

Tuesday, May 16, 2023, 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: 2557 357 3253** 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 25573573253 #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:*
    - *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.*
    - *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.*

**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)

CALL TO ORDER

PLEDGE OF ALLEGIANCE

INVOCATION

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

ROLL CALL

PRESENTATIONS

1. Proclamation – National Public Works Week – May 21-27
2. Proclamation – Jewish American Heritage Month
3. Proclamation – Asian/Pacific American Heritage Month
4. Police Swearing-In Ceremony

1. CONSENT CALENDAR

- 1.A Adoption of May 2, 2023 Closed Session, Special Meeting and Regular Meeting Minutes
- 1.B Staff recommends that the City Council adopt a resolution approving Amendment No. 1 to the Professional Services Agreement with SKM Engineering, LLC for the upgrade of the City of Tracy Supervisory Control and Data Acquisition system increasing the total not-to-exceed amount to \$752,140.
- 1.C Staff recommends that the City Council adopt a resolution renewing a Small Government Enterprise Licensing Agreement and the purchase of Geographic Information System software licenses through the Environmental Systems Research Institute, Inc. for a term of three years and a not-to-exceed amount of \$171,600.
- 1.D Staff recommends that the City Council adopt a resolution approving a Zero-Emission Bus Rollout Plan for the Tracer bus system as required by the California Air Resources Board's Innovative Clean Transit Regulation.
- 1.E. Staff recommends that the City Council adopt a resolution ratifying the San Joaquin Council of Governments (SJCOG) Annual Financial Plan for Fiscal Year 2023-2024, as required by the Joint Powers Agreement between SJCOG and its member agencies
- 1.F Staff recommends that the City Council, adopt a resolution to: (1) accept the finalized construction for the Pavement Rehabilitation Project, FY 2021-2022, CIP 73183, for work completed by Tracy Grading and Paving, Inc. of Tracy, California; (2) authorize the City Clerk to File the Notice of Completion with the San Joaquin County Recorder's Office; (3) authorize the City Engineer to release the bonds and retention payment; and (4) authorize the Finance Department to close the Project.
- 1.G. Staff recommends that the City Council, adopt a resolution, to: (1) approve an appropriation of \$485,000 from General Projects Fund (F301) to CIP 71111, for the Grand Theatre Center for the Arts Exterior Improvements Project, Phases 2 and 3; (2) award a construction contract to Diede Construction, Inc. of Woodbridge, California, in the amount of \$1,899,751 for Phases 2 and 3 of the Grand Theatre Center for the Arts Exterior Improvements, CIP 71111 with a not-to-exceed budget of \$2,374,689; and (3) authorize the City Manager to approve change orders up to the contingency amount of \$189,975, if needed.

- 1.H. Adopt a resolution approving Amendment No. 1 to the Professional Services Agreement with The KPA Group for the Citywide Public Facilities Master Plan Update to increase compensation by \$ 19,610 for a new total not-to-exceed amount of \$399,890 and extend the term of the Agreement through December 31, 2023.
- 1.I. Staff recommends that the City Council adopt a resolution to (1) accept the construction for the Lincoln Boulevard Sewer Main and Lateral Replacement Project, CIP 74163 for work completed by Tracy Grading and Paving, Inc., of Tracy, California, (2) authorize the City Clerk to File the Notice of Completion with the San Joaquin County Recorder's Office, (3) authorize the City Engineer to release the bonds and retention payment, and (4) authorize the Finance Director to close the Project.
- 1.J. Staff recommends that the City Council approve a resolution adopting the bylaws for the (a) Tracy's Homelessness Advisory Committee and (b) Finance Committee.
- 1.K. Staff recommends that City Council approve the Offsite Improvement Agreement between City and Lennar Homes of California, LLC for public roadway improvements for Tracy Hills Drive 1B-1 that are required by the Conditions of Approval for the Vesting Tentative Subdivision Map for Tracy Hills Phase 1B
- 1.L. Staff recommends that the City Council adopt a resolution (1) accepting the construction for the Temporary Emergency Housing Project on Arbor Avenue, Phase 1, CIP 71112 for work completed by GradeTech, Inc., of San Ramon, California, (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 bonds and retention payment.
- 1.M. Staff recommends that the City Council adopt a resolution (1) accepting public improvements constructed for Eastside Channel Concrete Lining by Tracy CHP Partners, LLC, (2) authorizing the City Engineer to release the bonds, and (3) authorizing the City Clerk to file the Notice of Completion with the San Joaquin County Recorder's Office.
- 1.N. Staff recommends that the City Council adopt a resolution approving Amendment No. 1 to the Professional Services Agreement with Indigo | Hammond + Playle Architects, LLP for the Citywide Public Safety Master Plan update (CIP 71108) to increase compensation by \$20,000 for a new total not-to-exceed amount of \$196,500 and extend the term through December 31, 2023.
- 1.O. Staff recommends that the City Council adopt a resolution to (1) accept the Lewis Manor Well Rehabilitation (Production Well No. 5) Project – CIP 75153, completed by Zim Industries, Inc.; (2) authorize the City Clerk to file the Notice of Completion with the San Joaquin County Recorder's Office; (3) authorize the City Engineer to release the bonds and retention payment; and (4) authorize the Finance Director to close the project.
- 1.P. Staff recommends that the City Council adopt a Resolution authorizing a Cooperative Purchasing Agreement with UniFirst Corporation for the purchase of uniform services for a term of 5 years and a total not to exceed amount of \$500,000.

## 2. ITEMS FROM THE AUDIENCE

## 3. REGULAR AGENDA

- 3.A. Staff recommends that the City Council introduce an Ordinance of the City of Tracy: 1)Amending Tracy Municipal Code Sections: (A) 6.36.012 to modify the definition of owner for commercial cannabis; (B) 6.36.040 to add clarifying language; (C) 6.36.080 to toll further toll the expiration date of the commercial cannabis business permits that are expiring on June 21, 2023, to March 3, 2024; and (D) 6.36.100 to modify the cannabis business permit renewal requirements; and 2) Determining that the Project is categorically exempt from the California Environment Quality Act (CEQA), pursuant to CEQA Guidelines Section 15061(B)(3).
- 3.B. Staff recommends that the City Council receive an informational report and provide feedback on renaming the Tracy Sports Complex pursuant to the City of Tracy's Naming Public Buildings, Parks and Recreational Facilities Policy.
- 3.C. Staff recommends that Council adopt a resolution approving a Joint Community Facilities Agreement with the Jefferson School District relating to the City of Tracy Community Facilities District No. 2016-1 (Tracy Hills) and approving and authorizing related documents and actions.
- 3.D Staff recommends that the City Council appoint, by motion, Matthew Shrout to serve on the City of Tracy's Parks and Community Services Commission, for a full term beginning May 17, 2023 and ending January 31, 2028.
- 3.E Approve a resolution to adopt amendments to the City Council's A) Code of Conduct and B) Meeting Protocols and Rules of Procedures

4. ITEMS FROM THE AUDIENCE

5. STAFF ITEMS

6. COUNCIL ITEMS

7. ADJOURNMENT

TRACY CITY COUNCIL - SPECIAL MEETING MINUTES

**May 2, 2023, 4:30 p.m.**

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

1. Mayor Young called the meeting to order at 4:30 p.m.
2. There was no action required pursuant to AB 2449.
3. Roll call found Council Members Bedolla, Evans, Mayor Pro Tem Davis and Mayor Young present.

Council Member Arriola arrived at 4:32 p.m. after roll call.

4. ITEMS FROM THE AUDIENCE - None
5. REQUEST TO CONDUCT CLOSED SESSION

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

- City Negotiators  
Midori Lichtwardt, Acting City Manager  
Karin Schnaider, Assistant City Manager  
Kimberly Murdaugh, Human Resources Director  
Sara Cowell, Finance Director  
Bijal Patel, City Attorney  
Che Johnson, Special Counsel  
Michael W. Jarvis, Special Counsel
- Employee Organizations:  
General Teamsters Local No. 439, IBT  
Tracy Mid Managers Bargaining Unit  
Tracy Police Management Association  
Tracy Police Officers' Association  
Tracy Technical and Support Services Employee Association

There was no public comment.

**ACTION:** Motion was made by Mayor Pro Tem Davis and seconded by Council Member Bedolla to recess to closed session. Roll call found all in favor; passed and so ordered. Time: 4:33 p.m.

6. Reconvene to Open Session – 5:46 p.m.
7. Report of Final Action, if Any - None
8. Council Items and Comments – None

9. Adjournment – Time: 5:46 p.m.

**ACTION:** Motion was made by Mayor Pro Tem Davis 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 April 27, 2023. The above are action minutes. A recording is available at the office of the City Clerk.

ATTEST:

\_\_\_\_\_  
Mayor

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

SPECIAL MEETING MINUTES OF THE TRACY CITY COUNCIL

**May 2, 2023, 5:30 p.m.**

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

1. Mayor Young called the meeting to order at 5:55 p.m.
2. There was no action required pursuant to AB 2449.
3. Roll call found Council Members Arriola, Bedolla, Evans, Mayor Pro Tem Davis and Mayor Young present.
4. Items from the Audience: None
5. Discussion Items

5.A CITY COUNCIL CONDUCT A WORKSHOP TO REVIEW THE CITY'S PROPOSED PAVEMENT REHABILITATION PROJECTS FOR THE NEXT THREE FISCAL YEARS AND PROVIDE FEEDBACK.

Jaylen French, Director of Development Services provided background on the Pavement Management Program and introduced Anju Pillai, PE, Senior Engineer who provided the staff report. Koosun Kim, Senior Engineer answered Council questions.

Robert Tanner expressed that it is nice the arterial roads will be repaired and asked if the side streets would also be repaired especially since some of those side streets have been inundated with weeds.

Council Member Bedolla expressed appreciation for the presentation and asked if Council and the public could get a version where they could zoom in and see the streets clearer, and appreciates the approach for the prioritization of the arterial roads.

Mayor Pro Tem Davis echoed Council Member Bedolla's sentiments and expressed encouragement for the prioritization for the worse streets in Tracy to get repaired so citizens can travel without worry that there will be damage to their vehicles.

Council Member Arriola shared his disappointment with how the prioritization took place, agreed that the arterial roads need repairs, but the geographic zones need to be fine-tuned since there is a discrepancy in the distribution of good and excellent roads as they are distributed throughout the City. Would like staff to take a closer look at the geographic zones, seems that some of the zones that are most affected are planned for 2028 and those are some of the oldest parts of the City particularly the areas that surround El Pescadero Park and historically have been underserved and it doesn't seem that equity has been taken into account. Would be more in favor to give this area higher priority and how far off those repairs are. Prioritize areas in front of schools, not in favor of this type of geographic zoning. Hoping to reorganize, to make it more equitable for those who have the worse streets already.

Council Member Evans supported staff's approach of attacking the arterial roads first since Tracy is a commuter town, would like to see additional fiscal forecast updates, shared confusion about zoning and the simplification and supports CPI ranking and conditions of the road. Would like to see ideas on Value Engineering and how to stretch our dollars to see how to get roads in better shape.

Mayor Young expressed appreciation for the update and requested that the information provided in the presentation be provided on the website for easy public access and agreed that key areas where schools are located are looked at and that communication be provided to all those that may be affected by traffic issues that may arise and asked about funding sources for this project.

Council Member Bedolla asked for clarification regarding Lowell Ave and what the timeframe of repairs for that would be.

6. Council Comments or Items - None

7. Adjournment: Time: 6:39 p.m.

**ACTION:** Motion was made by Mayor Pro Tem Davis 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 April 27, 2023. The above are action minutes. A recording is available at the office of the City Clerk.

ATTEST:

\_\_\_\_\_  
Mayor

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

**May 2, 2023, 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 7:00 p.m.

Roll call found Council Members Arriola, Bedolla, Evans, Mayor Pro Tem Davis and Mayor Young present.

Pastor Tim Heinrich, from Crossroads Baptist Church offered the invocation.

Midori Lichtwardt, Acting City Manager presented the Employee of the Month award for May 2023 to Heather Holtzman, Operations and Utilities Department.

Mayor Young presented Certificates of Appointment to new Measure V Residents' Oversight Committee members Rosario Arulappan and Pio Fernando.

Mayor Young presented a proclamation for Bike to Work Month to Dotty Nygard.

Mayor Young presented a proclamation for Older Americans Month to Volunteer, Judy Deliramich.

Mayor Young presented a proclamation for Building Safety Month to City of Tracy Building Official, Christopher Morgan.

Mayor Young proclaimed May 4, 2023 as National Day of Prayer.

Mayor Young presented a proclamation for Neurofibromatosis Awareness Month to Jessica Contreras.

Mayor Young presented a proclamation for Lyme Disease Awareness Month to Samantha Heinrich and Tim Heinrich.

#### DEVIATION

6. COUNCIL ITEMS - Council Member Evans shared that on April 19, 2023 he received the first of multiple threats of bodily harm and death, ranging from murder to kidnapping. Has received tremendous outpouring of support from the community but wanted to make it clear that the threats have scared his family but stand by his Council position and will continue making principled decisions that place the members of the community first, will continue doing his work on Council and political violence and threats are absolutely unacceptable. If there is an alternating point of view bring those convincing arguments to the podium, that takes guts and hard work, sitting behind a keyboard making threats to try to change the course of a city through intimidation is cowardice and ineffective. This has been reported to the authorities who are working diligently and investigating this issue. Thanked the community for hearing his message.

1. CONSENT CALENDAR – Motion was made by Mayor Pro Tem Davis and seconded by Council Member Arriola to adopt the Consent Calendar. Roll call found all in favor; passed and so ordered.
  - 1.A Adoption of April 18, 2023, Closed Session, Special Meeting and Regular Meeting Minutes. – **Minutes were adopted.**
  - 1.B Waive the second reading and adopt an ordinance authorizing an amendment to the contract between the City Of Tracy and the California Public Employees' Retirement System Plan to provide public service credit for Peace Corps, Americorps Vista, or Americorps Services for all local miscellaneous members and all local Police members, pursuant to Government Code section 20471. - **Ordinance 1336** was adopted.
  - 1.C Adopt a resolution awarding a public contract to H.B. Restoration, Inc., in the amount of \$62,980, for the City Hall Common Area Painting 2023, with a not-to-exceed budget of \$72,427 and authorizing the City Manager to approve any change orders up to the contingency amount of \$9,447 if needed. - **Resolution 2023-070** awarded a public contract to H.B. Restoration, Inc.
  - 1.D Adopt a resolution: 1) Authorizing the acceptance of a grant award from Health Plan of San Joaquin in the amount of \$1.2 million to partially fund the construction and operation of the Tracy Interim Shelter Site (renamed Phase 3 and Phase 4 of the Temporary Emergency Housing Shelter, CIP 71112); and 2) Appropriating \$1.2 million of the total grant funds to the Mobility and Housing Department, Homeless Services Division. – **Resolution 2023-071** accepted a grant award from Health Plan of San Joaquin.
  - 1.E Adopt a resolution (1) accepting public improvements as complete in accordance with the Off-Site Improvement Agreement for California Highway Patrol Building constructed by Tracy CHP Partners, LLC, a California Limited Liability Company, (2) authorizing the City Engineer to release performance and payment bonds, and (3) authorizing the City Clerk to file the Notice of Completion with the San Joaquin County Recorder's Office. – **Resolution 2023-072** accepted the public improvements for the CHP Building by Tracy CHP Partners.
  - 1.F Adopt a resolution: (1) awarding a construction contract to B&M Building Inc., of Rancho Cordova, California, in the amount of \$158,610 for the Water Treatment Plant HVAC Replacement – Blower Building Project, CIP 75171, (2) authorize a not-to-exceed budget of \$206,193, and (3) authorize the City Manager to approve change orders up to the contingency amount of \$23,792, if needed – **Resolution 2023-073** awarded a construction contract with B&M Inc.
  - 1.G Adopt a resolution authorizing the (1) submittal of an Allocation Request for the Low Carbon Transit Operation Program, (2) execution of Certifications and Assurances, and (3) authorizing the City Manager to execute funding documents with the California Department of Transportation (Caltrans) for allocation of the

FY 2022-23 LCTOP funds for the following project: Free Student Fares, in the amount of \$75,684. – **Resolution 2023-074** authorized the submittal of an allocation request for the Low Carbon Transit Operation Program.

- 1.H Adopt a resolution: (1) awarding a construction contract to GCJ, Inc., of Stockton, California, in the amount of \$2,349,496 for the Police Multipurpose Reality Based Training Facility Project, CIP 71110, with a not-to-exceed budget of \$3,171,821 and (2) authorize the City Manager to approve change orders up to the contingency amount of \$469,900, if needed. – **Resolution 2023-075** awarded a construction contract to GCJ, Inc.
  - 1.I Adopt a resolution amending the City’s Operating and Capital Budget for the Fiscal Year ending June 30, 2023, and authorize the Budget Officer to amend the City’s position control roster for FY2022- 23. – **Resolution 2023-076** amended the City’s Operating and Capital Budget.
  - 1.J. Waive the second reading and adopt an ordinance of the City of Tracy amending Tracy Municipal Code Sections 3.04.010, 3.04.030, and 3.04.130 to increase the fine amounts for administrative citations issued for violations of Chapter 3.04, “Fireworks”. – **Ordinance 1337** was adopted.
2. ITEMS FROM THE AUDIENCE – Tim Heinrich shared that he lives in the Ellis community and that the Corral Hollow Road drive has become increasingly dangerous, requested that there should be a left turn lane, traffic backs up, is a major inconvenience and creates danger when people try and beat the oncoming traffic by attempting to make the left turn.
- Wes Huffman shared concerns that there is an area behind the Lolly Hansen Senior Center that is scheduled repair, that space is covered with weeds, requested that the City pick up the cones and take away the caution tape and that he volunteers to remove the weeds that are on the verge of blooming and damaging the community garden.
- Rosario Arulappan expressed concerns for lack of schools in some neighborhoods and requested that Council expedites the school process for the Ellis Community along with the process for the Aquatic Park and submitted a petition from Ellis Homeowners to Council Member Evans to see if any action can be taken.
- Dotty Nygard expressed concern for Council Member Evans and his family’s safety in light of the threats he has received, shared that Tracy Earth Day was successful and thanked City staff and Council Members for attending.
- Robert Tanner requested that Council reconsider building the multi-generational facility before the aquatics park, thanked Council Member Bedolla for submitting what he has done for the month in a hard copy form rather than just on social media.
- Alice English thanked Council Member Bedolla for sharing hardcopies of his activities with the public, stated she has reached out to Manteca regarding Top Golf, and announced the following: The United Sikhs cleanup will be on Linne Road between Tracy Boulevard and Corral Hollow at 9:00 a.m., on June 2 and 3 Tracy Airport is having the Aerobatics Competitions located at the Airport.

Joseph Devlin from Altamont Wellness hopes that staff can help resolve the remaining issue with the Community Benefit Agreement so that businesses can open and serve the community, and asked Council to look into it with staff and come up with a quick resolution.

### 3. REGULAR AGENDA

- 3.A Council (1) adopt a Resolution of Intention of the City Council of the City of Tracy declaring its intention to increase wastewater rates, (2) set a public hearing date for June 20, 2023, and (3) authorize staff to proceed with mailing notices to all property owners within the City, as required by Proposition 218.

Sara Cowell, Finance Director provided the staff report.

Dotty Nygard shared that waste management was raised back in November and asked if there was a long-term plan to include solar a clean energy solar source to decrease the energy costs so that it doesn't go back on the consumer, especially those that are on fixed incomes.

Robert Tanner shared that Council is not taking seniors into consideration and due to their retirement income, they barely if at all meet the income requirement for low-income assistance and there should be a program specific for seniors.

Alice English echoed the same sentiments as Mr. Tanner and expanded that to seniors in general that are not only low income but on a fixed income and that pensions do not increase but everything else does such as food, gas, and basic living expenses.

Council comments and questions followed.

**ACTION:** Motion was made by Mayor Pro Tem Davis and seconded by Council Member Evans to 1) adopt **Resolution 2023-077** a resolution of Intention of the City Council of the City of Tracy declaring its intention to increase wastewater rates, (2) set a public hearing date for June 20, 2023, and (3) authorize staff to proceed with mailing notices to all property owners within the City, as required by Proposition 218. Roll call found all in favor; passed and so ordered.

- 3.B Discuss and provide direction on the proposed 1) bylaws for Tracy's Homelessness Advisory Committee and the Finance Committee and 2) modifications to the City Council's Meeting Protocols to reflect the delegation of increased authority to these standing Committees.

Karin Schnaider, Assistant City Manager, provided the staff report.

There was no public comment.

City Council comments and questions followed.

Mayor Pro Tem Davis requested that staff find the funding to ensure that both the Homeless Advisory Committee Meeting and the Finance Committee Meeting should be recorded, Council Member Evans and Mayor Young both supported the request.

- 3.C The Planning Commission recommends that the City Council Introduce an Ordinance 1) determining that the Project is categorically exempt from the California Environment Quality Act, pursuant to CEQA guidelines Section 15061(B)(3), and 2) Approving amendments to Sections 10.08.3196(b) and (d) of the Tracy Municipal Code to expand the definition of youth center and to establish buffers between Cannabis Uses and (a) Sensitive Uses and (b) Residential Uses

Victoria Lombardo, Senior Planner, provided the staff report.

Council comments and questions followed.

Michaela Toscas from Inspire Positive LLC. expressed her concerns regarding putting additional barriers on the cannabis industry. The current proposed buffer zones would make it nearly impossible to do business in Tracy and requested Council focus on getting business open with the regulations that were written three years ago. This is affecting people and businesses that have been waiting for three years and shared that from all the cities that she has worked with, this is one of the worst cannabis regulations processes she has seen.

Dotty Nygard expressed frustration after a denial was issued after meeting all the requirements asked to start a cannabis business, has not completed the community benefit or the DOJ process, asked after this process and after this ordinance has changed how will present and future cohorts be affected or is this a strategic plan on the part of the City so that no one can operate a cannabis business and shared that cannabis is not a gateway drug, safe and legal shops are being criminalized, this can bring in millions of dollars to the community.

Robert Tanner shared that the previous Council went from four stores to 11 stores and these rule changes should have been made prior to expanding the number of permits and is against the high concentration of dispensaries Downtown. Mr. Tanner expressed that this ordinance should have been thought out when the increase from four to 11 took place but that this needs to pass, but not affect the current applicants.

Alice English shared that Council Member Bedolla and Mayor Pro Tem Davis had called for an ordinance in the previous Council. Requested that Council extend the buffer zone. Shared that previous Council refused to do a buffer or a moratorium, this would not be an issue right now. For good businesses to be attracted to Tracy, the City has to do the right thing across the board for everybody.

Alex Monceaux shared that this problem was self-created when it went from four to 11 permits and stated that of the four that were on the previous Council, only Council Member Bedolla voted against that. Mr. Monceaux stated that he is in the cannabis business, and he was against that expansion of permits and now

this ordinance needs to be reviewed and urged Council to not adopt anything at this time due to the limitations and asked that Council take some time to craft a good ordinance and stop making rash decisions.

Matthew Nathaniel, Director with Shrine Group represents one of the two companies that is awaiting its CUP approval and shared that it is difficult to make a comparison with the original zoning and the proposal presented, stated that the buffer is not unreasonable but that this has been a lengthy and costly process already and requested that this ordinance not be adopted and something be crafted for future applicants and that the current cohorts be allowed to move forward in good faith and address the background check hurdles. Mr. Nathaniel extended an invitation to Council to tour facilities and provide further education.

Council comments and questions continued.

**ACTION:** Motion was made by Mayor Young and seconded by Council Member Arriola to continue an ordinance 1) determining that the project is categorically exempt from the California Environmental Quality Act, pursuant to CEQA guidelines section 15061(b)(3), and 2) amending sections 10.08.3196(b) and (d) of the Tracy Municipal Code to expand the definition of youth center and to establish buffers between cannabis uses and (a) sensitive uses and (b) residential uses item to 6 months from first Planning Commission Meeting in May 2023, which would be on December 5, 2023. Roll call found Council Members Arriola, Bedolla and Mayor Young in favor; Council Member Evans and Mayor Pro Tem Davis opposed, passed and so ordered.

## DEVIATION

4. Items of the audience – Richard Williams shared his concerns over uncontrolled crosswalks and provided information regarding a petition that was signed on Change.org. Mr. Williams shared the loss of his father-in-law who passed away due to being struck at an uncontrolled crosswalk and shared information about illuminating smart crosswalk systems and grant funding information that was provided to the Deputy City Clerk.

Gabriella Machuca shared that cannabis is not the only business that is struggling and expressed her frustration that some businesses do not make it because the finish lines keep moving there is always a new requirement and the verbal responses do not equate to the written responses.

- 3.D Council introduce an Ordinance of the City of Tracy: 1) Amending Tracy Municipal Code Sections: (A) 6.36.012 to modify the definition of owner for commercial cannabis; (B) 6.36.040 to add clarifying language; (C) 6.36.080 to toll the expiration date of each existing commercial cannabis business permit for an additional six months; and (D) 6.36.100 to modify the cannabis business permit renewal requirements; and 2) Determining that the Project is categorically exempt from the California Environment Quality Act (CEQA), pursuant to CEQA Guidelines Section 15061(B)(3).

Victoria Lombardo, Senior Planner, provided the staff report.

Kimberly Cargile, Tracy Cannabis Collective stated it has been a long process, requested that the permits be extended for a year rather than six months and asked how long this process will take. Shared that they have already gone through the DOJ and FBI background check with the Department of Cannabis Control and how long will it take to get employees approved. They are running out of funds and will have to get product on consignment and will not get paid. Have enough funds for two months of rent, are not corporately funded, have spent over \$500,000 to date and would like to open June 1<sup>st</sup>.

Community Member expressed her frustration about the process to open their storefront, shared that they have spent over \$500,000 over 3-years and that this process has been sad, requested that Council do what they can to get this done, they are looking forward to bringing education, safe products, and good businesses to Tracy. They have complied with every City requirement and do not fall by the wayside.

Michelle Trew, Tracy Cannabis Collective thanked staff and Council for the update and suggested that tolling be extended to one year versus the six months and asked if there would be a timeline available when it comes to changing the ownership and what is left for the businesses to do.

Robert Tanner shared that he is in favor of changing from 5% to 20%, Tracy should have stayed with the State law to begin with and maybe some stores would have already been opened, is not in favor of reducing the background check requirements and it is important that the DOJ not be left out of the process in case someone from out of state applies to work in a cannabis store.

Alex Monceaux shared that the 20% is a smart change and would help move things forward. Stated that four of the permits will be expiring next month and that is a sign on how bad this process is since permits are expiring before business have even opened up and requested that Council group all the applications together and extend all the expiration dates for the same time.

Council comments and questions continued.

Midori Lichtwardt, Acting City Manager requested a recess to confer with staff at 12:01 a.m.

Mayor Young called meeting to order at 12:17 a.m.

Council comments and questions continued.

Motion was made by Council Member Arriola and seconded by Council Member Bedolla to introduce an ordinance of the City of Tracy to amend Tracy Municipal Code Sections: 6.36.040 to add clarifying language; and 6.36.100 to modify the Cannabis Business Permit Renewal Requirements; and to determine that the project is categorically exempt from the California Environmental Quality Act, pursuant to CEQA Guidelines Section 15061(B)(3).

Bijal Patel, City Attorney asked for clarification that the motion is to move forward in part and not in whole and is direction going to be to have staff come back with additional requires for A and or C. It would best to keep the integrity of Chapter 6.36.

Council discussion continued.

Council Member Arriola withdrew his motion and moved to table the items to May 16 with the amendment that Section C is to extend all applicants to the date of March 2024.

**ACTION:** Motion was made by Council Member Arriola and seconded by Mayor Pro Tem Davis to reject ordinance as stated 1) amending Tracy Municipal Code Sections: (A) 6.36.012 to modify the definition of owner for commercial cannabis; (B) 6.36.040 to add clarifying language; (C) 6.36.080 to toll the expiration date of each existing commercial cannabis business permit for an additional six months; and (D) 6.36.100 to modify the Cannabis Business Permit Renewal Requirements; and 2) determining that the project is categorically exempt from the California Environmental Quality Act, pursuant to CEQA Guidelines Section 15061(B)(3) and have staff return with a new ordinance replicating the language except for section C such that all applicants will be extended to March 2024. Roll call found all in favor; passed and so ordered.

5. STAFF ITEMS – Midori Lichtwardt, Acting City Manager clarified that the Council Memos were being sent to the incorrect email address, that will be corrected moving forward. Ms. Lichtwardt provided the following updates:
- Save the Date for the Tracy Chamber of Commerce’s Annual State of the City Event featuring an address from our Mayor on May 31st at The Grand Theatre at 9 a.m.
  - In celebration of Older Americans Month, the Lolly Hansen Senior Center will be hosting its annual Open House & Resource Faire tomorrow from 9-11 a.m. Seniors, caregivers, and community members are all invited to attend.
  - The City’s first block party of the season will be this Friday at 6 p.m., come celebrate Cinco de Mayo with us and the Latin Essence Band at Front Street Plaza.
  - Children 3-5 years old are invited to join Tracy PD on Monday at 3 p.m. at the Tracy Branch Library for Badges for Books story time.
  - Join us this Mother’s Day weekend with one of America’s most beloved pianists and composers, Robin Spielberg, at The Grand. Get your tickets: [AtTheGrand.org](http://AtTheGrand.org)
6. COUNCIL ITEMS CONTINUED – Council Member Bedolla shared that he provided a written report on Council Board, Committees and Commission updates.

Council Member Bedolla referred to Mr. Williams concerns regarding crosswalks safety, and requested staff look into illuminated crosswalks or work that staff can do to implement those best practices into our crosswalks. Mayor Pro Tem Davis and Council Member Arriola supported the request.

Mayor Pro Tem Davis shared information regarding the Lobbying trip to Washington D.C. to bring funds to Tracy, will also be providing the City Clerk’s office a written report regarding participation in Boards and Commissions to be posted on the website and shared in hard copy form.

Council Member Arriola expressed concern for Council Member Evans and his family regarding the threats that they have been receiving and condemned such behavior.

Council Member Arriola shared the events that he and Mayor Pro Tem Davis participated in the Lobbying trip to Washington D.C. and wished the community a Happy Cinco de Mayo and Happy Mother's Day.

Mayor Young shared that she will be resuming her monthly written report practice and shared her participation in the African American Mayors Conference in Washington D.C. and several local meetings and policy related conferences, next week will be back in D.C. for the San Joaquin One Voice. Wished the community a Happy Cinco de Mayo and Happy Mother's Day and encouraged Council Member Evans to continue to speak up and stay strong for his family.

7. ADJOURNMENT – Time: 12:52 a.m. on Wednesday, May 3, 2023.

**ACTION:** Motion was made by Mayor Pro Tem Davis 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 April 27, 2023. 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

Agenda Item 1.B

RECOMMENDATION

**Staff recommends that the City Council adopt a resolution approving Amendment No. 1 to the Professional Services Agreement with SKM Engineering, LLC for the upgrade of the City of Tracy Supervisory Control and Data Acquisition system increasing the total not-to-exceed amount to \$752,140.**

EXECUTIVE SUMMARY

The proposed Amendment No. 1 to the Professional Service Agreement (PSA) with SKM Engineering, LLC (Consultant) for the upgrade of the City of Tracy (City) Supervisory Control and Data Acquisition (SCADA) system will increase the not-to-exceed amount of the Professional Services Agreement by \$327,140 for a total not-to-exceed amount of \$752,140.

BACKGROUND AND LEGISLATIVE HISTORY

The City and Consultant entered into a PSA for the upgrade of the City's SCADA system, with a not-to-exceed amount of \$425,000, which was approved by the City Council on January 3, 2017 under Resolution No. 2017-004.

ANALYSIS

The original scope of work addressed the replacement of existing Human-Machine Interface (HMI) software and select Programmable Logic Controller (PLC) units (PLCs 6, 7, 8), which were the most critical requiring updating at that time. Now that the project's first phase has been completed, the water plant has been experiencing cascading failures from other aging equipment.

The main PLCs have become obsolete, with replacement parts no longer available, making it difficult to maintain their functionality. The manufacturer offers a modern line of hardware and adapters that would enable a smooth replacement of the outdated PLCs. The PLC software, which has not been updated since 2011, is only compatible with 32-bit Windows XP machines, necessitating an update to run on the new hardware.

The City desires to amend the Agreement to include the additional services with a not to exceed an amount of \$327,140 in order to complete the necessary upgrades to equipment and programming to maintain this important system functionality.

FISCAL IMPACT

The PSA with SKM Engineering, LLC is funded through the Water operations budget. Sufficient funds exist to cover the contract amendment in the amount of \$327,140.

PUBLIC OUTREACH/INTEREST

No public outreach is required for this operations item.

CEQA DETERMINATION

The project is categorically exempt from 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.

ACTION REQUESTED OF THE CITY COUNCIL

Staff recommends that the City Council adopt a resolution approving Amendment No. 1 to the Professional Services Agreement with SKM Engineering, LLC for the upgrade of the City of Tracy Supervisory Control and Data Acquisition system increasing the total not-to-exceed amount to \$752,140.

Prepared by: Ilene Macintire, PE, Senior Civil Engineer  
Lea Emmons, Water Operations

Reviewed by: Sara Cowell, Finance Director  
Stephanie Reyna-Hiestand, Assistant Director of Utilities  
James Jackson, Director of Operations & Utilities  
Riana Daniel, Deputy City Attorney

Approved by: Midori Lichtwardt, Assistant City Manager

ATTACHMENTS

Attachment A – Amendment No. 1

**City of Tracy**  
**AMENDMENT NO. 1 TO PROFESSIONAL SERVICES AGREEMENT**  
**with SKM Engineering, LLC for the Upgrade of the City of Tracy Supervisory Control**  
**and Data Acquisition (SCADA)**

This Amendment No. 1 (Amendment) to the Professional Services Agreement is entered into between the City of Tracy, a municipal corporation (City), and SKM Engineering, LLC (Consultant).

**Recitals**

- A. The City and Consultant entered into a Professional Services Agreement (Agreement) for the Upgrade of the City of Tracy Supervisory Control and Data Acquisition (SCADA), which was approved by the City Council on January 3, 2017 under Resolution No. 2017-004.
- B. The original scope of work addressed the replacement of existing Human-Machine Interface (HMI) software and select Programmable Logic Controller (PLC) units (PLCs 6, 7, 8), which were the most critical for updating at the time. Now that the project's first phase has been completed, the water plant has been experiencing cascading failures from the aging equipment.
- C. The main PLCs have become obsolete, with replacement parts no longer available, making it difficult to maintain their functionality. The manufacturer offers a modern line of hardware and adapters that would enable a smooth replacement of the outdated PLCs. The PLC software, which has not been updated since 2011, is only compatible with 32-bit Windows XP machines, necessitating an update to run on the new hardware.
- D. The City and Consultant now seek to amend the Agreement to include the additional services not to exceed an amount of \$327,140. After negotiations between the City and Consultant, the parties have reached an agreement for performance of services in accordance with the terms set forth in this Amendment.
- D. The City and Consultant now seek to amend the Agreement to include the additional services not to exceed an amount of \$327,140.

**Now therefore, the parties mutually agree as follows:**

**1. Incorporation by Reference.** This Amendment incorporates by reference all terms set forth in the Agreement, unless specifically modified by this Amendment. The terms which are not specifically modified by this Amendment will remain in effect.

**2. Terms of Amendment.**

- A. Section 3.1 is hereby amended to read as follows:

“For services performed by Consultant under this Agreement, City shall pay Consultant on a time and expense basis, at the billing rates set forth in Exhibit “B-1”, attached and incorporated by reference. Consultant’s fee, for the scope of services set forth in Exhibit “A-1” is Not to Exceed \$327,140. 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 without the City's prior written approval.

B. Exhibits.

Exhibit A-1 "Scope of Services", attached hereto shall supplement Exhibit "A" of the Agreement. Consultant is responsible for completing all tasks identified in Exhibits "A" and "A-1".

"For services performed by Consultant under this Agreement, City shall pay Consultant on a time and expense basis, at the billing rates set forth in Exhibit B-1.

**3. Modifications.** This Amendment may not be modified orally or in any manner other than by an agreement in writing signed by both parties, in accordance with the requirements of the Agreement.

**4. Severability.** If 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 effect.

**5. Signatures.** The individuals executing this Amendment represent and warrant that they have the right, power, legal capacity and authority to enter into and to execute this Amendment. This Amendment shall inure to the benefit of and be binding upon the parties and their respective successors and assigns.

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

**City of Tracy**

By: Nancy D. Young  
Title: Mayor  
Date: \_\_\_\_\_

Attest:

\_\_\_\_\_  
Adrienne Richardson, City Clerk

Approved as to form:

\_\_\_\_\_  
Bijal M. Patel, City Attorney

EXHIBITS:  
A-1 Scope of Services  
B-1 Compensation

**Consultant  
SKM Engineering, LLC**

\_\_\_\_\_  


By: Allen Rogers

Title: Principal

Date: 4/19/23

Federal Employer Tax ID No. 81-4721680

\_\_\_\_\_

**Exhibit A-1 – Scope of Services**

**1. PLC Hardware Update:**

- a) Task 1 – Replace PLC-1 and associated RIO's Hardware

- b) Task 2 – Replace PLC-2 Hardware
- c) Task 3 – Replace PLC-2 RIO1 Hardware
- d) Task 4 – Replace PLC-2 RIO2 Hardware
- e) Task 5 – Replace PLC-3 Hardware
- f) Task 6 – Replace PLC-3 RIO1 Hardware
- g) Task 7 – Replace PLC-4 Hardware

- 2. PLC Programming Update
- 3. HMI Programming Update
- 4. Training
- 5. Owner Contingency

## 2.1 PLC Hardware Update

This task includes swapping out all the existing Modicon Quantum PLC Hardware with the new Modicon m580 platform as well as updating the network switches located in the cabinets. This would include the following cabinets located at the plant presently:

- 2.1.1 Task 1 – PLC-1 and Associated RIO's  
This task would update the hardware in the PLC cabinet located in the Admin building as well as the RIO racks tied to the processor located in the chemical building.
- 2.1.2 Task 2 – Replace PLC-2 Hardware  
This task replaces the PLC hardware that controls filters 4-6.
- 2.1.3 Task 3 – Replace PLC-2 RIO1 Hardware  
This task replaces the PLC hardware that controls Filters 1-3.
- 2.1.4 Task 4 – Replace PLC-2 RIO2 Hardware  
This task replaces the PLC hardware that controls the Floc/Sed system.
- 2.1.5 Task 5 – Replace PLC-3 Hardware  
This task replaces the PLC hardware that controls some of the backwash equipment and ancillary UV system equipment.
- 2.1.6 Task 6 – Replace PLC-3 RIO1 Hardware  
This task replaces the Air Scour PLC.
- 2.1.7 Task 7 – Replace PLC-4 Hardware  
This task replaces the Influent Pump Station PLC.

## 2.2 PLC Programming Update

The current PLCs were programmed in ProWorx32- this software only runs in Windows XP and has had no updates in over a decade. The new processors do not

support this software so migrating the code to the latest Modicon programming software, Control Expert, is required.

Consultant will take the existing logic as a base and re-program with modern standards using tag-based addresses instead of register based. The changes should make troubleshooting and maintenance work much quicker.

### 2.3 HMI Programming Update

Due to the fact the PLC code will be updated the tag database and information being pulled into SCADA system will need to be updated as well. This includes reconfiguring the tag database, updating control screens, and refreshing several templates to be in line with the PLC standards to be used. OFS Server will also be purchased to read in tag based addresses from the Modicon devices.

### 2.4 Training

Update operations staff on any changes and new templates that will be added during the PLC replacement. Train some of the staff on the Control Expert software.

### 2.5 Owner Contingency

Contingency to update other items that appear to be well beyond their expected life will working in the cabinets. This may include some power supply equipment, relay's etc.

Task ID	Task Description	Principle Engineer Allen Rogers	Project Manager Tovey Ashby	Senior Programmer	Junior Programmer	Drafting	Administrative	Total Hours	Cost
<b>Project Scope and Costs - Amendment 1</b>									
<b>Task 1 - PLC Replacement</b>									
1	PLC Hardware								\$155,000
2	Switch Hardware								\$13,540
3	Drawing Updates and Coordination	8		16		48		72	\$9,840
<b>Task 1 Totals</b>		<b>8</b>	<b>0</b>	<b>16</b>	<b>0</b>	<b>48</b>	<b>0</b>	<b>72</b>	<b>\$178,380</b>
<b>Task 2 - PLC Programming</b>									
1	PLC Programming	24	40	80	300		16	460	\$74,360
<b>Task 2 Totals</b>		<b>24</b>	<b>40</b>	<b>80</b>	<b>300</b>	<b>0</b>	<b>16</b>	<b>460</b>	<b>\$74,360</b>
<b>Task 3 - HMI Programming</b>									
1	HMI Programming	16	24	40	120			200	\$33,800
2	OFS Driver								\$5,400
<b>Task 3 Totals</b>		<b>16</b>	<b>24</b>	<b>40</b>	<b>120</b>	<b>0</b>	<b>0</b>	<b>200</b>	<b>\$39,200</b>
<b>Task 4 - Training</b>									
1	Training	8	16					24	\$5,200
<b>Task 4 Totals</b>		<b>8</b>	<b>16</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>24</b>	<b>\$5,200</b>
<b>Task 5 - Owner Contingency</b>									
1	Owner Contingency								\$30,000
<b>Task 5 Totals</b>		<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>\$30,000</b>
<b>Project Totals</b>									
<b>Task 1 Totals</b>								<b>Total:</b>	<b>\$178,380</b>
<b>Task 2 Totals</b>								<b>Total:</b>	<b>\$74,360</b>
<b>Task 3 Totals</b>								<b>Total:</b>	<b>\$39,200</b>
<b>Task 4 Totals</b>								<b>Total:</b>	<b>\$5,200</b>
<b>Task 5 Totals</b>								<b>Total:</b>	<b>\$30,000</b>
<b>Total Project Amendment Cost</b>									<b>\$327,140</b>

\_\_\_\_\_  
CITY ATTORNEY'S OFFICE

**TRACY CITY COUNCIL**

**RESOLUTION NO. \_\_\_\_\_**

**APPROVING AMENDMENT NO. 1 TO THE PROFESSIONAL SERVICES AGREEMENT WITH SKM ENGINEERING, LLC FOR THE UPGRADE OF THE CITY OF TRACY SUPERVISORY CONTROL AND DATA ACQUISITION SYSTEM INCREASING THE TOTAL NOT-TO-EXCEED AMOUNT TO \$752,140**

**WHEREAS**, on August 5, 2015, the City of Tracy (City) issued a Request for Proposals (RFP) for the upgrade of the City of Tracy Supervisory Control and Data Acquisition (SCADA) system for the John Jones Water Treatment Plant and other water facilities; and

**WHEREAS**, the City and SKM Engineering, LLC (Consultant) entered into a Professional Services Agreement (Agreement) for the upgrade of the City's SCADA system for the John Jones Water Treatment Plant and other water facilities on January 12, 2017 under Resolution No. 2017-004; and

**WHEREAS**, the original scope of work addressed the replacement of existing Human-Machine Interface (HMI) software and select Programmable Logic Controller (PLC) units (PLCs 6, 7, 8), which were the most critical requiring updating at that time, and now that the project's first phase has been completed the water plant has been experiencing cascading failures from other aging equipment; and

**WHEREAS**, the main PLCs need to be replaced with modern hardware and adapters to upgrade the system and prevent future system failures; and

**WHEREAS**, the Agreement needs to be amended to increase the not-to-exceed amount by \$327,140 to a total not-to-exceed amount of \$752,140; and, now, therefore, be it

**RESOLVED:** That the City Council of the City of Tracy hereby approves Amendment No. 1 to the Professional Services Agreement with SKM Engineering, LLC for a total not-to-exceed amount of \$752,140.

\*\*\*\*\*

The foregoing Resolution 2023-\_\_\_\_\_ was adopted by the Tracy City Council on May 16, 2023 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

REQUEST

**Staff recommends that the City Council adopt a resolution renewing a Small Government Enterprise Licensing Agreement and the purchase of Geographic Information System software licenses through the Environmental Systems Research Institute, Inc. for a term of three years and a not-to-exceed amount of \$171,600.**

EXECUTIVE SUMMARY

On July 15, 2008, Council approved the implementation of a citywide GIS and subsequently authorized the purchase of Geographic Institute System (GIS) software licenses from Environmental Systems Research Institute, Inc. (ESRI) through their Small Government Enterprise License Agreement. This agreement renews the City's existing GIS software licenses for an additional three years.

DISCUSSION

The City has been using ESRI software for Geographic Information Systems (GIS) data since 2008. This software is being used by multiple departments including Police (crime analysis, dispatch), Development Services (planning, traffic, engineering, and economic development), Operations and Utilities (landscape maintenance, water, wastewater, and signage), Finance Department (water meter routes for billing, CMMS), and the City Manager's Office (property research). The City also provides and shares GIS data with the development community for projects concerning parcel boundaries, addressing, and street development. In addition, many applications rely on GIS software for mapping integration.

Normally this software renewal would go out to formal bid via the Request for Proposal process. However, because the City has invested a great deal of staff time and money in the overall ESRI infrastructure over the past fifteen years, it is in the best interest of the City to dispense procurement requirements pursuant to Tracy Municipal Code section 2.20.140(b)(6). ESRI is the leader in GIS software space and is used by countless government agencies.

This license agreement includes all the maintenance, support, and upgrades associated with the software. It is an unlimited license giving the City flexibility to deploy it when and where needed.

STRATEGIC PLAN

This agenda item is a routine operational item and does not relate to Council's Strategic Priorities.

FISCAL IMPACT

Funding for the software is included in the adopted FY2023-24 operating budget. The cost of the Enterprise License Agreement is \$57,200 per year with a three-year commitment for a total obligation of \$171,600.

RECOMMENDATION

Staff recommends that the City Council adopt a resolution renewing a Small Government Enterprise Licensing Agreement and the purchase of Geographic Information System software licenses through the Environmental Systems Research Institute, Inc. for a term of three years and a not-to-exceed amount of \$171,600.

Prepared by: Jeff Davis, GIS Analyst

Reviewed by: Sara Cowell, Finance Director  
Riana Daniel, Deputy City Attorney  
Karin Schnaider, Assistant City Manager

Approved by: Midori Lichtwardt, Assistant City Manager

ATTACHMENTS

Attachment A – ESRI License Agreement  
Attachment B – ESRI Corporate Resolution

# Attachment A



## Quotation # Q-489114

Date: January 25, 2023

Customer # 155777 Contract #

City of Tracy  
Information Services  
325 Civic Center Plz  
Tracy, CA 95376

ATTENTION: Jeff Davis  
PHONE: (209) 831-6811  
EMAIL: jeff.davis@ci.tracy.ca.us

Environmental Systems Research Institute, Inc.  
380 New York St  
Redlands, CA 92373-8100  
Phone: (909) 793-2853  
DUNS Number: 06-313-4175 CAGE Code: 0AMS3

*To expedite your order, please attach a copy of this quotation to your purchase order.*  
*Quote is valid from: 1/25/2023 To: 4/25/2023*

Material	Qty	Term	Unit Price	Total
168179	1	Year 1	\$56,700.00	\$56,700.00
Populations of 50,001 to 100,000 Small Government Enterprise Agreement Annual Subscription				
168179	1	Year 2	\$56,700.00	\$56,700.00
Populations of 50,001 to 100,000 Small Government Enterprise Agreement Annual Subscription				
168179	1	Year 3	\$56,700.00	\$56,700.00
Populations of 50,001 to 100,000 Small Government Enterprise Agreement Annual Subscription				
178625	5		\$100.00	\$500.00
ArcGIS Business Analyst Web App Standard Online Annual Subscription - Year 1, 2023-2024				
178625	5		\$100.00	\$500.00
ArcGIS Business Analyst Web App Standard Online Annual Subscription - Year 2, 2024-2025				
178625	5		\$100.00	\$500.00
ArcGIS Business Analyst Web App Standard Online Annual Subscription - Year 3, 2025-2026				

Esri may charge a fee to cover expenses related to any customer requirement to use a proprietary vendor management, procurement, or invoice program.

<b>For questions contact:</b> Jesse Gonzalez	<b>Email:</b> jesse_gonzalez@esri.com	<b>Phone:</b> (909) 793-2853 x1106
<p>The items on this quotation are subject to and governed by the terms of this quotation, the most current product specific scope of use document found at <a href="https://assets.esri.com/content/dam/esrisites/media/legal/product-specific-terms-of-use/e300.pdf">https://assets.esri.com/content/dam/esrisites/media/legal/product-specific-terms-of-use/e300.pdf</a>, and your applicable signed agreement with Esri. If no such agreement covers any item quoted, then Esri's standard terms and conditions found at <a href="https://go.esri.com/MAPS">https://go.esri.com/MAPS</a> apply to your purchase of that item. If any item is quoted with a multi-year payment schedule, then unless otherwise stated in this quotation, Customer is required to make all payments without right of cancellation. Third-party data sets included in a quotation as separately licensed items will only be provided and invoiced if Esri is able to provide such data and will be subject to the applicable third-party's terms and conditions. If Esri is unable to provide any such data set, Customer will not be responsible for any further payments for the data set. US Federal government entities and US government prime contractors authorized under FAR 51.1 may purchase under the terms of Esri's GSA Federal Supply Schedule. Supplemental terms and conditions found at <a href="https://www.esri.com/en-us/legal/terms/state-supplemental">https://www.esri.com/en-us/legal/terms/state-supplemental</a> apply to some US state and local government purchases. All terms of this quotation will be incorporated into and become part of any additional agreement regarding Esri's offerings. Acceptance of this quotation is limited to the terms of this quotation. Esri objects to and expressly rejects any different or additional terms contained in any purchase order, offer, or confirmation sent to or to be sent by buyer. Unless prohibited by law, the quotation information is confidential and may not be copied or released other than for the express purpose of system selection and purchase/license. The information may not be given to outside parties or used for any other purpose without consent from Esri. Delivery is FOB Origin for customers located in the USA.</p>		

GONZALEZJ

**This offer is limited to the terms and conditions incorporated and attached herein.**



# Quotation # Q-489114

Date: January 25, 2023

Customer # 155777 Contract #

City of Tracy  
Information Services  
325 Civic Center Plz  
Tracy, CA 95376

ATTENTION: Jeff Davis  
PHONE: (209) 831-6811  
EMAIL: jeff.davis@ci.tracy.ca.us

Environmental Systems Research Institute, Inc.  
380 New York St  
Redlands, CA 92373-8100  
Phone: (909) 793-2853  
DUNS Number: 06-313-4175 CAGE Code: 0AMS3

*To expedite your order, please attach a copy of this quotation to your purchase order.*  
*Quote is valid from: 1/25/2023 To: 4/25/2023*

Subtotal:	\$171,600.00
Sales Tax:	\$0.00
Estimated Shipping and Handling (2 Day Delivery):	\$0.00
Contract Price Adjust:	\$0.00
<b>Total:</b>	<b>\$171,600.00</b>

Esri may charge a fee to cover expenses related to any customer requirement to use a proprietary vendor management, procurement, or invoice program.

<b>For questions contact:</b> Jesse Gonzalez	<b>Email:</b> jesse_gonzalez@esri.com	<b>Phone:</b> (909) 793-2853 x1106
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The items on this quotation are subject to and governed by the terms of this quotation, the most current product specific scope of use document found at <https://assets.esri.com/content/dam/esrisites/media/legal/product-specific-terms-of-use/e300.pdf>, and your applicable signed agreement with Esri. If no such agreement covers any item quoted, then Esri's standard terms and conditions found at <https://go.esri.com/MAPS> apply to your purchase of that item. If any item is quoted with a multi-year payment schedule, then unless otherwise stated in this quotation, Customer is required to make all payments without right of cancellation. Third-party data sets included in a quotation as separately licensed items will only be provided and invoiced if Esri is able to provide such data and will be subject to the applicable third-party's terms and conditions. If Esri is unable to provide any such data set, Customer will not be responsible for any further payments for the data set. US Federal government entities and US government prime contractors authorized under FAR 51.1 may purchase under the terms of Esri's GSA Federal Supply Schedule. Supplemental terms and conditions found at <https://www.esri.com/en-us/legal/terms/state-supplemental> apply to some US state and local government purchases. All terms of this quotation will be incorporated into and become part of any additional agreement regarding Esri's offerings. Acceptance of this quotation is limited to the terms of this quotation. Esri objects to and expressly rejects any different or additional terms contained in any purchase order, offer, or confirmation sent to or to be sent by buyer. Unless prohibited by law, the quotation information is confidential and may not be copied or released other than for the express purpose of system selection and purchase/license. The information may not be given to outside parties or used for any other purpose without consent from Esri. Delivery is FOB Origin for customers located in the USA.

**GONZALEZJ This offer is limited to the terms and conditions incorporated and attached herein.**



# Quotation # Q-489114

Date: January 25, 2023

Customer # 155777 Contract #

City of Tracy  
Information Services  
325 Civic Center Plz  
Tracy, CA 95376

ATTENTION: Jeff Davis  
PHONE: (209) 831-6811  
EMAIL: jeff.davis@ci.tracy.ca.us

Environmental Systems Research Institute, Inc.  
380 New York St  
Redlands, CA 92373-8100  
Phone: (909) 793-2853  
DUNS Number: 06-313-4175 CAGE Code: 0AMS3

*To expedite your order, please attach a copy of this quotation to your purchase order.*  
*Quote is valid from: 1/25/2023 To: 4/25/2023*

If you have made ANY alterations to the line items included in this quote and have chosen to sign the quote to indicate your acceptance, you must fax Esri the signed quote in its entirety in order for the quote to be accepted. You will be contacted by your Customer Service Representative if additional information is required to complete your request.

If your organization is a US Federal, state, or local government agency; an educational facility; or a company that will not pay an invoice without having issued a formal purchase order, a signed quotation will not be accepted unless it is accompanied by your purchase order.

In order to expedite processing, please reference the quotation number and any/all applicable Esri contract number(s) (e.g. MPA, ELA, SmartBuy, GSA, BPA) on your ordering document.

BY SIGNING BELOW, YOU CONFIRM THAT YOU ARE AUTHORIZED TO OBLIGATE FUNDS FOR YOUR ORGANIZATION, AND YOU ARE AUTHORIZING ESRI TO ISSUE AN INVOICE FOR THE ITEMS INCLUDED IN THE ABOVE QUOTE IN THE AMOUNT OF \$\_\_\_\_\_, PLUS SALES TAXES IF APPLICABLE. DO NOT USE THIS FORM IF YOUR ORGANIZATION WILL NOT HONOR AND PAY ESRI'S INVOICE WITHOUT ADDITIONAL AUTHORIZING PAPERWORK.

Please check one of the following:

I agree to pay any applicable sales tax.

I am tax exempt, please contact me if exempt information is not currently on file with Esri.

\_\_\_\_\_  
Signature of Authorized Representative

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name (Please Print)

\_\_\_\_\_  
Title

The quotation information is proprietary and may not be copied or released other than for the express purpose of system selection and purchase/license. This information may not be given to outside parties or used for any other purpose without consent from Environmental Systems Research Institute, Inc. (Esri).

Any estimated sales and/or use tax reflected on this quote has been calculated as of the date of this quotation and is merely provided as a convenience for your organization's budgetary purposes. Esri reserves the right to adjust and collect sales and/or use tax at the actual date of invoicing. If your organization is tax exempt or pays state tax directly, then prior to invoicing, your organization must provide Esri with a copy of a current tax exemption certificate issued by your state's taxing authority for the given jurisdiction.

Esri may charge a fee to cover expenses related to any customer requirement to use a proprietary vendor management, procurement, or invoice program.

<b>For questions contact:</b> Jesse Gonzalez	<b>Email:</b> jesse_gonzalez@esri.com	<b>Phone:</b> (909) 793-2853 x1106
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The items on this quotation are subject to and governed by the terms of this quotation, the most current product specific scope of use document found at <https://assets.esri.com/content/dam/esrisites/media/legal/product-specific-terms-of-use/e300.pdf>, and your applicable signed agreement with Esri. If no such agreement covers any item quoted, then Esri's standard terms and conditions found at <https://go.esri.com/MAPS> apply to your purchase of that item. If any item is quoted with a multi-year payment schedule, then unless otherwise stated in this quotation, Customer is required to make all payments without right of cancellation. Third-party data sets included in a quotation as separately licensed items will only be provided and invoiced if Esri is able to provide such data and will be subject to the applicable third-party's terms and conditions. If Esri is unable to provide any such data set, Customer will not be responsible for any further payments for the data set. US Federal government entities and US government prime contractors authorized under FAR 51.1 may purchase under the terms of Esri's GSA Federal Supply Schedule. Supplemental terms and conditions found at <https://www.esri.com/en-us/legal/terms/state-supplemental> apply to some US state and local government purchases. All terms of this quotation will be incorporated into and become part of any additional agreement regarding Esri's offerings. Acceptance of this quotation is limited to the terms of this quotation. Esri objects to and expressly rejects any different or additional terms contained in any purchase order, offer, or confirmation sent to or to be sent by buyer. Unless prohibited by law, the quotation information is confidential and may not be copied or released other than for the express purpose of system selection and purchase/license. The information may not be given to outside parties or used for any other purpose without consent from Esri. Delivery is FOB Origin for customers located in the USA.

GONZALEZJ

**This offer is limited to the terms and conditions incorporated and attached herein.**

**Esri Use Only:**  
 Cust. Name \_\_\_\_\_  
 Cust. # \_\_\_\_\_  
 PO # \_\_\_\_\_  
 Esri Agreement # 00319178.0



**SMALL ENTERPRISE AGREEMENT  
 COUNTY AND MUNICIPALITY GOVERNMENT  
 (E214-3)**

This Agreement is by and between the organization identified in the Quotation ("**Customer**") and **Environmental Systems Research Institute, Inc. ("Esri")**.

This Agreement sets forth the terms for Customer's use of Products and incorporates by reference (i) the Quotation and (ii) the Master Agreement. Should there be any conflict between the terms and conditions of the documents that comprise this Agreement, the order of precedence for the documents shall be as follows: (i) the Quotation, (ii) this Agreement, and (iii) the Master Agreement. This Agreement shall be governed by and construed in accordance with the laws of the state in which Customer is located without reference to conflict of laws principles, and the United States of America federal law shall govern in matters of intellectual property. The modifications and additional rights granted in this Agreement apply only to the Products listed in Table A.

**Table A  
 List of Products**

**Uncapped Quantities**

**Desktop Software and Extensions (Single Use)**

ArcGIS Desktop Advanced  
 ArcGIS Desktop Standard  
 ArcGIS Desktop Basic  
 ArcGIS Desktop Extensions: ArcGIS 3D Analyst, ArcGIS Spatial Analyst, ArcGIS Geostatistical Analyst, ArcGIS Publisher, ArcGIS Network Analyst, ArcGIS Schematics, ArcGIS Workflow Manager, ArcGIS Data Reviewer

**Enterprise Software and Extensions**

ArcGIS Enterprise (Advanced and Standard)  
 ArcGIS Monitor  
 ArcGIS Enterprise Extensions: ArcGIS 3D Analyst, ArcGIS Spatial Analyst, ArcGIS Geostatistical Analyst, ArcGIS Network Analyst, ArcGIS Schematics, ArcGIS Workflow Manager, ArcGIS Data Reviewer

**Enterprise Additional Capability Servers**

ArcGIS Image Server

**Developer Tools**

ArcGIS Runtime Standard  
 ArcGIS Runtime Analysis Extension

**Limited Quantities**

One (1) Professional subscription to ArcGIS Developer  
 Two (2) ArcGIS CityEngine Single Use Licenses  
 250 ArcGIS Online Viewers  
 250 ArcGIS Online Creators  
 37,500 ArcGIS Online Service Credits  
 250 ArcGIS Enterprise Creators  
 5 ArcGIS Insights in ArcGIS Enterprise  
 5 ArcGIS Insights in ArcGIS Online  
 50 ArcGIS Location Sharing for ArcGIS Enterprise  
 50 ArcGIS Location Sharing for ArcGIS Online  
 4 ArcGIS Parcel Fabric User Type Extensions (Enterprise)  
 4 ArcGIS Utility Network User Type Extensions (Enterprise)  
 4 ArcGIS Trace Network User Type Extensions (Enterprise)

**OTHER BENEFITS**

Number of Esri User Conference registrations provided annually	<b>4</b>
Number of Tier 1 Help Desk individuals authorized to call Esri	<b>4</b>
Maximum number of sets of backup media, if requested*	<b>2</b>
Five percent (5%) discount on all individual commercially available instructor-led training classes at Esri facilities purchased outside this Agreement	

\*Additional sets of backup media may be purchased for a fee

Customer may accept this Agreement by signing and returning the whole Agreement with (i) the Quotation attached, (ii) a purchase order, or (iii) another document that matches the Quotation and references this Agreement ("**Ordering Document**"). **ADDITIONAL OR CONFLICTING TERMS IN CUSTOMER'S PURCHASE ORDER OR OTHER DOCUMENT WILL NOT APPLY, AND THE TERMS OF THIS AGREEMENT WILL GOVERN.** This Agreement is effective as of the date of Esri's receipt of an Ordering Document, unless otherwise agreed to by the parties ("**Effective Date**").

**Term of Agreement:** Three (3) years

This Agreement supersedes any previous agreements, proposals, presentations, understandings, and arrangements between the parties relating to the licensing of the Products. Except as provided in Article 4—Product Updates, no modifications can be made to this Agreement.

Accepted and Agreed:

\_\_\_\_\_

(Customer)

By: \_\_\_\_\_  
Authorized Signature

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

ENVIRONMENTAL SYSTEMS RESEARCH INSTITUTE, INC.



Alejandra Merino

Manager, International Contracts

Apr 18, 2023

### CUSTOMER CONTACT INFORMATION

Contact: \_\_\_\_\_

Telephone: \_\_\_\_\_

Address: \_\_\_\_\_

Fax: \_\_\_\_\_

City, State, Postal Code: \_\_\_\_\_

E-mail: \_\_\_\_\_

Country: \_\_\_\_\_

Quotation Number (if applicable): \_\_\_\_\_

## 1.0—ADDITIONAL DEFINITIONS

In addition to the definitions provided in the Master Agreement, the following definitions apply to this Agreement:

**"Case"** means a failure of the Software or Online Services to operate according to the Documentation where such failure substantially impacts operational or functional performance.

**"Deploy", "Deployed" and "Deployment"** mean to redistribute and install the Products and related Authorization Codes within Customer's organization(s).

**"Fee"** means the fee set forth in the Quotation.

**"Maintenance"** means Tier 2 Support, Product updates, and Product patches provided to Customer during the Term of Agreement.

**"Master Agreement"** means the applicable master agreement for Esri Products incorporated by this reference that is (i) found at <https://www.esri.com/en-us/legal/terms/full-master-agreement> and available in the installation process requiring acceptance by electronic acknowledgment or (ii) a signed Esri master agreement or license agreement that supersedes such electronically acknowledged master agreement.

**"Product(s)"** means the products identified in Table A—List of Products and any updates to the list Esri provides in writing.

**"Quotation"** means the offer letter and quotation provided separately to Customer.

**"Technical Support"** means the technical assistance for attempting resolution of a reported Case through error correction, patches, hot fixes, workarounds, replacement deliveries, or any other type of Product corrections or modifications.

**"Tier 1 Help Desk"** means Customer's point of contact(s) to provide all Tier 1 Support within Customer's organization(s).

**"Tier 1 Support"** means the Technical Support provided by the Tier 1 Help Desk.

**"Tier 2 Support"** means the Esri Technical Support provided to the Tier 1 Help Desk when a Case cannot be resolved through Tier 1 Support.

## 2.0—ADDITIONAL GRANT OF LICENSE

**2.1 Grant of License.** Subject to the terms and conditions of this Agreement, Esri grants to Customer a personal, nonexclusive, nontransferable license solely to use, copy, and Deploy quantities of the Products listed in Table A—List of Products for the Term of Agreement (i) for the applicable Fee and (ii) in accordance with the Master Agreement.

**2.2 Consultant Access.** Esri grants Customer the right to permit Customer's consultants or contractors to use the Products exclusively for Customer's benefit. Customer will be solely responsible for compliance by consultants and contractors with this Agreement and will ensure that the consultant or contractor discontinues use of Products upon completion of work for Customer. Access to or use of Products by consultants or contractors not exclusively for Customer's benefit is prohibited. Customer may not permit its consultants or contractors to install Software or Data on consultant, contractor, or third-party computers or remove Software or Data from Customer locations, except for the purpose of hosting the Software or Data on Contractor servers for the benefit of Customer.

## 3.0—TERM, TERMINATION, AND EXPIRATION

**3.1 Term.** This Agreement and all licenses hereunder will commence on the Effective Date and continue for the duration identified in the Term of Agreement, unless this Agreement is terminated earlier as provided herein. Customer is only authorized to use Products during the Term of Agreement. For an Agreement with a limited term, Esri does not grant Customer an indefinite or a perpetual license to Products.

**3.2 No Use upon Agreement Expiration or Termination.** All Product licenses, all Maintenance, and Esri User Conference registrations terminate upon expiration or termination of this Agreement.

**3.3 Termination for a Material Breach.** Either party may terminate this Agreement for a material breach by the other party. The breaching party will have thirty (30) days from the date of written notice to cure any material breach.

**3.4 Termination for Lack of Funds.** For an Agreement with government or government-

owned entities, either party may terminate this Agreement before any subsequent year if Customer is unable to secure funding through the legislative or governing body's approval process.

**3.5 Follow-on Term.** If the parties enter into another agreement substantially similar to this Agreement for an additional term, the effective date of the follow-on agreement will be the day after the expiration date of this Agreement.

## 4.0—PRODUCT UPDATES

**4.1 Future Updates.** Esri reserves the right to update the list of Products in Table A—List of Products by providing written notice to Customer. Customer may continue to use all Products that have been Deployed, but support and upgrades for deleted items may not be available. As new Products are incorporated into the standard program, they will be offered to Customer via written notice for incorporation into the Products schedule at no additional charge. Customer's use of new or updated Products requires Customer to adhere to applicable additional or revised terms and conditions in the Master Agreement.

**4.2 Product Life Cycle.** During the Term of Agreement, some Products may be retired or may no longer be available to Deploy in the identified quantities. Maintenance will be subject to the individual Product Life Cycle Support Status and Product Life Cycle Support Policy, which can be found at <https://support.esri.com/en/other-resources/product-life-cycle>. Updates for Products in the mature and retired phases may not be available. Customer may continue to use Products already Deployed, but Customer will not be able to Deploy retired Products.

## 5.0—MAINTENANCE

The Fee includes standard maintenance benefits during the Term of Agreement as specified in the most current applicable Esri Maintenance and Support Program document (found at <https://www.esri.com/en-us/legal/terms/maintenance>). At Esri's sole discretion, Esri may make patches, hot fixes, or updates available for download. No Software other

than the defined Products will receive Maintenance. Customer may acquire maintenance for other Software outside this Agreement.

### a. Tier 1 Support

1. Customer will provide Tier 1 Support through the Tier 1 Help Desk to all Customer's authorized users.
2. The Tier 1 Help Desk will be fully trained in the Products.
3. At a minimum, Tier 1 Support will include those activities that assist the user in resolving how-to and operational questions as well as questions on installation and troubleshooting procedures.
4. The Tier 1 Help Desk will be the initial point of contact for all questions and reporting of a Case. The Tier 1 Help Desk will obtain a full description of each reported Case and the system configuration from the user. This may include obtaining any customizations, code samples, or data involved in the Case.
5. If the Tier 1 Help Desk cannot resolve the Case, an authorized Tier 1 Help Desk individual may contact Tier 2 Support. The Tier 1 Help Desk will provide support in such a way as to minimize repeat calls and make solutions to problems available to Customer's organization.
6. Tier 1 Help Desk individuals are the only individuals authorized to contact Tier 2 Support. Customer may change the Tier 1 Help Desk individuals by written notice to Esri.

### b. Tier 2 Support

1. Tier 2 Support will log the calls received from Tier 1 Help Desk.
2. Tier 2 Support will review all information collected by and received from the Tier 1 Help Desk including preliminary documented troubleshooting provided by the Tier 1 Help Desk when Tier 2 Support is required.
3. Tier 2 Support may request that Tier 1 Help Desk individuals provide verification of information, additional information, or answers to additional questions to

supplement any preliminary information gathering or troubleshooting performed by Tier 1 Help Desk.

4. Tier 2 Support will attempt to resolve the Case submitted by Tier 1 Help Desk.
5. When the Case is resolved, Tier 2 Support will communicate the information to Tier 1 Help Desk, and Tier 1 Help Desk will disseminate the resolution to the user(s).

## 6.0—ENDORSEMENT AND PUBLICITY

This Agreement will not be construed or interpreted as an exclusive dealings agreement or Customer's endorsement of Products. Either party may publicize the existence of this Agreement.

## 7.0—ADMINISTRATIVE REQUIREMENTS

**7.1 OEM Licenses.** Under Esri's OEM or Solution OEM programs, OEM partners are authorized to embed or bundle portions of Esri products and services with their application or service. OEM partners' business model, licensing terms and conditions, and pricing are independent of this Agreement. Customer will not seek any discount from the OEM partner or Esri based on the availability of Products under this Agreement. Customer will not decouple Esri products or services from the OEM partners' application or service.

**7.2 Annual Report of Deployments.** At each anniversary date and ninety (90) calendar days prior to the expiration of this Agreement, Customer will provide Esri with a written report detailing all Deployments. Upon request, Customer will provide records sufficient to verify the accuracy of the annual report.

## 8.0—ORDERING, ADMINISTRATIVE PROCEDURES, DELIVERY, AND DEPLOYMENT

### 8.1 Orders, Delivery, and Deployment

- a. Upon the Effective Date, Esri will invoice Customer and provide Authorization Codes to activate the nondestructive copy protection program that enables Customer to download,

operate, or allow access to the Products. If this is a multi-year Agreement, Esri may invoice the Fee up to thirty (30) calendar days before the annual anniversary date for each year.

- b. Undisputed invoices will be due and payable within thirty (30) calendar days from the date of invoice. Esri reserves the right to suspend Customer's access to and use of Products if Customer fails to pay any undisputed amount owed on or before its due date. Esri may charge Customer interest at a monthly rate equal to the lesser of one percent (1.0%) per month or the maximum rate permitted by applicable law on any overdue fees plus all expenses of collection for any overdue balance that remains unpaid ten (10) days after Esri has notified Customer of the past-due balance.

- c. Esri's federal ID number is 95-2775-732.

- d. If requested, Esri will ship backup media to the ship-to address identified on the Ordering Document, FOB Destination, with shipping charges prepaid. Customer acknowledges that should sales or use taxes become due as a result of any shipments of tangible media, Esri has a right to invoice and Customer will pay any such sales or use tax associated with the receipt of tangible media.

**8.2 Order Requirements.** Esri does not require Customer to issue a purchase order. Customer may submit a purchase order in accordance with its own process requirements, provided that if Customer issues a purchase order, Customer will submit its initial purchase order on the Effective Date. If this is a multi-year Agreement, Customer will submit subsequent purchase orders to Esri at least thirty (30) calendar days before the annual anniversary date for each year.

- a. All orders pertaining to this Agreement will be processed through Customer's centralized point of contact.

- b. The following information will be included in each Ordering Document:

- (1) Customer name; Esri customer number, if known; and bill-to and ship-to addresses
- (2) Order number
- (3) Applicable annual payment due

## 9.0—MERGERS, ACQUISITIONS, OR DIVESTITURES

If Customer is a commercial entity, Customer will notify Esri in writing in the event of (i) a consolidation, merger, or reorganization of Customer with or into another corporation or entity; (ii) Customer's acquisition of another entity; or (iii) a transfer or sale of all or part of Customer's organization (subsections i, ii, and iii, collectively referred to as "**Ownership Change**"). There will be no decrease in Fee as a result of any Ownership Change.

- 9.1** If an Ownership Change increases the cumulative program count beyond the maximum level for this Agreement, Esri reserves the right to increase the Fee or terminate this Agreement and the parties will negotiate a new agreement.
- 9.2** If an Ownership Change results in transfer or sale of a portion of Customer's organization, that portion of Customer's organization will transfer the Products to Customer or uninstall, remove, and destroy all copies of the Products.
- 9.3** This Agreement may not be assigned to a successor entity as a result of an Ownership Change unless approved by Esri in writing in advance. If the assignment to the new entity is not approved, Customer will require any successor entity to uninstall, remove, and destroy the Products. This Agreement will terminate upon such Ownership Change.

# Small Government Enterprise Agreement

Final Audit Report

2023-04-18

Created:	2023-04-18
By:	Joe Collins (jcollins@esri.com)
Status:	Signed
Transaction ID:	CBJCHBCAABAAPg0-g242j9_2jBvpux_87nbdmUVV7rad

## "Small Government Enterprise Agreement" History

-  Document created by Joe Collins (jcollins@esri.com)  
2023-04-18 - 11:05:47 PM GMT- IP address: 13.110.74.8
-  Document emailed to Alejandra Merino (smerino@esri.com) for signature  
2023-04-18 - 11:07:11 PM GMT
-  Email viewed by Alejandra Merino (smerino@esri.com)  
2023-04-18 - 11:08:25 PM GMT- IP address: 104.47.51.126
-  Document e-signed by Alejandra Merino (smerino@esri.com)  
Signature Date: 2023-04-18 - 11:08:42 PM GMT - Time Source: server- IP address: 47.149.110.48
-  Agreement completed.  
2023-04-18 - 11:08:42 PM GMT

Names and email addresses are entered into the Acrobat Sign service by Acrobat Sign users and are unverified unless otherwise noted.

# Attachment B

## ENVIRONMENTAL SYSTEMS RESEARCH INSTITUTE, INC.

### COMBINED DELEGATION OF AUTHORITY

I, Laura Dangermond, as Executive Vice President of Environmental Systems Research Institute, Inc. (the “Corporation”), hereby appoint the employee(s) identified in Attachment 1 to act for and on behalf of the Corporation, each acting solely, with full authority to sign documents as described in Attachment 1, on behalf of the Corporation. The authority delegation is not subject to further delegation without my prior written consent.

This authority hereby delegated by this document shall completely expire as of midnight in San Bernardino County, California on December 31, 2023.

This authority is delegated in accordance with the Minutes of Action duly adopted by the Board of Directors of the Corporation on August 2, 2019.

*laura dangermond*  
laura dangermond (Jan 12, 2023 11:13 PST)

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Laura Dangermond  
Executive Vice President

Effective Date: January 1, 2023

Corporate Seal of  
Environmental Systems  
Research Institute, Inc.



## Attachment 1

Name Title	Description of Documents
<p>John Perry Department Manager, PS Contracts</p> <p>Stacy McEwan Deputy Department Manager, PS Contracts</p>	<p><u>Task Orders</u> that define the detailed statement of work, schedule, and budget for work to be performed under the terms and conditions of an agreement previously signed by officers of both parties. The Task Order may not contain changes, additions or deletions to the terms and conditions when signed by corporate officers. All other contract changes will be signed amendments to the agreement.</p> <p><u>Unmodified Agreements and Task Orders (and amendments thereto) which are handled within PS Contracts by a PS Contracts Manager or PS Contracts Specialist</u>, including but not limited to the following:</p> <ul style="list-style-type: none"> <li>• Master Services Agreements and Subcontract Agreements</li> <li>• Term sheets containing PS business terms only</li> <li>• Advantage Program Agreements</li> <li>• Standard Esri Mutual Nondisclosure Agreement</li> <li>• PS only related Teaming Agreements, Memorandum of Understanding, Requests for Proposal, and Proposals and Quotations that do not contain any customer or other third party terms and conditions</li> <li>• PS only related level-of-effort certifications, contract closeout certifications, Government Furnished Equipment (GFE) certifications</li> </ul> <p><u>Modified Professional Services Agreements and Task Orders (and amendments thereto) which are handled within PS Contracts by a PS Contracts Manager or PS Contracts Specialist</u>, where modifications are limited to the following in accordance with the approved CLM Master Agreement Guidance document:</p> <ul style="list-style-type: none"> <li>• removal of certain PS sections that will not be used (EMCS, AP, Service Packages, T&amp;M or FFP)</li> <li>• payment terms increased to Net 45 maximum</li> <li>• governing law changes to accommodate state/local governments</li> </ul>
<p>Rebecca Tanouye Manager, Customer Service</p> <p>Backups:</p> <p>Roxanne Sandoval Manager, Domestic Customer Service</p> <p>Manny Ballesteros Manager, Domestic Customer Service</p> <p>Jonathan Ross Manager, International Customer Service</p> <p>Vicki Grubert Collections Manager</p>	<p><u>Unmodified Sales Agreements</u>, including but not limited to the following:</p> <ol style="list-style-type: none"> <li>1. Master License Agreement (MLA)</li> <li>2. Master Lab Kit Agreement (MLK)</li> <li>3. Master Site License Agreement (MSL)</li> <li>4. Application Service Provider (ASP) Agreement</li> <li>5. Russian Master Sublicense Agreement (RUS)</li> <li>6. Schools &amp; Libraries Agreement</li> <li>7. All small Enterprise Agreements (EAs)</li> <li>8. Nonprofit Organization Program Enterprise License Agreement (NPOPELA)</li> <li>9. International Research Institute Agreement</li> <li>10. Nonprofit Organization Program Enterprise License Agreement (NPOPELA)</li> <li>11. Standard (non-distributor) MLA for Esri conservation</li> </ol>

	<p style="text-align: center;">grants</p> <p>Additionally, Authorized Individuals may sign customer purchase orders and purchase order acknowledgements, provided that such document (i) does not include any terms and conditions, or (ii) references Esri’s standard terms and conditions or the terms and conditions of an existing signed master license agreement between Esri and the customer as the sole terms and conditions for the transaction.</p>
<p>Erick Arial  Manager, Commercial &amp; Government Contracts</p> <p>Donald J. Berry, Jr.  Chief Operating Officer</p> <p>Timothy Brazeal  Manager, Commercial &amp; Government Contracts</p> <p>William C. Fleming  Director of Contracts &amp; Legal</p> <p>Tamisa Greening  Managing Attorney, Contracts &amp; Legal</p> <p>Alejandra Merino  Manager, International Contracts</p>	<p><u>Purchasing and sales Agreements and related documentation</u></p> <ol style="list-style-type: none"> <li>1. All outbound license agreements, including but not limited to such as Master License Agreements, Master Lab Kit agreements, Master Site License agreements, Application Service Provider agreements, Enterprise Agreements, Multinational Agreements, Platform Agreements, and other supporting sales related agreements or letters.</li> <li>2. Service agreements.</li> <li>3. Term sheets.</li> <li>4. Partner/Reseller/International Distributor Agreements.</li> <li>5. Maintenance agreements.</li> <li>6. Master ordering agreements such as Master Purchase Agreements and General Services Agreements.</li> <li>7. Esri purchase orders and purchase agreements.</li> <li>8. Acknowledgments or acceptance of customer purchase orders and purchase agreements.</li> <li>9. Strategic Alliance Agreements, Service Level Agreements, Technical Support Agreements, and Enterprise Advantage Program Agreements.</li> <li>10. All evaluation agreements and licenses for software or data for internal use by Esri Parties or for embedding in Esri Parties' technology. However, this is not meant to include technology acquisitions</li> <li>11. All certifications and representations.</li> <li>12. Nondisclosure agreements.</li> <li>13. Vendor or bid list registrations.</li> <li>14. Equipment loan agreements.</li> <li>15. Purchase order Acknowledgements. And</li> <li>16. Professional Services Agreements and Task Orders.</li> </ol> <p>This delegation also authorizes each of the foregoing delegates to further delegate authority to accept click through agreements for acquisition of software or data on their behalf after the delegate has reviewed the document when it is impractical for the delegate to personally accept.</p>
<p>Fernando Frias  Administrative Assistant, International Contracts</p> <p>Eula Robinson  Administrative Assistant, Domestic Contracts</p> <p>Laura White  Proposals and Sales Support, Vendor Registration</p> <p>Jason Wilbur  Proposal Manager, Vendor Registration</p>	<p><u>Vendor Registration Forms.</u> Requests for vendor information or vendor intake request forms as they relate to Requests for Proposals, Requests for Quotes or Requests for Information (“RFPs, RFQs or RFIs”) and Vendor Registrations on behalf of the Corporation, provided that all of the information requested on said forms is contained in the Representations and Certifications Guidance document maintained by Contracts &amp; Legal and does not ask the Corporation to make a “declaration,” is not a “certification,” and does not contain words such as “I authorize”, “I approve”, or “I certify.”</p>

<p>Diana L. Maldonado GSA Program Manager Joe Collins Senior Contracts Specialist Timothy Brazeal Manager, Commercial &amp; Government Contracts</p>	<p><u>GSA Matters</u>. Online GSA schedules and contract modifications on behalf of the Corporation.</p>
<p>Alaa Elgendy Manager, Export Compliance</p>	<p><u>Export Documents</u>, including representations and certifications of the following:</p> <ol style="list-style-type: none"> <li>1. Darfur Contracting Act Certificate</li> <li>2. Iran Investment Activities</li> <li>3. Export Classification form(s)</li> <li>4. Vendor Export Classification and Authorization Certificate</li> <li>5. Restriction of Boycott on Israel Certification Form</li> <li>6. Annual Supplier Export Control Compliance Certification.</li> </ol>
<p>Michele Cole Events Marketing Group Mgr. Angela Huffman Events Operations Manager Vicki Nicholson Corporate Travel Manager</p>	<p><u>Corporate Travel and Events</u>.</p> <ol style="list-style-type: none"> <li>1. <b>Category 1 Agreements:</b> Agreements that fit into this category do not have any legal terms and have a value on their own of \$20,000 or less. Authorized Individuals shall review, sign, and administer Category 1 agreements.</li> <li>2. <b>Category 2 Agreements:</b> Agreements that fit into this category have legal terms and have a value on their own of \$20,000 or less. Authorized Individuals shall review, sign, and administer Category 2 agreements. Category 2 agreements must be reviewed and negotiated by the Corporate Travel or Events Marketing Group as much as possible and within the acceptable bounds of this Policy before being forwarded to the Contracts Department for assistance on specific clauses.</li> <li>3. <b>Category 3 Agreements:</b> Agreements that fit into this category are those that have a value on their own of more than \$20,000. Authorized Individuals may not sign agreements that fit into this category. However, Category 3 agreements must be reviewed and negotiated by the Corporate Travel or Events Marketing Group as much as possible and within the acceptable bounds of this Policy before being forwarded to the Contracts Department for (i) assistance on specific clauses, (ii) signature, or (iii) both (i) and (ii).</li> </ol>
<p>Dean P. Angelides Director, International Operations Kristin Gonzalez Distributor Community Manager Bruce Harrison Director, Global Business Development Operations Enablement</p>	<p><u>International Sole Distributor Certification Documents</u>.</p>
<p>Dean Garner Resale Products Manager</p>	<p><u>Price Letters</u>. A Price Letter is a letter agreement from a supplier establishing special pricing to Esri for the right to offer the</p>

	<p>supplier's products and services to Esri's customers. The Price Letter may identify limitations in the scope of use of such products or services including commencement and expiration dates, locations, customers, or specific uses. The Price Letter may not contain changes, additions or deletions to the terms and conditions of the underlying agreement under which Esri is authorized to resell or distribute the supplier's products or services.</p>
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**TRACY CITY COUNCIL**  
**RESOLUTION NO. \_\_\_\_\_**

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**RENEWING A SMALL GOVERNMENT ENTERPRISE LICENSING AGREEMENT AND THE PURCHASE OF GEOGRAPHIC INFORMATION SYSTEM SOFTWARE LICENSES THROUGH THE ENVIRONMENTAL SYSTEMS RESEARCH INSTITUTE, INC. FOR A TERM OF THREE YEARS AND A NOT-TO-EXCEED AMOUNT OF \$171,600**

**WHEREAS**, the City Council approved the implementation of a citywide Geographic Information System (GIS) and the purchase of Environmental Systems Research Institute, Inc. (ESRI) software licenses in 2008; and

**WHEREAS**, this license agreement renews the City's existing GIS software licenses for an additional three years; and

**WHEREAS**, this software is currently being utilized by multiple departments including Police, Fire, Development Services, Operations and Utilities, and Finance; and

**WHEREAS**, Tracy Municipal Code section 2.20.140(b)(6) permits the City Council to dispense a formal request for proposal process when it is in the best interest of the City; and

**WHEREAS**, it is in the best interest of the City to forgo the formal Request for Proposal process because the City has invested heavily over the last 15 years into building the overall GIS infrastructure using ESRI software and ESRI is the industry leader in the field used by most government agencies; and

**WHEREAS**, this is an unlimited license giving the City flexibility to deploy ESRI software when and where needed; and

**WHEREAS**, the cost of Enterprise License Agreement is \$57,200 per year (including tax) with a three year commitment for a total obligation of \$171,600; now therefore be it

**RESOLVED:** That the City Council of the City of Tracy hereby approves the renewal of a Small Government Enterprise Licensing Agreement and the purchase of Geographic Information System software licenses through the Environmental Systems Research Institute, Inc. for a term of three years and a not-to-exceed amount of \$171,600; and be it

**FURTHER RESOLVED:** That the City Council of the City of Tracy hereby finds that it is in the best interest of the City to dispense the procurement requirements for this Agreement pursuant to Tracy Municipal Code Section 2.20.140(b)(6).

\* \* \* \* \*

The foregoing Resolution 2023-\_\_\_\_\_ was adopted by the Tracy City Council on the 16<sup>th</sup> day of May 2023 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.D

RECOMMENDATION

**Staff recommends that the City Council adopt a resolution approving a Zero-Emission Bus Rollout Plan for the Tracer bus system as required by the California Air Resources Board's Innovative Clean Transit Regulation.**

EXECUTIVE SUMMARY

The California Air Resources Board (CARB) oversees the Innovative Clean Transit (ICT) regulation, which became effective October 1, 2019, requiring all public transit agencies to gradually transition their bus fleets to zero-emission technologies. The ICT regulation applies to all transit agencies that own, operate, or lease buses with a gross vehicle weight rating (GVWR) greater than 14,000 pounds. While the ultimate date to transition an agency's fleet to zero-emission is by 2040, a transition plan is required to be submitted to the CARB by July 1, 2023. It is noteworthy to mention that as technology is constantly changing, this plan may be modified from time to time, as the City deems necessary after its initial submission to CARB.

BACKGROUND AND LEGISLATIVE HISTORY

CARB oversees the ICT regulation requiring all public transit agencies to gradually transition their bus fleets to zero-emission technologies. The ICT regulation applies to all transit agencies that own, operate, or lease buses with a GVWR greater than 14,000 pounds. It covers standard, articulated, over-the-road, double decker, and cutaway buses. The ICT regulation requires a percentage of new bus purchases to be zero-emission buses (ZEBs). The ZEB percentage increases gradually with time. In 2023 and 2026, the ZEB purchase requirements begin for large and small transit agencies, respectively. Beginning in 2029, 100 percent of all transit agencies' new bus purchases must be ZEBs, with a goal of complete transition to ZEBs (all buses in each transit agency's fleet to be ZEBs) by 2040.

The ICT regulation requires each transit agency to complete a Zero-Emission Bus Rollout Plan (Rollout Plan) before ZEB purchase requirements become effective. The Rollout Plan should be a living document to serve as an implementation guide of zero-emission bus fleets and assist transit agencies work through many of the potential challenges and explore solutions. This plan provides estimated timelines for bus purchases, infrastructure upgrades, and workforce training. Once the Rollout Plan is submitted and approved by CARB, the City may update the Rollout Plan as it deems necessary. It is recommended, but not required, that updates be resubmitted to CARB, in an effort to keep them informed of the progress of the plan.

The Rollout Plan must include and address the following nine sections:

- Section A: Transit Agency Information
- Section B: Rollout Plan General Information
- Section C: Technology Portfolio

Section D: Current Bus Fleet Composition and Future Bus Purchases  
Section E: Facilities and Infrastructure Modifications  
Section F: Providing Service in Disadvantaged Communities  
Section G: Workforce Training  
Section H: Potential Funding Sources  
Section I: Start-up and Scale-up Challenges

The above-mentioned sections serve as an overview of the content that will be used to improve the State's understanding of the transit agency's operations and plans so that additional support can be provided by the State.

### ANALYSIS

Submission of the Rollout Plan is required for the City to remain compliant with the ICT regulation.

There are currently two commercially viable ZEB technologies available to transit agencies: hydrogen fuel cell electric buses (FCEB) and battery-electric buses (BEB). Staff proposes that the City of Tracy use a hybrid of these technologies with the use of FCEB for the larger fixed route vehicles and BEB for the smaller cutaway buses. At this time, the City does not have infrastructure in place for either of the technologies. Staff is currently on the pre-planning phase of a new Transit Maintenance and Storage Facility for which the scope of work includes the infrastructure for a hydrogen fueling station as well as options for electric charging of the smaller transit vehicles. The completion of the new Transit Maintenance and Storage Facility is tentatively scheduled for 2029; thus, aligning with the first ZEB to be purchased.

However, there are still current needs for expansion of the transit fleet. Therefore, it is proposed that those buses needed for expansion are purchased ahead of the cut-off to begin purchasing ZEBs to allow additional time to develop the infrastructure needed to fuel the ZEBs.

Replacement of the heavy-duty buses will begin in 2031, while the replacement of the smaller cutaway vehicles will begin as early as 2029. It is anticipated that the proposed City's new Transit Maintenance and Storage Facility will be completed by the time that the bus replacements are scheduled allowing for fuel options. There are currently no options for FCEB for smaller cutaways vehicles. Future changes in technology availability may affect the course the City decides move forward regarding the type of fueling for its smaller transit vehicles.

As stated above, the Rollout Plan may be amended as needed allowing giving the City the opportunity to further evaluate its needs and the associated costs as the technology further develops.

### FISCAL IMPACT

There is currently no impact associated with submitting the Rollout Plan. Staff will pursue grant funding opportunities through various existing and future programs at the Federal and State level in order to pay for the implementation of the various areas of the Rollout Plan.

**STRATEGIC PLAN**

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

**ACTION REQUESTED OF THE CITY COUNCIL**

Staff recommends that the City Council adopt a resolution approving a Zero-Emission Bus Rollout Plan for the Tracer bus system as required by the California Air Resources Board's Innovative Clean Transit Regulation.

Prepared by: Ed Lovell, Transit Manager

Reviewed by: Adriana Castaneda, Mobility and Housing Director  
Sara Cowell, Director of Finance  
Riana Daniel, Deputy City Attorney  
Karin Schnaider, Assistant City Manager

Approved by: Midori Lichtwardt, Assistant City Manager

**Attachments:**

Attachment A – Zero-Emission Bus Rollout Plan



## **Zero-Emission Bus Rollout Plan**

**Adopted May 2023**



## SECTION A. TRANSIT AGENCY INFORMATION

City of Tracy  
333 Civic Center Plaza  
Tracy, CA 95376

**Air District:** San Joaquin Valley Air Pollution Control District

**Total Number of Buses in Annual Maximum Service:** 12

### **Contact Information:**

Ed Lovell  
Transit Manager  
209-831-6204  
ed.lovell@cityoftracy.org

**Joint Group:** The City of Tracy is not part of a Joint Group.

## SECTION B. ROLLOUT PLAN GENERAL INFORMATION

The City of Tracy has a goal to fully transition to zero-emission buses (ZEB) by 2040 without the need for early retirement of conventional transit buses. The City is currently working on developing a new Maintenance and Storage facility which will provide the necessary infrastructure to meet the fueling needs of the ZEBs.

This plan was prepared by City staff. A copy of the board approved resolution was approved **May 16, 2023** and is attached in Appendix A.

For any additional information regarding the Rollout Plan, please contact:

Ed Lovell  
Transit Manager, City of Tracy  
ed.lovell@cityoftracy.org  
209-831-6204

## SECTION C. TECHNOLOGY PORTFOLIO

### *Types of zero-emission technologies to be deployed through 2040*

There are currently two commercially viable ZEB technologies available to transit agencies: hydrogen fuel cell electric buses (FCEB) and battery-electric buses (BEB). The City of Tracy intends to use a hybrid of these technologies with the use of FCEB for the larger fixed route vehicles and BEB for the smaller cutaway buses that do not fall under the requirements of the ICT Regulation. Replacement of the heavy-duty buses will begin in 2031, while the replacement of the smaller cutaway vehicles will begin as early as 2029. It is anticipated that the City's new Transit Maintenance and Storage Facility will be constructed by the time that the bus replacements are scheduled which will include as part of the construction, a hydrogen fueling station as well as options for electric charging of the smaller transit vehicles. There are currently no options for FCEB for smaller cutaways vehicles. Future changes in technology availability may affect the course the City decides to take regarding the type of fueling for its smaller transit vehicles.

## SECTION D. CURRENT BUS FLEET COMPOSITION AND FUTURE PURCHASES

### Existing Bus Fleet

The City of Tracy currently has 17 vehicles in its fleet. Of those vehicles, only 11 meet the weight requirements for implementation of the ICT Regulation. While not all vehicles fall under the ICT Regulation requirements, the City of Tracy intends to make a conversion of all its fleet to zero-emission vehicles.

Table 1: Individual Bus Information of Current Bus Fleet

Number of Buses	Engine Model Year	Bus Model Year	Fuel Type	Bus Type
5	2017	2017	Diesel	Heavy Duty Low-Floor
4	2020	2021	Diesel	Heavy Duty Low-Floor
2	2021	2021	Gasoline	Low-Floor Cutaway
4	2020	2020	Gasoline	Cutaway (<14,000 lbs)
2	2020	2020	Gasoline	Transit Van (<14,000 lbs)

Table 2: Future Bus Purchases

Timeline	Total Number of Buses to Purchase	Number of ZEB Purchases	% of Annual ZEB Purchases	ZEB Bus Type	ZEB Fuel Type	Number of Conventional Bus Purchases	% of Annual Conventional Bus Purchases	Type(s) of Conventional Buses	Fuel Type(s) of Conventional Buses
2024	3	0	0%	N/A	N/A	3	100%	Heavy Duty Low-Floor/ Low-Floor Cutaway	Diesel/ Gasoline
2025	3	0	0%	N/A	N/A	3	100%	Heavy Duty Low-Floor/ Low-Floor Cutaway	Diesel/ Gasoline
2029	6	6	100%	Cutaway	BEB	0	0%	N/A	N/A
2031	5	5	100%	Heavy Duty Low-Floor	FCEB	0	0%	N/A	N/A
2032	2	2	100%	Low-Floor Cutaway	FCEB or BEB	0	0%	N/A	N/A
2035	4	4	100%	Heavy Duty Low-Floor	FCEB	0	0%	N/A	N/A
2038	3	3	100%	Heavy Duty Low-Floor	FCEB	0	0%	N/A	N/A
2039	3	3	100%	Heavy Duty Low-Floor	FCEB	0	0%	N/A	N/A

### Schedule of Converting Conventional Buses to Zero-Emission Buses

The City of Tracy is not considering converting any of the conventional buses in service to ZEB. As existing conventional buses are due for replacement, they will be replaced with ZEBs. All of the current fleet meeting the requirements of ZEB transition are scheduled to be replaced before the zero-emission transition deadline of 2040.

## SECTION E. FACILITIES AND INFRASTRUCTURE MODIFICATIONS

The City of Tracy currently owns and operates service out of the Tracy Transit Station. This is a passenger and operational facility and it is not anticipated to be modified to allow for fueling of vehicles. The City anticipates constructing a new Maintenance and Storage Facility which will provide the necessary infrastructure to fuel the zero-emission vehicles.

Table 3: Facilities Information and Construction Timeline

Facility Name	Address	Main Function	Type of Infrastructure	Service Capacity	Needs Upgrade?	Estimated Construction Timeline
Tracy Transit Station	50 E. 6 <sup>th</sup> Street, Tracy, CA	Passenger Facility/Operations	N/A	N/A	No	N/A
Tracer Maintenance and Storage Facility	TBD, Tracy, CA	Bus Maintenance, Storage, Fueling, Operations	Hydrogen fueling w/liquid storage	40 buses min.	No, New Construction	2023 – Land Purchase 2024-25 – Design 2026-2027 - Construction

The future Maintenance and Storage Facility is being designed for the long term needs of the City of Tracy. The intent is to develop a facility that will have the ability to service at least 40 vehicles. The facility will also include the necessary infrastructure to fuel the ZEBs. At this time the City of Tracy is looking at utilizing hydrogen fueling technology for its larger fixed route buses. For the smaller buses, that do not meet the requirements of the ZEB roll-out plan, it is anticipated that electric charging infrastructure will be installed and utilized if hydrogen technology is not available for smaller buses when those vehicles are due for replacement.

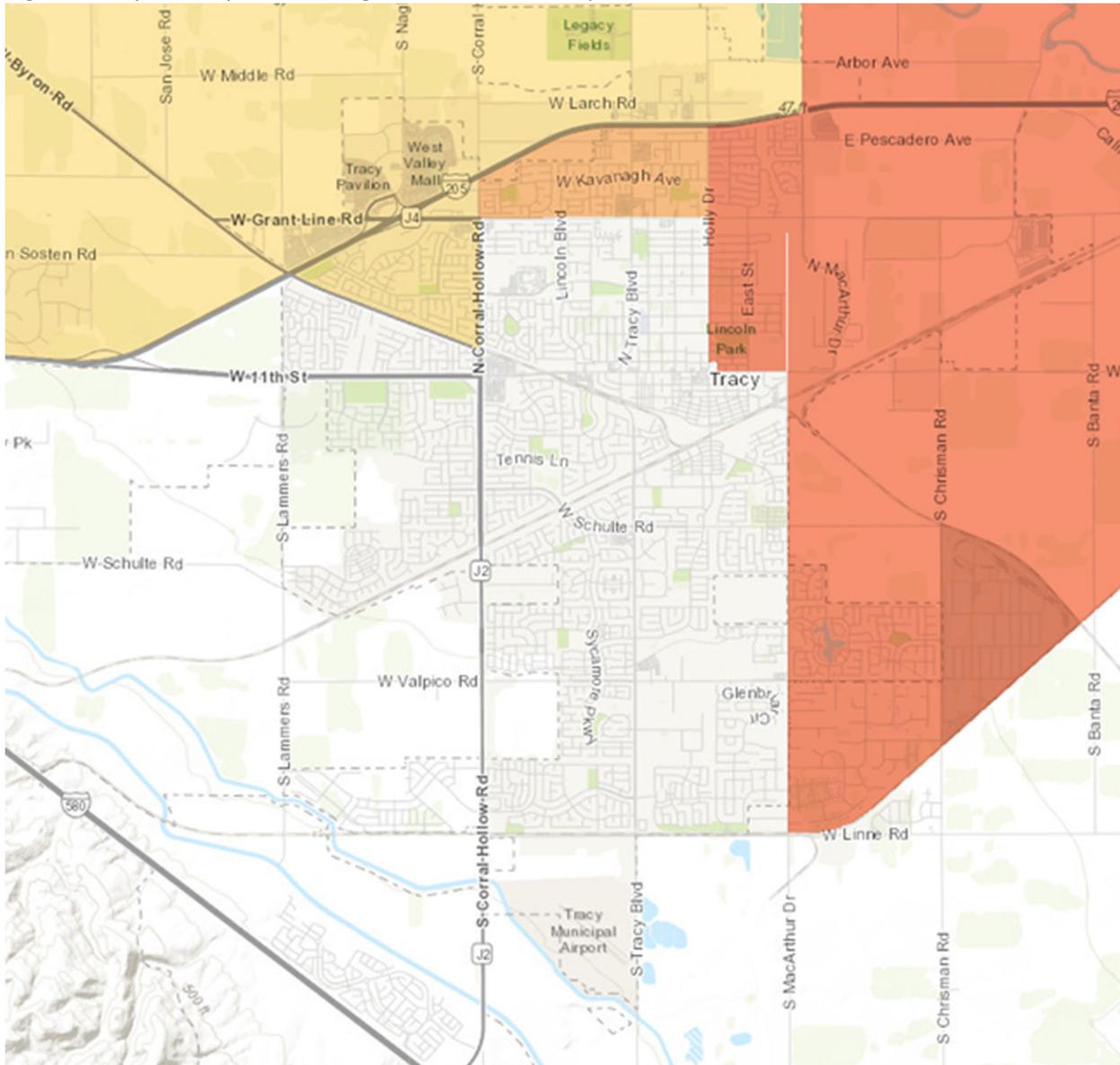
## SECTION F. PROVIDING SERVICE IN DISADVANTAGED COMMUNITIES

According to the California Office of Environmental Health Hazard Assessment (OEHHA), disadvantaged communities are defined as the top 25% in terms of scoring in the CalEnviroScreen. CalEnviroScreen is a

tool that identifies communities that are most vulnerable to pollution by using environmental, health, and socioeconomic data to produce a score for every census tract within the state of California.

According to the OEHHA Disadvantage Communities map, there are disadvantaged communities within the City of Tracy, as shown in Figure 1 below. The Tracer Bus Service provides service throughout the City of Tracy, which includes the shown disadvantaged communities. As the transition to ZEB takes place, service to these areas will also be included using ZEBs that are purchased.

Figure 1: City of Tracy Disadvantaged Communities Map



## **SECTION G. WORKFORCE TRAINING**

The City of Tracy is committed to ensuring that those who are operating and maintaining the zero-emission buses are educated on the proper aspects of the technology. The City intends to provide the necessary training on the vehicles by engaging in training efforts directly from the vehicle manufacturers ahead of the delivery of the first ZEBs.

## **SECTION H. POTENTIAL FUNDING SOURCES**

The City of Tracy is a few years away from both purchasing zero-emissions buses as well as constructing the facility to support their maintenance and fueling. As such, there may be additional funding sources that are developed and can be utilized as we approach the timelines for purchases and construction. Based on the current timelines listed, the City anticipates utilizing the following funding sources in addition to others that may develop:

FTA Section 5339 Bus and Bus Facilities Program

FTA Section 5339(c) Low and No Emissions Bus Deployment Program

FTA Section 5307 Urbanized Area Program

Congestion Mitigation and Air Quality Improvement (CMAQ) Program

State of California Transportation Development Act

San Joaquin County Measure K Local Transportation Sales Tax

## **SECTION I. START-UP AND SCALE-UP CHALLENGES**

Advanced technologies related to ZEB continue to evolve. It is difficult to know what may occur during the timeline for the City of Tracy to convert to ZEB. As such the City will continue to look for opportunities to further develop and refine its ZEB program.

Some immediate challenges that the City has identified are as follows:

- Availability of funding for both vehicle purchases and facility construction
- Availability of buses for purchase (there are currently long delay times to receive buses)
- Higher costs of ZEB (which will have an affect on the amount of funding needed to transition)
- The need to have a higher spare ratio to deal with potential performance issues, particularly with the smaller transit vehicles

APPROVED AS TO FORM AND LEGALITY

\_\_\_\_\_  
CITY ATTORNEY'S OFFICE

**TRACY CITY COUNCIL**

**RESOLUTION NO. \_\_\_\_\_**

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**APPROVING A ZERO-EMISSION BUS ROLLOUT PLAN FOR THE TRACER  
BUS SYSTEM AS REQUIRED BY THE CALIFORNIA AIR RESOURCES  
BOARD'S INNOVATIVE CLEAN TRANSIT REGULATION**

**WHEREAS**, the Innovative Clean Transit (ICT) regulation, which became effective October 1, 2019, requires all public transit agencies to gradually transition their bus fleets to zero-emission technologies by 2040; and

**WHEREAS**, the ICT regulation applies to all transit agencies that own, operate, or lease buses with a gross vehicle weight rating (GVWR) greater than 14,000 pounds; and

**WHEREAS**, a plan on how that transition will take place is required to be submitted to the California Air Resources Board (CARB) by July 1, 2023; and

**WHEREAS**, the submitted plan may be changed in the future as the City sees fit due to the changing technological advances; now, therefore, be it

**RESOLVED:** That the City Council of the City of Tracy hereby approves the Zero-Emission Bus Rollout Plan for the Tracer bus system as required by the California Air Resources Board's Innovative Clean Transit Regulation.

\* \* \* \* \*

The foregoing Resolution 2023-\_\_\_\_\_ was adopted by the Tracy City Council on May 16, 2023, 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.E

RECOMMENDATION

**Staff recommends that the City Council adopt a resolution ratifying the San Joaquin Council of Governments (SJCOG) Annual Financial Plan for Fiscal Year 2023-2024, as required by the Joint Powers Agreement between SJCOG and its member agencies.**

EXECUTIVE SUMMARY

This item seeks Council approval and ratification of the San Joaquin Council of Governments (SJCOG) Annual Financial Plan.

BACKGROUND AND LEGISLATIVE HISTORY

The Joint Powers Agreement forming the SJCOG, which the City is a party to (Attachment B), requires that the Annual Financial Plan be sent to member agencies for ratification by each governing body.

Attached is correspondence from SJCOG, dated March 27, 2023, requesting the City ratify the Plan prior to June 30, 2023; Resolution R-23-104 adopting the Plan; and a copy of the Annual Financial Plan (Attachment A).

ANALYSIS

The San Joaquin Council of Governments (SJCOG) is a joint-powers authority comprised of the County of San Joaquin and the cities of Stockton, Lodi, Manteca, Tracy, Ripon, Escalon and Lathrop. The role of SJCOG is to foster intergovernmental coordination within San Joaquin County and with neighboring jurisdictions, other regional agencies in the San Joaquin Valley, the state of California, and various Federal agencies.

The San Joaquin Council of Governments is required by a Joint Powers Agreement to adopt a budget (Annual Financial Plan) annually. The Annual Financial Plan is a line item budget through which revenues are brought into SJCOG and expended for specific purposes such as salaries and benefits, services and supplies, professional services, capital and asset acquisition, etc. On March 23, 2023, a proposed Annual Financial Plan was presented to the Board. The budget is sent to each of the member agencies for ratification.

FISCAL IMPACT

SJCOG receives funding from a variety of sources and distributes those funds to local jurisdictions. The City does not make a direct contribution to SJCOG, therefore there is no fiscal impact associated with this action.

STRATEGIC PLAN

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

ACTION REQUESTED OF THE CITY COUNCIL

Staff recommends that City Council, by resolution, ratify the San Joaquin Council of Governments (SJCOG) Annual Financial Plan for Fiscal Year 2023-2024, as required by the Joint Powers Agreement between SJCOG and its member agencies.

Prepared by: Adrienne Richardson, City Clerk

Reviewed by: Sara Cowell, Director of Finance  
Nancy Ashjian, Assistant City Attorney  
Karin Schnaider, Assistant City Manager

Approved by: Midori Lichtwardt, Assistant City Manager

ATTACHMENTS

Attachment A - San Joaquin Council of Government's Annual Financial Plan for FY 2023-2024  
Attachment B – Amended and Restated Joint Powers Agreement establishing the San Joaquin Council of Governments



## SAN JOAQUIN COUNCIL OF GOVERNMENTS

555 E. Weber Avenue • Stockton, California 95202 • P 209.235.0600 • F 209.235.0438 • [www.sjco.org](http://www.sjco.org)

March 27, 2023

Michael Rogers  
City of Tracy  
333 Civic Center Plaza  
Tracy, CA 95376

*Robert Rickman*  
CHAIR

*David Bellinger*  
VICE CHAIR

*Diane Nguyen*  
EXECUTIVE DIRECTOR

*Member Agencies*  
CITIES OF  
ESCALON,  
LATHROP,  
LODI,  
MANTECA,  
RIPON,  
STOCKTON,  
TRACY,  
AND  
THE COUNTY OF SAN  
JOAQUIN

Dear Mr. Rogers:

On March 23, 2023 the SJCOG Board adopted the Annual Financial Plan for FY 2023-24. Attached is the board staff report as well as a copy of the adopting resolution. Pursuant to SJCOG's Joint Powers Agreement, following adoption of the budget by the SJCOG Board, it is to be delivered to member agencies for ratification by each governing body. Approval by a majority of the governing bodies representing 55% or more of the county's population is considered ratification.

Therefore, SJCOG requests you place SJCOG's Annual Financial Plan for Fiscal Year 2023/24 on a forthcoming agenda prior to June 30, 2023, for ratification.

The Annual Financial Plan implements the FY 2023/24 Overall Work Program (OWP) that was also adopted by the SJCOG Board on March 23, 2023.

The attached Annual Financial Plan (AFP) provides detail of revenues and expenditures by cost category and line item comparing the proposed FY 2023-2024 budgets with the current year (FY 2022-2023) adopted budget, as most recently amended, along with FY 2021-2022 actual expenditures. The total revenues and expenditures total **\$41,687,240.00**. The proposed AFP represents the general fund budget for SJCOG. The revenues and expenditures in the AFP are the same as the Overall Work Program (OWP), however, presented in a traditional line-item format compared to the work element format of the OWP.

Readers should note several differences between SJCOG and its member agencies' budgets:

- SJCOG revenue sources are quite different from our member agencies.
- SJCOG employs staff on an at-will basis, vis-à-vis civil service and has its own employee handbook and policies.
- SJCOG has its own Financial and Accounting Policy guiding our financial matters including procurement procedures.
- SJCOG employees are exempted from Social Security except for Medicare.
- As noted below, SJCOG offers a defined contribution retirement plan to its employees. SJCOG has no CalPERS or post employments benefit obligations except limited sick leave conversion as noted.

The following assumptions are incorporated in the budget:

1. Work will not begin, and expenses will not be incurred unless anticipated revenue sources are secured.
2. The AFP anticipates SJCOG to be fully staffed. The budget includes a 5.02% pool that can be drawn upon for merit-based increases and potential promotions. The full impact of that pool is incorporated into the salary-driven benefits (retirement, Medicare, disability).
3. SJCOG has no significant liability exposure for post-employment benefits.
  - a. The employee retirement program is a defined contribution program managed by the International City Managers Association Retirement Program (Mission Square Retirement).
  - b. SJCOG employee vacation accruals are capped at two times the individual's annual leave.
  - c. Upon separation with 50 years of age or 20 years of SJCOG employment, an employee can convert accrued sick leave hours to be deposited into a Retirement Health Savings Account to pay for health-related expenses. The conversion is based upon the employee's salary at retirement.

SJCOG staff would be pleased to appear before your policymakers to answer any questions they might have regarding this matter. **We request ratification prior to June 30, 2023.** Please let me know when this will be on your agenda. If you have any questions regarding this matter, don't hesitate to contact me at (209) 235-0584.

Thank you for your assistance.

Sincerely,

DocuSigned by:  
  
77C9E4A491524D2...

STEVE DIAL  
Deputy Executive Director/Chief Financial Officer

Attachments:

R-23-104

FY 2023-24 Annual Financial Plan Staff Report

FY 2023-24 Annual Financial Plan Board Summary



**San Joaquin Council of Governments  
ANNUAL FINANCIAL PLAN  
Fiscal Year 2023/24**

**Proposed Final March 23, 2023**

**CHAIR**

Supervisor Robert Rickman, San Joaquin County

**VICE-CHAIR**

Mayor David Bellinger, City of Escalon

**BOARD OF DIRECTORS**

Mayor Pro Tem Lisa Craig	City of Lodi
Councilmember Diane Lazard	City of Lathrop
Mayor Gary Singh	City of Manteca
Mayor Kevin J. Lincoln II	City of Stockton
Councilmember Kimberly Warmesley	City of Stockton
Councilmember Dan Wright	City of Stockton
Supervisor Miguel Villapudua	County of San Joaquin
Supervisor Steven Ding	County of San Joaquin
Mayor Nancy Young	City of Tracy
Vice Mayor Leo Zuber	City of Ripon

**EX OFFICIO DIRECTORS**

Dennis Agar, Director	Caltrans District 10
Gary Giovanetti, Director	San Joaquin Regional Transit District
William R. Trezza, Commissioner	Port of Stockton

**SUBMITTED BY:**

Diane Nguyen  
Executive Director

Steve Dial  
Deputy Executive Director/  
Chief Financial Officer

**San Joaquin Council of Governments**  
**ANNUAL FINANCIAL PLAN**  
**Fiscal Year 2023/2024**  
**Proposed Final March 23, 2023**

REVENUES	FY 2021-22 Actual	FY 2022-23 Amendment #3	FY 2023-24 Proposed Final	+/- Change	+/- % Change
Federal Grants	5,095,875.06	9,646,688.20	11,175,862.00	1,529,173.80	15.85%
State Grants	3,592,632.34	12,077,932.42	22,443,157.00	10,365,224.58	85.82%
Local	5,778,141.34	6,847,246.59	7,988,221.00	1,140,974.41	16.66%
Interest	10,723.00	20,000.00	20,000.00	-	0.00%
Other	73,824.96	60,000.00	60,000.00	-	0.00%
<b>SJCOG OPERATING REVENUE</b>	<b>14,551,196.70</b>	<b>28,651,867.21</b>	<b>41,687,240.00</b>	<b>13,035,372.79</b>	<b>45.50%</b>
<b>EXPENDITURES</b>					
Salaries & Benefits	4,486,781.28	5,312,472.93	6,281,809.00	969,336.07	18.25%
Services & Supplies	1,077,170.21	1,212,800.00	1,338,500.00	125,700.00	10.36%
Office Expense	336,434.13	313,000.00	338,000.00	25,000.00	7.99%
Communications	60,810.26	60,000.00	60,000.00	-	0.00%
Memberships	34,890.58	45,000.00	45,000.00	-	0.00%
Maintenance - Equipment	5,199.74	10,000.00	10,000.00	-	0.00%
Rents & Leases - Equipment	51,493.74	131,000.00	131,000.00	-	0.00%
Transportation, Travel & Training (In & Out of State)	83,703.41	100,000.00	125,000.00	25,000.00	25.00%
Publications & Legal Notices	3,919.22	7,500.00	7,500.00	-	0.00%
Insurance	174,019.45	146,300.00	205,000.00	58,700.00	40.12%
Building Operations & Maintenance	217,331.92	200,000.00	217,000.00	17,000.00	8.50%
SJCOG Building Debt Service Principal and Interest	109,367.76	200,000.00	200,000.00	-	0.00%
Professional Services	8,059,048.90	21,746,094.28	33,686,431.05	11,940,336.77	54.91%
Capital Outlay	120,336.29	380,500.00	380,500.00	-	0.00%
Unallocated/Reserve					
<b>SJCOG OPERATING EXPENDITURES</b>	<b>13,743,336.68</b>	<b>28,651,867.21</b>	<b>41,687,240.05</b>	<b>13,035,372.84</b>	<b>45.50%</b>

March 2023  
SJCOG Board

## STAFF REPORT

**SUBJECT:** FY 2023-2024 Proposed Annual Financial Plan (AFP)

**RECOMMENDED ACTION:** That the Board Adopt Resolution 23-104 Approving the FY 2023-2024 Annual Financial Plan

The attached proposed Annual Financial Plan (AFP) provides detail of revenues and expenditures by cost category and line item comparing the proposed FY 2023-2024 budgets with the current year (FY 2022-2023) adopted budget, as most recently amended, along with FY 2021-2022 actual expenditures. The total revenues and expenditures total **\$41,687,240.00**. The proposed AFP represents the general fund budget for SJCOG. The revenues and expenditures in the AFP are the same as the Overall Work Program (OWP), however, presented in a traditional line-item format compared to the work element format of the OWP.

Below is a summary of revenues and expenditures in the AFP. For the detail for each of those categories please refer to the attached.

Readers should note several differences between SJCOG and its member agencies' budgets:

- SJCOG revenue sources are quite different from our member agencies.
- SJCOG employs staff on an at-will basis, vis-à-vis civil service and has its own employee handbook and policies.
- SJCOG has its own Financial and Accounting Policy guiding our financial matters including procurement procedures.
- SJCOG employees are exempted from Social Security except for Medicare.
- As noted below, SJCOG offers a defined contribution retirement plan to its employees. SJCOG has no CalPERS or post employments benefit obligations except limited sick leave conversion as noted.

Upon adoption by the board, pursuant to the SJCOG Joint Powers Agreement, the AFP will be sent to the member agencies for ratification. Ratification is achieved when a majority of the member agencies representing 55% of the county population approve the AFP.

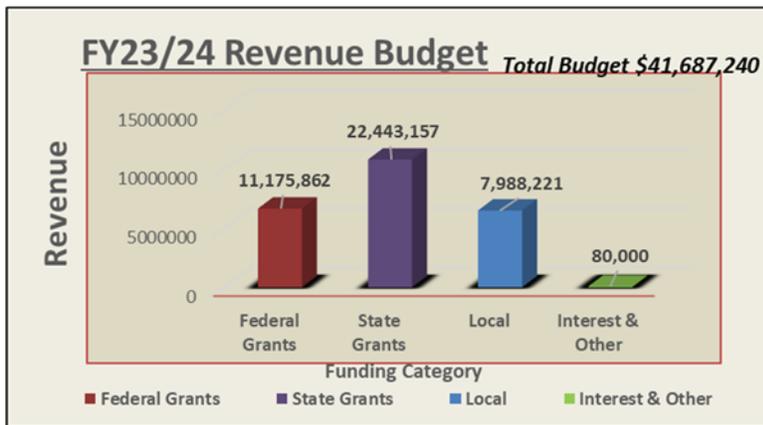
The following assumptions are incorporated in the budget:

1. Work will not begin, and expenses will not be incurred unless anticipated revenue sources are secured.
2. The AFP anticipates SJCOG creating two new positions and being fully staffed. The budget includes a 7% pool that can be drawn upon for merit-based increases and potential promotions. The full impact of that pool is incorporated into the salary-driven benefits (retirement, Medicare, disability).

3. SJCOG has no significant liability exposure for post-employment benefits.
  - a. The employee retirement program is a defined contribution program managed by the International City Managers Association Retirement Program (Mission Square Retirement).
  - b. SJCOG employee vacation accruals are capped at two times the individual's annual leave.
  - c. Upon separation with 50 years of age or 20 years of SJCOG employment, an employee can convert accrued sick leave hours to be deposited into a Retirement Health Savings Account to pay for health-related expenses. The conversion is based upon the employee's salary at retirement.

## REVENUES

Compared to the current year amended AFP, SJCOG general fund operating revenues are proposed to increase from \$28,651,867.21 to \$41,687,240.00, an increase of \$13,035,372.79.



Overall, federal funding for general fund activities is \$1,529,173.80 or 15.85% higher than FY 2022-23 due primarily to Increased funds for I-205 Managed Lanes Widening and consumption of one year of Congestion Mitigation/Air Quality funds (CMAQ) for dibs, SJCOG's Transportation Demand Management program.

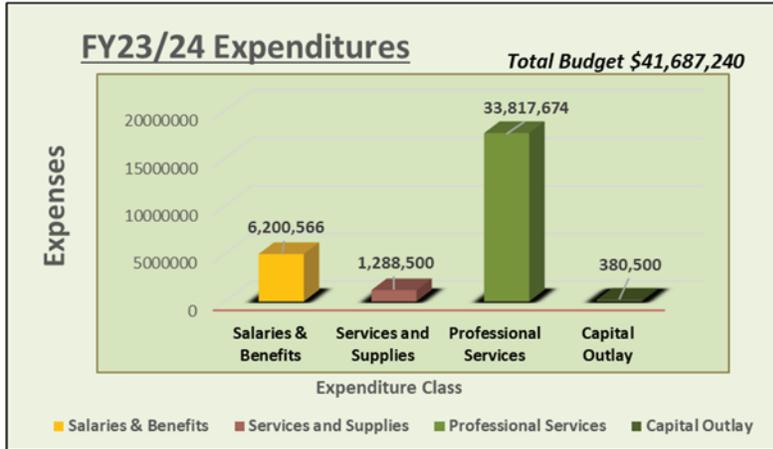
State funding sources are higher by \$10,365,224.58 or 85.82% due to:

- Regional Early Action Planning (REAP) 2.0 grant in the amount of \$10,400,000.
- \$801,535.98 drawdown on REAP 1.0
- Receipt of \$1,750,000 Regional Climate Collaborative grant.
- \$1,063,328.18 drawdown on prior year's Freeway Service Patrol funding.
- \$1,097,293 is available for FY 23-24 future years of Freeway Service Patrol funding.
- \$330,214.72 drawdown has occurred on three years of Senate Bill 1 (SB1) Sustainable Transportation Planning Grants offset by a FY 23-24 allocation of \$341,671.
- \$295,837.54 drawdown on prior year's State Transportation Improvement Program (STIP) for planning offset by FY 23-24 allocation of \$290,000.
- Expenditure of \$1,538,053 from the state grant for Sustainable Transportation Equity Project (STEP).
- Clean Mobility Options grant in the amount of \$500,970
- \$31,777 drawdown on Affordable Housing & Sustainable Community grant.
- State Transit Assistance increased by \$46,037.

Local revenues are higher by \$1,140,974.41 or 16.66% due to increased sales tax receipts on Local Transportation Fund by \$104,835 and Measure K by \$1,370,030.

Decrease in Regional Transportation Fund by \$170,500. Decrease in Roth Road funding by \$148,390.59 and decrease in other miscellaneous funding by \$15,000.

## EXPENDITURES



**Salaries and Benefits** are proposed to increase by \$969,336.07 or 18.25% from \$5,312,472.93 to \$6,281,809.00 compared to the FY 22-23 amended budget. The budget includes creating two new planning positions and filling existing position vacancies. It also includes a \$300,294.00 or 7.0% of total salaries pool for merit-based raises. The salary-driven benefits adjust accordingly.

### **Services and Supplies are proposed to increase by \$100,700.**

Computer software and licensing is increasing by \$25,000 to support both a return to the office, working remotely and heightened cybersecurity. Liability insurance is increasing by \$58,700. Building maintenance is increasing by \$17,000 due to increased utilities, security upgrades, and vandalism repairs.

### **Transportation, Travel, and Training increase by \$25,000.**

With several new board members and new employees, more training expenses are expected. This budget is increased by \$25,000 up to \$125,000. This will help to support such activities as the annual One Voice® trip.

### **Professional Services – Increases \$11,940,336.77 from FY 22-23 \$21,746,094.28 to 33,686,431.05**

There is consumption of various grants and funding sources. For example, the SB-1 Sustainable Communities Grants consumed \$179,039.29 While the Regional Early Action Plan (REAP 1.0) has consumed \$1,116,535.98, we are budgeting \$9,300,000 for REAP 2.0. The Sustainable Transportation Equity Project (STEP) has consumed \$1,738,053.00. We are budgeting \$223,965.04 for the CMO Voucher is program and \$1,650,000 for San Joaquin Regional Climate Collaborative. Lastly, \$3,800,000 is programmed for the I-205 Managed Lanes Widening project.

### **Position Classification and Salary Schedule**

Per board policy, the salary ranges at both the minimum and maximum levels are adjusted by the CPI change.

## FISCAL IMPACT

All revenues in the AFP are secured and available. The Annual Financial Plan is required to be adopted by the Board of Directors prior to April 1 each year and disseminated to the member

agencies for ratification. The Annual Financial Plan is the traditional line-item budget identifying estimated revenues and expenditures for the fiscal year. The Annual Financial Plan is complementary to the Overall Work Program.

## **RECOMMENDATION**

That the Board adopt Resolution 23-104 approving the FY 2023-24 Annual Financial Plan.

*Prepared by: Steve Dial, Deputy Executive Director/CFO, and Grace Orosco, Manager of Finance*



**RESOLUTION  
SAN JOAQUIN COUNCIL OF GOVERNMENTS**

**R-23-104**

**RESOLUTION APPROVING THE ADOPTION OF THE 2023-2024  
ANNUAL FINANCIAL PLAN  
FOR THE SAN JOAQUIN COUNCIL OF GOVERNMENTS**

WHEREAS, the San Joaquin Council of Governments is required by the Joint Powers Agreement to adopt a budget (Annual Financial Plan) annually, and

WHEREAS, the adopted budget is to be sent to the member agencies for ratification.

NOW THEREFORE BE IT RESOLVED, that the San Joaquin Council of Governments adopts the FY 2023-2024 Annual Financial Plan and directs the Executive Director to transmit it to the member agencies for ratification.

PASSED AND ADOPTED this 23rd day of March 2023 by the following vote of the San Joaquin Council of Governments, to wit:

AYES: Mayor Bellinger, Escalon; Supervisor Ding, SJC; Mayor Lincoln, Stockton; Supervisor Rickman, SJC; Mayor Singh, Manteca; Supervisor Villapudua, SJC; Councilmember Warmlesley, Stockton; Councilmember Wright, Stockton; Mayor Young, Tracy; Vice Mayor Zuber, Ripon

NOES:

ABSENT: Mayor Pro Temp, Craig, Lodi; Councilmember Lazard, Lathrop

  
ROBERT RICKMAN, Chair

**AMENDED AND RESTATED  
JOINT POWERS AGREEMENT  
ESTABLISHING THE SAN JOAQUIN COUNCIL  
OF GOVERNMENTS**

THIS AGREEMENT is entered into as of June 24, 2010, by and between the incorporated cities of Escalon, Manteca, Lathrop, Lodi, Ripon, Stockton, and Tracy, all municipal corporations and the County of San Joaquin, a political subdivision of the State of California. The municipal corporations are sometimes referred to individually as "City" and collectively as "Cities." The County of San Joaquin is sometimes referred to as "County." The Cities and County are sometimes referred to individually as a "Party" and collectively as "Parties."

WITNESSETH:

1. RECITALS.

1.1. Common Power. Chapter 5 of Division 7 of Title 1 (commencing with Section 6500) of the California Government Code authorizes two (2) or more public agencies to jointly exercise any power common to them.

1.2. Common Authority. The City of Stockton, by virtue of its charter and the Cities of Escalon, Lathrop, Lodi, Manteca, Ripon, Tracy, and the County of San Joaquin, by virtue of California Government Code Section 65600 through 65604, inclusive, possess in common the authority:

1.2.1. To study, discuss, and develop solutions to area-wide problems of direct concern to the performance of their constitutional and statutory functions and to establish an area planning organization and expend public funds for these purposes.

1.2.2. To do all acts necessary to participate in federal programs and receive federal funds for health, education, welfare, public works, and community improvement activities, including contracting and cooperating with other agencies.

1.3. Orderly Development. The people residing within the incorporated and unincorporated areas of San Joaquin County have an interest in the orderly development of their communities.

1.4. Independent Agency. The continued growth and extensive development within the incorporated and unincorporated areas of San Joaquin County evidenced a need to create a wholly independent regional agency capable of dealing with area-wide issues and problems.

1.5. Predecessor. The foregoing need led to the creation and establishment of the SAN JOAQUIN COUNCIL OF GOVERNMENTS on July 1, 1970.

1.6. Effects. The establishment of SAN JOAQUIN COUNCIL OF GOVERNMENTS (hereinafter referred to as "SJCOG") has:

1.6.1. Provided a forum to study and develop solutions to area-wide problems of mutual concern to the various governmental entities in San Joaquin County.

1.6.2. Provided efficiency and economy in governmental operations through the cooperation of member governments and the pooling of common resources.

1.6.3. Provided for the establishment of an agency responsible for identifying, planning, and developing solutions to regional problems requiring multijurisdictional cooperation.

1.6.4. Provided for the establishment of an agency capable of developing regional plans and policies and performing area-wide planning duties.

1.6.5. Facilitated cooperation among and agreement between local governmental bodies for specific purposes, interrelated developmental actions, and for the adoption of common policies with respect to issues and problems which are common to its members.

1.7. Amendment. The Cities of Escalon, Lathrop, Lodi, Manteca, Ripon, Stockton, and Tracy and the County of San Joaquin, at this time, desire to amend that certain joint powers agreement of March 1, 1991, as subsequently amended on December 7, 2000, and December 8, 2005, and enter into this Amended and Restated Agreement in order to establish the duties and powers of the SAN JOAQUIN COUNCIL OF GOVERNMENTS.

1.8. Transportation Authority. The County designated the SAN JOAQUIN COUNCIL OF GOVERNMENTS as the San Joaquin County Transportation Authority.

NOW, THEREFORE, it is mutually agreed as follows:

2. STATEMENT OF PURPOSE

The member Cities and the County have joined together to establish SJCOG for the following reasons:

2.1. Area-Wide Opportunities. A number of opportunities and issues within the area are either area-wide in nature or have area-wide aspects or implications, including, but not limited to transportation, air quality, land use, economic development, job creation, and the reduction of unemployment, the protection of agricultural productivity, and multi-species habitat management issues.

2.2. Need. There is a demonstrated need for the establishment of an organization of the Cities and the County within the area to provide a forum for study and development of recommendations to area-wide problems of mutual interest and concern to the Cities and the County and to facilitate the development of policies and action recommendations for the solution of problems.

2.3. Independent Review. The Cities and the County wish to create an area-wide organization which will independently review and make comments to the member Cities and the County regarding projects which receive federal or state funding.

2.4. Elected Officials. The Cities and the County believe that an area-wide planning organization, governed solely by elected officials from the Cities and the County, with a staff independent of any City or the County, is best suited for area-wide planning and review.

2.5. Area-Wide Problems. The Cities and the County, working together through this organization, can exercise initiative, leadership, and responsibility for solving area-wide problems.

2.6. Allocation of Resources. The Cities and the County share common area-wide problems and issues, and at the same time, have different needs and priorities and are affected in different ways by these common area-wide problems and issues. The resources of SJCOG should be allocated in a manner so that the needs of any portion of the area are not ignored, recognizing, however, that resources are limited and that not all needs can be met, nor all portions of the area assisted equally at any one time.

### 3. ESTABLISHMENT OF SJCOG

3.1. Continued Public Entity. Upon the effective date of this Agreement, the Parties hereto hereby continue the SAN JOAQUIN COUNCIL OF GOVERNMENTS, as a public entity separate and distinct from the Parties, as the agent to exercise the common powers provided for in this Agreement and to administer or otherwise execute this Agreement.

3.2. Functions. SJCOG is the successor entity to the Council Of Governments established in 1970, insofar as its predecessor entity has been designated, and insofar as legally authorized, it shall continue to function as:

3.2.1. The Area-wide Planning Organization (APO) as designated by the U.S. Department of Housing and Urban Development (HUD).

3.2.2. The Metropolitan Planning Organization (MPO) as designated by the U.S. Department of Transportation; pursuant to Title 23 of United States Code, Section 134 (23 USC 134) and Title 49 of the United States Code, Section 5303(b)(2).

3.2.3. The Regional Transportation Planning Agency (RTPA) as designated by the Secretary of Business and Transportation Agency of the State of California; pursuant to California Government Code Sections 65080, et seq.

3.2.4. The Airport Land Use Commission (ALUC) as designated by the Board of Supervisors of the County of San Joaquin and recognized by the State of California; pursuant to California Public Utilities Code, Section 21670(b).

3.2.5. The regional planning representative, as designated by the Parties hereto, for the purpose of acting upon any appropriate proposals which may be presented to the SJCOG Board of Directors for consideration, or which the SJCOG Board of Directors may elect to take up, and for transmission of proposed recommendations to Federal, State, and local agencies, including, but not limited to the member entities of SJCOG.

3.2.6. The San Joaquin County Transportation Authority as designated by the Board of Supervisors of San Joaquin County pursuant to Section 180000 of the California Public Utilities Code.

3.2.7. The Census Data Center as designated by the Bureau of the Census.

3.2.8. The Congestion Management Agency for San Joaquin County pursuant to California Government Code Sections 65088 and 65089 and Title 23 of the United States Code Section 134.

3.2.9. The Federal Clearinghouse to review federal grant applications under Section 6506 of Title 23 of the United States Code Annotated.

#### 4. COOPERATION

The Parties to this Agreement pledge full cooperation and agree to assign representatives to serve as official members of the SJCOG Board or any committee or subcommittee thereof, which members shall act for and on behalf of their Cities or the County in any and all matters which shall come before SJCOG, subject to any necessary and legal approvals of their acts by the legislative bodies of the Cities and the County.

5. MEMBERSHIP

5.1. Board. SJCOG shall be governed by a Board of Directors, herein referred to as the SJCOG Board, which shall be comprised of:

5.1.1. One (1) member from each of the City Councils of Escalon, Lathrop, Lodi, Manteca, Ripon, and Tracy (with the Mayor an eligible member).

5.1.2. Three (3) members from the Stockton City Council (with the Mayor an eligible member).

5.1.3. Three (3) members of the Board of Supervisors of the County of San Joaquin.

5.1.4. Ex-officio non-voting members acting in an advisory capacity shall be:

5.1.4.1. The District Director from the State Department of Transportation, District X.

5.1.4.2. A member of the San Joaquin Regional Transit District Board of Directors.

5.1.4.3. A member of the Stockton Port District Board of Commissioners.

5.2. Appointment. Members shall be appointed by the governing body of each Party and shall serve at the pleasure of their appointing body or until their respective successors are appointed. Termination of a Party's mayor, councilperson, or supervisor status shall constitute automatic termination of that person's membership on the SJCOG Board. The appointing body of a Party may appoint a new member or alternate immediately upon any vacancy in the Party's representation.

5.3. Alternates. The governing body of each Party shall appoint alternate members to the SJCOG Board. During the absence of a regular member from any meeting of the SJCOG Board, the alternate shall be entitled to participate in all respects as a regular member of the SJCOG Board. All members and alternates shall be duly elected representatives of their respective City Councils or Board of Supervisors.

5.4. Quorum. A quorum for conducting all matters of business shall be seven (7) members. The affirmative vote of a least a majority of the quorum present shall be required for the approval of any matter.

5.5. Rules. The SJCOG Board shall adopt rules of procedure and shall establish a time and place for regular SJCOG meetings. At any meeting the SJCOG Board may consider matters it deems proper for carrying out the purposes of this

Agreement, subject to the provisions of California Government Code Section 54950 et seq.

5.6. Executive Committee. An Executive Committee shall be constituted from among the representatives of the Parties. The Executive Committee shall consist of five (5) members of the SJCOG Board elected by the SJCOG Board. One (1) member of the SJCOG Board shall be elected by the SJCOG Board to serve as the alternate member of the Executive Committee. During the absence of a regular member from any meeting of the Executive Committee, the alternate shall be entitled to participate in all respects as a regular member of the Executive Committee. The Chairperson of SJCOG shall be the Chairperson of the Executive Committee and shall serve on it as the representative of his/her jurisdiction. The Executive Committee shall have powers as are not inconsistent with this Agreement and as delegated to it by the SJCOG By-laws or the SJCOG Board.

5.7. Bylaws. The Bylaws of the SJCOG shall be those adopted following the adoption of this Amended and Restated Agreement by the SJCOG Board, and may thereafter be amended from time to time by the SJCOG Board.

## 6. POWERS AND FUNCTIONS

6.1. Specific Functions. SJCOG shall have the common power of the Parties hereto to establish, administer and operate area-wide programs, and in the exercise of that power, SJCOG is authorized in its own name to:

6.1.1. Employ an executive director as the chief administrative officer of the agency.

6.1.2. Employ agencies and employees and contract for professional services.

6.1.3. Make and enter into contracts.

6.1.4. Operate transportation and other services and facilities.

6.1.5. Undertake the planning, design and environmental clearance of transportation and other projects.

6.1.6. Cooperate with other agencies, counties and other local public agencies and participate in joint projects as necessary.

6.1.7. Acquire, hold, and convey real and personal property.

6.1.8. Incur debts, obligations, and liabilities.

6.1.9. Accept contributions, grants, or loans from any public or private agency or individual, or the United States or any department, instrumentality, or agency thereof, for the purpose of financing its activities.

6.1.10. Invest money that is not needed for immediate necessities, as the Board determines advisable, in the same manner and upon the same conditions as other local entities in accordance with Section 53601 of the California Government Code.

6.1.11. Have appointed board members and ex-officio board members serve with or without compensation from the SJCOG.

6.1.12. Sue and be sued, in its own name only, but not in the name or stead of any member entity.

6.1.13. Make loans to Parties for projects approved by the SJCOG Board on terms, and interest rates, and with security, as may be established by the SJCOG Board.

6.1.14. To operate, either directly by SJCOG employees, or by independent contractors, programs approved by the SJCOG Board, such as, but not limited to, ridesharing programs, freeway service patrol programs, and habitat conservation programs, including the maintenance and operation of habitat conservation lands.

6.1.15. To provide services, including operational services, outside San Joaquin County, if fully compensated for the services, or in cooperative projects involving other public agencies.

6.1.16. To do all other acts reasonable and necessary to carry out the purpose of this Agreement.

6.2. Limitation. The powers to be exercised by SJCOG are subject to the restrictions upon the manner of exercising the powers as are imposed upon the County of San Joaquin in the exercise of similar powers.

6.3. Funds. SJCOG shall be held strictly accountable for all funds received, held and disbursed by it.

## 7. EXECUTIVE DIRECTOR

7.1. Powers and Duties. The executive director shall be selected by, and shall serve at the pleasure of and upon the terms prescribed by the SJCOG Board. The powers and duties of the executive director are:

7.1.1. To serve as the chief administrative officer of SJCOG and to be responsible to the SJCOG Board for the proper administration of all SJCOG affairs.

7.1.2. To appoint, supervise, suspend, discipline or remove SJCOG employees subject to those policies and procedures, from time to time, adopted by the SJCOG Board.

7.1.3. To supervise and direct the preparation of annual budget for the SJCOG and be responsible for its administration after adoption by the SJCOG Board.

7.1.4. To formulate and present to the SJCOG Board plans for SJCOG's activities and the means to finance them.

7.1.5. To supervise the planning and implementation of all SJCOG's activities.

7.1.6. To attend all meetings of the SJCOG Board and act as the secretary to the SJCOG Board.

7.1.7. To prepare and submit to the SJCOG Board periodic financial reports and, as soon as practicable after the end of each fiscal year, an annual report of the activities of SJCOG for the preceding year.

7.1.8. To have custody and charge of all SJCOG property other than money and securities.

7.1.9. To perform other duties as the SJCOG Board may require in carrying out the policies and directives of the SJCOG Board.

## 8. FINANCING

8.1. Fiscal Year. The SJCOG fiscal year shall be July 1 through June 30.

8.2. Annual Budget. On or before April 1st, the SJCOG shall adopt a budget for the ensuing fiscal year to commence on July 1, and shall submit the same for ratification to the governing body of each Party. Upon ratification of the proposed budget of the legislative bodies of the Parties, and representing at least 55% of the population within the County, the budget shall serve as the approved budget for the fiscal year in carrying out the tasks within the approved work program for the year. Any amendments to the budget shall be approved by the SJCOG Board.

8.3. Support by Parties. Any Party to this Agreement, in the exercise of the reasonable discretion of its governing body, may, upon mutual consent of the Parties, provide support for the SJCOG, its staff, and its professional consultants, including providing the quarters, janitorial services and maintenance, supplies, printing and duplication, postage, telephone services, transportation services, and professional and technical assistance as may be necessary to enable SJCOG to perform its responsibilities. All assistance shall be provided on an at-cost basis.

8.4. Eminent Domain and Taxes. Under no circumstances shall the SJCOG be empowered to exercise the right of eminent domain nor to levy taxes except as provided in Section 8.5 below. SJCOG shall apply for available State or Federal support funds, and shall make new and additional applications from time to time as appropriate. If deemed necessary, the SJCOG Board may also establish and collect filing and processing fees in connection with matters to be considered by it.

8.5. Measure K. In its role as the San Joaquin County Transportation Authority, SJCOG shall be empowered to levy and expend tax revenues authorized in San Joaquin County Transportation Authority Ordinance #91-01 and approved as Measure K on November 6, 1990 by the voters of San Joaquin County. This empowerment shall exist so long as San Joaquin County Transportation Authority Ordinance #91-01 is in effect and shall terminate when all San Joaquin County Transportation Authority Ordinance #91-01 taxes have been levied and expended.

9. TREASURER

9.1. Treasurer. The SJCOG Chief Financial Officer shall be the Treasurer of SJCOG.

9.2. Duties. The Treasurer shall:

9.2.1. Receive and receipt all money of SJCOG and place it in a designated financial institution approved by the SJCOG Board of Directors to the credit of SJCOG.

9.2.2. Be responsible upon his/her official bond for the safekeeping and disbursement of all SJCOG money held by the Treasurer.

9.2.3. Pay, when due, out of money of SJCOG, all sums payable on outstanding bonds and coupons of SJCOG.

9.2.4. Pay any sums due from SJCOG, from SJCOG's funds or any portion thereof, upon warrants of the SJCOG Auditor - Controller designated herein.

9.2.5. Verify and report in writing as soon as possible after the first day of July, October, January, and April of each year to SJCOG the amounts of monies the Treasurer holds for SJCOG, the amount of receipts since the Treasurer's last report, and any interest accrued to those funds.

10. AUDITOR - CONTROLLER

10.1. Auditor - Controller. The SJCOG Chief Financial Officer shall be the Auditor - Controller for the SJCOG.

10.2. Warrants. The Auditor - Controller shall draw warrants to pay demands against SJCOG when the demands have been approved by the SJCOG Board and/or the SJCOG Executive Director. The Auditor - Controller shall be responsible on his/her official bond for the Auditor - Controller's approval of disbursement of SJCOG money.

10.3. Records. The Auditor - Controller shall keep and maintain records and books of account on the basis of generally accepted accounting practices. The books of account shall include records of assets, liabilities, and contributions made by each Party to this Agreement.

10.4. Audit. The Auditor - Controller shall make available all financial records of SJCOG to a certified public accountant or public accountant contracted by SJCOG to make an annual audit of the accounts and records of SJCOG. The minimum requirements of the audit shall be those prescribed by the State Controller for special districts under Section 26909 of the Government Code and shall conform to generally accepted auditing standards.

## 11. BOND REQUIREMENTS

The executive director and other employees of SJCOG as may be designated by the SJCOG Board, shall file with SJCOG an official fidelity bond in a penal sum determined by the Board as security for the safekeeping of SJCOG property entrusted to the employee. Premiums for the bonds shall be paid by SJCOG.

## 12. PARTIES' LIABILITY

The debts, liabilities, and obligations of SJCOG shall not be debts, liabilities or obligations of the Parties to this Agreement either singly or collectively.

## 13. ASSIGNABILITY

With the approval of, and upon the terms agreed upon by, the governing body of each Party to this Agreement, all or any of the rights and property subject to this Agreement may be assigned to further the purpose of this Agreement. Provided, however, no right or property of SJCOG shall be assigned without compliance with all conditions imposed by any state or federal entity from which SJCOG has received financial assistance.

## 14. WITHDRAWAL OF A PARTY

14.1. Withdrawal Procedure. A Party to this Agreement may, at any time, withdraw from SJCOG, following 90 days notice to SJCOG and all other Parties of SJCOG, by resolution of intent to withdraw adopted by the governing board of the withdrawing Party.

14.2. Obligations. Upon the effective date of the withdrawal the Party shall cease to be bound by this Agreement, but shall continue to provide financial support through the approved percentage of planning funds provided COG, as Transportation Planning Agency under the provisions of Section 99233.2 of the Transportation Development Act. SJCOG assets representing any accumulated capital contribution of the withdrawing Party shall remain subject to SJCOG control, depreciation and use without compensation to the withdrawing Party until termination of this Agreement and distribution of SJCOG assets.

15. TERMINATION AND DISSOLUTION

15.1. No Specific Term. This Agreement shall continue in force without specific term.

15.2. Disestablishment. If, at any time, those Cities and County which are members of SJCOG contain less than 55% of the population residing within the area of San Joaquin County, based upon the latest available population estimates by the California Department of Finance, and there are less than a majority of local governments remaining as Parties of SJCOG, SJCOG shall be deemed disestablished and this Agreement shall cease to be operative except for the purpose of payment of any existing obligations.

15.3. Distribution. If this Agreement is terminated, all real and personal property owned by SJCOG shall be distributed to the Federal, State, or local funding agency or Party to this Agreement that supplied the property or whose funding provided for the acquisition of the property unless other distribution is provided by law. Should the origin of any real or personal property be undeterminable, that property shall be disbursed to the Parties to this Agreement in proportion to the size of the jurisdiction as delineated in the latest California Department of Finance estimate of population. This Agreement shall not terminate until all property has been distributed in accordance with this provision.

16. RETURN OF SURPLUS FUNDS

Upon termination of this Agreement, any surplus money on hand shall be returned to the Federal, State, or local agency or the Party to this Agreement that provided the funds.

17. ADDITIONAL MEMBERS

In addition to the Cities identified in this Agreement, any city within San Joaquin County which may hereafter be incorporated and which desires to participate in the activities of SJCOG may do so by executing this Agreement without the prior approval or ratification of the named Parties to this Agreement and shall thereafter be a Party to this Agreement and be bound by all terms and conditions of this Agreement as of the date it executes this Agreement.

18. SUCCESSORS

This Agreement shall be binding upon and shall inure to the benefit of any successors to or assigns of the Parties.

19. SEVERABILITY

Should any part, term, portion, or provision of this Agreement be finally decided to be in conflict with any law of the United States or the State of California, or otherwise be unenforceable or ineffectual, the validity of the remaining parts, terms, portions, or provisions shall be deemed severable and shall not be affected thereby, provided the remaining portions or provisions can be construed in substance to constitute the Agreement which the Parties intended to enter into in the first instance.

20. AMENDMENTS

This Agreement may be amended only after Parties who represent both a majority of the Parties and at least 55% of the population of San Joaquin County, based upon the latest population estimates of the California Department of Finance, approve the amendments.

21. COUNTERPARTS

This Agreement may be executed in any number of counterparts, each of which when executed will be deemed to be an original and all of which, taken together, will be deemed to be one and the same instrument.

22. TITLES AND HEADING.

The Section titles and the heading of this Agreement are for convenience only and shall not be used in interpreting this Agreement.

23. EFFECTIVE DATE OF AGREEMENT

This Amended and Restated Agreement shall become effective when the majority of the Cities and County representing more than 55% of the population of the County based upon the latest population estimates of the California Department of Finance, sign this Agreement. The population of the County for this purpose is the population of the unincorporated area.

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IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their respective offices as of:

APPROVED AS TO FORM

By: Don M. Squitella

Title: City Attorney

ATTEST: Janice  
City Clerk



MAYOR Walt Murken  
CITY OF ESCALON

-----

APPROVED AS TO FORM:

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

Title: \_\_\_\_\_

ATTEST: \_\_\_\_\_  
City Clerk

\_\_\_\_\_  
MAYOR Kristy Sayles  
CITY OF LATHROP

-----

APPROVED AS TO FORM:

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

Title: \_\_\_\_\_

ATTEST: \_\_\_\_\_  
City Clerk

\_\_\_\_\_  
MAYOR Paul Katzakian  
CITY OF LODI

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\*\*\* Signatures Continued on Next Page \*\*\*

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their respective offices as of:

APPROVED AS TO FORM

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

\_\_\_\_\_

Title: \_\_\_\_\_

MAYOR Walt Murken

ATTEST: \_\_\_\_\_

CITY OF ESCALON

City Clerk

-----

APPROVED AS TO FORM:

By: *[Signature]*

*[Signature]*

Title: *City Attorney*

MAYOR Kristy Sayles

ATTEST: *Miki Oty*

CITY OF LATHROP

City Clerk

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APPROVED AS TO FORM:

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

\_\_\_\_\_

Title: \_\_\_\_\_

MAYOR Paul Katzakian

ATTEST: \_\_\_\_\_

CITY OF LODI

City Clerk

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\*\*\* Signatures Continued on Next Page \*\*\*

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their respective offices as of:

APPROVED AS TO FORM

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

Title: \_\_\_\_\_

ATTEST: \_\_\_\_\_

City Clerk

\_\_\_\_\_

MAYOR Walt Murken

CITY OF ESCALON

-----

APPROVED AS TO FORM:

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

Title: \_\_\_\_\_

ATTEST: \_\_\_\_\_

City Clerk

\_\_\_\_\_

MAYOR Kristy Sayles

CITY OF LATHROP

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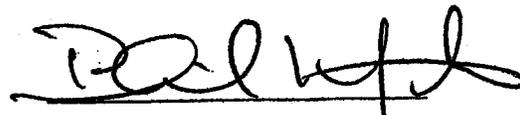
APPROVED AS TO FORM:

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

Title: City Attorney

ATTEST: \_\_\_\_\_

City Clerk



MAYOR PHIL KATZAKIAN

CITY OF LODI

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\*\*\* Signatures Continued on Next Page \*\*\*

APPROVED AS TO FORM:

By: *J. O. B.*

Title: *City Attorney*

ATTEST: *Joan O'H*  
City Clerk



MAYOR Willie W. Weatherford

CITY OF MANTECA

-----

APPROVED AS TO FORM:

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

\_\_\_\_\_

Title: \_\_\_\_\_

MAYOR Chuck Winn

ATTEST: \_\_\_\_\_

CITY OF RIPON

City Clerk

-----

APPROVED AS TO FORM:

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

\_\_\_\_\_

Title: \_\_\_\_\_

MAYOR Ann Johnston

ATTEST: \_\_\_\_\_

CITY OF STOCKTON

City Clerk

-----

APPROVED AS TO FORM:

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

\_\_\_\_\_

Title: \_\_\_\_\_

MAYOR Brent H. Ives

ATTEST: \_\_\_\_\_

CITY OF TRACY

City Clerk

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APPROVED AS TO FORM:

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

\_\_\_\_\_

Title: \_\_\_\_\_

MAYOR Willie W. Weatherford

ATTEST: \_\_\_\_\_

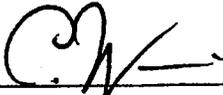
CITY OF MANTECA

City Clerk

-----

APPROVED AS TO FORM:

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

 \_\_\_\_\_

Title: *Tom Terpstra*  
*City Attorney*

MAYOR Chuck Winn

ATTEST: \_\_\_\_\_

CITY OF RIPON

*Synette Van Jaan*  
City Clerk

-----

APPROVED AS TO FORM:

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

\_\_\_\_\_

Title: \_\_\_\_\_

MAYOR Ann Johnston

ATTEST: \_\_\_\_\_

CITY OF STOCKTON

City Clerk

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APPROVED AS TO FORM:

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

\_\_\_\_\_

Title: \_\_\_\_\_

MAYOR Brent H. Ives

ATTEST: \_\_\_\_\_

CITY OF TRACY

City Clerk

-----

APPROVED AS TO FORM:

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

Title: \_\_\_\_\_

ATTEST: \_\_\_\_\_

City Clerk

\_\_\_\_\_

MAYOR Willie W. Weatherford

CITY OF MANTECA

APPROVED AS TO FORM:

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

Title: \_\_\_\_\_

ATTEST: \_\_\_\_\_

City Clerk

\_\_\_\_\_

MAYOR Chuck Winn

CITY OF RIPON

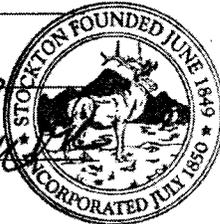
APPROVED AS TO FORM:

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

Title: City Atty

ATTEST: Bred Steen

City Clerk



Ann Johnston

MAYOR Ann Johnston

CITY OF STOCKTON

APPROVED AS TO FORM:

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

Title: \_\_\_\_\_

ATTEST: \_\_\_\_\_

City Clerk

\_\_\_\_\_

MAYOR Brent H. Ives

CITY OF TRACY

APPROVED AS TO FORM:

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

\_\_\_\_\_

Title: \_\_\_\_\_

MAYOR Willie W. Weatherford

ATTEST: \_\_\_\_\_  
City Clerk

CITY OF MANTECA

-----

APPROVED AS TO FORM:

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

\_\_\_\_\_

Title: \_\_\_\_\_

MAYOR Chuck Winn

ATTEST: \_\_\_\_\_  
City Clerk

CITY OF RIPON

-----

APPROVED AS TO FORM:

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

\_\_\_\_\_

Title: \_\_\_\_\_

MAYOR Ann Johnston

ATTEST: \_\_\_\_\_  
City Clerk

CITY OF STOCKTON

-----

APPROVED AS TO FORM:

By: David Sodergren

Brent H. Ives

Title: City Attorney

MAYOR Brent H. Ives

ATTEST: Sandra Edwards  
City Clerk

CITY OF TRACY

-----

APPROVED AS TO FORM:

By: *J. M. ...*

Title: *San Joaquin County Clerk*

ATTEST: \_\_\_\_\_  
County Clerk

*Carlos Villapudia*

CHAIRMAN Carlos Villapudia

SAN JOAQUIN COUNTY

-----

Amended March 1, 1991  
Amended December 7, 2000  
Amended December 8, 2005  
Amended June 24, 2010

COG

Attn: Andrew  
Chelsay

# Before the Board of Supervisors

County of San Joaquin, State of California

B-10- 10-777

MOTION: Ruhstaller/Vogel/4

**San Joaquin Council of Governments  
Amended Joint Powers Agreement**

**THIS BOARD OF SUPERVISORS DOES HEREBY** approve the request from the San Joaquin Council of Governments (SJCOG) that the Board ratify its adopted Joint Powers Agreement (JPA). (A copy of which is on file with the Clerk of the Board.)

I HEREBY CERTIFY that the above order was passed and adopted on August 3, 2010 by the following vote of the Board of Supervisors, to wit:

AYES: **Bestolarides, Vogel, Ruhstaller, Villapudua**

NOES: **None**

ABSENT: **Ornellas**

ABSTAIN: **None**

LOIS M. SAHYOUN  
Clerk of the Board of Supervisors  
County of San Joaquin  
State of California



10-0310

Resolution No. \_\_\_\_\_

# STOCKTON CITY COUNCIL

## APPROVE AMENDED AND RESTATED JOINT POWERS AGREEMENT WITH THE SAN JOAQUIN COUNCIL OF GOVERNMENTS

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF STOCKTON, AS FOLLOWS:

1. The City Council approves the Amended and Restated Joint Powers Agreement with the San Joaquin Council of Governments ("Agreement"), pursuant to COG's Joint Powers Agreement.
2. The City Council authorizes the Mayor to execute the Agreement, a copy of which is marked Exhibit A and incorporated by this reference.

PASSED, APPROVED and ADOPTED SEP 28 2010

*Ann Johnston*  
 \_\_\_\_\_  
 ANN JOHNSTON Mayor  
 of the City of Stockton

ATTEST:

*Katherine Gong Meissner*  
 \_\_\_\_\_  
 KATHERINE GONG MEISSNER  
 City Clerk of the City of Stockton



::ODMAIGRPWISE\COS.CM\CM\_LIBRARY\84657.1

City Atty  
 Review \_\_\_\_\_  
*[Signature]*

\_\_\_\_\_  
CITY ATTORNEY'S OFFICE

**TRACY CITY COUNCIL**

**RESOLUTION 2023 \_\_\_\_\_**

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**RATIFY THE SAN JOAQUIN COUNCIL OF GOVERNMENTS ANNUAL FINANCIAL PLAN FISCAL YEAR 2023-2024, AS REQUIRED BY THE JOINT POWERS AGREEMENT BETWEEN SJCOG AND ITS MEMBER AGENCIES**

**WHEREAS**, The San Joaquin Council of Governments (SJCOG) is a joint powers authority comprised of the County of San Joaquin and the cities of Stockton, Lodi, Manteca, Tracy, Ripon, Escalon, and Lathrop; and

**WHEREAS**, The Joint Powers Agreement between the SJCOG and its member agencies requires the Annual Financial Plan to be ratified by the governing body of each member agency; and

**WHEREAS**, The Tracy City Council considered the Annual Financial Plan at its meeting of May 16, 2023; now, therefore, be it

**RESOLVED:** That City Council of the City of Tracy hereby approves the San Joaquin Council of Governments (SJCOG) Annual Financial Plan for Fiscal Year 2023-2024, as required by the Joint Powers Agreement between SJCOG and its member agencies.

\*\*\*\*\*

The foregoing Resolution 2023-\_\_\_\_\_ was adopted by the Tracy City Council on May 16, 2023, 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.F

RECOMMENDATION

**Staff recommends that the City Council, adopt a resolution to: (1) accept the finalized construction for the Pavement Rehabilitation Project, FY 2021-2022, CIP 73183, for work completed by Tracy Grading and Paving, Inc. of Tracy, California; (2) authorize the City Clerk to File the Notice of Completion with the San Joaquin County Recorder's Office; (3) authorize the City Engineer to release the bonds and retention payment; and (4) authorize the Finance Department to close the Project.**

EXECUTIVE SUMMARY

City staff recommends that the City Council accept the construction for the Pavement Rehabilitation Project, FY 2021-2022, CIP 73183 (Project), as complete. Project costs are within the available budget and work was completed in a timely manner and in accordance with plans and specifications as approved.

BACKGROUND AND LEGISLATIVE HISTORY

The project is part of the City's annual street improvement program and consists of asphalt concrete (AC) overlay on Valpico Road (Signalized driveway east of Tracy Boulevard to 2100 feet east of the driveway), Clover Road (west City limits to 184 feet west of Tracy Boulevard), Grant Line Road (75 feet east of Lammers Road to 135 east of Walmart's signalized driveway), and pavement repair on Tracy Boulevard (12<sup>th</sup> Street to Lowell Avenue), including AC grinding, paving slurry sealing, pavement repair, signing, striping, traffic signal loop replacement, sidewalk repair, curb and gutter repair, curb ramp replacement, and drop inlet replacement.

Engineering staff prepared the plans and specifications and advertised the Project for competitive bids on May 6, and May 13, 2022. Bids for this Project were publicly opened on May 31, 2022. On July 5, 2022, City Council approved and awarded a construction contract to Tracy Grading and Paving, Inc., of Tracy, California in a not-to-exceed amount of \$897,671.71, for the construction of the Pavement Rehabilitation Project, FY 2021-2022, CIP 73183. Additionally, zero change orders were issued.

The Contractor has completed all the work required in accordance with the plans and specifications and has requested acceptance of the project. The City Engineer has inspected the completed work and confirmed that all work conforms to the contract plans and specifications. The project has been completed within the time frame of the original contract.

ANALYSIS

This project is part of the City's annual street improvement program. The street selections were based on life cycle and cost-benefit analysis using the City's Pavement Management Program (PMP) and coordinated with the City's Public Works Department, Street Maintenance Division.

FISCAL IMPACT

The Pavement Rehabilitation Project FY2021-2022, CIP 73183, is an approved Capital Improvement Project with a budget of \$1,213,747. The total completed cost is \$1,063,190, and was funded through Measure K, Gas Tax, and SB1 RMRA (Road maintenance and Rehabilitation Account) funds.

Final project costs were within budget as follows:

A.	Construction Contract Amount	\$	987,122
B.	Approved Change orders	\$	-
C.	Design, construction management, inspection, testing & miscellaneous project management expenses	\$	76,068
<b>Total Project Costs</b>		<b>\$</b>	<b>1,063,190</b>
<b>Total Budget Amount</b>		<b>\$</b>	<b>1,213,747</b>
<b>Budget Remaining</b>		<b>\$</b>	<b>150,557</b>

The remaining balances in the project will be released back into fund balance as follows:

	Budget	Cost	Balance
SB1 RMA	\$1,213,747	\$1,063,190	\$150,557
<b>Totals</b>	<b>\$1,213,747</b>	<b>\$1,063,190</b>	<b>\$150,557</b>

COORDINATION

Coordination between Engineering and Public Works, Street Maintenance Division occurred on multiple occasions to coordinate and establish this project as complete.

CEQA DETERMINATION

Ministerial Exemption, Code Section 15301. (c) EXISTING FACILITIES

The project is exempt pursuant to categorical exemptions per CEQA Guidelines §15301(c), Existing highways and streets, sidewalks, gutters, bicycle and pedestrian trails, and similar facilities (this includes road grading for the purpose of public safety), and other alterations such as the addition of bicycle facilities, including but not limited to bicycle parking, bicycle-share facilities and bicycle lanes, transit improvements such as bus lanes, pedestrian crossings, street trees, and other similar alterations that do not create additional automobile lanes).

STRATEGIC PLAN

This agenda item is consistent with the City Council’s adopted Quality of Life Strategy and meets the goal of enhancing the City’s amenities. Specifically implements the following goal: Goal 1 – Advance green and roadway infrastructure project that improve connectivity.

ACTION REQUESTED OF THE CITY COUNCIL

That City Council, by resolution, (1) accepts the finalized construction for the Pavement Rehabilitation Project, FY 2021-2022, CIP 73183, for work completed by Tracy Grading and Paving, Inc. of Tracy, California; (2) authorizes the City Clerk to File the Notice of Completion with the San Joaquin County Recorder's Office; (3) authorizes the City Engineer to release the bonds and retention payment; and (4) authorizes the Finance Department to close the Project.

Prepared by: Leisser Mazariegos, Associate Engineer

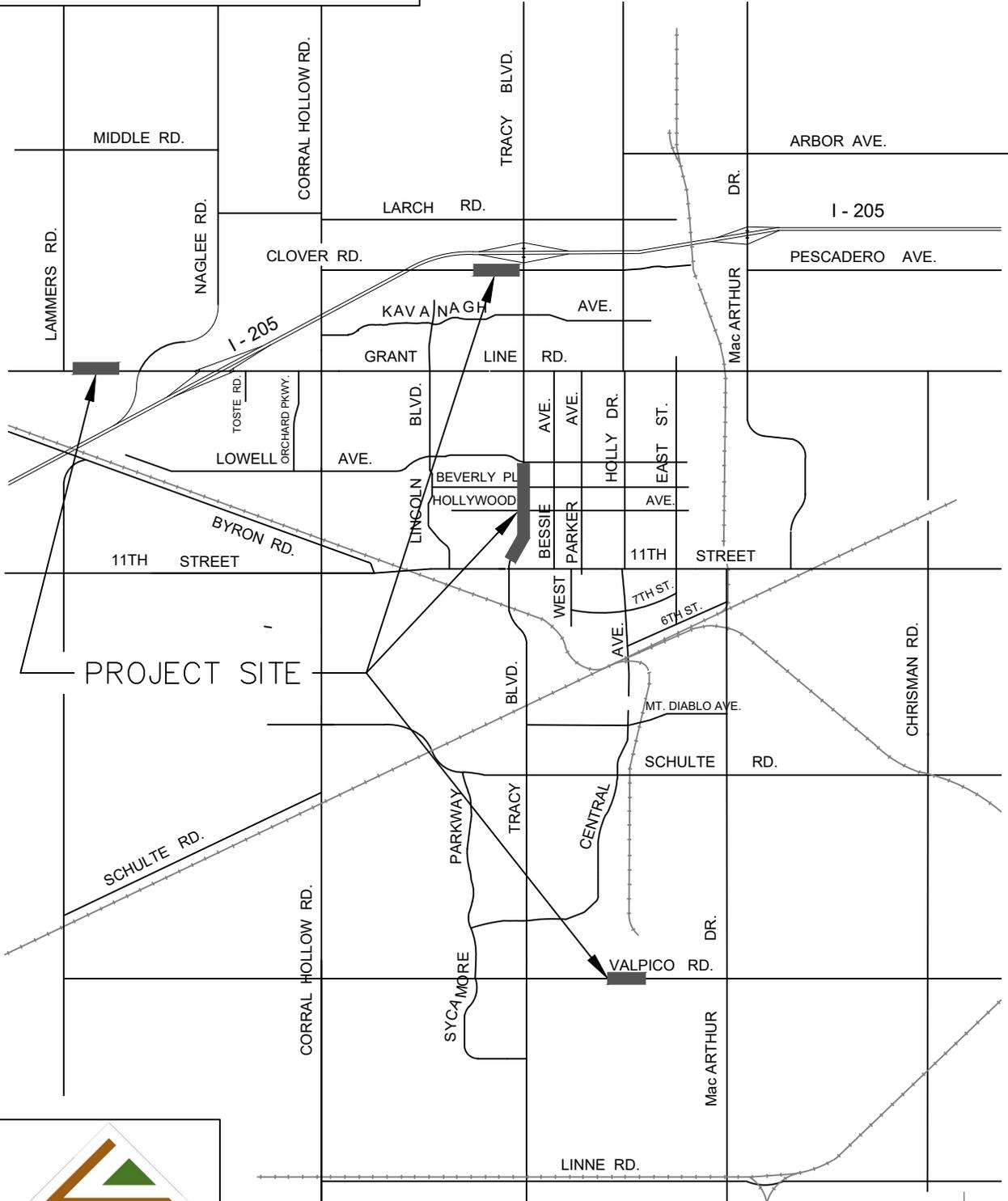
Reviewed by: Koosun Kim, PE, City Engineer / Assistant Director of Development Services  
Jaylen French, Development Services Director  
Sara Cowell, Finance Director  
Nancy Ashjian, Assistant City Attorney  
Karin Schnaider, Assistant City Manager

Approved by: Midori Lichtwardt, Assistant City Manager

ATTACHMENTS

Attachment A – Location Map

# CITY OF TRACY



PAVEMENT REHABILITATION  
 PROJECT FY 21/22  
 CIP 73183  
 LOCATION MAP



NOT TO SCALE

TRACY CITY COUNCIL

RESOLUTION 2023-\_\_\_\_\_

- (1) ACCEPTING THE FINALIZED CONSTRUCTION FOR THE PAVEMENT REHABILITATION PROJECT, FY 2021-2022, CIP 73183, FOR WORK COMPLETED BY TRACY GRADING AND PAVING, INC., OF TRACY, CALIFORNIA;
- (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) AUTHORIZING THE FINANCE DEPARTMENT TO CLOSE THE PROJECT.

**WHEREAS**, on July 5, 2022, the City Council approved and awarded a construction contract to Tracy Grading and Paving, Inc., of Tracy, California (Contractor) for the Pavement Rehabilitation Project, FY 2021-2022, in Tracy, California, CIP Project 73183; and

**WHEREAS**, the contractor has completed all the work required to be done in accordance with the plans and specifications and has requested acceptance of the project. The City Engineer has inspected the completed work and confirmed that all work conform to the contract plans and specifications; and

**WHEREAS**, no change orders were issued as part of this project; and

**WHEREAS**, the status of budget costs is as follows; and

A. Construction Contract Amount	\$	987,122
B. Approved Change orders	\$	-
Design, construction management, inspection,		
C. Testing & miscellaneous project management		
expenses	\$	76,068
<u>Total Project Costs</u>	<u>\$</u>	<u>1,063,190</u>
<u>Total Budget Amount</u>	<u>\$</u>	<u>1,213,747</u>
<u>Budget Remaining</u>	<u>\$</u>	<u>150,557</u>

**WHEREAS**, the Project has been completed with the available budget, within the time frame of the original contract plus the time extension given to the contractor for extra work, including rain delays, per plans, specifications, and City of Tracy Standards; and

**WHEREAS**, the Pavement Rehabilitation, FY 2021-2022 Project, CIP 73183, is an approved project with total funding Project cost of \$1,063,190. The total project budget is \$1,213,747, which allowed for the project to come in right on budget. The total project budget funding is from the Measure K, Gas Tax, and SB1 RMA and funds Measure K and Gas Tax will be reimbursed when the project is closed by the Finance Department; now therefore, be it

**RESOLVED:** That the City Council (1) accepts the finalized construction for the Pavement Rehabilitation Project, FY 2021-2022, in Tracy, California, CIP 73183, for work completed by Tracy Grading and Paving, Inc., of Tracy, California, (2) authorizes the City Clerk to File the Notice of Completion with the San Joaquin County Recorder's Office, (3) authorizes the City Engineer to release the bonds and retention payment, and (4) authorizes the Finance Department to close the Project.

\*\*\*\*\*

The foregoing Resolution 2023-\_\_\_\_\_ was adopted by the Tracy City Council on the 16<sup>th</sup> day of May 2023 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, to: (1) approve an appropriation of \$485,000 from General Projects Fund (F301) to CIP 71111, for the Grand Theatre Center for the Arts Exterior Improvements Project, Phases 2 and 3; (2) award a construction contract to Diede Construction, Inc. of Woodbridge, California, in the amount of \$1,899,751 for Phases 2 and 3 of the Grand Theatre Center for the Arts Exterior Improvements, CIP 71111 with a not-to-exceed budget of \$2,374,689; and (3) authorize the City Manager to approve change orders up to the contingency amount of \$189,975, if needed.**

EXECUTIVE SUMMARY

City staff requests that the City Council (1) approve a budget augmentation of \$485,000 to CIP 71111, the Grand Theatre Center for the Arts Exterior Improvements, Phases 2 and 3, (2) award a construction contract for CIP 71111, Grand Theatre Center for the Arts Exterior Improvements, Phase 2 and 3, to Diede Construction, Inc. of Woodbridge, California, in the amount of \$1,899,751, (3) approve a not-to-exceed amount of \$2,374,689, and (4) authorize the City Manager to approve change orders up to the contingency amount of \$189,975, if needed.

BACKGROUND AND LEGISLATIVE HISTORY

The Grand Theatre Center for the Arts is the crown jewel of the entertainment hub of the downtown district. The Theatre building was built in 1923, subject to an Art Deco refreshing between 1939-1941, and subject to a major structural remodel in 2007. The 2007 remodel incorporated the union of multiple structures to create the home for the Center of the Arts in Tracy. The 37,000 square foot Center of the Arts structure features art education, art gallery, and performance spaces. The exterior of the structure has significantly weathered, and periodic repairs and repainting of the structure are required to maintain this unique and treasured facility. Since the 2007 remodel a significant number of cracks have formed in the stucco facades of the building, concrete spalling has developed along various decorative corbels along the top of the structure and wall surfaces on the exterior of the structure. It is believed that water has penetrated the structure under the stucco and into the decorative corbelling and that a mere repaint will not address the cracking.

CIP 71111 for Grand Theatre Center for the Arts was established by Resolution No. 2020-032 as a new project in the FY 2019/2020 Mid-Year Budget Update with an appropriation of \$355,000, with an initial scope of roof repair and replacement (Phase 1). After preliminary engineering investigations by staff, the project scope was expanded with a budget augmentation in the amount of \$66,000 to include an engineering study, conducted by Barry & Wynn Architects, Inc, in March 2021, to determine the cause of visible exterior concrete deterioration and more detailed evaluation of the roof. The engineering report determined that the concrete damage was caused by water infiltration from the failing roof and copings and found that the concrete walls remained structurally sound. Exterior repairs identified by the report included replacement of most of the complex roofing, roof flashings, roof drains and parapet copings, replacement of the existing skylights which were allowing water infiltration into the main theatre

structure, repair of the historic metal spire above the marquee, reinforcement of the exterior horizontal canopies, repair or replacement of wooden windows in one of the complex buildings, and repair of failing concrete on portions of the exterior walls and recommended repainting of the exterior once all the repairs were complete (Phases 2 and 3).

On February 15, 2022, City Council approved a staff request for an emergency appropriation of \$2,085,000 to the project for the repairs at the Grand Theatre Center for the Arts complex that is critical for long-term preservation of this valuable City asset.

In August of 2021, Phase 1 of the roof repairs was awarded for construction for the 6,000-square-foot area determined to be the most significantly in need of repair. Material delays resulted in the actual commencement of work to be delayed until 2022, when winter rains caused additional significant problems.

The 2022/2023 Winter storms demonstrated the seriousness of the need for the remaining portions of the exterior repairs to be completed as soon as possible to prevent additional damage to the structure.

Engineering staff prepared the plans and specifications for Phases 2 and 3 of the Exterior Improvements Project and advertised the project for competitive bids on February 17, 2023, and February 24, 2023. Five (5) bids were received and publicly opened on April 3, 2023, at 2:00 p.m.

One of the bidders was deemed non-responsive and the apparent low bidder withdrew bid when a significant clerical error was found in the submitted bid documents and staff brought the error to their attention.

The following results are from the eligible responsive bidders:

<u>Contractor</u>	<u>Bid Amount</u>
Diede Construction, Inc., Woodbridge, CA	\$1,899,751
Pro-Ex Construction, Inc., Rancho Cordova, CA	\$2,282,978
Saboo, Inc., Brentwood, CA	\$2,906,317

### ANALYSIS

Bid analysis indicates that the now lowest monetary bid is responsive and the bidder, Diede Construction, Inc. of Woodbridge, California is responsible. The bidder has the appropriate contractor's license in active standing with the State of California and has completed similar projects in the City of Tracy.

The total estimated cost of this project, if awarded to the lowest bidder, is as follows:

Construction Bid	\$ 1,899,751
Construction Management (10%)	\$ 189,975
Design Support During Construction (5%)	\$ 94,987
Contingency (20%)	\$ 189,975
<b>Total Project Cost</b>	<b>\$ 2,374,688</b>

The Municipal Code Section 2.20.090(b) authorizes the City Manager to approve change orders up to the contingency amount of \$189,975 for this project, which is 10% of the construction contract cost.

FISCAL IMPACT

The total estimated project cost is \$2,374,688 and will be funded by CIP 71111, Grand Theatre Center for the Arts Exterior Improvements, Phases 2 and 3. An appropriation of \$485,000 is needed from General Projects (F301) to complete the Project as bid by the now lowest received bid. CIP 71111 has a current available budget of \$1,891,000 as follows:

	<u>Budget</u>	<u>Expensed</u>	<u>Available</u>
301 - General Projects	\$ 2,085,000	\$ 194,000	\$ 1,891,000
615 - Building Maintenance	\$ 421,000	\$ 421,000	\$ -
<b>Totals</b>	<b>\$ 2,506,000</b>	<b>\$ 615,000</b>	<b>\$ 1,891,000</b>

*Estimated Project Cost*    \$ 2,374,688

**Additional Funding Request    \$ 483,688**

COORDINATION

Engineering Staff coordinated with the Grand Theatre Center for the Arts, the Operations & Utilities Department, and the Assistant City Manager throughout the design of this Project.

CEQA DETERMINATION

The Project is exempt pursuant to categorical exemptions per CEQA Guidelines §15301(a), Class 1 consists of the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures.

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 City Council, by resolution, (1) approve an appropriation of \$485,000 from General Projects Fund (F301) to CIP 71111, for the Grand Theatre Center for the Arts Exterior Improvements Project, Phases 2 and 3; (2) award a construction contract to Diede Construction, Inc. of Woodbridge, California, in the amount of \$1,899,751 for Phases 2 and 3 of the Grand Theatre Center for the Arts Exterior Improvements, CIP 71111 with a not-to-exceed budget of \$2,374,689; and (3) authorize the City Manager to approve change orders up to the contingency amount of \$189,975, if needed.

Prepared by: Ilene Macintire, PE, Senior Civil Engineer

Reviewed by: Koosun Kim, PE, City Engineer / Assistant Director of Development Services  
Jaylen French, Development Services Director  
Sara Cowell, Finance Director  
Karin Schnaider, Assistant City Manager  
Nancy Ashjian, Assistant City Attorney

Approved by: Midori Lichtwardt, Assistant City Manager

TRACY CITY COUNCIL

RESOLUTION 2023-\_\_\_\_\_

- 
- (1) APPROVING AN APPROPRIATION OF \$485,000 FROM GENERAL PROJECTS FUND (F301) TO CIP 71111, FOR THE GRAND THEATRE CENTER FOR THE ARTS EXTERIOR IMPROVEMENTS, PHASES 2 AND 3; AND  
(2) AWARDING A CONSTRUCTION CONTRACT TO DIEDE CONSTRUCTION, INC. OF WOODBRIDGE, CALIFORNIA, IN THE AMOUNT OF \$1,899,751 FOR PHASES 2 AND 3 OF THE GRAND THEATRE CENTER FOR THE ARTS EXTERIOR IMPROVEMENTS CIP 71111, WITH A NOT-TO-EXCEED BUDGET OF \$2,374,689; AND  
(3) AUTHORIZING THE CITY MANAGER TO APPROVE CHANGE ORDERS UP TO THE CONTINGENCY AMOUNT OF \$189,975, IF NEEDED.

**WHEREAS**, the Grand Theatre Centre for the Arts Exterior Improvements, Phases 2 and 3, CIP 71111 is an approved project; and

**WHEREAS**, engineering staff prepared the plans and specifications and advertised the project for competitive bids on February 17, 2023, and February 24, 2023. Bids were received and publicly opened in City Hall Room 203/Teleconference at 2:00 p.m. on April 3, 2023, with the following results:

<u>Contractor</u>	<u>Bid Amount</u>
Diede Construction, Inc., Woodbridge, CA	\$1,899,751
Pro-Ex Construction, Inc., Rancho Cordova, CA	\$2,282,978
Saboo, Inc., Brentwood, CA	\$2,906,317; and

**WHEREAS**, Diede Construction, Inc. of Woodbridge, California, was the apparent lowest bidder; and

**WHEREAS**, the bid analysis indicates the bid is “responsive” and the bidder is “responsible;” and

**WHEREAS**, the Tracy Municipal Code Section 2.20.090(b) authorizes the City Manager to approve change orders up to the contingency amount approved by City Council; and

**WHEREAS**, the recommended contingency amount for this project is \$189,975; and

**WHEREAS**, the City Council has approved a not-to-exceed budget of \$2,374,689; and

**WHEREAS**, the not-to-exceed budget exceeds the available funding in CIP 71111; and

**WHEREAS**, the City Council has approved an appropriation of \$485,000 from General Projects (F301) to CIP 71111, Grand Theatre Center for the Arts Exterior Improvements, Phases 2 and 3; now, therefore, be it

**RESOLVED:** That the City Council of the City of Tracy hereby approves an appropriation of \$485,000 from the General Projects Fund (F301) to CIP 71111, for the Grand Theatre Center for the Arts Exterior Improvements, Phases 2 and 3; and be it

**FURTHER RESOLVED:** That the City Council of the City of Tracy awards a construction contract to Diede Construction, Inc., Woodbridge, CA, in the amount of \$1,899,751 for Phases 2 and 3 of the Grand Theatre Center for the Arts Exterior Improvement CIP 71111 with a not-to-exceed amount of \$2,374,689; 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 \$189,975, if needed.

\*\*\*\*\*

The foregoing Resolution 2023-\_\_\_\_\_ was adopted by the Tracy City Council on the 16<sup>th</sup> of May 2023 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.H

RECOMMENDATION

**Staff recommends that the City Council adopt a resolution approving Amendment No. 1 to the Professional Services Agreement with The KPA Group for the Citywide Public Facilities Master Plan Update to increase compensation by \$19,610 for a new total not-to-exceed amount of \$399,890 and extend the term of the Agreement through December 31, 2023.**

EXECUTIVE SUMMARY

The proposed Professional Services Agreement (PSA) Amendment seeks to increase the contract amount by \$19,610 from \$380,280 to a new total not-to-exceed amount of \$399,890, and extend the PSA term through December 31, 2023, allowing the Consultant time to complete the Citywide Public Facilities Master Plan Update.

BACKGROUND AND LEGISLATIVE HISTORY

The City initiated updates to several of the City infrastructure master plans in 2019 and 2020. On September 3, 2019, the City issued a Request for Proposals (RFP) for a qualified consulting firm to provide professional services to complete an update to the Citywide Public Facilities Master Plan (CPFMP) under CIP 71107. The RFP process resulted in a contract with KPA Group (Consultant).

The City and Consultant entered into a PSA for the Update to the CPFMP on March 10, 2020, under Resolution No. 2020-036. Consultant provided a schedule of 30 weeks to complete the update. The initial Draft of the CPFMP was submitted to the City on schedule in March of 2021.

ANALYSIS

Public workshops were held to discuss the initial draft plans. The Council and the public provided input which led to changes to the analysis and added projects to be considered in the plans. The Consultant has continued to provide updates to the Plan when requested and participated in staff and public workshops. During review and discussion of the draft plan, additional modifications were needed to the CPFMP to reflect facility project updates.

The Consultant continued to provide service beyond the initial contract term and provided updates at the City's request through the end of 2022. The initial compensation of \$380,280 was exhausted by the end of 2022. The City has requested the Consultant provide additional public presentations and provide updates as needed based on Council feedback. This item seeks to increase the PSA contract amount by \$19,610 to a new total of \$399,890, and extend the contract term through December 31, 2023, to cover the additional work. It is anticipated that the CPFMP update will be presented to City Council in the Fall of 2023.

FISCAL IMPACT

The Public Facilities Master Plan Update CIP 71107 has an approved budget of \$500,000 with an available balance of \$95,000.

### PUBLIC OUTREACH / INTEREST

The Consultant has provided presentations to staff and developers. They also participated in two public presentations of the information included in the CPFMP.

### COORDINATION

Engineering and the Consultant have coordinated with directors and staff of all City departments to gather information about future staffing and space needs.

### CEQA DETERMINATION

Ministerial Exemption, Code Section No. 151268.

### STRATEGIC PLAN

This agenda item is consistent with the City's Governance Strategy, Goal No. 2, item 6. Complete Rate and Fee Studies: Solid Waste, Wastewater, Citywide Core Fees, Master Impact Fees.

### ACTION REQUESTED OF THE CITY COUNCIL

Staff recommends that the City Council adopt a resolution approving Amendment No. 1 to the Professional Services Agreement with The KPA Group for the Citywide Public Facilities Master Plan Update to increase compensation by \$19,610 for a new total not-to-exceed amount of \$399,890 and extend the term of the Agreement through December 31, 2023.

Prepared by: Ilene Macintire, PE, Senior Civil Engineer  
Veronica Child, Management Analyst II

Reviewed by: Koosun Kim, PE, City Engineer / Asst. Director of Development Services  
Jaylen French, Director of Development Services  
Sara Cowell, Finance Director  
Riana Daniel, Deputy City Attorney  
Karin Schnaider, Assistant City Manager

Approved by: Midori Lichtwardt, Assistant City Manager

### ATTACHMENTS

Attachment A – Amendment No. 1 to PSA with The KPA Group  
Attachment B – Original executed Professional Services Agreement with The KPA Group for the Citywide Public Facilities Master Plan Update, CIP 71107

**CITY OF TRACY  
AMENDMENT NO. 1 TO THE PROFESSIONAL SERVICES AGREEMENT WITH  
THE KPA GROUP FOR THE CITYWIDE PUBLIC FACILITIES MASTERPLAN UPDATE,  
CIP 71107**

This Amendment No. 1 (**Amendment**) to the Professional Service Agreement is entered into between the City of Tracy, a municipal corporation (**City**), and The KPA Group, a California corporation (**Consultant**). City and Consultant are referred to individually as “Party” and collectively as “Parties.”

**Recitals**

- A.** The City and Consultant entered into a Professional Services Agreement (**Agreement**) for the City of Tracy’s Citywide Public Facilities Master Plan (**Project**), CIP 71107 on March 18, 2020, under Resolution No. 2020-1036.
- B.** The City desires to extend the term of the Agreement, amend the original scope for the services defined to provide project management and additional presentations that have required more time than was anticipated in the original Agreement. The parties also seek to amend the Agreement to increase compensation.
- C.** This Amendment is being executed pursuant to Resolution No. \_\_\_\_ approved by Tracy City Council on \_\_\_\_\_, 2023.

**Now therefore, the Parties mutually agree as follows:**

**1. Incorporation by Reference.** This Amendment incorporates by reference all terms set forth in the Agreement, unless specifically modified by this Amendment. The terms which are not specifically modified by this Amendment will remain in effect.

**2. Terms of Amendment.**

**A. 2.1 Term.**

The term of the existing Agreement shall be extended through December 31, 2023 in accordance with Sections 2 and 13 of the Agreement.

**B. 3.1 Not to Exceed Amount.**

Consultant’s total compensation under this Agreement shall not exceed \$399,890.00. For services performed pursuant to Exhibit “A-1” City shall pay Consultant a not-to-exceed amount of \$19,610 at the billing rates set forth in Exhibit “B-1.”

**C. Exhibits.**

Exhibit “A-1” Scope of Services attached hereto shall supplement Exhibit “A” of the Agreement. Consultant is responsible for completing all tasks identified in Exhibits “A” and “A-1.” Exhibit “B-1” attached hereto shall supplement Exhibit “B”. Rates in Exhibit “B-1” shall apply to all services identified in Exhibit “A”, and “A-1.”

**3. Modifications.** This Amendment may not be modified orally or in any manner other than by an agreement in writing signed by both parties, in accordance with the requirements of the Agreement.

**4. Severability.** If 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 effect.

**5. Signatures.** The individuals executing this Amendment represent and warrant that they have the right, power, legal capacity, and authority to enter into and to execute this Amendment. This Amendment shall inure to the benefit of and be binding upon the parties and their respective successors and assigns.

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

City of Tracy

By: \_\_\_\_\_  
Nancy Young  
Title: Mayor  
Date: \_\_\_\_\_

Attest:

By: \_\_\_\_\_  
Adrienne Richardson, City Clerk

Approved as to form

By: \_\_\_\_\_  
Bijal M. Patel, City Attorney

**Consultant**  
The KPA Group, a California Corporation

By: \_\_\_\_\_  
By: Paul W. Powers, A.I.A.,  
Title: President  
Date: 4-19-23

Federal Employer Tax ID No. 94-3202960

By: \_\_\_\_\_  
By: Matthew Evans,  
Title: Vice President  
Date: 04/19/2023

## **Exhibit A-1 Scope of Services**

**Tasks Included:**

1. Continue to address questions and comments from the City during the time from August 21, 2022 (the original anticipated plan adoption date) until the master plan is adopted by the City (currently anticipated schedule for Summer of 2023.)
2. Incorporate miscellaneous changes to the Citywide Public Facilities Master Plan (CPFMP) Update in response to City requests. The effort for the additional work is estimated based on the current understanding of the work required to finalize the CPFMP. Future decisions and direction from the City could revise the estimated effort required to finalize the CPFMP Update.
3. Contract summary to-date:
  - Original contract - Basic services \$380,280.00.
  - Amendment No. 1 — Allowance for added scope \$19,610.00.

**Total Adjusted Time & Materials Not-to-Exceed Fee \$399,890.00.**

## Exhibit B-1 Compensation Worksheet and Rate Schedule

CITY OF TRACY - CITYWIDE PUBLIC FACILITIES MASTER PLAN AMENDMENT							
COMPENSATION WORKSHEET							
SUMMARY BY CLASSIFICATION	PROJECT MANAGER	PROJECT ARCHITECT	ENGINEER	DESIGNER	CAD TECH	CLERICAL	SUBTOTAL
	\$260.00	\$230.00	\$230.00	\$205.00	\$160.00	\$110.00	
<b>PRESENTATIONS TO DEPT HEADS AND COUNCIL</b>							
1	Updates to PPT presentation			12		4	\$2,900.00
2	Presentations - Dept Heads			8			\$1,640.00
3	Presentations - Council	1		8		4	\$2,340.00
<b>SUBTOTAL</b>	<b>\$260.00</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$5,740.00</b>	<b>\$0.00</b>	<b>\$880.00</b>	<b>\$6,880.00</b>
<b>UPDATES TO CPFMP FOR REVISED COSTS, DEPT ORGANIZATION AND SCHEDULING</b>							
1	Costs revisions			2			\$410.00
2	Department organization changes			4			\$820.00
3	Scheduling and timeline changes			4			\$820.00
<b>SUBTOTAL</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$2,050.00</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$2,050.00</b>
<b>COORDINATION WITH HARRIS &amp; ASSOCIATES</b>							
1	Coordination for impact fees			8			\$1,640.00
<b>SUBTOTAL</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$1,640.00</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$1,640.00</b>
<b>UPDATES TO FACILITY CONDITION ASSESSMENTS</b>							
1	Revisions to FCAs	2	2	8			\$2,620.00
<b>SUBTOTAL</b>	<b>\$520.00</b>	<b>\$460.00</b>	<b>\$0.00</b>	<b>\$1,640.00</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$2,620.00</b>
<b>EXTENDED PROJECT MANAGEMENT</b>							
1	Project meetings and coordination	2	2	12			\$3,440.00
2	Future unknown efforts	2		12			\$2,980.00
<b>SUBTOTAL</b>	<b>\$1,040.00</b>	<b>\$460.00</b>	<b>\$0.00</b>	<b>\$4,920.00</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$6,420.00</b>
<b>TOTAL HOURS</b>	<b>7</b>	<b>4</b>	<b>0</b>	<b>78</b>	<b>0</b>	<b>8</b>	<b>97</b>
<b>TOTAL COST</b>	<b>\$1,820.00</b>	<b>\$920.00</b>	<b>\$0.00</b>	<b>\$15,990.00</b>	<b>\$0.00</b>	<b>\$880.00</b>	<b>\$19,610.00</b>

**CITY OF TRACY  
PROFESSIONAL SERVICES AGREEMENT WITH  
THE KPA GROUP FOR THE CITYWIDE PUBLIC FACILITIES MASTERPLAN UPDATE, CIP 71107**

This Professional Services Agreement (**Agreement**) is entered into between the City of Tracy, a municipal corporation (**City**), and The KPA Group, a California corporation (**Consultant**). City and Consultant are referred to individually as "Party" and collectively as "Parties."

**Recitals**

**A.** City desires to retain Consultant to perform public facilities analysis and master planner services; and

**B.** On September 3, 2019, the City issued a Request for Proposals (RFP) for the City of Tracy, Citywide Public Facilities Master Plan Update, CIP 7110 (Project). On October 3, 2019, Consultant submitted its proposal for the Project to the City. City has determined that Consultant possesses the skills, experience and certification required to provide the services.

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

**D.** This Agreement is being executed pursuant to Resolution No. 2020-036 approved by Tracy City Council on March 10, 2020.

**Now therefore, the Parties mutually agree as follows:**

**1. Scope of Work.** Consultant shall perform the services described in Exhibit "A" attached and incorporated by reference. The services shall be performed by, or under the direct supervision of, Consultant's Authorized Representative: Paul W. Powers, AIA, NCARB, President, Consultant shall not replace its Authorized Representative, nor shall Consultant replace any of the personnel listed in Exhibit "A," nor shall Consultant use or replace any subcontractor or subconsultant, without City's prior written consent. A failure to obtain the City's prior written consent for any change or replacement in personnel or subcontractor/subconsultant may result in the termination of this Agreement.

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

**2.1 Term.** The term of this Agreement shall begin on March 18, 2020 and end on August 31, 2022, unless terminated in accordance with Section 6. This Agreement may be extended for an additional one year by the City Manager following a written determination that Consultant has satisfactorily met all the requirements of this Agreement.

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

**3.1 Not to Exceed Amount.** Consultant's total compensation under this Agreement shall not exceed \$380,280.00. Consultant's billing rates shall cover all costs and expenses for Consultant's performance of this Agreement. No work shall be performed by Consultant in excess of the total compensation amount provided in this section without the City's prior written approval.

**3.2 Invoices.** Consultant shall submit monthly invoice(s) to the City that describe the services performed, including times, dates, and names of persons performing the services.

**3.2.1** If Consultant is providing services in response to a development application, separate invoice(s) must be issued for each application and each invoice shall contain the City's designated development application number.

**3.2.2** Consultant's failure to submit invoice(s) in accordance with these requirements may result in the City rejecting said invoice(s) and thereby delaying payment to Consultant.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

To City:  
Robert Armijo, P.E.  
City Engineer  
333 Civic Center Plaza  
Tracy, CA 95376

To Consultant:  
Paul W. Powers, A.I.A., N.C.A.R.B.  
President, The KPA Group  
6700 Koll Center Parkway, Suite 125  
Pleasanton, CA 94566

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

**13. Miscellaneous.**

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

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

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

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

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

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

**13.6.1 Prevailing Wage Laws.** Consultant is aware of the requirements of California Labor Code Section 1720, et seq., and 1770, et seq., as well as California Code of Regulations, Title 8, Section 16000, et seq., ("Prevailing Wage Laws"), which require the payment of prevailing wage rates; employment of apprentices (§ 1777.5), certified payroll records (§1776), hours of labor (§1813 and §1815), debarment of contractors and subcontractors (§1777.1) and the performance of other requirements on "public works" and "maintenance" projects. If the services being performed under this Agreement are part of a "public works" or "maintenance" project, as defined in the Prevailing Wage Laws, and if the total compensation is \$1,000 or more, Consultant agrees to fully comply with such Prevailing Wage Laws. These prevailing rates are on file with the City and are available online at <http://www.dir.ca.gov/DLSR>. Consultant shall defend, indemnify and hold the City, its officials, officers, employees and agents, harmless from any and all claims, costs, penalties, or interests arising out of any failure or alleged failure to comply with the Prevailing Wage Laws.

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

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

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

**13.9 Successors and Assigns.** This Agreement shall inure to the benefit of and be binding upon the Parties hereto and their respective successors and assigns.

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

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

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

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

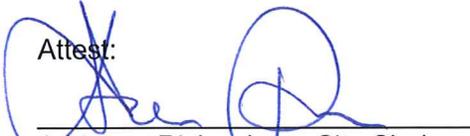
**14. Signatures.** The individuals executing this Agreement on behalf of Consultant represent and warrant that they have the right, power, legal capacity and authority to enter into and to execute this Agreement on behalf of Consultant.

**[SIGNATURES ON FOLLOWING PAGE]**

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

**City of Tracy**

  
By: Robert Rickman  
Title: Mayor  
Date: 2/21/2020

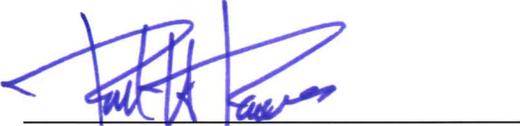
Attest:  
  
Adrianne Richardson, City Clerk

Approved as to form:

  
Leticia Ramirez, City Attorney

**Consultant**

The KPA Group, a California corporation

  
By: Paul W. Powers, A.I.A.,  
Title: President  
Date: 2/21/2020

Federal Employer Tax ID No. 94-3202960

  
By: Paul W. Powers, A.I.A.,  
Title: Chief Finance Officer  
Date: 2/21/2020

Exhibits:

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

## EXHIBIT A - Scope of Work

### **Task 1: Land Use Evaluation**

1.1 –The Consultant shall evaluate the city’s current land use plan. Through evaluation, the Consultant will identify possible changes to zoning, impact fees, and other adjustments and discuss accordingly with the City.

1.2 –The Consultant shall verify long-term land use assumptions outlined in the land use plan.

1.3 –The Consultant shall support the City’s consultant with analysis of the current impact fee structure and suggestions for changes to developer fees that better align with the overall CPFMP and long-term land use assumptions.

1.4 – The Consultant shall prepare a Cost Allocation Report describing the total cost of new public facilities and estimated cost burden by land use designation. The methodology used will be discussed with and approved by the City before preparation of the report.

1.5 – The Consultant shall review the City’s current means of financing new public development and deferred maintenance. These suggestions will be related to both individual facilities and general financing recommendations. Recommendations may include bonds, specific grants, public-private partnerships, pay-as-you-go (PAYGO) and other options that may surface throughout the CPFMP process.

1.6 – The Consultant shall develop recommendations related to property acquisitions that would better serve the City in the future. Reasoning for acquisitions will be included in recommendations.

### **Task 2: Facility Condition Assessments**

2.1 – The Consultant’s field assessment team shall walk through each facility, observe the physical state of building elements and assess each facility’s maintenance needs related to site, exterior envelope, visible structure, roof (where access is available), interior elements, mechanical electrical and plumbing (MEP) needs, and ADA compliance (major physical barriers). Photos will be taken to report general conditions and major issues. KPA will identify major code compliance issues, if any.

2.2 – The Consultant shall coordinate with an MEP engineer for specific needs and questions related to mechanical, electrical and plumbing components. This will include cost estimating coordination and potential MEP solutions.

2.3 – The Consultant shall identify emergency power needs of existing facilities through operations research and facility needs during times without power. We will coordinate with an MEP engineer for specific emergency power solutions including infrastructure and equipment best suited for the City at each of the necessary facilities.

2.4 – The Consultant shall develop specific recommendations and alternatives for changes to existing facilities. This includes facility expansions, renovations, uses and other aspects of existing facilities.

2.5 – The Consultant shall prepare Facility Condition Assessment reports for each of the public facilities identified as part of the CPFMP. Assessment reports will include a “Rating Table” showing

condition ratings given to specific building elements on a scale of 5 (excellent) to 1 (critical), a condition summary, photos and other information learned during the assessment process. Individual facility reports will also include recommendations and concepts of changes to respective facilities.

### **Task 3: Space Planning**

3.1 – The Consultant shall identify user needs of the public and stakeholders that may not be met and later discuss these suggestions with the City. Surveys will be created for the public and stakeholders regarding facility use including elements that work well and elements requiring change.

3.2 – During site visits to facilities, the Consultant shall identify user needs of employees that may not be met and later discuss these suggestions with the City. Surveys will be created for employees regarding facility use including elements that work well and elements requiring change. The Consultant shall develop space standards for employees based on current and projected needs and refine space standards upon discussion with the City. Workplace planning and design guidelines.

3.3 – The Consultant shall identify future staffing needs based on growth factors to be defined with the City.

3.4 – The Consultant shall develop workplace planning and design guidelines for all City facilities. Design guidelines will include square footage recommendations based on facility use, staff position, public interaction and other factors.

### **Task 4: Concept Formation**

4.1 – The Consultant shall prepare concepts related to space planning guidelines and changes to staffing for required facilities.

4.2 – The Consultant shall prepare concepts illustrating potential changes to existing facilities.

4.3 – The Consultant shall prepare concepts related to property acquisition and potential site layouts for new facilities.

### **Task 5: Cost Estimating**

5.1 – The Consultant shall prepare cost estimates related to deferred maintenance at each of the existing facilities assessed. Examples may include costs for carpet replacement, new windows, roof replacement and other factors related to deferred maintenance.

5.2 – The Consultant shall prepare cost estimates for recommended changes to facilities will be align with concepts prepared for the City. These cost estimates will be on an order-of-magnitude basis and will not be as detailed as deferred maintenance cost estimates due to the conceptual nature of recommendations.

5.3 – The Consultant shall compile property acquisition costs in a short report for each of the potential acquisition sites identified during the CPFMP process. Costs will include base cost of the property as well as costs related to site preparation and other needs.

5.4 – The Consultant shall prepare order-of-magnitude cost estimates for potential new facilities to be placed on acquired sites. Additionally, KPA will prepare order-of-magnitude cost estimates for any new facilities that may be planned on existing sites or after demolition of an existing facility.

## **Task 6: Master Plan**

6.1 – The Consultant shall prepare a draft CPFMP showing information gathered related to land use, existing facilities, space planning, alternative solutions, cost estimates and implementation strategies. Key problems associated with current facilities including overuse and lack of resources will be outlined with the City throughout the master planning process and included in the CPFMP.

6.2 – The Consultant shall review City comments from the draft CPFMP. The Consultant shall study and incorporate accordingly into future master plan submissions.

6.3 – After the review process is completed, the Consultant shall prepare a final CPFMP showing information related to land use, existing facilities, chosen alternates, feasible new construction, cost estimates and implementation strategies and other information requested by the City aligning with this Scope of Work.

6.4 – The Consultant shall prepare a phasing plan for timelines and strategies related to the implementation of various CPFMP elements. This phasing plan will be produced in conjunction with the Final master plan. The phasing plan will provide an overview of elements from the Capital Improvement Program's implementation plan.

6.5 – The Consultant shall present the final CPFMP and phasing plan to the City Council along with project team members from the City.

## **Task 7: Capital Improvement Program**

7.1 – The Consultant shall develop an Implementation Plan for the finance, design and construction of major capital expenditures to be described in the Capital Improvement Program (CIP).

7.2 – The Consultant shall develop a CIP for public facilities including timelines for projects to be constructed and their associated costs. Projects will be categorized in the CIP as a capital improvement project or a deferred maintenance project. Projects may be further categorized according to a prioritization to be decided on with the City as the CPFMP process is developed.

## **Task 8: EIR Support**

8.1 – The Consultant shall provide technical support to the City's EIR consultant during preparation of necessary programmatic and project specific CEQA documents related to the CPFMP.

8.2 – The Consultant shall provide and prepare specific technical sections related to the EIR as needed by the City's consultant and EIR process.

8.3 – The Consultant shall develop energy efficiency and environmental sustainability guidelines and methods for the City that align with state and federal guidelines.

8.4 – During the public EIR review process, the Consultant shall provide assistance to the City in the form of explaining portions of the CPFMP, making small changes to the CPFMP based on public review and other input.

## **Deliverables**

The Consultant shall provide the following deliverables:

1. Land Use Evaluation
  - 1.1. AB 1600 Cost Allocation Report
  - 1.2. Financing review and opportunity suggestions
2. Facility Condition Assessments
  - 2.1. Photos taken (digital format)
  - 2.2. Emergency power needs, by facility
  - 2.3. Facility recommendations
  - 2.4. Facility Condition Assessment reports
3. Space Planning
  - 3.1. Survey responses
  - 3.2. Growth factor projections
  - 3.3. Design guidelines
4. Concept Formation
  - 4.1. Space planning concepts
  - 4.2. Existing facility concepts
  - 4.3. New facility and site concepts
5. Cost Estimating
  - 5.1. Deferred maintenance list and cost estimate
  - 5.2. Facility recommendations cost estimate
  - 5.3. Property acquisitions cost report
  - 5.4. New facilities cost estimate
6. Master Plan
  - 6.1. Comprehensive Citywide Public Facilities Master Plan
  - 6.2. Phasing plan
7. Capital Improvement Program
  - 7.1. Implementation Plan
  - 7.2. CIP for public facilities
8. EIR Support
  - 8.1. Programmatic CEQA documents
  - 8.2. Technical EIR specification sections
  - 8.3. Energy efficiency and sustainability guidelines

#### Personnel

Key personnel include the following:

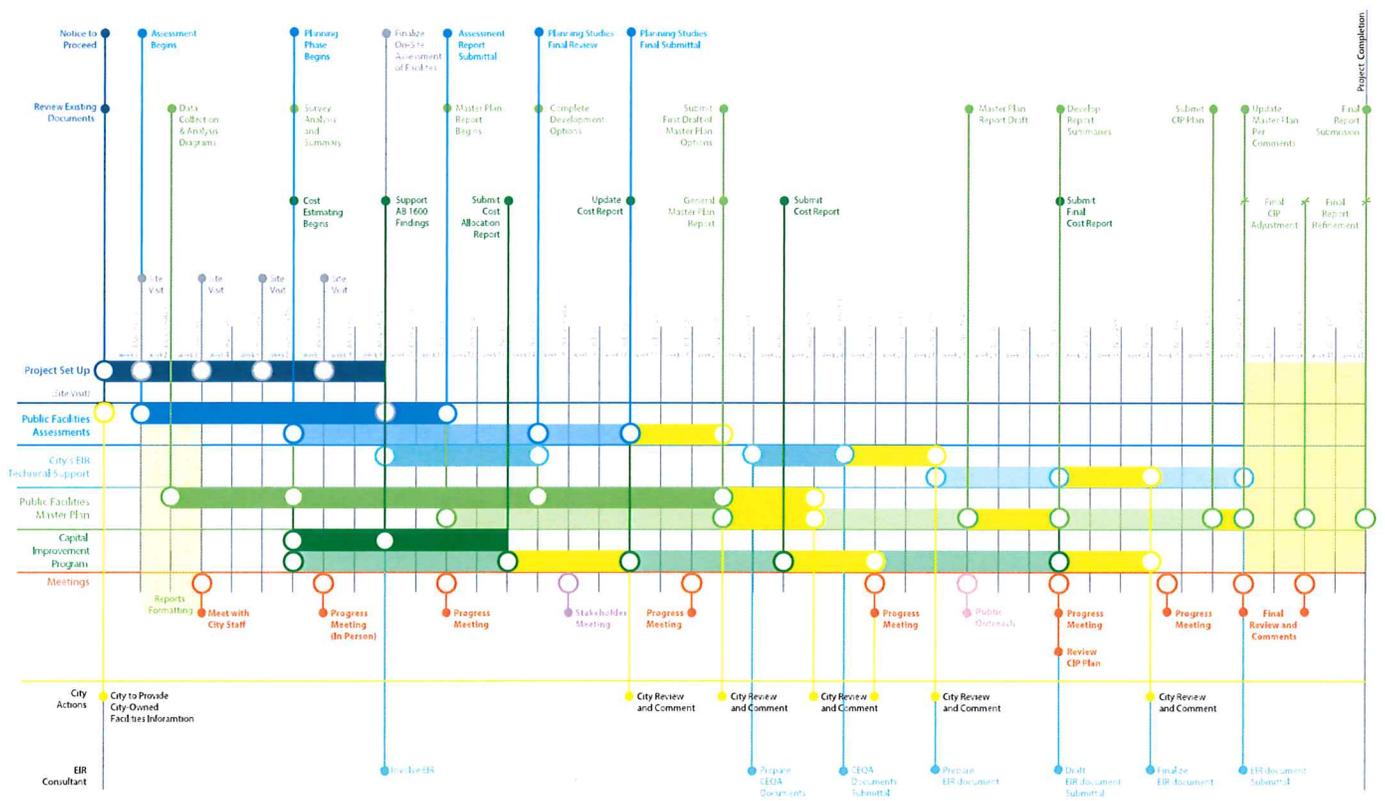
Paul Powers  
Matthew Evans  
Hannah Moon  
Agnes Gao  
Xinyi Chen

#### Schedule

Work shall be performed according to the Project Schedule included herein as Exhibit C.

**EXHIBIT B - COMPENSATION WORKSHEET**

SUMMARY BY CLASSIFICATION								
	PROJECT MANAGER	PROJECT ARCHITECT	ENGINEER	DESIGNER	CAD TECH	CLERICAL	SUBTOTAL	
	\$240.00	\$185.00	\$185.00	\$180.00	\$130.00	\$95.00		
<b>TASK 1: LAND USE EVALUATION</b>								
1	Evaluate current conditions	8	4		8		4	\$4,480.00
2	Verify long-term land use assumptions	8	8		8			\$4,840.00
3	AB 1600 findings and support	24	8		24		4	\$11,940.00
4	AB 1600 - Cost allocation report	12	8		16		16	\$8,760.00
5	Financing review and opportunity suggestions	16	12		24		8	\$11,140.00
6	Property acquisition recommendations	12	4		8		4	\$5,440.00
<b>SUBTOTAL</b>		<b>\$19,200.00</b>	<b>\$8,140.00</b>	<b>\$0.00</b>	<b>\$15,840.00</b>	<b>\$0.00</b>	<b>\$3,420.00</b>	<b>\$46,600.00</b>
<b>TASK 2: FACILITY CONDITION ASSESSMENTS</b>								
1	Site visits	16	24	16	40			\$18,440.00
2	MEP coordination	8	4	12	8		4	\$6,700.00
3	Emergency power needs	2	2	8	16			\$5,210.00
4	Facility recommendations (+alt solutions)	8	8	8	16			\$7,760.00
5	Facility reports	8	24	8	40	8	40	\$19,880.00
<b>SUBTOTAL</b>		<b>\$10,080.00</b>	<b>\$11,470.00</b>	<b>\$9,620.00</b>	<b>\$21,600.00</b>	<b>\$1,040.00</b>	<b>\$4,180.00</b>	<b>\$57,990.00</b>
<b>TASK 3: SPACE PLANNING</b>								
1	User needs - public and stakeholders	8	8		24		8	\$8,480.00
2	User needs - employees	8	16	4	16		4	\$8,880.00
3	Staffing growth factor projections	8	8	4	16		8	\$7,780.00
4	Design guidelines	8	20	12	16		16	\$12,240.00
<b>SUBTOTAL</b>		<b>\$7,680.00</b>	<b>\$9,620.00</b>	<b>\$3,700.00</b>	<b>\$12,960.00</b>	<b>\$0.00</b>	<b>\$3,420.00</b>	<b>\$37,380.00</b>
<b>TASK 4: CONCEPT FORMATION</b>								
1	Space planning concepts	8	16	2	24	8	16	\$12,130.00
2	Existing facility concepts - changes	8	32	4	40	8	8	\$17,580.00
3	New facilities - property aquisition and related	8	16		24	8	8	\$11,000.00
<b>SUBTOTAL</b>		<b>\$5,760.00</b>	<b>\$11,840.00</b>	<b>\$1,110.00</b>	<b>\$15,840.00</b>	<b>\$3,120.00</b>	<b>\$3,040.00</b>	<b>\$40,710.00</b>
<b>TASK 5: COST ESTIMATING</b>								
1	Deferred maintenance	8	4	4	16			\$6,280.00
2	Facility recommendations	16	8		8			\$6,760.00
3	Property acquisitions	8	8		8			\$4,840.00
4	New facilities	8	8		8			\$4,840.00
<b>SUBTOTAL</b>		<b>\$9,600.00</b>	<b>\$5,180.00</b>	<b>\$740.00</b>	<b>\$7,200.00</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$22,720.00</b>
<b>TASK 6: MASTER PLAN</b>								
1	Draft master plan	24	32	16	60	16	80	\$35,120.00
2	Incorporate draft review comments	4			24			\$5,280.00
3	Final master plan	32	40	24	80	16	100	\$45,500.00
4	Phasing plan	8	8		16		16	\$7,800.00
5	Presentation to City Council	8	8	8	24		8	\$9,960.00
<b>SUBTOTAL</b>		<b>\$18,240.00</b>	<b>\$16,280.00</b>	<b>\$8,880.00</b>	<b>\$36,720.00</b>	<b>\$4,160.00</b>	<b>\$19,380.00</b>	<b>\$103,660.00</b>
<b>TASK 7: CAPITAL IMPROVEMENT PROGRAM</b>								
1	Implementation strategies	16	8		16		4	\$8,580.00
2	Develop CIP for public facilities	24	16	12	60		16	\$23,260.00
<b>SUBTOTAL</b>		<b>\$9,600.00</b>	<b>\$4,440.00</b>	<b>\$2,220.00</b>	<b>\$13,680.00</b>	<b>\$0.00</b>	<b>\$1,900.00</b>	<b>\$31,840.00</b>
<b>TASK 8: EIR SUPPORT</b>								
1	Programmatic CEQA documents	8	16		24	16	16	\$12,800.00
2	Technical EIR sections support	8	16	8	16		16	\$10,760.00
3	Guidelines - energy efficiency and sustainability	4	8	4	16		16	\$7,580.00
4	Public EIR review assistance	16	16		8			\$8,240.00
<b>SUBTOTAL</b>		<b>\$8,640.00</b>	<b>\$10,360.00</b>	<b>\$2,220.00</b>	<b>\$11,520.00</b>	<b>\$2,080.00</b>	<b>\$4,560.00</b>	<b>\$39,380.00</b>
<b>TOTAL HOURS</b>		<b>358</b>	<b>414</b>	<b>154</b>	<b>744</b>	<b>80</b>	<b>416</b>	<b>2166</b>
<b>TOTAL COST</b>		<b>\$88,800.00</b>	<b>\$77,330.00</b>	<b>\$28,490.00</b>	<b>\$135,360.00</b>	<b>\$10,400.00</b>	<b>\$39,900.00</b>	<b>\$380,280.00</b>



CITY ATTORNEY'S OFFICE

TRACY CITY COUNCIL  
RESOLUTION 2023-\_\_\_\_\_

**APPROVING AMENDMENT NO. 1 TO THE PROFESSIONAL SERVICES AGREEMENT WITH THE KPA GROUP FOR THE CITYWIDE PUBLIC FACILITIES MASTER PLAN UPDATE TO INCREASE COMPENSATION BY \$19,610 FOR A NEW TOTAL NOT-TO-EXCEED AMOUNT OF \$399,890 AND EXTEND THE TERM OF THE AGREEMENT THROUGH DECEMBER 31, 2023**

**WHEREAS**, on May 29, 2020, the City issued a Request for Proposals (RFP) for a qualified consulting firm to provide professional services to complete an update to the Citywide Public Facilities Master Plan (CPFMP); and

**WHEREAS**, the RFP process resulted in a contract with The KPA Group (Consultant) to provide the update; and

**WHEREAS**, the City and Consultant entered into a Professional Services Agreement (Agreement) for the Update to the CPFMP on March 10, 2020, under Resolution No. 2020-036; and

**WHEREAS**, Consultant provided a schedule of 30 weeks to complete the update, and the initial draft of the CPSMP was submitted to the City on schedule in March of 2021; and

**WHEREAS**, staff review of the various master plan drafts revealed that additional time and effort was needed to provide consistency throughout the plans and that some additional projects needed to be considered for inclusion; and

**WHEREAS**, the Consultant continued to provide service beyond the initial contract term and provided updates at the City's request through the end of 2022, and the initial compensation of \$399,890 was exhausted by the end of 2022; and

**WHEREAS**, the City has requested the Consultant provide additional public presentations and provide updates as needed based on City Council feedback; and

**WHEREAS**, the Agreement not-to-exceed amount needs to be increased by \$19,610 and extended through December 31, 2023 to cover the additional work; and now, therefore, be it

**RESOLVED:** That the City Council of the City of Tracy hereby approves Amendment No. 1 to the Professional Services Agreement with The KPA Group for the Citywide Public Facilities Master Plan Update to increase compensation by \$19,610 for a new total not-to-exceed amount of \$399,890 and extend the term of the agreement through December 31, 2023.

\*\*\*\*\*

The foregoing Resolution 2023-\_\_\_\_\_ was adopted by the Tracy City Council on the 16<sup>th</sup> day of May 2023 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 1.1

RECOMMENDATION

**Staff recommends that the City Council adopt a resolution to (1) accept the construction for the Lincoln Boulevard Sewer Main and Lateral Replacement Project, CIP 74163 for work completed by Tracy Grading and Paving, Inc., of Tracy, California, (2) authorize the City Clerk to File the Notice of Completion with the San Joaquin County Recorder's Office, (3) authorize the City Engineer to release the bonds and retention payment, and (4) authorize the Finance Director to close the Project.**

EXECUTIVE SUMMARY

City staff requests that the City Council accept the construction for the Lincoln Boulevard Sewer Main and Lateral Replacement Project, CIP 74163 as complete. Project costs are within the available budget and work was completed in a timely manner and in accordance with plans and specifications as approved.

BACKGROUND AND LEGISLATIVE HISTORY

The existing ACP (Asbestos Cement Pipe) pipe is beyond its useful life and has required frequent emergency repairs. This City Capital Improvement Project (CIP) 74163 consists of the removal and replacement of the 8-inch ACP sewer main and 11 ACP sewer laterals on Lincoln Avenue, between Linda Place and Lowell Avenue, removal and replacement of a traffic loop, and restriping.

Engineering staff prepared the plans and specifications and advertised the Project for competitive bids on March 11, 2022, and March 18, 2022. Bids for this Project were publicly opened on March 30, 2022. On June 1, 2022, City Manager approved and awarded a construction contract to Tracy Grading and Paving, Inc., of Tracy, California in a not-to-exceed amount of \$288,588. No change orders were issued during construction activities.

The contractor has now completed all the work required in accordance with the plans and specifications and City staff is requesting acceptance of the project. The City Engineer has inspected the completed work and confirmed that all work conforms to the contract plans and specifications and has been completed within the time frame of the original contract.

ANALYSIS

This project was part of the City's CIP request list by operations and maintenance. The project area's continuous and repeated pipe failures and necessary emergency repairs made this a priority project. This 8" main serves a large area of the City and as such regular maintenance became an issue for residents and businesses as the line was shut down. Since 2003, 244 complaints were made regarding this specific sewer line leading to maintenance which would necessitate that the line would go offline. City Engineering Staff worked with Operations and Utilities Department and Construction Engineering Staff to create and design this project. The completion of construction of this project will alleviate maintenance calls and disruption of the line for years.

FISCAL IMPACT

The Lincoln Boulevard Sewer Main and Lateral Replacement Project, CIP 74163, is an approved Capital Improvement Project with a budget of \$372,000. The total completed cost is \$320,564 and was funded through Wastewater Capital Fund (F523).

Final project costs were within budget as follows:

A.	Construction Contract Amount	\$	304,463
B.	Approved Change orders	\$	0
C.	Design, construction management, inspection, testing & miscellaneous project management expenses	\$	16,101
	<u>Total Project Costs</u>	\$	<u>320,564</u>
	<u>Total Budget Amount</u>	\$	<u>372,000</u>
	<u>Budget Remaining</u>	\$	<u>51,436</u>

The remaining balances in the project will be released back into fund balance as follows:

	Budget	Cost	Balance
Wastewater Capital Fund (523)	\$ 372,000	\$ 320,564	\$ 51,436
<u>Totals</u>	<u>\$ 372,000</u>	<u>\$ 320,564</u>	<u>\$ 51,436</u>

COORDINATION

Coordination between Engineering and Economic Development and Operations and Utilities Department occurred on multiple occasions to coordinate and establish and complete the project.

CEQA DETERMINATION

15301. EXISTING FACILITIES

The project is exempt pursuant to categorical exemptions per CEQA Guidelines §15301(b), Existing facilities of both investor and publicly owned utilities used to provide electric power, natural gas, sewerage, or other public utility services.

STRATEGIC PLAN

This agenda item is consistent with the City Council's adopted Quality of Life Strategy and meets the goal of enhancing the City's amenities.

ACTION REQUESTED OF THE CITY COUNCIL

Staff recommends that the City Council, by resolution, (1) accepts the construction for the Lincoln Boulevard Sewer Main and Lateral Replacement Project, CIP 74163 for work completed by Tracy Grading and Paving, Inc., of Tracy, California, (2) authorizes the City Clerk to File the Notice of Completion with the San Joaquin County Recorder's Office, (3) authorizes the City Engineer to release the bonds and retention payment, and (4) authorizes the Finance Director to close the project.

Prepared by: Leisser Mazariegos, Associate Engineer

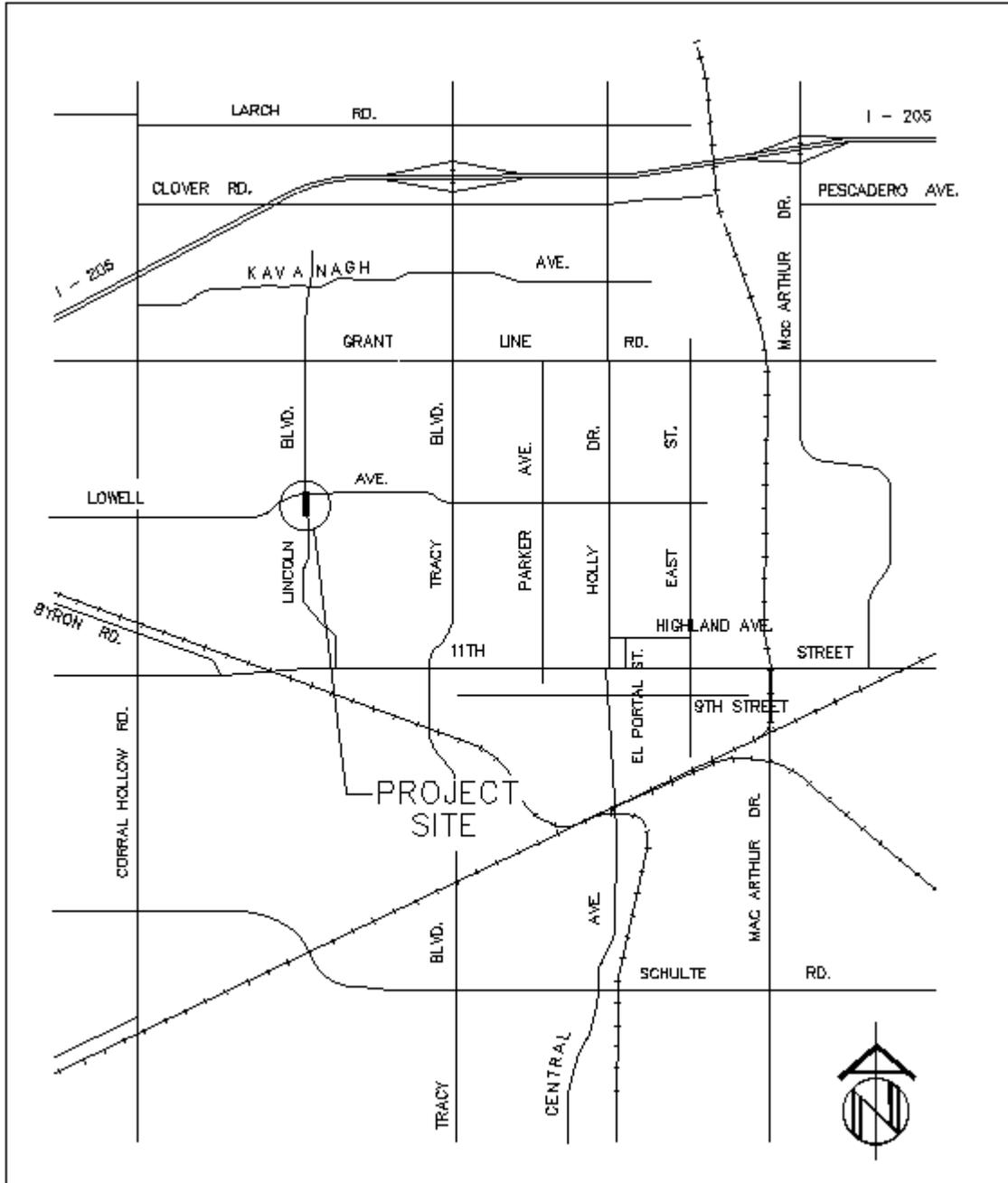
Reviewed by: Koosun Kim, PE, City Engineer / Assistant Director of Development Services  
Jaylen French, Development Services Director  
Sara Cowell, Finance Director  
Nancy Ashjian, Assistant City Attorney  
Karin Schnaider, Assistant City Manager

Approved by: Midori Lichtwardt, Assistant City Manager

ATTACHMENTS

Attachment A – Location Map

# Attachment A



LOCATION MAP  
NOT TO SCALE

CITY ATTORNEY'S OFFICE

TRACY CITY COUNCIL

RESOLUTION 2023-\_\_\_\_\_

(1) ACCEPTING THE CONSTRUCTION FOR THE LINCOLN BOULEVARD, SEWER MAIN AND LATERAL REPLACEMENT PROJECT, CIP 74163, FOR WORK COMPLETED BY TRACY GRADING AND PAVING, INC., OF TRACY, CALIFORNIA; (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) AUTHORIZING THE FINANCE DIRECTOR TO CLOSE THE PROJECT.

WHEREAS, on June 1, 2022, the City Manager approved and awarded a construction contract to Tracy Grading and Paving, Inc., of Tracy, California (Contractor) for the Lincoln Boulevard, Sewer Main and Lateral Replacement Project, in Tracy, California, CIP Project 74163; and

WHEREAS, the contractor has completed all the work required to be done in accordance with the plans and specifications and has requested acceptance of the project. The City Engineer has inspected the completed work and confirmed that all work conform to the contract plans and specifications; and

WHEREAS, no change orders were issued as part of this project; and

WHEREAS, the status of budget costs is as follows; and

A.	Construction Contract Amount	\$	304,463
B.	Approved Change orders	\$	0
C.	Design, construction management, inspection, testing & miscellaneous project management expenses	\$	16,101
	<u>Total Project Costs</u>	\$	<u>320,564</u>
	 Total Budget Amount	\$	 372,000
	<u>Budget Remaining</u>	\$	<u>51,436</u>

WHEREAS, the Project has been completed with the available budget, within the time frame of the original contract plus the time extension given to the contractor for extra work, including rain delays, per plans, specifications, and City of Tracy Standards; and

WHEREAS, the Lincoln Boulevard, Sewer Main and Lateral Replacement Project, CIP 74163, is an approved project with total funding Project cost of \$20,564. The total project budget is \$372,000, which allowed for the project to come in right on budget. The total project budget funding is from Wastewater Capital Fund (F523), of which Wastewater Capital Fund will be reimbursed when the project is closed by the Finance Department; now therefore, be it

**RESOLVED:** That the City Council (1) accepts the construction for the Lincoln Boulevard, Sewer Main and Lateral Replacement Project, CIP 74163 for work completed by Tracy Grading and Paving, Inc., of Tracy, California, (2) authorizes the City Clerk to File the Notice of Completion with the San Joaquin County Recorder’s Office, (3) authorizes the City Engineer to release the bonds and retention payment, and (4) authorizes the Finance Director to close the Project.

\*\*\*\*\*

The foregoing Resolution 2023-\_\_\_\_\_ was adopted by the Tracy City Council on the 16<sup>th</sup> day of May 2023 by the following vote:

AYES:           COUNCIL MEMBERS:  
NOES:           COUNCIL MEMBERS:  
ABSENT:        COUNCIL MEMBERS:  
ABSTAIN:       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 approve a resolution adopting the bylaws for the (a) Tracy Homelessness Advisory Committee and (b) Finance Committee.**

EXECUTIVE SUMMARY

On March 16, 2021, the City Council approved Resolution 2021-033 establishing Tracy's Homelessness Advisory Committee (THAC); no Committee bylaws were adopted with this action. On February 7, 2023, the City Council approved Resolution 2023-027 establishing the Finance Committee; no Committee bylaws were adopted with this action. On May 2, 2023, staff presented a draft of the proposed bylaws for these Council standing Committees and is returning with a recommendation to adopt the bylaws for both.

BACKGROUND AND LEGISLATIVE HISTORY

On March 16, 2021, the City Council approved Resolution 2021-033 to create a standing City Council committee titled the Tracy Homelessness Advisory Committee (THAC). The approving resolution set the meetings of the THAC to be quarterly. As the City continues its multi-pronged approach to address homelessness, the THAC has been meeting more frequently than quarterly, through special meetings. At the February 16, 2023 City Council meeting, Mayor ProTem Davis requested that the THAC meetings change from quarterly meetings to monthly meetings. This item was seconded by Councilmember Bedolla. In addition, staff has evaluated whether THAC, and any other standing committee of the City Council, should have more prescribed roles in the review of agenda items, rather than serving as advisory bodies, as is currently identified in the City Council's Meeting Protocols and Rules of Procedure.

On May 19, 2020, the City Council adopted the FY 2020-21 Operating and Capital Budget and formed an ad-hoc subcommittee of the City Council to discuss the fiscal health of the City in light of the pending COVID-19 pandemic (Resolution 2020-067). After several extensions of the ad-hoc subcommittee, on February 7, 2023, the City Council adopted Resolution 2023-027 to form a standing committee of the City Council to be named Finance Committee. Staff has prepared draft bylaws of the Finance Committee that align with those of the THAC.

ANALYSIS AND DISCUSSION

The City Council has formed two standing subject matter Committees: the Tracy Homelessness Advisory Committee and the Finance Committee. Committees are essential to the effective operation of legislative bodies. Committee membership enables members to develop specialized knowledge of the matters under their jurisdictions. Committees monitor on-going governmental operations, identify issues suitable for legislative review, gather and evaluate information, and recommend courses of action for the Council. Committees are authorized and directed to ascertain, study, and analyze all facts relating to any subjects or matters within their jurisdiction, and shall report to and submit recommendations to the City Council for action.

During the establishment of the Finance Committee bylaws, staff ascertained that the Tracy Homelessness Advisory Committee had not adopted bylaws. This agenda item has proposed bylaws for both standing Committees. Unlike City Commissions, where the bodies are comprised of residents of Tracy, the Finance Committee and THAC are made up of two City Councilmembers who are also governed by the City Council's Code of Conduct and Meeting Protocols and Rules of Procedure (Meeting Protocols). The proposed bylaws include Section B, which define the role of these Committees as subject matter Committees and establish clear procedures for their actions to be recognized by the City Council.

### **Tracy Homeless Advisory Committee**

Below is a summary of the key provisions of the proposed bylaws for the THAC. The basic framework is based on the original Council action forming this Committee.

#### Purpose:

The stated purpose of the committee is as follows:

- 1.1. To implement the Tracy Homelessness Strategic Plan including the possible amendment of such plan
  - 1.1.1. This Strategic Plan provides a framework to target resources to manage and decrease homelessness
    - GOAL 1: Increase Housing Options in Tracy
    - GOAL 2: Increase Access to Coordinated Support Services for People Experiencing Homelessness
    - GOAL 3: Develop Action Plans for Engaging with People Experiencing Homelessness
    - GOAL 4: Enact Specific Strategies for Vulnerable Subpopulations Experiencing Homelessness
- 1.2. To address homelessness in the City of Tracy
- 1.3. The Tracy Homeless Advisory Committee shall have initial jurisdiction over any item assigned to it by the City Council as well as any items being advanced by the City Manager that implement or relate to overall jurisdictional purpose of the Committee.

#### Makeup:

The makeup of this Committee would consist of two (2) City of Tracy Councilmembers; appointed annually per the City Council's appointment procedures. The Committee would be supported by the Mobility and Housing Department (or such other department deemed appropriate by the City Manager). It is recommended that the Committee meet monthly on the 3<sup>rd</sup> Thursday of the month and hold special meetings, as needed, to fulfill the role of the Committee.

#### Necessity:

The role of the Tracy Homelessness Advisory Committee is to provide input on the development of the Tracy Homelessness Strategic Plan initiatives and work to prevent and end homelessness in Tracy. This would ideally be done after receiving public deliberation and achieving consensus through partnering with staff.

## Finance Committee

Below is a summary of the key provisions of the proposed bylaws for the Finance Committee.

### Purpose:

1. The purpose of the Committee is to provide policy guidance as it relates to the development of a multi-year fiscal sustainability plan to address the City's fiscal health and long-term planning.
2. The Finance Committee shall have initial jurisdiction over any item assigned to it by the City Council as well as any items being advanced by the City Manager that implement or relate to the overall jurisdictional purpose of the Committee.
3. The Committee may develop and recommend budget strategies and fiscal policies related to: revenue enhancement, cost containment, and use of other revenue sources, such as Measure V and/or General Fund Reserves, keeping in mind planned recreational amenities.
4. The Committee will aid the City Council in fulfilling its fiduciary responsibilities to oversee the financial activities and financial condition of the City of Tracy and its jurisdiction may include the review, discussion, and input on the following areas:
  - 4.1.1. Annual audits and compliance reporting
  - 4.1.2. Annual and quarterly budget updates, augmentations, and forecast
  - 4.1.3. Long-term planning, including but not limited to
    - 4.1.3.1. City revenues and expenses, including related fee and tax studies
    - 4.1.3.2. Deferred maintenance and capital planning
    - 4.1.3.3. Long-term liabilities, debt, and other finance planning
5. The Committee will not have jurisdiction to discuss any budget approaches that would require good faith bargaining with labor groups.

### Makeup:

The makeup of this Committee would consist of two (2) City of Tracy Councilmembers; appointed annually per the City Council's appointment procedures. The Committee would be supported by the Finance Department. It is recommended that the new Committee meet monthly on the 3<sup>rd</sup> Wednesday of the month and hold special meetings, as needed, to fulfill the role of the Committee.

### Necessity:

The role of the Finance Committee is to provide oversight and guidance through policy level direction and input on financial items such as the operating budget, review of financial reporting documents, Capital Improvement Program, long-term financing, or other items requiring fiscal policy direction and input. This would ideally be done after receiving public deliberation and achieving consensus through partnering with staff.

### **Action by Subject Matter Committees**

Staff recommends that the City Council Meeting Protocols establish clear roles and responsibilities of these subject matter Committees.

#### A. Action by Subject Matter Committees -

The assigned subject matter Committee shall have initial jurisdiction over any item assigned to it by the City Council as well as any items being advanced by the City Manager that implement or relate to the overall jurisdictional purpose of such Committee and may take any of the following actions with respect to the assigned item.

The Committee may, by a vote of the consensus, decide to postpone, continue, or table an item on the agenda. On any item on an agenda, the Committee may allow for an informational presentation by City staff relating to the item. With respect to an action item, and after discussion and consideration of the item, the Committee may take one of the following actions:

1. Vote by consensus to approve the recommendation of staff or the originator of the proposed action item and forward the recommendation onto the full Council. The Committee may, as a condition of approval, request additional information to be presented for consideration when the full Council hears the item.
2. Fail to approve any recommended action, in which case the item shall not be forwarded to the full City Council; provided that the City Council shall have jurisdiction to place the item on the agenda for a future City Council meeting, in accordance with the requirements of the Meeting Protocols for agenda setting, if no action was taken on the item due to any one of the following reasons:
  - 2.1. Due to the cancellation of a Committee meeting or
  - 2.2. Due to lack of a quorum, or
  - 2.3. the Committee was not able to approve any recommended action
3. Propose by a consensus vote of those present one or more alternative recommendation(s) be forwarded to the full City Council for consideration and final action. The Committee may request additional information to be presented for consideration when the full Council hears the item.
4. Reject, by a consensus vote, jurisdiction over the action item and refer the action item back to the City Council with a recommendation for reassignment to another appropriate subject-matter committee.
5. Request, by consensus vote, additional, specified information from staff or the originator of the proposed action item. The action item may be continued or rescheduled for further consideration at the soonest feasible date available, allowing time for appropriate notice pursuant to the Meeting Protocols and the Brown Act.
6. With respect to an informational item, following discussion and consideration, a Committee shall take one of the following actions:
  - 6.1. Receive the informational report, by consensus vote, without forwarding the report to the full City Council;
  - 6.2. Receive the informational report and forward the report onto the full City Council, by consensus vote;
  - 6.3. Request, by consensus vote, from staff or the originator of the proposed

informational item. The item may be continued or rescheduled for further consideration at the soonest feasible date available, allowing time for appropriate notice pursuant to the Meeting Protocols.

FISCAL IMPACT

This is an administrative item and the fiscal impacts of implementing the proposed actions would be absorbed by the existing budgets of the City departments.

STRATEGIC PLAN

This agenda item supports the City Council's 2021-2023 Governance Strategic Priority, and specifically implements the following goal:

Goal 1: Model good governance, teamwork, and transparency.

RECOMMENDATION

Staff recommends that the City Council approve a resolution adopting the bylaws for the (a) Tracy Homelessness Advisory Committee and (b) Finance Committee.

Prepared by: Karin Schnaider, Assistant City Manager

Reviewed by: Sara Cowell, Finance Director  
Bijal Patel, City Attorney

Approved by: Midori Lichtwardt, Assistant City Manager

ATTACHMENTS

Attachment A – Tracy Homeless Advisory Committee Bylaws

Attachment B – Finance Committee Bylaws

**BYLAWS OF THE  
TRACY HOMELESSNESS ADVISORY  
COMMITTEE BYLAWS  
CITY OF TRACY, CALIFORNIA**

**WHEREAS**, The City desires to form a standing committee of the Tracy City Council to continue the work begun by the previous Ad Hoc Homelessness Advisory Committee, to be named the Tracy Homelessness Advisory Committee (Committee); and

**WHEREAS**, Committees are essential to the effective operation of legislative bodies; and

**WHEREAS**, Committee membership enables members to develop specialized knowledge of the matters under their jurisdictions; and

**WHEREAS**, The City Council recognize that a shelter crisis exists and forming a Council Homelessness advisory committee will facilitate an opportunity to evaluate options to address the current homelessness crisis; and

**WHEREAS**, On February 16, 2021 the Tracy City Council voted to approve the Tracy Homelessness Strategic Plan; and

**WHEREAS**, On March 16, 2021 the Tracy City Council voted to approve Resolution 2021-033 form a standing Council committee entitled Tracy Homelessness Advisory Committee; and

**WHEREAS**, the Committee is authorized and directed to ascertain, study, and analyze all facts relating to any subjects or matters within their jurisdiction, and shall report to and submit recommendations to the City Council for action.

**NOW, THEREFORE**, these Bylaws govern the conduct of the Tracy Homelessness Advisory Committee meetings and the transaction of its affairs.

1. PURPOSE

The stated purpose of the committee is as follows:

- 1.1. To implement the Tracy Homelessness Strategic Plan including the possible amendment of such plan
  - 1.1.1. This Strategic Plan provides a framework to target resources to manage and decrease homelessness
    - GOAL 1: Increase Housing Options in Tracy
    - GOAL 2: Increase Access to Coordinated Support Services for People Experiencing Homelessness

- GOAL 3: Develop Action Plans for Engaging with People Experiencing Homelessness
  - GOAL 4: Enact Specific Strategies for Vulnerable Subpopulations Experiencing Homelessness
- 1.2. To address homelessness in the City of Tracy
- 1.3. The Tracy Homeless Advisory Committee shall have initial jurisdiction over any item assigned to it by the City Council as well as any items being advanced by the City Manager that implement or relate to overall jurisdictional purpose of the Committee.

2. Action by Subject Matter Committees -

The assigned subject matter Committee shall have initial jurisdiction over any item assigned to it by the City Council as well as any items being advanced by the City Manager that implement or relate to the overall jurisdictional purpose of such Committee and may take any of the following actions with respect to the assigned item:

The Committee may, by a vote of the consensus, decide to postpone, continue, or table an item on the agenda. On any item on an agenda, the Committee may allow for an informational presentation by City staff relating to the item. With respect to an action item, and after discussion and consideration of the item, the Committee may take one of the following actions:

1. Vote by consensus to approve the recommendation of staff or the originator of the proposed action item and forward the recommendation onto the full Council. The Committee may, as a condition of approval, request additional information to be presented for consideration when the full Council hears the item.
2. Fail to approve any recommended action, in which case the item shall not be forwarded to the full City Council; provided that the City Council shall have jurisdiction to place the item on the agenda for a future City Council meeting, in accordance with the requirements of the Meeting Protocols for agenda setting, if no action was taken on the item due to any one of the following reasons:
  - 2.1. Due to the cancellation of a Committee meeting or
  - 2.2. Due to lack of a quorum, or
  - 2.3. The Committee was not able to approve any recommended action
3. Propose by a consensus vote one or more alternative recommendation(s) be forwarded to the full City Council for consideration and final action. The Committee may request additional information to be presented for consideration when the full Council hears the item.
4. Reject by a consensus vote, jurisdiction over the action item and refer the action item back to the City Council with a recommendation for reassignment to another appropriate subject-matter committee.

5. Request, by consensus vote, additional, specified information from staff or the originator of the proposed action item. The action item may be continued or rescheduled for further consideration at the soonest feasible date available, allowing time for appropriate notice pursuant to the Meeting Protocols and Brown Act.
6. With respect to an informational item, following discussion and consideration, Committee shall take one of the following actions:
  - 6.1. Receive the informational report by consensus vote without forwarding the report to the full City Council;
  - 6.2. Receive the informational report and forward the report onto the full City Council by consensus vote;
  - 6.3. Request by consensus vote from staff or the originator of the proposed informational item. The item may be continued or rescheduled for further consideration at the soonest feasible date available, allowing time for appropriate notice pursuant to the Meeting Protocols.

### 3. ROLE AND RESPONSIBILITIES

The role of the Tracy Homelessness Advisory Committee is to provide input on the development of the Tracy Homelessness Strategic Plan initiatives and work to prevent and end homelessness in Tracy. This would ideally be done after receiving public deliberation and achieving consensus through partnering with staff.

### 4. MEMBERSHIP GUIDELINES

1. **Membership.** The Tracy Homelessness Advisory Committee shall consist of two (2) City Councilmembers.
2. **Term.** Each member shall serve a one-year term; selected as part of the City Council's annual appointment process outlined in the Council's Code of Conduct.
3. **Attendance.** If a member of the Tracy Homelessness Advisory Committee fails to attend four (4) regular meetings in any calendar year, his or her position on the Tracy Homelessness Advisory Committee shall automatically become vacant. For quorum confirmation, a member who is unable to attend a meeting shall inform the staff liaison designated by the relevant City Department at least 48 hours before the next meeting. This would not include meetings that were canceled due to technical difficulties, City emergencies, or other staff related reasons.

5. QUORUM

A quorum of the Tracy Homelessness Advisory Committee shall consist of a majority of the members (including any vacancies). A quorum must be present in order for the Tracy Homelessness Advisory Committee to hold a meeting.

Meetings of the Committees may be noticed as a Special Meeting of the City Council if a majority of the members of the Council plan to attend and participate as part of the Committee.

6. OFFICERS

1. The officers of the Tracy Homelessness Advisory Committee shall be:
  - 1.1. The Chairperson and
  - 1.2. The Vice-Chairperson.
2. The Chairperson shall:
  - 2.1. Preside at all regular and special meetings.
  - 2.2. Rule on all points of order and procedure during the meetings.

7. DUTIES OF THE COMMITTEE

1. Review, discuss, and provide direction to facilitate in the preparing and presenting of accurate, timely, and meaningful information and recommendations to address homelessness within Tracy to the Council from City staff
2. Monitor the finances related the Homeless Division
3. Develop an annual work plan and presentation to the City Council
4. Review and update from time to time, as necessary policies related to addressing the unsheltered population
5. The following key metrics should be used to evaluate the effectiveness of this Plan:
  - 5.1. Increase in the number of affordable housing units dedicated to people who are experiencing homelessness
  - 5.2. Decrease in homelessness in the community—including in key subpopulations such as families, veterans, and people who are chronically homeless
  - 5.3. Decrease in the number of persons who become homeless for the first time
  - 5.4. Decrease in the average and median length of time persons remain homeless

- 5.5. Decrease in the percentage of persons who return to homelessness
- 5.6. Increase in the percentage of adults who gain or increase employment or nonemployment cash income over time
- 5.7. Increase in the percentage of persons who exit to or retain permanent housing

## 8. MEETINGS

1. Regular meetings of the Tracy Homelessness Advisory Committee shall be held on the 3rd Thursday of each month and shall begin at 7:00 p.m.
2. If the scheduled date of a regular meeting conflicts with a holiday period, staff shall reschedule that meeting to be conducted within that month.
3. Any regular meeting may be adjourned, or any item on the agenda continued to the next or any subsequent regular meeting of the Tracy Homelessness Advisory Committee, by a majority of the quorum. If a meeting is adjourned or an item is continued to a special meeting to be held on a date other than a regular meeting date, the time, place, and date of such special meeting shall be specified in the motion for adjournment or continuance.
4. All meetings are subject to the Brown Act as set forth in Government Code Sections 54950 and following. Accordingly, all meetings shall be noticed and agendas for all meetings shall be prepared and distributed in accordance with the current City Council meeting procedures and the Brown Act.
5. All meetings shall be conducted in accordance with the current City Council meeting procedures.

## 9. FUNDING

Any funding necessary for operation of the Tracy Homelessness Advisory Committee shall be included in the City of Tracy budget, which shall be approved by the City Council.

## 10. ADMINISTRATIVE PROCEDURES AND POLICIES

City Boards and Committees shall follow all applicable City administrative policies and procedures.

## 11. STAFF LIAISON

The Tracy Homelessness Advisory Committee shall have a staff liaison designated by the relevant City Department. The staff liaison shall:

1. Receive and record all exhibits, petitions, documents, or other material

- presented to the Committee in support of, or in opposition to, any question before the Committee.
2. Sign all meetings minutes and resolutions upon approval.
  3. Prepare and distribute agendas and agenda packets.

## 12. ADOPTION

This document, as adopted by City Council, on May 16, 2023, by Resolution 2023-XX, and shall serve as the Bylaws for the Tracy Homelessness Advisory Committee.

**BYLAWS OF THE  
FINANCE COMMITTEE BYLAWS  
CITY OF TRACY, CALIFORNIA**

**WHEREAS**, The City desires to form a standing committee of the Tracy City Council to continue the work begun by the previous Ad Hoc Fiscal Sustainability Subcommittee, to be named the Finance Committee (Committee); and

**WHEREAS**, Committees are essential to the effective operation of legislative bodies; and

**WHEREAS**, Committee membership enables members to develop specialized knowledge of the matters under their jurisdictions; and

**WHEREAS**, Committees monitor on-going governmental operations, identify issues suitable for legislative review, gather and evaluate information, and recommend courses of action for the Council; and

**WHEREAS**, the Finance Committee is authorized and directed to ascertain, study, and analyze all facts relating to any subjects or matters within their jurisdiction, and shall report to and submit recommendations to the City Council for action.

**NOW, THEREFORE**, these Bylaws govern the conduct of the Finance Committee meetings and the transaction of its affairs.

A. PURPOSE

1. The purpose of the Finance Committee is to provide policy guidance as it relates to the development of a multi-year fiscal sustainability plan to address the City's fiscal health and long-term planning.
2. The Finance Committee shall have initial jurisdiction over any item assigned to it by the City Council as well as any items being advanced by the City Manager that implement or relate to the overall jurisdictional purpose of the Finance Committee.
3. The Finance Committee may develop and recommend budget strategies and fiscal policies related to: revenue enhancement, cost containment, and use of other revenue sources, such as Measure V and/or General Fund Reserves, keeping in mind planned recreational amenities.
4. The Finance Committee will aid the City Council in fulfilling its fiduciary responsibilities to oversee the financial activities and financial condition of the City of Tracy and its jurisdiction may include the review, discussion, and input on the following areas:
  - 4.1.1. Annual audits and compliance reporting
  - 4.1.2. Annual and quarterly budget updates, augmentations, and forecast
  - 4.1.3. Long-term planning, including but not limited to
    - 4.1.3.1. City revenues and expenses, including related fee and tax studies

- 4.1.3.2. Deferred maintenance and capital planning
- 4.1.3.3. Long-term liabilities, debt, and other finance planning

- 5. The Finance Committee will not have jurisdiction to discuss any budget approaches that would require good faith bargaining with labor groups.

B. Action by Subject Matter Committees -

The assigned subject matter Committee shall have initial jurisdiction over any item assigned to it by the City Council as well as any items being advanced by the City Manager that implement or relate to the overall jurisdictional purpose of such Committee and may take any of the following actions with respect to the assigned item.

The Committee may, by a vote of the consensus, decide to postpone, continue, or table an item on the agenda. On any item on an agenda, the Committee may allow for an informational presentation by City staff relating to the item. With respect to an action item, and after discussion and consideration of the item, the Committee may take one of the following actions:

- 1. Vote by consensus to approve the recommendation of staff or the originator of the proposed action item and forward the recommendation onto the full Council. The Committee may, as a condition of approval, request additional information to be presented for consideration when the full Council hears the item.
- 2. Fail to approve any recommended action, in which case the item shall not be forwarded to the full City Council; provided that the City Council shall have jurisdiction to place the item on the agenda for a future City Council meeting, in accordance with the requirements of the Meeting Protocols for agenda setting, if no action was taken on the item due to any one of the following reasons:
  - 2.1. Due to the cancellation of a Committee meeting or
  - 2.2. Due to lack of a quorum, or
  - 2.3. the Committee was not able to approve any recommended action
- 3. Propose by a consensus vote one or more alternative recommendation(s) be forwarded to the full City Council for consideration and final action. The Committee may request additional information to be presented for consideration when the full Council hears the item.
- 4. Reject by a consensus vote, jurisdiction over the action item and refer the action item back to the City Council with a recommendation for reassignment to another appropriate subject-matter committee.
- 5. Request, by consensus vote, additional, specified information from staff or the originator of the proposed action item. The action item may be continued or rescheduled for further consideration at the soonest feasible date available, allowing time for appropriate notice pursuant to the Meeting Protocols and the Brown Act.
- 6. With respect to an informational item, following discussion and consideration, Committee shall take one of the following actions:
  - 6.1. Receive the informational report by consensus vote without forwarding the report to the full City Council;
  - 6.2. Receive the informational report and forward the report onto the full City Council

by consensus vote;

- 6.3. Request by consensus vote from staff or the originator of the proposed informational item. The item may be continued or rescheduled for further consideration at the soonest feasible date available, allowing time for appropriate notice pursuant to the Meeting Protocols.

C. ROLE AND RESPONSIBILITIES

The role of the Finance Committee is to provide oversight and guidance through policy level direction and input on financial items such as the operating budget, review of financial reporting documents, Capital Improvement Program, long-term financing, or other items requiring fiscal policy direction and input. This would ideally be done after receiving public deliberation and achieving consensus through partnering with staff.

D. MEMBERSHIP GUIDELINES

1. **Membership.** The Finance Committee shall consist of two (2) City Councilmembers.
2. **Term.** Each member shall serve a one-year term; selected as part of the City Council's annual appointment process outlined in the Council's Code of Conduct.
3. **Attendance.** If a member of the Finance Committee fails to attend four (4) regular meetings in any calendar year, his or her position on the Finance Committee shall automatically become vacant. For quorum confirmation, a member who is unable to attend a meeting shall inform the staff liaison designated by the relevant City Department at least 48 hours before the next meeting. This would not include meetings that were canceled due to technical difficulties, City emergencies, or other staff related reasons.

E. QUORUM

A quorum of the Finance Committee shall consist of a majority of the members (including any vacancies). A quorum must be present in order for the Finance Committee to hold a meeting.

Meetings of the Committees may be noticed as a Special Meeting of the City Council if a majority of the members of the Council plan to attend and participate as part of the Committee.

F. OFFICERS

1. The officers of the Finance Committee shall be:
  - 1.1. The Chairperson and
  - 1.2. The Vice-Chairperson.
2. The Chairperson shall:
  - 2.1. Preside at all regular and special meetings.

2.2. Rule on all points of order and procedure during the meetings.

G. DUTIES OF THE COMMITTEE

1. Review, discuss, and provide direction to facilitate in the preparing and presenting of accurate, timely, and meaningful financial statements to the Council from City staff
2. Monitor the finances of the City
3. Develop an annual work plan and presentation to the City Council
4. Review and update from time to time, as necessary the financial policies
5. Be familiar with, approve, and review periodically the organization's annual budget; Ensuring that the financial elements of the City are in accord with the City Council's Strategic Priorities
6. Set long-range financial goals along with financial strategies to achieve them
7. Develop policies and plans for financial awareness in cooperation with other public and private agencies
8. Provide recommendations to the City Council on such matters that may be referred to the City Council by the community

H. MEETINGS

1. Regular meetings of the Finance Committee shall be held on the 3th Wednesday of each month and shall begin at 7:00 p.m.
2. If the scheduled date of a regular meeting conflicts with a holiday period, staff shall reschedule that meeting to be conducted within that month.
3. Any regular meeting may be adjourned, or any item on the agenda continued to the next or any subsequent regular meeting of the Finance Committee, by a majority of the quorum. If a meeting is adjourned or an item is continued to a special meeting to be held on a date other than a regular meeting date, the time, place, and date of such special meeting shall be specified in the motion for adjournment or continuance.
4. All meetings are subject to the Brown Act as set forth in Government Code Sections 54950 and following. Accordingly, all meetings shall be noticed and agendas for all meetings shall be prepared and distributed in accordance with the current City Council meeting procedures and the Brown Act.
5. All meetings shall be conducted in accordance with the current City Council meeting procedures.

I. FUNDING

Any funding necessary for operation of the Finance Committee shall be included in the City of Tracy budget, which shall be approved by the City Council.

J. ADMINISTRATIVE PROCEDURES AND POLICIES

City Boards and Committees shall follow all applicable City administrative policies and procedures.

K. STAFF LIAISON

The Finance Committee shall have a staff liaison designated by the relevant City Department. The staff liaison shall:

1. Receive and record all exhibits, petitions, documents, or other material presented to the Committee in support of, or in opposition to, any question before the Committee.
2. Sign all meetings minutes and resolutions upon approval.
3. Prepare and distribute agendas and agenda packets.

L. ADOPTION

This document, as adopted by City Council, on May 16, 2023, by Resolution 2023-XX, and shall serve as the Bylaws for the Finance Committee.

APPROVED AS TO FORM AND LEGALITY

CITY ATTORNEY'S OFFICE

**TRACY CITY COUNCIL**

**RESOLUTION NO. \_\_\_\_\_**

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**ADOPTING THE BYLAWS FOR THE (A) TRACY HOMELESSNESS  
ADVISORY COMMITTEE AND (B) FINANCE COMMITTEE**

**WHEREAS**, On March 16, 2021 the Tracy City Council voted to approve Resolution 2021-033 form a standing Council committee entitled Tracy Homelessness Advisory Committee (THAC); and

**WHEREAS**, On February 7, 2023, the City Council approved Resolution 2023-027 establishing the Finance Committee; and

**WHEREAS**, Committees are essential to the effective operation of legislative bodies; and

**WHEREAS**, Committee membership enables members to develop specialized knowledge of the matters under their jurisdictions; and

**WHEREAS**, Committees monitor on-going governmental operations, identify issues suitable for legislative review, gather and evaluate information, and recommend courses of action for the Council; and

**WHEREAS**, Neither the THAC nor the Finance Committee have adopted bylaws; and

**WHEREAS**, On May 2, 2023, staff presented a draft of the proposed bylaws for both the THAC and the Finance Committee, attached hereto as **Attachments 1** and **2**; and

**WHEREAS**, The proposed bylaws include Section B, which define the role of these two Committees as subject matter Committees, and establish clear procedures for their actions to be recognized by the City Council; and

**WHEREAS**, The Committees are authorized and directed to ascertain, study, and analyze all facts relating to any subjects or matters within their jurisdiction, and shall report

to and submit recommendations to the City Council for action; and

**WHEREAS**, By separate agenda item, the City Council will consider whether to amend the Meeting Protocols and Rules of Procedure to reflect the roles and responsibilities that are set forth in the proposed Bylaws for these two Committees; and 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 adopts the Bylaws set forth in **Attachment 1** as the Bylaws for the THAC (THAC Bylaws); and be it further

**RESOLVED**: That the City Council hereby adopts the Bylaws set forth in **Attachment 2** as the Bylaws for the Finance Committee (Finance Committee Bylaws); and be it further

**RESOLVED**: The THAC Bylaws shall govern the conduct of the Tracy Homelessness Advisory Committee meetings and the transaction of its affairs; and be it further

**RESOLVED**: The Finance Committee Bylaws shall govern the conduct of the Finance Committee meetings and the transaction of its affairs; and be it further

**RESOLVED**: To the extent that either the THAC Bylaws or the Finance Committee Bylaws conflict with the City Council’s Meeting Protocols and Rules of Procedure, the latter shall prevail; and be it further

**RESOLVED**: That the City Attorney, solely, shall have the authority to interpret and render a final determination, in the event of ambiguity, the THAC Bylaws and the Finance Committee Bylaws; and be it further

**RESOLVED**, That the actions taken herein do not constitute a “project” under the California Environmental Quality Act.

\* \* \* \* \*

The foregoing Resolution 2023-\_\_\_\_\_ was adopted by the Tracy City Council on May 16, 2023, by the following vote:

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

---

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

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

#### ATTACHMENTS

- 1) Bylaws for the Tracy Homelessness Advisory Committee
- 2) Bylaws for the Finance Committee

**BYLAWS OF THE  
TRACY HOMELESSNESS ADVISORY  
COMMITTEE BYLAWS  
CITY OF TRACY, CALIFORNIA**

**WHEREAS**, The City desires to form a standing committee of the Tracy City Council to continue the work begun by the previous Ad Hoc Homelessness Advisory Committee, to be named the Tracy Homelessness Advisory Committee (Committee); and

**WHEREAS**, Committees are essential to the effective operation of legislative bodies; and

**WHEREAS**, Committee membership enables members to develop specialized knowledge of the matters under their jurisdictions; and

**WHEREAS**, The City Council recognize that a shelter crisis exists and forming a Council Homelessness advisory committee will facilitate an opportunity to evaluate options to address the current homelessness crisis; and

**WHEREAS**, On February 16, 2021 the Tracy City Council voted to approve the Tracy Homelessness Strategic Plan; and

**WHEREAS**, On March 16, 2021 the Tracy City Council voted to approve Resolution 2021-033 form a standing Council committee entitled Tracy Homelessness Advisory Committee; and

**WHEREAS**, the Committee is authorized and directed to ascertain, study, and analyze all facts relating to any subjects or matters within their jurisdiction, and shall report to and submit recommendations to the City Council for action.

**NOW, THEREFORE**, these Bylaws govern the conduct of the Tracy Homelessness Advisory Committee meetings and the transaction of its affairs.

1. PURPOSE

The stated purpose of the committee is as follows:

- 1.1. To implement the Tracy Homelessness Strategic Plan including the possible amendment of such plan
  - 1.1.1. This Strategic Plan provides a framework to target resources to manage and decrease homelessness
    - GOAL 1: Increase Housing Options in Tracy
    - GOAL 2: Increase Access to Coordinated Support Services for People Experiencing Homelessness

- GOAL 3: Develop Action Plans for Engaging with People Experiencing Homelessness
  - GOAL 4: Enact Specific Strategies for Vulnerable Subpopulations Experiencing Homelessness
- 1.2. To address homelessness in the City of Tracy
- 1.3. The Tracy Homeless Advisory Committee shall have initial jurisdiction over any item assigned to it by the City Council as well as any items being advanced by the City Manager that implement or relate to overall jurisdictional purpose of the Committee.

2. Action by Subject Matter Committees -

The assigned subject matter Committee shall have initial jurisdiction over any item assigned to it by the City Council as well as any items being advanced by the City Manager that implement or relate to the overall jurisdictional purpose of such Committee and may take any of the following actions with respect to the assigned item:

The Committee may, by a vote of the consensus, decide to postpone, continue, or table an item on the agenda. On any item on an agenda, the Committee may allow for an informational presentation by City staff relating to the item. With respect to an action item, and after discussion and consideration of the item, the Committee may take one of the following actions:

1. Vote by consensus to approve the recommendation of staff or the originator of the proposed action item and forward the recommendation onto the full Council. The Committee may, as a condition of approval, request additional information to be presented for consideration when the full Council hears the item.
2. Fail to approve any recommended action, in which case the item shall not be forwarded to the full City Council; provided that the City Council shall have jurisdiction to place the item on the agenda for a future City Council meeting, in accordance with the requirements of the Meeting Protocols for agenda setting, if no action was taken on the item due to any one of the following reasons:
  - 2.1. Due to the cancellation of a Committee meeting or
  - 2.2. Due to lack of a quorum, or
  - 2.3. The Committee was not able to approve any recommended action
3. Propose by a consensus vote one or more alternative recommendation(s) be forwarded to the full City Council for consideration and final action. The Committee may request additional information to be presented for consideration when the full Council hears the item.
4. Reject by a consensus vote, jurisdiction over the action item and refer the action item back to the City Council with a recommendation for reassignment to another appropriate subject-matter committee.

5. Request, by consensus vote, additional, specified information from staff or the originator of the proposed action item. The action item may be continued or rescheduled for further consideration at the soonest feasible date available, allowing time for appropriate notice pursuant to the Meeting Protocols and Brown Act.
6. With respect to an informational item, following discussion and consideration, Committee shall take one of the following actions:
  - 6.1. Receive the informational report by consensus vote without forwarding the report to the full City Council;
  - 6.2. Receive the informational report and forward the report onto the full City Council by consensus vote;
  - 6.3. Request by consensus vote from staff or the originator of the proposed informational item. The item may be continued or rescheduled for further consideration at the soonest feasible date available, allowing time for appropriate notice pursuant to the Meeting Protocols.

### 3. ROLE AND RESPONSIBILITIES

The role of the Tracy Homelessness Advisory Committee is to provide input on the development of the Tracy Homelessness Strategic Plan initiatives and work to prevent and end homelessness in Tracy. This would ideally be done after receiving public deliberation and achieving consensus through partnering with staff.

### 4. MEMBERSHIP GUIDELINES

1. **Membership.** The Tracy Homelessness Advisory Committee shall consist of two (2) City Councilmembers.
2. **Term.** Each member shall serve a one-year term; selected as part of the City Council's annual appointment process outlined in the Council's Code of Conduct.
3. **Attendance.** If a member of the Tracy Homelessness Advisory Committee fails to attend four (4) regular meetings in any calendar year, his or her position on the Tracy Homelessness Advisory Committee shall automatically become vacant. For quorum confirmation, a member who is unable to attend a meeting shall inform the staff liaison designated by the relevant City Department at least 48 hours before the next meeting. This would not include meetings that were canceled due to technical difficulties, City emergencies, or other staff related reasons.

5. QUORUM

A quorum of the Tracy Homelessness Advisory Committee shall consist of a majority of the members (including any vacancies). A quorum must be present in order for the Tracy Homelessness Advisory Committee to hold a meeting.

Meetings of the Committees may be noticed as a Special Meeting of the City Council if a majority of the members of the Council plan to attend and participate as part of the Committee.

6. OFFICERS

1. The officers of the Tracy Homelessness Advisory Committee shall be:
  - 1.1. The Chairperson and
  - 1.2. The Vice-Chairperson.
2. The Chairperson shall:
  - 2.1. Preside at all regular and special meetings.
  - 2.2. Rule on all points of order and procedure during the meetings.

7. DUTIES OF THE COMMITTEE

1. Review, discuss, and provide direction to facilitate in the preparing and presenting of accurate, timely, and meaningful information and recommendations to address homelessness within Tracy to the Council from City staff
2. Monitor the finances related the Homeless Division
3. Develop an annual work plan and presentation to the City Council
4. Review and update from time to time, as necessary policies related to addressing the unsheltered population
5. The following key metrics should be used to evaluate the effectiveness of this Plan:
  - 5.1. Increase in the number of affordable housing units dedicated to people who are experiencing homelessness
  - 5.2. Decrease in homelessness in the community—including in key subpopulations such as families, veterans, and people who are chronically homeless
  - 5.3. Decrease in the number of persons who become homeless for the first time
  - 5.4. Decrease in the average and median length of time persons remain homeless

- 5.5. Decrease in the percentage of persons who return to homelessness
- 5.6. Increase in the percentage of adults who gain or increase employment or nonemployment cash income over time
- 5.7. Increase in the percentage of persons who exit to or retain permanent housing

## 8. MEETINGS

1. Regular meetings of the Tracy Homelessness Advisory Committee shall be held on the 3rd Thursday of each month and shall begin at 7:00 p.m.
2. If the scheduled date of a regular meeting conflicts with a holiday period, staff shall reschedule that meeting to be conducted within that month.
3. Any regular meeting may be adjourned, or any item on the agenda continued to the next or any subsequent regular meeting of the Tracy Homelessness Advisory Committee, by a majority of the quorum. If a meeting is adjourned or an item is continued to a special meeting to be held on a date other than a regular meeting date, the time, place, and date of such special meeting shall be specified in the motion for adjournment or continuance.
4. All meetings are subject to the Brown Act as set forth in Government Code Sections 54950 and following. Accordingly, all meetings shall be noticed and agendas for all meetings shall be prepared and distributed in accordance with the current City Council meeting procedures and the Brown Act.
5. All meetings shall be conducted in accordance with the current City Council meeting procedures.

## 9. FUNDING

Any funding necessary for operation of the Tracy Homelessness Advisory Committee shall be included in the City of Tracy budget, which shall be approved by the City Council.

## 10. ADMINISTRATIVE PROCEDURES AND POLICIES

City Boards and Committees shall follow all applicable City administrative policies and procedures.

## 11. STAFF LIAISON

The Tracy Homelessness Advisory Committee shall have a staff liaison designated by the relevant City Department. The staff liaison shall:

1. Receive and record all exhibits, petitions, documents, or other material

- presented to the Committee in support of, or in opposition to, any question before the Committee.
2. Sign all meetings minutes and resolutions upon approval.
  3. Prepare and distribute agendas and agenda packets.

12. ADOPTION

This document, as adopted by City Council, on May 16, 2023, by Resolution 2023-XX, and shall serve as the Bylaws for the Tracy Homelessness Advisory Committee.

**BYLAWS OF THE  
 FINANCE COMMITTEE BYLAWS  
 CITY OF TRACY, CALIFORNIA**

**WHEREAS**, The City desires to form a standing committee of the Tracy City Council to continue the work begun by the previous Ad Hoc Fiscal Sustainability Subcommittee, to be named the Finance Committee (Committee); and

**WHEREAS**, Committees are essential to the effective operation of legislative bodies; and

**WHEREAS**, Committee membership enables members to develop specialized knowledge of the matters under their jurisdictions; and

**WHEREAS**, Committees monitor on-going governmental operations, identify issues suitable for legislative review, gather and evaluate information, and recommend courses of action for the Council; and

**WHEREAS**, the Finance Committee is authorized and directed to ascertain, study, and analyze all facts relating to any subjects or matters within their jurisdiction, and shall report to and submit recommendations to the City Council for action.

**NOW, THEREFORE**, these Bylaws govern the conduct of the Finance Committee meetings and the transaction of its affairs.

A. PURPOSE

1. The purpose of the Finance Committee is to provide policy guidance as it relates to the development of a multi-year fiscal sustainability plan to address the City's fiscal health and long-term planning.
2. The Finance Committee shall have initial jurisdiction over any item assigned to it by the City Council as well as any items being advanced by the City Manager that implement or relate to the overall jurisdictional purpose of the Finance Committee.
3. The Finance Committee may develop and recommend budget strategies and fiscal policies related to: revenue enhancement, cost containment, and use of other revenue sources, such as Measure V and/or General Fund Reserves, keeping in mind planned recreational amenities.
4. The Finance Committee will aid the City Council in fulfilling its fiduciary responsibilities to oversee the financial activities and financial condition of the City of Tracy and its jurisdiction may include the review, discussion, and input on the following areas:
  - 4.1.1. Annual audits and compliance reporting
  - 4.1.2. Annual and quarterly budget updates, augmentations, and forecast
  - 4.1.3. Long-term planning, including but not limited to
    - 4.1.3.1. City revenues and expenses, including related fee and tax studies

- 4.1.3.2. Deferred maintenance and capital planning
- 4.1.3.3. Long-term liabilities, debt, and other finance planning

- 5. The Finance Committee will not have jurisdiction to discuss any budget approaches that would require good faith bargaining with labor groups.

B. Action by Subject Matter Committees -

The assigned subject matter Committee shall have initial jurisdiction over any item assigned to it by the City Council as well as any items being advanced by the City Manager that implement or relate to the overall jurisdictional purpose of such Committee and may take any of the following actions with respect to the assigned item.

The Committee may, by a vote of the consensus, decide to postpone, continue, or table an item on the agenda. On any item on an agenda, the Committee may allow for an informational presentation by City staff relating to the item. With respect to an action item, and after discussion and consideration of the item, the Committee may take one of the following actions:

- 1. Vote by consensus to approve the recommendation of staff or the originator of the proposed action item and forward the recommendation onto the full Council. The Committee may, as a condition of approval, request additional information to be presented for consideration when the full Council hears the item.
- 2. Fail to approve any recommended action, in which case the item shall not be forwarded to the full City Council; provided that the City Council shall have jurisdiction to place the item on the agenda for a future City Council meeting, in accordance with the requirements of the Meeting Protocols for agenda setting, if no action was taken on the item due to any one of the following reasons:
  - 2.1. Due to the cancellation of a Committee meeting or
  - 2.2. Due to lack of a quorum, or
  - 2.3. the Committee was not able to approve any recommended action
- 3. Propose by a consensus vote one or more alternative recommendation(s) be forwarded to the full City Council for consideration and final action. The Committee may request additional information to be presented for consideration when the full Council hears the item.
- 4. Reject by a consensus vote, jurisdiction over the action item and refer the action item back to the City Council with a recommendation for reassignment to another appropriate subject-matter committee.
- 5. Request, by consensus vote, additional, specified information from staff or the originator of the proposed action item. The action item may be continued or rescheduled for further consideration at the soonest feasible date available, allowing time for appropriate notice pursuant to the Meeting Protocols and the Brown Act.
- 6. With respect to an informational item, following discussion and consideration, Committee shall take one of the following actions:
  - 6.1. Receive the informational report by consensus vote without forwarding the report to the full City Council;
  - 6.2. Receive the informational report and forward the report onto the full City Council

by consensus vote;

- 6.3. Request by consensus vote from staff or the originator of the proposed informational item. The item may be continued or rescheduled for further consideration at the soonest feasible date available, allowing time for appropriate notice pursuant to the Meeting Protocols.

C. ROLE AND RESPONSIBILITIES

The role of the Finance Committee is to provide oversight and guidance through policy level direction and input on financial items such as the operating budget, review of financial reporting documents, Capital Improvement Program, long-term financing, or other items requiring fiscal policy direction and input. This would ideally be done after receiving public deliberation and achieving consensus through partnering with staff.

D. MEMBERSHIP GUIDELINES

1. **Membership.** The Finance Committee shall consist of two (2) City Councilmembers.
2. **Term.** Each member shall serve a one-year term; selected as part of the City Council's annual appointment process outlined in the Council's Code of Conduct.
3. **Attendance.** If a member of the Finance Committee fails to attend four (4) regular meetings in any calendar year, his or her position on the Finance Committee shall automatically become vacant. For quorum confirmation, a member who is unable to attend a meeting shall inform the staff liaison designated by the relevant City Department at least 48 hours before the next meeting. This would not include meetings that were canceled due to technical difficulties, City emergencies, or other staff related reasons.

E. QUORUM

A quorum of the Finance Committee shall consist of a majority of the members (including any vacancies). A quorum must be present in order for the Finance Committee to hold a meeting.

Meetings of the Committees may be noticed as a Special Meeting of the City Council if a majority of the members of the Council plan to attend and participate as part of the Committee.

F. OFFICERS

1. The officers of the Finance Committee shall be:
  - 1.1. The Chairperson and
  - 1.2. The Vice-Chairperson.
2. The Chairperson shall:
  - 2.1. Preside at all regular and special meetings.

2.2. Rule on all points of order and procedure during the meetings.

G. DUTIES OF THE COMMITTEE

1. Review, discuss, and provide direction to facilitate in the preparing and presenting of accurate, timely, and meaningful financial statements to the Council from City staff
2. Monitor the finances of the City
3. Develop an annual work plan and presentation to the City Council
4. Review and update from time to time, as necessary the financial policies
5. Be familiar with, approve, and review periodically the organization's annual budget; Ensuring that the financial elements of the City are in accord with the City Council's Strategic Priorities
6. Set long-range financial goals along with financial strategies to achieve them
7. Develop policies and plans for financial awareness in cooperation with other public and private agencies
8. Provide recommendations to the City Council on such matters that may be referred to the City Council by the community

H. MEETINGS

1. Regular meetings of the Finance Committee shall be held on the 3th Wednesday of each month and shall begin at 7:00 p.m.
2. If the scheduled date of a regular meeting conflicts with a holiday period, staff shall reschedule that meeting to be conducted within that month.
3. Any regular meeting may be adjourned, or any item on the agenda continued to the next or any subsequent regular meeting of the Finance Committee, by a majority of the quorum. If a meeting is adjourned or an item is continued to a special meeting to be held on a date other than a regular meeting date, the time, place, and date of such special meeting shall be specified in the motion for adjournment or continuance.
4. All meetings are subject to the Brown Act as set forth in Government Code Sections 54950 and following. Accordingly, all meetings shall be noticed and agendas for all meetings shall be prepared and distributed in accordance with the current City Council meeting procedures and the Brown Act.
5. All meetings shall be conducted in accordance with the current City Council meeting procedures.

I. FUNDING

Any funding necessary for operation of the Finance Committee shall be included in the City of Tracy budget, which shall be approved by the City Council.

J. ADMINISTRATIVE PROCEDURES AND POLICIES

City Boards and Committees shall follow all applicable City administrative policies and procedures.

K. STAFF LIAISON

The Finance Committee shall have a staff liaison designated by the relevant City Department. The staff liaison shall:

1. Receive and record all exhibits, petitions, documents, or other material presented to the Committee in support of, or in opposition to, any question before the Committee.
2. Sign all meetings minutes and resolutions upon approval.
3. Prepare and distribute agendas and agenda packets.

L. ADOPTION

This document, as adopted by City Council, on May 16, 2023, by Resolution 2023-XX, and shall serve as the Bylaws for the Finance Committee.

Agenda Item 1.K

RECOMMENDATION

**Staff recommends that City Council approve the Offsite Improvement Agreement between City and Lennar Homes of California, LLC for public roadway improvements for Tracy Hills Drive 1B-1 that are required by the Conditions of Approval for the Vesting Tentative Subdivision Map for Tracy Hills Phase 1B.**

EXECUTIVE SUMMARY

This item involves the approval of the Offsite Improvement Agreement for the public roadway improvements known as the Tracy Hills Drive 1B-1 Improvements, located within the Tracy Hills Phase 1B development, and being within the boundaries of the Tracy Hills Specific Plan Area. Council's approval of the Offsite Improvement Agreement will allow Lennar Homes of California, LLC (Developer) to proceed with the construction of the Tracy Hills Drive 1B-1 Improvements as required by the Conditions of Approval for the Vesting Tentative Subdivision Map for Tracy Hills Phase 1B.

BACKGROUND AND LEGISLATIVE HISTORY

On November 10, 2020, the City Council adopted the Tracy Hills Specific Plan Amendment for Tracy Hills Phase 1B/1C and approved various related land use entitlements, including that certain Small-Lot Vesting Tentative Subdivision Map for Tracy Hills Phase 1B, Tract 4004, processed under Application No. TSM18-0006 and approved by Resolution No. 2020-188. The Tracy Hills Phase 1B project consists of 432 residential lots and is generally bordered by the Tracy Hills Phase 1A project to the east and Interstate 580 to the south.

ANALYSIS

The approval of the Vesting Tentative Subdivision Map for Tracy Hills Phase 1B by the City Council was subject to specified Conditions of Approval which describe, among other things, improvements that are required for approval of the Final Subdivision Maps pursuant to the Subdivision Map Act, the Subdivision Ordinance, and applicable City Standards. The Tracy Hills Drive 1B-1 Improvements are part of the public improvements that are required to be designed and constructed by the Developer under the Conditions of Approval.

The public right-of-way for the Tracy Hills Drive 1B-1 Improvements was dedicated to the City on the Final Subdivision Map for Tract 4083, Tracy Hills Village 9A, as approved by the City on October 19, 2021, and filed on November 17, 2021.

Improvement plans and specifications, which describe in more detail the Tracy Hills Drive 1B-1 Improvements which are required under the subject OIA, were prepared on behalf of the Developer and have been approved by the City Engineer.

The Developer has executed the Offsite Improvement Agreement and has submitted the required security to guarantee completion of the subject improvements. The Offsite Improvement Agreement and associated Improvement Plans are on file with the City Engineer.

FISCAL IMPACT

There will be no fiscal impact associated with this action. The developer will pay for the cost of plan checking, engineering inspection and processing of the Offsite Improvement Agreement.

PUBLIC OUTREACH/ INTEREST

All public outreach for the Tracy Hills Phase 1B development (notifications, public hearings, etc.) was conducted for the Planning Commission and City Council hearings that were held in October and November 2020 to consider the General Plan Amendment, Specific Plan Amendment and Vesting Tentative Subdivision Map for the overall project. Additional public outreach specifically for the Tracy Hills Drive 1B-1 Improvements is not required.

COORDINATION

This Staff Report was prepared by the Development Services, Engineering Division. No coordination was required with other departments, etc., for the preparation of this report.

CEQA DETERMINATION

An Environmental Impact Report (EIR) for the Tracy Hills Specific Plan was certified by the City Council on April 5, 2016. The Tracy Hills Drive 1B-1 Improvements are within the scope of the development evaluated by the existing EIR and therefore no further environmental review is required for the project under CEQA.

STRATEGIC PLAN

This item is consistent with the City Council's approved Economic Development Strategy to ensure that physical infrastructure necessary for development is constructed.

ACTION REQUESTED OF THE CITY COUNCIL

That City Council, by resolution, approve the Offsite Improvement Agreement between City and Lennar Homes of California, LLC for public roadway improvements for Tracy Hills Drive 1B-1 that are required by the Conditions of Approval for the Vesting Tentative Subdivision Map for Tracy Hills Phase 1B.

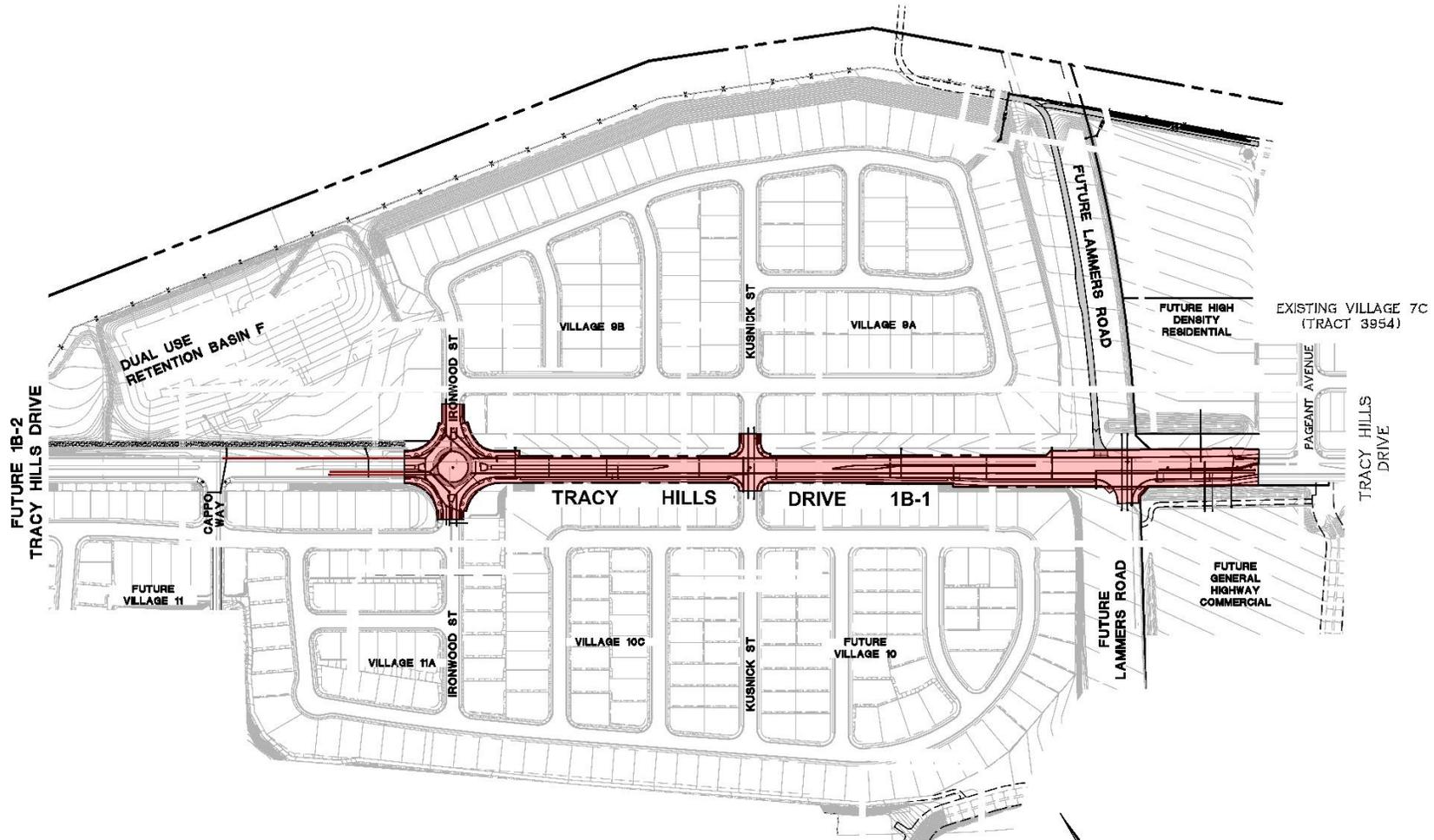
Prepared by: Al Gali, Associate Engineer

Reviewed by: Koosun Kim, PE, City Engineer / Assistant Director of Development Services  
Jaylen French, Development Services Director  
Sara Cowell, Finance Director  
Nancy Ashjian, Assistant City Attorney  
Karin Schnaider, Assistant City Manager

Approved by: Midori Lichtwardt, Assistant City Manager

ATTACHMENTS

Attachment A – Location Map  
Attachment B – Offsite Improvement Agreement



**PROJECT LOCATION**  
NO SCALE

**CITY OF TRACY  
OFF-SITE IMPROVEMENT AGREEMENT FOR  
FOR TRACY HILLS DRIVE 1B-1 IMPROVEMENTS**

This **OFF-SITE IMPROVEMENT AGREEMENT** (“**Agreement**”) is made and entered into by and between the **CITY OF TRACY** a municipal corporation (“**City**”), and **LENNAR HOMES OF CALIFORNIA, LLC**, a California limited liability company (“**Developer**”).

**Recitals**

- A.** Developer is the party responsible for the construction of the public roadway improvements known as the **Tracy Hills Drive 1B-1 Improvements** that are to be constructed within the Tracy Hills Drive right-of-way, as more particularly depicted in Exhibit “**A**” attached hereto and incorporated herein by reference (hereinafter “**Project**”).
- B.** The public right-of-way for the Project was dedicated to City on the Final Map for Tract 4083, Tracy Hills Village 9A, as approved by City on October 19, 2021, and filed on November 17, 2021, in Book 44 of Maps and Plats, at Page 1, Official Records of San Joaquin County.
- C.** The Project is geographically located within the boundaries of the Tracy Hills Specific Plan Area, which was approved by City Council on April 5, 2016.
- D.** The Project is within portions of the real properties comprising the 432-lot residential development known as Tracy Hills Phase 1B, as more particularly described in Exhibit “**B**” attached hereto.
- E.** On November 10, 2020, City Council adopted the Tracy Hills Specific Plan Amendment for Tracy Hills Phase 1B/1C and approved various related land use entitlements, including that certain Small-Lot Vesting Tentative Subdivision Map for Tracy Hills Phase 1B, Tract 4004, processed under Application No. TSM18-0006 and approved by Resolution No. 2020-188 (“**Tentative Map**”).
- F.** The approval of the Tentative Map by City Council was subject to specified conditions of approval (“**Conditions**”). The Conditions, attached hereto as Exhibit “**C**”, describe, among other things, improvements that are required for approval of the Final Subdivision Maps pursuant to the Subdivision Map Act, the Subdivision Ordinance, and applicable City Standards.
- G.** The Project is more specifically described in those certain Improvement Plans and Specifications submitted by Developer and approved by the City Engineer consisting of seventeen (17) sheets of improvement plans titled “Improvement Plans, Tracy Hills Phase 1B-1, Tracy Hills Phase 1B”, Sheets C-0.01 through EC-5.03, prepared by Ruggeri-Jensen-Azar; five (5) sheets of joint trench plans titled “Joint Trench Composite Plan, Tracy Hills Phase 1B, Tracy Hills Drive 1B-1”,

*City of Tracy - Offsite Improvement Agreement  
Tracy Hills Drive 1B-1 Improvements*

Sheets JT1.0 through JT5.0, prepared by Power Systems Design; four (4) sheets of street lighting plans titled "Street Lighting Plan Set, Tracy Hills Phase 1B, Tracy Hills Drive 1B-1", Sheets SL1.0 through SL4.0, prepared by Power Systems Design; fifty-eight (58) sheets of landscape construction drawings titled "Tracy Hills Ph. 1B Master Developer Public Landscape Improvement Plans", Sheets CS-0 through LPD-2, prepared by FORMA; and six (6) sheets of landscape electrical plans, Sheets ES1.0 through ES2.2, prepared by DW Consultants (collectively, the "Work"). The Plans and Specifications comprising the Work are on file with the City Engineer as ENG21-0001 (WDID# 5S39C393217) and incorporated herein by reference.

- H. Because the Work described above and in the Plans and Specifications has not been completed, Developer has requested to execute this Agreement as authorized by Government Code Section 66462.

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

**1. Scope of Work; Location.** Developer shall perform, or cause to be performed, the Work to the satisfaction of the City Engineer. The Work shall be performed, and all materials and labor shall be provided, at Developer's expense, in the manner described in the Plans and Specifications. No change shall be made to the Work unless authorized in writing by the City Engineer. Developer may submit a written request to the City Engineer for a change in the scope of Work, as authorized by Tracy Municipal Code section 12.36.060(f). To the extent applicable, all of the Work shall be performed by Developer in accordance with the requirements of the State prevailing wage laws.

Developer shall perform all Work at the locations and grades shown on the Plans and Specifications. Developer (a) has acquired any necessary easements or rights-of-way, or (b) has entered into a separate Agreement with the City to acquire the necessary easements or rights-of-way, at Developer's expense.

**2. Time of Performance.** Time is of the essence in the performance of the Work, and the timing requirements set forth here shall be strictly adhered to unless otherwise modified in writing in accordance with this Agreement. Developer shall submit all requests for extensions of time to the City, in writing, no later than ten (10) days after the start of the condition that purportedly caused the delay, and not later than the date on which performance is due.

**2.1. Commencement of Work.** No later than fifteen (15) days before the beginning of Work, Developer shall provide written notice to the City Engineer of the date on which Developer will begin Work. Developer shall not begin Work until after the notice required by this section is properly provided, and Developer shall not begin Work before the date specified in the written notice.

**2.2. Schedule of Work.** Concurrently with the written notice of beginning of Work, Developer shall provide the City with a written schedule of Work, which shall be

*City of Tracy - Offsite Improvement Agreement  
Tracy Hills Drive 1B-1 Improvements*

updated in writing as necessary to accurately reflect Developer's prosecution of the Work.

- 2.3. Completion of Work.** Developer shall complete all Work by no later than 365 days after Developer's submittal of its notice of commencement of Work pursuant to Section 2.1 above. If the Work is not completed by this date, City Engineer may grant an extension of time if (a) Developer submits a written request for extension at least ten (10) days prior to expiring date of completion, (b) the City Engineer determines that Work is progressing satisfactorily and an extension is warranted, and (c) Developer pays all processing fees for such time extension.

**3. Improvement Security.** Concurrently with Developer's execution of this Agreement, and before beginning any Work, Developer shall furnish contract security, in a form authorized by the Subdivision Map Act (including Government Code sections 66499 et seq.) and Tracy Municipal Code section 12.36.080, in the following amounts:

- 3.1. Faithful Performance** security in the amount of **\$3,275,958.00** to secure faithful performance of this Agreement (until the date on which the City Council accepts the Work as complete) under Government Code sections 66499.1, 66499.4, and 66499.9.
- 3.2. Labor and Material** security in the amount of \$ of **\$3,275,958.00** to secure payment by Developer to laborers and materialmen under Government Code sections 66499.2, 66499.3, and 66499.4.
- 3.3. Warranty** security in the amount of **\$327,596.00** to guarantee improvements against any defective work or labor done or defective materials used in performance of Work for one year from the date on which the City Council accepts the Work as complete, under Government Code sections 66499.1, 66499.4, and 66499.9.
- 3.4. Monumentation** security in the amount of **\$3,000.00** to secure faithful performance of setting monuments pursuant to Government Code section 66496.

**4. Indemnification.** Developer shall indemnify, defend, and hold harmless City (including its elected officials, officers, agents and employees) from and against any and all claims, demands, damages, liabilities, costs, and expenses (including court costs and attorney's fees) resulting from the performance of the Work by Developer or Developer's agents, representatives, contractors, subcontractors, or employees, except when caused by the active negligence or willful misconduct of City, until such time as all of the following have occurred: (1) the City Council accepts all of the improvements comprising the Work, (2) the City becomes responsible for the maintenance, operation and repair of all of the improvements comprising the Work, and (3) the one year warranty period set forth in Section 12, below, has expired, at which time the indemnification obligations under this Section 4 shall automatically terminate, with regard to any cause of action arising after such date. For avoidance of doubt, Developer's obligations under this Section 4 are in addition to all other Developer's obligations set forth in this Agreement, and shall not affect Developer's warranty obligations set forth in Section 12, below.

*City of Tracy - Offsite Improvement Agreement  
Tracy Hills Drive 1B-1 Improvements*

**5. Insurance.** Concurrently with the execution of this Agreement by Developer, and before beginning any Work, Developer shall furnish evidence to the City that the following insurance requirements have been satisfied. The insurance requirements contained in this Section 5 are material terms of this Agreement. These insurance coverage requirements below may be satisfied by umbrella or excess liability policies upon City approval.

- 5.1. General.** Developer shall, throughout the duration of this Agreement, maintain insurance to cover Developer, its agents, representatives, contractors, subcontractors, and employees in connection with the performance of services under this Agreement at the minimum levels set forth herein.
- 5.2. Commercial General Liability** (with coverage at least as broad as ISO form CG 00 01) coverage shall be maintained in an amount not less than \$4,000,000 per occurrence and \$8,000,000 general aggregate for general liability, bodily injury, personal injury, and property damage, including without limitation, blanket contractual liability and coverage for explosion, collapse, and underground property hazards.
- 5.3. Professional Contracts.** Developer shall cause its design professionals to maintain professional liability insurance that insures against professional errors and omissions that may be made in performing services related to the Work to be rendered in connection with this Agreement, in the minimum amount of one million dollars (\$1,000,000) per claim and in the aggregate. Any policy inception date, continuity date, or retroactive date must be before the effective date of this Agreement, and Developer agrees to cause its design professionals to maintain continuous coverage through a period no less than three years after completion of the services required pursuant to this Agreement.
- 5.4. Automobile Liability** (with coverage at least as broad as ISO form 00 01 07 97 for "any auto" including "hired autos" and "non-owned autos") coverage shall be maintained in an amount not less than \$2,000,000 per accident for bodily injury and property damage.
  - 5.4.1.** If Developer has no employees, or does not own automobiles, then "hired autos" and "non-owned autos" coverage shall be maintained in an amount not less than \$1,000,000 per accident for bodily injury and property damage.
- 5.5. Workers' Compensation** coverage shall be maintained as required by the State of California.
- 5.6. Endorsements.** Developer shall obtain endorsements to the commercial general liability and automobile policies with the following provisions:
  - 5.6.1.** The City (including its elected and appointed officials, officers, employees, agents, and volunteers) shall be named as an Additional Insured on Developer's Commercial General Liability policy utilizing endorsement form CG 20 10 (or its equivalent) for ongoing operations and CG 20 37 (or its equivalent) for products/completed operations.
  - 5.6.2.** For any claims related to this Agreement, Developer's coverage shall be primary insurance with respect to the City. Any insurance maintained by the City shall be excess of Developer's insurance and shall not contribute with it.

*City of Tracy - Offsite Improvement Agreement  
Tracy Hills Drive 1B-1 Improvements*

- 5.6.3.** Developer shall require its contractors and subcontractors providing services required by this Agreement (e.g. general contractors, design professionals) to name it and the City as Additional Insureds.
- 5.7. Notice of Cancellation.** Developer shall notify the City of any cancellation of either the commercial general liability policy or automobile insurance policy before the expiration date. For the purpose of this notice requirement, any material change in the policy before the expiration shall be considered a cancellation. Developer shall immediately obtain a replacement policy.
- 5.8. Authorized Insurers.** All insurance companies providing coverage to Developer shall be insurance organizations authorized by the Insurance Commissioner of the State of California to transact the business of insurance in the State of California, with an AM Best rating of at least A-:VII.
- 5.9. Insurance Certificate.** Developer shall provide evidence of compliance with the commercial general liability insurance and automobile insurance requirements listed above by providing a certificate of insurance and endorsements, in a form satisfactory to the City Attorney before the City executes this Agreement.
- 5.10. Substitute Certificates.** No later than thirty (30) days before the policy expiration date of any insurance policy required by this Agreement, Developer shall provide a substitute certificate of insurance.
- 5.11. Developer's Obligation.** Maintenance of insurance by Developer as specified in this Agreement shall in no way be interpreted as relieving Developer of any responsibility whatsoever (including indemnity obligations under this Agreement), and Developer may carry, at its own expense, such additional insurance as it deems necessary.
- 6. Independent Contractor Status.** Developer is an independent contractor and is solely responsible for the acts of its employees, agents, and subcontractors, including any negligent acts or omissions. Developer is not City's employee and Developer shall have no authority, express or implied, to act on behalf of the City as an agent, or to bind the City to any obligation, unless the City provides prior written authorization to Developer.
- 7. Default.**
- 7.1. Notice.** If Developer is in default of this Agreement, as defined in Section 7.2, the City Engineer shall provide written notice to Developer and Developer's surety (if any) describing the default.
- 7.2. Events of default.** Developer shall be in default of this Agreement if the City Engineer determines that any one of the following conditions exist:
- 7.2.1.** Developer is insolvent, bankrupt, or makes a general assignment for the benefit of its creditors.
- 7.2.2.** Developer abandons the Project site.
- 7.2.3.** Developer fails to perform one or more requirements of this Agreement.
- 7.2.4.** Developer fails to replace or repair any damage caused by Developer or its agents, representatives, contractors, subcontractors, or employees in connection with performance of the Work.

*City of Tracy - Offsite Improvement Agreement  
Tracy Hills Drive 1B-1 Improvements*

- 7.2.5.** Developer violates any legal requirement related to the Work.
- 7.3.** If Developer fails to cure the default within thirty (30) calendar days, or provide adequate written assurance to the satisfaction of the City Engineer that the cure will be promptly started and diligently prosecuted to its completion, the City may, in the discretion of the City Engineer, take any or all of the following actions:
- 7.3.1.** Cure the default and charge Developer for the costs, including administrative costs and interest in an amount equal to 7% per annum from the date of default.
- 7.3.2.** Demand Developer complete performance of the Work.
- 7.3.3.** Demand Developer's surety (if any) complete performance of the Work.
- 7.3.4.** Commence a legal action to enforce the terms of this Agreement.
- 8. Ownership of Work.** All original documents prepared by Developer for this Agreement are the property of the City, and Developer shall provide them to the City at the completion of Developer's Work, or upon demand from the City.
- 9. Repair of Any Damage.** In the event and to the extent Developer or its agents, representatives, contractors, subcontractors, or employees, in connection with performance of the Work, cause any damage to property owned by City or other property owners, then Developer shall promptly take all reasonable steps to repair or replace (as necessary) such property to remedy the damage caused thereto.
- 10. Inspection by the City; Inspection Fees and Fee Credits.** In order to permit the City to inspect the Work, Developer shall, at all times, provide to the City proper and safe access to the Project site, and all portions of the Work, and to all shops where portions of the Work are in preparation.

Concurrently with Developer's execution of this Agreement and before the beginning of any Work, Developer shall pay the City Inspection Fees in the amount of 3.5% of the estimated Project costs (as approved by the City Engineer). If the City requires an independent inspection, Developer shall pay all such costs and provide a report directly to the City.

Developer shall be entitled to fee credits consistent with Section 3.3 of that certain Development Agreement by and between the City of Tracy and the Tracy Hills Project Owner, LLC, and Tracy Phase I, LLC, adopted by City of Tracy Ordinance No. 1213 and recorded in the Official Records of San Joaquin County on June 9, 2016, as Document Number 2016-066658, as may be amended from time to time (the "DA"), and as provided in greater detail in the Finance and Implementation Plan for the Project pursuant to the DA and Tracy Municipal Code Section 10.20.060(b)(3), as may be amended from time to time.

- 11. Developer's Authorized Representative.** At all times during the progress of the Work, Developer shall have a competent foreperson or superintendent (Superintendent) on site with authority to act on behalf of Developer. Developer shall, at all times, keep the City Engineer informed in writing of the names and telephone

*City of Tracy - Offsite Improvement Agreement  
Tracy Hills Drive 1B-1 Improvements*

numbers of: (a) the Superintendent; and (b) all contractors and subcontractors performing the Work. Exhibit "D" attached hereto includes the initial contact information referenced in this Section 11.

**12. Acceptance of Work.** Before the City Council's acceptance of the Work, Developer is solely responsible for maintaining the quality of the Work and maintaining safety at the Project site. Developer's obligation to perform the Work is not satisfied until after the City Engineer has made a written determination that all obligations of the Agreement have been satisfied, all outstanding fees and charges have been paid, and the City Council has accepted the Work as complete.

**13. Warranty Period.** Developer shall warrant the quality of the Work, in accordance with the terms of the Plans and Specifications, for a period of one year after acceptance of the Work by the City Council. If during the one year warranty period any portion of the Work is determined by the City Engineer to be defective as a result of an obligation of Developer under this Agreement, Developer shall be in default of this Agreement and shall without delay and without any cost to City repair, replace, or reconstruct any defective improvements.

**14. Notices.** All notices, demands, or other communications which this Agreement contemplates or authorizes shall be in writing and shall be personally delivered or electronically mailed to the respective party as follows:

To City

City of Tracy  
333 Civic Center Plaza  
Tracy, CA 95376  
Attn: City Engineer  
notice@cityoftracy.org

With a copy to:

City Attorney  
333 Civic Center Plaza  
Tracy, CA 95376  
Attn: City Engineer  
attorney@cityoftracy.org

To Developer:

Lennar Homes of California, LLC  
2603 Camino Ramon, Suite 525  
San Ramon, CA 94583  
Attn: Bridgit Koller  
bridgit.koller@lennar.com

With a copy to:

AG Essential Housing CA 1, LP  
c/o AGWIP Asset Management LLC  
8585 E. Hartford Drive, Suite 118  
Scottsdale, AZ 85255  
Attn: Steven S. Benson, Manager  
steve.benson@agwipam.com

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

**15. Approvals by City.** Any approval or consent by that is to be given by City under this Agreement shall be in writing, and any approval or consent that is not in writing shall not be binding on City.

*City of Tracy - Offsite Improvement Agreement  
Tracy Hills Drive 1B-1 Improvements*

**16. Modifications.** This Agreement may not be modified orally or in any manner other than by an agreement in writing signed by both parties.

**17. 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.

**18. Assignment and Delegation.** This Agreement and any portion of it may not be assigned or transferred, nor shall any of Developer's duties be delegated, without the City's prior written consent. Any attempt to assign or delegate this Agreement without the City's written consent shall be void and of no effect. A consent by the City to one assignment shall not be deemed to be a consent to any subsequent assignment.

**19. Jurisdiction and Venue.** The interpretation, validity and enforcement of the Agreement shall be governed by 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.

**20. Permits, Licenses, and Compliance with Law.** Developer shall, at Developer's expense, obtain and maintain all necessary permits and licenses for the performance of the Work. Before City signs the Agreement, Developer shall obtain a City of Tracy Business License. Developer shall comply with all local, state, and federal laws, whether or not those laws are expressly stated in this Agreement.

**21. Entire Agreement; Severability.** The recitals and all defined terms in this Agreement are part of this Agreement. This Agreement, including all documents incorporated by reference, comprises the entire integrated understanding between the parties concerning the improvements to be constructed pursuant to this Agreement. This Agreement supersedes all prior negotiations, representations, or agreements. The following Exhibits attached hereto are incorporated into this Agreement and made a part hereof by this reference:

- A. Project Location (Recital A.)
- B. Legal Description of Property (Recital B.)
- C. Conditions of Approval (Section 1.)
- D. Developer's Authorized Representatives (Section 11.)

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.

**22. Signatures.** The individuals executing this Agreement represent and warrant that they have the right, power, legal capacity and authority to execute this Agreement. This Agreement shall inure to the benefit of and be binding upon the parties and their successors and assigns.

*[SIGNATURES ON NEXT PAGE]*

City of Tracy - Offsite Improvement Agreement  
Tracy Hills Drive 1B-1 Improvements

The parties hereby agree to the full performance of the terms set forth herein.

**City of Tracy**

**Developer**

\_\_\_\_\_  
Nancy D. Young, Mayor

LENNAR HOMES OF CALIFORNIA, LLC  
a California limited liability company

Date: \_\_\_\_\_

DocuSigned by:  
*Bridgit Koller*  
By: Bridgit Koller  
5D50BB66FFA244R

Approved by City Council on \_\_\_\_\_  
by Resolution No. \_\_\_\_\_.

Title: Vice President

Date: 11/3/2022

Approved As To Form:

Federal Employer Tax ID No. 93-1223261

\_\_\_\_\_  
By: Bijal M. Patel, City Attorney



**EXHIBIT “B”  
LEGAL DESCRIPTION OF PROPERTY**

All that real property situate in the City of Tracy, County of San Joaquin, State of California, described as follows:

Parcels 1, 2 and 3, as shown on that certain Parcel Map filed November 23, 2020, in Book 26 of Parcel Maps, at Page 179, Official Records of San Joaquin County.

**EXHIBIT "C"**  
**CONDITIONS OF APPROVAL**

**Conditions of Approval for Tracy Hills Phase 1B  
Small-Lot Vesting Tentative Subdivision Map  
Application Number TSM18-0006  
November 10, 2020**

**Project:** These Conditions of Approval shall apply to the small-lot Vesting Tentative Subdivision Map for Tracy Hills Phase 1B, Application Number TSM18-0006, including approximately 432 single-family residential lots, a park site, and approximately 70 other parcels.

**Property:** The property consists of approximately 310 acres located in the Tracy Hills Specific Plan Area, west of Phase 1A in the vicinity of Tracy Hills Drive, Application Number TSM18-0006.

**Community Facilities Districts:** Certain conditions of approval herein involve the establishment of one or more Community Facilities Districts (CFDs) to implement the Project. The imposition of conditions requiring or involving the establishment of CFDs on the Property shall not limit the City from establishing additional CFDs over the Property, subject to an affirmative vote of the Property owner(s).

**A. Definitions; Abbreviations.**

The definitions in the City’s zoning regulations (Tracy Municipal Code, Title 10, Chapter 10.08) and subdivision ordinance (Tracy Municipal Code, Title 12, Chapter 12.08) apply, and in addition:

1. “Applicant” means any person, or other legal entity, defined as a “Subdivider” by Section 12.08.010 of the City of Tracy Municipal Code.
2. “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 here. (The Development Services Director is also referred to in the Tracy Municipal Code as the Development and Engineering Services Director.)
3. “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 Hills Specific Plan, the Tracy Municipal Code, ordinances, resolutions, written policies, written procedures, and the City’s Design Documents (including the Standard Plans, Standard Specifications, Design Standards, and relevant Public Facility Master Plans).
4. “Conditions of Approval” or “Conditions” means these conditions of approval.
5. “Property” means the approximately 310 acres located in the Tracy Hills Specific Plan Area that is the subject of the small-lot Vesting Tentative Subdivision Map for Tracy Hills Phase 1B, Application Number TSM18-0006.

The following abbreviations may be used in these Conditions:

EIR	Environmental Impact Report	PI&RA	Park Improvement and Reimbursement Agreement
DIA	Deferred Improvement Agreement	PUE	Public Utility Easement
OIA	Offsite Improvement Agreement	TMC	Tracy Municipal Code

**B. Planning Division Conditions of Approval**

1. Compliance with laws. The Subdivider shall comply with all laws (federal, state, and local) related to the development of real property within the Project boundaries, 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 the California Environmental Quality Act (California Administrative Code, title 14, sections 15000, et seq., “CEQA Guidelines”).
2. City Regulations. Unless specifically modified by these Conditions of Approval, the Subdivider shall comply with all City Regulations.
3. Mitigation Measures. The Subdivider shall comply with all applicable mitigation measures in the Final Subsequent Environmental Impact Report (EIR) for the Tracy Hills Specific Plan Project (State Clearinghouse No. 2013102053), which was certified by the City Council on April 5, 2016, as it may be amended or modified pursuant to CEQA and the CEQA Guidelines.
4. Notice of protest period. Pursuant to Government Code Section 66020, including Section 66020 (d)(1), the City HEREBY NOTIFIES the Subdivider that the 90-day approval period (in which the Subdivider may protest the imposition of any fees, dedications, reservations, or other exactions that are within the purview of the Mitigation Fee Act [Government Code section 66000 et seq.] (“Exactions”) and imposed on this Project by these Conditions of Approval) shall begin on the date of the conditional approval of this Project. If the Subdivider fails to file a protest of the Exactions complying with all of the requirements of Government Code Section 66020 within this 90-day period, the Subdivider will be legally barred from later challenging any of the Exactions. The terms of this paragraph shall not affect any other deadlines or statutes of limitations set forth in the Mitigation Fee Act or other applicable law, or constitute a waiver of any affirmative defenses available to the City.
5. Final Maps for Financing Purposes. For the purpose of these Conditions of Approval, if any Final Map or Parcel Map is filed within the boundaries of the Project solely for financing purposes only, and no permits will be requested pursuant to such map, then the requirements listed in these Conditions of Approval shall not apply to the final map or parcel map for financing purposes only.

6. Conformance with Vesting Tentative Subdivision Map. All Final Maps shall be in substantial conformance with the approved Vesting Tentative Subdivision Map (Application Number TSM18-0006), which was received by the Development Services Department on October 7, 2020, and approved by the City Council on November 10, 2020, unless modified by these Conditions.
7. Maintenance for Project Public Landscaping. Before approval of the first Final Map, the Subdivider shall assure that there will be sufficient funding for the ongoing costs related to public landscaping maintenance. Subdivider shall prepare public landscaping improvement plans and a public landscaping budget analysis (to be reviewed and approved by the City Public Works Director) to establish the scope of and cost estimates for public landscaping maintenance.

As used in these Conditions of Approval:

“Public landscaping maintenance costs” include but are not limited to all costs associated with the maintenance, operation, repair and replacement of public landscaping included in the Project. Labor costs shall be based upon and be paid at “prevailing wages,” as that term is used in Section 1771 of the California Labor Code.

“Public landscaping” includes but is not limited to the following public areas and public improvements within or adjacent to the Project: public walls, special public amenities, ground cover, turf, shrubs, trees, irrigation systems, drainage and electrical systems, masonry walls or other fencing, entryway monuments or other ornamental structures, furniture, recreation equipment, hardscape and any associated appurtenances within medians, parkways, dedicated easements, channel-ways, public parks and public open space areas. It does not include public streets and street sweeping, but may include street lights.

Before approval of the first Final Map, Subdivider shall enter into an agreement with the City, which shall be recorded against the Property, which adopts and implements one or more of the following three options (a., b. or c.), subject to the approval of the City’s Finance Director:

- a. CFD or other funding mechanism. Before final inspection or occupancy of the first dwelling (except for up to fifteen model homes), the Subdivider shall, at its expense, form a Community Facilities District (CFD) or establish another lawful funding mechanism that is reasonably acceptable to the City for the entire Property for funding or performing the on-going maintenance of public landscaping. Formation of the CFD shall include, but not be limited to, affirmative votes and the recordation of a Notice of Special Tax Lien. Upon successful formation, the Property will be subject to the maximum special tax rates as outlined in the Rate and Method of Apportionment. If funds are needed to pay for such public

landscaping maintenance costs before collection of the first Special Services Tax (the “deficit”), then before final inspection or occupancy of the first dwelling (except for up to fifteen model homes), the Subdivider shall deposit to the CFD (by submittal to the City’s Finance Director) the amount of the deficit;

Or

b. HOA and dormant CFD. If the HOA is the chosen funding mechanism, the Subdivider must do the following:

- (1) Form a Homeowner’s Association (HOA) or other maintenance association, with CC&Rs reasonably acceptable to the City, to assume the obligation for the on-going maintenance of all public landscaping areas within the entire tentative subdivision map area;
- (2) Cause the HOA to enter into an agreement with the City, in a form to be approved by the City and to be recorded against the Property concurrently with the first Final Map, setting forth, among other things, the required maintenance obligations, the standards of maintenance, and all other associated obligation(s) to ensure the long-term maintenance by the HOA of all public landscape areas within the entire tentative subdivision map area;
- (3) For each Final Map, make and submit to the City, in a form reasonably acceptable to the City, an irrevocable offer of dedication of all public landscape areas within the Final Map area;
- (4) Before final inspection or occupancy of the first dwelling (except for up to fifteen model homes), annex into a CFD in a “dormant” capacity, to be triggered if the HOA fails (as determined by the City in its sole and exclusive discretion) to perform the required level of public landscape maintenance. The dormant tax or assessment shall be disclosed to all homebuyers and non-residential property owners, even during the dormant period.

Or

c. Direct funding. Before final inspection or occupancy of the first dwelling (except for up to fifteen model homes), the Subdivider shall deposit with the City an amount necessary, as reasonably determined by the City, to fund in perpetuity the full costs of public landscaping maintenance as identified by the approved landscaping budget analysis.

8. Maintenance for Public Landscaping for Major Program Roadways. Before approval of the first Final Map, the Subdivider shall assure that there will be sufficient funding to pay the Subdivider's proportionate share of the ongoing public landscaping maintenance costs associated with major program roadways, by entering into an agreement with the City, which shall be recorded against the Property, which adopts and implements one of the following two options (a. or b.), subject to the approval of the City's Finance Director:
    - a. CFD. Before final inspection or occupancy of the first dwelling (except for up to fifteen model homes), Subdivider shall, at its sole expense, form a Community Facilities District (CFD) for the Property, for funding the Subdivider's proportionate share of the ongoing public landscaping maintenance costs associated with major program roadways identified in the Citywide Roadway and Transportation Master Plan. Formation of the CFD shall include, but not be limited to, affirmative votes and the recordation of a Notice of Special Tax Lien. Upon successful formation, the Property will be subject to the maximum special tax rates as outlined in the Rate and Method of Apportionment. If funds are needed to pay for such public landscaping maintenance costs before collection of the first Special Services Tax (the "deficit"), then before final inspection or occupancy of the first dwelling (except for up to fifteen model homes), the Subdivider shall deposit to the CFD (by submittal to the City's Finance Director) the amount of the deficit;

Or

  - b. Direct Funding. Before final inspection or occupancy of the first dwelling (except for up to fifteen model homes), the Subdivider shall deposit with the City an amount necessary, as reasonably determined by the City, to fund in perpetuity the full costs of funding the Subdivider's proportionate share of the ongoing public landscaping maintenance costs associated with major program roadways identified in the Citywide Roadway and Transportation Master Plan.
9. Parks. Before approval of the first Final Map, the Subdivider shall enter into an agreement with the City, which shall be recorded against the property, which stipulates the following:
    - a. Before final inspection or occupancy of the 180<sup>th</sup> dwelling unit (whichever occurs first, except for up to fifteen model homes), the Phase 1B neighborhood park shall be completed and accepted by the City Council. If the Phase 1B neighborhood park is not completed and accepted by the City Council before final inspection or occupancy of the 180<sup>th</sup> dwelling unit (whichever occurs first, except for up to fifteen model homes) , no further building permits (except for plumbing only building permits) shall be issued until the neighborhood park is completed and accepted by the City Council.

10. Conservation Easement. Before approval of the first Final Map, the Subdivider shall enter into an agreement with the City, which shall be recorded against the Property, which stipulates that before issuance of a building permit for the 300<sup>th</sup> dwelling unit (except for plumbing only building permits), the Subdivider shall plant trees in the 100-foot wide conservation easement adjacent to Interstate 580, as depicted in Appendix C of the Tracy Hills Specific Plan (Figures C-6 and C-7), to the satisfaction of the Development Services Director.
11. Schools. Before issuance of a building permit for each new dwelling (except for plumbing only permits), the Subdivider shall document compliance with all applicable school mitigation requirements and provide to the City a certificate of compliance for such requirements from the Jefferson School District and Tracy Unified School District.
12. Public Services. Before approval of the first Final Map, the Subdivider shall do one of the following, subject to the approval of the City's Finance Director:
  - a. CFD or other funding mechanism. The Subdivider shall enter into an agreement with the City, to be signed by the City's Finance Director, which shall be recorded against the Property, which stipulates that prior to issuance of a building permit (except for plumbing only building permits and except for up to fifteen model homes), the Subdivider will form or annex into a Community Facilities District (CFD) or establish another lawful funding mechanism that is reasonably acceptable to the City for funding the on-going operational costs of providing Police services, Public Works services and other City services to serve the Project area. Formation of the CFD shall include, but not be limited to, affirmative votes and the recordation of a Notice of Special Tax Lien. The Subdivider shall be responsible for all costs associated with the formation or annexation proceedings. Upon successful formation, the parcels will be subject to the maximum special tax rates as outlined in the Rate and Method of Apportionment.

Or

- b. Direct funding. The Subdivider shall enter into an agreement with the City, which shall be recorded against the Property, which stipulates that prior to issuance of a building permit (except for plumbing only building permits and except for up to fifteen model homes), the Subdivider will fund a fiscal impact study to be conducted and approved by the City to determine the long term on-going operational costs of providing Police services, Public Works services, and other City services to serve the Project area, and deposit with the City an amount necessary, as reasonably determined by the City, to fund the full costs in perpetuity as identified by the approved study.

13. Utilities in Roundabout. The roundabout shown on the approved Vesting Tentative Subdivision Map for Tracy Hills Phase 1B shall be designed and constructed in such a manner that no utility lines intersect a 30-foot radius from the center of the roundabout in order to allow sufficient space for the planting and mature growth of any trees planted within the roundabout, which are conceptually depicted in Appendix C of the Tracy Hills Specific Plan (Figure C-9). The Subdivider shall submit Improvement Plans that demonstrate compliance with this condition, to the satisfaction of the Development Services Director.
14. Phillips 66 Pipeline Easement. A Phillips 66 pipeline easement intersects the Project site. Before approval of the first Final Map, the Subdivider shall enter into an agreement with the City, which shall be recorded against the Property, which stipulates that the Subdivider shall clearly mark and label any plot plan where the location of the 16.25-foot minimum setback line from the edge of the Phillips 66 pipeline easement encroaches into the subject property of the plot plan, prior to issuance of a building permit (except for plumbing only building permits), to the satisfaction of the Development Services Director.

**C. Engineering Division Conditions of Approval**

**C.1. General Conditions**

- C.1.1. Subdivider shall comply with the applicable requirements of the approved documents, technical analyses/reports prepared for the Project listed as follows:
  - a) *Tracy Hills Specific Plan*, approved by City Council on April 5, 2016, by Resolution No. 2016-063, and any amendments thereto.
  - b) *Amendment to the Tracy Hills Specific Plan for Phase 1B and 1C*, approved by City Council by Resolution No. 2020-\_\_\_\_\_ on November 10, 2020, including the *Transportation Consistency Analysis* prepared for the Amendment by Kimley-Horn and Associates, dated October 1, 2020, and any updates or amendments thereto (“Specific Plan Amendment”).
  - c) *Tracy Hills Specific Plan Final Subsequent Environmental Impact Report*, dated January 2016, certified by City Council by Resolution No. 2016-062 on April 5, 2016, and the *Initial Study for the Proposed Amendment to the Tracy Hills Specific Plan for Phase 1B and 1C* prepared by Kimley-Horn and Associates, dated October 2020, including all mitigation measures incorporated therein (hereinafter referred to together as “EIR”).
  - d) *Tracy Hills Phase 1A/B/C Plus KT Network Analysis Memorandum* prepared by Kimley-Horn and Associates, dated December 23, 2019, and *Tracy Hills Phase 1B Vesting Tentative Map Review Memorandum* prepared by Kimley-Horn and Associates, dated October 6, 2020, and any updates or amendments thereto (“Traffic Study”).

- e) *Tracy Hills Phase 1B and 1C Sanitary Sewer Study Technical Memorandum* prepared by Black Water Consulting Engineers, to be completed subsequent to the approval of the Vesting Tentative Subdivision Map, and any updates or amendments thereto (“Sanitary Sewer Study”).
- f) *Peer Review and Hydraulic Evaluation for Tracy Hills Phase 1B and 1C Technical Memorandum* prepared by West Yost Associates, dated May 7, 2020, and any updates or amendments thereto (“Water Study”).
- g) *Tracy Hills Phase 1B Drainage Analysis Technical Memorandum* prepared by Ruggeri-Jensen-Azar, dated August 4, 2020, and any revisions or additions thereto required as a result of the future review of said memorandum performed by the City storm drainage consultant (“Storm Drainage Study”).
- h) *Citywide Water System Master Plan* prepared by West Yost Associates, dated December 2012.
- i) *Plan Line Study – Corral Hollow Road* prepared by Ruggeri-Jensen-Azar (“Corral Hollow Road Plan Line”), dated November 7, 2016.
- j) *Pipeline Safety Hazard Assessment, Tracy Hills Specific Plan* prepared by Place Works dated September 2014.
- k) *Any Finance Implementation Plan* (“FIP”), as described in Section 10.20.060(b)(3)(B) of the Tracy Municipal Code, that is approved by the City Council for the property described in the Tracy Hills Phase 1B Vesting Tentative Subdivision Map, Application No. TSM18-0006.
- l) *Development Agreement*, executed between the City of Tracy and the developers of the Tracy Hills Project, approved by the City Council on April 5, 2016, by Ordinance No. 1213, and any amendments thereto (“Development Agreement”).
- m) *Settlement Agreement*, executed between the City of Tracy and the developers of the Tracy Hills Project, having an effective date of December 17, 2019 (“Settlement Agreement”).
- n) *Agreement to Defer Payment of Development Impact Fees on New Residential Development*, executed between the City of Tracy and the developers of the Tracy Hills Project, dated November 15, 2016 (“Fee Deferral Agreement”).

C.1.2. Timing of Compliance: The Applicant shall satisfy each of the following conditions prior to filing the first Final Map unless a different time for compliance is specifically stated in these Conditions of Approval. Any condition requiring an improvement that has already been designed,

completed or under a City-approved agreement may be considered satisfied at the discretion of the City Engineer.

For the purpose of these Conditions of Approval, if any Final Map or Parcel Map is filed within the boundaries of the Project solely for financing purposes only, and no permits will be requested pursuant to such map, then the requirements listed in these Conditions of Approval shall not apply to the final map or parcel map for financing purposes only.

- C.1.3. Revisions to the Vesting Tentative Subdivision Map (“VTSM”): The Subdivider shall incorporate revisions to comply with the recommendations and comments in the Traffic Study prior to signature by the City Engineer on the VTSM.

C.2. Improvement Plans

C.2.1. General

The Subdivider shall complete Improvement Plans to comply with all applicable laws, including the City Regulations (defined above) and these Conditions of Approval. Improvement Plans shall contain the design, construction details and specifications of improvements that are required to serve the Project. The Improvement Plans shall be drawn on a 24” x 36” size 4-mil thick polyester film (mylar) and 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.

- C.2.2. Signed and stamped Engineer’s Estimate that summarizes the cost of constructing all the public improvements shown on the Improvement Plans.

C.2.2. Site Grading

C.2.2.1. Erosion Control

Grading Plans shall specify the method of erosion control to be employed and materials to be used.

C.2.2.2. Grading and Drainage Plans

Submit a Grading and Drainage Plan prepared by a Registered Civil Engineer and accompanied by the Project’s Geotechnical/Soils Engineering report. The report shall provide recommendations regarding adequacy of the site relative to the stability of soils such as soil types and classification, percolation rate, soil bearing capacity, highest observed ground water elevation, and others.

- C.2.2.3. When the grade differential between the Project site and the adjacent property(s) exceeds 12 inches, a reinforced or masonry block wall, engineered slope, or engineered retaining wall is required for retaining soil. The Subdivider shall submit Retaining Wall Plans that includes the construction detail(s) and structural calculations of the retaining wall or masonry wall for City's review and approval.
- C.2.2.4. If an engineered slope is used to retain soil on adjacent property outside the Project boundary, a slope easement will be necessary from the adjacent property. The Subdivider shall obtain a slope easement from owner(s) of the adjacent and affected property(s) and show the slope easement on the Final Map.
- C.2.2.5. If applicable, show existing irrigation structure(s), channel(s) and pipe(s) that are to remain or relocated or to be removed, after coordinating with the irrigation district or owner of the irrigation facilities. If there are irrigation facilities including tile drains, that are required to remain to serve existing adjacent agricultural uses, the Subdivider shall design, coordinate and construct required modifications to the facilities to the reasonable satisfaction of the owner of the irrigation facilities and the City.

C.2.3. Grading Permit

The City will not accept a grading permit application for the Project as complete until the Subdivider has provided all relevant documents related to the grading permit required by the City Regulations and these Conditions of Approval, to the satisfaction of the City Engineer.

C.2.4. Storm Drainage

C.2.4.1. Not used.

C.2.4.2. All permanent underground storm drainage lines, structures and facilities to be maintained by the City shall be located within right-of-way to be dedicated to the City or within an easement. If applicable, interim facilities and storm drain lines and collection basins shall be maintained by the Subdivider.

Provide design and construction details for all storm water intercept points at Project boundary at I-580 showing adequate inlet structures, erosion control features, storm drainage easements and connections to the proposed storm drainage facilities in Tracy Hills Drive.

Prior to acceptance of storm drainage facilities for maintenance by the City, the Subdivider shall revise the locations of the 50' wide openings in the Conservation Easements to align with existing drainage routes and proposed storm drainage intercept points into the Project on-site storm drainage system.

- C.2.4.3. Storm drainage plans are to be submitted with the required hydrologic and hydraulic calculations for the sizing of storm drainage pipe(s) and shall comply with the Storm Drainage Study and City Regulations.
- C2.4.4. Prior to acceptance of maintenance of any public facilities by the City, the Subdivider shall prepare and obtain approval from the Public Works Department of a maintenance plan for all temporary and permanent storm drainage facilities to be maintained by the Subdivider or the HOA. The maintenance plan shall show the phasing of roadway construction, mass grading, drainage facilities, including collection channels, erosion control and protection of the Phillips 66 pipeline during construction. A SWPPP may be used as the maintenance plan with approval by the City Engineer.
- C.2.4.5. Storm water designs shall show facilities needed for the collection and channeling of surface water runoff and off-site flow-thru surface water runoff to underground storm drainage facilities, such as temporary drainage collection channels and sedimentation ponds. These improvements shall be shown on the Grading Plans and be approved by the City Engineer before the issuance of a Grading Permit.
- C.2.4.6. Since the Project will construct a terminal retention basin, it has been determined that the Project will be exempt from the Post Construction Stormwater Quality Standards. However, should new Federal or State regulations come into effect during the buildout of the Project that would require future compliance, then the Project would not be exempted from those new requirements.

SWPPP's shall be implemented during project construction. In addition, the Project may implement stormwater control measures such as disconnected roof leaders, non-contiguous street sidewalks (providing landscape strips/parkways), tree planting in parkways and use of drought tolerant landscape with drip irrigation systems and "intelligent" controllers. Similarly, public education measures regarding the damaging effects of pollutants to water quality may also be implemented.

- C.2.4.7. All storm water structural and construction details that are not part of the City Standard Plans or City Design Standards shall be provided by the Subdivider and submitted to the City for approval as part of the improvement plans.
- C.2.4.8. Storm drainage retention basin, including dual-use recreation facilities, shall be contained within a parcel suitable for dedication to the City of Tracy. The basin shall be provided with appropriate fencing with warning signs, access roadways to and from public roadways and access roadways into the ponds for maintenance purposes as approved by the City Engineer. All storm drainage inlets into this basin shall have inlet structures with design acceptable to the City Engineer. All dual-use recreation facilities located with the retention basin shall be designed in consultation with the Engineering, Public Works, Parks & Recreation, and other applicable City departments and are subject to the final approval of said departments.
- C.2.4.9. Fixed vertical sediment depth markers shall be installed near discharge points into the Retention Basin to assist with measurements of sediment deposition over time and future assessments of the need for maintenance activities.
- C.2.4.10. Prior to or concurrently with the City's approval of the first Final Map within Project, the Subdivider shall dedicate to the City utility maintenance easements necessary for all storm drainage facilities. All requirements relating to the access and maintenance by the Utilities Department and Public Works Department shall be incorporated into the improvement plans.

C.2.5. Sanitary Sewer

- C.2.5.1. All sanitary sewer lines and associated improvements shall be designed and installed per the Sanitary Sewer Study that is to be completed subsequent to the Vesting Tentative Subdivision Map approval and City Regulations. Before approval of Final Map(s) for the Project, Subdivider shall submit improvement plans and obtain approval for the plans for all on-site sewer improvements.
- C.2.5.2. No final inspection of any residential building will be performed or certificate of occupancy for commercial building will be issued, with the exception of Model Homes, until all improvements required per the Sanitary Sewer Study and City Regulations are completed and functional, as determined by the City Engineer.

- C.2.5.3. Subdivider shall pay impact fees at the time of issuance of building permit or in accordance with the Fee Deferral Agreement.
- C.2.5.4. Prior to the City's approval of the first Final Map within Project, the Subdivider shall dedicate to the City utility maintenance easements necessary for all sanitary sewer lines. All requirements relating to the access and maintenance by the Utilities Department and Public Works Department shall be incorporated into the improvement plans.
- C.2.5.5. The design for 10" sanitary sewer main shown crossing Lot 24 on the VTSM shall be revised as necessary to address access and maintenance requirements of the Public Works Department. The 10" sanitary sewer line shall be located within a parcel to be dedicated to the City for access and maintenance. A paved access shall be provided for the entire length of the parcel to be created between Lots 23 and 24 as required by the Public Works and Utilities departments.

C.2.6. Water Distribution System

- C.2.6.1. All potable and recycled water lines and associated improvements shall be designed and installed per the Water Study and City Regulations.
- C.2.6.2. During the construction phases (vertical construction) of the Project, the Subdivider shall be 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 Marshall.
- C.2.6.3. Prior to approval of each Final Map, the Subdivider shall submit calculations and improvement plans as required by the Fire Marshall and the City Engineer, and obtain a letter from the Fire Marshall that the fire flow parameters per Tracy Design Standards Section 6.02 are met for the phased construction of water lines to the satisfaction of the Fire Marshal.
- C.2.6.4. Subdivider shall install a 12-inch recycled water main in Tracy Hills Drive as required to serve the Project, connected to the existing recycled water main installed for the Tracy Hills Phase 1A project.

Initially, the 12-inch Recycled Water Main will be connected to a potable water supply (with a stub in place to future recycled water) as approved by the City until the program backbone Recycled Water facilities are in place. Once the Recycled

Water system network is online the 12-inch Recycled Water distribution main will be disconnected from the Potable Water system and connected to the Recycled Water System as part of the Recycled Water Project by the City.

- C.2.6.5. Domestic and Irrigation Water Services – The HOA will be responsible for the repair and maintenance of all valves, fittings on services related to landscaping on all parcels to be owned by HOA and within HOA easements.
- C.2.6.6. Fire Service Line – The Subdivider shall design and install fire hydrants at the locations approved by the Fire Marshall. Before the approval of the Improvement Plans, the Subdivider shall obtain written approval from the Fire Marshall for the design, location and construction details of the fire service connections to the Project, and for the location and spacing of fire hydrants that are to be installed to serve the Project.

#### C.2.7. Street Improvements

- C.2.7.1. Subdivider is required to design and construct all applicable on-site, frontage and off-site roadway improvements to serve the Project as identified in the Traffic Study, EIR and these Conditions of Approval. All improvements shall comply with City Regulations, Tracy Hills Design Standards and Specific Plan Amendment. Such improvements shall include, but are not limited to, roadways, water distribution system, sewer system, storm drainage systems, curb and gutter, sidewalks, street lighting system, traffic signals, ITS systems, pavement and crosswalk striping, bicycle lanes and trails, roadway signage and street signs, median islands, turn lanes, landscaping, and all necessary related improvements as required by the City. Timing of completion of street improvements shall comply with these Conditions of Approval.

In the case of a discrepancy between the information shown on the VTSM and the right-of-way and street improvement requirements in the Traffic Study, the Traffic Study shall govern unless determined otherwise by the City Engineer.

Subdivider shall conduct traffic counts as required by the City Engineer once every three months (or at other times if determined by the City Engineer) from the date of approval of the first Final map within the VTSM area. Subdivider shall submit report with the traffic counts to the City Engineer within 10 days from the date of the traffic counts. Where applicable, these traffic counts will be utilized to determine the timing of improvements that have been identified in the Traffic Report and the EIR.

C.2.7.2. Tracy Hills Drive and Other In-tract Streets – Right-of-Way

The Subdivider shall dedicate all rights-of-way that are necessary to construct Tracy Hills Drive and all the in-tract streets, based on their respective cross sections shown on the Vesting Tentative Subdivision Map (“VTSM”) and in accordance the Traffic Study, with the Final Map for the respective phase. The width of travel lanes, turn lanes, street median, landscaping strips and sidewalks shall be in accordance with the Vesting Tentative Subdivision Map and the Traffic Study.

C.2.7.3. Tracy Hills Drive and Other In-tract Streets – Improvements

Design and construction details of Tracy Hills Drive and the in-tract streets such as asphalt concrete pavement, curb, gutter, median curb, sidewalks, street lights, fire hydrants, landscaping with automatic irrigation system, storm drains, catch basin and drop inlets, sanitary sewer mains and laterals, water mains, individual water services and meters, pavement marking and striping, traffic signs, driveways, curb ramps and all other street improvements shall comply with City Regulations, and shall be shown on the Improvement Plans.

Improvements along Tracy Hills Drive shall also include Class II bike lanes on both sides of the roadway and an ADA-compliant decomposed granite trail northerly of the north side of the roadway, in accordance with the VTSM and the Traffic Study.

C.2.7.4. Lammers Road South of Tracy Hills Drive – Right-of-Way

The Subdivider shall dedicate the right-of-way necessary to construct the ultimate future Lammers Road improvements (137’ right-of-way) between Tracy Hills Drive and I-580, based on the Future Lammers Road (Ultimate) cross section shown on the VTSM and in accordance the Traffic Study, with the Final Map for the respective phase that meets the trigger thresholds identified in the Traffic Study. The ultimate future width and number of travel lanes and turn lanes, and width of street median, landscaping strips and sidewalks shall be in accordance with the Traffic Study.

The Subdivider shall dedicate or cause to be dedicated all right-of-way that is necessary to construct the ultimate future Lammers Road improvements between I-580 and Corral Hollow Road, and that is outside of the boundaries of the Project, in accordance the Traffic Study. Details of the roadway alignment and geometry shall be submitted for

review and approved by the City Engineer. The right-of-way shall be dedicated to the City prior to or concurrently with the Final Map that dedicates the right-of-way for the portion of Lammers Road between Tracy Hills Drive and I-580 as described above. The ultimate future width and number of travel lanes, turn lanes, and width of street median, landscaping strips and sidewalks shall be in accordance with the Traffic Study and roadway alignment and geometry as approved by the City Engineer.

C.2.7.5. Lammers Road South of Tracy Hills Drive – Improvements for Residential Units

A total of 1,347 residential units west of Corral Hollow Road, accessed via Tracy Hills Drive, can be built before triggering the need for the Lammers Road south connection between Tracy Hills Drive and Corral Hollow Road. This trigger equates to approximately 890 westbound and 473 eastbound P.M. peak hour trips along Tracy Hills Drive west of Corral Hollow Road.

Prior to approval of the first Final Map after the trigger threshold has been reached as determined by the traffic counts required by Condition C.2.7.1, the Subdivider shall construct Lammers Road improvements south of Tracy Hills Drive, extending between Tracy Hills Drive and Corral Hollow Road, including undercrossing beneath I-580, consisting of two travel lanes, and a shoulder, landscape strips and sidewalk on the east side as shown on the VTSM and in accordance with the Traffic Study. Subdivider shall obtain approval of encroachment permit and/or agreements from Caltrans for the I-580 undercrossing and related improvements within the Caltrans right-of-way.

C.2.7.6. Lammers Road South of Tracy Hills Drive – Improvements for Commercial Development

Prior to the final inspection of any commercial building developed on the area south of Tracy Hills Drive and east of future Lammers Road and designated as General Highway Commercial in the Specific Plan Amendment (Parcels T and U on the VTSM), the Subdivider shall construct the Interim Lammers Road Improvements south of Tracy Hills Drive, extending between Tracy Hills Drive and Corral Hollow Road, including widened undercrossing beneath I-580, consisting of four travel lanes, shoulders, street median, landscape strips and sidewalks as shown on the VTSM and in accordance with the Traffic Study. The final extent and cross-section geometry of the improvements shall be determined at the time of application for the commercial development.

C.2.7.7. In order to guarantee completion of the portion of the Lammers Road South of Tracy Hills Drive Improvements between I-580 and Corral Hollow Road and that lie outside of the boundaries of the Project, the Subdivider shall enter into an improvement agreement (SIA or OIA) and post an improvement security in the amounts and form in accordance with section 12.36.080 of the TMC and as required by these Conditions of Approval. The Subdivider shall submit the signed and notarized improvement agreement with the necessary improvement security before approval of the Final Map within the Project that meets the trigger thresholds identified in the Traffic Study.

C.2.7.8. Lammers Road North of Tracy Hills Drive – Right-of-Way

The Subdivider shall dedicate the right-of-way necessary to construct the ultimate future Lammers Road improvements (137' right-of-way) between Tracy Hills Drive and the California Aqueduct right-of-way, based on the Future Lammers Road (Ultimate) cross section shown on the VTSM and in accordance the Traffic Study, with the Final Map for the respective phase. The ultimate future width and number of travel lanes and turn lanes, and width of street median, landscaping strips and sidewalks shall be in accordance with the Traffic Study.

C.2.7.9. Lammers Road North of Tracy Hills Drive – Improvements for High Density Residential Development

At the time of approval of the first Final Map for residential development within the area north of Tracy Hills Drive and east of future Lammers Road (designated as High Density Residential in the Specific Plan Amendment and shown as Parcels B and C on the VTSM), the Subdivider shall construct the Interim Lammers Road improvements, extending between Tracy Hills Drive and the California Aqueduct right-of-way, consisting of four travel lanes, shoulders, street median, landscape strips and sidewalks as shown on the VTSM and in accordance with the Traffic Study. The final extent and cross-section geometry of the improvements shall be determined at the time of application for the high density residential development.

In order to guarantee completion of the Lammers Road North of Tracy Hills Drive Improvements, the Subdivider shall enter into an improvement agreement (SIA or OIA) and post an improvement security in the amounts and form in accordance with section 12.36.080 of the TMC and as required by these Conditions of Approval. The Subdivider shall submit the signed and notarized improvement agreement with the

necessary improvement security before approval of the first Final Map within Parcels B and C.

C.2.7.10. Corral Hollow Road at Lammers Road – Right of Way

Per the Citywide Roadway & Transportation Master Plan (CRTMP) that was adopted by City Council on November 26, 2012, pursuant to Resolution 2012-240, amended on November 19, 2013, Corral Hollow Road will be a 4-lane major arterial street with a raised median, sidewalks, bicycle facilities and landscaping, as depicted on the Corral Hollow Road Plan Line.

The Subdivider shall dedicate all rights-of-way necessary for the widening of Corral Hollow Road required at the future intersection of Corral Hollow Road and Lammers Road. The dedication shall include additional right-of-way for turn lanes and transitions where applicable. If required, the Subdivider shall also dedicate right-of-way for construction of intersection improvements as outlined in the Traffic Study, including traffic signal or a roundabout for buildout requirements.

The Subdivider may be eligible for fee Credits and/or reimbursements for right-of-way dedication beyond Project's frontage obligation per the CRTMP requirements. Temporary or interim improvements are not eligible for fee credits or reimbursements.

C.2.7.11. Corral Hollow Road at Lammers Road – Improvements

Concurrent with the construction of improvements on Lammers Road south of Tracy Hills Drive as described above, the Subdivider shall construct the Corral Hollow Road and Lammers Road intersection improvements, consisting of either a roundabout or traffic signal and all associated improvements, in accordance with the Traffic Study.

C.2.7.12. Pavement Repaving/Overlay on Corral Hollow Road

For the first 144 homes within the VTSM area, the Subdivider shall pay \$50,000 towards its fair share towards the estimated cost of repaving/overlay from I-580 south right-of-way line to southerly City Limits as directed by the City Engineer. At the time of construction of the intersection of future Lammers Road and Corral Hollow Road the Subdivider shall design and install repaving/overlay from the intersection to I-580 south right-of-way line as directed by the City Engineer. City will make fair share contributions collected

from other projects available to the Subdivider towards the cost of repaving/overlay.

C.2.7.13. Not used.

C.2.7.14. In order to guarantee completion of the Corral Hollow Road Improvements, the Subdivider shall enter into an improvement agreement (SIA or OIA) and post an improvement security in the amounts and form in accordance with section 12.36.080 of the TMC and as required by these Conditions of Approval. The Subdivider shall submit the signed and notarized improvement agreement with the necessary improvement security before approval of the Final Map within the Project that meets the trigger thresholds identified in the Traffic Study.

C.2.7.15. Criseldo Mina Avenue and Palmer Street - Improvements

In accordance with the Traffic Study, all improvements necessary to implement Route No. 1 in the Alternative Routes Analysis contained therein, consisting of the connection of Criseldo Mina Avenue to Palmer Street, shall be completed and said streets shall be accepted by the City Council as public roadways prior to the filing of the Final Map within the Project that meets the trigger thresholds identified in the Traffic Study.

C.2.7.16. Emergency Vehicle Access (EVA)

The existing all-weather emergency vehicle access road constructed per the Conditions of Approval and EIR Mitigation Measures for the Tracy Hills Phase 1A VTSM shall be reconstructed as necessary to conform to the extended Tracy Hills Drive improvements and the proposed Project grading north of Tracy Hills Drive, as generally shown on the VTSM.

Prior to issuance of the first building permit, the Subdivider shall ensure that the existing and reconstructed portions of the all-weather emergency vehicle access road, extending from Tracy Hills Drive northerly to its terminus at South Lammers Road, is fully accessible to Fire Department vehicles and all other necessary emergency responders at all times and to the satisfaction of the Fire Department.

C.2.7.17. Traffic Control Plan

Before starting any work within the project, the Subdivider shall submit a Traffic Control Plan for each phase of work, to show the method and type of construction signs to be used for regulating traffic at the work areas and within existing

streets accessing the work areas. The Traffic Control Plan shall be prepared by a Civil Engineer or Traffic Engineer licensed to practice in the State of California.

C.2.7.18. Encroachment Permit

Before starting any work to be performed and improvements to be constructed within City's right-of-way, the Subdivider shall obtain an Encroachment Permit from the City. The Subdivider or its authorized representative shall submit all documents that are required to process the Encroachment Permit including but not limited to, approved Improvement Plans, Traffic Control Plan, payment of engineering review fees, copy of the Contractor's license, Contractor's Tracy business license, and certificate of insurance naming the City of Tracy as additional insured or as a certificate holder.

C.2.7.19. Dead-End Streets.

A standard barricade and guardrail with appropriate traffic sign will be required at street ends. Alternatively, turnarounds/ hammerheads meeting the requirements of Fire Marshall shall be provided at the dead-end streets.

C.2.7.20. All intersections shall be designed to accommodate fire truck movements as required by the Fire Department.

C.2.7.21. Subdivider must provide and verify sight distances, where applicable, with regard to intersections, reverse lots and fence placements as required by the City Engineer.

C.2.8. EIR Mitigation Measures

The EIR identifies Project impacts that are to be mitigated by the Subdivider. The mitigation measures are summarized in the Mitigation, Monitoring and Reporting Matrix contained in the EIR as referenced under Item C.1.1.c above. Subdivider shall comply with all applicable mitigation measures as outlined in the EIR including, but not limited to, the following:

- a. Mitigation Measure HAZ 4.8-2b: Prior to issuance of grading permits, the Project Applicant shall work with Conoco Phillips and Shell to implement and observe a site damage-prevention plan to the satisfaction of the City of Tracy Engineering Division.
- b. Mitigation Measure LU 4.10-1: All tentative and final maps within the THSP shall conform to the provisions of the 2009 ALUCP (or the ALUCP in effect at the time of Project Applicant submissions)

- c. Mitigation Measure HYDRL 4.9-2: All Project Applicants shall submit and obtain City approval of a drainage plan to the City of Tracy for on-site post-construction BMP drainage improvements consistent with the Tracy Hills Storm Drain Master Plan. Once City approval is received, all Project Applicants shall construct the drainage improvements as necessary and in accordance with the timing described in the Tracy Hills Storm Drain Master Plan.
- d. Mitigation Measure NOI 4.11-3e: Prior to the issuance of Grading Permits, any residential development associated with the THSP Buildout (i.e., development other than Phase 1A) located within 260 feet of the Union Pacific Railroad corridor shall have an Acoustical Analysis prepared to fully analyze acoustical impacts and develop measures, if required, to ensure that the City's exterior standards of 70 dBA would be achieved for the proposed land uses that are subject to noise from train pass-bys. The analysis shall conduct detailed train noise modeling to verify that residences are adequately shielded and/or located at an adequate distance from the rail corridor to comply with the City's exterior standards. The analysis shall also ensure that interior noise levels do not exceed 45 dBA.
- e. Mitigation Measure PSR 4.12-6: Developers of subsequent phases of the Project (beyond Phase 1A) will be required to prepare SB 221 analysis for each subsequent phase of development.
- f. Mitigation Measure PSR 4.12-7a: As part of the development process for each individual site-specific development under the Specific Plan, the City shall review flow monitoring, at the applicant's cost, to determine available capacity.
- g. Mitigation Measure TRANS 4.13-2: To achieve compliance with CIR-3 Policy P4 and P6, the bicycle and pedestrian improvement connections from the THSP to the Citywide Network shall be implemented when the roadway infrastructure is required as determined at approval of each final map or issuance of building permits by the City Engineer. The pedestrian and bicycle facilities are included in the City of Tracy's typical cross sections and in the City TIF. Bicycle and pedestrian facilities within the THSP area shall be implemented with each building permit application/final map approval. Widening Corral Hollow Road and constructing and widening Lammers Road shall be in place when the project generates 2,588 AM peak hour trips.
- h. Mitigation Measure PSR 4.12-2: Prior to issuance of the first building permit, the developer shall construct an all-whether, emergency vehicle access to all points of the Project site from Lammers Road (including crossings of the Delta Mendota Canal, Union Pacific Railroad, and California Aqueduct). The emergency

vehicle access shall be available to police, fire, and all other necessary and relevant emergency responders. The design, location, and maintenance of the access shall meet City standards to the satisfaction of the Fire Chief. The access shall be continuously maintained by the developer until permanent access is developed and accepted for maintenance by the City

C.2.9. Neighborhood, Linear and Dual-Use Parks

- C.2.9.1. The Subdivider shall offer for dedication Parcels “EEE”, “DDD”, “CCC” and “K” for neighborhood park, linear park, and dual use recreation facility/detention basin purposes, respectively, on the Final Map that corresponds to the timing of completion of respective parks as identified in the Planning’s Department’s Conditions of Approval. The Subdivider shall design and construct the park improvements consistent with the Tracy Hills Specific Plan, Specific Plan Amendment and City Regulations. The Subdivider shall be eligible for park fee credits in accordance with the Title 13 of the TMC and the Park Improvement and Reimbursement Agreement (“PI&RA”).
- C.2.9.2. The Subdivider shall submit park improvement plans, signed and notarized improvement agreement PI&RA, and Improvement Security in the amount and type specified in the City Regulations at the time of approval of the Final Map that corresponds to the timing of completion of the park improvements specified in Planning Division’s Conditions of Approval.

C.2.10. Public Utility Easements

- C.2.10.1. Undergrounding of Overhead Utilities. Any existing overhead lines and poles within the Project boundaries shall be removed or undergrounded.
- C.2.10.2. All private utility services to serve the Project such as electric, telephone and cable TV to the building must be installed underground, within right-of-way or a dedicated Public Utility Easement (PUE) and at the location approved by the City and the respective owner(s) of the utilities.

The Subdivider shall submit improvement plans for the installation of electric, gas, telephone and TV cable lines that are to be installed under the sidewalk or within the PUE. Underground utility conduits may be installed under the sidewalks, and underground boxes and structures may be located in the landscaped parkway next to the curb. All above-ground boxes and facilities shall be behind the sidewalk and within the PUE. Pop-outs to provide additional

width of PUE where required to accommodate larger above-ground structures will be permitted subject to review and approval by Public Works Director and the City Engineer. Before approval of the first Final Map, the Subdivider shall complete the necessary coordination work with the respective owner(s) of the utilities to for approval.

- C.2.10.3. Public Utility Easements on sideyard lots shall be adjusted or eliminated in final neighborhood designs based on actual joint trench design requirements.

### C.3. Final Map

The City will not approve any Final Map until the Subdivider demonstrates, to the satisfaction of the City Engineer, that all the requirements set forth in these Conditions of Approval are completed, including, but not limited to the following:

- C.3.1. Subdivider has submitted one reproducible (mylar) copy of the approved tentative subdivision map for the Project after Subdivider's receipt of a notification of approval of the Tentative Subdivision Map. The signature of the owner of the Property on the Tentative Subdivision Map shall indicate the owner's consent to the preparation of the Tentative Subdivision Map and the proposed subdivision of the Property.
- C.3.2. Each Final Map is prepared in accordance with the applicable requirements of the Tracy Municipal Code, these Conditions of Approval, all other applicable City Regulations, and in substantial conformance with the Tentative Subdivision Map.
- C.3.3. Each Final Map includes and shows offer(s) of dedication of all right(s)-of-way and/or temporary or permanent easement(s) required by the Improvement Plans and Final Map, in accordance with City Regulations and these Conditions. If construction easement(s) is/are shown, it/they shall indicate the termination date of the construction easement(s).
- C.3.4. Horizontal and vertical control for the Project shall be based upon the City of Tracy coordinate system and at least three 2nd order Class 1 control points establishing the "Basis of Bearing" and shown as such on the Final Map. The Final Map shall also identify surveyed ties from two of the horizontal control points to a minimum of two separate points adjacent to or within the Property described by the Final Map.
- C.3.5. Subdivider has submitted a signed and stamped Engineer's Estimate that show construction cost of subdivision improvements that are described in Conditions C.2 above plus 10% for construction contingencies.
- C.3.6. Subdivision Improvement Agreement

Before the City's approval of any Final Map, the Subdivider shall execute a Subdivision Improvement Agreement (for the public facilities required to serve the real property described by the Final Map), and post all required improvement security in accordance with City Regulations.

C.3.7. Final Map Phasing Plan

Prior to Subdivider's submittal to the City of the first Final Map for City approval, Subdivider shall submit for the City Engineer's review and reasonable approval a phasing plan for the submittal of all Final Maps to be filed for this Vesting Tentative Subdivision Map. The phasing plan may be subject to subsequent modifications based on market conditions, the rate of development, and Subdivider's disposition of the parcels created by the Final Maps.

C3.8. Deferred Improvement Agreement

Prior to the City's approval of the first Final Map within the Project, the Subdivider shall execute a Deferred Improvement Agreement, in substantial conformance with the City's standard form agreement, by which (among other things) the Subdivider agrees to complete construction of all remaining public facilities (to the extent the public facilities are not included in the Subdivision Improvement Agreement or other executed agreement(s) with the City) which are required by these Conditions of Approval. The Deferred Improvement Agreement shall identify timing requirements for construction of all remaining public facilities, in conformance with the phasing plan submitted by the Subdivider and approved by the City Engineer.

C.3.9. Improvement Security

The Subdivider shall provide improvement security for all public facilities, as required by Subdivision Improvement Agreement or Offsite Improvement Agreement. The form of the improvement security may be a surety bond, letter of credit or other form in accordance with City Regulations. The amount of the improvement security shall be as follows:

- C.3.9.1 Faithful Performance (100% of the estimated cost of constructing the public facilities).
- C.3.9.2 Labor & Material (100% of the estimated cost of constructing the public facilities).
- C.3.9.3 Warranty (10% of the estimated cost of constructing the public facilities).

C.3.9.4 Monumentation (\$750 multiplied by the total number of street centerline monuments that are shown on the Final Map).

- C.3.10. Subdivider has paid engineering review fees including improvement plan checking, final map review, agreement processing, and all other fees required by these Conditions of Approval and City Regulations.
- C.3.11. Subdivider has submitted technical or materials specifications, cost estimate, and technical reports related to the design of improvements that are shown on the Improvement Plans and as required by these Conditions.
- C.3.12. Subdivider has submitted hydrologic and storm drainage calculations for the design and sizing of in-tract storm drainage pipes located within the Project.
- C.3.13. Subdivider has submitted signed and stamped Improvement Plans.
- C.3.14. Signed and notarized Offsite Improvement Agreement (OIA) and Improvement Security, to guarantee completion of the identified public improvements that are necessary to serve the Project as required by these Conditions of Approval. The form and amount of Improvement Security shall be in accordance with Section 12.36.080 of the Tracy Municipal Code (TMC), and the OIA.
- C.3.15. Signed and notarized Deferred Improvement Agreement (DIA) and Improvement Security, to allow deferment of completion of improvements as required by these Conditions of Approval. The form and amount of Improvement Security shall be in accordance with the DIA and Section 12.36.080 of the TMC.

C.4. Grading and Encroachment Permits

No applications for grading and encroachment permits will be accepted by the City as complete until the Subdivider has provided all documents required by these Conditions and City Regulations, to the reasonable satisfaction of the City Engineer, including, but not limited to, the following:

- C.4.1. Grading and Drainage Plans prepared on a 24" x 36" size polyester film (mylar). Grading and Drainage Plans shall be prepared under the supervision of and stamped and signed by a Registered Civil Engineer.
- C.4.2. 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.4.3. Three sets of the Storm Water Pollution Prevention Plan (SWPPP) identical to the reports submitted to the State Water Quality Control

Board (SWQCB) and any documentation or written approvals from the SWQCB including a copy of the Notice of Intent (NOI) with the state-issued Wastewater Discharge Identification number (WDID). After the completion of the Project, the Subdivider 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.

- C.4.4. 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 Subdivider. The Subdivider shall comply with all the requirements of the SWPPP and applicable Best Management Practices (BMPs) and the Storm Water Regulations adopted by the City in 2008 and any subsequent amendment(s), and the City Regulations.
- C.4.5. Two sets of the Project's Geotechnical Report signed and stamped by a licensed Geo-technical Engineer licensed to practice in the State of California. The technical report must include relevant information related to soil types and characteristics, soil bearing capacity, percolation rate, roadway section construction recommendations and elevation of the highest observed groundwater level.
- C.4.6. A copy of the Approved Fugitive Dust and Emissions Control Plan that meets San Joaquin Valley Air Pollution Control District (SJVAPCD) as required in Mitigation Monitoring and Reporting Program of the Tracy Hills Specific Plan Final Environmental Impact Report (TH-EIR).
- C.4.7. Two sets of Hydrologic and Storm Drainage Calculations for the design of the on-site storm drainage system.
- C.4.8. Reasonable written permission from irrigation district or affected owner(s), if applicable. The cost of relocating and/or removing irrigation facilities and/or tile drains is the sole responsibility of the Subdivider.
- C.4.9. Written approval(s) or permit(s) obtained from San Joaquin County regarding the removal and abandonment of any existing well(s), if applicable. All existing on-site wells, if any, shall be abandoned or removed in accordance with the City and San Joaquin County requirements. The Subdivider shall be responsible for all costs associated with the abandonment or removal of the existing well(s) including the cost of permit(s) and inspection.
- C.4.10. Improvement Plans prepared on a 24" x 36" size 4-mil thick polyester film (mylar) that incorporate all the requirements described in these Conditions of Approval. 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.

- C.4.11. Two sets of structural calculations for drainage structures and retaining walls within street right-of-way and retention basins signed and stamped by a Structural Engineer licensed in the State of California.
- C.4.12. Not Used.
- C.4.13. Check payment for the applicable engineering review fees which include plan checking, permit and agreement processing, testing, construction inspection, and other applicable fees as required by these Conditions of Approval. The engineering review fees will be calculated based on the current fee rate adopted by the City Council.
- C.4.14. Traffic Control Plan for each phase signed and stamped by a Registered Civil Engineer or Traffic Engineer licensed in the State of California.
- C.4.15. As required per Mitigation Measure 4.8-2a of the EIR, the Subdivider shall submit, prior to issuance of grading permits, a Phase II ESA focused on soil sampling conducted near the location of the underground crude oil pipelines, as determined by a qualified Phase II/Site Characterization specialist.
- C.4.16. As required per Mitigation Measure 4.8-2b of the EIR, prior to issuance of grading permits, the Subdivider shall work with Conoco Phillips to implement and observe a site damage prevention plan to the satisfaction of the City of Tracy Engineering Division.
- C.4.17 Signed and notarized Offsite Improvement Agreement (OIA) and Improvement Security, to guarantee completion of the identified public improvements that are necessary to serve the Project as required by these Conditions of Approval. The form and amount of Improvement Security shall be in accordance with Section 12.36.080 of the Tracy Municipal Code (TMC), and the OIA.
- C.4.18 Signed and notarized Deferred Improvement Agreement (DIA) and Improvement Security, to allow deferment of completion of improvements as required by these Conditions of Approval. The form and amount of Improvement Security shall be in accordance with the DIA and Section 12.36.080 of the TMC, or pursuant to the terms of the Development Agreement, as appropriate.

C.5. Building Permit

The City will not approve any building permit within the Project boundaries (except for a plumbing permit issued for the purpose of perfecting an RGA) until a Final Map is approved by the City Council and it is recorded at the San Joaquin County Recorder's Office, and the Subdivider demonstrates, to the reasonable satisfaction of the City Engineer, compliance with all the required Conditions of Approval and payment of fees in accordance with the Fee Deferral Agreement including but not limited to the following:

- C.5.1. Payment of the applicable current City-Wide Roadway and Traffic, Water, Recycled Water, Wastewater, Storm Drainage, Public Safety, Public Facilities, and Park Development Impact Fees as these relate to the Project and as required by these Conditions of Approval.
- C.5.2. Payment of applicable Regional Transportation Impact Fees (RTIF) as required in the Mitigation, Monitoring and Reporting Program of the EIR, these Conditions of Approval, and the Settlement Agreement.
- C.5.3. Check payment of any applicable Agricultural Mitigation Fee as required in Chapter 13.28 of the Tracy Municipal Code and Mitigation Measure AG 4.2.1 of the EIR and these Conditions of Approval.
- C.5.4. Payment of the San Joaquin County Facilities Fees as required in Chapter 13.24 of the TMC.

C.6. Final Building Inspection

The City will not perform final building inspection (except for Model Homes) until after the Subdivider provides documentation which demonstrates, to the reasonable satisfaction of the City Engineer, that:

- C.6.1. The Subdivider has completed construction of all public facilities required to serve the building for which a certificate of occupancy is requested or a final building inspection has to be performed unless otherwise defined herein. Unless specifically provided in these Conditions, or the City Regulations, the Subdivider shall take all actions necessary to construct all public facilities required to serve the Project, and the Subdivider 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. Temporary or Final Building Certificate of Occupancy

No Final Building Inspection shall be performed or a Temporary or Final Building Certificate of Occupancy will be issued (except for Model Homes) by the City until after the Subdivider provides reasonable documentation which demonstrates, to the satisfaction of the City Engineer, that:

- C.7.1 The Subdivider has satisfied all the requirements set forth in these Conditions of Approval.
- C.7.2. The Subdivider has completed construction of all required public facilities for the building for which a certificate of occupancy is requested, unless otherwise defined herein. Unless specifically provided in these Conditions of Approval, or some other applicable City Regulations, the Subdivider shall use diligent and good faith efforts in taking all actions necessary to construct all public facilities required to

serve the Project, and the Subdivider 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.8. Acceptance of Public Improvements

Public improvements will not be considered for City Council's acceptance until after the Subdivider demonstrates to the reasonable satisfaction of the City Engineer, completion of the following:

- C.8.1. All the public improvements shown on the Improvement Plans are completed and all the deficiencies listed in the deficiency report prepared by the assigned Engineering Inspector are all corrected.
- C.8.2. Subdivider has completed the 90-day public landscaping maintenance period.
- C.8.3. Subdivider has submitted Certified "As-Built" Improvement Plans (or Record Drawings). Upon completion of the construction by the Subdivider, the City shall temporarily release the originals of the Improvement Plans to the Subdivider so that the Subdivider will be able to document revisions to show the "As Built" configuration of all improvements.
- C.8.4. Where applicable, signed and notarized Grant Deed(s) with legal description(s) and plat maps for the offer of dedication of right-of-way, and Grant of Easements as required per these Conditions of Approval and City Regulations, or dedications shown on the Final Map.

C.9. Release of Improvement Security

City will release Improvement Security(s) to the Subdivider after City Council's acceptance of public improvements, both on-site and off-site, in accordance with TMC section 12.36.080, upon written request and submittal of the recorded Notice of Completion.

C.10. Special Conditions

- C.10.1. All streets and utilities improvements within City's right-of-way shall be designed and constructed in accordance with City Regulations, except as otherwise specifically approved in the Tracy Hills Specific Plan.
- C.10.2. When street cuts are made for installation of utilities, the Subdivider is required to install 2 inches thick asphalt concrete overlay with reinforcing fabric at least 25 feet from all sides and for the entire length of the utility trench. A 2 inches deep grind on the existing asphalt concrete pavement will be required where the asphalt concrete overlay will be applied and shall be uniform thickness in order to maintain current pavement grades, cross and longitudinal slopes. If the utility

trench extends beyond the median island, the limit of asphalt concrete overlay shall be up to the lip of existing gutter located along that side of the street.

C.10.3. 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. Any damaged, displaced, obliterated or lost monuments or survey markers shall be re-established or replaced by a licensed Land Surveyor at the Developer's (or Contractor's) sole expense. A corner record must be filed in accordance with the State law for any reset monuments (California Business and Professions Code Section 8871).

C.10.4. Benefit District

The Subdivider may make a written request to the City for the formation of a Benefit District, before the approval of the final map and improvement plans for the public facility(s) considered to be oversized that benefits other property(s) or development(s). Reimbursement request(s) will be processed in accordance with TMC Chapter 12.60.

C.10.5. The CFD or HOA shall include future costs of maintenance including PG&E charges for all new streetlights and new traffic signals to be installed by the Project.

C.10.6. Nothing contained in these Conditions shall be construed to permit any violation of City Regulations. Subject, however, to City Regulations, this Condition does not preclude the City from requiring pertinent revisions and additional requirements to the final map, improvement agreements, and improvement plans, before the City Engineer's signature on the final map and improvement plans, if the City Engineer finds it necessary due to public health and safety reasons. (Government Code section 66498.6.) The Subdivider shall bear all the cost for the inclusion, design, and implementations of such additions and requirements, without reimbursement or any payment from the City.

**EXHIBIT “D”  
SUBDIVIDER’S AUTHORIZED REPRESENTATIVE INFORMATION**

Initial Contact Information for Subdivider’s Authorized Representative:

Bridget Koller  
Lennar Homes of California, Inc.  
2603 Camino Ramon, Suite 525  
San Ramon, CA 94583  
(925) 242-0811  
bridgit.koller@lennar.com

CITY ATTORNEY'S OFFICE

TRACY CITY COUNCIL

RESOLUTION 2023-\_\_\_\_\_

**APPROVE THE OFFSITE IMPROVEMENT AGREEMENT BETWEEN CITY AND LENNAR HOMES OF CALIFORNIA, LLC FOR PUBLIC ROADWAY IMPROVEMENTS FOR TRACY HILLS DRIVE 1B-1 THAT ARE REQUIRED AS BY THE CONDITIONS OF APPROVAL FOR THE VESTING TENTATIVE SUBDIVISION MAP FOR TRACY HILLS PHASE 1B**

**WHEREAS**, on November 10, 2020, the City Council adopted the Tracy Hills Specific Plan Amendment for Tracy Hills Phase 1B/1C and approved various related land use entitlements, including that certain Small-Lot Vesting Tentative Subdivision Map for Tracy Hills Phase 1B, Tract 4004, processed under Application No. TSM18-0006 and approved by Resolution No. 2020-188; and

**WHEREAS**, the Tracy Hills Drive 1B-1 Improvements are part of the public improvements that are required to be designed and constructed by the Developer, Lennar Homes of California, LLC, under the Conditions of Approval for the Vesting Tentative Subdivision Map for Tracy Hills Phase 1B; and

**WHEREAS**, the public right-of-way for the Tracy Hills Drive 1B-1 Improvements was dedicated to City on the Final Subdivision Map for Tract 4083, Tracy Hills Village 9A, as approved by City on October 19, 2021, and filed on November 17, 2021; and

**WHEREAS**, improvement plans and specifications for the Tracy Hills Drive 1B-1 Improvements, which describe in more detail the improvements which are required under the Offsite Improvement Agreement, were prepared on behalf of the Developer and have been approved by the City Engineer; and

**WHEREAS**, the Developer has executed the Offsite Improvement Agreement and has submitted the required security to guarantee completion of the required improvements; now, therefore, be it

**RESOLVED:** That the City Council of the City of Tracy hereby approves the Offsite Improvement Agreement between City and Lennar Homes of California, LLC for public roadway improvements for Tracy Hills Drive 1B-1 that are required by Conditions of Approval for the Vesting Tentative Subdivision Map for Tracy Hills Phase 1B-1.

\*\*\*\*\*

The foregoing Resolution 2023-\_\_\_\_\_ was adopted by the Tracy City Council on the 16<sup>th</sup> day of May 2023 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 (1) accepting the construction for the Temporary Emergency Housing Project on Arbor Avenue, Phase 1, CIP 71112 for work completed by GradeTech, Inc., of San Ramon, California, (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 bonds and retention payment.**

EXECUTIVE SUMMARY

City staff recommends that the City Council accept the construction for the Temporary Emergency Housing Project on Arbor Road, Phase 1, CIP 71112, as complete. Project costs are within the available budget and work was completed in accordance with plans and specifications as approved. Staff recommends that the City Council accept this phase of the project as complete.

BACKGROUND AND LEGISLATIVE HISTORY

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

In order to expedite the groundbreaking of the Project, the construction work was divided into a preliminary phase (Phase 1) which consisted of demolition, rough grading and installation of underground utilities, all work which could be and was designed and prepared in house by City staff.

Engineering staff prepared the plans and specifications and advertised the Project for competitive bids on December 17, 2021, and December 24, 2021. Bids for this Project were publicly opened virtually on January 19, 2022. On April 19, 2022, City Council awarded a construction contract to GradeTech, Inc., of San Ramon, California in a not-to-exceed amount of \$2,473,100.

Two (2) change orders were issued during construction activities totaling \$944,443. The two (2) authorized change orders included work to address unforeseen structures found underground that were not on records prior to the initiation of design, unforeseen concrete pads needed for modulars installation, and change in material due to unforeseen delays in the supply chain.

The contractor has now completed all work required in accordance with the plans and specifications and City staff is recommending acceptance of the project. The City Engineer has inspected the completed work and confirmed that all work conforms to the contract plans and specifications and has been completed per the original contract.

Future Phases to include work such as premanufactured structures installation, sprung high tension membrane structure, interior buildout of the structure, plumbing, electrical and HVACX systems, sewer lift station package and precast holding tanks, fencing and gate, sidewalks, curbs, gutters, asphalt pavement, drainage system, landscape and all other work as required.

ANALYSIS

Given the complexity and magnitude of the homelessness crisis, further exacerbated by the COVID-19 pandemic, and the limited supply of affordable permanent housing options in the City and throughout San Joaquin County, there is a significant and immediate need for interim housing solutions in the City, including interim emergency housing. Concerns about the public health, safety, and welfare of unsheltered individuals grows as the months progress without options to shelter the unhoused.

On March 10, 2020, the Tracy City Council (Council) adopted Resolution No. 2020-050, which declared a shelter crisis pursuant to California Government Code Section 8698.2. The City actively pursued the development and construction of a temporary housing shelter on City-owned land located on Arbor Avenue to serve as an ongoing full-service temporary housing solution for the City's unsheltered.

FISCAL IMPACT

The Temporary Emergency Housing Project on Arbor Avenue, Phase 1, CIP 71112, is an approved Capital Improvement Project with a budget of \$10,430,689.

Final project costs for phase 1 were within budget as follows:

A. Construction Contract Amount	\$ 2,221,356
B. Approved Change orders	\$ 944,443
C. Design, construction management, inspection, testing & miscellaneous project management expenses	\$ 296,772
<b>Total Project Costs</b>	<b>\$ 3,462,571</b>

The following table lists current balances remaining in the project:

<u>Funding Source</u>	<u>Budget</u>	<u>Expenses (for all Phases)</u>	<u>Encumbered (Committed)</u>	<u>Balance</u>
Community Development Block Grant (s)	\$ 836,294	\$ 836,294	\$ -	\$ -
Homeless Housing, Assistance & Prevention	\$ 743,282	\$ 743,282	\$ -	\$ -
American Rescue Plan Act - SJ County (MOU B-8245)	\$ 3,661,113	\$ 3,217,343	\$ 443,770	\$ -
Housing Asset Funds (City)	\$ 690,000	\$ 137,852	\$ 61,404	\$ 490,744
American Rescue Plan Act - City of Tracy	\$ 4,500,000	\$ -	\$ -	\$ 4,500,000
<b>Totals</b>	<b>\$ 10,430,689</b>	<b>\$ 4,934,771</b>	<b>\$ 505,174</b>	<b>\$ 4,990,744</b>

Any remaining funds will assist in future phases of this project.

PUBLIC OUTREACH / INTEREST

Several Public outreach sessions were conducted by City staff. A Town Hall style activity was conducted at the Homeless Advisory Committee meeting on August 22, 2022. At this meeting the community gave feedback regarding potential solutions for the City's shelter crisis.

## COORDINATION

Coordination between Engineering and Public Works, Economic Development, and Mobility and Housing Department occurred on multiple occasions to coordinate and establish this project as complete.

## CEQA DETERMINATION

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

## STRATEGIC PLAN

This agenda item supports the Public Safety Strategic Priority, Implement the adopted Homelessness Strategic Plan. More specifically, by adopting this new resolution, the City Council would reaffirm their commitment to follow through with the strategic priorities set forth in their Strategic Plan.

## ACTION REQUESTED OF THE CITY COUNCIL

Staff recommends that the City Council, by resolution, (1) accept the construction for the Temporary Emergency Housing Project on Arbor Avenue, Phase 1, CIP 71112 in Tracy, California, for work completed by GradeTech, Inc., of San Ramon, California, (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 bonds and retention payment.

Prepared by: Leisser Mazariegos, Associate Engineer

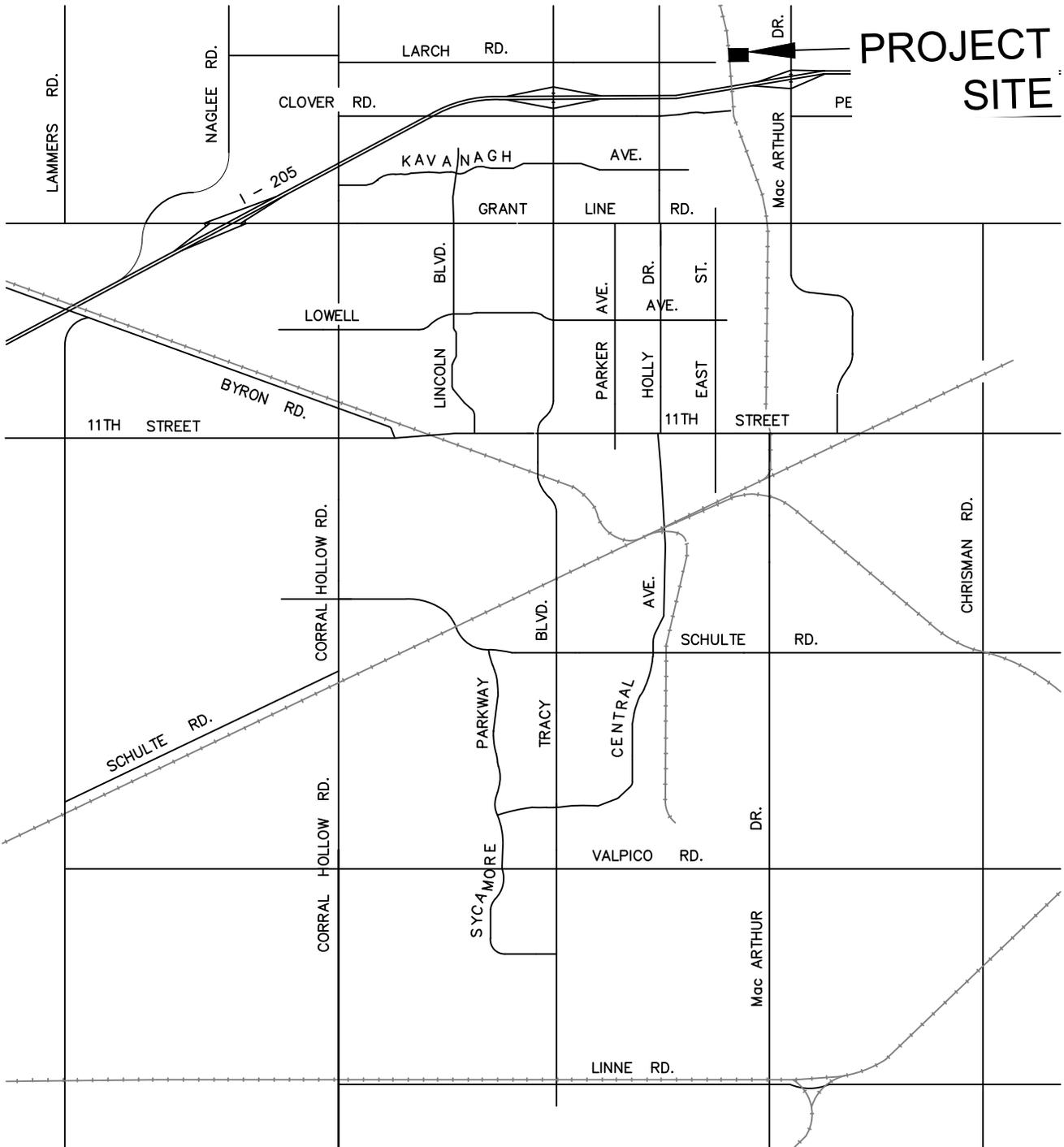
Reviewed by: Koosun Kim, PE, City Engineer / Assistant Director of Development Services  
Jaylen French, Development Services Director  
Sara Cowell, Finance Director  
Nancy Ashjian, Assistant City Attorney  
Karin Schnaider, Assistant City Manager

Approved by: Midori Lichtwardt, Assistant City Manager

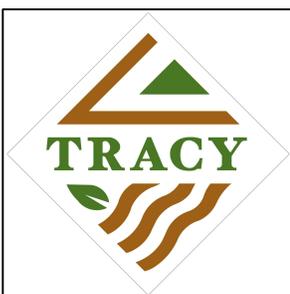
## ATTACHMENTS

Attachment A – Location Map

# CITY OF TRACY



**PROJECT  
SITE**



**COVID-19 ARBOR RD PROJECT SITE**

NOT TO SCALE

CITY ATTORNEY'S OFFICE

TRACY CITY COUNCIL

RESOLUTION 2023-\_\_\_\_\_

- (1) ACCEPTING THE CONSTRUCTION FOR THE TEMPORARY EMERGENCY HOUSING PROJECT ON ARBOR AVENUE, PHASE 1, CIP 71112, FOR WORK COMPLETED BY GRADETECH, INC., OF SAN RAMON, CALIFORNIA;
- (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 BONDS AND RETENTION PAYMENT.

**WHEREAS**, on April 19, 2022, City Council approved and awarded a construction contract to GradeTech, Inc., of San Ramon, California (Contractor) for the Temporary Emergency Housing Project on Arbor Avenue, Phase 1, in Tracy, California, CIP Project 71112; and

**WHEREAS**, the Contractor has completed all the work required to be done in accordance with the plans and specifications and has requested acceptance of the project, and the City Engineer has inspected the completed work and confirmed that all work conforms to the contract plans and specifications; and

**WHEREAS**, two change orders were issued as part of this project; and

**WHEREAS**, the status of budget costs is as follows:

A.	Construction Contract Amount	\$ 2,221,356
B.	Approved Change orders	\$ 944,443
C.	Design, construction management, inspection, testing & miscellaneous project management expenses	\$ 296,772
Total Project Costs		\$ 3,462,571

; and

**WHEREAS**, the Project has been completed within the available budget, within the time frame of the original contract plus the time extension given to the contractor for extra work, including rain delays, per plans, specifications, and City of Tracy Standards; and

**WHEREAS**, the Temporary Emergency Housing Project on Arbor Road, Phase 1, CIP 71112, is an approved project with total funding Project cost of \$3,462,571, and the total project budget is \$10,430,689, which allowed for the project to come in on budget; now therefore, be it

**RESOLVED:** That the City Council hereby (1) accepts the construction for the Temporary Emergency Housing Project, CIP 71112 for work completed by GradeTech, Inc., of San Ramon, California, (2) authorizes the City Clerk to File the Notice of Completion with the

San Joaquin County Recorder's Office, and (3) authorizes the City Engineer to release the bonds and retention payment.

\* \* \* \* \*

The foregoing Resolution 2023-\_\_\_\_\_ was adopted by the Tracy City Council on the 16<sup>th</sup> day of May 2023 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.M

RECOMMENDATION

**Staff recommends that the City Council adopt a resolution (1) accepting public improvements constructed for Eastside Channel Concrete Lining by Tracy CHP Partners, LLC, (2) authorizing the City Engineer to release the bonds, and (3) authorizing the City Clerk to file the Notice of Completion with the San Joaquin County Recorder's Office.**

EXECUTIVE SUMMARY

Tracy CHP Partners, LLC, a California Limited Liability Company (Developer), has completed public improvements for the Eastside Channel Concrete Lining, in accordance with the Offsite Improvement Agreement (OIA), project plans, and specifications. Staff recommends City Council accept the improvements as complete; authorize the City Engineer to release performance and payment bonds and authorize the City Clerk to file the Notice of Completion (NOC).

BACKGROUND AND LEGISLATIVE HISTORY

On March 3, 2022, the Mayor signed an Offsite Improvement Agreement (OIA) with Tracy CHP Partners, LLC, a California Limited Company (Developer) to construct concrete channel lining of the City Eastside Channel and associated site work adjacent to the new CHP field office facility located at 1175 E. Pescadero Avenue. Developer has completed all improvements in accordance with the OIA, project plans and specifications, and the City Engineer has determined the work to be acceptable. Staff recommends that City Council accept the improvements as complete, authorize the City Engineer to release the Developer's payment and performance bonds and authorize the City Clerk to file Notice of Completion.

ANALYSIS

The City Engineer has inspected the completed work and recommends accepting all the improvements completed per the OIA.

Developer furnished performance, payment, and warranty bonds assuring completion of the work. The estimated cost of the improvements is as follows:

East Side Channel Storm Drainage Improvements	\$ 1,914,549
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The project carries a one-year warranty bond for all public improvements in an amount equal to 10 percent of construction cost.

This project was performed entirely within City-owned property. No land dedications were required.

FISCAL IMPACT

All improvements were completed by the Developer in accordance with the OIA and there is no fiscal impact to the General Fund.

Per Section 15.1 of the OIA, Developer was refunded their City Infill Storm Drainage Fee of \$106,324.24. Per Section 15.2 of the OIA, upon acceptance of the work, Developer will be eligible for reimbursement of actual cost, in an amount not to exceed \$1,581,498.39. Developer will be reimbursed through the collection of development impact fees according to the process outlined in the City of Tracy Municipal Code.

#### COORDINATION

Project construction activities were coordinated with City of Tracy Utilities Department.

#### CEQA DETERMINATION

The project is categorically exempt from CEQA pursuant to CEQA Guidelines Section 15332, which pertains to certain infill development projects, because the project is consistent with the General Plan and Zoning, occurs within City limits on a project site of no more than five acres, is substantially surrounded by urban uses, has no value as habitat for endangered, rare or threatened species, would not result in any significant effects relating to traffic, noise, air quality, or water quality, and can be adequately served by all required utilities and public services. No further environmental assessment is necessary.

#### STRATEGIC PLAN

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

#### ACTION REQUESTED OF THE CITY COUNCIL

That City Council, by resolution, (1) accept public improvements constructed for Eastside Channel Concrete Lining by Tracy CHP Partners, LLC, (2) authorize the City Engineer to release the bonds, and (3) authorize the City Clerk to file the Notice of Completion with the San Joaquin County Recorder's Office.

Prepared by: Leisser Mazariegos, Associate Engineer

Reviewed by: Koosun Kim, PE, City Engineer / Assistant Director of Development Services  
Jaylen French, Development Services Director  
Sara Cowell, Finance Director  
Nancy Ashjian, Assistant City Attorney  
Karin Schnaider, Assistant City Manager

Approved by: Midori Lichtwardt, Assistant City Manager

CITY ATTORNEY'S OFFICE

TRACY CITY COUNCIL

RESOLUTION 2023-\_\_\_\_\_

**(1) ACCEPTING PUBLIC IMPROVEMENTS CONSTRUCTED FOR EASTSIDE CHANNEL CONCRETE LINING BY TRACY CHP PARTNERS, LLC; (2) AUTHORIZING THE CITY ENGINEER TO RELEASE THE BONDS; AND (3) AUTHORIZING THE CITY CLERK TO FILE THE NOTICE OF COMPLETION WITH THE SAN JOAQUIN COUNTY RECORDER'S OFFICE**

**WHEREAS**, on March 3, 2022, the Mayor executed an Offsite Improvement Agreement (Agreement) with Tracy CHP Partners, LLC, a California Limited Liability Company (Developer) for construction of concrete lining of a portion of the City Eastside Channel, required for effective storm drainage of the Northeast Industrial Area; and

**WHEREAS**, the City Engineer has inspected the completed work and recommends acceptance of all the improvements completed in accordance with the Agreement; and

**WHEREAS**, Developer furnished performance, payment, and warranty bonds assuring completion of the work. The estimated cost of the improvements was \$1,914,549; and

**WHEREAS**, the developer will be reimbursed a not-to-exceed amount of \$1,581,498.39 through development impact fees according to the process outlined in the City of Tracy Municipal Code; now, therefore, be it

**RESOLVED:** That the City Council hereby accepts the public improvements constructed for Eastside Concrete Channel Lining by Tracy CHP Partners, LLC; and be it

**FURTHER RESOLVED:** That the City Council authorizes the City Engineer to release the bonds; and be it

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

\*\*\*\*\*

The foregoing Resolution 2023-\_\_\_\_\_ was adopted by the Tracy City Council on the 16<sup>th</sup> day of May 2023, 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.N

RECOMMENDATION

**Staff recommends that the City Council adopt a resolution approving Amendment No. 1 to the Professional Services Agreement with Indigo | Hammond + Playle Architects, LLP for the Citywide Public Safety Master Plan update (CIP 71108) to increase compensation by \$20,000 for a new total not-to-exceed amount of \$196,500 and extend the term through December 31, 2023.**

EXECUTIVE SUMMARY

The proposed amendment will increase the not-to-exceed amount of the Professional Services Agreement by \$20,000 from \$176,500 to a new total not-to-exceed amount of \$196,500 and extend the Agreement through December 31, 2023, allowing time for the Consultant to complete the Citywide Public Safety Master Plan Update.

BACKGROUND AND LEGISLATIVE HISTORY

The City initiated updates to several of the City infrastructure master plans in 2019 and 2020. On May 29, 2020, the City issued a Request for Proposals (RFP) for a qualified architecture consulting firm for civil engineering firm to provide professional services to complete an update to the Citywide Public Safety Master Plan (CPSMP). The RFP process resulted in a contract with Indigo | Hammond + Playle Architects, LLP (Consultant) to provide the update.

The City and Consultant entered into a Professional Services Agreement (PSA) for the Update to the CPSMP on December 17, 2020, under Resolution No. 2020-177. Consultant provided a schedule of 20 weeks to complete the update. The initial Draft of the CPSMP was submitted to the City on schedule in June 2021.

ANALYSIS

Public workshops were held to discuss the initial draft plans. The Council and the public provided input which led to changes to the analysis and added projects to be considered in the plans. The Consultant has continued to provide updates to the Plan when requested and participated in staff and public workshops.

The Consultant continued to provide service beyond the initial contract term and provided updates at the City's request through the end of 2022. The initial compensation of \$176,500 was exhausted by the end of 2022. The City has requested the Consultant provide additional public presentations and provide updates as needed based on Council feedback. This item seeks to increase the PSA not-to-exceed amount by \$20,000 and extended the PSA term through December 31, 2023, to cover the additional work.

FISCAL IMPACT

The Public Safety Master Plan CIP 71108 has an approved budget of \$250,000 with an available balance of \$60,000.

PUBLIC OUTREACH / INTEREST

The Consultant has provided presentations to the public, City Council, staff, and developers. They also participated in two public presentations of the information included in the CPSMP.

COORDINATION

Engineering and the Consultant have coordinated with the Tracy Police Department and the South San Joaquin County Fire Authority.

CEQA DETERMINATION

Ministerial Exemption, Code Section No. 151268.

STRATEGIC PLAN

This agenda item is consistent with the City's Governance Strategy, Goal No. 2, item 6. Complete Rate and Fee Studies: Solid Waste, Wastewater, Citywide Core Fees, Master Plan Impact Fees.

ACTION REQUESTED OF THE CITY COUNCIL

Staff recommends that the City Council adopt a resolution approving Amendment No. 1 to the Professional Services Agreement with Indigo | Hammond + Playle Architects, LLP for the Citywide Public Safety Master Plan update (CIP 71108) to increase compensation by \$20,000 for a new total not-to-exceed amount of \$196,500 and extend the term through December 31, 2023.

Prepared by: Ilene Macintire, PE, Senior Civil Engineer  
Veronica Child, Management Analyst II

Reviewed by: Koosun Kim, PE, City Engineer/Asst. Director of Development Services  
Jaylen French, Director of Development Services  
Sara Cowell, Finance Director  
Riana Daniel, Deputy City Attorney  
Karin Schnaider, Assistant City Manager

Approved by: Midori Lichtwardt, Assistant City Manager

ATTACHMENTS

Attachment A – Amendment No. 1 to PSA Indigo | Hammond + Playle Architects, LLP  
Attachment B – Original PSA with Indigo | Hammond + Playle Architects, LLP

**CITY OF TRACY  
AMENDMENT NO. 1 TO PROFESSIONAL SERVICES AGREEMENT  
WITH INDIGO | HAMMOND + PLAYLE ARCHITECTS, LLP,  
FOR THE CITYWIDE PUBLIC SAFETY MASTER PLAN, CIP 71108**

This Amendment No. 1 (**Amendment**) to the Professional Services Agreement is entered into between the City of Tracy, a municipal corporation (**City**), and Indigo | Hammond + Playle Architects, LLP, a California Limited Liability Partnership (**Consultant**). City and Consultant are referred to individually as "Party" and collectively as "Parties."

**Recitals**

- A. The City and Consultant entered into a Professional Services Agreement (**Agreement**) for the City of Tracy's Citywide Public Safety Master Plan (**Project**), CIP 71108 on December 17, 2020, approved under Resolution No. 2020-177.
- B. The City desires to extend the term of the Agreement and amend the original scope of work to provide project management and additional presentations that have required more time than was anticipated in the original Agreement. The parties also seek to amend the Agreement to increase compensation.
- C. This Amendment is being executed pursuant to Resolution No. \_\_\_\_ approved by Tracy City Council on \_\_\_\_\_, 2023.

**Now therefore, the Parties mutually agree as follows:**

**1. Incorporation by Reference.** This Amendment incorporates by reference all terms set forth in the Agreement, unless specifically modified by this Amendment. The terms which are not specifically modified by this Amendment will remain in effect.

**2. Terms of Amendment.**

**A. 2.1 Term.**

The term of the existing Agreement shall be extended through December 31, 2023 in accordance with Sections 2 and 13 of the Agreement.

**B. 3.1 Compensation.**

Consultant's total compensation under this Agreement shall not exceed \$196,500. For services performed pursuant to Exhibit "A-1" City shall pay Consultant a not-to-exceed amount of \$20,000 at the billing rates set forth in Exhibit "B."

**C. Exhibits.**

Exhibit A-1 "Scope of Services" attached hereto shall supplement Exhibit "A" of the Agreement. Consultant is responsible for completing all tasks identified in Exhibits "A" and "A-1." Rates in Exhibit B shall apply to all services identified in Exhibit "A" and "A-1."

**3. Modifications.** This Amendment may not be modified orally or in any manner other than by an agreement in writing signed by both parties, in accordance with the requirements of the Agreement.

**4. Severability.** If 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 effect.

**5. Signatures.** The individuals executing this Amendment represent and warrant that they have the right, power, legal capacity, and authority to enter into and to execute this Amendment. This Amendment shall inure to the benefit of and be binding upon the parties and their respective successors and assigns.

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

City of Tracy

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

Nancy Young

Title: Mayor

Date: \_\_\_\_\_

**Consultant**

Indigo | Hammond + Playle Architects, LLP  
A California Limited Liability Partnership

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

By: Bruce Playle

Title: Partner

Date: 4/13/23

Attest:

Federal Employer Tax ID No. 68-0428958

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

Adrienne Richardson, City Clerk

Approved as to form

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

Bijal M. Patel, City Attorney

## **Exhibit A-1 Scope of Services**

**Tasks Included:**

1. Continue to address questions and comments from the City during the time from April, 2021 (the original anticipated plan adoption date) until the master plan is adopted by the City (currently anticipated schedule for Fall/Winter of 2023).
2. Incorporate miscellaneous changes to the Citywide Public Safety Master Plan (CPSMP) Update in response to City requests. The effort for the additional work is estimated based on the current understanding of the work required to finalize the CPSMP. Future decisions and direction from the City could revise the estimated effort required to finalize the CPSMP Update.
3. Contract summary to-date:
  - Original contract - Basic services \$176,500.
  - Amendment No. 1 — Allowance for added scope \$20,000.

**Total Adjusted Time & Materials Not-to-Exceed Fee \$196,500.**

CITY OF TRACY  
PROFESSIONAL SERVICES AGREEMENT WITH  
INDIGO | HAMMOND + PLAYLE ARCHITECTS, LLP,  
FOR THE CITYWIDE PUBLIC SAFETY MASTER PLAN, CIP 71108

This Professional Services Agreement (**Agreement**) is entered into between the City of Tracy, a municipal corporation (**City**), and Indigo | Hammond + Playle Architects, LLP, a California Limited Liability Partnership (**Consultant**). City and Consultant are referred to individually as "Party" and collectively as "Parties."

**Recitals**

**A.** City desires to retain Consultant to specialized in public safety facilities analysis and master planning and to provide professional services for the completion of an update to the City of Tracy's Citywide Public Safety Master Plan, CIP 71108.services; and

**B.** On May 29, 2020, the City issued a Request for Proposals (RFP) for a qualified Architecture consulting firm or Civil Engineering firm, specializing in public facilities analysis and master planning to provide professional services for the completion of an update to the City of Tracy's Citywide Public Safety Master Plan. On June 12, 2020, Consultant submitted its proposal for the Project to the City. City has determined that Consultant possesses the skills, experience and certification required to provide the services.

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

**D.** This Agreement is being executed pursuant to Resolution No. 2020-177 approved by Tracy City Council on October 20, 2020.

**Now therefore, the Parties mutually agree as follows:**

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

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

**2.1 Term.** The term of this Agreement shall begin on October 6, 2020 and end on December 31, 2021, unless terminated in accordance with Section 6. This Agreement may be extended for an additional one year by the City Manager following a written determination that Consultant has satisfactorily met all the requirements of this Agreement.

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

**3.1 Not to Exceed Amount.** Consultant's total compensation under this Agreement shall not exceed \$176,500. Consultant's billing rates shall cover all costs and expenses for Consultant's performance of this Agreement. No work shall be performed by Consultant in excess of the total compensation amount provided in this section without the City's prior written approval.

**3.2 Invoices.** Consultant shall submit monthly invoice(s) to the City that describe the services performed, including times, dates, and names of persons performing the services.

**3.2.1** If Consultant is providing services in response to a development application, separate invoice(s) must be issued for each application and each invoice shall contain the City's designated development application number.

**3.2.2** Consultant's failure to submit invoice(s) in accordance with these requirements may result in the City rejecting said invoice(s) and thereby delaying payment to Consultant.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

To City:

City of Tracy  
Ilene Macintire, P.E.  
Development Services  
333 Civic Center Plaza  
Tracy, CA 95376

To Consultant:

Indigo | Hammond + Playle Architects, LLP  
Bruce Playle, Partner  
909 5<sup>th</sup> Street  
Davis, CA 95616

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

### **13. Miscellaneous.**

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

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

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

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

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

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

**13.6.1 Prevailing Wage Laws.** Consultant is aware of the requirements of California Labor Code Section 1720, et seq., and 1770, et seq., as well as California Code of Regulations, Title 8, Section 16000, et seq., ("Prevailing Wage Laws"), which require the payment of prevailing wage rates; employment of apprentices (§ 1777.5), certified payroll records (§1776), hours of labor (§1813 and §1815), debarment of contractors and subcontractors (§1777.1) and the performance of other requirements on "public works" and "maintenance" projects. If the services being performed under this Agreement are part of a "public works" or "maintenance" project, as defined in the Prevailing Wage Laws, and if the total compensation is \$1,000 or more, Consultant agrees to fully comply with such Prevailing Wage Laws. These prevailing rates are on file with the City and are available online at <http://www.dir.ca.gov/DLSR>. Consultant shall defend, indemnify and hold the City, its officials, officers, employees and agents, harmless from any and all claims, costs, penalties, or interests arising out of any failure or alleged failure to comply with the Prevailing Wage Laws.

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

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

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

**13.9 Successors and Assigns.** This Agreement shall inure to the benefit of and be binding upon the Parties hereto and their respective successors and assigns.

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

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

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

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

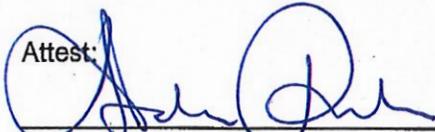
**14. Signatures.** The individuals executing this Agreement on behalf of Consultant represent and warrant that they have the right, power, legal capacity and authority to enter into and to execute this Agreement on behalf of Consultant.

**[SIGNATURES ON FOLLOWING PAGE]**

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

**City of Tracy**

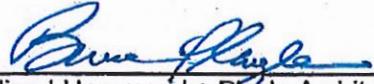
  
By: ~~Robert Rickman~~ Nancy D. Young  
Title: Mayor  
Date: 12/17/2020

Attest:   
Adrienne Richardson, City Clerk

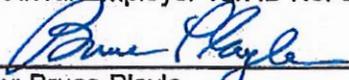
Approved as to form:

  
for Leticia Ramirez, City Attorney

**Consultant**

  
Indigo | Hammond + Playle Architects, LLP  
A California Limited Liability Partnership  
By: Bruce Playle  
Title: Partner  
Date: 10/6/2020

Federal Employer Tax ID No. 68-0428958

  
By: Bruce Playle  
Title: Partner  
Date: 10/6/2020

Exhibits:

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

## EXHIBIT A - Scope of Work

The Consultant will closely coordinate with City of Tracy personnel, as well as the Consultant's sub-consultants, in completing the General Scope of Work, Tasks 1 – 5, listed below over a 20 week and 8 meeting timeline. This includes coordination with the City Facilities Committee which may be composed of leadership from Administration, Finance, Fire, Police, Public Works, etc. The Citywide Public Safety Master Plan Update (CPSMP Update) will establish department-by-department programmatic needs from the "bottoms-up", substantiating the space required for City of Tracy emergency service operations Police and Fire, based on growth projections in the City's General Plan. The CPSMP Update relies heavily on pre-existing studies, including the prior approved Master Plan, and will be based on the growth projections in Tracy's adopted General Plan as well as discussions with your department directors and selected staff. The results of this "bottoms-up" study will then be cross-checked against a "tops-down" review of cities comparable to Tracy - peer cities - to ensure reasonableness. Consultant's scope of work shall consist of the following progressive steps, organized around Tasks 1 - 5 as described below.

### **TASK 1 - Public Safety Master Plan**

Proposed Work Plan – Prior to proceeding, the Consultant will develop a detailed work plan and schedule for the City, and will enumerate all items identified in below. To provide an idea of our proposed process, the Consultant will break Task 1 down into an outline of subtasks 0.0 through 1.8 as indicated below. The Consultant with the City's assistance identify key stakeholders and help develop a joint Public Safety Facility Committee (referred to below as Facility Committee) as a first order of business. The Consultant will assist the City to establish the roles and responsibilities of the Facility Committee, and its members, including the Committee's role in obtaining the input of stakeholders. All task items refer to update of the original master plan.

The estimated costs per task listed below are based on Hourly Rates in Exhibit B.

#### **TASK 0.0 - Data Collection**

**\$3,100**

Prepare list of requested items, present to City for provision so material can be reviewed ahead of Kick-off Meeting. Items to be requested and reviewed may include but are not limited to current organizational charts, approved budgets indicating approved staff positions, recent years calls for service and other data, recent changes to physical facility plans, and updated general plan or development maps affecting current and future service area. (2 week, 0 meetings)

#### **TASK 1.0 - Evaluate Current Conditions**

**\$17,200**

The Consultant will participate in a Kick-off Meeting to review overall update process, changes since adoptions of the prior Citywide Public Safety Master Plan (CPSMP), changes in delivery of police and fire services, changes in development community and development fee situation. Discussion will include changes made necessary by COVID-19. The Consultant will assess the "current" level of public safety service the City of Tracy delivers, by department, and the adequacy of current staff levels and the ability of existing facilities to deliver this service level. The Consultant will update the locations of City Safety staff and the general size, condition and capacities of existing facilities will be determined based on building plans provided by the City. The Consultant will work with City Safety stakeholders to identify current deficiencies for Police and Fire operations and facilities and potential remedies for same will be discussed. Locations of propose new facilities will be discussed. The consultant will note any necessary building improvements for accessibility and building system upgrade or replacements will be broadly defined. The Consultant will evaluate the degree of renovations and/or new construction required and to demonstrate that the best use of existing facilities is being made by optimizing the use of any reserve capacity. (2 week, 1 Facility Committee kick-off meeting including site walk of any new or recently remodeled Police and Fire facilities).

**TASK 1.1 - Develop Space Standards & Functional Flow**

**\$5,500**

The Consultant will establish the City of Tracy space standards for each public safety position type, functional area, equipment need, etc. When applied to projections for staff, functions and equipment will develop total space need for each department and for the aggregate. The Consultant will identify inter-departmental functional flow and adjacency requirements to determine optimum deployment of City of Tracy public safety staff and operational resources. Where the concept of "one-stop-shopping" and "combined police and fire public safety facility" makes sense for public safety services, it will be explored if desired. Recommendations for operational efficiency will be made. Supervisorial hierarchy and administrative support requirements will be defined. Savings through efficiencies found here are the highest order of savings possible, followed by those to be found by minimizing facility programmed size, construction cost, and operational cost. (2 weeks, 1 Facility Committee meeting concurrent with Task 1.3)

**TASK 1.2 - Prepare Staff & Space Need Projections**

**\$22,000**

Having previously identified "current" conditions, the Consultant will next identify City of Tracy "needed now" level of service, staff, and facilities. The difference, if any, between facilities "needed now" and "current" establishes facility demand nexus attributable to properly serving the existing population of approximately 95,000 residents. Response time standards for Fire will be identified and translated into facility need and location in the City of Tracy. The Consultant will identify growth indicators for Police and Fire Departments to determine future staff required at each growth milestone. The Consultant will review the General Plan and Master EIR to establish "projected" service levels, staff, and facilities in 10 and 20-year increments. The difference between "projected" and "needed now" generally is the nexus attributable to future development growth. Potential space and cost savings of a combined Police & Fire Public Safety Facility will be discussed, as appropriate. (2 weeks, 1 Facility meeting concurrent with Task 1.3)

**TASK 1.3 - Comparison to Peer Communities**

**\$12,500**

Although not specifically requested in Tasks 1 - 5 in the RFP, the Consultant highly recommends a brief comparison to peer communities conducted early in the Public Safety Master Plan study. The Consultant will establish a short list of "Peer Communities" - communities comparable to Tracy - in order to conduct "tops down" comparisons and demonstrate the reasonableness of Tracy's needs. The Consultant will compare the City of Tracy's "Current", "Needed Now", and "Projections" numbers for service level, staffing and facilities with those of relevant peer communities. This is done at an early stage so that any significant anomalies that could cause problems later can be detected and explored for cause. Modifications may be made to Tracy's projections, as appropriate. The City of Tracy may wish to conduct its own survey by telephone to peer cities. (1 week, 1 Facility Committee meeting)

**TASK 1.4 - Develop Alternative Facility Plans**

**\$23,500**

The Consultant will identify options available to adequately house City of Tracy Public Safety staff and Operations, now and into the future. The Consultant will prepare preliminary facility plans of remodel opportunities as well as new facility plans and evaluate for operational efficiencies. The Consultant will evaluate the renovation of structures as well as the possibility of building new facilities which could more flexibly provide functional space for City of Tracy police and fire operations. The Consultant will ensure that use of existing facilities is maximized to reduce the size and cost of any new facilities. This step will include preliminary site plan, floor plan layouts, massing studies, etc. Layout of a combined Police & Fire Public Safety Facility will be prepared, as appropriate. (2 weeks, 1 Facility Committee meeting concurrent with Task 1.5)

**TASK 1.5 - Comparative Cost Estimations**

**\$21,100**

The Consultant will prepare preliminary cost estimates and will use them to compare the various public safety facility options. This includes cost-outs for remodel and new construction options, evaluation of which scenarios demonstrate best value to the taxpayer, etc. The Consultant will provide specific recommendations on which scenarios best achieve City of Tracy goals and will fall within likely budget constraints. Based on the "needed now" and "projected" facilities described above, The Consultant will differentiate cost attribution to development growth vs. the serving the needs of the existing population of approximately 95,000 residents. See Tasks 1.6 and 3.0 below for more on the importance of accurate and realistic cost estimating to ensure the feasibility of the master plan. (1 week, 1 Facility Committee meeting)

**TASK 1.6 - Project Delivery, Phasing & Implementation Strategies**

**\$13,400**

The Consultant will develop project delivery options including lease, purchase and construction of new facilities as well as for remodel as part of its basic scope. Options for design-build or other potentially cost-savings techniques will be explored. A building phasing plan and various funding strategies will be defined. It is imperative that the cost and schedule of implementing the Master Plan be feasible if it is to be successful and usable to the City. See also Task 3.0 below for more on funding alternatives. (1 week, 1 Facility Committee meeting)

**TASK 1.7 - Select Preferred Master Plan**

**\$6,800**

Resulting from the study above and in close coordination with the Facility Committee, the preferred alternative will be selected upon which to base public safety master plan findings. The Consultant will provide an overall master planning tool integrating the above study areas and substantiating the rationale for City of Tracy public safety facilities to be built. (1 week, 1 Facility Committee meeting)

**TASK 1.8 - Develop Guidelines**

**\$10,000**

The Consultant will establish standards for workplace planning, interior design, energy-efficiency, resiliency, and sustainability meeting-or-exceeding federal and state guidelines for environmentally-appropriate use of resources for new and existing construction. These goals will reduce future utility costs at the same time demonstrating the City of Tracy's commitment to sustainable building practices. These standards will be crafted in a way that do not increase the cost of construction, yet lower operating costs through energy-efficiency. The tangible result will be reduced utility bills and a corresponding increase in general fund resources freed-up for program. The Consultant specializes in low-energy buildings, builds LEED-accredited facilities, and is uniquely credentialed to assist on this front. (1 week, 1 Facility Committee meeting)

**TASK 2.0 - Prepare Draft & Final Public Safety Master Plan**

**\$29,200**

Based on the Task 1 results, the Consultant will consolidate all process and findings into a step-by-step public safety facility deployment plan that makes sense for the City of Tracy, is financially feasible, and that delivers the desired functionality now and into the future. A Capital Improvement Program for Public Safety Facilities description will be prepared describing long term planning for the disposition, lease, purchase, or construction of new City public safety facilities. The CSFMP will be flexible for update and reuse over the years. (2 weeks, 1 meeting with City Council) including Council Approval

**TASK 3.0 - Prepare AB 1600 Findings and Assist City in Reviewing Funding Alternatives.**

**\$8,200**

The Consultant will prepare findings that can be used directly in the City's AB 1600 - Development Impact Fee Study and provide the underpinnings to the Public Safety Fee. These include existing building

inventory, facility standards, facility costs for growth, and implementation. Any costs attributable to the current population, if any, will be identified. Based on cost estimates of the various facility layout and alternatives, and working in concert with the City of Tracy Finance Department, Bay Area Economics (BAE) is on-board and available to prepare required cash flow demand tables and identify any differences between required and projected available cash flow. The Consultant will define the costs of the needed facilities and identify which portion is attributable to growth and which to the existing population. Project delivery options including design-build and leaseback will be explored. The Consultant will prepare a brief financing study and cash flow analysis which would be necessary for facility deployment. The Consultant will provide an estimate of net change to yearly Operations and Maintenance Cost to operate the expanded Public Safety Master Plan facilities. Working with City of Tracy Finance Department, The Consultant will prepare a list of candidate funding mechanisms and develop a phasing strategy which complements the cash flow generated by the various funding mechanisms. The Consultant will compare scheduling issues presented by the various alternatives to assist in establishing the priority and sequence of funded projects based on their order of need, cost-efficiency and ability to house staff and operations. The funding overview will provide an overview of the different funding sources, eligibility criteria, the estimated amount of funding available, and the general process necessary to obtain funding, including a conceptual funding matrix illustrating effect of a) existing and new local funding sources and b) State and/or Federal funding. (3 weeks, 1 Facility Committee meeting)

**TASK 4.0 - Provide Technical Support to the City's EIR Consultant. \$4,000**

The Consultant will provide support with environmental clearance of the CPSMP Update public safety master plans and buildings. The Consultant will interpret the facilities Alternatives Analysis, assist in preparation of the Environmental Sensitivity Analysis, assist in scoping any supplemental studies required, help write specific technical sections, and will attend any public meetings related to the public review process of the EIR document. (meetings and timeline concurrent with above)

**TASK 5.0 - Coordination Incl. above**

The Consultant will coordinate all work closely with City staff, provide timely response to inquiries from you, and will attend, present, and provide answers to your City Council. We performed these same tasks successfully in the original master plan and will re-establish relevant basis based on Tracy's current and projected needs, provide recommendations with complete rationale and funding feasibility analysis making it easy for Council to approve. (Meetings and timeline concurrent with above)

**Total elapsed time: 20 weeks, total meetings: 8**

**Deliverables:**

1. Land Use & Long Range Plan evaluation.
2. Project goals and objectives.
3. Recommended response standards for Police and Fire.
4. City map marked with potential locations for new Fire Station(s) meeting response standards.
5. Existing Public Safety Facility Inventory, including equipment, review of capacities and deficiencies.
6. Growth indicator factors, for Police and Fire.
7. Staff projection tables, for Police and Fire.
8. Space & Facility standards, for Police and Fire.
9. Space Need tables, for Police and Fire.
10. Functional flow and adjacency diagrams.
11. City of Tracy comparison to up to three peer cities.
12. Facility deployment alternatives, up to three alternatives.
13. Capital Improvement Program for Public Safety Facilities description.

14. Phasing plan and preliminary cost estimates for up to three alternatives.
15. Public Safety Building & facility plan floor layouts for new and renovation construction, including alternatives.
16. Guidelines for resiliency, energy efficiency, and environmental sustainability, including LEED goals.
17. Preliminary conceptual funding matrix.
18. Capital Improvement Program for Public Safety Facilities.
19. Draft Public Safety Master Plan, 20 copies provided. Includes complete findings of report to a draft level sufficient for City of Tracy staff review.
20. Final Public Safety Master Plan, 20 copies provided. Final report including addressing any minor comments or concerns raised by City of Tracy staff, for the approval of City Council.
21. AB1600 findings summary with Cost Allocation Report.
22. Supporting documentation to the EIR document and its review, as required.

Consultant Staff:

Bruce Playle, Principal Architect  
Prescott Nichols, Architect  
Candace Harrison, Architect  
Omar Armendariz, Designer/ Drafter- Level 2  
Apeksha Patel, Designer/ Drafter- Level 1  
Vicky Perez Herrera, Designer/ Drafter- Level 1  
Dina Connors, Clerical

EXHIBIT B – Compensation

**Fee Schedule**

Indigo | Hammond + Playle Architects, LLP  
2020 / 2021

Principal Architect	\$255
Architect	\$208
Senior Designer	\$187
Designer/ Drafter- Level 2	\$155
Designer/ Drafter- Level 1	\$135
Clerical	\$110

Overtime rate 1.5 times hourly rates above.

Consultants and reimbursable expenses are at 1.15 x cost

Allowable reimbursable expenses include: printing, delivery, presentation materials, mileage, and overnight accommodations where one-way travel is greater than 200 miles.

Mileage at \$0.58 per mile.

TRACY CITY COUNCIL

RESOLUTION 2023-\_\_\_\_\_

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**APPROVING AMENDMENT NO. 1 TO THE PROFESSIONAL SERVICES AGREEMENT WITH INDIGO | HAMMOND + PLAYLE ARCHITECTS, LLP FOR THE CITYWIDE PUBLIC SAFETY MASTER PLAN UPDATE (CIP 71108) TO INCREASE COMPENSATION BY \$20,000 FOR A NEW TOTAL NOT-TO-EXCEED AMOUNT OF \$196,500 AND EXTEND THE TERM THROUGH DECEMBER 31, 2023**

**WHEREAS**, on May 29, 2020, the City of Tracy issued a Request for Proposals (RFP) for a qualified architecture consulting firm or civil engineering firm to provide professional services to complete an update to the Citywide Public Safety Master Plan (CPSMP); and

**WHEREAS**, the RFP process resulted in a contract with Indigo | Hammond + Playle Architects, LLP (Consultant) to provide the update; and

**WHEREAS**, the City and Consultant entered into a Professional Services Agreement (Agreement) for the update to the CPSMP on December 17, 2020, under Resolution No. 2020-177; and

**WHEREAS**, Consultant provided a schedule of 20 weeks to complete the update, and the initial Draft of the CPSMP was submitted to the City on schedule in June of 2021; and

**WHEREAS**, staff review of the various master plan drafts revealed that additional time and effort was needed to provide consistency throughout the plans and that some additional projects needed to be considered for inclusion; and

**WHEREAS**, the Consultant continued to provide services beyond the initial contract term and provided updates at the City's request through the end of 2022, and the initial compensation of \$176,500 was exhausted by the end of 2022; and

**WHEREAS**, the City has requested the Consultant provide additional public presentations and provide updates as needed based on City Council feedback; and

**WHEREAS**, the Agreement not-to-exceed amount needs to be increased by \$20,000 and extended through December 31, 2023 to cover the additional work; and now, therefore, be it

**RESOLVED:** That the City Council of the City of Tracy hereby approves Amendment No. 1 to the Professional Services Agreement with Indigo | Hammond + Playle Architects, LLP for the Citywide Public Safety Master Plan Update (CIP 71108) to increase compensation by

\$20,000 for a new total not-to-exceed amount of \$196,500 and extend the term through December 31, 2023.

\*\*\*\*\*

The foregoing Resolution 2023-\_\_\_\_\_ was adopted by the Tracy City Council on the 16<sup>th</sup> day of May 2023 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:

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

Agenda Item 1.O

RECOMMENDATION

**Staff recommends that the City Council adopt a resolution to (1) accept the Lewis Manor Well Rehabilitation (Production Well No. 5) Project – CIP 75153, completed by Zim Industries, Inc.; (2) authorize the City Clerk to file the Notice of Completion with the San Joaquin County Recorder’s Office; (3) authorize the City Engineer to release the bonds and retention payment; and (4) authorize the Finance Director to close the project.**

EXECUTIVE SUMMARY

The Contractor has completed all contract work for the rehabilitation of the Lewis Manor Well (Production Well No. 5) in accordance with project plans, specifications, and contract documents. Staff recommends that the City Council accept the project as complete to enable the City Engineer to release the Contractor’s bonds and retention payment.

BACKGROUND AND LEGISLATIVE HISTORY

GEI Consultants, Inc. (Consultant) entered into a Professional Services Agreement with the City on April 10, 2018, approved by the City Manager pursuant to Tracy Municipal Code Section 2.20.090, to provide engineering design support, prepare the specifications for the well’s rehabilitation and provide support services during the construction phase.

CIP 75153 for the Lewis Manor Well Rehabilitation was established as an approved project as part of the FY2019/2020 adopted budget for work required to rehabilitate Production Well No. 5, also known as the Lewis Manor Well, with an approved budget of \$964,973 from the Water Capital Fund (F513.)

On October 1, 2019, City Council awarded a construction contract to Zim Industries, Inc. for the Lewis Manor Well Rehabilitation (Production Well No. 5) Project – CIP 75153, for a total amount of \$358,680 under Resolution 2019-194. The project’s scope of work included the removal and disposal of the existing pump equipment; rehabilitation of the well using a clay dispersant, acidic solution, and various other methods; removal of any accumulated sediments, scale, turbid and acidic water from the entire well; disinfection of the well; and the installation of the new pump to return the well to its operating condition.

Upon completion of the cleaning and disinfecting the well shaft, replacing the pump, and related contract work, testing indicated the manganese levels still exceeded the limits required by Title 22 Drinking Water Standards. Additional efforts and testing were needed to determine if excluding the water from the upper aquifer, that contains higher manganese concentrations, would allow water from only the lower-level aquifer to be pumped and tested to determine if the lower-level aquifer’s manganese concentrations met State requirements.

The project required three contract change orders, totaling \$186,019. Change order No. 1 and No. 3 addressed the installation of an inflatable packer and a pressure regulator to maintain pressure within the inflatable packer to exclude the upper-level aquifer so that additional testing could be done on just the lower-level aquifer. Change order No. 2 was for the relocation of overhead utilities that interfered with contractor access to the work area.

### ANALYSIS

The project was necessary because the manganese levels in the Lewis Manor Well exceeded the allowable limits for domestic water supplies required by the State. After cleaning and disinfection work, flow test results determined the concentration of manganese still did not meet the existing required levels under the Title 22 Drinking Water Standards for compliance. During the project time frame, the State Water Resource Control Board released a draft change to the manganese regulation that required an additional sixty (60) percent reduction of manganese levels. Staff determined that it was not cost-effective to attempt further solutions to bring the well into compliance with the State Title 22 Drinking Water Standards and that the Lewis Manor Well could no longer be used for the City's potable water system.

Potential opportunities to monetize the well water, that could generate revenue, include beneficial partnerships with surrounding irrigation districts or potentially a non-potable water supply that might supplement the recycled water system. There is no fixed timeline for pursuing the possible options which will involve discussions with regional irrigation partners and research into allowable uses under the State Water Resource Control Board requirements.

### FISCAL IMPACT

The Lewis Manor Well Rehabilitation (Production Well No. 5) Project – CIP 75153, is an approved Capital Improvement Project with a budget of \$964,973 from the Water Capital Fund (F513).

Final project costs were within budget as follows:

A.	Construction Contract Amount	\$ 358,680
B.	Approved Change orders	\$ 186,019
C.	Design, construction management, inspection, testing & miscellaneous project management expenses	\$ 125,272
	Total Project Costs	<b>\$ 669,971</b>
	Total Project Budget Amount	\$ 964,973
	Budget Remaining	\$ 295,002

The remaining balance will be released back into the Water Enterprise fund balance.

### STRATEGIC PLAN

This agenda item is consistent with the City's Quality of Life Strategy and meets the goals to ensure physical infrastructure and systems necessary for the delivery of safe and clean water.

ACTION REQUESTED OF THE CITY COUNCIL

That City Council, by resolution, (1) accept the Lewis Manor Well Rehabilitation (Production Well No. #5) Project – CIP 75153, completed by Zim Industries, Inc.; (2) authorize the City Clerk to file the Notice of Completion with the San Joaquin County Recorder's Office; (3) authorize the City Engineer to release the bonds and retention payment; and (4) authorize the Finance Director to close the project.

Prepared by: Ilene Macintire, Senior Civil Engineer

Reviewed by: James Jackson, Director of Operations and Utilities  
Sara Cowell, Finance Director  
Karin Schnaider, Assistant City Manager  
Riana Daniel, Deputy City Attorney

Approved by: Midori Lichtwardt, Assistant City Manager

\_\_\_\_\_  
CITY ATTORNEY'S OFFICE

**TRACY CITY COUNCIL**

**RESOLUTION NO. \_\_\_\_\_**

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**(1) ACCEPT THE LEWIS MANOR WELL REHABILITATION (PRODUCTION WELL NO. 5) PROJECT – CIP 75153, COMPLETED BY ZIM INDUSTRIES, INC.; (2) AUTHORIZE THE CITY CLERK TO FILE THE NOTICE OF COMPLETION WITH THE SAN JOAQUIN COUNTY RECORDER'S OFFICE; (3) AUTHORIZE THE CITY ENGINEER TO RELEASE THE BONDS AND RETENTION PAYMENT; AND (4) AUTHORIZE THE FINANCE DIRECTOR TO CLOSE THE PROJECT.**

**WHEREAS**, on October 1, 2019, City Council awarded a construction contract to Zim Industries, Inc. for the Lewis Manor Well Rehabilitation (Production Well No. 5) Project – CIP 75153, for a total amount of \$358,680; and

**WHEREAS**, the project required three change orders, amounting to \$186,019. The first change order installed an inflatable packer to limit the flow of water from the upper well screen interval where high manganese concentrations were detected. The second change order provided for relocation of overhead utilities that impacted contractor access to the work area, and the third installed a regulator apparatus to maintain pressure within the inflatable packer; and

**WHEREAS**, the project's scope of work included the removal and disposal of the existing pump equipment; rehabilitation of the well using a clay dispersant, acidic solution, and various other methods; removal of any accumulated sediments, scale, turbid and acidic water from the entire well; disinfection of the well; and the installation of the new pump to return the well to its operating condition; and

**WHEREAS**, GEI Consultants, Inc. (Consultant) was responsible for preparing the specifications for the well's rehabilitation and provided support services during the construction phase; and

**WHEREAS**, flow test results determined the concentration of manganese did not drop below the State Title 22 Drinking Water Standards levels needed to be compliant; and

**WHEREAS**, also during the project time frame the State Water Resource Control Board released a draft change to the manganese regulation that required an additional sixty (60) percent reduction of manganese levels, staff determined it was not cost-effective to attempt further solutions bring the well into compliance with the Title 22 Drinking Water Standards, and that the well could no longer be used for the City's potable water system; and

**WHEREAS**, potential opportunities to monetize the well water, that could generate revenue, include beneficial partnerships with surrounding irrigation districts or potentially a non-potable water supply that might supplement the recycled water system; and

**WHEREAS**, the Lewis Manor Well Rehabilitation (Production Well #5) Project – CIP 75153, is an approved Capital Improvement Project with a budget of \$964,973. The remaining balance will be released back into the Water Enterprise fund balance; and, now, therefore be it

**RESOLVED:** That the City Council of the City of Tracy accepts the Lewis Manor Well Rehabilitation (Production Well No. 5) Project – CIP 75153, completed by Zim Industries, Inc.; authorizes the City Clerk to file the Notice of Completion with the San Joaquin County Recorder’s Office; authorize the City Engineer to release the bonds and retention payment; and authorize the Finance Director to close the project.

\* \* \* \* \*

The foregoing Resolution 2023-\_\_\_\_\_ was adopted by the Tracy City Council on May 16, 2023, 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.P

RECOMMENDATION

**Staff recommends that the City Council adopt a Resolution authorizing a Cooperative Purchasing Agreement with UniFirst Corporation for the purchase of uniform services for a term of 5 years and a total not to exceed amount of \$500,000.**

EXECUTIVE SUMMARY

The current agreement for uniform services will be expiring on June 30, 2023. There is a need for a new service agreement for uniform services. The new agreement is for a five-year term.

BACKGROUND AND LEGISLATIVE HISTORY

The City of Tracy currently has a General Services Agreement with Ameripride Services, Inc. that began on September 1, 2017 and will expire on June 30, 2023. There is a current need for a new agreement for uniform services. UniFirst Corporation has a cooperative purchasing agreement with Sourcewell to provide the required services.

Sourcewell (formerly National Joint Powers Alliance (NJPA)) is a municipal contracting government agency that serves education and government agencies nationally through competitively bid and awarded contract purchasing solutions, approved to be used in California. The City of Tracy is an established customer with Sourcewell (customer number 18531). The City is authorized to make purchases using the Sourcewell cooperative purchasing agreements, per Tracy Municipal Code section 2.20.220.

ANALYSIS

The Operations and Utilities Department oversees the Agreement for uniform services for the Operation and Utilities Department and the Parks and Recreation Department. This service provides each employee shirts, pants/shorts, coveralls, smocks, and includes laundering services. In addition, shop towels and walk-off mats are also included in the Agreement.

The term of the Agreement is for five years, from July 1, 2023 through June 30, 2028. Service costs for garments and merchandise are included in Attachment A.

FISCAL IMPACT

Funding for uniform services is included in the approved operating budget for each division with amounts varying by staffing levels and needs. Total estimated annual cost of the first year of the Agreement, including coverage for incidentals is \$80,000. The estimated cost of the full five-year Agreement has a not to exceed amount of \$500,000 which factors in incidentals, replacements, and staffing increases.

STRATEGIC PLAN

This agenda item supports the City's Governance Strategic Priority; Goal 2: Ensure short and long-term fiscal health.

ACTION REQUESTED OF THE CITY COUNCIL

Staff recommends that the City Council adopt a Resolution authorizing a Cooperative Purchasing Agreement with UniFirst Corporation for the purchase of uniform services for a term of 5 years and a total not to exceed amount of \$500,000.

Prepared by: Connie Lopes, Management Analyst II

Reviewed by: David Murphy, Assistant Director of Operations  
James Jackson, Director of Operations and Utilities  
Sara Cowell, Finance Director  
Riana Daniel, Deputy City Attorney  
Karin Schnaider, Assistant City Manager

Approved by: Midori Lichtwardt, Assistant City Manager

ATTACHMENTS

Attachment A – Customer Service Agreement with UniFirst Corporation

Attachment B – City of Tracy Uniform Policy

Attachment C – Contract Between Sourcewell and UniFirst Corporation

**UniFirst**NEW ACCOUNT  EXISTING ACCOUNT 

INSTALLATION DATE \_\_\_\_\_

MM/DD/YYYY

**CUSTOMER SERVICE AGREEMENT**COMPANY NAME (Customer) City Of Tracy (all Locations) LOC. NO. 370ADDRESS 520 South Tracy Blvd. ROUTE NO. \_\_\_\_\_Tracy, Ca. 95376 DATE \_\_\_\_\_PHONE (209) 831-6300 SIC/NAICS \_\_\_\_\_

The undersigned (the "CUSTOMER") orders from UniFirst Corporation and/or UniFirst Holdings, Inc. d.b.a. UniFirst and/or UniFirst Canada LTD. ("UNIFIRST") the rental service(s) at the prices and upon the conditions outlined:

MERCHANDISE SERVICED								
ITEM DESCRIPTION	LOST/ DAMAGED REPLACEMENT CHARGE	SERVICE FREQUENCY	NO. OF PERSONS/ ISSUE PER PERSON	TOTAL NO. OF CHANGES/ PIECES	PRICE PER CHANGE/ PIECE	STANDARD/ NON-STANDARD <sup>1</sup>	TOTAL FULL SERVICE	TOTAL VAL-U-LEASE <sup>2</sup>
50AY Snap Front Frock Knit Cuff	\$17.68	1			\$0.14	S		
1002 Standard Flat Front Pant	\$10.25	1			\$0.22	S		
0202 Standard Work Shirt SS	\$11.68	1			\$0.14	S		
0102 Standard Work Shirt LS	\$13.70	1			\$0.16	S		
0101 Shirts 100% Cotton LS	\$18.82	1			\$0.23	S		
0201 Shirts 100% Cotton SS	\$17.01	1			\$0.20	S		
0211 Oxford Park Street Shirt SS	\$16.05	1			\$0.19	S		
0111 Oxford Park Street Shirt LS	\$17.54	1			\$0.20	S		
10HD Unifirst Relaxed Fit Jean	\$24.13	1			\$0.29	S		
1091 Unifirst Classic Fit Jean	\$20.40	1			\$0.25	S		
1092 Wrangler Woman's Jeans	\$28.15	1			\$0.34	N		
2526 Unisex Counter Coat	\$12.99	1			\$0.15	S		
3001 Coverall 100% Cotton	\$35.83	1			\$0.43	S		
3002 Coverall Polly/Cotton Blend	\$29.83	1			\$0.35	S		

Minimum weekly charge applies, equal to 75% of the initial weekly install value.

OTHER CHARGES	AMOUNT
Garment preparation per piece	\$0.75
Name emblem per piece	\$0.45
Company emblem per piece	\$1.50
Direct Embroidery: Wearer name per piece	\$2.50
Company name per piece	(4,999) \$3.55
to (5,000)	(9,999) \$5.35
Preps, Names, Company emblem, Direct emb.	\$0.02

OTHER CHARGES	AMOUNT
Non-stock sizes per piece	20%
Special cuts per piece	25%
Restock/Exchange per piece	\$200
Automatic Wiper Replacement	2%
Automatic Linen Replacement	2%
DEFE (See description on reverse side)	5%
Uniform Advantage Per garment	\$0.03

PAYMENT TERMS: C.O.D.  E.F.T.  Approved Charge<sup>3</sup> **COMMENTS**

Refer to Contract #040920 between Sourcewell & UniFirst  
City of Tracy Sourcewell ID #18531

Approved charge: CUSTOMER agrees to make payments within 30 days of invoice receipt. A late charge of 1½% per month (18% per year) for any amount in arrears may be applied.<sup>4</sup>

The undersigned agrees to all terms on the reverse and attests to have the authority to execute for the named CUSTOMER, and to approve use of any personalization – including logos or brand identities – that has been requested.

SALES REP: David Leichtung  
SALES REP (Print Name) \_\_\_\_\_ DATE 4/27/23  
ACCEPTED<sup>5</sup>: JACOB L. SPORZEM GM  
LOCATION MANAGER (Print Name and Title) \_\_\_\_\_ DATE \_\_\_\_\_

ACCEPTED: \_\_\_\_\_ DATE \_\_\_\_\_  
CUSTOMER (Signature) \_\_\_\_\_  
CUSTOMER (Print Name and Title) \_\_\_\_\_  
EMAIL \_\_\_\_\_

<sup>1</sup> Out-sizes of otherwise Standard Merchandise are deemed to be Non-Standard Merchandise.<sup>2</sup> Merchandise which is Val-U-Leased is not cleaned by UniFirst.<sup>3</sup> Charge status contingent upon continuing credit worthiness and may be revoked at UniFirst's discretion.<sup>4</sup> All returned checks and declined credit/debit cards subject to \$35 processing fee.<sup>5</sup> This Agreement is effective only upon acceptance by UniFirst Location Manager.



NEW ACCOUNT  EXISTING ACCOUNT

INSTALLATION DATE \_\_\_\_\_  
MM/DD/YYYY

**CUSTOMER SERVICE AGREEMENT**

COMPANY NAME (Customer) City Of TRacy LOC. NO. 370  
 ADDRESS 520 South Tracy Blvd. ROUTE NO. \_\_\_\_\_  
Tracy, Ca. 95376 DATE \_\_\_\_\_  
 PHONE (209)813-6300 SIC/NAICS \_\_\_\_\_

The undersigned (the "CUSTOMER") orders from UniFirst Corporation and/or UniFirst Holdings, Inc. d.b.a. UniFirst and/or UniFirst Canada LTD. ("UNIFIRST") the rental service(s) at the prices and upon the conditions outlined:

MERCHANDISE SERVICED								
ITEM DESCRIPTION	LOST/DAMAGED REPLACEMENT CHARGE	SERVICE FREQUENCY	NO. OF PERSONS/ISSUE PER PERSON	TOTAL NO. OF CHANGES/PIECES	PRICE PER CHANGE/PIECE	STANDARD/NON-STANDARD <sup>1</sup>	TOTAL FULL SERVICE	TOTAL VAL-U-LEASE <sup>2</sup>
7221 Unisex Scrub Pant Reversible	\$7.62	1			\$0.12	N		
76GA Mat 3X5 GI 2.0	\$68.78	1			\$1.20	S		
76GB Mat 4X6 GI 2.0	\$105.41	1			\$2.40	S		
5388 Scraper Mat 3X5	\$103.22	1			\$1.20	S		
76AT Comfort Antimicrobial Flow Thru	\$139.20	1			\$1.20	S		
ULO3/UL46 Logo Mat 3X5	\$136.30	1			\$1.95	N		
UL16/UL59 Logo Mat 4X6	\$199.51	1			\$3.12	N		
UM28 Safety Mat 3X5	\$92.71	1			\$1.35	S		
8581 Terrycloth Towel Blue	\$0.77	1			\$0.09	S		
8116 Wet Mop 24oz	\$11.59	1			\$0.48	S		
8023 Red Shop Towel	\$0.26	1			\$0.05	S		
8324 Dust Mop 24in	\$11.54	1			\$0.36	S		

Minimum weekly charge applies, equal to 75% of the initial weekly install value.

OTHER CHARGES	AMOUNT
Garment preparation per piece	\$0.75
Name emblem per piece	\$0.45
Company emblem per piece	\$1.50
Direct Embroidery: Wearer name per piece	\$2.50
Company name per piece	(4,999)\$3.55
(5,000) to	(9,999)\$5.35

OTHER CHARGES	AMOUNT
Non-stock sizes per piece	20%
Special cuts per piece	25%
Restock/Exchange per piece	\$2.00
Automatic Wiper Replacement	2%
Automatic Linen Replacement	2%
DEFE (See description on reverse side)	5%

PAYMENT TERMS: C.O.D.  E.F.T.  Approved Charge<sup>3</sup>

**COMMENTS**  
 Refer to Contract # 040920 between Sourcewell & UniFirst  
 City of Tracy Sourcewell ID # 18531

Approved charge: CUSTOMER agrees to make payments within 30 days of invoice receipt. A late charge of 1½% per month (18% per year) for any amount in arrears may be applied.<sup>4</sup>

The undersigned agrees to all terms on the reverse and attests to have the authority to execute for the named CUSTOMER, and to approve use of any personalization – including logos or brand identities – that has been requested.

SALES REP: David Leichtung  
 SALES REP (Print Name) \_\_\_\_\_ DATE \_\_\_\_\_  
 ACCEPTED<sup>5</sup>: Jacob L. Sporzem GM  
 LOCATION MANAGER (Signature) \_\_\_\_\_ DATE \_\_\_\_\_  
 LOCATION MANAGER (Print Name and Title)

ACCEPTED:  
 CUSTOMER (Signature) \_\_\_\_\_ DATE \_\_\_\_\_  
 CUSTOMER (Print Name and Title) \_\_\_\_\_  
 EMAIL \_\_\_\_\_

<sup>1</sup> Out-sizes of otherwise Standard Merchandise are deemed to be Non-Standard Merchandise.  
<sup>2</sup> Merchandise which is Val-U-Leased is not cleaned by UniFirst.  
<sup>3</sup> Charge status contingent upon continuing credit worthiness and may be revoked at UniFirst's discretion.

<sup>4</sup> All returned checks and declined credit/debit cards subject to \$35 processing fee.  
<sup>5</sup> This Agreement is effective only upon acceptance by UniFirst Location Manager.

**CUSTOMER SERVICE AGREEMENT TERMS**

**REQUIREMENTS SUPPLIED.** Customer orders from UniFirst Corp. ("UniFirst") the rental garments and/or other items of the type specified in this Agreement ("Merchandise") and related pickup/delivery and maintenance services (collectively with Merchandise, "Services") for all of Customer's requirements therefor, at the prices and upon the terms and conditions set forth herein. Additional Services requested by Customer, verbally or in writing, will also be covered by this Agreement. All rental Merchandise supplied to Customer remains the property of UniFirst. Customer warrants that it is not subject to, and that this Agreement does not interfere or conflict with, any existing agreement for the supply of the Merchandise or Services covered.

**PERFORMANCE GUARANTEE.** UNIFIRST GUARANTEES TO DELIVER HIGH-QUALITY SERVICE AT ALL TIMES. All items of Merchandise cleaned, finished, inspected, repaired and delivered by UniFirst will meet or exceed industry standards, or non-conforming items will be replaced by the next scheduled delivery day at no cost to Customer. Items of rental Merchandise requiring replacement due to normal wear and tear will be replaced at no cost to Customer, save for any applicable personalization and setup charges.

Customer expressly waives the right to terminate this Agreement during the initial term or any extension thereof for deficiencies in the quality of Services unless: (1) complaints are first made in writing to UniFirst which set forth the precise nature of any deficiencies; (2) UniFirst is afforded at least 60 days to correct any deficiencies complained of; and (3) UniFirst fails to correct those deficiencies complained of within 60 days. In the event Customer complies with the foregoing and UniFirst fails to correct such deficiencies, Customer may terminate this Agreement by written notice to UniFirst, providing that all previous balances due to UniFirst have been paid in full and that all other conditions to terminate have been satisfied. Any delay or interruption of the Services provided for in this Agreement by reason of acts of God, fires, explosions, strikes or other industrial disturbances, or any other cause not within the control of UniFirst, shall not be deemed a breach or violation of this Agreement.

**TERM AND RENEWAL.** This Agreement is effective when signed by both the Customer and UniFirst Location Manager and continues in effect for 60 months after installation of Merchandise (for new customers) or any renewal date. This Agreement will be renewed automatically and continuously for multiple successive 60-month periods unless Customer or UniFirst gives written notice of non-renewal to the other at least 90 days prior to the next expiration date.

**PRICES AND PAYMENTS.** Prices are based on 52 weeks of service per year. Any increase(s) to Service Frequency could result in additional charges. On an annual basis, the prices then in effect will be increased by the greater of the annual percent increase in the Consumer Price Index - All Urban Consumers, Series ID: CUUROOOSAG, other goods and services, or by 5%. Additional price increases and other charges may be imposed by separate written notice or by notation on Customer's invoice. Customer may, however, decline such additional increases or charges by notifying UniFirst in writing within 10 days after receipt of such notice or notation. If Customer declines said additional price increases, UniFirst may terminate this Agreement. Customer also agrees to pay the other charges and minimum weekly charge herein specified. Charges relating to a wearer leaving Customer's employ can be terminated by (1) giving notice thereof to UniFirst and (2) returning or paying for any missing Merchandise issued to that individual. Any Merchandise payments required pursuant to this Agreement will be at the replacement price(s) then in effect hereunder. If an authorized Customer representative is not available to receive and acknowledge delivery of Merchandise, Customer authorizes UniFirst to make delivery and assumes responsibility for related charges/invoices.

If Customer fails to make timely payment, UniFirst may, at any time and in its sole discretion, terminate this Agreement by giving written notice to Customer, whether or not UniFirst has previously strictly enforced Customer's obligation to make timely payments. Customer agrees to pay, and will pay, all applicable sales, use, personal property and other taxes and assessments arising out of this Agreement.

**DEFE CHARGE.** Customer's invoices may also include a DEFE charge to cover all or portions of certain expenses including:

D = DELIVERY, or expenses associated with the actual delivery of Services and Merchandise to Customer's place of business, primarily Route Sales Representative commissions, management salaries, vehicle depreciation, equipment maintenance, insurance, road use charges and local access fees.

E = ENVIRONMENTAL, or expenses (past, present and future) UniFirst absorbs related to wastewater testing, purification, effluent control, solids disposal, supplies and equipment for pollution controls and energy conservation and overall regulatory compliance.

F = FUEL, or the gas, diesel fuel, oil and lubricant expenses associated with keeping UniFirst's fleet vehicles on the road and servicing its customers.

E = ENERGY, primarily the natural gas UniFirst uses to run boilers and gas dryers, plus other local utility charges.

**MERCHANDISE.** Customer acknowledges and agrees to notify all employees that Merchandise supplied is for general occupational use and, except as expressly specified below, affords no special user protections. Customer further acknowledges that: (1) Customer has unilaterally and independently determined and selected the nature, style, performance characteristics, number of changes and scope of all Merchandise to be used and the appropriateness of such Merchandise for Customer's specific needs or intended uses; (2) UniFirst does not have any obligation to advise, and has not advised, Customer concerning the fitness or suitability of the Merchandise for Customer's intended use; (3) UniFirst makes no representation, warranty or covenant regarding the performance of the Merchandise (including without limitation Flame Resistant and Visibility Merchandise); and (4) UniFirst shall in no way be responsible or liable for any injury or harm suffered by any Customer employees while wearing or using any Merchandise. Customer agrees to indemnify and hold harmless UniFirst and its employees and agents from and against all claims, injuries or damages to any person or property resulting from Customer's or Customer's employee use of the Merchandise, whether or not such claims, injuries or damages arise from any alleged defects in the Merchandise.

*Flame Resistant ("FR") Merchandise* supplied hereunder is intended only to prevent the ignition and burning of fabric away from the point of high heat impingement and to be self-extinguishing upon removal of the ignition source. FR items will not provide significant protection from burns in the immediate area of high heat contact due to thermal transfer through the fabric and/or destruction of the fabric in the area of such exposure. FR items are designed for continuous wear as only a secondary level of protection. Primary protection is still required for work activities where direct or significant exposure to heat or open flame is likely to occur.

*Visibility Merchandise* is intended to provide improved conspicuity of the wearer under daylight conditions and when illuminated by a light source of sufficient candlepower at night. It is Customer's responsibility to determine the level of conspicuity needed by wearers under specific work conditions. Further, Customer agrees that Visibility Merchandise alone does not ensure conspicuity of the wearer and that additional safety precautions may be necessary. The Visibility Merchandise supplied satisfied particular ANSI/SEA standards only when they were new and unused and only if so labeled. Customer acknowledges that usage and laundering of Visibility Merchandise may adversely affect its conspicuity.

*Healthcare/Food-Related* Customer acknowledges that: (1) UniFirst does not guarantee or warrant that the Merchandise selected by Customer or that processed garments delivered by UniFirst will be appropriate or sufficient to provide a hygienic level adequate for individual Customer's needs; and (2) optional poly-bagging\* is recommended to reduce the risk of cross-contamination of Merchandise, and the failure to utilize such service may adversely affect the efficacy of UniFirst's hygienic cleaning process.

(\* Poly-bag services incur additional charges)

If any Merchandise supplied hereunder is Merchandise that: (1) UniFirst does not stock for whatever reason (including due to style, color, size or brand); (2) consists of non-UniFirst manufactured or customized FR Merchandise; or (3) consists of Merchandise that has been permanently personalized (in all cases known as "Non-Standard Merchandise"), then, upon the discontinuance of any Service hereunder at any time for any reason, including expiration, termination, or cancellation of this Agreement, with or without cause, deletion of any Non-Standard Merchandise from Customer's Service Program, or due to employee reductions (in each case a "Discontinuance of Service"), Customer will purchase at the time of such Discontinuance of Service all affected Non-Standard Merchandise items then in UniFirst's inventory (in-service, shelf, as well as any manufacturer's supplies ordered for Customer's use), paying for same the replacement charges then in effect.

Customer agrees not to contaminate any Merchandise with asbestos, heavy metals, solvents, inks or other hazardous or toxic substances ("contaminants"). Customer agrees to pay UniFirst for all Merchandise that is lost, stolen, damaged or abused beyond repair. As a condition to the termination of this Agreement, for whatever reason, Customer will return to UniFirst all standard Merchandise in good and usable condition or pay for same at the replacement charges then in effect.

**OBLIGATIONS AND REMEDIES.** If Customer breaches or terminates this Agreement before the expiration date for any reason (other than for UniFirst's failure under the performance guarantee described above), Customer will pay UniFirst, as liquidated damages and not as a penalty (the parties acknowledging that actual damages would be difficult to calculate with reasonable certainty) an amount equal to 50 percent of the average weekly amounts invoiced in the preceding 26 weeks, multiplied by the number of weeks remaining in the current term. These damages will be in addition to all other obligations or amounts owed by Customer to UniFirst, including the return of Standard Merchandise or payment of replacement charges, and the purchase of any Non-Standard Merchandise items as set forth herein.

This Agreement shall be governed by Massachusetts law (exclusive of choice of law). If a dispute arises from or relates in any way to this Agreement or any alleged breach thereof at any time, the parties will first attempt to resolve the claim or dispute by negotiation at agreed time(s) and location(s). All negotiations are confidential and will be treated as settlement negotiations. Any matter not resolved through direct negotiations within 30 days shall be resolved exclusively by final and binding arbitration, conducted in the capital city of the state where Customer has its principal place of business (or some other location mutually agreed); pursuant to the Expedited Rules of the Commercial Arbitration Rules of the American Arbitration Association; and, governed by the Federal Arbitration Act, to the exclusion of state law inconsistent therewith. The parties will agree upon one (1) Arbitrator to settle the controversy or claim. The successful or substantially prevailing party in any proceeding, including any appeals thereof (as determined by the Arbitrator/court) shall recover all of its costs and expenses including, without limitation, reasonable attorney fees, witness fees and discovery costs, all of which shall be included in and as a part of the judgment or award rendered hereunder. This provision for Arbitration is specifically enforceable by the parties; the Arbitrator shall have no power to vary or ignore the provisions hereof; and, the decision of the Arbitrator in accordance herewith, may be entered in any court having jurisdiction thereof. Customer acknowledges that, with respect to all such disputes, it has voluntarily and knowingly waived any right it may have to a jury trial or to participate in a class action or class litigation as a representative of any other persons or as a member of any class of persons, or to consolidate its claims with those of any other persons or class of persons. If this prohibition against class litigation is ruled to be unenforceable for any reason in any proceeding, then the prohibition against class litigation shall be void and of no force and effect in that proceeding.

**MISCELLANEOUS.** The parties agree that this Agreement represents the entire agreement between them. In the event Customer issues a purchase order to UniFirst at any time, none of the standard pre-printed terms and conditions therein shall have any application to this Agreement, or any transactions occurring pursuant hereto or thereto. UniFirst may, in its sole discretion, assign this Agreement. Customer may not assign this Agreement without the prior written consent of UniFirst. Customer agrees that in the event it sells or transfers its business, it will require the purchaser or transferee to assume all obligations and responsibilities under this Agreement; provided that such assumption shall not relieve Customer of its liabilities hereunder; and provided further that any failure by a purchaser or transferee to assume this Agreement shall constitute a breach and early termination of this Agreement resulting in the obligation to pay all amounts on account thereof as set forth in this Agreement. Neither party will be liable for any incidental, consequential, special or punitive damages. In no event shall UniFirst's aggregate liability to Customer for any and all claims exceed the sum of all amounts actually paid by Customer to UniFirst. In the event any portion of this Agreement is held by a court of competent jurisdiction or by a duly appointed arbitrator to be unenforceable, the balance will remain in effect. All written notices provided to UniFirst must be sent by certified mail to the attention of the Location Manager. In Texas and certain other locations, UniFirst's business is conducted by, and the term "UniFirst" as used herein means, UniFirst Holdings, Inc. d.b.a. UniFirst.

**ACCEPTED.** Customer Signature \_\_\_\_\_ Date \_\_\_\_\_ (I have read and agree to all of the above Terms.)

CITY OF TRACY  
ADMINISTRATIVE POLICY AND PROCEDURE MANUAL

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SUBJECT: : UNIFORM POLICY  
DATE ISSUED: : July 1, 2020  
SECTION: : U

SECTION 1: PURPOSE

The purpose of this program is to provide a consistent uniform appearance that will identify City employees who have direct contact with the public on a regular basis. This will provide a positive image of City operations generally performed by City personnel in public view, and will enhance the health and safety of employees who work in the Public Works, Parks & Recreation – Airport Division and Utilities Departments.

This policy applies to employees who have been designated to wear mandatory uniforms, except for Fire and Police employees and recreation part-time personnel in the Parks and Recreation Department. The purpose of the policy is to ensure that all personnel are treated equitably in the supply and maintenance of uniforms.

This policy will apply to the following Departments:

Public Works  
Utilities – Water and Wastewater Treatment Plants  
Parks and Recreation Department – Airport Division

SECTION 2: POLICY

All personnel who are required under this policy to wear uniforms furnished by the City shall abide by the following rules unless, for safety or other reasons, in particular situations, prudent judgment dictates to the contrary. The supervisor is responsible for interpreting and ensuring compliance with this procedure.

1. A uniform, or any part thereof, shall be worn only during working hours, in traveling to and from work, or while serving in a standby capacity. When an employee terminates City employment, they will return all uniforms to the City prior to receiving their final paycheck.

2. Uniform trousers and shirts shall be worn together.

3. Except for T-shirts, uniforms will be laundered by the City's vendor in order to comply with health and safety standards. Jackets will be dry cleaned once a year or when needed with approval of department supervisor. T-shirts will be laundered by the employee at their expense.

4. An employee losing their uniform, or a part thereof, will be held responsible. Replacement costs will be borne by the employee concerned.

5. An employee having their uniform damaged on the job through no fault of their own will have the replacement costs borne by the City. In the event of proven negligence by the employee, the replacement costs will be borne by the employee.

6. Employees at the Wastewater Treatment Plant will be provided with T-shirts as long as they are not worn as outer garments. Employees at the Water Plant will be provided with T-shirts and they may be worn as outer garments. Uniforms rented and laundered by a single vendor and not taken home (as T-shirts are) reduces the risk of exposure to infectious diseases and chemical toxins at the employee's home or to their family members.

SECTION 3:

QUANTITIES

The following uniforms will be provided by the City through a rental program by a vendor:

1. Eleven (11) shirts. Employee will be able to designate the combination of short sleeve and long sleeve shirts once a year.

2. Eleven (11) long pants. Employees designated to wear shorts will be allowed up to 5 shorts in place of 5 long pants for the summer season. (*See designated classifications below*)

3. The following items will be provided by the city:

a) One heavy jacket (at time of hire; replacements when damaged or worn beyond repair)

b) One lightweight jacket (at time of hire; replacements issued when damaged or worn beyond repair)

c) Five T-shirts - either pocket or no pocket (annually or as needed)

4. The following safety items will be provided by the City to the appropriate employees for safety reasons, and will not take the place of the required uniforms. These items will be maintained and stored at the work site.

- a) Rain gear will be provided to all appropriate employees.
- b) Marine gear will be provided for those employees who work on waterways.
- c) Boots provided in accordance with the Safety Boot Administrative Policy and Procedure and the respective Memorandum of Understanding (MOU)

#### CLASSIFICATIONS COVERED

Building Maintenance Worker  
Building Maintenance Assistant  
Custodian  
Electrician  
Environmental Compliance Officer  
Environmental Compliance Technician  
Environmental Control Inspector  
Equipment Mechanic  
Sr. Equipment Mechanic  
Equipment Service Worker  
General Laborer  
Instrument Technician  
Laboratory Technician  
Laboratory QA Officer  
Maintenance Worker I/II  
Meter Readers  
Plant Mechanic  
Principal Wastewater Treatment Plant Operator  
Senior Building Maintenance Worker  
Senior Electrician  
Senior Maintenance Worker  
Senior Wastewater Treatment Plant Operator  
Senior Water Treatment Plant Operator  
Water Plant Operator

Water Treatment Plant Operator-in-Training  
Wastewater Treatment Plant Operator-in-Training  
Utility Operator

**\*\* Classifications designated to wear shorts\*\***

Maintenance Worker - *Parks Only and Maintenance Workers performing customer service duties*  
Meter Readers

Approved as to form:

 Digitally signed by Leticia  
M. Ramirez  
Date: 2020.07.30  
17:10:59 -07'00'

Leticia Ramirez, City Attorney

Policy Approved by:



Jenny Haruyama, City Manager



**Solicitation Number: RFP #040920**

**CONTRACT**

This Contract is between **Sourcewell**, 202 12th Street Northeast, P.O. Box 219, Staples, MN 56479 (Sourcewell) and **UniFirst Corporation**, 68 Jonspin Road, Wilmington, MA 01860 (Vendor).

Sourcewell is a State of Minnesota local government agency and service cooperative created under the laws of the State of Minnesota (Minnesota Statutes Section 123A.21) that offers cooperative procurement solutions to government entities. Participation is open to federal, state/province, and municipal governmental entities, higher education, K-12 education, nonprofit, tribal government, and other public entities located in the United States and Canada.

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

**1. TERM OF CONTRACT**

- A. **EFFECTIVE DATE.** This Contract is effective upon the date of the final signature below.
- B. **EXPIRATION DATE AND EXTENSION.** This Contract expires May 22, 2024, unless it is cancelled sooner pursuant to Article 24. This Contract may be extended up to one additional one-year period upon request of Sourcewell and with written agreement by Vendor.
- C. **SURVIVAL OF TERMS.** Articles 11 through 16 survive the expiration or cancellation of this Contract.

**2. EQUIPMENT, PRODUCTS, OR SERVICES**

- A. **EQUIPMENT, PRODUCTS, OR SERVICES.** Vendor will provide the Equipment, Products, or Services as stated in its Proposal submitted under the Solicitation Number listed above. Vendor's Equipment, Products, or Services Proposal (Proposal) is attached and incorporated into this Contract. Vendor's Equipment, Products, or Services consist exclusively of textile products or services, and will identified as Products or Services in this Contract.

All purchased Products provided under this Contract must be new/current model. All rented Products provided under this Contract will be new at the time each location is initially installed into service. Vendor may offer close-out or refurbished Products if they are clearly indicated in Vendor's product and pricing list.

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

B. **WARRANTY.** Vendor warrants that all Products and Services furnished are free from liens and encumbrances. All Products will be processed, mended, and finished in accordance with the generally accepted standards of the textile rental industry. Vendor makes no other representations, warranties or conditions, express or implied by law, statutory or otherwise, including, without limitation, the design or condition of the Products, their merchantability or their fitness, capacity or durability for any particular use or purpose, the quality of the Products or workmanship of the Products.

C. **DEALERS, DISTRIBUTORS, AND/OR RESELLERS.** Upon Contract execution, Vendor will make available to Sourcewell a means to validate or authenticate Vendor's authorized dealers, distributors, and/or resellers relative to the Products and Services related to this Contract. This list may be updated from time-to-time and is incorporated into this Contract by reference. It is the Vendor's responsibility to ensure Sourcewell receives the most current version of this list.

### 3. PRICING

All Products or Services under this Contract will be priced as stated in Vendor's Proposal. The prices stated in Vendor's Proposal are calculated based on a five (5) year contract term commitment. Four (4) year contract term commitments will require a five percent (5%) price increase. Three (3) year contract term commitments will require a ten percent (10%) price increase. All prices submitted are exclusive of any applicable sales taxes. All such sales taxes shall be listed as a separate line item on the underlying invoice and paid directly by UniFirst to the appropriate taxing authority.

When providing pricing quotes to Participating Entities, all pricing quoted must reflect a Participating Entity's total cost of acquisition. This means that the quoted cost is for delivered Equipment, Products, and Services that are operational for their intended purpose, and includes all costs to the Participating Entity's requested delivery location.

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

A. **SHIPPING AND SHIPPING COSTS.** All delivered Products must be properly packaged. Damaged Products may be rejected. If the damage is not readily apparent at the time of

delivery, Vendor must permit the Products to be returned within a reasonable time at no cost to Sourcewell or its Participating Entities. Participating Entities reserve the right to inspect the Products at a reasonable time after delivery where circumstances or conditions prevent effective inspection of the Products at the time of delivery.

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

Vendor will repair any rental item or reperform any services which do not comport with the Sourcewell's specifications or requirements as set forth in the Contract and issue credits for any Services that do not comport with said specification and/or requirements. The Products are processed and delivered on a weekly basis, each week, continuously throughout the term of the Contract. As such, the applicable warranty period for such rental Products is one (1) week.

Sourcewell may declare the Vendor in breach of this Contract if the Vendor intentionally delivers substandard or inferior Products. In the event of the delivery of nonconforming Products, the Participating Entity will notify the Vendor as soon as possible and the Vendor will replace nonconforming Products with conforming Products that are acceptable to the Participating Entity.

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

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

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

#### **4. PRODUCT AND PRICING CHANGE REQUESTS**

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

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

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

## **5. PARTICIPATION, CONTRACT ACCESS, AND PARTICIPATING ENTITY REQUIREMENTS**

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

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

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

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

## **6. PARTICIPATING ENTITY USE AND PURCHASING**

A. ORDERS AND PAYMENT. To access the contracted Products or Services under this Contract, a Participating Entity must clearly indicate to Vendor that it intends to access this Contract; however, order flow and procedure will be developed jointly between Sourcewell and Vendor.

Typically, a Participating Entity will enter into a local service contract directly with Vendor. If a Participating Entity issues a purchase order, it may use its own forms, but the purchase order should clearly note the applicable Sourcewell contract number. All Participating Entity orders under this Contract must be issued prior to expiration of this Contract; however, Vendor performance, Participating Entity payment, and any applicable warranty periods or other Vendor or Participating Entity obligations may extend beyond the term of this Contract.

Vendor's acceptable forms of payment are included in Attachment A. Participating Entities will be solely responsible for payment and Sourcewell will have no liability for any unpaid invoice of any Participating Entity.

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

**C. PERFORMANCE BOND.** If requested by a Participating Entity, Vendor will provide a performance bond that meets the requirements set forth in the Participating Entity's order.

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

**E. TERMINATION OF ORDERS.** Participating Entities may terminate their local service contract, in whole or in part, subject to its terms and conditions, upon notice to Vendor in the event of any of the following events:

1. The Participating Entity fails to receive funding or appropriation from its governing body at levels sufficient to pay for the goods to be purchased;
2. Federal, state, or provincial laws or regulations prohibit the purchase or change the Participating Entity's requirements; or
3. Vendor commits any material breach of this Contract or the additional terms agreed to between the Vendor and a Participating Entity.

**F. GOVERNING LAW AND VENUE.** The governing law and venue for any action related to a Participating Entity's local service contract will be determined by the Participating Entity.

## 7. CUSTOMER SERVICE

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

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

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

## 8. REPORT ON CONTRACT SALES ACTIVITY AND ADMINISTRATIVE FEE PAYMENT

A. CONTRACT SALES ACTIVITY REPORT. Each calendar quarter, Vendor must provide a contract sales activity report (Report) to the Sourcewell Contract Administrator assigned to this Contract. A Report must be provided regardless of the number or amount of sales during that quarter (i.e., if there are no sales, Vendor must submit a report indicating no sales were made).

The Report must contain the following fields:

- Customer Name (e.g., City of Staples Highway Department);
- Customer Physical Street Address;
- Customer City;
- Customer State/Province;
- Customer Zip Code;
- Customer Contact Name;
- Customer Contact Email Address;
- Customer Contact Telephone Number;
- Sourcewell Assigned Entity/Participating Entity Number;
- Item Purchased Description;
- Item Purchased Price;
- Sourcewell Administrative Fee Applied; and
- Date Purchase was invoiced/sale was recognized as revenue by Vendor.

B. ADMINISTRATIVE FEE. In consideration for the support and services provided by Sourcewell, the Vendor will pay an administrative fee to Sourcewell on all Products and Services provided to Participating Entities. The Administrative Fee must be included in, and not added to, the pricing.

Vendor may not charge Participating Entities more than the contracted price to offset the Administrative Fee.

The Vendor will submit a check payable to Sourcewell for the percentage of administrative fee stated in the Proposal multiplied by the total sales of all Products and Services purchased by Participating Entities under this Contract during each calendar quarter. Payments should note the Sourcewell-assigned contract number in the memo and must be mailed to the address above "Attn: Accounts Receivable." Payments must be received no later than 45 calendar days after the end of each calendar quarter.

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

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

#### **9. AUTHORIZED REPRESENTATIVE**

Sourcewell's Authorized Representative is its Chief Procurement Officer.

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

#### **10. ASSIGNMENT, AMENDMENTS, WAIVER, AND CONTRACT COMPLETE**

- A. **ASSIGNMENT.** Neither the Vendor nor Sourcewell may assign or transfer any rights or obligations under this Contract without the prior consent of the parties and a fully executed assignment agreement. Such consent will not be unreasonably withheld.
- B. **AMENDMENTS.** Any amendment to this Contract must be in writing and will not be effective until it has been fully executed by the parties.
- C. **WAIVER.** If either party fails to enforce any provision of this Contract, that failure does not waive the provision or the right to enforce it.
- D. **CONTRACT COMPLETE.** This Contract contains all negotiations and agreements between Sourcewell and Vendor. No other understanding regarding this Contract, whether written or oral, may be used to bind either party.

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

### **11. LIABILITY**

Vendor will indemnify, save, and hold Sourcewell and its Participating Entities, including their agents and employees, harmless from any claims or causes of action, including attorneys' fees, arising out of its negligence or willful misconduct in the performance of this Contract by the Vendor or its agents or employees.

### **12. AUDITS**

Sourcewell reserves the right to review the books, records, documents, and accounting procedures and practices of the Vendor relevant to this Contract for a minimum of 6 years from the end of this Contract. This clause extends to Participating Entities as it relates to business conducted by that Participating Entity under this Contract.

### **13. GOVERNMENT DATA PRACTICES**

Vendor and Sourcewell must comply with the Minnesota Government Data Practices Act, Minnesota Statutes Chapter 13, as it applies to all data provided by or provided to Sourcewell under this Contract and as it applies to all data created, collected, received, stored, used, maintained, or disseminated by the Vendor under this Contract.

If the Vendor receives a request to release the data referred to in this article, the Vendor must immediately notify Sourcewell and Sourcewell will assist with how the Vendor should respond to the request.

### **14. INDEMNIFICATION**

As applicable, Vendor agrees to indemnify and hold harmless Sourcewell and its Participating Entities against any and all suits, claims, judgments, and costs instituted or recovered against Sourcewell or Participating Entities by any person on account of the use of any Products by Sourcewell or its Participating Entities supplied by Vendor in violation of applicable patent or copyright laws.

### **15. INTELLECTUAL PROPERTY, PUBLICITY, MARKETING, AND ENDORSEMENT**

#### **A. INTELLECTUAL PROPERTY**

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

- a. Sourcewell grants to Vendor a royalty-free, worldwide, non-exclusive right and license to use the Trademark(s) provided to Vendor by Sourcewell in advertising and promotional materials for the purpose of marketing Sourcewell's relationship with Vendor.
  - b. Vendor grants to Sourcewell a royalty-free, worldwide, non-exclusive right and license to use Vendor's Trademarks in advertising and promotional materials for the purpose of marketing Vendor's relationship with Sourcewell.
2. *Limited Right of Sublicense.* The right and license granted herein includes a limited right of each party to grant sublicenses to its and their respective distributors, marketing representatives, and agents (collectively "Permitted Sublicensees") in advertising and promotional materials for the purpose of marketing the Parties' relationship to Participating Entities. Any sublicense granted will be subject to the terms and conditions of this Article. Each party will be responsible for any breach of this Article by any of their respective sublicensees.
3. *Use; Quality Control.*
- a. Sourcewell must not alter Vendor's Trademarks from the form provided by Vendor and must comply with Vendor's removal requests as to specific uses of its trademarks or logos.
  - b. Vendor must not alter Sourcewell's Trademarks from the form provided by Sourcewell and must comply with Sourcewell's removal requests as to specific uses of its trademarks or logos.
  - c. Each party agrees to use, and to cause its Permitted Sublicensees to use, the other party's Trademarks only in good faith and in a dignified manner consistent with such party's use of the Trademarks. Upon written notice to the breaching party, the breaching party has 30 days of the date of the written notice to cure the breach or the license will be terminated.
4. *Termination.* Upon the termination of this Contract for any reason, each party, including Permitted Sublicensees, will have 30 days to remove all Trademarks from signage, websites, and the like bearing the other party's name or logo (excepting Sourcewell's pre-printed catalog of vendors which may be used until the next printing). Vendor must return all marketing and promotional materials, including signage, provided by Sourcewell, or dispose of it according to Sourcewell's written directions.

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

C. **MARKETING.** Any direct advertising, marketing, or offers with Participating Entities must be approved by Sourcewell. Materials should be sent to the Sourcewell Contract Administrator assigned to this Contract.

D. ENDORSEMENT. The Vendor must not claim that Sourcewell endorses its Products or Services.

## 16. GOVERNING LAW, JURISDICTION, AND VENUE

Minnesota law governs this Contract. Venue for all legal proceedings out of this Contract, or its breach, must be in the appropriate state court in Todd County or federal court in Fergus Falls, Minnesota.

## 17. FORCE MAJEURE

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

## 18. SEVERABILITY

If any provision of this Contract is found to be illegal, unenforceable, or void then both Sourcewell and Vendor will be relieved of all obligations arising under such provisions. If the remainder of this Contract is capable of performance, it will not be affected by such declaration or finding and must be fully performed.

## 19. PERFORMANCE, DEFAULT, AND REMEDIES

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

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

B. DEFAULT AND REMEDIES. Either of the following constitutes cause to declare this Contract, or any Participating Entity's local service contract under this Contract, in default:

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

Written notice of default and a reasonable opportunity to cure must be issued by the party claiming default. Time allowed for cure will not diminish or eliminate any liability for liquidated or other damages. If the default remains after the opportunity for cure, the non-defaulting party may:

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

## 20. INSURANCE

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

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

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

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

Minimum limits:

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

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

Minimum Limits:

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

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

Minimum Limits:

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

4. *Umbrella Insurance.* During the term of this Contract, Vendor will maintain umbrella coverage over Workers' Compensation, Commercial General Liability, and Commercial Automobile.

Minimum Limits:

\$2,000,000

5. *Network Security and Privacy Liability Insurance.* During the term of this Contract, Vendor will maintain coverage for network security and privacy liability. The coverage may be endorsed on another form of liability coverage or written on a standalone policy. The insurance must cover claims which may arise from failure of Vendor's security resulting in, but not limited to, computer attacks, unauthorized access, disclosure of not public data – including but not limited to, confidential or private information, transmission of a computer virus, or denial of service.

Minimum limits:

\$2,000,000 per occurrence

\$2,000,000 annual aggregate

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

B. CERTIFICATES OF INSURANCE. Prior to commencing under this Contract, Vendor must furnish to Sourcewell a certificate of insurance, as evidence of the insurance required under this Contract. Prior to expiration of the policy(ies), renewal certificates must be mailed to Sourcewell, 202 12th Street Northeast, P.O. Box 219, Staples, MN 56479 or sent to the Sourcewell Contract Administrator assigned to this Contract. The certificates must be signed by a person authorized by the insurer(s) to bind coverage on their behalf. All policies must include there will be no cancellation, suspension, non-renewal, or reduction of coverage without 30 days' prior written notice to the Vendor.

Upon request, Vendor must provide to Sourcewell copies of applicable policies and endorsements, within 10 days of a request. Failure to request certificates of insurance by Sourcewell, or failure of Vendor to provide certificates of insurance, in no way limits or relieves Vendor of its duties and responsibilities in this Contract.

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

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

E. **UMBRELLA/EXCESS LIABILITY.** The limits required by this Contract can be met by either providing a primary policy or in combination with umbrella/excess liability policy(ies).

F. **SELF-INSURED RETENTIONS.** Any self-insured retention in excess of \$10,000 is subject to Sourcewell's approval.

## **21. COMPLIANCE**

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

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

## **22. BANKRUPTCY, DEBARMENT, OR SUSPENSION CERTIFICATION**

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

Vendor certifies and warrants that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from programs

operated by the State of Minnesota; the United States federal government or the Canadian government, as applicable; or any Participating Entity. Vendor certifies and warrants that neither it nor its principals have been convicted of a criminal offense related to the subject matter of this Contract. Vendor further warrants that it will provide immediate written notice to Sourcewell if this certification changes at any time.

### **23. PROVISIONS FOR NON-UNITED STATES FEDERAL ENTITY PROCUREMENTS UNDER UNITED STATES FEDERAL AWARDS OR OTHER AWARDS**

Participating Entities that use United States federal grant or FEMA funds to purchase goods or services from this Contract may be subject to additional requirements including the procurement standards of the Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards, 2 C.F.R. § 200. Participating Entities may also require additional requirements based on specific funding specifications. Within this Article, all references to "federal" should be interpreted to mean the United States federal government. The following list only applies when a Participating Entity accesses Vendor's Products or Services with United States federal funds.

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

B. **DAVIS-BACON ACT, AS AMENDED (40 U.S.C. § 3141-3148).** When required by federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. § 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 C.F.R. § 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-federal entity must report all suspected or reported violations to the federal awarding agency. The contracts must also include a provision for compliance with the Copeland "Anti-Kickback" Act (40 U.S.C. § 3145), as supplemented by Department of Labor regulations (29 C.F.R. § 3, "Contractors and Subcontractors on Public Building or Public Work

Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-federal entity must report all suspected or reported violations to the federal awarding agency. Vendor must be in compliance with all applicable Davis-Bacon Act provisions.

C. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT (40 U.S.C. § 3701-3708). Where applicable, all contracts awarded by the non-federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. §§ 3702 and 3704, as supplemented by Department of Labor regulations (29 C.F.R. § 5). Under 40 U.S.C. § 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. § 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence. This provision is hereby incorporated by reference into this Contract. Vendor certifies that during the term of an award for all contracts by Sourcewell resulting from this procurement process, Vendor must comply with applicable requirements as referenced above.

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

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

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

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

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

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

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

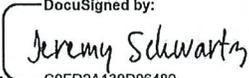
K. ACCESS TO RECORDS (2 C.F.R. § 200.336). Vendor agrees that duly authorized representatives of a federal agency must have access to any books, documents, papers and records of Vendor that are directly pertinent to Vendor's discharge of its obligations under this Contract for the purpose of making audits,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

also includes timely and reasonable access to Vendor’s personnel for the purpose of interview and discussion relating to such documents.

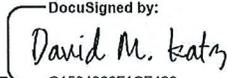
L. PROCUREMENT OF RECOVERED MATERIALS (2 C.F.R. § 200.322). A non-federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements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

**24. CANCELLATION**

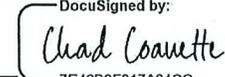
Sourcewell or Vendor may cancel this Contract at any time, with or without cause, upon 60 days’ written notice to the other party. However, Sourcewell may cancel this Contract immediately upon discovery of a material defect in any certification made in Vendor’s Proposal. Cancellation of this Contract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

Sourcewell  
By:   
C0FD2A139D06489...  
Jeremy Schwartz  
Title: Director of Operations &  
Procurement/CPO

Date: 6/18/2020 | 12:51 PM CDT

UniFirst Corporation  
By:   
C1504866F1CF420...  
David M. Katz  
Title: Vice President Sales & Marketing

Date: 6/18/2020 | 12:07 PM CDT

Approved:  
By:   
7E42B8F817A64CC...  
Chad Coquette  
Title: Executive Director/CEO

Date: 6/18/2020 | 12:52 PM CDT

# RFP 040920 - Uniforms with Related Products and Services

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## Vendor Details

Company Name: UniFirst Corporation  
Address: 68 Jonspin Rd  
Wilmington, MA 01887  
Contact: Jesse Daggett  
Email: jesse\_daggett@unifirst.com  
Phone: 903-279-1442  
HST#:

## Submission Details

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Submitter's IP Address: 207.126.196.16

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## Specifications

**Table 1: Proposer Identity & Authorized Representatives**

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

Line Item	Question	Response *
1	Proposer Legal Name (and applicable d/b/a, if any):	UniFirst Corporation
2	Proposer Address:	68 Jonspin Road Wilmington, MA 01860
3	Proposer website address:	<a href="https://unifirst.com/">https://unifirst.com/</a>
4	Proposer's Authorized Representative (name, title, address, email address & phone) (The representative must have authority to sign the "Proposer's Assurance of Compliance" on behalf of the Proposer and, in the event of award, will be expected to execute the resulting contract):	David M. Katz Vice President Sales & Marketing 68 Jonspin Road Wilmington, MA 01860 David_Katz@UNIFIRST.COM 800-347-7888
5	Proposer's primary contact for this proposal (name, title, address, email address & phone):	Jesse Daggett Preferred Vendor Business Development Manager 68 Jonspin Road Wilmington, MA 01860  Tel: 800-934-8641 Cell: 903-279-1442 Jesse_Daggett@UniFirst.com
6	Proposer's other contacts for this proposal, if any (name, title, address, email address & phone):	Jeremy Weiss Director, National Account Sales UniFirst Corporation 68 Jonspin Road Wilmington, MA 01887 800-347-7888 jweiss@UniFirst.com

**Table 2: Company Information and Financial Strength**

Line Item	Question	Response *
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<p>7</p>	<p>Provide a brief history of your company, including your company's core values, business philosophy, and industry longevity related to the requested equipment, products or services.</p>	<p>From our modest beginnings in an eight-stall garage in Boston in 1936, UniFirst Corporation has become an industry leader and one of the fastest growing companies in the \$13 billion Uniform Services business.</p> <p>As the only public company within its industry to grow revenues every year since we started in 1936, including each of the recent recessionary years, UniFirst may have just such a "secret formula." UniFirst supplies and services uniforms that are "job-fitted work clothes" tailored to the needs of companies throughout the U.S. and Canada.</p> <p>UniFirst is dedicated to excellence in service and total customer satisfaction. For 83 years we've known the importance of excellent customer service and we've dedicated ourselves to achieving it. Now in our ninth decade of service we continue working toward perfecting the process.</p> <p>UniFirst's overall Customer retention rate for the past 3 years is over 97%. Over the past 10 years our annual percentage of controllable lost accounts has remained under 5% and our contract renewal rate has actually increased year-to-year. With industry averages approaching 90%, we believe we are setting the pace for business retention in the industry. Our "Customers for Life" programs and overall business philosophy is a key differentiation between UniFirst and its competitors.</p> <p>Our corporate mission is to be recognized as the leading provider of quality uniform products and services for business. Our careful focus on serving each customer's special needs and providing total satisfaction enables us to grow, to provide an equitable return on investment, and to create opportunities for our team partners.</p> <p>We are committed to conducting our business in a fair, honest, and responsible manner in accordance with all environmental and government regulations and with the highest standards of business ethics.</p> <p>With a core business dedicated to the rental, lease, and sale of work clothing, uniforms, and career wear to business, we recognize that our continued success depends on the skill, creativity and initiative of all our team partners. That is why we are constantly seeking bright, talented, self-motivated individuals to help us extend our record of success in the 21st century.</p> <p>A difference that UniFirst offers can be looked at as a basic philosophy of doing business. This basic philosophy is summed up with three main thoughts; honesty, mutual trust and respect, and results for today and tomorrow. While these thoughts may seem sentimental and overused they form the foundation for how we approach day-to-day business at UniFirst.</p> <p>You will not hear UniFirst over commit just to win your business. We will honestly tell you what we can and what we cannot do. We feel that this is the only way to earn your business.</p> <p>UniFirst feels that a relationship built on mutual trust and respect will allow both parties to accomplish their necessary objectives. No one wins if one party to an agreement loses. Because all of our business partnerships begin with an honest commitment to what we can and cannot do, trust and respect naturally develop between UniFirst and our customers.</p> <p>While the program that we put in place addresses today's objectives we must constantly be looking to solving tomorrow's challenges. That means finding new technology, new products and services but most of all it means having a relationship that fosters commitment to meet tomorrow's requirements. UniFirst is committed to making this a long-term relationship. We want to be business partners for a long time.</p>
<p>8</p>	<p>Provide a detailed description of the products and services that you are offering in your proposal.</p>	<p>Products Standard Work-wear: From factory coveralls, to lab coats, to foodservice smocks – UniFirst's Industrial Wear line offers apparel for workers in virtually every occupation. Beyond a complete selection of primary garments, cover-ups, and outerwear, UniFirst also provides accessory items like gloves, hats, footwear, and protective gear - making "head-to-toe" outfitting more than just a marketing slogan. Most of the line's apparel items boast our Industrial Laundry Safe seal, meaning they are ideally constructed to hold up to UniFirst's rigorous industrial laundry process.</p> <p>Compared to home laundering, we use stronger detergents, longer agitation cycles, and higher temperatures to get even hard-use clothing their cleanest. UniFirst currently self-manufactures 67% of its overall industrial garment needs.</p> <p>Flame Resistant Apparel: Wherever business is hot (literally), UniFirst is on the job. Our flame-resistant apparel offers important secondary protection from flash fire, electric arcs, and other potentially hazardous flame conditions. Our FR garments look and feel comfortable,</p>

but offer great durability and the added protection of flame-resistance. UniFirst currently self manufactures over half of its overall FR needs. UniFirst also carries Flame Resistant Apparel specific for the foodservice industry - Samples are available.

#### Hi Visibility Garments:

For those whose jobs place them in potentially hazardous traffic environments, UniFirst offers the latest HIGHVISIBILITY WORKWEAR SOLUTIONS. Our ANSI compliant Hi-Vis garments make workers visible to drivers at much greater distances than simple enhanced visibility wear. And workers who are more easily seen by motorists and oncoming traffic are safer and happier on the job.

#### Corporate Casual Attire:

All across North America, the casual dress trend has taken hold. But the need for professional polish remains as strong as ever. UniFirst responds with Corporate Casual attire that allows employees to "dress down" while maintaining a decidedly business-like look. Our growing Corporate Casual line includes hundreds of items, all available with our own embroidered or screen-printed personalization. In this and other product categories, UniFirst offers the industry's fastest new installation and replenishment service available, thanks largely to our ISO 9001:2015 registered, 320,000 sq. ft. Owensboro, KY Central Distribution Facility, the only such facility in the industrial rental garment business.

#### Floorcare and Dust Control Services:

Creating a safe, attractive workplace is a process that begins from the ground up. It's no wonder, then, that UniFirst's floorcare products are underfoot in offices and factories from coast-to-coast. Through our rental programs, we regularly clean and rotate items, saving businesses significant maintenance time and expense. Supplying walk-off and logo mats; scraper and anti-fatigue mats; wet and dry mops; as well as various wiping products, UniFirst keeps workplaces clean and inviting, while protecting employees and your Members alike.

UniFirst self-manufactures over 97% of its total floorcare needs (mats and dust mops) from its Arkansas manufacturing facility so that we provide customers with an even greater level of color selection, and overall value than was previously available.

In business, quality and image are around-the-clock imperatives, often extending beyond work apparel. Restroom Services from UniFirst benefits both a company's employees and its Customers. Products such as hand soaps, sanitizers, air fresheners, disposable towels and tissue, as well as required dispensers, address health and sanitary concerns, while conveying a focus on cleanliness that speaks of a total commitment to quality.

#### Services

When you participate in a full-service UniFirst uniform program, up-front clothing investments are eliminated. We outfit employees in the clothing of your choice, provide weekly cleaning, garment maintenance, and issue replacements as necessary. We handle all the program administration for your employee uniforms and services, eliminating the worries and headaches. And it's all for one low weekly charge per employee (or per product).

#### Rent, lease, or buy work uniforms

Sourcewell's Members can assume as little or as much responsibility as they wish for their overall uniform program by electing to rent, lease, or buy. With the proper care and ongoing maintenance, Members can be assured their UniFirst workwear (and facility service) products are always in top shape.

Work Uniform Rental includes program administration, laundering, delivery, repairs, replacements, and more.

#### UniFirst full service uniform rental programs include:

When you participate in a full-service UniFirst uniform program, up-front clothing investments are eliminated. We outfit employees in the clothing of your Member's choice, provide weekly cleaning, garment maintenance, and issue replacements as necessary. We handle all the program administration for your Member's employee uniforms and services, eliminating the worries and headaches. And it's all for one low weekly charge per employee (or per product).

#### How our rental programs work

More than 260 UniFirst service centers throughout the U.S. and Canada provide a total uniform and Facility Service package. With a full service rental program, you get:

- Professional on-site needs analysis
- More than 40,000 in-stock product SKUs to choose from
- Measurement/fitting of each wearer conducted at your location(s)
- Specified number of garments for each individual
- Professional laundering and finishing
- Regularly scheduled uniform deliveries and product replenishment

- Inspection of all work clothing for rips, flaws, missing buttons, etc.
- Automatic garment repairs
- Automatic replacement of overly worn or damaged garments
- Inventory control with itemization by employee (or product)
- Quick outfitting of new employees
- Full program management

#### Triple Pro Service

You will get three dedicated UniFirst professionals working on your account at all times. There's a dependable Route Service Representative who'll keep your program running smoothly day in and day out, a Service Manager whose primary responsibility is to see that you're getting everything you need when you need it, and a helpful local Customer Service Representative who's always ready to provide immediate assistance. Through the efforts of this hard-working team, we guarantee 24-hour response to any problem, question, or request.

Every delivery day your Route Representative will check with you to see if there are any new employees to be added to the program. If there are, these additional people will be documented on the invoice. If you don't want to wait until your next delivery day, call your local UniFirst office and ask to speak with the Customer Service Rep. The Route Representative will size all new employees (or you can give their sizes over the phone) and uniforms will be ordered within 24 hours. You can expect stock garments in standard sizes to arrive on the next delivery day. Non-stock garments or non-standard sizes will take a little longer.

For rental uniforms UniFirst does not measure your employees. Rather, we have your employees actually try-on the garments, as we have found that this process better ensures proper fit. We have also found that lists, prepared in advance, that detail the employees to be sized, at a given sizing session, and the type and number of garments that each employee is entitled to receive, greatly assists the sizing process.

Work Uniform Leasing includes all the facets of a Uniform Rental Program, but employees take care of laundering their own uniform garments.

UniFirst Val-U-Lease uniform programs include:

Depending upon individual needs, your Members may prefer our Val-U-Lease program. They will enjoy the service, convenience, and all the benefits of our Full Service Uniform Rental Program, with the exception of the scheduled laundering services. But if they need occasional laundering, we can arrange that, too. And you'll still receive our uniform repair, replacement, and other maintenance services, as needed.

How our Val-U-Lease programs work

Like with our Uniform Rental programs, a UniFirst Val-U-Lease program eliminates upfront clothing investments in favor of low weekly charges. Your Members are only billed for the number of workers actually "in uniform." Idle clothing costs are avoided, and they get top-quality, stylish uniforms of their choice... complete with custom company emblems and much more. Employees take care of uniform cleaning, but UniFirst takes care of everything else, including:

- Professional on-site needs analysis
- More than 40,000 in-stock SKUs and over 340,000 total product SKUs to choose from
- Measurement/fitting of each wearer conducted at your location(s)
- Specified number of garments for each individual
- Garment repairs
- Garment replacements of overly worn or damaged garments
- Inventory control with itemization by employee (or product)
- Quick outfitting of new employees
- Full program management

#### Triple Pro Service

Your Members will get three dedicated UniFirst professionals working on their account at all times. There's a dependable Route Service Representative who'll keep their program running smoothly day in and day out, a Service Manager whose primary responsibility is to see that they are getting everything they need when they need it, and a helpful local Customer Service Representative who's always ready to provide immediate assistance. Through the efforts of this hard-working team, we guarantee 24-hour response to any problem, question, or request.

Work Uniform Purchase programs allow your Members to outfit their staff at competitive prices. And if they require occasional laundering or other garment services, we can provide that too.

For those who prefer to own, UniFirst offers competitive pricing and an extensive workwear selection - as all of our items are available for purchase.

		<p>Program Requirements: A service agreement would serve the best interest of both parties in the event that special or otherwise non-standard products, that UniFirst would also be expected to place into inventory, are specified.</p> <p>All our uniform rental items are available for purchase. Your Members may choose from thousands of UniFirst-manufactured products or other popular brands from trusted names like Landau, Fashion Seal, Dickies, Tri-Mountain &amp; Port Authority.</p>
9	<p>What are your company's expectations in the event of an award?</p>	<p>In the 9 years UniFirst has held the contract for uniforms, we've grown Sourcewell (formerly NJPA), to be our largest National Account Preferred Vendor program with annual revenues exceeding \$10M. In the event we're able to re-secure Sourcewell's uniform contract we are confident our program will, at a minimum, double over the course of the contract if not grow 2.5-3X based on ongoing sales efforts, management and rep awareness of the program and all the marketing and educating of Sourcewell members and/or prospective members these past 9 years.</p>
10	<p>Demonstrate your financial strength and stability with meaningful data. This could include such items as financial statements, SEC filings, credit and bond ratings, letters of credit, and detailed reference letters. Upload supporting documents (as applicable) in the document upload section of your response.</p>	<p>Please see the attached "UniFirst FY 2019 Annual Report," And the "UniFirst Standard Bank and Credit Responses" file. UniFirst's Dunn and Bradstreet Rating 5A2</p> <p>UniFirst is debt free, our balance sheet position allows us to commit to our industry leading product/facility reinvestment. That reinvestment will allow you to enjoy the best in class service from the Premium Supplier in the industry for the life of the facility service partnership.</p> <p>We are also the quality leader in the industry. Our executive focus and capital investment is all directed into improving our Laundry operations and customer experience. 95% of our revenues are from our core competency - rental laundry programs. Compared to our top two competitors, rental laundry represents roughly 77% of Cintas's revenue and only 9% of Aramark's revenue. Our financial position compared to our top two competitors with Aramark carrying \$7.87 billion and Cintas carrying \$2.54 billion in debt, with their efforts to reduce their debt burden, limits their ability to reinvest in their laundry infrastructure and customer's inventories.</p> <p>Ensuring quality, starts with product selection and account set-up. Unlike many of our competitors that have invested resources in other lines of business such as food related services, fire extinguishers, bathroom &amp; carpet cleaning and put in place lucrative commission structures for their drivers to cross sell to their existing customer base, UniFirst's primary business is Laundry. Each Route Service rep is judged and bonused each year on the customer retention numbers within their given route with top performers who keep 100% of their customers each year rewarded with a 5 night trip to a luxury resort to celebrate their accomplishment (The Cove at the Atlantis Bahamas in 2019).</p> <p>That commitment to excellence for our customers was built from the ground up by our founding family (and the majority shareholders in our company) based on our founding Core Values (which remain in place today): Customer Focus, Respect for Others, and Commitment to Quality. UniFirst's primary business objective is to provide its customers with only the best services possible, along with great-looking, image-enhancing uniforms, work clothing, and facility service items. All of our ongoing investments and efforts are focused on accomplishing one thing, which is our number-one long-term goal for UniFirst: to become universally recognized as the best service provider in our industry.</p> <p>To accomplish that goal, we have the largest network of ISO certified laundering plants in our industry. UniFirst maintains 260 facilities throughout North America. By having our plants ISO certified, we help ensure a consistency of quality that supports our commitment to providing best-in-class service and products to all of our customers.</p> <p>Each of our customer-servicing plant operations earned the internationally recognized ISO 9001 certification. The majority of our company-owned manufacturing facilities operate within ISO 9001:2015 certified quality management systems. ISO certification requires operations to document and follow workflow processes in detail in order to maintain ongoing maximized efficiencies in processes and productivity. ISO certifications can only be earned (and maintained) following in-depth quality and conformance audits by a recognized third-party certifying authority.</p> <p>UniFirst also maintains a state-of-the-art distribution center in Owensboro, Kentucky and has one plant in Cave City, Arkansas that specifically manufactures its own line (approximately 97% of the mats we place in service), of high-quality commercial floor mats. ISO 9001:2015 Certification, validates the fact that UniFirst has continuous improvement processes in place "to ensure that we consistently meet or exceed all of our customer's expectations." In-house manufacturing, producing millions of products annually, provides a unique level of vertical integration that not only lowers the cost for our customers, but also permits the creation of custom-designed mats for image-conscious companies.</p>

11	What is your US market share for the solutions that you are proposing?	16%	*
12	What is your Canadian market share for the solutions that you are proposing?	17%	*
13	Has your business ever petitioned for bankruptcy protection? If so, explain in detail.	No	*
14	<p>How is your organization best described: is it a manufacturer, a distributor/dealer/reseller, or a service provider? Answer whichever question (either a) or b) just below) best applies to your organization.</p> <p>a) If your company is best described as a distributor/dealer/reseller (or similar entity), provide your written authorization to act as a distributor/dealer/reseller for the manufacturer of the products proposed in this RFP. If applicable, is your dealer network independent or company owned?</p> <p>b) If your company is best described as a manufacturer or service provider, describe your relationship with your sales and service force and with your dealer network in delivering the products and services proposed in this RFP. Are these individuals your employees, or the employees of a third party?</p>	<p>We manufactured approximately 67% of the garments we placed in service during the fiscal year ended August 31, 2019 ("fiscal 2019"). These were primarily work pants and shirts manufactured at three of our plants located in San Luis Potosi, Mexico, one plant located in Managua, Nicaragua, as well as at subcontract manufacturers that we utilize to supplement our manufacturing capacity in periods of high demand. That means the products are made to withstand the punishing industrial laundry process. We also include products from other fine manufacturers noted for work wear quality and toughness.</p> <p>The Company operates 260 locations, serves over 300,000 customers throughout North America, puts nearly 2 million people in work apparel each business day and employs more than 14,000-plus team partners. Our business is the Rental, Lease and Sale of work clothing, uniforms, protective apparel, career-wear, and facility services products to businesses in virtually all industrial categories.</p>	*
15	<p>If applicable, provide a detailed explanation outlining the licenses and certifications that are both required to be held, and actually held, by your organization (including third parties and subcontractors that you use) in pursuit of the business contemplated by this RFP.</p>	<p>UniFirst is in good standing in the state of its incorporation, is qualified to do business in each state in which it proposes to provide products and/or services and has all licenses and permits necessary or required to provide such products and/or services.</p> <p>UniFirst operates the largest network of ISO 9001:2015 certified laundry facilities in the world. It has manufacturing facilities, and its primary distribution center is ISO 9001:2015 Certified. This process includes the creation of detailed training and communication programs for all team partners on maintaining appropriate procedures for quality and service controls.</p> <p>UniFirst maintains a state-of-the-art distribution center in Owensboro, Kentucky and three ISO 9001-2015 Certified garment manufacturing facilities in Mexico and also a manufacturing facility in Nicaragua. In-house manufacturing, producing millions of garments annually, provides a unique level of vertical integration that not only lowers the cost of uniforms we offer through our uniform programs, but also permits the creation of custom-designed garments for image-conscious companies. The latter often affords UniFirst a distinct competitive advantage.</p> <p>UniFirst belongs to the following Associations:</p> <p>Food Service  Grocery Manufacturers/Food Products Association  American Association of Meat Processors  International HACCP Alliance.</p> <p>Environmental  Uniform and Textile Service Association (UTSA)  Textile Rental Services Association (TRSA)  Laundry Environment Stewardship Program (LaundryESP®)  U.S. Green Building Council (USGBC)  Canada Green Building Council (CaGBC).  Energy Star and Green Lights® Business Partner  Green Seal™ certified  Eco-LogoM certified</p> <p>Healthcare  AORN (Association of Operating Room Nurses)  APIC (Association for Professionals in Infection Control and Epidemiology)  ASHES (American Society for Healthcare Environmental Services)  NADONA (National Association Directors of Nursing Administration)  NFSI (National Floor Safety Institute),</p> <p>We also offer food industries specialized uniform programs that are consistent with the guidelines of Hazard Analysis Critical Control Point (HACCP) and the Global Food Safety Initiative (GFSI).</p>	*

16	Provide all "Suspension or Debarment" information that has applied to your organization during the past ten years.	UniFirst operates 260 locations, serves over 300,000 customers throughout North America, puts nearly 2 million people in work apparel each business day and employs more than 14,000 team partners. As such, to the best of our knowledge and belief, and without any duty of investigation, we have no knowledge, in the last 10 years, of any suspension or debarment proceedings that apply to UniFirst as defined under 48 CFR Chapter 1 - Federal Acquisition Regulation.
17	Within this RFP category there may be subcategories of solutions. List subcategory titles that best describe your products and services.	<p>Work Apparel                      UniFirst Brands                      Industrial Uniforms                      Work Shirts                      Work Pants                      Outerwear                      Flame Resistant Clothing                      High Visibility Workwear                      Healthcare Uniforms &amp; Apparel                      Food Service Apparel                      ESD &amp; Anti-Static Garments</p> <p>Uniform Services                      Uniform Rental Programs                      Val-U-Lease Program                      Direct Purchase Programs                      National Account Programs</p> <p>Facility Services                      Floor Mat Services                      • WALK-OFF MATS                      • SCRAPER MATS                      • ANTI-FATIGUE MATS                      • "WET AREA" MATS                      • MESSAGE &amp; LOGO MATS</p> <p>Floor Mop Services                      • WET &amp; DRY FLOOR MOPS                      • MICROFIBER FLOOR MOPS</p> <p>Wiper &amp; Towel Services                      • SHOP TOWELS                      • MICROFIBER TOWELS</p> <p>Restroom Services                      • SOAPS &amp; HAND CARE                      • HEAVY-DUTY HAND CLEANERS                      • PAPER TOWELS &amp; SANITARY TISSUE                      • AIR FRESHENERS                      • SHAMPOO, SHOWER &amp; BATH</p> <p>Hand Hygiene Services                      • PURELL HAND SANITIZERS                      • MEDICAL SOAPS &amp; SURGICAL SCRUBS</p> <p>Cleaning Solution Dispensing Services</p> <p>Safety &amp; PPE                      • Safety Masks                      • Ear Plugs                      • Eyewash Stations                      • Flame Resistant Clothing                      • Industrial Safety Gloves                      • Hard Hats                      • High Visibility Clothing                      • Safety Glasses</p>

**Table 3: Industry Recognition & Marketplace Success**

Line Item	Question	Response *
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<p>18</p>	<p>Describe any relevant industry awards or recognition that your company has received in the past five years</p>	<p>Our Company continues to be honored by communities throughout North America for our environmental efforts. Utilities in Missouri and Texas, for example, presented UniFirst with "gold" awards for water safety and environmental-friendly treatment processes; other sanitation districts from Virginia to Kansas have also presented UniFirst with "Green" awards for the care we take in protecting local environmental resources.</p> <p>We have even been recognized for our environmental efforts within the specialized field of laundering and decontaminating apparel for the nuclear power industry. Exelon Corporation, one of the nation's largest nuclear power providers, presented our company with its Environmental Leadership Award, citing our "lengthy record of (processes and) services that are environmentally responsible, safe, and of superior quality." These are just a few of the many types of awards and recognitions we receive every year.</p> <p>UniFirst has secured the No. 9 spot on Apparel magazine's "Top 50" apparel companies list. This is the 13th consecutive year that Apparel magazine ranked UniFirst as one of America's top 50 apparel companies, and the second time the company has appeared in the top 10. To be eligible for the Apparel listing, public companies had to record at least \$100 million in annual sales; rankings were based on overall performance and financial management. UniFirst appears in the top 10 alongside some of America's most popular clothing companies including Nike, Canadian Goose, and lululemon athletica.</p> <p>In 2019 UniFirst was, once again, named by Selling Power magazine as one of the top companies to sell for in America. That's 16 years in a row.</p> <p>Top 5, A+ ranking on list of "America's Most Trustworthy Public Companies" (TGF Analytics).</p> <p>Forbes' Platinum 400 List "Best Big Companies in America."</p> <p>Forbes Magazine Names UniFirst Corporation to its 2019 America's Best Employers List. UniFirst has been selected as one of "America's Best Large Employers" for 2019. The list ranks the top 500 employers across 25 different industries in the United States...</p> <p>Glassdoor's "25 Best Companies for Career Opportunities" list.</p> <p>UniFirst Ranked by Newsweek as One of "America's Best Customer Service" Providers 2020.</p> <p>UniFirst has been included on Barron's second annual list of the 100 Most Sustainable Companies in the United States...</p> <p>Boston Globe's "Top 100 Performing Companies" list. All companies on the list are judged by their increased sales, profits, and return on shareholder's equity. Capital IQ, a Standard &amp; Poor's business, provided the analytics for this year's Globe 100 using Securities and Exchange Commission filings and corporate reports.</p> <p>UniFirst was once again recognized for its commitment to diversity from two different organizations—2020 Women on Boards and the TRSA (Textile Rental Services Association).</p> <p>UniFirst has won a 2019 APEX Award of Excellence for the design and implementation of the company's recent President's Club promotional mail campaign.</p> <p>This is the second consecutive APEX award that UniFirst has earned for their marketing communications programs—last year having won an award for the cover design of the company's Uniform Rental Catalog. This year's winning entry focused on UniFirst's President's Club, a prestigious designation that recognizes and rewards top salespeople for achieving challenging year-long sales goals.</p> <p>UniFirst has won a Bronze Stevie® Award for its LEAP (Leadership, Education, and Performance) management development program in a new category for 2019—Sales Recruitment Initiative of the Year...</p>
<p>19</p>	<p>What percentage of your sales are to the governmental sector in the past three years</p>	<p>Government sector sales falls under "Other" (16%), which includes:</p> <ul style="list-style-type: none"> <li>• Oil and Gas Extraction,</li> <li>• Government, Retail,</li> <li>• Other Industries</li> </ul>
<p>20</p>	<p>What percentage of your sales are to the education sector in the past three years</p>	<p>The Education sector sales (15%), falls under "General Services," which includes:</p> <ul style="list-style-type: none"> <li>• Business Services</li> <li>• Health and Educational Services</li> </ul>

21	List any state, provincial, or cooperative purchasing contracts that you hold. What is the annual sales volume for each of these contracts over the past three years?	UniFirst is an approved contracted supplier for these and other Group Purchasing Organizations (GPOs): Amerinet Champs Group Purchasing MedAssets Premier  Sales volumes are confidential.	*
22	List any GSA contracts or Standing Offers and Supply Arrangements (SOSA) that you hold. What is the annual sales volume for each of these contracts over the past three years?	UniFirst does not have any GSA contracts or Standing Offers and Supply Arrangements (SOSA) that we hold.	*

#### Table 4: References/Testimonials

Line Item 23. Supply reference information from three customers who are eligible to be Sourcwell participating entities.

Entity Name *	Contact Name *	Phone Number *	
City of Jacksonville	Richard Woodroof- City Manager	910-938-5200	*
City of Wilmington	Ellen McGowan- Sr Finance	910-343-1069	*
City of Germantown	Cathryn Perdue, CPPB, SPSM, Assistant Director of Procurement	P: (901) 751-7601	*

#### Table 5: Top Five Government or Education Customers

Line Item 24. Provide a list of your top five government, education, or non-profit customers (entity name is optional), including entity type, the state or province the entity is located in, scope of the project(s), size of transaction(s), and dollar volumes from the past three years.

Entity Name	Entity Type *	State / Province *	Scope of Work *	Size of Transactions *	Dollar Volume Past Three Years *	
Not for Publication	Government	Virginia - VA	Uniform/Facility Services Rental	\$1,905 (Average weekly invoice)	\$297,201	*
Not for Publication	Non-Profit	Washington - WA	Uniform/Facility Services Rental	\$1,874 (Average weekly invoice)	\$292,288	*
Not for Publication	Government	Virginia - VA	Uniform/Facility Services Rental	\$1,650 (Average weekly invoice)	\$257,451	*
Not for Publication	Government	North Carolina - NC	Uniform/Facility Services Rental	\$678 (Average weekly invoice)	\$105,710	*
Not for Publication	Education	California - CA	Uniform/Facility Services Rental	\$672 (Average weekly invoice)	\$104,836	*

#### Table 6: Ability to Sell and Deliver Service

Describe your company's capability to meet the needs of Sourcwell participating entities across the US and Canada, as applicable. Your response should address in detail at least the following areas: locations of your network of sales and service providers, the number of workers (full-time equivalents) involved in each sector, whether these workers are your direct employees (or employees of a third party), and any overlap between the sales and service functions.

Line Item	Question	Response *	
25	Sales force.	Direct employees across the US and Canada for Sales = 1230, and for Route Service Team partners that overlap with delivery and Route Sales = 2542	*

26	Dealer network or other distribution methods.	<p>We manufactured approximately 67% of all garments which we placed in service during fiscal 2019. These garments were primarily work pants and shirts manufactured at three of our plants located in San Luis Potosi, Mexico, one plant located in Managua, Nicaragua, as well as at subcontract manufacturers that we utilize to supplement our manufacturing capacity in periods of high demand. The balance of the garments used in our programs are purchased from a variety of industry suppliers. Currently, we also manufacture approximately 97% of the mats we place in service at our plant in Cave City, Arkansas.</p> <p>We note that our three apparel manufacturing plants in Cardenas, Valles and Ebano, Mexico have been awarded ISO 9001:2015 certification by Perry Johnson Registrars, an internationally recognized certifying authority. This ensures that the garments and emblems we design are produced with better quality, greater economy, and shorter response times to our customers.</p> <p>This ISO 9001:2015 certification speaks volumes about our commitment to quality in general and in particular about the quality manufacturing management systems that UniFirst now has in place at these garment manufacturing facilities. The output of these plants is shipped directly to our ISO 9001:2015 certification Distribution Center in Owensboro, KY for subsequent utilization by our customer service centers located throughout North America. This state-of-the-art Owensboro Distribution Center has systems and processes that allow for the incredibly fast delivery of products to our customers.</p> <p>Fast, accurate delivery -- UniFirst has invested over \$35 million in the state-of-the-art distribution center in Owensboro Kentucky, designed from the ground-up to support high-volume National Account service requirements. In-stock product can be picked, routed, inspected, packed and shipped within five (5) business days.</p> <p>UniFirst's centralized distribution center in Owensboro, KY is a state-of-the-art facility which improves shipping and labor costs and increases the service level we can provide Sourcewell. We invite you to view our Owensboro six minute video tour at the following URL:</p> <p><a href="http://www.unifirst.com/company/videos/centralized-distribution-center-owensboro-ky/">http://www.unifirst.com/company/videos/centralized-distribution-center-owensboro-ky/</a></p> <p>In-house manufacturing, producing millions of garments annually, provides a unique level of vertical integration that not only lowers the cost of uniforms the Company offers through Rental Programs, but also permits the creation of custom-designed garments for image-conscious companies. The latter often affords UniFirst a distinct competitive advantage.</p> <p>UniFirst has excellent geographic coverage for rental programs. We have extensive rental service operations. Our network of over 260 Locations, serve Customers in 45 US States &amp; the majority of Canada (not in HI, MT, ND, SD, and AK). For locations where we would not have coverage, we would use our best effort to subcontract to a local service provider.</p> <p>All services provided to all customers with operating locations within UniFirst's rental services area are provided exclusively by UniFirst personnel utilizing UniFirst owned or leased facilities and equipment. For locations that we do not currently service, we will use our best effort to subcontract to a local service provider. We serve over 300,000 customers throughout North America, putting nearly 2 million people in work apparel each business day.</p>
27	Service force.	1531 SERVICE

28	Describe in detail the process and procedure of your customer service program, if applicable. Include your response-time capabilities and commitments, as well as any incentives that help your providers meet your stated service goals or promises.	<p>We believe that effective customer service is the most important element in developing and maintaining our market position. Our commitment to service excellence is reflected throughout our organization. Our route service representatives are the first line of continuing customer contact, who are supported by local customer service representatives, local service management staff and local operations management leaders, all of whom are focused on addressing the ongoing needs of customers, constantly delivering high-value service and pursuing total customer satisfaction. Our proprietary information systems and our support service center enables us to respond to customer inquiries or issues within 24 hours, and our service personnel are specially trained to handle the daily contact work necessary to effectively manage customer relations.</p> <p>We measure the speed and accuracy of our customer service efforts on a weekly basis and, through our "Customers for Life" program, we continuously survey, record and report satisfaction levels as a means of evaluating current performance and highlighting areas for improvement.</p> <p>UniFirst's business hours are 8:00 A.M. to 5:00 P.M. daily local time (holidays and weekends excluded).</p> <p>To ensure Sourcewell and its members will have direct access to National Accounts we will also customize internal communication tools for your Member's employees. An example of those communications would be a customized 800 phone hotline, email (example: (MEMBER)@unifirst.com) and customized posters in all sites so that local people know who to contact for assistance and how to contact them.</p> <p>Your members experience countless customer interactions every day, so it's important that all of their team members look their best. As your uniform and facility services provider it's our job to make that happen. To accomplish this, we take a team approach to servicing your accounts.</p> <p>Your local UniFirst service team consists of the following trained service professionals working on your Member's account all the time....</p> <p>*Route Representative . . . they keep the program running smoothly day in and day out. They are responsible for picking-up dirty uniforms and delivering clean ones. There're also empowered to replace worn garments as needed, provide size exchanges and to handle any service issue on the spot. They are in short, the embodiment of UniFirst.</p> <p>*Service Manager . . . Their primary responsibility is to see to it your members are getting everything they need when they need it.</p> <p>*Customer Service Rep . . . available to provide immediate telephone assistance.</p> <p>In addition, this local team is aided by the National Account Service Team. Led by Sourcewell's dedicated Account Executive, this team is available in the event an issue needs extra attention, or your Member is not satisfied with our local response. Simply use the Service Hotline to communicate the issue. We will work with your Members and our local service team to ensure your Member's issue is resolved to their satisfaction, quickly and efficiently.</p> <p>Local Service Team: Call the local phone number provided on the weekly invoice. Account Executive: Jesse Daggett (contact via Hotline) or jesse_daggett@UniFirst.com Service Hotline: 877-382-4629</p> <p>If the local service team does not resolve the issue in the time specified, please contact the national account department using the dedicated Hot Line phone number or email.</p>
29	Identify your ability and willingness to provide your products and services to Sourcewell participating entities in the United States.	<p>UniFirst looks forward to continuing and expanding upon our existing successful relationship with Sourcewell and your participating entities across the United States. We directly provide service in 45 US States (not in HI, MT, ND, SD, and AK). For locations where we would not have coverage, we would use our best effort to subcontract to a local service provider.</p>
30	Identify your ability and willingness to provide your products and services to Sourcewell participating entities in Canada.	<p>Rental laundry facilities are located to provide products and services to your participating entities across Canada in Montreal, Quebec City, Drummondville, Toronto, London, Ottawa, Scarborough, Fredericton, Lethbridge, Calgary, Edmonton, Reed Deer, Grand Prairie, Saskatoon, Regina, Taber, Medicine Hat, Vancouver and Kelowna. More than 85% of Canada's population can be served from these facilities.</p> <p>UniFirst looks forward to continuing and expanding upon our existing successful relationship with Sourcewell and across Canada.</p>
31	Identify any geographic areas of the United States or Canada that you will NOT be fully serving through the proposed contract.	<p>Our network of over 260 locations, serve Customers in 45 US States &amp; the majority of Canada (not in HI, MT, ND, SD, and AK). For locations where we would not have coverage, we would use our best effort to subcontract to a local service provider.</p>

32	Identify any Sourcewell participating entity sectors (i.e., government, education, not-for-profit) that you will NOT be fully serving through the proposed contract. Explain in detail. For example, does your company have only a regional presence, or do other cooperative purchasing contracts limit your ability to promote another contract?	UniFirst will fully service all Sourcewell participating entity sectors that fall within our service territory. All services provided to all customers with operating locations within UniFirst's rental services area are provided exclusively by UniFirst personnel utilizing UniFirst owned or leased facilities and equipment. For locations that we do not currently service, we will use our best effort to subcontract to a local service provider.	*
33	Define any specific contract requirements or restrictions that would apply to our participating entities in Hawaii and Alaska and in US Territories.	<p>For Hawaii and Alaska locations that we do not directly service, we subcontract to local service providers who currently service some of our existing National Account Customers who have other locations outside of these areas.</p> <p>Further discussions are required for participating entities who are solely located in either Hawaii or Alaska.</p> <p>Please note that due to the cost of doing business in Alaska and Hawaii, Subcontractors in these states may charge a minimum of two times the prices quoted above. We will do our best to find a Subcontractor that will honor the program pricing, however actual prices are a function of the product in the program and the Subcontractors local business practices. Any alternative pricing for Alaska and Hawaii will be submitted for your approval prior to subcontracting any of your sites to a third party.</p>	*

**Table 7: Marketing Plan**

Line Item	Question	Response *	
34	Describe your marketing strategy for promoting this contract opportunity. Upload representative samples of your marketing materials (if applicable) in the document upload section of your response.	<p>The goal of the UniFirst marketing program is to create a consistent understanding of our partnership both internally and externally. We leverage multiple channels for communication to get this message across in the most effective and relevant way possible. Our local team members are eager to expand on our existing successful national partnerships because they know how it leads to professional success.</p> <p>Our marketing material is simple and effective and speaks to the relevant concerns of your members and our local team's ability to successfully create partnerships. We are very dexterous in our ability communicate with your members and our local teams. It is the design of our marketing that ultimately creates that facilitates habits and behaviors that are conducive to success.</p> <p>We do this today and have been successfully promoting this opportunity. Please see the attached "Sourcewell sample welcome kit."</p>	*
35	Describe your use of technology and digital data (e.g., social media, metadata usage) to enhance marketing effectiveness.	<p>UniFirst manages and optimizes its comprehensive internet-based Search Engine Optimization (SEO) and Search Engine Marketing (SEM) prospecting program to maximize UniFirst brand exposure via the web, gain increased website traffic to UniFirst.com, collect more qualified sales leads, and increase closed sale dollars directly related to these efforts. Programs include trackable results, reporting, and analyses, as well as direct ROI information. UniFirst Digital Marketing programs are intended to improve quality and numbers of current sales leads and conversions to new rental sales via UniFirst.com contact forms and call-ins to MRD. The goal is to continually increase related revenues annually, primarily through more targeted efforts and campaigns performed by our Digital Marketing Specialists, increased AdWord-type spends to include target markets/keywords, Shopify pages, and social media advertising. But, over time, the biggest boost we expect will come with the integration of our Marketo/Call Tracking platform and Microsoft Dynamics in 2020. This integration, planned for FY20, will provide additional ROI long-term via more accurate program tracking, as well as email marketing and other ongoing prospect "nurturing" opportunities, like ongoing targeted email campaigns to sales prospects, leading to improved results.</p> <p>UniFirst invests in cutting-edge Digital Marketing technologies to better compete in today's digital age and to effectively manage, track, and measure accurate ROI on all DM programs. Programs allow us the ability to more effectively run and more accurately report on DM activities, campaign data, testing, appointments, and sales results, as well as call-in leads and all sales leads from website form submissions. The following are some DM technologies that UniFirst currently invests in for both SEO and SEM: Marketo, CallTrackingMetrics (CTM), SEMrush, Web-CEO, SEOmox, Premium Store Locator (zip code lookup), Google AdWords, Bing Search Ads, Google Remarketing/Retargeting, Social Media Advertising (Facebook, Instagram, Twitter, LinkedIn, etc.), Shopify (online catalogs), ZMags (interactive, flip-catalogs online), Google Reviews, Google Local Search</p>	*
36	In your view, what is Sourcewell's role in promoting contracts arising out of this RFP? How will you integrate a Sourcewell-awarded contract into your sales process?	It's clear that you're focused on the success of this partnership like we are. Your support and buy-in is vital to long term mutually beneficial success. Our ability to coordinate our communication is one that will open many doors for both our organizations on the local level.	*

37	<p>Are your products or services available through an e-procurement ordering process? If so, describe your e-procurement system and how governmental and educational customers have used it.</p>	<p>Yes. For those who prefer to own, UniFirst offers competitive pricing and an extensive workwear selection - as all of our items are available for purchase.</p> <p>Program Requirements: A service agreement would serve the best interest of both parties in the event that special or otherwise non-standard products, that UniFirst would also be expected to place into inventory, are specified.</p> <p>All our uniform rental items are available for your Customers to purchase. You may choose from thousands of UniFirst-manufactured products or other popular brands from trusted names like Landau, Fashion Seal, Dickies, Tri-Mountain &amp; Port Authority.</p> <p>UniFirst can offer a custom e-procurement storefront web site personalized with for your Customer's graphics and content. Your Customer's logo can be included to give the feel the web site is an extension of their entity. The custom web site would only offer products and prices defined in the Contracted Offer.</p> <p>Orders can be transacted directly from the e-procurement web site. The e-procurement storefront is full-featured and completely functional with item personalization, order history, product specification, product graphics, purchase/spending limits.</p> <p>Once registration is completed each user would have a unique username and password with settings defining their authorized web site. The custom web storefront would be presented to the individual once logged in.</p> <p>A brief list of e-procurement storefront features and capabilities include:</p> <ul style="list-style-type: none"> <li>• On-line Registration for the Program by employees via the Storefront.</li> <li>• On-line Order placement by registered employees via the Storefront</li> <li>• On-line Order placement by a purchasing agent on behalf of a group of users.</li> <li>• On-line Order history review by registered employees or by a purchasing agent on behalf of a group of users.</li> <li>• The Program will manage specific products, attributes, and pricing and personalization options for your contracted offer.</li> <li>• Purchase Limits via our Managed Program module. Your Customer's balances would be loaded here</li> <li>• Tracking and enforcement of pre-defined spending limits at the individual employee level.</li> <li>• Payment methods available are: Accounts receivable (A/R), Credit card, and Individual purchase limit (A/R).</li> <li>• In addition to the products included in the offer, the entire UniFirst product catalog can be accessed, if desired, by a separate registration.</li> <li>• Accessible 24 hours, seven days a week.</li> <li>• On-line display by login showing spend by employee, if applicable.</li> <li>• Estimated Delivery Date</li> </ul>
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**Table 8: Value-Added Attributes**

Line Item	Question	Response *
38	<p>Describe any product, equipment, maintenance, or operator training programs that you offer to Sourcwell participating entities. Include details, such as whether training is standard or optional, who provides training, and any costs that apply.</p>	<p>UniFirst can provide training or instruction of our goods and services through the local Service Centers. At the time of your Member's transition.</p> <p>The Account Executive can help identify further areas that your Members feel may require further instruction. Additionally, they may contact the Customer Service team at the local Service Centers for further assistance.</p> <p>For Rental Programs during implementation, a dedicated account executive will coordinate the time and efforts of our Site General Manager, District Service Manager, Route Sales Representative, Office Services Personnel, &amp; Customer Services Representatives. The account executive will coordinate with your Member's representative to ensure their site managers are informed of the implementation plan the same time UniFirst managers are.</p> <p>We will require the willing participation of a site representative or representatives (perhaps from each functional area . . . defined to mean any area or group that requires individual billing) to attend site installation planning meetings; and, a meeting room within your Member's facility suitable for sizing and meeting purposes. Employees will have to be made available for sizing purposes, according to an agreed upon plan and schedule; and, ideally Member's should have available pre-prepared forms that detail each employee name (by sizing group), indicating the type and quantity of garments that each individual is entitled to receive.</p> <p>Necessary site permits, if any, will have to be secured and any site orientation sessions, including any safety programs that our employees may be required to attend, will also have to be scheduled and coordinated.</p>

Visits are planned with each functional group (i.e. plant manager, safety manager, buyer, etc. ...) prior to the installation of services. During this visit, our representatives will introduce UniFirst and explain the uniform rental process in detail, being careful to answer any and all questions fully. Orientation pieces entitled "Welcome to UniFirst" will also be left in each functional area.

Following installation, repeat visits will be scheduled to ensure that each functional area and each employee fully understands the Member/UniFirst uniform services program.

We will have a UniFirst service team of suitably qualified personnel in place to support the supplies and services being offered to the Members. In the implementation and day-to-day servicing of a program, questions and issues can and do come up. The UniFirst service team will be there to support the Members and deal with questions and issues effectively and quickly. Your Member's service team will consist of...

- Customer Service Manager . . . His/Her primary responsibility will be to see to it Members are getting everything they need when they need it.
- Customer Service Reps . . . Committed to exceeding your Member's expectations. Customer Service Reps are trained service professionals that are empowered to deliver consistent and reliable service every day. If service issues arise our Customer Service Reps will be ready to resolve any problems your Members may have.
- Account Executive . . . Provides direction and council to our Customer Service Reps. The Account Executive will coordinate any changes to the established Member's program. In addition, he/she will audit performance and work to ensure that we perform up to your Member's expectations.

To assist and guide your Member's team through a Direct Purchase program we can provide them with"

- A classroom style training introducing the features of the program. We can review the basic set-up of an account; step-by-step demonstrated the ordering process and walk the user through the final steps in placing the order. One location, one or two day training session.
- Training is normally done by scheduled conference call with Users accessing their own custom website with practice orders being placed.
- Provide documentation to highlight the one... two ... three's... of the storefront and the ordering process
- Or, if they decide to go it alone their storefront will be designed with an easy to access help feature
- Our professionally trained Customer Service Representative are ready to resolve any problems your Member's may have

UniFirst can help you design a training program to fit your Member's needs. The portal is guaranteed to be as easy to use as many found on the web today, but there may be questions.

We can also provide instruction on how to access the portals for reporting or direct purchase programs.

39	Describe any technological advances that your proposed products or services offer.	<p>UniFirst has long maintained a leadership position in developing and implementing technology for the textile service industry. From our ISO 9001:2015 certified state-of-the-art Distribution Center (325,000 Sq. Ft.), our newly implemented PeopleSoft platforms with deliverable eCommerce solutions via the Internet, to our new CRM system, UniFirst is leading the industry in delivering advanced business solutions. Capital reinvestment in technology for new systems and automated facilities continues to exceed that of our competitors. We welcome the opportunity to host your supplier selection team at any of our operations to further demonstrate the UniFirst difference.</p> <p>The UniFirst fleet of customer delivery and support vehicles follows proper maintenance schedules and all our drivers consistently follow best practices to conserve fuel consumption. We use "Roadnet® Route Optimization," which consolidates routes for increased efficiencies. By driving significantly fewer miles, we're drastically reducing our carbon footprint. This is an ongoing initiative being followed by our delivery vehicles throughout the United States and Canada. The benefit to your Members: We're driving fewer miles each day, keeping costs and emissions down, while delivering the same levels of excellence in service to our customers.</p> <p>UniFirst has developed a National Account Charter with an intensive focus on our most important deliverable...CONSISTANT APPLICATION OF PRODUCTS, SERVICES AND PRICING ACROSS ALL REGIONS OF NORTH AMERICA. To this end, UniFirst has developed a system called NACS . . . National Account Customer Setup (NACS). NACS enables us to efficiently communicate your Member's program requirements to each local UniFirst Customer Service Center that will be servicing the Member. We create a customized National Account Customer Profile that details how the Member's account will be serviced. It includes pricing, product as well as all service requirements. NACS allows us to distribute the Customer Profile on a schedule mutually agreed to by the Member and UniFirst. NACS also creates the officially recognized Installation Authorization that tells our local Service Centers to begin the program implementation. It also allows us to track implementation progress to ensure that target dates are met. This carefully orchestrated internal communication is essential to us applying your Member's programs consistently across all of their locations.</p> <p>UniFirst's proprietary bar coding system provides an accurate pick-up and delivery report to the Client, at the time of product delivery, on a weekly basis. These weekly reports, printed on your premises, detail the number of garments that are picked up for cleaning from, and delivered clean to, a given location or sub location, within a given location. This, in turn, will enable the Client to clearly identify who last had possession of the garments, and thus who is responsible for any loss of the subject garments.</p> <p>UniFirst tracks garments throughout all internal and external processes using advanced laser and digital camera bar code technologies. This proprietary system is ideal to help prevent delivery shortages and secure information better than other scanning methods, including radio frequency (RF) chip systems. And unlike RF tracking, that embeds chips into garments to transmit information, our approach does not transmit data and never compromises wearer comfort or privacy.</p> <p>When your Members participate in a full-service UniFirst uniform program, up-front clothing investments are eliminated. We outfit employees in the clothing of their choice, provide weekly cleaning, garment maintenance, and issue replacements as necessary. We handle all the program administration for your Member's employee uniforms and services, eliminating the worries and headaches. And it's all for one low weekly charge per employee (or per product).</p>
40	Describe any "green" initiatives that relate to your company or to your products or services, and include a list of the certifying agency for each.	<p>Environmental Stewardship</p> <p>UniFirst was one of the first in the textile services industry to re-engineer all of its operations to become a "greener" and more environmentally friendly Company. We were also one of the first members of the EPA's Green Lights and Energy Star Buildings programs, which combine business strategies with environmental protection and energy conservation at all corporate facilities. And every single UniFirst laundry production facility uses computerized processing equipment to maximize fuel and energy efficiencies, while minimizing waste.</p> <p>In 1997, UniFirst joined the Laundry Environment Stewardship Program (LaundryESP), an industry initiative with a singular focus to protect the environment. As a result of reworking all routine operational practices, UniFirst (and our industry) achieved and continues to maintain considerable reductions in water and energy usage.*</p> <ol style="list-style-type: none"> <li>1. Water use: 12.5 percent reduction.</li> <li>2. Energy use: 11.8 percent reduction.</li> <li>3. Pollutants discharged: 40 percent reduction.</li> <li>4. Peroxide bleaches: 100 percent increase in usage for wash formulas, resulting in less use of chlorine bleaches (which can combine with other chemicals to create non-biodegradable byproducts).</li> <li>5. Enzyme-based detergents: 57 percent increase (these cleaners are primarily used in food and healthcare textiles; their use reduces the need for higher temperature wash formulas, thereby reducing energy costs).</li> </ol> <p>* All data was subject to a quality check by Collier Shannon Scott, Environomics of Bethesda, Maryland and Georgetown Economics (D.C.).</p> <p>From the moment a piece of clothing or other textile product enters one of our processing facilities, every item is carefully sorted and placed into specially designed slings that are tagged as to garment type and soil level. They are then weighed and sent to designated washers that have been pre-programmed — based on the specifics of the load — to use the exact amounts of cleaning agents, water, and cleansing temperatures to maximize processing efficiencies and prevent unnecessary waste.</p>

Computerized wash formulas determine the correct water levels and temperatures, what detergents and additives are needed, the length of the wash cycle, and any other additional information that the specific clothing or soil type might require. And when the cleaning cycle is completed, sophisticated computer controls automatically tip and empty washers onto moving conveyors which transfer the laundry to preprogrammed computerized driers. Under these advanced systems, there's little likelihood for human error or accidental waste of resources.

We take extraordinary care with all the by-products produced by our laundry operations. Our ongoing investments in water and air treatment technologies help assure that everything we return to the environment is "clean," safe, and nonpolluting.

#### Environmental Sustainability

Additional services and benefits that are "typical" services are a testament to how UniFirst is an environmentally-friendly company. At UniFirst Corporation, we believe in protecting the environment. That's why we continually focus on sustainability and always strive to become a "greener," more environmentally-friendly Company in all aspects of our operations. Whether it's the precise uniform processing procedures we follow to ensure resource conservation and environmental protection, the thoughtful energy-saving practices we use at our 260 facilities, the careful fleet maintenance and driving procedures we have firmly in place, the manner in which our ancillary services and products are designed and manufactured, or the work uniform and facility services options we provide our customers to help them meet their sustainability goals...all we do consistently takes environmental sustainability into consideration.

#### Our Values

From modest beginnings in an eight-stall garage in Boston, MA in 1936, UniFirst has grown to become a billion dollar industry leader in the Uniform and Textile Services business. In part, our modern day success story is a result of our following the three Core Business Values established by our founder Aldo Croatti. These values, which continue to act as the foundation for our corporate culture, are:

1. CUSTOMER FOCUS — Customer Satisfaction is the best measure of how well we deliver quality. It's our overriding goal and at the center of our "Customers for Life" business philosophy.
2. RESPECT FOR OTHERS — We consistently treat those in our personal and business lives with the same consideration and understanding we wish for ourselves.
3. COMMITMENT TO QUALITY — Evidenced by our constant focus on "doing it right the first time" and our commitment to ISO certifying each of our service operations to ensure quality is the hallmark of all we do.

In order to fulfill our overriding goal for total Customer Satisfaction, UniFirst Team Partners annually pledge to our "10 Essentials of Service."

1. Every Team Partner contributes directly to the Company's image.
2. It's in each of our jobs to handle any Customer requests quickly and address any user problem immediately.
3. We will always strive to fully understand each Customer's needs and aim to deliver service that exceeds their expectations.
4. Every Team Partner is responsible for identifying any defects in our products, processes and work methods, and for making recommendations for improvements.
5. We are ambassadors of the business, both inside and outside of the workplace.
6. We will take pride and care in our personal appearance.
7. Being part of a team means we can count on those around us.
8. There is no dishonor in not having the right answer, only in not acting quickly to seek it out.
9. Mistakes are inevitable. How quickly we correct them and how well we communicate the remedies makes the difference between customers who remain upset and those who come away more loyal than before.
10. We must ultimately create exceptional job stability and continuously increase shareholder value.

#### In the Office

In 2008, our Information Services Department initiated a project to reduce the number and size of both servers and personal computers. By adopting latest technologies, the initiative reduced electrical costs and lowered the amount of cooling required from air-conditioning units. The project also extends the life of many computers, keeping unwanted waste materials out of recycling bins and landfills. In addition, paper and bottle recycling bins are located throughout all areas of our corporate offices and remote locations.

Additionally, all 260 UniFirst facilities are networked by more than 3,000 PCs and we consistently add new technologies that allow for more electronic options with our routine business activities – both internally and externally – thereby significantly reducing overall paper usage.

Route planning and optimization software has saved roughly 1.7 million gallons of fuel annually, which produces nearly 34 million less pounds of CO2 each year.

#### Uniforms, Work Apparel

Compared to purchasing, renting uniforms saves energy and decreases natural resource

consumption (as noted above). Plus, our work garments are built to last longer than store bought apparel, our service programs maintain customer clothing to extend wear life, and our apparel is reused whenever possible. . . thereby resulting in reduced raw textile usage and less waste entering landfills and incinerators.

When appropriate, we also refurbish and transform pre-worn customer apparel into "like new" offerings for garment replacements. And when wear and tear finally takes its toll and the professional image of our customers could become compromised, we look to donate such clothing items to needy organizations in the U.S and abroad — in effect, giving them a "second life."

Our Company manufactures more than half of the shirts and pants used in our rental service programs, and all aspects of the construction consistently keep clothing "longevity" in mind. For instance, our shirt and pant designs use reinforced triangular tacking at the corners of pockets to prevent ripping and tearing that could be caused by repeated contact. Similarly, our fabrics are carefully selected for weight/hand (feel) to withstand constant abrasion, as well as the industrial laundry process. And, although we use more stitches per fabric inch to produce higher quality construction, this additional thread use is more than offset by the extended garment life we achieve. We've also computerized our textile cutting systems to assure minimal waste of fabric and our "modular" assembly construction process maximizes efficiencies and the overall use of resources.

Virtually all of our millions of rental uniforms in service are delivered to customers on recycled wire hangers. Helping to prevent them from simply being tossed into waste bins, UniFirst maintains hanger recycling programs at customer sites. We also recycle such items as wood pallets, paper products, and fluorescent light bulbs wherever possible. Finally, to ensure that all our processes are operating as efficiently as possible and resources are being conserved, our uniform manufacturing and distribution facilities have earned ISO certification. And, we're currently on schedule to have all our laundering service facilities ISO certified as well.

#### Ancillary Products

UniFirst offers a wide variety of environmentally friendly programs in Floorcare and Restroom/Hygiene Services. These products have been designed with environmental sustainability in mind. And when they're included as part of a fully managed service program, they can help our customers earn LEED\* points that qualify them for environmental certification by the U.S. Green Building Council.

(\*Leadership in Energy and Environmental Design, a national benchmark for the design construction and operation of high performance green buildings.)

#### Floor Mats

Our floor mats are 100% PVC free and are specially constructed to capture and hold dirt and moisture from the soles of shoes and to prevent track-off and unnecessary soiling and cleaning of customer facilities. By literally trapping pounds of contaminants, UniFirst mat systems help protect expensive flooring surfaces, ventilation systems, and sensitive electronic equipment — all of which translates into less cleaning and use of chemicals.

We manufacture all our floor mats to last for at least five years, and recycle our scrap by-products. By comparison, mats purchased at most retail outlets will typically last just one year, thereby adding more vinyl and rubber components to the "waste stream."

#### Microfiber Mop/Wiper Technology

Our reusable Microfiber mops and wipers are ultra-light and designed to clean hard surfaces without chemicals and water. The U.S. Environmental Protection Agency (EPA) notes that such products can reduce chemical usage by 95 percent. For soiled surfaces requiring water and cleaning agents, we offer wet mops and towels that feature super absorbent natural fibers that have been treated with antimicrobial agents in order to prevent the growth of mold, mildew, and odor-causing bacteria.

The result: one-time, faster, more efficient cleanings. By using these reusable Company products versus disposables, EPA life cycle assessments show that solid waste can be reduced by 210 percent and water usage by as much as 12,590 percent.

#### Hand Towels and Sanitary Tissue

Our towel and tissue products are Green Seal and Eco-Logo certified, and manufactured from base paper that is 100 percent recycled. And our portion-control (one-at-a-time) paper dispensing systems are available with both mechanical and electronic touch-free options to help reduce unnecessary waste. Studies have shown that these dispensers reduce paper usage by 25-35 percent, resulting in less landfill dumping and incineration.

#### Soaps and Hand Care

Our soap and hand care products are provided by vendor-partner GOJO, a manufacturer of a wide range of "green" and biodegradable hand cleaning/disinfecting products. GOJO's Green Seal and Eco-Logo designated products are specially formulated for use in the types of work environments our Company serves and are available in a variety of touch and non-touch, portion controlled, dispensing options so as to minimize waste

#### Odor Control Systems

We offer three, environmentally-conscious odor control program solutions. Our most popular system, called TCell, contributes to clean and fresh air in a 100% environmentally-friendly way. All air freshener delivery systems are 100 percent EPA compliant and refill components are recyclable.

41	Identify any third-party issued eco-labels, ratings or certifications that your company has received for the equipment or products included in your Proposal related to energy efficiency or conservation, life-cycle design (cradle-to-cradle), or other green/sustainability factors.	UniFirst is a proud member of the U.S. Green Building Council (USGBC) and Laundry Environment Stewardship Program (LaundryESP), is an Energy Star and Green Lights Business Partner, and offers Green Seal and Eco-Logo certified products.
42	Describe any Women or Minority Business Entity (WMBE), Small Business Entity (SBE), or veteran owned business certifications that your company or hub partners have obtained. Upload documentation of certification (as applicable) in the document upload section of your response.	UniFirst does not qualify as Women or Minority Business Entity, Small Business Entity, or veteran owned business.
43	What unique attributes does your company, your products, or your services offer to Sourcwell participating entities? What makes your proposed solutions unique in your industry as it applies to Sourcwell participating entities?	<p>As a supplier of work apparel programs, UniFirst possesses a wide-range of experience encompassing many industries, types of garments and users. In particular, we believe there are several points which uniquely qualify us to meet Sourcwell's requirements:</p> <p><b>Wearer sensitivity:</b> We have extensive rental service operations throughout the United States and Canada. Every day nearly 2 million people wear a UniFirst rental uniform at work. And via our route delivery and sales organization we are in direct contact with many of them on a week-to-week basis. That means we're constantly getting real time feedback from people wearing our clothes regarding their likes and dislikes, approvals and disapproval's, satisfactions and dissatisfactions. This constant stream of input allows us to constantly adjust both garments and garment programs to achieve greater wearer satisfaction. And what we learn from our rental wearers, we can directly apply to better serve the interests of our direct purchase program wearers whom we may not see every week.</p> <p><b>Self-Manufacturer:</b> UniFirst presently makes over 75% of the shirts and pants used in its rental service programs and approximately 55% of the garments that it provides to all of its customers. This significant experience in making clothing gives us greater flexibility in creating custom programs for special customers and our significant size as a garment purchaser gives us leverage with subcontractors and suppliers when we're designing multi-faceted programs.</p> <p><b>Custom personalization:</b> is a key element in most image apparel programs and UniFirst's extensive experience in both screen printing and embroidery represents an advantage for us as well. We have our own in-house screen printing and operate our own embroidery machinery. Our in-house graphics staff creates and digitizes scores of new customer personalization designs on a daily basis. This gives us greater control over the process of creating and delivering unique customer images through the combination of specially selected clothing and custom-applied design.</p> <p><b>Pressing of all shirts (US only, not in Canada):</b> Provides a clean, professional appearance for all employees. Important if employees come in regular contact with both customers and prospective customers. Employees who look and feel good have higher morale and productivity. Pressing also allows us additional time to examine the garment for needed repairs. This additional step, that only this Vendor provides, allows us to catch those needed repairs that might otherwise slip through the cracks. Our pressing service is provided at no additional cost to our Clients.</p> <p><b>Control cost overruns:</b> Our Garment Maintenance Program (if selected) eliminates all damage charges, except those that arise as a consequence of gross negligence. Our detailed reporting capability will allow you to identify the specific individual responsible for the loss or damage of a given garment, which in turn, will provide your management team with the information necessary to allow them to work with their employees to minimize these charges.</p> <p><b>Proprietary Bar Code Scanning System:</b> UniFirst's proprietary bar coding system provides an accurate pick-up and delivery report to the Client, at the time of product delivery, on a weekly basis. These weekly reports, printed on your premises, detail the number of garments that are picked up for cleaning from, and delivered clean to, a given location or sub location, within a given location. This, in turn, will enable the Client to clearly identify who last had possession of the garments, and thus who is responsible for any loss of the subject garments.</p> <p><b>Guaranteed rates and charges:</b> Our proprietary Account Management System (AMS) guarantees only the charges authorized and specified in our service agreement can be invoiced. Only the items of merchandise and/or services specifically authorized in the agreement can be provided to the client. Items of merchandise and/service not authorized in the enabling service agreement can only be invoiced with prior client approval.</p> <p><b>Customer Satisfaction System:</b> No one works harder at making certain customers are</p>

		<p>satisfied than UniFirst. We don't wait for problems to come to us, we go out looking for them. Every customer is audited a minimum of twice a year to ask specifically about levels of satisfaction, areas where we can improve, and whether or not there are problems which need correcting. This proactive approach lets us uncover issues that might normally remain hidden and surfaces problems we might otherwise not hear about. It benefits both us and our customers and it's one of the reasons that over 98% of all current customers give us an "completely satisfied" or "satisfied" performance rating.</p> <p>Individual wearer survey cards are distributed approximately 2 times per year to assess wearer satisfaction or concerns.</p> <p>ISO Certified Manufacturing and Distribution: UniFirst manufactures and distributes the majority of its garments through a strict process controlled ISO 9001:2015 certified manufacturing and distribution system. This capability allows us to better manage our supply chain and negotiate favorable rates with fabric mills. The ISO certification ensures that consistently high quality manufactured garments will be delivered to the Client in a timely manner, through a proven documented distribution system.</p> <p>Speed of Service: Perhaps most important of all - particularly for a perspective customer with many geographically distributed operating locations - is a supplier's ability to deliver clothing quickly, completely and accurately. And here is where UniFirst has a leg-up on the competition. Our 320,000 square foot state-of-the-art distribution center in Owensboro, KY is the most modern and advanced in our industry, bringing "next generation" systems to the picking, personalization, packing and shipping of work clothing items. Designed specifically to accommodate the special need of both rental and direct purchase customers, this facility can process orders, including those with custom personalization, faster than any other in our industry. That means quicker delivery to every ordering location and higher levels of satisfaction for both wearers and the companies that employ them.</p>	
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**Table 9: Warranty**

**Describe in detail your manufacturer warranty program, including conditions and requirements to qualify, claims procedure, and overall structure. You may upload representative samples of your warranty materials (if applicable) in the document upload section of your response in addition to responding to the questions below.**

Line Item	Question	Response *	
44	Do your warranties cover all products, parts, and labor?	All items of Merchandise delivered by UniFirst will conform to Sourcewell's specifications set forth in our National Service Agreement and meet or exceed customary industry standards of quality, or non-conforming items will be replaced by UniFirst by the following normal delivery at no cost. All of the Services performed shall be executed in a good and workmanlike manner by qualified and careful workers, in accordance with industry standards of care and diligence normally practiced by firms performing services of a similar nature and in accordance with this Agreement.	*
45	Do your warranties impose usage restrictions or other limitations that adversely affect coverage?	<p>Any garment with, tears, rips, holes, excessive staining, or other non-repairable defect incurred while in service or upon termination of the Agreement at a Facility is considered "Damaged." Damage is in excess of normal wear and tear (which is defined as a gradual thinning of the fabric over time) a garment experiences through normal wash and wear cycles, and inhibits the re-issue of the garment to another employee. Additionally, pursuant to contractual language, a garment has been personalized through Direct Embroidery or other customer dictated modification may be considered "Damaged" if the modification inhibits the ability to re-issue the garment to another customer.</p> <p>This damage beyond repair category is designed to ensure a balance between the need for a cost-effective solution while maintaining a high level of appearance integrity. Under this criteria, a garment will be deemed as "damaged beyond repair" for any of the following:</p> <ul style="list-style-type: none"> <li>• Any hole or tear regardless of size</li> <li>• Any single pen mark larger than one and one half inch</li> <li>• Any combination of ten or more pen marks</li> <li>• Any garment purposely written on</li> <li>• Any single stain larger than one inch in diameter</li> <li>• Any combination of ten stains or more</li> <li>• Any broken or poorly functioning zipper</li> <li>• Any broken straps or clips or missing snaps</li> <li>• Any bioburden or hazardous material contamination</li> </ul>	*

<p>46</p>	<p>Do your warranties cover the expense of technicians' travel time and mileage to perform warranty repairs?</p>	<p>This is not applicable to an Industrial Landry Program.</p> <p>At the service level, any garment placed into service that was defective in any way, at the time of its installation, would be immediately replaced at no additional charge to your Members. And, we take care to inspect every rental garment every time we handle it. Upon pick-up and return to our service center, each garment receives a comprehensive ten point inspection. This system is backed-up by our wearer communication system which provides a continuous supply of service request tags at your Member's place of business so that any special repair needs can also be flagged by wearers to ensure that they get our immediate attention.</p> <p>UniFirst' exclusive "mend system" provides for a comprehensive ten point inspection of every garment every time it's processed. This system is backed up by our wearer communication system which provides a continuous supply of service request tags at your place of business so that any special needs can also be flagged by wearers to ensure that they get our immediate attention.</p> <p>For shirts the 10-point inspection examines:</p> <ul style="list-style-type: none"> <li>• Garment Cleanliness</li> <li>• Wearer Identification Tag</li> <li>• Collar</li> <li>• Shoulder Panel</li> <li>• Emblems and Pockets</li> <li>• Buttons and Front Panel</li> <li>• Underarm and Side Seams</li> <li>• Sleeves</li> <li>• Cuffs and Cuff Buttons</li> <li>• Back Panel</li> </ul> <p>For pants the 10-point inspection examines:</p> <ul style="list-style-type: none"> <li>• Garment Cleanliness</li> <li>• Wearer Identification Tag</li> <li>• Waistband and Belt Loops</li> <li>• Buttons and Fasteners</li> <li>• Zipper</li> <li>• Pockets</li> <li>• Crotch</li> <li>• Side Seams and Inseams</li> <li>• Seat Seam</li> <li>• Hem</li> </ul> <p>In general, we believe that the garment should be repaired whenever it is possible to do so, provided its appearance or function is not materially impacted by the repair. This "judgment call" we leave to the discretion of operating staff. Some Customers require that they and they alone approve the retirement from service of any damaged garment. This process remains acceptable to UniFirst</p> <p>Repairs to individual garments are made so as to ensure the return of the repaired item with the Customer's next weekly delivery. In other words, a damaged garment picked-up on Tuesday, will be repaired and returned the following Tuesday.</p> <p>Our Change-As-Needed system provides for the automatic replacement of garments before they become so worn as to impact appearance or function. And, unlike many (if not all) of our competitors, UniFirst replaces all garments which wear out as a consequence of normal wear and tear with "new" garments.</p>
<p>47</p>	<p>Are there any geographic regions of the United States (and Canada, if applicable) for which you cannot provide a certified technician to perform warranty repairs? How will Sourcewell participating entities in these regions be provided service for warranty repair?</p>	<p>This is not applicable to an Industrial Landry Program.</p> <p>UniFirst' exclusive "mend system" provides for a comprehensive ten point inspection of every garment every time it's processed. This system is backed up by our wearer communication system which provides a continuous supply of service request tags at your place of business so that any special needs can also be flagged by wearers to ensure that they get our immediate attention.</p>
<p>48</p>	<p>Will you cover warranty service for items made by other manufacturers that are part of your proposal, or are these warranties issues typically passed on to the original equipment manufacturer?</p>	<p>Yes.</p>

49	What are your proposed exchange and return programs and policies?	Any garment placed into service that was defective in any way, at the time of its installation, would be immediately replaced at no additional charge to your Members  UniFirst recognizes that not every employee stays the same size over time, so at no charge, we provide for clothing size exchanges whenever necessary	*
50	Describe any service contract options for the items included in your proposal.	UniFirst offers as an option, a Garment Maintenance Program (GMP). The Program involves an additional Weekly charge for each garment that is placed in service and replaces the practice of having ruin charges added to the weekly invoice. The practice of inspecting and reviewing garments on-site with Member Management is thus eliminated and the Weekly or Monthly service invoice remains relatively fixed. This allows Member Management and UniFirst Service teams to focus on providing "World Class" service to our Customers. Lost or unreturned garment fees are not currently covered under such a program. Developing a program for lost garments would be subject to further discussion at the appropriate time.	*

**Table 10: Payment Terms and Financing Options**

Line Item	Question	Response *	
51	What are your payment terms (e.g., net 10, net 30)?	CUSTOMER agrees to make payments within 30 days of invoice receipt. A late charge of 1½% per month (18% per year) for any amount in arrears may be applied.	*
52	Do you provide leasing or financing options, especially those options that schools and governmental entities may need to use in order to make certain acquisitions?	Depending upon individual needs, some may prefer our Val-U-Lease program. Customers enjoy all of the service, convenience, and benefits of our rental program, with the sole exception of the weekly water-wash service. <ul style="list-style-type: none"> <li>• Suitability: Best suited for circumstances or situations that involve moderate to high employee turnover rates, coupled with low or light soil environments.</li> <li>• Program Requirements: Same as the Rental Program.</li> </ul>	*
53	Briefly describe your proposed order process. Include enough detail to support your ability to report quarterly sales to Sourcewell as described in the Contract template. For example, indicate whether your dealer network is included in your response and whether each dealer (or some other entity) will process the Sourcewell participating entities' purchase orders.	There are multiple ordering approaches which might be of interest to you under the proposed program. They are listed below along with the primary advantages associated with each.  Rental: <ul style="list-style-type: none"> <li>• Route Service Representative: Speed, accuracy, and immediate sizing</li> <li>• Phone-Primary Advantages: Speed and interactivity, faxed confirmation</li> <li>• Fax-Primary Advantages: Speed and accuracy, faxed confirmation</li> </ul> Direct Sale: <ul style="list-style-type: none"> <li>• Custom Store Front/Internet: This on-line ordering has the primary advantages of: convenience, interactivity, colored pictures, descriptions, sizes, allowance programs, spending limits, multiple payment methods, program management/accountability, secure - Verisign®</li> <li>• Custom Brochure/Mail In: Available to all employees with or without internet access, color picture, descriptions, prices, includes pre-printed order forms, and convenience</li> <li>• Mail: Accuracy, faxed confirmation</li> <li>• Phone: Speed and interactivity, faxed confirmation</li> <li>• Fax: Speed and accuracy, faxed confirmation</li> <li>• E-Mail: Speed, accuracy, electronic record, electronic confirmation</li> </ul>	*
54	Do you accept the P-card procurement and payment process? If so, is there any additional cost to Sourcewell participating entities for using this process?	Yes. Customers can pay weekly invoices using a company credit or P-card. Our accounts receivable department will apply the weekly invoice amounts to the credit or P-card for each customer location.	*

**Table 11: Pricing and Delivery**

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

Line Item	Question	Response *
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<p>55</p>	<p>Describe your pricing model (e.g., line-item discounts or product-category discounts). Provide detailed pricing data (including standard or list pricing and the Sourcewell discounted price) on all of the items that you want Sourcewell to consider as part of your RFP response. If applicable, provide a SKU for each item in your proposal. Upload your pricing materials (if applicable) in the document upload section of your response.</p>	<p>UniFirst evaluates the total potential volume for any particular National Account customer and prices the entire in accordance with our pricing models. Total usage levels are evaluated as part of the pricing, and UniFirst takes this into consideration and leverages the total potential of each account in order to come up with the most competitive rates available.</p> <p>In general, UniFirst provides service quotes to its Customers that represent its very best prices for the projected volume of business and the associated terms and conditions of service, as determined by our review of the RFP documents. This does not mean, however, that we necessarily expect to receive all of this business immediately, or even necessarily within the first year or two of the term of our Agreement, for that matter, as we realize that we frequently are required to await the natural expiration (by their terms) of any pre-existing agreements that our Customer might then have in place with any third party vendors.</p> <p>As with all things there is at least one exception to this general rule, which would arise in the event that a given Customer elected to award all of its business to two or more preferred vendors, each of whom was then expected to solicit business from each Customer operating location. In this instance, we would downgrade the value of the projected business volumes (raise the bid prices that we initially quoted) and then offer incentives (reduced prices) to be granted upon the attainment of certain specified earned revenue thresholds. The most Customer friendly option is the former, where our very best prices are offered from day one of the Agreement.</p> <p>Once our agreement is finalized our Account Management System ensures that only those products and prices enabled in the agreement can be invoiced locally. Consistent application of products and pricing across all of the local Member's operations, is guaranteed.</p> <p>All requests for exceptions (additions) to the originally negotiated contract requirements must be processed through predefined channels for approval. All pricing will be developed using the same pricing model used in the original bid effort to incorporate the same volume considerations.</p> <p>Rental Services Include:</p> <ul style="list-style-type: none"> <li>» Water-wash of Rented Uniforms and Rented Items. Including inspection of all garments during the cleaning process and the pressing (US only), of all garments at no additional cost</li> <li>» Delivery of clean Rented Uniforms and Rented Items, on a stated weekly schedule.</li> <li>» Removal of soiled Ranted Uniforms and Rented Items, on a stated schedule.</li> <li>» Existing garments may be exchanged due to an Employee's changing size requirements at no cost to the Customer, though the emblem and garment preparation charges specified by the agreement will apply.</li> <li>» All Garment repairs needed due to normal wear and tear will be done at no cost to the Customer.</li> <li>» UniFirst will automatically replace garments before they become so worn as to impact either appearance or function. This replacement will be done at no charge to the Customer, though the emblem and garment preparation charges specified by agreement will apply.</li> </ul>
<p>56</p>	<p>Quantify the pricing discount represented by the pricing proposal in this response. For example, if the pricing in your response represents a percentage discount from MSRP or list, state the percentage or percentage range.</p>	<p>Sourcewell's program pricing is constant across the nation and therefore the discount/savings varies by market; i.e. savings on the Sourcewell program might be as high as 60-70% in metropolitan markets such as NYC whereas in central Kentucky the savings might only be 20-30%.</p> <p>We have included a comparison in the price list to show program rates vs standard local rates savings.</p>

57	Describe any quantity or volume discounts or rebate programs that you offer.	<p>A. Rental. The prices initially in effect under this Agreement, "Tier 1 Pricing" will be reduced by three percent (3%), "Tier 2 Pricing", for each of Customer's Participating Entities once the weekly rental revenues paid by each such Participating Entity exceeds \$2,000.00 per week, for a minimum of thirteen (13) weeks. Participating Entities shall have the right to aggregate the purchasing volume of all its Locations in order to meet the desired volume tier. The prices shall not be reduced retroactively; and, for purposes hereof, the phrase "weekly rental revenues" shall be defined to mean the total weekly invoice value, less any sums invoiced for loss / damage replacement, garment preparation, emblem, outsize garment, DEFE, minimum service charges, sale of disposable products, well as any applicable sales /use taxes.</p> <p>B. Direct. The prices initially in effect under this Agreement, "Tier 1 Pricing" will be reduced by three percent (3%), "Tier 2 Pricing", for each of Customer's Participating Entities once the total direct product purchases of each such Participating Entity exceeds \$104,000.00 per calendar year. Participating Entities shall have the right to aggregate the purchasing volume of all its Locations in order to meet the desired volume tier. The prices shall not be reduced retroactively; and "total direct product purchases" shall not be inclusive of any applicable sales/use taxes.</p>
58	Propose a method of facilitating "sourced" products or related services, which may be referred to as "open market" items or "nonstandard options". For example, you may supply such items "at cost" or "at cost plus a percentage," or you may supply a quote for each such request.	<p>UniFirst is a full-service provider of textile services, with much of the products being manufactured and much of the services being provided directly by UniFirst. As a part of our continued growth, we have aligned ourselves with several trusted vendor partners whenever we have customer requirements that don't align with our manufacturing core competencies (i.e. Non-Standard Options). All vendor partners must pass through our Vendor Approval process to ensure that they are financially solvent, and adhere to all manufacturing best practices and appropriate child/forced labor laws. Our vendor partners have been carefully selected based on product offering breadth, stocking position, and mutual business goals. This is an on-going effort to leverage our influence over these vendor partners in order to better guarantee the quality of services provided by any such vendor to any one of our customers. As an industry leader, UniFirst is able to leverage our size in order to negotiate the most favorable pricing and terms in the industry, a benefit that gets passed on directly to our customers.</p> <p>In situations where our vendor partner's products are used to support our customers, we will issue standard UniFirst (bulk) Purchase Orders for merchandise, on an as necessary basis. These orders will be filled and shipped directly to our distribution center in Owensboro, KY. Our vendor partners will then invoice UniFirst directly for their services. All other services (order administration, pick, pack, ship, customer services and overall program administration and management) will be directly performed by UniFirst personnel, utilizing UniFirst owned equipment and facilities.</p>
59	Identify any element of the total cost of acquisition that is NOT included in the pricing submitted with your response. This includes all additional charges associated with a purchase that are not directly identified as freight or shipping charges. For example, list costs for items like pre-delivery inspection, installation, set up, mandatory training, or initial inspection. Identify any parties that impose such costs and their relationship to the Proposer.	Please see the attached "Sourcewell Proposal," for a complete listing of all the associated Service Charges.

60	If freight, delivery, or shipping is an additional cost to the Sourcewell participating entity, describe in detail the complete freight, shipping, and delivery program.	<p>Rental: The delivery cost is included in the weekly rental rate.</p> <p>Direct Sales: Pricing is quoted F.O.B. Origin, sans applicable sales taxes, with applicable freight and handling charges being prepaid and added to the shipment invoice.</p> <ul style="list-style-type: none"> <li>• United States - All Purchased Items are shipped via UPS standard ground service from our ISO registered Central Distribution Center in Owensboro, KY, unless instructions to the contrary are specified on the order.</li> <li>• Canada - All Purchased Items are shipped via Canadian Post standard ground service from our Central Distribution Center in Mississauga, ON, unless instructions to the contrary are specified on the order.</li> </ul> <p>Expedited shipping (overnight) is available via FedEx or UPS Express. The cost of expedited shipping will be calculated on a case by case basis and we will pass along the true cost of shipping.</p>
61	Specifically describe freight, shipping, and delivery terms or programs available for Alaska, Hawaii, Canada, or any offshore delivery.	<p>Due to the cost of doing business in Alaska and Hawaii, subcontractors in these states may charge a minimum of two times the prices quoted above. We will do our best to find a subcontractor that will honor the program pricing, however actual prices are a function of the product in the program and the Subcontractors local business practices. Any alternative pricing for Alaska and Hawaii will be submitted for your approval prior to subcontracting any of your sites to a third party.</p>
62	Describe any unique distribution and/or delivery methods or options offered in your proposal.	<p>UniFirst's combination of the full weight of our ISO Certified Distribution Center Capabilities and our National Service Coverage can be brought to bear on the Sourcewell's requirements. Direct Sale and Rental programs are all supported from a merchandise perspective by our Owensboro, KY "state-of-the-art" Distribution Center. This facility has been built with the specific objective of providing the fastest most accurate order turnaround times in the industry and we are confident that this will enhance the UniFirst value proposition for Sourcewell Members.</p> <p>Our proposal represents "Best in Class" pricing based upon the Sourcewell estimated contract value and usage. Furthermore, we offer the following value-added services:</p> <ul style="list-style-type: none"> <li>• ISO Certified Manufacturing and Distribution: UniFirst manufactures and distributes the majority of its garments through a strict process controlled ISO certified manufacturing and distribution system. This capability allows us to better manage our supply chain and negotiate favorable rates with fabric mills. The ISO Certification ensures that consistently high quality manufactured garments will be delivered to your Member in a timely manner, through a proven documented distribution system.</li> <li>• Guaranteed rates and charges: Our proprietary Account Management System (AMSiMozart) guarantees only the charges authorized and specified in our service agreement can be invoiced, Only the items of merchandise and/or services specifically authorized in the agreement can be provided to the Member. Items of merchandise and/service not authorized in the enabling service agreement can only be invoiced with prior client approval.</li> <li>• Virtually Unlimited Catalog: By using our partnerships with our long term vendor partners, our catalog is essentially limitless, Even if a desired garment is not currently manufactured by UniFirst, or featured in our Workwear Direct catalog, by Leveraging our relationships with our trusted vendor partners we can guarantee best-in-class pricing and service for any work apparel item. Service excellence is central to our culture, it begins with highly trained Customer Representatives who are fully dedicated to total Customer satisfaction and extends to all the contact personnel in our National Accounts Group who specialize in dealing quickly and efficiently to ensure that the specific service requirements of our National Account Customers are understood and consistently applied by our entire field Customer service centers.</li> </ul>

**Table 12: Pricing Offered**

Line Item	The Pricing Offered in this Proposal is: *	Comments
63	c. better than the Proposer typically offers to GPOs, cooperative procurement organizations, or state purchasing departments.	

**Table 13: Audit and Administrative Fee**

Line Item	Question	Response *
64	Specifically describe any self-audit process or program that you plan to employ to verify compliance with your proposed Contract with Sourcewell. This process includes ensuring that Sourcewell Members obtain the proper pricing, that the Vendor reports all sales under the Contract each quarter, and that the Vendor remits the proper administrative fee to Sourcewell.	During the Term, UniFirst will, upon not less than thirty (30) business days prior written request, make available to Sourcewell no more than once per calendar year, at UniFirst's corporate offices, during normal business hours, the invoice reports and/or invoice documents from UniFirst pertaining to all invoices sent by UniFirst and payments made by Sourcewell's Members for all Products and Services procured under this Agreement. Sourcewell may employ an independent auditor or choose to conduct such audit on its own behalf. UniFirst shall have the right to approve the independent auditor, which approval shall not be unreasonably withheld. Upon approval and after the auditor has executed an appropriate confidentiality agreement, UniFirst will permit the auditor to review the relevant UniFirst documents. Sourcewell shall be responsible for paying the auditor's fees. The parties will make every reasonable effort to fairly and equitably resolve discrepancies to the satisfaction of both parties.
65	Identify a proposed administrative fee that you will pay to Sourcewell for facilitating, managing, and promoting the Sourcewell Contract in the event that you are awarded a Contract. This fee is typically calculated as a percentage of Vendor's sales under the Contract or as a per-unit fee; it is not a line-item addition to the Member's cost of goods. (See the RFP and template Contract for additional details.)	UniFirst will pay Sourcewell an administrative fee of 2.0% (Two Percent) of the sales to Sourcewell or Sourcewell Members of Products and Services resulting from Sourcewell net of returns and allowances and, with regard to the Products procured hereunder, less applicable delivery charges. With regard to the Services procured hereunder the specified administrative fee will be paid net of any garment preparation, emblem, loss/damage, minimum stop the truck or applicable DEFE (Delivery, Energy, Fuel and Environmental) surcharges. Said administrative fees are to be paid within thirty (30) days after the end of each calendar quarter and commencing on the effective date of this Agreement.

**Table 14: Industry Specific Questions**

Line Item	Question	Response *
66	If you are awarded a contract, provide a few examples of internal metrics that will be tracked to measure whether you are having success with the contract.	<p>Performance will be measured according to the following standards:</p> <p>A. Uniform Rental Services Your Account Executive will meet with you to discuss and identify continuous improvement targets. We will then create baselines from which we can measure future improvements. The Account Executive will then incorporate these improvement reports into the quarterly program review. Some of the areas we have included in continuous improvement projects for other customers include:</p> <p>1. On Time Installation: New locations will be installed into Service within eight (8) weeks following the conclusion of Company's employee measurement sessions. The time frame assumes standard garments within normal size ranges as defined in the contract price schedule. The target on time installation rate for new locations is 98%.</p> <p>2. Issue Resolution All service related issues that are communicated to Company will be addressed within 24 hours and Customer will notify Company when the issue is resolved to Customer's satisfaction. Company will utilize its RFCA (Request for Corrective Action) system to track any and all issues. Company will report all service issues and the time it takes to resolve issues to Customer's satisfaction.</p> <p>The following specific service issues may be submitted locally by Customer to Company. Company will address these issues at the local level following standard corrective actions.</p>

a. On Time Delivery and Pick Up:

A delivery and pick up will be considered on-time if the Merchandise arrives at the relevant locations on the specified delivery day, excluding Holidays, in which event, Company will give timely notice of the Holiday delivery schedule. Late deliveries resulting from a natural disaster, severe weather emergency, or road closures, will be excluded from this measurement.

Late deliveries will be recorded in the Company's RFCA system and the appropriate action plan communicated to the Customer's local manager. Performance will then be monitored until Customer's local manager is satisfied that the issue has been corrected.

b. Service For New Employees:

New employees will receive their garments within one (1) week of the request for standard garments in normal size ranges as defined in the contract price schedule.

Instances of new employees not outfitted in one week will be recorded in the Company's RFCA system and the appropriate action plan communicated to the Customer's local manager. Performance will then be monitored until Customer's local manager is satisfied that the issue has been corrected.

c. Merchandise Acceptance:

Merchandise will be considered accepted if the Merchandise is properly water-washed, pressed or steam tunneled and has no rips or tears that have not been repaired. If stains cannot be removed the Rented Uniforms or Rented Items, as applicable, the same will be reviewed with Customer's representative to determine responsibility for replacement costs.

Instances where merchandise is delivered in unacceptable condition will be recorded in the Company's RFCA system and the appropriate action plan communicated to the Customer's local manager. Performance will then be monitored until Customer's local manager is satisfied that the issue has been corrected.

B. Uniform Direct Sale

Order Fulfillment

A minimum of 98% of in-stock inventory will be shipped to Customer within 5 – 7 business days after the order is placed.

2. Order Accuracy

Company will achieve a minimum of 98% order accuracy measured as a function of returned orders.

Total Customer Satisfaction is measured in terms of customer retention rates. At UniFirst, our minimum goal is 95%. All Customer Service Centers are required to do all things necessary to retain a minimum of 95% of their Customers (the "Customers for Life Program"). Again, each Customer Service Center is ranked best to worst and financial incentives are associated with the attainment of this goal.

UniFirst's Route Sales Representatives (RSR's) are paid on delivered revenue at a 7% commission rate. In addition to the commission program all RSR's have a \$6000 annual bonus opportunity based primarily on Customer Satisfaction and Customer Retention. The annual bonus opportunity generally represents between 15 and 20 percent of total compensation.

We believe that effective customer service is the most important element in developing and maintaining our market position. Our commitment to service excellence is reflected throughout our organization. Our route sales representatives are the first line of continuing customer contact, who are supported by local customer service representatives, local service management staff and local operations management leaders, all of whom are focused on addressing the ongoing needs of customers, constantly delivering high-value service and pursuing total customer satisfaction. Our proprietary information systems and our support service center enable us to respond to customer inquiries or issues within 24 hours, and our service personnel are specially trained to handle the daily contact work necessary to effectively manage customer relations.

We measure the speed and accuracy of our customer service efforts on a weekly basis and, through our "Customers for Life" program, we continuously survey, record and report satisfaction levels as a means of evaluating current performance and highlighting areas for improvement.

Every customer is audited a minimum of twice a year to ask specifically about levels of satisfaction, areas where we can improve, and whether or not there are problems which need correcting. This proactive approach lets us uncover issues that might normally remain hidden and surfaces problems we might otherwise not hear about.

		<p>But it benefits both us and our customers and it's one of the reasons that over 98% of all current customers give us an "completely satisfied" or "satisfied" performance rating.</p>	
67	<p>Describe your unique product attributes and advances, including specific examples related to product longevity or wear-resistance.</p>	<p>With our Change-As-Needed system, uniform garments are regularly replaced on a rotating basis when they reach a point where either appearance or function is compromised. There is no specific schedule, and actual replacements are very much dependent upon the type of garment, the material from which it is manufactured and the nature of its use.</p>	*
68	<p>Describe how your direct buy, rental, and/or leasing solutions complement the value of your program and offerings.</p>	<p>UniFirst has a long and proud tradition of providing quality uniforms, Job-Fitted Work Clothes® and other image and safety enhancing workwear to businesses of all sizes and types. From industrial work shirts and pants, to work jackets and coveralls, to polos and executive wear, to lab coats and food service smocks - UniFirst offers work uniforms for virtually every occupation. Beyond a complete selection of the best work uniforms available, UniFirst also provides accessories like gloves, hats, and protective gear—making "single source workwear solutions" more than just a marketing slogan.</p> <p>We manufacture our work apparel in ISO certified facilities to ensure we consistently provide the most important garment features, benefits, and fabrics as defined by our customers. That's why the UniFirst family of workwear brands boasts unrivaled styling, comfort, durability, and protection; as well as wearer-friendly features like roomier cuts, more stitches per inch, and premium construction. And we supplement our own workwear product lines with those of other leading brands. So no matter the needs, UniFirst has the solutions customers demand.</p> <p>Rent, lease, or buy work uniforms          Sourcewell's Members can assume as little or as much responsibility as they wish for their overall uniform program by electing to rent, lease, or buy. With the proper care and ongoing maintenance, Members can be assured their UniFirst workwear (and facility service) products are always in top shape.</p> <p>Work Uniform Rental includes program administration, laundering, delivery, repairs, replacements, and more. Learn more about our Uniform Rental programs.</p> <p>UniFirst full service uniform rental programs include:          When you participate in a full-service UniFirst uniform program, up-front clothing investments are eliminated. We outfit employees in the clothing of your Member's choice, provide weekly cleaning, garment maintenance, and issue replacements as necessary. We handle all the program administration for your employee uniforms and services, eliminating the worries and headaches. And it's all for one low weekly charge per employee (or per product).</p> <p>How our rental programs work          More than 260 UniFirst service centers throughout the U.S. and Canada provide a total uniform and Facility Service package. With a full service rental program, you get:</p> <ul style="list-style-type: none"> <li>• Professional on-site needs analysis</li> <li>• More than 40,000 in-stock product SKUs to choose from</li> <li>• Measurement/fitting of each wearer conducted at your location(s)</li> <li>• Specified number of garments for each individual</li> <li>• Professional laundering and finishing</li> <li>• Regularly scheduled uniform deliveries and product replenishment</li> <li>• Inspection of all work clothing for rips, flaws, missing buttons, etc.</li> <li>• Automatic garment repairs</li> <li>• Automatic replacement of overly worn or damaged garments</li> <li>• Inventory control with itemization by employee (or product)</li> <li>• Quick outfitting of new employees</li> <li>• Full program management</li> </ul> <p>Triple Pro Service          You will get three dedicated UniFirst professionals working on your account at all times. There's a dependable Route Sales Representative who'll keep your program running smoothly day in and day out, a Service Manager whose primary responsibility is to see that you're getting everything you need when you need it, and a helpful local Customer Service Representative who's always ready to provide immediate assistance. Through the efforts of this hard-working team, we guarantee 24-hour response to any problem, question, or request.</p> <p>Work Uniform Leasing includes all the facets of a Uniform Rental Program, but employees take care of laundering their own uniform garments.</p> <p>UniFirst Val-U-Lease uniform programs include:          Depending upon individual needs, you may prefer our Val-U-Lease program. You enjoy the service, convenience, and all the benefits of our Full Service Uniform Rental Program, with the exception of the scheduled laundering services. But if you need occasional laundering, we can arrange that, too. And you'll still receive our uniform</p>	*

repair, replacement, and other maintenance services, as needed.

How our Val-U-Lease programs work

Like with our Uniform Rental programs, a UniFirst Val-U-Lease program eliminates upfront clothing investments in favor of low weekly charges. You're only billed for the number of workers actually "in uniform." Idle clothing costs are avoided, and you get top-quality, stylish uniforms of your choice... complete with custom company emblems and much more. Employees take care of uniform cleaning, but UniFirst takes care of everything else, including:

- Professional on-site needs analysis
- More than 40,000 in-stock SKUs and over 340,000 total product SKUs to choose from
- Measurement/fitting of each wearer conducted at your location(s)
- Specified number of garments for each individual
- Garment repairs
- Garment replacements of overly worn or damaged garments
- Inventory control with itemization by employee (or product)
- Quick outfitting of new employees
- Full program management

Triple Pro Service

You'll get three dedicated UniFirst professionals working on your account at all times. There's a dependable Route Service Representative who'll keep your program running smoothly day in and day out, a Service Manager whose primary responsibility is to see that you're getting everything you need when you need it, and a helpful local Customer Service Representative who's always ready to provide immediate assistance. Through the efforts of this hard-working team, we guarantee 24-hour response to any problem, question, or request.

Work Uniform Purchase programs allow you to outfit your staff at competitive prices. And if you require occasional laundering or other garment services, we can provide that too. Learn more about our Uniform Purchase programs.

UniFirst Direct Purchase programs include:

For those who prefer to own, UniFirst offers competitive pricing and an extensive workwear selection - as all of our items are available for purchase.

Program Requirements: A service agreement would serve the best interest of both parties in the event that special or otherwise non-standard products, that UniFirst would also be expected to place into inventory, are specified.

All our uniform rental items are available for purchase. You may choose from thousands of UniFirst-manufactured products or other popular brands from trusted names like Landau, Fashion Seal, Dickies, Tri-Mountain & Port Authority.

69	Describe any unique advantages that your offering provides in terms of customization, personalization, alteration, fitting, and/or sizing.	<p>Custom personalization is a key element in most image apparel programs and UniFirst's extensive experience in both screen printing and embroidery represents and advantage for us as well. We have our own in-house screen printing and operate our own embroidery machinery. In our Owensboro distribution facility UniFirst owns and operates our own embroidery equipment for emblem making and direct embroidery.</p> <p>Our advanced emblem, embroidery, logo, and employee name personalization options keep your employees looking sharp and easily identifiable in your business branded logo apparel.</p> <p>Our in-house graphics staff creates and digitizes scores of new customer personalization designs daily. Software allows us to quickly produce an electronic rendition of any embroidery design or emblem. This gives us greater control over the process of creating and delivering unique customer images through the combination of specially selected clothing and custom-applied design.</p> <p>UniFirst has the industry's largest complement of personalization equipment. Our proprietary personalization workflow software enables us to personalize over 30,000 items every day, and 6,000 emblems per hour. We invite you to view our Owensboro six minute video tour at the link listed below.</p> <p><a href="http://www.unifirst.com/company/videos/centralized-distribution-center-owensboro-ky/">http://www.unifirst.com/company/videos/centralized-distribution-center-owensboro-ky/</a></p> <p>For Direct Purchase: Custom inseam lengths for pants are available at the point of order entry. UniFirst will hem to a specified length prior to shipment of the order. As part of the service offering, UniFirst will accept returns for size exchanges within sixty (60) days of order receipt at no additional charge (i.e. no restocking fees). Freight to ship returned merchandise is paid by the customer unless the return was necessitated by a UniFirst error.</p> <p>Custom sized garments, not in stock, that do not require a "special manufacturing cut" will ship in approximately 14 - 17 business days from the date of order receipt. Custom garments that require a special cut, depending on the particular circumstances at hand, could take up to 12 weeks to procure.</p> <p>For Rental Programs: UniFirst does not measure your employees. Rather, we have your employees actually try-on the garments as we have found that this process better ensures proper fit. We have also found that lists, prepared in advance, that detail the employees to be sized, at a given sizing session, and the type and number of garments that each employee is entitled to receive greatly assists the sizing process.</p>
70	Describe any unique advantages that your offering provides in terms of laundering, cleaning, mending and/or repair services.	<p>The Company's commitment is to provide top-quality service to businesses in a broad range of industries that require superior work clothing, career apparel programs, and other managed services. The major portion of the Company's business is Rental Service Programs, which provide customers with all necessary products plus weekly cleaning, maintenance, and any needed replacements for an affordable weekly fee.</p> <p>UniFirst leads the industrial laundry industry with our technology and reporting capabilities which gives your Member's management the tools needed to impact their spend level.</p> <p>UniFirst operates the largest network of ISO certified laundry facilities in the world. Our strict adherence to our SOP's ensure our national customers receive consistent and predictable quality coast-to-coast. At UniFirst, the finishing process is unique to the industry because every shirt that we finish is professionally pressed (not in Canada), as opposed to the traditional tunnel finishing processes employed by our competitors. The vary process that occurs as our shirt pressing equipment is "dressed" by our operator requires that the top button is closed, and the dress collars are hand shaped. Once these inspection points are completed, the front of the shirt is completely inspected, including emblem affixation and quality. The bottom shirt tails and sleeves are clipped to complete the initial shirt press process. The UniFirst "Ten-Point" Inspection process and "Change-As-Needed" programs are employed to identify product defects so that your Members can focus on their Clients.</p> <p>UniFirst's exclusive "mend system" provides (at no cost to your Members), for a comprehensive "Ten-Point" inspection of every garment every time it's processed. This system is backed up by our wearer communication system which provides a continuous supply of service request tags at your place of business so that any special needs can also be flagged by wearers to ensure that they get our immediate attention.</p> <p>In general, we believe that the garment should be repaired whenever it is possible to do so, provided its appearance or function is not materially impacted by the repair. This "judgment call" we leave to the discretion of your Members. Some Customers</p>

require that they and they alone approve the retirement from service of any damaged garment. This process remains acceptable to UniFirst.

Our "Change-As-Needed" system provides (at no cost to your Members), for the automatic replacement of garments before they become so worn as to impact appearance or function. UniFirst is the only company in our industry who takes the additional step of proactively upgrading garments for our customers. Much of what our competitor's bill out as "damage" is actually the result of worn out uniforms that have not been replaced. Unlike many (if not all) of our competitors, UniFirst replaces all garments which wear out as a consequence of normal wear and tear with "new" garments.

UniFirst also recognizes that not every employee stays the same size over time, so we provide (at no cost to your Members), for clothing size exchanges to your Member's employees whenever necessary.

We commit to reinvesting 18% of revenues back into your garment inventory. The consistent upgrades (at no cost to your Members), keep your Member's inventory above the image and safety threshold where our competitors fall after the first couple years of service. We, at UniFirst, would be privileged to have the opportunity to host a tour of one of our operating facilities to demonstrate our competitive advantages in terms of garment finish quality and more importantly to you, finish appearance.

At every UniFirst ISO certified laundry facility, every single item is carefully sorted and placed into specially designed slings that are weighed before being sent to one of 14 different washers with capacities ranging from 75 to 700 pounds. Each wash lot is tagged as to the type of content and soiling so that operators can instruct a pre-programmed computer to use the correct wash formula for that particular load.

Under this system, there's virtually no opportunity for human error. Computerized wash formulas determine the correct water levels and temperatures, what detergents and additives are needed, the length of the wash cycle, and any other additional information that the clothing or soil type might require. And when the cleaning cycle is completed, sophisticated computer controls automatically tip and empty washers onto moving conveyors which transfer the laundry to pre-programmed computerized driers.

The automation process is extremely precise, and it allows UniFirst personnel to monitor each process from start to finish to ensure overall quality—from the most efficient use of energy and wash chemicals to the overall level of cleanliness. Should any minor error or malfunction occur, such as water not reaching a specific temperature, an alarm sounds and the entire process comes to an immediate halt until the problem is fixed.

The following controls are used to limit loss and damage.

- All garments are counted at Customer pick-up, again upon receipt at our plant and again at delivery . . . all documented on the weekly service invoice.
- All garments are individually barcoded to identify specific location, day of service and individual employee.
- Our UniTrack bar coding system provides an accurate pickup and delivery report to the Client, at the time of product delivery, on a weekly basis. These weekly reports, printed on their premises, detail the number of garments that are picked up for cleaning from, and delivered clean to, a given location or sub location, within a given location. This, in turn, will enable the member to clearly identify who last had possession of the garments, and thus who is responsible for any loss of the subject garments.
- Internal garment control systems back at our service center are designed to eliminate delivery shortages
- Our Garment Maintenance Program (if selected) eliminates all damage charges, except those that arise as a consequence of gross negligence
- Garment lockers are available to secure clean garments and for better housekeeping of soiled garments.
- Lost Damage Report - provides a detailed summary (monthly or quarterly) of the lost and damage charges invoiced for each Member's site. The report shows the garment information as well as the employee name.

We are committed to conducting our business in a fair, honest and responsible manner in accordance with all environmental and governmental regulations and with the highest standards of business ethics. UniFirst stresses energy conservation measures throughout all its facilities. Our laundry production facilities feature

	computerized processing equipment that ensures these operations are not wasteful in any way with respect to fuel and energy usage. With 260 locations throughout North America, we have also found that seemingly small conservation measures, such as installing energy efficient equipment, motion-activated lighting, and automated thermostats, are cumulatively producing big savings. We also make sure that each of our fleet of customer delivery and support vehicles follows proper maintenance schedules, and that all of our drivers follow best practices for vehicle fuel performance.
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### Exceptions to Terms, Conditions, or Specifications Form

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

### Documents

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

1. Documents in PDF format are preferred. Documents in Word, Excel, or compatible formats may also be provided.
2. Documents should NOT have a security password, as Sourcewell may not be able to open the file. It is your sole responsibility to ensure that the uploaded document(s) are not either defective, corrupted or blank and that the documents can be opened and viewed by Sourcewell.
3. Sourcewell may reject any response where any document(s) cannot be opened and viewed by Sourcewell.
4. If you need to upload more than one (1) document for a single item, you should combine the documents into one zipped file. If the zipped file contains more than one (1) document, ensure each document is named, in relation to the submission format item responding to. For example, if responding to the Marketing Plan category save the document as "Marketing Plan."
  - Financial Strength and Stability - Financial Strength and Stability UniFirst.zip - Wednesday April 08, 2020 13:05:35
  - Marketing Plan/Samples - Sourcewell sample welcome kit.pdf - Wednesday April 08, 2020 16:19:01
  - WMBE/MBE/SBE or Related Certificates (optional)
  - Warranty Information (optional)
  - Pricing - Sourcewell Proposal.docx - Thursday April 09, 2020 14:04:22
  - Additional Document (optional)

## Proposer's Affidavit

### PROPOSER AFFIDAVIT AND ASSURANCE OF COMPLIANCE

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

1. The Proposer is submitting this Proposal under its full and complete legal name, and the Proposer legally exists in good standing in the jurisdiction of its residence.
2. The Proposer warrants that the information provided in this Proposal is true, correct, and reliable for purposes of evaluation for contract award.
3. The Proposer, including any person assisting with the creation of this Proposal, has arrived at this Proposal independently and the Proposal has been created without colluding with any other person, company, or parties that have or will submit a proposal under this solicitation; and the Proposal has in all respects been created fairly without any fraud or dishonesty. The Proposer has not directly or indirectly entered into any agreement or arrangement with any person or business in an effort to influence any part of this solicitation or operations of a resulting contract; and the Proposer has not taken any action in restraint of free trade or competitiveness in connection with this solicitation. Additionally, if Proposer has worked with a consultant on the Proposal, the consultant (an individual or a company) has not assisted any other entity that has submitted or will submit a proposal for this solicitation.
4. To the best of its knowledge and belief, and except as otherwise disclosed in the Proposal, there are no relevant facts or circumstances which could give rise to an organizational conflict of interest. An organizational conflict of interest exists when a vendor has an unfair competitive advantage or the vendor's objectivity in performing the contract is, or might be, impaired.
5. The contents of the Proposal have not been communicated by the Proposer or its employees or agents to any person not an employee or legally authorized agent of the Proposer and will not be communicated to any such persons prior to Due Date of this solicitation.
6. If awarded a contract, the Proposer will provide to Sourcewell Participating Entities the equipment, products, and services in accordance with the terms, conditions, and scope of a resulting contract.
7. The Proposer possesses, or will possess before delivering any equipment, products, or services, all applicable licenses or certifications necessary to deliver such equipment, products, or services under any resulting contract.
8. The Proposer agrees to deliver equipment, products, and services through valid contracts, purchase orders, or means that are acceptable to Sourcewell Members. Unless otherwise agreed to, the Proposer must provide only new and first-quality products and related services to Sourcewell Members under an awarded Contract.
9. The Proposer will comply with all applicable provisions of federal, state, and local laws, regulations, rules, and orders.
10. The Proposer understands that Sourcewell will reject RFP proposals that are marked "confidential" (or "nonpublic," etc.), either substantially or in their entirety. Under Minnesota Statutes Section 13.591, subdivision 4, all proposals are considered nonpublic data until the evaluation is complete and a Contract is awarded. At that point, proposals become public data. Minnesota Statutes Section 13.37 permits only certain narrowly defined data to be considered a "trade secret," and thus nonpublic data under Minnesota's Data Practices Act.
11. Proposer its employees, agents, and subcontractors are not:
  - a. Included on the "Specially Designated Nationals and Blocked Persons" list maintained by the Office of Foreign Assets Control of the United States Department of the Treasury found at: <https://www.treasury.gov/ofac/downloads/sdnlist.pdf>;
  - b. Included on the government-wide exclusions lists in the United States System for Award Management found at: <https://www.sam.gov/>; or
  - c. Presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from programs operated

by the State of Minnesota; the United States federal government or the Canadian government, as applicable; or any Participating Entity. Vendor certifies and warrants that neither it nor its principals have been convicted of a criminal offense related to the subject matter of this solicitation.

By checking this box I acknowledge that I am bound by the terms of the Proposer's Affidavit, have the legal authority to submit this Proposal on behalf of the Proposer, and that this electronic acknowledgment has the same legal effect, validity, and enforceability as if I had hand signed the Proposal. This signature will not be denied such legal effect, validity, or enforceability solely because an electronic signature or electronic record was used in its formation. - David Katz, Vice President Sales & Marketing, UniFirst Corporation

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

Yes  No

The Bidder acknowledges and agrees that the addendum/addenda below form part of the Bid Document.

Check the box in the column "I have reviewed this addendum" below to acknowledge each of the addenda.

File Name	I have reviewed the below addendum and attachments (if applicable)	Pages
<b>Addendum_7_Uniforms_RFP040920</b> Fri April 3 2020 12:04 PM	<input checked="" type="checkbox"/>	1
<b>Addendum_6_Uniforms_RFP040920</b> Thu April 2 2020 08:09 AM	<input checked="" type="checkbox"/>	3
<b>Addendum_5_Uniforms_RFP040920</b> Thu March 19 2020 10:46 AM	<input checked="" type="checkbox"/>	1
<b>Addendum_4_Uniforms_RFP040920</b> Tue March 3 2020 11:20 AM	<input checked="" type="checkbox"/>	2
<b>Addendum_3_Uniforms_RFP040920</b> Thu February 27 2020 04:04 PM	<input checked="" type="checkbox"/>	1
<b>Addendum_2_Uniforms_RFP040920</b> Fri February 21 2020 02:33 PM	<input checked="" type="checkbox"/>	1
<b>Addendum_1_Uniforms_RFP040920</b> Thu February 20 2020 03:41 PM	<input checked="" type="checkbox"/>	1

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CITY ATTORNEY'S OFFICE

**TRACY CITY COUNCIL**

**RESOLUTION NO. \_\_\_\_\_**

**AUTHORIZING A COOPERATIVE PURCHASING AGREEMENT WITH UNIFIRST CORPORATION FOR THE PURCHASE OF UNIFORM SERVICES FOR A TERM OF 5 YEARS AND A TOTAL NOT TO EXCEED AMOUNT OF \$500,000**

**WHEREAS**, the City of Tracy currently has a General Services Agreement with Ameripride Services, Inc. to provide uniform services for the Operations and Utilities and Parks and Recreation Departments, which expires on June 30, 2023; and

**WHEREAS**, UniFirst Corporation has an existing cooperative purchasing agreement with Sourcewell (formerly National Joint Powers Alliance (NJPA)), which is a municipal contracting government agency that serves education and government agencies nationally through competitively bid and awarded contract purchasing solutions, approved to be used in California; and

**WHEREAS**, the City is currently a Sourcewell customer and is authorized to make purchases under Sourcewell's cooperative purchasing agreements under Tracy Municipal Code Section 2.20.220;

**WHEREAS**, the City seeks to obtain uniform services from UniFirst Corporation through the Sourcewell cooperative purchasing agreement; now therefore be it

**RESOLVED:** That the City Council of the City of Tracy hereby authorizes a Cooperative Purchasing Agreement with UniFirst Corporation for the purchase of uniform services for a term of 5 years and a total not to exceed amount of \$500,000.

\* \* \* \* \*

The foregoing Resolution 2023-\_\_\_\_\_ was adopted by the Tracy City Council on May 16, 2023, 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 introduce an Ordinance of the City of Tracy:**  
**1) Amending Tracy Municipal Code Sections: (A) 6.36.012 to modify the definition of owner for commercial cannabis; (B) 6.36.040 to add clarifying language; (C) 6.36.080 to further toll the expiration date of the commercial cannabis business permits that are expiring on June 21, 2023, to March 3, 2024; and (D) 6.36.100 to modify the cannabis business permit renewal requirements; and**  
**2) Determining that the Project is categorically exempt from the California Environment Quality Act (CEQA), pursuant to CEQA Guidelines Section 15061(B)(3).**

EXECUTIVE SUMMARY

Chapter 6.36 of the Tracy Municipal Code (TMC) establishes regulations for commercial cannabis activities in the City of Tracy (Cannabis Program). Pursuant to this Chapter, applicants must obtain a Cannabis Business Permit, after completing a fingerprinting and background security clearance process along with other application requirements. The City's Cannabis Program has been delayed because the City has been denied clearance to access federal databases for completed security clearances on "owners," as defined in the TMC.

Council met on May 2, 2023 and discussed four proposed revisions to Chapter 6.36 of the (TMC). At that meeting the City Council rejected that proposal and directed the City Manager to return with a new proposal. This staff report and the attached Ordinance represents the new proposal.

Specifically, the proposed revised Ordinance amends:

- 1) TMC Section 6.36.012 to modify the definition of owner as related to commercial cannabis; and
- 2) TMC Section 6.36.040 to clarify language within the code related to the number of allowable storefront retailers; and
- 3) TMC Section 6.36.080 to toll the expiration of the three existing Cannabis Business Permits (Permits) expiring on June 21, 2023 to March 3, 2024 to provide adequate time to establish and become operable prior to expiration of the Permits; and
- 4) Modifies the permit renewal process outlined in TMC Section 6.36.100.

BACKGROUND AND LEGISLATIVE HISTORY

California allows local governments to regulate commercial cannabis activities in their respective jurisdictions. On December 3, 2019, the City Council adopted Ordinance 1277 (codified as Tracy Municipal Code (TMC) Chapter 6.36), establishing permitting regulations for commercial cannabis activity in the City of Tracy (City), which regulations require applicants to obtain a Cannabis Business Permit. In addition, the City Council adopted Ordinance 1278 (codified as TMC Section 10.08.3196), in order to establish a retail site (dispensary) in the City.

During a series of meetings (January 21, 2020, April 21, 2020, May 19, 2020, June 2, 2020, July 7, 2020, and July 21, 2020), the City Council discussed the cannabis business permit guidelines and procedures. Through the meetings, the City Council adopted Ordinance 1293 to amend

Chapter 6.36 of the TMC with regards to cannabis cultivation permit requirements and adopt Resolution No. 2020-137 adopting the Cannabis Business Permit Application Procedures and Guidelines. On November 18, 2021, the City Council adopted an Ordinance amending the cannabis regulations to allow one storefront retailer (dispensary) per 10,000 population, but allowed the current cohort to proceed, which totals eleven storefront retailers (dispensaries). On June 7, 2022, the City Council introduced an Ordinance amending Chapter 6.36.080 tolling the expiration of cannabis business permit for an additional 12 months, which was approved on July 5, 2022, via Ordinance 1328. On March 7, 2023, the City Council, by motion action, directed staff to prepare an amendment to TMC Section 6.36 to address background check procedures. On April 18, 2023, the City Council received an informational item related to background check procedures. On May 2, 2023, City Council held a notice public hearing to discuss the Ordinance revisions and directed the agenda item to be brought back for consideration with revised language regarding the tolling of Cannabis Business Permits.

### **Background Check Requirements and Procedures**

Sections 6.36.50 and 6.36.150 of the Tracy Municipal Code (TMC) establish procedures for the application of a Cannabis Business Permit (CBP), which includes background check regulations for both employees and owners of CBP in the City of Tracy (City). The City has desired to obtain both State and Federal criminal records of owners of cannabis businesses through “Live Scan” fingerprinting. This has proven difficult as the City still has not been granted access to the Federal databases. And, while the California State Department of Cannabis has access to these federal databases, they conduct checks for a lower standard of ownership than that required by the City of Tracy.

Under Chapter 6.36 of the TMC, both owners and employees of a cannabis business are required to obtain some level of background check as a part of the process of obtaining a CBP in the City.

#### Rules Applicable to Owners

“Owner” is defined in TMC Section 6.36.012 as follows:

"Owner" means any of the following:

- (1) A person with an aggregate ownership interest of five (5) percent or more in the person applying for a permit or a permittee, unless the interest is solely a security, lien, or encumbrance.
- (2) The chief executive officer and the members of the board of directors of the entity engaging in the cannabis business.
- (3) An individual who will be participating in the direction, control, or management of the person applying for a City cannabis business permit.

While the City’s definition of a cannabis “owner” is comparable to that of the State definition, it differs significantly with respect to the percentage of ownership, as the State defines “owners” to be persons with an aggregate owner interest of 20 percent or more, whereas the City defines

“owners” to be persons with an aggregate owner interest of 5 percent or more. Below is the relevant statute:

Cal. Code Regs. Title 4, § 15003 - Owners of Commercial Cannabis Businesses

(a) An applicant for a commercial cannabis license or a licensee shall disclose all owners of the commercial cannabis business. An owner of the commercial cannabis business includes all of the following:

(1) A person with an aggregate ownership interest of 20 percent or more in the commercial cannabis business, unless the interest is solely a security, lien, or encumbrance. For purposes of this section, "aggregate" means the total ownership interest held by a single person through any combination of individually held ownership interests in a commercial cannabis business and ownership interests in an entity that has an ownership interest in the same commercial cannabis business. For example, a person who owns 10 percent of the stock in a commercial cannabis business as an individual shareholder and 100 percent of the stock in an entity that owns 10 percent of the stock in the same commercial cannabis business has a 20 percent aggregate ownership interest in the commercial cannabis business.

(2) An individual who manages, directs, or controls the operations of the commercial cannabis business, including but not limited to:

(A) A member of the board of directors of a nonprofit.

(B) A general partner of a commercial cannabis business that is organized as a partnership.

(C) A non-member manager or managing member of a commercial cannabis business that is organized as a limited liability company.

(D) The trustee(s) and all persons who have control of the trust and/or the commercial cannabis business that is held in trust.

(E) The chief executive officer, president or their equivalent, or an officer, director, vice president, general manager or their equivalent.

(b) If the commercial cannabis business is owned in whole or in part by an entity and the entity includes individuals who manage, direct, or control the operations of the commercial cannabis business, as described in subsection (a)(2)(E), those individuals shall also be disclosed as owners.

(c) If available evidence indicates that an individual qualifies as an owner, the Department may notify the applicant or licensee that they must either disclose the individual as an owner and submit the information required by Section 15002 or demonstrate that the individual does not qualify as an owner.

As outlined in the California Business and Professions Code 26057 and California Code of regulations 15017, the Cannabis industry is regulated by local and state agencies.

Section 6.36.050(a)(i)(D) of the TMC details the background check requirements for owner applicants of a CBP in the City:

D. Background checks. For each of the interested parties:

1. A legible copy of one valid government-issued form of photo identification, such as a state driver's license, a passport issued by the United States, or a permanent resident card.
2. A list of their misdemeanor and felony convictions, if any. For each conviction, the list must set forth the date of arrest, the offense charged, the offense convicted, the sentence, the jurisdiction of the court, and whether the conviction was by verdict, plea of guilty, or plea of nolo contendere.
3. Consent to fingerprinting and a criminal background investigation.

Rules Applicable to Employees

The City requires all employees of cannabis businesses to obtain an employee permit. To obtain such a permit, employees must clear a background check process. The applicable requirement is set forth in TMC Section 6.36.150:

Section 6.36.150 – Cannabis Employee Permit required

(c) (vi.) The application shall be accompanied by fingerprints and a recent photograph of the applicant in a form and manner as required by the Police Chief or designee(s).

(d) The Police Chief or designee(s) shall review the application for completeness, shall conduct a background check to determine whether the applicant was convicted of a crime or left a previous employer for reasons that show the applicant has ever been convicted of any of the offenses enumerated in California Business and Professions Code Section 26057(b)(4).

ANALYSIS AND DISCUSSION FOR BACKGROUND CHECKS

As evident in the provisions above, the City has more stringent background check requirements for “owners” of cannabis businesses than for employees of such businesses.

Live Scan is an inkless, electronic system for obtaining fingerprints. The data is transmitted directly to the relevant law enforcement databases. Live Scan reports all or part of a person's “Summary Criminal History Record,” which is the criminal record kept by the California Department of Justice. This criminal history includes arrests, charges, dispositions, convictions, dismissals, diversions, identifying info (including fingerprints), “in custody” status if the person is in jail or prison, and a history of applications for certain licenses. If the requesting agency has permission, the Live Scan report can also include a person's “Federal Record.”

Because Live Scans are based on fingerprints and not only on name, birth date, and demographic information, they will not give false positives, making them much more accurate than traditional background checks that are name based. Additionally, Live Scan reports can also give the requester subsequent notification if the person is later arrested or convicted of a crime. While the TMC is silent on this issue, the City Council made a policy decision early in the

cannabis program to require applicants to obtain Live Scan fingerprinting so as to provide the Tracy Police Department (PD) both their State of California and Federal Criminal Records. Having both would provide the City maximum information about the criminal history, if any, of owners, particularly since the industry has entities that operate across multiple jurisdictions. However, obtaining access to the Federal databases has proven to be very difficult.

In accordance with the Council's Motion, the proposed Ordinance includes a change of the TMC ownership definition for commercial cannabis, to match the California Department of Cannabis Control (DCC) State definition, because this would remove existing barriers, and allow the current cohort to move forward with no further issues. If enacted by the City Council, here is a summary of the key impacts to the City's process:

- Changing City definition of ownership to match the DCC, including:
  - Definition of ownership percentage from 5% or more to the State's 20% or more aggregate owner interest definition.
  - Owner backgrounds would go through the DCC. Tracy PD does not receive background data and the DCC cannot share the Live Scan results.
  - Please note this is not an automatic approval path forward for all current applicants. As of April 25, 2023, 5 of the 11 Cannabis Businesses are not currently listed with the DCC.
  - The DCC requires the completion of a local permitting process first and then meeting the state standards for operation (State background).

If the Ordinance is not adopted fully as drafted, then the City would proceed with the existing TMC code requirements. Under this scenario, the City's process would be as follows:

1. Cannabis Business Owner completes the HdL initial background check. This has already been completed during the initial application submittal.
2. Owners review the State DCC ownership requirements and submit to DCC Live Scan, which encompasses Federal and State databases. Owners must comply with the State ownership definition as it aligns with Tracy PD.
3. Owners request a copy of their Live Scan criminal record and share it with Tracy PD. The request for a copy of the owner's State criminal record can be done at Tracy PD.
4. A review of the DCC business license, ownership status, and criminal record will be completed by PD staff.
5. PD staff will then submit a memorandum regarding the findings to the Office of the Chief of Police.
6. A letter detailing the background findings will then be submitted to the applicant, City Attorney's Office, and Development Services.

**Under this scenario (where the Ordinance is not adopted as drafted), not all current applicants would be cleared under the TMC requirements.** Based on current ownership information, Tracy PD believes that 3 of the applicants currently registered with the DCC also meet the TMC requirements for fingerprinting and background checks. However, due to the passage of time, this ownership information needs to be updated for all applicants.

## ANALYSIS AND DISCUSSION FOR OTHER TMC 6.36 AMENDMENTS

### Clarifying Language Regarding Number of Retail Dispensary Permits.

Through the various City Council actions, the City Council approved a total of 11 retail dispensary Permits. At the same time, through Section 6.36.040, the City Council set a maximum threshold of one (1) such dispensary Permit per every 10,000, individuals living within the City. To avoid confusion, staff proposes to add a clarifying clause to the introduction of that section to note that the threshold does not apply to any Permits issued prior to April 2022 (by which date, all of the initial 11 Permits had been issued). The proposed ordinance language is as follows:

**SECTION 2. Amendment of Section 6.36.040.** Section 6.36.040, Maximum Number and Type of Authorized Commercial Cannabis Businesses Permitted, is amended to read as follows (with additions underlined, and deletions in ~~striketrough~~):

(b)i. Subsequent to the issuance of any permits occurring prior to April 2022, a maximum of one retailer – storefront (dispensary) permit may be issued for every 10,000 individuals living within the City of Tracy. For the purposes of this subsection, the total population of the City shall be determined by the most current published total available from the U.S. Census Bureau or the California State Department of Finance, whichever has been more recently updated, as of the date the cannabis business permit is issued. No new permit may be issued to authorize a retailer – storefront (dispensary) use if the number of such permits already issued equals or exceeds the total number authorized pursuant to this subsection.

### Tolling the Expiration of Cannabis Business Permits

Under TMC Section 6.36.080, each Cannabis Business Permit issued expires 12 months after the date of issuance. The City Council extended the expiration date for each Cannabis Business Permit by 12 months on July 5, 2022, by Ordinance 1328, to ensure the ability to comply with ordinance requirements including background check requirements.

Three Cannabis Business Permits are set to expire on June 21, 2023. Prior to operating a cannabis business, the TMC requires applicants to complete a background check (TMC Section 6.36.050). The proposed Ordinance will facilitate Permit holders to have additional time to establish and become operable prior to the expiration of the Permits.

The first four provisional Cannabis Business Permits were issued June 21, 2021, with an initial expiration date of June 20, 2022, which was tolled via Ordinance 1328 to June 21, 2023. The next 13 were issued March 3, 2022, with an expiration date of March 2, 2023, which was tolled via Ordinance 1328 to March 3, 2024. In order to assist the current Permit holders in their ability to establish and become operable prior to expiration of the Permits, this Ordinance proposes amending Section 6.36.080, Expiration of Cannabis Business Permits, to toll the expiration of the original Permits to March 3, 2024. This would cause all of the current cohort of provisional Cannabis Business Permit holders to have the same expiration date of March 3, 2024.

Below is the proposed Ordinance language pertaining to tolling showing changes in underline (new language) and ~~strikethrough~~ (deleted language).

### **Section 6.36.080 Expiration of Cannabis Business Permits**

Each Cannabis Business Permit issued pursuant to this chapter shall expire twelve (12) months after the date of its issuance, except that the expiration date of any cannabis business permit issued prior to May 2022 shall be tolled for an additional twelve (12) months from the date of issuance of any such permit, and further toll cannabis business permits that are expiring on June 21, 2023, to March 3, 2024. Cannabis business permits may be renewed as provided in section 6.36.100.

#### Modifying the Cannabis Business Permit Renewal Requirements

On December 3, 2019, City Council adopted Ordinance 1277 to create Chapter 6.36 of the TMC, establishing local regulations for commercial cannabis activity in Tracy. Amendments to Chapter 6.36 have been made on June 2, 2020, July 7, 2020, October 19, 2021, and June 7, 2022.

Chapter 6.36 provides that Cannabis Business Permits expire 12 months after issuance (which, as noted above, has been tolled by an additional 12 months and staff proposes to toll for an additional 6 months). An application for renewal of the Permit could be made per the Ordinance to the City prior to expiration with the caveat that the business was established and operational prior to expiration date, had been awarded a Conditional Use Permit (CUP) by the Planning Commission under Chapter 10.08.3196 of the TMC and had met other applicable conditions of approval.

Section 6.36.100 of the TMC sets forth renewal requirements for Permits, which are intended as a mechanism to annually ensure cannabis businesses are in good standing with local regulations. Section 6.36.100(b) indicates that Permit holders must provide the same information as existing applicants. As such, staff proposes that specified key provisions of the original application process be required for the renewal process. These key provisions include information about the Permit holder, ownership structure, insurance compliance and standing with the State licensing. New background checks and fingerprinting would be required as well. The remainder of the provisions of the renewal requirements as well as the City's authority to withhold a renewal would not change with this Ordinance.

Below is the proposed Ordinance language pertaining to renewals showing changes in underline (new language) and ~~strikethrough~~ (deleted language).

#### **6.36.100 Renewal Applications.**

- (a) An application for renewal of a cannabis business permit shall be filed at least 60 calendar days prior to the expiration date of the current permit.
- (b) ~~The renewal application shall contain all the information required under this chapter and the procedures established by City Council resolution.~~ The renewal application shall provide the information required under Sections 6.36.050(a)(i) and (ii)(D)-(F), updated from any prior information provided to the City.

- (b) The applicant shall pay a fee in an amount set by the City Council to cover the costs of processing the renewal permit application, together with any costs incurred by the City to administer the program created under this chapter.
- (c) An application for renewal of a cannabis business permit shall be denied if any of the following exists:
  - i. One or more of the circumstances upon which a cannabis business permit could be denied, as described in Section 6.36.070, exists or has occurred.
  - ii. The application is filed less than 60 days before its expiration.
  - iii. The cannabis business permit is suspended or revoked at the time of the application.
  - iv. The cannabis business has not been in regular and continuous operation in the four (4) months prior to the renewal application, unless the applicant has been granted a conditional use permit and is diligently pursuing either a discretionary permit or building permit, or is in construction.
  - v. The permittee fails to or is unable to renew its State License.
- (e)(d) The Police Chief or designee(s) is authorized to make all decisions concerning the issuance of a renewal permit. In making the decision, the Police Chief or designee(s) is authorized to impose additional conditions to a renewal permit, if it is determined to be necessary to ensure compliance with state or local laws and regulations or to preserve the public health, safety or welfare. Appeals from the decision of the Police Chief or designee(s) shall be directed to the City Manager and shall be handled pursuant to Chapter 1.12.
- (f)(e) If a renewal application is denied, a person may file a new application pursuant to this chapter no sooner than one (1) year from the date of the rejection.
- (g)(f) If an existing cannabis business permit holder fails to renew their permit, the City may, in its discretion, solicit and consider permit applications from other applicants pursuant to Sections 6.36.050 and 6.36.060.

#### FISCAL IMPACT

There is no fiscal impact associated with this action.

The establishment of the cannabis businesses in the City of Tracy, once operational, will generate revenue as they are required to pay permit processing fees, monetary benefits through Community Benefits Agreements and local sales taxes.

#### PUBLIC OUTREACH / INTEREST

This agenda item relates to the cannabis program which has undergone significant public input through City Council and Planning Commission meetings. This agenda item presents another opportunity for interested parties to participate.

#### COORDINATION

The agenda item involved coordination between the Departments of Development Services, Finance, Police, the City Manager's Office, as well as the City Attorney's Office.

### CEQA DETERMINATION

This Project is categorically exempt from the California Environment Quality Act (CEQA), pursuant to CEQA Guidelines Section 15061(B)(3) which pertains to projects that have no potential to cause a significant effect on the environment, as each individual permit issued under this Ordinance will be required to complete CEQA review.

### STRATEGIC PLAN

This agenda item supports the City of Tracy's Public Safety and Quality of Life Strategic Priorities.

### ACTION REQUESTED OF THE CITY COUNCIL

Staff recommends that the City Council introduce an Ordinance of the City of Tracy:

- 1) Amending Tracy Municipal Code Sections: (A) 6.36.012 to modify the definition of owner for commercial cannabis; (B) 6.36.040 to add clarifying language; (C) 6.36.080 to further toll the expiration date of Cannabis Business Permits (Permits) that are expiring on June 21, 2023 to March 3, 2024; and (D) 6.36.100 to modify the cannabis business permit renewal requirements; and
- 2) Determining that the Project is categorically exempt from the California Environment Quality Act (CEQA), pursuant to CEQA Guidelines Section 15061(B)(3).

Prepared by: Miguel Contreras, Police Lieutenant  
Bill Dean, Assistant Director of Development Services  
Victoria Lombardo, Senior Planner

Reviewed by: Jaylen French, Development Services Director  
Sekou Millington, Chief of Police  
Sara Cowell, Director of Finance  
Bijal Patel, City Attorney  
Karin Schnaider, Assistant City Manager

Approved by: Midori Lichtwardt, Assistant City Manager

### ATTACHMENTS

Attachment A – Ordinance Amending Sections 6.36.012, 6.36.040, 6.36.080, and 6.36.100 of the Tracy Municipal Code

**TRACY CITY COUNCIL**

**ORDINANCE NO. \_\_\_\_\_**

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**AN ORDINANCE 1) AMENDING TRACY MUNICIPAL CODE SECTIONS: (A) 6.36.012 TO MODIFY THE DEFINITION OF OWNER FOR COMMERCIAL CANNABIS; (B) 6.36.040 TO ADD CLARIFYING LANGUAGE; (C) 6.36.080 TO FURTHER TOLL THE EXPIRATION DATE OF THE COMMERCIAL CANNABIS BUSINESS PERMITS EXPIRING ON JUNE 21, 2023 TO MARCH 3, 2024; AND (D) 6.36.100 TO MODIFY THE CANNABIS BUSINESS PERMIT RENEWAL REQUIREMENTS; AND 2) DETERMINING THAT THE PROJECT IS CATEGORICALLY EXEMPT FROM THE CALIFORNIA ENVIRONMENTAL QUALITY ACT, PURSUANT TO CEQA GUIDELINES SECTION 15061(B)(3)**

**WHEREAS**, on December 3, 2019, the City Council adopted Ordinance 1277 (codified as Tracy Municipal Code, Chapter 6.36) establishing permitting regulations for commercial cannabis activity in the City of Tracy (City), which regulations require applicants to obtain a Cannabis Business Permit; and

**WHEREAS**, the Tracy Municipal Code (TMC) Section 10.08.3196, Cannabis Uses, also establishes zoning regulations for commercial cannabis activity in the City of Tracy (City); and

**WHEREAS**, through a series of meetings (January 21, 2020, April 21, 2020, May 19, 2020, June 2, 2020, July 7, 2020, July 21, 2020), the City Council discussed the cannabis business permit guidelines and procedures; and

**WHEREAS**, through the meeting the City Council adopted Ordinance 1293 to amend Chapter 6.36 of the TMC with regards to cannabis cultivation permit requirements and Resolution No. 2020-137 to adopt the Cannabis Business Permit Application Procedures and Guidelines; and

**WHEREAS**, effective November 18, 2021, Ordinance 1318 further amended the cannabis regulations so as to allow one storefront retailer (dispensary) per 10,000 population up to a maximum of eleven storefront retailers (dispensaries); and

**WHEREAS**, seventeen Cannabis Business Permits have been issued, including 11 dispensaries and 6 non-dispensaries; and

**WHEREAS**, the Planning Commission has heard nine Cannabis CUP applications since April 2022; and

**WHEREAS**, seven of the Cannabis CUP applications heard by Planning Commission were for locations within the City's Downtown district, or within close proximity to one another; and

**WHEREAS**, at the September 6, 2022 City Council meeting, the City Council considered an urgency ordinance, sponsored by the now Mayor Pro Tem Davis and Councilmember Bedolla, that would place a temporary moratorium on the issuance of further Cannabis CUPs; and

**WHEREAS**, the City Council did not adopt the urgency ordinance at the meeting; and

**WHEREAS**, during the Planning Commission public hearings on September 14, 2022, various parties expressed concerns regarding a perceived overconcentration of dispensaries downtown, concerns about allowing dispensaries downtown at all, and concern regarding their proximity to other existing businesses that have a significant number of customers that are children; and

**WHEREAS**, during the same public hearings on September 14, 2022, the Planning Commission expressed a desire to re-evaluate the zoning regulations and requested staff to return with potential changes to TMC Section 10.08.3196, related to where cannabis businesses could locate and potential changes to the definition of youth center; and

**WHEREAS**, on October 26, 2022 the Planning Commission conducted a workshop regarding the zoning regulations for cannabis and requested additional information (via research of regulations in other cities/counties) how to best regulate locations of cannabis businesses, including buffers between cannabis businesses and sensitive uses, between two cannabis businesses, density of cannabis businesses, and the definition of “youth center,” so that each of these matters could be discussed for proposed amendments to the zoning regulations; and

**WHEREAS**, on April 12, 2023, the Planning Commission heard an Ordinance amending Sections 10.08.3196(b) and (d) of the TMC to expand the definition of youth center and to establish buffers between proposed cannabis uses and sensitive uses; and

**WHEREAS**, at that meeting, the Planning Commission added a buffer requirement from residential uses as well and recommended that the City Council approve the proposed Ordinance; and

**WHEREAS**, TMC Section 6.36.080 provides that Cannabis Business Permits shall expire twelve months after the date of issuance; and

**WHEREAS**, TMC Sections 6.36.050 and 6.36.150 require that all interested parties and employees of a cannabis business undergo fingerprint based background checks; and

**WHEREAS**, in order for the City to conduct fingerprint based background checks, the Department of Justice (DOJ) must authorize the City to have access to such criminal history information; and

**WHEREAS**, due to the delay in obtaining DOJ approval, the City Council desires to amend TMC Section 6.36.012 to change the definition of “owner” for commercial cannabis to align with the State of California definition; and

**WHEREAS**, certain business permits are expiring on June 21, 2023 and others are expiring on March 3, 2024;

**WHEREAS**, due to the delay in obtaining DOJ approval, the City Council desires to amend TMC Section 6.36.080 to further toll the expiration of certain expiring cannabis business permits; and

**WHEREAS**, tolling the expiration of the first cohort of existing cannabis business permits, expiring on June 21, 2023, to March 3, 2024 will allow permit holders additional time to comply with the requirements under Chapter 6.36 to operate a cannabis business within the City and put these permit holders into parity with the remaining permit holders; and

**WHEREAS**, TMC Section 6.36.100 establishes cannabis business permit renewal requirements; and

**WHEREAS**, the existing regulations require submittal of application materials for renewal that are duplicitous with initial cannabis business permit application requirements, creating an undue administrative burden on both applicants and City staff in order to timely process renewal applications; and

**WHEREAS**, the City retains the ability to deny applications for renewal that would be unchanged as a result of this ordinance.

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF TRACY DOES ORDAIN AS FOLLOWS:**

**SECTION 1. Incorporation of Recitals/Findings.** The City Council finds and determines the foregoing recitals are true and correct and are hereby incorporated herein as findings and determinations of the City.

**SECTION 2. Amendment of Section 6.36.012.** "Owner" as defined in Section 6.36.012 is amended to read as follows (with additions underlined, and deletions in ~~strikethrough~~):

"Owner" means any of the following:

- (1) A person with an aggregate ownership interest of ~~five (5)~~ twenty (20) percent or more in the person applying for a permit or a permittee, unless the interest is solely a security, lien, or encumbrance.
- (2) The chief executive officer and the members of the board of directors of the entity engaging in the cannabis business.
- (3) An individual who will be participating in the direction, control, or management of the person applying for a City cannabis business permit.

**SECTION 3. Amendment of Section 6.36.040.** Section 6.36.040, Maximum Number and Type of Authorized Commercial Cannabis Businesses Permitted, is amended to read as follows (with additions underlined, and deletions in ~~strikethrough~~):

(b) Subsequent to the issuance of any permits occurring prior to April 2022, a maximum of one retailer - storefront (dispensary) permit may be issued for every 10,000 individuals living within the City of Tracy. For the purposes of this subsection, the total population of the City shall be determined by the most current published total available from the U.S. Census Bureau or the

California State Department of Finance, whichever has been more recently updated, as of the date the cannabis business permit is issued. No new permit may be issued to authorize a retailer - storefront (dispensary) use if the number of such permits already issued equals or exceeds the total number authorized pursuant to this subsection.

**SECTION 4. Amendment of Section 6.36.080.** Section 6.36.080, Expiration of Cannabis Business Permits, of the Tracy Municipal Code is hereby amended to read as follows (with additions underlined, and deletions in ~~striketrough~~):

Each Cannabis Business Permit issued pursuant to this chapter shall expire twelve (12) months after the date of its issuance, except that the expiration date of any cannabis business permit issued prior to May 2022 shall be tolled for an additional twelve (12) months from the date of issuance of any such permit, and further toll cannabis business permits that are expiring on June 21, 2023, to March 3, 2024. Cannabis business permits may be renewed as provided in section 6.36.100.

**SECTION 5. Amendment of Section 6.36.100.** Section 6.36.100, Renewal Applications, of the Tracy Municipal Code is hereby amended to read as follows (with additions underlined and deletions in ~~striketrough~~):

**6.36.100 Renewal Applications.**

- (a) An application for renewal of a cannabis business permit shall be filed at least 60 calendar days prior to the expiration date of the current permit
- ~~(b) The renewal application shall contain all the information required under this chapter and the procedures established by City Council resolution.~~ The renewal application shall provide the information required under Sections 6.36.050(a)(i) and (ii)(D)-(F), updated from any prior information provided to the City.
- ~~(e)~~(b) The applicant shall pay a fee in an amount set by the City Council to cover the costs of processing the renewal permit application, together with any costs incurred by the City to administer the program created under this chapter.
- ~~(d)~~(c) An application for renewal of a cannabis business permit shall be denied if any of the following exists:
  - i. One or more of the circumstances upon which a cannabis business permit could be denied, as described in Section 6.36.070, exists or has occurred;
  - ii. The application is filed less than sixty (60) days before its expiration.
  - iii. The cannabis business permit is suspended or revoked at the time of the application.
  - iv. The cannabis business has not been in regular and continuous operation in the four (4) months prior to the renewal application, unless the applicant has been granted a conditional use permit and is diligently pursuing either a discretionary permit or building permit, or is in construction.
  - v. The permittee fails to or is unable to renew its State License.
- ~~(e)~~(d) The Police Chief or designee(s) is authorized to make all decisions concerning the issuance of a renewal permit. In making the decision, the Police Chief or designee(s) is authorized to impose additional conditions to a renewal permit, if it is determined to be necessary to ensure compliance with state or local laws and regulations or to preserve the public health, safety or welfare. Appeals from the decision of the Police Chief or designee(s) shall be directed to the City Manager and shall be handled pursuant to Chapter 1.12.
- ~~(f)~~(e) If a renewal application is denied, a person may file a new application pursuant to this chapter no sooner than one (1) year from the date of the rejection.

(g)(f) If an existing cannabis business permit holder fails to renew their permit, the City may, in its discretion, solicit and consider permit applications from other applicants pursuant to Sections 6.36.050 and 6.36.060.

**SECTION 6. CEQA Determination.** The City Council finds that this Ordinance is categorically exempt from the California Environmental Quality Act (CEQA) in accordance with CEQA Guidelines Section 15061(B)(3) pertaining to activities that do not have the potential for causing a significant effect on the environment.

**SECTION 7. Severability.** If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the Chapter. The City Council hereby declares that it would have passed this Ordinance and each section, subsection, clause or phrase thereof irrespective of the fact that one or more other sections, subsections, clauses or phrases may be declared invalid or unconstitutional

**SECTION 8. Effective Date.** This ordinance shall become effective upon the thirtieth (30<sup>th</sup>) day after final adoption.

**SECTION 9. Publication.** The City Clerk is directed to publish this ordinance in a manner required by law.

**SECTION 10. Codification.** This Ordinance shall be codified in the Tracy Municipal Code.

\* \* \* \* \*

The foregoing Ordinance \_\_\_\_\_ was introduced at a regular meeting of the Tracy City Council on the 16<sup>th</sup> day of May 2023, and finally adopted on the \_\_\_\_ day of \_\_\_\_\_, 202\_\_, 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

Date of Attestation: \_\_\_\_\_

## NOTICE AND DIGEST

**AN ORDINANCE AMENDING THE FOLLOWING SECTION OF TRACY MUNICIPAL CODE CHAPTER 6.36 (COMMERCIAL CANNABIS): A) 6.36.012 TO MODIFY THE DEFINITION OF OWNER FOR COMMERCIAL CANNABIS; B) SECTION 6.36.040 TO ADD CLARIFYING LANGUAGE REGARDING THE NUMBER OF ALLOWABLE STOREFRONT RETAILERS; C) SECTION 6.36.080 TOLLING THE EXPIRATION DATE OF EACH EXISTING COMMERCIAL CANNABIS BUSINESS PERMIT FOR AN ADDITIONAL 6 MONTHS, AND D) SECTION 6.36.100 TO MODIFY REGULATIONS FOR RENEWAL OF CANNABIS BUSINESS PERMITS.**

The Ordinance (Ordinance) amends various sections of Tracy Municipal Code Chapter 6.36 (Commercial Cannabis), that in the aggregate removes existing barriers for applicants to complete the requisite security clearance process, tolls existing permits for an additional 6 months, and simplifies the renewal process. Specifically, the following Sections of Tracy Municipal Code are being amended through this Ordinance: a) 6.36.012 to modify the definition of owner for commercial cannabis; b) 6.36.040 to add clarifying language regarding the number of allowable storefront retailers; c) 6.36.080 tolling the expiration date of each existing commercial cannabis business permit for an additional 6 months, and d) 6.36.100 to modify regulations for renewal of cannabis business permits.

Agenda Item 3.B

RECOMMENDATION

**Staff recommends that the City Council receive an informational report and provide feedback on renaming the Tracy Sports Complex pursuant to the City of Tracy's Naming Public Buildings, Parks and Recreational Facilities Policy.**

EXECUTIVE SUMMARY

At the January 18, 2022, City Council Meeting, during the Items from the Audience, a resident proposed to name the Tracy Sports Complex (Complex) after an individual from the Tracy community. During Items from Council, Mayor Young asked the Council to consider the request and it was supported by then Mayor Pro Tem Vargas and then Council Member Davis. Following this meeting, staff initiated the Park Naming Process for this request through the formal naming process, Council Policy D-2, Naming Public Buildings, Parks, and Facilities (Resolution No. 2021-013).

On October 6, 2022, staff took this item to the Parks and Community Services Commission (Commission) for consideration, as per Chapter 7.16 of the City of Tracy Municipal Code, Parks and Community Services Commission, 7.16.030 Powers and Duties (e) advise the Council on the subject of recreation and facility master planning and development. While staff was working with the Commission on applications for naming the Complex, staff discovered it had already been officially named by the City Council on October 3, 2000, per the council minutes to the "Tracy Sports Complex". Any action to change the name would be considered "renaming" and requires City Council direction under Section 8 the current Council Policy for Naming Public Buildings, Parks, and Facilities.

This report seeks Council direction on renaming the Tracy Sports Complex.

BACKGROUND AND LEGISLATIVE HISTORY

The Tracy Sports Complex (Complex) is a 27-acre multi-sport complex that features sport fields lighting for four (4) ballfields and four (4) soccer fields. The Complex is located south of 11<sup>th</sup> Street between Jefferson Parkway and Crossroads Drive and includes two (2) playgrounds, picnic areas, restrooms, a concession building, and parking on-site.

The Complex was built within the Presidio Development; and at the time, was often referred to as the Presidio Community Park. On February 15, 2000, City Council approved, through Resolution 2000-042, naming the four (4) soccer fields at the Complex after the "1965 Pioneer Soccer Club". The "1965 Pioneer Soccer Club" is recognized as the "original" promoters of soccer, including building soccer fields at Ritter Family Ball Park, and starting the Tracy Youth Soccer League. There is a monument on the Soccer Fields at the Complex for the "1965 Pioneer Soccer Club". Further, on October 3, 2000, City staff brought forward a staff report to City Council to officially name the park and was approved per the Council minutes. Following discussion, City Council established a consensus to name the park the "Tracy Sports Complex".

On February 2, 2021, City Council approved, through Resolution No. 2021-013, amending the Council Policy for Naming Public Buildings, Parks, and Facilities. The policy outlines steps to be taken when initiating the naming of public buildings and Parks & Recreation facilities. Through this process, community outreach is conducted for a 30-day period through social media, Tracy Press, and emails to stakeholders and community groups. Though there are no clear policy or procedures around “renaming” a Parks & Recreation facility once it has gone through the public naming process, section 8 of the policy states:

*“If a public building that has previously been named is proposed to have its function be moved, or is proposed for relocation, or demolition, or is destroyed through a natural disaster or other act, the City Council shall be provided an opportunity to name the replacement building.”*

### ANALYSIS

On the January 18, 2022, City Council Meeting, citizen Steve Abercrombie proposed recognizing a number of Tracy individuals for their service and commitment to Tracy. Included in Mr. Abercrombie’s proposal was renaming the Tracy Sports Complex to the Brent Ives Sports Complex. Following this item’s request, the Parks & Recreation Department initiated the solicitation of names for the Tracy Sports Complex on July 21, 2022, in the Tracy Press, on social media, and an email went out to stakeholders and community group which ran for a period of 30 days.

The solicitation of names for the Complex ended on August 22, 2022. The Parks & Recreation Department received and processed two (2) complete applications with a total two (2) recommended individuals for the renaming of the Complex.

On October 6, 2022, City staff brought the two completed applications to the Park and Community Services Commission for review and recommendation. Following discussion, the Commission motioned 3-1 to re-open the naming process for additional names and to return to the Parks Commission with the two (2) recommended names from the original solicitation from August 2022 and any new names submitted under the new solicitation to be considered.

Following the October 2022 Commission meeting, staff completed additional research on the history of the Complex. Staff’s research indicated that the Tracy Sports Complex was officially named by the City Council through the prior naming policy procedures on October 2, 2000, per the Council minutes. As a result, the request is no longer considered an initial naming process, but falls within the parameters of “renaming” the park. Section 8 of the Council Policy for Naming Public Buildings, Parks, and Facilities states: *“If a public building that has previously been named is proposed to have its function be moved, or is proposed for relocation, or demolition, or is destroyed through a natural disaster or other act, the City Council shall be provided an opportunity to name the replacement building.”* Therefore, staff is seeking further direction from the City Council before reopening the application solicitation for naming the Complex.

Staff is requesting direction on two options for Council to consider: (1) Choose not to rename the Tracy Sports Complex, or (2) Direct staff to re-open the naming process for additional names and to return to the Commission with the two (2) recommended names from the August 2022 application solicitation and any new names to be considered under a new application solicitation, which will then be forwarded to City Council for consideration per the Policy.

PUBLIC OUTREACH/INTEREST

Community outreach was conducted for a 30-day period through social media, Tracy Press and emails to stakeholders and community groups.

FISCAL IMPACT

If the Tracy Sports Complex is renamed, new park monuments would need to be created and installed at the park with an estimated appropriation to the Parks & Recreation budget of \$40,000 from the General Fund. Two new monuments will need to be purchased and installed to replace the existing monuments on-site.

STRATEGIC PLAN

This agenda item also supports the City of Tracy's Quality of Life Strategic Priority to provide an outstanding quality of life by enhancing the City's amenities, business mix and services, and cultivating connections to promote positive change and progress in Tracy's community.

ACTION REQUESTED OF THE CITY COUNCIL

Staff recommends that the City Council receive an informational report and provide feedback on renaming the Tracy Sports Complex pursuant to the City of Tracy's Naming Public Buildings, Parks and Recreational Facilities Policy.

Prepared by: Jolene Jauregui, Recreation Services Manager

Reviewed by: Brian MacDonald, Director of Parks and Recreation  
Sara Cowell, Director of Finance  
Riana Daniel, Deputy City Attorney  
Karin Schnaider, Assistant City Manager

Approved by: Midori Lichtwardt, Assistant City Manager

ATTACHMENTS

Attachment A – List of Submissions

Attachment B – Naming Public Buildings, Parks & Recreation Facilities Policy



Think Inside the Triangle™

City of Tracy  
Parks & Recreation Department333 Civic Center Plaza  
Tracy, CA 95376

(209) 831.6200

## NOMINATION FOR NAMING PUBLIC BUILDINGS, PARKS, AND FACILITIES

DATE OF NOMINATION July 22, 2022NOMINATOR: Steve AbercrombieADDRESS: [REDACTED]PHONE: [REDACTED]RECOMMENDED NAME: Brnet Ives Sports ComplexLOCATION: Tracy Sports Complex on 11th

- |                                     |                   |                          |                   |
|-------------------------------------|-------------------|--------------------------|-------------------|
| <input type="checkbox"/>            | MINI PARK         | <input type="checkbox"/> | NEIGHBORHOOD PARK |
| <input type="checkbox"/>            | COMMUNITY PARK    | <input type="checkbox"/> | LINEAR PARK       |
| <input checked="" type="checkbox"/> | SPORTS COMPLEX    | <input type="checkbox"/> | SPECIAL USE PARK  |
| <input type="checkbox"/>            | OPEN SPACE /      | <input type="checkbox"/> | PUBLIC BUILDING   |
|                                     | CONSERVATION LAND |                          |                   |
| <input type="checkbox"/>            | PUBLIC FACILITY   | <input type="checkbox"/> | OTHER             |

IF A FAMILY MEMBER, WHAT IS THE RELATIONSHIP? \_\_\_\_\_

The policy for naming public buildings, parks and facilities is attached. The City of Tracy requests that the nominator review the attached policy and prepare a 1-2 page summary of how the recommended name meets one or more of the considerations listed in items #1-#7 attached. Please be as **complete as possible**.

Example:

- Involvement and Commitment to Community
- Local Clubs and Organizations Served
- Schools Attended
- Significance to City of Tracy
- Why nominating the person

Submit this form and summary via mail to the address below or email directly to: [parks@cityoftracy.org](mailto:parks@cityoftracy.org)

Parks & Recreation Department  
Attn: Parks & Recreation Director  
333 Civic Center Plaza  
Tracy, CA 95376

I am recommending that the City Council rename the Tracy Sports Complex to the Brent Ives Sports Complex. Mr. Ives was born and raised in Tracy. He has dedicated his life to making the City of Tracy a beautiful and thriving community.

Mr. Ives served on the Parks commission and Planning commission. He served ten years as a council member and eight years as the Mayor.

During his time in these positions Brent was focused on helping our youth and providing the facilities necessary for a healthy community. Mr. Ives was instrumental in making sure the Tracy Sports Complex was built. He worked with the City of Tracy staff and the land developer to make this park a reality.

I am proud to recommend that the Tracy Sports Complex be renamed the Brent Ives Sports Complex.



Think Inside the Triangle™

City of Tracy  
Parks & Recreation Department

333 Civic Center Plaza  
Tracy, CA 95376

(209) 831.6200

**NOMINATION FOR NAMING  
PUBLIC BUILDINGS, PARKS, AND FACILITIES**

DATE OF NOMINATION 07/26/2022

NOMINATOR: Justin Nool  
ADDRESS: [REDACTED]  
PHONE: [REDACTED]  
RECOMMENDED NAME: Dr. Helene Novesteras-Nool Sports Complex  
LOCATION: Tracy Sports Complex

- |  |  |
|--|--|
| <input type="checkbox"/> MINI PARK                         | <input type="checkbox"/> NEIGHBORHOOD PARK |
| <input type="checkbox"/> COMMUNITY PARK                    | <input type="checkbox"/> LINEAR PARK       |
| <input checked="" type="checkbox"/> SPORTS COMPLEX         | <input type="checkbox"/> SPECIAL USE PARK  |
| <input type="checkbox"/> OPEN SPACE /<br>CONSERVATION LAND | <input type="checkbox"/> PUBLIC BUILDING   |
| <input type="checkbox"/> PUBLIC FACILITY                   | <input type="checkbox"/> OTHER             |

IF A FAMILY MEMBER, WHAT IS THE RELATIONSHIP? Mother

The policy for naming public buildings, parks and facilities is attached. The City of Tracy requests that the nominator review the attached policy and prepare a 1-2 page summary of how the recommended name meets one or more of the considerations listed in items #1-#7 attached. Please be as **complete as possible**.

**Example:**

- Involvement and Commitment to Community
- Local Clubs and Organizations Served
- Schools Attended
- Significance to City of Tracy
- Why nominating the person

Submit this form and summary via mail to the address below or email directly to: [parcs@cityoftracy.org](mailto:parcs@cityoftracy.org)

Parks & Recreation Department  
Attn: Parks & Recreation Director  
333 Civic Center Plaza  
Tracy, CA 95376

Tuesday, July 26, 2022

Parks & Recreation Department  
Attn: Parks & Recreation Director  
333 Civic Center Plaza  
Tracy, CA 95376

**Subject: Nomination for the Tracy Sports Complex to be named in honor of Dr. Helene Novesteras-Nool M.D.**

Dear Parks & Recreation Director and esteemed Sub-Committee Members,

I submit the nomination of my mother, **Dr. Helene Novesteras-Nool M.D.**, to be considered for the renaming of the Tracy Sports Complex. It is an honor to be writing this nomination for my mother, who has been – and continues to be – a tireless and steadfast pillar for the children and families of Tracy for almost 30 years.

A citizen and medical provider for generations of Tracy families, Dr. Novesteras has cared for tens of thousands of Tracy's own. Immigrating from the Philippines in the 1980s after completing her medical education, she found herself in New York City, completing her residency in Pediatrics at NYU. After marrying my father, John Nool, my parents relocated to California to start a new life and family.

Dr. Novesteras had the opportunity to join the Mullikin Medical Center in 1993, joining the likes of esteemed providers who have cared for our small farm-town community of about 30,000. Branching off into private practice a few years after and balancing the pressures of business-owner and physician was no easy feat. She built a high-touch and growing clinic that served thousands, *and* still kept the personalized, one-on-one feel; she made an effort to get to know her patients, patients' parents, families, and their life story. As her "babies" were born across the street at Sutter Tracy Community Hospital, their Polaroids would land on the collages that ultimately covered the halls of her clinic over the years. She ultimately moved her practice to the Altamont Medical Plaza on Bessie Avenue in 2004 where she still continues to practice today. Over the years she also has found herself on the "Best of Tracy" lists multiple times with her fellow Pediatricians, winning the #1 spot in 2019!

Dr. Novesteras' involvement with the community and interacting with the children of Tracy brings so much joy to her life and it is so amazing to see her in her element. From participating in the Sutter Tracy Community Health Education events, to participating in clinics for student-athletes to ensure they are in tip-top shape for their community sporting events, Dr. Novesteras' care for the public health and wellness of the children of our community is the mission and legacy of her life's work. One of the most amazing aspects of her job is the multi-generational span of her patients – she even has "grand-patients"! Not many have the privilege growing up with Dr. Novesteras as their very own pediatrician, and having their own children to be cared for by her—that is truly something special!

When she's not on the clock at the clinic, or tending to babies being born at Sutter Tracy, you can catch her at our local farmer's market—fun fact, over the years, we'd have a competition guessing how many patients she would run into around town (minimum two at all times) —she's like a local celebrity!

Dr. Novesteras is also very involved with the First United Methodist Church of Tracy - a longtime pillar of the Tracy community and the parish of many notable Tracyites alike (Art Freiler, Louis Bohn, Dick Hastie, Lamar Stephenson, John Kimball, Emma Baumgardner). A member since we moved to Tracy in 1993, she has participated in supporting FUMC's fundraising and community outreach efforts both locally and globally.

After almost 30 years of service to this community (30 years in 2023), it would be such an honor to have the Tracy Sports Complex named after Dr. Novesteras. On a personal note, we have lived on the stretch of 11th that the Sports Complex is on since we moved to Tracy in 1993 (Redington Drive). From only seeing farmland as far as the eye can see to seeing bustling development and commerce, it is amazing to witness the growth and evolution of Tracy - but one thing that remains steadfast is the care and attention that Dr. Novesteras has given to our community.

Dr. Novesteras' humility and selflessness has not only led her to be one of the most caring people I know, but one of the best advocates for the children of our community. She would not seek this honor out herself, and as she comes to her 30th year of her career, I feel that this would be a great segue to solidifying her legacy as a pillar for Tracy's children and families. As a hub that is critical for the physical health and wellness for the community alike, it is fitting for her to receive the honor of the Tracy Sports Complex namesake.

**Quick Facts:**

- Novesteras-Nool Family moved to Tracy in 1993
- Sons, Ian Luke and Nigel Ethan (d. 2014), born at Sutter Tracy Community Hospital
- Justin, Ian, and Nigel Nool attended: West Valley Christian Academy, Jacobson Elementary, Art Freiler, George Kelly, and Tracy High School
- Members of First United Methodist Church of Tracy
- John and Helene Nool own and manage fruit/vegetable farmland in Vernalis and Banta
- Longtime residents of Redington Drive since 1993

**Naming Suggestions (*at the discretion of the sub-committee members*):**

- Dr. Helene Novesteras-Nool Sports Complex
- Dr. Helene Novesteras Sports Complex
- Novesteras-Nool Sports Complex
- Novesteras Sports Complex

RESOLUTION 2021-013

AMENDING COUNCIL POLICY D-2, NAMING PUBLIC BUILDINGS, PARKS AND FACILITIES

WHEREAS, On June 4, 2019, the City Council directed staff to review and revise Council Policy D-2 regarding the naming of public buildings, parks and facilities, and

WHEREAS, On December 5, 2019, the Parks and Community Services Commission discussed the need to amend Council Policy D-2 to include additional criteria, and

WHEREAS, The Parks and Community Services Commission reviewed, approved, and recommended to the City Council an amendment to Council Policy D-2;

NOW, THEREFORE, BE IT RESOLVED, That the City Council of the City of Tracy hereby adopts the attached amended Council Policy D-2, Naming Public Buildings, Parks and Facilities as recommended by the Parks and Community Services Commission.

BE IT FURTHER RESOLVED, that this resolution rescinds and replaces resolutions 2004-096 and 2017-179.

\*\*\*\*\*

The foregoing Resolution 2021-013 was passed and adopted by the Tracy City Council on the 2nd of February, 2021 by the following vote:

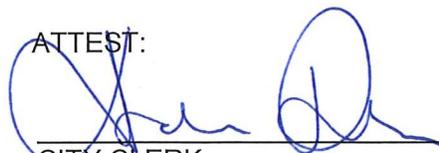
AYES: COUNCIL MEMBERS: ARRIOLA, BEDOLLA, DAVIS, VARGAS, YOUNG

NOES: COUNCIL MEMBERS: NONE

ABSENT: COUNCIL MEMBERS: NONE

ABSTAIN: COUNCIL MEMBERS: NONE

MAYOR 

ATTEST:   
CITY CLERK

**Naming Public Buildings, Parks and Recreation Facilities**  
**Policy Number: D-2**  
**Amended by resolution Date: 2/2/21**

PURPOSE:

The purpose of this policy is to establish a set of standard procedures and guidelines for the naming of Public Buildings, Parks and Recreation Facilities.

DEFINITIONS:

1. "Public Buildings" are City-owned facilities that house employees or are otherwise used to conduct City business. Buildings may include, but are not limited to, the Civic Center, City Council Chambers, and Police facility. This also includes "Support Facilities" that are City-owned facilities that are used to support field operations. Support facilities may include, but are not limited to, the corporation yard and pump stations.
2. "Parks & Recreation Facilities" are all City parks, community buildings and grounds, athletic facilities, open space areas and other grounds and facilities owned or operated by the City for park, recreation or open space purposes.

POLICY:

Consideration for Names:

1. When named for an individual family or person, strong consideration should be given to:
  - a. The level of involvement and commitment to the Tracy community over a span of years that are sufficient for accomplishments and contributions to have taken place;
  - b. Individuals or families who have been involved in many facets of the community such as through service clubs, civic organizations, school community, multi-cultural events and organizations, elected/appointed positions, military service, church community and non-profit groups; the nature of their involvement should be beyond that done in the normal course of their employment (i.e., voluntary);
  - c. The local significance and relationship of this individual or family to the City of Tracy, or to the parks and recreation systems or programs.
2. Public building, park and facility names should reflect both the current and past heritage and historical significance of the community that is now serviced. Strong consideration should be given to:
  - a. Maintaining names that represent the current and past cultural diversity of the community.
  - b. Any relevant California history that is part of the Tracy community, such as the period covered by the Spanish land grants, Native American tribal history, etc.

3. Park names should reflect the geographical significance of the park site's topography or other natural amenities that exist in or near the park property. Strong consideration should be given to:
  - a. Vistas and view corridors.
  - b. Native plants or trees
  - c. Adjacencies to creeks, streams, open space, hills, etc.
4. Public building, park and facility names should incorporate the functionality of the building, park or facility by simply stating its purpose without further description (for example the "John Smith Community Center"), especially, when a specialized facility may be a part of the park such as sports fields, etc. Special features for the park should be considered in the park name.
5. Consideration should also be given to public building, park and facility names that reflect the geographic location or adjacencies to other City facilities or schools in order to avoid confusion about the geographic location of the building.
6. If a public building, park or facility improvement is acquired or constructed by means of a substantial gift, financial contribution or financial donation by an individual, family or corporation, consideration should be given to recognizing the contribution by incorporating the benefactor's name into the facility name.
7. Rooms within public buildings may be named for individuals who have made exceptional contributions to the community such as:
  - a. The individual must have made a significant contribution to the community which resulted in the improved well-being of the citizens of Tracy.
  - b. The individual must have been involved in Tracy community affairs over a span of years that are sufficient for accomplishments and contributions to have taken place.
  - c. Individuals or families who have been involved in many facets of the community such as through service clubs, civic organizations, school community, multicultural events and organizations, elected/appointed positions, military service, church community and non-profit groups; the nature of their involvement should be beyond that done in the normal course of their employment (i.e., voluntary).
8. If a public building that has previously been named is proposed to have its function be moved, or is proposed for relocation, or demolition, or is destroyed through a natural disaster or other act, the City Council shall be provided an opportunity to name the replacement building.

PROCEDURES:

Parks and Recreation Facilities:

1. The Parks and Community Services Commission shall hold a public meeting that allows for community input and will follow a process for naming parks and recreational facilities that includes:

- a. The Parks and Recreation Director shall receive a naming request from a developer, resident or other interested groups for a new park or new recreational facility.
  - b. Staff will conduct a public solicitation of names (Example: social media & newspapers) for 30 days and submit all names to the Commission for review.
  - c. The Commission shall schedule a regular or special meetings to screen, review, evaluate and prioritize the requests submitted by residents and other interested groups such as developers, the West Side Pioneers, Chamber of Commerce, etc.
  - d. The Commission shall forward the top three names (In priority order) to City Council for final approval.
2. Depending on the special nature, size or location of a park, the Commission may also consider the following ideas for park naming:
    - a. Development of a community-based naming process such as a contest.
    - b. Receive input from an adjacent homeowner's association; receive input from future facility user group as identified through design process.

#### Public Buildings

1. The City Council will form a sub-committee to review and evaluate requests for naming public buildings from residents, interested groups and staff.
2. The sub-committee will bring forth screened, evaluated and recommended selections for authorization by the full City Council at a regularly scheduled Council meeting.



**RECEIVE AN INFORMATIONAL REPORT  
& PROVIDE FEEDBACK ON THE  
RENAMING OF THE  
TRACY SPORTS COMPLEX**

May 16, 2023



# OVERVIEW

- BACKGROUND
- THE PARK
- NOMINATIONS
- STAFF RECOMMENDATION & NEXT STEPS
- DISCUSSION



# BACKGROUND

- February 15, 2000
  - City Council approves naming 4 soccer fields after 1965 Pioneer Soccer Club at community park in Presidio Development
- October 3, 2000
  - City Council officially names community park in Presidio Development, “Tracy Sports Complex”
- October 6, 2002
  - Community Grand opening of Tracy Sports Complex
- February 2, 2021
  - City Council approves amendments to Council Policy for Naming Public Buildings, Parks, and Facilities
- January 18, 2022
  - During City Council Meeting, citizen requests to City Council to rename Tracy Sports Complex
- July 21, 2022
  - Parks & Rec initiated Park Naming Process
    - 2 Application received with total 2 individuals nominated (4 total names submitted)
- October 6, 2022
  - Parks Commission reviewed nominations and motioned to re-open the naming process due to lack of submissions



# THE PARK



# NOMINATIONS

## July 2022– Park Naming Process Initiated

- Two (2) applications received



City of Tracy  
Parks & Recreation Department  
333 Civic Center Plaza  
Tracy, CA 95376  
(209) 831-6200

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### NOMINATION FOR NAMING PUBLIC BUILDINGS, PARKS, AND FACILITIES

DATE OF NOMINATION \_\_\_\_\_

NOMINATOR: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

PHONE: \_\_\_\_\_

RECOMMENDED NAME: \_\_\_\_\_

LOCATION: \_\_\_\_\_

<input type="checkbox"/> MINI PARK	<input type="checkbox"/> NEIGHBORHOOD PARK
<input type="checkbox"/> COMMUNITY PARK	<input type="checkbox"/> LINEAR PARK
<input type="checkbox"/> SPORTS COMPLEX	<input type="checkbox"/> SPECIAL USE PARK
<input type="checkbox"/> OPEN SPACE /	<input type="checkbox"/> PUBLIC BUILDING
<input type="checkbox"/> CONSERVATION LAND	
<input type="checkbox"/> PUBLIC FACILITY	<input type="checkbox"/> OTHER _____

IF A FAMILY MEMBER, WHAT IS THE RELATIONSHIP? \_\_\_\_\_

The policy for naming public buildings, parks and facilities is attached. The City of Tracy requests that the nominator review the attached policy and prepare a 1-2 page summary of how the recommended name meets one or more of the considerations listed in items #1-#7, attached. Please be as complete as possible.

#### Example:

- Involvement and Commitment to Community
- Local Clubs and Organizations Served
- Schools Attended
- Significance to City of Tracy
- Why nominating the person

Submit this form and summary via mail to the address below or email directly to: [parks@cityoftracy.org](mailto:parks@cityoftracy.org)

Parks & Recreation Department  
Attn: Parks & Recreation Director  
333 Civic Center Plaza  
Tracy, CA 95376

W:\ADMIN\Folders\Park Names

Revised: August 16, 2011



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# List of Park Names Received

## **APPLICATION 1:**

- BRENT IVES SPORTS COMPLEX

## **APPLICATION 2:**

- DR. HELENE NOVESTERAS-NOOL SPORTS COMPLEX
- DR. HELENE NOVESTERAS SPORTS COMPLEX
- NOVESTERAS-NOOL SPORTS COMPLEX
- NOVESTERAS SPORTS COMPLEX



Think Inside the 'Triangle'

# Next Steps

- Discuss & provide staff direction on renaming of the Tracy Sports Complex
- City Council to consider:
  1. Choose not to rename the Tracy Sports Complex.
  2. Direct staff to re-open the naming process for additional names and to return to the Parks Commission with the two recommended names and any new names to be considered. Which will then be forwarded to City Council for consideration per the naming policy.

# DISCUSSION

Agenda Item 3.C

RECOMMENDATION

**Staff recommends that Council adopt a resolution approving a Joint Community Facilities Agreement with the Jefferson School District relating to the City of Tracy Community Facilities District No. 2016-1 (Tracy Hills) and approving and authorizing related documents and actions.**

EXECUTIVE SUMMARY

Under the Mello-Roos Community Facilities Act of 1982, as amended (the "Mello-Roos Act"), the City Council previously established a Community Facilities District for the Tracy Hills Project.

The Community Facilities District is authorized to finance facilities that are required as conditions of development of the property in the Community Facilities District and any related impact fees.

Certain developers of taxable property in the Community Facilities District have asked the City to provide for the financing by the Community Facilities District of certain mitigation obligations of the Developers with respect to the construction of school facilities to be owned and operated by the Jefferson School District.

Staff recommends that the City Council adopt the referenced resolution (the "Resolution") for the purpose of approving a Joint Community Facilities Agreement ("JCFA") with the developers and the Jefferson School District to provide the financing requested by the developers and approving and authorizing related documents and actions. On May 9, 2023, the Jefferson School District approved the JCFA.

BACKGROUND AND LEGISLATIVE HISTORY

**CFD FORMATION; RESOLUTION OF FORMATION; RESOLUTION OF NECESSITY; CHANGE PROCEEDINGS**

On July 19, 2016, the City Council completed proceedings under the Mello-Roos Act to form (i) "City of Tracy Community Facilities District No. 2016-1 (Tracy Hills)" (the "CFD"), (ii) "Improvement Area No. 1 of the City of Tracy Community Facilities District No. 2016-1 (Tracy Hills)" ("Improvement Area No. 1") and (iii) "City of Tracy Community Facilities District No. 2016-1 (Tracy Hills) (Future Annexation Area) (the "Future Annexation Area").

The CFD is authorized to levy special taxes and to issue bonds and other debt secured by those special taxes for financing certain public improvements (the "Authorized Facilities"), all as described in (i) Resolution No. 2016-157, entitled "Resolution of Formation of Community Facilities District," adopted by the City Council on July 19, 2016 (the "Resolution of Formation") and (ii) Resolution No. 2016-158, entitled "Resolution

Determining Necessity to Incur Bonded Indebtedness and Other Debt,” adopted by the City Council on July 19, 2016.

Subsequently, the City Council conducted change proceedings related to the CFD, all as set forth in Resolution No. 2018-169, entitled “Resolution of Change,” adopted by the City Council on August 21, 2018.

## ANALYSIS

### **AUTHORIZED FACILITIES AND FEES**

The Resolution of Formation describes the Authorized Facilities and Fees to be financed by the CFD, and the Resolution of Formation provides that the Authorized Facilities include facilities permitted under the Mello-Roos Act that are required as conditions of development of the property in the CFD and the Future Annexation Area and that any of the Authorized Facilities may be financed through the payment of fees for such Authorized Facilities.

### **JOINT COMMUNITY FACILITIES AGREEMENT**

Under the Mello-Roos Act, a community facilities district may finance facilities to be owned or operated by a public agency other than the agency that created the community facilities district, only pursuant to a Joint Community Facilities Agreement or a Joint Exercise of Powers Agreement between the legislative bodies of the public agency that formed the Community Facilities District and the public agency that will own or operate the facilities. The Mello-Roos Act provides that a Joint Community Facilities Agreement must be approved by the legislative body of each public agency pursuant to a resolution declaring that the agreement would be beneficial to its residents.

Certain developers of taxable property in the CFD and the Future Annexation Area (the “Developers”) have asked the City to enter into a Joint Community Facilities Agreement with them and the Jefferson School District (the “School District”) to provide for the financing by the CFD of certain mitigation obligations of the Developers with respect to the construction of school facilities to be owned and operated by the School District.

The School District is scheduled to consider the proposed Joint Community Facilities Agreement at its meeting on May 9, 2023.

### **FISCAL IMPACT**

There is no cost to the General Fund associated with this request because the Joint Community Facilities Agreement provides for financing by the CFD, and the related costs of negotiating the Joint Community Facilities Agreement are being paid by the developers.

STRATEGIC PLAN

This action to approve the Joint Community Facilities Agreement with the Developers and the School District is related to Council's Governance strategic plan, Goal 2: Ensure Short and Long-term health.

ACTION REQUESTED OF THE CITY COUNCIL

Staff recommends that Council adopt a resolution approving a Joint Community Facilities Agreement with the Jefferson School District relating to the City of Tracy Community Facilities District No. 2016-1 (Tracy Hills) and approving and authorizing related documents and actions.

Prepared by: Sara Cowell, Director of Finance

Reviewed by: Bijal Patel, City Attorney  
Karin Schnaider, Assistant City Manager

Approved by: Midori Lichtwardt, Assistant City Manager

ATTACHMENTS

A: Joint Community Facilities Agreement

## JOINT COMMUNITY FACILITIES AGREEMENT

### City of Tracy

### Community Facilities District No. 2016-1 (Tracy Hills)

This Joint Community Facilities Agreement (the “**Agreement**”), dated \_\_\_\_\_, 2023, is made and entered into by and among (i) the CITY OF TRACY, a California municipal corporation (the “**City**”); (ii) the JEFFERSON SCHOOL DISTRICT, a California public-school district (the “**JSD**”); and (iii) TRACY PHASE I, LLC, a Delaware limited liability company; TRACY PHASE IB, LLC, a Delaware limited liability company; TRACY PHASE 2, LLC, a Delaware limited liability company; TRACY PHASE 3, LLC, a Delaware limited liability company; TRACY PHASE 4, LLC, a Delaware limited liability company; and TRACY BPS, LLC, a Delaware limited liability company (the last six entities are referred to herein individually as a “**Developer**” and collectively herein as the “**Developers**”).

### Background

- A. This Agreement is made under the authority of California Government Code section 53316.2, part of the Mello-Roos Community Facilities Act of 1982, as amended (the “**Act**”).
- B. The City has conducted proceedings under the Act to (1) form the City of Tracy Community Facilities District No. 2016-1 (Tracy Hills) (the “**CFD**”), (2) designated two improvement areas within the CFD (each an “**Improvement Area**”), (3) identified property for future annexation into the CFD (the “**Future Annexation Area**”) which may be annexed into the CFD in the future as separate improvement areas (each a “**Future Improvement Area**”), and (4) authorized the financing, through the CFD and each Improvement Area, and Future Improvement Area of certain public fees and facilities (collectively, the “**CFD Proceedings**”). The land within the CFD and each Improvement Area is described in the Amended Boundary Map for the CFD recorded on August 27, 2018 with the San Joaquin County Clerk/Recorder as Document No. 2018-095090. The facilities authorized to be financed by the CFD and each Improvement Area and Future Improvement Area are described in Exhibit A to the Resolution of Formation No. 2016-157 adopted by the Tracy City Council on July 19, 2016 (the “**Authorized Improvements**”). The Authorized Improvements include facilities permitted under the Act that are required as conditions of development of the property in the CFD and the Future Annexation Area, and any of the Authorized Improvements may be financed through the payment of fees for such Authorized Improvements.
- C. The City, for itself and the CFD, previously entered into (1) an Acquisition Agreement Relating to: City of Tracy Community Facilities District No. 2016-1 (Tracy Hills) Improvement Area No. 1, dated as of July 19, 2016 (the “**Improvement Area No. 1 Acquisition Agreement**”), by and between the City and Tracy Phase I, LLC, relating to territory in Improvement Area No. 1 of the City of Tracy Community Facilities District No. 2016-1 (Tracy Hills) (“**Improvement Area No. 1**”) and (2) a Master Acquisition Agreement Relating to: City of Tracy Community Facilities District No. 2016-1 (Tracy Hills), dated as of July 19, 2016 (the

**“Master Acquisition Agreement”**; together with the Improvement Area No. 1 Acquisition Agreement, the **“Acquisition Agreements”**), by and between the City and The Tracy Hills Project Owner, LLC, relating to territory that was initially in the future annexation area for the CFD. The City and the Developers have determined that the Acquisition Agreements shall not govern the financing of the Mitigation Payments (as defined below).

- D. The Developers and JSD have notified the City that the property within the CFD, each Improvement Area and the Future Annexation Area (collectively, the **“Project”**), is subject to the terms of the Tracy Hills Project School Impact Mitigation Agreement, dated October 14, 2003, as recorded in Official Records of San Joaquin County as Document #2003-2555476, as amended by the First Amendment to Tracy Hills Project School Impact Mitigation Agreement for Project Phase 1 (1A & 1B) Development, dated June 20, 2018, recorded in Official Records of San Joaquin County as Document # 2018-081169, as amended by the Second Amendment to Tracy Hills Project School Impact Mitigation Agreement for Project Phase 1 (1A & 1B) Development, dated September 2018, recorded in Official Records of San Joaquin County as Document # 2018-104306, as amended by Third Amendment to Tracy Hills Project School Impact Mitigation Agreement for Project Phase 1 (1A & 1B) Development, dated December 2, 2020, recorded in Official Records of San Joaquin County as Document # 2020-023907, as amended by Fourth Amendment to Tracy Hills Project School Impact Mitigation Agreement for Project Phase 1 (1A & 1B) Development, dated as of August 16, 2022, recorded in Official Records of San Joaquin County as Document #2023-031634 (the **“Fourth Amendment”**), and as amended by Fifth Amendment to Tracy Hills Project School Impact Mitigation Agreement for Project Phases 2-4 Development, dated as of May 9, 2023, recorded in Official Records of San Joaquin County as Document # \_\_\_\_\_ (as it may be amended in the future, collectively, the **“Mitigation Agreement”**).
- E. The Developers and JSD have notified the City that JSD expects to acquire and develop school sites and construct, install and/or acquire various school facilities (permanent and interim facilities), including administration facilities, school sites, supporting infrastructure and improvements, and equipment that JSD will own and operate to serve the Project students or that are necessary to mitigate the impacts of Project students pursuant to the Mitigation Agreement (collectively, the **“School Facilities”**). The Developers and JSD have notified the City that the Developers’ obligation pursuant to the terms of the Mitigation Agreement is to pay certain contractual mitigation payments (**“Mitigation Payments”**), and that JSD will acquire, develop and construct School Facilities with the proceeds of such Mitigation Payments; the Developers will not acquire, develop or construct the School Facilities.
- F. The Developers and JSD have notified the City that to fund the capital costs of acquisition, development or construction of School Facilities, including the first school to serve the Project students (**“SF1”**), the Mitigation Agreement required, and the Developers paid to JSD, a Mitigation Payment in the amount of approximately \$31,300,000 for SF1 Phase 1A

Facilities Costs (herein, the “**Phase 1A SF1 Costs**”) and SF1 Phase 2 Facilities Costs (the “**Phase 2 SF1 Costs**” and together with the Phase 1A SF1 Costs, the “**Previously Paid SF1 Costs**”). The Mitigation Payment related to the Previously Paid SF1 Costs is the only Mitigation Payment made by the Developers to JSD prior to the date of this Agreement, and may be financed by the CFD as set forth in this Agreement.

- G. The Developers and JSD have notified the City that to fund the capital costs of acquisition, development or construction of School Facilities, including SF1, the Developers and JSD executed the Fourth Amendment the Mitigation Agreement to, among other things, require the Developers to pay a supplemental Mitigation Payment to JSD that JSD will use to pay for additional Phase 1A SF1 Costs and Phase 2 SF1 Costs to be incurred by JSD after the date of this Agreement (herein, the “**SF1 Supplemental Costs**”), and that the Developers will pay such supplemental Mitigation Payment after the date of this Agreement. The Mitigation Payments paid by the Developers that JSD will use to pay the SF1 Supplemental Costs may be financed by the CFD as set forth in this Agreement.
- H. The Developers and JSD have notified the City that to fund the capital costs of acquisition, development or construction of School Facilities, including a second school to serve the Project students (“**SF2**”), the Mitigation Agreement contemplates the payment by the Developers of Mitigation Payments that JSD will use to pay for the capital costs of acquisition, development or construction costs of SF2 (the “**SF2 Costs**”), although the amount and the time for payment of such SF2 Costs and the corresponding Mitigation Payments have not yet been determined. The Mitigation Payments paid by the Developers that JSD will use to pay for the SF2 Costs may be financed by the CFD pursuant as set forth in this Agreement.
- I. The Developers and JSD have notified the City that to fund acquisition, development or construction of School Facilities, including a third school to serve the Project students (“**SF3**”), the Mitigation Agreement contemplates the payment by the Developers of Mitigation Payments that JSD will use to pay for the capital costs of acquisition, development or construction costs of SF3 (the “**SF3 Costs**”), although the amount and the time for payment of such SF3 Costs and corresponding Mitigation Payments have not yet been determined. The Mitigation Payments paid by the Developers that JSD will use to pay for the SF3 Costs may be financed through the CFD as set forth in this Agreement.
- J. The Developers and JSD have notified the City that to fund acquisition, development or construction of School Facilities, including additional schools to serve the Project students (“**Future SFs**” and together with SF1, SF2, and SF3, the “**Project SFs**”), the Mitigation Agreement contemplates the payment by the Developers of Mitigation Payments that JSD will use to pay for the capital costs of acquisition, development or construction costs of Future SFs (the “**Future Phase Costs**” and together with the Previously Paid SF1 Costs, the SF1 Supplemental Costs, the SF2 Costs, and the SF3 Costs, the “**Project SFs Costs**”), although the amount and the time for payment of such Future Phase Costs and the corresponding

Mitigation Payments have not yet been determined. The Mitigation Payments paid by the Developers that JSD will use to pay for the Future Phase Costs may be financed through the CFD as set forth in this Agreement.

- K. The Developers and JSD have notified the City that the amounts and the time for payment of the Mitigation Payments to be paid by the Developers to JSD that JSD has used, or will use, to pay the Project SFs Costs are governed by the terms of the Mitigation Agreement.
- L. The Developers and JSD have represented to the City that the School Facilities are Authorized Improvements under the CFD because they are required as conditions of development of the property within the CFD and the Future Annexation Area.
- M. The City may issue and sell bonds for the CFD from time to time with respect to one or more Improvement Areas or Future Improvement Areas of the CFD and may use part of the bond proceeds to finance all or a portion of the Mitigation Payments to be paid by the Developers that JSD will use to finance some or all of the Project SFs Costs as set forth in this Agreement.
- N. JSD desires to cooperate with the City in accomplishing the financing, through the CFD, of some or all of the Mitigation Payments paid, or to be paid, by the Developers that JSD will use to finance the Project SFs Costs as set forth herein.
- O. Each Improvement Area and Future Improvement Area is, or will be, authorized to finance the Authorized Improvements, including the Mitigation Payments used to fund the Project SFs Costs, and this Agreement applies to all Improvement Areas and Future Improvement Areas.
- P. On February 21, 2023, the Council of the City adopted its Resolution No. 2023-032, entitled "Adopt a Resolution Declaring the Intention to Reimburse Expenditures from Proceeds of Tax-Exempt Obligations to be Issued by the City for and on behalf of City of Tracy Community Facilities District No. 2016-1 (Tracy Hills)" (the "**Reimbursement Resolution**"), pursuant to which the City declared its intent to reimburse certain expenditures related to the Facilities with the proceeds of bonded indebtedness and other debt issued by the City for the CFD.

***With these background facts in mind, the parties agree as follows:***

1. This Agreement constitutes a "joint community facilities agreement", within the meaning of Section 53316.2 of the Act pursuant to which the CFD, including the Improvement Areas thereof, will be authorized to finance the Project SFs Costs as set forth herein.
2. The City has concluded that this Agreement is beneficial to the residents of the City and the future residents within the CFD.

3. JSD has concluded that this Agreement is beneficial to the residents of JSD and the future residents within the CFD.
4. The City shall administer the CFD. For purposes of this Agreement, administration of the CFD includes the following: employing and paying all consultants, levying and collecting the special tax(es), paying debt service on the bonds and otherwise administering the CFD and the bonds, and complying with all California and federal requirements concerning the CFD Proceedings or the bonds, including, but not limited to, those of the United States Internal Revenue Code of 1986, as amended (the “**Code**”). JSD is not, and shall not be, responsible for such administration and will not participate in, or be considered a participant in, the CFD Proceedings other than as a party to this Agreement.
5. If, in its sole discretion, the City issues bonds for the CFD, with respect to an Improvement Area or Future Improvement Area, and if, in the City’s sole discretion, the proceeds of such bonds (“**Bond Proceeds**”) are made available to finance Mitigation Payments, then JSD shall accept such Bond Proceeds paid to it by the City/CFD as payment, to the extent of the money received, as payment(s) to be credited against Developers’ Mitigation Payment obligation for development of property within the CFD, and corresponding Improvement Areas, that JSD will use to fund the Project SFs Costs as set out herein. If less than all of the Mitigation Payments owed by the Developers to JSD under the Mitigation Agreement are paid to JSD from Bond Proceeds, then JSD and the Developer shall agree, in writing, on the application of the payments to specific Project SFs.
6. Bond Proceeds paid to JSD shall be for capital expenditures for School Facilities that JSD has already constructed in accordance with the Act and the Certificate Concerning Use of Bond Proceeds (as defined and discussed below).
7. Before the City issues any bonds, or series of bonds, the Bond Proceeds of which may be made available to finance the Mitigation Payments that JSD will use to pay for the Project SFs Costs, either the City or the Developers shall inform JSD, in writing, of the amount of Bond Proceeds that may be provided to JSD, and provided that JSD can certify that such amount(s) is no greater than the amount(s) expended by JSD for eligible School Facilities already constructed by JSD or School Facilities expenditures previously made by JSD, JSD shall thereafter, sign and deliver to the City a certificate for such series of bonds, in substantially the form set forth in Exhibit A to this Agreement (each a “**Certificate Concerning Use of Bond Proceeds**”). If the City issues bonds of the CFD, and if JSD has delivered the completed and signed Certificate Concerning Use of Bond Proceeds to the City (as provided for herein), then, upon the written request provided by the Developers (which may be made after the bonds are issued), the City shall make Bond Proceeds available to JSD for JSD to utilize in accordance with the Certificate Concerning Use of Bond Proceeds, and JSD shall, following receipt of such bond funds, utilize and account for such Bond Proceeds for School Facilities that it has already constructed as described in the Certificate Concerning Use of Bond Proceeds. In clarification of the foregoing, Bond Proceeds may only

be used to finance the costs of School Facilities that have been constructed by JSD. It shall not be necessary that the school project(s) (for which the School Facilities are a part) must be completed in full, only that the costs of the School Facilities have been expended by JSD prior to receipt of Bond Proceeds. If, after the closing of a series of bonds for which a Certificate Concerning Use of Bond Proceeds was provided, JSD expends additional funds for eligible School Facilities, those additional funds expended may, at the request of the Developers, be financed by the Bond Proceeds of such bonds if JSD provides a new Certificate Concerning Use of Bond Proceeds to account for the subsequent expenditures.

8. In addition to the foregoing, JSD shall provide to the City all documentation the City reasonably requires to comply with its records-retention policy and, if applicable, to monitor arbitrage liability in accordance with the terms applicable to the bonds, as issued, and the City's post-issuance debt procedures. Such documentation may include, but is not limited to, invoices, payment applications, warrants and fiscal reports associated with the School Facilities financed with Bond Proceeds. JSD shall with reasonable diligence, upon request by the City to include a list of requested documents, e-mail all documentation to the following persons:

Finance Director, City of Tracy  
City Attorney, City of Tracy

finance@cityoftracy.org  
ca@cityoftracy.org

9. JSD and Developers have informed the City that is expected that (a) prior to the time that Bond Proceeds will be used to finance Mitigation Payments, the Developer will pay the Mitigation Payments to JSD, and JSD will spend the Mitigation Payments on costs of the School Facilities and (b) Bond Proceeds will be used to finance Mitigation Payments in an amount that does not exceed the amount of Mitigation Payments previously spent on costs of School Facilities. Upon disbursement of Bond Proceeds to JSD, JSD shall deposit such Bond Proceeds in one or more separate capital accounts (the "**Bond Proceeds Deposit Account**"). Promptly after deposit of such Bond Proceeds into the Bond Proceeds Deposit Account, JSD will pay to the Applicable Developer (as defined below) a corresponding amount of the Mitigation Payments that were previously paid by the Applicable Developer to the District and that were previously expended on the costs of School Facilities within thirty (30) calendar days of the District's receipt of the written instructions from the Applicable Developers containing the applicable disbursement instructions (the "**Disbursement Instructions**") as follows:

- a) Each such set of Disbursement Instructions shall specify that the repayment with Bond Proceeds shall be made to each Developer(s) (the "**Applicable Developer**") in proportion to the amount of the Mitigation Payments actually paid by the Applicable Developer for the applicable Project SF. For example, if Tracy Phase IB, LLC paid \$6 million in Mitigation Payments for SF3 and Tracy Phase 2, LLC paid \$4 million in Mitigation Payments for SF3, then Tracy Phase IB, LLC would be entitled to 60% of the Bond Proceeds

on deposit in the Bond Proceeds Deposit Account, and Tracy Phase 2, LLC would be entitled to 40% of the Bond Proceeds on deposit in the Bond Proceeds Deposit Account. Disbursement Instructions shall include the full name of each Applicable Developer payee and payment directions for a receiving bank or financial institution which may receive funds on behalf of such Applicable Developer payee. Each such set of Disbursement Instructions shall be signed or acknowledged by each Applicable Developer which is a party to this Agreement.

b) JSD shall establish separate accounts and/or subaccounts for the Mitigation Payments and Bond Proceeds to assist in accounting for, and payment of, the Bond Proceeds in accordance with this Agreement.

c) City acknowledges that the within-referenced reimbursement structure for use of Bond Proceeds is acceptable to the City.

10. The City shall indemnify, defend, protect, and hold harmless JSD and JSD's officers, employees, and agents from and against all liabilities, claims, demands, damages, and costs (including reasonable attorneys' fees and litigation costs through final appeal) that arise out of any of the following:

a) the CFD Proceedings;

b) the authorization for, and implementation of, the levy, collection, and enforcement of the CFD's special taxes levied in each Improvement Area and Future Improvement Area;

c) the authorization by the City for, and initial disclosure by the City with respect to, the issuance, sale, and administration of the bonds of the CFD, except to the extent that such disclosure is based on information provided by JSD or the Developers;

d) any continuing disclosure obligations of the City relating to the bonds of the CFD, except to the extent that any such continuing disclosure is based on information provided by JSD or the Developers; or

e) any arbitrage or rebate issues under federal tax law that concern the bonds, except to the extent that such issues relate to actions or omissions of JSD or the Developers or representations made by JSD or the Developers to the City.

11. JSD shall administer and take full governmental responsibility for the following, for which the City shall have no responsibility: the construction or acquisition of any School Facilities which includes conducting environmental review; approving plans and specifications, bid requirements, performance and payment-bond requirements, and insurance requirements; administering construction contracts and construction work; staking and inspection;

acquiring necessary property interests in real or personal property; holding back and administering retention payments; and administering the punch list. JSD shall indemnify, defend, protect, and hold harmless the City and the City's officers, employees, and agents from and against all liabilities, claims, demands, damages, and costs (including reasonable attorneys' fees and litigation costs through final appeal) that arise out of the design, engineering, construction, or installation of the School Facilities.

12. JSD will have ownership of, and acquisition, construction, development and maintenance responsibility for, all of the School Facilities. JSD shall indemnify, defend, protect, and hold harmless the City and the City's officers, employees, and agents as well as the CFD and its officers, employees, and agents from and against all liabilities, claims, demands, damages, and costs (including reasonable attorneys' fees and litigation costs through final appeal) that arise out of the use or maintenance of the School Facilities.
13. JSD shall assure that the School Facilities financed by bonds are not used so as to cause the bonds to satisfy the private business tests of section 141(b) of the Code, or the private loan financing test of section 141(c) of the Code, if applicable.
14. To the extent that JSD wishes to lease, sell or convey any School Facilities financed by bonds of the CFD to an entity that is not a state or local government, JSD will seek the advice and approval of bond counsel to the City prior to any such sale. Such approval shall not be unreasonably withheld or delayed.
15. JSD shall indemnify, defend, protect, and hold harmless the City and the City's officers, employees, and agents as well as the CFD and its officers, employees, and agents from and against all liabilities, claims, demands, damages, and costs (including reasonable attorneys' fees and litigation costs through final appeal) that arise out of any representations made by JSD to the City with respect to its use of School Facilities funded by Bond Proceeds.
16. The City may take every step that is required or suitable for completing the CFD Proceedings; the levy, collection and enforcement of the special taxes; and the issuance, sale, delivery and administration of the bonds of the CFD. The City is not liable for its failure to conduct and complete the CFD Proceedings, levy, collect and enforce the special taxes or issue, sell, delivery and administer the bonds, including its decision for any reason not to finance through the CFD all, or any part of, the fees owed by the Developers under the terms of the Mitigation Agreement that JSD will use to pay for Project SFs Costs.
17. This Agreement may be amended by another written agreement signed by the parties, except that an amendment may not be made after issuance of any bonds issued by the City for the CFD if it would be detrimental to the interests of the bondholders without obtaining the consent of the bondholders in accordance with the related CFD bond documents.

18. This Agreement is solely for the benefit of the City, JSD, and the Developer and their successors and assigns. It is not intended to benefit any other third parties.
19. The parties may sign this Agreement in counterparts, each of which will be considered an original, but all of which will constitute the same agreement.
20. This Agreement will remain in force until all of the bonds have been retired and the authority to levy the special taxes conferred by the CFD Proceedings has ended or is otherwise terminated.

[SIGNATURE PAGES FOLLOW]

CITY OF TRACY

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

Date: \_\_\_\_\_, 20\_\_

Attest:

By: \_\_\_\_\_  
\_\_\_\_\_, City Clerk

Approved as to Form  
Tracy City Attorney

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

JEFFERSON SCHOOL DISTRICT

By: \_\_\_\_\_  
\_\_\_\_\_, President

Date: \_\_\_\_\_, 20\_\_

ATTEST:

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

Reviewed by JSD Legal Counsel

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

Agenda Date: \_\_\_\_\_, 20\_\_

Item Number: \_\_\_\_\_

Resolution No. \_\_\_\_\_

DEVELOPERS:

TRACY PHASE I, LLC,  
A Delaware limited liability company

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

TRACY PHASE 3, LLC,  
A Delaware limited liability company

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

TRACY PHASE IB, LLC,  
A Delaware limited liability company

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

TRACY PHASE 4, LLC,  
A Delaware limited liability company

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

TRACY PHASE 2, LLC,  
A Delaware limited liability company

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

TRACY BPS, LLC,  
A Delaware limited liability company

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

[Form of Certificate Concerning Use of Bond Proceeds]

EXHIBIT A

[BOND SERIES HEADER]

**CERTIFICATE CONCERNING USE OF BOND PROCEEDS**

I, the undersigned, hereby certify that I am a duly authorized officer of the Jefferson School District (“**School District**”) and I am authorized to sign this Certificate Concerning Use of Bond Proceeds (“**Certificate**”) on behalf of the School District in connection with the issuance of the above-captioned Series \_\_\_ Special Tax Bonds (“**Bonds**”). All capitalized terms used herein and not otherwise defined shall have the meanings given such terms in the Joint Community Facilities Agreement by and between the CITY OF TRACY, a California municipal corporation (“**City**”); (ii) the SCHOOL DISTRICT, (iii) TRACY PHASE I, LLC, a Delaware limited liability company; TRACY PHASE IB, LLC, a Delaware limited liability company; TRACY PHASE 2, LLC, a Delaware limited liability company; TRACY PHASE 3, LLC, a Delaware limited liability company; TRACY PHASE 4, LLC, a Delaware limited liability company; and TRACY BPS, LLC, a Delaware limited liability company, dated as of \_\_\_\_\_, 2023 (“**JCFA**”).

I further certify on behalf of the School District that:

1. School District is a public school district formed and operating pursuant to California law.
2. School District provides public education services within its boundaries.
3. Pursuant to the provisions of the JCFA the School District has been informed by the City and City of Tracy Community Facilities District No. 2016-1 (Tracy Hills) (“**CFD**”) that the City is in the process of issuing the Bonds on behalf of the CFD.
4. School District is informed that a portion of the net Bond proceeds (“**Bond Proceeds**”) are being allocated to the School District in order to finance certain Mitigation Payments that School District has used to pay Project SFs Costs of certain School Facilities, as further described in Attachment “1” attached hereto (the “**Financed Project SFs Costs**”). School District acknowledges that it is obligated under the JCFA to pay the Developer for the Financed Project SFs Costs with the Bond Proceeds, following receipt thereof, and that it must allocate the Bond Proceeds to the Financed Project SFs Costs.
5. The construction and operation of the School Facilities is in satisfaction of contractual requirements of the School District with respect to the provision of public education to the property within the boundaries of the CFD, as further described in the JCFA.

6. The School District will maintain adequate records to show the description of the Financed Project SFs Costs that have been funded with the Mitigation Payments that were financed with the Bond Proceeds. The District shall assure that the School Facilities financed by the Bonds are not used so as to cause the Bonds to satisfy the private business tests of section 141(b) of the Internal Revenue Code of 1986, as amended (the “**Tax Code**”), or the private loan financing test of section 141(c) of the Tax Code, if applicable. All of the School Facilities will be used in the performance of essential governmental functions of the District or another state or local government agency.

7. The School Facilities have all been previously constructed (or payments for such School Facilities have been made by the School District) and have not been the subject of any prior payment or financing from the Bond Proceeds.

8. Developers previously funded the Mitigation Payments that paid for the Financed Project SFs Costs with non-CFD funds.

In addition, as shown in Schedule 1, the District expended the Mitigation Payments that are being financed by the Bond Proceeds to pay for the Project SFs Costs that (i) were paid no earlier than sixty (60) days before the date of the adoption by the City of its Resolution No. 2023-032, entitled “Adopt a Resolution Declaring the Intention to Reimburse Expenditures from Proceeds of Tax-Exempt Obligations to be Issued by the City for and on behalf of City of Tracy Community Facilities District No. 2016-1 (Tracy Hills),” which was adopted on February 21, 2023, and (ii) are reimbursed no later than eighteen (18) months after the later of the date the expenditure was paid or the date the School Facilities were placed in service (but no later than three (3) years after the expenditure is paid). For federal income tax purposes, the District agrees to allocate \$\_\_\_\_\_ of Bond Proceeds as reimbursement for those Project SFs Costs.

As a result of the Developer financing the Mitigation Payments that funded the Project SFs Costs with Bond Proceeds, the District will return to the Applicable Developer a corresponding amount(s) of the Mitigation Payments that were previously paid by the Developer to the District.

This Certificate may be relied upon by the City, the CFD and bond counsel to the City/CFD in reaching its conclusions for confirmation of the federally tax-exempt status of the Bonds.

IN WITNESS WHEREOF, the undersigned has executed this certificate as of the date set forth below.

Dated: \_\_\_\_\_

JEFFERSON SCHOOL DISTRICT

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

*[Authorized Official Title]*

ATTACHMENT "1"

The following facilities have been constructed by the School District:

**"School Facilities"** *[input description]*. The averaged expected useful life of the School Facilities is at least \_\_\_ years.

Dated: \_\_\_\_\_, 20\_\_

JEFFERSON SCHOOL DISTRICT

By: \_\_\_\_\_  
James Bridges, Superintendent

Received and accepted by:

CITY OF TRACY

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

**TRACY CITY COUNCIL**

**RESOLUTION NO. \_\_\_\_\_**

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**APPROVING A JOINT COMMUNITY FACILITIES AGREEMENT WITH THE JEFFERSON SCHOOL DISTRICT RELATING TO THE CITY OF TRACY COMMUNITY FACILITIES DISTRICT NO. 2016-1 (TRACY HILLS) AND APPROVING AND AUTHORIZING RELATED DOCUMENTS AND ACTIONS**

**WHEREAS**, the City Council previously conducted proceedings under and pursuant to the Mello-Roos Community Facilities Act of 1982, as amended, Chapter 2.5 of Part 1 of Division 2 of Title 5 (commencing with Section 53311) of the California Government Code (the "Act"), to form (i) "City of Tracy Community Facilities District No. 2016-1 (Tracy Hills)" (the "CFD"), (ii) "Improvement Area No. 1 of the City of Tracy Community Facilities District No. 2016-1 (Tracy Hills)" ("Improvement Area No. 1") and (iii) "City of Tracy Community Facilities District No. 2016-1 (Tracy Hills) (Future Annexation Area) (the "Future Annexation Area"), to authorize the levy of special taxes and issue bonds and other debt secured by those special taxes for financing certain public improvements (the "Authorized Facilities"), all as described in (iv) Resolution No. 2016-157, entitled "Resolution of Formation of Community Facilities District," adopted by the City Council on July 19, 2016 (the "Resolution of Formation") and (v) Resolution No. 2016-158, entitled "Resolution Determining Necessity to Incur Bonded Indebtedness and Other Debt," adopted by the City Council on July 19, 2016; and

**WHEREAS**, subsequently, the City Council conducted change proceedings related to the CFD, all as set forth in Resolution No. 2018-169, entitled "Resolution of Change," adopted by the City Council on August 21, 2018; and

**WHEREAS**, the Resolution of Formation describes the Authorized Facilities and fees to be financed by the CFD, and the Resolution of Formation provides that the Authorized Facilities include facilities permitted under the Act that are required as conditions of development of the property in the CFD and the Future Annexation Area and that any of the Authorized Facilities may be financed through the payment of fees for such Authorized Facilities; and

**WHEREAS**, under Section 53316.2 of the Act, a community facilities district may finance facilities to be owned or operated by a public agency other than the agency that created the community facilities district, only pursuant to a Joint Community Facilities Agreement or a Joint Exercise of Powers Agreement between the two agencies; and

**WHEREAS**, Section 53316.2 of the Act further provides that at any time prior to the adoption of the Resolution of Formation creating a Community Facilities District or a resolution of change to alter a district, or a resolution or resolutions authorizing issuance of

bonds, the legislative bodies of two or more local agencies may enter into a joint community facilities agreement pursuant to the Act if the legislative body of each entity adopts a resolution declaring that the joint agreement would be beneficial to the residents of that entity; and

**WHEREAS**, certain developers of taxable property in the CFD and the Future Annexation Area (the “Developers”) have asked the City to enter into a Joint Community Facilities Agreement with them in the form attached hereto as **Exhibit A** (“JCFA”), and the Jefferson School District (the “School District”) to provide for the financing by the CFD of certain mitigation obligations of the Developers with respect to the construction of school facilities to be owned and operated by the School District; and

**WHEREAS**, the City Council has determined that the Joint Community Facilities Agreement would be beneficial to the residents of the City, and the City Council wishes to approve the Joint Community Facilities Agreement among the City, the Developers and the School District under which the CFD would finance certain fees payable by the Developers to the School District to finance Authorized Facilities;

**WHEREAS**, on May 9, 2023, the Jefferson School District approved the proposed joint community facilities agreement; 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 be it further

**RESOLVED**: The City Council hereby finds that a Joint Community Facilities Agreement with the School District will be beneficial to the residents of the City, and the City is hereby authorized to enter into a Joint Community Facilities Agreement with the Developers and the School District, as may be necessary to comply with the provisions of the Act; and be it further

**RESOLVED**: The Mayor and the City Manager and such other official of the City as may be designated by the City Manager (each, an “Authorized Representative”), acting alone, is hereby authorized and directed to execute and deliver such Joint Community Facilities Agreement on behalf of the City in substantially the form attached hereto as **Exhibit A**, together with such additions or changes as are approved by such Authorized Representative, and the approval of such additions or changes shall be conclusively evidenced by the execution and delivery by an Authorized Representative of the Joint Community Facilities Agreement; and be it further

**RESOLVED**: The City Council hereby authorizes the delivery and performance of the joint Community Facilities Agreement; and be it further

**RESOLVED**: All actions heretofore taken by the officers and agents of the City with respect to the establishment of the CFD, Improvement Area No. 1 and the Future Annexation Area and the Joint Community Facilities Agreement are hereby approved, confirmed and ratified, and the appropriate officers of the City are hereby authorized and directed to do any and all things and take any and all actions and execute any and all certificates, agreements and other documents, which they, or any of them, may deem necessary or advisable in order to accomplish the purposes of this resolution; and be it further

**RESOLVED**: This resolution shall take effect from and after its adoption.

The foregoing Resolution 2023-\_\_\_ was adopted by the Tracy City Council on May 16, 2023, 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

## JOINT COMMUNITY FACILITIES AGREEMENT

### City of Tracy

### Community Facilities District No. 2016-1 (Tracy Hills)

This Joint Community Facilities Agreement (the “**Agreement**”), dated \_\_\_\_\_, 2023, is made and entered into by and among (i) the CITY OF TRACY, a California municipal corporation (the “**City**”); (ii) the JEFFERSON SCHOOL DISTRICT, a California public-school district (the “**JSD**”); and (iii) TRACY PHASE I, LLC, a Delaware limited liability company; TRACY PHASE IB, LLC, a Delaware limited liability company; TRACY PHASE 2, LLC, a Delaware limited liability company; TRACY PHASE 3, LLC, a Delaware limited liability company; TRACY PHASE 4, LLC, a Delaware limited liability company; and TRACY BPS, LLC, a Delaware limited liability company (the last six entities are referred to herein individually as a “**Developer**” and collectively herein as the “**Developers**”).

### Background

- A. This Agreement is made under the authority of California Government Code section 53316.2, part of the Mello-Roos Community Facilities Act of 1982, as amended (the “**Act**”).
- B. The City has conducted proceedings under the Act to (1) form the City of Tracy Community Facilities District No. 2016-1 (Tracy Hills) (the “**CFD**”), (2) designated two improvement areas within the CFD (each an “**Improvement Area**”), (3) identified property for future annexation into the CFD (the “**Future Annexation Area**”) which may be annexed into the CFD in the future as separate improvement areas (each a “**Future Improvement Area**”), and (4) authorized the financing, through the CFD and each Improvement Area, and Future Improvement Area of certain public fees and facilities (collectively, the “**CFD Proceedings**”). The land within the CFD and each Improvement Area is described in the Amended Boundary Map for the CFD recorded on August 27, 2018 with the San Joaquin County Clerk/Recorder as Document No. 2018-095090. The facilities authorized to be financed by the CFD and each Improvement Area and Future Improvement Area are described in Exhibit A to the Resolution of Formation No. 2016-157 adopted by the Tracy City Council on July 19, 2016 (the “**Authorized Improvements**”). The Authorized Improvements include facilities permitted under the Act that are required as conditions of development of the property in the CFD and the Future Annexation Area, and any of the Authorized Improvements may be financed through the payment of fees for such Authorized Improvements.
- C. The City, for itself and the CFD, previously entered into (1) an Acquisition Agreement Relating to: City of Tracy Community Facilities District No. 2016-1 (Tracy Hills) Improvement Area No. 1, dated as of July 19, 2016 (the “**Improvement Area No. 1 Acquisition Agreement**”), by and between the City and Tracy Phase I, LLC, relating to territory in Improvement Area No. 1 of the City of Tracy Community Facilities District No. 2016-1 (Tracy Hills) (“**Improvement Area No. 1**”) and (2) a Master Acquisition Agreement Relating to: City of Tracy Community Facilities District No. 2016-1 (Tracy Hills), dated as of July 19, 2016 (the

**“Master Acquisition Agreement”**; together with the Improvement Area No. 1 Acquisition Agreement, the **“Acquisition Agreements”**), by and between the City and The Tracy Hills Project Owner, LLC, relating to territory that was initially in the future annexation area for the CFD. The City and the Developers have determined that the Acquisition Agreements shall not govern the financing of the Mitigation Payments (as defined below).

- D. The Developers and JSD have notified the City that the property within the CFD, each Improvement Area and the Future Annexation Area (collectively, the **“Project”**), is subject to the terms of the Tracy Hills Project School Impact Mitigation Agreement, dated October 14, 2003, as recorded in Official Records of San Joaquin County as Document #2003-2555476, as amended by the First Amendment to Tracy Hills Project School Impact Mitigation Agreement for Project Phase 1 (1A & 1B) Development, dated June 20, 2018, recorded in Official Records of San Joaquin County as Document # 2018-081169, as amended by the Second Amendment to Tracy Hills Project School Impact Mitigation Agreement for Project Phase 1 (1A & 1B) Development, dated September 2018, recorded in Official Records of San Joaquin County as Document # 2018-104306, as amended by Third Amendment to Tracy Hills Project School Impact Mitigation Agreement for Project Phase 1 (1A & 1B) Development, dated December 2, 2020, recorded in Official Records of San Joaquin County as Document # 2020-023907, as amended by Fourth Amendment to Tracy Hills Project School Impact Mitigation Agreement for Project Phase 1 (1A & 1B) Development, dated as of August 16, 2022, recorded in Official Records of San Joaquin County as Document #2023-031634 (the Fourth Amendment”), and as amended by Fifth Amendment to Tracy Hills Project School Impact Mitigation Agreement for Project Phases 2-4 Development, dated as of May 9, 2023, recorded in Official Records of San Joaquin County as Document # \_\_\_\_\_ (as it may be amended in the future, collectively, the **“Mitigation Agreement”**).
- E. The Developers and JSD have notified the City that JSD expects to acquire and develop school sites and construct, install and/or acquire various school facilities (permanent and interim facilities), including administration facilities, school sites, supporting infrastructure and improvements, and equipment that JSD will own and operate to serve the Project students or that are necessary to mitigate the impacts of Project students pursuant to the Mitigation Agreement (collectively, the **“School Facilities”**). The Developers and JSD have notified the City that the Developers’ obligation pursuant to the terms of the Mitigation Agreement is to pay certain contractual mitigation payments (**“Mitigation Payments”**), and that JSD will acquire, develop and construct School Facilities with the proceeds of such Mitigation Payments; the Developers will not acquire, develop or construct the School Facilities.
- F. The Developers and JSD have notified the City that to fund the capital costs of acquisition, development or construction of School Facilities, including the first school to serve the Project students (**“SF1”**), the Mitigation Agreement required, and the Developers paid to JSD, a Mitigation Payment in the amount of approximately \$31,300,000 for SF1 Phase 1A

Facilities Costs (herein, the “**Phase 1A SF1 Costs**”) and SF1 Phase 2 Facilities Costs (the “**Phase 2 SF1 Costs**” and together with the Phase 1A SF1 Costs, the “**Previously Paid SF1 Costs**”). The Mitigation Payment related to the Previously Paid SF1 Costs is the only Mitigation Payment made by the Developers to JSD prior to the date of this Agreement, and may be financed by the CFD as set forth in this Agreement.

- G. The Developers and JSD have notified the City that to fund the capital costs of acquisition, development or construction of School Facilities, including SF1, the Developers and JSD executed the Fourth Amendment the Mitigation Agreement to, among other things, require the Developers to pay a supplemental Mitigation Payment to JSD that JSD will use to pay for additional Phase 1A SF1 Costs and Phase 2 SF1 Costs to be incurred by JSD after the date of this Agreement (herein, the “**SF1 Supplemental Costs**”), and that the Developers will pay such supplemental Mitigation Payment after the date of this Agreement. The Mitigation Payments paid by the Developers that JSD will use to pay the SF1 Supplemental Costs may be financed by the CFD as set forth in this Agreement.
- H. The Developers and JSD have notified the City that to fund the capital costs of acquisition, development or construction of School Facilities, including a second school to serve the Project students (“**SF2**”), the Mitigation Agreement contemplates the payment by the Developers of Mitigation Payments that JSD will use to pay for the capital costs of acquisition, development or construction costs of SF2 (the “**SF2 Costs**”), although the amount and the time for payment of such SF2 Costs and the corresponding Mitigation Payments have not yet been determined. The Mitigation Payments paid by the Developers that JSD will use to pay for the SF2 Costs may be financed by the CFD pursuant as set forth in this Agreement.
- I. The Developers and JSD have notified the City that to fund acquisition, development or construction of School Facilities, including a third school to serve the Project students (“**SF3**”), the Mitigation Agreement contemplates the payment by the Developers of Mitigation Payments that JSD will use to pay for the capital costs of acquisition, development or construction costs of SF3 (the “**SF3 Costs**”), although the amount and the time for payment of such SF3 Costs and corresponding Mitigation Payments have not yet been determined. The Mitigation Payments paid by the Developers that JSD will use to pay for the SF3 Costs may be financed through the CFD as set forth in this Agreement.
- J. The Developers and JSD have notified the City that to fund acquisition, development or construction of School Facilities, including additional schools to serve the Project students (“**Future SFs**” and together with SF1, SF2, and SF3, the “**Project SFs**”), the Mitigation Agreement contemplates the payment by the Developers of Mitigation Payments that JSD will use to pay for the capital costs of acquisition, development or construction costs of Future SFs (the “**Future Phase Costs**” and together with the Previously Paid SF1 Costs, the SF1 Supplemental Costs, the SF2 Costs, and the SF3 Costs, the “**Project SFs Costs**”), although the amount and the time for payment of such Future Phase Costs and the corresponding

Mitigation Payments have not yet been determined. The Mitigation Payments paid by the Developers that JSD will use to pay for the Future Phase Costs may be financed through the CFD as set forth in this Agreement.

- K. The Developers and JSD have notified the City that the amounts and the time for payment of the Mitigation Payments to be paid by the Developers to JSD that JSD has used, or will use, to pay the Project SFs Costs are governed by the terms of the Mitigation Agreement.
- L. The Developers and JSD have represented to the City that the School Facilities are Authorized Improvements under the CFD because they are required as conditions of development of the property within the CFD and the Future Annexation Area.
- M. The City may issue and sell bonds for the CFD from time to time with respect to one or more Improvement Areas or Future Improvement Areas of the CFD and may use part of the bond proceeds to finance all or a portion of the Mitigation Payments to be paid by the Developers that JSD will use to finance some or all of the Project SFs Costs as set forth in this Agreement.
- N. JSD desires to cooperate with the City in accomplishing the financing, through the CFD, of some or all of the Mitigation Payments paid, or to be paid, by the Developers that JSD will use to finance the Project SFs Costs as set forth herein.
- O. Each Improvement Area and Future Improvement Area is, or will be, authorized to finance the Authorized Improvements, including the Mitigation Payments used to fund the Project SFs Costs, and this Agreement applies to all Improvement Areas and Future Improvement Areas.
- P. On February 21, 2023, the Council of the City adopted its Resolution No. 2023-032, entitled "Adopt a Resolution Declaring the Intention to Reimburse Expenditures from Proceeds of Tax-Exempt Obligations to be Issued by the City for and on behalf of City of Tracy Community Facilities District No. 2016-1 (Tracy Hills)" (the "**Reimbursement Resolution**"), pursuant to which the City declared its intent to reimburse certain expenditures related to the Facilities with the proceeds of bonded indebtedness and other debt issued by the City for the CFD.

***With these background facts in mind, the parties agree as follows:***

1. This Agreement constitutes a "joint community facilities agreement", within the meaning of Section 53316.2 of the Act pursuant to which the CFD, including the Improvement Areas thereof, will be authorized to finance the Project SFs Costs as set forth herein.
2. The City has concluded that this Agreement is beneficial to the residents of the City and the future residents within the CFD.

3. JSD has concluded that this Agreement is beneficial to the residents of JSD and the future residents within the CFD.
4. The City shall administer the CFD. For purposes of this Agreement, administration of the CFD includes the following: employing and paying all consultants, levying and collecting the special tax(es), paying debt service on the bonds and otherwise administering the CFD and the bonds, and complying with all California and federal requirements concerning the CFD Proceedings or the bonds, including, but not limited to, those of the United States Internal Revenue Code of 1986, as amended (the “**Code**”). JSD is not, and shall not be, responsible for such administration and will not participate in, or be considered a participant in, the CFD Proceedings other than as a party to this Agreement.
5. If, in its sole discretion, the City issues bonds for the CFD, with respect to an Improvement Area or Future Improvement Area, and if, in the City’s sole discretion, the proceeds of such bonds (“**Bond Proceeds**”) are made available to finance Mitigation Payments, then JSD shall accept such Bond Proceeds paid to it by the City/CFD as payment, to the extent of the money received, as payment(s) to be credited against Developers’ Mitigation Payment obligation for development of property within the CFD, and corresponding Improvement Areas, that JSD will use to fund the Project SFs Costs as set out herein. If less than all of the Mitigation Payments owed by the Developers to JSD under the Mitigation Agreement are paid to JSD from Bond Proceeds, then JSD and the Developer shall agree, in writing, on the application of the payments to specific Project SFs.
6. Bond Proceeds paid to JSD shall be for capital expenditures for School Facilities that JSD has already constructed in accordance with the Act and the Certificate Concerning Use of Bond Proceeds (as defined and discussed below).
7. Before the City issues any bonds, or series of bonds, the Bond Proceeds of which may be made available to finance the Mitigation Payments that JSD will use to pay for the Project SFs Costs, either the City or the Developers shall inform JSD, in writing, of the amount of Bond Proceeds that may be provided to JSD, and provided that JSD can certify that such amount(s) is no greater than the amount(s) expended by JSD for eligible School Facilities already constructed by JSD or School Facilities expenditures previously made by JSD, JSD shall thereafter, sign and deliver to the City a certificate for such series of bonds, in substantially the form set forth in Exhibit A to this Agreement (each a “**Certificate Concerning Use of Bond Proceeds**”). If the City issues bonds of the CFD, and if JSD has delivered the completed and signed Certificate Concerning Use of Bond Proceeds to the City (as provided for herein), then, upon the written request provided by the Developers (which may be made after the bonds are issued), the City shall make Bond Proceeds available to JSD for JSD to utilize in accordance with the Certificate Concerning Use of Bond Proceeds, and JSD shall, following receipt of such bond funds, utilize and account for such Bond Proceeds for School Facilities that it has already constructed as described in the Certificate Concerning Use of Bond Proceeds. In clarification of the foregoing, Bond Proceeds may only

be used to finance the costs of School Facilities that have been constructed by JSD. It shall not be necessary that the school project(s) (for which the School Facilities are a part) must be completed in full, only that the costs of the School Facilities have been expended by JSD prior to receipt of Bond Proceeds. If, after the closing of a series of bonds for which a Certificate Concerning Use of Bond Proceeds was provided, JSD expends additional funds for eligible School Facilities, those additional funds expended may, at the request of the Developers, be financed by the Bond Proceeds of such bonds if JSD provides a new Certificate Concerning Use of Bond Proceeds to account for the subsequent expenditures.

8. In addition to the foregoing, JSD shall provide to the City all documentation the City reasonably requires to comply with its records-retention policy and, if applicable, to monitor arbitrage liability in accordance with the terms applicable to the bonds, as issued, and the City's post-issuance debt procedures. Such documentation may include, but is not limited to, invoices, payment applications, warrants and fiscal reports associated with the School Facilities financed with Bond Proceeds. JSD shall with reasonable diligence, upon request by the City to include a list of requested documents, e-mail all documentation to the following persons:

Finance Director, City of Tracy  
City Attorney, City of Tracy

finance@cityoftracy.org  
ca@cityoftracy.org

9. JSD and Developers have informed the City that is expected that (a) prior to the time that Bond Proceeds will be used to finance Mitigation Payments, the Developer will pay the Mitigation Payments to JSD, and JSD will spend the Mitigation Payments on costs of the School Facilities and (b) Bond Proceeds will be used to finance Mitigation Payments in an amount that does not exceed the amount of Mitigation Payments previously spent on costs of School Facilities. Upon disbursement of Bond Proceeds to JSD, JSD shall deposit such Bond Proceeds in one or more separate capital accounts (the "**Bond Proceeds Deposit Account**"). Promptly after deposit of such Bond Proceeds into the Bond Proceeds Deposit Account, JSD will pay to the Applicable Developer (as defined below) a corresponding amount of the Mitigation Payments that were previously paid by the Applicable Developer to the District and that were previously expended on the costs of School Facilities within thirty (30) calendar days of the District's receipt of the written instructions from the Applicable Developers containing the applicable disbursement instructions (the "**Disbursement Instructions**") as follows:

- a) Each such set of Disbursement Instructions shall specify that the repayment with Bond Proceeds shall be made to each Developer(s) (the "**Applicable Developer**") in proportion to the amount of the Mitigation Payments actually paid by the Applicable Developer for the applicable Project SF. For example, if Tracy Phase IB, LLC paid \$6 million in Mitigation Payments for SF3 and Tracy Phase 2, LLC paid \$4 million in Mitigation Payments for SF3, then Tracy Phase IB, LLC would be entitled to 60% of the Bond Proceeds

on deposit in the Bond Proceeds Deposit Account, and Tracy Phase 2, LLC would be entitled to 40% of the Bond Proceeds on deposit in the Bond Proceeds Deposit Account. Disbursement Instructions shall include the full name of each Applicable Developer payee and payment directions for a receiving bank or financial institution which may receive funds on behalf of such Applicable Developer payee. Each such set of Disbursement Instructions shall be signed or acknowledged by each Applicable Developer which is a party to this Agreement.

b) JSD shall establish separate accounts and/or subaccounts for the Mitigation Payments and Bond Proceeds to assist in accounting for, and payment of, the Bond Proceeds in accordance with this Agreement.

c) City acknowledges that the within-referenced reimbursement structure for use of Bond Proceeds is acceptable to the City.

10. The City shall indemnify, defend, protect, and hold harmless JSD and JSD's officers, employees, and agents from and against all liabilities, claims, demands, damages, and costs (including reasonable attorneys' fees and litigation costs through final appeal) that arise out of any of the following:

a) the CFD Proceedings;

b) the authorization for, and implementation of, the levy, collection, and enforcement of the CFD's special taxes levied in each Improvement Area and Future Improvement Area;

c) the authorization by the City for, and initial disclosure by the City with respect to, the issuance, sale, and administration of the bonds of the CFD, except to the extent that such disclosure is based on information provided by JSD or the Developers;

d) any continuing disclosure obligations of the City relating to the bonds of the CFD, except to the extent that any such continuing disclosure is based on information provided by JSD or the Developers; or

e) any arbitrage or rebate issues under federal tax law that concern the bonds, except to the extent that such issues relate to actions or omissions of JSD or the Developers or representations made by JSD or the Developers to the City.

11. JSD shall administer and take full governmental responsibility for the following, for which the City shall have no responsibility: the construction or acquisition of any School Facilities which includes conducting environmental review; approving plans and specifications, bid requirements, performance and payment-bond requirements, and insurance requirements; administering construction contracts and construction work; staking and inspection;

acquiring necessary property interests in real or personal property; holding back and administering retention payments; and administering the punch list. JSD shall indemnify, defend, protect, and hold harmless the City and the City's officers, employees, and agents from and against all liabilities, claims, demands, damages, and costs (including reasonable attorneys' fees and litigation costs through final appeal) that arise out of the design, engineering, construction, or installation of the School Facilities.

12. JSD will have ownership of, and acquisition, construction, development and maintenance responsibility for, all of the School Facilities. JSD shall indemnify, defend, protect, and hold harmless the City and the City's officers, employees, and agents as well as the CFD and its officers, employees, and agents from and against all liabilities, claims, demands, damages, and costs (including reasonable attorneys' fees and litigation costs through final appeal) that arise out of the use or maintenance of the School Facilities.
13. JSD shall assure that the School Facilities financed by bonds are not used so as to cause the bonds to satisfy the private business tests of section 141(b) of the Code, or the private loan financing test of section 141(c) of the Code, if applicable.
14. To the extent that JSD wishes to lease, sell or convey any School Facilities financed by bonds of the CFD to an entity that is not a state or local government, JSD will seek the advice and approval of bond counsel to the City prior to any such sale. Such approval shall not be unreasonably withheld or delayed.
15. JSD shall indemnify, defend, protect, and hold harmless the City and the City's officers, employees, and agents as well as the CFD and its officers, employees, and agents from and against all liabilities, claims, demands, damages, and costs (including reasonable attorneys' fees and litigation costs through final appeal) that arise out of any representations made by JSD to the City with respect to its use of School Facilities funded by Bond Proceeds.
16. The City may take every step that is required or suitable for completing the CFD Proceedings; the levy, collection and enforcement of the special taxes; and the issuance, sale, delivery and administration of the bonds of the CFD. The City is not liable for its failure to conduct and complete the CFD Proceedings, levy, collect and enforce the special taxes or issue, sell, delivery and administer the bonds, including its decision for any reason not to finance through the CFD all, or any part of, the fees owed by the Developers under the terms of the Mitigation Agreement that JSD will use to pay for Project SFs Costs.
17. This Agreement may be amended by another written agreement signed by the parties, except that an amendment may not be made after issuance of any bonds issued by the City for the CFD if it would be detrimental to the interests of the bondholders without obtaining the consent of the bondholders in accordance with the related CFD bond documents.

18. This Agreement is solely for the benefit of the City, JSD, and the Developer and their successors and assigns. It is not intended to benefit any other third parties.
19. The parties may sign this Agreement in counterparts, each of which will be considered an original, but all of which will constitute the same agreement.
20. This Agreement will remain in force until all of the bonds have been retired and the authority to levy the special taxes conferred by the CFD Proceedings has ended or is otherwise terminated.

[SIGNATURE PAGES FOLLOW]

CITY OF TRACY

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

Date: \_\_\_\_\_, 20\_\_

Attest:

By: \_\_\_\_\_  
\_\_\_\_\_, City Clerk

Approved as to Form  
Tracy City Attorney

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

JEFFERSON SCHOOL DISTRICT

By: \_\_\_\_\_  
\_\_\_\_\_, President

Date: \_\_\_\_\_, 20\_\_

ATTEST:

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

Reviewed by JSD Legal Counsel

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

Agenda Date: \_\_\_\_\_, 20\_\_

Item Number: \_\_\_\_\_

Resolution No. \_\_\_\_\_

DEVELOPERS:

TRACY PHASE I, LLC,  
A Delaware limited liability company

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

TRACY PHASE 3, LLC,  
A Delaware limited liability company

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

TRACY PHASE IB, LLC,  
A Delaware limited liability company

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

TRACY PHASE 4, LLC,  
A Delaware limited liability company

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

TRACY PHASE 2, LLC,  
A Delaware limited liability company

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

TRACY BPS, LLC,  
A Delaware limited liability company

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

[Form of Certificate Concerning Use of Bond Proceeds]

EXHIBIT A

[BOND SERIES HEADER]

**CERTIFICATE CONCERNING USE OF BOND PROCEEDS**

I, the undersigned, hereby certify that I am a duly authorized officer of the Jefferson School District (“**School District**”) and I am authorized to sign this Certificate Concerning Use of Bond Proceeds (“**Certificate**”) on behalf of the School District in connection with the issuance of the above-captioned Series \_\_\_ Special Tax Bonds (“**Bonds**”). All capitalized terms used herein and not otherwise defined shall have the meanings given such terms in the Joint Community Facilities Agreement by and between the CITY OF TRACY, a California municipal corporation (“**City**”); (ii) the SCHOOL DISTRICT, (iii) TRACY PHASE I, LLC, a Delaware limited liability company; TRACY PHASE IB, LLC, a Delaware limited liability company; TRACY PHASE 2, LLC, a Delaware limited liability company; TRACY PHASE 3, LLC, a Delaware limited liability company; TRACY PHASE 4, LLC, a Delaware limited liability company; and TRACY BPS, LLC, a Delaware limited liability company, dated as of \_\_\_\_\_, 2023 (“**JCFA**”).

I further certify on behalf of the School District that:

1. School District is a public school district formed and operating pursuant to California law.
2. School District provides public education services within its boundaries.
3. Pursuant to the provisions of the JCFA the School District has been informed by the City and City of Tracy Community Facilities District No. 2016-1 (Tracy Hills) (“**CFD**”) that the City is in the process of issuing the Bonds on behalf of the CFD.
4. School District is informed that a portion of the net Bond proceeds (“**Bond Proceeds**”) are being allocated to the School District in order to finance certain Mitigation Payments that School District has used to pay Project SFs Costs of certain School Facilities, as further described in Attachment “1” attached hereto (the “**Financed Project SFs Costs**”). School District acknowledges that it is obligated under the JCFA to pay the Developer for the Financed Project SFs Costs with the Bond Proceeds, following receipt thereof, and that it must allocate the Bond Proceeds to the Financed Project SFs Costs.
5. The construction and operation of the School Facilities is in satisfaction of contractual requirements of the School District with respect to the provision of public education to the property within the boundaries of the CFD, as further described in the JCFA.

6. The School District will maintain adequate records to show the description of the Financed Project SFs Costs that have been funded with the Mitigation Payments that were financed with the Bond Proceeds. The District shall assure that the School Facilities financed by the Bonds are not used so as to cause the Bonds to satisfy the private business tests of section 141(b) of the Internal Revenue Code of 1986, as amended (the “**Tax Code**”), or the private loan financing test of section 141(c) of the Tax Code, if applicable. All of the School Facilities will be used in the performance of essential governmental functions of the District or another state or local government agency.

7. The School Facilities have all been previously constructed (or payments for such School Facilities have been made by the School District) and have not been the subject of any prior payment or financing from the Bond Proceeds.

8. Developers previously funded the Mitigation Payments that paid for the Financed Project SFs Costs with non-CFD funds.

In addition, as shown in Schedule 1, the District expended the Mitigation Payments that are being financed by the Bond Proceeds to pay for the Project SFs Costs that (i) were paid no earlier than sixty (60) days before the date of the adoption by the City of its Resolution No. 2023-032, entitled “Adopt a Resolution Declaring the Intention to Reimburse Expenditures from Proceeds of Tax-Exempt Obligations to be Issued by the City for and on behalf of City of Tracy Community Facilities District No. 2016-1 (Tracy Hills),” which was adopted on February 21, 2023, and (ii) are reimbursed no later than eighteen (18) months after the later of the date the expenditure was paid or the date the School Facilities were placed in service (but no later than three (3) years after the expenditure is paid). For federal income tax purposes, the District agrees to allocate \$\_\_\_\_\_ of Bond Proceeds as reimbursement for those Project SFs Costs.

As a result of the Developer financing the Mitigation Payments that funded the Project SFs Costs with Bond Proceeds, the District will return to the Applicable Developer a corresponding amount(s) of the Mitigation Payments that were previously paid by the Developer to the District.

This Certificate may be relied upon by the City, the CFD and bond counsel to the City/CFD in reaching its conclusions for confirmation of the federally tax-exempt status of the Bonds.

IN WITNESS WHEREOF, the undersigned has executed this certificate as of the date set forth below.

Dated: \_\_\_\_\_

JEFFERSON SCHOOL DISTRICT

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

*[Authorized Official Title]*

ATTACHMENT "1"

The following facilities have been constructed by the School District:

**"School Facilities"** *[input description]*. The averaged expected useful life of the School Facilities is at least \_\_\_ years.

Dated: \_\_\_\_\_, 20\_\_

JEFFERSON SCHOOL DISTRICT

By: \_\_\_\_\_  
James Bridges, Superintendent

Received and accepted by:

CITY OF TRACY

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

Agenda Item 3.D

RECOMMENDATION

**Staff recommends that the City Council appoint, by motion, Matthew ShROUT to serve on the City of Tracy's Parks and Community Services Commission, for a full term beginning May 17, 2023 and ending January 31, 2028.**

EXECUTIVE SUMMARY

On February 27, 2023, the current City of Tracy representative on the Tracy Parks and Community Services Commission notified staff that she would be resigning effective March 2, 2023. On December 12, 2023 interviews were conducted and one person was added to the eligibility list. That individual that was on the eligibility list shared that they were no longer available, and a secondary recruitment was conducted.

During the interview process, Matthew ShROUT was selected to fill the vacated term. Don Penning was placed on the eligibility list. Since the position is set to expire once again on January 31, 2024, staff requests to extend that to January 31, 2028 so that the applicant may participate in a full term.

BACKGROUND AND LEGISLATIVE HISTORY

On February 27, 2023, the current City of Tracy representative on the Tracy Parks and Community Services Commission notified staff that she would be resigning effective March 2, 2023. On December 12, 2023 interviews were conducted and one person was added to the eligibility list. That individual shared that they were no longer available.

A recruitment was opened on March 9, 2023 and ended on March 31, 2023, during which time, four (4) applications were received.

According to Council Policy outlined in Resolution 2021-200 (Attachment A), "If the Council subcommittee determines there are multiple qualified candidates, the subcommittee may recommend the Council establish an eligibility list that will be used to fill vacancies that occur in the following twelve (12) months."

ANALYSIS

On May 4, 2023, a Council subcommittee consisting of Council Member Bedolla and Council Member Evans, interviewed the four (4) applicants for the City of Tracy Parks and Community Services Commission. In accordance with Resolution No. 2021-200, the Council subcommittee recommended a candidate for appointment and also formed an eligibility list to the City of Tracy Parks and Community Services Commission. During the interview process, Matthew ShROUT was selected to fill the vacated term. Don Penning was placed on the eligibility list.

PUBLIC OUTREACH/ INTEREST

Notification of Parks and Community Services Commission recruitment has been posted on the City's Social Media pages, Tracy Press, the City's website, and Channel 26.

STRATEGIC PLAN

This item is a routine operational item and does not relate to any of the Council's strategic plans.

ACTION REQUESTED OF THE CITY COUNCIL

Staff recommends that the City Council appoint, by motion, Matthew Shroul to serve on the City of Tracy's Parks and Community Services Commission, for a full term beginning May 17, 2023 and ending January 31, 2028.

Prepared by: Necy Lopez, Deputy City Clerk

Reviewed by: Adrienne Richardson, City Clerk  
Karin Schnaider, Assistant City Manager  
Nancy Ashjian, Assistant City Attorney

Approved by: Midori Lichtwardt, Assistant City Manager

Attachment A: Resolution 2021-200

RESOLUTION 2021-200

ADOPTING A COUNCIL POLICY ESTABLISHING A SELECTION PROCESS FOR APPOINTMENTS TO CITY ADVISORY BODIES AND REPEALING RESOLUTION NO. 2021-131

WHEREAS, On September 7, 2021, the Tracy City Council adopted Resolution 2021-131 establishing a policy for the selection process for appointments to City advisory Bodies and repealing Resolution 2020-009;

WHEREAS, The current policy states that Council shall appoint two Council Members to serve on a subcommittee to review applications, interview applicants and recommend a candidate for appointment to the board, commission or committee, and

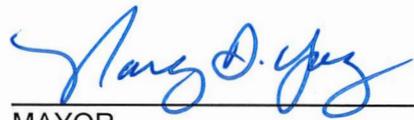
WHEREAS, Council wishes to amend the language of Section 2 (D)(1) to state that Council shall appoint two members *and an alternate* to serve on a subcommittee to review applications, interview applicants and recommend a candidate for appointment to the board, commission or committee.

NOW, THEREFORE BE IT RESOLVED, the City Council of the City of Tracy hereby adopts the Council Policy Establishing a Selection Process for Appointments to City Advisory Bodies, attached as Exhibit A, and thereby repeals and supersedes Resolution No. 2021-131.

\*\*\*\*\*

The foregoing Resolution 2021-200 was passed and adopted by the Tracy City Council on the 21st day of December, 2021, by the following vote:

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

  
MAYOR

ATTEST:  
  
CITY CLERK

**COUNCIL POLICY ESTABLISHING A SELECTION PROCESS FOR APPOINTMENTS TO  
CITY ADVISORY BODIES  
(Exhibit "A" to Resolution No. 2021-200)**

---

**SECTION 1:           PURPOSE**

To establish a selection process for appointments to City advisory bodies including defining residency requirements, in accordance with Government Code sections 54970 et seq.

**SECTION 2:           SELECTION PROCESS FOR APPOINTEE BODIES**

- A. On or before December 31st of each year, the City Clerk shall prepare an appointment list of all regular and ongoing boards, commissions and committees that are appointed by the City Council of the City of Tracy. The list shall contain the following information:
1. A list of all appointee terms which will expire during the next calendar year, with the name of the incumbent appointee, the date of the appointment, the date the term expires and the necessary qualifications for the position.
  2. A list of all boards, commissions and committees whose members serve at the pleasure of the Council and the necessary qualifications of each position.
  3. The list of appointments shall be made available to the public for a reasonable fee that shall not exceed actual cost of production. The Tracy Public Library shall receive a copy of the list.
- B. Whenever a vacancy occurs in any board, commission or committee, whether due to expiration of an appointee's term, resignation, death, termination or other causes, a special notice shall be posted in the office of the City Clerk, The Tracy Public Library, the City website, and in other places as directed within twenty (20) days after the vacancy occurs. Final appointment to the board, commission or committee shall not be made by the City Council for at least ten (10) working days after the posting of the notice in the Clerk's office. If Council finds an emergency exists, the Council may fill the unscheduled vacancy immediately.
- C. Appointments shall be made for the remainder of the term created by the vacancy except as follows:
1. If appointee will fill an un-expired term with six months or less remaining, the appointment shall be deemed to be for the new term.
  2. If the vacancy is filled by an emergency appointment the appointee shall serve only on an acting basis until the final appointment is made pursuant to section 2.
- D. The Council shall use the following selection process to provide an equal opportunity for appointment to a board, commission or committee:

1. Council shall appoint two Council members and an alternate to serve on a subcommittee to review applications, interview applicants and recommend a candidate for appointment to the board, commission or committee.
  2. If the Council subcommittee determines there are multiple qualified candidates, the subcommittee may recommend the Council establish an eligibility list that will be used to fill vacancies that occur in the following twelve (12) months.
  3. At the Council subcommittee's discretion, the chair (or designee) of the board, committee or commission for which a member will be appointed, can participate in the interviews.
- E. An individual already serving on a City of Tracy board, committee or commission may not be appointed to serve on an additional City of Tracy board, committee, or commission concurrently.

**SECTION 3:                    DEFINITION OF RESIDENCY REQUIREMENTS**

- A. The following definitions shall be used to determine whether residency requirements are met for boards and commissions to which the Tracy City Council appoints members:
1. Tracy Planning Area means the geographical area defined in the City of Tracy General Plan and any amendments thereto.
  2. City of Tracy means within the city limits of the City of Tracy.
  3. Citizen means a resident of the City of Tracy.
  4. Tracy School District means the geographical area served by the Tracy Unified School District.
  5. Sphere of Influence shall be the geographical area approved by the Local Agency Formation Commission (LAFCo) of San Joaquin County and any amendments thereto.
- B. Residency, as defined above and as set forth in the applicable bylaws for each board or commission, shall be verified annually by the City Clerk. The residency must be verifiable by any of the following means:
1. Voter registration,
  2. Current California Driver's License or Identification,
  3. Utility bill information (phone, water, cable, etc.),
  4. Federal or State tax returns.

C. Members of boards or commissions shall notify the City Clerk in writing within thirty (30) days of any change in residency. If the change in residency results in the board member or commissioner no longer meeting the residency requirements, the member shall tender their resignation to the City Clerk who shall forward it to the City Council.

Agenda Item 3.E

REQUEST

**Approve a resolution to adopt amendments to the City Council's A) Code of Conduct and B) Meeting Protocols and Rules of Procedures**

EXECUTIVE SUMMARY

On October 15, 2019, the City Council adopted a Code of Conduct (Code) that outlines the norms and values to which this legislative body holds itself. The City Council has amended the Code several times since its adoption in 2019, and the current version of the Code is attached to this report as Attachment A. These amendments addressed singular issues and did not change the remainder of the originally adopted Code. On November 5, 2019, the City Council adopted Meeting Protocols and Rules of Procedure (Protocols). The City Council has also amended the Protocols to address singular issues since their original adoption. The current version of the Protocols is attached to this report as Attachment B. On February 28, 2023, the City Council held a workshop to discuss both the Code and the Protocols and proposed amendments as well as omission that have been observed by the City Management team, City Attorney and Councilmembers. Staff is recommending the adoption of the Amended A) Code of Conduct and B) City Council's Meeting Protocols and Procedures.

DISCUSSION

Pursuant to best practices (and in accordance with authority granted by California Government Code section 36813), legislative bodies often adopt policies governing the roles and responsibilities of such bodies as well as norms and behaviors expected of the members serving on the bodies. These governance policies help to facilitate effective meetings, promote civility, and serve as a framework to guide a healthy working relationship between the legislative members and the staff serving the legislative bodies.

In June 2019, the San Joaquin County Civil Grand Jury issued a report on its investigation of the Tracy City Council and recommended the City Council adopt an ethics policy to guide its conduct. The City Council already had been discussing the need for an ethics policy prior to the release of the Grand Jury report and, on July 16, 2019, the City Council unanimously agreed to develop and adopt an ethics/code of conduct policy. Subsequently, on October 15, 2019, the City Council adopted the City Council's Code of Conduct. As noted above, the Code has been amended since its original adoption, most recently as 2021, but only to address singular issues.

During Council's development of the Code, the then City Council expressed a desire to update the existing rules and procedures for preparing agendas and conducting meetings. These older rules had been last adopted in April 2015 and were referred to as the "Procedures for Preparation, Posting and Distribution of Agenda and the Conduct of Public Meetings". On November 5, 2019, the City Council replaced those older rules with the new Protocols. The Protocols were last amended in 2021, with amendments to singular items only.

Both the Code and the Protocols state that they should be reviewed and revised by the City Council by December 31<sup>st</sup> of every odd year.

Accordingly, at its annual retreat on February 4-5, 2023, the City Council began a discussion of issues and observations that have been made by the City Management team, City Attorney and Councilmembers regarding the Code and the Protocols. On February 28, 2023, the City Council continued the discussion in a workshop, where, the Acting City Manager and City Attorney provided specific recommendations for the City Council's consideration.

## ANALYSIS

Based on the direction given by the City Councilmembers, the City Attorney is proposing that the City Council adopt the amended Code of Conduct, reflected in **Attachment A**, and the Council Meeting Protocols and Rules of Procedure, reflected in **Attachment B**. Redlined versions reflecting the specific proposed amendments are shown in **Attachments A-1** and **B-1**, respectively. The amendments reflect general cleanups and clarifications to existing language. In addition, the amendments remove any overlapping language in the two documents. The City Council adopted the Code and the Protocols to address two distinct substantive areas. Some overlapping language exists in these two documents, which has caused confusion as to how City officials should proceed on certain issues. To remove this confusion, the documents have been edited so that each uniquely addresses the topics contained within each document.

Importantly, the City Attorney's Office worked closely with the Acting City Manager and the Assistant City Manager in developing the proposed amendments. The City Council's direction at the workshop was to return with these proposed amendments on a timely basis. In addition, the City Attorney's Office reviewed local rules and procedures from a variety of comparably sized cities in the area, including Brentwood, Livermore, Lodi, Manteca, Pleasanton, Stockton and Walnut Creek. The City Attorney also drew upon her experiences working in and with other cities and special districts in the Bay Area.

A summary of key additional changes proposed for each are noted below.

### Code of Conduct

Section 1.4 – Added specific language to document the roles and responsibilities of the City Attorney. As this City has grown rapidly, some of the institutional structures are lacking and need to be developed. This language reflects not only the practice generally in the State, but also specifically what may be required under law.

Section 2.1.6 – Deleted language regarding participation in public relations, as this is inconsistent with the current City practice and unclear.

Section 2.2 – Added clarifications to the roles of the Mayor and Mayor Pro Tem and that voting is by majority vote of the City Council unless otherwise required by State law; deleted language regarding agenda setting, which is addressed in the Protocols.

Section 2.3 – Deleted language regarding Council actions, which is addressed in the Protocols and modified the existing Section 2.4 to become Section 2.3, as related to City Council Subject Matter (Standing) Committees.

Section 2.4 – Added new language regarding City Council Subject Matter (Standing) Committee actions.

### Protocols

Section 1.2 – Adds language to clarify that the Protocols prevail over the Code in the event of a conflict, as meeting protocols should only be in the Protocols.

Section 2.2 – Adds language to clarify what absence means.

Section 2.5 – Adds language to clarify that City Manager sets the Council agenda and once published, may withdraw an item(s), unless the item has been placed on the agenda by the City Council.

Section 2.6.2 – Adds language (and consolidates from other sections) to note that the City Clerk is the timekeeper for City Council meetings.

Section 2.8 – Adds language to clarify that the City Attorney is the Parliamentarian for City Council meetings.

Sections 3.2 and 3.4 – Adds language to document State law procedures regarding how closed session may be scheduled, agendized and managed.

Section 4.3 – Modifies existing language to more clearly reflect how Council Members may place regular and time-sensitive items on the City Council agenda.

Section 5.6 – Adds a new “Order of Business” section to the City Council agenda, under which agenda items may be reordered.

Section 5.18 – Adds language to document the Brown Act rules for how materials may be distributed to the City Council after agenda publication.

Section 6.3 – Adds language to clarify that “clapping” is not deemed disruptive only during the “Presentations/Proclamations and Awards” portion of the City Council meeting.

### STRATEGIC PLAN

This agenda item indirectly supports City Council’s Strategic Priority of Governance that encourages the development of good governance policies.

### FISCAL IMPACT

This agenda item will have no fiscal impact on the City as this affects administrative and governance policies and procedures only.

### RECOMMENDATION

Approve a resolution to adopt amendments to the City Council’s A) Code of Conduct and B) Meeting Protocols and Rules of Procedures.

Agenda Item 3.E  
May 16, 2023  
Page 4

Prepared and Approved by: Bijal M. Patel, City Attorney  
Karin Schnaider, Assistant City Manager

ATTACHMENTS

Attachment A – Revised Code of Conduct (Clean)

Attachment A-1 – Revised Code of Conduct (Redlined)

Attachment B – Revised Meeting Protocols and Rules of Procedure (Clean)

Attachment B-2 – Meeting Protocols and Rules of Procedure (Redlined)



# **CITY COUNCIL CODE OF CONDUCT**

Adopted on October 15, 2019 by Resolution No. 2019-203

Amended on July 21, 2020 by Resolution No. 2020-133

Amended on February 16, 2021 by Resolution No. 2021-017

Amended on October 19, 2021 by Resolution No. 2021-146

## TABLE OF CONTENTS

### CHAPTER 1 - FORM OF GOVERNMENT

1.1	Preamble .....	4
1.2	Form of Government .....	4
1.3	City Manager Appointment, Power and Duties .....	4
1.4	City Attorney Appointment and Responsibilities.....	5

### CHAPTER 2 - COUNCIL POWERS AND RESPONSIBILITIES

2.1	City Council Generally.....	6
2.2	Mayor and Mayor Pro Tem -Appointment, Power, and Duties .....	6
2.3	Council Member Subject Matter Committees .....	7
2.4	Action by Subject Matter Committees .....	8

### CHAPTER 3 - LEGAL AND ETHICAL STANDARDS

3.1	Preamble .....	10
3.2	Public Interest.....	10
3.3	Council Conduct.....	11
3.4	Conflict of Interest.....	12
3.5	AB 1234-Required Ethics Training.....	18
3.6	Code of Conduct Compliance and Enforcement .....	19

### CHAPTER 4 - COMMUNICATIONS

4.1	Relationship/Communications with Staff .....	21
4.2	Council Relationship/Communication with Council Advisory Bodies .....	22
4.3	Handling of Litigation and Other Confidential Information .....	22
4.4	Representing an Official City Position .....	22
4.5	Quasi-Judicial Role/Ex Parte Contacts .....	23
4.6	No Attorney-Client Relationship.....	24

**CHAPTER 5 - COUNCIL ADVISORY BODIES**

5.1 Citizen Boards and Commissions Generally.....25  
5.2 Citizen Board and Commission Organization and Conduct. .... 26  
5.3 Board and Commission Appointments ..... 26  
5.4 Boards and Commissions- Vacancy and Selection/Appointment Processes .... 26  
5.5 Boards, Commissions, and Committees - Removal ..... 27

**CHAPTER 6 - COUNCIL FINANCIAL MATTERS**

6.1 Compensation ..... 28  
6.2 Benefits ..... 28  
6.3 City Council Budget and Expenses ..... 28

**APPENDIX**

- A. Tracy Municipal Code (TMC) 2.08.060
- B. Council Appointed Committees
- C. City Nepotism Policy
- D. City Personnel Rule 9.2 (d)
- E. Resolution No. 2004-152 - Board, Commission, Committee Vacancy, Selection, and Defining Residency Requirements, for Appointee Bodies
- F. Ordinance 1094
- G. Resolution No. 2007-075 - Council Travel Procedures

ATTACHMENT 1 - City Council Code of Conduct Norms and Values Statement

ATTACHMENT 2- Council Advisory Body Norms and Values Statement

ATTACHMENT 3 - Code of Fair Campaign Practices

## **CHAPTER 1 FORM OF GOVERNMENT**

### **1.1 Preamble**

The legal responsibilities of the Tracy City Council are set forth by applicable state and federal laws. In addition, the City Council has adopted regulations, including this Code of Conduct Policy, that hold Council Members to standards of conduct above and beyond what is required by law. This Policy is written with the assumption that Council Members, through training, are aware of their legal and ethical responsibilities as elected officials.

### **1.2 Form of Government**

The City of Tracy operates under a Council-Manager form of government as prescribed by the Tracy Municipal Code ("TMC"). Accordingly, the Mayor and members of the Council are elected at-large, provide legislative direction, set City policy, and ultimately answer to the public.

### **1.3 City Manager Appointment, Power and Duties**

The City Manager is appointed by a majority vote of the Council and serves as the City's chief administrative officer and is responsible for directing the day-to-day operations of the City and implementing policy direction per Section 2.08.060 of the TMC (attached). Specifically, Section 2.08.070 of the TMC prohibits interference by either the City Council or any of its members with the City Manager's execution of their powers or duties:

- Neither the City Council, as a body, nor a member shall interfere with the appointment by the City Manager of any of the department heads or any person to any office or employment.
- Additionally, neither the City Council, as a body, nor any of its members shall interfere with the City Manager's power to remove any of those persons.
- Neither the Council nor any of its members shall give orders to any subordinate of the City Manager, either publicly or privately.
- The City Manager and his/her senior staff shall conduct themselves in accordance with the International City Management Association (ICMA) Code of Ethics.

The City Council and its members shall deal only with the City Manager with respect to the administrative services or operational matters of the City.

#### 1.4 City Attorney Appointment and Responsibilities

The City Attorney is appointed by a majority vote of the City Council, per Section 12.08.40, and serves as the City's sole legal counsel. The City Manager shall coordinate with and receive input from the City Attorney on all administrative, policy and operational matters that have or may have legal implications to the City. Without limiting the foregoing, the City Attorney shall have the following powers and duties:

- Neither the City Council, as a body, nor any of its members shall interfere with the administration of the City Attorney's Office or give orders to the subordinates of the City Attorney.
- The City Attorney shall serve as the legal counsel to the City Council and its standing committees, Planning Commission, City Manager, and all City staff pertaining to City matters.
- The City Attorney shall review and approve all ordinances, resolutions, and related staff reports for the City Council, its standing committees, and boards and commissions conducting meetings under the Brown Act.
- The City Attorney shall review and approve, as to form and legality, all contracts, agreements, bonds, and other legal documents related to the conduct of the City's affairs.
- The City Attorney shall interpret and opine on the implementation of the Tracy Municipal Code on behalf of the City and shall prosecute violations of the Tracy Municipal Code in Superior Court.
- The City Attorney may engage outside counsel to implement the functions of the City Attorney's Office, and no other City official, including the City Manager, City Council member or staff may independently engage outside counsel on City-related matters.
- The City Attorney and his/her senior staff shall, at all times, conduct themselves in accordance with the California Rules of Professional Conduct, established by the California State Bar, and the Ethical Principles for City Attorneys, adopted by the League of California Cities' City Attorneys Department.

## CHAPTER 2 COUNCIL POWERS AND RESPONSIBILITIES

### 2.1 City Council Generally

- 2.1.1 The City Council has the power, in the name of the City, to do and perform all acts and things appropriate to a municipal entity and the general welfare of its inhabitants, which are not specifically prohibited by the constitution, and/or State or Federal laws.
- 2.1.2 The Council acts as a body. Council policy and directives are established by majority vote, and a decision of the majority binds the Council to a course of action, unless otherwise required by State law.
- 2.1.3 No Council Member has extraordinary powers beyond those of other members (except as may otherwise be provided in State law). All members, including the Mayor, have equal powers.
- 2.1.4 No member of the Council is permitted to hold any other City office or City employment.
- 2.1.5 Council Members are appointed by the Council body to serve on various boards or committees, including Council standing and ad hoc committees, and third agency member boards and committees.

### 2.2 Mayor and Mayor Pro Tem - Appointment, Power, and Duties

- 2.2.1 The Mayor is directly elected by the voters to serve a two-year term. The selection of the Mayor occurs every two years in December after the City receives the certified results from the County Registrar of Voters electing a Mayor.
- 2.2.2 A Mayor Pro Tem is appointed for a one year term, by a majority vote of the City Council, and can be replaced at any time, by a majority vote of the City Council.

2.2.3 The Mayor is the official head of the City for all ceremonial purposes.

2.2.4 Per the Government Code, the Mayor, with the “approval” of the City Council, shall (a) execute official documents (Section 40602b) and (b) make appointments to city boards, commissions, and committees unless otherwise specifically provided by statute (Section 40605). Approval shall be deemed to be a majority vote of the City Council, unless a super majority is required by State law for any specific action.

2.2.5 The Mayor is authorized to send letters stating the City's official position to appropriate legislators as long as it is consistent with the City Council's Legislative Policy.

2.2.6 The Mayor may perform other duties consistent with the mayoral office as prescribed by the Tracy Municipal Code, California Government Code, or as determined by a majority vote of the City Council.

2.2.7 The Mayor does not possess any power of veto.

### 2.3 Council Member Subject Matter Committees

2.3.1 The City Council may organize itself into standing and/or special/ ad hoc subcommittees to facilitate Council review of policy matters and action.

2.3.2 The City Council may create or dissolve standing and/or special/ad hoc sub committees at any time by an affirmative vote of a majority of the City Council. The City Council will endeavor to rotate appointments to standing and ad hoc standing committees to ensure equitable participation.

2.3.3 The City Council, by a majority vote, appoints and removes members to standing and ad hoc committees annually

2.3.4 The Council also appoints and removes Council Members to third member agencies by a majority, annually

- 2.3.5 It is a best practice for non-appointed Council Members not to attend Council standing Committees to avoid the appearance of impropriety and maintain compliance with the Brown Act.

## 2.4 Action by Subject Matter Committees

The assigned subject matter Committee shall have initial jurisdiction over any item assigned to it by the City Council as well as any items being advanced by the City Manager that implement or relate to the overall jurisdictional purpose of such Committee and may take any of the following actions with respect to the assigned item.

The Committee may, by a vote of the consensus, decide to postpone, continue, or table an item on the agenda. On any item on an agenda, the Committee may allow for an informational presentation by City staff relating to the item. With respect to an action item, and after discussion and consideration of the item, the Committee may take one of the following actions:

- 2.4.1 Vote by consensus to approve the recommendation of staff or the originator of the proposed action item and forward the recommendation onto the full Council. The Committee may, as a condition of approval, request additional information to be presented for consideration when the full Council hears the item.
- 2.4.2 Fail to approve any recommended action, in which case the item shall not be forwarded to the full City Council; provided that the City Council shall have jurisdiction to place the item on the agenda for a future City Council meeting, in accordance with the requirements of the Meeting Protocols for agenda setting, if no action was taken on the item due to any one of the following reasons
- Due to the cancellation of a Committee meeting or
  - Due to lack of a quorum, or
  - the Committee was not able to approve any recommended action
- 2.4.3 Propose by a consensus vote of those present one or more alternative recommendation(s) be forwarded to the full City Council for consideration and final action. The Committee may request additional information to be presented for consideration when the full Council hears the item.
- 2.4.4 Reject, by a consensus vote, jurisdiction over the action item and refer the action item back to the City Council with a recommendation for reassignment to another appropriate subject-matter committee.
- 2.4.5 Request, by consensus vote, additional, specified information from staff or the

originator of the proposed action item. The action item may be continued or rescheduled for further consideration at the soonest feasible date available, allowing time for appropriate notice pursuant to the Meeting Protocols and the Brown Act.

2.4.6 With respect to an informational item, following discussion and consideration, a Committee shall take one of the following actions:

- Receive the informational report, by consensus vote, without forwarding the report to the full City Council;
- Receive the informational report and forward the report onto the full City Council, by consensus vote;
- Request, by consensus vote, from staff or the originator of the proposed informational item. The item may be continued or rescheduled for further consideration at the soonest feasible date available, allowing time for appropriate notice pursuant to the Meeting Protocols.

## CHAPTER 3

### LEGAL AND ETHICAL STANDARDS

#### 3.1 Preamble

The residents and businesses of Tracy are entitled to have fair, ethical, and accountable local government. Such a government requires that public officials:

- Comply with both the letter and the spirit of the laws and policies affecting operations of the government;
- Be independent, impartial, and fair in their judgment and actions;
- Use their public office for the public good, not for personal gain; and
- Conduct public deliberations and processes openly, unless legally confidential, in an atmosphere of respect and civility.

To this end, the Tracy City Council has adopted this Code of Conduct and the Norms and Values Statement (Attachment) to encourage public confidence in the integrity of local government and its fair and effective operation.

#### 3.2 Public Interest

3.2.1 Recognizing that stewardship of the public interest must be their primary concern, City Council Members shall work for the common good of the people of Tracy and not for any private or personal interest. City Council Members must endeavor to treat all members of the public and issues before them in a fair and equitable manner.

3.2.2 City Council Members shall comply with the laws of the nation, the State of California, and the City in the performance of their public duties. These laws include, but are not limited to: the United States and California constitutions; the Tracy Municipal Code; laws pertaining to conflicts of interest, election campaigns, financial disclosures, employer responsibilities, and open processes of government; and City ordinances and policies.

### 3.3 Conduct

- 3.3.1 City Council Members shall refrain from abusive conduct, personal charges, or verbal attacks upon the character or motives of other members of the City Council, boards, commissions, committees, staff, or the public.
- 3.3.2 City Council Member duties shall be performed in accordance with these Rules of Conduct and Council Meeting Protocols and Rules of Procedures established by the City Council as well as the Tracy Municipal Code and State law.
- 3.3.3 City Council Members shall inform themselves on public issues, listen attentively to public discussions before the body, and focus on the business at hand.
- 3.3.4 City Council decisions shall be based upon the merits and substance of the matter at hand.
- 3.3.5 It is the responsibility of City Council Members to publicly share substantive information that is relevant to a matter under consideration that they have received from sources outside of the public decision-making process with all other City Council Members and the public prior to taking action on the matter.
- 3.3.6 City Council Members shall not attend internal staff meetings or meetings between City staff and third parties unless authorized by the City Manager.
- 3.3.7 Policy Role
  - 3.3.7.1 City Council Members shall respect and adhere to the Council- Manager structure of the Tracy City government as provided in State law and Tracy Municipal Code.

3.3.7.2 City Council Members shall support the maintenance of a positive and constructive environment for residents, businesses, and City employees.

3.3.8 Campaign Activities. The Tracy City Council strongly encourages its members and City Board and Commission members to abide by the highest ethical standards and best practices relating to campaign activities to ensure that City elections promote decency, honesty and fair play. To that end, all candidates seeking elected office within the City of Tracy, including their official campaign representatives, are urged and encouraged to sign and comply with the Code of Fair Campaign Practices. (Attachment 3) A candidate's signed Code of Fair Campaign Practices shall be posted on the City's Elections Document webpage within three (3) business days of execution. (Reso No. 2021-017)

3.3.8.1 City staff shall send a copy of all notices (e.g. emails) sent to candidates relating to non-compliance with the TMC election sign restrictions to the entire City Council and all other candidates. (Reso No. 2021-017)

3.3.9 Implementation

3.3.9.1 This Code of Conduct shall be included in the regular orientations for City Council candidates. Current Council Members, including those entering office upon election shall sign a City Council Norms and Values Statement (**Attachment 1**) affirming they have read and understand this Tracy City Council Code of Conduct.

3.4 Conflict of Interest

3.4.1 In order to assure their independence and impartiality on behalf of the public good, City Council Members are prohibited from using their official positions to influence government decisions in which they have a financial interest or where they have an organizational responsibility or a personal relationship that would present a conflict of interest under applicable State law.

3.4.2 In accordance with State law, City Council Members must file an annual written disclosure (Form 700) of their economic interests.

- 3.4.3 City Council Members shall not take advantage of services or opportunities for personal gain by virtue of their public office that are not available to the public in general.
- 3.4.4 City Council Members shall respect and preserve the confidentiality of information provided to them concerning the confidential matters of the City. They must neither disclose confidential information without proper legal authorization nor use such information to advance the personal, financial, or private interests of themselves or others.
- 3.4.5 City Council Members should avoid any action that could be construed as, or create the appearance of, using public office for personal gain, including use of City stationery or other City resources to obtain or promote personal business or political campaigns.
- 3.4.6 Public resources not available to the general public (e.g., City staff time, equipment, supplies, or facilities) shall not be used by City Council Members for private gain and, personal and political purposes.
- 3.4.6.1 A mass communication using City resources shall not be sent within the 60 days preceding an election that feature a currently elected or appointed official of the City of Tracy whose name will appear on the ballot at that election. When no currently elected or appointed official is otherwise designated during the 60 days preceding an election, communication of official matters shall be made by the City Manager or designee.
- 3.4.7 In keeping with their role as stewards of the public interest, City Council Members shall not appear on behalf of the private interests of a third party before the City Council or any board, commission, or committee or proceeding of the City, except as permitted by law.
- 3.4.8 To the best of their ability, City Council Members shall represent the official policies and positions of the City Council as a body. When presenting their personal opinions or positions publicly, members shall explicitly state they do not represent the City Council or the City.
- 3.4.9 When serving on external boards, commissions, subcommittees, or Joint Powers of Authorities, City Council representatives must first obtain policy direction from the City Council on any fiscal matter that exceeds

previously allocated budget(s), prior to actions of such external board's, committees or authorities obligating the City.

### 3.4.10 Tracy City Municipal Code Provisions

#### 3.4.10.1 Financial Interests in City Contracts Prohibited.

Section 2.04.050 of the Municipal Code prohibits members of the City Council, appointed employees, the City Treasurer and members of City boards and commissions during their term of office, to contract or subcontract with the City.

Section 2.04.050 also requires a City Council Member to recuse (as defined by the Fair Political Practices Commission) themselves from any vote regarding any Memorandum of Understanding between the City and any lawfully recognized bargaining unit in which a City Council member has an immediate family member. "Immediate family member" is defined as "any and/or all spouses, partners or adult children, whether they live in a single household or not" under this section of the TMC.

#### 3.4.10.2 Nepotism.

The City of Tracy's Nepotism Policy prohibits the initial appointment of an individual to a position within the City of Tracy who has a marital or familial relationship, as defined in Section 4 of the Policy, with any member the City Council, City Manager, or City Attorney.

#### 3.4.10.3 Use of City Property for Private Purposes by City Official/ Employee.

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. (City Personnel Rule 9.2 (d))

#### 3.4.10.4 Political Activities Prohibited; Discrimination.

For informational purposes, the following provisions apply to City and contract employees and consultants:

1. No employee shall, while in uniform or during the employee's working hours, take an active part in any municipal or other political campaign.
2. No employee shall, while in uniform or during the employee's work hours, seek or accept contributions for or against a candidate or issue.
3. An employee may not seek or accept signatures to any petition for or against any such candidate or issue during their work hours.
4. No person in the classified service shall be employed, promoted, demoted, or discharged or in any way favored or discriminated against because of political opinions or affiliations or on any other basis protected by state and/or federal law.

#### 3.4.11 California State Law Regarding Conflicts

While not enforceable by the City, there are four key areas of California State law that regulate the ethics of public officials.

##### 3.4.11.1 Constitutional prohibitions

State law strictly forbids elected and appointed public

officials from accepting free or discounted travel from transportation companies. The penalty for a violation includes the forfeiture of office.

#### 3.4.11.2 Contractual conflicts of interest

This prohibition, found in Government Code Section 1090, applies to elected and appointed officials as well as other City staff members. It prohibits the City from entering into a contract if one of its members (i.e., a Council Member) is financially interested in the contract. If the bar (or prohibition) applies, the agency is prohibited from entering into the contract whether or not the official with the conflict participates or not. In some limited circumstances, officials are allowed to disqualify themselves from participation and the agency may enter into the contract.

Financial interest has been defined to include employment, stock/ ownership interests, and certain membership on the board of directors of a for-profit or nonprofit corporation, among others. Violations can be charged as a felony. A person convicted of violating Section 1090 is prohibited from ever holding public office in the State.

#### 3.4.11.3 Political Reform Act - Conflicts of Interest

The Political Reform Act (PRA) was adopted by the voters in 1974 and is the primary expression of the law relative to conflicts of interest (and campaign finance) in California. The Act created the Fair Political Practices Commission (FPPC), a five-member State board which administers the Act.

The Act and the regulations are complex and are continuously subjected to official interpretation. The following synopsis of key parts of the Act will be helpful in spotting issues; however, the FPPC and/or City Attorney should be consulted for further advice and clarification.

With respect to conflicts of interest, the FPPC has promulgated a regulation which establishes an analysis which assists in determining whether a public official is participating in a government decision in which they have a qualifying financial interest and whether it is reasonably foreseeable that the decision will have a material financial effect on the public official's financial interest, which is distinguishable from the effect the decision will have on the public generally.

#### 3.4.11.3.1 Political Reform Act-Enforcement

The FPPC can assess administrative fines and penalties for violation of the Act. The District Attorney and the State Attorney General may prosecute violators as civil or criminal matters. Violators may also be removed from office pursuant to Government Code Section 3060.

#### 3.4.11.4 Common Law Conflicts of Interest

This is the judicial expression of the public policy against public officials using their official position for private benefit. An elected official bears a fiduciary duty to exercise the powers of office for the benefit of the public and is not permitted to use those powers or their office for the benefit of any private interest. This common law doctrine continues to survive the adoption of various statutory expressions of conflict law.

#### 3.4.11.5 Appearance of Impropriety

When participation in action or decision-making as a public official does not implicate the specific statutory criteria for conflicts of interest; however, participation still does not "look" or "feel" right, that public official has probably encountered the appearance of impropriety.

For the public to have faith and confidence that government authority will be implemented in an even-handed and ethical manner, public officials may need to step aside even though no technical conflict exists. An example is where a long-term nonfinancial affiliation exists between the public official and an applicant or the applicant is related by blood or marriage to the official. For the good of the community, members who encounter the appearance of impropriety should step aside.

### 3.5 AB 1234-Required Ethics Training

AB 1234 requires elected or appointed officials who are compensated for their service or reimbursed for their expenses to take two hours of training in ethics principles and laws every two years. Those who enter office after January 1, 2006 must receive the training within a year of starting their service. They must then receive the training every two years after that.

The training must cover general ethics principles relating to public service and ethics laws including:

- Laws relating to personal financial gain by public officials (including bribery and conflict of interest laws);
- Laws relating to office-holder perks, including gifts and travel restrictions, personal and political use of public resources, and prohibitions against gifts of public funds;
- Governmental transparency laws, including financial disclosure requirements and open government laws (the Brown Act and Public Records Act); Laws relating to fair processes, including fair contracting requirements, common law bias requirements, and due process

NOTE: State laws governing conflicts of interest are written to ensure that actions are taken in the public interest. These laws are very complex. Council Members should consult with the City Attorney, their own attorney, or the Fair Political Practices Commission for guidance in advance.

### 3.6 Code of Conduct Compliance and Enforcement

Consistent with this oath is the requirement of this Council policy to comply with the laws as well as report violations of the laws and policy of which they become aware.

- 3.6.1 A request for censure of a member of the City Council may be submitted to the City Attorney by any member of the Council ("Initiating Member"), with the support of another Council member ("Seconding Member"). Censure is a formal statement or resolution by the Council officially reprimanding a City Council Member for conduct that may include sanctions. It is the intent of the City Council that a request for censure be used only for significant and/or repeated violations of this Code of Conduct and not a means to address politically or personally motivated disagreements amongst City Council Members.

The request shall contain the specific charges on which the proposed censure is based. The City Attorney shall deliver a copy of the request for censure and the charges to each member of the City Council at least 72 hours after receipt of the request. The request for censure shall first be considered by a neutral mediator selected by the Presiding Judge of the Superior Court of California of the County of San Joaquin. The neutral mediator shall conduct an investigation and prepare a written analysis of the allegation and their preliminary findings and recommendation. Said investigation shall, at a minimum, include interviews with the Initiating Member and the City Council Member who is the subject of the request. The neutral mediator's recommendation shall be to: (a) set the matter for a censure hearing and whether censure is warranted or (b) no further action should be taken with respect to the request. The neutral mediator shall present its recommendation to the City Council for its consideration and action within thirty (30) days of completing their investigation.

- 3.6.1.1 The censure request shall be agendized at the next regular City Council meeting following receipt of the neutral mediator's written findings and recommendation. The City Council, as a body, shall determine whether or not to accept the neutral mediator's recommendation. If the City Council decides to set the matter for a censure hearing, it shall schedule it no sooner than two weeks after its determination to hear the matter. It may not schedule the matter during any previously scheduled excused absence of the subject City Council Member. Written notice of the hearing shall be delivered in person to the Member of the City Council subject to the censure hearing at least ten (10) days in advance of the scheduled hearing. If the City Council decides that no further action is

required, the City Council may also request the Initiating Member either reimburse the City the cost of the neutral mediator's services from personal funds (not campaign funds), not to exceed \$2,500, or forgo a month's salary as a City Council Member. A report regarding the Initiating Member's compliance with that request shall be presented to City Council within sixty (60) days of that request.

3.6.1.2 At the censure hearing, the Member of the City Council who is the subject of the request for censure shall be given the opportunity to make an opening and a closing statement, to call witnesses on their behalf and to question their accusers. The Member subject to the charges may be represented by a person or persons of their choice whether or not an attorney at law and may have that representative speak or question witnesses on their behalf. The questioning or cross-questioning of witness may be reasonably limited by the person chairing the hearing.

3.6.1.3 Testimony shall be taken only from witnesses having direct knowledge of facts or circumstances relevant to the specific charges under consideration. However, the rules of evidence and judicial procedure applicable in courts of law shall not be applied to this hearing, and the procedures shall be generally informal.

3.6.2 At the discretion of the City Council, sanctions may be imposed as a result of a censure. These sanctions may be applied individually or in combination. They include, but are not limited to:

3.6.2.1 Public Admonishment - A reproof or verbal warning directed to a City Council Member about a particular type of behavior that violates City policy.

3.6.2.2 Revocation of Special Privileges -A revocation of a Council Member's Council Committee assignments, such as standing and ad hoc committees, regional boards and commissions, and other board/committee appointments. Other revocations may include temporary suspension of official travel, conference participation, and ceremonial titles.

3.6.3 Nothing in this Section shall limit the City Council's ability to informally address conduct considered to be not significant or a minor violation of this Code, which may include informal counseling from one City Council Member to another, and a City Council Member to a Council advisory body member.

## CHAPTER 4 COMMUNICATIONS

### 4.1 Relationship/Communications with Staff

Staff serves the City Council as a whole, therefore:

- 4.1.1 A City Council Member shall not direct staff in person or in writing to initiate any action, change a course of action, or prepare any report.
- 4.1.2 Requests for information and corresponding responses made by the City Council Members will be shared with the full City Council.
- 4.1.3 City Council Members shall not attempt to pressure or influence discussions, recommendations, workloads, schedules, or department priorities without first consulting with the City Manager and obtaining the approval of a majority of the City Council.
- 4.1.4 When preparing for City Council meetings, City Council Members should direct questions ahead of time to the City Manager so that staff can provide the desired information at the City Council meeting.
- 4.1.5 Any concerns by a Member of the City Council regarding the behavior or work of a City employee should be directed to the City Manager privately to ensure the concern is resolved. City Council Members shall not reprimand employees directly nor should they communicate their concerns to anyone other than the City Manager.
- 4.1.6 City Council Members may direct routine inquiries to either the City Manager or the appropriate department head, at the City Manager's discretion.
- 4.1.7 City Council Members serving on Council committees or as the City's representative to an outside agency may interact directly with City staff assigned to that effort as the City Manager's designee. The City

staff member so designated and assigned will keep the City Manager appropriately informed.

#### 4.2 Council Relationship/Communication with Council Advisory Bodies

4.2.1 City Council Members shall not attempt to pressure or influence board, commission, or committee decisions, recommendations, or priorities absent the approval of the majority of the City Council.

4.2.2 It is a best practice that City Council Members refrain from attending Board, Commission, and/or Committee meetings to avoid the appearance of impropriety and to maintain compliance with the Brown Act.

#### 4.3 Handling of Litigation and Other Confidential Information

4.3.1 All written materials and verbal information provided to City Council Members on matters that are confidential and/or privileged under State law shall be kept in complete confidence to ensure that the City's position is not compromised. No disclosure or mention of any information in these materials may be made to anyone other than City Council Members, the City Attorney, or City Manager.

4.3.1.1 Confidential materials provided in preparation for and during Closed Sessions shall not be retained and documents must be returned to staff at the conclusion of the Closed Session.

4.3.1.2 City Council Members may not request confidential written information from staff that has not been provided to all City Council Members.

#### 4.4 Representing an Official City Position

4.4.1 City Council Members may use their title only when conducting official City business, for information purposes, or as an indication of background and expertise, carefully considering whether they are exceeding or appearing to exceed their authority.

- 4.4.2 Once the City Council has taken a position on an issue, all official City correspondence regarding that issue will reflect the City Council's adopted position.
- 4.4.3 The Mayor is authorized to send letters on City letterhead stating the City's official position to appropriate legislators as long as it is consistent with the City Council's Legislative Policy.
- 4.4.4 City letterhead may be used by City Council Members only for official City business and/or to represent a policy action taken by the City Council, as a body.
- 4.4.5 If a Member of the City Council appears before another governmental agency organization to give a statement on an issue affecting the City, the City Council Member should indicate the majority position and opinion of the City Council.
- 4.4.6 Personal opinions and comments may be expressed only if the City Council Member clarifies that these statements do not reflect the official position of the City Council.

#### 4.5 Quasi-Judicial Role/*Ex Parte* Contacts

The City Council has a number of roles. It legislates and makes administrative and executive decisions. The City Council also acts in a quasi-judicial capacity or "like a judge" when it rules on various permits, licenses, and land use entitlements.

In this last capacity, quasi-judicial, the City Council holds a hearing, takes evidence, determines what the evidence shows, and exercises its discretion in applying the facts to the law shown by the evidence. It is to these proceedings that the rule relative to *ex parte* contacts applies.

- 4.5.1 *Ex Parte* Contacts/Fair Hearings. The City Council shall refrain from receiving information and evidence on any quasi-judicial matter while such matter is pending before the City Council or any agency, board, or commission thereof, except at the public hearing.

As an elected official, it is often impossible to avoid such contacts and exposure to information. Therefore, if any member is exposed to information or evidence about a pending matter outside of the public hearing, through contacts by constituents, the applicant or through site visits, the member shall disclose all such information and/or evidence acquired from such contacts, which is not otherwise included in the written or oral staff report, during the public hearing, and before the public comments period is opened.

Matters are "pending" when an application has been filed. Information and evidence gained by members via their attendance at noticed public hearings before subordinate boards and commissions are not subject to this rule.

#### 4.6 No Attorney-Client Relationship

City Council Members who consult the City Attorney, their staff, and/or outside attorney(s) engaged by the City Attorney to work on behalf of the City cannot enjoy or establish an attorney-client relationship with said attorney(s) by consulting with or speaking to same. Any attorney-client relationship established belongs to the City, acting through the City Council, and as may be allowed in State law for purposes of defending the City and/or the City Council in the course of litigation and/or administrative procedures, etc.

## CHAPTER 5 COUNCIL ADVISORY BODIES

### 5.1 Citizen Boards and Commissions Generally

- 5.1.1 The Tracy City Council establishes various Citizen Boards, Commissions, and Committee through the Tracy Municipal Code or by Resolution: Planning Commission to advise the Council on land use matters (Chapter 10.04), a Parks and Community Services Commission (Chapter 7.16) and the Youth Advisory Commission (Chapter 7.16). the Measure V Residents' Oversight Committee (Resolution No. 2004-152), Tracy Arts Commission (Ordinance No. 501), Transportation Advisory Commission (Resolution No. 2007-120), and Environmental sustainability Commission (Resolution 2023-XX).
- 5.1.2 The rules of procedure and code of conduct that govern the City Council apply with equal force to all Council advisory boards and commissions.
- 5.1.3 The City Council may also establish by ordinance or resolution, boards, commissions, and committees to assist the Council in making its policy decisions. The City Council has the inherent power to create advisory bodies.
- 5.1.4 City boards and commissions, (collectively "Council advisory bodies") provide policy recommendations to Council; they do not set or establish City policy or provide administrative direction to City staff.
- 5.1.5 City boards and commissions are advisory in nature and therefore do not represent City's official position on city matters.
- 5.1.6 Appointments to boards and commissions, are made by a majority vote of the Council. Appointees to Council advisory bodies serve at the pleasure of the City Council.

## 5.2 Citizen Board and Commission Organization and Conduct

- 5.2.1 Annually, each board, commission, and committee elects one of their members to serve as the chair (presiding officer) and vice-chair.
- 5.2.2 Boards and commissions hold regular and special meetings as required. The conduct of board, commission, and committee meetings are governed by the same rules of policy and procedure as the City Council.
- 5.2.3 Boards and commissions should comply with all applicable open meeting and conflict-of-interest laws of the State.
- 5.2.4 Upon appointment or reappointment, Council advisory body members (including all boards and commissions members) shall sign a Council Advisory Body Norms and Values statement (**Attachment 2**) affirming they have read and understand this City of Tracy City Council Code of Conduct.

## 5.3 Board and Commission Appointments

- 5.3.1 Resolution No. 2004-152 establishes the board and commission appointment/selection process and requirements for residency.
- 5.3.2 The term of office for each board, commission, or committee member is 4 years, with the exception of the Measure V Residents' Oversight Committee which is 3 years.
- 5.3.3 The City Clerk provides application forms, maintains a listing of all applications received, and solicits applications when vacancies occur.

## 5.4 Boards and Commissions- Vacancy and Selection/Appointment Processes

Resolution No. 2004-152 outlines procedures for filling a board and commission vacancy and selection and appointment process. The Council appoints all City boards, commissions, and committee members.

5.4.1 Resignations may be submitted at any time to the City Council either directly or through the board, commission, or committee chair. Resignations are effective upon submittal.

#### 5.5 Boards, Commissions, and Committees - Removal

A board member, commissioner, or committee member serves at the pleasure of the Council and may be removed at any time. The removal of a member must comply with the applicable TMC Sections or the board/committee/commission's bylaws and in accordance with the applicable procedure.

## CHAPTER 6 COUNCIL FINANCIAL MATTERS

### 6.1 Compensation

- 6.1.1 Pursuant to Ordinance No. 1094, the Tracy Mayor and City Council receive a monthly salary. The amount is the salary limit established by the State Legislature for members of the City Council of general law cities having a population range within which the City of Tracy falls, as specified in California Government Code Section 36516(a).
  
- 6.1.2 The salary of the Mayor and City Council should be reviewed every two years.

### 6.2 Benefits

- 6.2.1 The California Government Code provides that City Council Members may receive City-funded health, retirement, and other benefits. City-funded medical, dental, and life insurance plan benefits are provided. The Council Policy Providing City Paid Health Insurance for City Treasurer, City Clerk, and City Council, adopted by Resolution No. 2003-391, states that an elected official is not eligible for City-funded health benefits if the official or the official's spouse has employer-paid health insurance.

### 6.3 City Council Budget and Expenses

- 6.3.1 City Council Resolution No. 2007-075 provides policy guidance regarding Council expenditures for equipment, supplies and communications; travel; local expenses; and eligible reimbursements.

CITY OF TRACY CITY COUNCIL  
NORMS AND VALUES STATEMENT

PREAMBLE

The residents and businesses of Tracy are entitled to have fair, ethical, and accountable local government. Such a government requires that public officials:

- Comply with both the letter and the spirit of the laws and policies affecting operations of the government.
- Be independent, impartial and fair in their judgment and actions.
- Use their public office for the public good, not for personal gain.
- Conduct public deliberations and processes openly, unless legally confidential, in an atmosphere of respect and civility.

To this end, the Tracy City Council has adopted a Code of Conduct to encourage public confidence in the integrity of local government and its fair and effective operation.

City Council Members shall sign this Norms and Values statement upon assuming office and upon reelection to office as a symbol of each Council Member's continuing commitment to abide by the principles of this code.

1. Act in the Public Interest

Recognizing that stewardship of the public interest must be their primary concern, City Council Members shall work for the common good of the people of Tracy and not for any private or personal interest, and they will endeavor to treat all persons, claims, and transactions in a fair and equitable manner.

2. Comply with the Law

City Council Members shall comply with the laws of the nation, the State of California, and the City in the performance of their public duties. These laws include, but are not limited to: the United States and California constitutions;

the Tracy City Municipal Code; laws pertaining to Council-Manager form of government, conflicts of interest, election campaigns, financial disclosures, employer responsibilities, and open processes of government; and City ordinances and policies.

3. Conduct of Members

City Council Members shall refrain from abusive conduct, personal charges, or verbal attacks upon the character or motives of other members of the City Council, boards, commissions, committees, staff, or the public.

4 Respect for Process

City Council Member duties shall be performed in accordance with the processes and rules of order established by the City Council.

5. Conduct of Public Meetings

City Council Members shall inform themselves of public issues, listen attentively to public discussions before the body, and focus on the business at hand.

6. Decisions Based on Merit

City Council decisions shall be based upon the merits and substance of the matter at hand.

7. Communication

It is the responsibility of City Council Members to share substantive information that is relevant to a matter under consideration that they have received from sources outside of the public decision-making process with all other City Council Members.

8. Coordination with City Staff

Appropriate City staff should be involved when City Council Members meet with officials from other agencies and jurisdictions to ensure proper staff support as needed and to keep staff informed.

9. Disclosure of Corruption

All City officials shall take an oath upon assuming office, pledging to uphold the constitution and laws of the City, the State, and the Federal government. As part of this oath, officials commit to disclosing to the appropriate authorities and/or to the City Council any behavior or activity that may qualify as corruption, abuse, fraud, bribery, or other violation of the law.

10. Conflict of Interest

In order to assure their independence and impartiality on behalf of the public good, City Council Members shall not use their official positions to influence government decisions in which they have a financial interest or where they have an organizational responsibility or a personal relationship that would present a conflict of interest under applicable State law.

In accordance with the law, members shall file written disclosures of their economic interests and if they have a conflict of interest regarding a particular decision, refrain from participating in that decision unless otherwise permitted by law.

11. Gifts and Favors

City Council Members shall not take advantage of services or opportunities for personal gain by virtue of their public office that are not available to the public in general. They shall refrain from accepting gifts, favors, or promises of future benefits that might compromise their independence of judgment or action or give the appearance of being compromised.

12. Confidential Information

City Council Members shall respect and preserve the confidentiality of information provided to them concerning the confidential matters of the City. They shall neither disclose confidential information without proper legal authorization nor use such information to advance their personal, financial, or private interests.

13. Use of Public Resources

Public resources not available to the general public (e.g., City staff time, equipment, supplies, or facilities) shall not be used by City Council Members for private gain or personal and/or campaign purposes.

14. Representation of Private Interests

In keeping with their role as stewards of the public trust, City Council Members shall not appear on behalf of the private interests of a third-party before the City Council or any board, commission, or committee or proceeding of the City.

15. Advocacy

To the best of their ability, City Council Members shall represent the official policies and positions of the City Council. When presenting their personal opinions or positions, members shall explicitly state that they do not represent the City Council or the City.

16. Improper Influence

City Council Members shall refrain from using their position to improperly influence the deliberations or decisions of City staff, boards, commissions, or committees.

17. Policy Role of Members

City Council Members shall respect and adhere to the Council-Manager structure of Tracy City government as provided in State law and the City Municipal Code.

18. Positive Work Environment

Council Members shall support the maintenance of a positive and constructive environment for residents, businesses, and City employees.

19. Implementation

Ethics standards shall be included in the regular orientations for City Council candidates. Council Members entering office shall sign a statement affirming they read and understood the City of Tracy's City Council Code of Conduct.

20. Campaign Activities.

City Council Members who seek elected office within the City shall endeavor to conduct their campaign activities in a manner that promotes decency, honesty and fair play and in accordance with the Code of Fair Campaign Elections Code (Section 20400 et seq.).

21. Compliance and Enforcement

Council Members themselves have the primary responsibility to assure that ethical standards are understood and met and that the public can continue to have **full** confidence in the integrity of City government.

This City Council Norms and Values statement shall be considered to be a summary of the longer City Council Code of Conduct document. The City Council Code of Conduct document shall be considered to be the definitive document relating to ethical conduct by Tracy City Council Members.

I affirm that I have read and understand the City of Tracy City Council Norms and Values statement.

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Signature

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Date

CITY OF TRACY  
COUNCIL ADVISORY BODY  
NORMS AND VALUES STATEMENT

**PREAMBLE**

The residents and businesses of Tracy are entitled to have fair, ethical, and accountable local government. Such a government requires that public officials, including Council advisory body members:

- Comply with both the letter and the spirit of the laws and policies affecting operations of the government.
- Be independent, impartial, and fair in their judgment and actions.
- Use their public office for the public good, not for personal gain.
- Conduct public deliberations and processes openly, unless legally confidential, in an atmosphere of respect and civility.

To this end, Council advisory body members are expected to adhere to the Code of Conduct adopted by the Tracy City Council to encourage public confidence in the integrity of local government and its fair and effective operation.

Council advisory body members shall sign this Norms and Values statement at the first meeting of the board, commission, or committee upon assuming office and, if applicable, upon reappointment to the board, commission, or committee as a symbol of each Council advisory body member's commitment to abide by the principles of this code during their term.

1. Act in the Public Interest

Recognizing that stewardship of the public interest must be their primary concern, Council advisory body members shall work for the common good of the people of Tracy and not for any private or personal interest, and they will endeavor to treat all persons, claims, and transactions in a fair and equitable manner.

2. Comply with the Law

Council advisory body members shall comply with the laws of the nation, the State of California, and the City in the performance of their public duties. These laws include, but are not limited to: the United States and California Constitutions; the Tracy City Municipal Code; laws pertaining to the Council-

Manager form of government, conflicts of interest, election campaigns, financial disclosures, employer responsibilities, and open processes of government; and City ordinances and policies.

3. Conduct of Council Advisory Body Members

Council advisory body members shall refrain from abusive conduct, personal charges, or verbal attacks upon the character or motives of Council Members; other members of the Council advisory body; other boards, commissions, or committees; staff; or the public.

4. Respect for Process

Council advisory body member duties shall be performed in accordance with the processes and rules of order established by the City Council.

5. Conduct of Public Meetings

Council advisory body members shall inform themselves of public issues, listen attentively to public discussions before the body, and focus on the business at hand.

6. Decisions Based on Merit

Council advisory body members shall base their decisions upon the merits and substance of the matter at hand.

7. Communication

It is the responsibility of Council advisory body members to share substantive information that is relevant to a matter under consideration that they have received from sources outside of the public decision-making process with all other Council advisory body members.

8. Coordination with City Staff

Appropriate City staff should be involved when Council advisory body members meet with officials from other agencies and jurisdictions to ensure proper staff support, as needed, and to keep staff informed.



9. Disclosure of Corruption

All City officials shall take an oath upon assuming office, pledging to uphold the Constitution and laws of the City, the State, and the Federal government. As part of this oath, officials commit to disclosing to the appropriate authorities and/or to the City Council any behavior or activity that may qualify as corruption, abuse, fraud, bribery, or other violation of the law.

10. Conflict of Interest

In order to assure their independence and impartiality on behalf of the public good, Council advisory body members shall not use their official positions to influence government decisions in which they have a financial interest or where they have an organizational responsibility or a personal relationship that would present a conflict of interest under applicable State law.

In accordance with the law, members shall file written disclosures of their economic interests and if they have a conflict of interest regarding a particular decision, refrain from participating in that decision unless otherwise permitted by law.

11. Gifts and Favors

Council advisory body members shall not take advantage of services or opportunities for personal gain by virtue of their public office that are not available to the public in general. They shall refrain from accepting gifts, favors, or promises of future benefits that might compromise their independence of judgment or action or give the appearance of being compromised.

12. Confidential Information

Council advisory body members shall respect and preserve the confidentiality of information provided to them concerning the confidential matters of the City. They shall neither disclose confidential information without proper legal authorization nor use such information to advance their personal, financial, or private interests.

13. Use of Public Resources

Public resources not available to the general public (e.g., City staff time, equipment, supplies, or facilities) shall not be used by Council advisory body members for private gain or personal and/or campaign purposes.

14. Representation of Private Interests

In keeping with their role as stewards of the public trust, Council advisory body members shall not appear on behalf of the private interests of a third party before the City Council or any board, commission, or committee, or proceeding of the City.

15. Advocacy

To the best of their ability, Council advisory body members shall represent the official policies and positions of the City of Tracy. When presenting their personal opinions or positions, members shall explicitly state that they represent neither the Council advisory body nor the City.

16. Improper Influence

Council advisory body members shall refrain from using their position to improperly influence the deliberations or decisions of City staff, boards, commissions, or committees.

17. Policy Role of Members

Council advisory body members shall respect and adhere to the Council-Manager structure of Tracy City government as provided in State law and the City Municipal Code.

18. Positive Work Environment

Council advisory body members shall support the maintenance of a positive and constructive environment for residents, businesses, and City employees.  
Attachment 2 to City Council Code of Conduct

19. Implementation

Ethics standards shall be included in the regular orientations for Council advisory body members. Upon entering office and upon reappointment, Council advisory body members shall sign a statement affirming they read and understood the City of Tracy's City Council Code of Conduct.

20. Campaign Activities.

Council advisory body members who seek elected office within the City shall endeavor to conduct their campaign activities in a manner that promotes decency, honesty and fair play and in accordance with the Code of Fair Campaign Elections Code (Section 20400 et seq.).

21. Compliance and Enforcement

Council advisory body members themselves have the responsibility to assure that ethical standards are understood and met, and that the public can continue to have full confidence in the integrity of City government.

The Council Advisory Body Norms and Values statement shall be considered to be a summary of the longer City Council Code of Conduct document. The City Council Code of Conduct document shall be considered to be the definitive document relating to ethical conduct by Tracy City Council advisory body members.

I affirm that I have read and understand the City of Tracy City Council Code of Conduct.

---

Signature

---

Date

## **CODE OF FAIR CAMPAIGN PRACTICES**

(Elections Code § 20440)

There are basic principles of decency, honesty, and fair play which every candidate for public office in the State of California has a moral obligation to observe and uphold in order that, after vigorously contested but fairly conducted campaigns, our citizens may exercise their constitutional right to a free and untrammelled choice and the will of the people may be fully and clearly expressed on the issues.

THEREFORE:

- (1) I SHALL CONDUCT my campaign openly and publicly, discussing the issues as I see them, presenting my record and policies with sincerity and frankness, and criticizing without fear or favor the record and policies of my opponents or political parties that merit this criticism.
- (2) I SHALL NOT USE OR PERMIT the use of character defamation, whispering campaigns, libel, slander, or scurrilous attacks on any candidate or his or her personal or family life.
- (3) I SHALL NOT USE OR PERMIT any appeal to negative prejudice based on a candidate's actual or perceived race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, age, sexual orientation, sex, including gender identity, or any other characteristic set forth in Section 12940 of the Government Code, or association with another person who has any of the actual or perceived characteristics set forth in Section 12940 of the Government Code.
- (4) I SHALL NOT USE OR PERMIT any dishonest or unethical practice that tends to corrupt or undermine our American system of free elections, or that hampers or prevents the full and free expression of the will of the voters including acts intended to hinder or prevent any eligible person from registering to vote, enrolling to vote, or voting.
- (5) I SHALL NOT coerce election help or campaign contributions for myself or for any other candidate from my employees.
- (6) I SHALL IMMEDIATELY AND PUBLICLY REPUDIATE support deriving from any individual or group that resorts, on behalf of my candidacy or in opposition to that of my opponent, to the methods and tactics that I condemn. I shall accept responsibility to take firm action against any subordinate who violates any provision of this code or the laws governing elections.
- (7) I SHALL DEFEND AND UPHOLD the right of every qualified American voter to full and equal participation in the electoral process.

I, the undersigned, candidate for election to public office in the State of California or treasurer or chairperson of a

committee making any independent expenditures, hereby voluntarily endorse, subscribe to, and solemnly pledge myself to conduct my campaign in accordance with the above principles and practices.

Print Name: \_\_\_\_\_ Signature: \_\_\_\_\_

Date:.....



# **CITY COUNCIL CODE OF CONDUCT**

Adopted on October 15, 2019 by Resolution No. 2019-203

Amended on July 21, 2020 by Resolution No. 2020-133

Amended on February 16, 2021 by Resolution No. 2021-017

Amended on October 19, 2021 by Resolution No. 2021-146

## TABLE OF CONTENTS

### CHAPTER 1 - FORM OF GOVERNMENT

1.1	Preamble.....	4
1.2	Form of Government.....	4
1.3	City Manager Appointment, Power and Duties.....	4
1.4	City Attorney Appointment and Responsibilities.....	5

### CHAPTER 2 - COUNCIL POWERS AND RESPONSIBILITIES

2.1	City Council Generally .....	6
2.2	Mayor- and- <del>Vice</del> -Mayor <u>Pro Tem</u> -Appointment, Power, and Duties .....	6
2.3	Council <u>ActionsMember Subject Matter Committees</u> .....	7
2.4	<u>Council-MemberAction by Subject Matter</u> Committees .....	8

### CHAPTER 3 - LEGAL AND ETHICAL STANDARDS

3.1	Preamble.....	<u>910</u>
3.2	Public Interest .....	<u>910</u>
3.3	Council Conduct.....	<u>4011</u>
3.4	Conflict of Interest.....	<u>4412</u>
3.5	AB 1234-Required Ethics Training.....	<u>4718</u>
3.6	Code of Conduct Compliance and Enforcement.....	<u>4819</u>

### CHAPTER 4 - COMMUNICATIONS

4.1	Relationship/Communications with Staff.....	<u>2021</u>
4.2	Council Relationship/Communication with Council- Advisory- Bodies.....	<u>224</u>
4.3	Handling of Litigation and Other Confidential Information .....	<u>2422</u>
4.4	Representing an Official City Position .....	<u>2422</u>
4.5	Quasi-Judicial Role/Ex Parte Contacts.....	<u>2223</u>
4.6	No Attorney-Client Relationship .....	<u>2324</u>

CHAPTER 5 - COUNCIL ADVISORY BODIES

5.1 Citizen Boards and, Commissions and Committees Generally.....2425

5.2 Citizen Board and, Commission and Committee Organization and Conduct. 2526

5.3 Board and, Commission and Committee Appointments ..... 2526

5.4 Boards and, Commissions and Committees - Vacancy of Office and Selection/Appointment Processes .....2526

5.5 Boards, Commissions, and Committees Vacancy of Office- Removal.....27

CHAPTER 6 - COUNCIL FINANCIAL MATTERS

6.1 Compensation ..... 2728

6.2 Benefits ..... 2728

6.3 City Council Budget and Expenses ..... 2728

**APPENDIX**

- A. Tracy Municipal Code (TMC) 2.08.060
- B. Council Appointed Committees
- C. City Nepotism Policy
- D. City Personnel Rule 9.2 (d)
- E. Resolution No. 2004-152 - Board, Commission, Committee Vacancy, Selection, and Defining Residency Requirements, for Appointee Bodies
- F. Ordinance 1094
- G. Resolution No. 2007-075 - Council Travel Procedures

ATTACHMENT 1 - City Council Code of Conduct Norms and Values Statement

ATTACHMENT 2- Council Advisory Body Norms and Values Statement

ATTACHMENT 3 - Code of Fair Campaign Practices

# CHAPTER 1

## FORM OF GOVERNMENT

### 1.1 Preamble

The legal responsibilities of the Tracy City Council are set forth by applicable state and federal laws. In addition, the City Council has adopted regulations, including this Code of Conduct Policy, that hold Council Members to standards of conduct above and beyond what is required by law. This Policy is written with the assumption that Council Members, through training, are aware of their legal and ethical responsibilities as elected officials.

### 1.2 Form of Government

The City of Tracy operates under a Council-Manager form of government as prescribed by the Tracy Municipal Code ("TMC"). Accordingly, the Mayor and members of the Council are elected at-large, provide legislative direction, set City policy, and ultimately answer to the public.

### 1.3 City Manager Appointment, Power and Duties

The City Manager is appointed by a majority vote of the Council and serves as the City's chief administrative officer and is responsible for directing the day-to-day operations of the City and implementing policy direction per Section 2.08.060 of the TMC (attached). Specifically, Section 2.08.070 of the TMC prohibits interference by either the City Council or any of its members with the City Manager's execution of their powers or duties:

- Neither ~~t~~The City Council, as a body, nor a member shall interfere with the appointment by the City Manager of any of the department heads or any person to any office or employment.
- Additionally, neither the City Council, as a body, nor any of its members shall interfere with the City Manager's power to remove any of those persons.
- Neither the Council nor any of its members shall give orders to any subordinate of the City Manager, either publicly or privately.
- ~~The City Council nor any of its members shall interfere with the administration of the City Attorney or give orders to the subordinates of the City Attorney.~~
- The City Manager and his/her senior staff shall conduct themselves in accordance with the International City Management Association (ICMA) Code of Ethics.

The City Council and its members shall deal only with the City Manager with respect to the administrative services or operational matters of the City.

#### 1.4 City Attorney Appointment and Responsibilities

The City Attorney is appointed by a majority vote of the City Council, ~~Per~~ Section 12.08.40, and serves as the City's sole legal counsel. The City Manager shall coordinate with and receive input from the City Attorney on all administrative, policy and operational matters that have or may have legal implications to the City. Without limiting the foregoing, the City Attorney shall have the following powers and duties: the City Attorney is responsible for approving as to form all subdivision improvement agreements and security, deferred improvement agreements, liability agreements and insurance, and all governing documents for a community apartment project, condominium, stock cooperative, or conversion.

- Neither the City Council, as a body, nor any of its members shall interfere with the administration of the City Attorney's Office or give orders to the subordinates of the City Attorney.
- The City Attorney shall serve as the legal counsel to the City Council and its standing committees, Planning Commission, City Manager, and all City staff pertaining to City matters.
- The City Attorney shall review and approve all ordinances, resolutions, and related staff reports for the City Council, its standing committees, and boards and commissions conducting meetings under the Brown Act.
- The City Attorney shall review and approve, as to form and legality, all contracts, agreements, bonds, and other legal documents related to the conduct of the City's affairs.
- The City Attorney shall interpret and opine on the implementation of the Tracy Municipal Code on behalf of the City and shall prosecute violations of the Tracy Municipal Code in Superior Court.
- The City Attorney may engage outside counsel to implement the functions of the City Attorney's Office, and no other City official, including the City Manager, City Council member or staff may independently engage outside counsel on City-related matters.
  
- The City Attorney and his/her senior staff shall, at all times, conduct themselves in accordance with the California Rules of Professional Conduct, established by the California State Bar, and the Ethical Principles for City Attorneys, adopted by the League of California Cities' City Attorneys Department.

## CHAPTER 2 COUNCIL POWERS AND RESPONSIBILITIES

### 2.1 City Council Generally

2.1.1 The City Council has the power, in the name of the City, to do and perform all acts and things appropriate to a municipal entity and the general welfare of its inhabitants, which are not specifically prohibited by the constitution, and/or State or Federal laws.

2.1.2 The Council acts as a body. Council policy and directives are established by majority vote, ~~and unless otherwise required by state law.~~ a decision of the majority binds the Council to a course of action, unless otherwise required by State law.

2.1.3 No Council Member has extraordinary powers beyond those of other members (except as may otherwise be provided in State law). All members, including the Mayor, have equal powers.

2.1.4 No member of the Council is permitted to hold any other City office or City employment.

2.1.5 Council Members are appointed by the Council body to serve on various boards or committees, including Council standing and ad hoc committees, and third agency member boards and committees.

~~2.1.6 Based on available resources as determined by the City Manager, unless directed by the City Council, the Council as a body may participate in public relations activities regarding issues or topics pertaining to City business or that affect the community at-large. This may include, but is not limited to the dissemination of information via press release, video, social media, and/or other means of communication.~~

### 2.2 Mayor and Mayor Pro Tem~~rn~~ - Appointment, Power, and Duties

2.2.1 The Mayor is directly elected by the voters to serve a two-year term. The selection of the Mayor ~~Pro Tern~~ occurs every two years in December

after the City receives the certified results from the County Registrar of Voters electing a Mayor.

2.2.2 A Mayor Pro Tern is appointed for a one year term, by ~~the a majority vote of the City Council,~~ and can be replaced at any time, by a majority vote of the City Council.

~~2.2.3 The Mayor is the presiding officer of the City Council. In the Mayor's absence, the Mayor Pro Tern shall perform the duties of the Mayor.~~

~~2.2.4~~ 2.2.3 The Mayor is the official head of the City for all ceremonial purposes.

~~2.2.5~~ 2.2.4 Per the Government Code, the Mayor, with the "approval" of the City Council, shall (a) execute official documents (Section 40602b) and (b) make appointments to city boards, commissions, and committees unless otherwise specifically provided by statute (Section 40605). Approval shall be deemed to be a majority vote of the City Council, unless a super majority is required by State law for any specific action.

~~2.2.6~~ 2.2.5 The Mayor is authorized to send letters stating the City's official position to appropriate legislators as long as it is consistent with the City Council's Legislative Policy.

~~2.2.7~~ 2.2.6 The Mayor may perform other duties consistent with the mayoral office as prescribed by the Tracy Municipal Code, California Government Code, or as determined by ~~the a majority vote of the City Council.~~

~~2.2.8~~ 2.2.7 The Mayor does not possess any power of veto.

~~2.2.9 The Mayor coordinates with the City Manager in the development of agendas for meetings of the City Council. Once the agenda is published, the City Manager may withdraw an item. Additionally, the Mayor may rearrange the order of business on the agenda.~~

## ~~2.3 Council Actions~~

~~2.3.1 Legislative actions by the City Council can be taken by means of~~

~~ordinance, resolution, or minute action (motion) duly made and passed by the majority (unless otherwise required).~~

~~2.3.2 Under Council protocols and procedures, an item may be placed on the agenda if requested by two Council Members. The request can be made during open session or outside of a Council meeting.~~

~~2.3.3 Public actions of the Council are recorded in the minutes of the City Council meeting. The City Clerk is required to make a record only of business actually passed upon by a vote of the Council and is not required to record any remarks of Council Members, except at the special request of a Council Member and with the consent of the Council.~~

~~2.3.4 Actions of the Council concerning confidential property, personnel, and/or legal matters of the City are to be reported consistent with State law.~~

#### 2.42.3 Council Member Subject Matter Committees

~~2.4.12.3.1~~ The City Council may organize itself into standing and/or special/ad hoc subcommittees to facilitate Council review of policy matters and action.

~~2.4.22.3.2~~ The City Council may create or dissolve standing and/or special/ad hoc sub committees at any time by an affirmative vote of a majority of the City Council. The City Council will endeavor to rotate appointments to standing and ad hoc standing committees to ensure equitable participation.

~~2.4.32.3.3~~ The City Council, by a majority vote, appoints and removes members to standing and ad hoc committees annually.

2.3.4 The Council also appoints and removes Council Members to third member agencies by a majority, annually.

2.4.42.3.5 It is a best practice for non-appointed Council Members not to attend Council standing Committees to avoid the appearance of impropriety and maintain compliance with the Brown Act.

2.4 Action by Subject Matter Committees -

The assigned subject matter Committee shall have initial jurisdiction over any item assigned to it by the City Council as well as any items being advanced by the City Manager that implement or relate to the overall jurisdictional purpose of such Committee and may take any of the following actions with respect to the assigned item.

The Committee may, by a vote of the consensus, decide to postpone, continue, or table an item on the agenda. On any item on an agenda, the Committee may allow for an informational presentation by City staff relating to the item. With respect to an action item, and after discussion and consideration of the item, the Committee may take one of the following actions:

- 2.4.1 Vote by consensus to approve the recommendation of staff or the originator of the proposed action item and forward the recommendation onto the full Council. The Committee may, as a condition of approval, request additional information to be presented for consideration when the full Council hears the item.
- 2.4.2 Fail to approve any recommended action, in which case the item shall not be forwarded to the full City Council; provided that the City Council shall have jurisdiction to place the item on the agenda for a future City Council meeting, in accordance with the requirements of the Meeting Protocols for agenda setting, if no action was taken on the item due to any one of the following reasons
  - Due to the cancellation of a Committee meeting or
  - Due to lack of a quorum, or
  - the Committee was not able to approve any recommended action
- 2.4.3 Propose by a consensus vote of those present one or more alternative recommendation(s) be forwarded to the full City Council for consideration and final action. The Committee may request additional information to be presented for consideration when the full Council hears the item.
- 2.4.4 Reject, by a consensus vote, jurisdiction over the action item and refer the action item back to the City Council with a recommendation for reassignment to another appropriate subject-matter committee.
- 2.4.5 Request, by consensus vote, additional, specified information from staff or the originator of the proposed action item. The action item may be continued or rescheduled for further consideration at the soonest feasible date available, allowing time for appropriate notice pursuant to the Meeting Protocols and the Brown Act.
- 2.4.6 With respect to an informational item, following discussion and consideration, a Committee shall take one of the following actions:
  - Receive the informational report, by consensus vote, without forwarding the report to the full City Council;
  - Receive the informational report and forward the report onto

the full City Council, by consensus vote;

- Request, by consensus vote, from staff or the originator of the proposed informational item. The item may be continued or rescheduled for further consideration at the soonest feasible date available, allowing time for appropriate notice pursuant to the Meeting Protocols.

## CHAPTER 3

### LEGAL AND ETHICAL STANDARDS

#### 3.1 Preamble

The residents and businesses of Tracy are entitled to have fair, ethical, and accountable local government. Such a government requires that public officials:

- Comply with both the letter and the spirit of the laws and policies affecting operations of the government;
- Be independent, impartial, and fair in their judgment and actions;
- Use their public office for the public good, not for personal gain; and
- Conduct public deliberations and processes openly, unless legally confidential, in an atmosphere of respect and civility.

To this end, the Tracy City Council has adopted this Code of Conduct and the Norms and Values Statement (Attachment) to encourage public confidence in the integrity of local government and its fair and effective operation.

#### 3.2 Public Interest

3.2.1 Recognizing that stewardship of the public interest must be their primary concern, City Council Members shall work for the common good of the people of Tracy and not for any private or personal interest. City Council Members must endeavor to treat all members of the public and issues before them in a fair and equitable manner.

3.2.2 City Council Members shall comply with the laws of the nation, the State of California, and the City in the performance of their public duties. These laws include, but are not limited to: the United States and California constitutions; the Tracy Municipal Code; laws pertaining to conflicts of interest, election campaigns, financial disclosures, employer responsibilities, and open processes of government; and City ordinances and policies.

### 3.3 Conduct

- 3.3.1 City Council Members shall refrain from abusive conduct, personal charges, or verbal attacks upon the character or motives of other members of the City Council, boards, commissions, committees, staff, or the public.
- 3.3.2 City Council Member duties shall be performed in accordance with ~~these Rules of Conduct and processes and rules of order~~Council Meeting Protocols and Rules of Procedures established by the City Council as well as the Tracy Municipal Code and State law.
- 3.3.3 City Council Members shall inform themselves on public issues, listen attentively to public discussions before the body, and focus on the business at hand.
- 3.3.4 City Council decisions shall be based upon the merits and substance of the matter at hand.
- 3.3.5 It is the responsibility of City Council Members to publicly share substantive information that is relevant to a matter under consideration that they have received from sources outside of the public decision-making process with all other City Council Members and the public prior to taking action on the matter.
- 3.3.6 City Council Members shall not attend internal staff meetings or meetings between City staff and third parties unless authorized by the City Manager.
- 3.3.7 Policy Role
  - 3.3.7.1 City Council Members shall respect and adhere to the Council- Manager structure of the Tracy City government as provided in State law and Tracy Municipal Code.

3.3.7.2 City Council Members shall support the maintenance of a positive and constructive environment for residents, businesses, and City employees.

3.3.8 Campaign Activities. The Tracy City Council strongly encourages its members and City Board and Commission members to abide by the highest ethical standards and best practices relating to campaign activities to ensure that City elections promote decency, honesty and fair play. To that end, all candidates seeking elected office within the City of Tracy, including their official campaign representatives, are urged and encouraged to sign and comply with the Code of Fair Campaign Practices. (Attachment 3) A candidate's signed Code of Fair Campaign Practices shall be posted on the City's Elections Document webpage within three (3) business days of execution. (Reso No. 2021-017)

3.3.8.1 City staff shall send a copy of all notices (e.g. emails) sent to candidates relating to non-compliance with the TMC election sign restrictions to the entire City Council and all other candidates. (Reso No. 2021-017)

3.3.9 Implementation

3.3.9.1 This Code of Conduct shall be included in the regular orientations for City Council candidates. Current Council Members, including those entering office upon election shall sign a City Council Norms and Values Statement (**Attachment 1**) affirming they have read and understand this Tracy City Council Code of Conduct.

3.4 Conflict of Interest

3.4.1 In order to assure their independence and impartiality on behalf of the public good, City Council Members are prohibited from using their official positions to influence government decisions in which they have a financial interest or where they have an organizational responsibility or a personal relationship that would present a conflict of interest under applicable State law.

3.4.2 In accordance with State law, City Council Members must file an annual written disclosure (Form 700) of their economic interests.

- 3.4.3 City Council Members shall not take advantage of services or opportunities for personal gain by virtue of their public office that are not available to the public in general.
- 3.4.4 City Council Members shall respect and preserve the confidentiality of information provided to them concerning the confidential matters of the City. They must neither disclose confidential information without proper legal authorization nor use such information to advance the personal, financial, or private interests of themselves or others.
- 3.4.5 City Council Members should avoid any action that could be construed as, or create the appearance of, using public office for personal gain, including use of City stationery or other City resources to obtain or promote personal business or political campaigns.
- 3.4.6 Public resources not available to the general public (e.g., City staff time, equipment, supplies, or facilities) shall not be used by City Council Members for private gain and, personal and political purposes.
- 3.4.6.1 A mass communication using City resources shall not be sent within the 60 days preceding an election that feature a currently elected or appointed official of the City of Tracy whose name will appear on the ballot at that election. When no currently elected or appointed official is otherwise designated during the 60 days preceding an election, communication of official matters shall be made by the City Manager or designee.
- 3.4.7 In keeping with their role as stewards of the public interest, City Council Members shall not appear on behalf of the private interests of a third party before the City Council or any board, commission, or committee or proceeding of the City, except as permitted by law.
- 3.4.8 To the best of their ability, City Council Members shall represent the official policies and positions of the City Council as a body. When presenting their personal opinions or positions publicly, members shall explicitly state they do not represent the City Council or the City.
- 3.4.9 When serving on external boards, commissions, subcommittees, or Joint Powers of Authorities, City Council representatives must first obtain policy direction from the City Council on any fiscal matter that exceeds

previously allocated budget(s), prior to obligating the City via actions of such external board's, committees or authorities obligating the City-action.

### 3.4.10 Tracy City Municipal Code Provisions

#### 3.4.10.1 Financial Interests in City Contracts Prohibited.

Section 2.04.050 of the Municipal Code prohibits members of the City Council, appointed employees, the City Treasurer and members of City boards and commissions during their term of office, to contract or subcontract with the City.

Section 2.04.050 also requires a City Council Member to recuse (as defined by the Fair Political Practices Commission) themselves from any vote regarding any Memorandum of Understanding between the City and any lawfully recognized bargaining unit in which a City Council member has an immediate family member. "Immediate family member" is defined as "any and/or all spouses, partners or adult children, whether they live in a single household or not" under this section of the TMC.

#### 3.4.10.2 Nepotism.

The City of Tracy's Nepotism Policy prohibits the initial appointment of an individual to a position within the City of Tracy who has a marital or familial relationship, as defined in Section 4 of the Policy, with any member the City Council, City Manager, or City Attorney.

#### 3.4.10.3 Use of City Property for Private Purposes by City Official/ Employee.

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. (City Personnel Rule 9.2 (d))

#### 3.4.10.4 Political Activities Prohibited; Discrimination.

For informational purposes, the following provisions apply to City and contract employees and consultants:

1. No employee shall, while in uniform or during the employee's working hours, take an active part in any municipal or other political campaign.
2. No employee shall, while in uniform or during the employee's work hours, seek or accept contributions for or against a candidate or issue.
3. An employee may not seek or accept signatures to any petition for or against any such candidate or issue during their work hours.
4. No person in the classified service shall be employed, promoted, demoted, or discharged or in any way favored or discriminated against because of political opinions or affiliations or on any other basis protected by state and/or federal law.

#### 3.4.11 California State Law Regarding Conflicts

While not enforceable by the City, there are four key areas of California State law that regulate the ethics of public officials.

##### 3.4.11.1 Constitutional prohibitions

State law strictly forbids elected and appointed public officials from accepting free or discounted travel from transportation companies. The penalty for a violation includes the forfeiture of office.

#### 3.4.11.2 Contractual conflicts of interest

This prohibition, found in Government Code Section 1090, applies to elected and appointed officials as well as other City staff members. It prohibits the City from entering into a contract if one of its members (i.e., a Council Member) is financially interested in the contract. If the bar (or prohibition) applies, the agency is prohibited from entering into the contract whether or not the official with the conflict participates or not. In some limited circumstances, officials are allowed to disqualify themselves from participation and the agency may enter into the contract.

Financial interest has been defined to include employment, stock/ ownership interests, and certain membership on the board of directors of a for-profit or nonprofit corporation, among others. Violations can be charged as a felony. A person convicted of violating Section 1090 is prohibited from ever holding public office in the State.

#### 3.4.11.3 Political Reform Act - Conflicts of Interest

The Political Reform Act (PRA) was adopted by the voters in 1974 and is the primary expression of the law relative to conflicts of interest (and campaign finance) in California. The Act created the Fair Political Practices Commission (FPPC), a five-member State board which administers the Act.

The Act and the regulations are complex and are continuously subjected to official interpretation. The following synopsis of key parts of the Act will be helpful in spotting issues; however, the FPPC and/or City Attorney should be consulted for further advice and clarification.

With respect to conflicts of interest, the FPPC has promulgated a regulation which establishes an analysis which assists in determining whether a public official is participating in a government decision in which they have a qualifying financial interest and whether it is reasonably foreseeable that the decision will have a material financial effect on the public official's financial interest, which is distinguishable from the effect the decision will have on the public generally.

#### 3.4.11.3.1 Political Reform Act-Enforcement

The FPPC can assess administrative fines and penalties for violation of the Act. The District Attorney and the State Attorney General may prosecute violators as civil or criminal matters. Violators may also be removed from office pursuant to Government Code Section 3060.

#### 3.4.11.4 Common Law Conflicts of Interest

This is the judicial expression of the public policy against public officials using their official position for private benefit. An elected official bears a fiduciary duty to exercise the powers of office for the benefit of the public and is not permitted to use those powers or their office for the benefit of any private interest. This common law doctrine continues to survive the adoption of various statutory expressions of conflict law.

#### 3.4.11.5 Appearance of Impropriety

When participation in action or decision-making as a public official does not implicate the specific statutory criteria for conflicts of interest; however, participation still does not "look" or "feel" right, that public official has probably encountered the appearance of impropriety.

For the public to have faith and confidence that government authority will be implemented in an even-handed and ethical manner, public officials may need to step aside even though no technical conflict exists. An example is where a long-term nonfinancial affiliation exists between the public official and an applicant or the applicant is related by blood or marriage to the official. For the good of the community, members who encounter the appearance of impropriety should step aside.

### 3.5 AB 1234-Required Ethics Training

AB 1234 requires elected or appointed officials who are compensated for their service or reimbursed for their expenses to take two hours of training in ethics principles and laws every two years. Those who enter office after January 1, 2006 must receive the training within a year of starting their service. They must then receive the training every two years after that.

The training must cover general ethics principles relating to public service and ethics laws including:

- Laws relating to personal financial gain by public officials (including bribery and conflict of interest laws);
- Laws relating to office-holder perks, including gifts and travel restrictions, personal and political use of public resources, and prohibitions against gifts of public funds;
- Governmental transparency laws, including financial disclosure requirements and open government laws (the Brown Act and Public Records Act); Laws relating to fair processes, including fair contracting requirements, common law bias requirements, and due process

NOTE: State laws governing conflicts of interest are written to ensure that actions are taken in the public interest. These laws are very complex. Council Members should consult with the City Attorney, their own attorney, or the Fair Political Practices Commission for guidance in advance.

### 3.6 Code of Conduct Compliance and Enforcement

Consistent with this oath is the requirement of this Council policy to comply with the laws as well as report violations of the laws and policy of which they become aware.

- 3.6.1 A request for censure of a member of the City Council may be submitted to the City Manager-Attorney by any member of the Council ("Initiating Member"), with the support of another Council member ("Seconding Member"). Censure is a formal statement or resolution by the Council officially reprimanding a City Council Member for conduct that may include sanctions. It is the intent of the City Council that a request for censure be used only for significant and/or repeated violations of this Code of Conduct and not a means to address politically or personally motivated disagreements amongst City Council Members.

The request shall contain the specific charges on which the proposed censure is based. The City Manager-Attorney shall deliver a copy of the request for censure and the charges to each member of the City Council at least 72 hours after receipt of the request. The request for censure shall first be considered by a neutral mediator selected by the Presiding Judge of the Superior Court of California of the County of San Joaquin. The neutral mediator shall conduct an investigation and prepare a written analysis of the allegation and their preliminary findings and recommendation. Said investigation shall, at a minimum, include interviews with the Initiating Member and the City Council Member who is the subject of the request. The neutral mediator's recommendation shall be to: (a) set the matter for a censure hearing and whether censure is warranted or (b) no further action should be taken with respect to the request. The neutral mediator shall present its recommendation to the City Council for its consideration and action within thirty (30) days of completing their investigation.

- 3.6.1.1 The censure request shall be agendized at the next regular City Council meeting following receipt of the neutral mediator's written findings and recommendation. The City Council, as a body, shall determine whether or not to accept the neutral mediator's recommendation. If the City Council decides to set the matter for a censure hearing, it shall schedule it no sooner than two weeks after its determination to hear the matter. It may not schedule the matter during any previously scheduled excused absence of the subject City Council Member. Written notice of the hearing shall be delivered in person to the Member of the City Council subject to the censure hearing at least ten (10) days in advance of the scheduled hearing. If the City Council decides that no further action

is required, the City Council may also request the Initiating Member either reimburse the City the cost of the neutral mediator's services from personal funds (not campaign funds), not to exceed \$2,500, or forgo a month's salary as a City Council Member. A report regarding the Initiating Member's compliance with that request shall be presented to City Council within sixty (60) days of that request.

3.6.1.2 At the censure hearing, the Mmember of the City Council who is the subject of the request for censure shall be given the opportunity to make an opening and a closing statement, to call witnesses on their behalf and to question their accusers. The Mmember subject to the charges may be represented by a person or persons of their choice whether or not an attorney at law and may have that representative speak or question witnesses on their behalf. The questioning or cross-questioning of witness may be reasonably limited by the person chairing the hearing.

3.6.1.3 Testimony shall be taken only from witnesses having direct knowledge of facts or circumstances relevant to the specific charges under consideration. However, the rules of evidence and judicial procedure applicable in courts of law shall not be applied to this hearing, and the procedures shall be generally informal.

3.6.2 At the discretion of the City Council, sanctions may be imposed as a result of a censure. These sanctions may be applied individually or in combination. They include, but are not limited to:

3.6.2.1 Public Admonishment - -A reproof or verbal warning directed to a City Council Member about a particular type of behavior that violates City policy.

3.6.2.2 Revocation of Special Privileges -A revocation of a Council Member's Council Committee assignments, such as standing and ad hoc committees, regional boards and commissions, and other board/committee appointments. Other revocations may include temporary suspension of official travel, conference participation, and ceremonial titles.

3.6.3 Nothing in this Section shall limit the City Council's ability to informally address conduct considered to be not significant or a minor violation of this Code, which may include informal counseling from one City Council Mmember to another, and a City Council Mmember to a Council advisory body member.

## CHAPTER 4 COMMUNICATIONS

### 4.1 Relationship/Communications with Staff

Staff serves the City Council as a whole, therefore:

- 4.1.1 A City Council Member shall not direct staff in person or in writing to initiate any action, change a course of action, or prepare any report. ~~A Council Member shall not initiate any project or study without the approval of the majority of the Council.~~
- 4.1.2 Requests for information and corresponding responses made by the City Council Members will be shared with the full City Council.
- 4.1.3 City Council Members shall not attempt to pressure or influence discussions, recommendations, workloads, schedules, or department priorities without first consulting with the City Manager and obtaining the approval of a majority of the City Council.
- 4.1.4 When preparing for City Council meetings, City Council Members should direct questions ahead of time to the City Manager so that staff can provide the desired information at the City Council meeting.
- 4.1.5 Any concerns by a Mmember of the City Council regarding the behavior or work of a City employee should be directed to the City Manager privately to ensure the concern is resolved. City Council Members shall not reprimand employees directly nor should they communicate their concerns to anyone other than the City Manager.
- 4.1.6 City Council Members may direct routine inquiries to either the City Manager or the appropriate department head, at the City Manager's discretion.
- 4.1.7 City Council Members serving on Council committees or as the City's representative to an outside agency may interact directly with City staff assigned to that effort as the City Manager's designee. The City

staff member so designated and assigned will keep the City Manager appropriately informed.

#### 4.2 Council Relationship/Communication with Council Advisory Bodies

4.2.1 City Council Members shall not attempt to pressure or influence board, commission, or committee decisions, recommendations, or priorities absent the approval of the majority of the City Council.

4.2.2 It is a best practice that City Council Members refrain from attending Board, Commission, and/or Committee meetings to avoid the appearance of impropriety and to maintain compliance with the Brown Act.

#### 4.3 Handling of Litigation and Other Confidential Information

4.3.1 All written materials and verbal information provided to City Council Members on matters that are confidential and/or privileged under State law shall be kept in complete confidence to ensure that the City's position is not compromised. No disclosure or mention of any information in these materials may be made to anyone other than City Council Members, the City Attorney, or City Manager.

4.3.1.1 Confidential materials provided in preparation for and during Closed Sessions shall not be retained and documents must be returned to staff at the conclusion of the Closed Session.

4.3.1.2 City Council Members may not request confidential written information from staff that has not been provided to all City Council Members.

#### 4.4 Representing an Official City Position

4.4.1 City Council Members may use their title only when conducting official City business, for information purposes, or as an indication of background and expertise, carefully considering whether they are exceeding or appearing to exceed their authority.

- 4.4.2 Once the City Council has taken a position on an issue, all official City correspondence regarding that issue will reflect the City Council's adopted position.
- 4.4.3 The Mayor is authorized to send letters on City letterhead stating the City's official position to appropriate legislators as long as it is consistent with the City Council's Legislative Policy.
- 4.4.4 City letterhead may be used by City Council Members only for official City business and/or to represent a policy action taken by the City Council, as a body.
- 4.4.5 If a Member of the City Council appears before another governmental agency organization to give a statement on an issue affecting the City, the City Council Member should indicate the majority position and opinion of the City Council.
- 4.4.6 Personal opinions and comments may be expressed only if the City Council Member clarifies that these statements do not reflect the official position of the City Council.

#### 4.5 Quasi-Judicial Role/Ex Parte Contacts

The City Council has a number of roles. It legislates and makes administrative and executive decisions. The City Council also acts in a quasi-judicial capacity or "like a judge" when it rules on various permits, licenses, and land use entitlements.

In this last capacity, quasi-judicial, the City Council holds a hearing, takes evidence, determines what the evidence shows, and exercises its discretion in applying the facts to the law shown by the evidence. It is to these proceedings that the rule relative to *ex parte* contacts applies.

- 4.5.1 Ex Parte Contacts/Fair Hearings. The City Council shall refrain from receiving information and evidence on any quasi-judicial matter while such matter is pending before the City Council or any agency, board, or commission thereof, except at the public hearing.

As an elected official, it is often impossible to avoid such contacts and exposure to information. Therefore, if any member is exposed to information or evidence about a pending matter outside of the public hearing, through contacts by constituents, the applicant or through site visits, the member shall disclose all such information and/or evidence acquired from such contacts, which is not otherwise included in the written or oral staff report, during the public hearing, and before the public comments period is opened.

Matters are "pending" when an application has been filed. Information and evidence gained by members via their attendance at noticed public hearings before subordinate boards and commissions are not subject to this rule.

#### 4.6 No Attorney-Client Relationship

City Council Members who consult the City Attorney, their staff, and/or outside attorney(s) ~~contracted to work~~ engaged by the City Attorney to work on behalf of the City cannot enjoy or establish an attorney- client relationship with said attorney(s) by consulting with or speaking to same. Any attorney-client relationship established belongs to the City, acting through the City Council, and as may be allowed in State law for purposes of defending the City and/or the City Council in the course of litigation and/or administrative procedures, etc.

## CHAPTER 5 COUNCIL ADVISORY BODIES

### 5.1 Citizen Boards and, Commissions, ~~and Committees~~ Generally

- 5.1.1 The Tracy City Council, Tracy Municipal Code establishes various Citizen Boards, Commissions, and Committee through the Tracy Municipal Code or by Resolution: a Planning Commission to advise the Council on land use matters (Chapter 10.04), ~~and~~ a Parks and Community Services Commission (Chapter 7.16) and the Youth Advisory Commission (Chapter 7.16). Through Resolution or Ordinance the following committees and commissions have been established: the Measure V Residents' Oversight Committee (Resolution No. 2004-152), Tracy Arts Commission (Ordinance No. 501), Transportation Advisory Commission (Resolution No. 2007-120), and Youth Advisory Commission (Chapter 7.16) and Environmental sustainability Commission (Resolution 2023-XX) and the Tracy Homeless Advisory Commission (Resolution No. 2021-033).
- 5.1.2 The rules of procedure and code of conduct that govern the City Council apply with equal force to all Council advisory boards and commissions.
- 5.1.3 The City Council may also establish by ordinance or resolution, boards, commissions, and committees to assist the Council in making its policy decisions. The City Council has the inherent power to create advisory bodies.
- 5.1.4 City boards and, commissions, ~~and committees~~ (collectively "Council advisory bodies") provide policy recommendations to Council; they do not set or establish City policy or provide administrative direction to City staff.
- 5.1.5 City boards and, commissions, ~~and committees~~ are advisory in nature and therefore do not represent City's official position on city matters.
- 5.1.6 Appointments to boards, and commissions, ~~and committees~~ are made by a majority vote of the Council. Appointees to Council advisory

bodies serve at the pleasure of the City Council.

5.1.7 ~~The terms "board" and "commission" can be used interchangeably. Boards and commissions typically have broader policy and advisory responsibilities than committees which typically have much more focused advisory roles to the City Council. The term "Commission" refers to a group of lay residents appointed to conduct external review of the City's processes. City Council members do not typically serve on commissions.~~

## 5.2 ~~Citizen~~ Board ~~and~~, Commission, ~~and~~ ~~Committee~~ Organization and Conduct

5.2.1 Annually, each board, commission, and committee elects one of their members to serve as the chair (presiding officer) and vice-chair.

5.2.2 Boards ~~and~~, commissions, ~~and~~ ~~committees~~ hold regular and special meetings as required. The conduct of board, commission, and committee meetings are governed by the same rules of policy and procedure as the City Council.

5.2.3 Boards ~~and~~, commissions, ~~and~~ ~~committees~~ should comply with all applicable open meeting and conflict-of-interest laws of the State.

5.2.4 Upon appointment or reappointment, Council advisory body members (including all boards and commissions, and committee members) ~~body members~~ shall sign a Council Advisory Body Norms and Values statement (**Attachment 2**) affirming they have read and understand this City of Tracy City Council Code of Conduct.

## 5.3 Board ~~and~~, Commission, ~~and~~ ~~Committee~~ Appointments

5.3.1 Resolution No. 2004-152 establishes the board ~~,and~~ ~~commission,~~ ~~and~~ ~~committee~~ appointment/selection process and requirements for residency.

5.3.2 The term of office for each board, commission, or committee member

is 4 years, with the exception of the Measure V Residents' Oversight Committee which is 3 years.

5.3.3 The City Clerk provides application forms, maintains a listing of all applications received, and solicits applications when vacancies occur.

#### 5.4 Boards ~~and~~ Commissions ~~and Committees~~ - Vacancy and Selection/Appointment Processes

Resolution No. 2004-152 outlines procedures for filling a board ~~and~~ commission ~~or committee~~-vacancy and selection and appointment process. The Council appoints all City boards, commissions, and committee members.

5.4.1 Resignations may be submitted at any time to the City Council either directly or through the board, commission, or committee chair. Resignations are effective upon submittal.

#### 5.5 Boards, Commissions, and Committees - Removal

A board member, commissioner, or committee member serves at the pleasure of the Council and may be removed at any time. The removal of ~~a member-a planning commission member~~ must comply with the applicable TMC Sections or the board/committee/commission's bylaws and in accordance with the applicable procedure.

## CHAPTER 6 COUNCIL FINANCIAL MATTERS

### 6.1 Compensation

- 6.1.1 Pursuant to Ordinance No. 1094, the Tracy Mayor and City Council receive a monthly salary. The amount is the salary limit established by the State Legislature for members of the City Council of general law cities having a population range within which the City of Tracy falls, as specified in California Government Code Section 36516(a).
  
- 6.1.2 The salary of the Mayor and City Council should be reviewed every two years.

### 6.2 Benefits

- 6.2.1 The California Government Code provides that City Council Members may receive City-funded health, retirement, and other benefits. City-funded medical, dental, and life insurance plan benefits are provided. The Council Policy Providing City Paid Health Insurance for City Treasurer, City Clerk, and City Council, adopted by Resolution No. 2003-391, states that an elected official is not eligible for City-funded health benefits if the official or the official's spouse has employer-paid health insurance.

### 6.3 City Council Budget and Expenses

- 6.3.1 City Council Resolution No. 2007-075 provides policy guidance regarding Council expenditures for equipment, supplies and communications; travel; local expenses; and eligible reimbursements.



CITY OF TRACY CITY COUNCIL  
NORMS AND VALUES STATEMENT

PREAMBLE

The residents and businesses of Tracy are entitled to have fair, ethical, and accountable local government. Such a government requires that public officials:

- Comply with both the letter and the spirit of the laws and policies affecting operations of the government.
- Be independent, impartial and fair in their judgment and actions.
- Use their public office for the public good, not for personal gain.
- Conduct public deliberations and processes openly, unless legally confidential, in an atmosphere of respect and civility.

To this end, the Tracy City Council has adopted a Code of Conduct to encourage public confidence in the integrity of local government and its fair and effective operation.

City Council Members shall sign this Norms and Values statement upon assuming office and upon reelection to office as a symbol of each Council Member's continuing commitment to abide by the principles of this code.

1. Act in the Public Interest

Recognizing that stewardship of the public interest must be their primary concern, City Council Members shall work for the common good of the people of Tracy and not for any private or personal interest, and they will endeavor to treat all persons, claims, and transactions in a fair and equitable manner.

2. Comply with the Law

City Council Members shall comply with the laws of the nation, the State of California, and the City in the performance of their public duties. These laws include, but are not limited to: the United States and California constitutions;

the Tracy City Municipal Code; laws pertaining to Council-Manager form of government, conflicts of interest, election campaigns, financial disclosures, employer responsibilities, and open processes of government; and City ordinances and policies.

3. Conduct of Members

City Council Members shall refrain from abusive conduct, personal charges, or verbal attacks upon the character or motives of other members of the City Council, boards, commissions, committees, staff, or the public.

4. Respect for Process

City Council Member duties shall be performed in accordance with the processes and rules of order established by the City Council.

5. Conduct of Public Meetings

City Council Members shall inform themselves of public issues, listen attentively to public discussions before the body, and focus on the business at hand.

6. Decisions Based on Merit

City Council decisions shall be based upon the merits and substance of the matter at hand.

7. Communication

It is the responsibility of City Council Members to share substantive information that is relevant to a matter under consideration that they have received from sources outside of the public decision-making process with all other City Council Members.

8. Coordination with City Staff

Appropriate City staff should be involved when City Council Members meet with officials from other agencies and jurisdictions to ensure proper staff support as needed and to keep staff informed.

9. Disclosure of Corruption

All City officials shall take an oath upon assuming office, pledging to uphold the constitution and laws of the City, the State, and the Federal government. As part of this oath, officials commit to disclosing to the appropriate authorities and/or to the City Council any behavior or activity that may qualify as corruption, abuse, fraud, bribery, or other violation of the law.

10. Conflict of Interest

In order to assure their independence and impartiality on behalf of the public good, City Council Members shall not use their official positions to influence government decisions in which they have a financial interest or where they have an organizational responsibility or a personal relationship that would present a conflict of interest under applicable State law.

In accordance with the law, members shall file written disclosures of their economic interests and if they have a conflict of interest regarding a particular decision, refrain from participating in that decision unless otherwise permitted by law.

11. Gifts and Favors

City Council Members shall not take advantage of services or opportunities for personal gain by virtue of their public office that are not available to the public in general. They shall refrain from accepting gifts, favors, or promises of future benefits that might compromise their independence of judgment or action or give the appearance of being compromised.

12. Confidential Information

City Council Members shall respect and preserve the confidentiality of information provided to them concerning the confidential matters of the City. They shall neither disclose confidential information without proper legal authorization nor use such information to advance their personal, financial, or private interests.

13. Use of Public Resources

Public resources not available to the general public (e.g., City staff time, equipment, supplies, or facilities) shall not be used by City Council Members for private gain or personal and/or campaign purposes.

14. Representation of Private Interests

In keeping with their role as stewards of the public trust, City Council Members shall not appear on behalf of the private interests of a third-party before the City Council or any board, commission, or committee or proceeding of the City.

15. Advocacy

To the best of their ability, City Council Members shall represent the official policies and positions of the City Council. When presenting their personal opinions or positions, members shall explicitly state that they do not represent the City Council or the City.

16. Improper Influence

City Council Members shall refrain from using their position to improperly influence the deliberations or decisions of City staff, boards, commissions, or committees.

17. Policy Role of Members

City Council Members shall respect and adhere to the Council-Manager structure of Tracy City government as provided in State law and the City Municipal Code.

18. Positive Work Environment

Council Members shall support the maintenance of a positive and constructive environment for residents, businesses, and City employees.

19. Implementation

Ethics standards shall be included in the regular orientations for City Council candidates. Council Members entering office shall sign a statement affirming they read and understood the City of Tracy's City Council Code of Conduct.

20. Campaign Activities.

City Council Members who seek elected office within the City shall endeavor to conduct their campaign activities in a manner that promotes decency, honesty and fair play and in accordance with the Code of Fair Campaign Elections Code (Section 20400 et seq.).

21. Compliance and Enforcement

Council Members themselves have the primary responsibility to assure that ethical standards are understood and met and that the public can continue to have **full** confidence in the integrity of City government.

This City Council Norms and Values statement shall be considered to be a summary of the longer City Council Code of Conduct document. The City Council Code of Conduct document shall be considered to be the definitive document relating to ethical conduct by Tracy City Council Members.

I affirm that I have read and understand the City of Tracy City Council Norms and Values statement.

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Signature

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Date

CITY OF TRACY  
COUNCIL ADVISORY BODY  
NORMS AND VALUES STATEMENT

**PREAMBLE**

The residents and businesses of Tracy are entitled to have fair, ethical, and accountable local government. Such a government requires that public officials, including Council advisory body members:

- Comply with both the letter and the spirit of the laws and policies affecting operations of the government.
- Be independent, impartial, and fair in their judgment and actions.
- Use their public office for the public good, not for personal gain.
- Conduct public deliberations and processes openly, unless legally confidential, in an atmosphere of respect and civility.

To this end, Council advisory body members are expected to adhere to the Code of Conduct adopted by the Tracy City Council to encourage public confidence in the integrity of local government and its fair and effective operation.

Council advisory body members shall sign this Norms and Values statement at the first meeting of the board, commission, or committee upon assuming office and, if applicable, upon reappointment to the board, commission, or committee as a symbol of each Council advisory body member's commitment to abide by the principles of this code during their term.

1. Act in the Public Interest

Recognizing that stewardship of the public interest must be their primary concern, Council advisory body members shall work for the common good of the people of Tracy and not for any private or personal interest, and they will endeavor to treat all persons, claims, and transactions in a fair and equitable manner.

2. Comply with the Law

Council advisory body members shall comply with the laws of the nation, the State of California, and the City in the performance of their public duties. These laws include, but are not limited to: the United States and California Constitutions; the Tracy City Municipal Code; laws pertaining to the Council-

Manager form of government, conflicts of interest, election campaigns, financial disclosures, employer responsibilities, and open processes of government; and City ordinances and policies.

3. Conduct of Council Advisory Body Members

Council advisory body members shall refrain from abusive conduct, personal charges, or verbal attacks upon the character or motives of Council Members; other members of the Council advisory body; other boards, commissions, or committees; staff; or the public.

4. Respect for Process

Council advisory body member duties shall be performed in accordance with the processes and rules of order established by the City Council.

5. Conduct of Public Meetings

Council advisory body members shall inform themselves of public issues, listen attentively to public discussions before the body, and focus on the business at hand.

6. Decisions Based on Merit

Council advisory body members shall base their decisions upon the merits and substance of the matter at hand.

7. Communication

It is the responsibility of Council advisory body members to share substantive information that is relevant to a matter under consideration that they have received from sources outside of the public decision-making process with all other Council advisory body members.

8. Coordination with City Staff

Appropriate City staff should be involved when Council advisory body members meet with officials from other agencies and jurisdictions to ensure proper staff support, as needed, and to keep staff informed.



9. Disclosure of Corruption

All City officials shall take an oath upon assuming office, pledging to uphold the Constitution and laws of the City, the State, and the Federal government. As part of this oath, officials commit to disclosing to the appropriate authorities and/or to the City Council any behavior or activity that may qualify as corruption, abuse, fraud, bribery, or other violation of the law.

10. Conflict of Interest

In order to assure their independence and impartiality on behalf of the public good, Council advisory body members shall not use their official positions to influence government decisions in which they have a financial interest or where they have an organizational responsibility or a personal relationship that would present a conflict of interest under applicable State law.

In accordance with the law, members shall file written disclosures of their economic interests and if they have a conflict of interest regarding a particular decision, refrain from participating in that decision unless otherwise permitted by law.

11. Gifts and Favors

Council advisory body members shall not take advantage of services or opportunities for personal gain by virtue of their public office that are not available to the public in general. They shall refrain from accepting gifts, favors, or promises of future benefits that might compromise their independence of judgment or action or give the appearance of being compromised.

12. Confidential Information

Council advisory body members shall respect and preserve the confidentiality of information provided to them concerning the confidential matters of the City. They shall neither disclose confidential information without proper legal authorization nor use such information to advance their personal, financial, or private interests.

13. Use of Public Resources

Public resources not available to the general public (e.g., City staff time, equipment, supplies, or facilities) shall not be used by Council advisory body members for private gain or personal and/or campaign purposes.

14. Representation of Private Interests

In keeping with their role as stewards of the public trust, Council advisory body members shall not appear on behalf of the private interests of a third party before the City Council or any board, commission, or committee, or proceeding of the City.

15. Advocacy

To the best of their ability, Council advisory body members shall represent the official policies and positions of the City of Tracy. When presenting their personal opinions or positions, members shall explicitly state that they represent neither the Council advisory body nor the City.

16. Improper Influence

Council advisory body members shall refrain from using their position to improperly influence the deliberations or decisions of City staff, boards, commissions, or committees.

17. Policy Role of Members

Council advisory body members shall respect and adhere to the Council-Manager structure of Tracy City government as provided in State law and the City Municipal Code.

18. Positive Work Environment

Council advisory body members shall support the maintenance of a positive and constructive environment for residents, businesses, and City employees.  
Attachment 2 to City Council Code of Conduct

19. Implementation

Ethics standards shall be included in the regular orientations for Council advisory body members. Upon entering office and upon reappointment, Council advisory body members shall sign a statement affirming they read and understood the City of Tracy's City Council Code of Conduct.

20. Campaign Activities.

Council advisory body members who seek elected office within the City shall endeavor to conduct their campaign activities in a manner that promotes decency, honesty and fair play and in accordance with the Code of Fair Campaign Elections Code (Section 20400 et seq.).

21. Compliance and Enforcement

Council advisory body members themselves have the responsibility to assure that ethical standards are understood and met, and that the public can continue to have full confidence in the integrity of City government.

The Council Advisory Body Norms and Values statement shall be considered to be a summary of the longer City Council Code of Conduct document. The City Council Code of Conduct document shall be considered to be the definitive document relating to ethical conduct by Tracy City Council advisory body members.

I affirm that I have read and understand the City of Tracy City Council Code of Conduct.

\_\_\_\_\_

\_\_\_\_\_

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Signature

Date

## **CODE OF FAIR CAMPAIGN PRACTICES**

(Elections Code § 20440)

There are basic principles of decency, honesty, and fair play which every candidate for public office in the State of California has a moral obligation to observe and uphold in order that, after vigorously contested but fairly conducted campaigns, our citizens may exercise their constitutional right to a free and untrammelled choice and the will of the people may be fully and clearly expressed on the issues.

THEREFORE:

- (1) I SHALL CONDUCT my campaign openly and publicly, discussing the issues as I see them, presenting my record and policies with sincerity and frankness, and criticizing without fear or favor the record and policies of my opponents or political parties that merit this criticism.
- (2) I SHALL NOT USE OR PERMIT the use of character defamation, whispering campaigns, libel, slander, or scurrilous attacks on any candidate or his or her personal or family life.
- (3) I SHALL NOT USE OR PERMIT any appeal to negative prejudice based on a candidate's actual or perceived race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, age, sexual orientation, sex, including gender identity, or any other characteristic set forth in Section 12940 of the Government Code, or association with another person who has any of the actual or perceived characteristics set forth in Section 12940 of the Government Code.
- (4) I SHALL NOT USE OR PERMIT any dishonest or unethical practice that tends to corrupt or undermine our American system of free elections, or that hampers or prevents the full and free expression of the will of the voters including acts intended to hinder or prevent any eligible person from registering to vote, enrolling to vote, or voting.
- (5) I SHALL NOT coerce election help or campaign contributions for myself or for any other candidate from my employees.
- (6) I SHALL IMMEDIATELY AND PUBLICLY REPUDIATE support deriving from any individual or group that resorts, on behalf of my candidacy or in opposition to that of my opponent, to the methods and tactics that I condemn. I shall accept responsibility to take firm action against any subordinate who violates any provision of this code or the laws governing elections.
- (7) I SHALL DEFEND AND UPHOLD the right of every qualified American voter to full and equal participation in the electoral process.

I, the undersigned, candidate for election to public office in the State of California or treasurer or chairperson of a

committee making any independent expenditures, hereby voluntarily endorse, subscribe to, and solemnly pledge myself to conduct my campaign in accordance with the above principles and practices.

Print Name: \_\_\_\_\_ Signature: \_\_\_\_\_

Date:.....



# **COUNCIL MEETING PROTOCOLS AND RULES OF PROCEDURE**

Adopted by Resolution No. 2019-240  
Revised by Resolution Nos. 2020-112 & 2021-049

**City of Tracy – Council Meeting Protocols and Rules of Procedures**

**Table of Contents**

**Section 1 –Purpose and Applicability.....3**

**Section 2 –Duties (Roles and Responsibilities).....4**

**Section 3 – Meeting Types.....6**

**Section 4 – Meeting Agendas .....8**

**Section 5 –Conduct of Meetings .....11**

**Section 6 – Conduct of the Public .....17**

**Section 7 – Miscellaneous .....18**

**Appendices..... 19**

# City of Tracy – Council Meeting Protocols and Rules of Procedures

## Section 1 –Purpose and Applicability

### 1. Purpose and Applicability

- 1.1. The purpose of these Council Meeting Protocols and Rules of Procedures (“Protocols”) are to provide clear guidelines to assist the City Council, staff and the public to conduct meetings in an efficient and transparent manner and in accordance with the Ralph M. Brown Act (“Brown Act”; Government Code sections 54950-54963) and all applicable laws.<sup>1</sup> These Protocols are adopted pursuant to Section 36813. In the event of a conflict between the Brown Act and these Protocols, the Brown Act shall control.
- 1.2. In the event of a conflict between these Protocols, and the City of Tracy’s adopted Code of Conduct (Resolution No. 2021-146), Protocols shall control.
- 1.3. These Protocols shall apply to the City Council, the Successor Agency to the Community Development Agency, the Tracy Public Facilities Corporation, the Tracy Industrial Development Authority, and all City Boards, Commissions, and Committees.
- 1.4. Suspension of Protocols. Any rule set forth herein may be suspended by a supermajority vote of the City Council.
- 1.5. Review and Changes to Protocols. These Protocols shall be reviewed by December 31<sup>st</sup> of every odd-numbered year. A majority vote of the City Council shall be necessary to amend these Protocols.
- 1.6. A copy of these Protocols shall be available for public review at the City Clerk’s Office and City’s website ([www.cityoftracy.org](http://www.cityoftracy.org)).

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<sup>1</sup> All references to statutes are to the California Government Code unless otherwise specified.

# City of Tracy – Council Meeting Protocols and Rules of Procedures

## Section 2 –Duties (Roles and Responsibilities)

### 2. Roles and Responsibilities at Council Meetings

- 2.1. Mayor. The Mayor is the Presiding Officer of all meetings of the full City Council. The Presiding Officer is the primary, but not the only, person responsible for ensuring that the City Council, staff, and members of the public adhere to these Protocols during City Council meetings. (Section 36802). The Chair of a City board or commission shall act as the Presiding Officer.
- 2.2. Mayor Pro Tem. The Mayor Pro Tem shall serve as the Presiding Officer in the absence of the Mayor. Absence shall be as defined by State law. Upon the arrival of the Mayor, the Mayor Pro Tem shall immediately relinquish the role of Presiding Officer at the conclusion of the business then before Council. (Section 36802) The Vice Chair of a City board or commission shall act as the Presiding Officer in the absence of the Chair.
- 2.3. City Council. All members of the City Council shall comply with the Council Code of Conduct at meetings. Newly elected City Council members shall be sworn in and seated at the first regular City Council meeting after receipt of the certified election results from the County Registrar of Voters.
- 2.4. Sergeant-at-Arms. The Sergeant-at-Arms is the law enforcement official charged with maintaining security during meetings of the City Council. The Sergeant-at-Arms of the City Council shall be a police officer assigned by the Police Chief. There shall be at least one officer so assigned and present at each meeting of the full City Council. The officer shall maintain order and enforce the orders of the City Council and Presiding Officer.
- 2.5. City Manager. Pursuant to the Council-Manager form of government established by Chapter 2.08 of the Tracy Municipal Code, the City Manager sets the Council agenda and once published, may withdraw an item(s), unless the item has been placed on the agenda by the City Council pursuant to Section 4.3.1. of these Protocols.
- 2.6. City Clerk. The City Clerk shall attend all meetings of the Council unless excused. The Deputy City Clerk shall attend Council meetings in the City Clerk's absence. The City Clerk shall record, prepare, and maintain the official records of the Council and perform other duties as directed by the City Manager. (Section 36804)
  - 2.6.1. Minutes. The City Clerk's office shall be responsible for the preparation and distribution of the Council minutes. The minutes shall include a public report on any action taken and the vote or abstention on such action of each Council Member present for the action. Unless a reading of the minutes is requested by a Council Member, the minutes may be approved as a Consent Calendar item.
    - 2.6.1.1. No minutes or written record of closed sessions of the City Council shall be kept, except as required by State law or as directed by the majority vote of

## City of Tracy – Council Meeting Protocols and Rules of Procedures

the City Council. The Council shall report at a public meeting any action taken in closed session, as required by Section 54957.1.

- 2.6.1.2. The City Clerk shall include a report on posting of the agenda in the minutes.
- 2.6.2. Timekeeper. The City Clerk shall be the designated timekeeper at all City Council meetings and shall have the authority to interrupt speakers, whether members of the public or a City Council member, when their allotted speaking times have expired.
- 2.7. City Staff. City staff shall (a) prepare balanced staff reports and provide accompanying documents on all agenda items in accordance with the agenda preparation schedule; (b) be available for questions from the City Council in accordance with the Brown Act prior to and during meetings; and (c) respond to questions from the public during meetings only when requested to do so by the City Council or the City Manager.
- 2.8. City Attorney. The City Attorney shall attend all meetings of the Council unless excused. The Assistant City Attorney shall attend Council meetings in the City Attorney's absence. The City Attorney shall give advice, upon request of the City Council, on questions of law. The City Attorney shall serve as the Parliamentarian at City Council meetings, opining on any procedural issues related to these Protocols, the Brown Act, and Rosenberg's Rules.

# City of Tracy – Council Meeting Protocols and Rules of Procedures

## Section 3 – Meeting Types

### 3. Council Meeting Types

- 3.1. Regular Meetings. Regular City Council meetings are held on the first and third Tuesdays of the month at 7:00 p.m. at City Hall Council Chambers, 333 Civic Center Plaza, Tracy, California 95376, unless otherwise noticed and as under Section 54954. No meeting shall be held on a holiday as defined by Section 6700. (Section 36805)
- 3.2. Special Meetings. The City Manager, Mayor, or a majority of the members of the City Council may call a special meeting. (Section 54956). Only the City Attorney is authorized to convene a closed session, which shall be considered a special meeting and conducted in accordance with the Brown Act. (Section 36807)
- 3.3. Workshops. The purpose of a workshop is to inform the City Council of complex issues and provide an opportunity for the City Council to review documents and request additional information. However, no final City Council action shall be taken during the workshop on agenda items. Workshops are open to the public and shall be conducted as public meetings in accordance with the Brown Act.
- 3.4. Closed Sessions.
  - 3.4.1. The City Attorney shall convene a special closed session meeting under the following circumstances:
    - 3.4.1.1. When requested by the City Manager to discuss a matter in closed session, and the City Attorney determines such a matter is permissible for discussion in closed session under the Brown Act;
    - 3.4.1.2. When requested by the City Council, pursuant to Section 4.3, to discuss a matter in closed session, and the City Attorney determines such a matter is permissible for discussion in closed session under the Brown Act;
    - 3.4.1.3. When the City Attorney deems it so necessary and determines a closed session is permissible under the Brown Act.
  - 3.4.2. Closed sessions shall be held in accordance with the Brown Act. Non-agenda items shall not be discussed in closed session. Closed sessions may precede or follow a City Council meeting.
  - 3.4.3. All closed session information, verbal or written, is privileged and confidential and shall not be shared with any person not at the closed session. Any member sharing information in violation of this rule may be subject to censure by the City Council or other legal remedies as set forth in Section 54963.
  - 3.4.4. The public may speak regarding any closed session item prior to the closed session as required by the Brown Act.

## City of Tracy – Council Meeting Protocols and Rules of Procedures

- 3.4.5. The City Attorney shall attend all closed sessions and shall report out in public session any reportable actions there taken by Council and the vote on such actions, in accordance with the Brown Act.
- 3.5. Teleconferenced Meetings. The City Council may hold a meeting by teleconference, meaning a meeting of the Council in which members are in different locations and connected by electronic means, through either audio or video, or both. Any teleconference meeting of the Council must comply with the requirements of Government Section 54953 and other applicable law, including but not limited to the requirement that all votes taken shall be by roll call.
- 3.6. Emergency Meetings. In the case of an emergency, as defined by Section 54956.5, a majority of Council may call a meeting and dispense with the special meeting notice and posting requirements under the Brown Act. Any emergency meeting held shall comply with the applicable Brown Act provisions.
- 3.7. The City Clerk shall ensure that the applicable noticing and posting requirements under the Brown Act are followed for all meetings of the City Council and shall poll and confirm a quorum is available for all such meetings in advance of publication.

# City of Tracy – Council Meeting Protocols and Rules of Procedures

## Section 4 – Meeting Agendas

### 4. Meeting Agendas

4.1. Purpose of Agenda. The Council meeting agenda documents serve four purposes:

- To communicate and inform City Council, City staff, the public and the press about City business.
- To comply with mandated state laws.
- To facilitate the decision-making process by including sufficient background information so that the City Council can obtain a full understanding of the issues and staff's analysis and recommendation prior to their consideration and action.
- To serve as a historical reference that can be kept as a record of proceedings and actions as needed for future actions and/or litigation.

As set forth above, the purpose of the agenda is to provide a framework within which Council meetings can be conducted and to effectively implement the approved Council programs, goals and budget. The agenda shall contain a brief general description of each item of business to be transacted or discussed at the meeting.

4.2. Posting and Distribution of Agendas. At a minimum, the posting and distribution of all agendas shall be done in accordance with the Brown Act. Agendas for regular meetings shall be posted not less than 72 hours prior to the meeting (Section 54954.2(a)(1)); special meeting agendas shall be posted not less than 24 hours prior to the meeting (Section 54956).

4.2.1. All agendas shall be posted in the following locations: City Hall, the Tracy Library, the City's website, and other locations as may be required by the bylaws of a particular Board or Commission. Posting of agendas at City Hall shall be the official location for purposes of Brown Act compliance.

4.2.2. Agenda packets are provided electronically to City Council Members on the Thursday prior to a City Council meeting unless technical difficulties occur. If technical difficulties occur, the City Clerk will endeavor to provide Council with hard copies of the agenda as soon as reasonably possible. Distribution to the staff, public, and media shall occur immediately after distribution to the City Council. Members of the public may sign up to receive notification that a Council meeting agenda has been posted on the City's website ([www.cityoftracy.org](http://www.cityoftracy.org)). The City Clerk will mail copies of the agenda or particular agenda items to any person submitting a request. (Section 54954.1) Said requests will be valid for one year. Copies of the agenda, and of individual agenda items, are available at costs established in the City's Master Fee Schedule. Copies of the agenda are also available for inspection at the Tracy Library and City Clerk's office. Agendas for Council meetings are posted on the City's website ([www.cityoftracy.org](http://www.cityoftracy.org)).

## City of Tracy – Council Meeting Protocols and Rules of Procedures

- 4.3. Agenda Item Submission; Council Member Request for Agenda Items. Council Members may seek to have an item discussed by the City Council at a future meeting and shall follow the below processes to have an item placed on a future City Council agenda.
  - 4.3.1. During "Council Items and Comments", a Council Member may make a motion, to place an item on a future City Council agenda, and upon receiving a second to such motion, the City Manager shall place the item on a future agenda.
    - 4.3.1.1. When the motion is made, the City Manager may provide information regarding current workloads, staffing and/or anticipated research that may affect the timing of completing the requested item, so as to establish more accurate and realistic expectations of when such item will be placed on a future City Council agenda.
    - 4.3.1.2. If no discussion is had regarding the timing, the City Manager shall place the requested item on a future City Council agenda within a reasonable time.
    - 4.3.1.3. The motion maker may include a specific meeting date on which the item must be brought to the City Council for consideration, and such date shall prevail, unless the City Manager provides information to explain that such date is not possible either due to current workloads, staffing and/or anticipated research.
  - 4.3.2. A Council Member may request a time-sensitive item be placed on the next City Council agenda, by contacting the City Manager, or their designee, via telephone, email or in person. Upon the request of a Council Member, the item will be placed on the next City Council agenda as long as the motion maker obtains one other Council Member to second the request. In the interest of transparency and Brown Act compliance, the motion maker shall limit discussions, outside of City Council meetings, to only one other Council Member to obtain support for a second to the motion regarding the time-sensitive request.
    - 4.3.2.1. For purposes of this section 4.3.2, "time-sensitive" shall mean any agenda item that is considered urgent by the sponsor and that has a deadline for action that is prior to the next meeting of the City Council. All necessary information should be submitted to City Council for a valid time-sensitive request.
    - 4.3.2.2. In the event of a time-sensitive request, the City Manager shall notify the rest of the City Council when two Council Members request an item to be placed on the agenda. The City Manager will place the item on the next City Council agenda, unless the City Manager has communicated to the two requesting Councilmembers that such timeframe is not possible based

## City of Tracy – Council Meeting Protocols and Rules of Procedures

on current workloads, staffing and/or research. The City Manager shall consult and coordinate with the City Attorney on all time-sensitive matters.

- 4.3.2.3. If the time-sensitive item is not able to be placed on the next City Council agenda, due to the information provided by the City Manager pursuant to Section 4.3.2.2, then the Council Member may place the item on a future City Council agenda pursuant to Section 4.3.1
- 4.3.3. Other Public Agencies. Agenda items such as presentations and proposals from other public entities must be sponsored for agenda placement by two Council members or the City Manager.

# City of Tracy – Council Meeting Protocols and Rules of Procedures

## Section 5 – Conduct of Meetings

### 5. Conduct of Meetings

- 5.1. Order of Business. The suggested order of business of Council meetings shall be as follows.
1. Call to Order
  2. Roll Call
  3. Pledge of Allegiance
  4. Invocation
  5. Presentations/Proclamations and Awards
  6. Order of Business
  7. Consent Calendar
  8. Items from the Audience/Public Comment
  9. Continued Public Hearings
  10. Public Hearings
  11. Regular Items
  12. Items from the Audience/Public Comment
  13. Staff Items
  14. Council Items and Comments
  15. Adjournment
- 5.2. Call to Order. The Presiding Officer shall take the chair at the hour appointed for the meeting and shall immediately call the meeting to order.
- 5.3. Roll Call. A majority of the members of the Council then in office shall constitute a quorum. (Section 36810)
- 5.4. Invocations. Any member of the public who wishes to offer an invocation prior to the opening of a regular Council meeting shall contact the City Clerk. The City Clerk shall select a mutually agreeable City Council meeting date for the invocation.
- 5.5. Presentations/Proclamations and Awards. This portion of the Agenda is dedicated for presentations, such as proclamations and awards, employee of the month recognitions, board and commission recognitions, and employee swearing-ins, and shall be limited to a 15-minute maximum period.
- 5.6. Order of Business. The order of business shall be as set forth in the published agenda. However, the Mayor may reorder agenda items or a Council Member may request that the Mayor reorder agenda items. The Mayor, as the Presiding Officer, shall be the decision maker on the order of business, except that the Mayor's decision may be appealed by a Council Member and such appeal shall be decided upon by a majority vote of the City Council. Upon a final determination that a reorder is occurring, the Mayor shall announce the reorder prior to proceeding with the meeting.
- 5.7. Consent Calendar. All items listed on the Consent Calendar are considered to be routine matters or consistent with previous City Council direction, such as resolutions confirming action from a previous meeting or the adoption of an ordinance previously

## City of Tracy – Council Meeting Protocols and Rules of Procedures

introduced by Council. 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.

5.8. Items from the Audience/Public Comment. It is the policy of the City Council that members of the public be allowed to address the Council on any item of interest to the public, before or during its consideration of that item, that is within the City Council's subject matter jurisdiction. (Section 54954.3(a)).

5.8.1. Agendas for regular meetings will have two opportunities for "Items from the Audience/Public Comment." (Section 54954.3(a)). In the interest of allowing the City Council to have adequate time to address the agenda items of business, the first public comment opportunity will be limited to a 15-minute maximum period. (Section 54954.3(b)). The second opportunity will not have a time limit period. A five-minute time limit per speaker will apply to all individuals speaking during the "Items from the Audience/Public Comment" portion of the agenda. Speakers may not concede any part of their allotted time to another speaker.

5.8.1.1. However, 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.

5.8.2. Each speaker shall avoid repetition of the remarks of the prior speakers, and when speaking under a specific agenda item, shall speak only to that agenda item. 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.

5.8.3. Speaker Cards. To facilitate the orderly process of public comment and to assist the City Council to conduct its business as efficiently as possible, members of the public wishing to address the City 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 City Council. (Section 54953.3)

5.9. Public Hearings. Public hearings are required for a variety of City Council actions such as changes to the Tracy Municipal Code, zoning revisions, some annexations, street vacations, weed abatement, liens, fee increases, etc. Whenever the law provides that publication of a notice shall be made, such notice shall be published in a newspaper of general circulation for the period prescribed, the number of times, and in the manner required. Each speaker will be allowed a maximum of five minutes for public input or

## City of Tracy – Council Meeting Protocols and Rules of Procedures

testimony. However, in the event there are 15 or more individuals wishing to speak regarding a public hearing item, the maximum amount of time allowed per speaker will be three minutes. Public hearings are scheduled at the beginning of the meeting, and no regular item can be placed ahead of a public hearing.

- 5.9.1. Public Hearings for Land Use and Other Matters. The Presiding Officer may designate individuals as the “Proponent/Appellant” or “Opponent” and provide each with additional time for comments and the opportunity to present a rebuttal.
- 5.10. Regular Items. This portion of the Agenda is for non-public hearing agenda items that require Council action or direction such as status or informational reports from staff and Council requests for agenda items.
- 5.11. Staff Items. This portion of the agenda provides an opportunity for the City Manager, City Attorney, and City staff to provide information of community interest to the City Council.
- 5.12. Council Items and Comments. This portion of the agenda is for each member of the City Council to provide brief reports on any intergovernmental agency meetings, conferences, community meetings, meetings of other legislative bodies, or other events of interest to the community that they attended, as well as meetings attended at the City’s expense. This portion of the agenda is also for the City Council to provide guidance and direction to staff concerning items to be included on future agendas and information to be provided in response to questions raised during “Items from the Audience/Public Comment.”
  - 5.12.1. Under this portion of the agenda, two Council members may request staff to provide information, perform studies, or undertake other action. If the requested action is routine in nature, the City Manager will direct staff to proceed. However, if the request cannot be accomplished within the approved budget or City Council priorities, or if it will involve substantial staff resources, the City Manager will report to the City Council at a subsequent City Council meeting and request further direction. At that time, the consensus of a majority of the City Council will be required to proceed.
  - 5.12.2. Agendas for regular and special meetings of the Council shall include a “Council Items and Comments” section. (Resolution No. 2021-049)
- 5.13. Adjournment. If a City Council meeting is still in session at 11:00 p.m., the Presiding Officer shall ask the question of whether the City Council desires to consider any new items after 11:00 p.m. The City Council shall determine, by motion, which specific items will be considered or continued. The City Manager shall inform the City Council of any time sensitive items. Any item continued due to the lateness of the hour shall automatically be placed on the agenda for the next regularly scheduled City Council meeting unless otherwise scheduled by motion action of a majority of the City Council.

## City of Tracy – Council Meeting Protocols and Rules of Procedures

- 5.14. Non-Agendized Items. The Brown Act prohibits the City Council from discussing or acting upon any non-agendized matter, unless an exception under Section 54954.2 applies. For non-agendized items, City 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 person; or request that the matter be placed on a future agenda or that staff provide additional information to the City Council. However, items may be added to the agenda (such as emergency matters) as permitted in the Brown Act. Brief announcements, brief responses, or questions seeking clarifications, may be made to statements or questions raised on items not on the agenda (Section 54954.2(a)(3)). Action on any item not on the agenda shall be deferred until the item is properly listed on the agenda for a subsequent City Council meeting unless added due to an immediate need if permitted under state law.
- 5.15. Voting Requirements. All ordinances, resolutions, and orders for payment of money require a majority vote of the total membership of the City Council in accordance with Section 36939, unless otherwise required by State law.
- 5.15.1. It is a best practice that all City Council members vote on every item of business unless prevented from doing so by virtue of an actual or potential conflict of law or other valid abstention under applicable laws. City Council Members are encouraged to disclose the reason for that abstention prior to the City Council engaging in discussion on that item.
- 5.16. Parliamentary Procedures. City Council meetings shall be conducted in accordance with the Rosenberg's Rules of Order: Simple Parliamentary Procedures for the 21<sup>st</sup> Century unless otherwise specified herein. (Appendix A - Rosenberg's Rules of Order, Revised 2011, as may be amended). City Boards and Commissions may use Rosenberg's Rules of Order or any other informal meeting protocols or parliamentary procedures to conduct their meetings. (Resolution No. 2021-049)
- 5.16.1. Time Limit for City Council Discussion and Debate. Each City Council Member shall have an aggregate maximum of five minutes to speak during each City Council discussion item and debate of a motion. (Resolution No. 2021-049)
- 5.16.2. Point of Order. Any City Council member may ask for a point of order, at which time the Presiding Officer will ask for an explanation. Points of order relate to matters that a City Council member considers inappropriate conduct for the meeting, such as the failure to adhere to these Protocols. The Presiding Officer shall rule on the matter. Any member can move to appeal the Presiding Officer's ruling, with a second from another Council member. Following debate, the ruling of the Presiding Officer may be reversed by a majority vote.
- 5.17. Written Communications from the City and the Public. The City Clerk shall manage communications to members regarding meeting topics to ensure compliance with the Brown Act.

## City of Tracy – Council Meeting Protocols and Rules of Procedures

- 5.17.1. Except for records exempt from disclosure under the California Public Records Act and otherwise by law, agendas or any other writings distributed to all or a majority of the members of a legislative body for discussion or consideration at a public meeting are disclosable to the public, and shall be made available upon request without delay.
- 5.17.2. Materials distributed to the members during the meeting shall be available for viewing by the public during the meeting if the materials were prepared by the City or a City Council member, or posted on the City's website within 48 hours the conclusion of the meeting if prepared by another person.
- 5.18. Written Materials after the City Council Agenda has been Distributed. On occasion, the City Council may receive, from members of the public, written materials either after the Agenda has been posted or at a City Council meeting. These written materials are typically related to an agenda item or handed out during "Items from the Audience/Public Comment." Upon the City Council receiving these written materials, they become a public record. For materials related to an agenda item, copies will be kept on file at the City Clerk's Office and will typically be posted on the City's website under "Materials Distributed at Council Meetings" 48 hours after the City Council meeting.
  - 5.18.1. For agenda items, staff may distribute materials to the City Council after the agenda has been published, only in compliance with the Brown Act. Any such materials will be made available at the City Council meeting for the public to review.
  - 5.18.2. Interested parties or their authorized representatives may address the Council by written communications regarding agenda items.
    - 5.18.2.1. Documents (6 copies are recommended) that members of the public submit to the City Council at the meeting shall be given directly to the City Clerk for distribution and shall not be given directly to the City Council. The documents will be available to the public on the City's website within 48 hours of the conclusion of the meeting.
- 5.19. Compliance with the Americans with Disabilities Act (ADA). The City of Tracy is in compliance with the Americans with Disabilities Act and will make all reasonable accommodations for the disabled. To allow for such reasonable accommodations, persons requiring assistance or auxiliary aids to participate at a City Council meeting, should contact the City Clerk's Office at (209) 831-6105 at least 24 hours prior to the meeting.

# City of Tracy – Council Meeting Protocols and Rules of Procedures

## Section 6 – Conduct of the Public

### 6. Conduct of the Public

- 6.1. Purpose of Public Comment. The City, in accordance with the Brown Act, provides the public the opportunity to address the City Council body as a whole and express their opinions regarding agenda items and non-agenda matters within the subject matter jurisdiction of the City Council. (Section 54954.3) Items are generally considered to be within the City Council's subject matter jurisdiction if they are within the City Council's scope of influence.
  - 6.1.1. Nothing in these Protocols shall be construed as prohibiting public criticism of the City's policies, procedures, programs or services, or the acts or omissions of the City Council. However, these Protocols are not intended to confer any privilege or protection for expression beyond that otherwise provided by law. (Section 54954.3(c)).
  - 6.1.2. Public comments should not be addressed to individual City Council members nor City staff, but rather to the City Council as a whole.
  - 6.1.3. While members of the public may speak their opinions on City business, personal attacks on members and City officials, use of swear words, and verbal or non-verbal signs or displays of disrespect for individuals are discouraged as they impede good communication with the City Council.
  - 6.1.4. Consistent with the Brown Act, the City Council is limited in its ability to respond to public comments regarding non-agenda matters.
- 6.2. In the interest of conducting an efficient meeting, the Presiding Officer may stop a member of the public whose comments are not confined to the agenda item being heard. In addition, during the "Items from the Audience/Public Comment" portion of the agenda, the Presiding Officer may stop a member of the public whose comments are not within the subject matter jurisdiction of the City.
- 6.3. Rules of Decorum. While the City Council is in session, no person in the audience at a City Council meeting shall engage in conduct that disrupts the orderly conduct of a Council meeting, including, but not limited to, the utterance of loud, threatening or abusive language, refusing to abide speaker time limits and leave the podium when directed; whistling, stamping of feet, yelling or shouting or interrupting a speaker who is addressing the City Council; repeated waving of arms; or other disruptive acts. Clapping at any time during a City Council meeting, except during the "Presentations/Proclamations and Awards" portion of the meeting, shall be considered a disruption.
- 6.4. Any person who disrupts the orderly course of the meeting may be issued a criminal citation pursuant to Penal Code section 403 and/or called out of order by the Presiding Officer and barred from further participation during that session of the City Council in accordance with the Brown Act.

## City of Tracy – Council Meeting Protocols and Rules of Procedures

- 6.4.1. All persons attending a Council meeting shall obey any lawful order or direction of the Presiding Officer or Sergeant-at-Arms.
- 6.4.2. The Sergeant-at-arms shall assist the Presiding Officer in enforcing these rules of decorum at City Council meetings, including but not limited, removing disruptive audience members. Additionally, any City Council member may at any time call for a point of order, to request the timely enforcement of these rules of decorum.
- 6.5. Location of Speaker. Members of the public wishing to address the City Council must approach the podium when recognized by the Presiding Officer and shall speak only from the podium.

## City of Tracy – Council Meeting Protocols and Rules of Procedures

### Section 7 – Miscellaneous

#### 7. Miscellaneous

- 7.1. Conflicts of Interests. It is the responsibility of every Council member to disclose conflicts of interest on agenda items, in accordance with State and local laws.
- 7.2. Proclamations. The Mayor issues proclamations to provide special recognition by the City to an individual, event, issue etc. Proclamations are not statements of policy and do not require the official approval or action of the City Council.
- 7.3. Broadcasting of Council Meetings. Generally, City Council meetings are broadcast live on Channel 26 and the City's website ([www.cityoftracy.org](http://www.cityoftracy.org)), unless technical difficulties make that infeasible. Reruns of the preceding City Council meeting are shown every Wednesday at 8:00 p.m., every Thursday at 10:00 a.m., and every Saturday at 9:00 a.m. on Channel 26.
  - 7.3.1. Recordings of City Council meetings shall be accessible on the City's website ([www.cityoftracy.org](http://www.cityoftracy.org)) by the end of the following business day. DVD recordings of Council meetings are available at costs established in the City's Master Fee Schedule.

## City of Tracy – Council Meeting Protocols and Rules of Procedures

### Appendices

- A. Rosenberg's Rules of Order, revised 2011, Simple Rules of Parliamentary Procedure for the 21<sup>st</sup> Century. Judge Dave Rosenberg



# **COUNCIL MEETING PROTOCOLS AND RULES OF PROCEDURE**

Adopted by Resolution No. 2019-240  
Revised by Resolution Nos. 2020-112 & 2021-049

# City of Tracy – Council Meeting Protocols and Rules of Procedures

## Table of Contents

Section 1 –Purpose and Applicability.....	3
Section 2 –Duties (Roles and Responsibilities).....	4
Section 3 – Meeting Types.....	6
Section 4 – Meeting Agendas .....	8
Section 5 –Conduct of Meetings .....	119
Section 6 – Conduct of the Public .....	175
Section 7 – Miscellaneous .....	187
Appendices.....	198

# City of Tracy – Council Meeting Protocols and Rules of Procedures

## Section 1 –Purpose and Applicability

### 1. Purpose and Applicability

1.1. The purpose of these Council Meeting Protocols and Rules of Procedures (“Protocols”) are to provide clear guidelines to assist the City Council, staff and the public to conduct meetings in an efficient and transparent manner and in accordance with the Ralph M. Brown Act (“Brown Act”; Government Code sections 54950-54963) and all applicable laws.<sup>1</sup> These Protocols are adopted pursuant to Section 36813. In the event of a conflict between the Brown Act and these Protocols, the Brown Act shall control.

1.2. In the event of a conflict between these Protocols, and the City of Tracy’s adopted Code of Conduct (Resolution No. 2021-146), Protocols shall control.

1.2.1.3. These Protocols shall apply to the City Council, the Successor Agency to the Community Development Agency, the Tracy Public Facilities Corporation, the Tracy Industrial Development Authority, and all City Boards, Commissions, and Committees.

1.3.1.4. Suspension of Protocols. Any rule set forth herein may be suspended by a supermajority vote of the City Council.

1.4.1.5. Review and Changes to Protocols. These Protocols shall be reviewed by December 31<sup>st</sup> of every odd numbered year. A majority vote of the City Council shall be necessary to amend these Protocols.

1.5.1.6. A copy of these Protocols shall be available for public review at the City Clerk’s Office and City’s website (www.cityoftracy.org).

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<sup>1</sup> All references to statutes are to the California Government Code unless otherwise specified.

# City of Tracy – Council Meeting Protocols and Rules of Procedures

## Section 2 –Duties (Roles and Responsibilities)

### 2. Roles and Responsibilities at Council Meetings

- 2.1. Mayor. The Mayor is the Presiding Officer of all meetings of the full City Council. The Presiding Officer is the primary, but not the only, person responsible for ensuring that the City Council, staff, and members of the public adhere to these Protocols during City Council meetings. (Section 36802). The Chair of a City board or commission shall act as the Presiding Officer.
- 2.2. Mayor Pro Tem. The Mayor Pro Tem shall serve as the Presiding Officer in the absence of the Mayor. Absence shall be as defined by State law. Upon arrival of the Mayor, the Mayor Pro Tem shall immediately relinquish the role of Presiding Officer at the conclusion of the business then before Council. (Section 36802) The Vice Chair of a City board or commission shall act as the Presiding Officer in the absence of the Chair.
- 2.3. City Council. All members of the City Council shall comply with the Council Code of Conduct at meetings. Newly elected City Council members shall be sworn in and seated at the first regular City Council meeting after receipt of the certified election results from the County Registrar of Voters.
- 2.4. Sergeant-at-Arms. The Sergeant-at-Arms is the law enforcement official charged with maintaining security during meetings of the City Council. The Sergeant-at-Arms of the City Council shall be a police officer assigned by the Police Chief. There shall be at least one member-officer so assigned and present at each meeting of the full City Council. The officer shall maintain order and enforce the orders of the City Council and Presiding Officer.
- 2.5. City Manager. Pursuant to the Council-Manager form of government established by Chapter 2.08 of the Tracy Municipal Code, the City Manager sets the Council agenda and once published, may withdraw an item(s), unless the item has been placed on the agenda by the City Council pursuant to XXXX. ~~The City Manager may consult with the Mayor regarding the development of the agenda.~~
- 2.6. City Clerk. The City Clerk shall attend all meetings of the Council unless excused. The Deputy City Clerk shall attend Council meetings in the City Clerk's absence. The City Clerk shall record, prepare, and maintain the official records of the Council and perform other duties as directed by the City Manager. (Section 36804)
  - 2.6.1. Minutes. The City Clerk's office shall be responsible for the preparation and distribution of the Council minutes. The minutes shall include a public report on any action taken and the vote or abstention on such action of each Council Member present for the action. Unless a reading of the minutes is requested by a Council Member, the minutes may be approved as a Consent Calendar item.
    - 2.6.1.1. No minutes or written record of closed sessions of the City Council shall be kept, except as required by State law or as directed by the majority vote of

## City of Tracy – Council Meeting Protocols and Rules of Procedures

the City Council. The Council shall report at a public meeting any action taken in closed session, as required by Section 54957.1.

2.6.1.2. The City Clerk shall include a report on posting of the agenda in the minutes.

2.6.2. Timekeeper. The City Clerk shall be the designated timekeeper at all City Council meetings and shall have the authority to interrupt speakers, whether members of the public or a City Council member, when their allotted speaking times have expired.

2.7. City Staff. City staff shall (a) prepare balanced staff reports and provide accompanying documents on all agenda items in accordance with the agenda preparation schedule; (b) be available for questions from the City Council in accordance with the Brown Act prior to and during meetings; and (c) respond to questions from the public during meetings only when requested to do so by the City Council or the City Manager.

2.8. City Attorney. The City Attorney shall attend all meetings of the Council unless excused. The Assistant City Attorney shall attend Council meetings in the City Attorney's absence. The City Attorney shall give ~~opinions~~advicse, upon request from the City Council, ~~either in writing or verbally~~, on questions of law. The City Attorney shall advise the Council at meetings on legal issues, including these Protocols. The City Attorney will shall serve as the Council's advisory Parliamentarian at City Council meetings, providing adviceopinng on any procedural issues related to these Protocols, the Brown Act and Rosenberg's Rules. disputes and ensuring the Council and members of the public follow applicable rules and procedures.

# City of Tracy – Council Meeting Protocols and Rules of Procedures

## Section 3 – Meeting Types

### 3. Council Meeting Types

3.1. Regular Meetings. Regular City Council meetings are held on the first and third Tuesdays of the month at 7:00 p.m. at City Hall Council Chambers, 333 Civic Center Plaza, Tracy, California 95376, unless otherwise noticed and as allowed under Section 54954. No meeting shall be held on a holiday as defined by Section 6700. (Section 36805)

3.2. Special Meetings. The City Manager, Mayor, or a majority of the members of the City Council may call a special meeting. (Section 54956). ~~The Only the~~ City Attorney is ~~also~~ authorized to ~~call a special meeting for the sole purpose of convening~~ a closed session, which shall be considered a special meeting and conducted in accordance with the Brown Act. (Section 36807)

3.3. Workshops. The purpose of a workshop is to inform the City Council of complex issues and provide an opportunity for the City Council to review documents and request additional information. However, no final City Council action shall be taken during the workshop on ~~workshop-agendized~~ items. Workshops are open to the public and ~~are shall~~ be conducted as public meetings for the purpose of in accordance with the Brown Act.

3.4. Closed Sessions.

3.4.1. The City Attorney shall convene a special closed session meeting under the following circumstances:

3.4.1.1. When requested by the City Manager to discuss a matter in closed session, and the City Attorney determines such a matter is permissible for discussion in closed session under the Brown Act;

3.4.1.2. When requested by the City Council, pursuant to Section 4.3, to discuss a matter in closed session, and the City Attorney determines such a matter is permissible for discussion in closed session under the Brown Act;

3.4.1.3. When the City Attorney deems it so necessary and determines a closed session is permissible under the Brown Act.

~~3.4.1.~~3.4.2. Closed sessions shall be held in accordance with the Brown Act. Non-agendized matters shall not be discussed in closed session. Closed sessions may precede or follow a City Council meeting.

~~3.4.2.~~3.4.3. All closed session information, verbal or written, is privileged and confidential and shall not be shared with any person not at the closed session. Any member sharing information in violation of this rule may be subject to censure by the City Council or other legal remedies as set forth in Section 54963.

## City of Tracy – Council Meeting Protocols and Rules of Procedures

~~3.4.3.3.4.4.~~ 3.4.4.3.4.4. The public may speak regarding any closed session item prior to the closed session as required by the Brown Act.

~~3.4.4.3.4.5.~~ 3.4.4.3.4.5. The ~~Presiding Officer~~The City Attorney shall attend all closed sessions and shall report out in public session any reportable actions there taken by Council and the vote on such actions, in accordance with the Brown Act.

- 3.5. Teleconferenced Meetings. The City Council may hold a meeting by teleconference, meaning a meeting of the Council in which members are in different locations and connected by electronic means, through either audio or video, or both. Any teleconference meeting of the Council must ~~be comply~~comply with the requirements ~~under of Government~~ Section 54953 ~~and any other state applicable law adopted by the California Legislature~~, including but not limited to the requirement that all votes taken shall be by roll call.
- 3.6. Emergency Meetings. In the case of an emergency, as defined by Section 54956.5, ~~as may be amended from time to time~~, a majority of Council may call a meeting and dispense with the special meeting notice and posting requirements under the Brown Act. Any emergency meeting held shall comply with the applicable Brown Act provisions.
- 3.7. The City Clerk shall ensure that the applicable noticing and posting requirements under the Brown Act are followed for all meetings of the City Council and shall poll and confirm a quorum is available for all such meetings in advance of publication.

# City of Tracy – Council Meeting Protocols and Rules of Procedures

## Section 4 – Meeting Agendas

### 4. Meetings Agendas

4.1. Purpose of Agenda. The Council meeting agenda documents serve four purposes:

- To communicate and inform City Council, City staff, the public and the press about City business.
- To comply with mandated state laws.
- To facilitate the decision-making process by including sufficient background information so that the City Council can obtain a full understanding of the issues and staff's analysis and recommendation prior to their consideration and action.
- To serve as a historical reference that can be kept as a record of proceedings and actions as needed for future actions and/or litigation.

As set forth above, the purpose of the agenda is to provide a framework within which Council meetings can be conducted and to effectively implement the approved Council programs, goals and budget. The agenda shall contain a brief general description of each item of business to be transacted or discussed at the meeting.

4.2. Posting and Distribution of Agendas. At a minimum, the posting and distribution of all agendas shall be done in accordance with the Brown Act. Agendas for regular meetings shall be posted not less than 72 hours prior to the meeting (Section 54954.2(a)(1)); special meeting agendas shall be posted not less than 24 hours prior to the meeting (Section 54956).

4.2.1. All agendas shall be posted in the following locations: City Hall, the Tracy Library, the City's website, and other locations as may be required by the bylaws of a particular Board or Commission. Posting of agendas at City Hall shall be the official location for purposes of Brown Act compliance.

4.2.2. Agenda packets are provided electronically to City Council Members on the Thursday prior to a City Council meeting unless technical difficulties occur. If technical difficulties occur, the City Clerk will endeavor to provide Council with hard copies of the agenda as soon as reasonably possible. Distribution to the staff, public and media shall occur immediately after distribution to the City Council. Members of the public may sign up to receive notification that a Council meeting agenda has been posted on the City's website ([www.cityoftracy.org](http://www.cityoftracy.org)). The City Clerk will mail copies of the agenda or particular agenda items to any person submitting a request. (Section 54954.1) Said requests will be valid for one year. Copies of the agenda, and of individual agenda items, are available at costs established in the City's Master Fee Schedule. Copies of the agenda are also available for inspection at the Tracy Library and City Clerk's office. Agendas for Council meetings are posted on the City's website ([www.cityoftracy.org](http://www.cityoftracy.org)).

## City of Tracy – Council Meeting Protocols and Rules of Procedures

4.3. Agenda Item Submission, Council Member Request for Agenda Items. Council Members may seek to have an item discussed by the City Council at a future meeting and shall follow the below processes to have an item placed on a future City Council agenda:

~~4.3.1. Council Member Request for Agenda Items. Council Members wishing to have a matter discussed by the City Council During "Council Items and Comments", a Council Member may make a motion, and seconded by a second Council Member, to request that to place an agenda item be placed on a future City Council agenda, and upon receiving a second to such motion, the City Manager shall place the item on a future agenda.~~

~~4.3.1.1. When the motion is made, the City Manager may provide information regarding current workloads, staffing and/or anticipated research that may affect the timing of completing the requested item, so as to establish more accurate and realistic expectations of when such item will be placed on a future City Council agenda.~~

~~4.3.1.2. If no discussion is had regarding the timing, the City Manager shall place the requested item on a future City Council agenda within a reasonable time.~~

~~4.3.1.3. The motion maker may include a specific meeting date on which the item must be brought to the City Council for consideration, and such date shall prevail, unless the City Manager provides information to explain that such date is not possible either due to current workloads, staffing and/or anticipated research. during a Council meeting, under "Council Items and Comments."~~

~~Council Member Request for Agenda Items. Council Members wishing to have a matter discussed by the City Council may request that it be placed on a future City Council agenda during a Council meeting, under "Council Items and Comments."~~

~~4.3.2. A Council Member may request a time sensitive item be placed on the next City Council agenda, may be requested by contacting the City Manager, or their designee, via telephone, email or in person. Upon the request of a Council Member, the item will be placed on a futurethe next City Council agenda as long as the motion maker obtains one other Council Member to second concurs with the request. In the interest of transparency and Brown Act compliance, the motion maker Council shall limit discussions, outside of City Council meetings, about requests to support agenda items to a maximum of twoonly one other Council Member to obtain support for a second to the motion s regarding the time-sensitive request.~~

~~4.3.2.1. For purposes of this section 4.3.2, "Time-sensitive" shall mean any agenda item that is considered urgent by the sponsor and that has a deadline for action that is prior to the next meeting of the City Council. All necessary information should be submitted to City Council for a valid Time-sensitive request.~~

## City of Tracy – Council Meeting Protocols and Rules of Procedures

4.3.2.2. In the event of a time-sensitive request, the City Manager shall notify the rest of the City Council when two Council Members request an item to be placed on the agenda. The City Manager will ~~determine when to~~ place the item on the next City Council a future agenda, unless the City Manager has communicated to the two requesting Councilmembers that such timeframe is not possible based on current workloads, staffing and/or research. The City Manager shall consult and coordinate with the City Attorney on all time-sensitive matters.

4.3.1.1.4.3.2.3. ~~If the time-sensitive item is not able to be placed on the next City Council agenda, due to the information provided by the City Manager pursuant to Section 4.3.2.2, then the Council Member may place the item on a future City Council agenda pursuant to Section 4.3.1 based on time necessary to complete the research and staff workload considerations.~~

4.3.2.4.3.3. Other Public Agencies. Agenda items such as presentations and proposals from other public entities must be sponsored for agenda placement by two Council members or the City Manager.

# City of Tracy – Council Meeting Protocols and Rules of Procedures

## Section 5 –Conduct of Meetings

### 5. Conduct of Meetings

5.1. Order of Business. The suggested order of business of Council meetings shall be as follows. ~~However, the Mayor may reorder the items unless a majority of Council members object. The Mayor shall announce the reorder prior to calling members of the public to speak during the meeting open to the public.~~

1. Call to Order
2. Roll Call
3. Pledge of Allegiance
4. Invocation
5. Presentations/Proclamations and Awards
- 5.6. ~~Special Orders of the Business Day~~
- 6.7. Consent Calendar
- 7.8. Items from the Audience/Public Comment
- 8.9. Continued Public Hearings
- 9.10. Public Hearings
- 10.11. Regular Items
- 11.12. Items from the Audience/Public Comment
- 12.13. Staff Items
- 13.14. Council Items and Comments
- 14.15. Adjournment

5.2. Call to Order. The Presiding Officer shall take the chair at the hour appointed for the meeting and shall immediately call the meeting to order.

5.3. Roll Call. A majority of the members of the Council then in office shall constitute a quorum. (Section 36810)

5.4. Invocations. Any member of the public who wishes to offer an invocation prior to the opening of a regular Council meeting shall contact the City Clerk. The City Clerk shall select a mutually agreeable City Council meeting date for the invocation.

5.5. Presentations/Proclamations and Awards. This portion of the Agenda is dedicated for presentations, such as proclamations and awards, employee of the month recognitions, board and commission recognitions, and employee swearing-ins, and shall be limited to a 15-minute maximum period.

5.6. ~~Special Orders of the Business Day~~. The order of business shall be as set forth in the published agenda. However, the Mayor may reorder the agenda items unless a majority of Council members object, or a Council Member may request that the Mayor reorder agenda items. The Mayor, as the Presiding Officer, shall be the decision maker on the order of business, except that the Mayor's decision may be appealed by a Council Member and such appeal shall be decided upon by a majority vote of the City Council.- Upon a final determination that a reorder is occurring, tThe Mayor shall announce the reorder prior to calling members of the public to speak during the meeting open to the public. Any proceeding with the meeting. special items to be

## City of Tracy – Council Meeting Protocols and Rules of Procedures

~~considered by City Council will be discussed during this agenda item. This may include a suspension of certain rules, a petitioner's request to withdraw an ordinance or resolution, or annual housekeeping items.~~

~~5.6-5.7.~~ 5.6-5.7. Consent Calendar. All items listed on the Consent Calendar are considered to be routine matters or consistent with previous City Council direction, such as resolutions confirming action from a previous meeting or the adoption of an ordinance previously introduced by Council. 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.

~~5.7-5.8.~~ 5.7-5.8. Items from the Audience/Public Comment. It is the policy of the City Council that members of the public be allowed to address the Council on any item of interest to the public, before or during its consideration of that item, that is within the City Council's subject matter jurisdiction. (Section 54954.3(a)).

~~5.7.1-5.8.1.~~ 5.7.1-5.8.1. Agendas for regular meetings will have two opportunities for "Items from the Audience/Public Comment." (Section 54954.3(a)). In the interest of allowing the City Council to have adequate time to address the agenda items of business, the first public comment opportunity will be limited to a 15-minute maximum period. (Section 54954.3(b)). The second opportunity will not have a ~~maximum~~ time limit period. A five-minute ~~maximum~~ time limit per speaker will apply to all individuals speaking during the "Items from the Audience/Public Comment" portion of the agenda. ~~The City Clerk shall be the timekeeper.~~ Speakers may not concede any part of their allotted time to another speaker.

~~5.7.1.1-5.8.1.1.~~ 5.7.1.1-5.8.1.1. However, 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.

~~5.7.2-5.8.2.~~ 5.7.2-5.8.2. Each speaker shall avoid repetition of the remarks of the prior speakers, and when speaking under a specific agenda item, shall speak only to that agenda item. 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.

~~5.7.3-5.8.3.~~ 5.7.3-5.8.3. Speaker Cards. To facilitate the orderly process of public comment and to assist the City Council to conduct its business as efficiently as possible, members of the public wishing to address the City 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 City Council. (Section 54953.3)

## City of Tracy – Council Meeting Protocols and Rules of Procedures

5.8-5.9. Public Hearings. Public hearings are required for a variety of City Council actions such as changes to the Tracy Municipal Code, zoning revisions, some annexations, street vacations, weed abatement, liens, fee increases, etc. Whenever the law provides that publication of a notice shall be made, such notice shall be published in a newspaper of general circulation for the period prescribed, the number of times, and in the manner required. Each speaker will be allowed a maximum of five minutes for public input or testimony. However, in the event there are 15 or more individuals wishing to speak regarding a public hearing item, the maximum amount of time allowed per speaker will be three minutes. ~~The City Clerk shall be the timekeeper.~~

5.8.1-5.9.1. Public Hearings for Land Use and Other Matters. The Presiding Officer may designate individuals as the “Proponent/Appellant” or “Opponent” and provide each with additional time for comments and the opportunity to present a rebuttal.

5.9-5.10. Regular Items. This portion of the Agenda is for non-public hearing agenda items that require Council action or direction such as status or informational reports from staff and Council requests for agenda items.

5.10-5.11. Staff Items. This portion of the agenda provides an opportunity for the City Manager, City Attorney, and City staff to provide information of community interest to the City Council.

5.12. Council Items and Comments. This portion of the agenda is for each member of the City Council to provide brief reports on any intergovernmental agency meetings, conferences, community meetings, meetings of other legislative bodies, or other events of interest to the community that they attended, as well as meetings attended at the City’s expense. This portion of the agenda is also for the City Council to provide guidance and direction to staff concerning items to be included on future agendas and information to be provided in response to questions raised during “Items from the Audience/Public Comment.”

5.10.1-5.12.1. Under this portion of the agenda, two Council members may request staff to provide information, perform studies, or undertake other action. If the requested action is routine in nature, the City Manager will direct staff to proceed. However, if the request cannot be accomplished within the approved budget or City Council priorities, or if it will involve substantial staff resources, the City Manager will report to the City Council at a subsequent City Council meeting and request further direction. At that time, the consensus of a majority of the City Council will be required to proceed.

5.10.2-5.12.2. Agendas for regular and special meetings of the Council shall include a “Council Items and Comments” section. (Resolution No. 2021-049)

5.11-5.13. Adjournment. If a City Council meeting is still in session at 11:00 p.m., the Presiding Officer shall ask the question of whether the City Council desires to consider any new items after 11:00 p.m. The City Council shall determine, by motion, which

## City of Tracy – Council Meeting Protocols and Rules of Procedures

specific items will be considered or continued. The City Manager shall inform the City Council of any time sensitive items. Any item continued due to the lateness of the hour shall automatically be placed on the agenda for the next regularly scheduled City Council meeting unless otherwise scheduled by motion action of a majority of the City Council.

5.12-5.14. Non-Agendized Items. The Brown Act prohibits the City Council from discussing or acting upon any non-agendized matter, unless an exception under Section 54954.2 applies. For non-agendized items, City 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 person; or request that the matter be placed on a future agenda or that staff provide additional information to the City Council. However, items may be added to the agenda (such as emergency matters) as permitted in the Brown Act. Brief announcements, brief responses, or questions seeking clarifications, may be made to statements or questions raised on items not on the agenda (Section 54954.2(a)(3)). Action on any item not on the agenda shall be deferred until the item is properly listed on the agenda for a subsequent City Council meeting unless added due to an immediate need if permitted under state law.

5.13-5.15. Voting Requirements. All ordinances, resolutions, and orders for payment of money require a majority vote of the total membership of the City Council in accordance with Section 36939, unless otherwise required by state law.

5.13.1-5.15.1. It is a best practice that all City Council members vote on every item of business unless prevented from doing so by virtue of an actual or potential conflict of law or other valid abstention under applicable laws. City Council Members are encouraged to disclose the reason for that abstention prior to the City Council engaging in discussion on that item.

5.14-5.16. Parliamentary Procedures. City Council meetings shall be conducted in accordance with the Rosenberg's Rules of Order: Simple Parliamentary Procedures for the 21<sup>st</sup> Century unless otherwise specified herein. (Appendix A - Rosenberg's Rules of Order, Revised 2011, as may be amended). City Boards and Commissions may use Rosenberg's Rules of Order or any other informal meeting protocols or parliamentary procedures to conduct their meetings. (Resolution No. 2021-049)

5.14.1-5.16.1. Time Limit for City Council Discussion and Debate. Each City Council Member shall have an aggregate maximum of five minutes to speak during each City Council discussion item and debate of a motion. (Resolution No. 2021-049)  
The City Clerk shall be the timekeeper for all Council discussions.

5.14.2-5.16.2. Point of Order. Any City Council member may ask for a point of order, at which time the Presiding Officer will ask for an explanation. Points of order relate to matters that a City Council member considers inappropriate conduct for the meeting, such as the failure to adhere to these Protocols. The Presiding Officer shall rule on the matter. Any member can move to appeal the Presiding Officer's

## City of Tracy – Council Meeting Protocols and Rules of Procedures

ruling, with a second from another Council member. Following debate, the ruling of the Presiding Officer may be reversed by a majority vote.

~~5.15.5.17.~~ Written Communications from the City and the Public. The City Clerk shall manage communications to members regarding meeting topics to ensure compliance with the Brown Act.

~~5.15.1.5.17.1.~~ Except for records exempt from disclosure under the California Public Records Act and otherwise by law, agendas or any other writings distributed to all or a majority of the members of a legislative body for discussion or consideration at a public meeting are disclosable to the public, and shall be made available upon request without delay.

~~5.15.2.5.17.2.~~ Materials distributed to the members during the meeting shall be available for viewing by the public during the meeting if the materials were prepared by the City or a City Council member, or posted on the City's website within 48 hours the conclusion of the meeting if prepared by another person.

~~5.16.5.18.~~ Written Materials after the City Council Agenda has been Distributed. On occasion, the City Council may receive, from members of the public, written materials either after the Agenda has been posted or at a City Council meeting. These written materials are typically related to an agendized item or handed out during "Items from the Audience/Public Comment." Upon the City Council receiving these written materials, they become a public record. For materials related to an agendized item, a copies will be kept on file at the City Clerk's Office and will typically be posted on the City's website under "Materials Distributed at Council Meetings" 48 hours after the City Council meeting.

~~5.16.1.5.18.1.~~ For agendized items, staff may distribute materials to the City Council after the agenda has been published, only in compliance with the Brown Act. Any such materials about an agendized item that are received less than 72 hours before a Council meeting that are distributed to a majority of Council will be made available at the City Council meeting for the public to review.

~~5.16.2.5.18.2.~~ Interested parties or their authorized representatives may address the Council by written communications regarding agenda items.

~~5.16.2.1.5.18.2.1.~~ Documents (6 copies are recommended) that members of the public submit to the City Council at the meeting shall be given directly to the City Clerk for distribution and shall not be given directly to the City Council. The documents will be available to the public on the City's website within 48 hours of the conclusion of the meeting.

~~5.17.5.19.~~ Compliance with the Americans with Disabilities Act (ADA). The City of Tracy is in compliance with the Americans with Disabilities Act and will make all reasonable accommodations for the disabled. To allow for such reasonable accommodations, persons requiring assistance or auxiliary aids to participate at a City Council meeting,

## City of Tracy – Council Meeting Protocols and Rules of Procedures

should contact the City Clerk's Office at (209) 831-6105 at least 24 hours prior to the meeting.

# City of Tracy – Council Meeting Protocols and Rules of Procedures

## Section 6 – Conduct of the Public

### 6. Conduct of the Public

- 6.1. Purpose of Public Comment. The City, in accordance with the Brown Act, provides the public the opportunity to address the City Council body as a whole and express their opinions regarding agenda items and non-agenda matters within the subject matter jurisdiction of the City Council. (Section 54954.3) Items are generally considered to be within the City Council's subject matter jurisdiction if they are within the City Council's scope of influence.
- 6.1.1. Nothing in these Protocols shall be construed as prohibiting public criticism of the City's policies, procedures, programs or services, or the acts or omissions of the City Council. However, these Protocols are not intended to confer any privilege or protection for expression beyond that otherwise provided by law. (Section 54954.3(c)).
- 6.1.2. Public comments should not be addressed to individual City Council members nor City staff, but rather to the City Council as a whole.
- 6.1.3. While members of the public may speak their opinions on City business, personal attacks on members and City officials, use of swear words, and verbal or non-verbal signs or displays of disrespect for individuals are discouraged as they impede good communication with the City Council.
- 6.1.4. Consistent with the Brown Act, the City Council is limited in its ability to respond to public comments regarding non-agenda matters. ~~The limited circumstances under which members may respond to public comments are set out in Rule 5.13.~~
- 6.2. In the interest of conducting an efficient meeting, the Presiding Officer may stop a member of the public whose comments are not confined to the agenda item being heard. In addition, during the "Items from the Audience/Public Comment" portion of the agenda, the Presiding Officer may stop a member of the public whose comments are not within the subject matter jurisdiction of the City.
- 6.3. Rules of Decorum. While the City Council is in session, no person in the audience at a City Council meeting shall engage in conduct that disrupts the orderly conduct of a Council meeting, including, but not limited to, the utterance of loud, threatening or abusive language, refusing to abide speaker time limits and leave the podium when directed; whistling, ~~clapping~~, stamping of feet, yelling or shouting or interrupting a speaker who is addressing the City Council; repeated waving of arms; or other disruptive acts. Clapping at any time during a City Council meeting, except during the "Presentations/Proclamations and Awards" portion of the meeting, shall be considered a disruption.
- 6.4. Any person who disrupts the orderly course of the meeting may be issued a criminal citation pursuant to Penal Code section 403 and/or called out of order by the Presiding

## City of Tracy – Council Meeting Protocols and Rules of Procedures

Officer and barred from further participation during that session of the [City](#) Council in accordance with the Brown Act.

6.4.1. All persons attending a Council meeting shall obey any lawful order or direction of the Presiding Officer or Sergeant-at-Arms.

6.4.2. The Sergeant-at-arms shall assist the Presiding Officer in enforcing these rules of decorum at [City](#) Council meetings, including but not limited, removing disruptive audience members. Additionally, any [City](#) Council member may at any time call for a point of order, to request the timely enforcement of these rules of decorum.

6.5. Location of Speaker. Members of the public wishing to address the [City](#) Council must approach the podium when recognized by the Presiding Officer and shall speak only from the podium.

# City of Tracy – Council Meeting Protocols and Rules of Procedures

## Section 7 – Miscellaneous

### 7. Miscellaneous

- 7.1. Conflicts of Interests. It is the responsibility of every Council member to disclose conflicts of interest on agendized items, in accordance with Sstate and local conflict of interest laws.
- 7.2. Proclamations. The Mayor issues proclamations to provide special recognition by the City to an individual, event, issue etc. Proclamations are not statements of policy and do not require the official approval or action of the City Council.
- 7.3. Broadcasting of Council Meetings. Generally, City Council meetings are broadcast live on Channel 26 and the City's website ([www.cityoftracy.org](http://www.cityoftracy.org)), unless technical difficulties make that infeasible. Reruns of the preceding City Council meeting are shown every Wednesday at 8:00 p.m., every Thursday at 10:00 a.m., and every Saturday at 9:00 a.m. on Channel 26.
  - 7.3.1. Recordings of City Council meetings shall be accessible on the City's website ([www.cityoftracy.org](http://www.cityoftracy.org)) by the end of the following business day. DVD recordings of Council meetings are available at costs established in the City's Master Fee Schedule.

## City of Tracy – Council Meeting Protocols and Rules of Procedures

### Appendices

- A. Rosenberg's Rules of Order, revised 2011, Simple Rules of Parliamentary Procedure for the 21<sup>st</sup> Century. Judge Dave Rosenberg

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CITY ATTORNEY'S OFFICE

**TRACY CITY COUNCIL**

**RESOLUTION NO. \_\_\_\_\_**

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**ADOPTING AMENDMENTS TO THE CITY COUNCIL'S A) CODE OF CONDUCT AND B) MEETING PROTOCOLS AND RULES OF PROCEDURES**

**WHEREAS**, Pursuant to best practices (and in accordance with authority granted by California Government Code section 36813), legislative bodies often adopt policies governing the roles and responsibilities of such bodies as well as norms and behaviors expected of the members; and

**WHEREAS**, In June 2019, the San Joaquin County Civil Grand Jury issued a report on its investigation of the Tracy City Council and recommended the City Council adopt an ethics policy to guide its conduct; and

**WHEREAS**, On July 16, 2019, the City Council unanimously agreed to develop and adopt an ethics/code of conduct policy, and subsequently, on October 15, 2019, the Council adopted the City Council's Code of Conduct (Code); and

**WHEREAS**, On November 5, 2019, the City Council replaced older meeting protocol rules with the new Meeting Protocols and Rules of Procedure (Protocols); and

**WHEREAS**, Both the Code and the Protocols state that they should be reviewed and revised by the City Council by December 31<sup>st</sup> of every odd year; and

**WHEREAS**, At its annual retreat on February 4-5, 2023, the City Council began a discussion of issues and observations that have been made by the City Management team, City Attorney and Councilmembers regarding the Code and the Protocols; and

**WHEREAS**, On February 28, 2023, the City Council continued the discussion in a workshop, in which the Acting City Manager, Assistant City Manager, and City Attorney provided specific recommendations for the City Council's consideration; and

**WHEREAS**, Based on the direction given by the City Councilmembers, the City Attorney is proposing that the City Council adopt the amended Code of Conduct, reflected in **Attachment A**, and the amended Council Meeting Protocols and Rules of Procedure, reflected in **Attachment B**; and

**WHEREAS,** The amendments reflect general cleanups and clarifications to existing language; and

**WHEREAS,** The amendments also remove any overlapping language in the two documents, add clarifications to existing processes, and document compliance with laws; and

**WHEREAS,** The City Attorney worked closely with the previous Acting City Manager and the Assistant City Manager in developing the proposed amendments, to timely respond to the City Council’s direction; now, therefore, be it

**RESOLVED:** That the City Council of the City of Tracy hereby adopts the amendments to the Code of Conduct, as reflected in **Attachment A**; and

**FURTHER RESOLVED:** That the City Council hereby adopts the amendments to the Meeting Protocols and Rules of Procedure, as reflected in **Attachment B**; and be it

**FURTHER RESOLVED:** That the City Council hereby directs the City Manager to implement the amended Code and Protocols, as of the date of this Resolution; and be it

**FURTHER RESOLVED:** In the event of ambiguity on any terms of the amended Code or Protocols, the City Manager shall consult with and obtain from the City Attorney a determination; and be it

**FURTHER RESOLVED,** That the actions taken herein do not constitute a “project” under the California Environmental Quality Act.

\* \* \* \* \*

The foregoing Resolution 2023-\_\_\_\_\_ was adopted by the Tracy City Council on May 16, 2023 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

#### ATTACHMENTS

Attachment A – Code of Conduct  
Attachment B - Meeting Protocols and Rules of Procedure



# **CITY COUNCIL CODE OF CONDUCT**

Adopted on October 15, 2019 by Resolution No. 2019-203

Amended on July 21, 2020 by Resolution No. 2020-133

Amended on February 16, 2021 by Resolution No. 2021-017

Amended on October 19, 2021 by Resolution No. 2021-146

## TABLE OF CONTENTS

### CHAPTER 1 - FORM OF GOVERNMENT

1.1	Preamble .....	4
1.2	Form of Government .....	4
1.3	City Manager Appointment, Power and Duties .....	4
1.4	City Attorney Appointment and Responsibilities.....	5

### CHAPTER 2 - COUNCIL POWERS AND RESPONSIBILITIES

2.1	City Council Generally.....	6
2.2	Mayor and Mayor Pro Tem -Appointment, Power, and Duties .....	6
2.3	Council Member Subject Matter Committees .....	7
2.4	Action by Subject Matter Committees .....	8

### CHAPTER 3 - LEGAL AND ETHICAL STANDARDS

3.1	Preamble .....	10
3.2	Public Interest.....	10
3.3	Council Conduct.....	11
3.4	Conflict of Interest.....	12
3.5	AB 1234-Required Ethics Training.....	18
3.6	Code of Conduct Compliance and Enforcement .....	19

### CHAPTER 4 - COMMUNICATIONS

4.1	Relationship/Communications with Staff .....	21
4.2	Council Relationship/Communication with Council Advisory Bodies .....	22
4.3	Handling of Litigation and Other Confidential Information .....	22
4.4	Representing an Official City Position .....	22
4.5	Quasi-Judicial Role/Ex Parte Contacts .....	23
4.6	No Attorney-Client Relationship.....	24

**CHAPTER 5 - COUNCIL ADVISORY BODIES**

5.1 Citizen Boards and Commissions Generally.....25  
5.2 Citizen Board and Commission Organization and Conduct. .... 26  
5.3 Board and Commission Appointments ..... 26  
5.4 Boards and Commissions- Vacancy and Selection/Appointment Processes .... 26  
5.5 Boards, Commissions, and Committees - Removal ..... 27

**CHAPTER 6 - COUNCIL FINANCIAL MATTERS**

6.1 Compensation ..... 28  
6.2 Benefits ..... 28  
6.3 City Council Budget and Expenses ..... 28

**APPENDIX**

- A. Tracy Municipal Code (TMC) 2.08.060
- B. Council Appointed Committees
- C. City Nepotism Policy
- D. City Personnel Rule 9.2 (d)
- E. Resolution No. 2004-152 - Board, Commission, Committee Vacancy, Selection, and Defining Residency Requirements, for Appointee Bodies
- F. Ordinance 1094
- G. Resolution No. 2007-075 - Council Travel Procedures

ATTACHMENT 1 - City Council Code of Conduct Norms and Values Statement

ATTACHMENT 2- Council Advisory Body Norms and Values Statement

ATTACHMENT 3 - Code of Fair Campaign Practices

## **CHAPTER 1 FORM OF GOVERNMENT**

### **1.1 Preamble**

The legal responsibilities of the Tracy City Council are set forth by applicable state and federal laws. In addition, the City Council has adopted regulations, including this Code of Conduct Policy, that hold Council Members to standards of conduct above and beyond what is required by law. This Policy is written with the assumption that Council Members, through training, are aware of their legal and ethical responsibilities as elected officials.

### **1.2 Form of Government**

The City of Tracy operates under a Council-Manager form of government as prescribed by the Tracy Municipal Code ("TMC"). Accordingly, the Mayor and members of the Council are elected at-large, provide legislative direction, set City policy, and ultimately answer to the public.

### **1.3 City Manager Appointment, Power and Duties**

The City Manager is appointed by a majority vote of the Council and serves as the City's chief administrative officer and is responsible for directing the day-to-day operations of the City and implementing policy direction per Section 2.08.060 of the TMC (attached). Specifically, Section 2.08.070 of the TMC prohibits interference by either the City Council or any of its members with the City Manager's execution of their powers or duties:

- Neither the City Council, as a body, nor a member shall interfere with the appointment by the City Manager of any of the department heads or any person to any office or employment.
- Additionally, neither the City Council, as a body, nor any of its members shall interfere with the City Manager's power to remove any of those persons.
- Neither the Council nor any of its members shall give orders to any subordinate of the City Manager, either publicly or privately.
- The City Manager and his/her senior staff shall conduct themselves in accordance with the International City Management Association (ICMA) Code of Ethics.

The City Council and its members shall deal only with the City Manager with respect to the administrative services or operational matters of the City.

#### 1.4 City Attorney Appointment and Responsibilities

The City Attorney is appointed by a majority vote of the City Council, per Section 12.08.40, and serves as the City's sole legal counsel. The City Manager shall coordinate with and receive input from the City Attorney on all administrative, policy and operational matters that have or may have legal implications to the City. Without limiting the foregoing, the City Attorney shall have the following powers and duties:

- Neither the City Council, as a body, nor any of its members shall interfere with the administration of the City Attorney's Office or give orders to the subordinates of the City Attorney.
- The City Attorney shall serve as the legal counsel to the City Council and its standing committees, Planning Commission, City Manager, and all City staff pertaining to City matters.
- The City Attorney shall review and approve all ordinances, resolutions, and related staff reports for the City Council, its standing committees, and boards and commissions conducting meetings under the Brown Act.
- The City Attorney shall review and approve, as to form and legality, all contracts, agreements, bonds, and other legal documents related to the conduct of the City's affairs.
- The City Attorney shall interpret and opine on the implementation of the Tracy Municipal Code on behalf of the City and shall prosecute violations of the Tracy Municipal Code in Superior Court.
- The City Attorney may engage outside counsel to implement the functions of the City Attorney's Office, and no other City official, including the City Manager, City Council member or staff may independently engage outside counsel on City-related matters.
- The City Attorney and his/her senior staff shall, at all times, conduct themselves in accordance with the California Rules of Professional Conduct, established by the California State Bar, and the Ethical Principles for City Attorneys, adopted by the League of California Cities' City Attorneys Department.

## CHAPTER 2 COUNCIL POWERS AND RESPONSIBILITIES

### 2.1 City Council Generally

- 2.1.1 The City Council has the power, in the name of the City, to do and perform all acts and things appropriate to a municipal entity and the general welfare of its inhabitants, which are not specifically prohibited by the constitution, and/or State or Federal laws.
- 2.1.2 The Council acts as a body. Council policy and directives are established by majority vote, and a decision of the majority binds the Council to a course of action, unless otherwise required by State law.
- 2.1.3 No Council Member has extraordinary powers beyond those of other members (except as may otherwise be provided in State law). All members, including the Mayor, have equal powers.
- 2.1.4 No member of the Council is permitted to hold any other City office or City employment.
- 2.1.5 Council Members are appointed by the Council body to serve on various boards or committees, including Council standing and ad hoc committees, and third agency member boards and committees.

### 2.2 Mayor and Mayor Pro Tem - Appointment, Power, and Duties

- 2.2.1 The Mayor is directly elected by the voters to serve a two-year term. The selection of the Mayor occurs every two years in December after the City receives the certified results from the County Registrar of Voters electing a Mayor.
- 2.2.2 A Mayor Pro Tem is appointed for a one year term, by a majority vote of the City Council, and can be replaced at any time, by a majority vote of the City Council.

2.2.3 The Mayor is the official head of the City for all ceremonial purposes.

2.2.4 Per the Government Code, the Mayor, with the “approval” of the City Council, shall (a) execute official documents (Section 40602b) and (b) make appointments to city boards, commissions, and committees unless otherwise specifically provided by statute (Section 40605). Approval shall be deemed to be a majority vote of the City Council, unless a super majority is required by State law for any specific action.

2.2.5 The Mayor is authorized to send letters stating the City's official position to appropriate legislators as long as it is consistent with the City Council's Legislative Policy.

2.2.6 The Mayor may perform other duties consistent with the mayoral office as prescribed by the Tracy Municipal Code, California Government Code, or as determined by a majority vote of the City Council.

2.2.7 The Mayor does not possess any power of veto.

### 2.3 Council Member Subject Matter Committees

2.3.1 The City Council may organize itself into standing and/or special/ ad hoc subcommittees to facilitate Council review of policy matters and action.

2.3.2 The City Council may create or dissolve standing and/or special/ad hoc sub committees at any time by an affirmative vote of a majority of the City Council. The City Council will endeavor to rotate appointments to standing and ad hoc standing committees to ensure equitable participation.

2.3.3 The City Council, by a majority vote, appoints and removes members to standing and ad hoc committees annually

2.3.4 The Council also appoints and removes Council Members to third member agencies by a majority, annually

- 2.3.5 It is a best practice for non-appointed Council Members not to attend Council standing Committees to avoid the appearance of impropriety and maintain compliance with the Brown Act.

## 2.4 Action by Subject Matter Committees

The assigned subject matter Committee shall have initial jurisdiction over any item assigned to it by the City Council as well as any items being advanced by the City Manager that implement or relate to the overall jurisdictional purpose of such Committee and may take any of the following actions with respect to the assigned item.

The Committee may, by a vote of the consensus, decide to postpone, continue, or table an item on the agenda. On any item on an agenda, the Committee may allow for an informational presentation by City staff relating to the item. With respect to an action item, and after discussion and consideration of the item, the Committee may take one of the following actions:

- 2.4.1 Vote by consensus to approve the recommendation of staff or the originator of the proposed action item and forward the recommendation onto the full Council. The Committee may, as a condition of approval, request additional information to be presented for consideration when the full Council hears the item.
- 2.4.2 Fail to approve any recommended action, in which case the item shall not be forwarded to the full City Council; provided that the City Council shall have jurisdiction to place the item on the agenda for a future City Council meeting, in accordance with the requirements of the Meeting Protocols for agenda setting, if no action was taken on the item due to any one of the following reasons
- Due to the cancellation of a Committee meeting or
  - Due to lack of a quorum, or
  - the Committee was not able to approve any recommended action
- 2.4.3 Propose by a consensus vote of those present one or more alternative recommendation(s) be forwarded to the full City Council for consideration and final action. The Committee may request additional information to be presented for consideration when the full Council hears the item.
- 2.4.4 Reject, by a consensus vote, jurisdiction over the action item and refer the action item back to the City Council with a recommendation for reassignment to another appropriate subject-matter committee.
- 2.4.5 Request, by consensus vote, additional, specified information from staff or the

originator of the proposed action item. The action item may be continued or rescheduled for further consideration at the soonest feasible date available, allowing time for appropriate notice pursuant to the Meeting Protocols and the Brown Act.

- 2.4.6 With respect to an informational item, following discussion and consideration, a Committee shall take one of the following actions:
- Receive the informational report, by consensus vote, without forwarding the report to the full City Council;
  - Receive the informational report and forward the report onto the full City Council, by consensus vote;
  - Request, by consensus vote, from staff or the originator of the proposed informational item. The item may be continued or rescheduled for further consideration at the soonest feasible date available, allowing time for appropriate notice pursuant to the Meeting Protocols.

## CHAPTER 3

### LEGAL AND ETHICAL STANDARDS

#### 3.1 Preamble

The residents and businesses of Tracy are entitled to have fair, ethical, and accountable local government. Such a government requires that public officials:

- Comply with both the letter and the spirit of the laws and policies affecting operations of the government;
- Be independent, impartial, and fair in their judgment and actions;
- Use their public office for the public good, not for personal gain; and
- Conduct public deliberations and processes openly, unless legally confidential, in an atmosphere of respect and civility.

To this end, the Tracy City Council has adopted this Code of Conduct and the Norms and Values Statement (Attachment) to encourage public confidence in the integrity of local government and its fair and effective operation.

#### 3.2 Public Interest

3.2.1 Recognizing that stewardship of the public interest must be their primary concern, City Council Members shall work for the common good of the people of Tracy and not for any private or personal interest. City Council Members must endeavor to treat all members of the public and issues before them in a fair and equitable manner.

3.2.2 City Council Members shall comply with the laws of the nation, the State of California, and the City in the performance of their public duties. These laws include, but are not limited to: the United States and California constitutions; the Tracy Municipal Code; laws pertaining to conflicts of interest, election campaigns, financial disclosures, employer responsibilities, and open processes of government; and City ordinances and policies.

### 3.3 Conduct

- 3.3.1 City Council Members shall refrain from abusive conduct, personal charges, or verbal attacks upon the character or motives of other members of the City Council, boards, commissions, committees, staff, or the public.
- 3.3.2 City Council Member duties shall be performed in accordance with these Rules of Conduct and Council Meeting Protocols and Rules of Procedures established by the City Council as well as the Tracy Municipal Code and State law.
- 3.3.3 City Council Members shall inform themselves on public issues, listen attentively to public discussions before the body, and focus on the business at hand.
- 3.3.4 City Council decisions shall be based upon the merits and substance of the matter at hand.
- 3.3.5 It is the responsibility of City Council Members to publicly share substantive information that is relevant to a matter under consideration that they have received from sources outside of the public decision-making process with all other City Council Members and the public prior to taking action on the matter.
- 3.3.6 City Council Members shall not attend internal staff meetings or meetings between City staff and third parties unless authorized by the City Manager.
- 3.3.7 Policy Role
  - 3.3.7.1 City Council Members shall respect and adhere to the Council- Manager structure of the Tracy City government as provided in State law and Tracy Municipal Code.

3.3.7.2 City Council Members shall support the maintenance of a positive and constructive environment for residents, businesses, and City employees.

3.3.8 Campaign Activities. The Tracy City Council strongly encourages its members and City Board and Commission members to abide by the highest ethical standards and best practices relating to campaign activities to ensure that City elections promote decency, honesty and fair play. To that end, all candidates seeking elected office within the City of Tracy, including their official campaign representatives, are urged and encouraged to sign and comply with the Code of Fair Campaign Practices. (Attachment 3) A candidate's signed Code of Fair Campaign Practices shall be posted on the City's Elections Document webpage within three (3) business days of execution. (Reso No. 2021-017)

3.3.8.1 City staff shall send a copy of all notices (e.g. emails) sent to candidates relating to non-compliance with the TMC election sign restrictions to the entire City Council and all other candidates. (Reso No. 2021-017)

3.3.9 Implementation

3.3.9.1 This Code of Conduct shall be included in the regular orientations for City Council candidates. Current Council Members, including those entering office upon election shall sign a City Council Norms and Values Statement (**Attachment 1**) affirming they have read and understand this Tracy City Council Code of Conduct.

3.4 Conflict of Interest

3.4.1 In order to assure their independence and impartiality on behalf of the public good, City Council Members are prohibited from using their official positions to influence government decisions in which they have a financial interest or where they have an organizational responsibility or a personal relationship that would present a conflict of interest under applicable State law.

3.4.2 In accordance with State law, City Council Members must file an annual written disclosure (Form 700) of their economic interests.

- 3.4.3 City Council Members shall not take advantage of services or opportunities for personal gain by virtue of their public office that are not available to the public in general.
- 3.4.4 City Council Members shall respect and preserve the confidentiality of information provided to them concerning the confidential matters of the City. They must neither disclose confidential information without proper legal authorization nor use such information to advance the personal, financial, or private interests of themselves or others.
- 3.4.5 City Council Members should avoid any action that could be construed as, or create the appearance of, using public office for personal gain, including use of City stationery or other City resources to obtain or promote personal business or political campaigns.
- 3.4.6 Public resources not available to the general public (e.g., City staff time, equipment, supplies, or facilities) shall not be used by City Council Members for private gain and, personal and political purposes.
- 3.4.6.1 A mass communication using City resources shall not be sent within the 60 days preceding an election that feature a currently elected or appointed official of the City of Tracy whose name will appear on the ballot at that election. When no currently elected or appointed official is otherwise designated during the 60 days preceding an election, communication of official matters shall be made by the City Manager or designee.
- 3.4.7 In keeping with their role as stewards of the public interest, City Council Members shall not appear on behalf of the private interests of a third party before the City Council or any board, commission, or committee or proceeding of the City, except as permitted by law.
- 3.4.8 To the best of their ability, City Council Members shall represent the official policies and positions of the City Council as a body. When presenting their personal opinions or positions publicly, members shall explicitly state they do not represent the City Council or the City.
- 3.4.9 When serving on external boards, commissions, subcommittees, or Joint Powers of Authorities, City Council representatives must first obtain policy direction from the City Council on any fiscal matter that exceeds

previously allocated budget(s), prior to actions of such external board's, committees or authorities obligating the City.

### 3.4.10 Tracy City Municipal Code Provisions

#### 3.4.10.1 Financial Interests in City Contracts Prohibited.

Section 2.04.050 of the Municipal Code prohibits members of the City Council, appointed employees, the City Treasurer and members of City boards and commissions during their term of office, to contract or subcontract with the City.

Section 2.04.050 also requires a City Council Member to recuse (as defined by the Fair Political Practices Commission) themselves from any vote regarding any Memorandum of Understanding between the City and any lawfully recognized bargaining unit in which a City Council member has an immediate family member. "Immediate family member" is defined as "any and/or all spouses, partners or adult children, whether they live in a single household or not" under this section of the TMC.

#### 3.4.10.2 Nepotism.

The City of Tracy's Nepotism Policy prohibits the initial appointment of an individual to a position within the City of Tracy who has a marital or familial relationship, as defined in Section 4 of the Policy, with any member the City Council, City Manager, or City Attorney.

#### 3.4.10.3 Use of City Property for Private Purposes by City Official/ Employee.

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. (City Personnel Rule 9.2 (d))

#### 3.4.10.4 Political Activities Prohibited; Discrimination.

For informational purposes, the following provisions apply to City and contract employees and consultants:

1. No employee shall, while in uniform or during the employee's working hours, take an active part in any municipal or other political campaign.
2. No employee shall, while in uniform or during the employee's work hours, seek or accept contributions for or against a candidate or issue.
3. An employee may not seek or accept signatures to any petition for or against any such candidate or issue during their work hours.
4. No person in the classified service shall be employed, promoted, demoted, or discharged or in any way favored or discriminated against because of political opinions or affiliations or on any other basis protected by state and/or federal law.

#### 3.4.11 California State Law Regarding Conflicts

While not enforceable by the City, there are four key areas of California State law that regulate the ethics of public officials.

##### 3.4.11.1 Constitutional prohibitions

State law strictly forbids elected and appointed public

officials from accepting free or discounted travel from transportation companies. The penalty for a violation includes the forfeiture of office.

#### 3.4.11.2 Contractual conflicts of interest

This prohibition, found in Government Code Section 1090, applies to elected and appointed officials as well as other City staff members. It prohibits the City from entering into a contract if one of its members (i.e., a Council Member) is financially interested in the contract. If the bar (or prohibition) applies, the agency is prohibited from entering into the contract whether or not the official with the conflict participates or not. In some limited circumstances, officials are allowed to disqualify themselves from participation and the agency may enter into the contract.

Financial interest has been defined to include employment, stock/ ownership interests, and certain membership on the board of directors of a for-profit or nonprofit corporation, among others. Violations can be charged as a felony. A person convicted of violating Section 1090 is prohibited from ever holding public office in the State.

#### 3.4.11.3 Political Reform Act - Conflicts of Interest

The Political Reform Act (PRA) was adopted by the voters in 1974 and is the primary expression of the law relative to conflicts of interest (and campaign finance) in California. The Act created the Fair Political Practices Commission (FPPC), a five-member State board which administers the Act.

The Act and the regulations are complex and are continuously subjected to official interpretation. The following synopsis of key parts of the Act will be helpful in spotting issues; however, the FPPC and/or City Attorney should be consulted for further advice and clarification.

With respect to conflicts of interest, the FPPC has promulgated a regulation which establishes an analysis which assists in determining whether a public official is participating in a government decision in which they have a qualifying financial interest and whether it is reasonably foreseeable that the decision will have a material financial effect on the public official's financial interest, which is distinguishable from the effect the decision will have on the public generally.

#### 3.4.11.3.1 Political Reform Act-Enforcement

The FPPC can assess administrative fines and penalties for violation of the Act. The District Attorney and the State Attorney General may prosecute violators as civil or criminal matters. Violators may also be removed from office pursuant to Government Code Section 3060.

#### 3.4.11.4 Common Law Conflicts of Interest

This is the judicial expression of the public policy against public officials using their official position for private benefit. An elected official bears a fiduciary duty to exercise the powers of office for the benefit of the public and is not permitted to use those powers or their office for the benefit of any private interest. This common law doctrine continues to survive the adoption of various statutory expressions of conflict law.

#### 3.4.11.5 Appearance of Impropriety

When participation in action or decision-making as a public official does not implicate the specific statutory criteria for conflicts of interest; however, participation still does not "look" or "feel" right, that public official has probably encountered the appearance of impropriety.

For the public to have faith and confidence that government authority will be implemented in an even-handed and ethical manner, public officials may need to step aside even though no technical conflict exists. An example is where a long-term nonfinancial affiliation exists between the public official and an applicant or the applicant is related by blood or marriage to the official. For the good of the community, members who encounter the appearance of impropriety should step aside.

### 3.5 AB 1234-Required Ethics Training

AB 1234 requires elected or appointed officials who are compensated for their service or reimbursed for their expenses to take two hours of training in ethics principles and laws every two years. Those who enter office after January 1, 2006 must receive the training within a year of starting their service. They must then receive the training every two years after that.

The training must cover general ethics principles relating to public service and ethics laws including:

- Laws relating to personal financial gain by public officials (including bribery and conflict of interest laws);
- Laws relating to office-holder perks, including gifts and travel restrictions, personal and political use of public resources, and prohibitions against gifts of public funds;
- Governmental transparency laws, including financial disclosure requirements and open government laws (the Brown Act and Public Records Act); Laws relating to fair processes, including fair contracting requirements, common law bias requirements, and due process

NOTE: State laws governing conflicts of interest are written to ensure that actions are taken in the public interest. These laws are very complex. Council Members should consult with the City Attorney, their own attorney, or the Fair Political Practices Commission for guidance in advance.

### 3.6 Code of Conduct Compliance and Enforcement

Consistent with this oath is the requirement of this Council policy to comply with the laws as well as report violations of the laws and policy of which they become aware.

- 3.6.1 A request for censure of a member of the City Council may be submitted to the City Attorney by any member of the Council ("Initiating Member"), with the support of another Council member ("Seconding Member"). Censure is a formal statement or resolution by the Council officially reprimanding a City Council Member for conduct that may include sanctions. It is the intent of the City Council that a request for censure be used only for significant and/or repeated violations of this Code of Conduct and not a means to address politically or personally motivated disagreements amongst City Council Members.

The request shall contain the specific charges on which the proposed censure is based. The City Attorney shall deliver a copy of the request for censure and the charges to each member of the City Council at least 72 hours after receipt of the request. The request for censure shall first be considered by a neutral mediator selected by the Presiding Judge of the Superior Court of California of the County of San Joaquin. The neutral mediator shall conduct an investigation and prepare a written analysis of the allegation and their preliminary findings and recommendation. Said investigation shall, at a minimum, include interviews with the Initiating Member and the City Council Member who is the subject of the request. The neutral mediator's recommendation shall be to: (a) set the matter for a censure hearing and whether censure is warranted or (b) no further action should be taken with respect to the request. The neutral mediator shall present its recommendation to the City Council for its consideration and action within thirty (30) days of completing their investigation.

- 3.6.1.1 The censure request shall be agendized at the next regular City Council meeting following receipt of the neutral mediator's written findings and recommendation. The City Council, as a body, shall determine whether or not to accept the neutral mediator's recommendation. If the City Council decides to set the matter for a censure hearing, it shall schedule it no sooner than two weeks after its determination to hear the matter. It may not schedule the matter during any previously scheduled excused absence of the subject City Council Member. Written notice of the hearing shall be delivered in person to the Member of the City Council subject to the censure hearing at least ten (10) days in advance of the scheduled hearing. If the City Council decides that no further action is

required, the City Council may also request the Initiating Member either reimburse the City the cost of the neutral mediator's services from personal funds (not campaign funds), not to exceed \$2,500, or forgo a month's salary as a City Council Member. A report regarding the Initiating Member's compliance with that request shall be presented to City Council within sixty (60) days of that request.

3.6.1.2 At the censure hearing, the Member of the City Council who is the subject of the request for censure shall be given the opportunity to make an opening and a closing statement, to call witnesses on their behalf and to question their accusers. The Member subject to the charges may be represented by a person or persons of their choice whether or not an attorney at law and may have that representative speak or question witnesses on their behalf. The questioning or cross-questioning of witness may be reasonably limited by the person chairing the hearing.

3.6.1.3 Testimony shall be taken only from witnesses having direct knowledge of facts or circumstances relevant to the specific charges under consideration. However, the rules of evidence and judicial procedure applicable in courts of law shall not be applied to this hearing, and the procedures shall be generally informal.

3.6.2 At the discretion of the City Council, sanctions may be imposed as a result of a censure. These sanctions may be applied individually or in combination. They include, but are not limited to:

3.6.2.1 Public Admonishment - A reproof or verbal warning directed to a City Council Member about a particular type of behavior that violates City policy.

3.6.2.2 Revocation of Special Privileges -A revocation of a Council Member's Council Committee assignments, such as standing and ad hoc committees, regional boards and commissions, and other board/committee appointments. Other revocations may include temporary suspension of official travel, conference participation, and ceremonial titles.

3.6.3 Nothing in this Section shall limit the City Council's ability to informally address conduct considered to be not significant or a minor violation of this Code, which may include informal counseling from one City Council Member to another, and a City Council Member to a Council advisory body member.

## CHAPTER 4 COMMUNICATIONS

### 4.1 Relationship/Communications with Staff

Staff serves the City Council as a whole, therefore:

- 4.1.1 A City Council Member shall not direct staff in person or in writing to initiate any action, change a course of action, or prepare any report.
- 4.1.2 Requests for information and corresponding responses made by the City Council Members will be shared with the full City Council.
- 4.1.3 City Council Members shall not attempt to pressure or influence discussions, recommendations, workloads, schedules, or department priorities without first consulting with the City Manager and obtaining the approval of a majority of the City Council.
- 4.1.4 When preparing for City Council meetings, City Council Members should direct questions ahead of time to the City Manager so that staff can provide the desired information at the City Council meeting.
- 4.1.5 Any concerns by a Member of the City Council regarding the behavior or work of a City employee should be directed to the City Manager privately to ensure the concern is resolved. City Council Members shall not reprimand employees directly nor should they communicate their concerns to anyone other than the City Manager.
- 4.1.6 City Council Members may direct routine inquiries to either the City Manager or the appropriate department head, at the City Manager's discretion.
- 4.1.7 City Council Members serving on Council committees or as the City's representative to an outside agency may interact directly with City staff assigned to that effort as the City Manager's designee. The City

staff member so designated and assigned will keep the City Manager appropriately informed.

#### 4.2 Council Relationship/Communication with Council Advisory Bodies

4.2.1 City Council Members shall not attempt to pressure or influence board, commission, or committee decisions, recommendations, or priorities absent the approval of the majority of the City Council.

4.2.2 It is a best practice that City Council Members refrain from attending Board, Commission, and/or Committee meetings to avoid the appearance of impropriety and to maintain compliance with the Brown Act.

#### 4.3 Handling of Litigation and Other Confidential Information

4.3.1 All written materials and verbal information provided to City Council Members on matters that are confidential and/or privileged under State law shall be kept in complete confidence to ensure that the City's position is not compromised. No disclosure or mention of any information in these materials may be made to anyone other than City Council Members, the City Attorney, or City Manager.

4.3.1.1 Confidential materials provided in preparation for and during Closed Sessions shall not be retained and documents must be returned to staff at the conclusion of the Closed Session.

4.3.1.2 City Council Members may not request confidential written information from staff that has not been provided to all City Council Members.

#### 4.4 Representing an Official City Position

4.4.1 City Council Members may use their title only when conducting official City business, for information purposes, or as an indication of background and expertise, carefully considering whether they are exceeding or appearing to exceed their authority.

- 4.4.2 Once the City Council has taken a position on an issue, all official City correspondence regarding that issue will reflect the City Council's adopted position.
- 4.4.3 The Mayor is authorized to send letters on City letterhead stating the City's official position to appropriate legislators as long as it is consistent with the City Council's Legislative Policy.
- 4.4.4 City letterhead may be used by City Council Members only for official City business and/or to represent a policy action taken by the City Council, as a body.
- 4.4.5 If a Member of the City Council appears before another governmental agency organization to give a statement on an issue affecting the City, the City Council Member should indicate the majority position and opinion of the City Council.
- 4.4.6 Personal opinions and comments may be expressed only if the City Council Member clarifies that these statements do not reflect the official position of the City Council.

#### 4.5 Quasi-Judicial Role/*Ex Parte* Contacts

The City Council has a number of roles. It legislates and makes administrative and executive decisions. The City Council also acts in a quasi-judicial capacity or "like a judge" when it rules on various permits, licenses, and land use entitlements.

In this last capacity, quasi-judicial, the City Council holds a hearing, takes evidence, determines what the evidence shows, and exercises its discretion in applying the facts to the law shown by the evidence. It is to these proceedings that the rule relative to *ex parte* contacts applies.

- 4.5.1 *Ex Parte* Contacts/Fair Hearings. The City Council shall refrain from receiving information and evidence on any quasi-judicial matter while such matter is pending before the City Council or any agency, board, or commission thereof, except at the public hearing.

As an elected official, it is often impossible to avoid such contacts and exposure to information. Therefore, if any member is exposed to information or evidence about a pending matter outside of the public hearing, through contacts by constituents, the applicant or through site visits, the member shall disclose all such information and/or evidence acquired from such contacts, which is not otherwise included in the written or oral staff report, during the public hearing, and before the public comments period is opened.

Matters are "pending" when an application has been filed. Information and evidence gained by members via their attendance at noticed public hearings before subordinate boards and commissions are not subject to this rule.

#### 4.6 No Attorney-Client Relationship

City Council Members who consult the City Attorney, their staff, and/or outside attorney(s) engaged by the City Attorney to work on behalf of the City cannot enjoy or establish an attorney-client relationship with said attorney(s) by consulting with or speaking to same. Any attorney-client relationship established belongs to the City, acting through the City Council, and as may be allowed in State law for purposes of defending the City and/or the City Council in the course of litigation and/or administrative procedures, etc.

## CHAPTER 5 COUNCIL ADVISORY BODIES

### 5.1 Citizen Boards and Commissions Generally

- 5.1.1 The Tracy City Council establishes various Citizen Boards, Commissions, and Committee through the Tracy Municipal Code or by Resolution: Planning Commission to advise the Council on land use matters (Chapter 10.04), a Parks and Community Services Commission (Chapter 7.16) and the Youth Advisory Commission (Chapter 7.16). the Measure V Residents' Oversight Committee (Resolution No. 2004-152), Tracy Arts Commission (Ordinance No. 501), Transportation Advisory Commission (Resolution No. 2007-120), and Environmental sustainability Commission (Resolution 2023-XX).
- 5.1.2 The rules of procedure and code of conduct that govern the City Council apply with equal force to all Council advisory boards and commissions.
- 5.1.3 The City Council may also establish by ordinance or resolution, boards, commissions, and committees to assist the Council in making its policy decisions. The City Council has the inherent power to create advisory bodies.
- 5.1.4 City boards and commissions, (collectively "Council advisory bodies") provide policy recommendations to Council; they do not set or establish City policy or provide administrative direction to City staff.
- 5.1.5 City boards and commissions are advisory in nature and therefore do not represent City's official position on city matters.
- 5.1.6 Appointments to boards and commissions, are made by a majority vote of the Council. Appointees to Council advisory bodies serve at the pleasure of the City Council.

## 5.2 Citizen Board and Commission Organization and Conduct

- 5.2.1 Annually, each board, commission, and committee elects one of their members to serve as the chair (presiding officer) and vice-chair.
- 5.2.2 Boards and commissions hold regular and special meetings as required. The conduct of board, commission, and committee meetings are governed by the same rules of policy and procedure as the City Council.
- 5.2.3 Boards and commissions should comply with all applicable open meeting and conflict-of-interest laws of the State.
- 5.2.4 Upon appointment or reappointment, Council advisory body members (including all boards and commissions members) shall sign a Council Advisory Body Norms and Values statement (**Attachment 2**) affirming they have read and understand this City of Tracy City Council Code of Conduct.

## 5.3 Board and Commission Appointments

- 5.3.1 Resolution No. 2004-152 establishes the board and commission appointment/selection process and requirements for residency.
- 5.3.2 The term of office for each board, commission, or committee member is 4 years, with the exception of the Measure V Residents' Oversight Committee which is 3 years.
- 5.3.3 The City Clerk provides application forms, maintains a listing of all applications received, and solicits applications when vacancies occur.

## 5.4 Boards and Commissions- Vacancy and Selection/Appointment Processes

Resolution No. 2004-152 outlines procedures for filling a board and commission vacancy and selection and appointment process. The Council appoints all City boards, commissions, and committee members.

5.4.1 Resignations may be submitted at any time to the City Council either directly or through the board, commission, or committee chair. Resignations are effective upon submittal.

#### 5.5 Boards, Commissions, and Committees - Removal

A board member, commissioner, or committee member serves at the pleasure of the Council and may be removed at any time. The removal of a member must comply with the applicable TMC Sections or the board/committee/commission's bylaws and in accordance with the applicable procedure.

## CHAPTER 6 COUNCIL FINANCIAL MATTERS

### 6.1 Compensation

- 6.1.1 Pursuant to Ordinance No. 1094, the Tracy Mayor and City Council receive a monthly salary. The amount is the salary limit established by the State Legislature for members of the City Council of general law cities having a population range within which the City of Tracy falls, as specified in California Government Code Section 36516(a).
  
- 6.1.2 The salary of the Mayor and City Council should be reviewed every two years.

### 6.2 Benefits

- 6.2.1 The California Government Code provides that City Council Members may receive City-funded health, retirement, and other benefits. City-funded medical, dental, and life insurance plan benefits are provided. The Council Policy Providing City Paid Health Insurance for City Treasurer, City Clerk, and City Council, adopted by Resolution No. 2003-391, states that an elected official is not eligible for City-funded health benefits if the official or the official's spouse has employer-paid health insurance.

### 6.3 City Council Budget and Expenses

- 6.3.1 City Council Resolution No. 2007-075 provides policy guidance regarding Council expenditures for equipment, supplies and communications; travel; local expenses; and eligible reimbursements.

CITY OF TRACY CITY COUNCIL  
NORMS AND VALUES STATEMENT

PREAMBLE

The residents and businesses of Tracy are entitled to have fair, ethical, and accountable local government. Such a government requires that public officials:

- Comply with both the letter and the spirit of the laws and policies affecting operations of the government.
- Be independent, impartial and fair in their judgment and actions.
- Use their public office for the public good, not for personal gain.
- Conduct public deliberations and processes openly, unless legally confidential, in an atmosphere of respect and civility.

To this end, the Tracy City Council has adopted a Code of Conduct to encourage public confidence in the integrity of local government and its fair and effective operation.

City Council Members shall sign this Norms and Values statement upon assuming office and upon reelection to office as a symbol of each Council Member's continuing commitment to abide by the principles of this code.

1. Act in the Public Interest

Recognizing that stewardship of the public interest must be their primary concern, City Council Members shall work for the common good of the people of Tracy and not for any private or personal interest, and they will endeavor to treat all persons, claims, and transactions in a fair and equitable manner.

2. Comply with the Law

City Council Members shall comply with the laws of the nation, the State of California, and the City in the performance of their public duties. These laws include, but are not limited to: the United States and California constitutions;

the Tracy City Municipal Code; laws pertaining to Council-Manager form of government, conflicts of interest, election campaigns, financial disclosures, employer responsibilities, and open processes of government; and City ordinances and policies.

3. Conduct of Members

City Council Members shall refrain from abusive conduct, personal charges, or verbal attacks upon the character or motives of other members of the City Council, boards, commissions, committees, staff, or the public.

4 Respect for Process

City Council Member duties shall be performed in accordance with the processes and rules of order established by the City Council.

5. Conduct of Public Meetings

City Council Members shall inform themselves of public issues, listen attentively to public discussions before the body, and focus on the business at hand.

6. Decisions Based on Merit

City Council decisions shall be based upon the merits and substance of the matter at hand.

7. Communication

It is the responsibility of City Council Members to share substantive information that is relevant to a matter under consideration that they have received from sources outside of the public decision-making process with all other City Council Members.

8. Coordination with City Staff

Appropriate City staff should be involved when City Council Members meet with officials from other agencies and jurisdictions to ensure proper staff support as needed and to keep staff informed.

9. Disclosure of Corruption

All City officials shall take an oath upon assuming office, pledging to uphold the constitution and laws of the City, the State, and the Federal government. As part of this oath, officials commit to disclosing to the appropriate authorities and/or to the City Council any behavior or activity that may qualify as corruption, abuse, fraud, bribery, or other violation of the law.

10. Conflict of Interest

In order to assure their independence and impartiality on behalf of the public good, City Council Members shall not use their official positions to influence government decisions in which they have a financial interest or where they have an organizational responsibility or a personal relationship that would present a conflict of interest under applicable State law.

In accordance with the law, members shall file written disclosures of their economic interests and if they have a conflict of interest regarding a particular decision, refrain from participating in that decision unless otherwise permitted by law.

11. Gifts and Favors

City Council Members shall not take advantage of services or opportunities for personal gain by virtue of their public office that are not available to the public in general. They shall refrain from accepting gifts, favors, or promises of future benefits that might compromise their independence of judgment or action or give the appearance of being compromised.

12. Confidential Information

City Council Members shall respect and preserve the confidentiality of information provided to them concerning the confidential matters of the City. They shall neither disclose confidential information without proper legal authorization nor use such information to advance their personal, financial, or private interests.

13. Use of Public Resources

Public resources not available to the general public (e.g., City staff time, equipment, supplies, or facilities) shall not be used by City Council Members for private gain or personal and/or campaign purposes.

14. Representation of Private Interests

In keeping with their role as stewards of the public trust, City Council Members shall not appear on behalf of the private interests of a third-party before the City Council or any board, commission, or committee or proceeding of the City.

15. Advocacy

To the best of their ability, City Council Members shall represent the official policies and positions of the City Council. When presenting their personal opinions or positions, members shall explicitly state that they do not represent the City Council or the City.

16. Improper Influence

City Council Members shall refrain from using their position to improperly influence the deliberations or decisions of City staff, boards, commissions, or committees.

17. Policy Role of Members

City Council Members shall respect and adhere to the Council-Manager structure of Tracy City government as provided in State law and the City Municipal Code.

18. Positive Work Environment

Council Members shall support the maintenance of a positive and constructive environment for residents, businesses, and City employees.

19. Implementation

Ethics standards shall be included in the regular orientations for City Council candidates. Council Members entering office shall sign a statement affirming they read and understood the City of Tracy's City Council Code of Conduct.

20. Campaign Activities.

City Council Members who seek elected office within the City shall endeavor to conduct their campaign activities in a manner that promotes decency, honesty and fair play and in accordance with the Code of Fair Campaign Elections Code (Section 20400 et seq.).

21. Compliance and Enforcement

Council Members themselves have the primary responsibility to assure that ethical standards are understood and met and that the public can continue to have **full** confidence in the integrity of City government.

This City Council Norms and Values statement shall be considered to be a summary of the longer City Council Code of Conduct document. The City Council Code of Conduct document shall be considered to be the definitive document relating to ethical conduct by Tracy City Council Members.

I affirm that I have read and understand the City of Tracy City Council Norms and Values statement.

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Signature

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Date

CITY OF TRACY  
COUNCIL ADVISORY BODY  
NORMS AND VALUES STATEMENT

**PREAMBLE**

The residents and businesses of Tracy are entitled to have fair, ethical, and accountable local government. Such a government requires that public officials, including Council advisory body members:

- Comply with both the letter and the spirit of the laws and policies affecting operations of the government.
- Be independent, impartial, and fair in their judgment and actions.
- Use their public office for the public good, not for personal gain.
- Conduct public deliberations and processes openly, unless legally confidential, in an atmosphere of respect and civility.

To this end, Council advisory body members are expected to adhere to the Code of Conduct adopted by the Tracy City Council to encourage public confidence in the integrity of local government and its fair and effective operation.

Council advisory body members shall sign this Norms and Values statement at the first meeting of the board, commission, or committee upon assuming office and, if applicable, upon reappointment to the board, commission, or committee as a symbol of each Council advisory body member's commitment to abide by the principles of this code during their term.

1. Act in the Public Interest

Recognizing that stewardship of the public interest must be their primary concern, Council advisory body members shall work for the common good of the people of Tracy and not for any private or personal interest, and they will endeavor to treat all persons, claims, and transactions in a fair and equitable manner.

2. Comply with the Law

Council advisory body members shall comply with the laws of the nation, the State of California, and the City in the performance of their public duties. These laws include, but are not limited to: the United States and California Constitutions; the Tracy City Municipal Code; laws pertaining to the Council-

Manager form of government, conflicts of interest, election campaigns, financial disclosures, employer responsibilities, and open processes of government; and City ordinances and policies.

3. Conduct of Council Advisory Body Members

Council advisory body members shall refrain from abusive conduct, personal charges, or verbal attacks upon the character or motives of Council Members; other members of the Council advisory body; other boards, commissions, or committees; staff; or the public.

4. Respect for Process

Council advisory body member duties shall be performed in accordance with the processes and rules of order established by the City Council.

5. Conduct of Public Meetings

Council advisory body members shall inform themselves of public issues, listen attentively to public discussions before the body, and focus on the business at hand.

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Council advisory body members shall base their decisions upon the merits and substance of the matter at hand.

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It is the responsibility of Council advisory body members to share substantive information that is relevant to a matter under consideration that they have received from sources outside of the public decision-making process with all other Council advisory body members.

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Appropriate City staff should be involved when Council advisory body members meet with officials from other agencies and jurisdictions to ensure proper staff support, as needed, and to keep staff informed.



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All City officials shall take an oath upon assuming office, pledging to uphold the Constitution and laws of the City, the State, and the Federal government. As part of this oath, officials commit to disclosing to the appropriate authorities and/or to the City Council any behavior or activity that may qualify as corruption, abuse, fraud, bribery, or other violation of the law.

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In order to assure their independence and impartiality on behalf of the public good, Council advisory body members shall not use their official positions to influence government decisions in which they have a financial interest or where they have an organizational responsibility or a personal relationship that would present a conflict of interest under applicable State law.

In accordance with the law, members shall file written disclosures of their economic interests and if they have a conflict of interest regarding a particular decision, refrain from participating in that decision unless otherwise permitted by law.

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Council advisory body members shall respect and preserve the confidentiality of information provided to them concerning the confidential matters of the City. They shall neither disclose confidential information without proper legal authorization nor use such information to advance their personal, financial, or private interests.

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Public resources not available to the general public (e.g., City staff time, equipment, supplies, or facilities) shall not be used by Council advisory body members for private gain or personal and/or campaign purposes.

14. Representation of Private Interests

In keeping with their role as stewards of the public trust, Council advisory body members shall not appear on behalf of the private interests of a third party before the City Council or any board, commission, or committee, or proceeding of the City.

15. Advocacy

To the best of their ability, Council advisory body members shall represent the official policies and positions of the City of Tracy. When presenting their personal opinions or positions, members shall explicitly state that they represent neither the Council advisory body nor the City.

16. Improper Influence

Council advisory body members shall refrain from using their position to improperly influence the deliberations or decisions of City staff, boards, commissions, or committees.

17. Policy Role of Members

Council advisory body members shall respect and adhere to the Council-Manager structure of Tracy City government as provided in State law and the City Municipal Code.

18. Positive Work Environment

Council advisory body members shall support the maintenance of a positive and constructive environment for residents, businesses, and City employees.  
Attachment 2 to City Council Code of Conduct

19. Implementation

Ethics standards shall be included in the regular orientations for Council advisory body members. Upon entering office and upon reappointment, Council advisory body members shall sign a statement affirming they read and understood the City of Tracy's City Council Code of Conduct.

20. Campaign Activities.

Council advisory body members who seek elected office within the City shall endeavor to conduct their campaign activities in a manner that promotes decency, honesty and fair play and in accordance with the Code of Fair Campaign Elections Code (Section 20400 et seq.).

21. Compliance and Enforcement

Council advisory body members themselves have the responsibility to assure that ethical standards are understood and met, and that the public can continue to have full confidence in the integrity of City government.

The Council Advisory Body Norms and Values statement shall be considered to be a summary of the longer City Council Code of Conduct document. The City Council Code of Conduct document shall be considered to be the definitive document relating to ethical conduct by Tracy City Council advisory body members.

I affirm that I have read and understand the City of Tracy City Council Code of Conduct.

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Signature

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Date

## **CODE OF FAIR CAMPAIGN PRACTICES**

(Elections Code § 20440)

There are basic principles of decency, honesty, and fair play which every candidate for public office in the State of California has a moral obligation to observe and uphold in order that, after vigorously contested but fairly conducted campaigns, our citizens may exercise their constitutional right to a free and untrammelled choice and the will of the people may be fully and clearly expressed on the issues.

THEREFORE:

- (1) I SHALL CONDUCT my campaign openly and publicly, discussing the issues as I see them, presenting my record and policies with sincerity and frankness, and criticizing without fear or favor the record and policies of my opponents or political parties that merit this criticism.
- (2) I SHALL NOT USE OR PERMIT the use of character defamation, whispering campaigns, libel, slander, or scurrilous attacks on any candidate or his or her personal or family life.
- (3) I SHALL NOT USE OR PERMIT any appeal to negative prejudice based on a candidate's actual or perceived race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, age, sexual orientation, sex, including gender identity, or any other characteristic set forth in Section 12940 of the Government Code, or association with another person who has any of the actual or perceived characteristics set forth in Section 12940 of the Government Code.
- (4) I SHALL NOT USE OR PERMIT any dishonest or unethical practice that tends to corrupt or undermine our American system of free elections, or that hampers or prevents the full and free expression of the will of the voters including acts intended to hinder or prevent any eligible person from registering to vote, enrolling to vote, or voting.
- (5) I SHALL NOT coerce election help or campaign contributions for myself or for any other candidate from my employees.
- (6) I SHALL IMMEDIATELY AND PUBLICLY REPUDIATE support deriving from any individual or group that resorts, on behalf of my candidacy or in opposition to that of my opponent, to the methods and tactics that I condemn. I shall accept responsibility to take firm action against any subordinate who violates any provision of this code or the laws governing elections.
- (7) I SHALL DEFEND AND UPHOLD the right of every qualified American voter to full and equal participation in the electoral process.

I, the undersigned, candidate for election to public office in the State of California or treasurer or chairperson of a

committee making any independent expenditures, hereby voluntarily endorse, subscribe to, and solemnly pledge myself to conduct my campaign in accordance with the above principles and practices.

Print Name: \_\_\_\_\_ Signature: \_\_\_\_\_

Date:.....



# **COUNCIL MEETING PROTOCOLS AND RULES OF PROCEDURE**

Adopted by Resolution No. 2019-240  
Revised by Resolution Nos. 2020-112 & 2021-049

**City of Tracy – Council Meeting Protocols and Rules of Procedures**

**Table of Contents**

**Section 1 –Purpose and Applicability.....3**

**Section 2 –Duties (Roles and Responsibilities).....4**

**Section 3 – Meeting Types.....6**

**Section 4 – Meeting Agendas .....8**

**Section 5 –Conduct of Meetings .....11**

**Section 6 – Conduct of the Public .....17**

**Section 7 – Miscellaneous .....18**

**Appendices..... 19**

# City of Tracy – Council Meeting Protocols and Rules of Procedures

## Section 1 –Purpose and Applicability

### 1. Purpose and Applicability

- 1.1. The purpose of these Council Meeting Protocols and Rules of Procedures (“Protocols”) are to provide clear guidelines to assist the City Council, staff and the public to conduct meetings in an efficient and transparent manner and in accordance with the Ralph M. Brown Act (“Brown Act”; Government Code sections 54950-54963) and all applicable laws.<sup>1</sup> These Protocols are adopted pursuant to Section 36813. In the event of a conflict between the Brown Act and these Protocols, the Brown Act shall control.
- 1.2. In the event of a conflict between these Protocols, and the City of Tracy’s adopted Code of Conduct (Resolution No. 2021-146), Protocols shall control.
- 1.3. These Protocols shall apply to the City Council, the Successor Agency to the Community Development Agency, the Tracy Public Facilities Corporation, the Tracy Industrial Development Authority, and all City Boards, Commissions, and Committees.
- 1.4. Suspension of Protocols. Any rule set forth herein may be suspended by a supermajority vote of the City Council.
- 1.5. Review and Changes to Protocols. These Protocols shall be reviewed by December 31<sup>st</sup> of every odd-numbered year. A majority vote of the City Council shall be necessary to amend these Protocols.
- 1.6. A copy of these Protocols shall be available for public review at the City Clerk’s Office and City’s website ([www.cityoftracy.org](http://www.cityoftracy.org)).

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<sup>1</sup> All references to statutes are to the California Government Code unless otherwise specified.

# City of Tracy – Council Meeting Protocols and Rules of Procedures

## Section 2 –Duties (Roles and Responsibilities)

### 2. Roles and Responsibilities at Council Meetings

- 2.1. Mayor. The Mayor is the Presiding Officer of all meetings of the full City Council. The Presiding Officer is the primary, but not the only, person responsible for ensuring that the City Council, staff, and members of the public adhere to these Protocols during City Council meetings. (Section 36802). The Chair of a City board or commission shall act as the Presiding Officer.
- 2.2. Mayor Pro Tem. The Mayor Pro Tem shall serve as the Presiding Officer in the absence of the Mayor. Absence shall be as defined by State law. Upon the arrival of the Mayor, the Mayor Pro Tem shall immediately relinquish the role of Presiding Officer at the conclusion of the business then before Council. (Section 36802) The Vice Chair of a City board or commission shall act as the Presiding Officer in the absence of the Chair.
- 2.3. City Council. All members of the City Council shall comply with the Council Code of Conduct at meetings. Newly elected City Council members shall be sworn in and seated at the first regular City Council meeting after receipt of the certified election results from the County Registrar of Voters.
- 2.4. Sergeant-at-Arms. The Sergeant-at-Arms is the law enforcement official charged with maintaining security during meetings of the City Council. The Sergeant-at-Arms of the City Council shall be a police officer assigned by the Police Chief. There shall be at least one officer so assigned and present at each meeting of the full City Council. The officer shall maintain order and enforce the orders of the City Council and Presiding Officer.
- 2.5. City Manager. Pursuant to the Council-Manager form of government established by Chapter 2.08 of the Tracy Municipal Code, the City Manager sets the Council agenda and once published, may withdraw an item(s), unless the item has been placed on the agenda by the City Council pursuant to Section 4.3.1. of these Protocols.
- 2.6. City Clerk. The City Clerk shall attend all meetings of the Council unless excused. The Deputy City Clerk shall attend Council meetings in the City Clerk's absence. The City Clerk shall record, prepare, and maintain the official records of the Council and perform other duties as directed by the City Manager. (Section 36804)
  - 2.6.1. Minutes. The City Clerk's office shall be responsible for the preparation and distribution of the Council minutes. The minutes shall include a public report on any action taken and the vote or abstention on such action of each Council Member present for the action. Unless a reading of the minutes is requested by a Council Member, the minutes may be approved as a Consent Calendar item.
    - 2.6.1.1. No minutes or written record of closed sessions of the City Council shall be kept, except as required by State law or as directed by the majority vote of

## City of Tracy – Council Meeting Protocols and Rules of Procedures

the City Council. The Council shall report at a public meeting any action taken in closed session, as required by Section 54957.1.

- 2.6.1.2. The City Clerk shall include a report on posting of the agenda in the minutes.
- 2.6.2. Timekeeper. The City Clerk shall be the designated timekeeper at all City Council meetings and shall have the authority to interrupt speakers, whether members of the public or a City Council member, when their allotted speaking times have expired.
- 2.7. City Staff. City staff shall (a) prepare balanced staff reports and provide accompanying documents on all agenda items in accordance with the agenda preparation schedule; (b) be available for questions from the City Council in accordance with the Brown Act prior to and during meetings; and (c) respond to questions from the public during meetings only when requested to do so by the City Council or the City Manager.
- 2.8. City Attorney. The City Attorney shall attend all meetings of the Council unless excused. The Assistant City Attorney shall attend Council meetings in the City Attorney's absence. The City Attorney shall give advice, upon request of the City Council, on questions of law. The City Attorney shall serve as the Parliamentarian at City Council meetings, opining on any procedural issues related to these Protocols, the Brown Act, and Rosenberg's Rules.

# City of Tracy – Council Meeting Protocols and Rules of Procedures

## Section 3 – Meeting Types

### 3. Council Meeting Types

- 3.1. Regular Meetings. Regular City Council meetings are held on the first and third Tuesdays of the month at 7:00 p.m. at City Hall Council Chambers, 333 Civic Center Plaza, Tracy, California 95376, unless otherwise noticed and as under Section 54954. No meeting shall be held on a holiday as defined by Section 6700. (Section 36805)
- 3.2. Special Meetings. The City Manager, Mayor, or a majority of the members of the City Council may call a special meeting. (Section 54956). Only the City Attorney is authorized to convene a closed session, which shall be considered a special meeting and conducted in accordance with the Brown Act. (Section 36807)
- 3.3. Workshops. The purpose of a workshop is to inform the City Council of complex issues and provide an opportunity for the City Council to review documents and request additional information. However, no final City Council action shall be taken during the workshop on agenda items. Workshops are open to the public and shall be conducted as public meetings in accordance with the Brown Act.
- 3.4. Closed Sessions.
  - 3.4.1. The City Attorney shall convene a special closed session meeting under the following circumstances:
    - 3.4.1.1. When requested by the City Manager to discuss a matter in closed session, and the City Attorney determines such a matter is permissible for discussion in closed session under the Brown Act;
    - 3.4.1.2. When requested by the City Council, pursuant to Section 4.3, to discuss a matter in closed session, and the City Attorney determines such a matter is permissible for discussion in closed session under the Brown Act;
    - 3.4.1.3. When the City Attorney deems it so necessary and determines a closed session is permissible under the Brown Act.
  - 3.4.2. Closed sessions shall be held in accordance with the Brown Act. Non-agenda items shall not be discussed in closed session. Closed sessions may precede or follow a City Council meeting.
  - 3.4.3. All closed session information, verbal or written, is privileged and confidential and shall not be shared with any person not at the closed session. Any member sharing information in violation of this rule may be subject to censure by the City Council or other legal remedies as set forth in Section 54963.
  - 3.4.4. The public may speak regarding any closed session item prior to the closed session as required by the Brown Act.

## City of Tracy – Council Meeting Protocols and Rules of Procedures

- 3.4.5. The City Attorney shall attend all closed sessions and shall report out in public session any reportable actions there taken by Council and the vote on such actions, in accordance with the Brown Act.
- 3.5. Teleconferenced Meetings. The City Council may hold a meeting by teleconference, meaning a meeting of the Council in which members are in different locations and connected by electronic means, through either audio or video, or both. Any teleconference meeting of the Council must comply with the requirements of Government Section 54953 and other applicable law, including but not limited to the requirement that all votes taken shall be by roll call.
- 3.6. Emergency Meetings. In the case of an emergency, as defined by Section 54956.5, a majority of Council may call a meeting and dispense with the special meeting notice and posting requirements under the Brown Act. Any emergency meeting held shall comply with the applicable Brown Act provisions.
- 3.7. The City Clerk shall ensure that the applicable noticing and posting requirements under the Brown Act are followed for all meetings of the City Council and shall poll and confirm a quorum is available for all such meetings in advance of publication.

# City of Tracy – Council Meeting Protocols and Rules of Procedures

## Section 4 – Meeting Agendas

### 4. Meeting Agendas

4.1. Purpose of Agenda. The Council meeting agenda documents serve four purposes:

- To communicate and inform City Council, City staff, the public and the press about City business.
- To comply with mandated state laws.
- To facilitate the decision-making process by including sufficient background information so that the City Council can obtain a full understanding of the issues and staff's analysis and recommendation prior to their consideration and action.
- To serve as a historical reference that can be kept as a record of proceedings and actions as needed for future actions and/or litigation.

As set forth above, the purpose of the agenda is to provide a framework within which Council meetings can be conducted and to effectively implement the approved Council programs, goals and budget. The agenda shall contain a brief general description of each item of business to be transacted or discussed at the meeting.

4.2. Posting and Distribution of Agendas. At a minimum, the posting and distribution of all agendas shall be done in accordance with the Brown Act. Agendas for regular meetings shall be posted not less than 72 hours prior to the meeting (Section 54954.2(a)(1)); special meeting agendas shall be posted not less than 24 hours prior to the meeting (Section 54956).

4.2.1. All agendas shall be posted in the following locations: City Hall, the Tracy Library, the City's website, and other locations as may be required by the bylaws of a particular Board or Commission. Posting of agendas at City Hall shall be the official location for purposes of Brown Act compliance.

4.2.2. Agenda packets are provided electronically to City Council Members on the Thursday prior to a City Council meeting unless technical difficulties occur. If technical difficulties occur, the City Clerk will endeavor to provide Council with hard copies of the agenda as soon as reasonably possible. Distribution to the staff, public, and media shall occur immediately after distribution to the City Council. Members of the public may sign up to receive notification that a Council meeting agenda has been posted on the City's website ([www.cityoftracy.org](http://www.cityoftracy.org)). The City Clerk will mail copies of the agenda or particular agenda items to any person submitting a request. (Section 54954.1) Said requests will be valid for one year. Copies of the agenda, and of individual agenda items, are available at costs established in the City's Master Fee Schedule. Copies of the agenda are also available for inspection at the Tracy Library and City Clerk's office. Agendas for Council meetings are posted on the City's website ([www.cityoftracy.org](http://www.cityoftracy.org)).

## City of Tracy – Council Meeting Protocols and Rules of Procedures

- 4.3. Agenda Item Submission; Council Member Request for Agenda Items. Council Members may seek to have an item discussed by the City Council at a future meeting and shall follow the below processes to have an item placed on a future City Council agenda.
  - 4.3.1. During "Council Items and Comments", a Council Member may make a motion, to place an item on a future City Council agenda, and upon receiving a second to such motion, the City Manager shall place the item on a future agenda.
    - 4.3.1.1. When the motion is made, the City Manager may provide information regarding current workloads, staffing and/or anticipated research that may affect the timing of completing the requested item, so as to establish more accurate and realistic expectations of when such item will be placed on a future City Council agenda.
    - 4.3.1.2. If no discussion is had regarding the timing, the City Manager shall place the requested item on a future City Council agenda within a reasonable time.
    - 4.3.1.3. The motion maker may include a specific meeting date on which the item must be brought to the City Council for consideration, and such date shall prevail, unless the City Manager provides information to explain that such date is not possible either due to current workloads, staffing and/or anticipated research.
  - 4.3.2. A Council Member may request a time-sensitive item be placed on the next City Council agenda, by contacting the City Manager, or their designee, via telephone, email or in person. Upon the request of a Council Member, the item will be placed on the next City Council agenda as long as the motion maker obtains one other Council Member to second the request. In the interest of transparency and Brown Act compliance, the motion maker shall limit discussions, outside of City Council meetings, to only one other Council Member to obtain support for a second to the motion regarding the time-sensitive request.
    - 4.3.2.1. For purposes of this section 4.3.2, "time-sensitive" shall mean any agenda item that is considered urgent by the sponsor and that has a deadline for action that is prior to the next meeting of the City Council. All necessary information should be submitted to City Council for a valid time-sensitive request.
    - 4.3.2.2. In the event of a time-sensitive request, the City Manager shall notify the rest of the City Council when two Council Members request an item to be placed on the agenda. The City Manager will place the item on the next City Council agenda, unless the City Manager has communicated to the two requesting Councilmembers that such timeframe is not possible based

## City of Tracy – Council Meeting Protocols and Rules of Procedures

on current workloads, staffing and/or research. The City Manager shall consult and coordinate with the City Attorney on all time-sensitive matters.

- 4.3.2.3. If the time-sensitive item is not able to be placed on the next City Council agenda, due to the information provided by the City Manager pursuant to Section 4.3.2.2, then the Council Member may place the item on a future City Council agenda pursuant to Section 4.3.1
- 4.3.3. Other Public Agencies. Agenda items such as presentations and proposals from other public entities must be sponsored for agenda placement by two Council members or the City Manager.

# City of Tracy – Council Meeting Protocols and Rules of Procedures

## Section 5 – Conduct of Meetings

### 5. Conduct of Meetings

- 5.1. Order of Business. The suggested order of business of Council meetings shall be as follows.
1. Call to Order
  2. Roll Call
  3. Pledge of Allegiance
  4. Invocation
  5. Presentations/Proclamations and Awards
  6. Order of Business
  7. Consent Calendar
  8. Items from the Audience/Public Comment
  9. Continued Public Hearings
  10. Public Hearings
  11. Regular Items
  12. Items from the Audience/Public Comment
  13. Staff Items
  14. Council Items and Comments
  15. Adjournment
- 5.2. Call to Order. The Presiding Officer shall take the chair at the hour appointed for the meeting and shall immediately call the meeting to order.
- 5.3. Roll Call. A majority of the members of the Council then in office shall constitute a quorum. (Section 36810)
- 5.4. Invocations. Any member of the public who wishes to offer an invocation prior to the opening of a regular Council meeting shall contact the City Clerk. The City Clerk shall select a mutually agreeable City Council meeting date for the invocation.
- 5.5. Presentations/Proclamations and Awards. This portion of the Agenda is dedicated for presentations, such as proclamations and awards, employee of the month recognitions, board and commission recognitions, and employee swearing-ins, and shall be limited to a 15-minute maximum period.
- 5.6. Order of Business. The order of business shall be as set forth in the published agenda. However, the Mayor may reorder agenda items or a Council Member may request that the Mayor reorder agenda items. The Mayor, as the Presiding Officer, shall be the decision maker on the order of business, except that the Mayor's decision may be appealed by a Council Member and such appeal shall be decided upon by a majority vote of the City Council. Upon a final determination that a reorder is occurring, the Mayor shall announce the reorder prior to proceeding with the meeting.
- 5.7. Consent Calendar. All items listed on the Consent Calendar are considered to be routine matters or consistent with previous City Council direction, such as resolutions confirming action from a previous meeting or the adoption of an ordinance previously

## City of Tracy – Council Meeting Protocols and Rules of Procedures

introduced by Council. 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.

5.8. Items from the Audience/Public Comment. It is the policy of the City Council that members of the public be allowed to address the Council on any item of interest to the public, before or during its consideration of that item, that is within the City Council's subject matter jurisdiction. (Section 54954.3(a)).

5.8.1. Agendas for regular meetings will have two opportunities for "Items from the Audience/Public Comment." (Section 54954.3(a)). In the interest of allowing the City Council to have adequate time to address the agenda items of business, the first public comment opportunity will be limited to a 15-minute maximum period. (Section 54954.3(b)). The second opportunity will not have a time limit period. A five-minute time limit per speaker will apply to all individuals speaking during the "Items from the Audience/Public Comment" portion of the agenda. Speakers may not concede any part of their allotted time to another speaker.

5.8.1.1. However, 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.

5.8.2. Each speaker shall avoid repetition of the remarks of the prior speakers, and when speaking under a specific agenda item, shall speak only to that agenda item. 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.

5.8.3. Speaker Cards. To facilitate the orderly process of public comment and to assist the City Council to conduct its business as efficiently as possible, members of the public wishing to address the City 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 City Council. (Section 54953.3)

5.9. Public Hearings. Public hearings are required for a variety of City Council actions such as changes to the Tracy Municipal Code, zoning revisions, some annexations, street vacations, weed abatement, liens, fee increases, etc. Whenever the law provides that publication of a notice shall be made, such notice shall be published in a newspaper of general circulation for the period prescribed, the number of times, and in the manner required. Each speaker will be allowed a maximum of five minutes for public input or

## City of Tracy – Council Meeting Protocols and Rules of Procedures

testimony. However, in the event there are 15 or more individuals wishing to speak regarding a public hearing item, the maximum amount of time allowed per speaker will be three minutes. Public hearings are scheduled at the beginning of the meeting, and no regular item can be placed ahead of a public hearing.

- 5.9.1. Public Hearings for Land Use and Other Matters. The Presiding Officer may designate individuals as the “Proponent/Appellant” or “Opponent” and provide each with additional time for comments and the opportunity to present a rebuttal.
- 5.10. Regular Items. This portion of the Agenda is for non-public hearing agenda items that require Council action or direction such as status or informational reports from staff and Council requests for agenda items.
- 5.11. Staff Items. This portion of the agenda provides an opportunity for the City Manager, City Attorney, and City staff to provide information of community interest to the City Council.
- 5.12. Council Items and Comments. This portion of the agenda is for each member of the City Council to provide brief reports on any intergovernmental agency meetings, conferences, community meetings, meetings of other legislative bodies, or other events of interest to the community that they attended, as well as meetings attended at the City’s expense. This portion of the agenda is also for the City Council to provide guidance and direction to staff concerning items to be included on future agendas and information to be provided in response to questions raised during “Items from the Audience/Public Comment.”
  - 5.12.1. Under this portion of the agenda, two Council members may request staff to provide information, perform studies, or undertake other action. If the requested action is routine in nature, the City Manager will direct staff to proceed. However, if the request cannot be accomplished within the approved budget or City Council priorities, or if it will involve substantial staff resources, the City Manager will report to the City Council at a subsequent City Council meeting and request further direction. At that time, the consensus of a majority of the City Council will be required to proceed.
  - 5.12.2. Agendas for regular and special meetings of the Council shall include a “Council Items and Comments” section. (Resolution No. 2021-049)
- 5.13. Adjournment. If a City Council meeting is still in session at 11:00 p.m., the Presiding Officer shall ask the question of whether the City Council desires to consider any new items after 11:00 p.m. The City Council shall determine, by motion, which specific items will be considered or continued. The City Manager shall inform the City Council of any time sensitive items. Any item continued due to the lateness of the hour shall automatically be placed on the agenda for the next regularly scheduled City Council meeting unless otherwise scheduled by motion action of a majority of the City Council.

## City of Tracy – Council Meeting Protocols and Rules of Procedures

- 5.14. Non-Agendized Items. The Brown Act prohibits the City Council from discussing or acting upon any non-agendized matter, unless an exception under Section 54954.2 applies. For non-agendized items, City 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 person; or request that the matter be placed on a future agenda or that staff provide additional information to the City Council. However, items may be added to the agenda (such as emergency matters) as permitted in the Brown Act. Brief announcements, brief responses, or questions seeking clarifications, may be made to statements or questions raised on items not on the agenda (Section 54954.2(a)(3)). Action on any item not on the agenda shall be deferred until the item is properly listed on the agenda for a subsequent City Council meeting unless added due to an immediate need if permitted under state law.
- 5.15. Voting Requirements. All ordinances, resolutions, and orders for payment of money require a majority vote of the total membership of the City Council in accordance with Section 36939, unless otherwise required by State law.
- 5.15.1. It is a best practice that all City Council members vote on every item of business unless prevented from doing so by virtue of an actual or potential conflict of law or other valid abstention under applicable laws. City Council Members are encouraged to disclose the reason for that abstention prior to the City Council engaging in discussion on that item.
- 5.16. Parliamentary Procedures. City Council meetings shall be conducted in accordance with the Rosenberg's Rules of Order: Simple Parliamentary Procedures for the 21<sup>st</sup> Century unless otherwise specified herein. (Appendix A - Rosenberg's Rules of Order, Revised 2011, as may be amended). City Boards and Commissions may use Rosenberg's Rules of Order or any other informal meeting protocols or parliamentary procedures to conduct their meetings. (Resolution No. 2021-049)
- 5.16.1. Time Limit for City Council Discussion and Debate. Each City Council Member shall have an aggregate maximum of five minutes to speak during each City Council discussion item and debate of a motion. (Resolution No. 2021-049)
- 5.16.2. Point of Order. Any City Council member may ask for a point of order, at which time the Presiding Officer will ask for an explanation. Points of order relate to matters that a City Council member considers inappropriate conduct for the meeting, such as the failure to adhere to these Protocols. The Presiding Officer shall rule on the matter. Any member can move to appeal the Presiding Officer's ruling, with a second from another Council member. Following debate, the ruling of the Presiding Officer may be reversed by a majority vote.
- 5.17. Written Communications from the City and the Public. The City Clerk shall manage communications to members regarding meeting topics to ensure compliance with the Brown Act.

## City of Tracy – Council Meeting Protocols and Rules of Procedures

- 5.17.1. Except for records exempt from disclosure under the California Public Records Act and otherwise by law, agendas or any other writings distributed to all or a majority of the members of a legislative body for discussion or consideration at a public meeting are disclosable to the public, and shall be made available upon request without delay.
- 5.17.2. Materials distributed to the members during the meeting shall be available for viewing by the public during the meeting if the materials were prepared by the City or a City Council member, or posted on the City's website within 48 hours the conclusion of the meeting if prepared by another person.
- 5.18. Written Materials after the City Council Agenda has been Distributed. On occasion, the City Council may receive, from members of the public, written materials either after the Agenda has been posted or at a City Council meeting. These written materials are typically related to an agenda item or handed out during "Items from the Audience/Public Comment." Upon the City Council receiving these written materials, they become a public record. For materials related to an agenda item, copies will be kept on file at the City Clerk's Office and will typically be posted on the City's website under "Materials Distributed at Council Meetings" 48 hours after the City Council meeting.
  - 5.18.1. For agenda items, staff may distribute materials to the City Council after the agenda has been published, only in compliance with the Brown Act. Any such materials will be made available at the City Council meeting for the public to review.
  - 5.18.2. Interested parties or their authorized representatives may address the Council by written communications regarding agenda items.
    - 5.18.2.1. Documents (6 copies are recommended) that members of the public submit to the City Council at the meeting shall be given directly to the City Clerk for distribution and shall not be given directly to the City Council. The documents will be available to the public on the City's website within 48 hours of the conclusion of the meeting.
- 5.19. Compliance with the Americans with Disabilities Act (ADA). The City of Tracy is in compliance with the Americans with Disabilities Act and will make all reasonable accommodations for the disabled. To allow for such reasonable accommodations, persons requiring assistance or auxiliary aids to participate at a City Council meeting, should contact the City Clerk's Office at (209) 831-6105 at least 24 hours prior to the meeting.

# City of Tracy – Council Meeting Protocols and Rules of Procedures

## Section 6 – Conduct of the Public

### 6. Conduct of the Public

- 6.1. Purpose of Public Comment. The City, in accordance with the Brown Act, provides the public the opportunity to address the City Council body as a whole and express their opinions regarding agenda items and non-agenda matters within the subject matter jurisdiction of the City Council. (Section 54954.3) Items are generally considered to be within the City Council's subject matter jurisdiction if they are within the City Council's scope of influence.
  - 6.1.1. Nothing in these Protocols shall be construed as prohibiting public criticism of the City's policies, procedures, programs or services, or the acts or omissions of the City Council. However, these Protocols are not intended to confer any privilege or protection for expression beyond that otherwise provided by law. (Section 54954.3(c)).
  - 6.1.2. Public comments should not be addressed to individual City Council members nor City staff, but rather to the City Council as a whole.
  - 6.1.3. While members of the public may speak their opinions on City business, personal attacks on members and City officials, use of swear words, and verbal or non-verbal signs or displays of disrespect for individuals are discouraged as they impede good communication with the City Council.
  - 6.1.4. Consistent with the Brown Act, the City Council is limited in its ability to respond to public comments regarding non-agenda matters.
- 6.2. In the interest of conducting an efficient meeting, the Presiding Officer may stop a member of the public whose comments are not confined to the agenda item being heard. In addition, during the "Items from the Audience/Public Comment" portion of the agenda, the Presiding Officer may stop a member of the public whose comments are not within the subject matter jurisdiction of the City.
- 6.3. Rules of Decorum. While the City Council is in session, no person in the audience at a City Council meeting shall engage in conduct that disrupts the orderly conduct of a Council meeting, including, but not limited to, the utterance of loud, threatening or abusive language, refusing to abide speaker time limits and leave the podium when directed; whistling, stamping of feet, yelling or shouting or interrupting a speaker who is addressing the City Council; repeated waving of arms; or other disruptive acts. Clapping at any time during a City Council meeting, except during the "Presentations/Proclamations and Awards" portion of the meeting, shall be considered a disruption.
- 6.4. Any person who disrupts the orderly course of the meeting may be issued a criminal citation pursuant to Penal Code section 403 and/or called out of order by the Presiding Officer and barred from further participation during that session of the City Council in accordance with the Brown Act.

## City of Tracy – Council Meeting Protocols and Rules of Procedures

- 6.4.1. All persons attending a Council meeting shall obey any lawful order or direction of the Presiding Officer or Sergeant-at-Arms.
- 6.4.2. The Sergeant-at-arms shall assist the Presiding Officer in enforcing these rules of decorum at City Council meetings, including but not limited, removing disruptive audience members. Additionally, any City Council member may at any time call for a point of order, to request the timely enforcement of these rules of decorum.
- 6.5. Location of Speaker. Members of the public wishing to address the City Council must approach the podium when recognized by the Presiding Officer and shall speak only from the podium.

# City of Tracy – Council Meeting Protocols and Rules of Procedures

## Section 7 – Miscellaneous

### 7. Miscellaneous

- 7.1. Conflicts of Interests. It is the responsibility of every Council member to disclose conflicts of interest on agenda items, in accordance with State and local laws.
- 7.2. Proclamations. The Mayor issues proclamations to provide special recognition by the City to an individual, event, issue etc. Proclamations are not statements of policy and do not require the official approval or action of the City Council.
- 7.3. Broadcasting of Council Meetings. Generally, City Council meetings are broadcast live on Channel 26 and the City's website ([www.cityoftracy.org](http://www.cityoftracy.org)), unless technical difficulties make that infeasible. Reruns of the preceding City Council meeting are shown every Wednesday at 8:00 p.m., every Thursday at 10:00 a.m., and every Saturday at 9:00 a.m. on Channel 26.
  - 7.3.1. Recordings of City Council meetings shall be accessible on the City's website ([www.cityoftracy.org](http://www.cityoftracy.org)) by the end of the following business day. DVD recordings of Council meetings are available at costs established in the City's Master Fee Schedule.

## City of Tracy – Council Meeting Protocols and Rules of Procedures

### Appendices

- A. Rosenberg's Rules of Order, revised 2011, Simple Rules of Parliamentary Procedure for the 21<sup>st</sup> Century. Judge Dave Rosenberg