security and Exchange Commission (SEC) or foreign equivalent filing, ownership disclosure can be met by providing links to the website(s) containing the last annual filing(s) with the federal Securities and Exchange Commission (or foreign equivalent) that contain the name and address of each person holding a 10% or greater beneficial interest in the publicly traded parent entity, along with the relevant page numbers of the filing(s) that contain the information on each such person. **Attach additional sheets if more space is needed.**

Website (URL) containing the last annual SEC (or foreign equivalent) filing	Page #'s

**Please list** the names and addresses of each stockholder, partner or member owning a 10 percent or greater interest in any corresponding corporation, partnership and/or limited liability company (LLC) listed in Part II **other than for any publicly traded parent entities referenced above.** The disclosure shall be continued until names and addresses of every noncorporate stockholder, and individual partner, and member exceeding the 10 percent ownership criteria established pursuant to N.J.S.A. 52:25-24.2 has been listed. **Attach additional sheets if more space is needed.**

Stockholder/Partner/Member and Corresponding Entity Listed in Part II	Home Address (for Individuals) or Business Address
N/A	

**Part IV Certification**

I, being duly sworn upon my oath, hereby represent that the foregoing information and any attachments thereto to the best of my knowledge are true and complete. I acknowledge: that I am authorized to execute this certification on behalf of the bidder/proposer; that the **<name of contracting unit>** is relying on the information contained herein and that I am under a continuing obligation from the date of this certification through the completion of any contracts with **<type of contracting unit>** to notify the **<type of contracting unit>** in writing of any changes to the information contained herein; that I am aware that it is a criminal offense to make a false statement or misrepresentation in this certification, and if I do so, I am subject to criminal prosecution under the law and that it will constitute a material breach of my agreement(s) with the, permitting the **<type of contracting unit>** to declare any contract(s) resulting from this certification void and unenforceable.

Full Name (Print):	David Hutchins	Title:	VP Strategic Programs
Signature:	<i>David C Hutchins</i>	Date:	10/11/2002

**NON-COLLUSION AFFIDAVIT**

<b>STANDARD BID DOCUMENT REFERENCE</b>	
	<b>Reference: VII-H</b>
Name of Form:	<b>NON-COLLUSION AFFIDAVIT</b>
Statutory Reference:	No specific statutory reference State Statutory Reference N.J.S.A. 52:34-15
Instructions Reference:	Statutory and Other Requirements VII-H
Description:	The Owner's use of this form is optional. It is used to ensure that the bidder has not participated in any collusion with any other bidder or Owner representative or otherwise taken any action in restraint of free and competitive bidding.

NON-COLLUSION AFFIDAVIT

State of Illinois
County of Lake

ss:

I, David Hutchins residing in Lincolnshire in the County of Lake and State of Illinois of full age, being duly sworn according to law on my oath depose and say that:

I am VP Strategic Programs of the firm of CDW Government LLC

the bidder making this Proposal for the bid Technology Product Solutions and Related Services entitled and that I executed the said proposal with full authority to do so that said bidder has not, directly or indirectly entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free, competitive bidding in connection with the above named project; and that all statements contained in said proposal and in this affidavit are true and correct, and made with full knowledge that the Cobb County and OMNIA Partners relies upon the truth of the statements contained in said Proposal and in the statements contained in this affidavit in awarding the contract for the said project.

I further warrant that no person or selling agency has been employed or retained to solicit or secure such contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except bona fide employees or bona fide established commercial or selling agencies maintained by CDW Government LLC.

Subscribed and sworn to

before me this day

David C Hutchins Signature

October 11, 2022

David Hutchins (Type or print name of affiant under signature)

Elizabeth Hilts Notary public of Connecticut

My Commission expires May 31, 2026

(Seal)



ELIZABETH HILTS NOTARY PUBLIC My Commission Expires May 31, 2026

**AFFIRMATIVE ACTION AFFIDAVIT  
(P.L. 1975, C.127)**

**Company Name:** CDW Government LLC  
**Street:** 230 N Milwaukee Ave  
**City, State, Zip Code:** Vernon Hills, IL 60061

**Proposal Certification:**

Indicate below company's compliance with New Jersey Affirmative Action regulations. Company's proposal will be accepted even if company is not in compliance at this time. No contract and/or purchase order may be issued, however, until all Affirmative Action requirements are met.

**Required Affirmative Action Evidence:**

Procurement, Professional & Service Contracts (Exhibit A)

Vendors must submit with proposal:

1. A photocopy of a valid letter that the contractor is operating under an existing Federally approved or sanctioned affirmative action program (good for one year from the date of the letter);

OR

2. A photocopy of a Certificate of Employee Information Report approval, issued in accordance with N.J.A.C. 17:27-4;

OR

3. A photocopy of an Employee Information Report (Form AA302) provided by the Division of Contract Compliance and Equal Employment Opportunity in Public Contracts and distributed to the public agency to be completed by the contractor in accordance with N.J.A.C. 17:27-4.

**Public Work – Over \$50,000 Total Project Cost:**

- A. No approved Federal or New Jersey Affirmative Action Plan. We will complete Report Form AA201. A project contract ID number will be assigned to your firm upon receipt of the completed Initial Project Workforce Report (AA201) for this contract.
- B. Approved Federal or New Jersey Plan – certificate enclosed

*I further certify that the statements and information contained herein, are complete and correct to the best of my knowledge and belief.*

10/11/2022

**Date**

*David C Hutchins* VP Strategic Programs  
**Authorized Signature and Title**

Certification 26158

**CERTIFICATE OF EMPLOYEE INFORMATION REPORT  
RENEWAL**

This is to certify that the contractor listed below has submitted an Employee Information Report pursuant to N.J.A.C. 17:27-1.1 et. seq. and the State Treasurer has approved said report. This approval will remain in effect for the period of **15-MAR-2020** to **15-MAR-2023**

**CDW GOVERNMENT, LLC  
200 N. MILWAUKEE AVENUE  
VERNON HILLS IL 60061**



*Elizabeth Maher Muoio*

ELIZABETH MAHER MUOIO  
State Treasurer

**P.L. 1995, c. 127 (N.J.A.C. 17:27)**  
**MANDATORY AFFIRMATIVE ACTION LANGUAGE**

**PROCUREMENT, PROFESSIONAL AND SERVICE**  
**CONTRACTS**

During the performance of this contract, the contractor agrees as follows:

The contractor or subcontractor, where applicable, will not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, ancestry, marital status, sex, affectional or sexual orientation. The contractor will take affirmative action to ensure that such applicants are recruited and employed, and that employees are treated during employment, without regard to their age, race, creed, color, national origin, ancestry, marital status, sex, affectional or sexual orientation. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Public Agency Compliance Officer setting forth provisions of this non-discrimination clause.

The contractor or subcontractor, where applicable will, in all solicitations or advertisement for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to age, race, creed, color, national origin, ancestry, marital status, sex, affectional or sexual orientation.

The contractor or subcontractor, where applicable, will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer advising the labor union or workers' representative of the contractor's commitments under this act and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

The contractor or subcontractor, where applicable, agrees to comply with any regulations promulgated by the Treasurer pursuant to P.L. 1975, c. 127, as amended and supplemented from time to time and the Americans with Disabilities Act.

The contractor or subcontractor agrees to attempt in good faith to employ minority and female workers trade consistent with the applicable county employment goal prescribed by N.J.A.C. 17:27-5.2 promulgated by the Treasurer pursuant to P.L. 1975, C.127, as amended and supplemented from time to time or in accordance with a binding determination of the applicable county employment goals determined by the Affirmative Action Office pursuant to N.J.A.C. 17:27-5.2 promulgated by the Treasurer pursuant to P.L. 1975, C.127, as amended and supplemented from time to time.

The contractor or subcontractor agrees to inform in writing appropriate recruitment agencies in the area, including employment agencies, placement bureaus, colleges, universities, labor unions, that it does not discriminate on the basis of age, creed, color, national origin, ancestry, marital status, sex, affectional or sexual orientation, and that it will discontinue the use of any recruitment agency which engages in direct or indirect discriminatory practices.

The contractor or subcontractor agrees to revise any of its testing procedures, if necessary, to assure that all personnel testing conforms with the principles of job-related testing, as established by the statutes and court decisions of the state of New Jersey and as established by applicable Federal law and applicable Federal court decisions.

The contractor or subcontractor agrees to review all procedures relating to transfer, upgrading, downgrading and lay-off to ensure that all such actions are taken without regard to age, creed, color, national origin, ancestry, marital status, sex, affectional or sexual orientation, and conform with the applicable employment goals, consistent with the statutes and court decisions of the State of New Jersey, and applicable Federal law and applicable Federal court decisions.

The contractor and its subcontractors shall furnish such reports or other documents to the Affirmative Action Office as may be requested by the office from time to time in order to carry out the purposes of these regulations, and public agencies shall furnish such information as may be requested by the Affirmative Action Office for conducting a compliance investigation pursuant to Subchapter 10 of the Administrative Code (NJAC 17:27).

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Signature of Procurement Agent



## C. 271 POLITICAL CONTRIBUTION DISCLOSURE FORM

### Public Agency Instructions

This page provides guidance to public agencies entering into contracts with business entities that are required to file Political Contribution Disclosure forms with the agency. **It is not intended to be provided to contractors.** What follows are instructions on the use of form local units can provide to contractors that are required to disclose political contributions pursuant to N.J.S.A. 19:44A-20.26 (P.L. 2005, c. 271, s.2). Additional information on the process is available in Local Finance Notice 2006-1 ([http://www.nj.gov/dca/divisions/dlgs/resources/lfns\\_2006.html](http://www.nj.gov/dca/divisions/dlgs/resources/lfns_2006.html)). Please refer back to these instructions for the appropriate links, as the Local Finance Notices include links that are no longer operational.

1. The disclosure is required for all contracts in excess of \$17,500 that are **not awarded** pursuant to a “fair and open” process (N.J.S.A. 19:44A-20.7).
2. Due to the potential length of some contractor submissions, the public agency should consider allowing data to be submitted in electronic form (i.e., spreadsheet, pdf file, etc.). Submissions must be kept with the contract documents or in an appropriate computer file and be available for public access. **The form is worded to accept this alternate submission.** The text should be amended if electronic submission will not be allowed.
3. The submission must be **received from the contractor and** on file at least 10 days prior to award of the contract. Resolutions of award should reflect that the disclosure has been received and is on file.
4. The contractor must disclose contributions made to candidate and party committees covering a wide range of public agencies, including all public agencies that have elected officials in the county of the public agency, state legislative positions, and various state entities. The Division of Local Government Services recommends that contractors be provided a list of the affected agencies. This will assist contractors in determining the campaign and political committees of the officials and candidates affected by the disclosure.
  - a. The Division has prepared model disclosure forms for each county. They can be downloaded from the “County PCD Forms” link on the Pay-to-Play web site at <http://www.nj.gov/dca/divisions/dlgs/programs/lpcl.html#12>. They will be updated from time-to-time as necessary.
  - b. A public agency using these forms **should edit them to properly reflect the correct legislative district(s)**. As the forms are county-based, **they list all legislative districts** in each county. **Districts that do not represent the public agency should be removed from the lists.**
  - c. Some contractors may find it easier to provide a single list that covers all contributions, regardless of the county. These submissions are appropriate and should be accepted.
  - d. The form may be used “as-is”, subject to edits as described herein.
  - e. The “Contractor Instructions” sheet is intended to be provided with the form. It is recommended that the Instructions and the form be printed on the same piece of paper. The form notes that the Instructions are printed on the back of the form; where that is not the case, the text should be edited accordingly.
  - f. The form is a Word document and can be edited to meet local needs, and posted for download on web sites, used as an e-mail attachment, or provided as a printed document.
5. It is recommended that the contractor also complete a “Stockholder Disclosure Certification.” This will assist the local unit in its obligation to ensure that contractor did not make any prohibited contributions to the committees listed on the Business Entity Disclosure Certification in the 12 months prior to the contract (See Local Finance Notice 2006-7 for additional information on this obligation at [http://www.nj.gov/dca/divisions/dlgs/resources/lfns\\_2006.html](http://www.nj.gov/dca/divisions/dlgs/resources/lfns_2006.html)). A sample Certification form is part of this package and the instruction to complete it is included in the Contractor Instructions. NOTE: This section is not applicable to Boards of Education.

## C. 271 POLITICAL CONTRIBUTION DISCLOSURE FORM

### Contractor Instructions

Business entities (contractors) receiving contracts from a public agency that are NOT awarded pursuant to a “fair and open” process (defined at N.J.S.A. 19:44A-20.7) are subject to the provisions of P.L. 2005, c. 271, s.2 (N.J.S.A. 19:44A-20.26). This law provides that 10 days prior to the award of such a contract, the contractor shall disclose contributions to:

- any State, county, or municipal committee of a political party
- any legislative leadership committee\*
- any continuing political committee (a.k.a., political action committee)
- any candidate committee of a candidate for, or holder of, an elective office:
  - of the public entity awarding the contract
  - of that county in which that public entity is located
  - of another public entity within that county
  - or of a legislative district in which that public entity is located or, when the public entity is a county, of any legislative district which includes all or part of the county

The disclosure must list reportable contributions to any of the committees that exceed \$300 per election cycle that were made during the 12 months prior to award of the contract. See N.J.S.A. 19:44A-8 and 19:44A-16 for more details on reportable contributions.

N.J.S.A. 19:44A-20.26 itemizes the parties from whom contributions must be disclosed when a business entity is not a natural person. This includes the following:

- individuals with an “interest” ownership or control of more than 10% of the profits or assets of a business entity or 10% of the stock in the case of a business entity that is a corporation for profit
- all principals, partners, officers, or directors of the business entity or their spouses
- any subsidiaries directly or indirectly controlled by the business entity
- IRS Code Section 527 New Jersey based organizations, directly or indirectly controlled by the business entity and filing as continuing political committees, (PACs).

When the business entity is a natural person, “a contribution by that person’s spouse or child, residing therewith, shall be deemed to be a contribution by the business entity.” [N.J.S.A. 19:44A-20.26(b)] The contributor must be listed on the disclosure.

Any business entity that fails to comply with the disclosure provisions shall be subject to a fine imposed by ELEC in an amount to be determined by the Commission which may be based upon the amount that the business entity failed to report.

The enclosed list of agencies is provided to assist the contractor in identifying those public agencies whose elected official and/or candidate campaign committees are affected by the disclosure requirement. It is the contractor’s responsibility to identify the specific committees to which contributions may have been made and need to be disclosed. The disclosed information may exceed the minimum requirement.

The enclosed form, a content-consistent facsimile, or an electronic data file containing the required details (along with a signed cover sheet) may be used as the contractor’s submission and is disclosable to the public under the Open Public Records Act.

The contractor must also complete the attached Stockholder Disclosure Certification. This will assist the agency in meeting its obligations under the law. **NOTE: This section does not apply to Board of Education contracts.**

\* N.J.S.A. 19:44A-3(s): “The term “legislative leadership committee” means a committee established, authorized to be established, or designated by the President of the Senate, the Minority Leader of the Senate, the Speaker of the General Assembly or the Minority Leader of the General Assembly pursuant to section 16 of P.L.1993, c.65 (C.19:44A-10.1) for the purpose of receiving contributions and making expenditures.”



**List of Agencies with Elected Officials Required for Political Contribution Disclosure**  
**N.J.S.A. 19:44A-20.26**

**County Name:**

State: Governor, and Legislative Leadership Committees

Legislative District #s:

State Senator and two members of the General Assembly per district.

County:

Freeholders

{County Executive}

County Clerk

Surrogate

Sheriff

Municipalities (Mayor and members of governing body, regardless of title):

**USERS SHOULD CREATE THEIR OWN FORM, OR DOWNLOAD  
FROM THE PAY TO PLAY SECTION OF THE DLGS WEBSITE A  
COUNTY-BASED, CUSTOMIZABLE FORM.**

**STOCKHOLDER DISCLOSURE CERTIFICATION**

**Name of Business:**

I certify that the list below contains the names and home addresses of all stockholders holding 10% or more of the issued and outstanding stock of the undersigned.

**OR**

I certify that no one stockholder owns 10% or more of the issued and outstanding stock of the undersigned.

**Check the box that represents the type of business organization:**

Partnership

Corporation

Sole Proprietorship

Limited Partnership

Limited Liability Corporation


Limited Liability Partnership

Subchapter S Corporation

**Sign and notarize the form below, and, if necessary, complete the stockholder list below.**

Stockholders:

Name:	Name:
Home Address:	Home Address:
Name:	Name:
Home Address:	Home Address:
Name:	Name:
Home Address:	Home Address:

Subscribed and sworn before me this <u>11<sup>th</sup></u> day of <u>October</u> , <u>2022</u> . (Notary Public) My Commission expires: May 31, 2026		<u>David C. Hutchins</u> (Affiant) David Hutchins, VP Strategic Programs (Print name & title of affiant) (Corporate Seal)
---	---	---

## Certification of Non-Involvement in Prohibited Activities in Iran

Pursuant to N.J.S.A. 52:32-58, Offerors must certify that neither the Offeror, nor any of its parents, subsidiaries, and/or affiliates (as defined in N.J.S.A. 52:32 – 56(e) (3)), is listed on the Department of the Treasury’s List of Persons or Entities Engaging in Prohibited Investment Activities in Iran and that neither is involved in any of the investment activities set forth in N.J.S.A. 52:32 – 56(f).

Offerors wishing to do business in New Jersey through this contract must fill out the Certification of Non-Involvement in Prohibited Activities in Iran here:

[http://www.state.nj.us/humanservices/dfd/info/standard/fdc/disclosure\\_investmentact.pdf](http://www.state.nj.us/humanservices/dfd/info/standard/fdc/disclosure_investmentact.pdf).

Offerors should submit the above form completed with their proposal.

This link does not work. CDW•G complies with this request and have included below an image from a recently submitted OMNIA proposal. We will readily fill out the correct form when the link is fixed.

STATE OF NEW JERSEY -- DIVISION OF PURCHASE AND PROPERTY DISCLOSURE OF INVESTMENT ACTIVITIES IN IRAN									
Quote Number: _____	Bidder / Offeror: _____								
<b>PART 1: CERTIFICATION</b> <b>BIDDERS MUST COMPLETE PART 1 BY CHECKING EITHER BOX.</b> <b>FAILURE TO CHECK ONE OF THE BOXES WILL RENDER THE PROPOSAL NON-RESPONSIVE.</b>									
<small>Pursuant to Public Law 2012, c. 25, any person or entity that submits a bid or proposal or otherwise proposes to enter into or renew a contract must complete the certification below to attest, under penalty of perjury, that neither the person or entity, nor any of its parents, subsidiaries, or affiliates, is identified on the Department of Treasury's Chapter 25 list as a person or entity engaging in investment activities in Iran. The Chapter 25 list is found on the Division's website at <a href="http://www.state.nj.us/easuy/purchasepdf/Chapter25List.pdf">http://www.state.nj.us/easuy/purchasepdf/Chapter25List.pdf</a>. Bidders must review this list prior to completing the below certification. Failure to complete the certification will render a bidder's proposal non-responsive. If the Director finds a person or entity to be in violation of law, s/he shall take action as may be appropriate and provided by law, rule or contract, including but not limited to, imposing sanctions, seeking compliance, recovering damages, declaring the party in default and seeking debarment or suspension of the party.</small>									
<b>PLEASE CHECK THE APPROPRIATE BOX:</b>									
<input checked="" type="checkbox"/> I certify, pursuant to Public Law 2012, c. 25, that neither the bidder listed above nor any of the bidder's parents, subsidiaries, or affiliates is listed on the N.J. Department of the Treasury's list of entities determined to be engaged in prohibited activities in Iran pursuant to P.L. 2012, c. 25 ("Chapter 25 List"). I further certify that I am the person listed above, or I am an officer or representative of the entity listed above and am authorized to make this certification on its behalf. I will skip Part 2 and sign and complete the Certification below.									
OR									
<input type="checkbox"/> I am unable to certify as above because the bidder and/or one or more of its parents, subsidiaries, or affiliates is listed on the Department's Chapter 25 list. I will provide a detailed, accurate and precise description of the activities in Part 2 below and sign and complete the Certification below. Failure to provide such will result in the proposal being rendered as non-responsive and appropriate penalties, fines and/or sanctions will be assessed as provided by law.									
<b>PART 2: PLEASE PROVIDE FURTHER INFORMATION RELATED TO INVESTMENT ACTIVITIES IN IRAN</b> You must provide a detailed, accurate and precise description of the activities of the bidding person/entity, or one of its parents, subsidiaries or affiliates, engaging in the investment activities in Iran outlined above by completing the boxes below.									
EACH BOX WILL PROMPT YOU TO PROVIDE INFORMATION RELATIVE TO THE ABOVE QUESTIONS. PLEASE PROVIDE THOROUGH ANSWERS TO EACH QUESTION. IF YOU NEED TO MAKE ADDITIONAL ENTRIES, CLICK THE "ADD AN ADDITIONAL ACTIVITIES ENTRY" BUTTON.									
<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%;">Name _____</td> <td style="width: 50%;">Relationship to Bidder/Offeror _____</td> </tr> <tr> <td colspan="2">Description of Activities _____</td> </tr> <tr> <td>Duration of Engagement _____</td> <td>Anticipated Cessation Date _____</td> </tr> <tr> <td>Bidder/Offeror Contact Name _____</td> <td>Contact Phone Number _____</td> </tr> </table>		Name _____	Relationship to Bidder/Offeror _____	Description of Activities _____		Duration of Engagement _____	Anticipated Cessation Date _____	Bidder/Offeror Contact Name _____	Contact Phone Number _____
Name _____	Relationship to Bidder/Offeror _____								
Description of Activities _____									
Duration of Engagement _____	Anticipated Cessation Date _____								
Bidder/Offeror Contact Name _____	Contact Phone Number _____								
<input type="button" value="ADD AN ADDITIONAL ACTIVITIES ENTRY"/>									
<small>Certification: I, being duly sworn upon my oath, hereby represent and state that the foregoing information and any attachments thereto to the best of my knowledge are true and complete. I attest that I am authorized to execute this certification on behalf of the above-referenced person or entity. I acknowledge that the State of New Jersey is relying on the information contained herein and thereby acknowledge that I am under a continuing obligation from the date of this certification through the completion of any contracts with the State to notify the State in writing of any changes to the answers of information contained herein. I acknowledge that I am aware that it is a criminal offense to make a false statement or misrepresentation in this certification, and if I do so, I recognize that I am subject to criminal prosecution under the law and that it will also constitute a material breach of my agreement(s) with the State of New Jersey and that the State at its option may declare any contract(s) resulting from this certification void and unenforceable.</small>									
Full Name (Print): <u>David Hutchins</u>	Signature: <u>David C Hutchins</u>								
Title: <u>VP, Strategic Programs</u>	Date: <u>4/29/2022</u>								
DPP Standard Forms Packet 11/2013									

**NEW JERSEY BUSINESS REGISTRATION CERTIFICATE  
(N.J.S.A. 52:32-44)**

Offerors wishing to do business in New Jersey must submit their State Division of Revenue issued Business Registration Certificate with their proposal here. Failure to do so will disqualify the Offeror from offering products or services in New Jersey through any resulting contract.

<https://www.njportal.com/DOR/BusinessRegistration/>

N.J. Department of Treasury - Division of Revenue, On-Line Inquiry



**STATE OF NEW JERSEY  
BUSINESS REGISTRATION CERTIFICATE**

<b>Taxpayer Name:</b>	CDW GOVERNMENT LLC
<b>Trade Name:</b>	
<b>Address:</b>	200 N MILWAUKEE AVE VERNON HILLS, IL 60061-1577
<b>Certificate Number:</b>	1561883
<b>Effective Date:</b>	May 10, 2010
<b>Date of Issuance:</b>	March 24, 2021

**For Office Use Only:**  
**20210324152645869**

**EEOAA EVIDENCE**

Equal Employment Opportunity/Affirmative Action  
Goods, Professional Services & General Service Projects

**EEO/AA Evidence**

Vendors are required to submit evidence of compliance with N.J.S.A. 10:5-31 et seq. and N.J.A.C. 17:27 in order to be considered a responsible vendor.

**One** of the following must be included with submission:

- Copy of Letter of Federal Approval
- Certificate of Employee Information Report
- Fully Executed Form AA302
- Fully Executed EEO-1 Report

See the guidelines at:

[https://www.state.nj.us/treasury/contract\\_compliance/documents/pdf/guidelines/pa.pdf](https://www.state.nj.us/treasury/contract_compliance/documents/pdf/guidelines/pa.pdf)

for further information.

I certify that my bid package includes the required evidence per the above list and State website.

Name: David Hutchins Title: VP Strategic Programs

Signature *David C Hutchins*

Date 10/11/2022



Certification 26158

**CERTIFICATE OF EMPLOYEE INFORMATION REPORT  
RENEWAL**

This is to certify that the contractor listed below has submitted an Employee Information Report pursuant to N.J.A.C. 17:27-1.1 et. seq. and the State Treasurer has approved said report. This approval will remain in effect for the period of ~~15-MAR-2020~~ to ~~15-MAR-2023~~

**CDW GOVERNMENT, LLC  
200 N. MILWAUKEE AVENUE  
VERNON HILLS IL 60061**



*Elizabeth Maher Muoio*

**ELIZABETH MAHER MUOIO  
State Treasurer**

DOC #9  
MACBRIDE-PRINCIPLES



STATE OF NEW JERSEY DEPARTMENT OF THE TREASURY  
DIVISION OF PURCHASE AND PROPERTY

33 WEST STATE STREET, P.O. BOX 230  
TRENTON, NEW JERSEY 08625-0230

MACBRIDE PRINCIPALS FORM

BID SOLICITATION #: 23-6692

VENDOR/BIDDER: CDW Government LLC

VENDOR'S/BIDDER'S REQUIREMENT  
TO PROVIDE A CERTIFICATION IN COMPLIANCE WITH THE MACBRIDE PRINCIPALS  
AND NORTHERN IRELAND ACT OF 1989

Pursuant to Public Law 1995, c. 134, a responsible Vendor/Bidder selected, after public bidding, by the Director of the Division of Purchase and Property, pursuant to N.J.S.A. 52:34-12, must complete the certification below by checking one of the two options listed below and signing where indicated. If a Vendor/Bidder that would otherwise be awarded a purchase, contract or agreement does not complete the certification, then the Director may determine, in accordance with applicable law and rules, that it is in the best interest of the State to award the purchase, contract or agreement to another Vendor/Bidder that has completed the certification and has submitted a bid within five (5) percent of the most advantageous bid. If the Director finds contractors to be in violation of the principals that are the subject of this law, he/she shall take such action as may be appropriate and provided by law, rule or contract, including but not limited to, imposing sanctions, seeking compliance, recovering damages, declaring the party in default and seeking debarment or suspension of the party.

I, the undersigned, on behalf the Vendor/Bidder, certify pursuant to N.J.S.A. 52:34-12.2 that:



**CHECK THE APPROPRIATE BOX**

The Vendor/Bidder has no business operations in Northern Ireland; or



**OR**

The Vendor/Bidder will take lawful steps in good faith to conduct any business operations it has in Northern Ireland in accordance with the MacBride principals of nondiscrimination in employment as set forth in section 2 of P.L. 1987, c. 177 (N.J.S.A. 52:18A-89.5) and in conformance with the United Kingdom's Fair Employment (Northern Ireland) Act of 1989, and permit independent monitoring of its compliance with those principals.

**CERTIFICATION**

I, the undersigned, certify that I am authorized to execute this certification on behalf of the Vendor/Bidder, that the foregoing information and any attachments hereto, to the best of my knowledge are true and complete. I acknowledge that the State of New Jersey is relying on the information contained herein, and that the Vendor/Bidder is under a continuing obligation from the date of this certification through the completion of any contract(s) with the State to notify the State in writing of any changes to the information contained herein; that I am aware that it is a criminal offense to make a false statement or misrepresentation in this certification. If I do so, I will be subject to criminal prosecution under the law, and it will constitute a material breach of **my** agreement(s) with the State, permitting the State to declare any contract(s) resulting from this certification to be void and unenforceable.

*David C Hutchins*

10/11/2022

Signature

Date

David Hutchins, VP Strategic Programs

Print Name and Title

## Appendix C: Addendums

See following pages for our signed Addendums



**COBB COUNTY  
Purchasing Department**

122 Waddell Street NE  
Marietta, Georgia 30060  
(770) 528-8400 • fax: (770) 528-8428  
purchasing@cobbcounty.org

Roger Ball  
Purchasing Director

**ADDENDUM No. 1**

**Sealed Bid # 23-6692  
Request for Proposals  
Technology Product Solutions and Related Services  
Cobb County Purchasing Department**

**Date: September 19, 2022**

Page 1 of 8

The following addendum hereby amends and/or modifies the Proposal Documents and specifications as originally issued for this project. All proposers are subject to the provisions of this Addendum.

This Addendum consists of:

- Minutes, Questions and Clarifications from Pre-Proposal Meeting held via Webex on September 14, 2022
- Sign-In Sheet(s) from Pre-Proposal Meeting
- Questions Submitted in Writing
- Attachment - Financial Ratio Evaluation Excel Spreadsheet

---

Receipt of addendum **MUST** be acknowledged in the submitted proposal. It is the Proposer's ultimate responsibility to ensure that they have all applicable addenda prior to bid submittal.

This acknowledgment form must be signed, dated, and included with your submitted proposal

CDW Government LLC  
\_\_\_\_\_  
Company Name

10/11/2022  
\_\_\_\_\_  
Date

*David C Hutchins*  
\_\_\_\_\_  
Signature

David Hutchins  
\_\_\_\_\_  
Please Print Name

**All bids must be received before 12:00 (noon) by the Bid Opening date. Bids shall be delivered to Cobb County Purchasing Department, 122 Waddell Street NE, Marietta, GA 30060.**



**COBB COUNTY  
Purchasing Department**

122 Waddell Street NE  
Marietta, Georgia 30060  
(770) 528-8400 • fax: (770) 528-8428  
purchasing@cobbcounty.org

Roger Ball  
Purchasing Director

**ADDENDUM No. 2**

**Sealed Bid # 23-6692  
Request for Proposals  
Technology Product Solutions and Related Services  
Cobb County Purchasing Department**

**Date: September 30, 2022**

Page 1 of 5

The following addendum hereby amends and/or modifies the Proposal Documents and specifications as originally issued for this project. All proposers are subject to the provisions of this Addendum.

This Addendum consists of:

- **Questions Submitted in Writing**

---

Receipt of addendum **MUST** be acknowledged in the submitted proposal. It is the Proposer's ultimate responsibility to ensure that they have all applicable addenda prior to bid submittal.

**This acknowledgment form must be signed, dated, and included with your submitted proposal**

CDW Government LLC  
\_\_\_\_\_  
Company Name

10/11/2022  
\_\_\_\_\_  
Date

*David C Hutchins*  
\_\_\_\_\_  
Signature

David Hutchins  
\_\_\_\_\_  
Please Print Name

**All bids must be received before 12:00 (noon) by the Bid Opening date. Bids shall be delivered to Cobb County Purchasing Department, 122 Waddell Street NE, Marietta, GA 30060.**



**COBB COUNTY  
Purchasing Department**

122 Waddell Street NE  
Marietta, Georgia 30060  
(770) 528-8400 • fax: (770) 528-8428  
purchasing@cobbcounty.org

Roger Ball  
Purchasing Director

**ADDENDUM No. 3**

**Sealed Bid # 23-6692  
Request for Proposals  
Technology Product Solutions and Related Services  
Cobb County Purchasing Department**

**Date: October 5, 2022**

Page 1 of 5

The following addendum hereby amends and/or modifies the Proposal Documents and specifications as originally issued for this project. All proposers are subject to the provisions of this Addendum.

This Addendum consists of:

- **Questions Submitted in Writing**

---

Receipt of addendum **MUST** be acknowledged in the submitted proposal. It is the Proposer's ultimate responsibility to ensure that they have all applicable addenda prior to bid submittal.

**This acknowledgment form must be signed, dated, and included with your submitted proposal**

CDW Government LLC  
\_\_\_\_\_  
Company Name

10/11/2022  
\_\_\_\_\_  
Date

*David C Hutchins*  
\_\_\_\_\_  
Signature

David Hutchins  
\_\_\_\_\_  
Please Print Name

**All bids must be received before 12:00 (noon) by the Bid Opening date. Bids shall be delivered to Cobb County Purchasing Department, 122 Waddell Street NE, Marietta, GA 30060.**

# Cobb County Purchasing Department

Sealed Bid # 23-6692

Request for Proposals

Technology Product Solutions and Related Services

Proposed Language for Negotiation

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## Appendix D: Exceptions

### I. Introductory Comment

CDW-G's proposed edits have been driven by the nuances between manufacturers and non-manufacturer resellers of hardware and service offerings such as CDW-G.

The below clauses and associated rationale attempt to convey those challenges and the inherent risks which are potentially subject to price contemplation in resulting offers. Thank you for the opportunity to provide the below feedback and potential future discussion on the below proposals. CDW-G appreciates the partnership with the County and the opportunity to earn additional business.

### II. OVERVIEW

#### Section – ADDITIONAL AGREEMENTS

End User License Agreement(s) or EULA(s) or Term of Service “TOS” are standard contract documents or terms or conditions governing a Participating Agency’s access to, use of, or deployment of certain software, [Cloud solutions](#), or services [the awarded vendor supplies hereunder, directly, or indirectly, and that a Participating Agency may be required to execute or agree to in connection with its use of the same.](#) Participating Agencies may negotiate EULAs or TOSs with the applicable awarded vendor, [Cloud solutions provider](#), or OEM software provider/publisher and/or service provider even if this solicitation is awarded to a distributor.

### III. Cobb County General Instructions for Proposers, Terms and Conditions

#### VII. Patent Indemnity

The contractor guarantees to hold the County, its agents, officers or employees harmless from liability of any nature or kind for use of any copyrighted or uncopyrighted composition, secret process, patented or unpatented invention, articles or appliances furnished or used in the performance of the contract, for which the contractor is ~~not~~ the patentee, assignee or licensee.

#### IX.G.i Notice Requirement

Each insurance policy required by this Contract ~~shall be endorsed to state that coverage~~ shall notify Owner in the event it is ~~be~~ suspended, voided, canceled, reduced in coverage or in limits ~~except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to Owner, in care of the Cobb County [insert department name and address].~~ Owner reserves the right to accept alternate notice terms and provisions provided they meet the minimum requirements under Georgia law.

**XIII. Contract** – CDW-G notes that the RFP did not contain a Cobb County Sample Contract. Any proposed items for negotiation are therefore reserved for post-award review.

© CDW Government LLC 2022 | 230 N. Milwaukee Ave. | Vernon Hills, IL 60061

To the extent allowable, all information and documents hereby submitted in response to the Request for Proposal/Quote (“RFP/RFQ”) furnished by Cobb County Purchasing are the Proprietary and Confidential property of CDW Government LLC (“CDW-G”).

# Cobb County Purchasing Department

Sealed Bid # 23-6692

Request for Proposals

Technology Product Solutions and Related Services

Proposed Language for Negotiation

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## XIV. Delivery Failures

Failure of a contractor to deliver within the time specified or within reasonable time as interpreted by the Purchasing Director, or failure to make replacements of rejected articles/services when so requested, immediately or as directed by the Purchasing Director, shall constitute authority for the Purchasing Director to purchase in the open market or rebid for articles/services of comparable grade to replace the articles/services rejected or not delivered. ~~On all such purchases, the contractor shall reimburse the County within a reasonable time specified by the Purchasing Director for any expense incurred in excess of contract prices, or the County shall have the right to deduct such an amount from monies owed the defaulting contractor. Alternatively, the County may penalize the contractor one percent (1%) per day for a period of up to ten (10) days for each day that delivery or replacement is late.~~ Should public necessity demand it, the County reserves the right to use or consume articles/services delivered which are substandard in quality, subject to an adjustment in price to be determined by the Purchasing Director.

## XVII. Default

The contract may be cancelled or annulled by the Purchasing Director in whole or in part by written notice of default to the contractor upon non-performance or violation of any contract term. An award may be made to the next highest rated responsive and responsible proposer, or articles specified may be purchased on the open market similar to those terminated or the County may issue a new Request for Proposal. In any event, the defaulting contractor ~~(or his surety) shall be liable to the County for costs to the County in excess of the defaulted contract prices; provided, however, that the contractor~~ shall continue the performance of this contract to the extent not terminated under the provisions of this clause. Failure of the contractor to deliver materials or services within the time stipulated on its proposal, unless extended in writing by the Purchasing Director, shall constitute contract default.

## XXVII. Indemnification

By submitting a Proposal, the Proposer hereby agrees to indemnify, defend and hold harmless the County, its departments, employees and the Board of Commissioners from and against any and all ~~finally adjudicated~~ claims, demands, liabilities, losses, costs or expenses, including attorneys' fees, due to liability to a third party or parties, for any loss due to bodily injury (including death), personal injury, and ~~tangible personal~~ property damage; ~~including but not limited to intellectual property claims,~~ arising directly ~~or indirectly~~ from the submission of the Proposal hereunder, but only to the extent such claims are caused by the negligence, recklessness or intentionally wrongful conduct of the Proposer or its agents, employees, associates, subcontractors or others working at the direction of Proposer. This indemnification obligation survives beyond the submission date of the Proposal and the dissolution or, to the extent allowed by law, the bankruptcy of the Proposer.

## XXVIII. Indemnification/Hold Harmless

The Contractor covenants and agrees to take and assume all responsibility for the Work rendered in connection with this Agreement. ~~The Contractor shall bear all losses and damages directly or indirectly resulting to it on account of the performance or character of the Work rendered pursuant to this Agreement.~~ To the fullest extent permitted by law, the Contractor shall defend, indemnify and hold harmless the County and the County's elected and appointed officials, officers, boards, commissions, employees, representatives, consultants, servants, agents and volunteers (individually an "Indemnified Party" and collectively the "Indemnified Parties") from and against any and all ~~third party~~ claims, suits, actions, judgments, injuries, damages, losses, expenses, and liability of any

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To the extent allowable, all information and documents hereby submitted in response to the Request for Proposal/Quote ("RFP/RFQ") furnished by Cobb County Purchasing are the Proprietary and Confidential property of CDW Government LLC ("CDW\*G").



## Response for National Cooperative Contract

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### 1.0 Scope of National Cooperative Contract

Capitalized terms not otherwise defined herein shall have the meanings given to them in the Master Agreement or in the Administration Agreement between Supplier and OMNIA Partners.

#### 1.1 Requirement

The Cobb County, GA (hereinafter defined and referred to as “Principal Procurement Agency”), on behalf of itself and the National Intergovernmental Purchasing Alliance Company, a Delaware corporation d/b/a OMNIA Partners, Public Sector (“OMNIA Partners”), is requesting proposals for Technology Product Solutions and Related Services. The intent of this Request for Proposal is any contract between Principal Procurement Agency and Supplier resulting from this Request for Proposal (“Master Agreement”) be made available to other public agencies nationally, including state and local governmental entities, public and private primary, secondary and higher education entities, non-profit entities, and agencies for the public benefit (“Public Agencies”), through OMNIA Partners’ cooperative purchasing program. The Principal Procurement Agency has executed a Principal Procurement Agency Certificate with OMNIA Partners, an example of which is included as Exhibit D, and has agreed to pursue the Master Agreement. Use of the Master Agreement by any Public Agency is preceded by their registration with OMNIA Partners as a Participating Public Agency in OMNIA Partners’ cooperative purchasing program. Registration with OMNIA Partners as a Participating Public Agency is accomplished by Public Agencies entering into a Master Intergovernmental Cooperative Purchasing Agreement, an example of which is attached as Exhibit C, and by using the Master Agreement, any such Participating Public Agency agrees that it is registered with OMNIA Partners, whether pursuant to the terms of the Master Intergovernmental Purchasing Cooperative Agreement or as otherwise agreed to. The terms and pricing established in the resulting Master Agreement between the Supplier and the Principal Procurement Agency will be the same as that available to Participating Public Agencies through OMNIA Partners.

All transactions, purchase orders, invoices, payments etc., will occur directly between the Supplier and each Participating Public Agency individually, and neither OMNIA Partners, any Principal Procurement Agency nor any Participating Public Agency, including their respective agents, directors, employees or representatives, shall be liable to Supplier for any acts, liabilities, damages, etc., incurred by any other Participating Public Agency. Supplier is responsible for knowing the tax laws in each state.

This Exhibit A defines the expectations for qualifying Suppliers based on OMNIA Partners’ requirements to market the resulting Master Agreement nationally to Public Agencies. Each section in this Exhibit A refers to the capabilities, requirements, obligations, and prohibitions of competing Suppliers on a national level in order to serve Participating Public Agencies through OMNIA Partners.

These requirements are incorporated into and are considered an integral part of this RFP. OMNIA Partners reserves the right to determine whether to make the Master Agreement awarded by the Principal Procurement Agency available to Participating Public Agencies, in its sole and absolute discretion, and any party submitting a response to this RFP acknowledges that any award by the Principal Procurement Agency does not obligate OMNIA Partners to make the Master Agreement available to Participating Procurement Agencies.

## **1.2 Marketing, Sales and Administrative Support**

During the term of the Master Agreement OMNIA Partners intends to provide marketing, sales, partnership development and administrative support for Supplier pursuant to this section that directly promotes the Supplier's products and services to Participating Public Agencies through multiple channels, each designed to promote specific products and services to Public Agencies on a national basis.

OMNIA Partners will assign the Supplier a Director of Partner Development who will serve as the main point of contact for the Supplier and will be responsible for managing the overall relationship between the Supplier and OMNIA Partners. The Director of Partner Development will work with the Supplier to develop a comprehensive strategy to promote the Master Agreement and will connect the Supplier with appropriate stakeholders within OMNIA Partners including, Sales, Marketing, Contracting, Training, and Operations & Support.

The OMNIA Partners marketing team will work in conjunction with Supplier to promote the Master Agreement to both existing Participating Public Agencies and prospective Public Agencies through channels that may include:

- A. Marketing collateral (print, electronic, email, presentations)
- B. Website
- C. Trade shows/conferences/meetings
- D. Advertising
- E. Social Media

The OMNIA Partners sales teams will work in conjunction with Supplier to promote the Master Agreement to both existing Participating Public Agencies and prospective Public Agencies through initiatives that may include:

- A. Individual sales calls
- B. Joint sales calls
- C. Communications/customer service
- D. Training sessions for Public Agency teams
- E. Training sessions for Supplier teams

The OMNIA Partners contracting teams will work in conjunction with Supplier to promote the Master Agreement to both existing Participating Public Agencies and prospective Public Agencies through:

- A. Serving as the subject matter expert for questions regarding joint powers authority and state statutes and regulations for cooperative purchasing
- B. Training sessions for Public Agency teams
- C. Training sessions for Supplier teams
- D. Regular business reviews to monitor program success
- E. General contract administration

Suppliers are required to pay an Administrative Fee of 3% of the greater of the Contract Sales under the Master Agreement and Guaranteed Contract Sales under this Request for Proposal. Supplier will be required to execute the OMNIA Partners Administration Agreement (Exhibit B).

### **1.3 Estimated Volume**

The dollar volume purchased under the Master Agreement is estimated to be approximately \$20 million annually. While no minimum volume is guaranteed to Supplier, the estimated annual volume is projected based on the current annual volumes among the Principal Procurement Agency, other Participating Public Agencies that are anticipated to utilize the resulting Master Agreement to be made available to them through OMNIA Partners, and volume growth into other Public Agencies through a coordinated marketing approach between Supplier and OMNIA Partners.

### **1.4 Award Basis**

The basis of any contract award resulting from this RFP made by Principal Procurement Agency will, at OMNIA Partners' option, be the basis of award on a national level through OMNIA Partners. If multiple Suppliers are awarded by Principal Procurement Agency under the Master Agreement, those same Suppliers will be required to extend the Master Agreement to Participating Public Agencies through OMNIA Partners. Utilization of the Master Agreement by Participating Public Agencies will be at the discretion of the individual Participating Public Agency. Certain terms of the Master Agreement specifically applicable to the Principal Procurement Agency (e.g., governing law) are subject to modification for each Participating Public Agency as Supplier and such Participating Public Agency may agree without being in conflict with the Master Agreement as a condition of the Participating Agency's purchase and not a modification of the Master Agreement applicable to all Participating Agencies. Participating Agencies may request to enter into a separate supplemental agreement to further define the level of service requirements over and above the minimum defined in the Master Agreement (e.g., governing law, invoice requirements, order requirements, specialized delivery, diversity requirements such as minority and woman owned businesses, historically underutilized business, etc.) ("Supplemental Agreement"). It shall be the

responsibility of the Supplier to comply, when applicable, with the prevailing wage legislation in effect in the jurisdiction of the Participating Agency. It shall further be the responsibility of the Supplier to monitor the prevailing wage rates as established by the appropriate department of labor for any increase in rates during the term of the Master Agreement and adjust wage rates accordingly. In instances where supplemental terms and conditions create additional risk and cost for Supplier, Supplier and Participating Public Agency may negotiate additional pricing above and beyond the stated contract not-to-exceed pricing so long as the added price is commensurate with the additional cost incurred by the Supplier. Any supplemental agreement developed as a result of the Master Agreement is exclusively between the Participating Agency and the Supplier (Contract Sales are reported to OMNIA Partners).

All signed Supplemental Agreements and purchase orders issued and accepted by the Supplier may survive expiration or termination of the Master Agreement. Participating Agencies' purchase orders may exceed the term of the Master Agreement if the purchase order is issued prior to the expiration of the Master Agreement. Supplier is responsible for reporting all sales and paying the applicable Administrative Fee for sales that use the Master Agreement as the basis for the purchase order, even though Master Agreement may have expired.

## **1.5 Objectives of Cooperative Program**

This RFP is intended to achieve the following objectives regarding availability through OMNIA Partners' cooperative program:

- A. Provide a comprehensive competitively solicited and awarded national agreement offering the Products covered by this solicitation to Participating Public Agencies;
- B. Establish the Master Agreement as the Supplier's primary go to market strategy to Public Agencies nationwide;
- C. Achieve cost savings for Supplier and Public Agencies through a single solicitation process that will reduce the Supplier's need to respond to multiple solicitations and Public Agencies need to conduct their own solicitation process;
- D. Combine the aggregate purchasing volumes of Participating Public Agencies to achieve cost effective pricing.

APPROVED AS TO FORM AND LEGALITY

\_\_\_\_\_  
CITY ATTORNEY'S OFFICE

**TRACY CITY COUNCIL**  
**RESOLUTION NO. \_\_\_\_\_**

---

**APPROVING A PROFESSIONAL SERVICES AGREEMENT WITH CDW  
GOVERNMENT LLC, UTILIZING OMNIA PARTNERS PURCHASING AGREEMENT  
FOR INFORMATION TECHNOLOGY SOLUTIONS AND SERVICES FOR A NOT TO  
EXCEED AMOUNT OF \$915,000 ANNUALLY FOR A TERM OF 4 YEARS**

**WHEREAS**, the City has a large computer infrastructure network that connects the various remote sites throughout the City, supported by the Innovation and Technology (IT) Department, including the Grand Theatre, Animal Shelter, Wastewater and Water Treatment Plants, the Airport, Transit Station, Community Center, etc; and

**WHEREAS**, the data center in City Hall is the hub of this network and uses approximately 200 network devices and software to support this equipment and this infrastructure allows users access to email, software applications (Word, Excel, Computer-Aided Dispatch, Records Management Systems, etc.), network drives, the Internet, private and public Wi-Fi, VoIP phones, and all other hosted services; and

**WHEREAS**, it is crucial to replace hardware at the end of its economic life and to consistently apply software updates and patches to guarantee dependable operations and maintain a robust level of cyber security to allow the network to function reliably and with the proper cyber security tools; and

**WHEREAS**, the scheduled replacements are determined based on the age and condition of the equipment, tracked through the City's IT asset inventory system, and the equipment refresh strategy follows a five-year life cycle on average, resulting in the replacement of approximately one fifth of the equipment each year and the annual replacement cost varies, particularly when high-value components like internet firewalls need refreshing; and

**WHEREAS**, OMNIA Partners (OMNIA) is a contracting agency that serves education and government agencies nationally through competitively bid and award contract and purchasing solutions and the City of Tracy is an established customer with OMNIA and is authorized to make purchases using the OMNIA cooperative purchasing agreements, per Tracy Municipal Code, section 2.20.220; and

**WHEREAS**, staff recommends utilizing the OMNIA cooperative purchasing agreement to enter into a procurement agreement with CDW Government LLC (Vendor) for the purchase of information technology solutions and services, as needed each year; and

**WHEREAS**, authorizing the use of the proposed cooperative agreement will allow the City to procure products and services in a timely manner and to take advantage of the significant discounts in this agreement, as well as create efficiencies for staff; and

**WHEREAS**, there is a purchasing agreement, referenced as Contract #23-6692-02 (Contract) between the Vendor and OMNIA, providing the scope of work and compensation for these services; and

**WHEREAS**, to ensure the City's additional needs are addressed, staff has prepared a separate Professional Services Agreement (PSA) with the Vendor which incorporates the Contract and also stipulates the additional terms negotiated between the City and the Vendor; and

**WHEREAS**, the City has routinely made purchases from the Vendor, and this is a vendor in good standing; and

**WHEREAS**, routine technology purchases have been approved by the City Council in the 2023-2024 Fiscal Year budget and will also be a part of the budget request for Fiscal Year 2024-2025; and now therefore be it

**RESOLVED:** That the City Council of the City of Tracy hereby approves the Professional agreement with CDW Government, LLC attached as Exhibit 1, which incorporates the key terms of the OMNIA Contract, for an annual not to exceed amount of \$915,000 and a four-year term.

\* \* \* \* \*

The foregoing Resolution 2024-\_\_\_\_\_ was adopted by the Tracy City Council on the 3<sup>rd</sup> day of September 2024 by the following vote:

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

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

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

Agenda Item 1.G

RECOMMENDATION

**Staff recommends that the City Council adopt a resolution (1) accepting offsite improvements for USLP Tracy Distribution Center as complete and assuming all future operations and maintenance, (2) authorizing the City Engineer to release improvement security in accordance with the Offsite Improvement Agreement, (3) authorizing the City Clerk to file the Notice of Completion with the San Joaquin County Recorder's Office, and (4) authorizing the City Clerk to accept (A) a fee dedication of land widening Grant Line Road (B) a public utility easement along Grant Line Road and (C) an emergency vehicle access easement, and file them with the San Joaquin County Recorder's Office.**

EXECUTIVE SUMMARY

This agenda item seeks approval of a resolution accepting offsite improvements for USLP Tracy Distribution Center constructed by USLP Tracy VI, LLC, a Delaware Limited Liability Company (Developer), as complete and the City to assume all future operations and maintenance. This also seeks authorization for the City Engineer to release improvement security in accordance with the Offsite Improvement Agreement and allow the City Clerk to file the Notice of Completion with the San Joaquin County Recorder's Office. Furthermore, this agenda item seeks authorization for the City Clerk to accept and file with the San Joaquin County Recorder Office the following property interests from the Developer: 1) a fee dedication for the widening of Grant Line Road; 2) a public utility easement along Grant Line Road; and 3) an emergency vehicle access easement.

BACKGROUND AND LEGISLATIVE HISTORY

Developer has completed public improvements for USLP Tracy Distribution Center, a 606,343 square foot industrial building (Project) located at 1269 E. Grant Line Road, within the Northeast Industrial (NEI) Service Area (see Attachment A for Project location), in accordance with the Offsite Improvement Agreement, project plans, and specifications. On September 18, 2018, the Development Services Director approved a Development Review Application D18-0023 for a new 606,343 square foot industrial building located at 1269 E. Grant Line Road subject to Conditions of Approval, which required, among other things, certain public improvements along Grant Line Road to be completed and dedications of property interests to be granted by the Developer.

On October 3, 2022, pursuant to Emergency Ordinance 1273, the City Manager approved an Offsite Improvement Agreement (OIA) with Developer for the USLP Tracy Distribution Center allowing construction of public improvements along the Grant Line Road frontage pursuant to the Conditions of Approval.

ANALYSIS

The OIA required Developer to perform the scope of work defined in the following plan set: “Tracy Distribution Center – Street Improvement Plans for Grant Line Road Tracy, California” consisting of 18 sheets, prepared by Kier & Wright Civil Engineers & Surveyors, Inc. of Livermore, California, the Work. Developer has completed all the Work required to be done in accordance with the Agreement 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 and City plans and specifications.

Bonds were provided by Developer as required by the Agreement in the amounts as follows:

<b>Bond Type</b>	<b>Amount</b>
Faithful Performance	\$ 766,203
Labor and Material	\$ 766,203
Warranty	\$ 76,620

Faithful Performance Bonds may be released upon acceptance of improvements by the City Council. Labor and Material Bonds may be released thirty (30) days after recordation of Notice of Completion as statute of limitations period expires in accordance with Civil Code §9356. The original Warranty Bond will be retained by the City’s Engineering Division, and shall be released one year after City Council acceptance of improvements and any warranty work is completed.

A total of 1,274 square feet, 0.03 acres, is being dedicated by Developer in fee interest, for the widening of Grant Line Road, as required by Condition of Approval C.5.1.h. Developer has submitted a fully executed and notarized grant deed for this purpose. Staff recommends City Council authorize the City Clerk to accept this grant deed and file with the San Joaquin County Recorder’s Office.

In addition to the fee interest, Developer has submitted two fully executed and notarized easement dedications:

1. A 10-foot wide Public Utility Easement along the full frontage of Grant Line Road as required by Condition of Approval C.5.2, and
2. An Emergency Vehicle Access Easement to provide City access to the storm drain system along the northern boundary of the property, as required by Condition of Approval C.5.1.d. (See Attachment B)

Staff recommends City Council authorize the City Clerk to accept the fee interest and these easements and file them with the San Joaquin County Recorder’s Office.



FISCAL IMPACT

All improvements were completed by the Developer in accordance with the Agreement and there was no fiscal impact to the City for the construction cost. Once accepted by the City, maintenance will be funded through the City’s Landscape Maintenance District. The estimated cost of the public improvements are as follows:

<b>Cost Breakdown:</b>	
Roadway Improvements	\$719,502
Storm Drain	\$ 7,073
Sanitary Sewer	\$ 5,129
Water	\$ 27,600
Landscaping	\$ 6,900
<b>Total</b>	<b>\$766,204</b>

Dedicated Land Value       \$ 3,000

PUBLIC OUTREACH / INTEREST

Not applicable.

COORDINATION

Project construction activities were coordinated with City of Tracy Operations and Utilities Department.

CEQA DETERMINATION

Prior to commencement of construction, an analysis of the project showed that there would be no significant on or off-site impacts as a result of this particular project which were not already discussed in the Northeast Industrial and General Plan EIRs. There was also no evidence of any significant impacts to occur off-site as a result of the project, as traffic, air quality, land use and other potential cumulative impacts have already been considered within the original environmental documentation. No new evidence of potentially significant effects had been identified as a result of this project.

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 City Council adopt a resolution (1) accepting offsite improvements for USLP Tracy Distribution Center as complete and assuming all future operations and maintenance, (2) authorizing the City Engineer to release improvement security in accordance with the Offsite Improvement Agreement, (3) authorizing the City Clerk to file the Notice of Completion with the San Joaquin County Recorder’s Office, and (4) authorizing the City Clerk to accept (A) a fee dedication of land widening Grant Line Road (B) a public utility easement along Grant Line Road and (C) an emergency vehicle access easement, and file them with the San Joaquin County Recorder’s Office.

Agenda Item 1.G  
September 3, 2024  
Page 4

Prepared by: Miguel Hernandez, Construction Project Manager

Reviewed by: Koosun Kim, PE, City Engineer  
Sara Castro, Finance Director  
Bijal M. Patel, City Attorney  
Karin Schnaider, Assistant City Manager

Approved by: Midori Lichtwardt, City Manager

ATTACHMENTS:

Attachment A – Project Location  
Attachment B – IPT4 Conditions of Approval

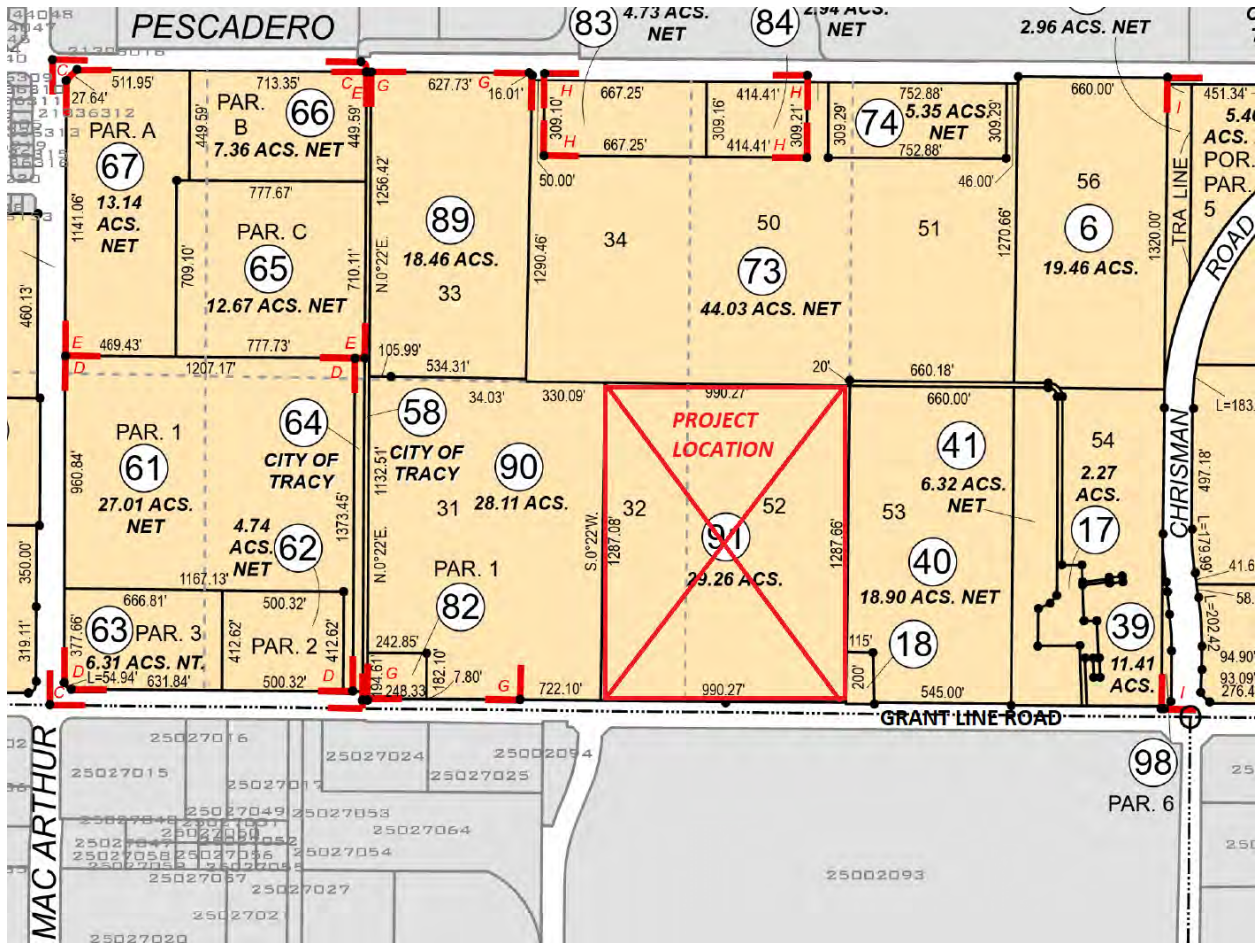


EXHIBIT 'A'  
LEGAL DESCRIPTION  
10' PUBLIC UTILITY EASEMENT

REAL PROPERTY SITUATE IN THE CITY OF TRACY, COUNTY OF SAN JOAQUIN, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

BEING A PORTION OF THAT PARCEL DESCRIBED IN THAT CERTAIN DOCUMENT RECORDED ON JUNE 14, 2019, AS DOCUMENT NUMBER 2019-062469, OFFICIAL RECORDS OF SAN JOAQUIN COUNTY, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

**BEGINNING** AT A POINT ON THE NORTHERLY RIGHT OF WAY LINE OF GRANT LINE ROAD, 118.00 FOOT WIDE, SAID POINT BEING THE SOUTHEAST CORNER OF SAID PARCEL;

THENCE ALONG THE SOUTH LINE OF SAID PARCEL, NORTH 89° 33' 43" WEST, 647.43 FEET;

THENCE NORTH 88° 37' 08" WEST, 303.82 FEET;

THENCE NORTH 89° 33' 43" WEST, 6.06 FEET;

THENCE NORTH 53° 51' 00" WEST, 27.56 FEET;

THENCE SOUTH 61° 07' 07" WEST, 12.20 FEET TO A POINT ON THE WEST LINE OF SAID PARCEL;

THENCE ALONG SAID WEST LINE, NORTH 0° 22' 04" EAST, 11.46 FEET;

THENCE NORTH 61° 07' 07" EAST, 12.98 FEET;

THENCE SOUTH 53° 51' 00" EAST, 30.72 FEET;

THENCE SOUTH 89° 33' 43" EAST, 2.92 FEET;

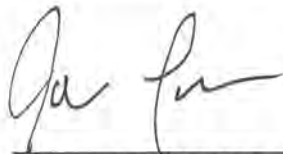
THENCE SOUTH 88° 37' 08" EAST, 303.82 FEET TO A POINT ON A LINE THAT IS PARALLEL WITH AND 10.00 FEET NORTHERLY OF SAID SOUTH LINE;

THENCE ALONG SAID PARALLEL LINE, SOUTH 89° 33' 43" EAST, 647.34 FEET TO A POINT ON THE EAST LINE OF SAID PARCEL;

THENCE ALONG SAID EAST LINE, SOUTH 0° 22' 04" WEST, 10.00 FEET TO THE **POINT OF BEGINNING**.

CONTAINING 9,974 SQUARE FEET OF LAND, MORE OR LESS.

KIER & WRIGHT CIVIL ENGINEERS & SURVEYORS, INC.

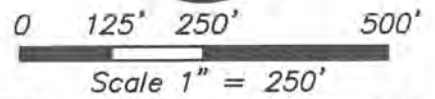


JOSEPH D. THOMPSON, P.L.S. 8121

12/12/23

DATE





S89°37'35"E 990.27'

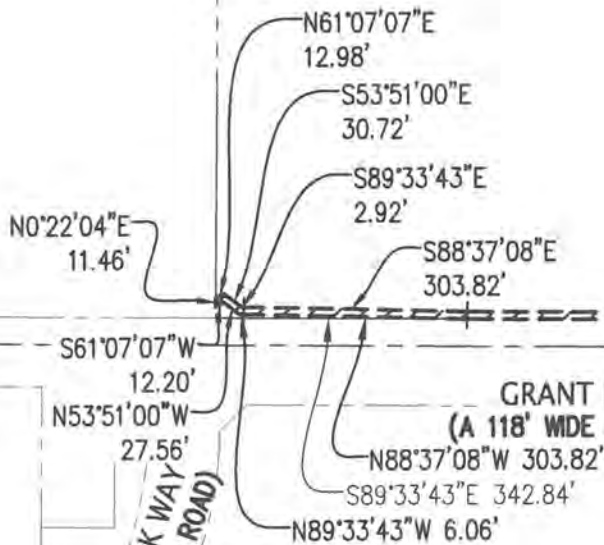
N0°22'04"E 1287.24'(T)

MERGED PARCEL  
2019-062469 O.R.



*ga fr*  
12/12/23

10' P.U.E.  
AREA = 9,974± S.F.



GRANT LINE ROAD  
(A 118' WIDE PUBLIC ROAD)

### LEGEND

OR	OFFICIAL RECORDS
POB	POINT OF BEGINNING
P.U.E.	PUBLIC UTILITY EASEMENT
S.F.	SQUARE FEET
(T)	TOTAL



**KIER & WRIGHT**  
**CIVIL ENGINEERS & SURVEYORS, INC.**  
 2850 Collier Canyon Road Phone (925) 245-8788  
 Livermore, California 94551 Fax (925) 245-8796  
 www.kierwright.com

## EXHIBIT "B"

### PUBLIC UTILITY EASEMENT

TRACY,

CALIFORNIA

DATE	JULY 2019
SCALE	1" = 250'
BY	BMM
JOB NO.	A17559-1
SHEET	1 OF 1

Name: PUE

North: 2098802.3866' East: 6306999.2840'

Segment #1 : Line

Course: N89°33'43"W Length: 647.43'  
North: 2098807.3365' East: 6306351.8729'

Segment #2 : Line

Course: N88°37'08"W Length: 303.82'  
North: 2098814.6594' East: 6306048.1411'

Segment #3 : Line

Course: N89°33'43"W Length: 6.06'  
North: 2098814.7057' East: 6306042.0813'

Segment #4 : Line

Course: N53°51'00"W Length: 27.56'  
North: 2098830.9634' East: 6306019.8273'

Segment #5 : Line

Course: S61°07'07"W Length: 12.20'  
North: 2098825.0708' East: 6306009.1447'

Segment #6 : Line

Course: N0°22'04"E Length: 11.46'  
North: 2098836.5306' East: 6306009.2183'

Segment #7 : Line

Course: N61°07'07"E Length: 12.98'  
North: 2098842.7999' East: 6306020.5838'

Segment #8 : Line

Course: S53°51'00"E Length: 30.72'  
North: 2098824.6781' East: 6306045.3895'

Segment #9 : Line

Course: S89°33'43"E      Length: 2.92'  
North: 2098824.6558'      East: 6306048.3094'

Segment #10 : Line

Course: S88°37'08"E      Length: 303.82'  
North: 2098817.3329'      East: 6306352.0411'

Segment #11 : Line

Course: S89°33'43"E      Length: 647.34'  
North: 2098812.3837'      East: 6306999.3622'

Segment #12 : Line

Course: S0°22'04"W      Length: 10.00'  
North: 2098802.3839'      East: 6306999.2980'

Perimeter: 2016.31'      Area: 9974.24 Sq. Ft.  
Error Closure:      0.0143      Course: S79°11'57"E  
Error North:      -0.00268      East: 0.01407

Precision 1: 141000.70

**EXHIBIT 'A'**  
**LEGAL DESCRIPTION**  
**30' EMERGENCY VEHICLE ACCESS EASEMENT**

REAL PROPERTY SITUATE IN THE CITY OF TRACY, COUNTY OF SAN JOAQUIN, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

BEING A PORTION OF THAT PARCEL DESCRIBED IN THAT CERTAIN DOCUMENT RECORDED ON JUNE 14, 2019, AS DOCUMENT NUMBER 2019-062469, OFFICIAL RECORDS OF SAN JOAQUIN COUNTY, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

**COMMENCING** AT THE NORTHWEST CORNER OF SAID PARCEL;

THENCE ALONG THE WEST LINE OF SAID PARCEL, SOUTH 0° 22' 04" WEST, 36.53 FEET TO THE **POINT OF BEGINNING**;

THENCE LEAVING SAID WEST LINE THE FOLLOWING FOUR (4) COURSES:

- 1) SOUTH 89° 37' 56" EAST, 29.90 FEET TO THE BEGINNING OF A CURVE TO THE LEFT,
- 2) ALONG THE ARC OF SAID CURVE HAVING A RADIUS OF 20.00 FEET, THROUGH A CENTRAL ANGLE OF 48° 54' 32" FOR AN ARC LENGTH OF 17.07 FEET TO A POINT OF REVERSE CURVATURE,
- 3) ALONG THE ARC OF A CURVE TO THE RIGHT HAVING A RADIUS OF 80.00 FEET, THROUGH A CENTRAL ANGLE OF 48° 56' 39" FOR AN ARC LENGTH OF 68.34 FEET, AND
- 4) SOUTH 89° 35' 51" EAST, 884.95 FEET TO A POINT ON THE EAST LINE OF SAID PARCEL;

THENCE ALONG SAID EAST LINE, SOUTH 0° 22' 04" WEST, 30.00 FEET;


THENCE LEAVING SAID EAST LINE THE FOLLOWING FOUR (4) COURSES:

- 1) NORTH 89° 35' 51" WEST, 884.97 FEET TO THE BEGINNING OF A CURVE TO THE LEFT,
- 2) ALONG THE ARC OF SAID CURVE HAVING A RADIUS OF 50.00 FEET, THROUGH A CENTRAL ANGLE OF 48° 56' 39" FOR AN ARC LENGTH OF 42.71 FEET TO A POINT OF REVERSE CURVATURE,
- 3) ALONG THE ARC OF A CURVE TO THE RIGHT HAVING A RADIUS OF 50.00 FEET, THROUGH A CENTRAL ANGLE OF 48° 54' 32" FOR AN ARC LENGTH OF 42.68 FEET, AND
- 4) NORTH 89° 37' 56" WEST, 29.90 FEET TO A POINT ON THE WEST LINE OF SAID PARCEL;

THENCE ALONG SAID WEST LINE, NORTH 0° 22' 04" EAST, 30.00 FEET TO THE **POINT OF BEGINNING**.

CONTAINING 30,008 SQUARE FEET OF LAND, MORE OR LESS.

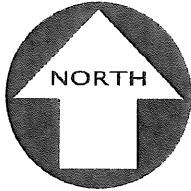
KIER & WRIGHT CIVIL ENGINEERS & SURVEYORS, INC.

  
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JOSEPH D. THOMPSON, P.L.S. 8121

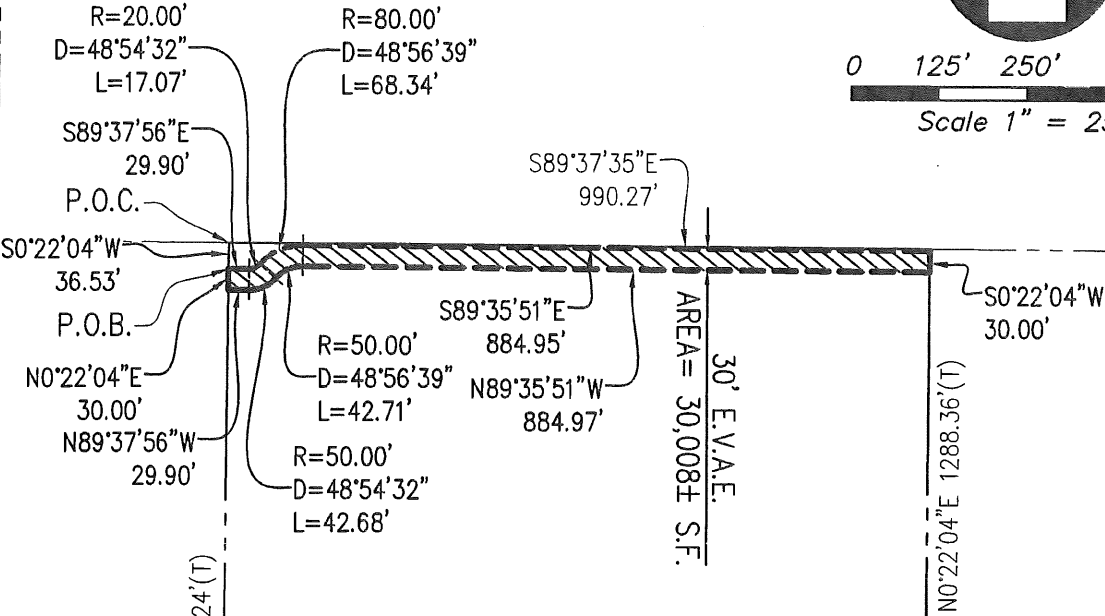
7/18/19  
\_\_\_\_\_  
DATE







0 125' 250' 500'  
Scale 1" = 250'



MERGED PARCEL  
2019-062469 O.R.

### LEGEND

ESMT	EASEMENT
E.V.A.E.	EMERGENCY VEHICLE ACCESS EASEMENT
OR	OFFICIAL RECORDS
PL	PROPERTY LINE
POC	POINT OF COMMENCING
POB	POINT OF BEGINNING
S.F.	SQUARE FEET
(T)	TOTAL



*Joe Thompson* 7/18/19

37' S89°33'43"E 990.27'

GRANT LINE ROAD  
(A 118' WIDE PUBLIC ROAD)

SKYLARK WAY  
(A PUBLIC ROAD)

81'

**KIER & WRIGHT**  
CIVIL ENGINEERS & SURVEYORS, INC.  
2850 Collier Canyon Road Phone (925) 245-8788  
Livermore, California 94551 Fax (925) 245-8796  
www.kierwright.com

## EXHIBIT "B" EMERGENCY VEHICLE ACCESS EASEMENT

TRACY, CALIFORNIA

DATE	JULY 2019
SCALE	1" = 250'
BY	BMM
JOB NO.	A17559-1
SHEET	1 OF 1

North: 2098410.0017' East: 6299555.6457'

Segment #1 : Line

Course: N0.220371E (dms) Length: 10.00'  
North: 2098420.0015' East: 6299555.7099'

Segment #2 : Line

Course: S89.334301E (dms) Length: 39.16'  
North: 2098419.7021' East: 6299594.8687'

Segment #3 : Line

Course: S88.370827E (dms) Length: 303.82'  
North: 2098412.3797' East: 6299898.6005'

Segment #4 : Line

Course: S89.334300E (dms) Length: 647.34'  
North: 2098407.4305' East: 6300545.9216'

Segment #5 : Line

Course: S0.220371W (dms) Length: 10.00'  
North: 2098397.4307' East: 6300545.8574'

Segment #6 : Line

Course: N89.334300W (dms) Length: 647.43'  
North: 2098402.3806' East: 6299898.4463'

Segment #7 : Line

Course: N88.370827W (dms) Length: 303.82'  
North: 2098409.7030' East: 6299594.7146'

Segment #8 : Line

Course: N89.334301W (dms) Length: 39.07'  
North: 2098410.0017' East: 6299555.6457'

Perimeter: 2000.64'      Area: 9903.18 Sq. Ft.  
Error Closure:            0.0000      Course: N0.000000E (dms)  
Error North:              0.00000      East: 0.00000

Precision 1: 2000640000.00

**EXHIBIT 'A'**  
**LEGAL DESCRIPTION**  
**RIGHT OF WAY DEDICATION**

REAL PROPERTY SITUATE IN THE CITY OF TRACY, COUNTY OF SAN JOAQUIN, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

BEING A PORTION OF THAT PARCEL DESCRIBED IN THAT CERTAIN DOCUMENT RECORDED ON JUNE 14, 2019, AS DOCUMENT NUMBER 2019-062469, OFFICIAL RECORDS OF SAN JOAQUIN COUNTY, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

**BEGINNING** AT A POINT ON THE NORTHERLY RIGHT OF WAY LINE OF GRANT LINE ROAD, 118.00 FOOT WIDE, SAID POINT BEING THE SOUTHWEST CORNER OF SAID PARCEL;

THENCE ALONG THE WEST LINE OF SAID PARCEL, NORTH 0° 22' 04" EAST, 15.11 FEET

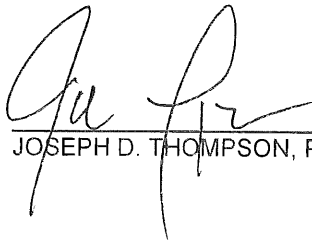
THENCE LEAVING SAID WEST LINE THE FOLLOWING THREE (3) COURSES:

- 1) NORTH 61° 07' 07" EAST, 12.20 FEET,
- 2) SOUTH 53° 51' 00" EAST, 27.56 FEET, AND
- 3) SOUTH 89° 37' 08" EAST, 303.82 FEET TO A POINT ON THE SOUTH LINE OF SAID PARCEL, ALSO BEING SAID NORTHERLY RIGHT OF WAY LINE OF GRANT LINE ROAD, 118.00 FOOT WIDE;

THENCE ALONG SAID RIGHT OF WAY LINE, NORTH 89° 33' 43" WEST, 342.84 FEET TO THE **POINT OF BEGINNING**.

CONTAINING 1,274 SQUARE FEET OF LAND, MORE OR LESS.

KIER & WRIGHT CIVIL ENGINEERS & SURVEYORS, INC.

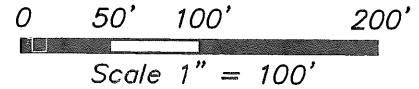
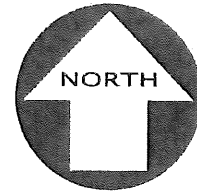
  
\_\_\_\_\_  
JOSEPH D. THOMPSON, P.L.S. 8121

7/18/19  
\_\_\_\_\_  
DATE

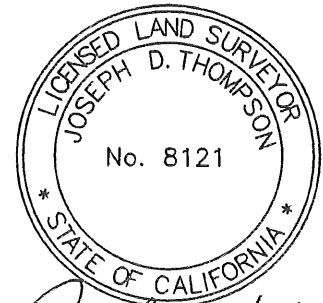


# LEGEND

OR	OFFICIAL RECORDS
POB	POINT OF BEGINNING
ROW	RIGHT OF WAY
S.F.	SQUARE FEET
(T)	TOTAL



MERGED PARCEL  
2019-062469 O.R.



*John Thompson* 7/18/19

N0°22'04"E 1287.24'(T)

ROW DEDICATION  
AREA= 1,274± S.F.

S53°51'00"E  
27.56'

N61°07'07"E  
12.20'

N0°22'04"E  
15.11'

P.O.B.

S89°33'43"E  
6.06'

S88°37'08"E 303.82'

N89°33'43"W 342.84'

N89°33'43"W 990.27'(T)

GRANT LINE ROAD  
(A 118' WIDE PUBLIC ROAD)

SKYLARK WAY  
(A PUBLIC ROAD)

81'



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## EXHIBIT "B" RIGHT OF WAY DEDICATION

TRACY,

CALIFORNIA

DATE	JULY 2019
SCALE	1" = 100'
BY	BMM
JOB NO.	A17559-1
SHEET	1 OF 1

North: 2098405.0018'      East: 6299555.6136'

Segment #1 : Line

Course: N0.220369E (dms)      Length: 15.11'  
North: 2098420.1115'      East: 6299555.7106'

Segment #2 : Line

Course: N61.070718E (dms)      Length: 12.20'  
North: 2098426.0041'      East: 6299566.3932'

Segment #3 : Line

Course: S53.505985E (dms)      Length: 27.56'  
North: 2098409.7464'      East: 6299588.6472'

Segment #4 : Line

Course: S89.334301E (dms)      Length: 6.06'  
North: 2098409.7000'      East: 6299594.7070'

Segment #5 : Line

Course: S88.370827E (dms)      Length: 303.82'  
North: 2098402.3776'      East: 6299898.4387'

Segment #6 : Line

Course: N89.334300W (dms)      Length: 342.84'  
North: 2098404.9988'      East: 6299555.6088'

Perimeter: 707.59'      Area: 1274.13 Sq. Ft.  
Error Closure:      0.0057      Course: S57.415887W (dms)  
Error North:      -0.00306      East: -0.00485

Precision 1: 124138.60

EXHIBIT B  
PAGE 1 OF 21

CITY OF TRACY  
DETERMINATION OF THE  
DEVELOPMENT SERVICES DIRECTOR

Application Number D18-0023

A determination of the Development Services Director approving a Development Review application for a new 606,343 square foot industrial building with related parking and landscape improvements located at 1269 E. Grant Line Road (Assessor's Parcel Numbers 213-070-19, 20, 28 and 29). The owner is Black Creek Group.

The following considerations were relevant in evaluating this application: Existing and planned infrastructure improvements, such as adjacent roadways, existing site improvements, storm drain systems, the project's visual impact on Grant Line Road, Pescadero Road, and Mac Arthur Drive as well as other adjacent properties, on-site circulation, and landscaping.

Staff has reviewed the application and determined that the following City regulations apply:

TMC Sec 10.08.3920 et seq.: Development Review  
TMC Sec 10.08.3440 et seq.: Off-Street Parking Requirements  
Northeast Industrial Specific Plan  
City of Tracy Design Goals and Standards

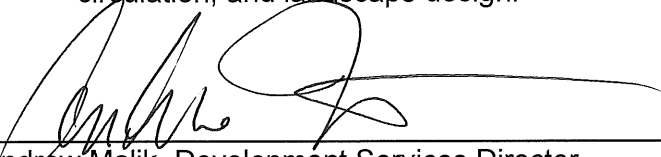
The Development Services Director has determined that the proposed project is consistent with the Northeast Industrial Specific Plan Environmental Impact Report (EIR), approved by the City Council in 1996, and the General Plan EIR approved by the City Council on February 1, 2011. Pursuant to CEQA Guidelines Section 15183, no additional environmental documentation is required. An analysis of the project shows that there will be no significant on or off-site impacts as a result of this particular project which were not already discussed in the Northeast Industrial and General Plan EIRs. There is also no evidence of any significant impacts to occur off-site as a result of the project, as traffic, air quality, land use and other potential cumulative impacts have already been considered within the original environmental documentation. No new evidence of potentially significant effects has been identified as a result of this project.

THE DEVELOPMENT SERVICES DIRECTOR, AFTER CONSIDERING ALL OF THE EVIDENCE PRESENTED, HEREBY APPROVES THE DEVELOPMENT REVIEW APPLICATION AS DESCRIBED IN THE PLANS RECEIVED BY THE DEVELOPMENT SERVICES DEPARTMENT ON AUGUST 6, 2018, SUBJECT TO THE ATTACHED CONDITIONS OF APPROVAL (EXHIBIT "1") AND BASED ON THE FOLLOWING FINDINGS:

Development Review Findings:

1. The proposal increases the quality of the project site and enhances the property in a manner that improves the property in relation to the surrounding area and the citizens of Tracy because it will enhance the property with a new, well-designed industrial building and related landscaping.

2. The proposed project, as conditioned, conforms to the regulations of the Northeast Industrial Specific Plan, the Tracy Municipal Code, the City of Tracy General Plan, the Citywide Design Goals and Standards, California Building and Fire Codes, and all other applicable City regulations, including land use, building design, off-street parking and circulation, and landscape design.



---

Andrew Malik, Development Services Director

9/18/18

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Date of Action



Exhibit 1 - Development and Engineering Services Department Conditions of Approval

**Conditions of Approval for IPT Building 4  
1207 E. Grant Line Road  
Application Number D18-0023  
September 18, 2018**

**A. General Provisions and Definitions**

1. These Conditions of Approval shall apply to the real property described as 1269 E. Grant Line Road, Assessor's Parcel Numbers 213-070-19, 20, 28 and 29, Application Number D18-0023, a new 606,343 square foot industrial building with related parking and landscaping (hereinafter "Project").
2. The following definitions shall apply to these Conditions of Approval:
  - a. "Applicant" means any person, or other legal entity, defined as a "Developer".
  - b. "City Engineer" means the City Engineer of the City of Tracy, or any other duly licensed engineer designated by the City Manager, or the Development Services Director, or the City Engineer to perform the duties set forth herein.
  - c. "City Regulations" means all written laws, rules, and policies established by the City, including those set forth in the City of Tracy General Plan, the Tracy Municipal Code, Northeast Industrial Concept Development Plan, ordinances, resolutions, policies, procedures, and the City's Design Documents (including the Standard Plans, Standard Specifications, Design Standards, and relevant Public Facility Master Plans).
  - d. "Development Services Director" means the Development Services Director of the City of Tracy, or any other person designated by the City Manager or the Development Services Director to perform the duties set forth herein.
  - e. "Conditions of Approval" shall mean the conditions of approval applicable to the 606,343 square foot industrial building and related improvements. Application Number D18-0023, located at 1269 E. Grant Line Road, Assessor's Parcel Numbers 213-070-19, 20, 28 and 29. The Conditions of Approval shall specifically include all Development Services Department, including Planning Division, Engineering, and Building Division and Fire Department conditions set forth herein.
  - f. "Project" means the real property located at 1269 E. Grant Line Road, Assessor's Parcel Numbers 213-070-19, 20, 28 and 29.

- g. "Developer" means any person, or other legal entity, who applies to the City to divide or cause to be divided real property within the Project boundaries, or who applies to the City to develop or improve any portion of the real property within the Project boundaries. The term "Developer" shall include all successors in interest.
3. The Developer shall comply with all laws (federal, state, and local) related to the development of real property within the Project, including, but not limited to: the Planning and Zoning Law (Government Code sections 65000, et seq.), the Subdivision Map Act (Government Code sections 66410, et seq.), the California Environmental Quality Act (Public Resources Code sections 21000, et seq., "CEQA"), and the Guidelines for California Environmental Quality Act (California Administrative Code, title 14, sections 1500, et seq., "CEQA Guidelines").
4. Unless specifically modified by these Conditions of Approval, the Developer shall comply with all City Regulations.
5. Pursuant to Government Code section 66020, including section 66020(d)(1), the City HEREBY NOTIFIES the Developer that the 90-day approval period (in which the Developer may protest the imposition of any fees, dedications, reservations, or other exactions imposed on this Project by these Conditions of Approval) has begun on the date of the conditional approval of this Project. If the Developer fails to file a protest within this 90-day period, complying with all of the requirements of Government Code section 66020, the Developer will be legally barred from later challenging any such fees, dedications, reservations or other exactions.

**B. Planning Division Conditions of Approval**

B1. Except as otherwise modified herein, the project shall be developed in accordance with the plans received by the Development Services Department on August 6, 2018. Prior to the issuance of any building permits, any deviations from the approved site plan or elevations shall be evaluated for substantial compliance with the approved plans, to the satisfaction of the Development Services Director. Should any deviations be determined not to be in substantial compliance with the approved plans, they shall be reviewed in a new Development Review application process.

B2. Prior to issuance of a building permit, a detailed landscape and irrigation plan showing the landscaping shall be submitted for approval by the Development Services Director. All landscape and irrigation improvements shall be designed and installed per the requirements of the City of Tracy Off-Street Parking Requirements, the Water Efficient Landscape Guidelines, and all other applicable City standards.

B3. Prior to the issuance of a building permit, an Agreement for Maintenance of Landscape and Irrigation Improvements shall be executed and financial security submitted to the Development Services Department. The Agreement shall ensure maintenance of the on-site landscape and irrigation improvements for a period of two years. Said security shall be equal to the actual material and labor costs for installation of the on-site landscape and irrigation improvements, or \$2.50 per square foot of on-site landscape area.

B4. All PG&E transformers, phone company boxes, trash enclosures or compactors, Fire Department connections, backflow preventers, irrigation controllers, and other on-site utilities, shall be vaulted or screened from view from any public right-of-way, behind structures or landscaping, to the satisfaction of the Development Services Director.

B5. All vents, gutters, downspouts, flashing, electrical conduit, etc. shall be internal to the buildings when feasible, and otherwise shall be painted to match the color of the adjacent surface or otherwise designed in harmony with the building exterior to the satisfaction of the Development Services Director.

B6. Prior to the issuance of a certificate of occupancy, bicycle parking spaces shall be provided in accordance with Tracy Municipal Code Section 10.08.3510 to the satisfaction of the Development Services Director.

B7. All exterior lighting shall be directed downward, onto the parking and maneuvering surface and away from the public rights-of-way.

B8. All improvements shall be consistent with the Tracy Municipal Code, Northeast Industrial Specific Plan, Standard Plans, and other applicable City Regulations.

B9. Where landscape planters are parallel and adjacent to the side of vehicular parking spaces, a 12" wide concrete curb shall be placed adjacent to the parking space to allow for pedestrian access to vehicles without damage to the landscape areas.

B10. Prior to final inspection of certificate of occupancy, on-site circulation signs shall be installed to the satisfaction of the Development Services Director.

B11. No roof mounted equipment, including, but not limited to, HVAC units, vents, fans, antennas, sky lights and dishes whether proposed as

part of this application, potential future equipment, or any portion thereof, shall be visible from Grant Line Road, Pescadero Road, Mac Arthur Drive, I-205 or any other public right-of-way.

**Engineering Division Conditions of Approval**

C.1. General Conditions

Developer shall comply with the applicable sections of approved documents and/or recommendations of the technical analyses/reports prepared for the Project listed as follows:

- 1) Council adopted Northeast Industrial (NEI) Specific Plan, latest edition;
- 2) Water Technical Memorandum by Black Water Consulting Engineers dated August 23, 2018;
- 3) Traffic Technical Memorandum by Kimley-Horn and Associates dated August 21, 2018;
- 4) Storm Drain Technical Memorandum by Storm Water Consulting dated September 7, 2018; and
- 5) Sanitary Sewer Technical Memorandum by Bennett Engineers dated September 10, 2018.

C.2. NOT USED

C.3. NOT USED

C.4. Grading Permit

All grading work (on-site and off-site) shall require a Grading Plan. All grading work shall be performed and completed in accordance with the recommendation(s) of the Project's Registered Geotechnical Engineer. The City will not accept a Grading Permit application for the Project until Developer provides all documents related to said Grading Permit required by the applicable City Regulations and these Conditions of Approval, to the satisfaction of the City Engineer, including, but not limited to, the following:

- C.4.1 Developer has completed all requirements set forth in this section.
- C.4.2 Developer has obtained the approval (i.e. recorded easements for slopes, drainage, utilities, access, parking, etc.) of all other public agencies and/or private entities with jurisdiction over the required public and/or private facilities and/or property. Written permission from PG&E or affected owner(s) will be required to be submitted to the City prior to the issuance of the Grading Permit.
- C.4.3 Developer has obtained a demolition permit to remove any existing structure located within the project's limits.
- C.4.4 All existing on-site water well(s), septic system(s), and leech field(s), if any, shall be abandoned or removed in accordance with the City and San Joaquin

County requirements. Developer shall be responsible for all costs associated with the abandonment or removal of the existing well(s), septic system(s), and leech field(s) including the cost of permit(s) and inspection. Developer shall submit a copy of written approval(s) or permit(s) obtained from San Joaquin County regarding the removal and abandonment of any existing well(s), prior to the issuance of the Grading Permit.

- C.4.5 The Improvement Plans for all improvements to serve the Project (on-site and off-site) including the Grading and Drainage Plans shall be prepared in accordance with the City's Subdivision Ordinance (TMC Chapter 12.36), City Design Documents as defined in Title 12 of the TMC, and these Conditions of Approval.
- C.4.6 On-site Grading/Drainage Plans and Improvement Plans shall be prepared on a 24-inch x 36-inch size 4-millimeter thick polyester film (mylar). These plans shall use the City's Title Block. Improvement Plans shall be prepared under the supervision of, stamped and signed by a Registered Civil Engineer and Registered Geotechnical Engineer. Developer shall obtain all applicable signatures by City departments and outside agencies (where applicable) on the mylars including signatures by the Fire Marshal prior to submitting the mylars to Engineering Division for City Engineer's signature. Erosion control measures shall be implemented in accordance with the Improvement Plans approved by the City Engineer for all grading work. All grading work not completed before October 15 may be subject to additional requirements as applicable. Improvement Plans shall specify all proposed erosion control methods and construction details to be employed and specify materials to be used during and after the construction.
- C.4.7 Payment of the applicable Grading Permit fees which include grading plan checking and inspection fees, and other applicable fees as required by these Conditions of Approval.
- C.4.8 For Projects on property larger than one (1) acre: Prior to the issuance of the Grading Permit, Developer shall submit to the Utilities Department ([stephanie.hiestand@cityoftracy.org](mailto:stephanie.hiestand@cityoftracy.org)) one (1) electronic copy and one (1) hard copy of the Storm Water Pollution Prevention Plan (SWPPP) as submitted in Stormwater Multiple Applications and Reporting Tracker System (SMARTS) along with either a copy of the Notice of Intent (NOI) with the state-issued Wastewater Discharge Identification number (WDID) or a copy of the receipt for the NOI. After the completion of the Project, the Developer is responsible for filing the Notice of Termination (NOT) required by SWQCB, and shall provide the City, a copy of the completed Notice of Termination. Cost of preparing the SWPPP, NOI and NOT including the annual storm drainage fees and the filing fees of the NOI and NOT shall be paid by the Developer. Developer shall comply with all the requirements of the SWPPP, applicable Best Management Practices (BMPs) and the Stormwater Post-Construction Standards adopted by the City in 2015 and any subsequent amendment(s).

For Projects on property smaller than one (1) acre: Prior to the issuance of the Grading Permit, the Developer shall submit to the Utilities Department ([stephanie.hiestand@cityoftracy.org](mailto:stephanie.hiestand@cityoftracy.org)) one (1) electronic copy and 1 hard copy of the City of Tracy Erosion and Sediment Control Plan (ESCP) for approval.

Cost of preparing the ESCP including any annual storm drainage fees shall be paid by the Developer. Developer shall comply with all the requirements of the ESCP, applicable BMPs and the Post-Construction Stormwater Standards adopted by the City in 2015 and any subsequent amendment(s).

C.4.9 Developer shall provide a PDF copy of the Project's Geotechnical Report signed and stamped by a Registered Geotechnical Engineer. The technical report must include relevant information related to soil types and characteristics, soil bearing capacity, compaction recommendations, retaining wall recommendations, if necessary, paving recommendations, slope recommendations, and elevation of the highest observed groundwater level.

C.4.10 Minor Retaining – Developer shall use reinforced or engineered masonry blocks for retaining soil when the grade differential exceeds 12-inches. Developer will include construction details of these minor retaining walls with the on-site Grading and Drainage Plan. Developer may use slopes among the lots to address the grade differential but said slope shall not exceed a slope gradient of 3 (horizontal) to 1 (vertical) unless a California licensed geotechnical engineer signs and stamps a geotechnical report letter that supports a steeper slope gradient. Slope easements may be required and will be subject to approval by the City Engineer and if adjacent and affected property(s) owner(s) grants said easements.

Slopes are an acceptable option as a substitute to engineered retaining walls, where cuts or fills do not match existing ground or final grade with the adjacent property or public right of way, up to a maximum grade differential of two (2) feet, subject to approval by the City Engineer.

If required, slope easements will be recorded, prior to the issuance of the Grading Permit. The Developer shall be responsible to obtain and record slope easement(s) on private properties, where it is needed to protect private improvements constructed within and outside the Project, and a copy of the recorded easement document must be provided to the City, prior to the issuance of the Grading Permit.

Walls - Developer shall show proposed retaining walls and masonry walls on the on-site Grading and Drainage Plan. The Developer is required to submit improvement plans, construction details, and structural calculations for retaining walls and masonry walls to Building and Safety. Retaining wall and masonry wall design parameters will be included in the geotechnical report.

C.4.11 Developer shall provide a copy of the approved Incidental Take Minimization Measures (ITMM) habitat survey [San Joaquin County Multi-Species Habitat

Conservation & Open Space Plan (SJMSCP)] from San Joaquin Council of Governments (SJCOG).

- C.4.12 Developer shall provide a copy of the approved Air Impact Assessment (AIA) with an Indirect Source Review (ISR) from San Joaquin Valley Air Pollution Control District (SJVAPCD).
- C.4.13 Developer shall abandon or remove all existing irrigation structures, channels and pipes, if any, as directed by the City after coordination with the irrigation district, if the facilities are no longer required for irrigation purposes. If irrigation facilities including tile drains, if any, are required to remain to serve existing adjacent agricultural uses, the Developer will design, coordinate and construct required modifications to the facilities to the satisfaction of the affected agency and the City. Written permission from irrigation district or affected owner(s) will be required to be submitted to the City prior to the issuance of the Grading Permit. The cost of relocating and/or removing irrigation facilities and/or tile drains is the sole responsibility of the Developer.
- C.4.14 If the Project contains overhead utilities, the Developer shall underground existing overhead utilities such as electric, TV cable, telephone, and others. Each dry utility shall be installed at the location approved by the respective owner(s) of dry utility and the Developer shall coordinate such activities with each utility owner. All costs associated with the undergrounding shall be the sole responsibility of the Developer and no reimbursement will be due from the City. Developer shall submit undergrounding plans. Exempt from this condition is the high voltage power lines along the Project's northerly property line.
- C.4.15 If at any point during grading that the Developer, its contractor, its engineers, and their respective officials, employees, subcontractor, and/or subconsultant exposes/encounters/uncovers any archeological, historical, or other paleontological findings, the Developer shall address the findings as required per the General Plan Cultural Resource Policy and General Plan EIR; and subsequent Cultural Resource Policy or mitigation in any applicable environmental document.
- C.5. Improvement Agreement(s)

All construction activity involving public improvements will require a fully executed improvement agreement (Off-site, Subdivision, and/or Inspection). Any construction activity involving public improvements without a fully executed improvement agreement is prohibited. All public improvements shall be performed and completed in accordance with the recommendation(s) of the Project's Registered Civil Engineer. The City will not start writing any improvement agreement or schedule any improvement agreement to be approved by City Council for the Project until the Developer provides all documents related to said improvements required by the applicable City Regulations and these Conditions of Approval, to the satisfaction of the City Engineer, including, but not limited to, the following:

C.5.1. Off-site and/or Public Infrastructure Improvement Plans prepared on a 24-inch x 36-inch size 4-millimeter thick mylar that incorporate all requirements described in the documents described in these Conditions of Approval, the City's Design Documents as defined in Title 12 of the Tracy Municipal Code. Developer shall use the latest title block and, if necessary, contain a signature block for the Fire Marshal. Improvement Plans shall be prepared under the supervision of, and stamped and signed by a Registered Civil, Traffic, Electrical, Mechanical Engineer, and Registered Landscape Architect for the relevant work. Developer shall obtain all applicable signatures by City departments and outside agencies (where applicable) on the mylars including signatures by Fire Marshal to submitting the mylars to Engineering Division for City Engineer's signature. The improvement plans shall be prepared to specifically include, but not be limited to, the following items:

- C.5.1.a. All existing and proposed utilities such as domestic water line, irrigation service, fire service line, storm drain, and sanitary sewer, including the size and location of the pipes.
- C.5.1.b. All supporting engineering calculations, materials information or technical specifications, cost estimate, and technical reports. All improvement plans shall contain a note stating that the Developer (or Contractor) will be responsible to preserve and protect all existing survey monuments and other survey markers such as benchmarks.
- C.5.1.c. A PDF copy of the Project's Geotechnical/Soils Report, prepared or signed and stamped by a Registered Geotechnical Engineer. The technical report must include relevant information related to street pavement thickness, materials, compaction and other pertinent information.
- C.5.1.d. Storm Water - The Project's on-site storm water drainage connection to the City's storm water system shall be approved by the City Engineer. Drainage calculations for the sizing of the on-site storm drainage system. Improvement Plans to be submitted with the hydrology and storm water.

As required by Item No. 15, Section V on page 94 of the 2008 Design Standards, storm drain run-off will not cross lot lines. Generally, the storm drain release point is a location at the boundary of the Project adjacent to the public right-of-way where storm water leaves the Property during a storm event and the Property's on-site storm drainage system fails to function or is clogged. Developer has requested that their site grading be designed such that the Project's storm water during a 100-year storm event with a non-functioning storm drain system be contained entirely within their private on-site basin (and thus not have an overland release point). The storm drain system shall be designed and improved to the satisfaction of the City Engineer.



The Project's permanent storm drainage connection(s) shall be designed and constructed in accordance with City Regulations. The design of the permanent storm drainage connection shall be shown on the Grading and Drainage Plans with calculations for the sizing of the storm drain pipe(s), and shall comply with the applicable requirements of the City's storm water regulations adopted by the City Council in 2012 and any subsequent amendments.

Per the 2012 Storm Drainage Master Plan, this parcel is master planned to drain towards the east, but the Developer has requested that the project drain towards the west and directly into the Eastside Channel. The project will limit its storm water flow into the Eastside Channel to 2.24 cubic-feet per second at all times. Developer shall size its on-site storm drain basin and design a storm water pipe system to maintain this flow. This drainage scheme requires constructing a storm drain system on private property. Developer shall obtain a drainage easement and a temporary construction easement to facilitate construction. Developer shall also obtain an access and maintenance easement to facilitate maintaining this private storm drain system. Developer shall also install a flap gate as recommended by the Storm Water Technical Memorandum.

- C.5.1.e. Sanitary Sewer - It is the Developer's responsibility to design and construct the Project's permanent on-site sanitary sewer (sewer) improvements including the Project's sewer connection in accordance with the City's Design Standards, City Regulations and Standard Specifications. Sewer improvements shall include but not limited to, replacing asphalt concrete pavement, reconstructing curb, gutter and sidewalk, restoring pavement marking and striping, and other improvements that are disturbed as a result of installing the Project's permanent sewer connection. Developer shall submit improvement plans that include the design of the sewer line from the Property to the point of connection.

Project's sewer connection will be towards the southerly public right-of-way to Grant Line Road. Private on-site sewer easements are prohibited.

Developer is hereby notified that the City will not provide maintenance of the sewer lateral within the public right-of-way unless the sewer cleanout is located and constructed in conformance with Standard Plans. The City's responsibility to maintain on the sewer lateral is from the wye/onsite sewer manhole at the right-of-way line/property line/wye fitting to the point of connection with the sewer main.

Developer is hereby notified that the City has limited wastewater treatment capacity in the City's Wastewater Treatment Plant until current and future expansion capital improvement projects are completed and operational. As of January 2015, the City had an unused capacity of approximately 4,200 EDU's within its wastewater treatment plant available to new development within the City on a first come-first served basis via building permit issuances. These EDU's are currently available to serve the proposed project, but as other development projects within the City come forward and building permits are issued, this remaining capacity will be reduced. Only the issuance of building permits will guarantee sewer capacity.

- C.5.1.g. Water Distribution - Developer shall design and construct domestic and irrigation water service that comply with the City Regulations. Water line sizing, layout and looping requirements for this Project shall comply with City Regulations. During the construction of the Project, the Developer is responsible for providing water infrastructure (temporary or permanent) capable of delivering adequate fire flows and pressure appropriate to the various stages of construction and as approved by the Fire Marshal.

Interruption to the water supply to the existing businesses and other users will not be allowed to facilitate construction of improvements related to the Project. Developer shall be responsible for notifying business owner(s) and users, regarding construction work. The written notice, as approved by the City Engineer, shall be delivered to the affected residents or business owner(s) at least 72 hours before start of work. Prior to starting the work described in this section, the Developer shall submit a Work Plan acceptable to the City that demonstrates no interruptions to the water supply, and Traffic Control Plan to be used during the installation of the off-site water mains and connections.

The Project's water service connections shall use a remote-read (radio-read) master water meter (the water meter to be located within City's right-of-way) and a Reduced Pressure Type back-flow protection device in accordance with City Regulations. The domestic and irrigation water service connection(s) must be completed before the inspection of the building. The location of the meters shall be approved by the City Engineer.

After improvement acceptance, repair and maintenance of the water service from the water meter to the point of connection with the water distribution main in the street shall be the responsibility of the City. Water service repairs after the water meter is the responsibility of the Developer or individual lot owner(s).

Prior to improvement acceptance, repair and maintenance of all on-site water lines, laterals, sub-water meters, valves, fittings, fire hydrant and appurtenances shall be the responsibility of the Developer or the individual lot owner(s).

All costs associated with the installation of the Project's water connection(s) including the cost of removing and replacing asphalt concrete pavement, pavement marking and striping such as crosswalk lines and lane line markings on existing street or parking area(s) that may be disturbed with the installation of the permanent water connection(s), or domestic water service, and other improvements shall be paid by the Developer.

Fire Service Line(s) and Hydrant – Location and construction details of fire service line including fire hydrant(s) that are to serve the Project shall be approved by the Fire Marshal. Prior to the approval of the Improvement Plans by the City Engineer, the Developer shall obtain written approval from the Fire Marshal, for the design, location and construction details of the fire service connection to the Project, and for the location and spacing of fire hydrants that are to be installed or planned to serve the Project.

- C.5.1.h. Streets – All streets and utilities improvements within City right-of-way shall be designed and constructed in accordance with City Regulations, and City's Design Standards including the City's Facilities Master Plan for ~~storm drainage~~, roadways, wastewater, and water as adopted, amended, and updated by the City, or as otherwise specifically approved by the City.

Developer shall use existing utility stubs. If the stubs are not present or additional utility connections are required, the pavement restoration shall conform to C.8.1 of these Conditions.

Developer shall construct its shared driveway with the property to the west as designed on August 29, 2018. Developer shall record an irrevocable offer of dedication to dedicate enough land to place the easterly curb return of the shared driveway within the right-of-way.

Developer shall construct a right-of-way section in conformance of the 2012 Roadway Master Plan. This portion of is master planned to be a 4-lane arterial with a 99-foot wide right-of-way width as outlined in Figure 4.15b of the 2012 Roadway Master Plan. Developer shall construct a 13-foot wide sidewalk and landscaped area with the sidewalk separated from the curb-gutter by 5-feet. Developer shall record an irrevocable offer of dedication to dedicate enough land so that the 13-foot wide sidewalk and landscaped area is within the City right-of-way.

Access for the easterly and middle driveway will be restricted to right-in and right-out turn movements. Developer is prohibited from modifying the median on Grant Line Road.

On the north side of Grant Line Road, Developer shall landscape and irrigate the existing area as per current adopted City landscape standards. Landscape and irrigation plans shall be prepared on a 24-inch x 36-inch size 4-millimeter thick mylar that incorporate all requirements described in the documents described in these Conditions of Approval, the City's Design Documents as defined in Title 12 of the Tracy Municipal Code. Developer shall use the latest title block. Said landscape and irrigation plan shall be prepared by a California licensed landscape architect. Developer can either protect-in-place the existing sidewalk and repair any cracked, settled, and/or damaged sidewalk or remove and replace the sidewalk so long as the replacement sidewalk is similar to the current sidewalk, i.e. similar width, meanders, etc. Developer shall also install street trees in the landscaped area between the existing meandering sidewalk and the curb and gutter. On the opposite side of the sidewalk, Developer shall install additional street trees, shrubs, ground cover, and other landscaping as required. The landscaping and irrigation shall conform to MWELo standards. If

recommended, Developer shall use structural soil if the street trees' well is narrower than five (5) feet wide. Developer shall also remove existing sign monument and its appurtenances, and any other existing items such as bollards, mailboxes, etc.

C.5.2. Joint Trench Plans and Composite Utility Plans, prepared on a 24-inch x 36-inch size 4-millimeter thick mylar for the installation of dry utilities such as electric, gas, TV cable, telephone, and others that will be located within the 10-foot wide P.U.E. to be installed to serve the Project. All private utility services to serve Project must be installed underground or relocated to be underground, and to be installed at the location approved by the respective owner(s) of the utilities from the street or an existing or proposed utility easement to the building(s). If necessary, the Developer shall dedicate 10-foot wide P.U.E. for access to these new utilities for re-installation, replacement, repair, and maintenance work to be performed by the respective utility owner(s) in the future.

C.5.3. Signed and stamped Engineer's Estimate that summarizes the cost of constructing all the public improvements shown on the Improvement Plans. The cost estimate shall show the cost of designing the public improvements.

Payment of applicable fees required by these Conditions of Approval and City Regulations, including but not limited to, plan checking, grading and encroachment permits and agreement processing, construction inspection, and testing fees. The engineering review fees will be calculated based on the fee rate adopted by the City Council on September 2, 2014, per Resolution 2014-141 and on May 16, 2017, per Resolution 2017-098. Developer shall submit payment in the form of a check for the aforementioned fees.

C.5.5. Traffic Control Plan - Prior to starting the work for any work within City's right-of-way, the Developer shall submit a Traffic Control Plan (TCP). TCP can be split among the different construction phases. TCP will show the method and type of construction signs to be used for regulating traffic at the work areas within these streets. TCP shall conform to the Manual on Uniform Traffic Control Devices as amended by the State of California, latest edition (MUTCD-CA). TCP shall be prepared under the supervision of, signed and stamped by a Registered Civil Engineer or Registered Traffic Engineer.

Access and Traffic Circulation to Existing Businesses/Residents - Developer shall take all steps necessary to plan and construct site improvements such that construction operations do not impact safety and access (including emergency vehicles) to the existing businesses and residents throughout the duration of construction. Developer shall coordinate with the owners and cooperate to minimize impacts on existing businesses. All costs of measures needed to provide safe and functional access shall be borne by the Developer.

C.5.6. No street trench shall be left open, uncovered, and/or unprotected during night hours and when the Developer's contractor is not performing

construction activities. Appropriate signs and barricades shall be installed on the street and on all trenches during such times. If the Developer or its contractor elects to use steel plates to cover street trenches, said steel plates will be skid-resistance, and shall be ramped on all sides. Ramps will be a minimum two-foot wide and will run the entire length of each side.

- C.5.7. If at any point during utility installation or construction in general that the Developer, its contractor, its engineers, and their respective officials, employees, subcontractor, and/or subconsultant exposes/encounters/uncovers any archeological, historical, or other paleontological findings, the Developer shall address the findings as required per the General Plan Cultural Resource Policy and General Plan EIR; and subsequent Cultural Resource Policy or mitigation in any applicable environmental document.

- C.5.8. Off-site Public Improvements, If Applicable - Prior to the Developer commencing construction of off-site public improvements, Developer shall possess a fully executed Off-site Improvement Agreement (OIA). Developer shall also complete all of the following requirements to the satisfaction of the City Engineer:

Developer has paid all required processing fees including plan check and inspection fees.

Improvement Security - Developer shall provide improvement security for all public facilities, as required by the Improvement Agreement. The form of the improvement security may be a bond, or other form in accordance with the Government Code, and the TMC. The amount of the improvement security shall be in accordance with Title 12 of the TMC.

Insurance – Developer shall provide written evidence of insurance coverage that meets the terms of the Improvement Agreement.

C.6. Building Permit

No building permit within the Project boundaries will be approved by the City until the Developer demonstrates, to the satisfaction of the City Engineer, compliance with all required Conditions of Approval, including, but not limited to, the following:

- C.6.1 Developer has completed all requirements set forth in Condition C.1, through C.5, above.
- C.6.2 Developer pays the applicable development impact fees as required in the TMC, these Conditions of Approval, and the fees outlined for the Northeast Industrial Area as approved by City Council on October 2, 2018, and City Regulations applicable at the time a building permit from the City is requested.

- C.6.3 Developer shall install an "Autos Only" sign at the auto (middle) driveway. Said sign will face towards the street and towards the building.

C.7 Acceptance of Public Improvements

Public improvements will not be considered for City Council's acceptance until after the Developer demonstrates to the reasonable satisfaction of the City Engineer, completion of the following:

- C.7.1 Developer has satisfied all the requirements set forth in these Conditions of Approval.
- C.7.2 Developer submitted the Storm water Treatment Facilities Maintenance Agreement (STFMA) to the Utilities Department.
- C.7.3 Developer has satisfactorily completed construction of all required/conditioned improvements. Unless specifically provided in these Conditions of Approval, or some other applicable City Regulations, the Developer shall use diligent and good faith efforts in taking all actions necessary to construct all public facilities required to serve the Project, and the Developer shall bear all costs related to construction of the public facilities (including all costs of design, construction, construction management, plan check, inspection, land acquisition, program implementation, and contingency).
- C.7.4 Certified "As-Built" Improvement Plans (or Record Drawings). Upon completion of the construction by the Developer, the City, at its sole discretion, temporarily release the original mylars of the Improvement Plans to the Developer so that the Developer will be able to document revisions to show the "As-Built" configuration of all improvements.
- C.7.6 Developer shall be responsible for any repairs or reconstruction of street pavement, curb, gutter and sidewalk and other public improvements along the frontage of the Project, if determined by the City Engineer to be in poor condition or damaged by construction activities related to the Project.
- C.7.7 Developer has completed the 90-day public landscaping maintenance period.
- C.7.8 Release of Improvement Security – Release of improvement security shall be in accordance with the requirements of Title 12 of the TMC. Monumentation Bond will be released to the Developer after City Council's acceptance of the public improvements and if the Developer meets the terms set in Section 66497(c) of the Subdivision Map Act. All survey monuments shown on the Final Map must be installed. Any altered, damaged, or destroyed survey monuments and/or benchmarks shall be re-established. Developer shall submit centerline tie sheets or a record of survey for the following: new public streets; re-established survey monuments, and/or benchmarks. If the Developer destroyed, altered, and/or reconstructed any existing curb returns, Developer shall also submit corner records. Any survey document will be submitted the City and to the San Joaquin County Surveyor to comply with California Business and Professions Code Section 8771(c). Said work shall be executed by a California licensed Land Surveyor at the Developer's sole expense.



C.8 Special Conditions

- C.8.1 When street cuts are made for the installation of utilities, the Developer shall conform to Section 3.14 of the 2008 Design Standards and is required install a 2-inch thick asphalt concrete (AC) overlay with reinforcing fabric at least 25-feet from all sides of each utility trench. A 2-inch deep grind on the existing AC pavement will be required where the AC overlay will be applied and shall be uniform thickness in order to maintain current pavement grades, cross and longitudinal slopes. This pavement repair requirement is when cuts/trenches are perpendicular and parallel to the street's direction.
- C.8.2 Nothing contained herein shall be construed to permit any violation of relevant ordinances and regulations of the City of Tracy, or other public agency having jurisdiction. This Condition of Approval does not preclude the City from requiring pertinent revisions and additional requirements to the improvement plans, prior to the City Engineer's signature on the improvement plans, and prior to issuance of Grading Permit, Encroachment Permit, Building Permit, if the City Engineer finds it necessary due to public health and safety reasons, and it is in the best interest of the City. The Developer shall bear all the cost for the inclusion, design, and implementations of such additions and requirements, without reimbursement or any payment from the City.
- C.8.3 If water is required for the project, the Developer shall obtain an account for the water service and register the water meter with the Finance Department. Developer shall pay all fees associated with obtaining the account number for the water service.
- C.8.4 Developer shall obtain an account for the water service to the Project and register the water meter with the Finance Department. Developer shall prepare and submit a map depicting the location of the water meter on a 8.5-inch X 11-inch sheet to Finance Department.
- C.8.5 Developer shall install on-site stop bars, stop legends, and keep clear legends as recommended by the Traffic Memorandum.

**Building Division Conditions of Approval**

D1. Prior to building permit application submittal, applicant to secure final approval from Nick Prichard at Giuliani & Kull to abandon and re-route irrigation line per Pescadero Irrigation District.

D2. Prior to building permit issuance, applicant must adjust or eliminate all interior lot lines per City of Tracy Municipal Code Title 12 sub-section 12.04.080- Lot line adjustment procedure.

D3. At time of building permit application submittal, applicant shall provide plans that demonstrate level interior floor landings per 2016 CBC 1010.1.5. There is a slight elevation change throughout the building at the finished floor level.

D4. Prior to building permit issuance, applicant must submit separate demolition permit applications for all structures being removed due to the construction of IPT Building #4 per 2016 CBC 105, as it is not exempt from permits.

D5. Prior to the issuance of demolition permits, applicant must submit and receive approval for the Asbestos Survey Report, Asbestos Notification Form, Demolition Permit Release Form and pay all appropriate fees per San Joaquin County Air Pollution District.

D6. Prior to construction of any structures, applicant must submit construction documents, plans, specifications and/or calculations to the Building Safety Division, which meet all requirements of Title 24 California Code of Regulations and City of Tracy Municipal Codes, as applicable.

D7. Prior to building permit issuance, applicant shall provide evidence of the abandonment of the gas line and easement running from the south side of the building to the north side of the building per PG&E standards and soils report.

D8. Prior to building occupancy, applicant shall provide evidence of removal and relocation of all overhead electrical transmission lines per PG&E standards.

**Fire Prevention Conditions of Approval**

E1. Prior to building permit approval, applicant shall provide plans demonstrating compliance with 2016 California Fire Code, Section 503 Fire Apparatus Access Roads; success to the EVAE shall be provided. Gate access to the adjoining properties to ensure continued access shall be provided.

E2. Prior to building permit issuance, applicant shall provide sprinkler plans and hydraulic calculations from a licensed fire protection company and a fire alarm to monitor the fire sprinkler system.

E3. Prior to building permit issuance, applicant shall provide plans for the fire control room that shall be accessible from the building exterior, in accordance with Section 509.3 of the 2016 California Fire Code, as amended by the Tracy Municipal Code, Chapter 9.06.060.

E4. A fire suppression and fire alarm system are required for this building. Prior to certificate of occupancy, an exterior annunciator panel shall be provided at the front of the building and notification device(s) shall be provided within the building to alert occupants of a problem within the building.

E5. Prior to building permit approval, applicant shall provide plans demonstrating that sectional valves will be provided at appropriate points within piping sections such that the number of fire protection connections between sectional valves does not exceed six, per NFPA 24, Section 6.6. Post indicator valves shall be used; they shall be located in readily accessible areas that are protected from vehicle impact. Sectional valves and the PIV are required to be outside of the building collapse zone.

E6. Prior to certificate of occupancy, emergency responder radio coverage will be required in accordance with Section 510 of the 2016 California Fire Code. Testing and installation may take place after the building construction but prior to final inspection.

TRACY CITY COUNCIL

RESOLUTION 2024-\_\_\_\_\_

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**(1) ACCEPTING OFFSITE IMPROVEMENTS FOR USLP TRACY DISTRIBUTION CENTER AS COMPLETE AND ASSUMING ALL FUTURE OPERATIONS AND MAINTENANCE, (2) AUTHORIZING THE CITY ENGINEER TO RELEASE IMPROVEMENT SECURITY IN ACCORDANCE WITH THE OFFSITE IMPROVEMENT AGREEMENT, (3) AUTHORIZING THE CITY CLERK TO FILE THE NOTICE OF COMPLETION WITH THE SAN JOAQUIN COUNTY RECORDER'S OFFICE, AND (4) AUTHORIZING THE CITY CLERK TO ACCEPT (A) A FEE DEDICATION OF LAND WIDENING GRANT LINE ROAD (B) A PUBLIC UTILITY EASEMENT ALONG GRANT LINE ROAD AND (C) AN EMERGENCY VEHICLE ACCESS EASEMENT, AND FILE THEM WITH THE SAN JOAQUIN COUNTY RECORDER'S OFFICE.**

**WHEREAS**, on September 18, 2018, the Development Services Director approved a Development Review Application D18-0023, by USLP Tracy VI, LLC, a Delaware Limited Liability Company (Developer), for a new 606,343 square foot industrial building located at 1269 E. Grant Line Road (Project), subject to Conditions of Approval which required, among other things, certain public improvements along Grant Line Road to be completed and dedications of property interests to be granted by the Developer; and

**WHEREAS**, on October 3, 2022, pursuant to Emergency Ordinance 1273, City Manager approved an Offsite Improvement Agreement (Agreement) with for the Project, allowing construction of public improvements along the Grant Line Road frontage; and

**WHEREAS**, Developer has completed all the work required to be done in accordance with the Agreement and has requested acceptance of the public improvements and the City Engineer has inspected the completed improvements and confirmed that they conform to the Agreement and City plans and specifications; and

**WHEREAS**, Developer furnished Faithful Performance, Labor and Materials, and Warranty Bonds assuring completion of the work; and

**WHEREAS**, Faithful Performance Bonds may be released upon acceptance of improvements by the City Council; and

**WHEREAS**, Labor and Material Bonds may be released thirty (30) days after recordation of Notice of Completion as statute of limitations period expires in accordance with Civil Code §9356. Warranty Bonds may be released one year after City Council acceptance of improvements and any warranty work is completed; and

**WHEREAS**, the estimated cost of the improvements are as follows:

**Cost Breakdown:**

Roadway Improvements	\$719,502
Storm Drain	\$ 7,073
Sanitary Sewer	\$ 5,129
Water	\$ 27,600
Landscaping	\$ 6,900
<b>Total</b>	<b>\$766,204</b>

**WHEREAS**, a total of 0.03 acre, valued at \$3,000, has been offered in fee dedication as public right-of-way for widening of Grant Line Road, as required in Conditions of Approval C.5.1.h; and

**WHEREAS**, a 10-foot-wide public utility easement along the Grant Line Road frontage has been offered by Developer, as required in Conditions of Approval C.5.2; and

**WHEREAS**, an emergency vehicle access easement along the northern boundary of the property to provide City access to storm drainage facilities has been offered by Developer as required in Conditions of Approval C.5.1.d; and

**WHEREAS**, once accepted by the City, maintenance will be funded through the City's Landscape Maintenance District; now, therefore, be it

**RESOLVED:** That the City Council of the City of Tracy hereby accepts the offsite improvements for USLP Tracy Distribution Center as complete and accepting future maintenance and repair of Grant Line Road; and be it

**FURTHER RESOLVED:** That the City Engineer may release the improvement security in accordance with the Offsite Improvement Agreement; and be it

**FURTHER RESOLVED:** That City Council authorizes the City Clerk to file the Notice of Completion with the San Joaquin County Recorder's Office; and be it

**FURTHER RESOLVED:** That City Council authorizes the City Clerk to accept a fee dedication of land widening Grant Line Road and file with the San Joaquin County Recorder's Office; and be it

**FURTHER RESOLVED:** That City Council authorizes the City Clerk to accept dedications of a public utility easement along Grant Line Road and an emergency vehicle access easement and file with the San Joaquin County Recorder's Office.

\*\*\*\*\*

The foregoing Resolution 2024-\_\_\_\_\_ was adopted by the Tracy City Council on the 3<sup>rd</sup> day of September 2024, by the following vote:

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

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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

Agenda Item 1.H

RECOMMENDATION

**Staff recommends that the City Council adopt a Resolution authorizing amendments to the City's Personnel Rules and Regulations to comply with recent legal updates, integrate best practices, address operational requirements, and enhance clarity.**

EXECUTIVE SUMMARY

The City of Tracy is committed to maintaining a fair and equitable system of personnel management through the City of Tracy Personnel Rules and Regulations (Personnel Rules). These guidelines serve as a cornerstone in fostering an environment that values transparency and compliance with legal standards and best practices.

The Personnel Rules were first adopted by City Council in 1997 and have been amended over the years. Through this item, staff recommends further amendments to the Personnel Rules, as depicted in the redlined draft shown in Attachment A, to uphold compliance with recent legal updates, integrate best practices, address operational requirements, and enhance clarity through transparent language.

BACKGROUND AND LEGISLATIVE HISTORY

The Human Resources Department upholds a proactive approach in reviewing and updating the Personnel Rules and Regulations. This ensures alignment with current laws and regulations, incorporates evolving best practices, and enhances clarity and accessibility through clear and transparent language. By doing so, the City aims to optimize organizational efficiency and promote a conducive working environment for its employees. This commitment underscores the City of Tracy's dedication to effective personnel management, fostering a culture of fairness, accountability, and professionalism across all facets of municipal operations.

The City of Tracy's Personnel Rules and Regulations were first adopted by the City Council in 1997 pursuant to Resolution 1997-371 when the City Council authorized the elimination of the Personnel Advisory Board. These rules are crafted to govern the employment relationship between the City and its workforce, encompassing recruitment, hiring, promotion, disciplinary actions, and other key aspects of personnel administration. By establishing clear guidelines, the City aims to uphold standards of professionalism, clarify employee rights, and foster a productive work environment conducive to both individual and organizational success. Initially formulated to meet specific organizational needs and comply with prevailing laws, the Personnel Rules and Regulations have undergone iterative revisions over the years with the most recent amendment in 2022 pursuant to Resolution 2022-063 adding the Juneteenth holiday. These updates are driven by periodic reviews conducted by the Human Resources Department, in collaboration with legal counsel and stakeholder input, to ensure alignment with federal, state, and local regulations. Moreover, enhancements in readability and transparency have been integral to these updates, aiming to make the rules accessible and comprehensible to all employees.

## ANALYSIS

Staff is recommending the amendments to comply with recent legal updates, integrate best practices, address operational requirements, update position titles, and enhance clarity to include the following:

- Classification Plan Amendments: The City Council can abolish or amend classifications or position descriptions, including changes to titles or salaries when deemed in the best interest of City service. The City Manager has the authority to approve non-material amendments to classifications or position descriptions.
- Step Advances for Part-Time Positions: Clarifies eligibility criteria for step advancements for part-time Limited Services Positions.
- Recruitment Practices: Updates recruitment practices to align with electronic application processes and reduces the minimum announcement period to speed up hiring.
- Transfer and Demotion Process: Modernizes the transfer process to match electronic applications and clarifies rules for voluntary demotions.
- Outside Employment Authorization: Clarifies authorization terms for outside employment to ensure compliance with City policy.
- Disability Benefits Integration: Clarifies the integration process for employee benefits while on disability.
- Legal Updates: Updates language to reflect legal changes, including bereavement leave and the addition of a Workplace Violence policy.

Employer-Employee Relations Policy: Modernizes the Employer-Employee Relations Policy. Amending these rules involves a structured approach that includes consultation and negotiation with bargaining units, followed by approval from the City Council. This collaborative effort ensures that amendments reflect consensus and addresses the diverse needs of the City's workforce while adhering to legal standards and enhancing operational efficiency.

Audits of personnel rules are a detailed, methodical, and lengthy process that requires meet and confer with bargaining units and Council approval to amend. Public agencies regularly experience changes to employment laws and regulations, best management practices, and internal changes to procedures which necessitate an audit of the personnel rules.

Staff recommends amendments to the Personnel Rules to uphold compliance with recent legal updates, integrate best practices, addresses operational requirements, and enhance clarity through transparent language. These amendments are essential to align the Personnel Rules with current employment laws, ensuring the City of Tracy maintains a robust and legally sound framework for personnel management. By incorporating best practices, the amendments aim to improve efficiency, promote fairness, and support a positive work environment for all employees.

## FISCAL IMPACT

There are no costs associated with this action.

## CEQA

The California Environmental Quality Act is not applicable to this action.



STRATEGIC PLAN

This agenda item supports the City's Governance Strategy, and specifically implements the following goal:

Governance Strategy

Goal 5: Recruit, develop, and retain a high performing workforce.

ACTION REQUESTED OF THE CITY COUNCIL

Staff recommends that the City Council adopt a Resolution authorizing amendments to the City's Personnel Rules and Regulations to comply with recent legal updates, integrate best practices, address operational requirements, and enhance clarity.

Prepared by: JoAnn Weberg, Human Resources Manager

Reviewed by: Kimberly Murdaugh, Director of Human Resources  
Sara Castro, Director of Finance  
Bijal Patel, City Attorney  
Karin Schnaider, Assistant City Manager

Approved by: Midori Lichtwardt, City Manager

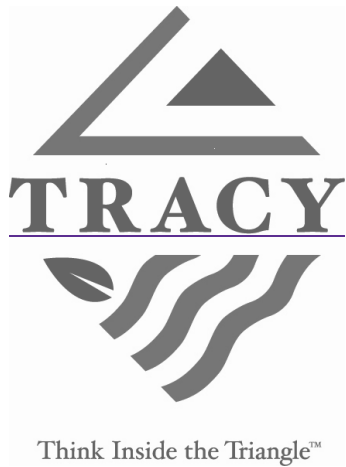
Attachments:

A. [Proposed] Amended Personnel Rules and Regulations Effective 09/01/2024.

ATTACHMENT A

# CITY OF TRACY

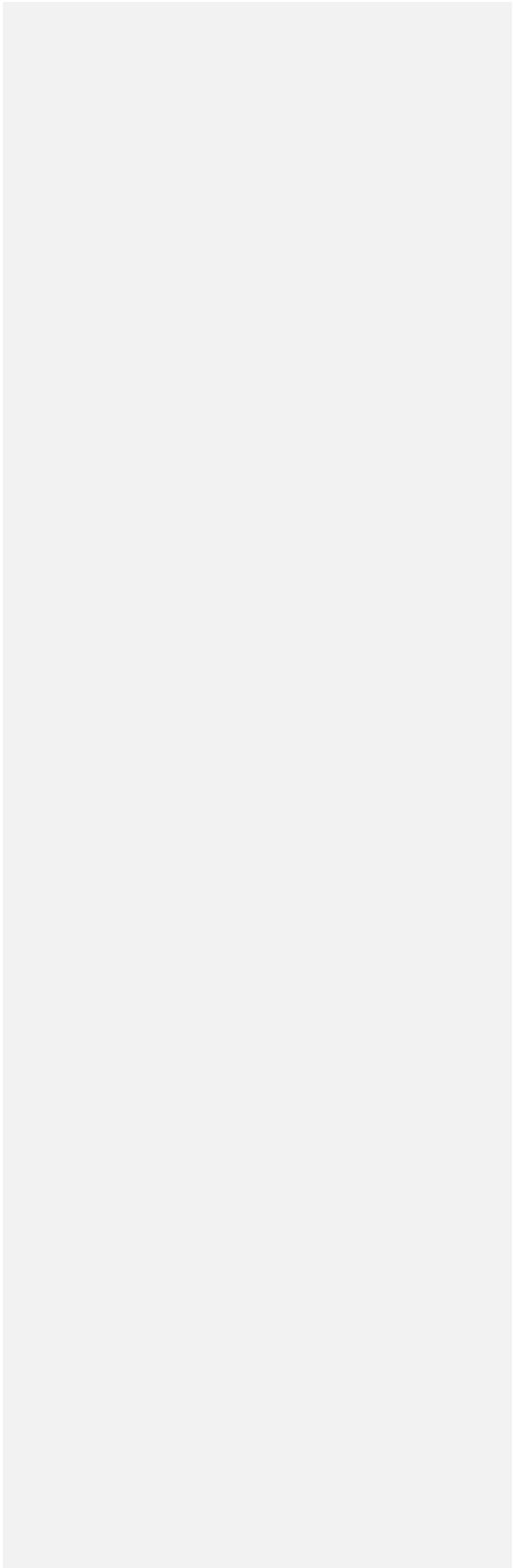
## PERSONNEL RULES AND REGULATIONS



**Effective:** November 1997

**Revised:** ~~June 2022~~ September 2024

City of Tracy Personnel Rules and Regulations



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# CITY OF TRACY

## PERSONNEL RULES

### 1. PURPOSE

In order to establish a uniform procedure for dealing with personnel matters, the personnel system set forth in these Rules and Regulations (hereinafter "Rules") is hereby adopted. These Rules supersede any prior rules and regulations and may be changed only upon approval of the City Council.

Where an applicable memorandum of understanding between the City and a recognized employee organization contains provisions that are inconsistent with any of these Rules, the language contained in the Memorandum of Understanding shall govern.

The City Council authorizes the City Manager to implement administrative policies that shall be supplemental to these Rules.

Each employee shall be given a copy of these Rules and is responsible for reading and complying with these Rules.

These Rules may be amended from time to time. However, in order to be effective, the amendment must be in writing and approved by resolution of the City Council. Whenever such amendments affect the wages, hours, or other terms or conditions of employment, they shall be subject to the meet and confer process as required by law.

In the event of an emergency, any part or all of these Rules may be suspended by order of the City Manager and such suspension shall remain in effect until the City Manager's order is withdrawn.

#### 1.1 **Personnel Policy**

In accepting employment with the City each employee agrees to be governed by and to comply with ordinances, these Rules, the Administrative Policy and Procedures Manual, the rules, regulations, and directives of the department in which employed, and the memorandum of understanding in effect between the City and the appropriate employee organization.

#### 1.2 **Equal Employment Opportunity**

It is the policy of the City of Tracy to provide equal opportunity in employment for all persons to prohibit discrimination in employment. This policy of equal employment opportunity applies to and must be an integral part of every aspect of personnel policy and practice in the employment, development, advancement, and treatment of employees to the extent permitted by law.

1.2.1 This Equal Employment Opportunity policy applies to all applicants, officers, volunteers, and employees without exception.

1.2.2 The City shall not discriminate against qualified employees or applicants for

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employment on the basis of actual or perceived race, color, religion, gender, national origin, ancestry, citizenship, age, marital status, physical disability, mental disability, medical condition, sexual orientation, or any other basis protected by law, or on the basis of a perception that an individual is associated with a person who has, or is perceived to have, any of these characteristics. For purposes of this policy, "race" is inclusive of traits historically associated with race, including, but not limited to, hair texture and protective hairstyles. The City shall afford equal employment opportunity to all qualified applicants or employees with respect to compensation and all terms and conditions of employment, including hiring, training, promotion, transfer, discipline, and termination.

- 1.2.3 Employees who believe they have experienced denial of equal employment opportunity or discrimination are encouraged to report this experience immediately to their supervisor or the ~~Director of Human Resources~~ Director of Human Resources. The City shall promptly investigate the report under the Harassment, Discrimination, Retaliation and Discrimination Complaints Procedure.

### 1.3 Powers of the City Manager

- 1.3.1 The City Manager is the chief administrative officer and the head of the administrative branch of the City Government. Whenever the term "City Manager" is used in these Rules, it shall include the City Manager, or any person designated by ~~him/her/them~~ to carry out any function required by these Rules. When any officer or employee other than the City Manager is assigned a duty or responsibility under these Rules, such assignment is subject to the direction and control of the City Manager, and the City Manager shall have the right to perform such duty or responsibility or to assign it to any other officer or employee.

- 1.3.2 Subject to Section 2.08.060 of the Tracy Municipal Code, the City Manager has the power and authority to:

1.3.2.1 Establish, when not in conflict with these Rules, such other policies, procedures, rules, and regulations necessary for the control and supervision of the affairs of the City;

1.3.2.2 Appoint and remove all Department Heads, officers and employees of the City, except those officers appointed by the Council;

1.3.2.3 Approve all proposed appointments and removals of subordinate employees by all officers and Department Heads;

1.3.2.4 Transfer, promote, demote, reemploy, reinstate, discipline, layoff, reduce in salary, suspend, or dismiss City employees, except for those officers appointed by the City Council.

- ▲ 1.3.3. The City Manager shall interpret, apply, administer, and enforce the provisions of these Rules, any ordinances or resolutions relating to personnel matters, the employer-employee relations resolution, the memoranda of understanding, and

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any other pertinent regulations, directives and policies which relate to the City's personnel system.

1.3.4 The City Manager may delegate to the ~~Director of Human Resources-~~ Director of Human Resources any of the powers and duties conferred upon ~~him/her/them~~ under these or other City rules, regulations, resolutions, or ordinances. The ~~Human Resources Director~~ Director of Human Resources, or ~~his/her/their~~ designee, shall be responsible for administration of these Personnel Rules.

#### 1.4 **Department Rules and Regulations**

Department Heads may develop, implement, and revise as necessary any departmental policies, procedures, rules, and regulations pertaining to unique operational requirements and their effect upon departmental personnel as are needed for the full performance of duties and responsibilities and which are not contrary to these Rules.

#### 1.5 **Application of Personnel Rules**

The provisions of these Rules shall apply to all offices, positions, and employees ~~in the Competitive Service~~ of the City, except the following positions and except as otherwise indicated within a specific provision of these Rules:

- 1.5.1 Elected officials;
- 1.5.2 Members of appointed boards, commissions, and committees;
- 1.5.3 Persons engaged under contract to render professional, scientific, technical, or expert services for a definite period of time;
- 1.5.4 Volunteer personnel who receive no regular compensation from the City;
- 1.5.5 Where a particular rule or article expressly states it does not apply to certain employees and/or positions or applies only to certain employees and/or positions.

#### 1.6 **Adoption of Personnel Rules**

The Personnel Rules shall be established by resolution adopted by the City Council.

#### 1.7 **Amendment and Revision of Personnel Rules**

Proposed amendments to/or revisions of the Personnel Rules shall be submitted to the City Council in writing by the ~~Human Resources Director~~ Director of Human Resources after approval of the City Manager.

#### 1.8 **Conflict of Personnel Rules**

In the event that one or more provisions of these Rules contradict provisions included in memorandum of understanding currently in effect between the City and a formally recognized employee organization, the terms of the memorandum of understanding shall prevail. If there is a conflict between these Rules and a federal or state law, that law prevails. If there is a conflict between these Rules and an administrative regulation issued by the City, these Rules prevail.

1.9 **Rights of Management**

The adoption of these Rules shall not be deemed a waiver or surrender of any management prerogative in relation to the organization or the necessity of any department or position.

1.10 **Violation of Personnel Rules**

Each employee is responsible to comply with these Rules and any amendments hereto. Violation of the provisions of these Rules shall be grounds for disciplinary action, up to and including dismissal.

**2. DEFINITION OF TERMS**

All words and terms used in these Rules and in any other resolution, ordinance, or administrative procedures dealing with personnel policies or procedures shall be defined as they are normally and generally defined in the field of personnel administration. For the purpose of convenience, however, the words and terms most commonly used are defined as follows:

2.1 **Actual hours worked**

All hours in which the employee actually performed work and does not include any paid or unpaid leave time, including but not limited to vacation and sick leave.

2.2 **Advancement**

-A salary increase of one or more steps within the limits of the pay range established for a class.

2.3 **Allocation**

The official assignment of an individual position to its appropriate classification as reflected in the Position Control Roster, in accordance with the duties performed and the authority and responsibilities exercised.

2.4 **Applicant**

Any person who has ~~made~~ completed the application process for employment at a position.

2.5 **Appointment**

Employment of a person into a position.

2.6 **At-will**

The employee serves at the pleasure of the City Manager or as defined in the Municipal Code. The City Manager, who retains the authority to terminate any such employee at any time with or without cause. An "at will" employee has no right of appeal of discipline or termination.

2.7 **Base Salary**

The salary range and step established in by the Compensation Plan master salary schedule, exclusive of any overtime, shift-differential, incentive or other excludable pay an employee may receive.

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- 2.8 **Candidate**  
Any person who has been accepted for participation in an examination process.
  
- 2.9 **Certification**  
The submittal to a Department Head or designee of a listing of eligible candidates from an appropriate employment list, or names of those on a reinstatement or re-employment list.
  
- 2.10 **Certified Employee Organization**  
An employee organization that has been certified by the City of Tracy as representing the majority of the eligible employees in an appropriately designated employee representation unit and shall be considered the exclusive representative to represent all the employees of that unit.
  
- 2.11 **Class or Classification**  
A group of positions sufficiently and substantially similar in duties, authority, responsibilities, and minimum qualifications for employment to permit combining them under a single title and the application of common standards of selection and compensation.
  
- 2.12 **Classification Series**  
Two or more classification levels which have similar duties and responsibilities but are distinguished from each other by degree of difficulty or level of responsibility.
  
- 2.13 **Classification Plan**  
~~The designation by resolution of the City Council of a~~The title for each classification together with the specifications for each classification as prepared and maintained by the ~~Human Resources Director~~Director of Human Resources.
  
- 2.14 **Compensation**  
The salary, wage, allowances, and all other forms of valuable consideration earned by or paid to any employee by reason of said service in any position, but does not include any allowances authorized and incurred as incidents to employment.
  
- 2.15 **Compensatory Time Off (CTO)**  
Paid time off from work in lieu of overtime pay.
  
- 2.16 **Competitive Service**  
All regular positions in ~~the~~ City service, except for the following positions, which are within the non-Competitive Service: Elective Offices, the City Manager, Assistant City Manager, City Attorney, Assistant City Attorney, and all Heads of Departments.
  
- 2.17 **Competitive Examination**  
A competitive examination open for a defined period of time for a particular classification which is designed to be either open or promotional, or both; and which the examination consists of tests of fitness used to assess the relative qualifications of a group of applicants, and as a result of which names of eligible candidates are placed on an employment list. One or more selection procedures used to assess the relative qualifications of a group of applicants or candidates.

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2.18 **Continuous Competitive Examination**

A competitive examination or a particular class which is designed to be either open or promotional, or both; and the examination consists of the same or comparable tests of fitness which may be administered periodically; and as a result of which names of eligible candidates may be added to an existing employment list for the duration of such list.

- 2.19 **Continuous Service**  
Employment without ~~interruption, and~~ interruption and includes approved leaves of absence to serve in the armed forces of the United States, ~~as provided by Section 395 of the Military and Veterans Code, as amended~~ in compliance with federal and state military leave laws.
- 2.20 **Days**  
Calendar days unless otherwise noted.
- 2.21 **Demotion**  
The voluntary or involuntary movement of an employee from one class to another class having a lower maximum rate of pay.
- 2.22 **Department**  
An organizational unit with responsibility for carrying out a function under the supervision of a Department Head.
- 2.23 **Department Head**  
The head of an established office or department having supervision of such department and office.
- 2.24 **Dismissal**  
The involuntary separation of an employee from the City service.
- 2.25 **Domestic Partner**  
“Domestic partner” as defined in California Family Code ~~Section 297.~~
- 2.26 **Elective Office**  
All positions ~~in the Exempt Service~~ held by elected officials.
- 2.27 **Eligible Candidate**  
A person who has earned a place on an employment list established by competitive examination.
- 2.28 **Employment Date**  
For retirement, sick leave and other benefit purposes, the effective date of an employee’s initial appointment to a full-time ~~or permanent part-time~~ position ~~within the Competitive Service.~~
- 2.29 **Employment List**  
A list of names of persons who may be considered for employment with the City under specific conditions. Such lists may be designated as either a re-employment, reinstatement, promotion, or open employment list.
- 2.30 **Employment Status**  
The type of ~~an~~ employee’s appointment, such as regular, probationary, or limited service.
- 2.31 **Examination**  
~~The selection procedures used to measure the knowledges, skills, and abilities of the persons applying for positions within the Competitive Service.~~

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2.32 **Executive Management**

The group of employees comprised of the City Manager, City Attorney, Assistant City Manager, and all Department Heads.

**X.XX Flexible (Flex) Staffing**

A flexibly staffed classification allows qualifying individuals to flex upwards within the classification series when the required knowledge, skills and abilities have been achieved and minimum qualifications for the higher level have been satisfied. A flexed employee does not serve a new probationary period for advancing within the series and does not participate in a competitive process.

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2.33 **FLSA**

The Fair Labor Standards Act.

2.34 **FLSA Exempt**

All employees who meet one or more of the duties test exemptions from overtime under the FLSA (e.g. executive, administrative, professional) and who are paid on a salary basis. FLSA exempt employees are not eligible for overtime compensation.

2.35 **FLSA Non-Exempt**

Employees who are eligible for FLSA overtime compensation.

2.36 **Grievance**

Defined in Section 13 of these Rules.

2.37 **Incumbent**

A person legally occupying a position in the City Service.

2.38 **Layoff**

The termination of an employee from City service for reasons of economy, efficiency, reorganization or other non-disciplinary reason.

2.39 **Limited Service**

Those types of positions which do not provide full-time employment throughout a fiscal year. The kinds of positions assigned to the Limited Service include temporary, part-time, student, and seasonal positions. Appointment to such positions are noncompetitive and incumbents do not acquire status in the class to which assigned by virtue of such employment. Limited service positions are "at will" and may be terminated with or without cause and without right of appeal.

2.40 **Limited Term Position**

A position in the competitive or non-Competitive Service which is created for a limited term, ~~or for projects funded entirely~~

2.41 **Open Examination**

A competitive examination for a particular class in which applications are invited from all qualified persons, regardless of whether or not they are employed by the City.

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2.42 **Overtime Work**

All actual hours worked by a non-exempt employee in excess of forty (40) hours in the employee's designated workweek, except as otherwise designated by an applicable

MOU, as otherwise designated for employees on an approved flexible work schedule, or as designated under the FLSA.

2.43

**Part-Time Position**

A type of ~~limited-service~~ limited-service position to which a person is employed in a regularly budgeted position who works less than full-time.

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2.44 **Pay Range**  
A series of base salary steps to which a class may be assigned.

~~2.45 **Permanent Appointment or Permanent Status**  
The type of status granted an employee who has successfully completed an official probationary period for a particular class and in a regular position in the Competitive Service.~~

2.46 **Position**  
A combination of duties and responsibilities assigned to a single employee and performed on either a full-time or part-time basis. A position may be occupied or vacant.

2.47 **Probationary Appointment**  
The initial appointment of an employee into a position that begins a probationary period.

2.48 **Probationary Period**  
The final stage of the recruitment, examination, and selection process, where a new or promoted employee is required to demonstrate satisfactory or better performance of the position's duties. During this period, the employee is "at will" and may be dismissed at any time without cause and without right of appeal or hearing.

2.49 **Promotional Appointment**  
The advancement of an employee from a position in one classification to a position in another classification having a higher maximum salary range. Limited Service Employees hired into a full-time regular position in the competitive service does not qualify as a promotion.

2.50 **Promotional Examination**  
A competitive examination of a particular class which is only available to current employees who meet the qualifications for the class or are otherwise permitted to take such an examination.

2.51 **Provisional Appointment**  
Appointment of a person possessing the minimum qualifications last established for a particular class other than eligibility by examination and who has been appointed to a position in that class in the absence of available eligible candidates.

2.52 **Provisional Employee**  
An employee appointed to fill a position vacancy for a limited time period when no valid eligibility employment list exists for that position. Provisional employees are "at will," and their appointment may be terminated at any time with or without cause and without right of appeal.

~~X.XX **Reallocation**  
The permanent reassignment of a classification to another classification.~~

2.53 **Reclassification**  
The permanent reassignment of a position to another classification due to the material change of the job duties of a position an incumbent from one classification to another

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classification.

2.54 **Recognized Employee Organization**

An employee organization that has been formally acknowledged by the City as the employee organization that represents the employees in an appropriate representation unit.

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- 2.55 **Re-Employment**  
The reappointment of a former regular employee ~~(from a layoff re-employment list)~~  
~~, who had a permanent appointment with the City at the time of layoff.~~
- 2.56 **Regular Employee**  
The employment status of a person in an authorized full-time position following successful completion of ~~a~~the initial probationary period in an authorized full-time position in the Competitive Service.
- 2.57 **Regular Position**  
A full-time position in the Competitive Service which is established without any limitation as to time.
- 2.58 **Rehire**  
The reappointment of a former employee who does not have re-employment or reinstatement rights at the time of returning to the payroll.
- 2.59 **Reinstatement**  
The probationary appointment of an employee after the employee who resigned in good standing from a permanent regular position or the return of an employee from a non-disciplinary demotion to a position which the employee held not more than one year previously. In either case reinstatement must occur not more than one (1) year from the date of separation. Such reinstatement may be done ~~so~~ without further competitive examination.
- 2.60 **Resignation**  
The voluntary separation of an employee from City employment.
- 2.61 **Safety Sensitive**  
A position or duty of a position that the City has designated as “safety sensitive” for purposes of implementing its Drug and Alcohol policy.
- 2.62 **Salary Basis**  
Compensation in a predetermined amount that is not reduced, regardless of the quality or ~~quantity~~ of work actually performed, except as required by the City’s principles of public accountability, for partial-day absences or as otherwise set forth in the FLSA.
- 2.63 **Salary Evaluation Date**  
The date on which a probationary or regular employee’s performance is evaluated and the date upon which the employee is eligible, on the basis of job performance for a prescribed period, for a merit salary increase within the established salary range.
- 2.64 **Seniority in City Service**  
Seniority in City service is based on the employee’s number of continuous years in City measured from the employee’s original hire date. Seniority in classification is based on the number of continuous years of service in the present or higher classification.

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- 2.65 **Seasonal Position**  
A position of ~~limited service~~limited-service status which is recurrent and does not provide full time employment. Seasonal employees are “at will” and may be terminated at any time with or without cause and without right of appeal.
- 2.66 **Selection Procedure**  
The process by which employment decisions are made, including but not limited to application screening, written tests, oral interviews, performance tests, background investigations, assessments of physical or mental condition, and probation periods.
- 2.67 **Separation**  
The voluntary or involuntary termination of employment from City service. Separation may include death, dismissal, layoff, resignation, retirement, or work completion.
- 2.68 **Service Anniversary Date**  
The original date of hire as a full-time employee for purposes of accruing benefits and determining years of service with the City.
- 2.69 **Step Advancement**  
The merit-based increase of an employee’s salary to a higher salary level within the established salary range for the employee’s classification.
- 2.70 **Step Advancement Date**  
The effective date of an employee’s merit-based salary increase.
- 2.71 **Student Position**  
A type of ~~limited service~~limited-service position to which an employee who is also a student pursuing a course of study may be employed part-time during an academic school year and full-time during school vacations and holidays. Employees holding such positions are “at will” and may be terminated at any time with or without cause and without right of appeal.
- 2.72 **Suspension**  
The temporary separation without pay of an employee from the Competitive Service for disciplinary purposes.
- 2.73 **Temporary Position**  
A type of ~~limited service~~limited-service position to which a person is appointed on a temporary basis and which is not an authorized regular position or a regular position for a limited period of time, either full-time or part time. Temporary employment that is limited to not more than 999 hours in any fiscal year. This time period includes all time spent in one or more positions.
- 2.74 **Termination**  
Involuntary separation of an employee from City service.



2.75 **Transfer**

The reassignment of an employee from one position to another position in the same classification or another classification having the same maximum salary range, involving the performance of basically similar duties, and requiring substantially the same minimum qualifications.

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2.76 **Vacancy**

An ~~allocated~~ ~~daily created~~ position which is not occupied and for which monies have been appropriated.

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2.77 **Y-Rated**

Employee's existing salary is frozen until adjustments to the employee's salary cause it to fall within a new salary range.

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**3. POSITION CLASSIFICATION**

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3.1 **Classification Plan**

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The City Council, upon recommendation of the ~~Human Resources Director~~ ~~Director of Human Resources~~ shall create and adjust classes of positions in the City service. These classes shall be known as the "Classification Plan."

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3.1.2 *Implementation of the Classification Plan*

The ~~Human Resources Director~~ ~~Director of Human Resources~~, in consultation with the City Manager and Department Heads, shall recommend a Classification Plan for all classifications in the Competitive Service that includes but is not limited to the following for each classification:

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- The classification title;
- A description of typical duties and responsibilities;
- A statement of the desirable training, experience and other qualifications of applicants for the classification;
- Whether the classification or any of its duties are safety-sensitive.
- Whether the classification is FLSA exempt

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The ~~Human Resources Director~~ ~~Director of Human Resources~~ shall ensure that all positions within the same classification are substantially similar with respect to duties, authority, decision-making, character of work, and schedules of compensation.

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3.1.3 *Interpretation of Class Specifications*

The class specifications are meant to be descriptive and explanatory ~~and but~~ not restrictive. They are intended to indicate the kinds of positions allocated to the various classes and should not be construed as limiting the assignment of duties and responsibilities to any position. The use of a particular expression or an illustration as to duties should not be interpreted to exclude others not mentioned that are of a similar ~~kind of~~ level of responsibility. The specification for each class should be considered in its entirety and in relation to other classes in the Classification Plan. Consideration should be given to

the general duties, specific tasks, responsibilities, qualifications desired, and relation to other positions, as affording together a picture of the kind of employment the class is designed to embrace.

3.1.4 *Periodic Updates*

From time to time the ~~Human Resources Director~~Director of Human Resources shall review the Classification Plan to ensure that it is accurate and make amendments to ~~reclassify~~, add positions or classifications, or make other changes as necessary or appropriate.

3.1.5 *Adoption by City Council*

The Classification Plan shall become effective only upon adoption by resolution of the City Council. Upon adoption, the Classification Plan shall take immediate effect unless otherwise specified.

3.1.6 *Amendments*

The classification or position descriptions may be abolished or amended from time to time by City Council action ~~when deemed in the best interest of the City service~~when material changes are made including the title and/or salary. The City Manager has authority to approve non-material classification or position description amendments. In addition, new classification or position descriptions may be added to the City's Classification Plan. If new positions are added to the City services, such positions shall be allocated to an appropriate class by the ~~Human Resources Director~~Director of Human Resources.

3.1.7 *Assignment of Classifications to Bargaining Units*

Assignment or reassignment of classifications to employee units of representation shall be at the sole discretion of the City Manager and in accordance with the Employer-Employee Relations Rule.

3.2 **Positions**

In accordance with these Rules, any position may be assigned, reallocated or transferred to a different class by the ~~Human Resources Director~~Director of Human Resources, in consultation with the City Manager and affected Department Head, whenever there is a need of such action because of a change in duties or responsibilities of the position. All positions shall be included in the same class if:

- 3.2.1 They are sufficiently similar in respect to duties and responsibilities so that the same descriptive title may be used; and
- 3.2.2 Substantially the same requirements as to education, experience, knowledge, and ability are required of incumbents; and
- 3.2.3 Substantially the same tests of capacities and fitness may be used in choosing qualified appointees; and
- 3.2.4 The same pay range or salary rate applies.

3.3 **Emergency or Temporary Positions**

Whenever, in the judgment of the ~~Human Resources Director~~Director of Human Resources in consultation with the City Manager, it is necessary for a department to employ a person or persons on an emergency or temporary basis in a type of position

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for which there is no classification provided in the Classification Plan, then the ~~Human Resources Director~~Director of Human Resources, in consultation with the Department Head(s) and City Manager, may authorize such

positions and shall fix the amount of compensation, and may determine the minimum qualifications for such additional employees, and shall limit in advance the period of time the position may be allowed up to a maximum of 999 hours in a fiscal year.

### 3.4 **Classification Review**

Review of the classification of a position may occur in the following circumstances:

- One or more new positions are under consideration for possible establishment;
- Due to a change in organization or methods, a major change of the duties or responsibilities of an existing position is made which may require the reallocation of such position;
- A new class is created to which a position may more appropriately be allocated;
- Due to the abolishment or combination of an existing position or class, an amendment to the Classification Plan is required.

The procedure for classification review is as follows in accordance with the Classification Review Policy:

- 3.4.1 The Department Head shall report the significant facts relating to such possible changes in writing to the ~~Human Resources Director~~Director of Human Resources.
- 3.4.2 The ~~Human Resources Director~~Director of Human Resources, upon written request of an employee and ~~his/her~~their department head, may undertake an inquiry of the classification of any position.
- 3.4.3 Upon either of the above initiations, the ~~Human Resources Director~~Director of Human Resources shall make a study of the assigned duties and responsibilities of any such position and the qualifications required, and of the relationships of such positions to other classes of positions in the Classification Plan.
- 3.4.4 On the basis of such investigation, the ~~Human Resources Director~~Director of Human Resources shall then make a recommendation no changes are necessary; or change ~~in~~ the allocation of the position; or reallocate the position to a more appropriate class in the existing Classification Plan; or determine a new class to which the position would be allocated, whichever the ~~Human Resources Director~~Director of Human Resources deems is the appropriate action. Whenever a position is ~~reclassified or~~ reallocated, the existing position is to be deleted and a new position created in the class to which the position is to be assigned.

## 4. **COMPENSATION PLAN**

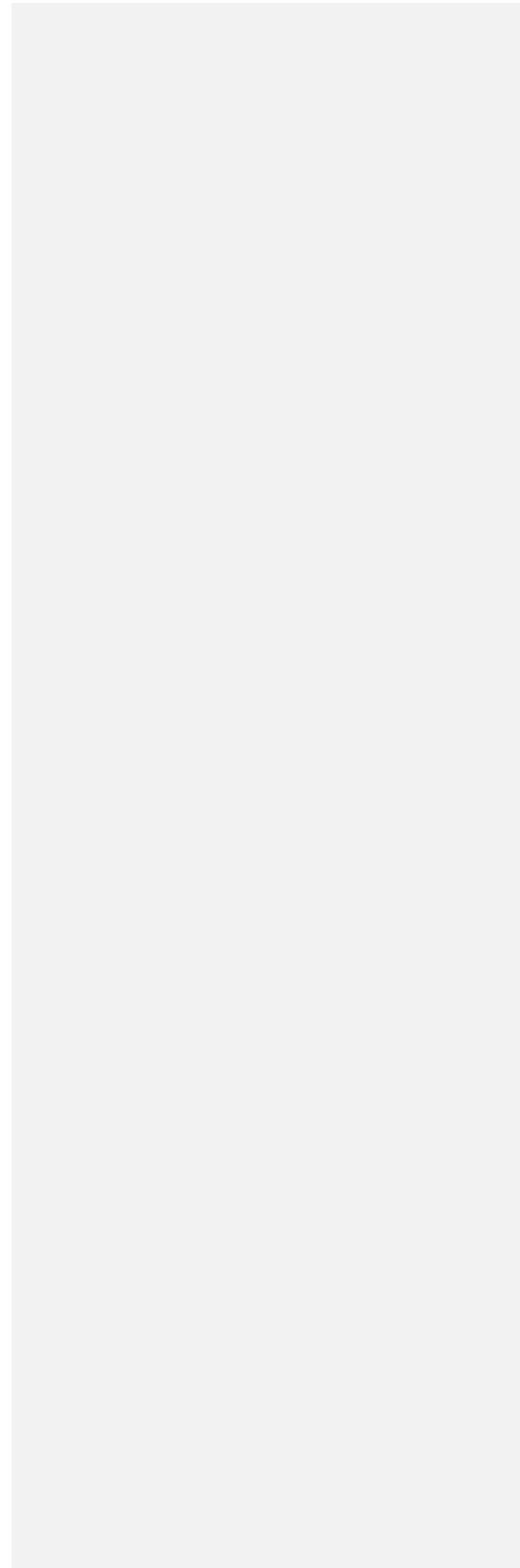
### 4.1 **Compensation Plan Establishment**

The City of Tracy is committed to maintaining fiscal integrity and high standards of accountability to the public in the expenditure of funds provided by taxpayers. The

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City establishes its compensation system in accordance with the principles of public accountability.



The ~~Human Resources Director~~ Director of Human Resources shall prepare a Compensation Plan that includes the following:

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- a. The salary ranges for all classifications ~~in the Competitive Service~~, showing the minimum and maximum rates of pay;
- b. A designation of the position as full-time, part time or temporary;
- c. A designation of the position as ~~paid on an hourly or salary basis~~ exempt or non-exempt.

These rules do not preclude the creation of separate management pay plans that, if adopted by the Council, must be administered in accordance with the procedures adopted for such plan(s) by the City Council.

On a periodic basis, the ~~Human Resources Director~~ Director of Human Resources may survey benchmark classifications. Survey results shall be considered as one of the pieces of information used as a guideline in establishing or modifying compensation for a particular position or classification.

The ~~Human Resources Director~~ Director of Human Resources shall also determine whether any modifications are necessary due to recruitment ~~and or~~ retention issues, changes to positions or classifications, including changes to exempt or non-exempt status, resulting from ~~his/her~~ their periodic review of the Classification Plan.

The ~~Human Resources Director~~ Director of Human Resources shall submit any modifications to the Compensation Plan to the City Manager for recommendation to City Council for adoption.

4.2 **Compensation Plan Administration**

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The authorized pay ranges for the respective classes of positions with such amendments as may be adopted by the City Council ~~from time to time~~ by resolution shall be applied as follows:

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4.2.1 *Increases Within the Pay Range*

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Normally, and as a general rule, upon progress and productivity, employees in the Competitive Service or those occupying an ~~Appointive~~ Appointed position shall be considered for a step advancement according to the following general plan:

4.2.1.1 *Steps*. The letters A, B, C, D, E, etc. respectively, denote the various salary steps in the pay range.

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4.2.1.2 *Step A*. Step "A" shall typically be paid upon initial employment into a five (5) step pay range. If the employee possesses exceptional training or experience, that employee may start at a step B with the approval of the Department Head. Appointments at any step greater than B require prior authorization from the City Manager.

4.2.1.3 *Step Advances for Regular Positions*. At the completion of the applicable probationary period of employment, employees appointed at Step A are eligible for a step increase. Police Officers appointed at Step A whose probationary period is eighteen (18) months are eligible

for a step increase after (twelve) 12 months. If employed at other than Step "A" in a five (5) step pay range for the class, then consideration for advancement to the next salary step will take ~~place twenty-four (24) semi-weekly pay periods (approximately one year)~~ one year following the date of hire. If no probationary period is served as a result of the step advancement, consideration for advancement to the next salary step will take place one year following the date of advancement.

All step advances will be effective ~~to~~ the beginning of the ~~closest~~ pay period following the evaluation due date at that time unless the evaluation date is on the first day of the pay period. Additional step advances will be on an annual basis thereafter until the attainment of Step E.

All step advances shall be based on satisfactory performance as shown from the evaluation by the employee's Supervisor. Denial of step increases shall be based on documented performance evaluations. Increases of more than one step for superior performance may be provided upon recommendation by the Department Head and approval of the ~~Human Resources Director~~ Director of Human Resources.

4.2.1.3.1 Step Advances for Limited Service Positions. Limited Service Employees (LSE) are eligible for consideration of a step increase at the discretion of the Department Head or their designee after working for one continuous year and hours worked reaches 1040 hours and thereafter every one year and 1040 hours worked until the attainment of Step E. An exception may be made for step advances for LSE assigned to the Aquatics Program after they have worked for one continuous year and thereafter every one year until the attainment of Step E. There is no retroactivity for LSE step increases.

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4.2.1.4 *Step at Promotion.* When employees are promoted, they shall normally receive the first step in the salary range for their new position. However, if such step results in a salary increase of less than 5 percent, they shall receive a minimum 5 percent increase, provided that in no event shall the new salary be above Step E of the promoted class. The City Manager may authorize an appointment to a position at any higher salary step in the pay range upon the recommendation by the ~~Resources Director~~ Director of Human Resources in consultation with the Department Head.

4.2.1.5 *Special Salary Adjustments.* Notwithstanding anything in these Rules to the contrary, in order to correct gross inequities or to reward outstanding achievement and performance, the City Manager may, upon recommendation of the Department Head and the ~~Human Resources Director~~ Director of Human Resources, adjust the salary step of an incumbent of a particular position to any step within the pay range for the class to which the position is allocated. If a special salary step



adjustment is authorized, it shall coincide with the beginning date of a pay period.

4.2.1.6 *Calculation of Service Anniversary Dates and/or Step Advancement Dates for Regular Positions.* Service Anniversary dates shall be established as of the effective date of employment into a regular ~~full-time~~full-time position. Step Advancement Dates shall be established as of the effective date of the most recent step advancement, promotion, or reinstatement in the City service, or the effective date of a special salary adjustment as provided in Section 4.2.1.5 of these Rules. Service anniversary dates of those reemployed shall be established as provided by Section 8.2.2 of these Rules. All step advancements shall be effective the first day of the pay period following the step advance date, unless that date falls on the first day of a pay period.

4.2.1.7 *Applicable Salary Rates Following Pay Range Increases and Decreases.*

4.2.1.7.1 *Same Relative Step.* Where a pay range for a given class is revised upward, the incumbents of positions in classes affected shall have their existing salary adjusted to the same relative step in the new pay range (Step B to Step B,

Step C to Step C, etc.) and their next step advancement date shall not be changed.

- 4.2.1.7.2 *Retention of Salary and "Y" Rates.* When a pay range is adjusted downward, incumbents may, on approval of the City Manager, be assigned a "Y"-rate designation to hold the employee at the current salary rate, without increases, until such time as the salary range for the new classification is the same or exceeds the amount of the "Y"-rating. Any such "Y" rate shall be indicated by a capital "Y" following the salary each time it appears on personnel records or transactions. Said "Y" rate shall be canceled on vacancy of the position.
- 4.2.1.7.3 *Pay Range Change on Step Advancement Date.* In the event that a pay range change becomes effective on an employee's step advancement date, the employee shall first receive any within-range adjustment to which entitled and then receive the corresponding step adjustment.
- 4.2.1.7.4 *Pay Range Change on Date of Promotion.* In the event that a pay range change becomes effective on the date an employee is promoted to a higher class, the employee shall first receive any corresponding step adjustment to which entitled in the lower class, and then the next higher step promotional adjustment as provided in Section 8.5.1 of these Rules.

- 4.2.2 *Trainee Salary Range.* ~~(added August 8, 2009 per resolution 2009-142)~~  
At the recommendation of a Department Head, concurrence by the ~~Human Resources Director~~ Director of Human Resources, and approval by the City Manager, City of Tracy non-sworn classifications within the competitive service may be under filled by a special class of Trainee under a training program or on-the-job training assignment. Such training program or on-the-job training assignment will provide expectations and milestones for an employee to reach during the training period in order for said employee to acquire the full range of required skills and abilities within a reasonable and specified period of time. The salary paid such employees shall be ten percent (10%) below the salary range provided herein for employees in the classification for which training is being given. The title of such employees shall be the job title provided herein ~~dash (-), with "Trainee" appended.~~

If an employee transfers into a Trainee class, and the employee's former salary range falls between the new class' actual and Trainee (-10%) salary ranges, the Department Head may recommend and seek approval to set the transferred employee's Trainee salary according to the following criteria:

- 1) The employee's salary placement must be an amount between the new class' actual and "Trainee" (-10%) salary ranges; and

- 2) The employee's salary placement cannot exceed the employee's former salary.

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**4.2.3 Retirement/Resignation Notification Incentive.** ~~(added September 15 per resolution 2009-170XXX)~~

The City may offer a Retirement/Resignation Notification Incentive in any fiscal year in which the City Manager deems such an incentive is necessary to assist with workforce planning or potential workforce reduction efforts. The incentive will be provided to those employees who notify the City during a designated incentive offer period of their retirement/resignation effective no later than the end of that particular fiscal year or earlier date as determined by the City Manager.

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Each employee shall receive the same incentive amount during the incentive offer period as designated by the City Manager. The amount of the Retirement/Resignation Notification Incentive per employee shall not exceed ~~\$1,000~~ amount designated per employee by the City Manager. It will be available only to CalPERS member employees who notify the City of their intent to retire or resign and completely separate their employment with the City of Tracy by the end of the specified fiscal year or earlier date as determined by the City Manager.

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Employees must fill out a Retirement/Resignation Notification Incentive Application and submit it to the Human Resources Department by the deadline specified. Once the application is signed and submitted by the employee, the City will deem the application to be an irrevocable letter of intent to retire or resign and payment shall be made to the individual employee.

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**4.3 Errors in Compensation**

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Each employee shall review each of ~~his/her~~ their paychecks to ensure the employee was paid correctly. If the employee believes an error or irregularity has occurred, the employee must immediately call it to the attention of ~~his/her~~ their supervisor who shall in turn notify the ~~Payroll Division of the Finance Department, Finance and Administrative Services Director~~. The City shall document all errors in compensation and the affected employees shall sign an acknowledgement for any corrections made.

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In the event of any underpayment of which the City becomes aware, the employee shall receive any amount due ~~him/her~~ them on the next regular pay-check or as soon as administratively possible.

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In the event an employee receives an overpayment by the City, the employee shall reimburse the City for the total overpayment and the City may obtain reimbursement by payroll deduction(s). Typically, such repayment shall occur over a schedule equal to the amount of time over which the overpayment occurred.

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**5. RECRUITMENT, APPLICATIONS AND APPLICANTS**

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It is the policy of the City of Tracy to recruit and select the most qualified individuals for positions in the City's service. Recruitment and selection shall be conducted in a manner that will ensure open competition, provide equal employment opportunity, and prohibit discrimination or

favoritism because of ~~race, religion, sex, color, national origin, age, serious medical condition, disability, politics, sexual orientation, gender identity, and ancestry~~ any protected classification.

5.1 **Recruitment**

Positions to be filled in the Competitive Service shall be publicized ~~by distributing announcements to those City divisions, surrounding government entities or other publication/advertising sources~~ as deemed advisable and appropriate within the discretion of the ~~Human Resources Director~~ **Director of Human Resources** and in consultation with the affected Department Head(s). The Human Resources Department shall prepare an official bulletin announcing any proposed examination. The notice shall be posted ~~in public view at the City Hall~~ **online** and other City facilities ~~at the discretion of the Director of Human Resources~~. The ~~notice-announcements~~ shall be posted for ~~at least ten (10) working days~~ **a minimum of five (5) working days** prior to the closing date for receipt of applications ~~or until a sufficient number of qualified applications have been received~~. ~~The notice may be posted for less time for a promotional only recruitment~~. The examination announcement shall contain all information of importance for consideration by potential applicants, including whether the examination is to be promotional only, open, both promotional and open, or continuously open.

When the City seeks only promotional candidates, distributions will be limited to internal sources. Additionally, when distribution of a job announcement would detrimentally delay the filling of a position the City, in its sole discretion, may opt to fill the position temporarily from immediately available sources.

5.2 **Applications**

Official application forms shall be ~~available-completed online, however in~~ the City's Human Resources Department ~~will have paper applications available for anyone without internet access~~. Applications shall be ~~made on forms~~ provided by the Human Resources Department's ~~webpage~~. All applications ~~and supplemental questions and/or materials~~ must be submitted on or before the filing deadline stated in the job announcement. If in the best interest of the City, the ~~Human Resources Director~~ **Director of Human Resources** may permit a letter, resume or other indication of interest to be accepted pending receipt of a properly completed application.

When necessary to meet continued requirements for filling positions due to non-availability of applicants for a classification or position or due to an increased vacancy rate or due to increased City needs, the closing date for any selection process may be indefinite and applicants may be tested continuously in such manner and at such times and places as may be provided by the City. Applicants who fail to achieve a passing score in such an open continuous examination may not compete again until the lapse of ninety (90) days between the first and second testing and one hundred and twenty (120) days between the second and third such testing, unless stipulated to the contrary on the job announcement. The City may exclude such applicants from further testing at its discretion.

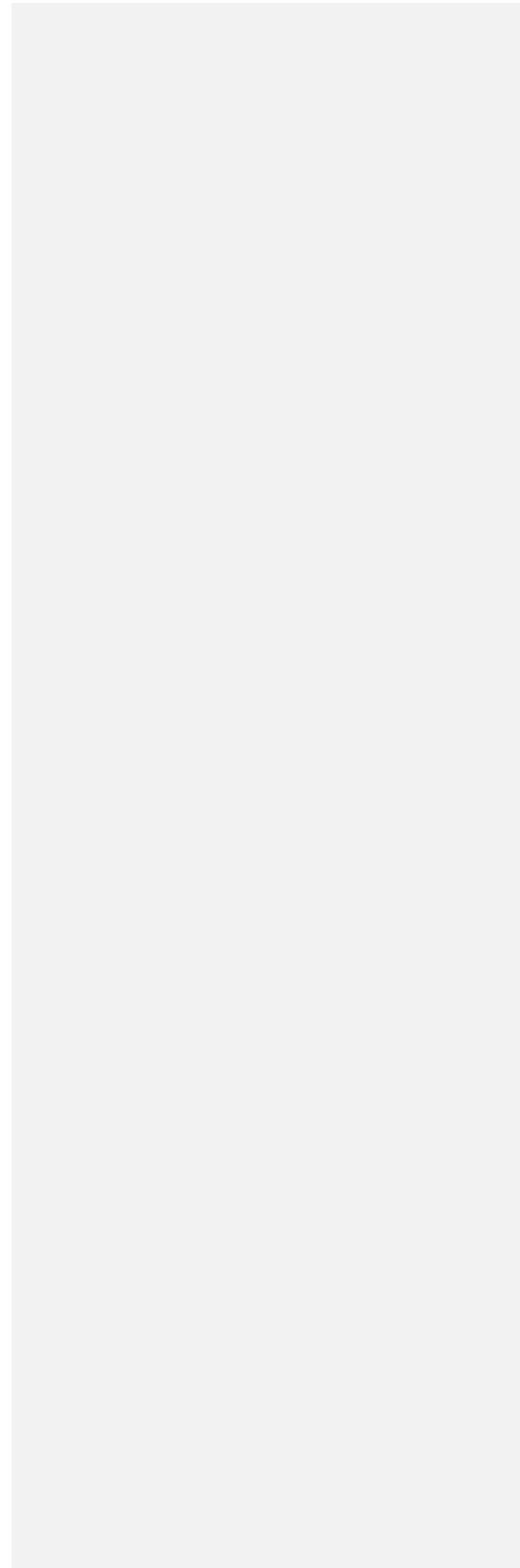
5.3 **Disqualification of Applicants**

The ~~Human Resources Director~~ **Director of Human Resources** may disqualify any applicant either before or after examination for any of the following causes:

- a. The applicant did not properly complete the application;

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- b. The application indicates on its face that the applicant does not possess the minimum qualifications for the position;



c. The applicant is unable to perform the essential functions of the position sought, with or without reasonable accommodations;

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d. The applicant is currently using illegal drugs;

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e. The applicant has been convicted of a crime that may have an adverse impact on the applicant's ability to perform the job for which the applicant is applying;

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f. The applicant is not legally permitted to work within the United States;

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g. The applicant has made false statement of any material fact or practiced or attempted to practice deception or fraud in making application for employment; or

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h. For any material cause which in the judgment of the ~~Human Resources Director~~ Director of Human Resources would render the applicant unsuitable for the position, including a prior resignation from City service, termination from City service, or significant disciplinary action.

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#### 5.4 **Notice of Rejection**

The Human Resources Department shall ~~mail a send~~ notice by electronic mail of any rejection to the electronic mailing address account provided by the applicant on the application. Any disqualified applicant may protest ~~his or her~~ their rejection as provided by Section 6.7 of these Rules.

#### 5.5 **Incomplete or Late Applications**

Incomplete or improperly completed applications may be returned to the applicant for additional information and/or completion provided the time limit for receiving applications has not expired. Such applications may be resubmitted and accepted by the ~~Human Resources Director~~ Director of Human Resources. Acceptance in this case will be based on such applications being initially received on or before the previously announced final date for filing. Applications received after the announced final date for filing may be accepted by the ~~Human Resources Director~~ Director of Human Resources. Acceptance in this case will be based on a reasonable explanation being given by the applicant which is satisfactory to the ~~Human Resources Director~~ Director of Human Resources. Such acceptance must take place prior to any scheduled examination for the class in question.

### 6. EXAMINATIONS

#### 6.1 **Responsibility**

The ~~Human Resources Director~~ Director of Human Resources or designee, in consultation with the Department Head or designee, will determine the manner and methods, and by whom examinations shall be given. All examinations and background checks will be job-related and consistent with a business necessity.

Examinations shall be competitive and may consist of written tests, oral tests, performance tests, evaluations of prior training and performance, experience and education, interviews, style assessments, file review, or any combination thereof.

The ~~Human Resources Director~~ Director of Human Resources shall be responsible for the selection of examination for classes of positions within the City's service.

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6.2 **Need for Examinations**

The ~~Human Resources Director~~ Director of Human Resources or designee shall schedule examinations as necessary. If there is a vacancy or one is anticipated, or if a provisional appointment is made, an examination will be conducted as soon as practicable to establish or supplement an employment list.

6.3 **Qualifications Appraisal Board**

In examinations where appropriate, the education, experience, skills, personal qualifications, and other pertinent information about the candidate may be evaluated by a Qualifications Appraisal Board. The weight to be given the evaluation of the above shall be determined by the ~~Human Resources Director~~ Director of Human Resources. The Qualifications Appraisal Board may be composed of outside subject matter experts, entirely of City employees, or a combination thereof. If a Qualifications Appraisal Board member is a City employee, provided that such persons are they shall not be neither the manager/supervisor for the positions being examined, nor ~~are be~~ currently the immediate supervisor of a candidate. If possible, at least one of the members of the Qualifications Appraisal Board shall be technically familiar with the character of the work of the class for which the candidates are being examined.

6.4 **Rating**

In all examinations, the minimum grade or standing for which eligibility may be earned shall be based upon all factors in the examination, including educational requirements, experience, and other qualifying elements as shown in the application of the candidate or other verified information. At the discretion of the ~~Human Resources Director~~ Director of Human Resources, failure in one part of the examination may be grounds for declaring the applicant as failing in the entire examination, or as disqualified for subsequent parts of an examination. The ~~Human Resources Director~~ Director of Human Resources may also designate any part of an examination as qualifying only, and no numerical weight need be assigned to passing scores in said part.

6.5 **Preparation of Employment Lists**

~~Eligibility-Employment~~ lists shall be established and certified by the ~~Human Resources Director~~ Director of Human Resources or his/her/their designee following all applicable examinations. If the examination was given on both a promotional and open basis, the names of candidates shall be distinguished under the corresponding heading, "Promotional List" or "Open List". The listing of eligible names shall be in alphabetical order and grouped within the following blocks, as determined by the Human Resources Department after review of qualifications and/or testing results.

- Block A** shall contain the names of those candidates found to be most qualified.
- Block B** shall contain the names of those candidates found to be well qualified.
- Block C** shall contain the names of those candidates found to be qualified, but not as fully qualified as those placed in Blocks "A" or "B".

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6.6 **Notification of Examination Results**

Every applicant taking part in the examination process shall be given written notice of the results. Any claim of error in rating or grading, must be submitted to the ~~Human Resources Director~~Director of Human Resources no later than ~~ten-five (105)~~ days after the effective date of the eligibility-employment list, to be considered for correction. Applicants shall be provided timely access to all information reasonably necessary to determine if an error in rating or grading has occurred. However, applicants may be prohibited from inspecting examination papers if review of such materials is prohibited by the consulting agency that prepared the examination. Applicants cannot have access to the rating sheets of the individual raters, but upon request may have access to a composite description of the rating sheets. Corrections of errors in grading shall be made within the discretion of the ~~Human Resources Director~~Director of Human Resources. Applicants have no further right of appeal of examination results.

6.7 **Protests/Appeals to ~~Human Resources Director~~Director of Human Resources**

6.7.1 *Rejection of Application.* Within five (5) ~~working-calendar~~ days of the date of the notice of disqualification, an applicant may file an appeal in writing with the ~~Human Resources Director~~Director of Human Resources. Such an appeal shall contain information in sufficient detail to enable the ~~Human Resources Director~~Director of Human Resources to reevaluate the applicant. Within ten (10) ~~working-calendar~~ days of receipt of the appeal, the ~~Human Resources Director~~Director of Human Resources shall review the issues involved and render a decision in writing to the appellant.

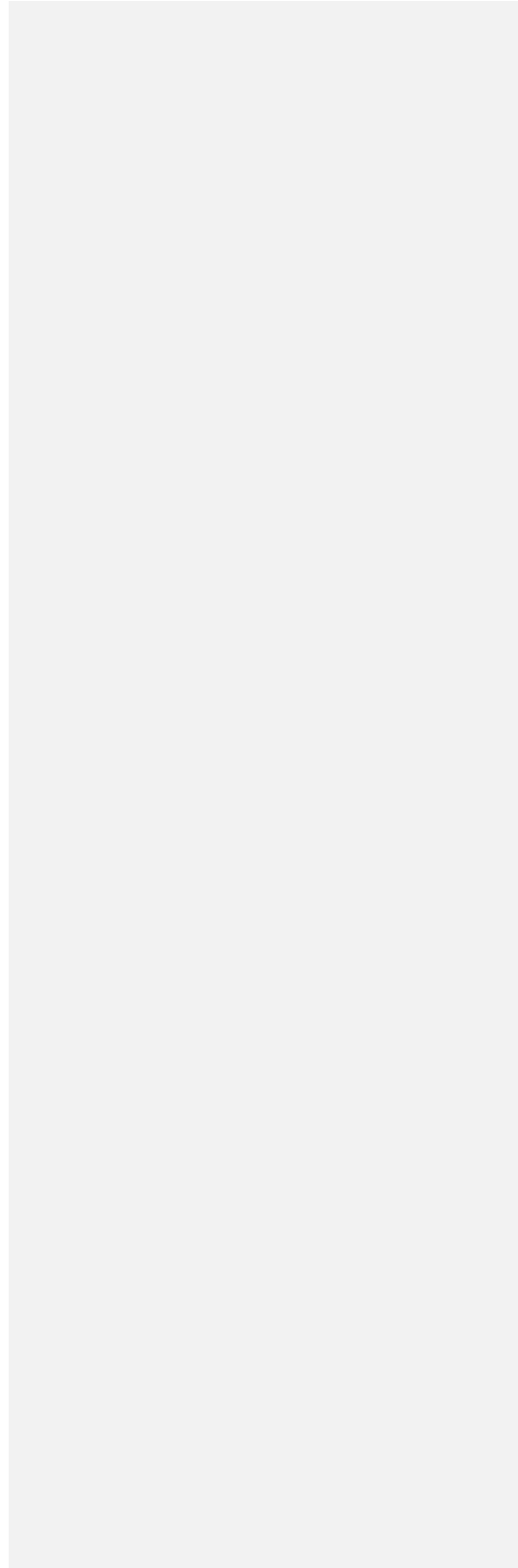
6.7.2 *Protest of Written Test Items*

6.7.2.1 *Item Protests.* Within ~~ten-five (510)~~ calendar days of the examination date, a candidate may submit a written protest or objection to any item in the examination. Protests should cite authorities or references in support and/or reason for challenge to keyed items in sufficient detail to enable the ~~Human Resources Director~~Director of Human Resources to understand the objection and to complete any research which is necessary to evaluate the soundness of the protest. Protests based purely on personal opinion without cited authority shall not be considered by the ~~Human Resources Director~~Director of Human Resources.

6.7.2.2 *Determination of Item Protests.* Upon the receipt of test or item protests, the ~~Human Resources Director~~Director of Human Resources shall commence to review the basis for the protests, consulting with such authorities as appropriate and make a determination if the items shall stand as keyed, be eliminated from the test, or that the key be modified and the test shall be scored or restored accordingly. In any case, the person filing the protest shall be notified in writing of the ~~Human Resources Director~~Director of Human Resources's decision.

6.7.3 *Disqualification/Final Ratings.* A candidate or eligible may appeal in writing to the ~~Human Resources Director~~Director of Human Resources within five (5)

| calendarworking days after being



notified by mail to the last known address of disqualification or final ratings in any examination. Within ten (10) ~~working-calendar~~ days of the receipt of such an appeal, the ~~Human Resources Director~~Director of Human Resources shall commence to review the issue. When the ~~Human Resources Director~~Director of Human Resources has reached a decision, the appellant shall be notified by mail to the last known ~~electronic mail~~ address of the ~~Human Resources Director~~Director of Human Resources's decision.

#### **6.8 Status of Examinations Being Protested or Appealed**

Normally, scoring of written tests will not be completed pending disposition of protests. As the needs of the service may require the City to fill vacancies from employment lists, tests may be scored and other parts of the examination, certification, and appointment process completed prior to receipt of or answer to protests. Appointments so made are not subject to change even if subsequent test rescoreing should alter the established order of the employment lists.

### **7. ESTABLISHMENT AND THE USE OF EMPLOYMENT LISTS**

#### **7.1 Types of Lists**

The following types of employment lists shall be established by examinations with the type of employment list to be established determined by the ~~Director of Human Resources~~Director.

7.1.1. *Promotional Employment List*- If there are less than three (3) applicants on a promotional eligibility list, the ~~Human Resources Director~~Director of Human Resources, in consultation with the Department Head, may declare the list invalid and announce a new recruitment and examination period. In the alternative, the ~~Human Resources Director~~Director of Human Resources may make a temporary appointment until eligible candidates can be certified after appropriate examination.

7.1.2. *Open Employment List* - If less than five (5) names of qualified applicants are available for a new appointment, the ~~Human Resources Director~~Director of Human Resources may declare the list invalid and announce a new recruitment and examination period.

#### **7.2 Use of Employment Lists**

Employment lists shall be valid and in effect for a period of one (1) year ~~unless declared invalid by the Director of Human Resources after all candidates have been considered~~. An ~~eligibility-employment~~ list may be extended upon the recommendation of the Department Head and by action of the ~~Human Resources Director~~Director of Human Resources for additional six-month periods, but in no event shall a list remain in effect for more than two (2) years.

#### **7.3 Eligibility for Promotional Examinations**

All candidates for promotion ~~al examinations~~ must ~~be current regular employees, currently work in City services, have worked the equivalent of one-half year (1040-hours) within the past five consecutive years, and must possess the minimum~~

~~qualifications as set forth in the specifications of the class to which the promotion is sought.~~

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#### 7.4 **Employment Lists Resulting from Continuous Examinations**

The ~~Human Resources Director~~Director of Human Resources may initiate a continuous examination for a class or add to an existing open or promotional employment list by re-announcing and conducting a continuous examination. Candidates on such an employment list shall be placed in the appropriate block of names as determined by their relative ratings for a period of one (1) year unless the employment list is declared invalid by the Director of Human Resources as provided by section 7.2 of these Rules-

#### 7.5 **Restoration of Names of Laid-off Employees to Employment Lists**

The names of employees who are laid-off or demoted for lack of work, or lack of funds, shall be restored to the same employment list from which the original appointment was made, and in the same block of candidates as when the original appointment was made, provided the original employment list is still valid.

#### 7.6 **Availability of Candidates**

It shall be the responsibility of candidates or those on re-employment or reinstatement lists to notify the Human Resources Department of any change of electronic mail address or other change affecting availability for appointment. The Human Resources Department may circulate employment, reinstatement, or re-employment lists or use other methods to determine the availability of candidates and may indicate the conditions under which appointment may be offered. Candidates or those on reinstatement lists who decline to be considered or indicate unwillingness to accept employment under the offered conditions will be deemed to be not further considered for that position.

#### 7.7 **Removal of Names from Employment, Reinstatement or Re-employment Lists**

The ~~Human Resources Director~~Director of Human Resources may remove the name of any eligible candidate from an employment, reinstatement, or re-employment list for any of the following reasons:

7.7.1 *Disqualification.* As stipulated in Section 5.3 of these Rules.

7.7.2 *No Response.* On evidence ~~that~~ the eligible candidate cannot be located by ~~postal authorities at~~ the last known electronic mail address, failure to reply within five (5) working days from the date the letter was sent via electronic mail mailed requesting information as to availability for appointment, or failure to notify the Human Resources Department of any change of electronic mail address resulting in the return of letters ~~without forwarding by the United States Post Office~~, will be considered sufficient evidence. On submission of a request therefore, giving acceptable reasons as to why the notice was not returned or change of electronic mail address not filed, the ~~Human Resources-~~

~~Director~~ Director of Human Resources may restore the name of an eligible to the appropriate list.

7.7.3 *Request of Eligible Candidate.* Upon receipt of a written statement from the eligible candidate requesting ~~his/her~~ their name be removed from the employment, reinstatement, or reemployment list.

- 7.7.4 *Third-Waiver.* If three offers of regular full-time employment in the class for which the employment, reinstatement, or re-employment list was established have been declined by the eligible candidate.
- 7.7.5 *Failure to Accept Appointment Offer.* If the person selected has been granted at least two (2) weeks to assume the position, and fails to do so, this failure to appear may be cause to remove that person from the employment, reinstatement, or re-employment list.
- 7.7.6 *Removal from Promotional Employment List Automatic Upon Termination.* If an eligible candidate on a promotional employment list resigns from the City service or is dismissed for cause, the candidate's name shall automatically be dropped from such list. If an open list from which the candidate was originally hired exists and is still valid, the person who resigns from City service may request that ~~his/her~~their name be placed on the open list.
- 7.7.7 *Unfit for Duty.* If an eligible candidate is physically or mentally unable to perform the essential functions of the job, with or without reasonable accommodation.
- 7.7.8 *Any other lawful reasons.*

7.8 **Request to Fill Vacancies**

Whenever a position in the Competitive Service is to be filled, the Department Head shall notify the ~~Human Resources Director~~Director of Human Resources by electronically submitting a Request to Hire form. The ~~Human Resources Director~~Director of Human Resources shall advise the Department Head as to the availability of persons for employment in the position.

7.9 **Employment List Priority**

Subject to the provisions of Section 14.6 of these Rules, priority for consideration for appointment to a regular position shall be given to the various employment lists in the following order: re-employment lists, reinstatement lists, promotional lists, and open lists; however, reinstatement lists may be used instead of any employment list except a re-employment list.

- 7.9.1 *Re-employment Lists.* A re-employment list for any class, shall consist of the names of employees who have permanent-regular status in that class and who have been issued an Official Notice of Layoff and have been laid-off, or in lieu of layoff, have been demoted, transferred, or resigned from a position in the same class prior to the effective date of their layoff. All names shall be placed on the re-employment list in reverse order of the designated date of layoff. That is, the person who was laid-off, or who demoted, transferred, or resigned in lieu of layoff most recently shall be placed highest on the list. Employees whose positions have been reclassified to a class having a lower maximum salary, but who have not been demoted for cause, shall have their names placed on the re-employment list in order of their service in the class from which their position was reclassified. Names placed on a re-employment list

shall remain on such a list for no more than two (2) years from the date of layoff; demotion, transfer, or resignation in lieu of layoff; or the reclassification of the position to a class having a lower maximum salary.

7.9.2 *Reinstatement Lists.* The Department Head may, with the approval of the ~~Human Resources Director~~ Director of Human Resources, reinstate any person who has either resigned in good standing from a position in which the former employee had permanent-regular status to a position in the same class, or return an employee to a class in which status was held prior to the employee's acceptance of a non-disciplinary demotion, provided that such reinstatement is accomplished within one (1) year of the date of resignation or non-disciplinary demotion. Such reinstatement action may, at the discretion of the ~~Human Resources Director~~ Director of Human Resources, take precedence over any employment lists, except a re-employment list. Any person so reinstated shall be subject to a new probationary period of the same length as established for new appointees to a position in the class. The order of names on a reinstatement list for a class shall be in order of their resignation or non-disciplinary demotion, with the most recent being last.

7.9.3 *Promotional Lists.* Promotional lists shall consist of the names of employees who have been successful in an examination designated as a promotional examination. Names of all eligible candidates shall be placed in alphabetical order within an appropriate block on the promotional list according to their scores. Names of employees requesting an approved lateral transfer may also be placed on the promotional list.

7.9.4 *Open Lists.* Open lists shall consist of the names of persons who have been successful in an examination designated as an open examination. The names of all eligible candidates shall be placed in alphabetical order within an appropriate block on the open list according to their scores.

7.10 **Certification of Employment Lists**

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When requests for certification of employment list(s) are received, certification shall be made to the Department Head by the Human Resources Department in conformance with the following provisions:

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7.10.1 *Re-employment List Certification.* If a re-employment list exists for the class, the highest name on such a list shall be certified for a vacancy to be filled. If more than one vacancy is to be filled, then one more of the highest names shall be certified for each vacancy. In the event that employees on the re-employment list have the same designated date of layoff, ties shall be broken using the criteria specified in Section 14.2 of the Personnel Rules. The ~~principles~~ rules governing availability of candidates and removal of names from re-employment lists shall be as provided in Sections 7.7 of the Personnel Rules.

7.10.2 *Reinstatement List Certification.* If a reinstatement list exists for the class, all names on such a list shall be certified in addition to an appropriate certification from promotional or open employment lists.



7.10.3 *Promotional List Certification.* Subject to the provisions of Section 14.6, if no re-employment list for a class exists, then the names from the promotional list(s) for the class shall be certified.

7.10.4 *Open List Certification.* If no re-employment or promotional list exists for a class, then names from the open list(s) for the class shall be certified. Lists shall be provided to departments according to block. Priority consideration shall be provided to A Block candidates over B Block Candidates and B Block candidates over C block candidates. The open list(s) shall include all names contained in Blocks “A”, “B”, and “C” for such list(s).

If a vacancy exists in a classification for which there is no existing ~~eligibility employment~~ list, an appropriate ~~eligibility-employment~~ list may be prepared for the classification from one or more existing related ~~eligibility-employment~~ lists. For this purpose, the ~~eligibility-employment~~ list may be selected from the classes for which the selection process and qualifications are comparable to or higher than those required for the class for which the vacancy exists.

## 8. APPOINTMENTS

The City Manager or ~~his/her/their~~ designee shall make an appointment by extending a conditional offer of appointment to an applicant. If the applicant accepts the offer of appointment, the appointment shall be deemed completed, subject to successful completion of any required pre-employment examination(s) or assessments. If the applicant does not accept the offer of appointment within the time period designated by the City Manager or ~~his/her/their~~ designee, the offer shall expire and the offer of appointment shall be deemed declined by the applicant. However, an offer of an appointment to a City position and acceptance of that appointment does not create a contract of employment between the City and appointee. City employment is not held by contract, but rather is governed by these Rules and Council resolutions.

### 8.1 General Requirements for Appointment

#### 8.1.1 Pre-Employment Screenings

As part of the pre-employment procedure, applicants may be required to supply references and submit to a thorough background check, including Live Scan fingerprinting. Safety employees shall be subject to investigation in accordance with Department of Justice and/or Police Officer Standards and Training (POST) requirements. In the case of employees handling money or other valuables in the course of their duties, a credit check may be done in accordance with applicable law.

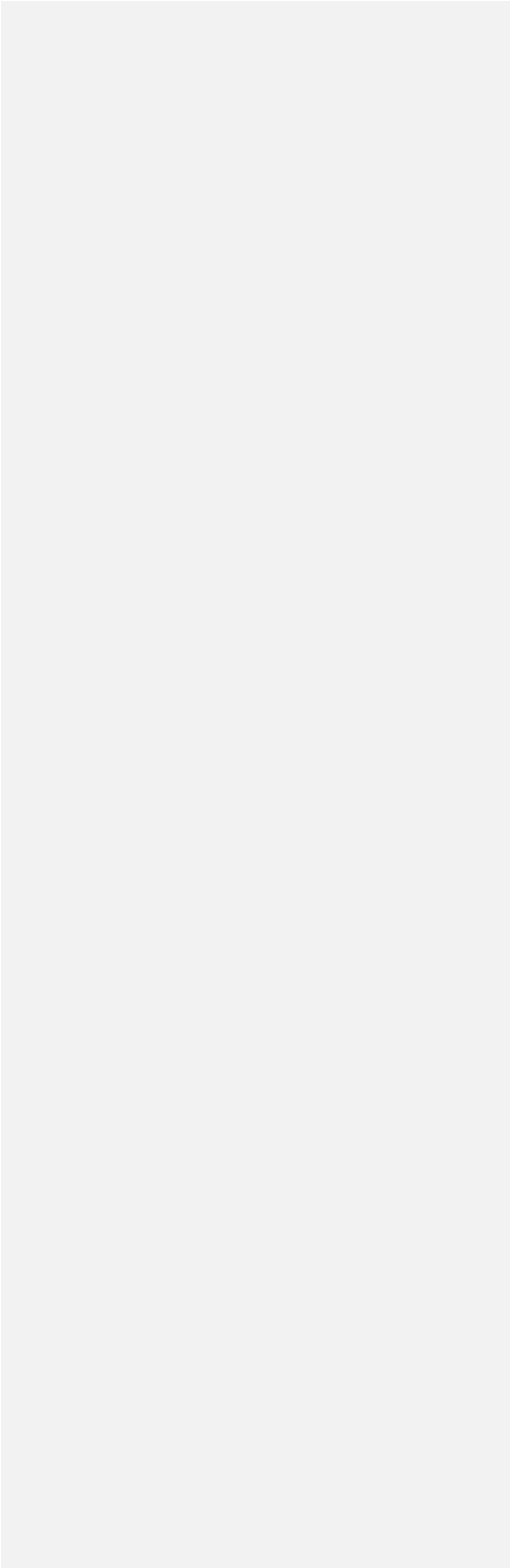
All offers for appointment to a position ~~in the Competitive Service~~ shall be contingent upon the appointee passing appropriate medical and/or psychological examination and testing to determine whether the candidate can perform the essential functions of the job, with or without reasonable accommodation. Such pre-employment screenings may also include screening for illegal drug use in compliance with the City’s Drug and Alcohol Testing Policy. If the examination reveals that the appointee cannot perform the essential functions of the job, with or without reasonable accommodation, or

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that the person uses illegal drugs, the person may be disqualified from consideration for employment.



If a candidate is disqualified from appointment to a position for failing to meet the medical and psychological standards for the job class, the candidate may file a written request to review the disqualification. Such request must be submitted to the ~~Human Resources Director~~ Director of Human Resources no later than five (5) working days after the ~~postmarked~~ date of the notification or disqualification. The candidate may submit medical evidence supporting ~~his/her/their~~ he/she/they claim that ~~he/she/they~~ should not have been disqualified. Submittals shall be accepted for a period of fifteen ~~(15)~~ days, commencing with the date of notification of disqualification. In case of a genuine dispute, the City may require the candidate to be examined by a physician or medical evaluator of the City's choice. Any such examination shall be paid for by the City. The City shall make the final determination based on this examination. If the disqualification is upheld, the candidate has no further right of appeal of the City's determination.

## 8.2 Applicable Pay Upon Employment

Those appointed to a position in the City service shall be paid the designated rate of pay or salary for the class.

- 8.2.1 *Pay for New Employees.* Step "A" shall typically be paid upon initial employment into a five (5) step pay range. If the employee possesses exceptional training or experience, that employee may start at a step "B" with the approval of the Department Head. Appointments at any step greater than "B" require prior authorization from the City Manager.
- 8.2.2 *Pay on Re-employment.* Upon the appointment of an employee from a re-employment list as provided by Section 7.9.1 of these Rules, the employee shall receive not more than the salary step in the pay range the person received prior to layoff and the person's step advance date shall be adjusted to credit City service since the most recent salary step advancement, but the employee shall not be credited for the period of separation from City employment. ~~If the re-employment results from a reallocation of a position to a class having a lower maximum salary, the salary upon re-employment into the higher class shall be the employee's present salary or the step in the pay range the employee received prior to the reallocation, whichever is higher, and there shall be no change in the employee's step advance date.~~
- 8.2.3 *Pay upon Rehire.* Upon the rehire of a former employee into the same class as the employee occupied prior to separation, such a person shall receive the same salary step in the pay range for the class as was received prior to separation. If rehired into a related lower class, credit shall be given for prior service in determining the salary step for employment in the lower class. If rehired into a higher class than previously occupied, the Rules regarding pay upon promotion shall apply. The employment date for a person rehired into a position shall be established based upon the date of such rehire.
- 8.2.4 *Pay upon Reinstatement.* Upon the reinstatement of an employee as provided by Section 7.9.2 of these Rules, the employee shall receive not more than the same salary step in the pay range the employee previously received prior to

termination or non-disciplinary demotion and new employment and step advance dates for the employee shall be established based upon the date of such reinstatement.

### 8.3 Types of Appointments

8.3.1 *Limited-Service Appointments.* Such appointments may, but need not be, made from employment lists. Any person on an employment list who accepts a Limited-Service appointment shall nevertheless retain ~~his/her~~their place on such employment list. Employees holding limited-service appointments shall be compensated on a straight hourly basis for the actual number of hours worked, unless otherwise provided by the ~~Human Resources Director~~Director of Human Resources. The rate of pay shall be determined by the City's compensation plan and shall be within the salary range for the specified position.

Employees in limited services appointments shall work on a schedule determined by the City. These positions may be eliminated and/or replaced with full time positions as determined by the City. Employees holding limited-~~services~~ appointments are "at will" and may be terminated at any time with or without cause and without right of appeal.

No limited-service employee shall be eligible for a salary adjustment except as provided in a Council approved compensation plan.

However, Department Heads may make recommendation to the City Manager salary adjustments at an earlier date if circumstances warrant such adjustment.

~~For the purpose of calculating City service time, part time hours worked may be converted to equivalent full time hours. If appointed to a regular position, no credit will be given for limited-service hours worked and incumbent will be considered a new employee.~~

8.3.2 *Provisional Appointments.* All Department Heads and other appointing authorities shall, whenever possible, notify the ~~Human Resources Director~~Director of Human Resources of impending or anticipated vacancies in their departments sufficiently in advance ~~so as to~~to allow for the establishment of an appropriate employment list. However, when the demands of the service are such that it is not practicable to give such notification and when no employment list exists ~~or existing lists are insufficient~~ and if it is not practicable to delay appointment until a new employment list can be prepared and certified, the Department Head may, with the approval of the ~~Human Resources Director~~Director of Human Resources, make a provisional appointment to a regular position. As soon as practicable after a provisional appointment has been made, the ~~Human Resources Director~~Director of Human Resources shall cause an examination to be prepared, and all positions filled provisionally shall be filled by an appointment from an employment list as soon as feasible.

Persons holding provisional appointments are "at will" and may be terminated from those provisional appointments at any time with or without cause and without right of appeal. However, if such employee has attained permanent status in a different position within City service, then in the event the

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employee's provisional appointment has been terminated, the employee may revert back to the previously held position.

8.3.3 *Emergency Appointments.* To meet the immediate requirements of an emergency condition, such as major fire, flood, earthquake, or other public calamity that threatens public life or property, the City Manager may employ such persons as may be needed for the duration of the emergency without regard to the personnel ordinance, these Rules, or other rules and regulations affecting appointments. Such employees serve at the will of the City Manager and may be dismissed with or without cause and without any right of appeal.

#### 8.4 **Probationary Period.**

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Any person ~~appointed~~ hired into a position in the Competitive Service, except for the positions ~~listed below, shall be placed on probation for a period of six (6) months unless otherwise~~ specified in a Memoranda of Understanding or other Council approved resolution, shall be placed on probation for a period of six (6) months. ~~The probationary period for appointments to Police Communications Operator, Fresh Water Treatment Plant Operator, Waste Water Treatment Plant Operator, and Fire Engineer shall be for one (1) year and the probationary period for entry level class of Police Officer shall be for eighteen (18) months.~~ The probationary period for all promoted employees shall be six (6) months unless otherwise specified in a Memorandum of Understanding or other Council approved resolution. With the approval of the ~~Human Resources Director~~ Director of Human Resources and upon written notice to the probationer, the probationary period may be extended up to six (6) months for those on a six-month probation period and up to one (1) year for any appointments to a Peace Officer. The probationary period shall be considered a part of the recruitment, examination and selection process and shall not include the time served under any limited service or provisional appointment, but shall date from the time of appointment to a regular position after certification. Leaves of absence or assignment out of the class totaling more than thirty (30) calendar days, for any reason, shall not be counted toward completion of the probationary period. During the probation period, the employee may be rejected by the Department Head in consultation with the ~~Human Resources Director~~ Director of Human Resources at any time without cause and without right of appeal or hearing.

#### 8.5 **Promotion of an Employee.**

~~The appointment of a~~ Any employee hired into a regular position in a class which has a higher maximum salary than the employee's present position constitutes a promotion. Such an appointment to a position in the Competitive Service shall be made from an employment list established for the class with the higher maximum salary. If no appropriate employment list exists, then a provisional appointment may be made as provided by Section 8.3.2 of these Rules.

8.5.1 *Applicable Pay Following Promotion.* In the case of the promotion of any employee in the City service, such employee shall be entitled to receive the rate of compensation in the entrance step of the pay range for the class to which the employee has been promoted. In cases of promotion where the pay range overlaps, the employee shall be placed at such step in the pay range of the higher class as to provide at least five percent (5%) more ~~basic~~ salary than the employee receives in the lower class. Provided, however, that the application of this provision does not exceed the highest salary step in the authorized pay range for the higher class. The City Manager may authorize an

appointment to a position at any higher salary step in the pay range upon the recommendation by the Department Head, as outlined in 8.2.1 (Pay for New Employees).

Effective on the date of the promotion, a new salary evaluation date shall be established for purposes of eligibility for consideration for future salary step advances within the pay range of the higher class. In the event the promotion occurs on the employee's salary evaluation date, such employee shall first receive any within-range increase to which the employee is otherwise entitled in the lower class, and then the promotional salary adjustment as provided above.

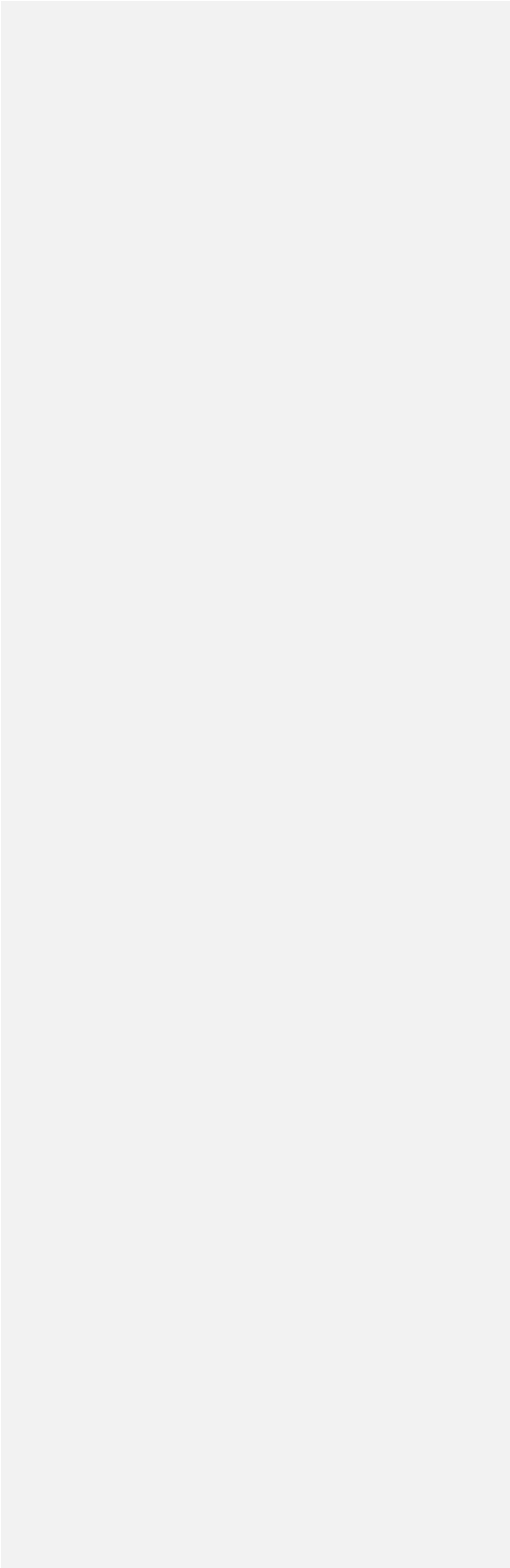
- 8.5.2 *Status of Employee Following Promotion.* When a promoted employee (excluding at will employees) successfully completes the probationary period for a class ~~he/she they~~ then gains ~~permanent-regular~~ status in the new class and gives up ~~permanent-regular~~ status in the former class. Any employee who does not successfully complete the probationary period in the promoted class, may return to the position and status held prior to promotion providing there is a vacancy, unless the reason for rejecting the employee during the probationary period from a position to which promoted would have been sufficient to cause dismissal from the former position as well. If no vacancy exists, the employee will be placed number one on the re-employment list.

## 8.6 **Transfer of an Employee.**

A Department Head may, in consultation with the ~~Human Resource Director~~Director of Human Resources, at any time and for any reason, transfer an employee from one position to another position in the same or comparable classification with the same or comparable qualifications and without loss of compensation. If such transfer involves a change from one department to another, both Department Heads should be consulted before the action shall be considered effective. An appropriate personnel action form shall be completed and shall include the effective date of the transfer. Whenever possible, an employee being considered for transfer shall be notified within a reasonable period in advance of the effective date of such contemplated transfer and ~~his/her~~their wishes with respect to this action shall be taken into account to whatever extent practicable, consistent with the interest of efficient operations of the departments concerned.

- 8.61 *Applicable Pay Rates Following Transfer.* In the case of the transfer of any employee from one position to another in the same class or to another class to which the same pay range is applicable, the employee shall remain at the same salary step and shall retain the salary same evaluation date.
- 8.62 *Status of Employee Following Transfer.* A transfer of a ~~permanent-regular~~ employee from a position in one class in the Competitive Service to a position in another Competitive Service class having related duties and responsibilities and the same maximum salary shall be made only upon written approval of the ~~Human Resources Director~~Director of Human Resources that the employee possesses the qualifications for employment in the new class. In such case, no further competitive examination is required, and the employee shall assume ~~permanent-regular~~ status in the class to which assigned. However, an

employee currently serving a probationary period shall not be transferred to a position in another class for





which an employment list exists, unless directed by the ~~Human Resources Director~~Director of Human Resources. In such case, the employee shall start a new probationary period effective on the date of the transfer.

#### 8.7 **Voluntary Transfers**

~~Regular e~~Employees who desire a transfer may submit a request for voluntary transfer ~~to their Department Head~~online for consideration. ~~The A~~ Department Head may approve or deny the transfer request ~~in his/her~~at their sole discretion. If an employee voluntarily transfers to another position in the same or comparable classification and is not successful, the employee may, at the discretion of the Department Head(s), return to ~~his/her~~their former position if that position has not been filled. The employee's salary evaluation date shall remain the same as it was before the transfer and both departments shall partner to complete the evaluation as needed.

#### 8.8 **Qualified Reasonable Accommodations for Disabled Employees**

The City may initiate a transfer of a ~~qualified~~ disabled employee to another position as a reasonable accommodation for the employee's disability. Such transfers may have priority over any candidates on an existing ~~eligibility~~employment list.

#### 8.9 **Demotion of an Employee**

An employee may be demoted at ~~his/her~~their request, as a result of reduction in force, for disciplinary reasons, or for other cause. In all cases, the Department Heads concerned, in consultation with the ~~Human Resources Director~~Director of Human Resources, shall approve or reject the demotion request and notify the employee in writing.

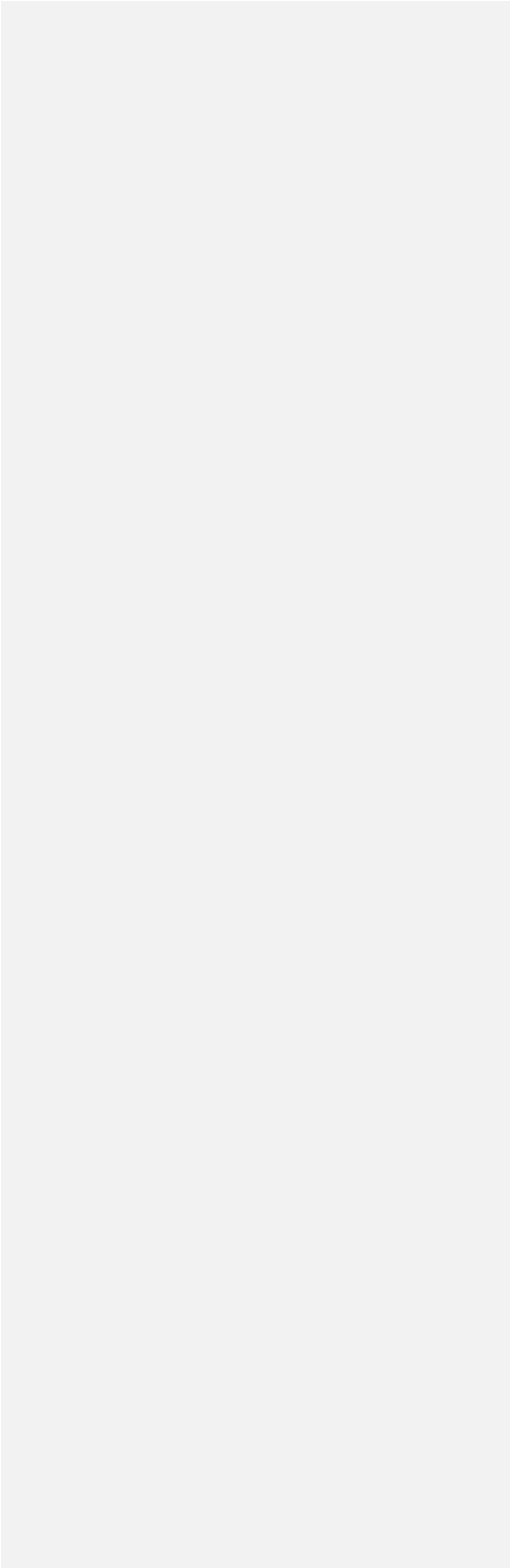
A demoted employee shall be required to serve a probationary period in the lower classification unless the lower classification is in the same class series or the employee completed probation in the lower classification. In the event a voluntarily demoted employee does not pass probation, the employee may, at the discretion of the Department Head(s), return to their former position if that position has not been filled. In the event ~~the an employee~~ demoted for any reason other than voluntary employee does not pass probation, the employee shall be terminated from employment without right of appeal. The effective date of a demotion shall establish a new salary evaluation date.

An employee may request a voluntary demotion to a lower classification in which the employee meets the minimum qualifications. The request shall be ~~in writing~~completed and submitted ~~to the Department Head~~online for consideration. ~~The A~~ Department Head may approve or deny the demotion request ~~in his/her~~at their sole discretion. If approved, the employee shall sign an acknowledgement of voluntary demotion and reduction of salary and benefits.

If an employee voluntarily demotes to another position in the same or comparable classification, the employee's salary evaluation date shall remain the same as it was prior to the demotion.

8.9.1 *Applicable Pay Following Demotion.* An employee who is demoted to a class

in the City service with a lower maximum salary shall be assigned to a salary step in the lower pay range according to the following rules:



- 8.9.2 *Disciplinary Demotion.* If a disciplinary demotion, any designated step in the lower pay range which is at least one (1) step less than the dollar amount received in the pay range for the class from which demoted. A new salary evaluation date shall be established as of the effective date of demotion.
- 8.9.3 *Non-Disciplinary Demotion.* If a non-disciplinary demotion, that salary step in the pay range for the lower class which the employee would have received had the employee's service in the class from which demoted been continuous in said lower class. ~~The employee's previous salary evaluation date shall be retained.~~The effective date of a demotion shall establish a new salary evaluation date.
- 8.9.4 *Status of Employee Following Demotion.* If the demotion involves an employee with ~~permanent-regular~~ status in the Competitive Service, then the demoted employee shall assume ~~permanent-regular~~ status in the class to which demoted and give up ~~permanent-regular~~ status in the class from which demoted only if the findings of the ~~Human Resources Director~~Director of Human Resources are that the employee meets the qualifications of the class to which demoted. If the employee does not have ~~permanent-regular~~ status in the higher class or in a class comparable to the class to which the employee is demoted, the employee shall serve a new probationary period in the demoted position.

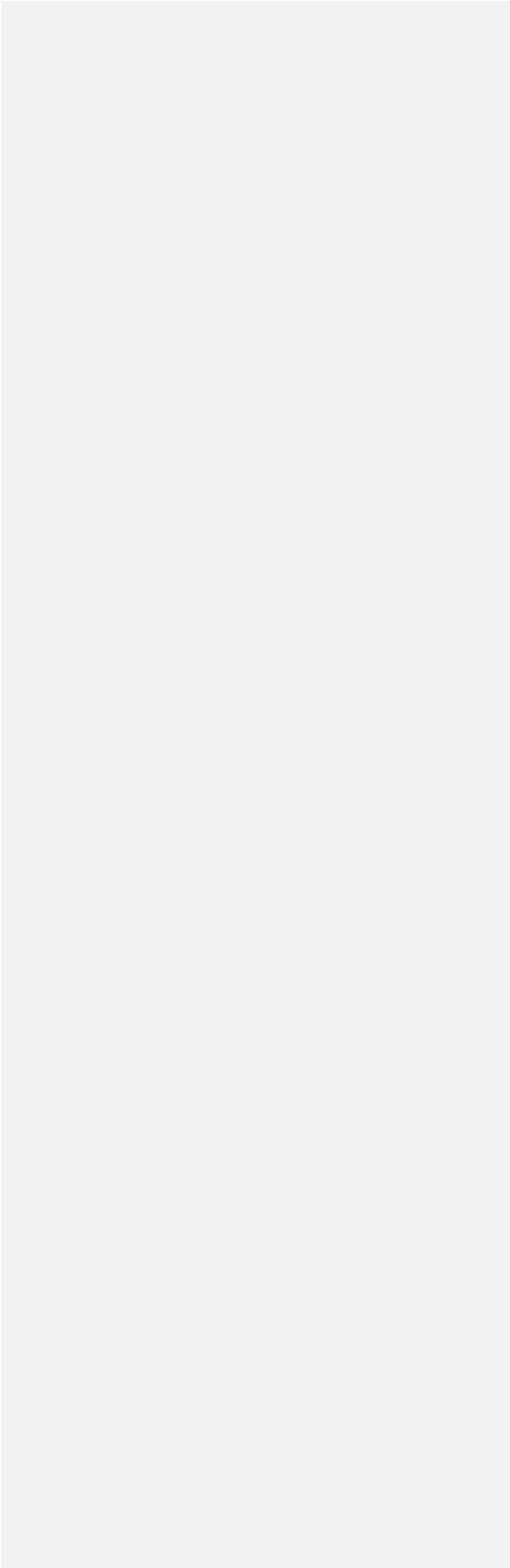
#### 8.10 **Reclassification of an Employee's Position**

An employee may be reclassified without competitive exam if the ~~Human Resources Director~~Director of Human Resources determines the employee has met the minimum qualifications of the new classification and has performed the duties of the reclassified position for a considerable length of time. Reclassification shall not be used for the purpose of avoiding competitive selection processes. The Director of Human Resources may approve or deny a reclassification at their sole discretion.

The employee's salary evaluation date shall not change as a result of the reclassification. When a position is reclassified from one existing class to another existing or new class under Section 3.4. of these Rules, the following shall apply to the incumbent:

- 8.10.1 *Applicable Pay Following Reclassification.* If a position is reclassified to a class having the same maximum salary, the salary and the salary evaluation date of the incumbent shall not change. If a position is reclassified to a class which has a higher maximum salary, the salary shall be adjusted in accordance with Sections 4.2.1.7.4 and 8.5.1 of these Rules. If a position is reclassified to a class with a lower pay range, the salary of the incumbent shall not change. If such salary is greater than the maximum salary of the lower class, the incumbent will be assigned a "Y" rate designation as provided in Section 4.2.1.7.2 of these Rules.
- 8.10.2 *Status of Incumbents in Reclassified Positions.* Whenever reclassification occurs, an employee occupying the position may be retained in the position after it has been reclassified without further competitive examination, provided

that the ~~Human Resources Director~~Director of Human Resources in consultation with the Department Head, finds that:



8.10.2.1 The reclassification results from an official recognition of a change in duties and responsibilities which has already occurred.

8.10.2.2 The addition of duties and responsibilities (justifying allocation to a different classification) was not the result of planned management action.

8.10.2.3 The performance of the duties and responsibilities of the incumbent has been satisfactory.

8.10.2.4 The incumbent possesses the knowledge, skills, and abilities of the qualifications of the different class.

8.10.2.5 The incumbent has permanent-regular status in the class to which the position was formerly allocated.

8.10.3 *Retention of Status.* No person having permanent-regular status, who, in addition to regular duties, is given additional or new duties by a Department Head shall lose permanent-regular status in the class to which the employee held prior to the assignment of such additional or new duties.

## 9. OUTSIDE EMPLOYMENT AND USE OF CITY PROPERTY

### 9.1 Prohibited Activity

Full-time employees are expected to devote full time to assigned duties as a City employee. An employee shall not engage in any employment, activity or enterprise which is inconsistent, incompatible or in conflict with City job duties, functions or responsibilities, nor shall an employee engage in any outside activity which will directly or indirectly contribute to the lessening of effectiveness as a City employee. No employee shall engage in any type of activity relating to an employee organization during such time an employee is on duty, except as expressly provided in these Employer-Employee Relations Rules, Memorandum of Understanding, or by law.

### 9.2 Outside Employment

Employees may not engage in any employment or activities that create a conflict of interest, is unethical, or otherwise interferes with their City employment.

A City employee shall not perform any work, service, or consultation for compensation outside of City employment where any part of his/her/their efforts will be subject to approval by any officer, employee, board, or commission of the City of Tracy, unless approved in the manner prescribed by these Rules.

Employees occupying competitive services positions, who hold or wish to hold jobs outside their normal City employment must make a request to engage in outside employment and submit the request to the ~~Human Resources Director~~ Director of Human Resources or his/her/their designee. Department Heads who wish to engage in outside employment shall submit

such requests to the City Manager. Outside employment shall not be permitted if it conflicts in any manner with the employee's duties and responsibilities with the City or is prohibited by law.

In making a determination as to whether an activity creates a conflict or ethical question, the ~~Human Resources Director~~Director of Human Resources shall consider, among other pertinent factors, whether the activity involves:

- a. Receipt or acceptance by the employee of any money or other consideration from anyone other than the City for the performance of an act that the employee would be required or expected to render in the regular course of City employment;
- b. The performance of an act or work which may later be directly or indirectly subject to the control, inspection, review, audit or enforcement by such employee or other City employees;
- c. Conditions or factors which might, directly or indirectly, lessen the efficiency of the employee in regular City employment or conditions in which there is a substantial danger of injury or illness to the employee;
- d. The use for private gain or advantage of City time, facilities, equipment and supplies, prestige, influence, or information obtained through one's City office or employment. No City-owned facilities, equipment or supplies, including autos, trucks, instruments, tools, supplies, machines, badges, identification cards, or other items which are the property of the City shall be used by an employee for personal or non-City business reasons except upon prior written approval of the City Manager;
- e. The solicitation of future employment with a business or individual doing business with the City over which the employee has some control or influence in the course of performing official duties.

### 9.3 Authorization of Outside Employment

Notice of authorization of outside employment shall be in writing to the employee involved, with a copy placed in the employee's personnel file. Denial of authorization of outside employment determination may be subject to the Grievance Procedure as set forth in Section 13 of these Rules. An outside employment authorization is valid only up to one (1) year. Should the employee continue the outside employment, activity, or enterprise for a longer duration, they must make another request following the process in accordance with the Outside Employment Policy and California Government Code Section 1126.

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### 9.4 Violations and Penalties

Any outside employment authorization may be revoked or suspended during the year it is granted under the circumstances listed below.

- (a) The employee's work performance declines; or

(b) An employee's conduct or outside employment conflicts with the conditions of the outside work authorization or is incompatible with the employee's work for the City.

Any violation of these provisions regarding outside employment shall constitute grounds for disciplinary action up to and including termination.

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## 10. PERFORMANCE EVALUATIONS

### 10.1 Frequency

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Department Heads or their designees shall make a report of performance of each employee after completion of a probationary period and annually thereafter. Unless changed in accordance with these Rules, these evaluation dates shall constitute the employee's salary evaluation date for purposes of eligibility for a merit salary increase. The employee shall continue to receive annual performance evaluations on said date even after the employee has reached the top of the applicable salary range. In addition, a performance evaluation may be prepared at any other time at the discretion of the employee's supervisor.

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The employee shall receive a copy of the performance evaluation and shall have an opportunity to discuss said evaluation with his/her/their supervisor. The employee may also submit written comments or rebuttal to the evaluation which shall be part of the complete document to be placed in the employee's personnel file.

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### 10.2 Personnel Files

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The City shall maintain an official personnel file for each of its employees. Personnel files are maintained by the Human Resources Department and contain such personnel records as may be deemed necessary for the administration of labor and employment relations in the City and are property of the City.

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Personnel files shall be made available to employees for inspection in accordance with the Personnel Records Policy within a reasonable time after an employee's request and without loss of pay, provided that employees shall make arrangements with their supervisor if the inspection occurs on duty.

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The City may preclude inspection of certain information in accordance with the law, such as background and other pre-employment information and materials relating to confidential investigations.

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The City shall maintain separate files for injury reports, confidential medical records, grievances, discrimination complaints and other matters in accordance with applicable laws.

## 11. DISCIPLINARY ACTION

### 11.1 Authority to Discipline

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Employees who hold non-probationary appointments, and are not at will, shall not be disciplined without good cause. At will and probationary employees are subject to

dismissal without cause. For purposes of this section, disciplinary action shall be defined to include one or more of the following: oral ~~warnings~~reprimand, written reprimands, suspensions, demotions, reductions in pay and dismissal. Oral and written reprimands may be initiated at the supervisor/division manager level. Disciplinary action more serious than a written reprimand must be initiated at the Department Head level in consultation with the ~~Human Resources Director~~Director of Human Resources. The ~~Human Resources Director~~Director of Human Resources shall be notified of any contemplated disciplinary action prior to the time it is taken, provided that in emergency situations or other instances when prior notification is not practicable, the ~~Human Resources Director~~Director of Human Resources may be notified as soon as possible subsequent to the time the action is taken.

#### 11.2 **Grounds for Disciplinary Action**

Good cause for disciplinary action exists not only when there has been an improper act or omission by an employee in the employee's official capacity, but when any conduct by an employee brings discredit to the City, affects the employee's ability to perform his or her duties, causes other employees not to be able to perform their duties, or involves any improper use of the employee's position for personal advantage or the advantage of others. Good cause may include non-disciplinary reasons such as, the employee's unwillingness or inability, due to mental or physical disability, to perform the duties of the position for an indefinite period. The type of disciplinary action shall depend on the seriousness of the offense and the relevant employment history of the employee. Causes for disciplinary action against an employee may include, but shall not be limited to, the following:

- 11.2.1 Misstatements or omissions of fact in completion of the employment application or to secure appointment to a position with the City;
- 11.2.2 Furnishing knowingly false information in the course of the employee's duties and responsibilities;
- 11.2.3 Inefficiency, incompetence, carelessness or negligence in the performance of duties;
- 11.2.4 Violation of safety rules;
- 11.2.5 Violation of any of the provisions of these personnel rules and regulations, department rules and regulations, City policies, ordinances or resolutions;
- 11.2.6 Inattention to duty;
- 11.2.7 Tardiness or overstaying lunch periods;
- 11.2.8 Being under the influence of an intoxicating beverage or non-prescription drug or prescription drugs not authorized by the employee's physician, while on duty or on City property;
- 11.2.9 Disobedience to proper authority, refusal or failure to perform assigned work, to comply with a lawful order, or to accept a reasonable and proper assignment from an authorized supervisor;



- 11.2.10 Any violation of the City's Discrimination or Harassment Policies;
- 11.2.11 Unauthorized soliciting on City property;
- 11.2.12 Unauthorized absence without leave; failure to report after leave of absence has expired or after a requested leave of absence has been disapproved, revoked or canceled; or any other unauthorized absence from work;
- 11.2.13 Conviction of a felony, or a misdemeanor involving moral turpitude, or a violation of a federal, state or local law which negatively impacts the employee's ability to perform his/her/their job or brings discredit to the City. (For purposes of this section, a misdemeanor conviction does not include a conviction based on a plea of nolo contendere);
- 11.2.14 Discourteous or offensive treatment of the public or other employees;
- 11.2.15 Falsifying any City document or record;
- 11.2.16 Misuse of City property; improper or unauthorized use of City equipment or supplies; damage to or negligence in the care and handling of City property;
- 11.2.17 Fighting, assault and/or battery;
- 11.2.18 Working overtime without authorization;
- 11.2.19 Theft or sabotage of City property;
- 11.2.20 Sleeping on the job, except as specifically authorized for twenty-four (24) hour duty personnel;
- 11.2.21 Accepting bribes or kickbacks;
- 11.2.22 Gambling on the job;
- 11.2.23 Engaging in outside employment which conflicts with an employee's responsibilities;
- 11.2.24 Intimidation or interference with the rights of any employee;
- 11.2.25 Outside work or any other activity or conduct which creates a conflict of interest with City work, which causes discredit to the City, negatively impacts the effective performance of City functions or is not compatible with good public service or interests of the City service;
- 11.2.26 Abusive or intemperate language toward or in the presence of others in the work place;
- 11.2.27 Failure to obtain and/or maintain minimum qualifications for a position, including licenses or certificates;

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11.2.28 Any other conduct of equal gravity to the reasons enumerated above as determined by the City.

### 11.3 **Types of Discipline**

Any authorized supervisory employee may propose disciplinary action for cause against an employee under his/her supervision in accordance with the procedures outlined in these Rules. In general, the City shall adhere to the principles of progressive discipline.

11.3.1 *Oral Reprimand* - Verbally notifies the employee that his/her/their performance or behavior must be improved. Oral ~~warnings-reprimands~~ are generally given by supervisors when counseling has failed to produce the desired changes. The ~~warning-reprimand~~ defines the areas in which improvement is required, sets up goals leading to this improvement, and informs the employee that failure to improve will result in more serious action. Although the supervisor makes a note of the content of the ~~warning-reprimand~~ or sends a confirming memo to the employee, no record is placed in the employee's permanent personnel file unless subsequent action is necessary. Oral reprimands are not subject to the disciplinary appeal procedure set forth in these Rules (except as provided by law for sworn police ~~officers~~ and ~~firefighters~~ fire personnel).

11.3.2 *Written Reprimand* - Official notification to the employee that there is cause for dissatisfaction with the employee's services and that further disciplinary measures may be taken if said cause is not corrected. Written reprimands should be given in consultation with the ~~Human Resources Director~~ Director of Human Resources. Written reprimands shall be made a part of the employee's official personnel record and may be considered as pertinent evidence or information in any hearing. Written reprimands are not subject to the disciplinary appeal procedure set forth in these Rules (except as provided by law for sworn police ~~officers~~ and ~~firefighters~~ fire personnel).

11.3.3 *Suspension without pay* - Shall be a temporary separation from City service. Certain suspensions are subject to the disciplinary appeal procedure set forth in these Rules.

11.3.4 *Reduction in Step within range as a disciplinary measure* - Is the withdrawal of step advancements granted for merit, efficiency, and length of service. Reduction in pay shall become effective the first day of the pay period on the or after the effective date of the disciplinary action. Reduction may be made on permanent or temporary basis. Certain reductions of pay are subject to the disciplinary appeal procedure set forth in these Rules.

11.3.5 *Demotion without consent* - Shall be a reduction in classification to a classification having a lower maximum salary with reduction in salary as provided in Section 8.9.2 of these Rules. Demotion without consent may be made to the classification having the lowest maximum salary in the classification series or a classification series comparable to that within which the employee's position is located. Demotion may be made on a permanent or temporary basis. Demotions are subject to the disciplinary appeal procedure set forth in these Rules.

11.3.6 *Dismissal* - The termination of an employee from the City service. Dismissals, other than for probationary and at-will employees, are subject to the disciplinary appeal procedure set forth in these Rules.

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11.4 **Procedures for Disciplinary Action**

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In the absence of a process in a Memoranda of Understanding, employees shall be governed by the following provisions:

*Written Notice/Pre-Discipline Meeting/Final Action*

The City shall issue a written notice of discipline, describing the intended discipline, the basis for the discipline, and attaching any documents upon which the discipline is based. The City shall provide the employee an opportunity to respond to the disciplinary action, either orally or in writing, within 10 calendar days of such written notice of discipline. If the employee chooses to respond orally, the ~~Human Resources Director~~Director of Human Resources shall designate a City official who shall convene a meeting to hear the employee's response. If the employee chooses to respond in writing, the written response shall be logged in the employee's personnel file. No further appeal shall be permitted. In the case of a written reprimand, the employee may respond by submitting a written rebuttal to be logged in the employee's personnel file, but no oral response or appeal is permitted.

For discipline that is greater in severity than a suspension of five (5) working days, (or the equivalent reduction in pay) the City shall issue a notice of intent to impose discipline, describing the intended discipline, the basis for the discipline and attaching any documents upon which the discipline is based. The notice shall state that the employee has a right to respond, either orally or in writing, before discipline is imposed. The City shall set the pre-discipline meeting approximately one (1) week from the date of the notice, unless a different time and date is set by mutual agreement.

For discipline that is greater in severity than a suspension of five (5) working days, (or the equivalent reduction in pay) the ~~Human Resources Director~~Director of Human Resources shall designate a City official who is disinterested in the matter who shall convene a meeting to review the employee's response before imposing discipline. The employee shall be entitled to a representative of his/her/their choice; provided, however, that the inability of a particular representative to attend the meeting shall not be cause for requiring a continuance of the meeting. At the meeting, the employee shall be provided the opportunity to respond to the charges and to present any new information for consideration by the City.

At some reasonable time, but no longer than thirty (30) calendar days, after the employee has been provided an opportunity to respond to the charges, the City shall issue a final notice of discipline. The notice shall notify the employee of his/her/their right of appeal.

**12. DISCIPLINARY APPEAL PROCESS**

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12.1 **Employee's Right to Representation During Appeal Process**

At any step in the disciplinary appeal procedure, the employee concerned may choose to represent ~~himself/herself/hemself~~ or may be represented by that certified employee organization which has been recognized by the City for that representation unit to which the employee's classification is assigned, or by legal counsel. The employee concerned shall be personally present at all stages of the disciplinary appeal process unless that employee specifically waives the right in writing.

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12.2 Appeal Process (for discipline greater than 5 day suspension or reduction in pay)

For discipline that is greater in severity than a suspension of five (5) working days (or equivalent reduction in pay), employees shall have the right to appeal from the final notice of discipline. The notice of appeal must be received within seven (7) calendar days from the date of the final notice of discipline, or the right to proceed to the next appeal level under these Rules shall be forfeited and the discipline shall become final.

12.2.1 *Hearing Officer Selection* - The appeal shall be heard by an independent hearing officer. The hearing officer shall be selected from among a list of names not to exceed ten (10) names provided by the California State Mediation and Conciliation Service, or from a similar body mutually agreed to between the parties. After a toss of a coin to decide which party shall strike first, the representative of the City and the employee (or the employee's representative) shall alternately strike one name from the list until one name remains and such person shall act as the hearing officer. This procedure shall be followed until there is an available arbitrator.

12.2.2 *Costs* - The costs of the hearing officer shall be borne by the City unless the employee's union has brought the appeal on the employee's behalf, in which case the costs of the hearing officer will be shared equally by the City and the union. Either party may request that the hearing be transcribed, and the requesting party shall bear the expense of the transcript and court reporter's fees. If the transcript is jointly requested by both parties, both parties will share equally in the expense of the transcript and court reporter's fees.

12.2.3 *Hearing Officer Authority* - The hearing officer shall have the authority to convene the hearing, receive evidence through testimony and documents and make findings of fact and conclusions about the discipline. Within sixty days (60) of the close of the hearing, the hearing officer shall serve a recommended decision on the City Manager and the employee. The hearing officer's decision must contain detailed findings of facts relating to the disciplinary charges. The decision may include a recommendation regarding outcome, but the final decision regarding discipline rests with the City Manager. After consideration of the hearing officer's recommended decision, the City Manager shall issue a final decision in writing. The City Manager's decision may be reviewed by administrative writ of mandamus within the time frames established by California law.

12.2.4 *Waiver of Steps or Time Limits*. Notwithstanding any provision in this section, any time limit or stage of procedure specified in this section may be waived upon consent of all parties involved.

### 13. GRIEVANCE PROCEDURE FOR NON-DISCIPLINARY MATTERS

In the absence of an applicable Memorandum of Understanding, this grievance procedure shall apply. This procedure is intended to ensure that every reasonable effort will be made to resolve problems as near as possible to the point of origin.

#### 13.1 Definition of “Grievance”

Subject to the exclusions listed in this Rule, a grievance is defined as any dispute involving the interpretation, application, or alleged violation of 1) the specific express terms of a current Memorandum of Understanding (MOU), between the City and a recognized employee organization, or 2) a specific express term of these Rules.

#### 13.2 Eligibility to File a Grievance

Only full-time employees in regular non-probationary appointments who are adversely affected by an act or omission of the City are eligible to file a grievance.

#### 13.3 Exclusion from the Grievance Procedure

The following matters are excluded from the definition of a “grievance”:

13.3.1 Requests for changes in wages, hours, or working conditions;

13.3.2 The content of employee evaluations or performance reviews, except those that result in a loss of benefits to the employee;

13.3.3 Challenges to reclassification, layoff, transfer, or denial of reinstatement;

13.3.4 Challenges to examinations or appointment to positions;

13.3.5 Challenges to this grievance procedure.

13.3.6 Disciplinary Actions

#### 13.4 Group Grievances

In the event more than one employee is directly involved with an issue, they may, at any step in the grievance procedure, name one of their number to carry the grievance through the procedure as a group grievance and be represented by that employee organization which has been recognized by the City for that representation unit to which their classification(s) is/are assigned. In a group grievance, that named employee directly concerned shall be personally present at all stages.

#### 13.5 Procedure

It is the City’s intent to deal with and settle complaints and grievances informally and at the nearest practical organizational level and as promptly and fairly as possible. Whenever feasible, complaints and grievances will be handled during the regularly scheduled working hours of the parties involved.

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The grievance procedure shall consist of the following steps:

#### 13.5.1 *Informal Grievance Procedure*

A grievance must be filed within thirty (30) calendar days of the act(s) or omission(s) giving rise to the grievance. Failure to file the grievance within this time period shall result in denial of the grievance as null and void. Within thirty (30) working days of the act(s) or omission(s) giving rise to the grievance, the grievant must discuss the grievance with ~~his/her~~their immediate supervisor, who shall investigate and attempt to

resolve the matter. The supervisor shall give the grievant an oral or written reply within ten (10) working days after the discussion. If the grievant is not satisfied with the reply, ~~he/she~~they may proceed to the Formal Grievance Procedure.

#### 13.5.2 *Formal Grievance Procedure*

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##### 13.5.2.1 *Level 1 Review*

Any grievance not resolved by the Informal Grievance Procedure, may be submitted in writing by the grievant to ~~his/her~~their supervisor along with a copy to the ~~Human Resources Director~~Director of Human Resources, no later than ten (10) working days after the date of the supervisor's written reply. A grievance may be submitted directly to the ~~Human Resources Director~~Director of Human Resources or, if the grievance started at a level above the supervisor or Department Head, the grievance may be submitted at the higher level. The written grievance must contain the following information:

1. Name of grievant and job title;
2. Department/~~Section~~Division in which grievant works;
3. The specific act or omission that gave rise to the alleged violation, misinterpretation, or misapplication and the date or dates of the alleged act or omission;
4. The specific provision(s) of the Memorandum of Understanding, City Policy or Personnel Rules alleged to have been violated, misinterpreted, or misapplied;
5. A list of the documents, witnesses or other evidence that support the grievance;
6. Desired solution or remedy;
7. Name of the grievant's representative, if any;
8. Signature of the grievant or representative and date signed.

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Within ten (10) working days thereafter, the supervisor shall schedule a meeting with the grievant to work at resolving the grievance. The supervisor shall give the grievant a written reply within ten (10) working days after the meeting and shall file a copy with the ~~Human Resources Director~~Director of Human Resources.

If the grievant is not satisfied with the response, ~~he/she~~they may proceed to Level 2.

13.5.2.2. *Level 2 - Department Head Review*

Any grievance not resolved at Level 1 may be submitted to the Department Head no later than ten (10) working days after the date of the supervisor's written reply. The grievant shall provide the Department Head with a copy of the Level 1 response. Within ten

(10) working days thereafter, the Department Head shall schedule a meeting with the grievant to work at resolving the grievance. The Department Head shall give the grievant a written reply within ten (10) working days after the meeting and shall file a copy with the ~~Human Resources Director~~Director of Human Resources. If the grievant is not satisfied with the response, ~~he/she~~they may proceed to Level 3.

13.5.2.3. *Level 3 – City Manager Review*

Any grievance not resolved at Level 2 may be submitted to the City Manager no later than ten (10) working days after the date of the Department Head's written reply. The grievant shall provide the City Manager with a copy of the Level 1 and Level 2 responses. Within ten (10) working days after receipt of the grievance and the Level 1 and Level 2 responses, the City Manager or ~~his/her~~their designee, at ~~his/her~~their discretion, may conduct an informal hearing involving the parties to the dispute. The City Manager's decision shall be final and binding.

13.6 **Representation**

The grievant is entitled to representation of ~~his/her~~ their choice at any point in the grievance procedure. If the representative is a fellow employee, that employee shall receive time off from ~~his/her~~their work assignment for the time of the grievance meeting or hearing plus reasonable travel time. The grievant must inform the ~~Human Resources Director~~Director of Human Resources whether ~~he/she~~they will be represented at any meeting regarding the grievance, along with the identity of the representative, at least forty-eight (48) hours prior to the grievance meeting.

13.7 **Waiver of Steps or Time Limits**

Notwithstanding any provision in this section, any time limit or level of procedure specified in this section may be waived upon consent of all parties involved.

13.8 **Waiver of Grievance**

Failure by the grievant to appeal ~~his/her~~their grievance to the next level within the specified time limits of this rule shall constitute a waiver of the right to pursue the grievance further, unless the City has granted an extension of time to a definite date. Failure by the City to respond to the grievance within any of the specified ~~time-~~lines shall entitle the grievant to appeal to the next level of review.

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Additionally, failure on the part of an employee or ~~his~~-their representative to appear for any scheduled meeting without notification may, in the City's discretion, result in the City's denial of the grievance.

#### 13.9 **No Interruption of Work**

During the determination of a grievance herein, the employees involved in pursuing the grievance are required to continue their normal work schedule, unless the ~~Human Resources Director~~Director of Human Resources directs otherwise.

#### 13.10 **No Retaliation**

Employees shall not be penalized or retaliated against in any way for using the grievance procedures, or testifying as a witness in a grievance proceeding in accordance with the Harassment, Discrimination and Retaliation Prevention Policy .

Taking any retaliatory adverse employment action against an employee who has or is believed to have disclosed information to any government or law enforcement agency, including to the City, if the employee has reasonable cause to believe that the information discloses a violation of federal or state law, or a violation or noncompliance with a local, state, or federal rule or regulation is prohibited in accordance with the Whistleblower Policy.

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### 14. **LAYOFF, DISPLACEMENT AND REEMPLOYMENT**

#### 14.1 **Notice**

Should the City Manager determine that reductions in force are necessary due to lack of work, reorganization or for financial reasons, layoffs may be directed. In the event of layoffs, the City shall provide affected employees with as much notice as possible.

#### 14.2 **Layoff Order Determination**

In determining the order of layoffs, the following rules shall be followed:

No ~~permanent-regular~~ employee shall be laid-off while there are temporary employees serving in the same or ~~allied-comparable~~ class or position in the City service unless that employee has been offered the temporary work. Layoffs shall be made in accordance with California Government code §45100 and the criteria set forth below:

- (a) Layoffs shall be by job classification, according to reverse order of seniority, as defined by total City service.
- (b) The employee to be laid-off may displace the least senior employee in a lateral or lower classification in which ~~he/she/they~~ previously held ~~permanent-regular~~ status, provided the displaced employee has less total City service. Total City service means as a regular full-time employee and does not include any part-time or limited service employment.
- (c) An employee may demote or transfer to a vacant position in a classification for which ~~he/she/they~~ possesses the necessary skills, as determined by the minimum



qualifications and job specifications for the position.

- (d) The name of each laid-off employee shall be entered, in order of seniority, on a Reemployment List for twenty-four (24) months.
- (e) A former employee appointed from a Reemployment List shall have restored all rights accrued prior to being laid-off, such as sick leave, vacation credits, and credit for years of service. However, such recalled employees shall not be eligible for benefits for which ~~he/she/they~~ received compensation at the time of, or subsequent to, the date ~~he/she/they~~ ~~were~~ laid-off.

### 14.3 Bumping

“Bumping” means the displacement of an employee from ~~his/her/their~~ position by an employee in a higher classification who formerly held the same position and has received notice of layoff.

The laid-off employee must be able to perform the essential job functions of the former position and possess the minimum qualifications of the position as specified by the current job classification specification.

The City shall notify laid-off employees in writing of the position and classification into which ~~he/she/they~~ may bump, if any. Following such notification, the employee must notify the ~~Human Resources Director~~ Director of Human Resources in writing of ~~his/her/their~~ intent to exercise the bumping rights within seven (7) calendar days of the date of the written notice. Failure to provide such notification shall be deemed a waiver of bumping rights by the employee.

Where there is more than one employee in a position available for bumping, the determination of which employee will be bumped, if any, will be based on seniority.

Any displaced employee shall be considered as laid-off for the same reason as the person who displaced them and shall in the same manner be eligible to displace another employee based on the criteria specified above.

### 14.4 Layoff List Preparation Procedure

When a Competitive Service position within a classification is ~~abolished/eliminated~~, the following general procedure shall be followed:

14.4.1 Limited Service employees will be released before an employee in the same classification with probationary or ~~permanent-regular~~ status.

14.4.2 The ~~Human Resources Director~~ Director of Human Resources shall prepare a layoff list of all those Competitive Service employees (including those who are on Leave of Absence) and vacancies within the classification in which a reduction in the number of positions is to occur.

### 14.5 Separations

All employees who separate from City service, that is, whose employment with the

City terminates through separation for cause, layoff, resignation, or retirement must:

14.5.1 Return all City property to the ~~Human Resources Director~~Director of Human Resources or the immediate supervisor prior to receiving the final paycheck.

14.5.2 Clear any existing financial obligations with the City.

14.5.3 If applicable, file a Form 700 with the City Clerk.

In addition, employees who resign or retire shall adhere to the following procedures before they will be deemed to have separated in good standing:

14.5.4 Submit a written notification stating the intent to resign or retire and the proposed effective date to their immediate supervisor.

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14.5.4 Provide a minimum notice of two weeks. The City encourages employees who become aware of their pending separation from the City to let the ~~Human Resources Director~~Director of Human Resources know as far in advance as possible.

#### **14.6 Reemployment from Lay-off**

Employees who were laid-off may be reinstated within twenty-four (24) months to their former position, if vacant, or to a vacant position in the same classification, without being subject to the application requirement.

### **15. WORK WEEK AND ATTENDANCE**

Department Heads shall assign daily hours of work (or shifts) for employees within departments, as required to meet operational requirements, or the employees' applicable Memorandum of Understanding. The Department Head may change an employee's work period, week, or hours at any time to meet the requirements of the City. Changes shall be made in accordance with applicable Memorandum of Understanding.

Any foreseeable absence or deviation from regular working hours desired by an employee shall be cleared in advance through the employee's supervisor, and such absences shall be noted on the employee's time sheet.

#### **15.1 Work Week**

Unless otherwise designated by the Department Head, the work week for City employees on a 5/8 schedule (eight hours a day for five days) shall be from Sunday through the following Saturday; for City employees on a 9/80 schedule (nine hours Monday through Thursday, eight hours alternate Friday, and alternate Fridays closed) shall be Friday halfway through the ~~work day~~workday through the following Friday halfway through the work day. These designated work weeks may be changed only as a result of major changes in operations, payroll procedures or as otherwise necessary in order to deliver services as efficiently and economically as possible. The work week for a 4/10 schedule and a 12 hour schedule, if applicable, will be designated by

the Department Head.

## 15.2 Attendance

Employees are expected to report to work as scheduled, on time, and prepared to start work. Employees are also expected to remain at work for their entire work schedule, except when required to leave on authorized City business or some other authorized leave. All departments shall keep daily attendance records of employees, which shall be reported on the employee's timesheet.

Employees who anticipate an absence from all or a portion of their regular work schedule and wish to request a form of accrued leave time or unpaid leave time should follow the procedures provided in these Rules or Memoranda of Understanding for the particular type of leave that they are requesting.

Employees who are unexpectedly unable to report for work as scheduled on any particular day must call their immediate supervisor no later than their scheduled time to begin work for that day, or as otherwise required by the Department. If the employee's immediate supervisor is not available, then the employee must notify the Department Head or ~~his/her~~their designee. Employees shall inform their supervisor of the expected duration of any late arrival or absence. Employees who call later than their scheduled time to begin work for their assigned shift shall be deemed to have an unauthorized tardy or absence in violation of this attendance policy. Abuse or misrepresentation of any form of accrued or paid or unpaid leave time will be grounds for discipline.

Failure on the part of an employee, who is absent without notification or authorization, to return to duty within twenty-four (24) hours after a notice to return to duty has been delivered to their last known telephone number and/or address will constitute an automatic resignation effective as of the last day an employee worked. If, within ten (10) days of said notice, the employee can show good cause for the failure to return to duty, the ~~Human Resources Director~~Director of Human Resources, in ~~his/her~~their discretion may, with approval of the City Manager, reverse the resignation. In the event that an employee's absence is deemed an "automatic resignation" in accordance with this Rule, the employee shall have the same right to appeal afforded to employees who are terminated for cause under these Rules. However, an employee's absence without notification or authorization for twenty-four (24) hours or more shall be deemed just cause for termination.

## 15.3 Meals and Rest Periods

Employees shall receive a thirty (30) to sixty (60) minute meal period that shall not be compensated, with the exception of safety personnel such as ~~sworn police officers and firefighters~~fire personnel. During the meal period, the employee shall be relieved of duties. If the employee is authorized in advance and performs work during the meal period, the employee shall be compensated for such time. Meal periods may not be used to shorten the workday unless the employee obtains express prior approval from ~~his/her~~their supervisor.

Employees shall have a ten (10) minute rest period for each half of their shift, as scheduled by the supervisor. The rest period may be interrupted or cancelled if

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necessary to complete work and shall be compensated time. The rest periods shall not be combined or used to shorten the workday.

#### 15.4 Timekeeping

All employees must sign and accurately record all hours worked and any leave taken on their timesheets. Employees must immediately report any errors on a timesheet that has already been submitted to their supervisor.

### 16. VACATION AND HOLIDAYS

#### 16.1 Vacation Accrual

Unless otherwise specified in a Memorandum of Understanding or Council approved resolution, each full-time employee shall accrue vacation at the following rate pro-rated per pay period for continuous service performed in pay status as follows:

##### Miscellaneous Employees

0 through 5 years of service:	96 hours per year of vacation
6 through 10 years of service:	136 hours per year of vacation
11 through 15 years of service:	176 hours per year of vacation
16 or more years of service:	192 hours per year of vacation

##### Sworn Police Employees

0 through 5 years of service:	96 hours per year (4 hours/pay period)
6 through 10 years of service:	144 hours per year (6 hours/pay period)
11 through 15 years of service:	160 hours per year (6.67 hours/pay period)
16 or more years of service:	8 additional hours per year up to a maximum of twenty-eight (28) days or two hundred and twenty-four (224) hours maximum annual accrual.

##### Sworn Fire Employees

~~(Employees on a forty (40) hour work week)~~

<del>0 through 5 years of service:</del>	<del>96 hours per year</del>
<del>6 through 10 years of service:</del>	<del>136 hours per year</del>
<del>11 through 15 years of service:</del>	<del>176 hours per year</del>
<del>16 through 20 years of service:</del>	<del>192 hours per year</del>
<del>20 or more years of service:</del>	<del>8 additional hours per year</del>

##### ~~Sworn Fire Employees~~

~~(Employees on a fifty-six (56) hour work week)~~

<del>0 through 5 years of service:</del>	<del>12 hours per month</del>
<del>6 through 10 years of service:</del>	<del>18 hours per month</del>
<del>11 through 15 years of service:</del>	<del>21 hours per month</del>
<del>16 through 20 years of service:</del>	<del>24 hours per month</del>
<del>20 or more years:</del>	<del>1 additional hours/month</del>

#### 16.2 Use of Vacation

After completion of six (6) months of continuous service, an employee may take

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vacation leave at any time, subject to approval by the employee's Department Head or ~~his/her~~their designee. Approvals shall be based upon ~~work load~~workload, staffing coverage, seniority, timing of the request, and any other work-related factors appropriate for consideration by the Department Head. Vacation shall be taken in increments of one-quarter (.25) hour or more. The Department Head, with concurrence of the ~~Human Resources Director~~Director of Human Resources, may authorize an employee to take vacation leave prior to completion of six (6) months of continuous service.

### **16.3 Effect of Sick Leave On Vacation Leave**

In the event an employee becomes ill during a vacation period, such time shall not be charged as vacation leave if the following conditions are met:

16.3.1. *Employee Sick Leave Requirements.* The employee complies with the same notice requirements as required when the employee is not on leave, including notice to the employee's supervisor no later than the start of the employee's regular work shift. If the employee becomes ill after the start of the work

shift, then the employee must promptly provide notice on the same day the illness begins. Sick leave shall only be granted for those days on which notice is given; and

16.3.2 *Return to work requirements.* The employee, upon return to work, submits a doctor's certificate for each day the employee was absent from work.

### **16.4 Compensation for City Work During Vacation Prohibited**

No person shall be permitted to work for compensation for the City in any capacity, except compensation for mandated court appearance, call back or special duty assignments, during paid vacation time. Exceptions may be made for Reserve Firefighters.

### **16.5 Vacation Pay-Out Upon Termination**

A regular or probationary employee whose employment with the City terminates shall be paid for that part of ~~his/her~~their vacation accumulation that remains unused at the time of termination. Payment for unused vacation shall be made at the rate of pay in effect for such employees at time of termination.

Unless otherwise provided by State Law, when termination is caused by the death of the employee, said pay for unused vacation shall be paid to the beneficiary the employee has designated. Such designation shall be in writing, signed by the employee and filed with the Human Resources ~~Office~~Department. In the event an employee has not designated a beneficiary, the payment shall be made to the estate of the employee.

### **16.6 Holidays *\*Revised as of 06/07/2022***

16.6.1 *Authorized Holidays.* Every full-time probationary and regular employee shall be entitled to the following paid holidays each calendar year and such other

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days as may be designated by action of the City Council;

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- a. January 1 (New Year's Day)
- b. The third Monday in January (Martin Luther King Day)
- c. The third Monday in February (Presidents' Day)
- d. The last Monday in May (Memorial Day)
- e. June 19 (Juneteenth)
- f. July 4 (Independence Day)
- g. The first Monday in September (Labor Day)
- h. November 11 (Veteran's Day)
- i. Thanksgiving Day
- j. The Friday after Thanksgiving Day
- k. December 24 (Christmas Eve)
- l. December 25 (Christmas Day)

16.6.2 *Holidays Falling During Vacation.* When a day designated and observed by the City as a holiday occurs on a day on which an employee is taking vacation, such employee shall not be charged as using vacation for that day. The employee's compensation for that day shall be holiday pay and ~~he/she~~they shall not be paid or charged for vacation, except for the additional hour(s) for those employees on a 9/80, 4/10, or other schedule.

16.6.3 *Employee absent from work immediately preceding a holiday.* Employees who are absent from work on the ~~work day~~workday immediately preceding a holiday due to unpaid leave of any form shall not receive reimbursement for the missed holiday.

## 17. SICK LEAVE

▲ Sick leave shall be requested only in cases of actual personal sickness or disability, medical or dental treatment, ~~or~~ as authorized in Section 17.6, or for other purposes as provided by law. The employee requesting sick leave shall notify ~~his/her~~their supervisor or Department Head prior to the start of the employee's regular work shift. Sick leave with pay shall not be allowed unless the employee has met and complied with the provisions of these Rules and Regulations, City policy, Department policy and ~~his/her~~their Department Head has approved such payment. Accrued and unused sick leave shall not be paid out when the employee separates from City employment.

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### 17.1 Certification

The Department Head may request, in ~~his/her~~their discretion, that the employee produce a certificate issued by a licensed physician or other satisfactory proof of illness before sick leave is granted in accordance with the City's Sick Leave Policy. The Department Head with concurrence from the Director of Human Resources may also direct an employee to attend a physical examination by a City-retained licensed physician, at City expense, to ascertain whether the employee is fit to perform the duties of ~~his/her~~their position.

### 17.2 Prohibited Activity

Any employee who is absent from work on a leave as provided in Section 17 or who is absent after requesting such leave shall not engage in work or other activities at any time which would be in conflict with the inability to report for work and to perform the duties assigned.

### 17.3 Eligibility

Regular and probationary employees shall be eligible to accrue sick leave upon commencement of City employment. Limited service or provisional employees ~~who have worked more than 999 hours in a fiscal year shall be eligible to accrue sick leave after their work has exceeded 999 hours in a fiscal year unless otherwise expressly provided in writing~~ are provided sick leave in accordance with the City's Sick Leave Policy for Limited Service Employees.

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### 17.4 Accrual

▲ ~~Regular and probationary employees s~~Sick leave shall be accrued at the rate of eight (8) hours per calendar month pro-rated per pay period for each calendar month that an employee has worked regularly scheduled hours and/or has been on an authorized paid leave unless specified otherwise in an MOU.

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**17.5 Accumulation**

Accrued sick leave may be accumulated without limit for regular and probationary employees unless otherwise specified in an MOU-

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**17.6 Use**

17.6.1 *Sick Leave.* Sick leave may be requested and used as approved by the Department Head or ~~Human Resources Director~~Director of Human Resources. Pay for approved sick leave shall be authorized until the employee's accumulated sick leave hours have been exhausted and at such time the employee shall receive no further pay for sick leave. An employee shall be granted time off chargeable to sick leave for ~~a visit to a doctor or dentist~~reasons defined in the City's Sick Leave Policy.

17.6.2 *Use of Sick Leave for Family Member.* Family Sick Leave is authorization to use up to one-half of an employee's annual sick leave accrual in a calendar year to care for a member of an employee's immediate family as defined in the City's Sick Leave Policy, unless otherwise outlined in the applicable Memorandum of Understanding. ~~In cases of illness of a family member, employees are entitled to use up to one-half of the employee's sick leave entitlement for the year to attend to the illness of a spouse, domestic partner, parent or child, in accordance with state law.~~ Additional family sick leave usage for may be defined in an MOU and/or special circumstances may be granted on a case-by-case basis at the discretion of the Department Head with the concurrence of the ~~Human Resources Director~~Director of Human Resources.

17.6.3 *Use of Sick Leave toward Retirement.* An employee may not use sick leave to extend a retirement (either disability or service retirement) or separation date, unless specifically provided for in an applicable Memorandum of Understanding, or as required by law.

**17.7 Integration of Benefits**

If an employee is on sick leave and is receiving State Disability Insurance (SDI) or temporary total Disability (TTD) payments (including Workers' Compensation payments), the employee may continue to receive full pay from the City by requesting that the maximum weekly disability benefits be supplemented by the use of accrued sick leave benefits. To exercise this option, the employee shall ~~tender his/her SDI code their timecard to their accrued leave balances, then tender their SDI/STD payments or TTD payments~~ payments or temporary disability payments to the City, ~~and~~ The City shall then continue to issue paychecks and deduct the value of the difference between those payments and the employee's regular pay from the employee's sick leave accruals, convert the amount of disability payments to the equivalent amount of leave hours and deposit the leave hours into the employee's appropriate leave bank.

Part-time and temporary employees are covered by and shall receive the benefits provided by the Workers' Compensation Insurance Plan of the City ~~but shall not be and may be eligible to receive SDI payments but shall not be eligible to supplement their weekly disability benefits with the use of accrued leave benefits. for any other Limited Service employee~~ benefits in this section except for those are outlined in the Limited Service Compensation and Benefit Plan in effect at the time.

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**17.8 Catastrophic Leave Program**

An employee may be eligible to receive donations of paid vacation or CTO leave to be included in the employee's sick leave balance if ~~she/he~~they or an immediate family member has suffered a catastrophic illness or injury which prevents the employee from being able to work. Catastrophic illness or injury is defined as a critical medical condition that is considered to be terminal, a long-term major physical impairment or disability. (The definition of immediate family member and the usage of sick leave shall be in accordance with the respective MOU.) This program will be administered in accordance with the City's Catastrophic Leave Policy and Procedure.

## 18. LEAVES OF ABSENCE WITHOUT PAY

### 18.1 Authorization for Leave of Absence Without Pay

▲ At the sole discretion of the City, an employee may be granted a leave of absence without pay. An employee's request for leave of absence without pay may be granted by the Department Head for a period of up to three (3) working days. The Department Head must notify the ~~Human Resources Director~~ Director of Human Resources of any such requests as soon as reasonably possible.

▲ Upon recommendation of the Department Head and the ~~Human Resources Director~~ Director of Human Resources, requests for leaves of absence without pay may be granted by the City Manager for a period of up to one year.

▲ The City may fill the position with a temporary employee during the term of the leave of absence or undertake any other appropriate measures to address workload needs.

### 18.2 Leave of Absence Request in Excess of Three (3) Days

▲ Employees requesting a leave of absence without pay must submit the request in writing to their Department Head, and the request should state the reason for the request and the anticipated beginning and ending dates of the leave. The Department Head shall submit the request along with ~~his or her~~ their recommendation to the ~~Human Resources Director~~ Director of Human Resources. The ~~Human Resources Director~~ Director of Human Resources shall evaluate the request and make a recommendation to the City Manager. The City Manager shall make a decision and transmit in writing the decision to the employee. The decision of the City Manager shall be final and is not subject to grievance or appeal.

### 18.3 Return from Authorized Leave of Absence Without Pay

When an employee intends to return from an authorized leave of absence without pay, the employee shall contact the Department Head as soon as possible but not less than three (3) working days prior to the planned day of return. The Department Head shall promptly notify the ~~Human Resources Director~~ Director of Human Resources of the employee's intention. Upon an employee's notification that ~~he/she/they~~ he/she/they intends to return after a leave of absence without pay, the City shall make reasonable effort to do so. Failure of an employee to abide by this notification procedure or to report for work promptly at the date of leave expiration shall be grounds for discipline up to and including termination.

Employees returning from leave because of illness or disability must first submit to the ~~Human Resources Director~~ Director of Human Resources a release to work from a physician that satisfactorily certifies the employee can perform the essential functions of the position to which ~~he/she/they~~ he/she/they desires to return, with or without accommodation. Further, the employee may be subject to an examination by a City retained licensed physician, at City expense, to ascertain whether the employee is fit to perform the duties of ~~his/her/their~~ his/her/their position.

### 18.4 Authorized Leave of Absence Without Pay for Job Injury

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The City Manager may grant a leave of absence without pay for a period of time to any employee who is disabled by job injury or illness. Such leave may be terminated by the City Manager when it is determined that the employee is disabled for an extended period of time and unable to perform the duties of ~~his/her~~ their position.

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**18.5 Status of Employee on Authorized Leave of Absence Without Pay**

18.5.1 *Break in Service.* Authorized leave of absence without pay shall not be construed as a break in service, and rights accrued at the time the leave is granted shall be retained by the employee. However, vacation credits, sick leave credits, holidays, health benefits, and retirement benefits, increases in salary, and other similar benefits shall not accrue to a person granted such leave during the period of absence unless otherwise expressly provided for in a Council-approved action. Employees in such status may be required to pay for all fringe benefits, such as health plan premiums, during the period of their leave without pay.

18.5.2 *Employee Return to Work.* An employee returning after an authorized leave of absence without pay shall retain the same status and shall be placed at the same salary step in the pay range currently in effect for the class as the employee received when the authorized leave of absence without pay commenced. Time spent on such leave without pay shall not count toward service within the pay range and the employee’s salary anniversary date shall be set forward a period of time equal to the employee’s total absence as adjusted to the beginning of the closest pay period.

18.5.3 *Return from Authorized Leave of Absence without Pay for Military Duty.* Notwithstanding provisions of Section 18.5, 19.5 & 19.6 of these Rules, the applicable sections of the Federal and State military leave laws shall apply in determining benefits for those employees returning from an authorized leave of absence without pay for military duty.

**19. OTHER LEAVES OF ABSENCE**

**19.1 Administrative Leave**

The City, in its discretion, may place an employee on administrative leave with or without pay. Employees on such leave shall be available and are subject to the City’s instructions during their normal working hours.

**19.2 Bereavement Leave**

The City shall grant leaves of absence with pay when a member of the employee’s or employee’s spouse or domestic partner’s immediate family dies. “Immediate family” ~~means parent, current spouse or domestic partner, child, stepchild, grandparent, grandchild, brother, sister, step sibling, mother, father, step parent, sister, son or daughter in law~~ is defined in the City’s Bereavement Leave Policy. The City, in its discretion, may require some proof that a death in the family has occurred. In the case of death within the immediate family of an employee, such employee shall be entitled to remain absent from duty with pay ~~in order to attend the funeral or memorial service~~ for up to five (5) ~~consecutive work days~~ workdays within three months of the death for each such bereavement.

~~In the event of the death of a relative, not a member of the immediate family, absence from duty shall be allowed not to exceed one (1) day. Employee’s accruals other than sick leave shall be used for absence from duty.~~

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**19.3 Family and Medical Leave (FMLA/CFRA)**

In accordance with federal and state laws and regulations, the City shall provide family and medical leave, which is unpaid leave, to eligible employees. "Family and Medical Leave" under this Rule refers to leave pursuant to the Family and Medical Leave Act of 1993 ("FMLA") and the California Family Rights Act ("CFRA"). Employees ~~with any questions or requests for information about family and medical leave~~ should consult the Human Resources Department and the City's FMLA/CFRA policy.

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**19.4 Jury Duty**

Regular employees, probationary employees and limited services employees who have worked at least 1000 hours in a fiscal year and/or are enrolled in the PERS Retirement System who are required to report for jury duty shall be granted leave for such purpose, upon presentation of the jury notice to the Department Head. Said employees shall receive full pay for the time served on a jury, provided the employee remits to the City all fees as soon as received by the employee for such duties. Compensation for mileage or subsistence allowances shall not be considered as a fee and shall be retained by the employee. If an employee is required to report to jury duty within 2 1/2 hours of the scheduled start of the workday, the employee is not required to report to work at the start of the ~~workday, but~~ workday but shall report directly to jury duty. If an employee is released from jury duty with more than one-half of ~~his~~ their work-day remaining, the employee is required to report to work to complete the regularly scheduled workday.

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**19.5 Military Family Leave**

In accordance with the City's Family and Medical Leave Act (FMLA) Policy, eligible employees may ~~use their twelve (12) weeks of FMLA leave for any "qualifying exigency" arising out of a family member's active military duty. Eligible employees are also permitted to take up to twenty six (26) weeks of leave in a single twelve (12) month period to care for a family member who sustains a serious illness or injury while on active military duty~~ be entitled to use FMLA and/or CFRA leave.

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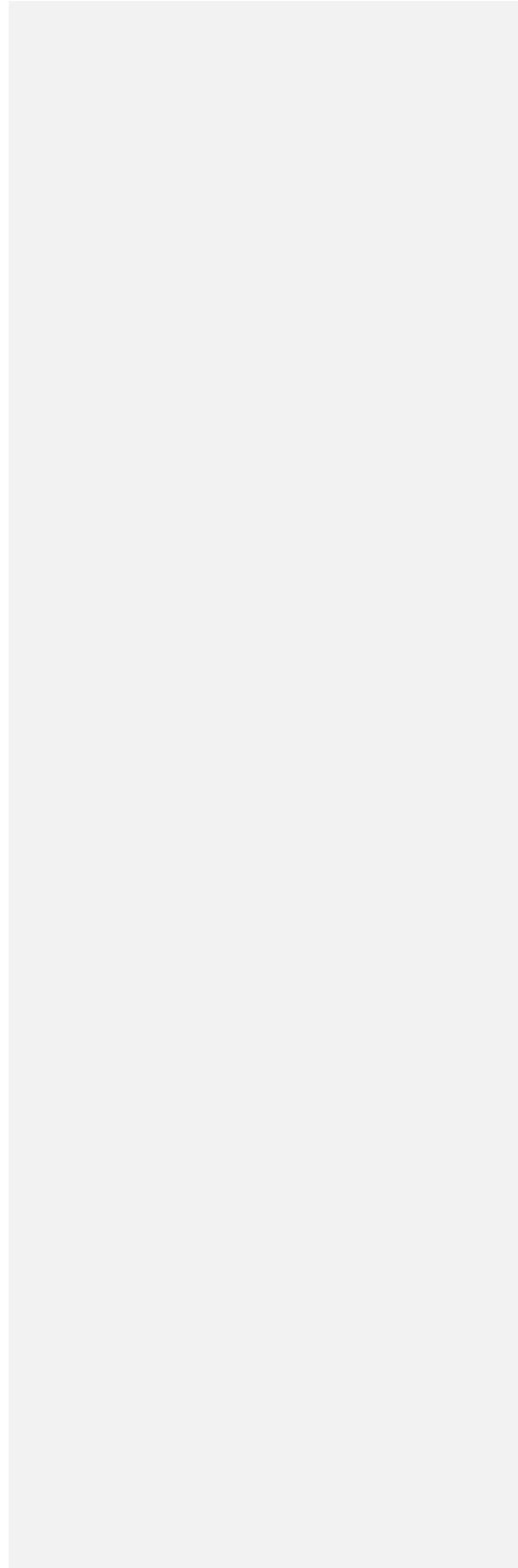
**19.6 Military Leave**

19.3.1 *Military Leave With Pay.* Shall be granted in accordance Federal and State law ~~and in accordance with the City's Military Leave Policy.~~ An employee entitled to military leave shall give ~~his/her~~ their Department Head an opportunity, within the limits of military regulations, to determine when such leave shall be taken. Prior to taking such leave, an employee shall present a copy of ~~his/her~~ their military orders to the Department Head. The Department Head shall promptly advise the ~~Human Resources Director~~ Director of Human Resources of such military orders. The employee's work schedule may be temporarily changed by the Department Head to accommodate the leave and department workloads, in accordance with applicable law. Benefits shall continue to accrue to the employee to the extent required by law. Employees on military leave shall be granted promotional opportunities and reinstatement after return from military leave in accordance with applicable law. The City

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offers employees on military leave the option to continue health benefits.



19.3.2 *Leave Accrual.* As required by law, the City will continue leave accruals during paid military leave and make contributions under retirement plans.

**19.7 Military Spouse Leave**

In accordance with California Military & Veterans Code section 395.10, eligible spouses and domestic partners of active members of the military are entitled to up to ten (10) days of unpaid leave when their spouse or domestic partner, who is in active military service, is on qualified leave.

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**19.8 Paid Family Leave (PFL)**

Employees who are covered by State Disability Insurance (SDI) are eligible for Paid Family Leave (PFL) benefits while taking care of family member(s). These benefits are paid by the State Employment Development Department.

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**19.9 Pregnancy Disability Leave (PDL)**

Any employee who is disabled because of pregnancy, childbirth, or a related medical condition may be entitled to pregnancy disability leave (PDL). The rules for PDL are contained in the City's [Pregnancy Disability Leave Policy](#) ~~FMLA/CFRA Policy.~~

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**19.10 School Activity Leave**

Employees who are parents, guardians or grandparents of a child in kindergarten through grade 12 may take up to forty (40) hours per year, not to exceed eight (8) hours per month, to participate in the child's school activities. The employee shall use accrued vacation or compensatory time for this leave. Prior notice of the need for this leave shall be given to the supervisor.

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**19.11 Voting Leave**

Time off with pay to vote in any general, direct primary or presidential primary election shall be granted as provided by state law [in accordance with the City's Voting Time Off Policy](#). Employees shall give their supervisors prior notice of the need to take such time off. ~~Paid leave for the purpose of voting shall not exceed one (1) hour.~~

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**19.12 Witness Leave**

An employee who is subpoenaed to appear in court in a matter regarding an event or transaction which [he/she/they](#) perceived or investigated in the course of [his/her/their](#) employment with the City shall be allowed to do so without loss of compensation, unless it is the employee's own lawsuit.

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An employee subpoenaed to appear in court in a matter unrelated to [his/her/their](#) official capacity, or who is appearing in court in a matter initiated by the employee, shall be permitted time off without pay, or if the employee chooses, to use accrued vacation for this purpose.

The employee may be required to present the subpoena to [his/her/their](#) Department Head.



20. **EMPLOYEE TRAINING AND EDUCATION PROGRAMS**

Employees are encouraged (but not required) to further their education by taking accredited courses which satisfy any of the following criteria: are related to the employee's present position with the City; related to the employee's potential development with the City; part of a program leading to a degree related to the employee's present position or potential for development; or required to obtain a high school diploma.

An employee who participates in an educational program may be reimbursed for courses taken on the employee's own time and at ~~his/her~~their expense in accordance with the City's Tuition Reimbursement Policy and Procedure or applicable Memorandum of Understanding.

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**XX. WORKPLACE VIOLENCE**

**X.X Policy**

In accordance with the City's Violence in the Workplace Policy and Procedure, it is the City's policy to promote a safe environment for its employees. The City is committed to working with its employees to maintain a work environment free from violence, threats of violence, harassment, intimidation, and other disruptive behavior. Acts such as these will not be tolerated, and all reports of incidents will be taken seriously and will be handled appropriately. The policy covers not only employees of the City but individuals from outside the agency threatening or perpetrating violence against City employees.

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**X.X Prohibited Behavior**

Employees who make threats, exhibit threatening behavior, engage in violent acts against the life, health, well-being, family or property of others while at work may be removed from the premises, may be subject to disciplinary action, up to and including termination, and may be subject to criminal penalties, or all of these actions.

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In addition, employees are prohibited from possessing firearms, weapons, or other dangerous devices in the workplace or at the work site unless expressly authorized by the nature of their work. This prohibition includes any simulated or toy weapons. Employees are prohibited from utilizing work tools and equipment as weapons.

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**X.XX Workplace Violence Definition**

Violence involves the exertion of force or aggression with the intent of causing injury or abuse. The examples listed below are for purposes of illustration. An employee who believes they have been injured or abused by another employee or member of the public while conducting city business should follow the City's reporting procedure, even if the act does not appear to fall into one of the identified examples of violent acts and threats contained in the policy. Specific examples of workplace violence can be found in the Violence in the Workplace Policy and Procedure.

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**X.X Prevention**

The City of Tracy's Workplace Violence Prevention Plan (WVPP) addresses the hazards known to be associated with the four types of workplace violence as defined by the Labor Code. The WVPP includes procedures and rules which are intended to reduce workplace violence hazards.

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21. EMPLOYER - EMPLOYEE RELATIONS POLICY

21.1 Statement of Purpose

The purpose of this Policy is to implement Chapter 10, Division 4, Title 1 of the Government Code of the State of California (Section 3500 *et seq.*) captioned "Local Public Employee Organizations", also known as the "Meyers-Miliias-Brown Act" [herein "MMBA"] by providing orderly procedures for the administration of employer-employee relations between the City and its employee organizations. Nothing contained herein, however, shall be deemed to supersede the provisions of state law or any City ordinances, resolutions, ~~or other provisions of these Personnel Rules which establish and regulate the City's civil service system~~, or which provide for other methods of administering employer-employee relations. This Policy is intended, instead, to strengthen ~~civil service and other~~ the methods of administering employer-employee relations through the establishment of uniform and orderly methods of communication between employees, employee organizations, and the City.

It is the purpose of this Policy to provide procedures for meeting and conferring in good faith with Recognized Employee Organizations regarding matters that directly and significantly affect and primarily involve the wages, hours, and other terms and conditions of employment of employees in appropriate units and that are not preempted by federal or state law, or the ~~City Charter~~ Municipal Code. The City shall not be required to meet and confer over the merit, necessity, or organization of any service or activity provided by law or executive order.

Nothing contained in this Policy shall be construed to restrict any legal or inherent exclusive City rights with respect to matters of general legislative or managerial policy. Unless specifically in conflict with any Memorandum of Understanding, the City retains all management rights, which include but are not limited to: The sole and exclusive right to determine the City's mission, including that of its constituent departments, commissions, and boards; the sole and exclusive right to direct the affairs of, manage, and maintain the efficiency of the City, to set standards of service; and to control the organization and operation of the City. The City also has the sole and exclusive right to take any actions which the City deems desirable to conduct its affairs, including, but not limited to: determining the procedures and standards of selection for employment; directing its work force (including scheduling and assigning work and overtime); hiring; firing; discharges; promotions; demotions; transfers; taking disciplinary action; determining the methods, means, and personnel by which City operations are to be conducted; relieving employees from duty because of budgetary considerations, lack of work, or other lawful reasons; subcontracting; maintaining discipline and efficiency of employees; determining the content of job classifications; taking all necessary actions to carry out its mission in emergencies; and exercising complete control and discretion over its organization and the technology of performing its work consistent with the provisions of this Policy and the MMBA. The foregoing is meant to be descriptive of the City's rights, and is not exhaustive.

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## **21.2 Definitions**

As used in this Policy, the following terms shall have the meanings indicated as follows:

21.2.1 "Appropriate unit" means a unit of employee classes or positions, established pursuant to Section 21.3.7 of this Policy.

21.2.2 "City" means the City of Tracy, including as appropriate the City Council or any other duly authorized City representative as herein defined.

21.2.3 "Confidential Employee" means an employee who, in the course of their duties, has access to confidential information relating to the City's administration of employer-employee relations.

21.2.4 "Consult in good faith" or "Consultation in good faith" means to meet and discuss issues with all affected recognized employee organizations, in good faith, for the purpose of

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presenting and obtaining views or advising of proposed actions in an effort to reach consensus; as distinguished from meeting and conferring in good faith regarding matters within the required scope of representation (as defined in California Government Code sections 3504 and 3507) this does not necessarily involve an endeavor to reach a binding agreement, and is not subject to the impasse resolution procedures set forth in Section 21.5 of this Policy.

21.2.5 “Day” means calendar day unless expressly stated otherwise.

21.2.6 “Employee Relations Officer” means the City Manager or their duly authorized representative.

21.2.7 “Exclusively Recognized Employee Organization” means an employee organization which has been formally acknowledged by the City as the sole employee organization representing the employees in an appropriate representation unit determined pursuant to Section 21.3 of this Policy, having the exclusive right to meet and confer in good faith concerning matters within the scope of representation pertaining to unit employees, and thereby assuming the corresponding obligation of fairly representing such employees. Exclusive recognition status may only be challenged pursuant to the procedures set forth in Section 21.3.6 of this Policy.

21.2.8 “Impasse” means that the representatives of the City and a recognized employee organization have reached a point in their meeting and conferring in good faith where their differences on matters to be included in a Memorandum of Understanding, and/or concerning matters over which they are required to meet and confer, remain so substantial and prolonged that further meeting and conferring would be futile.

21.2.9 “Management employee” means an employee having responsibility for formulating, administering, or managing the implementation of City policies and programs.

21.2.10 “Proof of employee support” means (1) an authorization card recently signed and personally dated by an employee, provided that the card has not been subsequently revoked in writing by the employee; (2) a verified authorization petition or petitions recently signed and personally dated by the employee; or (3) an employee dues deduction authorization, suing the payroll register for the period immediately prior to the date a petition is filed hereunder, except that dues deduction authorizations for more than one employee organization for the account of any one employee shall not be considered as proof of employee support for any employee organization. The only authorization which shall be considered as proof of employee support hereunder shall be the authorization last signed by an employee. The words “recently signed” shall mean within ninety (90) days prior to the filing of such proof of support.

21.2.11 “Supervisory employee” means any employee having authority, in the interest of the City, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employee, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action if, in connection with the foregoing, the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

Terms not defined herein which are defined in the MMBA shall have the meanings set forth in the MMBA.

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## **21.3 Representation Proceedings**

### **21.3.1 Filing of Recognition Petition by Employee Organization**

An employee organization which seeks to be formally acknowledged as the exclusively recognized employee organization representing the employees in an appropriate unit shall file a petition with the Employee Relations Officer containing the following information and documentation:

- a. Name and address of the employee organization.
- b. Names and titles of its officers, and mailing addresses.
- c. Names and telephone numbers of employee organization representatives who are authorized to speak on behalf of the organization in any communication with the City.
- d. A statement that the employee organization has, as one of its primary purposes, the responsibility of representing employees in their employment relations with the City.
- e. A statement whether the employee organization is a chapter of, or affiliated directly or indirectly in any manner, with a local, regional, state, national, or international organization, and if so the name and address of each such other organization.
- f. Certified copies of the employee organization's constitution and bylaws.
- g. A designation of those persons, not exceeding two in number, and their addresses and/or email addresses, to whom notice sent by regular United States mail and/or email will be deemed sufficient notice on the employee organization for any purpose.
- h. A statement that the employee organization has no restriction on membership based on race, color, religion, creed, sex, national origin, age, marital status, sexual orientation, mental or physical disability, medical condition, military or veteran status, gender identity or expression, genetic information, or any other legally-protected classification.
- i. The job classifications or position titles of employees in the unit claimed to be appropriate and the approximate number of member employees therein.
- j. A statement that the employee organization has in its possession proof of employee support as herein defined to establish that a majority of the employee in the unit claimed to be appropriate have designated the employee organization to represent them in their employment relations with the City. Such written proof shall be submitted for confirmation to the Employee Relations Officer or to a mutually agreed-upon disinterested third party.
- k. A request that the Employee Relations Officer formally acknowledge the petitioner as the Exclusively Recognized Employee Organization representing the employees in the unit claimed to be appropriate for the purpose of meeting and conferring in good faith.
- l. A statement by the duly authorized officer(s) of the employee organization executing the petition declaring under penalty of perjury that the petition, including the proof of employee support and all accompanying documentation, are true, correct, and complete.

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**21.3.2 City Response to the Recognition Petition**

Upon receipt of a recognition petition, the Employee Relations Officer shall determine whether:

- a. The petition complies with the requirements for filing as set forth in Section 21.3.1 of this Policy; and
- b. The proposed representation unit is an appropriate unit in accordance with Section 21.3.7 of this Policy.

If the Employee Relations Officer makes an affirmative determination on both the foregoing matters, they shall so inform the petitioning employee organization, shall give written notice of such request for recognition to the employees in the unit, and shall take no action on said request for thirty (30) days thereafter.

If the Employee Relations Officer does not make an affirmative determination of either or both of the foregoing matters, they shall offer to consult thereon with such petitioning employee organization and, if such determination thereafter remains unchanged, shall inform that organization in writing of the reasons therefor.

gанизation and, if such determination thereafter remains unchanged, shall inform that organization in writing of the reasons therefor.

The petitioning employee organization may appeal such determination in accordance with Section 21.3.10 of this Policy.

**21.3.3 Challenging Petition; Open Period for Filing**

Within thirty (30) days of the date written notice was given to affected employees that a valid recognition petition for an appropriate unit has been filed, any other employee organization may file a competing request to be formally acknowledged as the exclusively recognized employee organization of the employees in the same or in an overlapping unit by filing a petition evidencing proof of employee support in the unit claimed to be appropriate of at least thirty percent (30%) and otherwise in the same form and manner as set forth in Section 21.3.1 of this Policy.

percent (30%) and otherwise in the same form and manner as set forth in Section 21.3.1 of this Policy.

and manner as set forth in Section 21.3.1 of this Policy.

For purposes of this section, an “overlapping unit” is one which corresponds with respect to some, but not all the classifications or positions set forth in the recognition petition being challenged.

If such challenging petition seeks establishment of an overlapping unit, the Employee Relations Officer shall call for a hearing on such overlapping petitions for the purpose of ascertaining the more appropriate unit, at which time the petitioning employee organizations shall be heard. Thereafter, the Employee Relations Officer shall determine the appropriate unit or units in accordance with the standards in Section 21.3.7 of this Policy and shall provide written notice of their determination.

Relations Officer shall determine the appropriate unit or units in accordance with the standards in Section 21.3.7 of this Policy and shall provide written notice of their determination.

If the petitioning employee organizations do not agree with the decision rendered by the Employee Relations Officer, the petitioning employee organizations shall have fifteen (15) days from the date when notice of such unit determination is communicated to them by the Employee Relations Officer to amend their petitions to conform to such determination or to appeal such determination pursuant to Section 21.3.10 of this Policy.

onform to such determination or to appeal such determination pursuant to Section 21.3.10 of this Policy.

#### **21.3.4 Granting Recognition Without an Election**

If the Petition is in order, and the proof of support shows that a majority of the employees in the unit deemed to be appropriate have designated the petitioning employee organization to represent them, and if no other employee organization filed a challenging petition, the petitioning employee organization and the Employee Relations Officer shall request the California State Mediation and Conciliation Service, or another agreed upon neutral third party, to review the count, form, accuracy and propriety of the proof of support. If the neutral third party makes an affirmative determination, the Employee Relations Officer shall formally acknowledge the petitioning employee organization as the exclusively recognized employee organization for the designated unit.

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the proof of support. If the neutral third party makes an affirmative determination, the Employee Relations Officer shall formally acknowledge the petitioning employee organization as the exclusively recognized employee organization for the designated unit.

#### **21.3.5 Election Procedure**

Where recognition is not granted pursuant to Section 21.3.4 of this Policy, then, upon determination of an appropriate unit in accordance with Sections 21.3.2 and 21.3.7 of this Policy, the Employee Relations Officer shall arrange for a secret ballot election to be conducted by a party agreed to by the Employee Relations Officer and the concerned employee organization(s), in accordance with such party's rules and procedures subject to the provisions of this Policy. All employee organizations who have duly submitted petitions which have been determined to be in conformance with Section 21.3 of this Policy shall be included on the ballot. The choice of "no organization" shall also be included on the ballot, thereby allowing employees the choice of representing themselves individually in their employment relations with the City.

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submitted petitions which have been determined to be in conformance with Section 21.3 of this Policy shall be included on the ballot. The choice of “no organization” shall also be included on the ballot, thereby allowing employees the choice of representing themselves individually in their employment relations with the City.

Employees entitled to vote in such election shall be those persons employed in regular permanent positions within the designated appropriate unit who were employed during the pay period immediately prior to the date which ended at least fifteen (15) days before the date the election commences, including those who did not work during such period because of illness, vacation or other authorized leaves of absence, and who are employed by the City in the same unit on the date of the election.

An employee organization shall be formally acknowledged as the Exclusively Recognized Employee Organization for the designated appropriate unit following an election or run-off election if it received a numerical majority of all valid votes cast in the election. In an election involving three or more choices, where none of the choices receives a majority of the valid votes cast, a run-off election shall be conducted between the two choices receiving the largest number of valid votes cast; the rules governing an initial election being applicable to a run-off election. Nothing in this provision shall be read as prohibiting an “instant runoff” or “ranked choice” election where there are three or more choices on the ballot.

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There shall be no more than one valid election under this Policy pursuant to any petition in a 12-month period affecting the same unit.

In the event that the parties are unable to agree on a party to conduct an election, the election shall be conducted by the California State Mediation and Conciliation Service (“CSMCS”). In the event that CSMCS declined to conduct the election for any reason, the parties agree that the election shall be conducted by a neutral arbitrator selected from a list of seven (7) names to be provided by CSMCS or, if that body for any reason fails to provide such a list, by the American Arbitration Association. The incumbent recognized employee organization shall first strike one name, the petitioning organization shall then strike one name, and further strikes shall alternate accordingly until one name remains; the arbitrator whose name remains shall be the Election Monitor.

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If, once the Election Monitor is appointed the parties cannot agree as to the time, place, and manner of the election, the Election Monitor shall be authorized to unilaterally determine such issues and to carry out the election accordingly, consistent with the procedures set forth in this Policy.

ent with the procedures set forth in this Policy.

Costs of conducting elections shall be borne in equal shares by the City and by each employee organization appearing on the ballot.

#### **21.3.6 Decertification of Exclusively Recognized Employee Organizations**

A Decertification Petition alleging that the incumbent Exclusively Recognized Employee Organization no longer represents a majority of the employees in an established appropriate unit may be filed with the Employee Relations Officer only during the month of March of any year following the first full year of recognition or during the thirty (30) day period commencing one hundred twenty (120) days prior to the termination date of a Memorandum of Understanding then having been in effect less than three (3) years, whichever occurs later. A decertification petition may be filed by two or more employees or their representative, or an employee organization, and shall contain the following information and documentation declared by the duly authorized signatory under penalty of perjury to be true, correct and complete:

Understanding then having been in effect less than three (3) years, whichever occurs later. A decertification petition may be filed by two or more employees or their representative, or an employee organization, and shall contain the following information and documentation declared by the duly authorized signatory under penalty of perjury to be true, correct and complete:

rs, whichever occurs later. A decertification petition may be filed by two or more employees or their representative, or an employee organization, and shall contain the following information and documentation declared by the duly authorized signatory under penalty of perjury to be true, correct and complete:

- a. The name, address and telephone number of the petitioner and a designated representative authorized to receive notices or requests for further information.
- b. The name of the established appropriate unit and of the incumbent Exclusively Recognized Employee Organization sought to be decertified as a representative of that unit.
- c. An allegation that the incumbent Exclusively Recognized Employee Organization no longer represents a majority of the employees in the appropriate unit, and any other relevant and material facts relating thereto.

d. Proof of employee support that at least thirty (30) percent of the employees in the established appropriate unit no longer desire to be represented by the incumbent exclusively recognized employee organization. Such proof shall be submitted for confirmation to the Employee Relations Officer or to a mutually agreed disinterested third party within the time limits specified in the first paragraph of this section.

An employee organization may, in satisfaction of the decertification petition requirements hereunder, file a petition under this section in the form of a Recognition Petition that evidences proof of employee support of at least thirty (30%) percent, that includes the allegation and information required under this Section 21.3.6, and otherwise conforms to the requirements of Section 21.3.1 of this Policy.

The Employee Relations Officer shall initially determine whether the Petition has been filed in compliance with the applicable provisions of this Section 21.3. If their determination is in the negative, they shall offer to consult thereon with the representative(s) of such petitioning employees or employee organization and, if such determination thereafter remains unchanged, shall return such Petition to the employees or employee organization with a statement of the reasons therefore in writing. The petitioning employees or employee organization may appeal such determination in accordance with Section 21.3.10 of this Policy. If the determination of the Employee Relations Officer is in the affirmative, or their negative determination is reversed on appeal, the Employee Relations Officer shall give written notice of such Decertification or Recognition Petition to the incumbent exclusively recognized employee organization and to unit employees.

nce with the applicable provisions of this Section 21.3. If their determination is in the negative, they shall offer to consult thereon with the representative(s) of such petitioning employees or employee organization and, if such determination thereafter remains unchanged, shall return such Petition to the employees or employee organization with a statement of the reasons therefore in writing. The petitioning employees or employee organization may appeal such determination in accordance with Section 21.3.10 of this Policy. If the determination of the Employee Relations Officer is in the affirmative, or their negative determination is reversed on appeal, the Employee Relations Officer shall give written notice of such Decertification or Recognition Petition to the incumbent exclusively recognized employee organization and to unit employees.

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10 of this Policy. If the determination of the Employee Relations Officer is in the affirmative, or their negative determination is reversed on appeal, the Employee Relations Officer shall give written notice of such Decertification or Recognition Petition to the incumbent exclusively recognized employee organization and to unit employees.

The Employee Relations Officer shall thereupon arrange for a secret ballot election to be held on or about thirty (30) days after such notice to determine the wishes of unit employees as to the question of decertification and, if a Recognition Petition was duly filed hereunder, the question of representation. Such election shall be conducted in conformance with Section 21.3.5 of this Policy.

nit employees as to the question of decertification and, if a Recognition Petition was duly filed hereunder, the question of representation. Such election shall be conducted in conformance with Section 21.3.5 of this Policy.

During the “open period” specified in the first paragraph of this Section, the Employee Relations Officer may on their own motion, when they have reason to believe that a majority of unit employees no longer wish to be represented by the incumbent Exclusively Recognized Employee Organization, give notice to that organization and all unit employees that they will arrange for an election to determine that issue. In such event any other employee organization may within fifteen (15) days of such notice file a Recognition Petition in accordance with this section and Section 21.3.1, which the Employee Relations Officer shall act on in accordance with this section.

ation, give notice to that organization and all unit employees that they will arrange for an election to determine that issue. In such event any other employee organization may within fifteen (15) days of such notice file a Recognition Petition in accordance with this section and Section 21.3.1, which the Employee Relations Officer shall act on in accordance with this section.

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If, pursuant to this section, a different employee organization is formally acknowledged as the Exclusively Recognized Employee Organization, such organization shall be bound by all the terms and conditions of any Memorandum of Understanding then in effect for its remaining term.

#### **21.3.7 Policy and Standards for Determination of Appropriate Units**

The Employee Relations Officer shall maintain a list of all current bargaining units in the City and shall have the management discretion to form and define reasonable bargaining units based on the procedures specified in this Policy. The policy objectives used in determining the appropriateness of units shall be the effect of a proposed unit on (1) the efficient operations of the City and its compatibility with the primary responsibility of the City and its employees to effectively and economically serve the public, and (2) providing employees with effective representation based on recognized community of interest considerations. These policy objectives require that the appropriate unit shall be the broadest feasible grouping of positions that share an identifiable community of interest.

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In considering whether classifications share an identifiable community of interest, the following factors shall be considered:

- a. Similarity of the general kinds of work performed, types of qualifications required, and the general working conditions.
- b. History of representation in the City and similar employment; except that no unit shall be deemed appropriate solely on the basis of the extent to which employees in the proposed unit have organized.
- c. Consistency with the organizational patterns of the City.
- d. Effect of differing legally mandated impasse resolution procedures, if any.
- e. Number of employees and classifications, and the effect on the administration of employer-employee relations created by the fragmentation of classifications and proliferation of units.
- f. Effect on the classification structure and impact on the stability of the employer-employee relationship of dividing a single or related classifications among two or more units.

Notwithstanding the foregoing provisions of this section, managerial, supervisory and confidential responsibilities, as defined in Section 21.2 of this Policy, are determining factors in establishing appropriate units hereunder, and therefore such managerial, supervisory and confidential employees may only be included in units that do not include non- managerial, non-supervisory and non-confidential employees. Managerial, supervisory and confidential employees may not represent any employee organization which represents other employees.

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Peace officers have the right to be represented in separate units composed solely of such peace officers.

Also under the MMBA, professional employees have the right to be represented separately from non-professional employees.

The Employee Relations Officer shall, after notice to and consultation with affected employee organizations, allocate new classifications or positions, delete eliminated classifications or positions, and retain, reallocate or delete modified classifications or positions from units in accordance with the provisions of this section. The decision of the Employee Relations Officer shall be final.

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**21.3.8 Procedure for Modification of Established Appropriate Units**

Requests by employee organizations for modifications of established appropriate units may be considered by the Employee Relations Officer only during the period specified in the first paragraph of Section 21.3.6 of this Policy. Such requests shall be submitted in the form of a Recognition Petition and, in addition to the requirements set forth in Section 21.3.1, shall contain a complete and shall contain a complete statement of all relevant facts and citations in support of the proposed modified unit in terms of the policies and standards set forth in

Section 21.3.7. The Employee Relations Officer shall process such petitions consistent with any other recognition petition under the provisions of this Policy.

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When new classifications are adopted, existing classifications abolished, or when a classification is no longer compatible with the existing bargaining unit in light of the factors set forth in Section 21.3.7 of this Policy, the Employee Relations Officer may by his own motion at any time propose that an established unit be modified. The Employee Relations Officer shall give written notice of the proposed modification(s) to any affected employee organization and shall hold a meeting concerning the proposed modification(s), at which time all affected employee organizations shall be heard.

established unit be modified. The Employee Relations Officer shall give written notice of the proposed modification(s) to any affected employee organization and shall hold a meeting concerning the proposed modification(s), at which time all affected employee organizations shall be heard.

modification(s), at which time all affected employee organizations shall be heard.

Thereafter the Employee Relations Officer shall determine the composition of the appropriate unit or units in accordance with Section 21.3.7, and shall give written notice of such determination to the affected employee organizations. The Employee Relations Officer's determination may be appealed as provided in Section 21.3.10 of this Policy. If a unit is modified pursuant to the motion of the Employee Relations Officer hereunder, employee organizations may thereafter file Recognition Petitions seeking to become the exclusively recognized employee organization for such new appropriate unit or units pursuant to Section 21.3.1.

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#### **21.3.9 Procedure for Processing Severance Requests**

An employee organization may file a request to become the exclusively recognized employee organization of a unit alleged to be appropriate, that consists of a group of employees who are already a part of a larger, previously established unit represented by another employee organization. The timing, form, and processing of such request shall follow the procedures for a modification request under Section 21.3.8.

#### **21.3.10 Appeals**

An employee organization aggrieved by a determination of the Employee Relations Officer that a recognition petition (Section 21.3.1), challenging petition (Section 21.3.3), decertification petition (Section 21.3.6), unit modification petition (Section 21.3.8), or severance request (Section 21.3.9) has not been filed in compliance with the applicable provisions of this Policy, or aggrieved by the Employee Relations Officer's determination of an appropriate bargaining unit (Section 21.3.7), may within ten (10) days of notice of the Employee Relations Officer's appeal such determination to the City Council for a final decision.

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) days of notice of the Employee Relations Officer's appeal such determination to the City Council for a final decision.

Appeals to the City Council shall be filed in writing with the City Clerk, and a copy thereof served on the Employee Relations Officer. The City Council shall commence to consider the matter within thirty (30) days of the filing of the appeal. The City Council may, in its discretion, refer the dispute to a non-binding third party hearing process.

Any decision of the City Council on the use of such procedure, and/or any decision of the City Council determining the substance of the dispute shall be final and binding.

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#### **21.3.11 Abandonment of Unit or Good Faith Doubt of Majority Representation**

In the event a bargaining unit appears to have been abandoned by its exclusively recognized employee organization, or in the event that the Employee Relations Officer has a good faith doubt that the exclusively recognized employee organization represents a majority of the members of the unit, the Employee Relations Officer shall serve notice to the affected employee organization(s) stating the evidence leading them to the belief of abandonment or doubt of majority representation status. Such affected employee organization shall have twenty (20) days to present written evidence and argument to the contrary.

nt or doubt of majority representation status. Such affected employee organization shall have twenty (20) days to present written evidence and argument to the contrary.

ee organization shall have twenty (20) days to present written evidence and argument to the contrary.

If, after the twenty-day period expires and after consideration of any written evidence and argument submitted by the employee organization, the Employee Relations Officer still believes the unit has been abandoned or still has a good faith doubt of majority representation, the Employee Relations Officer shall thereupon arrange for a secret ballot election to be held on or about fifteen (15) days after notice thereof to determine the wishes of unit members. The question before the eligible voting employees shall be "Do you wish to continue to be represented by [name of employee organization] in your formal bargaining relationship with the City?" If the answer by a majority of valid votes cast is in the affirmative, there shall be no change in representational status. If the answer by a majority of valid votes cast is in the negative, then the organization's representational status as bargaining representative for the unit in question shall be terminated.

Except as specifically provided above, the details of such election shall be handled in accordance with applicable provisions of Section 21.3.4 of this Policy.

3.4 of this Policy.

## **21.4 Administration**

### **21.4.1 Submission of Current Information by Recognized Employee Organizations**

Any changes in the information filed with the City by an exclusively recognized employee organization under items (a) through (h) of its Recognition Petition under Section 21.3.1 of this Policy shall be submitted in writing to the Employee Relations Officer within fourteen (14) days of such change.

### **21.4.2 Employee Organization Activities – Use of City Resources**

Access to City work locations and the use of City paid time, facilities, equipment and other resources by employee organizations and those representing them shall be authorized only to the extent provided for in Memoranda of Understanding and/or administrative procedures, shall be limited to lawful activities consistent with the provisions of this Policy that pertain directly to the employer-employee relationship and not such internal employee organization business as soliciting membership, campaigning for office, and organization meetings and elections, and shall not interfere with the efficiency, safety and security of City operations.

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office, and organization meetings and elections, and shall not interfere with the efficiency, safety and security of City operations.

### **21.4.3 Administrative Rules and Procedures**

The City Manager is hereby authorized to establish such rules and procedures as appropriate to implement and administer the provisions of this Policy after consultation with affected employee organizations.

## **21.5 Impasse Procedures**

### **21.5.1 Initiation of Impasse Procedures**

If the meet and confer process between the City and an exclusively recognized employee organization has reached impasse as defined in Section 21.2 of this Policy, either party may initiate the impasse procedures by filing with the other party a written request for an impasse meeting, together with a statement of its position on all issues. An impasse meeting shall then be scheduled promptly by the Employee Relations Officer. The purpose of such meeting shall be:

- a.** To identify and specify in writing the issue or issues that remain in dispute;

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- b. To review the position of the parties in a final effort to reach agreement on a Memorandum of Understanding; and
- c. If the impasse is not resolved, to discuss arrangements for the utilization of the impasse procedures provided herein.

### 21.5.2 Impasse Procedures

Impasse procedures are as follows:

- a. If the parties agree to submit the dispute to mediation, and agree on the selection of a mediator, the dispute shall be submitted to mediation. All mediation proceedings shall be private. The mediator shall make no public recommendation, nor take any public position at any time concerning the issues.
- b. Otherwise, the parties can utilize any other impasse procedures provided in accordance with the MMBA.
- c. After any applicable mediation and fact-finding procedures have been exhausted, including any statutory waiting period that may apply under the MMBA, the City Council may hold a public hearing regarding the impasse and take such action regarding the impasse as it in its discretion deems appropriate as in the public interest, including implementation of the City's last, best and final offer. Any legislative action by the City Council on the impasse shall be final and binding.

### 21.5.3 Costs of Impasse Procedures

The costs for the services a mediator, a factfinding panel chairperson, and any other mutually incurred costs of any impasse procedures shall be equally divided between the City and the exclusively recognized employee organization. Any separately incurred services or costs, including but not limited to costs for a fact-finding panel member selected by each party, shall be borne solely by the party incurring the cost.

## 21.6 Miscellaneous Provisions

### 21.6.1 Construction

This Policy shall be administered and construed as follows:

- a. Nothing in this Policy shall be construed to deny to any person, employee, organization, the City, or any authorized officer, body or other representative of the City, the rights, powers and authority granted by federal or state law.
- b. This Policy shall be interpreted so as to carry out its purpose as set forth in Section 21.1.
- c. Nothing in this Policy shall be construed as a waiver of any rights unless expressly and specifically stated.

### 21.6.2 Suspension of Recognition

Recognition of an employee organization may be suspended by the City Council for:

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~~— Repeated or continued failure or refusal to comply with the provisions of this Policy;~~

~~— Intentionally furnishing false information to the City; or~~

~~— Violation of any law, contract provisions, court decisions, or court orders.~~

~~Reasonable notice and opportunity to correct violations shall be given prior to suspensions under this section.~~

### **21.6.3 Severability**

If any provision of this Policy, or the application of such provision to any persons or circumstances, shall be held invalid, the remainder of this Policy, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

~~The purpose of this section is to implement the Meyers Milius Brown Act, Government Code Sections 3500 et seq., (“MMBA”) by providing orderly procedures for the administration of employer-employee relations between the City and its employee organizations and for resolving disputes regarding wages, hours, and other terms and conditions of employment.~~

### **21.1 Definitions**

~~For purposes of this section, the following terms shall have the meanings indicated:~~

~~21.1.1 *Appropriate Unit.* A unit established pursuant to Section 21.9.~~

~~21.1.2 *City.* The City of Tracy, a municipal corporation, and where appropriate herein, “City” refers to the City Council, the governing body of said City or any duly authorized management employee as herein defined.~~

~~21.1.3 *Confidential Employee.* An employee who is privy to decisions of City management affecting employer-employee relations.~~

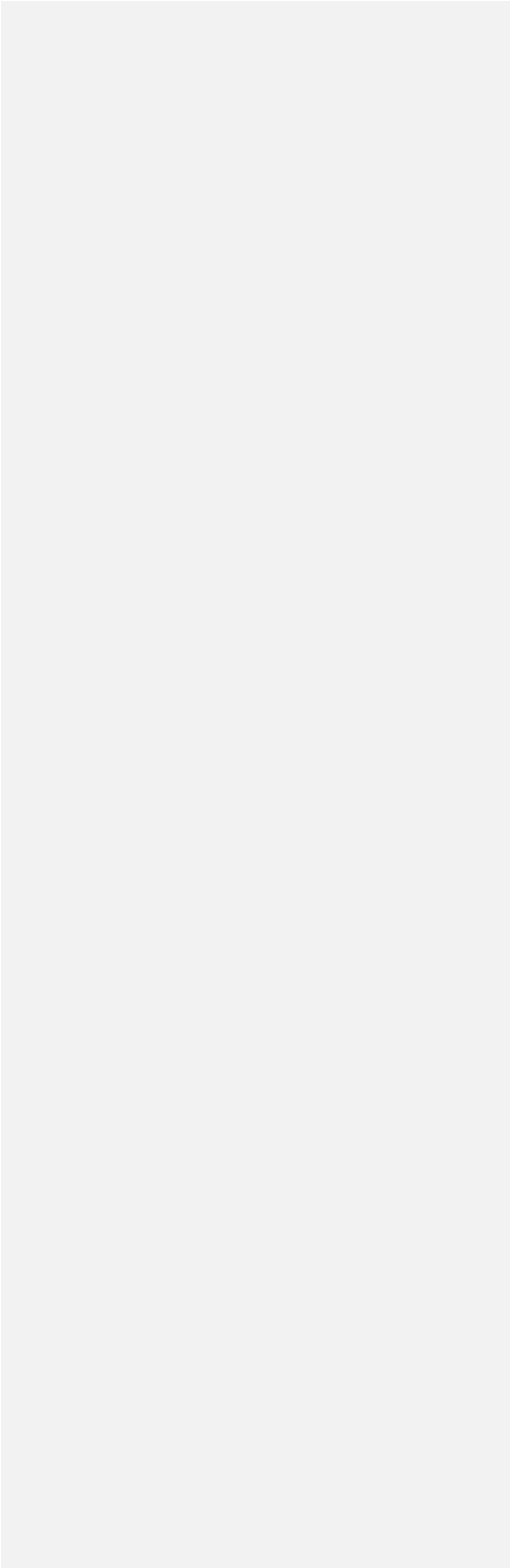
~~21.1.4 *Consult or Consultation in Good Faith.* To communicate orally or in writing for the purpose of presenting and obtaining views or advising of intended actions.~~

~~21.1.5 *Employee.* Any person regularly employed by the City except those persons appointed directly by the City Council, elected by popular vote or temporary or contract employees.~~

~~21.1.6 *Employee Organization.* Any organization which includes employees of the City and which has as one of its primary purposes representing such employees in their employment relations with the City.~~

~~21.1.7 *Employer-Employee Relations.* The relationship between the City and its employees and their employee organization, or when used in a general sense,~~

~~the relationship between City management and employees or employee organizations.~~



- ~~21.1.8 *Impasse.* a) a deadlock in the discussions between an employee organization and the City over any matters which they are required to meet and confer in good faith, or over the scope of such subject matter; or b) any unresolved complaint by an affected employee organization, advanced in good faith, concerning a decision of the Municipal Employee Relations Officer made pursuant to section 21.5.~~
- ~~21.1.9 *Majority Representative.* An employee organization, or its duly authorized representative, that has been granted formal recognition by the Municipal Employee Relations Officer as representing the majority of employees in an appropriate unit.~~
- ~~21.1.10 *Management Employee.* Any employee having significant responsibilities for formulating and administering City policies and programs, including but not limited to the City Manager and Department Heads. Any employee having authority to exercise independent judgment to hire, transfer, suspend, lay off, recall, promote, dismiss, assign, reward, or discipline other employees. The exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.~~
- ~~21.1.11 *Mediation or Conciliation.* The efforts of an impartial third person, or persons, functioning as intermediaries, to assist the parties in reaching a voluntary resolution to an impasse, through interpretation, suggestion and advice. Mediation and conciliation are interchangeable terms.~~
- ~~21.1.12 *Meet and Confer in Good Faith.* (Sometimes referred to herein as “meet and confer” or “meeting and conferring”). Performance by duly authorized City representatives and duly authorized representatives of an employee organization (recognized as the majority representative) of their mutual obligation to meet at reasonable times and to confer in good faith regarding matters within the scope of representation, including wages, hours, and other terms and conditions of employment, in an effort to: a) reach agreement on those matters within the authority of such representatives and b) reach agreement on what will be recommended to the City Council on those matters within the decision making authority of the City Council. This does not require either party to agree to a proposal or to make a concession.~~
- ~~21.1.13 *Municipal Employee Relations Officer.* The City’s principal representative in all matters of employer-employee relations designated pursuant to Section 21.2, or his/her duly authorized representative.~~
- ~~21.1.14 *Peace Officer.* As defined in Section 830, California Penal Code.~~
- ~~21.1.15 *Professional Employee.* Employees engaged in work requiring specialized knowledge and skills attained through completion of a recognized course of instruction, including, but not limited to, attorneys, engineers, planners, architects, and various types of physical, chemical, and biological scientists.~~
- ~~21.1.16 *Recognized Employee Organizations.* An employee organization which has been acknowledged by the Municipal Employee Relations Officer as an employee organization that represents employees of the City. The rights~~

accompanying recognition are either:

~~21.1.16.1 *Formal Recognition.* The right to meet and confer in good faith as the majority representative in an appropriate unit; or~~

~~21.1.16.2 *Informal Recognition.* The right to consultation in good faith by all recognized employee organizations.~~

~~21.1.17 *Scope of Representation.* All matters relating to employment conditions and employer-employee relations, including, but not limited to, wages, hours, and other terms and conditions of employment. City Rights (Section 21.4) are excluded from the scope of representation.~~

~~21.2 Designation of Municipal Employee Relations Officer~~

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~~21.2.1 The City Manager or his/her/their designee shall be the City's Municipal Employee Relations Officer and shall be the City's principal representative in all matters of employer-employee relations, with authority to meet and confer in good faith on matters within the scope of representation including wages, hours and other terms and conditions of employment.~~

~~The Municipal Employee Relations Officer is authorized to delegate these duties and responsibilities.~~

~~21.3 Employee Rights~~

~~Employees of the City shall have the right to form, join and participate in the activities of employee organizations of their own choosing for the purpose of representation on all matters of employer-employee relations including, but not limited to, wages, hours, and other terms and conditions of employment. Employees of the City also shall have the right to refuse to join or participate in the activities of employee organizations and shall have the right to represent themselves individually in their employment relations with the City (except as provided for in California Government Code 3502.5 Agency Shop). No employee shall be interfered with, intimidated, restrained, coerced or discriminated against by the City or by any employee organization because of his/her/their exercise of these rights.~~

~~21.4 City Rights~~

~~The rights of the City include, but are not limited to, the exclusive right to determine the mission of its constituent departments, commissions and boards; set standards of service; determine the procedures and standards of selection for employment and promotion; direct its employees; take disciplinary action; relieve its employees from duty because of lack of work or for other legitimate reasons; maintain the efficiency of governmental operations; determine the methods, means and personnel by which government operations are to be conducted; determine the content of job classifications; take all necessary actions to carry out its mission in emergencies; and exercise complete control and discretion over its organization and the technology of performing its work.~~

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**21.5 Meet and Confer in Good Faith – Scope**

~~21.5.1 The City, through its representatives, shall meet and confer in good faith with representatives of formally recognized employee organizations with majority representation rights regarding matters within the scope of representation including wages hours and other terms and conditions of employment within the appropriate unit.~~

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~~21.5.2 The City shall not be required to meet and confer in good faith on any subject preempted by Federal or State law or by the City ordinances and resolutions, nor shall it be required to meet and confer in good faith on Employee or City Rights as defined in Sections 21.3 and 21.4. Proposed amendments to this Rule are excluded from the scope of meeting and conferring.~~

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**21.6 Incorporation into a Memorandum of Understanding**

~~When the meeting and conferring process is concluded between the City and a formally recognized employee organization representing a majority of the employees in an appropriate unit, all agreed upon matters shall be incorporated in a written memorandum of understanding signed by the duly authorized City and majority representatives.~~

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~~As to those matters within the authority of the City Council, the Memorandum of Understanding shall be submitted to the City Council for approval.~~

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**21.7 Compliance with Federal and State Laws**

~~The City Council may adopt such Rules and Regulations necessary or convenient to implement the provisions of this Rule and the MMBA.~~

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~~Nothing in this Section shall be construed to deny any person or employee the rights granted by Federal and State laws and City Code provisions.~~

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~~The rights, powers and authority of the City Council in all matters, including the right to maintain any legal action, shall not be modified or restricted by this Section.~~

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~~The provisions of this Section are not intended to conflict with the provisions of the MMBA.~~

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**21.8 Advance Notice**

~~Reasonable written notice shall be given to each recognized employee organization affected of any ordinance, rule, resolution or regulation directly relating to matters within the scope of representation proposed to be adopted by the City Council or by any board or commission of the City, and each shall be given the opportunity to meet with the Municipal Employee Relations Officer.~~

~~In cases of emergency when the City or any board or commission of the City determines that an ordinance, rule, resolution or regulation must be adopted immediately without prior notice or meeting with a recognized employee organization, the City or the board or commission of the City shall provide such notice and~~

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opportunity to meet at the earliest practicable time following the adoption of such ordinance, rule, resolution or regulation.

## **21.9 — Petition for Recognition**

There are two levels of employee organization recognition — formal and informal. The recognition requirements of each are set forth below.

~~21.9.1 — Formal Recognition — *The Right to Meet and Confer in Good Faith as Majority Representative:* An employee organization that seeks formal recognition for purposes of meeting and conferring in good faith as the majority representative of employees in an appropriate unit shall file a petition with the Municipal Employee Relations Officer containing the following information and documentation:~~

- ~~(1) Name and address of the employee organization.~~
- ~~(2) Names and titles of its officers.~~
- ~~(3) Names of employee organization representatives who are authorized to speak on behalf of its members.~~
- ~~(4) A statement that the employee organization has, as one of its primary purposes, representing employees in their employment relations with the City.~~
- ~~(5) A statement whether the employee organization is a chapter or local of, or affiliated directly or indirectly in any manner with, a regional or state, or national or international organization, and, if so, the name and address of each such regional, state or international organization.~~
- ~~(6) Certified copies of the employee organization's constitution and by laws.~~
- ~~(7) A designation of those persons, not exceeding two in number, and their addresses, to whom notice sent by regular United States mail will be deemed sufficient notice on the employee organization for any purpose.~~
- ~~(8) A statement that the employee organization recognizes that the provisions of Section 923 of the California Labor Code are not applicable to City employees.~~
- ~~(9) A statement that the employee organization has no restriction on membership based on race, color, creed, sex, national origin, disability or medical condition, age, or sexual orientation.~~
- ~~(10) The job classifications or titles of employees in the unit claimed to be appropriate and the approximate number of member employees therein.~~
- ~~(11) Authorization cards demonstrating support for the petition, signed by 30% or more of the employees within the bargaining unit, that are dated no later than six (6) months earlier than the date of the petition, and which appear authentic to the party reviewing them who may be the Municipal Employee Relations Officer or a mutually agreed upon disinterested third party.~~
- ~~(12) A request that the Municipal Employee Relations Officer recognize the employee organization as the majority representative of the employees in the unit claimed to be appropriate for the purpose of meeting and conferring in good faith on all matters within the scope of representation.~~

~~21.9.2 — Informal Recognition — *The Right to Consult in Good Faith:* An employee organization that seeks recognition for purposes of consultation in good faith~~

shall file a petition with the Municipal Employee Relations Officer containing the following information and documentation:

- (1) ~~All of the information enumerated in 21.9.1 of this Section.~~
- (2) ~~A statement that the employee organization has in its possession written proof, dated within six (6) months of the date upon which the petition is filed, to establish that employees have designated the employee organization to represent them in their employment relations with the City. Such written proof shall be submitted for confirmation to the Municipal Employee Relations Officer or to a mutually agreed upon disinterested third party.~~
- (3) ~~A request that the Municipal Employee Relations Officer recognize the employee organization for the purpose of consultation in good faith.~~

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#### **21.10 The Petition**

~~The petition, including all accompanying documents, shall be verified, under oath, by the Executive Officer and Secretary of the organization that the statements are true. All changes in such information shall be filed forthwith in like manner.~~

#### **21.11 Municipal Employee Relations Officer**

~~The Municipal Employee Relations Officer shall grant recognition, in writing, to all employees organizations who have complied with either Section 21.9.1 or 21.9.2 for purposes of consultation in good faith for its members. Employee organizations seeking formal recognition as majority representative must, in addition, establish to the satisfaction of the Municipal Employee Relations Officer that it represents a majority of the employees in the manner prescribed in Section 21.9. No employee may be represented by more than one recognized employee organization for the purposes of this Resolution.~~

#### **21.12 Response to Petition**

~~Within 30 days after receiving a petition, the Municipal Employee Relations Officer shall determine whether the petition contains the necessary elements demonstrating the requisite showing of interest. If the petition is defective in some respect, the Municipal Employee Relations Officer may reject and return it, with a brief explanation. Alternatively, the Municipal Employee Relations Officer may retain the petition, and permit the petitioner to alleviate the deficiencies promptly.~~

#### **21.13 Notice**

~~After the Municipal Employee Relations Officer determines that a petition meets the requirements under this Rule, the Officer shall provide notice that a petition has been filed to all employees in the bargaining unit at issue, all recognized employee organizations, and the City Council.~~

#### **21.14 Elections**

Unless otherwise provided by State Law, elections shall be conducted in accordance with the provisions herein.

~~21.15 Certification~~

~~The Municipal Employee Relations Officer shall provide notice of the election outcome to all affected employee organizations and the Council. For certification petitions, the Council shall certify the prevailing organization, if any, as the exclusive bargaining representative for the bargaining unit(s) at issue.~~

~~21.16 Election Procedures~~

~~The following procedures are applicable to elections, except as specified herein.~~

~~21.16.1 Third-party Election. Elections will be conducted by a third party as designated by the Municipal Employee Relations Officer. The Municipal Employee Relations Officer may take reasonable measures, not in conflict with this Rule or applicable law, to ensure the integrity of elections.~~

~~21.16.2 Municipal Employee Relations Officer Discretion. The Municipal Employee Relations Officer has the discretion to refer the election matter at issue to a neutral agency such as the State Mediation and Conciliation Services (SMCS), or the Public Employee Relations Board (PERB), for handling.~~

~~21.16.3 Supported Petition. In order for an election to be held, petitions to certify or decertify a recognized bargaining representative, or to rescind an agency shop provision, must be accompanied by cards showing that the petition at issue is supported by thirty percent (30%) or more of the bargaining unit employees.~~

~~21.16.4 Challenges. Challenges to certification petitions may be initiated by other employee organizations. If the challenging organization meets these requirements, the organization will also be included in the election. The requirements are:~~

~~21.16.4.1 Challenging Organization. The challenging organization provides the information contained in this Rule.~~

~~21.16.4.2 Percent of Signed Cards. The challenging organization produces cards demonstrating that at least ten percent (10%) of employees in the bargaining unit subject to the petition support the challenge.~~

~~21.16.4.3 Time Period. The challenge must be initiated within 30 days after the Municipal Employee Relations Officer gives notice of a petition for certification.~~

~~21.16.5 Authenticity. The authenticity of cards and signatures shall be verified by a neutral party designated by the Municipal Employee Relations Officer.~~

~~21.16.6.1 Secret Ballot. Elections will be conducted by secret ballot. Over~~

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~~fifty percent 50% of the employees in the bargaining unit must participate in the election in order for the election to be certified. Elections will be determined by majority vote of those employees casting votes.~~

~~21.16.7 — *No Representation Choice.* Ballots shall contain the choice of “no representation”.~~

~~21.16.7.1 — *No Majority Result.* If no representative receives a majority of the votes, the Municipal Employee Relations Officer shall conduct a runoff election between the two (2) choices receiving the most votes.~~

~~21.16.8 — *Costs.* Except for initial elections regarding certification of an exclusive bargaining representative, costs of elections shall be borne equally among the City Council and the employee organizations appearing on the ballot, to the extent permitted by law.~~

~~21.16.8.1 — *Decertification election.* Elections concerning the proposed decertification of an exclusive bargaining representative may be held no sooner than twelve (12) months following the date the Council certified and recognized the bargaining representative as the exclusive bargaining representative for the employee organization(s) at issue. A decertification petition alleging that the incumbent recognized employee organization no longer represents a majority of employees in an established unit may be filed with the Municipal Employee Relations Officer only during the thirty (30) day period commencing one hundred and twenty (120) days prior to the termination date of an MOU then having been in effect less than three (3) years. For MOUs in effect three (3) years or longer, decertification petitions may be filed during the month of January in every year the MOU is in effect.~~

~~21.16.8.2 — *Rescinding Agency Shop.* No more than one vote to rescind an agency shop agreement may be taken during the life of a MOU that provides for agency shop.~~

~~21.16.12 — *Granting Recognition.* Notwithstanding the procedures in this Rule, the Council shall grant exclusive recognition to an employee organization based on a signed petition, authorization cards, or union membership cards showing that a majority of the employees in an employee organization determined appropriate by the Municipal Employee Relations Officer desire the representation, unless another labor organization has previously been lawfully recognized as exclusive or majority representative of all or part of the same unit. Exclusive representation shall be determined by a neutral third party selected by the Municipal Employee Relations Officer and the employee organization who shall review the signed petition, authorization cards, or union membership cards to verify the exclusive or majority status of the employee~~

~~organization. In the event the parties cannot agree on a neutral third party, the parties shall utilize the services of the SMCS. In the event the neutral third party determines, based on a signed petition, authorization cards, or union membership cards, that a second labor organization has the support of at least 30% of the employees in the unit in which recognition is sought, the neutral third party shall order an election to establish which labor organization, if any, has majority status.~~

### **21.17 – Bargaining Unit Modifications**

~~Bargaining unit modifications may be initiated by the Municipal Employee Relations Officer, by a group of employees, or by a recognized employee representative. Modifications to existing bargaining units must be supported by some legitimate reason.~~

~~21.17.1 *Municipal Employee Relations Officer Initiated Unit Modification.* The Municipal Employee Relations Officer may initiate a modification of its unit structure, including the creation of new units, or the reallocation of classifications from one bargaining unit to another bargaining unit. The Municipal Employee Relations Officer shall provide notice to all affected employee organizations, and to each employee who may be affected by the proposed change. Before implementing any modification or reallocation, the Municipal Employee Relations Officer shall provide the opportunity to meet and confer (or consult), to the extent required by law, with affected, recognized employee representatives.~~

~~21.17.2 *Employee and Union Initiated Modifications.* An employee, group of employees, or a recognized employee organization may request that a unit be modified, or that one or more classifications be reallocated to a new or existing bargaining unit. The Municipal Employee Relations Officer shall provide notice to all affected employee organizations upon receipt of such a request. The request must be accompanied by authorization cards, dated no later than six (6) months earlier than the request, showing that at least 40% of the employees in the new proposed unit, or 30% of the employees in the classification(s) proposed to be reallocated to another bargaining unit, support the request.~~

### **21.18 – Denying the Request**

~~The Municipal Employee Relations Officer may exercise discretion to deny the request in the event the criteria listed in section 21.9 of this Rule indicates to the Municipal Employee Relations Officer that the modification or reallocation is inappropriate. The Municipal Employee Relations Officer shall provide written notice of the rejection to all recognized employee representatives promptly after such determination.~~

~~21.18.1 *Consistent Modifications.* If the Municipal Employee Relations Officer determines that the modification or reallocation is consistent with the criteria listed, the Municipal Employee Relations Officer shall further process the request. If the Municipal Employee Relations Officer~~

determines that a new unit or reallocation is appropriate, the Municipal Employee Relations Officer shall provide notice to all recognized employee representatives. If no protest is filed within 30 days, the Municipal Employee Relations Officer shall promptly reassign affected classifications to the new unit, or reallocate the classifications to an existing bargaining unit. In the event of an assignment to a newly created bargaining unit, the Municipal Employee Relations Officer shall also notify the employees of their rights under this Rule, including the right to select a representative of their choice for the purpose of meeting and conferring regarding wages, hours and working conditions under the MMBA.

~~21.18.2 *Protests.* Within 30 days of notice regarding the Municipal Employee Relations Officer's determination to modify a bargaining unit, or reallocate classifications, an affected recognized employee representative may submit a protest to the Municipal Employee Relations Officer's office. The protest must include the following in order to be considered.~~

~~21.18.2.1 *Data.* The name, address, e-mail address, and telephone number of the protesting representative.~~

~~21.18.2.2 *Facts.* The facts and arguments supporting the protest.~~

~~21.18.2.3 *Resolution.* The proposed resolution.~~

~~21.18.3 *Response.* Upon receipt of a protest, the Municipal Employee Relations Officer shall meet and confer to the extent required by law. If there is no resolution, the dispute shall be submitted to the SMCS for mediation. If the SMCS is unable to achieve a resolution, the matter shall be referred to the Municipal Employee Relations Officer for final written decision and notice to all affected parties. After issuing a decision, the Municipal Employee Relations Officer may reassign or reallocate the classifications at issue.~~

#### **21.19 Timing**

~~Unless required by law, unit modifications or reallocations may not be initiated sooner than 12 months following the date of City Council adoptions of any memorandum of understanding which covers the classifications proposed to be reallocated or moved from the bargaining unit.~~

## 21.20 Unit Disputes Involving Professional Employees

In the event of a dispute on the appropriateness of a unit of representation for professional employees, upon request of any of the parties, the dispute shall be submitted to the SMCS for mediation or for recommendation for resolving the dispute. Professional employees, for the purposes of this section, mean employees engaged in work requiring specialized knowledge and skills attained through completion of a recognized course of instruction, including, but not limited to, attorneys, physicians, registered nurses, engineers, architects, teachers, and the various types of physical, chemical, and biological scientists.

## 21.21 Rights and Responsibilities

~~21.21.1 *Meet and Confer.* An exclusive bargaining representative shall have the right to meet and confer in good faith with authorized City representatives regarding wages, hours, and working conditions within the scope of representation. If an agreement is reached, the parties shall jointly prepare a written MOU, which shall not be binding, and present it to the Council. If the Council adopts the written MOU, it shall become binding on the parties. The City is under no obligation to meet and confer with an employee organization unless it has been certified as a recognized employee representative.~~

~~21.21.2 *Current Information.* Recognized employee representatives have the responsibility to inform the Municipal Employee Relations Officer, in writing, of any changes in the information specified in section 21.9 of this Rule, and the Council may rely on its information on file for purposes of notice under this resolution and the MMBA.~~

~~21.21.3 *Release Time.* During the period of meet and confer regarding a memoranda of understanding, recognized employee representatives shall be entitled to a reasonable number of representatives who may receive paid release time during the period when formal negotiations are occurring at the table. The precise number shall be subject to the parties' discussions and the Municipal Employee Relations Officer's approval at the outset of negotiations. Employee representatives shall cooperate with the Municipal Employee Relations Officer on a reasonable schedule, and the employees released for negotiations shall notify their supervisors, obtain their consent (which shall not be unreasonably withheld) and ensure that the dates scheduled for negotiations do not adversely affect City operations. Paid release time may not be authorized for activities such as soliciting membership, internal union elections, campaigning for office or other political activity, organizing efforts, or for any other purpose not authorized by this Rule or an MOU.~~

~~21.21.4 *City Resources.* Use of City resources, and use of City Council facilities, including without limitation; stationery, computers, mail, e mail, copy machines, and fax machines, for Union business is prohibited.~~

~~21.21.5 *Dues and Other Authorized Payroll Deductions.* Recognized employee representatives may sponsor payroll deduction programs for membership~~

dues, charitable causes, and benefit premiums and contributions. In order to participate, each affected employee must submit a written authorization on a form prescribed by the Municipal Employee Relations Officer. Deductions shall comply applicable MOU and/or with City administrative procedures.

~~21.21.6 Appeals. An employee or labor organization aggrieved by any adverse action taken pursuant to this Employee Employer Relations Rule may submit an appeal to the Municipal Employee Relations Officer. The Municipal Employee Relations Officer may adopt reasonable procedures, after appropriate meet and consult, to resolve such appeals. To be considered, an appeal must be filed within 30 days of when the aggrieved party knew or should have known of the alleged violation. Failure to file an appeal within the 30 day time limit shall constitute a waiver of any challenge to the action at issue. Appeals must contain specific allegations that the employer violated a specific provision of this Rule or applied the Rule in a manner that violates an applicable law. Appeals must be submitted and appeal procedures exhausted before resorting to any other forum, so that the underlying facts may be gathered, an appropriate record may be created, and the Municipal Employee Relations Officer is provided a reasonable opportunity to correct or remedy complaints. No other grievance or appeal process may be used to address issues covered by this Rule.~~

## **21.22 Impasse Resolution Procedures**

~~21.22.1 Impasse Meeting. If impasse is reached during negotiations concerning an MOU, either party may declare an impasse by submitting a written letter formally declaring an impasse. The declaration of impasse must contain all of the following elements:~~

~~21.22.1.1 Tentative Agreements. A list of all tentative agreements, if any.~~

~~21.22.1.2 Disputed Issues. A list of all disputed issues.~~

~~21.22.1.3 Last and Final Offer. For each disputed issue, the declarant's last and final offer. The party against whom the impasse is declared shall submit a formal response within 7 working days of notice of impasse, and shall meet within 7 working days thereafter.~~

~~21.22.2 Mediation. Upon and after impasse, either party may request that the dispute be submitted to mediation, and the other party must participate in good faith upon request, or submit a letter within 7 working days of the request specifically declining to participate in mediation. The costs of mediation shall be borne equally. Mediation shall be conducted by a mediator supplied by the SMCS, or by some other mutually agreed upon mediator. Mediation shall be~~

~~confidential. The mediator shall not make public recommendations or issue any decision concerning the issues. If no agreement is reached after an opportunity for mediation, the matter may be referred to the City Council for final determination.~~

~~21.22.3 — *Miscellaneous.* The impasse resolution section shall not apply to economic disputes involving employees governed by different impasse resolution procedures imposed by lawful statute. This impasse resolution section shall only cover bargaining impasses regarding comprehensive memoranda of understanding (MOUs), and it does not cover day to day issues subject to meet and confer/meet and consult; or Council actions that may be subject to meet and confer/meet and consult requirements.~~

#### ~~21.23 — Agency Shop~~

~~If made, agency shop arrangements must accord with all requirements of California Government Code section 3502.5.~~

#### ~~21.24 — Miscellaneous Provisions~~

~~21.24.1 — *Savings and Separability.* This Rule is intended to comply with all applicable state and federal laws, and it should be interpreted and applied to harmonize with all such law, reserving the broadest legal measure of authority to the Council. In the event a court of competent jurisdiction determines that some provision is inconsistent with applicable and binding law, then that provision shall be severed and all remaining portions of the Rule shall continue in full force and effect. Upon request by the Municipal Employee Relations Officer, a recognized bargaining representative will meet and consult promptly in an effort to resolve any amendments that are necessary or advisable in light of changes to existing law, or interpretations of the law that impact this Rule.~~

## 22. MISCELLANEOUS

These rules and regulations shall only become effective when they are adopted by the City Council. Upon adoption they shall supersede any and all City-wide and/or departmental personnel management policies, rules, regulations, and procedures previously adopted, except those adopted by order of a department manager which are not in conflict with these Rules.

Any and all provisions contained in a Memorandum of Understanding (MOU) in effect at the time of adoption of these Rules, and which may be in conflict with the provisions of these Rules, shall remain in effect and supersede these Rules until such time as the conflicting provisions of the MOU may be modified, through the meet and confer process, to conform to these Rules. No existing MOU shall be modified, and no new MOU shall be entered into, which would establish provisions that would be in conflict with these Rules unless expressly identified by the City Manager and recommended to the City Council for review and approval.

These Rules do not create a “contract” of employment between the City and any employee. Public employment is statutory, not contractual.

If any part of these Rules is determined to be unconstitutional or illegal, such part shall be severed from these rules and the remaining Rules shall be given full force and effect. The City shall comply with changes in state and federal law, and shall amend these Rules as necessary for consistency. The term “City” as used in these rules refers to the City of Tracy. Responsibilities and rights of the City under these rules are exercised by the City Manager, and may be delegated by the Manager in his/her/their discretion.

**TRACY CITY COUNCIL**

**RESOLUTION NO. \_\_\_\_\_**

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**AUTHORIZING AMENDMENTS TO THE CITY'S PERSONNEL  
RULES AND REGULATIONS TO COMPLY WITH RECENT  
LEGAL UPDATES, INTEGRATE BEST PRACTICES, ADDRESS  
OPERATIONAL REQUIREMENTS, AND ENHANCE CLARITY**

**WHEREAS**, the City of Tracy established Personnel Rules and Regulations in 1997 through City Council adoption pursuant to Resolution 97-371 when the City Council authorized the elimination of the Personnel Advisory Board; and

**WHEREAS**, periodically, the Human Resources Department reviews and recommends revisions to the City's Personnel Rules and Regulations to align with current laws and regulations, incorporate evolving best practices, and enhance clarity and accessibility through clear and transparent language; and

**WHEREAS**, the Personnel Rules and Regulations have undergone iterative revisions over the years with the most recent amendment in 2022 pursuant to Resolution 2022-063 adding the Juneteenth holiday; and

**WHEREAS**, amendments to the Personnel Rules are necessary to comply with recent legal updates, integrate best practices, address operational requirements, update position titles, and enhance clarity in amendments to the classification plan, providing step advances for part-time positions, modernizing recruitment practices, clarification to the transfer and demotion process, authorization of outside employment process, integration of disability benefits, and Employer-Employee Relations Policy; and

**WHEREAS**, the proposed amendments to the City's Personnel Rules and Regulations uphold compliance with recent legal updates, integrate best practices, and address operational requirements; now therefore be it

**RESOLVED:** That the City Council of the City of Tracy hereby finds and determines that the foregoing recitals are true and correct and are hereby incorporated herein as findings and determinations of the City; and be it further

**RESOLVED:** That the City Council hereby authorizes amendments to the City's Personnel Rules and Regulations, as set forth in the updates shown in Attachment A; and be it further

**RESOLVED:** That the Proposed Personnel Rules and Regulations shall become effective September 1, 2024.



\*\*\*\*\*

The foregoing Resolution 2024-\_\_\_\_\_ was adopted by the Tracy City Council on \_\_, by the following vote:

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

---

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

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

Attachments:

- A. Amended Personnel Rules and Regulations Effective 09/01/2024

Agenda Item 1.1

RECOMMENDATION

**Staff recommends that the City Council adopt a Resolution: 1) approving the award of the Mayor's Community Youth Support Network Reconnecting Our Youth grants for Fiscal Year 2024-2025 in the total amount of \$175,000 to six non-profit organizations; and 2) authorizing the execution of the funding agreements for each grant.**

EXECUTIVE SUMMARY

The City of Tracy's Mayor's Community Youth Support Network (MCYSN) Reconnecting our Youth (ROY) grant program is entering its sixteenth year of programming, referred to as Cycle 16. This program has served thousands of local youths, as a grant matching program, through prevention, intervention and crisis suppression services offered in partnership with non-profits.

Staff is requesting that the City Council review and approve the recommendations from the MCYSN ROY Grant Scoring Committee, and award grant funding in the total amount of \$175,000 to six non-profits to support youth programs in the City of Tracy (City).

BACKGROUND AND LEGISLATIVE HISTORY

During the Fall of 2006, Tracy community members voiced concerns about increases in school fights, vandalism in City parks, graffiti on property, and growing gang activity in the City. Following these growing concerns, community stakeholders, City officials and City staff partnered to form the Mayor's Community Youth Support Network. The objectives of the program are to reconnect youth to their families, schools, and community and to develop a gang prevention strategy that targeted at-risk youth.

Shortly following formation, MCYSN began meeting regularly to organize communication and formulate a strategic plan to guide the program. The MCYSN Strategic Plan was drafted in 2007 and focused on the following four priority areas: 1) assessing current youth service gaps, 2) funding strategies, 3) creating a crisis response protocol and 4) developing a service delivery system. The MCYSN program was intended to partner with non-profits to provide services such as counseling, mentoring, case management, after school tutoring, career preparation, technology training, life skills training, parent workshops, and gang intervention and prevention workshops.

On February 19, 2008, the City Council approved the MCYSN Strategic Plan and allocated \$1 million to kick-start the program. The allocation funded personnel to carry out the goals and objectives of the MCYSN program, which included: one Management Analyst in the City Manager's Office to oversee the MCYSN program, one Administrative Assistant, one

part-time Recreation Coordinator, six part-time Recreation Leaders, and two sworn School Resource Officers. The funding was also utilized for contracted services via the MCYSN - ROY Grant Program, recreation programs (after school programs and “Rolling Rec” Truck), educational workshops, marketing and promotions, and operational supplies.

Following the economic downturn in 2009, the City initiated a pivot in resources which eliminated several positions and programs under MCYSN. The MCYSN program budget changed to \$200,000 annually. Historically, approximately \$25,000 of the program budget is allocated to provide administrative support to the program, and the remaining \$175,000 funds community youth programs in alignment with the strategic priorities and objectives of MCYSN.

In 2018, the MCYSN program transitioned from the City Manager’s Office to the Parks and Recreation Department in order to align the program with appropriate staff. During the 2020-2021 grant period, MCYSN was temporarily suspended in response to the COVID-19 pandemic. In 2021, City Council approved the return of the MCYSN grant program for Cycle 13.

#### ANALYSIS

This year, the MCYSN is entering its 16<sup>th</sup> year of programming. The MCYSN ROY Grant Program aims at supporting local programs that develop skills and competencies resulting in healthy and thriving youth and families. MCYSN’s approach is to prevent and intervene on issues of youth violence via a network of community service providers.

The MCYSN ROY Grant application for FY 2024-25 was made available on June 7, 2024. A mandatory pre-submittal conference was held on June 24, 2024, and the grant application deadline was July 3, 2024. Eligible service areas for the ROY grant include youth outreach and education; substance abuse prevention and intervention; bullying prevention (physical, verbal, cyber); alternative after school and evening activities; gang prevention and intervention services; family or individual youth case management; behavioral health services (prevention and intervention). MCYSN ROY Grant contracts may not exceed \$75,000. The term of the FY 2024-25 contracts is from October 1, 2024, through June 30, 2025. Upon approval, the City Council will authorize the execution of the funding agreements for each grant, in the City’s standard form and approved by the City Attorney.

Funding recommendations for the MCYSN ROY Grant are made by an external review committee. Staff held the MCYSN ROY Grant Scoring Committee meeting on July 16, 2024. The scoring committee consisted of two Parks Commissioners, one Adult Youth Advisory Commissioner, two Youth Advisory Commissioners, and one representative from the Tracy Unified School District.

The City received eight applications for the MCYSN ROY Grant, which are summarized in Attachment A. Each Committee member scored each application using the MCYSN Scoring Sheet, example template provided in Attachment B.

Each applicant received a score based off specific criteria such as organizational experience and reliability, program design, staffing plan and qualifications, program evaluation, and cost proposal.

After careful review and discussion, the MCYSN Grant Scoring Committee made the following funding recommendations:

Organization	Amount Requested by Applicant	Amount Recommended by MCYSN Scoring Committee	Total Score
Boys and Girls Club of Tracy – Enrichment Program	\$75,000	\$68,000	585
Tracy Earth Project, Inc.- Tracy Bike Life Youth Program	\$15,000	\$11,000	550
ITIFAQ Afghan Soccer Club – Youth Soccer Outreach Program	\$12,500	\$8,000	500
West Side Pioneer Association of Tracy– Tracy Schoolhouse and Museum Field Trip Program	\$25,000	\$15,000	485
Sow a Seed – Family Health and Wellbeing Program	\$75,000	\$38,000	435
UNeed2, Inc. – Youth and Family Technology Training Center	\$75,000	\$35,000	400
Children’s Dance Theatre – Theatrical productions of “The Nightmare Before Christmas” and “Beetlejuice”	\$73,500	\$0	0
West Coast Soccer – Soccer’s a Kick Drugs are a Drag College Mentorship Program	\$70,000	\$0	0
<b>TOTAL</b>	<b>\$ 421,000</b>	<b>\$175,000</b>	

Feedback from the Grant Scoring Committee is included in Attachment A. Each organization received funding based off their initial budget request which was less than the amount being requested.

#### FISCAL IMPACT

The MCYSN program budget of \$200,000 has been allocated and approved as part of the Fiscal Year 2024-25 budget.

#### PUBLIC OUTREACH/INTEREST

A public outreach meeting for MCYSN was held on June 24, 2024, to inform service providers about the background of MCYSN. Before this meeting, three (3) email notifications were sent to local businesses, non-profits, and schools advertising MCYSN and informing the community about the outreach meeting. Multiple social media posts to advertise MCYSN were also posted on Instagram and Facebook. Many non-profits that saw the emails and social media posts responded positively, acquiring more information about MCYSN and how to apply.

#### STRATEGIC PLAN

This agenda item supports the City's Quality of Life Strategic Plan and specifically implements the following goal:

Quality of Life Strategy

**Goal 2:** Promote public health, safety, and community welfare throughout the community.

#### CEQA DETERMINATION

Each of the MCYSN grant applicants is a community service organization seeking funding to help pay for a portion of an existing service program provided by the organization. No new structures, facilities, or other improvements are proposed to be funded through this program by any of the grant recipients. The services of each of the six grant recipients proposed to be funded through the grant program are ongoing academic, educational, and recreational activities for youth in Tracy. This project to award the MCYSN grants is exempt from CEQA based on CEQA Guidelines Section 15061(b)(3), the commonsense exemption, which states that a project is not subject to CEQA "where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment." Clearly, these ongoing youth academic, educational, and recreational activities do not have the potential for causing a significant effect on the environment, and therefore, the project is exempt from CEQA pursuant to Guidelines Section 15061(b)(3).

#### ACTION REQUESTED OF THE CITY COUNCIL

Staff recommends that the City Council adopt a Resolution: 1) approving the award of the Mayor's Community Youth Support Network Reconnecting Our Youth grants for Fiscal Year 2024-2025 in the total amount of \$175,000 to six non-profit organizations; and 2) authorizing the execution of the funding agreements for each grant.

Prepared by: Katie Akre, Recreation Program Coordinator

Reviewed by: Justin Geibig, Recreation Service Supervisor  
Jolene Jauregui-Correll, Recreation Services Manager  
Brian MacDonald, Director of Parks, Recreation and Community Services  
Sara Castro, Director of Finance  
Bijal Patel, City Attorney  
Arturo M. Sanchez, Assistant City Manager

Approved by: Midori Lichtwardt, City Manager

Attachments:

Attachment A - Summary of MCYSN ROY Grant Scoring Committee funding recommendations and comments.

Attachment B - MCYSN ROY Grant, Scoring Sheet Template

## MCYSN ROY Grant Scoring Committee Funding Recommendations – Cycle 16

Organization Name	Program Name and Description	# of youth proposing to serve	Funding Request	Recommended Award Amount	Scoring Committee Comments
Boys and Girls Club of Tracy	Enrichment Program	600	\$75,000	\$68,000	<ul style="list-style-type: none"> <li>• Reliable, known organization, Long standing program with success rate.</li> <li>• Outcomes of programs are strong.</li> <li>• Culturally diverse staff and serves diverse population of students (79% coming from low economic households)</li> <li>• Budget is organized and easy to understand.</li> <li>• Financial Report Detailed</li> </ul>
Organization Name	Program Name and Description	# of youth proposing to serve	Funding Request	Recommended Award Amount	Scoring Committee Comments
Tracy Earth Project Inc.	Tracy Bike Life Youth Program	72	\$15,000	\$11,000	<ul style="list-style-type: none"> <li>• Serving Low-income underserved youth ages 7–17</li> <li>• Program is free for the youth.</li> <li>• Program utilized curriculum that introduces students to S.T.E.M</li> <li>• Youth learn bicycle safety, repair, and maintenance.</li> <li>• Youth get to keep the bike they built at the end of the 8-week program.</li> <li>• Reasonable requested amount</li> <li>• Long standing program with success rate</li> </ul>

Organization Name	Program Name and Description	# of youth proposing to serve	Funding Request	Recommended Award Amount	Scoring Committee Comments
ITIFAQ Afghan Soccer Club	Youth Soccer Outreach Program	200	\$12,500	\$8,000	<ul style="list-style-type: none"> <li>• Proposed to serve 8–18-year-olds.</li> <li>• Organization wants to build youth confidence in a healthy competitive environment.</li> <li>• Staff is experienced and all volunteers.</li> <li>• Services offered at local sport complexes.</li> <li>• Program/uniform fee for youth is very minimal (\$16/month), to best serve low-income families.</li> <li>• Serving youth for over 25 years</li> <li>• Reasonable requested amount</li> </ul>
Organization Name	Program Name and Description	# of youth proposing to serve	Funding Request	Recommended Award Amount	Scoring Committee Comments
West Side Pioneer Association of Tracy	Tracy Schoolhouse and Museum Field Trip Program	150	\$25,000	\$15,000	<ul style="list-style-type: none"> <li>• Organization was founded in 1921.</li> <li>• A great source to educate the community on Tracy history.</li> <li>• Proposed to serve 10–18-year-olds.</li> <li>• Program mission and vision is positive.</li> <li>• Budget is organized and easy to understand.</li> </ul>



Organization Name	Program Name and Description	# of youth proposing to serve	Funding Request	Recommended Award Amount	Scoring Committee Comments
Sow a Seed	Family Health and Wellbeing Program	100	\$75,000	\$38,000	<ul style="list-style-type: none"> <li>• Serving disenfranchised youth ages 10-18 currently left out from services and support, particularly from low-income families.</li> <li>• Offering comprehensive mental health support through mentoring sessions</li> <li>• Budget is organized and thorough.</li> <li>• Serving youth for nearly 20 years</li> </ul>
Organization Name	Program Name and Description	# of youth proposing to serve	Funding Request	Recommended Award Amount	Scoring Committee Comments
Uneed2, Inc.	Youth and Family Technology Center	80	\$75,000	\$35,000	<ul style="list-style-type: none"> <li>• Program mission and vision is unique/ positive.</li> <li>• Provide technical training and internships to students.</li> <li>• Serving community since 2001</li> <li>• Offering training in STEM education, for low-income youth</li> <li>• Certify kids and adults on computer safety, along with how to build, rebuild, and repair computers.</li> <li>• The organization supplies a refurbished computer to low-income households that do not have an existing working computer.</li> </ul>

Organization Name	Program Name and Description	# of youth proposing to serve	Funding Request	Recommended Award Amount	Scoring Committee Comments
Children's Dance Theatre	Theatrical productions of "The Nightmare Before Christmas" and "Beetlejuice"	Did not specify.	\$73,500	\$0	<ul style="list-style-type: none"> <li>• Does not clarify how the program will be targeting 'at-risk youth'.</li> <li>• Application incomplete: missing recent financial statement</li> <li>• Target population was not defined for youth just in Tracy and what schools in the area the program would target.</li> </ul>
Organization Name	Program Name and Description	# of youth proposing to serve	Funding Request	Recommended Award Amount	Scoring Committee Comments
West Coast Soccer	Soccer's a Kick Drugs are a Drag College Mentorship Program	300	\$70,000	\$0	<ul style="list-style-type: none"> <li>• Does not clarify how program targets 'at-risk' youth.</li> <li>• Program timeline was not detailed.</li> <li>• Program activities not detailed. Does not outline the structure or course material of educational workshops, mentorship meetings, or college recruitment classes.</li> <li>• Does not clarify how the program will prevent and intervene on issues of youth violence and serve already 'at-risk' youth.</li> <li>• Application incomplete: Attachment D not signed by Fiscal Agent</li> <li>• Evaluation Methods for both Outputs and Outcomes does not clarify the specifications on how mental health checks or physical checks will be processed.</li> </ul>

## MCYSN Cycle XVI (16) -Evaluation Criteria Score Sheet

Service Provider Name:

Name of Reviewer:

Criteria	Notes	Score (20 pt. max)
<p><b>Organizational Experience &amp; Reliability:</b></p> <ul style="list-style-type: none"> <li>• <i>Experience providing services to high-risk youth</i></li> <li>• <i>List of current and recent contracts</i></li> <li>• <i>Description of outcomes</i></li> <li>• <i>Financial capacity</i></li> <li>• <i>Client recordkeeping system</i></li> <li>• <i>Current year organization budget/audited financial statements</i></li> <li>• <i>Reference sheet</i></li> </ul>		
<p><b>Program Design:</b></p> <ul style="list-style-type: none"> <li>• <i>Describe community's need for services, including local data</i></li> <li>• <i>Describe target population &amp; geography; numbers to be served</i></li> <li>• <i>Describe ending based program model</i></li> <li>• <i>Describe activities &amp; dosage</i></li> <li>• <i>Describe how program will be cultural competent</i></li> <li>• <i>Describe how program will collaborate and communicate with City of Tracy</i></li> <li>• <i>Provide detailed timeline</i></li> </ul>		

## MCYSN Cycle XVI (16) -Evaluation Criteria Score Sheet

<p><b>Staffing Plan &amp; Qualifications:</b></p> <ul style="list-style-type: none"> <li>• <i>Provide staffing plan, Include titles, number of full time employees, qualifications</i></li> <li>• <i>Justify number, full time employees and types of positions, including job expectations</i></li> <li>• <i>Describe how project will include staff/volunteers with experiences similar to target populations</i></li> <li>• <i>Attached: Organization chart</i></li> <li>• <i>Attached: Resumes</i></li> <li>• <i>Attached: Job descriptions</i></li> </ul>		
<p><b>Program Evaluation:</b></p> <ul style="list-style-type: none"> <li>• <i>List expected outcomes</i></li> <li>• <i>Describe how program will measure outcomes, including validated measurement tools</i></li> <li>• <i>Describe how program will track activities, participants, units of service</i></li> <li>• <i>Describe data system</i></li> </ul>		
<p><b>Cost Proposal:</b></p> <ul style="list-style-type: none"> <li>• <i>Attached: Line item budget</i></li> <li>• <i>Includes all costs to be reimbursed</i></li> <li>• <i>Indirect costs, overhead</i></li> </ul>		
<p><b>Overall comments about program:</b></p>		

CITY ATTORNEY'S OFFICE

TRACY CITY COUNCIL

RESOLUTION NO. \_\_\_\_\_

**1) APPROVING THE AWARD OF THE MAYOR'S COMMUNITY YOUTH SUPPORT NETWORK (MCYSN) RECONNECTING OUR YOUTH (ROY) GRANTS FOR FISCAL YEAR 2024-2025 IN THE TOTAL AMOUNT OF \$175,000 TO SIX NON-PROFIT ORGANIZATIONS; AND 2) AUTHORIZING THE EXECUTION OF THE FUNDING AGREEMENTS FOR EACH GRANT**

**WHEREAS**, the Mayor's Community Youth Support Network (MCYSN) Reconnecting Our Youth (ROY) Grant Program is a City matching grant program that helps fund youth services, and is budgeted pending appropriation and approval by the City Council; and

**WHEREAS**, the MCYSN ROY Grant application for FY 2024-25 was made available on June 7, 2024, with an application deadline of July 3, 2024; and

**WHEREAS**, MCYSN ROY Grant contracts may not exceed \$75,000 with a term for the FY 2024-25 contracts being from October 1, 2024, through June 30, 2025; and

**WHEREAS**, the City of Tracy received eight grant applications, and a grant scoring committee consisting of internal staff and external leaders reviewed the applications and recommended that six be funded based on the MCYSN ROY Grant scoring criteria, for a total award amount of \$175,000; and

**WHEREAS**, in accordance with CEQA Guidelines Section 15061(b)(3), an activity is not subject to CEQA "...where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment..."; and the ongoing academic, educational, and recreational youth activities of the grant recipients do not have the potential for causing a significant effect on the environment; now, therefore, be it

**RESOLVED:** That the City Council of the City of Tracy hereby awards MCYSN ROY Grants for Fiscal Year 2024-2025 to the following awardees, in the amounts noted:

ORGANIZATION	AWARD AMOUNT
Boys and Girls Club of Tracy	\$68,000
Tracy Earth Project, Inc.	\$11,000
ITIFAQ Afghan Soccer Club	\$8,000
West Side Pioneers of Tracy	\$15,000
Sow a Seed	\$38,000
UNeed2, Inc.	\$35,000
Total Funding Award	\$175,000

**FURTHER RESOLVED:** That the City Council hereby authorizes the execution of funding agreements for each grant, in the City's standard form and approved by the City Attorney; and be it

**FURTHER RESOLVED:** That the City Council hereby finds that this action is exempt under the California Environmental Quality Act pursuant to Section 15061(b)(3) of the Guidelines.

\*\*\*\*\*

The foregoing Resolution 2024-\_\_\_\_\_ was adopted by the Tracy City Council on September 3, 2024, by the following vote:

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

---

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

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

Agenda Item 1.J

RECOMMENDATION

**Staff recommends that the City Council adopt a Resolution (1) transferring \$54,746 from the Edgar Thoming Park Improvement Capital Improvement Project (CIP) 78191 to the City Hall Memorial Flag Poles Project (CIP 78192) to increase the budget, (2) awarding a construction contract to GCJ, Inc. of Stockton, California for CIP 78192 in the amount of \$148,085, and (3) authorizing the City Manager to approve change orders up to the contingency amount of \$14,808, if needed, pursuant to Tracy Municipal Code Section 2.20.090(b).**

EXECUTIVE SUMMARY

Staff requests that the City Council award a construction contract to GCJ, Inc., of Stockton, California (Contractor), for the City Hall Memorial Flag Poles Project, CIP 78192 (Project), in the amount of \$148,085, and authorize the City Manager to approve change orders up to the contingency amount of \$14,808, if needed. The City Council previously approved a project budget of \$150,000 and based on the apparent low bid, an additional \$54,746 will be required to fully fund the Project. Staff recommends transferring \$54,746 from the Edgar Thoming CIP 78191 to CIP 78192, for a not to exceed amount of \$204,746, in order to make up the funding gap. Edgar Thoming CIP 78191 is currently inactive while the Flagpole Project is shovel ready and a high priority project. Staff plans to reallocate any unspent contingency funds from CIP 78192 back to CIP 78191 at the completion of the Project.

BACKGROUND AND LEGISLATIVE HISTORY

In Fiscal Year (FY) 2023/2024, the City Council authorized the creation of a CIP for the City Hall Memorial Flag Poles Project, CIP 78192, to add six (6) flag poles with up lights to the existing war memorial along with updated landscape. As part of the budget approval process in FY 2021/2022, \$75,000 was allocated and an additional \$75,000 was allocated in FY 2023/2024.

In order to expedite the construction schedule and push to have the Project completed by the 2024 Veteran’s Day holiday, staff has already purchased the six (6) flag poles for the Project as the manufacturing time was significant. The flag poles are expected to be delivered to Boyd Service Center in late September. The awarded contractor will be responsible for pick up and installation.

Staff prepared the plans, specifications and bid documents for the Project in-house. The scope of work includes: installation of six new flag poles with up lights for each branch of the United States military (Army, Marine Corps, Navy, Air Force, Space Force and Coast Guard), updated drought tolerant landscaping in the general area of the memorial, and other related work. Staff advertised the Project for competitive bids on July 5, 2024, and July 12, 2024. Bids were received and publicly opened on August 6, 2024, at 2:00 p.m. with the following results:

<u>Contractor</u>	<u>Bid Amount</u>
GCJ, Inc.	\$148,085.00
Frontline General Engineering	\$191,200.15
Swierstak (Pro Builders)	\$214,800.00

**ANALYSIS**

Bid analysis indicates that the lowest monetary bid is responsive and the bidder, GCJ, Inc., of Stockton, California, is responsible. The bidder has the appropriate contractor’s license in active standing with the State of California and has complete similar projects.

The total estimated cost of this project, if awarded to the lowest bidder, is as follows:

Construction Bid	\$148,085
Construction Management (10%)	\$ 14,808
Design Support During Construction (5%)	\$ 7,404
Contingency (10%)	\$ 14,808
<u>Project Costs to Date</u>	<u>\$ 19,641</u>
Total Project Cost	\$204,746

Tracy Municipal Code Section 2.20.090(b) authorizes the City Manager to authorize change orders up to the contingency amount if approved by City Council. The requested contingency amount for this project is \$14,808, which is 10% of the construction contract amount.

**FISCAL IMPACT**

The City Hall Memorial Flag Poles Project, CIP 78192, has an approved budget of \$150,000 and a current available balance of \$130,359. The total estimated Project cost is \$204,746 which will require an additional \$54,746 to fully fund the Project. Staff is requesting that the City Council appropriate these funds from the Edgar Thoming Park Improvement Project (CIP 78191) to CIP 78192 as follows, to complete the Project:

<u>Funding Source</u>	<u>Budget</u>	<u>Expenses</u>	<u>Balance</u>
301 - General Fund Projects	\$ 150,000	\$ 19,641	\$ 130,359
<u>Current Budget</u>	<u>\$ 150,000</u>	<u>\$ 19,641</u>	<u>\$ 130,359</u>
Transfer from CIP 78191 (301 - General Projects)	\$ 54,746	\$ -	\$ 54,746
<u>Revised Budget</u>	<u>\$ 204,746</u>	<u>\$ 19,641</u>	<u>\$ 185,105</u>

The Edgar Thoming Park Improvement Project, CIP 78191, has an approved project budget of \$600,000. The work planned for CIP 78191 includes the renovation of surfacing and fencing at two (2) tennis courts and one (1) basketball court and a new booster pump at Edgar Thoming Park, and renovation of one (1) basketball court and two (2) handball courts at McDonald Park. The current project budget for CIP 78191 is a preliminary estimate that will need to be analyzed in more detail once work on this project is initiated. Until that time, it is hard to determine exact impacts to the overall scope of the project based on this recommended shifting of funds. Potential impacts could include reducing the number of sport courts being renovated, reduction in fencing improvements, or considering other value engineering options such as different resurfacing materials and/or vendors.



Staff recommends the transfer of \$54,746 from CIP 78191, as CIP 78192 is a shovel ready project and CIP 78191 is currently inactive. This shifting of funds as well as imminent cost escalation impacts will require the scope and budget of CIP 78191 to be reanalyzed in the future as the CIP work plan allows. Staff plans to reallocate any unspent contingency funds from CIP 78192 back to CIP 78191 at the completion of the Project.

### CEQA DETERMINATION

Staff has reviewed and determined the project was Categorically Exempt under the California Environmental Quality Act (CEQA) based on Article 19 Section 15301 (e)(h), Class 1 "Existing Facilities". A Notice of Exemption was filed with the County of San Joaquin and State Clearing House in compliance with CEQA guidelines.

### STRATEGIC PLAN

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

### ACTION REQUESTED OF THE CITY COUNCIL

Staff recommends that the City Council adopt a Resolution (1) transferring \$54,746 from the Edgar Thoming Park Improvement Capital Improvement Project (CIP) 78191 to the City Hall Memorial Flag Poles project (CIP 78192) to increase the budget, (2) awarding a construction contract to GCJ, Inc. of Stockton, California for CIP 78192 in the amount of \$148,085, and (3) authorizing the City Manager to approve change orders up to the contingency amount of \$14,808, if needed, pursuant to Tracy Municipal Code Section 2.20.090(b).

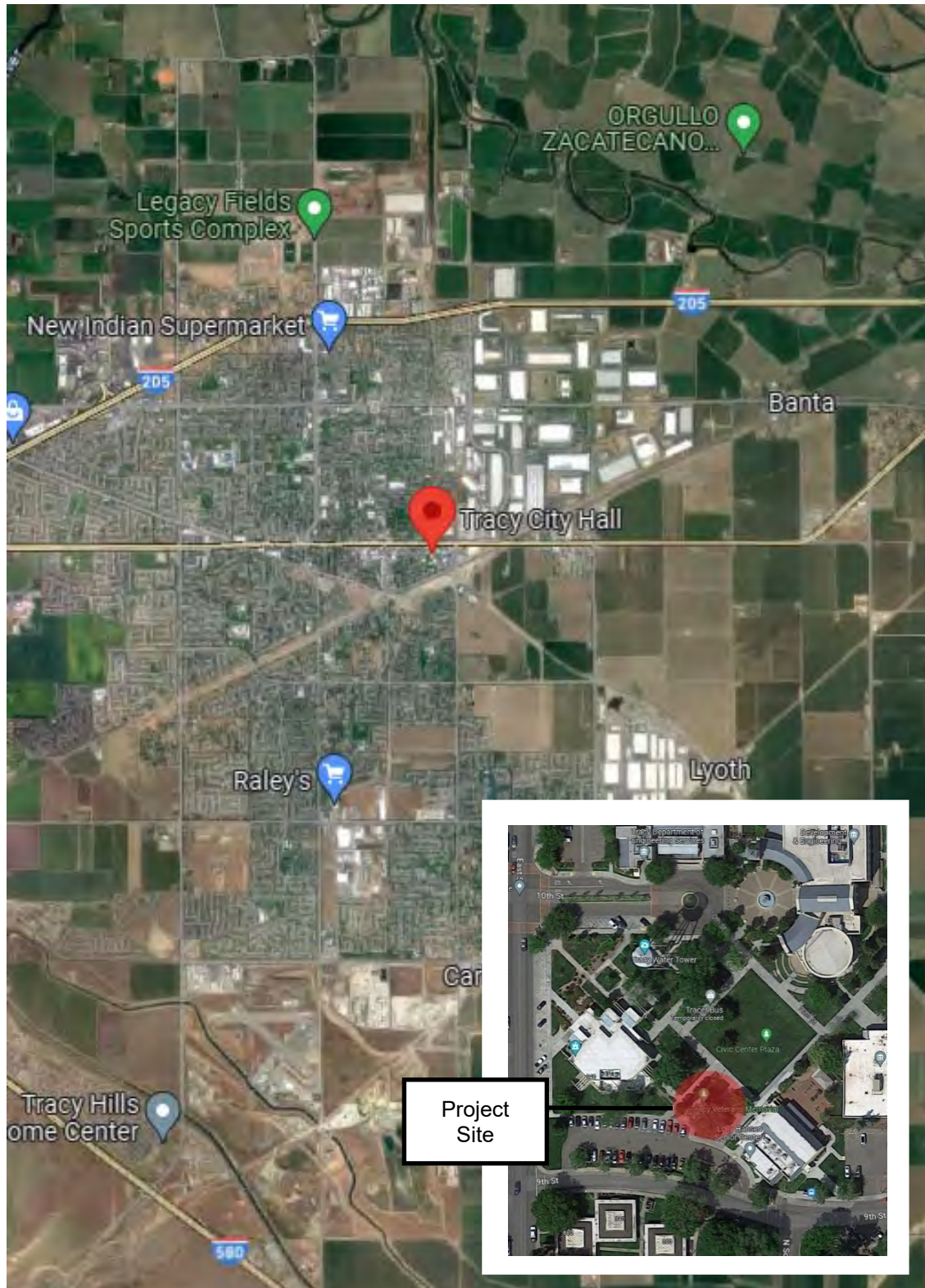
Prepared By: Richard Joaquin, Acting Assistant Director of Parks, Recreation and Community Services

Reviewed By: Brian MacDonald, Parks, Recreation, and Community Services Director  
Sara Castro, Director of Finance  
Arturo Sanchez, Assistant City Manager  
Bijal Patel, City Attorney

Approved By: Midori Lichtwardt, City Manager

### ATTACHMENTS

Attachment A – Location Map



Location Map

City of Tracy

\_\_\_\_\_  
CITY ATTORNEY'S OFFICE

**TRACY CITY COUNCIL**

**RESOLUTION NO. \_\_\_\_\_**

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**(1) TRANSFERRING \$54,746 FROM THE EDGAR THOMING PARK IMPROVEMENT CAPITAL IMPROVEMENT PROJECT (CIP) 78191 TO THE CITY HALL MEMORIAL FLAG POLES PROJECT (CIP 78192) TO INCREASE THE NOT-TO-EXCEED BUDGET TO \$204,706, (2) AWARDED A CONSTRUCTION CONTRACT TO GCJ, INC. OF STOCKTON, CALIFORNIA FOR CIP 78192 IN THE AMOUNT OF \$148,085, AND (3) AUTHORIZING THE CITY MANAGER TO APPROVE CHANGE ORDERS UP TO THE CONTINGENCY AMOUNT OF \$14,808, IF NEEDED, PURSUANT TO TRACY MUNICIPAL CODE SECTION 2.20.090(B).**

**WHEREAS**, the City Hall Memorial Flag Poles Project, CIP 78192 (Project), is an approved project; and

**WHEREAS**, staff prepared the plans, specifications and advertised the Project for competitive bids on July 5, 2024, and July 12, 2024; and

**WHEREAS**, bids were received and publicly opened on August 6, 2024, at 2:00 p.m., with the following results:

<u>Contractor</u>	<u>Bid Amount</u>
GCJ, Inc.	\$148,085.00
Frontline General Engineering	\$191,200.15
Swierstak (Pro Builders)	\$214,800.00

**WHEREAS**, GCJ, Inc. of Stockton, California, was the apparent lowest bidder with the bid analysis indicating the bid is "responsive" and the bidder is "responsible"; and

**WHEREAS**, CIP 78192 has an approved budget of \$150,000 and a current available balance of \$130,359; and

**WHEREAS**, the total estimated Project cost is \$204,746 which will require an additional \$54,746 to fully fund the Project; and

**WHEREAS**, staff recommends that the City Council appropriate the necessary funds from the Edgar Thoming Park Improvement Project (CIP 78191) as follows to complete the Project:

<u>Funding Source</u>	<u>Budget</u>	<u>Expenses</u>	<u>Balance</u>
301 - General Fund Projects	\$ 150,000	\$ 19,641	\$ 130,359
Current Budget	\$ 150,000	\$ 19,641	\$ 130,359
Transfer from CIP 78191 (301 - General Projects)	\$ 54,746	\$ -	\$ 54,746
Revised Budget	\$ 204,746	\$ 19,641	\$ 185,105

**WHEREAS**, the Tracy Municipal Code Section 2.20.090(b) authorizes the City Manager to approve change orders up to the recommended contingency amount for this Project, which is \$14,808, if approved by City Council; and

**NOW, THEREFORE, BE IT**

**RESOLVED:** That the City Council of the City of Tracy hereby authorizes transferring \$54,746 from the Edgar Thoming Park Improvement CIP 78191 to CIP 78192 to increase the not-to-exceed budget to \$204,706; and be it further

**RESOLVED:** That the City Council hereby awards a construction contract to GCJ, Inc., of Stockton, California in the amount of \$148,085; and be it further

**RESOLVED:** That the City Council hereby authorizes the City Manager to approve change orders up to a contingency amount of \$14,808, if needed, pursuant to Tracy Municipal Code Section 2.20.090(b); and be it further

**RESOLVED:** That, based on the entirety of the record, the City Council hereby determines the Project is Categorically Exempt under the California Environmental Quality Act (CEQA) based on Article 19 Section 15301 (e)(h), Class 1 “Existing Facilities” and that a Notice of Exemption was filed with the County of San Joaquin and State Clearing House in compliance with CEQA guidelines.

\* \* \* \* \*

The foregoing Resolution 2024-\_\_\_\_\_ was adopted by the Tracy City Council on September 3, 2024, by the following vote:

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

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

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

September 3, 2024

Agenda Item 1.K

RECOMMENDATION

**Staff recommends that the City Council adopt a resolution:**

- (1) accepting the construction of the Sewer Connection at Lincoln and 11<sup>th</sup> Street Project by Tracy Grading & Paving, Inc., of Tracy, California as complete;**
- (2) approving a retroactive increase of \$37,000 to the contingency amount for the Project;**
- (3) authorizing the City Clerk to file the Notice of Completion with the San Joaquin County Recorder's Office, and**
- (4) authorizing the City Engineer to release the bonds and retention payment.**

EXECUTIVE SUMMARY

This agenda item seeks adoption of a resolution by the City Council to accept the construction of the sewer connection at Lincoln and 11<sup>th</sup> Street, Capital Improvement Project (CIP) 74162 (Project) by Tracy Grading and Paving Inc. (Contractor) as complete.

This agenda item also seeks approval of a retroactive increase of an additional \$37,000 to the contract contingency amount. With the increase, the authorization for the City Manager to approve change orders would be a revised contingency amount of \$70,000. The additional contingency amount is needed to correct procedural errors that occurred when additional costs were paid to the Contractor because of unforeseen events occurring during the project. Staff obtained the City Manager's authorization for the change order recently, but the authorization form incorrectly cited the original City Council approval, as that original approval was for a lower contingency amount. A retroactive increase of the contingency amount will correct this authorization form.

Furthermore, this agenda item seeks adoption of the resolution authorizing the City Clerk to file the Notice of Completion with the San Joaquin County Recorder's Office and authorize the City Engineer to release bonds and retention payment.

BACKGROUND AND LEGISLATIVE HISTORY

In 2004, construction on 11<sup>th</sup> Street encountered underground conditions that prevented the connection between a proposed six-inch sewer and manhole to the downstream sewer collection system. An existing twelve-inch vitreous clay sewer pipe, installed in 1984, was found to be encased in a steel pipe sleeve under 11<sup>th</sup> Street at the planned connection point, the location of the proposed manhole, preventing the connection of the twelve-inch pipe to the new manhole. Record drawings from the 2004 project indicated the steel sleeve extended the entire width of 11<sup>th</sup> street from the Westgate Plaza driveway to the downstream manhole on the north side of the street. The six-inch pipe, serving two commercial properties, was left connected to a manhole in the center of the Lincoln and 11<sup>th</sup> intersection, with no downstream outlet. The wastewater from the six-inch pipe collected in the manhole and the manhole had to be periodically pumped out by City staff. Work to pump out the manhole impacted traffic through the intersection and was a safety concern for staff doing the work and to the public.

On June 24, 2022, the City Council adopted Resolution No. 2022-085 that authorized the

On June 24, 2022, the City Council adopted Resolution No. 2022-085 that authorized the creation of a CIP for the Project as part of the Fiscal Year 2022-23 Budget. The purpose of this Project was to create a connection between the six-inch sewer main installed in 2004 and the City sanitary sewer collection system and to resolve a long-term, ongoing maintenance issue at a dead-end sewer manhole. During construction of the Project, unforeseen events and underground conditions were encountered which required additional work not in the original Project scope. The additional work was identified in a change order and exceeded the initial contingency amount by approximately \$37,000. The additional cost was funded through the operating budget of Fund 521 (Wastewater). Recently, the City Manager was given an incorrect authorization form to sign for this additional amount.

Staff has discovered that there were some procedural omissions during the process. The increased contingency had not been approved by the City Council, so the City Manager's approval of the change order was done in error. Staff is now requesting the City Council to approve a retroactive increase in the contingency amount, which increase will then validate the change order authorization that the City Manager was improperly asked to approve recently. The final Project cost did not exceed the City Council approved CIP budget of \$262,300.

### ANALYSIS

Staff prepared the project improvement plans, specifications and cost estimates and a Notice Inviting Bids was advertised for competitive bids on July 7, 2023. Bids were opened on August 8, 2023. On September 18, 2023, pursuant to Resolution 2023-186, a construction contract was awarded to Tracy Grading & Paving, Inc, of Tracy, California, for the construction of the Project, in the amount of \$165,000. Construction work for the Project was completed at night to reduce the impacts on traffic through the Lincoln Avenue and 11<sup>th</sup> Street intersection. Trench excavations had to be plated at the end of each work period to reopen the intersection to traffic before 5:00 a.m.

The Project was designed to provide a new eight-inch pipe parallel to existing steel cased pipe (built in 1984) to provide a connection between the manholes at each end. During excavation for the new pipeline, loose pea gravel fill material was encountered on the north side of 11<sup>th</sup> Street, in the westbound lane. The loose fill material flowed out from around the irrigation pipes into the trench for the new pipe, with the resulting voids under the pavement extending to the east and west of the new pipe alignment. A section of the 11<sup>th</sup> Street roadway was undermined due to the loose material movement. Efforts to install shoring to prevent the flow of material away from the existing pipes were not successful.

The contractor proposed a solution to install sheet piles to stabilize the loose material, which was approved by engineering staff. During installation of the sheet piles, it was discovered that the twelve-inch pipe was not encased as far north as indicated. When it was exposed, a section of the old twelve-inch vitreous clay sewer main failed, requiring emergency repair and cleanup due to regulatory mandates for illicit discharges and sanitary sewer overflows. These additions were not a part of the original scope of work and required a change order.

A change order for this unanticipated work included addressing the encounter of the loose pea gravel fill and solution, repair of the old twelve-inch sewer main, and installation of a new manhole to provide a new point of connection due to the unstable subsurface conditions. The amount of the change order was \$69,711.54. The original project approval by City Council authorized a contingency amount of \$33,000 at the time of award which was approximately \$37,000 less than the change order amount needed.

The additional contingency amount of \$37,000 was transferred to the CIP from the Wastewater Operations Fund (F521) to cover the change order in full, as this was the original funding source for the Project. The action of increasing the approved contingency amount requires approval of a retroactive increase to the contingency amount by City Council. With this approval, the authorization form that improperly specified that the City Manager had authority to approve the change order will be corrected, as the increase will change the newly revised contingency amount to \$70,000, pursuant to Tracy Municipal Code Section 2.20.090(b).

The Contractor has now completed all the work required in accordance with the plans and specifications, as directed by the Engineer, and City staff is requesting acceptance of the Project. The Contractor provided a one-year Warranty Bond, a Payment Bond, and a Performance Bond with the contract documents after contract award. Once the Project has been accepted by City Council, the City Engineer will release the Payment Bond and Performance Bond in accordance with State law. The City Engineer will release the Warranty Bond when the warranty period expires one year after Project acceptance in accordance with State law.

### FISCAL IMPACT

The Sewer Connection at Lincoln and 11<sup>th</sup> Street Project, CIP 74162, was established as a CIP funded from the Wastewater Operations Fund (F523), with an approved budget of \$262,300. There is no impact on the General Fund.

The total construction contract amount with change orders was \$234,712 (Final Contract Price.) The total completed project cost is \$250,444 and the remaining balance (\$11,856) will be released back into the Wastewater Operations Fund (F523)

The Final Project costs with change orders were within the approved budget as follows:

Construction Contract Award	\$ 165,000
Approved Change Orders (\$69,711.54)	\$ 69,712
Design, construction management, inspection, testing & miscellaneous project management expenses	\$ 15,732
<hr/>	
Total Project Costs	\$ 250,444
Total Budget Amount	\$ 262,300
Budget Remaining	\$ 11,856

### PUBLIC OUTREACH/INTEREST

No public outreach was conducted or required for this Project.

### COORDINATION

Coordination between the Engineering Division and the Public Works Division was conducted.

### CEQA DETERMINATION

The project was determined to be exempt at the time of the contract award, pursuant to categorical exemptions per California Environmental Quality Act (CEQA) Guidelines §15301(b),

Class 1, operation, repair, maintenance of existing facilities of publicly owned utilities.

STRATEGIC PLAN

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

ACTION REQUESTED OF THE CITY COUNCIL

Staff recommends that the City Council adopt a resolution:

- (1) accepting the construction of the Sewer Connection at Lincoln and 11th Street Project by Tracy Grading & Paving, Inc., of Tracy, California as complete;
- (2) approving a retroactive increase of \$37,000 to the contingency amount for the Project;
- (3) authorizing the City Clerk to file the Notice of Completion with the San Joaquin County Recorder's Office, and
- (4) authorizing the City Engineer to release the bonds and retention payment.

Prepared by: Ilene Macintire, PE, Senior Civil Engineer, Utilities Division

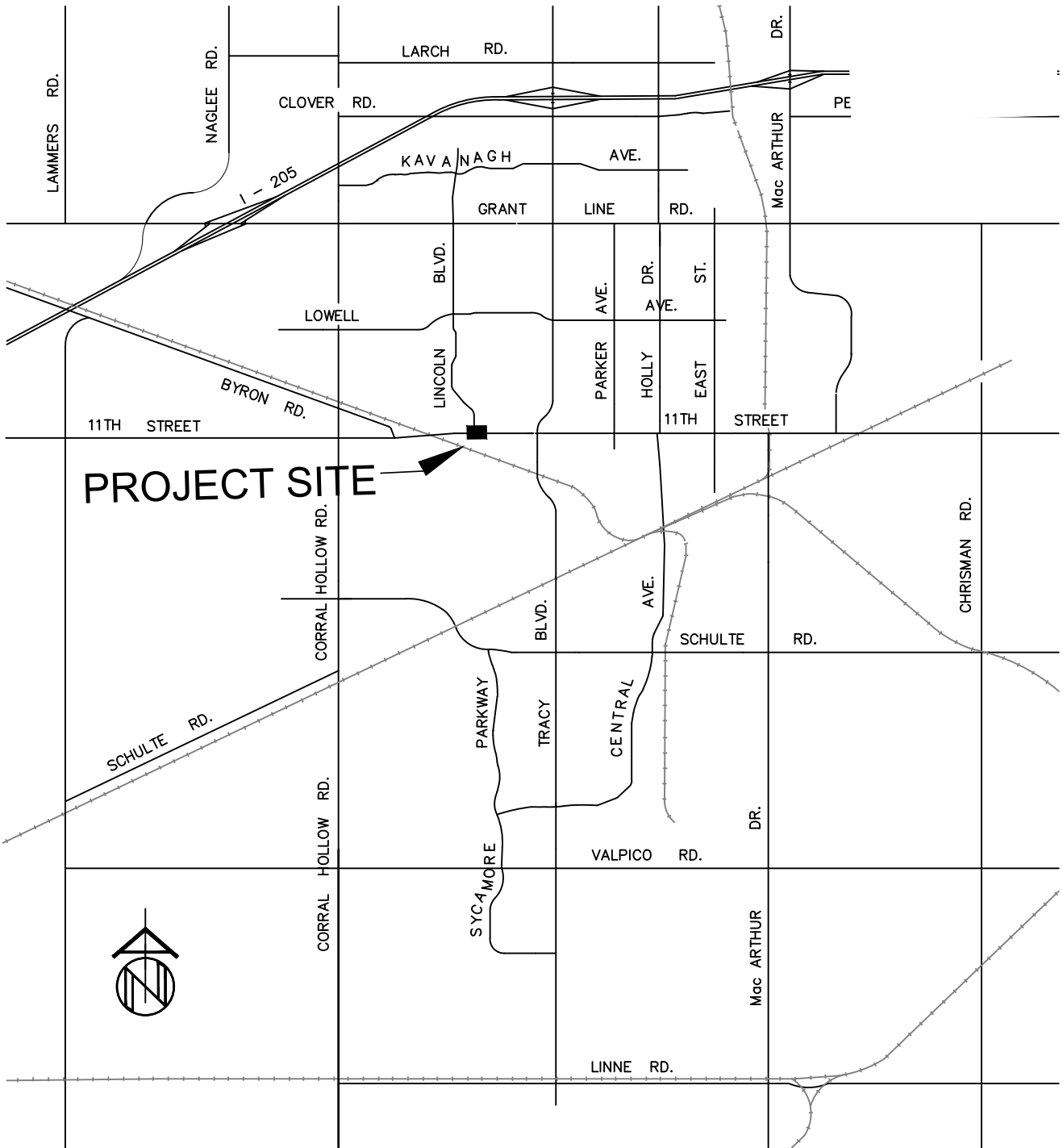
Reviewed by: Stephanie Reyna-Hiestand, Assistant Director of Utilities  
Brian MacDonald, Interim Public Works Director  
Sara Castro, Finance Director  
Bijal M. Patel, City Attorney

Approved by: Midori Lichtwardt, City Manager

Attachments: A – Location Map



# CITY OF TRACY



**PROJECT SITE**



## SEWER CONNECTION AT LINCOLN & 11TH, CIP 74162

NOT TO SCALE

\_\_\_\_\_  
CITY ATTORNEY'S OFFICE

**TRACY CITY COUNCIL**

**RESOLUTION NO. \_\_\_\_\_**

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**1) ACCEPTING THE CONSTRUCTION OF THE SEWER CONNECTION AT LINCOLN AND 11<sup>TH</sup> STREET PROJECT BY TRACY GRADING & PAVING, INC., OF TRACY, CALIFORNIA AS COMPLETE;**

**(2) APPROVING A RETROACTIVE INCREASE OF \$37,000 TO THE CONTINGENCY AMOUNT FOR THE PROJECT;**

**(3) AUTHORIZING THE CITY CLERK TO FILE THE NOTICE OF COMPLETION WITH THE SAN JOAQUIN COUNTY RECORDER'S OFFICE, AND**

**(4) AUTHORIZING THE CITY ENGINEER TO RELEASE THE BONDS AND RETENTION PAYMENT.**

**WHEREAS**, Capital Improvement Project (CIP) 74162 (Project) was authorized by the City Council pursuant to Resolution No. 2022-085 to resolve a long-term and ongoing maintenance issue at a dead-end sewer manhole; and

**WHEREAS**, the Project involved creating a connection between the six-inch sewer main installed in 2004 and the City sanitary sewer collection system to prevent ongoing maintenance and safety concerns to pump out the manhole periodically; and

**WHEREAS**, the Project was established as a CIP funded from the Wastewater Operations Fund, with an approved budget of \$ 262,300; and

**WHEREAS**, staff prepared the Project Improvement Plans, Specifications and cost estimates, and a Notice Inviting Bids was advertised on July 7, 2023 and bids were received and opened on August 8, 2023; and

**WHEREAS**, on September 18, 2023, pursuant to Resolution 2023-186, a construction contract (Contract) was awarded to Tracy Grading and Paving Inc. (Contractor) in the amount of \$165,000, with an authorization for the City Manager to approve change orders up to the contingency amount of \$33,000; and

**WHEREAS**, construction work for the Project was completed at night to reduce the impacts on traffic through the Lincoln Avenue and 11<sup>th</sup> Street intersection, trench excavations had to be plated at the end of each work period to reopen the intersection to traffic before 5:00 a.m.; and

**WHEREAS**, during construction of the Project, unforeseen events and underground conditions were encountered which required additional work not in the original Project scope, which additional work exceeded the initial contingency amount by approximately \$37,000; and

**WHEREAS**, the additional cost was funded through the operating budget of Fund 521 (Wastewater);

**WHEREAS**, staff has discovered that there were some procedural omissions during the process, as the change in contingency amount had not been approved by the City Council, and a recent approval by City Manager of the change order was done in error; and

**WHEREAS**, staff is now requesting the City Council to approve a retroactive change in the contingency amount for an additional \$37,000, upon which the City Manager's approval will be validated; and

**WHEREAS**, City staff inspected all work and determined that as of April 26, 2024, the Contractor has completed all work required in accordance with the plans and specifications; and

**WHEREAS**, the Contractor provided a one-year Warranty Bond, Payment Bond, and a Performance Bond with contract documents after contract award; and

**WHEREAS**, the total complete cost is \$250,444 and the remaining budget will be released back into the Wastewater Operations Fund (F523); and

**WHEREAS**, the final Project costs were within budget as follows:

Construction Contract Award	\$	165,000
Approved Change Orders (\$ 69,711.54)	\$	69,712
Design, Construction Management, Inspection, Testing & Miscellaneous Project Management Expenses	\$	15,732
<hr/>		
Total Project Costs	\$	250,444
Total Budget Amount	\$	262,300
Budget Remaining	\$	11,856

; now therefore, be it

**RESOLVED:** That the City Council for the City of Tracy, hereby accepts the construction work completed by Tracy Grading & Paving, Inc.. for the Sewer Connection at Lincoln and 11<sup>th</sup> Street Project, CIP 74162; and be it

**FURTHER RESOLVED:** That the City Council approves a retroactive increase of \$37,000 to the Project contingency amount; and be it

**FURTHER RESOLVED:** That the City Council authorizes the City Clerk to file the Notice of Completion with the San Joaquin County Recorder's Office; and be it

**FURTHER RESOLVED:** That the City Council authorizes the City Engineer to release the bonds and retention payment in accordance with State law; and be it

**FURTHER RESOLVED:** That the City Council finds that the Project is categorically exempt from California Environmental Quality Act (CEQA), pursuant to CEQA Guidelines §15301(b), Class 1, operation, repair, maintenance of existing facilities of publicly owned utilities.

The foregoing Resolution 2024-\_\_\_\_\_ was adopted by the Tracy City Council on September 3, 2024, by the following vote:

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

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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

Agenda Item 1.L

RECOMMENDATION

**Staff recommends that the City Council adopt a resolution approving and authorizing the execution of a Cooperative Agreement with the California Department of Transportation for the Project Initiation Document Phase of the Interstate 580/Corral Hollow Interchange Project, Capital Improvement Project 73198, for a total not-to-exceed amount \$130,000.**

EXECUTIVE SUMMARY

This agenda item is seeking the adoption of a resolution approving a Cooperative Agreement (Agreement) with the California Department of Transportation (Caltrans) for the Project Initiation Document (PID) Phase of the Interstate 580 (I-580)/Corral Hollow Interchange Project (CIP) 73198 (Project), for a total not to exceed amount of \$130,000. While the Project is in the 2012 Transportation Master Plan, this interchange and potentially the I-580/Lammers Road Interchange are mitigation measures under the environmental review documents for the Tracy Hills Specific Plan area. Staff is currently in negotiations with the developers of that development project pursuant to an Offsite Improvement Agreement (OIA) that was approved as a part of the Phase 2A Final Maps, by the City Council on July 2, 2024, Resolution No. 2024-120. These negotiations are anticipated to conclude with additional agreements (that will be presented to the City Council for consideration and approval) that will define whether the Tracy Hills Development Project is responsible for the funding of one or both of the interchanges as well as the level of funding. The OIA allows the City to withhold building permits and inspections if this key issue has not been resolved by a specified time frame.

While those negotiations are still underway, staff recommends moving forward with this Agreement as the design and construction of the Project will be a lengthy process. As the interchange is a Caltrans facility, the City is required to follow Caltrans Project Development Procedures. Per California Streets and Highways Code Sections 114 and 130 and California Government Code Section 65086.5, both Caltrans and City are required to enter into a Cooperative Agreement for improvements to the State Highway System. Execution of this Agreement will allow Caltrans to provide design and independent quality oversight during the design of the Project. Without this Agreement, Caltrans will not approve the design or issue a permit for construction.

BACKGROUND AND LEGISLATIVE HISTORY

The I-580/Corral Hollow Interchange, in its existing condition, is configured as a tight diamond interchange. The ongoing Tracy Hills development in the area has led to increased traffic at this interchange, and this congestion is expected to worsen as Tracy Hills continues to develop. As noted above, this traffic impact was identified in the environmental documents for the Tracy Hills Specific Plan and one of the mitigation measures for that impact was to improve this interchange, and depending upon the configuration of the improvement chosen by the developer, to also improve the I-580/Lammers Road Interchange. Since the proposed improvements modify a Caltrans facility, the City is required to follow Caltrans Project Development Procedures and enter into this Agreement so that Caltrans can provide design and independent quality oversight during the design of the Project. Without such an Agreement, Caltrans will not approve the design or issue a permit for construction. As the funding of the Project has not been resolved, this Agreement has a limited scope for only the PID phase. An

amendment to this Agreement or a new Cooperative Agreement will be presented to the City Council at a future date, once the funding has been resolved, to expand the scope.

### ANALYSIS

The Caltrans Project Development Procedures include three required design phases for the sponsoring agency (City of Tracy) to adhere to. The first phase involves creating a Project Initiation Document (PID Phase), followed by the Project Acceptance/Environmental Documentation (PA&ED Phase), and concluding with the development of the final Plans, Specifications, and Estimates (PS&E Phase). The Caltrans Project Development Procedure Manual (PDPM) permits the completion of the PID Phase with a Project Study Report/Project Report (PSR/PR) instead of the traditional Project Study Report/Project Development Support (PSR/PDS). The PSR/PR can be used for Non-State Highway Operations and Protection Program (SHOPP) projects and is designed to expedite the project development process by simultaneously working on the PID and completing the PA&ED Phase. However, obtaining approval from the District Director is required for this approach. In May 2023, a formal letter was submitted to Caltrans to request the development of a PSR/PR for the I-580/Corral Hollow Interchange, and approval was obtained from Caltrans.

During the PSR/PR phase, Caltrans will designate representatives from various Caltrans departments to review and participate in the design process. A work plan with the roles and responsibilities of project team members will be developed. Much of the work that has been presented as part of the Feasibility Study will be formalized in the PID along with a developed project scope, preliminary geometric drawings, cost estimates, and schedule information.

This phase is unique in that it will require the City to reimburse Caltrans for the cost of their project team to review and process the PID. Caltrans estimates that the oversight and processing of the PID for the Project will cost \$130,000, to be invoiced based on actual costs incurred. A draft Agreement (see Attachment A) is attached for the City Council's consideration. Before Caltrans can assign a project team for the Project this Agreement for the PID Phase must be executed.

Depending on resolution of funding (as discussed above), the current project schedule for the completion of the PSR/PR Phase is planned for Fall 2025, and the City intends to initiate final designs for the interchange improvements immediately following the completion of the PSR/PR:

**Schedule:**

California Environmental Quality Act (CEQA) Approval	04/2025
Final Design Complete	10/2025
Right of Way Complete	09/2025
CTC Allocation (CON)	12/2026
Construction Award	03/2026

Subsequent phases will require new Cooperative Agreements with Caltrans, but they are not anticipated to require reimbursement to Caltrans for expenses associated with the future design phases. Funding for Caltrans involvement in the construction phase will be identified in the future Construction Cooperative Agreement to be presented to Council before the start of construction.

FISCAL IMPACT

The adopted Fiscal Year 2024/2025 (FY24/25) CIP Budget designates funding for the I-580/ Corral Hollow Interchange Project, CIP 73198, with a total project budget of \$200,000. The current project budget includes sufficient funds for the PID Phase. The remainder of the design and construction phases of the Project are currently unfunded.

<b>Fund Source</b>	<b>Budget</b>	<b>Expenses</b>	<b>Balance</b>
245 - Gas Tax	\$ 200,000	\$ -	\$ 200,000

COORDINATION

The Engineering Division is coordinating with Caltrans for the execution of this Agreement.

CEQA DETERMINATION

The recommended action is not a project under CEQA. In subsequent project phases, environmental assessments will be conducted as required per the CEQA and National Environmental Policy Act (NEPA) for the project determination. Caltrans will remain the responsible party for CEQA and NEPA compliance.

STRATEGIC PLAN

This agenda item supports the City of Tracy's Quality of Life Strategic Priority, which is to provide an outstanding quality of life by enhancing the City's amenities, business mix and services and cultivating connections to promote positive change and progress in our community.

ACTION REQUESTED OF THE CITY COUNCIL

Staff recommends that the City Council, by resolution, approve and authorize the execution of a Cooperative Agreement with the California Department of Transportation for the Project Initiation Document Phase of the Interstate 580/Corral Hollow Interchange Project, Capital Improvement Project 73198, for a total not-to-exceed amount \$130,000.

Prepared by: Sharat Bandugula, PE, Senior Civil Engineer

Reviewed by: Koosun Kim, PE, City Engineer  
Sara Castro, Finance Director  
Bijal M. Patel, City Attorney  
Karin Schnaider, Assistant City Manager

Approved by: Midori Lichtwardt, City Manager

ATTACHMENTS:

Attachment A – Caltrans PID Cooperative Agreement.

## **COOPERATIVE AGREEMENT**

This Agreement, executed on effective from \_\_\_\_\_, is between the State of California, acting through its Department of Transportation, referred to as CALTRANS, and:

City of Tracy, a body politic and municipal corporation or chartered city of the State of California, referred to hereinafter as CITY.

An individual signatory agency in this AGREEMENT is referred to as a PARTY. Collectively, the signatory agencies in this AGREEMENT are referred to as PARTIES.

### **RECITALS**

1. PARTIES are authorized to enter into a cooperative agreement for improvements to the State Highway System per California Streets and Highways Code, Sections 114 and 130 and California Government Code, Section 65086.5.
2. For the purpose of this AGREEMENT, IMPROVEMENTS TO EXISTING I-580/CORRAL HOLLOW INTERCHANGE IN THE CITY OF TRACY. EXISTING INTERCHANGE CONSISTS OF AN L-1 (TIGHT DIAMOND) WITH TWO LANE OVERCROSSING. ONGOING AND PLANNED DEVELOPMENTS IN THE CITY WILL RESULT IN INCREASED TRAFFIC VOLUMES THAT WILL TRIGGER IMPROVEMENTS TO EXISTING RAMP TERMINALS AND OVERCROSSING will be referred to hereinafter as PROJECT. CITY desires to utilize a Project Study Report - Project Report (PSR-PR) for both project initiation and approval.
3. All obligations and responsibilities assigned in this AGREEMENT to complete the following PROJECT COMPONENT will be referred to hereinafter as WORK:
  - PROJECT INITIATION DOCUMENT (PID)

The PROJECT will also contain obligations and responsibilities that are typically assigned to the Project Approval & Environmental Document (PA&ED) project component. Each PROJECT COMPONENT is defined in the CALTRANS Workplan Standards Guide as a distinct group of activities/products in the project planning and development process.



4. The term AGREEMENT, as used herein, includes this document and any attachments, exhibits, and amendments.

This AGREEMENT is separate from and does not modify or replace any other cooperative agreement or memorandum of understanding between the PARTIES regarding the PROJECT.

PARTIES intend this AGREEMENT to be their final expression that supersedes any oral understanding or writings pertaining to the WORK. The requirements of this AGREEMENT will preside over any conflicting requirements in any documents that are made an express part of this AGREEMENT.

If any provisions in this AGREEMENT are found by a court of competent jurisdiction to be, or are in fact, illegal, inoperative, or unenforceable, those provisions do not render any or all other AGREEMENT provisions invalid, inoperative, or unenforceable, and those provisions will be automatically severed from this AGREEMENT.

Except as otherwise provided in the AGREEMENT, PARTIES will execute a written amendment if there are any changes to the terms of this AGREEMENT.

AGREEMENT will terminate 180 days after PSR-PR is signed by PARTIES or as mutually agreed by PARTIES in writing. However, all indemnification, document retention, audit, claims, environmental commitment, legal challenge, maintenance and ownership articles will remain in effect until terminated or modified in writing by mutual agreement or expire by the statute of limitations.

5. No PROJECT deliverables have been completed prior to this AGREEMENT.
6. In this AGREEMENT capitalized words represent defined terms, initialisms, or acronyms.
7. PARTIES hereby set forth the terms, covenants, and conditions of this AGREEMENT.

## **RESPONSIBILITIES**

### **Sponsorship**

8. A SPONSOR is responsible for establishing the scope of the PROJECT and securing the financial resources to fund the WORK. A SPONSOR is responsible for securing additional funds when necessary or implementing PROJECT changes to ensure the WORK can be completed with the funds obligated in this AGREEMENT.

PROJECT changes, as described in the CALTRANS Project Development Procedures Manual, will be approved by CALTRANS as the owner/operator of the State Highway System.

9. CITY is the SPONSOR for the WORK in this AGREEMENT.

### **Implementing Agency**

10. The IMPLEMENTING AGENCY is the PARTY responsible for managing the scope, cost, schedule, and quality of the work activities and products of a PROJECT COMPONENT.

- CITY is the PID IMPLEMENTING AGENCY.

The PSR-PR identifies the PROJECT need and purpose, stakeholder input, project alternatives, anticipated right-of-way requirements, initial cost estimates, potential funding sources, the completion of the Final Environmental Document and the Project Report (documenting the project alternative selection).

11. CITY will provide a Quality Management Plan (QMP) for the WORK in every PROJECT COMPONENT that they are implementing. The QMP describes the IMPLEMENTING AGENCY's quality policy and how it will be used. The QMP will include a process for resolving disputes between the PARTIES at the team level. The QMP is subject to CALTRANS review and concurrence.
12. Any PARTY responsible for completing WORK will make its personnel and consultants that prepare WORK available to help resolve WORK-related problems and changes for the entire duration of the PROJECT including PROJECT work that may occur under separate agreements.

## **Funding**

13. CITY is the only PARTY obligating funds in this AGREEMENT and will fund the cost of the WORK in accordance with this AGREEMENT.  
If, in the future, CALTRANS is allocated state funds and Personnel Years (PYs) for PSR-PR review or development of this PROJECT, PARTIES will agree to amend this AGREEMENT to change the reimbursement arrangement for PSR-PR review.
14. Funding sources, PARTIES committing funds, funding amounts, and invoicing/payment details are documented in the Funding Summary section of this AGREEMENT.  
PARTIES will amend this AGREEMENT should this condition by updating and replacing the Funding Summary, in its entirety, each time the funding details change. Funding Summary replacements will be executed by a legally authorized representative of the respective PARTIES. The most current fully executed Funding Summary supersedes any previous Funding Summary created for this AGREEMENT.
15. PARTIES will not be reimbursed for costs beyond the funds commitments in this AGREEMENT.
16. Unless otherwise documented in the Funding Summary, overall liability for project costs within a PROJECT COMPONENT, subject to program limitations, will be in proportion to the amount contributed to that PROJECT COMPONENT by each fund type.
17. Unless otherwise documented in the Funding Summary, any savings recognized within a PROJECT COMPONENT will be credited or reimbursed, when allowed by policy or law, in proportion to the amount contributed to that PROJECT COMPONENT by each fund type.
18. This section left blank intentionally.
19. WORK costs, except those that are specifically excluded in this AGREEMENT, are to be paid from the funds obligated in the Funding Summary. Costs that are specifically excluded from the funds obligated in this AGREEMENT are to be paid by the PARTY incurring the costs from funds that are independent of this AGREEMENT.

### **CALTRANS' Quality Management**

20. CALTRANS, as the owner/operator of the State Highway System (SHS), will perform quality management work including Quality Management Assessment (QMA), environmental document quality control, and owner/operator approvals for the portions of WORK within the existing and proposed SHS right-of-way.
21. CALTRANS' QMA efforts are to ensure that CITY's quality assurance results in WORK that is in accordance with the applicable standards and the PROJECT's QMP. QMA does not include any efforts necessary to develop or deliver WORK or any validation by verifying or rechecking WORK.

When CALTRANS performs QMA, it does so for its own benefit. No one can assign liability to CALTRANS due to its QMA.

22. CALTRANS, as the owner/operator of the SHS, will approve WORK products in accordance with CALTRANS policies and guidance and as indicated in this AGREEMENT.
23. The cost of CALTRANS' quality management work is to be borne by CITY.

### **CEQA/NEPA Lead Agency**

24. CALTRANS is the CEQA & NEPA Lead Agency for the PROJECT.  
Per National Environmental Policy Act (NEPA) assignment and California Environmental Quality Act (CEQA) statutes, CALTRANS will perform environmental document quality control and NEPA assignment review procedures for environmental documentation. CALTRANS quality control and quality assurance procedures for all environmental documents are described in [Chapter 38](http://dot.ca.gov/programs/environmental-analysis/standard-environmental-reference-ser/volume-1-guidance-for-compliance/ch-38-nepa-assignment) of the Standard Environmental Reference (SER) available at <http://dot.ca.gov/programs/environmental-analysis/standard-environmental-reference-ser/volume-1-guidance-for-compliance/ch-38-nepa-assignment>. This also includes the independent judgement analysis and determination under CEQA that the environmental documentation meets CEQA requirements.
25. CITY will provide WORK-related products and supporting documentation upon CALTRANS' request for the purpose of CALTRANS' quality management work.

26. CITY, including any employee, agent, consultant or sub-consultant retained by the CITY, shall implement uniform document control policies necessary to retain all records and electronically stored information associated with the WORK, including but not limited to those records identified in California Public Resources Code, Section 21167.6, and including email and attachments, in a manner consistent with the CALTRANS Uniform Filing System and the “Final Caltrans Environmental Records Retention Policy”, available at <https://dot.ca.gov/-/media/dot-media/programs/environmental-analysis/documents/nepa-recordretention-policy-final-ally.pdf>. These records, along with an index of the records, shall be provided to CALTRANS within 60 days of CALTRANS’ written request.

### **Environmental Permits, Approvals and Agreements**

27. CITY will comply with the commitments and conditions set forth in the environmental documentation, environmental permits, approvals, and applicable agreements as those commitments and conditions apply to CITY’s responsibilities in this AGREEMENT.
28. Unless otherwise assigned in this AGREEMENT, the IMPLEMENTING AGENCY for a PROJECT COMPONENT is responsible for all PROJECT COMPONENT WORK associated with coordinating, obtaining, implementing, renewing, and amending the PROJECT permits, agreements, and approvals whether they are identified in the planned project scope of work or become necessary in the course of completing the PROJECT.
29. It is expected that the PROJECT will not require environmental permits/approvals.

### **Project Initiation Document (PID)**

30. As the PID IMPLEMENTING AGENCY, CITY is responsible for all PID WORK except those activities and responsibilities that are assigned to another PARTY and those activities that are excluded under this AGREEMENT.
31. Should CITY request CALTRANS to perform any portion of PID preparation work, except as otherwise set forth in this in this AGREEMENT, CITY agrees to reimburse CALTRANS for such work and PARTIES will amend this AGREEMENT.
32. CALTRANS will be responsible for completing the following PSR-PR activities:

CALTRANS Work Breakdown Structure Identifier (If Applicable)	AGREEMENT Funded Cost
100.05.10.xx Quality Management	Yes
150.05.05.xx Review of Existing Reports, Data, Studies, and Mapping	Yes
150.25.20 PSR-PR Circulation, Review, and Approval	Yes
175.20 Project Preferred Alternative	Yes
180.10.05.05.xx CEQA Lead Final Env. Doc QA/QC and Approval	Yes
180.15.10 Notice of Determination (CEQA)	Yes

33. CALTRANS will provide relevant existing proprietary information and maps related to:

- Geologic and Geotechnical information
- Utility information
- Environmental constraints
- Traffic modeling/forecasts
- Topographic and Boundary surveys
- As-built centerline and existing right-of-way

Due to the potential for data loss or errors, CALTRANS will not convert the format of existing proprietary information or maps.

34. When required, CALTRANS will perform pre-consultation with appropriate resource agencies in order to reach consensus on need and purpose, avoidance alternatives, and feasible alternatives.
35. CALTRANS will actively participate in the Project Delivery Team meetings.
36. The PSR-PR will be signed on behalf of CITY by a Civil Engineer registered in the State of California.
37. CALTRANS will review and approve the PSR-PR as required by California Government Code, Section 65086.5.

CALTRANS will complete a review of the draft PSR-PR and provide its comments to CITY within 60 calendar days from the date CALTRANS received the draft PSR-PR from CITY. CITY will address the comments provided by CALTRANS. If any interim reviews are requested of CALTRANS by CITY CALTRANS will complete those reviews within 30 calendar days from the date CALTRANS received the draft PSR-PR from CITY.

After CITY revises the PSR-PR to address all of CALTRANS' comments and submits the revised draft PSR-PR and all related attachments and appendices, CALTRANS will complete its review and final determination of the revised draft PSR-PR within 30 calendar days from the date CALTRANS received the revised draft PSR-PR from CITY. Should CALTRANS require supporting data necessary to defend facts or claims cited in the revised draft PSR-PR, CITY will provide all available supporting data in a reasonable time so that CALTRANS may conclude its review. The 30- day CALTRANS review period will be stalled during that time and will continue to run after CITY provides the required data.

No liability will be assigned to CALTRANS, its officers and employees by CITY under the terms of this AGREEMENT or by third parties by reason of CALTRANS' review and approval of the PSR-PR.

38. Any PARTY preparing environmental documentation, including studies and reports, will ensure that qualified personnel remain available to help resolve environmental issues and perform any necessary work to ensure that the PROJECT remains in environmental compliance.
39. CITY will provide written notice of the initiation of environmental studies to the CEQA and NEPA Lead Agencies prior to completing any other PID phase work.

California Environmental Quality Act (CEQA)

40. Environmental documentation will be prepared in compliance with the California Public Resources Code §§ 21080.3.1(d)(e). CALTRANS will provide, and CITY will use, a letter template and a list of California Native American tribes requesting notification. CITY will prepare consultation documentation for CALTRANS' signature and transmittal in compliance with the statutorily required time frames.
41. The CEQA Lead Agency will determine the type of CEQA documentation and will cause that documentation to be prepared in accordance with CEQA requirements.
42. Any PARTY involved in the preparation of CEQA documentation will prepare the documentation to meet CEQA requirements and follow the CEQA Lead Agency's standards that apply to the CEQA process.

43. Any PARTY preparing any portion of the CEQA-documentation, including any studies and reports, will submit that portion of the documentation to the CEQA Lead Agency for review, comment, and approval at appropriate stages of development prior to public availability.
44. CITY will submit CEQA-related public notices to CALTRANS for review, comment, and approval prior to publication and circulation.
45. CITY will submit all CEQA-related public meeting materials to the CEQA Lead Agency for review, comment, and approval at least ten (10) working days prior to the public meeting date.

If the CEQA Lead Agency makes any changes to the materials, then the CEQA Lead Agency will allow CITY to review, comment, and concur on those changes at least three (3) working days prior to the public meeting date.

46. The CEQA Lead Agency will attend all CEQA-related public meetings.
47. If a PARTY who is not the CEQA Lead Agency holds a public meeting about the PROJECT, that PARTY must clearly state its role in the PROJECT and the identity of the CEQA Lead Agency on all meeting publications. All meeting publications must also inform the attendees that public comments collected at the meetings are not part of the CEQA public review process.

That PARTY will submit all meeting advertisements, agendas, exhibits, handouts, and materials to the CEQA Lead Agency for review, comment, and approval at least ten (10) working days prior to publication or use. If that PARTY makes any changes to the materials, it will allow the CEQA Lead Agency to review, comment on, and approve those changes at least three (3) working days prior to the public meeting date.

The CEQA Lead Agency maintains final editorial control with respect to text or graphics that could lead to public confusion over CEQA-related roles and responsibilities.



National Environmental Policy Act (NEPA) (if applicable)

48. Pursuant to Chapter 3 of Title 23, United States Code (23 U.S.C. 326) and 23 U.S.C. 327, CALTRANS is the NEPA Lead Agency for the PROJECT. CALTRANS is responsible for NEPA compliance, will determine the type of NEPA documentation, and will cause that documentation to be prepared in accordance with NEPA requirements.

CALTRANS, as the NEPA Lead Agency for PROJECT, will review, comment, and approve all environmental documentation (including, but not limited to, studies, reports, public notices, and public meeting materials, determinations, administrative drafts, and final environmental documents) at appropriate stages of development prior to approval and public availability.

When required as NEPA Lead Agency, CALTRANS will conduct consultation and coordination and obtain, renew, or amend approvals pursuant to the Federal Endangered Species Act, and Essential Fish Habitat.

When required as NEPA Lead Agency, CALTRANS will conduct consultation and coordination approvals pursuant to Section 106 of the National Historic Preservation Act.

49. Any PARTY involved in the preparation of NEPA documentation will follow FHWA and CALTRANS standards that apply to the NEPA process including, but not limited to, the guidance provided in the FHWA Environmental Guidebook (available at <http://environment.fhwa.dot.gov/index.asp>) and the CALTRANS Standard Environmental Reference.
50. Any PARTY preparing any portion of the NEPA documentation (including, but not limited to, studies, reports, public notices, and public meeting materials, determinations, administrative drafts, and final environmental documents) will submit that portion of the documentation to CALTRANS for CALTRANS' review, comment, and approval prior to public availability.
51. CITY will prepare, publicize, and circulate all NEPA-related public notices, except Federal Register notices. CITY will submit all notices to CALTRANS for CALTRANS' review, comment, and approval prior to publication and circulation.
- CALTRANS will work with the appropriate federal agency to publish notices in the Federal Register.
52. The NEPA Lead Agency will attend all NEPA-related public meetings.

53. CITY will submit all NEPA-related public meeting materials to CALTRANS for CALTRANS' review, comment, and approval at least ten (10) working days prior to the public meeting date.
54. If a PARTY who is not the NEPA Lead Agency holds a public meeting about the PROJECT, that PARTY must clearly state its role in the PROJECT and the identity of the NEPA Lead Agency on all meeting publications. All meeting publications must also inform the attendees that public comments collected at the meetings are not part of the NEPA public review process.

That PARTY will submit all meeting advertisements, agendas, exhibits, handouts, and materials to the NEPA Lead Agency for review, comment, and approval at least ten (10) working days prior to publication or use. If that PARTY makes any changes to the materials, it will allow the NEPA Lead Agency to review, comment on, and approve those changes at least three (3) working days prior to the public meeting date.

The NEPA Lead Agency has final approval authority with respect to text or graphics that could lead to public confusion over NEPA-related roles and responsibilities.

55. CITY will ensure that the PROJECT is included in the approved Federal Statewide Transportation Improvement Program (FSTIP) prior to the NEPA Lead Agency's approval of the environmental document.

### **Schedule**

56. PARTIES will manage the WORK schedule to ensure the timely use of obligated funds and to ensure compliance with any environmental permits, right-of-way agreements, construction contracts, and any other commitments. PARTIES will communicate schedule risks or changes as soon as they are identified and will actively manage and mitigate schedule risks.
57. The IMPLEMENTING AGENCY for each PROJECT COMPONENT will furnish PARTIES with a final report of the WORK completed.

## **Additional Provisions**

### *Standards*

58. PARTIES will perform all WORK in accordance with federal and California laws, regulations, and standards; Federal Highway Administration (FHWA) standards; and CALTRANS standards. CALTRANS standards include, but are not limited to, the guidance provided in the:

- CADD Users Manual
- CALTRANS policies and directives
- Plans Preparation Manual
- Project Development Procedures Manual (PDPM)
- Workplan Standards Guide
- Standard Environmental Reference
- Highway Design Manual

### *Noncompliant Work*

59. CALTRANS retains the right to reject noncompliant WORK. CITY agrees to suspend WORK upon request by CALTRANS for the purpose of protecting public safety, preserving property rights, and ensuring that all WORK is in the best interest of the State Highway System.

### *Qualifications*

60. Each PARTY will ensure that personnel participating in WORK are appropriately qualified or licensed to perform the tasks assigned to them.

### *Consultant Selection*

61. CITY will invite CALTRANS to participate in the selection of any consultants that participate in the WORK.

Encroachment Permits

62. CALTRANS will issue, upon proper application, the encroachment permits required for WORK within State Highway System (SHS) right-of-way. CITY, their contractors, consultants, agents and utility owners will not work within the SHS right-of-way without an encroachment permit issued in their name. CALTRANS will provide encroachment permits to CITY, their contractors, consultants, and agents at no cost. CALTRANS will provide encroachment permits to utility owners at no cost. If the encroachment permits and this AGREEMENT conflict, the requirements of this AGREEMENT will prevail.
63. The IMPLEMENTING AGENCY for a PROJECT COMPONENT will coordinate, prepare, obtain, implement, renew, and amend any encroachment permits needed to complete the WORK.

Protected Resources

64. If any PARTY discovers unanticipated cultural, archaeological, paleontological, or other protected resources during WORK, all WORK in that area will stop and that PARTY will notify all PARTIES within 24 hours of discovery. WORK may only resume after a qualified professional has evaluated the nature and significance of the discovery and CALTRANS approves a plan for its removal or protection.

Disclosures

65. PARTIES will hold all administrative drafts and administrative final reports, studies, materials, and documentation relied upon, produced, created, or utilized for the WORK in confidence to the extent permitted by law and where applicable, the provisions of California Government Code, Section 6254.5(e) will protect the confidentiality of such documents in the event that said documents are shared between PARTIES.

PARTIES will not distribute, release, or share said documents with anyone other than employees, agents, and consultants who require access to complete the WORK without the written consent of the PARTY authorized to release them, unless required or authorized to do so by law.

66. If a PARTY receives a public records request pertaining to the WORK, that PARTY will notify PARTIES within five (5) working days of receipt and make PARTIES aware of any disclosed public records.

Hazardous Materials

67. HM-1 is hazardous material (including, but not limited to, hazardous waste) that may require removal and disposal pursuant to federal or state law, irrespective of whether it is disturbed the PROJECT or not.

68. HM-2 is hazardous material (including, but not limited to, hazardous waste) that may require removal and disposal pursuant to federal or state law only if disturbed by the PROJECT.

The management activities related to HM-1 and HM-2, including and without limitation, any necessary manifest requirements and disposal facility designations are referred to herein as HM-1 MANAGEMENT and HM-2 MANAGEMENT respectively.

69. If HM-1 or HM-2 is found the discovering PARTY will immediately notify all other PARTIES.

70. PARTIES agree to consider alternatives to PROJECT scope and/or alignment, to the extent practicable, in an effort to avoid any known hazardous materials within the proposed PROJECT limits.

71. CALTRANS, independent of the PROJECT, is responsible for any HM-1 found within the existing State Highway System right-of-way CALTRANS will undertake, or cause to be undertaken, HM-1 MANAGEMENT with minimum impact to the PROJECT schedule.

CALTRANS will pay, or cause to be paid, the cost of HM-1 MANAGEMENT for HM-1 found within the existing State Highway System right-of-way with funds that are independent of the funds obligated in this AGREEMENT.

72. CITY, independent of the PROJECT, is responsible for any HM-1 found within the PROJECT limits and outside the existing State Highway System right-of-way. CITY will undertake, or cause to be undertaken, HM-1 MANAGEMENT with minimum impact to the PROJECT schedule.

CITY, independent of the PROJECT, will pay, or cause to be paid, the cost of HM-1 MANAGEMENT for HM-1 found within the PROJECT limits and outside of the existing State Highway System right-of-way.

73. If hazardous materials are discovered within PROJECT limits, but outside of State Highway System right-of-way, it is the responsibility of CITY in concert with the local agency having land use jurisdiction over the property, and the property owner, to remedy before CALTRANS will acquire or accept title to such property.
74. The CONSTRUCTION IMPLEMENTING AGENCY is responsible for HM-2 MANAGEMENT within the PROJECT limits.

CITY and CALTRANS will comply with the Soil Management Agreement for Aerially Deposited Lead Contaminated Soils (Soil Management Agreement) executed between CALTRANS and the California Department of Toxic Substances Control (DTSC). Under Section 3.2 of the Soil Management Agreement, CALTRANS and CITY each retain joint and severable liability for noncompliance with the provisions of the Soil Management Agreement. CITY will assume all responsibilities assigned to CALTRANS in the Soil Management Agreement during PROJECT COMPONENTS for which they are the IMPLEMENTING AGENCY except for final placement and burial of soil within the State right-of-way, per Section 4.5 of the Soil Management Agreement, which is subject to CALTRANS concurrence and reporting to DTSC which will be performed by CALTRANS.

75. CALTRANS' acquisition or acceptance of title to any property on which any HM-1 or HM-2 is found will proceed in accordance with CALTRANS' policy on such acquisition.

### Claims

76. Any PARTY that is responsible for completing WORK may accept, reject, compromise, settle, or litigate claims arising from the WORK without concurrence from the other PARTY.
77. PARTIES will confer on any claim that may affect the WORK or PARTIES' liability or responsibility under this AGREEMENT in order to retain resolution possibilities for potential future claims. No PARTY will prejudice the rights of another PARTY until after PARTIES confer on the claim.
78. If the WORK expends state or federal funds, each PARTY will comply with the Federal Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards of 2 CFR, Part 200. PARTIES will ensure that any for-profit consultant hired to participate in the WORK will comply with the requirements in 48 CFR, Chapter 1, Part 31. When state or federal funds are expended on the WORK these principles and requirements apply to all funding types included in this AGREEMENT.

Accounting and Audits

79. PARTIES will maintain and will ensure that any consultant hired by PARTIES to participate in WORK will maintain, a financial management system that conforms to Generally Accepted Accounting Principles (GAAP), and that can properly accumulate and segregate incurred PROJECT costs and billings.
80. PARTIES will maintain and make available to each other all WORK-related documents, including financial data, during the term of this AGREEMENT.

PARTIES will retain all WORK-related records for three (3) years after the final voucher.

PARTIES will require that any consultants hired to participate in the WORK will comply with this Article.

81. PARTIES have the right to audit each other in accordance with generally accepted governmental audit standards.

CALTRANS, the State Auditor, FHWA (if the PROJECT utilizes federal funds), and CITY will have access to all WORK -related records of each PARTY, and any consultant hired by a PARTY to participate in WORK, for audit, examination, excerpt, or transcription.

The examination of any records will take place in the offices and locations where said records are generated and/or stored and will be accomplished during reasonable hours of operation. The auditing PARTY will be permitted to make copies of any WORK-related records needed for the audit.

The audited PARTY will review the draft audit, findings, and recommendations, and provide written comments within thirty (30) calendar days of receipt.

Upon completion of the final audit, PARTIES have forty-five (45) calendar days to refund or invoice as necessary in order to satisfy the obligation of the audit.

Any audit dispute not resolved by PARTIES is subject to mediation. Mediation will follow the process described in the General Conditions section of this AGREEMENT.

82. If the WORK expends state or federal funds, each PARTY will undergo an annual audit in accordance with the Single Audit Act in the Federal Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards as defined in 2 CFR, Part 200.
83. When a PARTY reimburses a consultant for WORK with state or federal funds, the procurement of the consultant and the consultant overhead costs will be in accordance with the Local Assistance Procedures Manual, Chapter 10.

Interruption of Work

84. If WORK stops for any reason, IMPLEMENTING AGENCY will place the PROJECT right-of-way in a safe and operable condition acceptable to CALTRANS.
85. If WORK stops for any reason, each PARTY will continue with environmental commitments included in the environmental documentation, permits, agreements, or approvals that are in effect at the time that WORK stops, and will keep the PROJECT in environmental compliance until WORK resumes.

Penalties, Judgements and Settlements

86. The cost of awards, judgements, or settlements generated by the WORK are to be paid from the funds obligated in this AGREEMENT.
87. The cost of legal challenges to the environmental process or documentation may be paid from the funds obligated in this AGREEMENT.
88. Any PARTY whose action or lack of action causes the levy of fines, interest, or penalties will indemnify and hold all other PARTIES harmless per the terms of this AGREEMENT.

Project Files

89. CITY will furnish CALTRANS with the Project History Files related to the PROJECT facilities on State Highway System within sixty (60) days following the completion of each PROJECT COMPONENT. CITY will prepare the Project History File in accordance with the Project Development Procedures Manual, Chapter 7. All material will be submitted neatly in a three-ring binder and on a CD ROM in PDF format.

**GENERAL CONDITIONS**

90. All portions of this AGREEMENT, including the Recitals Section, are enforceable.

**Venue**

91. PARTIES understand that this AGREEMENT is in accordance with and governed by the Constitution and laws of the State of California. This AGREEMENT will be enforceable in the State of California. Any PARTY initiating legal action arising from this AGREEMENT will file and maintain that legal action in the Superior Court of the county in which the CALTRANS district office that is signatory to this AGREEMENT resides, or in the Superior Court of the county in which the PROJECT is physically located.



### **Exemptions**

92. All CALTRANS' obligations under this AGREEMENT are subject to the appropriation of resources by the Legislature, the State Budget Act authority, programming and allocation of funds by the California Transportation Commission (CTC).

### **Indemnification**

93. Neither CALTRANS nor any of their officers and employees, are responsible for any injury, damage, or liability occurring by reason of anything done or omitted to be done by CITY, its contractors, sub-contractors, and/or its agents under or in connection with any work, authority, or jurisdiction conferred upon CITY under this AGREEMENT. It is understood and agreed that CITY, to the extent permitted by law, will defend, indemnify, and save harmless CALTRANS and all of their officers and employees from all claims, suits, or actions of every name, kind, and description brought forth under, but not limited to, tortious, contractual, inverse condemnation, or other theories and assertions of liability occurring by reason of anything done or omitted to be done by CITY, its contractors, sub-contractors, and/or its agents under this AGREEMENT.
94. Neither CITY nor any of their officers and employees, are responsible for any injury, damage, or liability occurring by reason of anything done or omitted to be done by CALTRANS, its contractors, sub-contractors, and/or its agents under or in connection with any work, authority, or jurisdiction conferred upon CALTRANS under this AGREEMENT. It is understood and agreed that CALTRANS, to the extent permitted by law, will defend, indemnify, and save harmless CITY and all of their officers and employees from all claims, suits, or actions of every name, kind, and description brought forth under, but not limited to, tortious, contractual, inverse condemnation, or other theories and assertions of liability occurring by reason of anything done or omitted to be done by CALTRANS, its contractors, sub-contractors, and/or its agents under this AGREEMENT.

### **Non-parties**

95. PARTIES do not intend this AGREEMENT to create a third-party beneficiary or define duties, obligations, or rights for entities not signatory to this AGREEMENT. PARTIES do not intend this AGREEMENT to affect their legal liability by imposing any standard of care for fulfilling the WORK different from the standards imposed by law.
96. PARTIES will not assign or attempt to assign obligations to entities not signatory to this AGREEMENT without an amendment to this AGREEMENT.

### **Ambiguity and Performance**

97. CITY will not interpret any ambiguity contained in this AGREEMENT against CALTRANS. CITY waives the provisions of California Civil Code, Section 1654.

A waiver of a PARTY's performance under this AGREEMENT will not constitute a continuous waiver of any other provision.

98. A delay or omission to exercise a right or power due to a default does not negate the use of that right or power in the future when deemed necessary.

### **Defaults**

99. If any PARTY defaults in its performance of the WORK, a non-defaulting PARTY will request in writing that the default be remedied within thirty (30) calendar days. If the defaulting PARTY fails to do so, the non-defaulting PARTY may initiate dispute resolution.

### **Dispute Resolution**

100. PARTIES will first attempt to resolve AGREEMENT disputes at the PROJECT team level as described in the Quality Management Plan. If they cannot resolve the dispute themselves, the CALTRANS District Director and the Executive Officer of CITY will attempt to negotiate a resolution. If PARTIES do not reach a resolution, PARTIES' legal counsel will initiate mediation. PARTIES agree to participate in mediation in good faith and will share equally in its costs.

Neither the dispute nor the mediation process relieves PARTIES from full and timely performance of the WORK in accordance with the terms of this AGREEMENT. However, if any PARTY stops fulfilling its obligations, any other PARTY may seek equitable relief to ensure that the WORK continues.

Except for equitable relief, no PARTY may file a civil complaint until after mediation, or forty-five (45) calendar days after filing the written mediation request, whichever occurs first.

PARTIES will file any civil complaints in the Superior Court of the county in which the CALTRANS District Office signatory to this AGREEMENT resides or in the Superior Court of the county in which the PROJECT is physically located.

101. PARTIES maintain the ability to pursue alternative or additional dispute remedies if a previously selected remedy does not achieve resolution.

## **Prevailing Wage**

102. When WORK falls within the Labor Code § 1720(a)(1) definition of "public works" in that it is construction, alteration, demolition, installation, or repair; or maintenance work under Labor Code § 1771, PARTIES will conform to the provisions of Labor Code §§ 1720-1815, and all applicable provisions of California Code of Regulations, Title 8, Division 1, Chapter 8, Subchapter 3, Articles 1-7. PARTIES will include prevailing wage requirements in contracts for public work and require contractors to include the same prevailing wage requirements in all subcontracts.

Work performed by a PARTY's own employees is exempt from the Labor Code's Prevailing Wage requirements.

If WORK is paid for, in whole or part, with federal funds and is of the type of work subject to federal prevailing wage requirements, PARTIES will conform to the provisions of the Davis-Bacon and Related Acts, 40 U.S.C. §§ 3141-3148.

When applicable, PARTIES will include federal prevailing wage requirements in contracts for public works. WORK performed by a PARTY's employees is exempt from federal prevailing wage requirements.

## **Contact Information**

### **CALTRANS**

Udaya Shankar, Project Manager  
1976 E. Charter Way  
Stockton, CA 95205  
Office Phone: (209)639-6456  
Email: udaya.shankar@dot.ca.gov

### **CITY OF TRACY**

Anju Pillai, Senior Civil Engineer  
333 Civic Center Plaza  
Tracy, CA 95376  
Office Phone: 209-831-6455  
anju.pillai@cityoftracy.org

**SIGNATURES**

PARTIES are authorized to enter into this AGREEMENT and have delegated to the undersigned the authority to execute this AGREEMENT on behalf of the respective agencies and hereby covenants to have followed all the necessary legal requirements to validly execute this AGREEMENT. By signing below, the PARTIES each expressly agree to execute this AGREEMENT electronically.

The PARTIES acknowledge that executed copies of this AGREEMENT may be exchanged by facsimile or email, and that such copies shall be deemed to be effective as originals.

**STATE OF CALIFORNIA  
DEPARTMENT OF TRANSPORTATION**

\_\_\_\_\_  
Grace Magsayo  
Acting District Director

**Verification of funds and authority:**

\_\_\_\_\_  
Michelle Ishaya  
District Budget Manager

**Certified as to financial terms and policies:**

\_\_\_\_\_  
Lai Saephan  
HQ Accounting Supervisor

**CITY OF TRACY**

\_\_\_\_\_  
Midori Lichtwardt  
City Manager

**Attest:**

\_\_\_\_\_  
Adrienne Richardson  
City Clerk

**Approved as to form and procedure:**

\_\_\_\_\_  
Bijal Patel  
City Attorney

**FUNDING SUMMARY NO. 01**

<b><u>FUNDING TABLE</u></b>			
Source	Party	Fund Type	PSR-PR
			Totals
LOCAL	Tracy	CITY	700,000
LOCAL	Tracy	CITY	130,000
Totals			830,000

<b><u>SPENDING SUMMARY</u></b>			
Fund Type	PSR-PR		Totals
	CALTRANS	<u>TRACY</u>	
CITY	0	700,000	700,000
CITY	130,000	0	130,000
<b>Totals</b>	0	830,000	830,000

## **Funding**

1. If there are insufficient funds available in this AGREEMENT to place the PROJECT right-of-way in a safe and operable condition, the appropriate IMPLEMENTING AGENCY will fund these activities until such time as PARTIES amend this AGREEMENT.

That IMPLEMENTING AGENCY may request reimbursement for these costs during the amendment process.

2. If there are insufficient funds in this AGREEMENT to implement the obligations and responsibilities of this AGREEMENT, including the applicable commitments and conditions included in the PROJECT environmental documentation, permits, agreements, and/or approvals that are in effect at a time that WORK stops, each PARTY accepts responsibility to fund their respective WORK until such time as PARTIES amend this AGREEMENT.

Each PARTY may request reimbursement for these costs during the amendment process.

3. Notwithstanding the terms of this AGREEMENT, PARTIES agree to abide by the funding guidelines for all contributed funds that are programmed and allocated by the CTC.

## **ICRP Rate**

4. Per the State Budget Act of 2012, Chapter 603, amending item 2660-001-0042 of Section 2.00, the cost of any engineering support performed by CALTRANS towards any local government agency-sponsored PSR-PR project will only include direct costs. Indirect or overhead costs will not be applied during the development of the PSR-PR document.

## **Invoicing and Payment**

5. PARTIES will invoice for funds where the SPENDING SUMMARY shows that one PARTY provides funds for use by another PARTY. PARTIES will pay invoices within forty-five (45) calendar days of receipt of invoice when not paying with Electronic Funds Transfer (EFT). When paying with EFT, CITY will pay invoices within five (5) calendar days of receipt of invoice.

6. If [LOCAL AGENCY] has received EFT certification from CALTRANS, then [LOCAL AGENCY] will use the EFT mechanism and follow all EFT procedures to pay all invoices issued from CALTRANS.
7. When a PARTY is reimbursed for actual cost, invoices will be submitted each month for the prior month's expenditures. After all PROJECT COMPONENT WORK is complete, PARTIES will submit a final accounting of all PROJECT COMPONENT costs. Based on the final accounting, PARTIES will invoice or refund as necessary to satisfy the financial commitments of this AGREEMENT.

*Project Initiation Document (PID)*

CALTRANS will invoice CITY for an initial deposit of \$20,000 after execution of this AGREEMENT. This deposit represents the estimated cost of an average two (2) months of CALTRANS' WORK. After the first month of WORK, CALTRANS will invoice on monthly basis, and CITY will pay.

CALTRANS will not begin WORK until CALTRANS receives the initial deposit.

TRACY CITY COUNCIL

RESOLUTION NO. 2024-\_\_\_\_\_

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**APPROVING AND AUTHORIZING THE EXECUTION OF A COOPERATIVE AGREEMENT WITH THE CALIFORNIA DEPARTMENT OF TRANSPORTATION FOR THE PROJECT INITIATION DOCUMENT PHASE OF THE INTERSTATE 580/CORRAL HOLLOW INTERCHANGE PROJECT, CAPITAL IMPROVEMENT PROJECT (CIP) 73198, FOR A TOTAL NOT-TO-EXCEED AMOUNT \$130,000.**

**WHEREAS**, the Interstate 580 (I-580)/Corral Hollow Interchange (Interchange), in its existing condition, is configured as a tight diamond interchange and the ongoing Tracy Hills Development in the area has led to increased traffic at the site, and this congestion is expected to worsen as Tracy Hills continues to develop; and

**WHEREAS**, the improvement of this Interchange and potentially the I-580/Lammers Road Interchange are mitigation measures under the environmental review documents for the Tracy Hills Specific Plan area; and

**WHEREAS**, improvement of the Interchange is also in the 2012 Transportation Master Plan; and

**WHEREAS**, staff is currently in negotiations with the developers of that Tracy Hills Development Project pursuant to an Offsite Improvement Agreement (OIA) that was approved as a part of the Phase 2A Final Maps by the City Council on July 2, 2024, Resolution No. 2024-120; and

**WHEREAS**, these negotiations are anticipated to conclude with additional agreements (that will be presented to the City Council for consideration and approval) that will define whether the Tracy Hills Development Project is responsible for the funding of one or both of the interchanges as well as the level of funding; and

**WHEREAS**, the OIA allows the City to withhold building permits and inspections if this key issue has not been resolved by a specified timeframe; and

**WHEREAS**, while those negotiations are still underway, staff recommends moving forward with a Cooperative Agreement (Agreement) with the California Department of Transportation (Caltrans) as the design and construction of the Interchange improvements (Project) will be a lengthy process; and

**WHEREAS**, as the proposed improvements involve modification to a Caltrans facility, under State law, the City is required to follow Caltrans Project Development Procedures and enter into the Agreement so that Caltrans can provide design and independent quality oversight



during design of the Project; and

**WHEREAS**, without such an Agreement, Caltrans will not approve the design or issue a permit for construction; and

**WHEREAS**, the Caltrans Project Development Procedures include three design phases for the City to adhere to, which are:

- First Phase - Project Initiation Document (PID)
- Second Phase - Project Acceptance/Environmental Documentation (PA&ED)
- Third Phase - Development of the final Plans, Specifications, and Estimates (PS&E); and

**WHEREAS**, the Caltrans Project Development Procedure Manual (PDPM) permits the completion of the PID Phase with a Project Study Report/Project Report (PSR/PR) instead of the traditional Project Study Report Project Development Support (PSR/PDS); and

**WHEREAS**, the PSR/PR can be used for Non-State Highway Operations and Protection Program (SHOPP) projects and is designed to expedite the project development process by simultaneously working on the PID and completing the PA&ED Phase; however, obtaining approval from the District Director is required for this approach; and

**WHEREAS**, in May 2023, a formal letter was submitted to Caltrans to request the development of a PSR/PR for the Project, and approval was obtained; and

**WHEREAS**, during the PSR/PR phase, Caltrans will designate representatives from various Caltrans departments to review and participate in the design process, and a work plan with the roles and responsibilities of project team members will be developed; and

**WHEREAS**, prior to the commencement of the PSR/PR phase, staff seeks to commence the process by entering into this Agreement for the PID phase only; and

**WHEREAS**, during the PID phase, the majority of the work that the City has been presented as part of the Feasibility Study will be formalized along with a developed project scope, preliminary geometric drawings, cost estimates, and schedule information; and

**WHEREAS**, the City is required to reimburse Caltrans for the cost of their project team to review and process the PID, and Caltrans estimated that the oversight and processing of the PID for the Project would be \$130,000, to be invoiced based on actual cost incurred; and

**WHEREAS**, the Fiscal Year 2024/2025 (FY24/25) Capital Improvement Program (CIP) Budget designates funding for the Project with a total project budget of \$200,000 and the current project budget includes sufficient funds for this Agreement; and

**WHEREAS**, as the funding of the Project has not been resolved, this Agreement has a limited scope for only the PID phase; an amendment to this Agreement or a new Cooperative Agreement will be presented to the City Council at a future date, once the funding has been resolved, to expand the scope; and

**WHEREAS**, the recommended action does not require California Environmental Quality Act (CEQA) and future Project phases, environmental assessments shall be conducted as required per CEQA and National Environmental Policy Act (NEPA), and Caltrans will remain the responsible party for CEQA and NEPA compliance; and, therefore, be it

**RESOLVED:** That the City Council of the City of Tracy hereby approves and authorizes the execution of a Cooperative Agreement, attached hereto as Exhibit 1, with the State Department of Transportation for the development of a Project Initiation Document for the Interstate 580/Corral Hollow Interchange Project, Capital Improvement Project 73198, for a total not-to-exceed amount of \$130,000; and be it

**FURTHER RESOLVED:** That the City Council finds that the recommended action does not require review under CEQA or NEPA and that for future Project phases, environmental reviews and/or assessments shall be conducted as required per CEQA and NEPA.

\*\*\*\*\*

The foregoing Resolution 2024-\_\_\_\_\_ was adopted by the Tracy City Council on the 3<sup>rd</sup> day of September 2024 by the following vote:

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

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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

EXHIBITS:

Exhibit 1 – Caltrans PID Cooperative Agreement.

## **COOPERATIVE AGREEMENT**

This Agreement, executed on effective from \_\_\_\_\_, is between the State of California, acting through its Department of Transportation, referred to as CALTRANS, and:

City of Tracy, a body politic and municipal corporation or chartered city of the State of California, referred to hereinafter as CITY.

An individual signatory agency in this AGREEMENT is referred to as a PARTY. Collectively, the signatory agencies in this AGREEMENT are referred to as PARTIES.

### **RECITALS**

1. PARTIES are authorized to enter into a cooperative agreement for improvements to the State Highway System per California Streets and Highways Code, Sections 114 and 130 and California Government Code, Section 65086.5.
2. For the purpose of this AGREEMENT, IMPROVEMENTS TO EXISTING I-580/CORRAL HOLLOW INTERCHANGE IN THE CITY OF TRACY. EXISTING INTERCHANGE CONSISTS OF AN L-1 (TIGHT DIAMOND) WITH TWO LANE OVERCROSSING. ONGOING AND PLANNED DEVELOPMENTS IN THE CITY WILL RESULT IN INCREASED TRAFFIC VOLUMES THAT WILL TRIGGER IMPROVEMENTS TO EXISTING RAMP TERMINALS AND OVERCROSSING will be referred to hereinafter as PROJECT. CITY desires to utilize a Project Study Report - Project Report (PSR-PR) for both project initiation and approval.
3. All obligations and responsibilities assigned in this AGREEMENT to complete the following PROJECT COMPONENT will be referred to hereinafter as WORK:
  - PROJECT INITIATION DOCUMENT (PID)

The PROJECT will also contain obligations and responsibilities that are typically assigned to the Project Approval & Environmental Document (PA&ED) project component. Each PROJECT COMPONENT is defined in the CALTRANS Workplan Standards Guide as a distinct group of activities/products in the project planning and development process.

4. The term AGREEMENT, as used herein, includes this document and any attachments, exhibits, and amendments.

This AGREEMENT is separate from and does not modify or replace any other cooperative agreement or memorandum of understanding between the PARTIES regarding the PROJECT.

PARTIES intend this AGREEMENT to be their final expression that supersedes any oral understanding or writings pertaining to the WORK. The requirements of this AGREEMENT will preside over any conflicting requirements in any documents that are made an express part of this AGREEMENT.

If any provisions in this AGREEMENT are found by a court of competent jurisdiction to be, or are in fact, illegal, inoperative, or unenforceable, those provisions do not render any or all other AGREEMENT provisions invalid, inoperative, or unenforceable, and those provisions will be automatically severed from this AGREEMENT.

Except as otherwise provided in the AGREEMENT, PARTIES will execute a written amendment if there are any changes to the terms of this AGREEMENT.

AGREEMENT will terminate 180 days after PSR-PR is signed by PARTIES or as mutually agreed by PARTIES in writing. However, all indemnification, document retention, audit, claims, environmental commitment, legal challenge, maintenance and ownership articles will remain in effect until terminated or modified in writing by mutual agreement or expire by the statute of limitations.

5. No PROJECT deliverables have been completed prior to this AGREEMENT.
6. In this AGREEMENT capitalized words represent defined terms, initialisms, or acronyms.
7. PARTIES hereby set forth the terms, covenants, and conditions of this AGREEMENT.

## **RESPONSIBILITIES**

### **Sponsorship**

8. A SPONSOR is responsible for establishing the scope of the PROJECT and securing the financial resources to fund the WORK. A SPONSOR is responsible for securing additional funds when necessary or implementing PROJECT changes to ensure the WORK can be completed with the funds obligated in this AGREEMENT.

PROJECT changes, as described in the CALTRANS Project Development Procedures Manual, will be approved by CALTRANS as the owner/operator of the State Highway System.

9. CITY is the SPONSOR for the WORK in this AGREEMENT.

### **Implementing Agency**

10. The IMPLEMENTING AGENCY is the PARTY responsible for managing the scope, cost, schedule, and quality of the work activities and products of a PROJECT COMPONENT.

- CITY is the PID IMPLEMENTING AGENCY.

The PSR-PR identifies the PROJECT need and purpose, stakeholder input, project alternatives, anticipated right-of-way requirements, initial cost estimates, potential funding sources, the completion of the Final Environmental Document and the Project Report (documenting the project alternative selection).

11. CITY will provide a Quality Management Plan (QMP) for the WORK in every PROJECT COMPONENT that they are implementing. The QMP describes the IMPLEMENTING AGENCY's quality policy and how it will be used. The QMP will include a process for resolving disputes between the PARTIES at the team level. The QMP is subject to CALTRANS review and concurrence.
12. Any PARTY responsible for completing WORK will make its personnel and consultants that prepare WORK available to help resolve WORK-related problems and changes for the entire duration of the PROJECT including PROJECT work that may occur under separate agreements.

## **Funding**

13. CITY is the only PARTY obligating funds in this AGREEMENT and will fund the cost of the WORK in accordance with this AGREEMENT.  
If, in the future, CALTRANS is allocated state funds and Personnel Years (PYs) for PSR-PR review or development of this PROJECT, PARTIES will agree to amend this AGREEMENT to change the reimbursement arrangement for PSR-PR review.
14. Funding sources, PARTIES committing funds, funding amounts, and invoicing/payment details are documented in the Funding Summary section of this AGREEMENT.  
PARTIES will amend this AGREEMENT should this condition by updating and replacing the Funding Summary, in its entirety, each time the funding details change. Funding Summary replacements will be executed by a legally authorized representative of the respective PARTIES. The most current fully executed Funding Summary supersedes any previous Funding Summary created for this AGREEMENT.
15. PARTIES will not be reimbursed for costs beyond the funds commitments in this AGREEMENT.
16. Unless otherwise documented in the Funding Summary, overall liability for project costs within a PROJECT COMPONENT, subject to program limitations, will be in proportion to the amount contributed to that PROJECT COMPONENT by each fund type.
17. Unless otherwise documented in the Funding Summary, any savings recognized within a PROJECT COMPONENT will be credited or reimbursed, when allowed by policy or law, in proportion to the amount contributed to that PROJECT COMPONENT by each fund type.
18. This section left blank intentionally.
19. WORK costs, except those that are specifically excluded in this AGREEMENT, are to be paid from the funds obligated in the Funding Summary. Costs that are specifically excluded from the funds obligated in this AGREEMENT are to be paid by the PARTY incurring the costs from funds that are independent of this AGREEMENT.

### **CALTRANS' Quality Management**

20. CALTRANS, as the owner/operator of the State Highway System (SHS), will perform quality management work including Quality Management Assessment (QMA), environmental document quality control, and owner/operator approvals for the portions of WORK within the existing and proposed SHS right-of-way.
21. CALTRANS' QMA efforts are to ensure that CITY's quality assurance results in WORK that is in accordance with the applicable standards and the PROJECT's QMP. QMA does not include any efforts necessary to develop or deliver WORK or any validation by verifying or rechecking WORK.

When CALTRANS performs QMA, it does so for its own benefit. No one can assign liability to CALTRANS due to its QMA.

22. CALTRANS, as the owner/operator of the SHS, will approve WORK products in accordance with CALTRANS policies and guidance and as indicated in this AGREEMENT.
23. The cost of CALTRANS' quality management work is to be borne by CITY.

### **CEQA/NEPA Lead Agency**

24. CALTRANS is the CEQA & NEPA Lead Agency for the PROJECT.  
Per National Environmental Policy Act (NEPA) assignment and California Environmental Quality Act (CEQA) statutes, CALTRANS will perform environmental document quality control and NEPA assignment review procedures for environmental documentation. CALTRANS quality control and quality assurance procedures for all environmental documents are described in [Chapter 38](http://dot.ca.gov/programs/environmental-analysis/standard-environmental-reference-ser/volume-1-guidance-for-compliance/ch-38-nepa-assignment) of the Standard Environmental Reference (SER) available at <http://dot.ca.gov/programs/environmental-analysis/standard-environmental-reference-ser/volume-1-guidance-for-compliance/ch-38-nepa-assignment>. This also includes the independent judgement analysis and determination under CEQA that the environmental documentation meets CEQA requirements.
25. CITY will provide WORK-related products and supporting documentation upon CALTRANS' request for the purpose of CALTRANS' quality management work.

26. CITY, including any employee, agent, consultant or sub-consultant retained by the CITY, shall implement uniform document control policies necessary to retain all records and electronically stored information associated with the WORK, including but not limited to those records identified in California Public Resources Code, Section 21167.6, and including email and attachments, in a manner consistent with the CALTRANS Uniform Filing System and the “Final Caltrans Environmental Records Retention Policy”, available at <https://dot.ca.gov/-/media/dot-media/programs/environmental-analysis/documents/nepa-recordretention-policy-final-ally.pdf>. These records, along with an index of the records, shall be provided to CALTRANS within 60 days of CALTRANS’ written request.

### **Environmental Permits, Approvals and Agreements**

27. CITY will comply with the commitments and conditions set forth in the environmental documentation, environmental permits, approvals, and applicable agreements as those commitments and conditions apply to CITY’s responsibilities in this AGREEMENT.
28. Unless otherwise assigned in this AGREEMENT, the IMPLEMENTING AGENCY for a PROJECT COMPONENT is responsible for all PROJECT COMPONENT WORK associated with coordinating, obtaining, implementing, renewing, and amending the PROJECT permits, agreements, and approvals whether they are identified in the planned project scope of work or become necessary in the course of completing the PROJECT.
29. It is expected that the PROJECT will not require environmental permits/approvals.

### **Project Initiation Document (PID)**

30. As the PID IMPLEMENTING AGENCY, CITY is responsible for all PID WORK except those activities and responsibilities that are assigned to another PARTY and those activities that are excluded under this AGREEMENT.
31. Should CITY request CALTRANS to perform any portion of PID preparation work, except as otherwise set forth in this in this AGREEMENT, CITY agrees to reimburse CALTRANS for such work and PARTIES will amend this AGREEMENT.
32. CALTRANS will be responsible for completing the following PSR-PR activities:



CALTRANS Work Breakdown Structure Identifier (If Applicable)	AGREEMENT Funded Cost
100.05.10.xx Quality Management	Yes
150.05.05.xx Review of Existing Reports, Data, Studies, and Mapping	Yes
150.25.20 PSR-PR Circulation, Review, and Approval	Yes
175.20 Project Preferred Alternative	Yes
180.10.05.05.xx CEQA Lead Final Env. Doc QA/QC and Approval	Yes
180.15.10 Notice of Determination (CEQA)	Yes

33. CALTRANS will provide relevant existing proprietary information and maps related to:

- Geologic and Geotechnical information
- Utility information
- Environmental constraints
- Traffic modeling/forecasts
- Topographic and Boundary surveys
- As-built centerline and existing right-of-way

Due to the potential for data loss or errors, CALTRANS will not convert the format of existing proprietary information or maps.

34. When required, CALTRANS will perform pre-consultation with appropriate resource agencies in order to reach consensus on need and purpose, avoidance alternatives, and feasible alternatives.
35. CALTRANS will actively participate in the Project Delivery Team meetings.
36. The PSR-PR will be signed on behalf of CITY by a Civil Engineer registered in the State of California.
37. CALTRANS will review and approve the PSR-PR as required by California Government Code, Section 65086.5.

CALTRANS will complete a review of the draft PSR-PR and provide its comments to CITY within 60 calendar days from the date CALTRANS received the draft PSR-PR from CITY. CITY will address the comments provided by CALTRANS. If any interim reviews are requested of CALTRANS by CITY CALTRANS will complete those reviews within 30 calendar days from the date CALTRANS received the draft PSR-PR from CITY.

After CITY revises the PSR-PR to address all of CALTRANS' comments and submits the revised draft PSR-PR and all related attachments and appendices, CALTRANS will complete its review and final determination of the revised draft PSR-PR within 30 calendar days from the date CALTRANS received the revised draft PSR-PR from CITY. Should CALTRANS require supporting data necessary to defend facts or claims cited in the revised draft PSR-PR, CITY will provide all available supporting data in a reasonable time so that CALTRANS may conclude its review. The 30- day CALTRANS review period will be stalled during that time and will continue to run after CITY provides the required data.

No liability will be assigned to CALTRANS, its officers and employees by CITY under the terms of this AGREEMENT or by third parties by reason of CALTRANS' review and approval of the PSR-PR.

38. Any PARTY preparing environmental documentation, including studies and reports, will ensure that qualified personnel remain available to help resolve environmental issues and perform any necessary work to ensure that the PROJECT remains in environmental compliance.
39. CITY will provide written notice of the initiation of environmental studies to the CEQA and NEPA Lead Agencies prior to completing any other PID phase work.

California Environmental Quality Act (CEQA)

40. Environmental documentation will be prepared in compliance with the California Public Resources Code §§ 21080.3.1(d)(e). CALTRANS will provide, and CITY will use, a letter template and a list of California Native American tribes requesting notification. CITY will prepare consultation documentation for CALTRANS' signature and transmittal in compliance with the statutorily required time frames.
41. The CEQA Lead Agency will determine the type of CEQA documentation and will cause that documentation to be prepared in accordance with CEQA requirements.
42. Any PARTY involved in the preparation of CEQA documentation will prepare the documentation to meet CEQA requirements and follow the CEQA Lead Agency's standards that apply to the CEQA process.

43. Any PARTY preparing any portion of the CEQA-documentation, including any studies and reports, will submit that portion of the documentation to the CEQA Lead Agency for review, comment, and approval at appropriate stages of development prior to public availability.
44. CITY will submit CEQA-related public notices to CALTRANS for review, comment, and approval prior to publication and circulation.
45. CITY will submit all CEQA-related public meeting materials to the CEQA Lead Agency for review, comment, and approval at least ten (10) working days prior to the public meeting date.

If the CEQA Lead Agency makes any changes to the materials, then the CEQA Lead Agency will allow CITY to review, comment, and concur on those changes at least three (3) working days prior to the public meeting date.

46. The CEQA Lead Agency will attend all CEQA-related public meetings.
47. If a PARTY who is not the CEQA Lead Agency holds a public meeting about the PROJECT, that PARTY must clearly state its role in the PROJECT and the identity of the CEQA Lead Agency on all meeting publications. All meeting publications must also inform the attendees that public comments collected at the meetings are not part of the CEQA public review process.

That PARTY will submit all meeting advertisements, agendas, exhibits, handouts, and materials to the CEQA Lead Agency for review, comment, and approval at least ten (10) working days prior to publication or use. If that PARTY makes any changes to the materials, it will allow the CEQA Lead Agency to review, comment on, and approve those changes at least three (3) working days prior to the public meeting date.

The CEQA Lead Agency maintains final editorial control with respect to text or graphics that could lead to public confusion over CEQA-related roles and responsibilities.

National Environmental Policy Act (NEPA) (if applicable)

48. Pursuant to Chapter 3 of Title 23, United States Code (23 U.S.C. 326) and 23 U.S.C. 327, CALTRANS is the NEPA Lead Agency for the PROJECT. CALTRANS is responsible for NEPA compliance, will determine the type of NEPA documentation, and will cause that documentation to be prepared in accordance with NEPA requirements.

CALTRANS, as the NEPA Lead Agency for PROJECT, will review, comment, and approve all environmental documentation (including, but not limited to, studies, reports, public notices, and public meeting materials, determinations, administrative drafts, and final environmental documents) at appropriate stages of development prior to approval and public availability.

When required as NEPA Lead Agency, CALTRANS will conduct consultation and coordination and obtain, renew, or amend approvals pursuant to the Federal Endangered Species Act, and Essential Fish Habitat.

When required as NEPA Lead Agency, CALTRANS will conduct consultation and coordination approvals pursuant to Section 106 of the National Historic Preservation Act.

49. Any PARTY involved in the preparation of NEPA documentation will follow FHWA and CALTRANS standards that apply to the NEPA process including, but not limited to, the guidance provided in the FHWA Environmental Guidebook (available at <http://environment.fhwa.dot.gov/index.asp>) and the CALTRANS Standard Environmental Reference.
50. Any PARTY preparing any portion of the NEPA documentation (including, but not limited to, studies, reports, public notices, and public meeting materials, determinations, administrative drafts, and final environmental documents) will submit that portion of the documentation to CALTRANS for CALTRANS' review, comment, and approval prior to public availability.
51. CITY will prepare, publicize, and circulate all NEPA-related public notices, except Federal Register notices. CITY will submit all notices to CALTRANS for CALTRANS' review, comment, and approval prior to publication and circulation.
- CALTRANS will work with the appropriate federal agency to publish notices in the Federal Register.
52. The NEPA Lead Agency will attend all NEPA-related public meetings.

53. CITY will submit all NEPA-related public meeting materials to CALTRANS for CALTRANS' review, comment, and approval at least ten (10) working days prior to the public meeting date.
54. If a PARTY who is not the NEPA Lead Agency holds a public meeting about the PROJECT, that PARTY must clearly state its role in the PROJECT and the identity of the NEPA Lead Agency on all meeting publications. All meeting publications must also inform the attendees that public comments collected at the meetings are not part of the NEPA public review process.

That PARTY will submit all meeting advertisements, agendas, exhibits, handouts, and materials to the NEPA Lead Agency for review, comment, and approval at least ten (10) working days prior to publication or use. If that PARTY makes any changes to the materials, it will allow the NEPA Lead Agency to review, comment on, and approve those changes at least three (3) working days prior to the public meeting date.

The NEPA Lead Agency has final approval authority with respect to text or graphics that could lead to public confusion over NEPA-related roles and responsibilities.

55. CITY will ensure that the PROJECT is included in the approved Federal Statewide Transportation Improvement Program (FSTIP) prior to the NEPA Lead Agency's approval of the environmental document.

### **Schedule**

56. PARTIES will manage the WORK schedule to ensure the timely use of obligated funds and to ensure compliance with any environmental permits, right-of-way agreements, construction contracts, and any other commitments. PARTIES will communicate schedule risks or changes as soon as they are identified and will actively manage and mitigate schedule risks.
57. The IMPLEMENTING AGENCY for each PROJECT COMPONENT will furnish PARTIES with a final report of the WORK completed.

## **Additional Provisions**

### *Standards*

58. PARTIES will perform all WORK in accordance with federal and California laws, regulations, and standards; Federal Highway Administration (FHWA) standards; and CALTRANS standards. CALTRANS standards include, but are not limited to, the guidance provided in the:

- CADD Users Manual
- CALTRANS policies and directives
- Plans Preparation Manual
- Project Development Procedures Manual (PDPM)
- Workplan Standards Guide
- Standard Environmental Reference
- Highway Design Manual

### *Noncompliant Work*

59. CALTRANS retains the right to reject noncompliant WORK. CITY agrees to suspend WORK upon request by CALTRANS for the purpose of protecting public safety, preserving property rights, and ensuring that all WORK is in the best interest of the State Highway System.

### *Qualifications*

60. Each PARTY will ensure that personnel participating in WORK are appropriately qualified or licensed to perform the tasks assigned to them.

### *Consultant Selection*

61. CITY will invite CALTRANS to participate in the selection of any consultants that participate in the WORK.

Encroachment Permits

62. CALTRANS will issue, upon proper application, the encroachment permits required for WORK within State Highway System (SHS) right-of-way. CITY, their contractors, consultants, agents and utility owners will not work within the SHS right-of-way without an encroachment permit issued in their name. CALTRANS will provide encroachment permits to CITY, their contractors, consultants, and agents at no cost. CALTRANS will provide encroachment permits to utility owners at no cost. If the encroachment permits and this AGREEMENT conflict, the requirements of this AGREEMENT will prevail.
63. The IMPLEMENTING AGENCY for a PROJECT COMPONENT will coordinate, prepare, obtain, implement, renew, and amend any encroachment permits needed to complete the WORK.

Protected Resources

64. If any PARTY discovers unanticipated cultural, archaeological, paleontological, or other protected resources during WORK, all WORK in that area will stop and that PARTY will notify all PARTIES within 24 hours of discovery. WORK may only resume after a qualified professional has evaluated the nature and significance of the discovery and CALTRANS approves a plan for its removal or protection.

Disclosures

65. PARTIES will hold all administrative drafts and administrative final reports, studies, materials, and documentation relied upon, produced, created, or utilized for the WORK in confidence to the extent permitted by law and where applicable, the provisions of California Government Code, Section 6254.5(e) will protect the confidentiality of such documents in the event that said documents are shared between PARTIES.  
  
PARTIES will not distribute, release, or share said documents with anyone other than employees, agents, and consultants who require access to complete the WORK without the written consent of the PARTY authorized to release them, unless required or authorized to do so by law.
66. If a PARTY receives a public records request pertaining to the WORK, that PARTY will notify PARTIES within five (5) working days of receipt and make PARTIES aware of any disclosed public records.

Hazardous Materials

67. HM-1 is hazardous material (including, but not limited to, hazardous waste) that may require removal and disposal pursuant to federal or state law, irrespective of whether it is disturbed the PROJECT or not.
68. HM-2 is hazardous material (including, but not limited to, hazardous waste) that may require removal and disposal pursuant to federal or state law only if disturbed by the PROJECT.

The management activities related to HM-1 and HM-2, including and without limitation, any necessary manifest requirements and disposal facility designations are referred to herein as HM-1 MANAGEMENT and HM-2 MANAGEMENT respectively.

69. If HM-1 or HM-2 is found the discovering PARTY will immediately notify all other PARTIES.
70. PARTIES agree to consider alternatives to PROJECT scope and/or alignment, to the extent practicable, in an effort to avoid any known hazardous materials within the proposed PROJECT limits.
71. CALTRANS, independent of the PROJECT, is responsible for any HM-1 found within the existing State Highway System right-of-way CALTRANS will undertake, or cause to be undertaken, HM-1 MANAGEMENT with minimum impact to the PROJECT schedule.

CALTRANS will pay, or cause to be paid, the cost of HM-1 MANAGEMENT for HM-1 found within the existing State Highway System right-of-way with funds that are independent of the funds obligated in this AGREEMENT.

72. CITY, independent of the PROJECT, is responsible for any HM-1 found within the PROJECT limits and outside the existing State Highway System right-of-way. CITY will undertake, or cause to be undertaken, HM-1 MANAGEMENT with minimum impact to the PROJECT schedule.

CITY, independent of the PROJECT, will pay, or cause to be paid, the cost of HM-1 MANAGEMENT for HM-1 found within the PROJECT limits and outside of the existing State Highway System right-of-way.



73. If hazardous materials are discovered within PROJECT limits, but outside of State Highway System right-of-way, it is the responsibility of CITY in concert with the local agency having land use jurisdiction over the property, and the property owner, to remedy before CALTRANS will acquire or accept title to such property.
74. The CONSTRUCTION IMPLEMENTING AGENCY is responsible for HM-2 MANAGEMENT within the PROJECT limits.

CITY and CALTRANS will comply with the Soil Management Agreement for Aerially Deposited Lead Contaminated Soils (Soil Management Agreement) executed between CALTRANS and the California Department of Toxic Substances Control (DTSC). Under Section 3.2 of the Soil Management Agreement, CALTRANS and CITY each retain joint and severable liability for noncompliance with the provisions of the Soil Management Agreement. CITY will assume all responsibilities assigned to CALTRANS in the Soil Management Agreement during PROJECT COMPONENTS for which they are the IMPLEMENTING AGENCY except for final placement and burial of soil within the State right-of-way, per Section 4.5 of the Soil Management Agreement, which is subject to CALTRANS concurrence and reporting to DTSC which will be performed by CALTRANS.

75. CALTRANS' acquisition or acceptance of title to any property on which any HM-1 or HM-2 is found will proceed in accordance with CALTRANS' policy on such acquisition.

### Claims

76. Any PARTY that is responsible for completing WORK may accept, reject, compromise, settle, or litigate claims arising from the WORK without concurrence from the other PARTY.
77. PARTIES will confer on any claim that may affect the WORK or PARTIES' liability or responsibility under this AGREEMENT in order to retain resolution possibilities for potential future claims. No PARTY will prejudice the rights of another PARTY until after PARTIES confer on the claim.
78. If the WORK expends state or federal funds, each PARTY will comply with the Federal Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards of 2 CFR, Part 200. PARTIES will ensure that any for-profit consultant hired to participate in the WORK will comply with the requirements in 48 CFR, Chapter 1, Part 31. When state or federal funds are expended on the WORK these principles and requirements apply to all funding types included in this AGREEMENT.

Accounting and Audits

79. PARTIES will maintain and will ensure that any consultant hired by PARTIES to participate in WORK will maintain, a financial management system that conforms to Generally Accepted Accounting Principles (GAAP), and that can properly accumulate and segregate incurred PROJECT costs and billings.
80. PARTIES will maintain and make available to each other all WORK-related documents, including financial data, during the term of this AGREEMENT.

PARTIES will retain all WORK-related records for three (3) years after the final voucher.

PARTIES will require that any consultants hired to participate in the WORK will comply with this Article.

81. PARTIES have the right to audit each other in accordance with generally accepted governmental audit standards.

CALTRANS, the State Auditor, FHWA (if the PROJECT utilizes federal funds), and CITY will have access to all WORK -related records of each PARTY, and any consultant hired by a PARTY to participate in WORK, for audit, examination, excerpt, or transcription.

The examination of any records will take place in the offices and locations where said records are generated and/or stored and will be accomplished during reasonable hours of operation. The auditing PARTY will be permitted to make copies of any WORK-related records needed for the audit.

The audited PARTY will review the draft audit, findings, and recommendations, and provide written comments within thirty (30) calendar days of receipt.

Upon completion of the final audit, PARTIES have forty-five (45) calendar days to refund or invoice as necessary in order to satisfy the obligation of the audit.

Any audit dispute not resolved by PARTIES is subject to mediation. Mediation will follow the process described in the General Conditions section of this AGREEMENT.

82. If the WORK expends state or federal funds, each PARTY will undergo an annual audit in accordance with the Single Audit Act in the Federal Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards as defined in 2 CFR, Part 200.
83. When a PARTY reimburses a consultant for WORK with state or federal funds, the procurement of the consultant and the consultant overhead costs will be in accordance with the Local Assistance Procedures Manual, Chapter 10.

Interruption of Work

84. If WORK stops for any reason, IMPLEMENTING AGENCY will place the PROJECT right-of-way in a safe and operable condition acceptable to CALTRANS.
85. If WORK stops for any reason, each PARTY will continue with environmental commitments included in the environmental documentation, permits, agreements, or approvals that are in effect at the time that WORK stops, and will keep the PROJECT in environmental compliance until WORK resumes.

Penalties, Judgements and Settlements

86. The cost of awards, judgements, or settlements generated by the WORK are to be paid from the funds obligated in this AGREEMENT.
87. The cost of legal challenges to the environmental process or documentation may be paid from the funds obligated in this AGREEMENT.
88. Any PARTY whose action or lack of action causes the levy of fines, interest, or penalties will indemnify and hold all other PARTIES harmless per the terms of this AGREEMENT.

Project Files

89. CITY will furnish CALTRANS with the Project History Files related to the PROJECT facilities on State Highway System within sixty (60) days following the completion of each PROJECT COMPONENT. CITY will prepare the Project History File in accordance with the Project Development Procedures Manual, Chapter 7. All material will be submitted neatly in a three-ring binder and on a CD ROM in PDF format.

**GENERAL CONDITIONS**

90. All portions of this AGREEMENT, including the Recitals Section, are enforceable.

**Venue**

91. PARTIES understand that this AGREEMENT is in accordance with and governed by the Constitution and laws of the State of California. This AGREEMENT will be enforceable in the State of California. Any PARTY initiating legal action arising from this AGREEMENT will file and maintain that legal action in the Superior Court of the county in which the CALTRANS district office that is signatory to this AGREEMENT resides, or in the Superior Court of the county in which the PROJECT is physically located.

### **Exemptions**

92. All CALTRANS' obligations under this AGREEMENT are subject to the appropriation of resources by the Legislature, the State Budget Act authority, programming and allocation of funds by the California Transportation Commission (CTC).

### **Indemnification**

93. Neither CALTRANS nor any of their officers and employees, are responsible for any injury, damage, or liability occurring by reason of anything done or omitted to be done by CITY, its contractors, sub-contractors, and/or its agents under or in connection with any work, authority, or jurisdiction conferred upon CITY under this AGREEMENT. It is understood and agreed that CITY, to the extent permitted by law, will defend, indemnify, and save harmless CALTRANS and all of their officers and employees from all claims, suits, or actions of every name, kind, and description brought forth under, but not limited to, tortious, contractual, inverse condemnation, or other theories and assertions of liability occurring by reason of anything done or omitted to be done by CITY, its contractors, sub-contractors, and/or its agents under this AGREEMENT.
94. Neither CITY nor any of their officers and employees, are responsible for any injury, damage, or liability occurring by reason of anything done or omitted to be done by CALTRANS, its contractors, sub-contractors, and/or its agents under or in connection with any work, authority, or jurisdiction conferred upon CALTRANS under this AGREEMENT. It is understood and agreed that CALTRANS, to the extent permitted by law, will defend, indemnify, and save harmless CITY and all of their officers and employees from all claims, suits, or actions of every name, kind, and description brought forth under, but not limited to, tortious, contractual, inverse condemnation, or other theories and assertions of liability occurring by reason of anything done or omitted to be done by CALTRANS, its contractors, sub-contractors, and/or its agents under this AGREEMENT.

### **Non-parties**

95. PARTIES do not intend this AGREEMENT to create a third-party beneficiary or define duties, obligations, or rights for entities not signatory to this AGREEMENT. PARTIES do not intend this AGREEMENT to affect their legal liability by imposing any standard of care for fulfilling the WORK different from the standards imposed by law.
96. PARTIES will not assign or attempt to assign obligations to entities not signatory to this AGREEMENT without an amendment to this AGREEMENT.

### **Ambiguity and Performance**

97. CITY will not interpret any ambiguity contained in this AGREEMENT against CALTRANS. CITY waives the provisions of California Civil Code, Section 1654.

A waiver of a PARTY's performance under this AGREEMENT will not constitute a continuous waiver of any other provision.

98. A delay or omission to exercise a right or power due to a default does not negate the use of that right or power in the future when deemed necessary.

### **Defaults**

99. If any PARTY defaults in its performance of the WORK, a non-defaulting PARTY will request in writing that the default be remedied within thirty (30) calendar days. If the defaulting PARTY fails to do so, the non-defaulting PARTY may initiate dispute resolution.

### **Dispute Resolution**

100. PARTIES will first attempt to resolve AGREEMENT disputes at the PROJECT team level as described in the Quality Management Plan. If they cannot resolve the dispute themselves, the CALTRANS District Director and the Executive Officer of CITY will attempt to negotiate a resolution. If PARTIES do not reach a resolution, PARTIES' legal counsel will initiate mediation. PARTIES agree to participate in mediation in good faith and will share equally in its costs.

Neither the dispute nor the mediation process relieves PARTIES from full and timely performance of the WORK in accordance with the terms of this AGREEMENT. However, if any PARTY stops fulfilling its obligations, any other PARTY may seek equitable relief to ensure that the WORK continues.

Except for equitable relief, no PARTY may file a civil complaint until after mediation, or forty-five (45) calendar days after filing the written mediation request, whichever occurs first.

PARTIES will file any civil complaints in the Superior Court of the county in which the CALTRANS District Office signatory to this AGREEMENT resides or in the Superior Court of the county in which the PROJECT is physically located.

101. PARTIES maintain the ability to pursue alternative or additional dispute remedies if a previously selected remedy does not achieve resolution.

## **Prevailing Wage**

102. When WORK falls within the Labor Code § 1720(a)(1) definition of "public works" in that it is construction, alteration, demolition, installation, or repair; or maintenance work under Labor Code § 1771, PARTIES will conform to the provisions of Labor Code §§ 1720-1815, and all applicable provisions of California Code of Regulations, Title 8, Division 1, Chapter 8, Subchapter 3, Articles 1-7. PARTIES will include prevailing wage requirements in contracts for public work and require contractors to include the same prevailing wage requirements in all subcontracts.

Work performed by a PARTY's own employees is exempt from the Labor Code's Prevailing Wage requirements.

If WORK is paid for, in whole or part, with federal funds and is of the type of work subject to federal prevailing wage requirements, PARTIES will conform to the provisions of the Davis-Bacon and Related Acts, 40 U.S.C. §§ 3141-3148.

When applicable, PARTIES will include federal prevailing wage requirements in contracts for public works. WORK performed by a PARTY's employees is exempt from federal prevailing wage requirements.

## **Contact Information**

### **CALTRANS**

Udaya Shankar, Project Manager  
1976 E. Charter Way  
Stockton, CA 95205  
Office Phone: (209)639-6456  
Email: udaya.shankar@dot.ca.gov

### **CITY OF TRACY**

Anju Pillai, Senior Civil Engineer  
333 Civic Center Plaza  
Tracy, CA 95376  
Office Phone: 209-831-6455  
anju.pillai@cityoftracy.org

**SIGNATURES**

PARTIES are authorized to enter into this AGREEMENT and have delegated to the undersigned the authority to execute this AGREEMENT on behalf of the respective agencies and hereby covenants to have followed all the necessary legal requirements to validly execute this AGREEMENT. By signing below, the PARTIES each expressly agree to execute this AGREEMENT electronically.

The PARTIES acknowledge that executed copies of this AGREEMENT may be exchanged by facsimile or email, and that such copies shall be deemed to be effective as originals.

**STATE OF CALIFORNIA  
DEPARTMENT OF TRANSPORTATION**

**CITY OF TRACY**

\_\_\_\_\_  
Grace Magsayo  
Acting District Director

\_\_\_\_\_  
Midori Lichtwardt  
City Manager

**Verification of funds and authority:**

**Attest:**

\_\_\_\_\_  
Michelle Ishaya  
District Budget Manager

\_\_\_\_\_  
Adrienne Richardson  
City Clerk

**Certified as to financial terms and policies:**

**Approved as to form and procedure:**

\_\_\_\_\_  
Lai Saephan  
HQ Accounting Supervisor

\_\_\_\_\_  
Bijal Patel  
City Attorney

**FUNDING SUMMARY NO. 01**

<b><u>FUNDING TABLE</u></b>			
Source	Party	Fund Type	PSR-PR
			Totals
LOCAL	Tracy	CITY	700,000
LOCAL	Tracy	CITY	130,000
Totals			830,000

<b><u>SPENDING SUMMARY</u></b>			
Fund Type	PSR-PR		Totals
	CALTRANS	<u>TRACY</u>	
CITY	0	700,000	700,000
CITY	130,000	0	130,000
<b>Totals</b>	0	830,000	830,000



## **Funding**

1. If there are insufficient funds available in this AGREEMENT to place the PROJECT right-of-way in a safe and operable condition, the appropriate IMPLEMENTING AGENCY will fund these activities until such time as PARTIES amend this AGREEMENT.

That IMPLEMENTING AGENCY may request reimbursement for these costs during the amendment process.

2. If there are insufficient funds in this AGREEMENT to implement the obligations and responsibilities of this AGREEMENT, including the applicable commitments and conditions included in the PROJECT environmental documentation, permits, agreements, and/or approvals that are in effect at a time that WORK stops, each PARTY accepts responsibility to fund their respective WORK until such time as PARTIES amend this AGREEMENT.

Each PARTY may request reimbursement for these costs during the amendment process.

3. Notwithstanding the terms of this AGREEMENT, PARTIES agree to abide by the funding guidelines for all contributed funds that are programmed and allocated by the CTC.

## **ICRP Rate**

4. Per the State Budget Act of 2012, Chapter 603, amending item 2660-001-0042 of Section 2.00, the cost of any engineering support performed by CALTRANS towards any local government agency-sponsored PSR-PR project will only include direct costs. Indirect or overhead costs will not be applied during the development of the PSR-PR document.

## **Invoicing and Payment**

5. PARTIES will invoice for funds where the SPENDING SUMMARY shows that one PARTY provides funds for use by another PARTY. PARTIES will pay invoices within forty-five (45) calendar days of receipt of invoice when not paying with Electronic Funds Transfer (EFT). When paying with EFT, CITY will pay invoices within five (5) calendar days of receipt of invoice.

6. If [LOCAL AGENCY] has received EFT certification from CALTRANS, then [LOCAL AGENCY] will use the EFT mechanism and follow all EFT procedures to pay all invoices issued from CALTRANS.
7. When a PARTY is reimbursed for actual cost, invoices will be submitted each month for the prior month's expenditures. After all PROJECT COMPONENT WORK is complete, PARTIES will submit a final accounting of all PROJECT COMPONENT costs. Based on the final accounting, PARTIES will invoice or refund as necessary to satisfy the financial commitments of this AGREEMENT.

*Project Initiation Document (PID)*

CALTRANS will invoice CITY for an initial deposit of \$20,000 after execution of this AGREEMENT. This deposit represents the estimated cost of an average two (2) months of CALTRANS' WORK. After the first month of WORK, CALTRANS will invoice on monthly basis, and CITY will pay.

CALTRANS will not begin WORK until CALTRANS receives the initial deposit.

## Agenda Item 1.M

### RECOMMENDATION

**Staff recommends that the City Council adopt a resolution (1) appropriating \$340,000 from South San Joaquin County Fire Authority for the construction of the Fire Training Facility at the NEI Reservoir, (2) awarding a construction contract to GradeTech Inc. of Livermore, California, in the amount of \$3,441,656.01, (3) authorizing the City Manager to approve change orders up to the contingency amount of \$172,083, if needed, and (4) approving a total not-to-exceed Project budget of \$3,805,780.01.**

### EXECUTIVE SUMMARY

This agenda item seeks approval of a resolution appropriating \$340,000 from the South San Joaquin County Fire Authority (SSJCFA) for the construction of the Fire Training Facility at the NEI Reservoir, Capital Improvement Project (CIP) 71109, (Project). Concurrently, staff is requesting the City Council to award a construction contract for the Project to GradeTech Inc., of Livermore, California (Contractor), in the amount of \$3,441,656.01; authorize the City Manager to approve change orders up to the amount of \$172,083; and approve a total not-to-exceed Project budget of \$3,805,780.01. Staff has determined that the Contractor is the lowest responsible bidder of all the bids received pursuant to the notice for competitive bids advertised publicly on May 24, 2024.

### BACKGROUND AND LEGISLATIVE HISTORY

On September 7, 1999, the City of Tracy (City) and the Tracy Rural Fire Protection District (TRFPD) entered into a Joint Exercise of Powers Agreement (JPA) to consolidate fire services in the south San Joaquin County area, thereby creating the South County Fire Authority (SCFA). Over time, the SCFA jurisdictional area was expanded by various resolutions, and the TRFPD raised concerns about its role in the governance of the SCFA. The San Joaquin Local Agency Formation Commission's (LAFCO) 2011 Municipal Service Review also expressed concerns over the governance of the SCFA as it related to annexation without detachment, confusion over jurisdictional boundaries, and the impact on County revenues.

On February 20, 2018, the City and TRFPD reevaluated the SCFA's governance and terms of the JPA and executed the South County Fire Dissolution Agreement dissolving the SCFA and executed a new Joint Powers Agreement (JPA) of the South San Joaquin County Fire Authority (SSJCFA) between the Member Agencies, the City and the TRFPD, to address these concerns. This new JPA provides personnel and fire protection services within the jurisdictional boundaries of the City and the TRFPD. In Section 4, of the JPA entitled "Facilities and Equipment", paragraph 4.1 defines Member Agency Ownership as follows: Member Agencies shall, as a condition of membership, make available all its stations, apparatus, and equipment to provide fire protection services. Member Agencies shall be responsible for constructing and replacing fire stations within their respective jurisdiction. Additionally, Section 1, of the JPA entitled "Purpose and Powers", paragraph 1.2(a) states in part that one of the duties and responsibilities of the SSJCFA is to provide and manage a training program to provide these services. The Project was designed by the Member Agencies to construct a new fire training facility within the jurisdictional area of the SSJCFA to provide these services.

In 2013, the Citywide Public Safety Master Plan (CPSMP) recognized the need for a specialized fire training facility within the SSJCFA jurisdictional service area. The CPSMP designated the Police Gun Range on South Tracy Boulevard for the fire training site. The Project's California Environmental Quality Act (CEQA) clearance was to be completed as part of the 2013 CPSMP and the associated Nexus Study for that location. On February 5, 2019, the City Council approved Resolution No. 2019-013, creating CIP 71109, for the Project for the fire training facility at the City owned NEI Reservoir property located on Chrisman Road. The Project included the construction of a fire training facility to meet the future fire training needs of the SSJCFA. After the 2013 CPSMP adoption, the SSJCFA recommended that an alternate location on Chrisman Road at the NEI Reservoir would be more suitable.

Engineering began Project design for the Chrisman Road location with the understanding that the CPSMP update, and the associated Nexus Study would address the location change. The design was completed in mid-2020 to include a water infrastructure and a training tower. The Engineer's Estimate was higher than the proposed budget. In late fall 2021, the funding gap was addressed, and the bid documents were finalized. On January 21, 2022, and January 28, 2022, the Project was advertised for competitive bids. On February 22, 2022, bids were received and publicly opened at 2:00 p.m. At the time the Project was advertised, it was anticipated that the CPSMP update and the associated Nexus Study that includes the Chrisman Road project site would be presented for adoption by the City Council early in 2022, providing the required environmental review clearance under the CEQA for the Project. However, the adoption of all the infrastructure master plans was delayed, rendering the Project without CEQA clearance.

On August 16, 2022, the City Council approved Resolution No. 2022-112 rejecting all bids that were received so that the City could process a project-specific and site-specific CEQA document and clearance.

On October 4, 2022, the County approved funding in the amount of \$2,599,234 of American Rescue Plan Act funds for a portion of the Project costs, as was requested by the SSJCFA. The total committed funds in the CIP increased to approximately \$3.6 million.

In January 2023, the City began collaborating with SSJCFA and Shack & Company, Inc., contracted by SSJCFA, to expand the scope of the Project, creating both a set of Phase 1 Project plans and a set of Project Master Plans that enlarged the footprint from the original two acres to 5.13 acres. The Project Master Plan includes the addition of a classroom, parking lot, and other features. On November 20, 2023, the SSJCFA designated the City as the lead agency on the Project.

On September 15, 2023, the City advertised a 30-day public review period for the Initial Study/Negative Declaration (IS/ND) for the Project Master Plan. On October 17, 2023, the Project-specific environmental analysis and clearance were completed at the end of the public comment period. On May 21, 2024, the City Council conducted a public hearing and, upon its conclusion, approved Resolution No. 2024-075 and adopted the IS/ND and authorized staff to file the Notice of Determination with the San Joaquin County Clerk's Office, completing the environmental document process for CIP 71109, Fire Training Facility Master Plan in compliance with CEQA.

On May 21, 2024, the City Council also adopted Resolution No. 2024-076 that (a) Designated 5.13 acres of the City-owned property for the Project; (b) Authorized the execution of a Memorandum of Understanding with San Joaquin County for the award of \$2,599,234 of

American Rescue Plan Act (ARPA) grant funds for Phase 1 of the Project costs; and (c) Appropriated the grant funds to the Project. The ARPA funding is a grant reimbursement, such that the County will reimburse the City upon delivery of invoices.

The Project has been designed to be constructed in phases that are easily expanded to accommodate future fire training amenities and facilities needed by the SSJCFA and the region. As additional funding becomes available, the training facilities will be expanded to incorporate the following amenities described in the Project Master Plan: an office and classroom building, an equipment storage building, a training tower, a 40-space parking lot, a radio communications tower, and a prop training field that will include training props and equipment for training scenarios such as rail car accidents, hazardous materials spills, confined spaces, open trenches, vehicle extractions, heavy objects, and structural collapse.

This construction contract award request is for Phase 1 of the Project Master Plan which includes the training tower, a parking lot, a storm drain system and temporary storm retention basin, an automated security gate with chain-link perimeter fencing, utilities, and an empty training field as shown in Phase 1 of the Project plans. This construction contract will also install the classroom building foundation, sidewalk, water service, sewer vault, and electrical services needed for the future mobile modular office and classroom building. The classroom building design is complete, and the building will be purchased separately when additional funding is available from future grants and future Fire Public Safety Facility Master Plan Fees.

On August 14, 2024, the SSJCFA Board authorized the allocation of \$340,000 from SSJCFA funds to Phase 1 of the Project to help cover project costs. Future phases of the Project are anticipated to be funded through future grants and future Fire Public Safety Facility Master Plan Fees.

**ANALYSIS**

Phase 1 of the Project was advertised for competitive bids by public notice on May 24, 2024, and May 31, 2024. Bids were received and publicly opened in City Hall, Conference Room 203, and via Microsoft Teams virtual meeting at 2:00 p.m. on Monday, July 15, 2024, with the following results:

<b>Contractor</b>	<b>Bid Amount</b>
GradeTech Inc., Livermore, CA	\$3,441,656.01
GCJ Inc., Tracy, CA	\$4,486,201.05
Swierstok Enterprise, Inc. dba Pro Builders, Orangevale, CA	\$4,988,310.00
Saboo Inc., Brentwood, CA	\$6,097,752.00

In accordance with Tracy Municipal Code Section 2.20.260 and the California Public Contract Code Section 22032, staff performed a subsequent bid analysis of all bids and determined that the lowest responsible bidder was GradeTech Inc. of Livermore, California. Staff further verified that the bidder has the appropriate contractor's license in active standing with the State of California and is deemed responsible.

The total estimated cost of Phase 1 of the Project, if awarded to the lowest bidder, is as follows:

Construction Bid	\$ 3,441,656.01
Construction Contingency (5%)	\$ 172,083.00
Construction Management (2.5%)	\$ 86,041.00
<u>Estimated Habitat Mitigation Fee</u>	<u>\$ 106,000.00</u>
Estimated Construction Cost	\$ 3,805,780.01

**FISCAL IMPACT**

On May 21, 2024, the City Council appropriated ARPA grant funds from San Joaquin County in the amount of \$2,599,234. Staff recommends that the City Council appropriate \$340,000 in additional funding from SSJCFA. With grant funding and appropriated funds, sufficient funds will exist to complete Phase 1 of the Project as follows:

<b>Funding Source</b>	<b>Budget</b>	<b>Expenses</b>	<b>Balance</b>
South San Joaquin County Fire Authority	\$ 340,000	\$ -	\$ 340,000
Tracy Rural Fire Protection District	\$ 275,625	\$ -	\$ 275,625
369 - TIMP Public Safety Fire	\$ 478,311	\$ -	\$ 478,311
605 - Equipment Replacement	\$ 450,000	\$ 309,418	\$ 140,582
<u>San Joaquin County (ARPA)</u>	<u>\$ 2,599,234</u>	<u>\$ -</u>	<u>\$ 2,599,234</u>
<u>Current Budget</u>	<u>\$ 4,143,170</u>	<u>\$ 309,418</u>	<u>\$ 3,833,752</u>

**PUBLIC OUTREACH / INTEREST**

The public outreach for this Project occurred through the environmental review process conducted under CEQA.

**COORDINATION**

The Engineering Division coordinated with the South San Joaquin County Fire Authority, the Tracy Rural Fire Protection District, and San Joaquin County.

**CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) DETERMINATION**

The City is the lead agency for CEQA review of the Project. In March 2023, the environmental consultant De Novo Planning Group, Inc. prepared an Initial Study/Negative Declaration (IS/ND) for the Project. The Draft IS/ND was posted on the City’s website from September 15, 2023, to October 16, 2023, for comments in accordance with CEQA requirements. Furthermore, the notice was published in Tracy Press on September 15, 2023, and sent to interested agencies and fronting residents for their review and comment. The Notice of Completion was submitted to the State Clearinghouse (No. 2023090350) for the IS/ND to begin the requisite review process. The IS/ND determined that the proposed Project will not have significant impacts on the environment.

On May 21, 2024, the City Council conducted a public hearing and upon its conclusion adopted the IS/ND and authorized staff to file the Notice of Determination with the San Joaquin County Clerk’s Office, completing the environmental document process for CIP 71109 in compliance

with CEQA. The Notice of Determination has been filed with the San Joaquin County Clerk's Office.

**STRATEGIC PLAN**

This agenda item supports the City of Tracy's Public Safety Strategic Priority, which provides support for emergency operations preparedness, response, and recovery.

**ACTION REQUESTED OF THE CITY COUNCIL**

Staff recommends that the City Council, by resolution, (1) appropriate \$340,000 from South San Joaquin County Fire Authority for the construction of the Fire Training Facility at the NEI Reservoir, (2) award a construction contract to GradeTech Inc. of Livermore, California, in the amount of \$3,441,656.01, (3) authorize the City Manager to approve change orders up to the contingency amount of \$172,083, if needed, and (4) approve a total not-to-exceed Project budget of \$3,805,780.01.

Prepared by: D'Evelyn Spekner, Associate Engineer

Reviewed by: Sharat Bandugula, PE, Senior Civil Engineer  
Koosun Kim, PE, City Engineer  
Sara Castro, Finance Director  
Bijal M. Patel, City Attorney  
Karin Schnaider, Assistant City Manager

Approved by: Midori Lichtwardt, City Manager

**ATTACHMENTS**

Attachment A – Location Map

Attachment B – MOU between San Joaquin County and City of Tracy South San Joaquin Fire Training Facility Project: CAO-22-695

Attachment C – Resolution 2018-023 and the Joint Powers Agreement of the South San Joaquin County Fire Authority with Addendum No. 1

# CITY OF TRACY



LOCATION MAP



**Attachment B**



**MEMORANDUM OF UNDERSTANDING  
BETWEEN  
SAN JOAQUIN COUNTY  
AND  
CITY OF TRACY  
SOUTH SAN JOAQUIN FIRE TRAINING FACILITY PROJECT: CAO-22-695**

**Funding Amount Approved: \$2,599,234**

PARTIES:	COUNTY:	County of San Joaquin County Administrator 44 N. San Joaquin Street, Suite 640 Stockton, CA 95202  Contact: Sandra Regalo Phone: (209) 468-3203 Email: sregalo@sjgov.org
	CITY:	City of Tracy Employer ID #: 94-6000442 333 Civic Center Plaza Tracy, CA 95376  Contact: Koosun Kim Phone: (209) 831-6400 Email: Koosun.Kim@cityoftracy.org

This Memorandum of Understanding ("MOU") is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2024, by and between City of Tracy, a California General Law City ("City"), and San Joaquin County, a political subdivision of the State of California, through its County Administrator ("COUNTY").

## **RECITALS**

### **Overview**

The South San Joaquin County Fire Authority (SSJCFA) is Joint Powers Authority originally formed in 1999 by the consolidation of the Tracy Rural Fire Protection District and the City of Tracy Fire Department. With a population of over 120,000 residents, SSJCFA is a full-service fire agency that provides all risk response to the County's largest fire service response area covering 170 square miles of urban, suburban, and rural areas. SSJCFA staffs seven fire stations with seven Advanced Life Support (ALS) engine companies and one ALS ladder truck company. SSJCFA staffs one of twelve State OES Type I Hazardous Materials Teams. SSJCFA is comprised of a uniformed staff of 86 personnel and a total staff of 100 personnel and responds annually to more than 10,000 emergencies.

The 2013 Citywide Public Safety Master Plan (CPSMP) identified the need for construction of a Fire Training Facility at the location of the Police Gun Range on South Tracy Boulevard and was included in the Nexus Study for that location. Subsequent to the adoption of the 2013 CPSMP, the South San Joaquin County Fire Authority (SSJCFA) recommended an alternate and more suitable location at the NEI Reservoir on Chrisman Road. On February 5, 2019, the Tracy City Council approved Resolution No. 2019-013 creating CIP 71109 for the Fire Training Tower Apparatus at the NEI Reservoir (Project).

In the early design phase of the project, a key objective was to develop a site plan that was capable of expansion in order to accommodate additional fire training props and facilities that is capable of meeting the future needs of the SSJCFA.

On October 4, 2022, the San Joaquin County Board of Supervisors approved the use of \$2,599,234 of American Rescue Plan Act (ARPA) funds toward the Project. As part of Phase 1 and Phase 2 of the fire training facility development process, the City of Tracy agreed to allocate a 5.13 acre site, create a city CIP, and manage the overall project. The City of Tracy is the lead agency on the project. CEQA, Geotech studies, and construction drawings have been completed.

COUNTY and CITY mutually desire to enter into this MOU to memorialize the rights, duties, and obligations of each toward the other in connection with the Project that the CITY will construct for the benefit of the CITY, regional public safety entities, and educational entities that include:

- Delta College – EMT and Fire Science Classes
- Tracy Unified School District – Fire Service Classes
- Defense Logistics Agency Fire Department – Firefighter Training
- Mountain House Fire Department – Firefighter Training
- Cal Fire-Firefighter Training, regional meetings
- Tracy Police Department – Law Enforcement classroom and SWAT tactical training
- San Joaquin County Emergency Management – meetings and classroom training
- California Highway Patrol – Classroom training and meetings

**City of Tracy**

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**Project: South San Joaquin County Fire Training Facility**

South San Joaquin County Fire Authority (SSJCFA) jurisdictional responsibilities include significant county, state, and federal infrastructure that requires specialized training. SSJCFA is one of the largest fire agencies in California that does not have a training facility within or near their jurisdictional boundaries. The SSJCFA is requesting county, state, and federal funding for this project due to the unique fire protection challenges in providing emergency response capabilities to diverse and expansive county, state, and federal infrastructure.

County ARPA funding, combined with City of Tracy and Tracy Rural Fire District funding, will be used to complete the following aspects of the Project:

- Paving of 1.75 of the 5.13 acre site.
- Electrical, water and storm drain infrastructure.
- Installation of 2 fire hydrants.
- Fencing around the 5.13 acre site that includes an electric vehicle access gate.
- Purchase and installation of a 2,880 square foot pre-fabricated classroom facility that will include 2 restrooms, 40 person classroom, 3 offices, reception area, kitchenette, and an EMS clinical area.
- Erection of a pre-fabricated three story fire training tower that was purchased through a FEMA facilitated Assistance to Firefighter Grant.

The original Phase 1 of the Project (\$1.2 million) was funded by the Tracy Rural Fire District and the City of Tracy. The City was in the process of issuing the Requests for Proposals for construction through the competitive bidding process when San Joaquin County awarded \$2,599,234 of American Recovery Plan Act (ARPA) funding to South San Joaquin Fire Authority to expand Phase 1 of the Project. The approved budget for the construction of expanded Phase 1 Fire Training Facility is now approximately \$3.7 million as shown in the following table. The County agrees to contribute \$2,599,234 towards the Project on a reimbursement basis.

**\*\*\* FIRE TRAINING FACILITY at NEI RESERVOIR - PHASE 1\*\*\***  
**\*\*\*PRELIMINARY CONSTRUCTION COST ESTIMATE \*\*\***  
 AS OF OCTOBER 20,2023

SCHACK & COMPANY, INC.  
 1025 Central Avenue  
 Tracy, California 95376

Job No: 22.054  
 Estimate Date: October 20, 2023  
 Estimated By: Staff

ITEM DESCRIPTION	QUANTITY	UNIT COST	ITEM TOTAL
<b>A SITE WORK:</b>			
Earthworks	1 EA	\$196,075.00 LS	\$196,075.00
Concrete Prep to Subgrade	1 EA	\$56,680.00 LS	\$56,680.00
Paving	1 EA	\$348,145.00 LS	\$348,145.00
Concrete - Site Only	1 EA	\$57,860.00 LS	\$57,860.00
Signage & Striping	1 EA	\$9,050.00 LS	\$9,050.00
		SUBTOTAL:	\$667,810.00
<b>B UTILITES:</b>			
Wet Utilities	1 EA	\$152,650.00 LS	\$152,650.00
Domestic Water & Irrigation	1 EA	\$37,570.00 LS	\$37,570.00
Electrical - PG&E & Transformer Pad	1 EA	\$275,000.00 LS	\$275,000.00
		SUBTOTAL:	\$465,220.00
<b>C FIRE SERVICE IMPROVEMENTS:</b>			
Fire Systems	1 EA	\$235,970.00 LS	\$235,970.00
Training Tower Foundation	1 EA	\$64,805.00 LS	\$64,805.00
Tower Apparatus Erection & Assembly	1 EA	\$272,935.00 LS	\$272,935.00
Tower Apparatus Additional Steel Members	1 EA	\$20,880.00 LS	\$20,880.00
		SUBTOTAL:	\$594,590.00
<b>D MISCELLANEOUS:</b>			
Modular Building & Foundation	1 EA	\$1,000,000.00 LS	\$1,000,000.00
Traffic Control	1 EA	\$30,475.00 LS	\$30,475.00
SWPPP - NOI	1 EA	\$20,880.00 LS	\$20,880.00
SWPPP - Install & Maintain	1 EA	\$13,920.00 LS	\$13,920.00
Chain-link Fence, Man-gate & 20' Slide-gate	1 EA	\$254,190.00 LS	\$254,190.00
Protective Pipe Bollards	1 EA	\$5,568.00 LS	\$5,568.00
Flag Pole	1 EA	\$6,500.00 LS	\$6,500.00
Testing	1 EA	\$5,415.00 LS	\$5,415.00
Surveyor	1 EA	\$6,060.00 LS	\$6,060.00
Supervision	1 EA	\$59,786.00 LS	\$59,786.00
Temporary Facilities	1 EA	\$2,900.00 LS	\$2,900.00
Insurance	1 EA	\$52,950.00 LS	\$52,950.00
Bonds	1 EA	\$22,040.00 LS	\$22,040.00
		SUBTOTAL:	\$1,480,684.00

**COST SUMMARY**

	<b>SITE WORK:</b>	<b>\$667,810.00</b>
	<b>UTILITES:</b>	<b>\$465,220.00</b>
	<b>FIRE SERVICE IMPROVEMENTS:</b>	<b>\$594,590.00</b>
	<b>MISCELLANEOUS:</b>	<b>\$1,480,684.00</b>
	<b>TOTAL ESTIMATED COST (Without Contingencies):</b>	<b>\$3,208,304.00</b>
	<b>10% CONTINGENCY:</b>	<b>\$320,830.40</b>
	<b>5% INSPECTION FEE:</b>	<b>\$160,415.20</b>
	<b>TOTAL ESTIMATED PHASE 1 CONSTRUCTION COSTS:</b>	<b>\$3,689,549.60</b>

NOW, THEREFORE, COUNTY and CITY do hereby mutually agree as follows:

I. PURPOSE OF THE MOU

On October 4, 2022, the COUNTY Board of Supervisors approved funding in the form of reimbursement of \$2,599,234 for a capital project as requested by the South San Joaquin County Fire Authority.

Per the guidance, issued by the U.S. Department of the Treasury, for the Coronavirus State and Local Fiscal Recovery Funds (SLFRF) Final Rule, SLFRF funds may be used for permissible capital investments. Under the section, Capital Expenditures in General Provisions: other and eligible uses include the acquisition of equipment for COVID-19 prevention and treatment, including ventilators, ambulances, and other medical and emergency services; acquisition of emergency response equipment; and support for operations and maintenance of existing equipment and facilities.

The purpose of this MOU is to memorialize the use of funding to be provided to the CITY pursuant to COUNTY Board Order B-22-695 approved on October 4, 2022 for the Project described in the Recital above.

II. ORDER OF PRECEDENCE

Each of the items listed below is incorporated into this MOU by reference. In the event of any inconsistency in this MOU, the inconsistency shall be resolved by giving precedence in the following order:

1. Applicable Federal and State of California statutes and regulations.
2. This MOU and its Exhibits:

Exhibit 1: San Joaquin County Board Order B-22-695

Exhibit 2: City of Tracy Request for Funds

Exhibit 3: W-9/Employer ID #: 94-6000442

Exhibit 4: EXHIBIT Z – ADDITIONAL FEDERAL GRANT CLAUSES

III. SCOPE OF SERVICES

CITY agrees to provide support and other services to the San Joaquin County community and shall utilize the COUNTY funding described herein for the Project described in the Recitals above.

CITY shall perform its services and work in accordance with currently approved methods and standards of practice in the CITY'S professional specialty.

IV. GENERAL PROVISIONS

A. Term of Agreement:

This Agreement shall commence on the date of execution through the 31st day of December 2026, unless said work is completed on a date prior thereto or unless terminated earlier as provided herein or extended upon mutual agreement.

**B. Interpretation:**

This MOU shall not be interpreted in favor of any Party by virtue of said Party not having prepared this MOU.

If any time period provided for in this MOU ends on a day other than a Business Day, the time period shall be extended to the next Business Day.

**C. Compensation:**

1. COUNTY agrees to pay the CITY, on a reimbursement basis, the sum of **TWO MILLION FIVE HUNDRED NINETY-NINE THOUSAND, TWO HUNDRED THIRTY-FOUR DOLLARS** (\$2,599,234).

a. Copies of all supporting documents for the Project (including, but not limited to, contractor/concessionaire quotes, agreements, invoices, and purchase receipts) shall be submitted by CITY to COUNTY no later than December 31, 2026, via email to [ARPAfunds@sigov.org](mailto:ARPAfunds@sigov.org).

b. Any funds committed to CITY pursuant to this MOU that are not used for the approved Project by December 31, 2026 shall be returned to COUNTY no later than December 31, 2026.

2. COUNTY can monitor the CITY's performance periodically throughout the term of this MOU, including reconciliation of payments to actual cost, to ensure that the Project is achieving satisfactory performance in relation to the objectives stated in the Request for Funds.

3. CITY agrees to maintain all program, fiscal, statistical, and management records and make such records available for inspection by COUNTY representatives upon request as described below. The records to be kept and maintained in connection with this MOU shall include any and all costs associated with the Project. Failure to promptly comply with any COUNTY request for records and/or inspection pursuant to this Section IV shall constitute a breach of this MOU.

4. CITY agrees to maintain all records pertaining to service delivery and fiscal and administrative controls for a minimum of seven (7) years after final payment has been made or until all pending County, State, and Federal audits are completed, whichever is later.

Upon request, the CITY shall make these records available to COUNTY, by way of all authorized County personnel, within three (3) working days of the request for such records.

5. CITY shall account for all of the expenditures paid by the COUNTY under this MOU and agrees that CITY financial records shall contain itemized records of all costs related to this MOU. The CITY agrees to follow Generally Accepted Accounting Principles (GAAP) to support COUNTY paid expenditures.

6. Total payments under this MOU shall not exceed **TWO MILLION FIVE HUNDRED NINETY-NINE THOUSAND, TWO HUNDRED THIRTY-FOUR DOLLARS** (\$2,599,234) for the term of this MOU, as set forth in Section IV (A), above.

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D. Invoicing:

CITY shall submit invoice(s) to the County of San Joaquin, County Administrator, via email to [ARPAfunds@sjgov.org](mailto:ARPAfunds@sjgov.org). All invoices must reference MOU ID # CAO-22-695 and the service(s) performed.

E. Indemnification:

CITY shall, at its expense, defend, indemnify, and hold harmless the COUNTY and its employees, officers, directors, contractors, and agents from and against any losses, liabilities, damages, penalties, costs, fees, including without limitation reasonable attorneys' fees and expenses from any claim or action, including, without limitation for bodily injury or death, arising from or pertaining to the subject matter of this MOU.

CITY shall hold the COUNTY, its officers, and employees, harmless from liability, of any nature or kind on account of the use of any copyrighted or un-copyrighted composition, secret process, patented or un-patented invention articles, or appliance furnished or used under this Agreement.

F. Insurance:

CITY shall obtain and maintain continuously in effect at all times during the term of this Agreement, at CITY's sole expense, general liability insurance protecting COUNTY, its officers, employees, and agents against liability which may accrue against COUNTY by reason of CITY's use of funds pursuant to this MOU. Such insurance must be in the amount of not less than One Million Dollars (\$1,000,000) combined single limits coverage for personal injury, death, or property damage, and shall name the COUNTY and its agents as coinsured thereunder. In addition, the policy shall provide for a thirty (30) day notice to the COUNTY prior to cancellation or material change of the insurance policy. CITY shall promptly supply the COUNTY with a certificate of insurance evidencing compliance with the above requirements.

CITY's employees, contractors, and agents shall be fully and adequately covered by CITY's Worker's Compensation Insurance, as required by law, and shall submit to the COUNTY a certificate of insurance evidencing compliance with such insurance requirements upon execution of this agreement. CITY shall not commence or continue operations on the Premises without the required Worker's Compensation Insurance being in force.

G. Notices:

Any notice required to be given pursuant to the terms and conditions hereof shall be in writing, and shall be effected by one of the following methods: personal delivery, prepaid Certified First-Class Mail, or prepaid Priority Mail with delivery confirmation. Unless otherwise designated in writing by either party, such notice shall be mailed to the addresses shown on page one (1) of this MOU.

H. Termination:

1. **Termination for Cause:** If the CITY breaches or habitually neglects its duties under this MOU without curing such breach or neglect upon fifteen (15) working days written notice, the COUNTY may, by written notice, immediately terminate this MOU without

prejudice to any other remedy to which the COUNTY may be entitled, either at law, in equity, or under this MOU.

I. Conflict of Interest Statement:

CITY covenants that the CITY, its officers, employees, or their immediate family presently has no interest, including, but not limited to, other projects or independent contracts, and shall not acquire any such interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this MOU. CITY further covenants that in the performance of this MOU, no person having any such interest shall be employed or retained by the CITY under this MOU. CITY shall not hire COUNTY's employees to perform any portion of the work or services provided for herein, including secretarial, clerical, and similar incidental services, except upon the written approval of the COUNTY. Performance of services under this MOU by associates or employees of the CITY shall not relieve the CITY from any responsibility under this MOU.

J. Force Majeure:

It is agreed that neither party shall be responsible for delays in delivery, acceptance of delivery, or failure to perform when such delay or failure is attributable to Acts of God, war, strikes, riots, lockouts, accidents, rules, or regulations of any governmental agencies or other matters or conditions beyond the control of either the CITY or the COUNTY.

K. Compliance:

CITY shall comply with all Federal, State, and local laws, regulations, and requirements necessary for the provision of work and services. Furthermore, the CITY shall comply with all laws applicable to wages and hours of employment, occupational safety, fire safety, health, and sanitation, including, but not limited to, payment of prevailing wage pursuant to California law. CITY shall maintain current throughout the life of this MOU, all permits, licenses, certificates, and insurances that are necessary for the provision of contracted services.

L. Disputes and Remedies:

1. At the COUNTY's sole discretion, COUNTY may elect to raise a dispute, claim, or breach by submitting it, in writing, to CITY. Such dispute, claim, or breach would include conditions and time constraints required of CITY to remedy.
2. Neither the pendency of a dispute, claim, or breach nor its consideration will excuse the parties from full and timely performance in accordance with terms of this MOU.
3. Any legal action or proceeding with respect to this MOU shall be brought in the courts of the State of California for the County of San Joaquin or the courts of the United States of America for the Eastern District of California, and in no other courts. CITY hereby accepts such jurisdiction and venue and generally and unconditionally waives any objection, including, without limitation, any objection to the laying of venue or based on the grounds of forum non-convenient. The provision of this paragraph shall survive the expiration or other termination of this MOU regardless of the cause of such termination.



- 4. In any action brought by a party to enforce the terms of this MOU, the prevailing party shall be entitled to reasonable attorney's fees and costs, including the reasonable value of any services provided by in-house counsel. The reasonable value of services provided by either party's counsel shall be capped at the hourly rate charged by Deputy County Counsel IV attorneys in the office of the County Counsel of San Joaquin County, California.

M. Entire MOU and Modification:

- 1. This MOU and all documents incorporated by reference herein supersede all previous agreements between the Parties hereto, either oral or written, and constitute the entire understanding of the Parties with respect to the subject matter described herein. No changes, amendments, or alterations shall be effective unless in writing and signed by both Parties.
- 2. If any term of the MOU is found to be illegal, invalid, or unenforceable under applicable law, such term shall be excluded to the extent of such illegality, invalidity, or unenforceability; all other terms of this MOU shall remain in full force and effect; and, to the extent permitted and possible, the illegal, invalid, or unenforceable term shall be replaced by a term that is legal, valid, and enforceable and that comes closest to expressing the intention of such illegal, invalid, or unenforceable term.

IN WITNESS WHEREOF, COUNTY and CITY have executed this MOU effective on the day and year first written above.

City of Tracy  
333 Civic Center Plaza  
Tracy, CA 95376

COUNTY OF SAN JOAQUIN, a  
political subdivision of  
the State of California

By: \_\_\_\_\_  
Midori Lichtwardt  
City Manager

By: \_\_\_\_\_  
Sandra Regalo  
Interim County Administrator

Date: \_\_\_\_\_

Date: \_\_\_\_\_

APPROVED AS TO FORM  
Office of County Counsel

By: \_\_\_\_\_  
Jonathan King  
Deputy County Counsel

## EXHIBIT Z – ADDITIONAL FEDERAL GRANT CLAUSES

### APPENDIX II TO PART 200: CONTRACT PROVISIONS FOR NON-FEDERAL ENTITY CONTRACTS UNDER FEDERAL AWARDS

Please review and check the appropriate boxes to determine the applicability of provisions to the federally funded contract or purchase order. In the event of any contradictions or inconsistencies between these provisions and the provisions of the Agreement itself, the terms of this Exhibit Z shall control.

**§200.216 PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT**

(a) Recipients and subrecipients are prohibited from obligating or expending loan or grant funds to:

(1) Procure or obtain;

(2) Extend or renew a contract to procure or obtain; or

(3) Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115-232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).

(i) For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).

(ii) Telecommunications or video surveillance services provided by such entities or using such equipment.

(iii) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

(b) In implementing the prohibition under Public Law 115-232, section 889, subsection (f), paragraph (1), heads of executive agencies administering loan, grant, or subsidy programs shall prioritize available funding and technical support to assist affected businesses, institutions and organizations as is reasonably necessary for those affected entities to transition from covered communications equipment and services, to procure replacement equipment and services, and to ensure that communications service to users and customers is sustained.

**DEBARMENT AND SUSPENSION – Executive Orders 12549 and 12689 (All)**

- a. This contract is a covered transaction for purposes of 2 C.F.R. pt. 180.22 and 2 C.F.R. pt. 3000. As such the Contractor is required to verify that none of the Contractor, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).
- b. The Contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.
- c. This certification is a material representation of fact relied upon by San Joaquin County. If it is later determined that the Contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the primary recipient and San Joaquin County, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.
- d. The Bidder agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The Bidder further agrees to include a provision requiring such compliance in its lower tier covered transactions.

**§200.322 DOMESTIC PREFERENCES FOR PROCUREMENTS**

(a) As appropriate and to the extent consistent with law, the non-Federal entity should, to the greatest extent practicable under a Federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subawards including all contracts and purchase orders for work or products under this award.

(b) For purposes of this section:

(1) “Produced in the United States” means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.

(2) “Manufactured products” means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

**§200.323 PROCUREMENT OF RECOVERED MATERIALS (All)**

- a. In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired
  1. Competitively within a timeframe providing for compliance with the contract performance schedule;
  2. Meeting contract performance requirements; or
  3. At a reasonable price.

- b. Information about this requirement, along with the list of EPA- designated items, is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.
- c. The Contractor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act."

**The contract is funded through a FEMA grant or cooperative agreement. If checked, Provisions 1 through 5 apply.**

**1. Access to Records. (All)**

- a. The Contractor agrees to provide the San Joaquin County, the primary recipient of the federal funding, if any, the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.
- b. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
- c. The Contractor agrees to provide the FEMA Administrator or his authorized representatives' access to construction or other work sites pertaining to the work being completed under the contract.

**2. DHS Seal, Logo, and Flags. (All)**

The Contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval.

**3. Compliance with Federal Law, Regulations, and Executive Orders. (All)**

This is an acknowledgement that FEMA financial assistance will be used to fund the contract only. The Contractor will comply will all applicable federal law, regulations, executive orders, FEMA policies, procedures, and directives.

**4. No Obligation by the Federal Government. (All)**

The Federal Government is not a party to this contract and is not subject to any obligations or liabilities to the non-Federal entity, Contractor, or any other party pertaining to any matter resulting from the contract.

**5. Fraud and False or Fraudulent Statements or Related Acts. (All)**

The Contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the Contractor's actions pertaining to this contract.

**EQUAL EMPLOYMENT OPPORTUNITY (Construction Work > \$2,000)**

- a. The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for

- training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
- b. The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, or national origin.
  - c. The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Contractor's commitments under this Provision, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
  - d. The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
  - e. The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
  - f. In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions as may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
  - g. The Contractor will include the portion of the sentence immediately preceding paragraph (a) and the provisions of paragraphs (a) through (g) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance, provided, however, that in the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

**DAVIS-BACON ACT. 40 U.S.C. 3141-3148 (Construction Contracts > \$2,000)**

- a. The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
- b. The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, or national origin.
- c. The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Contractor's commitments under this Provision, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

- d. The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- e. The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- f. In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions as may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- g. The Contractor will include the portion of the sentence immediately preceding paragraph (a) and the provisions of paragraphs (a) through (g) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance, provided, however, that in the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

**COPELAND “ANTI-KICKBACK” ACT. (Construction Contracts > \$2,000)**

- a. Contractor. The Contractor shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3 as may be applicable, which are incorporated by reference into this contract.
- b. Subcontracts. The Contractor or subcontractor shall insert in any subcontracts the clause above and such other clauses as the Federal Emergency Management Agency (“FEMA”) may by appropriate instructions require, and a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.
- c. Breach. A breach of the contract clauses above may be grounds for termination of the contract, and for debarment as a contractor and subcontractor as provided in 29 C.F.R. § 5.12.

**TERMINATION FOR CAUSE AND CONVENIENCE. (Contracts > \$10,000)**

- a. Termination for cause. The County reserves the right to cancel this contract if goods or services are not delivered as directed within the time specified. In case of default by Contractor, the County may procure the articles or services from other sources and may deduct from any monies due, or that may thereafter become due to the Contractor, the difference between the price named in the Bid and actual cost thereof to the County shall be considered the prevailing market price at the time such purchase is made. Periods of performance may be extended if the facts as to the cause of delay justify such extension in the opinion of the Purchasing Agent.
- b. Termination for convenience. At any time, with or without cause, the County shall have the right, in its sole discretion, to terminate this contract by giving written notice to Contractor.

There shall be no period of grace after giving the notice of termination. Termination shall become effective immediately upon the giving of notice by personal delivery or mail. The County shall pay Contractor as full compensation for performance up to the date of such termination: (1) the unit or pro rata bid price for the delivered and accepted portion of goods or work completed up to the point of termination; and (2) a reasonable amount, not otherwise recoverable from other sources by Contractor as approved by the County, with respect to the undelivered or unaccepted portion of this contract; provided compensation hereunder shall in no event exceed the total Bid price.

**BYRD ANTI-LOBBYING AMENDMENT – 31 U.S.C. 1352**  
**(Contract > \$100,000) – ATTACHMENT A**

- Contractors who apply or bid for an award of \$100,000 or more shall file the required certification, provided in Attachment A. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient.

**CONTRACT WORK HOURS AND SAFETY STANDARDS ACT – 40 U.S.C. 3701-3708**  
**(Contract > \$100,000)**

- a. Overtime requirements. No Contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
- b. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (a) of this Provision, the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (a) of this Provision, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (a) of this Provision.
- c. Withholding for unpaid wages and liquidated damages. San Joaquin County shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work

Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b) of this Provision.

- d. Subcontracts. The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (a) through (d) of this Provision and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (a) through (d) of this Provision.

**CLEAN AIR ACT, FEDERAL WATER POLLUTION CONTROL ACT AND REMEDIES (Contract > \$150,000)**

- a. The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401, et seq.
- b. The Contractor agrees to report each violation to San Joaquin County and understands and agrees that San Joaquin County will, in turn, report each violation as required to assure notification to the primary recipient, FEMA, and the appropriate Environmental Protection Agency Regional Office.
- c. The Contractor agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FEMA.
  - d. In the event the Contractor breaches any part of the contract, the County may procure the articles or services from other sources and the Contractor must compensate the County for the difference between the price named in the Bid and actual cost thereof to the County shall be considered the prevailing market price at the time such procurement is made. Such payment may be deducted from any monies due, or that may thereafter become due to the Contractor. The exercise by the County of this remedy does not preclude the exercise of any other rights or remedies that may now or subsequently be available at law, in equity, by statute, in any other agreement between the parties or otherwise.

**Signature**

THE UNDERSIGNED HEREBY CERTIFIES THAT THE RESPONSES PROVIDED ARE CORRECT AND TRUTHFUL TO THE BEST OF MY KNOWLEDGE AND FOR THOSE RESPONSES GIVEN WHICH ARE BASED ON INFORMATION AND BELIEF, THOSE RESPONSES ARE TRUE AND CORRECT BASED ON MY PRESENT BELIEF AND INFORMATION.

Dated this \_\_\_\_\_ day of \_\_\_\_\_ of the year \_\_\_\_\_



Name of organization: \_\_\_\_\_

Signature: \_\_\_\_\_

Printed Name and title: \_\_\_\_\_

**ATTACHMENT "A"**

**Byrd Anti-Lobbying Amendment**

APPENDIX A, 44 C.F.R. PART 18- CERTIFICATION REGARDING LOBBYING

Certification for Contracts, Grants, Loans, and Cooperative Agreements  
(To be submitted with each bid or offer exceeding \$100,000)

The undersigned Contractor certifies, to the best of his or her knowledge, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form- LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Contractor, \_\_\_\_\_, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. § 3801, *et seq.*, apply to this certification and disclosure, if any.

Name and Title of Contractor's Authorized Official

REFERENCED IN PO 00000\_\_\_\_\_ – REQUIRED FOR ALL FEDERAL FUNDED PROCUREMENTS.

\_\_\_\_\_

Signature of Contractor's Authorized Official

\_\_\_\_\_

Date \_\_\_\_\_

<b>SAN JOAQUIN COUNTY NON PROFIT REQUEST FOR FUNDING</b>		
<b>BOARD ORDER #: B-22-695      AGENDA DATE: 10/4/2022</b>		
<b>Recipient Organization Name: City of Tracy - South San Joaquin Fire Training Facility Project</b>		
<b>Recipient Address: 333 Civic Center Plaza, Tracy, CA 95376</b>		
<b>Contact Name: Koosun Kim</b>	<b>Phone#: (209) 831-6400</b>	<b>Email: Koosun.Kim@cityoftracy.org</b>
<b>Project Repairs Projected Start Date: April 4, 2024</b>		
<b>Project Repairs Projected Completion Date:</b>		<b>December 31, 2026</b>
<b>TOTAL AMOUNT REQUESTED: \$2,599,234</b>		<b>TOTAL AMOUNT APPROVED: \$2,599,234</b>
<b>Project Name: City of Tracy - South San Joaquin Fire Training Facility Project</b>	<b>PROJECT DESCRIPTION Construction of expanded Phase 1 Fire Training Facility</b>	
<p>The South San Joaquin County Fire Authority (SSJCFA) is Joint Powers Authority that was originally formed in 1999 by consolidating the Tracy Rural Fire Protection District and the City of Tracy Fire Departments. SSJCFA staffs seven fire stations with seven Advanced Life Support (ALS) engine companies and one ALS ladder truck company. SSJCFA staffs one of twelve State OES Type I Hazardous Materials Teams. SSJCFA has a uniformed staff of 86 personnel and a total staff of 100 personnel and responds to over 10,000 emergencies annually.</p> <p>The need for Fire Training Facility was identified in the 2013 Citywide Public Safety Master Plan (CPSMP) for construction at the location of the Police Gun Range on South Tracy Boulevard, and was included in the Nexus Study for that location. Subsequent to the 2013 CPSMP adoption, the South San Joaquin County Fire Authority (SSJCFA) recommended an alternate location at the NE1 Reservoir on Chrisman Road to be more suitable. On February 5, 2019, Council approved Resolution No. 2019-</p>	<p>The approved budget for the construction of expanded Phase 1 Fire Training Facility is now approximately \$3.7 million as shown in the attached table. The County agrees to contribute \$2,599,234 towards the Project, on a reimbursement basis. Project details include:</p> <ul style="list-style-type: none"> <li>•Paving of 1.75 of the 5.13 acre site.</li> <li>•Electrical, water and storm drain infrastructure.</li> <li>•Installation of 2 fire hydrants.</li> <li>•Encing around the 5.13 acre site that includes an electric vehicle access gate.</li> <li>•Purchase and installation of a 2880 square foot prefabricated classroom facility. The classroom facility includes 2 restrooms, 40 person classroom, 3 offices, reception area, kitchenette, and an EMS clinical area.</li> <li>•Erection of a pre-fabricated three story fire training tower that was purchased through an Assistance to Firefighter Grant through FEMA.</li> </ul>	
	<b>Current Fund Request</b>	<b>Approved Amount</b>
<b>Itemized Repair Costs must accompany request for reimbursement.</b>		
<b>TOTAL</b>	<b>\$0.00</b>	<b>\$0.00</b>

Date Paid: \_\_\_\_\_

Account # \_\_\_\_\_

**Deposit of Funds must be completed with 48 hours of pickup of check.**

Recipient Signature: Midori Lichtwardt

Title: City Manager

Date: \_\_\_\_\_

Submitted W9: \_\_\_\_\_

Request for Funds Approved By: San Joaquin County Board of Supervisors

Title: ADOPTED UNANIMOUS - Board Order 22-695

Date: 10/4/22

**Attachments: Board Letter 5/2/2023 and UOP's Manor Hall Renovation Budget**

Fund #: 20250 AMERICAN RESCUE PLAN ACT FUND

Amount Funded: \$2,599,234

Funding Available from 4/4/24 through 12/31/26

*\* Any unused funds used for the approved project will be returned to San Joaquin County.*

*\* All invoices, supporting payment/purchases, fees and other items associated with the project will be supplied to the San Joaquin County Administrator's Office for reconciliation.*

*\* Depending on how funds are distributed (one payment - multiple payments etc.) will dictate when and how often supporting documents will be required and how often reconciliation will be performed.*

RESOLUTION 2018-023

APPROVING A JOINT POWERS AGREEMENT BETWEEN THE CITY OF TRACY AND THE TRACY RURAL FIRE PROTECTION DISTRICT ESTABLISHING THE SOUTH SAN JOAQUIN COUNTY FIRE AUTHORITY WITH AN EFFECTIVE DATE OF MARCH 1, 2018 AND IMPLEMENTATION DATE OF JULY 1, 2018, AND REALLOCATING \$20,000 FROM UNALLOCATED RESERVES TO FUND 22-211 FOR JPA START-UP COSTS

WHEREAS, In 1999, the City and the District entered into a Joint Powers Agreement (JPA) that formed the South County Fire Authority (SCFA), and

WHEREAS, Subsequently, the JPA entered into an agreement with the City of Tracy to provide personnel and fire protection services to the JPA, and

WHEREAS, Since the formation of the SCFA several factors have prompted a reevaluation of the current governance and creating a strong JPA that operates as an autonomous agency was the chosen model, and

WHEREAS, Reestablishing and improving fire protection governance between the City of Tracy and the Tracy Rural Fire Protection District will protect future fire protection revenues, and

WHEREAS, The JPA agreement will have an effective date of March 1, 2018 with an implementation date of July 1, 2018, and the current JPA will remain in effect until July 1, 2018;

NOW, THEREFORE, BE IT RESOLVED, That the City Council approves a Joint Powers Agreement between the City of Tracy and the Tracy Rural Fire Protection District establishing the South San Joaquin County Fire Authority with an effective date of March 1, 2018 and implementation date of July 1, 2018, and authorizes reallocating \$20,000 from unallocated reserves to Fund 22-211 for JPA start-up costs.

\*\*\*\*\*


The foregoing Resolution 2018-023 was adopted by the Tracy City Council on the 6<sup>th</sup> day of February, 2018, by the following vote:


AYES: COUNCIL MEMBERS: DEMENT, RANSOM, YOUNG, VARGAS, RICKMAN

NOES: COUNCIL MEMBERS: NONE

ABSENT: COUNCIL MEMBERS: NONE

ABSTAIN: COUNCIL MEMBERS: NONE

  
MAYOR

ATTEST:  
  
CITY CLERK

**AMENDMENT NO. 1 TO THE JOINT POWERS AGREEMENT OF THE SOUTH SAN  
JOAQUIN COUNTY FIRE AUTHORITY**

THIS AMENDMENT is entered into by an between the City of Tracy, a municipal corporation ("City"), and the Tracy Rural Fire Protection District, a fire protection district formed pursuant to Health and Safety Code sections 13000 and following ("Fire District"). City and Fire District are collectively referred to as "Member Agencies."

**RECITALS**

WHEREAS, City and Fire District entered into a "Joint Powers Agreement of the South San Joaquin County Fire Authority" (the "Agreement") on February 20, 2018, and

WHEREAS, The parties wish to amend the Agreement to align with requirements of the California Government Code sections 6508.1-6508.2 regarding joint powers agreements that participate in or contract with a public retirement system and the liability of member agencies upon termination.

**NOW, THEREFORE, THE PARTIES MUTUALLY AGREE AS FOLLOWS:**


1. **Incorporation by Reference.** This Amendment incorporates by reference all terms and conditions set forth in the Agreement, unless specifically modified by this Amendment. All terms and conditions set forth in the Agreement which are not specifically modified by this Amendment shall remain in full force and effect.

2. **Terms of Amendment.**

A. Section 1.7 "Obligations of Authority" of the Agreement is amended to read as follows:

**"Section 1.7 Obligations of Authority**

The debts, liabilities, and obligations of the Authority shall not be the debts, liabilities, and obligations of any Member Agency unless otherwise specified in Section 2.11 of this agreement.

B.  Subsection (b) "Continued Liabilities" of Section 2.11 of the Agreement is amended to read as follows:

**"Section 2.11 Termination of Authority; (b) Continued Liabilities.**

Upon termination of this Agreement, unless otherwise determined by a court of competent jurisdiction, any continuing obligations of the Authority shall be borne by the Member Agencies in proportion to their total monetary responsibility for costs of maintenance and operations for the life of the Authority, except as otherwise stated herein.

Each Member's Agency's proportionate share of CalPERS liability is determined by the cost allocation formula defined in Section 5.4 and in effect at the time the Authority is dissolved or insolvent. In the event the Authority is dissolved or becomes insolvent, or the agreement with CalPERS is terminated, each Member Agency is responsible for its


**Amendment No. 1 to the Joint Powers Agreement of the South San Joaquin County Fire Authority**  
**Page 2 of 2**

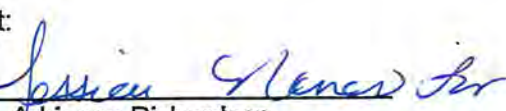
proportionate share of all other outstanding Authority liabilities and obligations incurred during the Member Agency's membership in the Authority, allocated in accordance with the formula defined in Section 5.4 and in effect at the time of said dissolution or insolvency, so that the Member Agencies together have fiscal responsibility for 100% of the Authority's outstanding liabilities and obligations upon dissolution or insolvency."

3. **Modifications.** This Amendment No. 1 may not be modified orally or in any manner other than by agreement in writing signed by both parties, in accordance with the requirements of the Agreement.
4. **Severability.** In the event any term of this Amendment is held invalid by a court of competent jurisdiction, the Amendment shall be construed as not containing that term, and the remainder of this Amendment shall remain in full force and effect.
5. **Signatures.** The individuals executing this Amendment No. 1 represent and warrant that they have the right, power, legal capacity, and authority to enter into and to execute this Amendment No. 1 on behalf of the District and the City. This Amendment No. 1 shall inure to the benefit of and be binding upon the parties thereto and their respective successors and assigns.


IN WITNESS WHEREOF the parties do hereby agree to the full performance of the terms set forth herein.

CITY OF TRACY


By:   
Robert Rickman  
Title: Mayor  
Date: 10-17-19


Attest:  
By:   
Adrienne Richardson  
Title: City Clerk  
Date: 10/18/19

Approved as to form


By:   
Leticia Ramirez  
Title: Interim City Attorney  
Date: 10/16/19

TRACY RURAL FIRE PROTECTION DISTRICT

By:   
Title: Board Chairperson  
Date: 10-15-19

Attest:  
By:   
Natalie Bowman  
Title: Clerk of the Board  
Date: 10-15-19

Approved as to form

By:   
Mark C. Bowman  
Title: Attorney at Law, District Counsel  
Date: 10-15-19

**JOINT POWERS AGREEMENT OF THE SOUTH  
SAN JOAQUIN COUNTY FIRE AUTHORITY**

THIS AGREEMENT is entered into on this 20<sup>th</sup> day of February 2018, by and between the City of Tracy, a municipal corporation (“City”) and the Tracy Rural Fire Protection District, a Fire Protection District (“District”).

**RECITALS**

WHEREAS, pursuant to Title 1, Division 7, Chapter 5 of the Government Code of the State of California the City and District (“**Initial Member Agencies**”) previously entered into an agreement for the joint exercise of any power common to them; and

WHEREAS, the Initial Member Agencies desire to enter this Agreement to exercise the power to provide fire protection services within their jurisdictions under a new joint powers authority (hereinafter “**the South San Joaquin County Fire Authority**” or “**Authority**”); and

WHEREAS, this Agreement sets forth the terms and conditions by which they will exercise their powers for the purpose of improving the provision of fire service with the Authority’s jurisdiction.

**AGREEMENT**

NOW THEREFORE, for and in consideration of the mutual advantages to be derived therefrom and in consideration of the mutual covenants herein contained, it is agreed by and between the parties hereto as follows:

**SECTION 1. PURPOSE AND POWERS**

**1.1 Authority.**

South San Joaquin County Fire Authority (“Authority”) is formed by this Agreement pursuant to the provisions of Article 1, Chapter 5, Division 7, Title 1 (commencing with section 6500) of the Government Code of the State of California (“Act”). As provided in Government Code section 6507, the Authority shall be a public entity separate from the parties hereto and its debts, liabilities and obligations shall not be the debts, liabilities and obligations of its Member Agencies. The terms “Members” or “Member Agencies” shall mean any public entity or agency that has agreed to this Agreement, including Initial Member Agencies. The term “Initial Member Agencies” shall only mean City and District.

## **1.2 Purpose.**

The purpose of this Agreement is to provide for the joint exercise of powers to provide a full range of fire services (“Fire Protection Services”) within the Authority’s jurisdictional area including:

- (a) Administer and direct the personnel that provides the Fire Protection Services and provide the necessary administrative support for its programs and operations, which shall include, but not be limited to,
  - (i.) Provide fire safety plan checks and inspections for all commercial, residential and industrial buildings.
  - (ii.) Coordinate abatement activities for hazardous materials and nuisances.
  - (iii.) Promote fire prevention.
  - (iv.) Respond to fire and emergency calls to provide fire suppression, rescue, emergency medical advanced life support, and hazardous materials response services.
  - (v.) Provide and manage a training program involving all facets of departmental functions and operations, for career, reserve, and volunteer personnel.
  - (vi.) Contract for or provide fire dispatch services (“Fire Dispatch Services”) within the Authority’s jurisdictional area.
- (b) Adopt performance objectives of the Authority.

## **1.3 General Powers.**

The Authority shall exercise in the manner herein provided the powers common to each of the Member Agencies, and/or inherent to any one Member Agency, as provided by the laws of the State of California, e.g. Fire Protection District Law of 1987, and all incidental, implied, expressed, or necessary powers for the accomplishment of the purposes of this Agreement, subject to the restrictions set forth in this Agreement and shall have the power to manage, maintain, and operate facilities.

## **1.4 Specified Powers.**

The Authority is hereby authorized, in its own name, to do all acts necessary for the exercise of the foregoing powers, including but not limited to, any of the following:

- (a) Initiate, alter and otherwise exercise the common powers of its Members in providing fire suppression, protection, prevention and related services, and those powers that may be conferred upon it by subsequently enacted legislation, and to be the exclusive



body to make policy concerning the administration of the provision of fire service by the Authority for Member Agencies including determining if, when and where to place facilities and staff said facilities within the Authority's jurisdiction for services.

- (b) Make and enter into contracts, including contracts with its Members; provided, however, the Authority may not enter into real property development agreements pursuant to Government Code Section 65865.
- (c) To hire and employ personnel or to contract for personnel to fulfil its mission.
- (d) Assume existing contracts relating to fire suppression, protection, prevention and related services.
- (e) Lease, acquire, hold and dispose of real and personal property.
- (f) Invest reserve funds.
- (g) Incur debts, liabilities, or obligations, provided that all long term bonded indebtedness, certificates of participation or other long-term debt financing require the prior consent of the Member Agencies.
- (h) Sue and be sued in its own name.
- (i) Apply for grants, loans, or other assistance from persons, firms, corporations, or governmental entities.
- (j) Use any and all financing mechanisms available to the Authority, subject to the provisions of this Agreement.
- (k) Prepare and support legislation related to the purposes of the Agreement.
- (l) Lease, acquire, construct, operate, maintain, repair and manage new or existing facilities, apparatus and equipment as well as to close or discontinue the use of such facilities, apparatus and equipment.
- (m) Levy and collect payments and fees for Fire Protection Services.
- (n) Impose new special taxes or assessments as authorized by law to the extent allowed by law, and in coordination with the underlying jurisdiction(s).
- (o) Provide related services as authorized by law including, but not limited to, emergency medical services, emergency preparedness, mitigation of hazardous materials incidents and confined space rescue.

- (p) Contract for the services of attorneys, accountants, consultants and other services as needed.
- (q) Purchase insurance or to self-insure and to contract for risk management services.
- (r) Adopt rules, regulations, policies, bylaws and procedures governing the operation of the Authority, including the determination of compensation of Directors.
- (s) Exercise the power of eminent domain.
- (t) Advise its Members of the impact of land development on the provision of fire suppression, protection, prevention and related services.
- (u) Recommend approval of an annual fire department budget to the Member Agencies, including, but not limited to, staffing levels at each fire station and all related costs for each fire station and the administrative, training and fire prevention budget activities.
- (v) Develop finance, procurement and conflict of interest policies.
- (w) Establish fire department operational policies for fire protection.
- (x) Receive, accept, and utilize the service of personnel offered by the Member Agencies, or their representatives or agents and to receive, accept and utilize real or personal property from the Member Agencies.
- (y) Mitigate fire protection impacts caused by development within the jurisdiction of the Authority.

### **1.5 Restrictions on Exercise of Powers.**

The power of the Authority shall be exercised in the manner provided in the Act and, in accordance with §6509 of the Act, shall be subject to the restrictions upon the manner of exercising such powers that are imposed upon general law cities in the State of California in the exercise of similar powers.

### **1.6 Employment of Personnel and Administration of Services.**

Initially, the Authority will contract with a Member Agency to serve as the “Employer of Record” and provide all employees and employee services to the Authority. The Initial Member Agencies desire to transition to having the Authority employ its own personnel to provide any or all of the services the Authority elects to provide. In the event that the Authority elects to employ its own personnel, the Chief Executive Officer shall, with the assistance of the staffs and consultants of the Member Agencies, prepare a personnel plan (“the Personnel Plan”) 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 Member Agencies 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 new organizations. The Personnel Plan shall be presented to the legislative bodies of the Member Agencies. Upon their receipt of the Personnel Plan, the Member Agencies agree to meet in good faith and negotiate the terms of the Authority employing personnel. Thereafter, Member Agencies and 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’s Chief Executive Officer shall be hired as the Fire Chief of the Member Agency that is the “Employer of Record.” Until such time as personnel are transferred to the Authority pursuant to this Section, 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 the officers, agents, or employees of the Member Agencies when performing their respective functions shall apply to them to the same degree and extent while engage in the performance of any of the functions or duties under this Agreement.

#### **1.7 Obligations of Authority.**

The debts, liabilities, and obligations of the Authority shall not be the debts, liabilities, and obligations of any Member Agency.

#### **1.8 Conflict of Interest.**

The Authority Board shall adopt and, thereafter, maintain a conflict of interest code in compliance with applicable provisions of the Political Reform Act (Gov. Code, §87300 et seq.) and the regulations adopted by the Fair Political Practices Commission (Cal. Code Regs., Title 2, §1870 et seq.).

#### **1.9 Identification.**

The Authority’s fire stations fire apparatus, vehicles and personnel will be identified as “South County Fire.”

### **SECTION 2. GOVERNANCE.**

#### **2.1 Governing Board.**

The Authority shall be administered by a Board of Directors (hereinafter, “**Authority Board**” or “**Board**”) consisting of members of the legislative bodies of the Member Agencies. The initial Member Agencies, as identified in this agreement, shall each indefinitely be allocated a minimum of two Board positions. Any additional Member Agency that becomes party to this agreement shall be allocated a minimum of one Board position and may not exceed two Board positions.

Each Legislative Body shall appoint an alternate Board member from the Legislative Body who may act in the absence of a member appointed by that Legislative Body. The Board of Directors shall be called the “Board of Directors of the South San Joaquin County Fire Authority.” All voting power of the Authority shall reside with the Board of Directors who shall be responsible for setting policy for the Authority including the provision of all Fire Protection Services for its Member Agencies.

All Board members shall serve at the pleasure of the Member Agency that appointed such Board member.

All vacancies on the Board of seats appointed by Member Agencies shall be filled by the appointing Member Agency within thirty (30) calendar days of the vacancy. Each board member shall cease to be member of the Board of Directors when such member ceases to hold office as a member of the Legislative Body appointing entity.

## **2.2 Officers.**

### **(a) Chief Executive Officer.**

The Authority Board of Directors shall select an Chief Executive Officer and the Chief Executive Officer shall serve as the Authority Fire Chief and shall serve at the will of the Authority Board. The Chief Executive Officer shall be responsible for implementing the Authority’s policies as well as administration of the Authority’s affairs and property as directed by the Authority’s Board of Directors.

Initially, as stated in Section 1.6, a Member Agency shall serve as the “Employer of Record” of the Authority’s and the Chief Executive Officer shall be employed by the said Member Agency. Although employed by a Member Agency, the Chief Executive Officer shall be selected by and serve at the “will” of the Authority Board of Directors.

The Chief Executive Officer shall have the power:

- To prepare and submit, in consultation with the Member Agencies, to the Board of Directors, an annual budget for the succeeding Fiscal Year;
- To expend funds of the Authority whenever authorized by the Authority’s annual budget or the Member Agencies for additional services;
- To retain any consultants, or contractors, as authorized in the Authority’s budget, or as may be directed by the Board of Directors;
- To supervise the operation of the Authority’s Fire Protection Services and Leased Facilities;

- To make recommendations to the Member Agencies for the purchase or construction of new fire station(s) apparatus and equipment, the replacement of existing property and/or the acquisition of new property; and
- To perform such other duties as directed by the Board of Directors.

The Chief Executive Office shall provide the Authority's Board of Directors a report each quarter of the staffing levels at each fire station and such other details of operational performance of the Authority's services as well as any other reports concerning the Authority as may be requested by the Board of Directors.

**(b) Secretary/Clerk.**

The Secretary/Clerk shall be appointed by the Board. The Secretary shall countersign all contracts signed by the Chairperson, Vice-Chairperson and/or the Chief Executive Officer on behalf of the Authority, as well as perform such other duties as may be imposed by the Board of Directors.

The Secretary/Clerk shall be responsible for providing notice of, preparing and posting agendas after consulting the Member Agencies, and keeping minutes of regular, adjourned regular, and special meetings of the Board, and shall cause a copy of the minutes to be forwarded to each Director. The Secretary/Clerk shall have charge of, handle and have access to all other records of the Authority. The Secretary/Clerk shall be directed by the Chief Executive Officer.

**(c) Controller/Treasurer.**

The Controller Treasurer shall be appointed by the Board. The Controller/Treasurer shall be depository and shall have custody of all of the accounts, funds and money of the Authority from whatever source. The Controller/Treasurer shall have the duties and obligations set forth in §§6505 and 6505.5 of the Act, and shall assure that there shall be strict accountability of all funds and reporting of all receipts and disbursements of the Authority.

The Controller/Treasurer shall provide monthly reports of Member Agencies' expenditures and revenue for fire prevention and fire protection services and of the Authority to the Board of Directors in such form as may be specified by the Board.

**(d) Officers in Charge of Property.**

Pursuant to §6505.6 of the Act, the Controller/Treasurer shall have charge of, handle, and have access to all accounts, funds, and money of the Authority and all records of the Authority relating thereto; the Secretary shall have charge of, handle and have access to all other records of the Authority; and the Chief Executive Officer shall

have charge of, handle, and have access to physical properties of the Authority, in such a manner as may be specified by the Authority's Board of Directors.

**(e) Official Bonds.**

The Chief Executive Office, Secretary/Clerk, and Controller/Treasurer shall each file an official bond in the penal sum of \$25,000 pursuant to §6505.1 of the Act.

**(f) Legal Counsel.**

The Board of Directors shall have the power to appoint one or more general and/or special legal counsel to the Authority who shall perform such duties as may be prescribed by the Board of Directors. Neither legal counsel, nor his/her firm, shall represent any Member Agency, unless a conflict waiver has been granted by the Authority.

**2.3 Meetings of the Board of Directors.**

The Board of Directors shall provide for regular meetings at a date, time, and place fixed by resolution of the Board of Directors which shall occur at least monthly. All meetings of the Board of Directors shall be called, noticed, held, and conducted in accordance with the provisions of §§54950, et seq. of the California Government Code (The Ralph M. Brown Act). A proposed agenda shall be sent to all Member Agencies prior to a board meeting, as directed, by resolution of the Board.

A minimum of half of the Board of Directors, plus one Board member, shall constitute quorum for purposes of conducting meetings and transacting business.

**2.4 Chairperson and Vice-Chairperson.**

The Board of Directors shall elect a Chairperson and Vice-Chairperson from among its members. The Chairperson and Vice-Chairperson shall rotate from each Member Agency annually such that the Chairperson and Vice-Chairperson shall not be appointed from the same Member Agency. In the event of the disqualification or permanent inability to serve as the Chairperson during the year, another member from the same Agency shall be appointed Chairperson to fulfill the one-year term.

The Chairperson shall preside at all Authority Board meetings, may sign all contracts on behalf of the Authority and shall perform such other duties as may be imposed by the Board of Directors.

The Vice-Chairperson shall act, sign contracts, and perform all of the Chairperson's duties in the temporary absence of the Chairperson.

## **2.5 Required Votes.**

The affirmative votes of a majority of members of the Board of Directors shall be required to take any action, provided however, that any vote to incur a debt or to issue bonds respectively, shall require a unanimous vote of all Board members.

## **2.6 Voting.**

Each member of the Board of Directors shall have one vote.

## **2.7 Minutes.**

The Secretary/Clerk shall keep minutes of the meetings of the Board of Directors and forward a copy of the minutes to each Member Agency following board approval.

## **2.8 Bylaws.**

The Board of Directors may adopt Bylaws for the conduct of its meetings and affairs as are necessary for the purposes herein.

## **2.9 Appointment of Officers/Employees.**

Initially, an officer or employee of a Member Agency as specified in Section 2.2(c) may hold the office of Controller/Treasurer of the Authority. Within one (1) year of the Effective Date of this Agreement, the Authority shall select an independent Controller/Treasurer who shall assume the responsibilities within a reasonable period of time. Such person or persons shall possess the powers of and shall perform the Controller/Treasurer functions for the Authority required by Government Code Sections 6505, 6505.5, and 6505.6, including any subsequent amendments thereto. The Controller/Treasurer shall assure that there shall be strict accountability of all funds and reporting of all receipts and disbursements of Authority.

## **2.10 Expenditures for the Approved Budget.**

All expenditures within the amount of the approved general budget shall be made in accordance with the authorization of the Board. Expenditures in excess of any amount approved in the general budget by the Board shall not be made without the approval of a majority of all of the Directors of the Board. A Member Agency incurring obligations to the Authority without Board approval shall be fully liable for said obligation and shall indemnify the Authority and the other Member Agencies from said obligations.

## **2.11 Termination of Authority.**

### **(a) Notice Required.**

This Agreement may be terminated by an affirmative vote of Member Agencies constituting 50% or more of the membership of the Authority. A written Notice of

Termination shall be sent all other Member Agencies following that vote and shall state that the termination date is effective at least twenty four (24) months from the date of the Notice.

**(b) Continued Liabilities.**

Upon termination of this Agreement, unless otherwise determined by a court of competent jurisdiction, any continuing obligations of the Authority shall be borne by the Member Agencies in proportion to their total monetary responsibility for costs of maintenance and operations for the life of the Authority.

**(c) Disposition of Leased Facilities.**

Upon termination of this agreement, Authority shall return all Leased Facilities, including any replacements, to the Member Agency on title, reasonable wear and tear excepted.

**(d) Surplus Money.**

Upon termination of this Agreement, any surplus money on hand shall be returned to the Member Agencies in accordance with the proportion to their total monetary responsibility for costs of maintenance and operations for the life of the Authority

**(e) Obligations Survive Termination.**

The obligations of Section 2.11 survive termination of this Agreement.

**2.13 Dispute Resolution.**

In the event the Member Agencies disagree regarding the interpretation or application of this Agreement or cannot agree on the distribution of Leased Facilities and/or other assets of the Authority upon termination, they shall meet during a ninety (90) day period in a good faith effort to resolve the disagreement informally. If the Member Agencies cannot informally resolve the dispute, they shall then attempt to resolve such dispute through either non-binding mediation or arbitration for a period not to exceed sixty (60) calendar days. If the Member Agencies cannot mutually agree upon a mediator, then the presiding judge to the San Joaquin County Superior Court shall designate a mediator. The Member Agency shall contribute equally to the cost of mediation. If mediation is unsuccessful, the disputing Member Agency may pursue litigation or any other remedies to resolve the dispute.

The arbitration shall be conducted in accordance with the California Arbitration Act (Code of Civil Procedure §1280 et seq.). The costs of mediation or arbitration (excluding each Agency's own costs) shall be borne by the Agencies equally.



## **2.14 Cooperation and Disclosure.**

Unless and until the Authority employs its own personnel, the Employer of Record shall keep the Authority informed of any negotiations, agreements or other circumstances that have a significant impact on the operations and/or jurisdiction of the Authority. Member Agencies shall keep the Authority informed of their negotiations with developers and, prior to entering into any agreements with same, shall advise the Authority of any significant impacts to the Authority. Members shall promptly notify the Authority of all annexation or new land development applications that impact the Authority's jurisdiction before filing with any city or county. Members shall consult with the Authority other Members before seeking to raise new revenue (ballot, tax or bond) that impact the provision of fire services. Upon written request, Member Agencies shall, within a reasonable time period, provide the Authority with records necessary to conduct audits of funds used for the provision of fire services.

All Member Agencies shall be notified before any Member Agency approves a formal action by any Member Agency to pursue, financing, purchasing and/or building facilities to be used for Fire Protection Services.

## **SECTION 3. LEVEL OF SERVICE.**

### **3.1 Basic Services.**

A. *List of Services.* The Authority shall provide a uniform, minimum set of basic services to each Member Agency, which shall consist of the following:

1. Responding to fire and emergency calls to provide fire suppression, rescue, emergency medical, and hazardous materials response service.

2. Providing a fire prevention program that includes fire safety plan checks, issuance of fire safety permits and inspections as required by the California Fire Code.

a. The Member Agencies will each adopt the California Fire Code with such modification and amendments deemed appropriate by each Agency. As part of the code adoption process, each Agency will assign the Authority as the "Authority Having Jurisdiction" for all fire protection matters within the Member Agency jurisdictions.

b. The Authority by Member agreement may charge user fees for its fire protection program to the greatest extent possible to fully recover its cost for services. By agreement with the Authority, a Member Agency may elect to fund the aspects of the Authority fire protection program otherwise required to be funded by Authority user fees, in which case the Authority user fees shall not be charged in the territory of the Member Agency as specified in the agreement between the Authority and the Member Agency.

3. Coordinating abatement activities for hazardous materials and nuisances. So as to avoid the inequitable use of Authority resources, the Authority and Member Agencies shall

take commercially reasonable steps to recover the costs of abatement from the parties responsible for the conditions requiring abatement.

4. Ensuring that personnel are trained to provide all facets of Authority functions and operations.

5. Provide or contract for dispatch services within the Authority's jurisdiction area.

B. *Level of Service.* The Member Agencies will indirectly control the level of services, in terms of response times, through their station siting and staffing level decisions. Member Agencies shall also retain the right to elect to close stations within their jurisdictions. Nothing in this Agreement is intended to or shall limit or control the land use power of a municipal corporation or any other Member Agency that is a party to this Agreement.

### **3.2 Additional Services.**

So long as it would be consistent with the Authority's powers set out in Section 1 above, the Authority may perform additional or higher level services within the territory of all or a particular Member Agency, pursuant to an agreement between the Authority and the Member Agencies.

## **SECTION 4. FACILITIES AND EQUIPMENT.**

### **4.1 Member Agency Ownership**

Member Agencies shall, as a condition of membership, make available all its stations, apparatus and equipment to provide fire protection services. Member Agencies shall be responsible for constructing and replacing fire stations within their respective jurisdiction.

Member Agencies that have overlapping jurisdictional boundaries shall enter into a separate agreement to establish ownership of facilities within the overlapped areas.

### **4.2 Lease of Facilities.**

Each Member Agency hereby agrees to lease, by separate agreement, in consideration of the services provided herein, to the Authority the following real and personal property, together with any replacements or new property of a similar nature.

(a) All existing operational fire stations, together with all furniture, computers and furnishings in such stations.

(b) All fire apparatus, together with all equipment located on the apparatus, , which consists of existing fire trucks, engines, and vehicles together with all equipment physically located on each piece of apparatus;

- (c) All personal protective equipment listed, such as turnout gear and all other personal protective equipment.

Each Member Agency warrants that its property provided is in good and workable condition.

#### **4.4 New Facilities.**

All new station constructed by a Member Agency that are within the Member Agency's jurisdictional boundaries shall be leased to the Authority upon being placed in service in accordance with this Section. Such leases shall be separately negotiated between the Authority and the Member Agency.

#### **4.5 Improvements and Maintenance of Facilities and Apparatus.**

A. *Maintenance and Repair.* The Authority shall be responsible for maintenance and ordinary repair of all facilities leased in the provision of services pursuant to this Agreement.

B. *Station Structural Repairs; Replacement.* Members Agencies shall be responsible for capital improvements to the real property owned by each, as used herein, "capital improvements" refers to structural repairs and similar improvements which are the type of improvements that would be added to the tax "basis" if the property were owned by a non-governmental entity. Member Agencies shall be responsible for ensuring that the facilities are replaced at the end of the facility's useful life, including ensuring that financial resources are available for replacement. To facilitate the Member Agencies' duty to replace facilities, the Authority shall maintain and annually update a replacement schedule for all of the leased facilities.

C. *Property Insurance.* The Authority shall maintain in full force and effect, fire insurance and a standard "all risk" policy covering all Leased Facilities. This coverage must (i) name the titled Member Agencies as an additional insureds, (ii) contain a waiver of subrogation endorsement in favor of the titled Member Agencies, (iii) cover loss or damage to the station and any Member Agency-owned personal property in the amount of the full replacement value, (iv) include a deductible no greater than \$25,000. Covered perils are to include fire, all risk, vandalism, malicious mischief and sprinkler leakage. The Parties intend that insurance proceeds paid as a result of real property damage be passed through the Authority to the effected Member Agency.

#### **4.6 Authority-Owned Facilities.**

With the approval of the legislative bodies of all of the Member Agencies, the Authority may acquire by lease or purchase real and personal property such as administration buildings, training, and other facilities as necessary..

#### **4.7 Authority's Assumption of Liability.**

The Authority shall assume responsibility for any and all loss, litigation, liability, injury, damage, claim, demand, and tort or workers compensation incidents that occur for any personnel or contracts assigned to and accepted by the Authority. The Member Agency shall retain responsibility and liability for any and all such incidents not assigned or accepted by the Authority and shall retain all risk management reserves that have been set aside for such prior incidents. The Authority may contract to receive risk management services on such terms as agreed to by the Authority.

#### **4.8 Indemnification and Insurance.**

Pursuant to Government Code section 820.9, as may be amended, members of the Board of Directors of the Authority are not vicariously liable for injuries caused by the act or omission of the Authority or any of its Members.

Except as provided herein, the Authority shall defend, indemnify and hold harmless Member Agencies 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 or an agreement assumed by or otherwise transferred to the Authority or any Member assets to be transferred to the Authority, including but not limited to real property, personal property, equipment and apparatus.

Notwithstanding this Agreement the Members agree that no immunity or defense available to the Member Agencies under State or federal law or regulation shall be waived with respect to any third party claim.

### **SECTION 5. FINANCES.**

#### **5.1 Accounting Procedures.**

Full books and accounts shall be maintained for the Authority in accordance with practices established by, or consistent with, those utilized by the Controller of the State of California for like public entities. In particular, the Authority's auditor and treasurer shall comply strictly with requirements governing joint powers agencies, Article 1, Chapter 5, Division 7, Title 1 (commencing with Section 6500) of the Government of Code of the State of California.

The Authority shall keep accurate and correct books of account, showing the cost of providing Fire Protection Services and Fire Dispatch Services within the jurisdictional area, broken down by: jurisdictional areas; Member Agency; locations of calls; number of units sent; cancellation of units; and the identity of responding stations. Said books and records shall be open to inspection at all times during normal business hours by a Member Agency or its designee.

The Controller/Treasurer shall provide monthly reports of expenditures and revenue of all Member Agencies relating to the fire protection and fire prevention services and of the Authority to

the Authority Board and Member Agencies in such form as may be specified by the Board or requested by a Member.

## **5.2 Audits.**

The Controller/Treasurer shall cause the books of account and other financial records of the Authority to be audited by an independent public accountant or certified public accountant in accordance with §§6505 and 6505.6 of the Act.

The records and accounts of the Authority shall be audited annually by an independent certified public accountant and copies of the audited financial reports, with the opinion of the independent certified public accountant, shall be filed with the County Auditor, the State Controller and each Member Agency within six (6) months of the end of the fiscal year under examination.

## **5.3 Annual Budget.**

It shall be the policy of the Authority to approve only those budgets that do not exceed available revenues and neither the Authority nor the Employer of Record shall disburse funds outside of approved budgets or without the prior written approval of all Member Agencies.

At least sixty (60) days prior to the commencement of each fiscal year, the Chief Executive Officer shall meet with each Member Agency to prepare a preliminary budget for the Authority based on the formula identified in Section 5.4. Each Member Agency must approve the preliminary budget prior to May 15th of each year. On or before May 15th, of each year, the Authority Board of Directors shall adopt a preliminary annual budget for maintenance and operation costs of the Authority. On or before September 1, of each fiscal year, the Authority Board shall adopt a final annual budget for maintenance and operation costs of the Authority.

Following approval of the annual budget by the Authority, Member Agencies shall pay their pro rata share 120 days in advance of their expenses as estimated within the current approved budget.

The Chief Executive Officer and the Treasurer shall provide quarterly budget updates to the Authority Board.

## **5.4 Responsibility for Maintenance and Operations Costs.**

The Member Agencies shall share responsibility for the annual costs of maintenance and operations for Fire Protection Services, Fire Dispatch Services, any expenses of the Member Agency pursuant to this Agreement, and any insurance premiums paid by the Member Agency to insure itself against liability arising out of the contract with the Authority for the provision of fire services. Based on the formula in the paragraph below, each Member Agency shall be responsible for all such costs within their jurisdictional fire protection boundaries. Member Agencies with overlapping boundaries shall enter into a separate agreement that establishes fire protection responsibilities.

Prior to December 31 of each year, the Chief Executive Officer and Treasurer shall meet with each Member Agency to provide an accounting of the previous fiscal year. Except as otherwise provided in this Agreement, or pursuant to a resolution adopted by each Member Agency, the cost allocation shall be determined by the following formula:

Divide the total number of daily staffed positions within each Member Agency by the total number of daily staffed positions within the Authority.

Example: If the Authority has a total number of seven (7) daily staffed fire companies, each staffed with three (3) personnel, the total staffed positions for the Authority would be twenty-one (21). If a Member Agency had four (4) companies within their jurisdictional boundaries, the Member Agency would be responsible for twelve (12) daily staffed positions of the total twenty-one (21) daily staffed positions. Twelve (12) divided by twenty-one (21) equals 57.14 percent. The Member Agency with four (4) of the seven (7) companies would be responsible for 57.14 percent of the operating cost of the Authority.

The formula used for cost allocation shall be used for all fire protection and fire prevention services provided by the Authority. Formula shall not apply to:

*Station Repairs; Replacement.* Members Agencies shall be responsible for capital improvements to the real property owned by each Member Agency. As used herein, “capital improvements” refers to structural repairs and similar improvements which are the type of improvements that would be added to the tax “basis” if the property were owned by a non-governmental entity. Member Agencies shall also be responsible for all facility repairs and replacements costs that exceed \$5,000 per occurrence.

## **5.5 Limitations on Exceeding Budget Allocations**

Unless and until such time as the Authority employs its own personnel, expenditures by the Employer of Record, shall not exceed the approved Authority annual budget without prior written consent of all Member Agencies. Any expenditures not pre-approved in writing by all Member Agencies, shall be an expense paid by the Member Agency incurring the unauthorized expenditure and shall not be a debt owed by the other Member Agency(s) of the Authority.

## **5.6 Funding.**

Unless otherwise agreed, the Member Agencies agree to each be responsible to fund the replacement of the apparatus and facilities owned by Member Agency, respectively.

The Authority Board shall adopt an “emergency funding” policy for the funding of unforeseen emergencies that must be addressed prior to formal Board approval.

To the extent authorized by law, the Member Agencies agree to impose fire impact fees and/or special taxes necessary to provide funding for the Member Agency’s obligations under this Agreement.

## **5.7 Additional Services.**

Either Member Agency may request the Authority to perform additional services in addition to Fire Protection Services, provided such Member Agency provides funding for such additional services or other agreement between the Members.

## **SECTION 6. MEMBERSHIP.**

### **6.1 Adding Member Agencies.**

Any “public agency,” as that term is defined in Section 6500 of the Government Code, that is authorized to provide the common powers jointly exercised pursuant to this Agreement is eligible to become an additional party to this Agreement. Member Agencies other than the Initial Member Agencies are referred to herein as “Additional Member Agencies.” Eligible agencies may become members by executing this Agreement, satisfying any terms and conditions established by the Board, and upon unanimous approval of the membership of the Board. Upon such approval, this Agreement will then become effective as to that signatory.

### **6.2 Withdrawal of a Member Agency.**

This Agreement shall remain in effect as to all Member Agencies, unless and until it is terminated as to a particular Member Agency by written notice (“Withdrawal Notice”) to all other Members. The Withdrawal Notice must be given by the withdrawing Member at least two (2) years in advance of the effective date of such withdrawal. A withdrawing Member Agency shall not be liable for commitments made by the Authority after the Withdrawal Notice is given except that the departing Member Agency shall be liable for its pro rata share up to the Date of Withdrawal. A withdrawing Member Agency shall also be liable for its pro rata share of the Authority’s approval contractual commitments made prior to the Withdrawal Notice, excluding automatic renewals, amendments or restatements made subsequent to the Withdrawal Notice. The withdrawing Member Agency may pay the Authority the present value of its pro rata share of all obligations as of the Date of Withdrawal or otherwise refinance its obligations, but in no event pay less than owed at the time payment is due under agreements made before the Withdrawal Notice. Upon termination of this Agreement as to a withdrawing party, the Authority shall return to the Member Agency all of the leased facilities identified in Sections 4.2 above, unless otherwise specified in an agreement between Member Agencies that share territory. A withdrawing agency shall not be entitled to any agency funds upon withdrawal.

## **SECTION 7. MISCELLANEOUS.**

### **7.1 Conflict of Interest.**

The Authority Board shall adopt and, thereafter, maintain a conflict of interest code in compliance with applicable provisions of the Political Reform Act (Gov. Code, §87300 et seq.) and the regulations adopted by the Fair Political Practices Commission (Cal. Code Regs., Title 2, §1870 et seq.).

### **7.2 Recitals.**

The foregoing recitals are true and correct and are made a part hereof.

### **7.3 Effective Date of Agreement.**

This Agreement shall become effective when signed and executed by both Member Agencies.

### **7.4 Operational Date of Authority.**

This Agreement shall become operational on March 1, 2018, following approval and execution by the Initial Member Agencies.

### **7.5 Term.**

This Agreement shall be effective on the effective date and shall continue in effect until terminated pursuant to Sub-section 2.11.

### **7.6 Headings.**

All section headings in this Agreement are for convenience of reference only and are not to be construed as modifying or governing language in the section referred to or to define or limit the scope of any provision of this Agreement.

### **7.7 Consent.**

Whenever in this Agreement any consent or approval is required, the same shall not be unreasonably withheld.

### **7.8 Law Governing.**

This agreement is made under the Constitution and laws of the State of California.



**7.9 Amendments.**

This Agreement may not be amended or modified except by vote of all Members.

**7.10 Severability.**

In the event any provision of this Agreement is determined to be illegal or invalid for any reason, all other provisions and sections of this Agreement shall remain in full force and effect unless and until otherwise determined. The illegality of any provision of this Agreement shall in no way affect the legality and enforceability of any other provisions of this Agreement.

**7.11 Non-Liability of Agents.**

None of the officers or agents of the Authority shall be deemed, by reason of such status, to be officers, agents or employees of either Member Agency or to be subject to any of the requirements of either Member Agency.

**7.12 Successors.**

This Agreement shall be binding upon and all inure to the benefit of the successors of the Member Agencies. Member Agencies may not assign any right or obligation hereunder without written consent of the Authority.

**7.13 Notice.**

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 at the mailing or electronic addresses listed herein.

To City: City of Tracy  
333 Civic Center Plaza  
Tracy, California 95376  
[Manager@cityoftracy.org](mailto:Manager@cityoftracy.org)

With copy to: City Attorney  
333 Civic Center Plaza  
Tracy, California 95376  
[attorney@cityoftracy.org](mailto:attorney@cityoftracy.org)

To District: Bowman & Berreth  
Tracy Rural Fire Protection District  
1820 Kettleman Lane, Suite F  
Lodi, California 95242

Communications shall be deemed to have been received on the first to occur of: (1) actual receipt at the physical address designated above, or (2) three working days after the deposit of a written

**7.14 No Continuing Waiver.**

No waiver of any term or condition of this Agreement shall be considered a continuing waiver thereof.

**7.15 No Third Party Beneficiary.**

The Members agree that the provisions of this Agreement are not intended to directly benefit, and shall not be enforceable by, any person or entity not a party to this Agreement.

**7.16 Entire Agreement.**


This Agreement contains all the terms agreed to by the Parties relating to its subject matter.

**7.17 Construction of Agreement.**

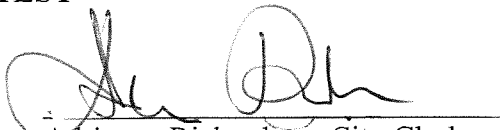
Each Member Agency has had an equivalent opportunity to participate in the drafting of this Agreement and to consult with legal counsel. Therefore, the usual construction of an agreement against the drafting party shall not apply hereto.

[SIGNATURES ON NEXT PAGE]

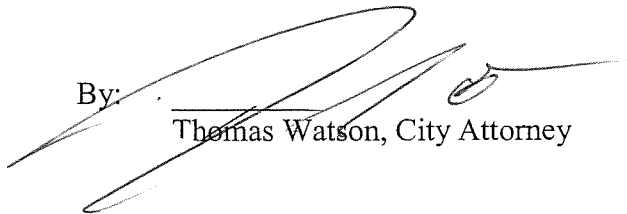
**CITY OF TRACY**

By:   
Robert Rickman  
Mayor

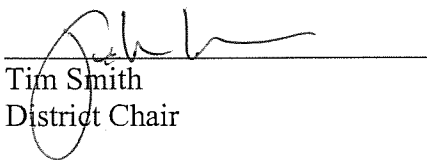
**ATTEST**

By:   
Adrienne Richardson, City Clerk

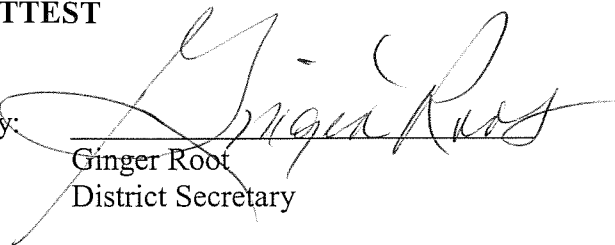
**APPROVED AS TO FORM**

By:   
Thomas Watson, City Attorney

**TRACY RURAL FIRE PROTECTION DISTRICT**

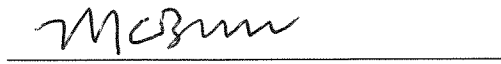
By:  *Vice Chair for*  
Tim Smith  
District Chair

**ATTEST**

By:   
Ginger Root  
District Secretary

**APPROVED AS TO FORM**

BOWMAN & BERRETH, LLP

By:   
Mark Charles Bowman  
District Counsel

TRACY CITY COUNCIL

RESOLUTION 2024-\_\_\_\_\_

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**(1) APPROPRIATING \$340,000 FROM SOUTH SAN JOAQUIN COUNTY FIRE AUTHORITY FOR THE CONSTRUCTION OF THE FIRE TRAINING FACILITY AT THE NEI RESERVOIR, (2) AWARDED A CONSTRUCTION CONTRACT TO GRADETECH INC. OF LIVERMORE, CALIFORNIA, IN THE AMOUNT OF \$3,441,656.01, (3) AUTHORIZING THE CITY MANAGER TO APPROVE CHANGE ORDERS UP TO THE CONTINGENCY AMOUNT OF \$172,083, IF NEEDED, AND (4) APPROVING A TOTAL NOT-TO-EXCEED PROJECT BUDGET OF \$3,805,780.01.**

**WHEREAS**, on September 7, 1999, the City of Tracy (City) and Tracy Rural Fire Protection District (TRFPD) entered into a Joint Exercise of Powers Agreement (JPA) to form the South County Fire Authority (SCFA) to provide fire protection services within the City's and TRFPD's respective areas; and

**WHEREAS**, on February 20, 2018, the City and TRFPD executed the South County Fire Dissolution Agreement (Dissolution Agreement) between City and TRFPD dissolving the SCFA; and executed a new Joint Powers Agreement of the South San Joaquin County Fire Authority (SSJCFA) to replace SCFA as the fire protection services provider for the City's and TRFPD's respective service areas as Member Agencies; and

**WHEREAS**, Section 4, of the JPA entitled "Facilities and Equipment", paragraph 4.1 defines Member Agency Ownership as follows: Member Agencies shall, as a condition of membership, make available all its stations, apparatus, and equipment to provide fire protection services. Member Agencies shall be responsible for constructing and replacing fire stations within their respective jurisdiction; and

**WHEREAS**, Section 1, of the JPA entitled "Purpose and Powers", paragraph 1.2(a) states in part that one of the duties and responsibilities of the SSJCFA is to provide and manage a training program to provide these services; and

**WHEREAS**, the Project was designed by the Member Agencies to construct a new fire training facility within the jurisdictional area of the SSJCFA to provide these services; and

**WHEREAS**, the 2013 Citywide Public Safety Master Plan (CPSMP) recognized the need for a specialized fire training facility within the SSJCFA jurisdictional service area; and

**WHEREAS**, the CPSMP designated the Police Gun Range on South Tracy Boulevard for the fire training site. The Project's California Environmental Quality Act (CEQA) clearance was to be completed as part of the 2013 CPSMP and the associated Nexus Study; and

**WHEREAS**, after the adoption of the 2013 CPSMP, SSJCFA recommended that an alternate location on Chrisman Road at NEI Reservoir would be more suitable than the Police Gun Range location originally identified in the adopted 2013 CPSMP and Nexus Study; and

**WHEREAS**, on February 5, 2019, the City Council approved Resolution No. 2019-013 creating CIP 71109, for the fire training facility at the City owned NEI Reservoir property located on Chrisman Road; and

**WHEREAS**, on January 21, 2022, and January 28, 2022, the Project was advertised for competitive bids and on February 22, 2022, bids were received and publicly opened at 2:00 p.m.; and

**WHEREAS**, at the time the Project was advertised, it was anticipated that the CPSMP update and the associated Nexus Study that includes the Chrisman Road project site would be presented for adoption by the City Council early in 2022, providing the required CEQA clearance for the Project; however, the adoption of all the infrastructure master plans was delayed, rendering the Project without CEQA clearance; and

**WHEREAS**, on August 16, 2022, the City Council approved Resolution 2022-112 rejecting all bids that were received so that the City could process a project-specific and site-specific CEQA document and clearance; and

**WHEREAS**, on October 4, 2022, the County approved funding in the amount of \$2,599,234 of American Rescue Plan Act (ARPA) funds for a portion of the Project costs, as requested by SSJCFA, and the total committed funds increased to approximately \$3.6 million; and

**WHEREAS**, in January 2023, the City began collaborating with SSJCFA and Shack & Company, Inc., contracted by SSJCFA to expand the scope of the Fire Training Facility, creating both a set of Phase 1 Project plans and a set of Project Master Plans that enlarged the footprint from the original two acres to 5.13 acres. The Project Master Plan includes the addition of a classroom, parking lot, and other features; and

**WHEREAS**, the Project has been designed to be constructed in phases that are easily expanded to accommodate future fire training amenities and facilities needed by the SSJCFA and the region; and

**WHEREAS**, as additional funding becomes available, the training facilities will be expanded to incorporate the following amenities described in the Project Master Plan: an office and classroom building, an equipment storage building, a training tower, a 40-space parking lot, a radio communications tower, and a prop training field that will include training props and equipment for training scenarios such as rail car accidents, hazardous materials spills, confined spaces, open trenches, vehicle extractions, heavy objects, and structural collapse; and

**WHEREAS**, this construction contract award request is for Phase 1 of the Project Master Plan which includes a training tower, a parking lot, a storm drain system and temporary storm retention basin, an automated security gate with chain-link perimeter fencing, utilities, and an empty training field as shown in Phase 1 of the Project plans; and

**WHEREAS**, this construction contract will also install the classroom building foundation, sidewalk, water service, sewer vault, and electrical services needed for the future mobile modular office and classroom building; and

**WHEREAS**, the classroom building design is complete, and the building will be purchased separately when additional funding is available from future grants and future Fire Public Safety Facility Master Plan Fees; and

**WHEREAS**, future phases of the Project are anticipated to be funded through future grants and future Fire Public Safety Facility Master Plan Fees; and

**WHEREAS**, on May 21, 2024, the City Council approved Resolution No. 2024-076 (a) Designating 5.13 acres of the City-owned property for the Project; (b) Authorizing the execution of a Memorandum of Understanding with San Joaquin County for the award of \$2,599,234 of ARPA grant funds for Phase 1 of the Project costs; and (c) Appropriating the grant funds to the Project; and

**WHEREAS**, the ARPA funding is a grant reimbursement, such that the County will reimburse the City upon delivery of invoices; and

**WHEREAS**, the City is the lead agency for CEQA review of the Project, and in March 2023, the environmental consultant De Novo Planning Group, Inc. prepared an Initial Study/Negative Declaration (IS/ND) for the Project; and

**WHEREAS**, the City has evaluated potential environmental effects of the Project through the preparation and circulation of a proposed IS/ND State Clearinghouse (No. 2023090350) and consideration of all comments and responses and all actions required to be taken by applicable law related to the preparation, circulation, and review of the proposed IS/ND have been taken; and

**WHEREAS**, on September 15, 2023, the City advertised a 30-day public review period for the IS/ND for the Project Master Plan. On October 17, 2023, the Project specific environmental analysis and clearance were completed at the end of the public comment period; and

**WHEREAS**, the IS/ND determined that the proposed Project will not have significant impacts on the environment; and

**WHEREAS**, on May 21, 2024, the City Council approved Resolution No. 2024-075 adopting the Negative Declaration, as the appropriate environmental document; and authorizing the City Manager to file a Notice of Determination with the San Joaquin County Clerk's Office after execution, completing the environmental document process for the Project, in compliance with CEQA; and

**WHEREAS**, Phase 1 of the Project was advertised for competitive bids by public notice on May 24, 2024, and May 31, 2024; and the bids were received and publicly opened in City Hall, Conference Room 203, and via Microsoft Teams virtual meeting at 2:00 p.m. on Monday, July 15, 2024; with the following results:

<b>Contractor</b>	<b>Bid Amount</b>
GradeTech Inc., Livermore, CA	\$3,441,656.01
GCJ Inc., Tracy, CA	\$4,486,201.05
Swierstok Enterprise, Inc. dba Pro Builders, Orangevale, CA	\$4,988,310.00
Saboo Inc., Brentwood, CA	\$6,097,752.00

;and

**WHEREAS**, GradeTech, Inc. of Livermore, California, is the lowest bidder; and

**WHEREAS**, the bid analysis indicates their bid is “responsive” and the bidder is “responsible”; and

**WHEREAS**, the total estimated cost of Phase 1 of the Project, if awarded to the lowest bidder, is as follows:

Construction Bid	\$ 3,441,656.01
Construction Contingency (5%)	\$ 172,083.00
Construction Management (2.5%)	\$ 86,041.00
Estimated Habitat Mitigation Fee	\$ 106,000.00
<u>Estimated Construction Cost</u>	<u>\$ 3,805,780.01</u> ; and

**WHEREAS**, on August 14, 2024, the SSJCFA Board authorized \$340,000 of additional funds be transferred to the Project budget; and

**WHEREAS**, with grant funding and appropriated funds, sufficient funds will exist to complete Phase 1 of the Project; now, therefore, be it

**RESOLVED:** That the City Council of the City of Tracy, hereby approves an appropriation of \$340,000 from the SSJCFA to CIP 71109, for the Fire Training Facility at the NEI Reservoir; and be it

**FURTHER RESOLVED:** That the City Council of the City of Tracy awards a construction contract to GradeTech, Inc. of Livermore, California, in the amount of \$3,441,656.01 for the Fire Training Facility at the NEI Reservoir Project, CIP 71109; and be it

**FURTHER RESOLVED:** That the City Council of the City of Tracy authorizes the City Manager to approve change orders up to the contingency amount of \$172,083, if needed; and be it

**FURTHER RESOLVED:** That the City Council approves a not-to-exceed Project budget of \$3,805,780.01; and be it

**FURTHER RESOLVED:** That the City Council, through its own independent review, finds that the Negative Declaration adopted by the City Council on May 21, 2024, adequately addressed the environmental impacts of the Project under the California Environmental Quality Act (CEQA) and that no new significant changes have occurred since that date necessitating any further review under CEQA.

\*\*\*\*\*

The foregoing Resolution 2024-\_\_\_\_\_ was adopted by the Tracy City Council on the 3<sup>rd</sup> day of September 2024 by the following vote:

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

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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



Agenda Item 3.A

RECOMMENDATION

**Staff recommends that the City Council receive an update on the League of California Cities City Manager's Sales Tax Working Group: E-Commerce Policy Recommendations.**

EXECUTIVE SUMMARY

Staff recommends that the City Council receive an update on the League Of California Cities (Cal Cities) City Manager's Sales Tax Working Group (Working Group): E- Commerce Policy Recommendations. In June 2024, the Working Group completed a two-year policy review of Bradley Burns Sales Tax related to e-commerce and is recommending a 50/50 split of the Sales Tax between point-of-sale and destination of sale.

BACKGROUND AND LEGISLATIVE HISTORY

In 2021, the City of Tracy opposed a proposed Cal Cities Conference Resolution to shift Bradley Burns 1% Sales Tax from point-of-sale to 100% destination for E-Commerce transactions. The Resolution Committee of Cal Cities ultimately rejected the proposed resolution, and the policy item was sent back to the Cal Cities Revenue and Taxation Committee for further discussion. In 2022, the Cal Cities Revenue and Taxation Committee formed the Working Group to develop policies for e-commerce sales tax.

The Working Group was comprised of representatives from warehouse and non- warehouse communities. Karin Schnaider, Assistant City Manager, was appointed for warehouse communities representing the Central Valley Division.

The purpose of the Working Group was stated to be:

*"To convene a diverse and representative group of California city officials dedicated to examining local government sales tax issues and providing recommendations that:*

- *Equitable benefit California cities*
- *Further Fiscal Sustainability; and*
- *Strengthen the viability of the sales tax"*

In 2023, the Working Group drafted a New Equity Policy Statement for e-commerce. Adopted by the Cal Cities Board, the policy statement shifted from Bradley Burns Sales Tax on e-commerce from 100% destination to consideration of both destination and point-of-sale in e-commerce sales tax discussion. In addition, the Cal Cities Board adopted other policy considerations for e-commerce sales tax as proposed by the Working Group (Attachment A).

In June 2024, the Working Group completed their recommendations for e-commerce Bradley Burns 1% Sales Tax. At the August 20, 2024, City Council meeting, Finance Committee Chair, Council Member Arriola, requested an update on the Cal Cities e-commerce policies to come to the September 3, 2024 City Council meeting. This was seconded by Finance Committee Co-Chair, Council Member Bedolla.

## ANALYSIS AND DISCUSSION

### **In-State E-commerce Sales Tax Split**

In support of the new equity statement, the Working Group recommends that in-state e-commerce should be split 50% point-of-sale and 50% destination. The proposed policy includes an allowance for a plus/minus of 10% of this formula to allow for some flexibility during the drafting of the bill. The Working Group also recommends an exclusion for business-to-business e-commerce and existing tax-sharing agreements. As part of this policy, the Working Group drafted a definition of e-commerce (see [Attachment B](#)). The Working Group also recommends a five-year phase in period to achieve the final proposed ratio split. The five-year phase in period would begin after the California Department of Tax and Fee Administration (CDTFA) determines that it can make the appropriate changes to account for split of the e-commerce taxes.

The Cal Cities Board is expected to consider this proposal in 2025. Over the next 6-12 months, Cal Cities will be conducting an educational and awareness campaign related to the proposed e-commerce policies. There is a potential for a State bill to be introduced in 2026. This is likely to require a constitutional amendment, which requires a super majority vote. It is estimated that nine cities, including the City of Tracy, are expected to have a 25% or greater loss in sales tax with the 50/50 split. This is a decrease from the approximate 30 cities with the similar losses under the policy of 100% sales tax to destination.

The full impacts to the City of Tracy are unknown, as there are many variables in this policy that are expected to be worked out over the next two years. It is estimated that the first year of implementation by CDTFA of the shift in e-commerce sales tax would be 2028. If a five-year phase in period is approved with the amendment, the full revenue loss could be in 2033. The exclusions of business-to-business; as well as the definition of e-commerce will lessen the potential loss of sales tax to the City of Tracy. The estimated loss of sales tax is \$16-\$50 million annually. Over the course of the next nine-years, other factors could arise and their impacts on the City's revenues should be monitored.

### **Out-of-State E-commerce Sales Tax**

The Working Group recommends that e-commerce transactions that are out-of-state should be 100% destination. This is a modification of current CDTFA practice of placing it in County pool and allocating based on each jurisdiction's quarterly sales tax earnings. The Cal Cities Board is expected to consider this in 2025. There is a potential for

implementation in Fiscal Year 2025/2026 as CDTFA may make this change at their discretion. The full impacts of this policy to the City of Tracy are unknown as the data is held by the CDTFA; it is estimated it may be a revenue loss of \$1-3 million annually.

### **Other Policy Recommendations for Sales Tax**

In 2023, the Working Group recommended that sales tax rebate/sharing agreements should be limited to average of 50% sales tax generated by the private business, across the lifetime of the agreement. The Working Group recognized that the average over the contract life provided for greater flexibility for economic incentives. They also recommended that sales tax sharing agreements should be limited to 20 years; and term extensions would be prohibited. The Cal Cities Board approved this recommendation in 2023. There is a potential for a State bill measure to be introduced in 2025. This would be prospective in nature and would have minimal impact on the City of Tracy's current sales tax rebate policies.

In 2023, the Working Group recommended that CDTFA deduct a city's sales tax rebate from a city's county pool formula. The Cal Cities Board approved this recommendation in 2023. This would be prospective in nature. There is a potential for implementation in Fiscal Year 2025/2026 as CDTFA may make this change at their discretion. The City may see a minimal revenue loss related to this policy.

In 2023, the Working Group recommended regulation for reporting sales tax rebate agreements to a centralized repository (such as the CDTFA). The Cal Cities Board approved this recommendation in 2023 and Assembly Member Irwin introduced Assembly Bill 2854 in 2024. The only fiscal impact would occur for non-compliance.

Staff will be presenting a PowerPoint Presentation for this agenda item (see [Attachment C](#)).

### **FISCAL IMPACT**

Nine cities in California, including the City of Tracy, may see a 25% or greater loss in sales tax from e-commerce under this policy. The estimated value of revenue loss is \$16 million to \$50 million. However, the timeline and certain exclusions may reduce the revenue loss.

### **STRATEGIC PLAN**

This agenda item supports Governance Strategic Goal 1: Model Good Governance, Teamwork, and Transparency.

### **ACTION REQUESTED OF THE CITY COUNCIL**

Staff recommends that the City Council receive an update on the League of California Cities City Manager's Sales Tax Working Group: E-Commerce Policy Recommendations.

Prepared by: Karin Schnaider, Assistant City Manager

Reviewed by: Sara Castro, Finance Director  
Bijal Patel, City Attorney

Approved by: Midori Lichtwardt, City Manager

Attachments:

Attachment A – City Managers Sales Tax Working Group (CMSTWG) Staff Analysis June 2023

Attachment B – CMSTWG Take Away – Annual Conference 2023

Attachment C – PowerPoint Presentation



## **ATTACHMENT A**

### Revenue and Taxation Policy Committee Legislative Agenda June 2023

Staff: Ben Triffo, Legislative Representative, (916) 738-9062  
Jessica Sankus, Senior Policy & Legislative Affairs Analyst, (916) 658-8283

1. Prospective changes to sales tax sharing agreements  
City Managers Sales Tax Working Group Recommendation: Reducing competition for situs-based sales tax revenue by instituting parameters for sales tax sharing agreements.

#### Summary

Throughout late 2022 and early 2023, the City Managers Sales Tax Working Group (working group) convened a subcommittee to workshop proposals to institute prospective, reasonable, and targeted limits to sales tax sharing agreements (rebate agreements) to reduce competition for situs-based sales tax revenue between cities. The subcommittee took into consideration the conversations, feedback, and survey responses of the working group members.

Although subcommittee members hold a variety of perspectives and experiences regarding the merits or flaws of sales tax sharing agreements, the subcommittee conversations ultimately focused on how to preserve sales tax sharing agreements as an economic incentive tool while establishing parameters that reduce competition and create a fairer environment.

#### Background

The Sales Tax Working Group of the City Managers Department is convened to review evolving trends, explore policy implications, and identify additional data to support reform discussions. The 2022 working group convenes a diverse and representative group of California city officials dedicated to examining local government sales tax issues to provide recommendations that equitably benefit California cities, further fiscal sustainability, and strengthen the viability of the sales tax.

Throughout 2022, the reconvened group explored existing law, regulations and practices regarding tax sourcing rules including national trends. The group has given significant attention to reforming tax sourcing rules and tax rebate agreements. The group has also identified additional issues within county pool allocation policy.

Within the suite of recommendations adopted by the previous iteration of the working group in 2018, the previous group reached consensus to limit rebate agreements as follows:

1. Sales tax rebate agreements involving online retailers should be prohibited going forward as they have the effect of encouraging revenue to be shifted away from numerous communities and concentrated to the benefit of one.
2. Any type of agreement that seeks to move a retailer from one community to another within a market area should also be prohibited going forward. Existing law already prohibits such agreements for auto dealers and big box stores.

To this end, Senator Glazer introduced [SB 531](#) in 2019, which would have prospectively banned sales tax rebate agreements between a retailer and a local agency involving Bradley-Burns Sales and Use Taxes. In 2019, Governor Newsom vetoed SB 531. In his veto message, Governor Newsom noted that:

*“Current use of these tax agreements are limited but also an important local tool that captures additional economic activity, particularly in rural and inland California cities that continue to face significant economic challenges like high unemployment rates...Therefore, completely removing these tax options from **local decision makers is the wrong approach.**” [Emphasis added]*

#### 2022-23 Working Group Conversations on Sales Tax Sharing Agreements

Throughout late 2022 and into 2023, working group members discussed a path forward to limit sales tax sharing agreements without implementing a statewide prohibition. Although subcommittee members hold a variety of perspectives and experiences regarding the merits or flaws of sales tax sharing agreements, the subcommittee of the working group ultimately focused on how to preserve sales tax sharing agreements as an economic incentive tool while establishing parameters that reduce competition and create a fairer environment.

This compromise scenario included the following comments and recommendations:

- Any changes to statute regarding sales tax sharing agreements should be prospective in nature.
- Existing sales tax sharing agreements should be “grandfathered in” (exempted to some degree)
- If a bill is introduced, this will cause companies to put pressure on cities to enter into sales tax sharing agreements before the bill is signed. The bill would need to be effective as of the date the bill was introduced, or something similar to prevent a “rush” to enter into agreements.
- There should be a cap on the percentage/proportion rebated to a private business in sales tax sharing agreements, prospectively.
- There should be a cap on the duration of sales tax sharing agreements.
- There should be more oversight and public review of sales tax sharing agreements.
- A majority of the working group's conversation included an exploration of county pool calculations and whether it is equitable that sales tax revenue that is rebated to a private business is included in the county pool calculations (i.e., the proportion of each city's taxable sales compared to the county as a whole includes taxable sales that are rebated to a private business). Generally, this

means that a city generating 4% of all taxable sales in a county receives 4% of the pool, even if 1% of the city's taxable sales was rebated to a private business.

- To reach an equitable policy recommendation, working group members recommend modifying the formula that determines the pro rata portion of the county pool for each city. Working group members discussed whether it would be more appropriate to remove the amount that is rebated to private businesses, or, whether all of the sales tax generated via a sales tax sharing agreement should be deducted from the county pool calculation.
- Regardless of what the group decides regarding how much should be deducted, this modified calculation would need to apply to only new sales tax sharing agreements, in order to honor the agreement/intention that recommendations adopted by the working group will be prospective in nature.

## 2022 Working Group Member Survey Results

### July 2022 Survey

Would you support legislative efforts to limit future (prospective) sales tax sharing agreements in which a city rebates some portion of money to a private business?

- Yes: 62% (25 responses)
- No: 28% (11 responses)
- Unsure: 10% (4 responses)

### May 2022 Survey

Should measures be taken to reduce competition for situs-based sales tax revenue?

- Yes: 70% (26 responses)
- No: 19% (4 responses)
- Unsure: 11% (7 responses)

## 2023 Cal Cities Statewide Survey on Sales Tax Sharing Agreements

In March 2023 Cal Cities conducted a statewide survey to understand the scope and scale of sales tax sharing agreements statewide, the results of which would inform future recommendations of the City Managers Sales Tax Working Group. 132 cities responded to the survey and comprise diverse representation across the state geographically and economically.

The key results of the survey are as follows:

- Of the 132 survey respondents, 36 cities had one or more sales tax sharing agreement (27% of respondents).
- Of the 36 survey respondents that have sales tax sharing agreements, 22 cities have one rebate agreement and 14 had more than one.
- The median duration of the rebate agreements is 18.5 years.
- The median percent of sales tax rebated to a private business is 50%.
- 33% of the agreements (12 out of 36) have caps on rebates and the median tax rebate cap is 50%.
- 31% (11 out of 36) of the agreements have term extension options.

- 69% (25 out of 36) have tiered rebate formulas or baselines in the formula for their agreement (rebating above a threshold).

#### Existing Law

In 2013, Governor Brown signed [AB 562](#) (Chapter 740, Statutes of 2013) which requires local agencies, beginning January 2014, to provide specified information to the public before approving any economic development subsidy of \$100,000 or more. The information is to be made publicly available on the local agency's website in the form of an Economic Development Subsidy Report.

In 2019, Governor Newsom signed [AB 485](#) (Chapter, 803, Statutes of 2019) which expand the provisions of AB 562 specifically to warehouse distribution centers and require local governments to hold hearings and report on those subsidies. AB 485 requires local agencies to submit a report to the Governor's Office of Business and Economic Development providing specified information and would require the office to make those reports available to the public through its internet website.

AB 485 also prohibits a local agency from signing a nondisclosure agreement regarding a warehouse distribution center as part of negotiations or in the contract for any economic development subsidy.

#### Existing Cal Cities Policy

From the [Cal Cities Summary of Existing Policy and Guiding Principles](#)

#### Reduce Competition

Restrictions should be implemented and enforced to prohibit the enactment of agreements designed to circumvent the principle of situs-based sales and redirect or divert sales tax revenues from other communities when the physical location of the affected businesses does not change.

Sales tax rebate agreements involving online retailers are inappropriate because they have the effect of encouraging revenue to be shifted away from numerous communities and concentrated to the benefit of one. Any type of agreement that seeks to lure a retailer from one community to another within a market area should also be prohibited going forward.

#### Recommendation from the City Managers Sales Tax Working Group

#### Sales Tax Sharing Agreement Parameters, Enhanced Transparency, and Modifications to County Pool Calculations

- All policy changes to sales tax sharing agreements will be prospective in nature (will not affect existing agreements). However, existing sales tax sharing agreements should not have the ability to be renewed in perpetuity, i.e., term extensions that would be a loophole to avoid new requirements are prohibited.
- Institute a maximum duration of 20 years for new sales tax sharing agreements.
- Institute a rebate cap of 50% of the sales tax generated by the private business.



- Require the state to create and maintain a database and dashboard of all Economic Development Subsidy Reports on a website.
- Exclude from the county pool calculations of the local Bradley Burns 1% sales and use tax the sales tax gained from a sales tax sharing agreement that is rebated to a private business. (See example charts attached to this analysis)

Staff Recommendation:

Staff recommends support of the working group's recommendation.

Committee Recommendation:

Committee unanimously approved transmittal of the working group's recommendation to the Cal Cities Board of Directors.

Board Recommendation:

**Tax Sharing Agreements: Changes to County Pool Calculation (Example)**

**Recommendation:** Exclude only the rebated amount of local tax from a jurisdiction's direct allocations for the purpose of calculating a county pool pro-rata share.

**Notes:**

"Total Direct Allocations" means the direct allocations included in calculation of pro-rata shares.

"Pool Amount" means the use tax that is reported by the taxpayer to the countywide pool and then distributed to each jurisdiction in that county on a pro-rata share of total taxable sales.

In this example, "City C" has a new tax rebate agreement.

Status Quo				Recommended Modification					
	Direct allocations	Pro Rata Share	Pool Dollars	Direct allocations	Rebated Amount	Direct Allocation Excluding Rebated Amount	Pro-Rata Share of Direct Allocation Excluding Rebated Amount	Pool Dollars	
City A	\$ 100,000	15.2%	\$ 75,988	City A	\$ 100,000	\$ -	\$ 100,000	17.9%	\$ 89,606
City B	\$ 40,000	6.1%	\$ 30,395	City B	\$ 40,000	\$ -	\$ 40,000	7.2%	\$ 35,842
City C	\$ 500,000	76.0%	\$ 379,939	City C	\$ 500,000	\$ 100,000	\$ 400,000	71.7%	\$ 358,423
City D	\$ 12,000	1.8%	\$ 9,119	City D	\$ 12,000	\$ -	\$ 12,000	2.2%	\$ 10,753
City E	\$ 6,000	0.9%	\$ 4,559	City E	\$ 6,000	\$ -	\$ 6,000	1.1%	\$ 5,376
<b>Total Direct Allocations</b>	\$ 658,000			<b>Total Direct Allocations</b>	\$ 658,000		\$ 558,000		
<b>Pool Amount</b>	\$ 500,000			<b>Pool Amount</b>	\$ 500,000				

2. Reconciliation of Cal Cities existing policy and guiding principles to reflect the definition of equitable e-commerce sales tax revenue distribution as drafted by the City Managers Sales Tax Working Group.

### Summary

In January 2023, the City Managers Sales Tax Working Group adopted a guiding definition of equitable e-commerce sales tax revenue distribution for the Revenue and Taxation policy committee and Board of Directors consideration. This guiding definition contextualizes equity within the evolving landscape of consumer preferences, technological advances, and the needs of cities. The proposed framework is considered critical to forming recommendations that further fiscal sustainability and strengthen the viability of the sales tax.

### Background

The Sales Tax Working Group of the City Managers Department is convened to review evolving trends, explore policy implications, and identify additional data to support reform discussions. The 2022 working group convenes a diverse and representative group of California city officials dedicated to examining local government sales tax issues to provide recommendations that equitably benefit California cities, further fiscal sustainability, and strengthen the viability of the sales tax.

Throughout 2022, the group explored existing law, regulations and practices regarding tax sourcing rules including state and national trends. The group has given significant attention to reforming tax sourcing rules and tax rebate agreements. The group has also identified additional issues within county pool allocation policy.

Given the growing consensus to develop recommendations on several matters, while more time is needed to support a robust discussion on broader tax sourcing rules, the group has identified two phases for its work – short- and long-term actions. As part of **the first phase of group's work plan it has recommended a** guiding definition of equitable e-commerce sales tax revenue distribution. "Equity" is distributing resources and access to opportunities based on the needs of the recipients in order to reach fair and just outcomes for all.

In January 2023, the City Managers Sales Tax Working Group and the Revenue and Taxation Policy Committee adopted this guiding definition of equitable e-commerce sales tax revenue distribution to contextualize equity within the evolving landscape of consumer preferences, technological advances, and the needs of cities. This context is critical to forming recommendations that further fiscal sustainability and strengthen the viability of the sales tax. This equity statement was subsequently adopted by the Cal Cities Board of Directors.

This equity statement is the lens by which the working group will explore and answer the following questions: 1) Does the existing sales and use tax system equitably distribute revenues?, 2) Given significant transformations in commerce and how consumers access the marketplace, are changes to the local Bradley Burns 1 percent sales and use tax distribution needed?, and 3) What are the outcomes of any changes and how can they be equitably and fairly implemented?

## Equity Statement

*The equitable allocation of remote revenues from e-commerce recognizes both sides of the transaction and their contribution to sales tax generation. Allocation of the Bradley Burns 1 percent local sales tax revenue from in-state online purchases should proportionately benefit those communities that provide the infrastructure and incentives that facilitate the transaction and delivery of those goods and those communities that are the destinations for the goods. The regional impacts to infrastructure, land use, environmental quality, and public health stemming from e-commerce as well as the financial dependence of communities on the resulting revenues must be recognized. Changes to consumer behavior, which consists of more online shopping, must also be considered as to the fiscal sustainability of all cities.*

*City officials should account for these factors in the evolving marketplace and continuously strive for prospective fair and equitable revenue sharing based on data, as available. City officials should also employ their best judgement to support policies that benefit the sustainability of all cities.*

## Existing Cal Cities Policy

From the [Cal Cities Summary of Existing Policy and Guiding Principles](#) (May 2022):

### Reduce Competition

The existing situs-based sales tax under the Bradley Burns 1% baseline should be preserved and protected. Tax proceeds collected from internet sales should be allocated to the location where the product is received by the purchaser.

## Policy Change for Consideration

To better reflect the progress of the working group and the emphasis on equity as adopted in January 2023 and upheld in subsequent meetings, it is recommended that Cal Cities existing policy publication be updated to replace the struck sentence, below, with the working groups' equity statement:

### Reduce Competition

The existing situs-based sales tax under the Bradley Burns 1% baseline should be preserved and protected. ~~Tax proceeds collected from internet sales should be allocated to the location where the product is received by the purchaser.~~

*The equitable allocation of remote revenues from e-commerce recognizes both sides of the transaction and their contribution to sales tax generation. Allocation of the Bradley Burns 1 percent local sales tax revenue from in-state online purchases should proportionately benefit those communities that provide the infrastructure and incentives that facilitate the transaction and delivery of those goods and those communities that are the destinations for the goods. The regional impacts to infrastructure, land use, environmental quality, and public health stemming from e-commerce as well as the financial dependence of communities on the resulting revenues must be recognized. Changes to consumer behavior, which consists of more online shopping, must also be considered as to the fiscal sustainability of all cities.*

City officials should account for these factors in the evolving marketplace and continuously strive for prospective fair and equitable revenue sharing based on data, as available. City officials should also employ their best judgement to support policies that benefit the sustainability of all cities.

Staff Recommendation

Staff recommends support of this change to reconcile Cal Cities existing policies and guiding principles.

Committee Recommendation:

Committee unanimously approved transmittal of the recommendation to the Cal Cities Board of Directors.

Board Recommendation:



## **ATTACHMENT B**

# City Managers Sales Tax Working Group

### Background

The City Managers Sales Tax Working Group reviews evolving trends, explores policy implications, and identifies data to support reform discussions. This diverse group of city managers have diligently examined key aspects of sales tax policy in the state.

The City Managers Sales Tax Working Group has put forth several recommendations designed to promote clarity and fairness in sales tax sharing agreements, along with a guiding definition of equitable e-commerce sales tax distribution. During the June Revenue and Taxation Policy committee meeting, members unanimously approved several proposals. These proposals were then unanimously approved by the Board of Directors at their July meeting.

#### Sales tax sharing agreement parameters

**Duration and rebate cap.** The working group proposed that all policy changes to sales tax sharing agreements should only apply to future agreements, thus ensuring fairness to existing agreements. The group also suggested new sales tax sharing agreements should have a maximum duration of 20 years to prevent agreements from being renewed indefinitely. To encourage fiscal responsibility, they recommend instituting a rebate cap of 50% of the sales tax generated by private businesses.

**Enhanced transparency.** Transparency is a cornerstone of the working group's recommendations. The working group advocated for the creation of a public database and dashboard of all Economic Development Subsidy Reports by the state on a dedicated website. This would significantly enhance transparency by providing the public with access to information on a city's sales tax sharing agreement.

**Modifications to county pool calculations.** The working group proposed modifying county pool calculations to ensure the accurate allocation of funds. The working group recommends excluding from these calculations the local Bradley-Burns 1% sales and use tax revenue generated from sales tax sharing agreements that are rebated to private businesses. This exclusion aims to direct funds appropriately and prevent distortions in revenue allocation.

#### Equitable e-commerce sales tax revenue distribution

The working group also put forward a guiding definition of equitable e-commerce sales tax revenue distribution. "Equity" here means distributing resources and access to opportunities based on the needs of the recipients to reach fair and just outcomes for all.

In January 2023, the working group, along with the Cal Cities Revenue and Taxation Policy Committee, adopted this guiding definition to contextualize equity within the evolving landscape of consumer preferences, technological advances, and the needs of cities. This context is critical to forming recommendations that further fiscal sustainability and strengthen the viability of the sales tax. This equity statement was subsequently adopted by the Cal Cities Board of Directors.



# City Managers Sales Tax Working Group

This equity statement is the lens by which the working group will explore and answer the following questions: 1) Does the existing sales and use tax system equitably distribute revenues? 2) Given significant transformations in commerce and how consumers access the marketplace, are changes to the local Bradley-Burns 1% sales and use tax distribution needed? 3) What are the outcomes of any changes and how can they be equitably and fairly implemented?

To better reflect the progress of the working group and the emphasis on equity, the group recommended that Cal Cities existing policy be updated to state “tax proceeds collected from internet sales should be allocated to the location where the product is received by the purchaser” with the working groups’ equity statement (below).

“The equitable allocation of remote revenues from e-commerce recognizes both sides of the transaction and their contribution to sales tax generation. Allocation of the Bradley Burns 1 percent local sales tax revenue from in-state online purchases should proportionately benefit those communities that provide the infrastructure and incentives that facilitate the transaction and delivery of those goods and those communities that are the destinations for the goods. The regional impacts to infrastructure, land use, environmental quality, and public health stemming from e-commerce as well as the financial dependence of communities on the resulting revenues must be recognized. Changes to consumer behavior, which consists of more online shopping, must also be considered as to the fiscal sustainability of all cities.

City officials should account for these factors in the evolving marketplace and continuously strive for prospective fair and equitable revenue sharing based on data, as available. City officials should also employ their best judgement to support policies that benefit the sustainability of all cities.”

**ATTACHMENT C**



**LEAGUE OF CALIFORNIA CITIES  
(CALCITIES) CITY MANAGER'S SALES TAX  
WORKING GROUP:  
E-COMMERCE POLICY RECOMMENDATION**

Update to Finance Committee August 27, 2024



# Background

- **2021** Cal Cities Conference Resolution Committee rejects a Resolution to shift Bradley Burns 1% Sales Tax from point-of-sale to 100% destination for E-Commerce transactions; item was sent back to Cal Cities Revenue and Taxation Committee
- **2022** Cal Cities Forms a New City Managers' Working Group to develop policies for e-commerce sales tax

# Background

- **2023** New Equity Statement for e-commerce was adopted by Cal Cities Board to consider both destination and point-of-sale in sales tax discussion; as well as other policy considerations for sales tax
- **2024** City Manager's Sales Tax Working Group completes recommendations for e-commerce Bradley Burns 1% sale tax

# City Managers' Sales Tax Working Group

## Purpose

To convene a **diverse and representative** group of California city officials dedicated to examining local government sales tax issues and providing recommendations that:

- Equitably benefit California cities,
- Further fiscal sustainability, and,
- Strengthen the viability of the sales tax.



# Final Recommendations from CM Working Group to Cal Cities Board

# E-Commerce Recommendation

- In State E-Commerce, split **50% point-of-sale and 50% destination**
  - Allow for a plus/minus of 10% of this formula
- Would exclude business to business e-commerce and existing tax-sharing agreements
- Would allow for a five-year\* phase in to achieve proposed ratio split

\*Five-year phase in period would begin after CDTFA determines that it can make the appropriate changes to account for split of the e-commerce taxes



# Out of State E-Commerce

- Out of State E-Commerce, 100% destination
  - Modification of current CDTFA practice of placing it in County pool and allocating based on each jurisdiction's quarterly sales tax earnings



## Other Policies (Approved 2023)

- Sales Tax rebate/sharing agreements should be limited to average\* of 50% sales tax generated by the private business, across the lifetime of the agreement
  - \* Provides for greater flexibility for economic incentives
- Sales Tax sharing agreements should be limited to 20 years; term extensions would be prohibited



## Other Policies (Approved 2023)

- Cities should report all sales tax-sharing agreements to a centralized location (CDTFA)
- Modify county pool calculations of the local Bradley Burns 1% sales tax to deduct sales tax rebated to a private business from pro-rata shares.



# Proposed E-Commerce Definition

## E-Commerce Definition

- An internet transaction, or other similar digital-electronic media, processed digitally and delivered to a consumer from a warehouse or fulfillment location. This transaction may be fulfilled in-state or out-of-state and does not require human intervention.
- For purposes of this definition, consumer means a person or a group who intends to purchase goods or products primarily for personal, social, family, household and similar needs, who is not directly related to entrepreneurial or business activities.
- For purposes of this definition, a warehouse or fulfillment location is the location where a product or good is stored before it begins shipment to a consumer after an order is placed and is not a consumer facing retail location.



Anticipated Timelines  
and Potential Impacts on  
the City of Tracy



# Anticipated Timeline for CalCities Actions

- Regulation for reporting sales tax rebate agreements to centralized repository (CDTFA)
  - ❖ AB 2854 introduced in 2024
  - ✓ Fiscal impact for non-compliance only
- Possible bill in 2025/2026 on tax rebate policies (50% average with 20 yr term)
  - ✓ Limited impact on City as this change only limits future extension option from City's existing rebate program.



# Anticipated Timeline for CalCities Actions

- Modification to exclude rebated sales tax from County pool calculation
- Modification to shift out-of-state e-commerce from County pool calculation to 100% destination
  - ❖ Possible implementation in 2025/2026 of County pool modifications as these are CDTFA practices and not legislative modifications
- ✓ **Unknown fiscal impact:** potential \$1M to \$3M Sales Tax revenue loss



# Anticipated Timeline for CalCities Actions

- CalCities Board consideration of in state e-commerce recommendations in 2025
  - Next 6-12 months on educational updates to CalCities members
- Potential for State bill or ballot measure for 2026
  - This is likely a constitutional amendment
- ✓ **Unknown fiscal impact:** potential \$16M to \$50M Sales Tax revenue loss





QUESTIONS?

