TRACY CITY COUNCIL

REGULAR MEETING AGENDA

Tuesday, October 15, 2024, 7:00 P.M.

Tracy City Hall Chambers, 333 Civic Center Plaza, Tracy
Web Site: www.cityoftracy.org

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

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

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

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

***Remote Public Comment**:*

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

- *Comments via:*
  - **Online by visiting** https://cityoftracyevents.webex.com and using the following **Event Number: 2551 676 8145** 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 when prompted to provide an email address.
  - Join by phone by dialing +1-408-418-9388, enter 25516768145 #8722922# Press *3 to raise the hand icon to speak on an item.

- *Protocols for commenting via WebEx:*
  - *If you wish to comment on the "Consent Calendar", "Items from the Audience/Public Comment" or "Regular Agenda" portions of the agenda:*
    1) *Listen for the Mayor to open that portion of the agenda for discussion, then raise your hand to speak by clicking on the Hand icon on the Participants panel to the right of your screen.*
    2) *If you no longer wish to comment, you may lower your hand by clicking on the Hand icon again.*
  - *Comments for the "Consent Calendar" "Items from the Agenda/Public Comment" or "Regular Agenda" portions of the agenda will be accepted until the public comment for that item is closed.*
  - *Comments received on Webex outside of the comment periods outlined above will not be included in the record.*

Date Posted: October 11, 2024

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

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

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

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

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

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

Date Posted: October 11, 2024

CALL TO ORDER

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

ROLL CALL AND DECLARATION OF CONFLICTS

PLEDGE OF ALLEGIANCE

INVOCATION

PRESENTATIONS

1. Proclamation – Arbor Day
2. Proclamation – Homeless Youth Awareness Month
3. Proclamation – Sikh American Awareness Month
4. Proclamation – Breast Cancer Awareness Month

ORDER OF BUSINESS

1. CONSENT CALENDAR

1.A. Approval of October 1, 2024, special meeting minutes and October 1, 2024, Regular Meeting Minutes.

1.B. The Tracy Homelessness Advisory Committee recommend that the City Council adopt a resolution approving Amendment No. 1 to the Professional Service Agreement with The Salvation Army for operation of the Temporary Emergency Housing Facility for a term of one year with a not-to-exceed annual cost of $2.6 Million and a minor modification to scope.

1.C. Staff recommends that City Council adopt a Resolution: (1) Approving the execution of a General Services Agreement with Petroleum Solids Control, Inc., a California Corporation, to provide rental services for certain equipment for the City of Tracy Wastewater Treatment Plant at a monthly lease amount of $19,350 for an initial six (6) month term; and (2) Authorizing the City Manager to approve monthly extensions up to a one-year term for a total not-to-exceed total amount of $232,200.

1.D. The Tracy Finance Committee recommends that the City Council adopt a resolution: (1) Approving a 20% local match for the Safe Streets and Roads for All (SS4A) grant from the United States Department of Transportation; (2) Accepting the SS4A grant in the amount of $3,764,800; (3) Appropriating to Capital Improvement Project 73201 (A) $941,200 in funds from gas taxes (Fund 245) to provide for the local match and (B) the total SS4A grant funds, for a total project amount of $4,706,000; and (4) Authorizing the City Manager to execute the grant agreement and other documents to effectuate the grant.

1.E. Staff recommends that the City Council adopt a Resolution approving Amendment No. 4 to the Professional Services Agreement with Terracare Associates, (1) Increasing the annual not-to-exceed amount to $1,600,000, for streetscapes, park, and channelway landscape maintenance services; and (2) Extending the term for an additional year; and (3) Amending the billing rates by the CPI of 2.7% to account for inflationary increases.

1.F. Staff recommends that the City Council waive the second reading and adopt an Ordinance, pursuant to Government Code, § 36516, amending Chapter 2.04.060 of the Tracy Municipal Code increasing the monthly salary of the Mayor from $1,129 to $2,100 and increasing the monthly salary of Council Members from $1,029 to $1,900.

1.G. Staff recommends that the City Council adopt a resolution approving the execution of a Freeway Agreement with the California Department of Transportation for the Interstate 580/Lammers Road Undercrossing Project.

1.H. Staff recommends that the City Council adopt a resolution: (1) Approving the execution of a Subdivision Improvement Agreement between the City and Lennar Homes of California, LLC, for construction of in-tract improvements for Tracy Hills Phase 2B Tract 4181 Villages 11 and 12, and (2) Authorizing the City Clerk to Record the Subdivision Improvement Agreement with the Office of the San Joaquin County Recorder.

1.I. Staff recommends that the City Council adopt the following: (1) a Resolution approving an On-Call Professional Services List, for Geotechnical Engineering Services, for five years, and (2) By separate Resolutions, authorizing the (A) Execution of Master Professional Services Agreements with BSK Associates and Ninyo & Moore to provide Geotechnical Engineering Services, each for an initial term of three years and a not-to-exceed amount of $300,000 per fiscal year; and (B) City Manager to extend, administratively, for up to two additional years.

1.J. Staff recommends that the City Council adopt a Resolution: (1) authorizing the submittal of an application, and upon award, execution by the Mayor of a grant agreement with the California Department of Transportation Division of Aeronautics, in the amount of $6,300; and (2) subject to and upon award, accepting such grant funds and appropriating the full grant amount to Capital Improvement Project 77595 - Pavement Maintenance Management Plan Project.

1.K. Staff recommends that the City Council adopt a resolution: (1) Authorizing the acceptance of the Technology and Equipment Program Grant in the amount of $391,400 from the United States Department of Justice, Office of Community Oriented Policing Services and (2) Appropriating the full grant funds to the Police Department's Operational Budget for Fiscal Year 2024/2025.

1.L. Staff recommends that the City Council adopt a resolution approving a General Services Agreement with Stockton Petroleum Company, Inc. for gasoline and diesel fuel services for a term of two-years and a total not to exceed amount of $1,537,000 per fiscal year.

1.M. The City Council adopt a Resolution waiving the City Council Appointment Policy process under Resolution 2024-042 and deferring, instead, to the Interview Process under the Bylaws of the Environmental Sustainability Commission to fill youth vacancies.

1.N. Staff recommends that the City Council approve Amendment No. 2 to the Master Services Agreement between the City of Tracy and Paymentus Corporation to add updated web portal and other payment options for credit card merchant services and processing.

1.O. Staff recommends that the City Council adopt a resolution: (1) Accepting a Grant of Easement from the Bureau of Reclamation for the International Parkway Bridge Replacement and Expansion Project, Capital Improvement Project 73148 and (2) Authorizing the City Clerk to record the Grant of Easement with the Office of the San Joaquin County Recorder.

2. ITEMS FROM THE AUDIENCE

3. REGULAR AGENDA

3.A. Staff recommends that the City Council adopt a Resolution approving annexation of property into "Improvement Area No. 3 of the City of Tracy Community Facilities District No. 2016-1 (Tracy Hills)" and confirming, ordering and directing other related matters.

3.B. Staff recommends that the City Council receive an informational report on the fiscal health of the City of Tracy Consolidated Landscape Maintenance District.

3.C. Staff recommends that the City Council receive an informational report on the findings and recommendations of the City of Tracy Communication Strategy study conducted through the Bloomberg Harvard City Leadership Initiative.

3.D Staff recommends that the City Council receive information and provide direction on adding a bus route within the Tracy Hills' subdivision to accommodate the bell schedule for the Corral Hollow Elementary School.

3.E. Adopt one of two Resolutions replacing the *City Council Policy on Filling City Council Vacancies* with a new policy that requires all vacancies, regardless of when occurring during a term, to be appointed based on the next highest vote-getter at either (A) the last most recent General Municipal Election, or, alternatively, (B) the General Municipal Election through which the vacant seat was originally filled.

3.F. (1) Accepting the following in accordance with the City's Donation & Gift Policy adopted by Resolution 2021-108:
(A) A donation of a historical display entitled "Tracy's Leadership History" from Mayor Nancy D. Young; and
(B) Monetary gift in the amount of $2,000 from Good Samaritan, Inc. to cover the cost of installation of the historical display in the City Hall foyer; and
(2) Approving the execution of a General Services Agreement (GSA) with 7 Thunder Productions LLC Doing Business As Signarama in the amount of $2,000 for the installation of the historical display and authorizing the City Manager to execute the GSA; and (3) Appropriating the donated funds for the GSA

4. ITEMS FROM THE AUDIENCE

5. STAFF ITEMS

6. COUNCIL ITEMS

7. ADJOURNMENT

TRACY CITY COUNCIL - SPECIAL MEETING MINUTES

October 1, 2024, 5:30 p.m.

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

1. Mayor Young called the meeting to order at 5:34 p.m.

2. There were no actions taken pursuant to AB 2449.

3. Roll call found Council Members Arriola, Bedolla, Evans, Mayor Pro Tem Davis, and Mayor Young present. City Council had no declarations of conflicts.

4. ITEMS FROM THE AUDIENCE – No public comment.

5. DISCUSSION ITEMS

5.A. For vacancies on the Tracy Youth Advisory Commission, the City Council, by motion, (1) Establish interview protocols to fill two adult vacancies; (2) Conduct interviews of four adult applicants and upon conclusion, appoint applicants to fill two adult vacancies and establish an eligibility list, if appropriate; and (3) Establish a subcommittee of two Council Members, and an alternate, to interview sixteen youth applicants to fill eleven youth vacancies.

Lauren Repetto, Recreation Services Supervisor, Parks, Recreation and Community Services, provided the staff report and presentation and responded to questions.

City Council discussed and determined the interview questions, amount of time allocated for each applicant to respond to questions, order in which applicants will be interviewed, process and length of time for follow-up questions, and the length of time for Council discussion. Mayor Young announced that of the four initial applicants, two decided to withdraw from consideration.

Council questions and comments continued, interviews were conducted, and Council Members provided the Mayor with their recommendations for appointment to the Youth Advisory Commission.

Mayor Young announced the following selection: Olinga Alexander and Jose Chavez to serve as the Adult Commissioners on the Youth Advisory Commission.

ACTION: Motion was made by Mayor Young and seconded by Council Member Bedolla to appoint Olinga Alexander and Jose Chavez to serve from October 1, 2024 to July 31, 2026 as the Adult Commissioners on the Youth Advisory Commission. Roll call found all in favor; passed and so ordered.

ACTION: Motion was made by Mayor Young and seconded by Council Member Bedolla to suspend the Council Policy on appointments for the youth applicants and direct staff to utilize the Youth Advisory Commission's process as it is currently outlined

in its bylaws and return to Council with its appointments. Roll call found all in favor; passed and so ordered.

6. Council Items and Comments – None

7. Adjournment – Time: 6:17 p.m.

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

The above agenda was posted at the Tracy City Hall on September 26, 2024. The above are action minutes. A recording is available at the office of the City Clerk.

_____
Mayor

ATTEST:

_____
City Clerk

TRACY CITY COUNCIL REGULAR MEETING MINUTES

October 1, 2024, 7:00 p.m.

City Hall, 333 Civic Center Plaza, Tracy *Web Site: www.cityoftracy.org*

Mayor Young called the meeting to order at 7:04 p.m.

There were no actions taken pursuant to AB 2449.

Roll call and Declaration of Conflicts – Council Members Arriola, Bedolla, Evans, Mayor Pro Tem Davis and Mayor Young present. There were no declarations of conflict.

Mayor Young led the Pledge of Allegiance.

Pastor Doug Diestler, Mission City Church offered the invocation.

Midori Lichtwardt, City Manager presented the Employee of the Month award for October to Richard Joaquin, Parks, Recreation, and Community Services.

Mayor Young proclaimed October as Domestic Violence Awareness Month – presented a Proclamation to Wanda Irish from Chest of Hope and Diana Poe, Housing Coordinator for PREVAIL.

1. CONSENT CALENDAR – Motion made by Council Member Arriola and seconded by Council Member Bedolla to adopt the Consent Calendar. Roll call found all in favor; passed and so ordered.

   1.A. Approval of September 17, 2024 Regular Meeting Minutes. – **Minutes were adopted.**

   1.B. Staff recommends that the City Council adopt a resolution (1) approving and authorizing the execution of two pipeline crossing agreements with Union Pacific Railroad Company for new sewer main crossings located in Corral Hollow Road for the Sewer Capacity Upgrade Phases 2 and 3, Capital Improvement Project 74165, and (2) approving a total not-to-exceed amount of $61,798 for the payment of fees associated with the terms of the agreements. – **Resolution 2024-161**

   1.C. The Tracy Homelessness Advisory Committee recommend that the City Council adopt a resolution: (1) Authorizing the acceptance of a grant award from Kaiser Permanente in the amount of $95,000 to support strengthening the medical respite ecosystem - at the Temporary Emergency Housing Facility, Capital Improvement Project 71112; and (2) Appropriating the full grant funds to the Parks, Recreation and Community Services Department, Homeless Services Division, for Fiscal Year 2024-2025. – **Resolution 2024-162**

   1.D. Staff recommends that the City Council adopt a resolution: (1) Authorizing the acceptance of the State of California Office of Traffic Safety grant award in the amount of $50,000 to conduct extra patrols and traffic enforcement, and to purchase two new LiDAR speed reading devices; and (2) Appropriating the full

grant funds to the Police Department Operational Budget for Fiscal Year 2024/2025. – **Resolution 2024-163**

1.E. Staff recommends that the City Council waive the second reading and adopt an Ordinance amending Tracy Municipal Code Section 10.08.2356 to provide an alternative to the current 120-foot width lot standard in the Community Recreation Support Services Zoning District. – **Ordinance 1349**

1.F. Staff recommends that the City Council waive the second reading and adopt an Ordinance amending Tracy Municipal Code Section Chapter 6.04 of the TMC to reflect revised business tax rates and categories. – **Ordinance 1350**

1.G. Staff recommends that City Council adopt a Resolution: 1) Approving the execution of a General Services Agreement with JHA Remediation, LLC, a California Limited Liability Company, for haulage and disposal of bio-solids from the City's Wastewater Treatment Plant for a one-year term and annual total amount of $469,587 per fiscal year; and 2) Authorizing administrative extensions by the City Manager for two additional one-year terms upon satisfactory performance and budget availability. – **Resolution 2024-164**

1.H. The Tracy Finance Committee recommends that the City Council adopt a Resolution adopting an amended Operating and Capital Budget for the Fiscal Year ending June 30, 2024, and making such amended budget to be retroactively effective. – **Resolution 2024-165**

1.I. Staff recommends that the City Council adopt a resolution: (1) Awarding a Construction Contract to Franco Engineering, Inc., of Tracy, California, in the amount of $392,300 for the Tracy Boulevard Sidewalk Gap Closure, Capital Improvement Project 73175, and (2) Authorizing the City Manager to approve change orders up to the contingency amount of $58,845, if needed. – **Resolution 2024-166**

1.J. Staff recommends that the City Council adopt a resolution authorizing payment to the San Joaquin Council of Governments, Inc. of up to $106,000 in Habitat Fee for the agricultural land impacted by the construction of the Fire Training Facility at the NEI Reservoir, Capital Improvement Project 71109. – **Resolution 2024-167**

1.K. Staff recommends that the City Council adopt a Resolution: (1) Ratifying the erroneously executed Actual Cost Contract (ACC) with Pacific Gas and Electric Company (PG&E) in the amount of $394,311 for work performed for the Traffic Signal Installation and Roadway Widening at Corral Hollow Road and Valpico Road Intersection, Capital Improvement Project 72095; and (2) Approving Amendment No. 1 to the ratified ACC with PG&E for additional costs in the amount of $140,930 to reflect the revised total of $535,241. – **Resolution 2024-168**

1.L. Staff recommends that the City Council adopt a Resolution, for the Interstate 580/International Parkway/Patterson Pass Road Diverging Diamond Interchange Project, Capital Improvement Project 73147, granting authority to the City Manager to: (1) authorize the payment of fees for Caltrans oversight, utility relocations and permitting; and (2) execute utility agreements, Caltrans agreements, permits and related documents. – **Resolution 2024-169**

2. ITEMS FROM THE AUDIENCE – Sandy Taylor expressed concerns over the lack of Title Insurance for the Aquatic Center property and read out several emails that were exchanged between the City Attorney, staff and the title insurance company.

Robert Tanner expressed support for Agenda Item 1.F and that when it comes to Measure V the Citizens and Council Members made a mistake, and expressed support for the City to refund developers if the IOD was not prepared properly.

3. REGULAR AGENDA

3.A Finance Committee recommends that the City Council conduct a public hearing and upon conclusion adopt a resolution (1) adopting Development Impact Fee Nexus Studies for the following functions: Parks (Neighborhood and Community); Public Facilities; Water and Recycled Water (Distribution, Supply, Treatment); Public Safety (Fire, Police, Communication Facilities); and Program Management (Master Plan areas of the City); (2) approving, increases in part, and decreases in part, in Development Impact Fees for each such function to become effective 60 days after final adoption, including annual adjustments on July 1st of each year, using the Engineering News Record Construction Cost Index; and (3) rescinding, as of the effective date of the new fees, the existing Development Impact Fees for each such function.

Mayor Young opened the public hearing at 7:32 p.m.

Veronica Child, Management Analyst II, Sharat Bandugula, Senior Civil Engineer, and Alison Bouley from Harris and Associates, provided the staff report and responded to questions.

Council comments and questions followed.

Mayor Young closed the public hearing at 8:57 p.m.

ACTION: Motion was made by Mayor Pro Tem Davis and seconded by Council Member Evans **to reject** (1) adopting Development Impact Fee Nexus Studies for the following functions: Parks (Neighborhood And Community); Public Facilities; Water (Distribution, Supply, Treatment) and Recycled Water; Public Safety (Fire, Police, Communication Facilities); and Program Management (Master Plan Areas Of The City); (2) approving, increases in part, and decreases in part, in Development Impact Fees for each such function to become effective 60 days after final adoption, including annual adjustments on July 1st of each year, using the engineering news record construction cost index; and (3) rescinding, as of the effective date of the new fees, the existing Development Impact Fees for each such function**.** Roll call found Council Member Evans, Mayor Pro Tem Davis and Mayor Young in favor; passed and so ordered. Council Members Arriola and Bedolla opposed.

3.B. Staff recommends that the City Council conduct a Public Hearing, and upon conclusion: 1) Introduce an Ordinance, pursuant to Government Code, § 36516, amending Chapter 2.04.060 of the Tracy Municipal Code increasing the monthly salary of the Mayor from $1,129 to $2,100 and increasing the monthly

salary of Council Members from $1,029 to $1,900; and 2) adopt a Resolution increasing the monthly salary of the City Treasurer from $1,075 to $1,900 and rescinding Resolution 2021-107.

Mayor Young opened the public hearing at 8:58 p.m.

Karin Schnaider, Assistant City Manager provided the staff report.

Robert Tanner stated that just because the state allows to increase stipend due to population, it does not need to be done, questioned where the spirit of volunteerism is at and the amount that is being paid to City Council is too high. Mr. Tanner proposed that the City Council Members make $1300 a month and the Mayor $100 more and shared that the 85% increase is not the same percentage increase that staff, or other commissioners would be paid.

Alice English agreed with the sentiments of the previous speaker and shared that there are community members that are Veterans, elderly or single parents that could use that tax payer money, an increase of 83% is too high and asked that Council do their job and serve the City, suggested that the Council send out a survey to the community regarding increases and urged Council to reject this item and do what's best for the City.

Community Members shared that when people are being paid good money, they do good work, expressed that Council is underpaid and urged that staff look into looking towards finding funds from grants, Federal funds, or corporations for Corporate Assistance Programs to assist with funding the Council stipend.

Council questions and comments followed.

Mayor Young closed the public hearing at 9:23 p.m.

Necy Lopez, Deputy City Clerk read the title of the proposed ordinance.

ACTION: Motion was made by Council Member Bedolla and seconded by Council Member Arriola to waive full reading of text and introduce an ordinance pursuant to Government Code, § 36516, amending Chapter 2.04.060 of the Tracy Municipal Code increasing the monthly salary of the Mayor from $1,129 to $2,100 and increasing the monthly salary of Council Members from $1,029 to $1,900. Roll call found Council Members Arriola, Bedolla, and Mayor Young in favor; passed and so ordered. Council Member Evans and Mayor Pro Tem Davis opposed.

ACTION: Motion was made by Council Member Bedolla and seconded by Council Member Arriola to adopt **Resolution 2024-170** increasing the monthly salary of the City Treasurer from $1,075 to $1,900 and rescinding Resolution 2021-107. Roll call found Council Members Arriola, Bedolla, and Mayor Young in favor; passed and so ordered. Council Member Evans and Mayor Pro Tem Davis opposed.

DEVIATION:

3.D. Discuss and provide direction regarding a proposed gift of public art from the City of Tracy's Mayor, in the form of an installation of a historical display entitled "Tracy's Leadership History".

Arturo Sanchez, Assistant City Manager, Dr. Nancy Young, City of Tracy Mayor and Shivani Shibu, intern for the Mayor provided the staff report.

Gwendolyn Stewart from The Golden Agers thanked the Mayor for this contribution and that this display will inspire the Community.

Conrad Levoit expressed excitement for the project and thanked the Mayor for the gift and asked for clarification as to where the display will be in City Hall.

Mayor Young clarified that the proposed location is on the south wall in the foyer of City Hall.

Community Member commended the Mayor on the presentation and shared that this would be a plus for the community and that this will help the visualization of the City's progress.

Council questions and comments followed.

Mayor Young requested the item return to Council no later than the October 15, 2024, Council Meeting.

Arturo Sanchez, Assistant City Manager, explained that there would potentially not be enough time to gather all the information needed to add this to the agenda scheduled to publish on Thursday, October 10, 2024 and asked that the item be brought back for the November 19, 2024 meeting.

Mayor Young shared that this item needed to come back to Council no later than October 15, 2024. Bijal Patel, City Attorney, shared that her office would work with staff and Council to bring this item back as the Mayor requested.

ACTION: Motion was made by Council Member Arriola and seconded by Council Member Bedolla to direct staff with a resolution to accept the gift of public art in the form of option 3 to be placed in the south wall of the City Hall foyer and direct staff to work with the contractor to identify the actual cost of the installation of the gift for the purposes of developing a sole source contract to install, repair and maintain the gift and finally accept the funds raised by the Mayor to pay for the sole source contract, provide direction regarding a proposed gift of public art from the City of Tracy's Mayor, in the form of an installation of a historical display entitled "Tracy's Leadership History". Roll call found all in favor; passed and so ordered.

Mayor Pro Tem Davis left the meeting at 10:21 p.m.

3.C <u>The Planning Commission recommends that the City Council adopt a Resolution approving the Downtown Vision Plan.</u>

Scott Claar, Senior Planner provided the staff report.

Robert Tanner expressed concerns regarding the purchase and decontamination of the land and the amount of contamination that needs to be cleaned up, asked if the City knows if Union Pacific Railroad would even want to sell the land and asked if trains will continue to utilize the railroad and what is happening with the TOD.

Harris expressed excitement for this project and asked about the Landscape Maintenance District and the land in question is in Zone 35, wanted clarification as to if Zone 35 will have to pay for the maintenance, shared that the Landscape Maintenance Districts may not be working well for the City and should be revisited.

Gabriella Machuca stated that a private investor would not invest in the area because of cost and urged the City to invest in the land and clean-up of the contaminants, asked how the Downtown Plan phasing will work and in what order will it be built and requested better access, lighting, incentives for the downtown area, and maybe not charge impact fees in the Downtown area.

Council comments and questions followed.

ACTION: Motion was made by Council Member Arriola and seconded by Council Member Evans to adopt **Resolution 2024-171** approving a Resolution approving the Downtown Vision Plan. Roll call found Council Members Arriola, Bedolla, Evans and Mayor Young in favor; passed and so ordered. Mayor Pro Tem Davis was absent.

4. ITEMS FROM THE AUDIENCE – Pastor Young expressed his frustration at the City Attorney related to the Mayor's project and that Council Member Evans was frivolous with taxpayer money by keeping the City Attorney, giving her a raise and providing back pay.

   Council Member Evans called a point of order.

5. STAFF ITEMS - None.

6. COUNCIL ITEMS – Council Member Evans thanked the Gold Star Families for the flag raising last Friday to the flagpole at City Hall.

   Council Member Evans requested support to bring back an amendment to C-10 of the City Council Policies that as currently written, requires all Council vacancies to be filled by appointment. Requested that it be amended to state that the highest vote getter in the current election would get that seat and believed the way it is currently written is wrong, seat should go to highest vote getter and not be appointed.

   Council Member Arriola responded that Council did change that rule so any vacancy will go to the next highest voter.

   Council Member Evans stated the way it is currently written is under C-10 as was adopted in 2019, it states that if someone in the middle of their term on Council leaves their seat, the Council will appoint.

   Council Member Arriola responded his recollection was that Council amended a resolution that within one year of an election, the next runner up would take any vacated seat and an appointment process would only happen after one year.

   Council Member Evans stated that is correct, after the seat has been filled for one year and that seat is vacated two years into the term, the way he read it Council will appoint for the remainder of that seat.

Council Member Evans stated he wants an amendment brought back and provided two options: would like to delete Section B, and amend 2-A, to say that a vacancy occurring at any time will be filled by the next highest vote getter in the election of that originally filled seat or would like to delete Section B, and amend 2-A, to state that a vacancy occurring at any time would be filled by the next highest vote getter in the election that created the vacancy, recommended it be written both ways and requested that it comes back at the next Council meeting.

Bijal Patel, City Attorney clarified the current policy language.

Council Member Evans stated the part he wants to fix is the appointment after a year, he feels it should be a democratically elected public official and does not want Council appointing that person.

Council Member Arriola responded he wouldn't particularly object to it however he was concerned because it is so close to an election and heard staff say the next meeting is stacked, and would the defacto change have any impact for this upcoming election or could Council do that right after the election so staff is not bogged down with an extra item because the outcome would be the same that the next runner up would take the vacant seat in this upcoming election.

Council Member Evans stated he does not think the outcome would be the same and stated it should be done prior to the election.

Council Member Arriola stated if a vacancy happens in this upcoming election, the next runner up will take that seat given the current rules.

Mayor Young stated yes there was a lot of discussion with prior Council regarding the appointment process which was a problem, so they put the policy in place.

Ms. Patel responded you have to go back to when that term started and is the vacancy in the first year of that term. The way it is written it is the vacant positions term so you go back to when that term started of the vacancy. Depends on the term of the seat that you are filling and did the vacancy happen within the first year of that term starting or after. Council Member Evans is asking to take out Section B which is the appointment process which says it is after the vacancy term.

Council Member Evans stated that is correct and alter Section 2.A to read – vacancy occurring at any time would be filled by the highest vote getter.

Council Member Arriola responded it sounds like there is some ambiguity regardless. He was under the impression that should a vacancy occur in the upcoming election the next runner up would take the Council seat.

Mayor Young stated that was absolutely the intent after what happened in 2012, 2014 and 2016 and that is why it was put into place so it would be clear that the third vote getter would receive that seat.

Ms. Patel responded maybe there is a disconnect about what you thought you approved and what was written in the policy. The policy is clear that the vacant positions term is what dictates how you appoint, and whether or not the vacancy occurs in or after the first year. It is when the term started. Ms. Patel provided examples of within a year and after a year.

Council Member Evans stated he is not questioning the intent, just the language.

Council Member Arriola stated if any ambiguity between intent and language, then it should definitely be cleared up.

Ms. Patel stated she would send Council the Policy, resolution, and link to the video.

Council Member Arriola seconded Council Member Evan's request. It needs to be very clear.

Mayor Young agreed and stated we don't want to get into that appointment process again.

Council Member Bedolla shared that when the Council Policy comes back, it needs to be very clear in the intention. Ms. Patel provided information as to what the legal limitations may be.

Ms. Patel asked that when the item comes back to Council, is the request to bring back a discussion item or a specific resolution amending the policy.

Council Member Evans responded he would like both resolutions drafted for Council approval.

Ms. Patel stated she can do one resolution with option A and B.

Council Member Evans stated yes one decisive motion and it is codified.

Council consensus was to bring back the City Council Policies and make amendments to clarify the language regarding Council vacancies, no later than the October 15, 2024 meeting.

Council Member Bedolla expressed frustration with the incorrect statements made regarding the City Attorney's willingness to work with the Mayor on her gift and clarified that the City Attorney stated that her office and City Management Team would work together with the Mayor to facilitate that item coming back to Council at the next meeting.

Mayor Young asked staff to provide the specific pages that Council Member Evans was referring to in his request.

7. ADJOURNMENT: Time: 11:32 p.m.

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

The above agenda was posted at the Tracy City Hall on September 26, 2024. The above are action minutes. A recording is available at the office of the City Clerk.

_____
Mayor

ATTEST:

_____
City Clerk

October 15, 2024

Agenda Item 1.B

RECOMMENDATION

The Tracy Homelessness Advisory Committee recommend that the City Council adopt a resolution approving Amendment No. 1 to the Professional Service Agreement with The Salvation Army for operation of the Temporary Emergency Housing Facility for a term of one year with a not-to-exceed annual cost of $2.6 Million and a minor modification to scope.

EXECUTIVE SUMMARY

This agenda item seeks an adoption of a resolution that the Tracy Homelessness Advisory Committee recommends that the City Council approve Amendment No.1 to the Professional Service Agreement (PSA) with The Salvation Army, Stockton (Consultant) for the operation of the Temporary Emergency Housing Facility (TEHF). The Consultant currently serves as the operator of the TEHF since November 1, 2023. Since then, the Consultant has provided non-faith based shelter services including case management, day programming, meals, transportation, and laundry services, to individuals experiencing or at risk of homelessness in a year-round non-congregate low barrier setting. The performance and service delivery of the Consultant has met, and in certain circumstances exceeded, the needs of the City. The existing PSA expires on October 31, 2024, and has an option for an additional one year extension; however, the Scope of Work (SOW) to the PSA requires a minor modification, which change is outside of the City Manager's authority, resulting in the need for City Council to approve the extension.

As Consultant has satisfactorily met the SOWs (other than one), staff is recommending the City Council exercise the option to extend the agreement for an additional one year, for the existing not-to-exceed annual amount of $2.6 Million.

The Tracy Homelessness Advisory Committee heard this item on September 19, 2024 and recommends that the City Council adopt the proposed Resolution.

BACKGROUND

Consultant was awarded a PSA to operate the City of Tracy's Temporary Emergency Housing Facility located at 370 Arbor Avenue Tracy, CA 95304 on October 3, 2023, for a term of one year. The PSA provides the City with the option to extend for an additional year, upon evidence of satisfactory performance.

The PSA included 19 SOW requirements that the Consultant was expected to implement. The SOW ranged from hours and methods of operation to community engagement, compliant resolution and service implementation and delivery. As part of the PSA, the SOW included that the Consultant, within 6 months of the commencement of operations, become a Cal-Aim provider.

The Cal-Aim Initiative is a Medi-Cal program intended to provide new services as part of the transformation of Medi-Cal to help members address unmet basic needs that can impact their health. Access to Managed Care Plan via the Cal-Aim Initiative is currently provided to individual

members through the Medi-Cal Managed Care plan portals. The Cal-Aim application process is being offered as funding to community-based organizations that are serving large subpopulations of Medi-Cal beneficiaries. However, due to the reasons explained below, this part of the scope has not been implemented by Consultant.

In February of 2024, three months into Consultant's contract it was determined through meetings with Health Plan of San Joaquin and Health Net, our Medi-Cal Managed Care plans, that the Consultant could not apply to be a Cal-Aim provider. This determination, by the Health Plan of San Joaquin and Health Net, was due to the potential for the shelter operator to change. Their determination concluded that it was more appropriate for the City to apply to be the provider for the Cal-Aim application. Consultant remains committed to playing a role in the provision of Cal-Aim services and is amenable to proceeding with the City as the Applicant and Consultant as the implementor. The Change in Applicant requires an amendment to the Shelter contract to revise term #17, to reflect that the City will be the Cal-Aim applicant, but Consultant will implement on the City's behalf, with no specific date for commencement because it is unknown how long the process will take.

In February, the City began working with the state to become a Cal-Aim provider, the first step of which was for the City to be granted a National Provider Identifier (NPI) number. In April of 2024, the City of Tracy was granted an NPI number. The next phase of the process included providing and completing several documents to the Health Plan of San Joaquin, which was completed by the City in July of 2024. The City is currently in the Cal-Aim vetting process with an anticipated early September desk audit scheduled with Health Plan of San Joaquin who will assist the City in drafting additional forms specific to the services the shelter can provide. Consultant continues to support the City in their efforts to be become a Cal-Aim eligible facility and is eager to help the City implement the program.

In addition, the City of Tracy was recently provided with an opportunity to partner with San Joaquin County Behavioral Health and Central Valley Low Income Housing Corporation (HMIS lead agency) for reimbursement of Behavioral Health beds at the shelter site. This reimbursement program would allow for the overall City expenditures to be reduced by the equivalent value of all reimbursements made because of Behavioral Health beds. Since, we are currently serving individuals that are already receiving services through Behavioral Health, staff is recommending that the City avail itself of this opportunity for reimbursement of bed utilization. The reimbursement program will also help expand partnerships and implement best practices from across the County's Continuum of Services. The program would be added to the SOW, along with the minor change to the Cal-Aim language, as Consultant will need to provide the information required of the City in order to apply for reimbursement.

ANALYSIS

To date, Consultant has met and, in some instances, exceeded the SOW requirements of the City. They have implemented on site 24 hour a day 7 day a week management, facility operations and maintenance; maintained an inclusive and safe space that welcomes pets all while implementing and requiring adherence to shelter rules; conducted community outreach and engagement to the greater community inclusive of public and private service partners; made reasonable accommodations as warranted on a case by case basis; provided 3 meals a day; provided safe and drug free environment to the guests, facilitated the on-site delivery of care and support services as warranted and needed by the guests; and has provided on site case

management for all shelter guests. The Consultant has also taken steps to implement a volunteer clean up team which they deploy to City identified illegal dumping areas as a way for shelter residents to give back to the City.

While many of the SOW elements are ongoing and evolving in nature, driven primarily by the shelter guest's demographics and needs, Consultant has to date satisfactorily performed on the contract. The need to revise the SOW is primarily driven by the Cal-Aim initiative of the Department of Health Care Services, also known as California Advancing and Innovating Medi-Cal. Had it not been for the Managed Care Plan requiring that the City be the applicant for this program, the City Manager would simply have exercised her authority to extend the Agreement based on the satisfactory performance of Consultant. The change in the SOW to clarify that the Consultant will still be the implementor (rather than the applicant) of the Cal-Aim initiative, and that the City will be the applicant and requires that the Council approve the amendment.

Cal-Aim is a more coordinated, person centered and equitable health system. Any Medi-Cal member can access these resources through their chosen managed care plan that is based on the managed care plans available in their county. For San Joaquin County this would be Health Plan of San Joaquin, Health Net and Mountain Valley Health Plan. To become a Cal-Aim provider, an entity must first establish a National Provider Identifier (NPI) number which is required for any provider who is providing or implementing any type of health service. In addition to establishing an NPI number, an entity will need to go through a lengthy application process which goes into detail regarding the types of services the specific entity is able to provide. The Managed Care Plan will assist the provider in the process to ensure they have all the necessary forms and certifications for their specific program.

While the Cal-Aim program has not been implemented at the site, its lack of implementation has not impacted or prevented guests at the shelter from accessing or receiving their Medi-Cal eligible services. The shelter continues to provide the services to the individuals as needed, and it has included referring some individuals out to other programs to access the necessary services. The services for the individuals are still available because they are current Medi-Cal members.

The City's pursuit of the Cal-Aim initiative provides an ongoing benefit to the City because the City can bill for eligible services received at the shelter which can subsidize the cost of operating the shelter. Some of the services are specific to specialty beds. An example of specialty beds is the City being reimbursed for bringing an individual from the hospital to recover, once stable. This service is known as short term post hospitalization care and is a Cal-Aim Initiative reimbursable service. We are currently already providing the service and not billing for it.

The opportunity to partner with San Joaquin County Behavioral Health Services (BHS) and Central Valley Low Income Housing Corporation (CVLIHC) would be an addition to the contract scope of work which would give the City the opportunity to subsidize shelter operations costs through reimbursable services. A portion of our shelter residents are currently receiving behavioral health services and this partnership would provide the opportunity for them to receive shelter beds coupled with their services that are paid for through BHS with CVLIHC monitoring the unit agreement for reimbursable funding and BHS assisting with services. Based on our current shelter bed rate, which is a formula based on costs of the shelter contract, a shelter bed night rate is currently $61 a bed per night/$427 dollars a week per bed.

This opportunity is being made available through BHS working through expansions with the Behavioral Health Services structures within counties and linked to the implementation of county wide Proposition 1. Proposition 1 is a two-part Initiative aiming to improve access to behavioral health services. This includes funding for treatment facilities, housing support and changes to the Mental Health Services Act. The City of Tracy is being given the opportunity to partner as the implementation process of Proposition 1 begins.

STRATEGIC PLAN

This agenda item supports the Public Safety Strategic Priority, Implement the adopted Homelessness Strategic Plan.

FISCAL IMPACT

Funding for the contract to operate the City's Temporary Emergency Housing Facility is included in the General Fund's adopted operating budget for Fiscal Year 2024-25. Subsequent years will be allocated as part of the annual budget process. The benefit to becoming a Cal-Aim provider and agreeing to provide Behavioral Health Beds by partnering with Behavioral Health and Central Valley Low Income Housing Corporation is the opportunity to subsidize shelter operations for bed utilization while also partnering with County Housing and Mental Health providers.

The extension of the agreement with Consultant is at an equivalent cost to the prior year’s agreement; however, through becoming a Cal Aim provider some of the contracted costs may become reimbursable. The actual reimbursable cost is subject to whether the shelter operator can access the Cal Aim funds via referral of the individual clients into Cal Aim services/and that clients meet the criteria for placement into these specialty beds. Actual recovery amounts from the sources identified above may vary at any given time within the term of the contract. Reimbursements from Cal Aim Medi-Cal or Behavioral Health Services will be contingent on the needs of the individual client referred. If funds are reimbursed, they will be documented and credited towards ongoing shelter operations.

CEQA DETERMINATION

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

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

ACTION REQUESTED OF THE CITY COUNCIL

The Tracy Homelessness Advisory Committee recommend that the City Council adopt a resolution approving Amendment No. 1 to the Professional Service Agreement with The Salvation Army for operation of the Temporary Emergency Housing Facility for a term of one year with a not-to-exceed annual cost of $2.6 Million and a minor modification to scope.

Prepared by: Virginia Carney, Homeless Services Manager

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

Approved by: Midori Lichtwardt, City Manager

ATTACHMENTS

Attachment A. Amendment No. 1 to Professional Services Agreement with The Salvation Army, Del Oro Division.

Attachment B-DHCS Non-Binding ILOS Pricing Guidance

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Amendment No. 1
To Professional Services Agreement

This Amendment No. 1(**Amendment**) to the Professional Services Agreement (**Agreement**) entered between the City of Tracy, a municipal corporation (**City**), and The Salvation Army, A California Corporation a (**Consultant**) is entered into as of the date of last signature below. City and Consultant are referred to individually as "**Party**" and collectively as "**Parties**."

Recitals

A. The Agreement was executed pursuant to the authority granted in Resolution No.2023-207, approved by the Tracy City Council on October 3, 2023.

B. The Agreement had an initial term of one year (s) and included an option to extend for an additional one year following the written determination by the City that the Consultant has met all the requirements of the Agreement.

C. The term of the original Agreement expires on October 31,2024.

D. The City and Consultant desire to amend the term of the Agreement by extending the expiration date of such term from October 31,2024 to October 31, 2025.

E. This Amendment is being executed pursuant to Resolution No. 2024-_____ approved by Tracy City Council on _____.

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

1. Option to Extend. Pursuant to Section 2.1 of the Agreement, the City hereby extends the Term by one additional year and, accordingly, Section 2.1 of the Agreement is hereby modified to reflect that the Term expires on October 31,2025.

2. Scope of Work. Consultant shall perform the Services, which includes those generally described in Exhibit "A" attached hereto and incorporated herein by this reference. Consultant shall not perform any Services until instructed by the City. The Services shall be performed by, or under the direct supervision of, Consultant's Authorized Representative: Major John Brackenbury, Del Oro Divisional Commander**.** 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. The City may terminate this Agreement if Consultant makes any such change.

.;5>=87:Ã/:?69;<6Ã1.*Ã&#%0($!"Ä)#'#Ä%!"%Ä('+,Ä-./&0,"-$'.

3. Compensation. The first sentence of Section 3.1 of the Original Agreement shall be amended to read as follows: "Consultant's total compensation under this Agreement shall not exceed $2,599,920 annually." Thus, the compensation provided during this 2024-2025 amendment term shall not exceed $2,599,920.

4. Entire Agreement. This Amendment represents the entire agreement and understanding of the Parties and shall supersede any prior agreement—written or oral—between the Parties. This Amendment will not be valid and enforceable until executed by all the Parties hereto. This Amendment may not be modified or altered except through a subsequent writing signed by both Parties.

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

6. Signatures. The individuals executing this Amendment represent and warrant that they have the right, power, legal capacity, and authority to enter and to execute this Amendment. This Amendment shall inure to the benefit of and be binding upon the parties and their respective successors and assigns. This Amendment may be executed in one or more counterparts. All counterparts so executed shall constitute one contract, binding on all Parties, even though all Parties are not signatory to the same counterpart.

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

City of Tracy

By: _____
Nancy D. Young

Title: Mayor

Date: _____

Attest:

By: _____
Adrianne Richardson, City Clerk

Approved as to form:

By: _____
Bijal M. Patel, City Attorney

Consultant

By: Signed by: David Bentley 8317AF603766484... _____
David Bentley

Title: Assistant Secretary
) #& #!#%Ã@Ã#*"%Ã32Ã3.4

Date: _____

By: Signed by: Kelly Pontsler 26FB2AE02FDD4DC... _____
Kelly Pontsler

Title: Treasurer
) #& #!#%Ã@Ã#*#%Ã32Ã3.4

Date: _____

Feder Employer Tax ID No. 94-1156347

State of California—Health and Human Services Agency
Department of Health Care Services

WILL LIGHTBOURNE
DIRECTOR

GAVIN NEWSOM
GOVERNOR

Non-Binding ILOS Pricing Guidance

Background: Non-Binding ILOS Pricing Guidance

Background on ILOS

A key feature of California Advancing and Innovating Medi-Cal (CalAIM) is the introduction of a new menu of health-related in lieu of services (ILOS). ILOS are medically appropriate and cost-effective alternatives to services covered under the State Plan[1] The Department of Health Care Services (DHCS) has pre-approved a list of 14 ILOS that managed care plans (MCPs) are strongly encouraged to offer. MCPs may offer some or all of these ILOS starting on January 1, 2022. Based on California's experience with home and community-based care waivers, the Whole Person Care (WPC) Pilots, stakeholder input, and experiences elsewhere in the nation, these pre-approved ILOS are designed to be highly valuable to Members with some of the most complex health issues, including conditions caused or exacerbated by lack of food, housing or other social drivers of health. Consistent with federal regulations, the pre-approved ILOS are expected to be a cost-effective substitute for covered Medi-Cal benefits, such as hospital care, nursing facility care and emergency department (ED) use. For more detailed information on each of the pre-approved ILOS, see DHCS' Revised CalAIM Proposal, released on January 8, 2021, and the forthcoming ILOS Program Guide, to be posted online at https://www.dhcs.ca.gov/enhancedcaremanagementandinlieuofservices.

Purpose of Non-Binding ILOS Pricing Guidance

Overview

The Cal-Aim initiative and, in particular, the introduction of the 14 pre-approved health-related ILOS prompt MCPs to work and contract with a new set of "non-traditional" Providers that offer services and supports that historically have not been well integrated into the health care system. These Providers include, but are not limited to, housing service providers, home modification companies, sobering centers, and organizations that prepare and deliver medically supportive food and nutrition. While many MCPs and ILOS Providers have some experience working together, particularly in WPC Pilot counties, Cal-Aim is designed to encourage and support broader contracting and partnerships throughout the State. In recognition that this requires MCPs and ILOS Providers to engage in new contracting and payment relationships, DHCS has prepared this non-binding ILOS pricing guidance. It offers information on potential rates for each

[1] 42 CFR 438.3(e)(2).

of the 14 pre-approved ILOS, including midpoint benchmarks, a range around the benchmarks, and a discussion of key cost drivers for MCPs and ILOS Providers to consider as they establish their own contracting and payment arrangements.

Critically, this pricing guidance is designed to serve as a tool to support discussions regarding rates; **it is in no way binding on MCPs or ILOS Providers**. MCPs and ILOS Providers have full flexibility and discretion to agree to ILOS rates that are different from those outlined in this document, particularly because the rates in the pricing guidance are based on data and assumptions that reflect the statewide average cost of inputs. DHCS reserves the right to make modifications to the pricing guidance on an as-needed basis based on experience with the ILOS initiative and its evolution over time.

Variation on Midpoint Prices and Rate Ranges

In collaboration with Mercer, an actuarial firm, the midpoint rates and rate ranges in this pricing guidance were developed by DHCS based on a set of statewide assumptions and data from national and statewide sources; the methodology is described in more detail below. In general, the low, mid and high ends of the ranges reflect use of wage rates at the 25th, 50th and 75th percentiles of the statewide average wage rate for the relevant occupation, as well as caseload assumptions as reported by respondents in a statewide survey. Actual contracted Provider rates still may vary significantly from these illustrative rate ranges, and these ranges should not be interpreted as establishing a ceiling or floor on what may be reasonable for the provision of ILOS. There are many reasons the rate agreed to between an MCP and ILOS Providers could fall outside of the rate range presented in this pricing guidance, including but not limited to:

- **Variation in program structure, staffing ratios and facility size:** The rate ranges and midpoint rate for each of the ILOS were developed based on statewide average data on key assumptions regarding how the service would be operationalized. In practice, Provider structure and staffing intensity, staff availability, and facility sizes could drive changes in caseloads and administrative expenses that would affect pricing even beyond the variation reflected in the rate range.
    - Caseload variation: An ILOS Provider might determine it is necessary to adopt a lower caseload per staff member than was assumed for purposes of the pricing guidance (e.g., if the Medi-Cal beneficiaries expected to

receive the ILOS service have relatively intensive needs). This could result in a higher price, given that the time and costs of the staff member would need to be spread across fewer enrollees.

- Facility size differences: Larger facility sizes could result in lower staffing costs, as a supervisor or other staff may be able to provide care to more enrollees within the same time period in a larger facility than in a smaller one.
- Actual employee-related expenses: The pricing guidance assumes a consistent set of employer-paid taxes and benefits for all direct care workers, supervisors, program specialists, etc. Depending on the actual benefit levels paid by the employer, the benefit costs per employee could result in lower or higher workforce cost considerations and, thus, lower or higher prices.
- Variable program models and expertise: The pricing guidance assumes a "basic model" for all ILOS. Some programs may operate a specialized or intensive model—for example, a recuperative care program, short-term post hospitalization program, or sobering center that operates a specialty behavioral health model may have more costly/intensive staffing and facility costs relative to the "basic model." Or, similarly, a medically tailored meals/medically supportive food program may include appropriate incremental value added services, and therefore could be more intensive and have higher costs.
- Considerations for other workforce investments over time: Importantly, the California Master Plan on Aging and California's HCBS Spending Plan both recommend and anticipate increasing investments in the Home and Community-Based Services (HCBS) workforce, including training, upskilling and other professional development, which could affect reasonable prices for certain ILOS that rely on this workforce.

Caseload variation example

If a housing navigation coordinator salary is $5,000 per month and they are providing a service to 35 enrollees within the month, the rate paid for that service per person per month must cover 1/35th of the $5,000 monthly wage cost—i.e., ~$143. However, if the direct care worker is able to effectively provide services to only 25 enrollees per month, the rate paid would need to cover 1/25th of the monthly wage cost—i.e., ~$200.

- **Geographic variation:** The midpoint prices and rate ranges displayed in this pricing guidance are based on average costs across the State of California. However, the costs of key service inputs vary widely by geographic area within the State. In particular, the cost of transportation and the amount of time spent in transit, "brick and mortar" costs, and wage costs can vary markedly by urban versus rural and/or high- versus low-cost areas even beyond what is captured in the rate ranges. As MCP and ILOS Providers consider the implications of this geographic variation on negotiated ILOS service rates, the following resources and examples may offer useful reference points.
    - Labor/wage costs: The Bureau of Labor Statistics (BLS) provides wage and employee-related expenses data specific to metropolitan statistical areas (MSAs) and non-metropolitan areas within California. These data may be helpful for Providers and MCPs to consider when establishing payment rates. As the main cost driver for all the pre-approved ILOS is direct care wages, this geographic variation in direct care wages may contribute to markedly different rates. The rate ranges presented here capture some of the variation in wage costs by using the 25th and 75th percentile average wage in California for the lower and upper bound of the ranges, but, any given MCP and Provider still may find that the range does not encompass the appropriate wage rate for the ILOS in a particular community.
    - Rent/brick-and-mortar costs: Square footage rental cost research specific to California metropolitan areas are publicly available from sources such as Colliers and Avison Young; California's fair market rent (FMR) values, defined by the Department of Housing and Urban Development (HUD), also are readily available. Research related to rental costs for facility space identified large variability by geography. While this pricing guidance used the statewide average cost of $4 per square foot for all services with a facility cost (inclusive of rent and utilities), this regional variability in brick-and-mortar costs may lead to the cost of a service falling outside the rate range.
    - Transportation costs: Although there are no national data sources that capture within-state variation in transportation costs, it is important to acknowledge that transportation costs may vary between rural and urban areas due to increased mileage between contacts for services. In some urban areas, transportation costs may be significantly affected by traffic congestion and the amount of time required for transportation.

- **Use of a value-based—rather than a cost-based—payment model:**
    - While the prices in this guidance are established using costs of providing the service, it could also be appropriate to reimburse some services based on the value, outcomes or portion of averted costs resulting from the services. In this case, rates may not be paid on a fee-for-service basis, or fees could be constructed differently to account for a broader value-based approach to service offerings.
    - **History of payment strategies for WPC Pilots, which may offer in some places and circumstances an existing successful payment structure:** Many of the pre-approved ILOS were provided as part of WPC Pilots and/or HCBS waivers, which may offer in some places and circumstances an existing successful structure and payment strategy that may be a more natural and appropriate starting place for rate-setting discussions than the midpoint prices and ranges presented here. However, historical WPC Pilot costs may also include some cost drivers (e.g., capacity building) that are not appropriate to include in service rates. These cost drivers may be better addressed outside of the rates used to reimburse for the delivery of a particular service, such as through the funding available under the Enhanced Care Management (ECM)/ILOS performance incentive program.

Rent/brick-and-mortar variation examples

Rental costs for the Inland Empire area are less than $2.25 per square foot, compared to nearly $80 per square foot in the San Francisco area, so a 2,000-square-foot space in the Inland Empire area may cost $4,500 per month compared to $160,000 in San Francisco. If such a space allowed 15 individuals to receive support for 30 days, the facility cost would be $10 per individual per day in the Inland Empire compared to nearly $356 per individual per day in San Francisco.

The statewide average used in this guidance was $4 per square foot, inclusive of rent and utilities. If this per-square-foot cost was increased to $20, the assumed service rate and rate range for Short-Term Post Hospitalization Housing, for example, would increase by nearly 66%.

Methodology for Developing Pricing Guidance

DHCS worked with its actuary, Mercer, and partner Manatt to review each ILOS

definition, establish key pricing assumptions, and then develop a rate range and midpoint for each ILOS. As described above, rate ranges and midpoint prices, which were developed using statewide average cost inputs, are subject to geographic variation in the cost of rent, transportation, labor and other cost drivers. Additionally, more intensive or specialized service delivery models may increase costs relative to the "basic approach" that was modeled for this document. Additional resources for reference on the impact of such variation on prices are available above.

To develop the methodology for pricing specific services, DHCS and its partners relied on the following tools:

- **Stakeholder engagement:** DHCS consulted with national, state and local experts—including health care providers and payers, community-based organizations, advocates, and finance experts—through various forums to inform the service definitions, caseload assumptions and other considerations relevant to this pricing guidance. Strategies DHCS employed included:
    - Conducting robust stakeholder engagement to design the list of pre-approved ILOS and refine service descriptions for each ILOS
    - Reviewing stakeholder feedback on the January 8 release of the Revised CalAIM Proposal related to ILOS service definitions
    - Providing regular updates and engagement with MCPs and WPC counties
- **Cost input survey:** DHCS released a structured survey to stakeholders to gather data on pricing drivers for existing service offerings that are similar to ILOS. DHCS received more than 50 responses, which were then compiled and used to inform the development of the midpoint prices and underlying assumptions used in the pricing guidance. Additional detail on survey responses is provided in Appendix A.
- **Review of rate-setting approaches:** Mercer used the Center for Medicare & Medicaid (CMS) guidance on developing rates for HCBS and rate-setting strategies within California and other states to inform its methodology for developing midpoint prices and ranges for the pre-approved services.
- **Other market research on cost inputs:** Mercer reviewed typical costs for key rate inputs, such as salaries, employee-related expenses (EREs) and square footage expenses, from publicly available data sources. Sources include the following:
    - BLS wage and ERE data specific to the State of California for relevant

occupations

- Internal Revenue Service (IRS) data for applicable payroll taxes and mileage reimbursement rates
- Square footage rental costs specific to California metropolitan areas, publicly available from sources such as Colliers and Avison Young
- Social Security Administration for cost-of-living adjustment (COLA) information

When these resources offered rates that varied by region within California, Mercer used the statewide average rate as a representative midpoint approach for guidance purposes. To create the rate ranges, Mercer used the 25th and 75th percentile of statewide wages, as well as caseload assumptions as reported by respondents to the cost input survey. As noted above, individual MCPs and ILOS Providers may want to substitute region-specific rates and/or use other strategies to take into account geographic variation in costs.

- **Benchmark analysis:** Mercer also reviewed payment rates used by Medi-Cal and other California programs that fund similar services for different populations or in different circumstances. Existing payment rates for ILOS-like services covered within the following programs were reviewed in the process of establishing the midpoint rates in the pricing guidance:
  - 1915(c) HCBS Waiver for Californians with Developmental Disabilities
  - 1915(c) Home and Community-Based Alternatives Waiver
  - Meals on Wheels programs across the State

Service Payment Approach and Methodology

For purposes of developing the pricing guidance, DHCS divided the pre-approved ILOS into three major types, each of which requires a different approach to establishing illustrative rates. Table 1 outlines the payment approaches used to develop midpoint prices for each of these three major groups of pre-approved ILOS.

Table 1. Payment Approaches and Methodology for Determining Rates

Payment Approach	Description	Methodology
Bundled Payments (per Person per Month	Single, distinct payment per Member or case payable each month a person is enrolled with a Provider (regardless of specific level of services or	• Research benchmarks and market data for estimated total cost and utilization of a direct care worker or team providing

(PMPM))	number of interactions provided to that person)	services • Divide total cost by caseload to determine PMPM rate
Fee for Service (per Unit of Time, per Meal, etc.)	Single, distinct payment for a discrete good or defined length of time (e.g., per hour, per diem) or other unit (e.g., per meal)	• Research benchmarks and market standards for estimated cost and utilization where available • For services without benchmarks, calculate total cost of providing service based on various inputs (e.g., length of interaction, labor costs, staffing ratios)
Cost-Based Reimbursement Up to a Cap	A cap on the total amount of services/goods that will be reimbursed for a specified service or set of services	• Reflect a reasonable cap that meets policy objectives

Service Pricing Inputs for Rate Build-Ups

Where the pricing methodology relied on building up a rate based on estimated market costs (i.e., bundled and fee-for-service rates), DHCS and Mercer used one or more of the following inputs. Not all inputs were relevant for all services. Note that the key assumptions are outlined in the service-specific sections below. These assumptions are based on research and not intended to serve as State-required minimums or maximums for purposes of service delivery.

- **Labor:** Statewide average wages based generally on 25th-to-75th–percentile wages and EREs, according to BLS data for California
    - Wages for all assumed staff varied by anticipated occupation type for each service. These wages are summarized in each service section below.
    - The following ERE assumptions were used across all priced services unless noted otherwise:
        - Federal Insurance Contributions Act (FICA): 7.65% of wages
        - Federal Unemployment Tax Act (FUTA)/State Unemployment Tax Act (SUTA): $280 per year

  - Retirement and workers' compensation: 4.45% of wages
  - Long Term Disability (LTD)/Short Term Disability (STD)/life insurance: 0.35% of wages
  - Employer-paid health care: $498 per employee per month
  - Mileage reimbursement rate: $0.56 per mile
- **Staffing ratios:** Caseload estimates based on market research and survey responses
- **Non-billable personnel time:** Time spent on paid time off, training, travel and documentation time
- **Transportation:** Time and mileage for service providers, where appropriate
- **Program supplies:** Cost of program materials (e.g., food) and other supplies/facility expenses (e.g., rent for facility-based services)
- **Indirect costs:** Administrative staff costs and overhead allocations

Summary of ILOS Pricing Guidance Components

This document includes the service name, unit of service, a rate range and corresponding midpoint service rate, a high-level service definition, and eligibility criteria for each ILOS. Full service definitions available in Appendix J in the Revised CalAIM Proposal provide additional detail on each pre-approved ILOS, including eligibility criteria. This guidance document also describes the major "cost drivers" that help determine the midpoint service rate and ranges.

Service-specific pricing guidance: For each of the 14 pre-approved ILOS, this document provides:

- ***High-level service description and eligibility criteria:*** Summary of what the service is and who is eligible to receive it.
- ***Midpoint service rate:*** An average midpoint rate based on a set of assumptions that drive service costs (as detailed below). Midpoint rates are non-binding and do not reflect a service rate floor or ceiling. Rather, midpoint rates represent one data point that MCPs and ILOS Providers can reference when negotiating service rates for the provision of ILOS. Some ILOS are subject to a limit or "cap" on the total amount that may be spent per Member on that particular service (e.g., Environmental Modifications) as defined by the ILOS service definitions. These capped amounts are referenced in the pricing guidance where applicable.

- ***Rate range:*** In addition to the average midpoint rate, this document also provides a range of rates to consider. These ranges are based on the 25th-to-75th percentile statewide BLS wage data research, and where appropriate, on caseload ranges provided via the cost input survey. Actual contracted Provider rates may vary significantly from these illustrative rate ranges, and they should not be interpreted as a ceiling or floor on reasonable prices. In particular, these statewide average data points do not reflect full regional variability in wages, nor regional variability in brick-and-mortar or transportation costs. As a result, it may be important to consider prices outside of the ranges presented here.
- ***Pricing unit and Healthcare Common Procedure Coding System (HCPCS) codes:*** Proposal for how the service could be paid for (e.g., PMPM payment, reimbursement up to a cap) and the HCPCS codes associated with each service that will be used to generate encounters. Notably, HCPCS codes may differ from how an ILOS is billed.
- ***Direct cost drivers and assumptions:*** Summary of assumptions made on key components of cost that generated the midpoint ILOS service rate. Cost drivers include:
    - Frequency (if applicable): How often a service is provided to the Member (will not be applicable for some ILOS)
    - Duration (if applicable): How long a service lasts (will not be applicable for some ILOS)
    - Setting: Where the ILOS is provided to a Member (e.g., in a home, in an office setting)
    - Provider staffing (qualifications, salaries, caseloads): Who is providing the ILOS, what their qualifications are, and what the caseload or the ratio of staff to Members served is
    - Other pricing inputs: Other relevant drivers of pricing (e.g., transportation-related time and mileage for service providers, as appropriate)
    - Relevant benchmarks (if applicable): Other similar services provided in other programs/initiatives that helped inform the midpoint pricing of this service

  Across all pre-approved ILOS, DHCS also considered the indirect costs that affect pricing rates, including administrative staff costs, overhead allocations, non-billable personnel time (e.g., training, time spent on paid time off) and

program supplies. Indirect costs were based on review of the administrative considerations within other programs in California and generally accepted CMS limits. Broader capacity-building funding (such as IT investments) are not reflected in these rates but could be supported through other funding streams such as performance incentives.

Summary table of midpoint ILOS service rates and pricing units: The guidance document includes a summary table with each of the ILOS, their rate ranges, midpoint service rates and unit of pricing.

1. Housing Transition Navigation Service

High-level pricing approach: The pricing considers a housing care manager with a college degree providing services face-to-face in an office as well as in the community and via phone/other technology to a midpoint caseload of 1:35 individuals concurrently. The caseload range in the available research and based on stakeholder input varies from 1:20 to 1:50 individuals concurrently. Pricing also includes 1 housing specialist per 6 housing care managers and 1 supervisor per 10 housing care managers. The caseloads also reflect time spent on behalf of enrollees, such as coordination with landlords or housing research.

Service Rate

Midpoint Service Rate	$386
Rate Range	$324–$449
Unit of Service	PMPM
HCPCS Billing Code	H0043, H2016 (Modifier U6 for both)

Cost Drivers and Assumptions

Assumptions Informing Midpoint Price	
Cost Drivers	**Assumptions**
Frequency (if applicable)	As needed
Duration (if applicable)	As needed
Setting	In-Person/Telephone/Video
Provider Staffing Qualifications and Hourly Salaries	Housing Care Manager (bachelor's degree or higher): $34.62 Supervisor (bachelor's degree or higher): $37.42 Housing Specialist (high school diploma or higher): $34.29
Staffing Ratio/Caseload	1 Housing Care Manager: 20 to 50 Enrollees 1 Supervisor: 10 Housing Care Managers 1 Housing Specialist: 6 Housing Care Managers

Other Pricing Inputs	Non-Billable Time: Training 40 hours/year, paid time off (PTO) 25 days/year Transportation: 10 miles/day Indirect Expenses: 5% program costs, 10% administration
Relevant Benchmarks (if applicable)	1915(c) HCBS Waiver for Californians with Developmental Disabilities: • Housing Access Services per hour: $65.00

2. Housing Deposits

High-level pricing approach: MCPs and Providers may want to consider California's FMR values defined by HUD (https://www.huduser.gov/portal/datasets/fmr.html) when establishing appropriate payment levels for this service. Per the service definition, both first and last month's rent could be considered under this service, as well as utility setup fees and goods and services needed for the individual's initial move-in. Therefore, the following payment structure may be considered:

- Two times the FMR value as established under HUD, which would represent first and last month's rent + $1,000 for discrete moving costs/initial utilities[1]

Service Rate

Service Rate	$5,000 recommended maximum
Unit of Service	Recommended maximum
HCPCS Billing Code	H0044 (U2 Modifier)

Cost Drivers and Assumptions

Assumptions Informing Midpoint Price	
Cost Drivers	**Assumptions**
Frequency (if applicable)	Once per lifetime
Duration (if applicable)	Until $5,000 recommended maximum is reached
Setting	N/A
Provider Staffing Qualifications and Hourly Salaries	N/A
Staffing Ratio/Caseload	N/A

[1] HUD's Housing Choice Voucher program also uses a 90% to 110% of the FMR to determine rental payment standards. The user of the voucher must also contribute 30% of the costs towards the voucher.
https://www.hud.gov/sites/dfiles/PIH/documents/HCV_Guidebook_Payment_Standards.pdf

Other Pricing Inputs	N/A
Relevant Benchmarks (if applicable)	Consistent with HCBS waiver limits

3. Housing Tenancy and Sustaining Service

High-level pricing approach: The pricing considers a housing care manager with a college degree providing services face-to-face in an office as well as in the community and via phone/other technology to a total caseload of 25 individuals concurrently. The caseload range in the available research and based on stakeholder input varies from 1:20 to 1:30 individuals concurrently. Pricing also includes 1 supervisor per 10 housing care managers. The caseloads also reflect time spent on behalf of enrollees when not directly engaging with them, such as coordination with landlords or housing research.

Service Rate

Midpoint Service Rate	$444
Rate Range	$413–$475
Unit of Service	PMPM
HCPCS Billing Code	T2040, T2041 (Modifier U6 for both)

Cost Drivers and Assumptions

Assumptions Informing Midpoint Price	
Cost Drivers	**Assumptions**
Frequency (if applicable)	As needed
Duration (if applicable)	As needed
Setting	In-Person/Telephone/Video
Provider Staffing Qualifications and Hourly Salaries	Housing Care Manager (bachelor's degree or higher): $34.62 Supervisor (bachelor's degree or higher): $37.42
Staffing Ratio/Caseload	1 Housing Care Manager: 20 to 30 Enrollees 1 Supervisor: 10 Housing Care Managers
Other Pricing Inputs	Non-Billable Time: Training 40 hours/year, PTO 25 days/year

	Transportation: 30 miles/day Indirect Expenses: 5% program costs, 10% administration
Relevant Benchmarks (if applicable)	

4. Short-Term Post-Hospitalization Housing

High-level pricing approach: The pricing considers a direct care worker available 24 hours per day who provides monitoring/support to a facility of 15 to 30 beds. The pricing includes a supervisor in a 1:10 staffing ratio and additional support professionals as needed (e.g., staff on call to address behavioral health needs). The pricing also considers square footage costs and utility costs for a Provider-maintained facility along with food costs for the residents. Costs for Medicaid covered services (e.g., pharmacy costs) are excluded from the pricing guidance for this service.

Based on the survey information and Provider feedback, alternative service locations, with similar levels of on-site care, are allowable settings for short-term post-hospitalization housing, which would influence the service costs. Additionally, as discussed in a prior section, the size of the facility and number of assumed beds per direct care worker impact total rate levels, where larger facilities tend to lower the rate.

DHCS acknowledges that variation in staffing models from the assumptions below are possible, resulting in different costs and therefore prices. For example, some short-term post-hospitalization programs may operate a specialized or intensive model (e.g., a program focused on addressing opioid addiction) with higher staff and facility costs relative to those modeled below, while others may utilize a less intensive staffing model (e.g., on call clinical staff instead of onsite clinical staff) and so may have lower staff/facility costs relative to those modeled below.

Service Rate

Midpoint Service Rate	$108
Rate Range	$97–$119
Unit of Service	Per Diem
HCPCS Billing Code	H0044 (Modifier U3)

Cost Drivers and Assumptions

Assumptions Informing Midpoint Price	
Cost Drivers	**Assumptions**
Frequency (if applicable)	Once per lifetime
Duration (if applicable)	Not to exceed a duration of six months

Assumptions Informing Midpoint Price	
Cost Drivers	**Assumptions**
Setting	In-Person
Provider Staffing Qualifications and Hourly Salaries	Direct Care Worker (high school diploma or higher with training/certification): $22.43 Psychiatric Professional (bachelor's degree or higher): $30.77 Supervisor (bachelor's degree or higher): $37.42
Staffing Ratio/Caseload	1 Direct Care Worker: 15 to 30 Residents 1 Psychiatric Professional: 6 Direct Care Workers 1 Supervisor: 10 Direct Care Workers
Other Pricing Inputs	Non-Billable Time: Training 40 hours/year, PTO 25 days/year Indirect Expenses: 5% program costs, 10% administration Facility Costs and Utilities: 100 square feet per enrollee and 400 square feet in common/staff space at $4.00 per square foot Daily Food and Supply Costs: $25 per day per resident
Relevant Benchmarks (if applicable)	

5. Recuperative Care (Medical Respite)

High-level pricing approach: The recuperative care service is more medical and intensive than the short-term post-hospitalization service; thus, the pricing assumes more highly trained staff and the need for lower caseloads. The pricing considers medically trained direct care workers providing 24 hours per day of monitoring/support to a facility of 10 to 20 beds. The pricing also includes a supervisor in a 1:10 staffing ratio and an available psychiatric professional. The pricing considers square footage costs and utility costs for a Provider-maintained facility along with food costs for the residents. Costs for Medicaid covered services (e.g., pharmacy costs) are excluded from the pricing guidance for this service. Additionally, as discussed in a prior section, the size of the facility and assumed beds per direct care worker impact total rate levels, where larger facilities tend to lower the modeled rate. DHCS also acknowledges that variation in staffing models from the assumptions below are possible, resulting in different costs and therefore prices. For example, some recuperative care programs may operate a specialized or intensive model with higher staff and facility costs relative to those modeled below, while others may utilize a less intensive staffing model (e.g., on call clinical staff instead of onsite clinical staff) and so may have lower staff/facility costs relative to those modeled below. **Service Rate**

Midpoint Service Rate	$204
Rate Range	$181–$226
Unit of Service	Per Diem
HCPCS Billing Code	T1002, T2033 (Modifier U6 for both)

Cost Drivers and Assumptions

Assumptions Informing Midpoint Price	
Cost Drivers	**Assumptions**
Frequency (if applicable)	As Needed
Duration (if applicable)	No more than 90 days in continuous duration
Setting	In-Person

Assumptions Informing Midpoint Price	
Cost Drivers	**Assumptions**
Provider Staffing Qualifications and Hourly Salaries	Direct Care Worker (bachelor's degree or higher): $44.55 Psychiatric Professional (bachelor's degree or higher): $30.77 Supervisor (bachelor's degree or higher): $47.84
Staffing Ratio/Caseload	1 Direct Care Worker: 10 to 20 Residents 1 Psychiatric Professional: 4 Direct Care Workers 1 Supervisor: 10 Direct Care Workers
Other Pricing Inputs	Non-Billable Time: Training 40 hours/year, PTO 25 days/year Indirect Expenses: 5% program costs, 10% administration Facility Costs and Utilities: 100 square feet per enrollee and 400 square feet in common/staff space at $4.00 per square foot Daily Food and Supply Costs: $25 per day per resident
Relevant Benchmarks (if applicable)	

6. Respite Services

High-level pricing approach: This service provides short-term relief to an enrollee's usual caregiver on an as-needed basis. Respite services are non-medical and may be provided within the enrollee's home or in a facility setting. Pricing assumes use of an agency model, and as such, assumes a supervisor at a ratio of 1 to 10 direct care workers and also includes consideration for all EREs and benefits (e.g., employer-paid health care, retirement, disability insurance) for the direct care worker and supervisor, administrative cost considerations, and a travel allowance of 30 miles per day for the direct care worker. Facility-based respite in an institutional setting may lead to total rate and cost variability compared to these assumptions. Additionally, this service is well established in California's Medicaid program, so other comparable programs may serve as benchmarks in determining appropriate funding levels.

Service Rate

Midpoint Service Rate	$33
Rate Range	$29–$38
Unit of Service	Hourly
HCPCS Billing Codes	H0045, S5151, S9125

Cost Drivers and Assumptions

Assumptions Informing Midpoint Price	
Cost Drivers	**Assumptions**
Frequency (if applicable)	As needed
Duration (if applicable)	As needed
Setting	In-Person
Provider Staffing Qualifications and Hourly Salaries	Direct Care Worker (High School diploma/on-the-job training): $15 Supervisor (HS Diploma or higher): $21.95

Assumptions Informing Midpoint Price	
Cost Drivers	**Assumptions**
Staffing Ratio/Caseload	1 Direct Care Worker: 1 Enrollee 1 Supervisor: 10 Direct Care Workers
Other Pricing Inputs	Non-Billable Time: Training 40 hours/year, PTO 25 days/year Transportation: 30 miles/day Indirect Expenses: 5% program costs, 10% administration All standard ERE components included
Relevant Benchmarks (if applicable)	1915(c) Home and Community-Based Alternatives Waiver: Home Respite: $5.91 per 15-minute unit

7. Day Habilitation Programs

High-level pricing approach: The pricing considers a high school-educated direct care worker employed by a Day Habilitation Provider or agency delivering this service face-to-face in the community to 6 individuals concurrently. Pricing also includes 1 supervisor per 10 direct care workers. The per diem rate assumes 8 hours of continuous service being provided. As discussed in a prior section, payment for smaller group sizes (i.e., less than 6) and training/certification may require higher payment rates than illustrated. Additionally, daily rates with shorter assumed durations than 8 hours may require lower payment rates than illustrated.

Service Rate

Midpoint Service Rate	$56 per day	$7 per hour
Rate Range	$46–$67	$6–$8
Unit of Service	Per Diem	hourly
HCPCS Billing Code	T2012, T2014, T2018, T2020, H2014, H2024, H2026 (Modifier U6 for all)	

Cost Drivers and Assumptions

Assumptions Informing Midpoint Price	
Cost Drivers	**Assumptions**
Frequency (if applicable)	As Needed
Duration (if applicable)	As Needed
Setting	In-Person
Provider Staffing Qualifications and Hourly Salaries	Direct Care Worker (HS Diploma/On-the-Job Training): $21.95 Supervisor (HS Diploma/On-the-Job Training): $24.21
Staffing Ratio/Caseload	1 Direct Care Worker: 6 Enrollees 1 Supervisor: 10 Direct Care Workers
Other Pricing Inputs	Non-Billable Time: Training 40 hours/year, PTO 25 days/year

Assumptions Informing Midpoint Price	
Cost Drivers	**Assumptions**
	Transportation: 10 miles/day Indirect Expenses: 5% program costs, 10% administration
Relevant Benchmarks (if applicable)	1915(c) HCBS Waiver for Californians with Developmental Disabilities: • Community-based Day Program per diem: $64.05

8. Nursing Facility Transition/Diversion to Assisted Living Facilities, Such as Residential Care Facilities for Elderly and Adult Residential Facilities

High-level pricing approach: This service has two components: transition services to the Assisted Living Facility, and other services provided in the facility as needed to meet Member needs on an ongoing basis. These components are priced separately below, but could be combined in a single rate as appropriate.

The pricing for the transition services below considers a social worker with a college degree working as a care manager providing transition education and support services face-to-face in the community and via phone/other technology to a total caseload of 25 individuals concurrently. The caseload range in the available research and based on stakeholder input varies from 1:20 to 1:30 individuals concurrently. Pricing also includes one supervisor (nurse) per 10 care managers.

The pricing for the ongoing services is separately noted below in the "Ongoing Support for ADLs/IADLs" column of the table. These ongoing activities should be consistent with the service definition, and as such can include assistance with Activities of Daily Living (ADLs) and Instrumental ADLs (IADLs) as needed, companion services, medication oversight, and therapeutic social and recreational programming provided in a home-like environment. Note that the service definition also anticipates 24-hour on-site staff will be available to meet unpredictable needs in a way that promotes maximum dignity and independence, and to provide supervision, safety, and security, and pricing should be consistent with these requirements. Ongoing activities may also include coordination with the Medi-Cal managed care plan to ensure that the needs of Members who need enhanced services to be safely and stably housed in RCFE/ARF settings have in lieu of services and/or enhanced care management services that provide the necessary enhanced services. Room and board expenses are not included in the service definition or the pricing below. The hourly rate below for ongoing support services, which assumes an agency-based model and was developed using the same assumptions and methodology as the respite services midpoint price, is illustrative and may support MCPs and ILOS providers in determining reasonable reimbursement for this ongoing assistance, but it is not binding. MCPs and ILOS Providers are permitted to utilize different payment approaches to cover the ongoing services described above (i.e., not an hourly rate) that meet the unique needs of their localities. Other payment approaches may include, for example, PMPM or per diem payments. The Assisted Living Waiver rate schedule may also be a relevant benchmark for ongoing services.

Service Rate

Service Component	Nursing Facility Transition/Diversion (PMPM)	Ongoing Support Services (hourly)
Midpoint Service Rate	$459	$33
Rate Range	$422–$496	$29–$38
Unit of Service	PMPM	Per Hour
HCPCS Billing Code	T2038 (Modifier U4)	N/A

Cost Drivers and Assumptions: Nursing Facility Transition PMPM

Assumptions Informing Midpoint Price	
Cost Drivers	**Assumptions**
Frequency (if applicable)	As Needed
Duration (if applicable)	As Needed
Setting	Primarily In-Person; some services may be completed via telephone
Provider Staffing Qualifications and Hourly Salaries	Care Manager (bachelor's degree or higher): $36.51 Supervisor (nurse): $44.55
Staffing Ratio/Caseload	1 Care Manager: 20 to 30 Enrollees 1 Supervisor: 10 Care Managers
Other Pricing Inputs	Non-Billable Time: Training 40 hours/year, PTO 25 days/year Transportation: 10 miles/day Indirect Expenses: 5% program costs, 10% administration
Relevant Benchmarks (if applicable)	

Cost Drivers and Assumptions: Ongoing Support Services

Assumptions Informing Midpoint Price	
Cost Drivers	**Assumptions**
Frequency (if applicable)	As Needed
Duration (if applicable)	As Needed
Setting	In-Person
Provider Staffing Qualifications and Hourly Salaries	Direct Care Worker (HS Diploma/On-the-Job Training): $15 Supervisor (HS Diploma or higher): $21.95
Staffing Ratio/Caseload	1 Direct Care Worker: 1 Enrollee 1 Supervisor: 10 Direct Care Workers
Other Pricing Inputs	Non-Billable Time: Training 40 hours/year, PTO 25 days/year Transportation: 30 miles/day Indirect Expenses: 5% program costs, 10% administration All Standard ERE components included. Consideration for ERE and indirect expenses varies widely by county.
Relevant Benchmarks (if applicable)	1915(c) HCBS Waiver for Californians with Developmental Disabilities: • Homemaker: $16.71 per hour unit • Home Health Aide: $23.63 per hour unit The Assisted Living Waiver rate schedule may also be a relevant benchmark for ongoing services.

9. Community Transition Services/Nursing Facility Transition to a Home

High-level pricing approach: The pricing considers a social worker with a college degree working as a care manager providing transition education and support services face-to-face in the home and via phone/other technology to a total caseload of 25 individuals concurrently. The caseload range in the available research and based on stakeholder input varies from 1:20 to 1:30 individuals concurrently. Pricing also includes 1 supervisor (nurse) per 10 care managers.

Service Rate

Midpoint Service Rate	$459
Rate Range	$422–$496
Unit of Service	PMPM
HCPCS Billing Code	T2038 (Modifier U5)

Cost Drivers and Assumptions

Assumptions Informing Midpoint Price	
Cost Drivers	**Assumptions**
Frequency (if applicable)	As Needed
Duration (if applicable)	Lifetime maximum of $7,500 (consistent with caps available under HCBS programs)
Setting	In-Person/Telephone
Provider Staffing Qualifications and Hourly Salaries	Care Manager (bachelor's degree or higher): $36.51 Supervisor (nurse): $44.55
Staffing Ratio/Caseload	1 Care Manager: 20 to 30 Enrollees 1 Supervisor: 10 Care Managers
Other Pricing Inputs	Non-Billable Time: Training 40 hours/year, PTO 25 days/year Transportation: 10 miles/day Indirect Expenses: 5% program costs, 10% administration

Assumptions Informing Midpoint Price	
Cost Drivers	**Assumptions**
Relevant Benchmarks (if applicable)	

10. Environmental Accessibility Adaptations (Home Modifications)

High-level pricing approach: The cap for this service is aligned with current spending caps in place within California's HCBS waiver programs to promote consistency between programs and services and in preparation for offering successful ILOS as a statewide benefit in future years. Note that there is a requirement within the service definition that at least two bids from appropriate Providers must be obtained for each requested service or set of services.

Service Rate

Service Rate	$7,500 Cap
Unit of Service	Cap
HCPCS Billing Code	S5165 (Modifier U6)

Cost Drivers and Assumptions

Assumptions Informing Midpoint Price	
Cost Drivers	**Assumptions**
Frequency (if applicable)	Once per Lifetime
Duration (if applicable)	Lifetime maximum of $7,500 (consistent with caps available under HCBS programs)
Setting	N/A
Provider Staffing Qualifications and Hourly Salaries	N/A
Staffing Ratio/Caseload	N/A
Other Pricing Inputs	Service definition notes a requirement of at least two bids from appropriate Providers of the requested service
Relevant Benchmarks (if applicable)	Consistent with HCBS waiver limits

11. Medically Tailored Meals/Medically Supportive Food

High-level pricing approach: The pricing considers weekly food costs per the United States Department of Agriculture (USDA) and the average delivery costs associated with transporting meals and/or food boxes in the U.S. The nutritional assessment assumes a one-hour session provided to only one person at a time from a registered dietician. Consistent with the service definition, the nutritional assessment should be based on evidence-based nutritional practice guidelines to address medical diagnoses, symptoms, allergies, medication management, and side effects to ensure the best possible nutrition-related health outcomes. The nutritional assessment will inform the ongoing menu-planning for the Member.

DHCS acknowledges that variation in program designs and staffing models from the assumptions below are possible, resulting in different costs and therefore prices. For example, some medically tailored meals/medically supportive food programs may include appropriate incremental value added services that offer a more specialized or intensive model, with higher staff and facility costs relative to those modeled below, while others may utilize a less intensive staffing model and so may have lower staff/facility costs relative to those modeled below.

Service Rate

Midpoint Service Rate	$9.50	$66	$41
Rate Range	$7–$12	$52–$81	$33–$49
Unit of Service	Per Delivered Meal	Per Weekly Grocery Box Delivered	Per Nutritional Assessment
HCPCS Billing Code	S5170 (Modifier U6)	S9977 (Modifier U6)	S9470 (Modifier U6)

Cost Drivers and Assumptions

Assumptions Informing Midpoint Price	
Cost Drivers	**Assumptions**
Frequency (if applicable)	Up to 3 delivered meals per day/delivered groceries for up to 3 meals per day
Duration (if applicable)	As needed for up to 12 weeks

Assumptions Informing Midpoint Price	
Cost Drivers	**Assumptions**
Setting	N/A
Provider Staffing Qualifications and Hourly Salaries	Dietician (associate degree or higher): $29.34
Staffing Ratio/Caseload	One Hour Nutritional Assessment Per 12 weeks
Other Pricing Inputs	Food Costs: $58.40 per week for food box (based on USDA weekly food costs) Delivery: $7.50 per weekly box Pricing also considers administrative costs associated with ongoing meal planning
Relevant Benchmarks (if applicable)	1915(c) HCBS Waiver for Californians with Developmental Disabilities: • Nutritional Consultation per hour: $42.50 Meals on Wheels West Los Angeles • $7.00 per meal Mom's Meals (https://www.momsmeals.com/our-food/how-it-works/): • $6.99 per meal

12. Sobering Centers

High-level pricing approach: The pricing considers around-the-clock support from a team of staff in various staffing ratios (see Provider staffing and qualifications section of the table below). The pricing assumes this team would staff a facility size of 12 to 16 beds and also considers square footage costs for a Provider-maintained facility and food costs for the residents. Costs for Medicaid covered services (e.g., pharmacy costs) are excluded from the pricing guidance for this service. Additionally, as discussed in a prior section, the size of the facility and assumed beds per direct care worker impact total rate levels, where larger facilities tend to lower the modeled rate.

DHCS acknowledges that variation in staffing models from the assumptions below are possible, resulting in different costs and therefore prices. For example, some sobering cents may operate a specialized or intensive model (e.g., a sobering center focused on addressing behavioral health crises) with higher staff and facility costs relative to those modeled below, while others may utilize a less intensive staffing model (e.g., on call clinical staff instead of onsite clinical staff) and so may have lower staff/facility costs relative to those modeled below.

Service Rate

Midpoint Service Rate	$170
Rate Range	$154–$186
Unit of Service	Per Diem
HCPCS Billing Code	H0014 (Modifier U6)

Cost Drivers and Assumptions

Assumptions Informing Midpoint Price	
Cost Drivers	**Assumptions**
Frequency (if applicable)	As Needed
Duration (if applicable)	As Needed
Setting	In-Person
Provider Staffing Qualifications and Hourly Salaries	Direct Care Worker (bachelor's degree or higher): $29.47

	Licensed Practical Nurse (bachelor's degree or higher): $30.85 Supervisor (bachelor's degree or higher): $37.42
Staffing Ratio/Caseload	1 Direct Care Worker: 12 to 16 Enrollees 1 Licensed Practical Nurse: 3 Direct Care Workers 1 Supervisor: 10 Direct Care Workers
Other Pricing Inputs	Non-Billable Time: Training 40 hours/year, PTO 25 days/year Indirect Expenses: 5% program costs, 10% administration Facility Costs and Utilities: 100 square feet per enrollee and 400 square feet in common/staff space at $4.00 per square foot Daily Food and Supply Costs: $25 per day per resident
Relevant Benchmarks (if applicable)	

13. Personal Care Services

High-Level Pricing Approach: The pricing considers a high school-educated direct care worker or a direct care worker with on-the-job training providing one-on-one assistance with activities of daily living in the enrollee's home or in the community. Different training/certification expectations will affect the pricing. The pricing is for an agency model which assumes a supervisor at a ratio of 1 to 10 direct care workers, and also includes consideration for all employee-related expenses and benefits (e.g., employer-paid healthcare, retirement, disability insurance) for the direct care worker and supervisor, agency administrative cost considerations, and a travel allowance of 30 miles per day for the direct care worker.

Service Rate:

Mid-Point Service Rate	$33
Rate Range	$29 - $38
Unit of Service	Hourly – Agency Model
HCPCS Billing Code	S5130, T1019

Cost Drivers and Assumptions:

Assumptions Informing Midpoint Price	
Cost Drivers	**Assumptions**
Frequency (if applicable)	As Needed
Duration (if applicable)	As Needed
Setting	In-Person
Provider Staffing Qualifications and Hourly Salaries	Direct Care Worker (HS Diploma/On-the-Job Training): $15 Supervisor (HS Diploma or higher): $21.95
Staffing Ratio / Case Load	1 Direct Care Worker: 1 Enrollee 1 Supervisor: 10 Direct Care Workers
Other Pricing Inputs	Non-Billable Time: Training 40 hours/year, PTO 25 days/year Transportation: 30 miles/day Indirect Expenses: 5% program costs, 10% administration All Standard ERE components included
Relevant Benchmarks (if applicable)	1915(c) HCBS Waiver for Californians with Developmental Disabilities:

	• Homemaker $16.71 per hour unit • Home Health Aide $23.63 per hour unit Department of Social Services In-Home Supportive Services Program (https://www.cdss.ca.gov/inforesources/ihss): • Rates differ by county, but the average rate is $14.64 prior to any consideration for ERE or indirect expenses • Consideration for ERE and indirect expenses varies widely by county

14. Asthma Remediation

High-level pricing approach: The cap for this service is aligned with current spending caps in place within California's HCBS waiver programs to promote consistency between programs and services and in preparation for offering successful ILOS as a statewide benefit in future years.

Service Rate

Service Rate	$7,500 Cap
Unit of Service	Cap
HCPCS Billing Code	S5165 (Modifier U5)

Cost Drivers and Assumptions

Assumptions Informing Midpoint Price	
Cost Drivers	**Assumptions**
Frequency (if applicable)	Once per Lifetime
Duration (if applicable)	Lifetime maximum of $7,500 (consistent with caps available under HCBS programs)
Setting	N/A
Provider Staffing Qualifications and Hourly Salaries	N/A
Staffing Ratio/Caseload	N/A
Other Pricing Inputs	N/A
Relevant Benchmarks (if applicable)	Consistent with HCBS waiver limits

Summary of Non-Binding Midpoint Pilot Service Rates and Ranges

Note: *ILOS Pricing Guidance is in no way binding on MCPs or ILOS Providers. MCPs and ILOS Providers have full flexibility and discretion to agree to ILOS rates that are different than those outlined in the table, and in some circumstances, it may be appropriate to select a price outside of the range. Rate ranges and midpoint prices were developed using statewide average cost inputs, and may not fully capture geographic variation in the cost of rent, transportation, labor, and other cost drivers.*

#	Service Name	Unit of Service	Midpoint Rate	Rate Range
1	Housing Transition Navigation Services	PMPM	$386	$324–$449
2	Housing Deposits	Recommended Maximum	$5,000	N/A
3	Housing Tenancy and Sustaining Service	PMPM	$444	$413–$475
4	Short-Term Post-Hospitalization Housing	Per Diem	$108	$97–$119
5	Recuperative Care (Medical Respite)	Per Diem	$204	$181–$226
6	Respite Services (assumes agency model)	Hourly	Agency Model: $33	Agency: $29–$38
7	Day Habilitation Programs	Hourly Per Diem	$7 Per Hour $56 Per Day	$6–$8 Per Hour $46–$67 Per Day
8	Nursing Facility Transition/Diversion to Assisted Living Facilities, such as	PMPM for Nursing Facility Transition	$459	$422–$496

#	Service Name	Unit of Service	Midpoint Rate	Rate Range
	Residential Care Facilities for Elderly and Adult Residential Facilities	Per Hour for Ongoing Support Services	Agency Model: $33	Agency: $29–$38
9	Community Transition Services/Nursing Facility Transition to a Home	PMPM	$459	$422–$496
10	Environmental Accessibility Adaptations (Home Modifications)	Cap	$7,500	N/A
11	Medically Tailored Meals/Medically Supportive Food	Per Meal Per Weekly Grocery Box Per Nutritional Consultation	$9.50 Per Meal $66 Per Grocery Box $41 Per Consultation	$7–$12 Per Meal $52–$81 Per Grocery Box $33–$49 Per Consultation
12	Sobering Centers	Per Diem	$170	$154–$186
13	Personal Care and Homemaker Services	Hourly	Agency Model: $33	Agency: $29 - $38
14	Asthma Remediation	Cap	$7,500	N/A

Appendix A: Findings From Targeted ILOS Survey

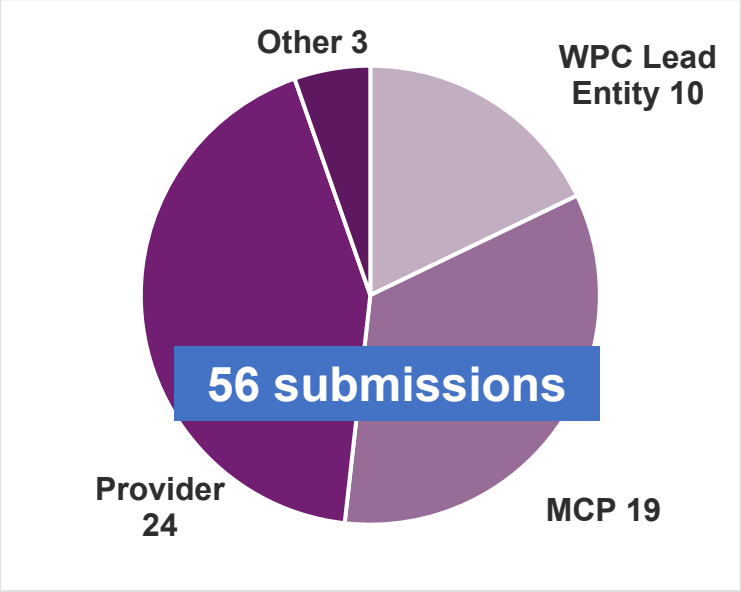
DHCS conducted a targeted survey in April 2021 to build on robust stakeholder engagement conducted to date and to support DHCS in conducting the following:

- Learn about existing service offerings that are similar to ILOS; and
- Solicit information from stakeholders on pricing information to assist DHCS in developing an ILOS pricing approach.

Fifty-six entities submitted survey responses, including:

- Managed care plans (MCPs)
- Providers of ILOS-like services/Community Based Organizations
- Whole Person Care Pilot Lead Entities

Survey Respondents



- *WPC Lead Entity includes submissions of a separate survey format.*
- *MCP includes Kaiser HealthPlan (which tagged itself as "MCP and Other").*
- *Provider includes CBOs and "Other Providers of ILOS-like Services."*

APPROVED AS TO FORM AND LEGALITY

_____

CITY ATTORNEY'S OFFICE

TRACY CITY COUNCIL

RESOLUTION NO. _____

APPROVING AMENDMENT NO. 1 TO THE PROFESSIONAL SERVICE AGREEMENT WITH THE SALVATION ARMY FOR OPERATION OF THE TEMPORARY EMERGENCY HOUSING FACILITY, FOR A TERM OF ONE YEAR WITH A NOT-TO-EXCEED ANNUAL COST OF $2.6 MILLION AND A MINOR MODIFICATION TO SCOPE

WHEREAS, pursuant to the City Council's reaffirmation of the emergency shelter crisis in August of 2022, the City Manager authorized staff to identify permanent and emergency alternative housing options for the unsheltered population within the city limits; and

WHEREAS, this effort not only focuses on the housing and support, but also to prepare the residents for self-sufficiency which resulted in the development of a "Campus Concept" where temporary housing and Supportive Services would be provided to the unsheltered population; and

WHEREAS, the work to develop and provide services at this "campus" has continued and has grown to include identifying and applying for ways to offset the cost of construction, services and support provided to the unhoused residents of the campus, which has been named the Temporary Emergency Housing Facility (TEHF); and

WHEREAS, on July 7, 2023, the City issued a Request for Proposals (RFP) seeking a provider to operate and maintain the TEHF; and

WHEREAS, in response to the RFP, the City received two responses and a five-member panel of internal and external subject matter experts (Review Panel) determined that The Salvation Army (Consultant) best met the City's needs and demonstrated the professional qualifications for the satisfactory operation and management of the TEHF; and

WHEREAS, on October 3, 2023, pursuant to Resolution No. 2023-207, the City Council awarded the Professional Service Agreement (PSA) to the Consultant with an option for an additional one-year extension; and

WHEREAS, the PSA included 19 Scope of Work (SOW) requirements that the Consultant was expected to implement, ranging from hours and methods of operation to community engagement, compliant resolution and service implementation and delivery; and

WHEREAS, as part of the PSA, the SOWs included that Consultant, within 6 months of the commencement of operations, would become a provider for Cal-Aim, a Medi-Cal program; and

WHEREAS, Consultant is unable to meet the Cal-Aim SOW because the relevant agency is requiring the City of Tracy to become the applicant instead of Consultant, and the City is in the process of completing that application process; and

WHEREAS, Consultant has been performing satisfactorily for all SOW requirements, except for the one related to becoming a Cal-Aim provider, and staff is recommending that the City modify this requirement so that Consultant will implement the program once the City is approved as the provider; and

WHEREAS, as the City now wants to exercise the option and extend the PSA for an additional one-year term; with some administrative changes to the scope of work; and

WHEREAS, as the foregoing requires a minor modification to the PSA, which change is outside of the City Manager's authority, staff is returning to the City Council to approve the proposed Amendment attached as Exhibit 1; and

WHEREAS, the change in the SOW is in the best interests of the City, as it will result in a new partnership with San Joaquín County Behavioral Health Services and Central Valley Low Income Housing Corporation; and

WHEREAS, additional funding can be made available to the City of Tracy by moving forward with this change to the SOW and extending the contract for an additional 1 year; and

WHEREAS, the Tracy Homelessness Advisory Committee heard this item on September 19, 2024, and recommended that the City Council adopt this proposed Resolution; and now, therefore, be it resolved as follows:

RESOLVED: That the City Council of the City of Tracy 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 finds that The Salvation Army satisfactorily performed all requirements of the Professional Services Agreement; and be it

FURTHER RESOLVED: That the City Council hereby approves and authorizes the execution of Amendment No. 1, attached as Exhibit 1 for an additional one year and with the change to the SOW as described herein at an annual not-to-exceed cost of $2.6 Million; and be it

FURTHER RESOLVED: That the City Manager is authorized to take all actions necessary to effectuate the intent of this Resolution; and be it

FURTHER RESOLVED: That a Notice of Exemption was issued on October 16, 2020, for the TEHF in accordance with Government Code sections 65660-65662 for low barrier navigation Centers and Section 15269(c) of the CEQA Guidelines. This action is consistent with the project considered in the Notice of Exemption and no further environmental review is necessary. San Joaquin County, as the responsible entity under the National Environmental Protection Act (NEPA) for the federal grants related to this Project, conducted an Environmental Assessment in 2023 and released a Finding of No Significant Impact on January 18, 2024, in compliance with NEPA and applicable federal regulations; and be it

FURTHER RESOLVED: After review and approval by the City Attorney, the Mayor may execute the Amendment No. 1 to Professional Services Agreement with The Salvation Army, Del Oro Division; and be it further

FURTHER RESOLVED: That this resolution takes effect immediately upon its adoption.

* * * * * * * * * * * * * *

The foregoing Resolution 2024-_____ was adopted by the Tracy City Council on October 15, 2024, by the following vote:

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

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

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

Attachments:

Amendment No. 1 to Professional Services Agreement with The Salvation Army, Del Oro Division

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Amendment No. 1
To Professional Services Agreement

This Amendment No. 1(**Amendment**) to the Professional Services Agreement (**Agreement**) entered between the City of Tracy, a municipal corporation (**City**), and The Salvation Army, A California Corporation a (**Consultant**) is entered into as of the date of last signature below. City and Consultant are referred to individually as "**Party**" and collectively as "**Parties**."

Recitals

A. The Agreement was executed pursuant to the authority granted in Resolution No.2023-207, approved by the Tracy City Council on October 3, 2023.

B. The Agreement had an initial term of one year (s) and included an option to extend for an additional one year following the written determination by the City that the Consultant has met all the requirements of the Agreement.

C. The term of the original Agreement expires on October 31,2024.

D. The City and Consultant desire to amend the term of the Agreement by extending the expiration date of such term from October 31,2024 to October 31, 2025.

E. This Amendment is being executed pursuant to Resolution No. 2024-_____ approved by Tracy City Council on _____.

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

1. Option to Extend. Pursuant to Section 2.1 of the Agreement, the City hereby extends the Term by one additional year and, accordingly, Section 2.1 of the Agreement is hereby modified to reflect that the Term expires on October 31,2025.

2. Scope of Work. Consultant shall perform the Services, which includes those generally described in Exhibit "A" attached hereto and incorporated herein by this reference. Consultant shall not perform any Services until instructed by the City. The Services shall be performed by, or under the direct supervision of, Consultant's Authorized Representative: Major John Brackenbury, Del Oro Divisional Commander**.** 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. The City may terminate this Agreement if Consultant makes any such change.

.;5>=87:Ã/:?69;<6Ã1.*Ã&#%0($!"Ä)#'#Ä%!"%Ä('+,Ä-./&0,"-$'.

3. Compensation. The first sentence of Section 3.1 of the Original Agreement shall be amended to read as follows: "Consultant's total compensation under this Agreement shall not exceed $2,599,920 annually." Thus, the compensation provided during this 2024-2025 amendment term shall not exceed $2,599,920.

4. Entire Agreement. This Amendment represents the entire agreement and understanding of the Parties and shall supersede any prior agreement—written or oral—between the Parties. This Amendment will not be valid and enforceable until executed by all the Parties hereto. This Amendment may not be modified or altered except through a subsequent writing signed by both Parties.

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

6. Signatures. The individuals executing this Amendment represent and warrant that they have the right, power, legal capacity, and authority to enter and to execute this Amendment. This Amendment shall inure to the benefit of and be binding upon the parties and their respective successors and assigns. This Amendment may be executed in one or more counterparts. All counterparts so executed shall constitute one contract, binding on all Parties, even though all Parties are not signatory to the same counterpart.

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

City of Tracy

By: _____
Nancy D. Young

Title: Mayor

Date: _____

Attest:

By: _____
Adrianne Richardson, City Clerk

Approved as to form:

By: _____
Bijal M. Patel, City Attorney

Consultant

By: Signed by: David Bentley 8317AF603766484... _____
David Bentley

Title: Assistant Secretary
) #& #!#%Ã@Ã#*"%Ã32Ã3.4

Date: _____

By: Signed by: Kelly Pontsler 26FB2AE02FDD4DC... _____
Kelly Pontsler

Title: Treasurer
) #& #!#%Ã@Ã#*#%Ã32Ã3.4

Date: _____

Feder Employer Tax ID No. 94-1156347

October 15, 2024

Agenda Item 1.C

RECOMMENDATION

Staff recommends that City Council adopt a Resolution:
(1) Approving the execution of a General Services Agreement with Petroleum Solids Control, Inc., a California Corporation, to provide rental services for certain equipment for the City of Tracy Wastewater Treatment Plant at a monthly lease amount of $19,350 for an initial six (6) month term; and
(2) Authorizing the City Manager to approve monthly extensions up to a one-year term for a total not-to-exceed total amount of $232,200.

EXECUTIVE SUMMARY

This agenda item seeks adoption of a Resolution by the City Council approving a General Services Agreement (GSA) with Petroleum Solids Control, Inc. (Contractor) in the form attached as Attachment A to lease a sludge dewatering centrifuge which is necessary for the removal of liquid waste from solid waste at the City of Tracy (City) Wastewater Treatment Plant. This lease is needed because the existing centrifuge failed and there is no redundant equipment currently in place. The City Manager authorized a one month rental (including setup and delivery) on September 13, 2024, pursuant to Tracy Municipal Code 2.20.170, that included the initial diagnosis of repair needs on the existing centrifuge for a total not-to-exceed amount of $41,100, with the Contractor. Staff realizes that the repairs on the failed centrifuge will take longer than one month, and is, therefore, seeking City Council approval for an additional six (6) months rental at $19,350 per month, as well as City Manager authorization to approve the lease up to an additional six (6) months, on a monthly basis, for a total not-to-exceed amount of $232,200 from Fund 521 - Wastewater Operations and Maintenance Budget.

BACKGROUND AND LEGISLATIVE HISTORY

On August 18, 2020, pursuant to Resolution No. 2020-148, the City leased a sludge dewatering centrifuge with an option to purchase at the end of the term, through a GSA with the Contractor. In May 2022, the City selected the option and purchased the rental centrifuge per the terms of the agreement. This centrifuge provides a high-speed rotation process that forces the separation of solids from the liquids in the wastewater treatment process. This process reduces the volume of residuals, removes solids from the activated sludge operation, is a critical part of the activated sludge process, and reduces costs for subsequent storage, processing, transfer, end use, and disposal of waste material.

As a part of the Wastewater Treatment Plant Phase IIB expansion, a new and larger centrifuge was designed and underwent construction with a planned startup date of late summer 2024. The existing centrifuge would serve as a redundant unit that could be utilized during maintenance or any needed repair of the new centrifuge. The initial startup of the newly designed and constructed centrifuge was delayed due to several issues. Mid-August 2024, staff discovered that the existing centrifuge was no longer separating solids effectively. Maintenance staff was able to diagnose the issue and determine that the task would require an outside contractor to provide the repair and replacement of certain parts within the unit. However, due to the delay in the new centrifuge being brought online, the existing centrifuge had to continue to be run due to the vital nature of this piece of the process. The unit ran until

the end of August when it was no longer able to provide the necessary treatment required, whereby staff determined that a temporary centrifuge would be required until a diagnostic could be performed on the existing failed centrifuge.

ANALYSIS

Due to the vital need of this equipment in the treatment process, an alternate temporary monthly rental of a similar centrifuge would be required to continue operations until the new centrifuge comes online, or the existing centrifuge is able to be repaired. On August 22, 2024, as this was an urgent need, staff conducted an informal bid process and requested three quotes from qualified local contractors who could provide the general services and equipment needed with a two-day deadline. Staff's goal was primarily to provide uninterrupted services to our Community, continue the high expectation for human health and safety, and avoid costly violations from the State Water Resources Control Board.

On August 24, 2024, a total of two proposals were received by the City, with an initial quote for only the monthly lease of a sludge dewatering centrifuge. The two proposals were reviewed by an internal committee consisting of staff from both maintenance and operations and it was determined that both bidders met all the required specifications and were responsive.

Contractor Name	**Lease Price**	**Terms**
Petroleum Solids Control, Inc.	$25,200	$19,350/month rental $ 3,000 Transportation $ 2,850 (at time of removal for cleaning)
Centrisys	$39,000	$27,500/month rental $ 3,000 Transportation $ 8,500 (one time removal and installation)

However, upon further discussion, it was determined that in order to be more cost-effective and efficient, recognizing economy of scale due to the need to provide rental crane services large enough to move these large units, transportation for the rental unit, and removal of the existing for diagnosis, staff requested an additional quote from the three bidders on September 10, 2024, with a deadline of September 13, 2024. The additional quote was only for an initial diagnosis of the centrifuge needing repair (including transportation already captured in the lease quote), and a technical report identifying the findings with recommendations.

On September 13, 2024, a total of two additional proposals were received from the same two bidders. Only one bidder met the required specification and was responsive: Petroleum Solids Control, Inc. This bidder offered the lowest monthly rental and provided only the requested proposal for the additional need.

Contractor Name	**Diagnosis Fee**	**Terms**
Petroleum Solids Control, Inc.	$15,900	diagnostic analysis and technical report

Staff recommended the Contractor as the lowest responsive bidder and on September 13, 2024, requested the City Manager to approve a one-month rental of an alternate centrifuge, the initial diagnostic of the existing centrifuge, and a technical report identifying their findings for a total not-to-exceed of $41,100, pursuant to T.M.C. 2.20.170. Based upon their recommendation, a scope of work will be prepared, and a Notice Inviting Bids will be issued for either replacement of or repair to the failed centrifuge. The City Manager authorized the contract, and the new rental unit was installed at the Wastewater Treatment Plant on

Wednesday, September 18, 2024, and the failed centrifuge was transported back to the Contractor's facility for inspection, cleaning, and diagnosis.

As previously stated, staff realized that the initial diagnostic and report out along with preparation, posting, selection, and award of contract will take longer than the initial one-month lease approval from the City Manager. Therefore, staff is seeking City Council approval to enter into a GSA with Petroleum Solids Control, Inc. for an initial term of six (6) months at a $19,350 per month rental fee; and authorize the City Manager to approve monthly extensions for up to a one-year total term with a total not-to-exceed twelve-month rental amount of $232,200.

CEQA DETERMINATION

The project is categorically exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA guidelines section 15301(b) which includes the maintenance of a publicly owned utility facility. No expansion of use will occur because of the Project.

STRATEGIC PLAN

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

FISCAL IMPACT

The total not-to-exceed amount of $232,200 will be funded through the adopted FY24/25 Wastewater Operations and Maintenance Budget (Fund 521).

ACTION REQUESTED OF THE CITY COUNCIL

Staff recommends that City Council adopt a Resolution:
(1) Approving the execution of a General Services Agreement with Petroleum Solids Control, Inc., a California Corporation, to provide rental services for certain equipment for the City of Tracy Wastewater Treatment Plant at a monthly lease amount of $19,350 for an initial six (6) month term; and
(2) Authorizing the City Manager to approve monthly extensions up to a one-year term in a not-to-exceed total amount of $232,200.

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

Reviewed by: Sara Castro, Director of Finance
Bijal Patel, City Attorney
Karin Schnaider, Assistant City Manager/Interim Director of Public Works

Approved by: Midori Lichtwardt, City Manager

Attachments:

A – General Service Agreement with Petroleum Solids Control, Inc. for up to a twelve-month lease of a sludge dewatering centrifuge.

CITY OF TRACY
GENERAL SERVICES AGREEMENT

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

Recitals

A. City desires to retain Contractor to provide a sludge dewatering centrifuge for the City of Tracy Wastewater Treatment Plant as a vital part of the separation of liquids and solids in the wastewater treatment process; and

B. On August 22, 2024, the City requested three informal bids for the lease of a sludge dewatering centrifuge due to a failure of its existing centrifuge and immediate need. The City received two bids on August 24, 2024, and after careful review, the Contractor was determined to be the lowest qualified bidder.

C. On September 13, 2024, the City Manager authorized an initial one month rental and installation of the sludge dewatering centrifuge pursuant to Tracy Municipal Code 2.20.170

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

E. This Agreement is being executed pursuant to Resolution No. 2024-____ approved by Tracy City Council on October 15, 2024.

Now therefore, the Parties mutually agree as follows:

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

2. Time of Performance. Time is of the essence in the performance of services under this Agreement and the timing requirements set forth shall be strictly adhered to unless otherwise modified in writing in accordance with this Agreement. Contractor shall begin performance, complete installation of all equipment, and provide training no later than September 19, 2024. Any services for which times for performance are not specified in this Agreement shall be started and completed by Contractor in a reasonably prompt and timely manner based upon the circumstances and direction communicated to the Contractor. Contractor shall submit all requests for time extensions to the City in writing no later than ten days after the start of the condition which purportedly caused the delay, and not later than the date on which performance is due. City shall grant or deny such requests at its sole discretion.

2.1 Term. The term of this Agreement shall begin on October 15, 2024, and end on April 14, 2025, unless terminated in accordance with Section 6. OPTION TO EXTEND: This Agreement may be extended for an additional six months on a monthly basis by the City Manager following a written determination that Contractor has satisfactorily met all the requirements of this Agreement.

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

3.1 Not to Exceed Amount. Contractor's total compensation under this Agreement shall not exceed $232,200 with Council approval pursuant to Tracy Municipal Code section 2.20.080. Contractor's billing rates shall cover all costs and expenses for Contractor's performance of this Agreement. No work shall be performed by Contractor in excess of the total compensation amount provided in this section without the City's prior written approval.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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the expiration shall be considered a cancellation. Contractor shall immediately obtain a replacement policy.

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

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

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

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

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

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

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

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

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

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

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

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

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

Docusign Envelope ID: 54ECDB34-7DA7-45B6-B4EF-D92BDB564170

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

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

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

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

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

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

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

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

To City:

Karin Schnaider, Assistant City Manager
Interim Director of Public Works
333 Civic Center Drive
Tracy, CA 95376

To Contractor:

Eugene Rogachevsky
Petroleum Solids Control, Inc.
1320 E. Hill Street
Signal Hill, CA 90755

Docusign Envelope ID: 54ECDB34-7DA7-45B6-B4EF-D92BDB564170

With a copy to:

City Attorney
333 Civic Center Plaza
Tracy, CA 95376

14. Miscellaneous.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[SIGNATURES ON FOLLOWING PAGE]

Docusign Envelope ID: 54ECDB34-7DA7-45B6-B4EF-D92BDB564170

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

City of Tracy

By: _____
Nancy D. Young
Title: Mayor
Date: _____

Attest:

_____
Adrianne Richardson, City Clerk

Approved as to form:

_____
Bijal M. Patel, City Attorney

Contractor
Petroleum Solids Control, Inc., a California Corporation

Signed by:
Derek Vignovich
CA08A28990BB426...
By: Derek Vignovich
Title: President
Date: 9/23/2024 | 2:54 PM PDT

Federal Employer Tax ID No. 95-1912960

Signed by:
Manuel Tollins
8102E19843554D9...
By: Manuel Tollins
Title: Operations Manager, CFO
Date: 9/23/2024 | 3:56 PM MDT

Exhibits:

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

Docusign Envelope ID: 54ECDB34-7DA7-45B6-B4EF-D92BDB564170

EXHIBIT A - Scope of Work

The Contractor will provide the following equipment:

Flottweg Z4E-441 skid-mounted centrifuge

- Bowl Diameter: 16.5”
- Length: 66”
- Max Bowl Speed: 3000rpm Max Differential Speed: 30rpm
- Main Drive: 40HP, 60 Hz, 460V 3phase Back Drive: 30HP, 60 Hz, 460V 3phase Control Panel: EXP Class 1 Div 1
- One receptacle for feed pump Class 1 Div 2
- One electric cord size 6/4 type T; 100’

Preserving Equipment: Contractor may inspect the equipment at any time but must notify the plant 24 hours prior to arrival. City shall keep the equipment in good operable condition and must maintain equipment at City’s expense.

Sample Clause: A sample of both the sludge and any chemicals being used to process the sludge must be received within 1 week of the job in order for Contractor to assess the proper machine to be used. Contractor does not guarantee any results for quality of water, oil, or solids. Contractor leases machines and backs them with support and knowledge, however, responsibility for the final results of processing falls on the City.

Docusign Envelope ID: 54ECDB34-7DA7-45B6-B4EF-D92BDB564170

EXHIBIT B - Compensation

Cost of Work:
The monthly rental cost submitted by the Contractor shall be a lump sum amount that included installation, setup, and initial training.

Monthly Rent: $19,350

If there is a need to complete maintenance work due to misuse of the equipment by the City, the cost table for labor are as follows:

Description	Straight time per hour	Overtime Per hour	Double time Sunday/ Holiday Per hour
Field Service Technician	$100.00	$150.00	$200.00
Installation Labor, Operator	$85.00	$127.50	$170.00
Travel time per employee per hour	$75.00	$112.50	$150.00

If there is need for additional training, the cost table for labor is as follows:

8 hour labor charge	$850.00 Per day
8 to 10 hours	$120.00 Per hour
10 hours to 12 hours	$155.00 Per Hour
Per Diem	$55.00+ Per day
Cost of Room (Area Specific)	$125.00+ Per day

All California regulations pertaining to wage and hour laws shall be required for any services provided by the Contractor. In accordance with this, Contractor employees shall observe mandated rest and meal periods throughout the course of their workday.

A standard fee of $2,850 will be charged upon return of the equipment to cover cleanup of equipment and disposal of any waste removed. City shall return equipment clean enough to be transported.

Payment Location:
City shall make the invoiced monthly payment and any other fees assessed to the office of the Contractor.

1320 E. Hill Street
Signal Hill, CA 90755

APPROVED AS TO FORM AND LEGALITY

_____
CITY ATTORNEY'S OFFICE

TRACY CITY COUNCIL

RESOLUTION NO. _____

---

(1) APPROVING THE EXECUTION OF A GENERAL SERVICES AGREEMENT WITH PETROLEUM SOLIDS CONTROL, INC., A CALIFORNIA CORPORATION, TO PROVIDE RENTAL SERVICES FOR CERTAIN EQUIPMENT FOR THE CITY OF TRACY WASTEWATER TREATMENT PLANT AT A MONTHLY LEASE AMOUNT OF $19,350 FOR AN INITIAL SIX (6) MONTH TERM; AND

(2) AUTHORIZING THE CITY MANAGER TO APPROVE MONTHLY EXTENSIONS UP TO A ONE-YEAR TERM FOR A TOTAL NOT-TO-EXCEED AMOUNT OF $232,200

WHEREAS, the City utilizes a sludge dewatering centrifuge in its wastewater treatment process to remove the liquids from the solids that was purchased in 2020 - pursuant to Resolution 2020-148; and

WHEREAS, as a part of the Wastewater Treatment Plant Phase IIB expansion, a new and larger centrifuge was designed and underwent construction with a planned startup date of late summer of 2024, and it was determined that the existing centrifuge would serve as a redundant unit that could be utilized during maintenance or repairs of the new centrifuge; and

WHEREAS, the initial startup of the newly designed and constructed centrifuge was delayed due to several issues and is not operational at this time; and

WHEREAS, this sludge dewatering centrifuge failed in August 2024 creating a need for a rental of similar build until either the existing centrifuge is repaired, or the new unit becomes operational; and

WHEREAS, on August 22, 2024, staff followed established procedures, in accordance with Tracy Municipal Code, Section 2.20.170, and requested three (3) informal quotes for a month-to-month rental centrifuge equal to the onsite failed unit; and

WHEREAS, prior to the deadline, the City received two (2) proposals, one of which was from Petroleum Solids Control, Inc. (Contractor); and

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

WHEREAS, due to urgency of the need to provide uninterrupted services to the Community considering human health and safety reasons, and to avoid costly violations from the State Water Resources Control Board and time restraints for Council approval the City Manager authorized a one (1) month rental that included installation and setup on September 13, 2024, under Tracy Municipal Code, Section 2.20.170; and

WHEREAS, based on the assessment done by the Contractor, staff now anticipates that the rental would be required for a minimum of six months before the new centrifuge becomes operational or repairs are completed on the exiting unit; and

WHEREAS, staff recommends that the City Council authorize the execution of the General Services Agreement with Contractor (GSA) attached hereto as Exhibit A to provide the continued lease of the sludge dewatering centrifuge on a month-to-month basis for an initial term of six months and an administrative option to extend up to one year by the City Manager; and

WHEREAS, if extended, the total not-to-exceed amount for the one-year term is $232,300; and

WHEREAS, the cost of the services provided by the Contractor will be accounted for in the Fiscal Year (FY) 24/25 annual operations and maintenance budget of the Wastewater Fund (521); and

WHEREAS, the GSA is for the rental of the equipment and approval of this GSA will not result in a physical change in the environment, therefore is not considered as a project as defined by Section 21065 of the Public Resources Code; and

NOW, THEREFORE, be it resolved as follows:

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

FURTHER RESOLVED: That the City Council of the City of Tracy, hereby approves the execution of the General Services Agreement attached hereto as Exhibit A for an initial term of six months and for a total not to exceed amount of $232,200 with Petroleum Solids Control, Inc., a California Corporation; and be it further

FURTHER RESOLVED: That the City Council authorizes the City Manager to approve, administratively, monthly extensions for up to 6 additional months, if needed; and be it

FURTHER RESOLVED: The City Council finds that the project is categorically exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15301(b) which includes the maintenance of a publicly owned utility facility.

****

The foregoing Resolution 2024-_____ was adopted by the Tracy City Council on October 15, 2024, by the following vote:

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

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

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

October 15, 2024

Agenda Item 1.D

RECOMMENDATION

The Tracy Finance Committee recommends that the City Council adopt a resolution:
(1) Approving a 20% local match for the Safe Streets and Roads for All (SS4A) grant from the United States Department of Transportation;
(2) Accepting the SS4A grant in the amount of $3,764,800;
(3) Appropriating to Capital Improvement Project 73201 (A) $941,200 in funds from gas taxes (Fund 245) to provide for the local match and (B) the total SS4A grant funds, for a total project amount of $4,706,000; and
(4) Authorizing the City Manager to execute the grant agreement and other documents to effectuate the grant.

EXECUTIVE SUMMARY

This agenda item seeks acceptance of a Safe Streets and Roads for All (SS4A) Grant award in the amount of $3,764,800 from the United States Department of Transportation for the Citywide Systemic Safety Enhancements Project, Capital Improvement Project (CIP) 73201. This CIP will allow for improvements at 10 locations along roadway segments that enhance traffic safety. As this grant requires a 20% local match, this item also seeks approval of the match requirement and an appropriation of funding, in the amount of $941,200, for the required local match from Gas Tax Funds to CIP 73201. As various documents will need to be executed during the administration of the grant, this agenda item also seeks an authorization for the City Manager to execute grant related documents up to the total project amount of $4,706,000.

The Tracy Finance Committee heard this item on September 24, 2024, and recommended approval.

BACKGROUND AND LEGISLATIVE HISTORY

The United States Department of Transportation (DOT) released a Notice of Funding Opportunity to solicit applications for Safe Streets and Roads for All (SS4A) grants for Fiscal Year 2023. The City of Tracy (City) applied for this grant opportunity for the Citywide Systemic Safety Enhancements Project, CIP 73201 (Project), on July 10, 2023.

The Project includes safety improvements at 10 locations along roadway segments and intersections with high concentrations of collisions. The City Council adopted a Local Roadway and Safety Plan (LRSP) in 2023, through Resolution No. 2023-034, which established a framework to identify, analyze, and develop traffic safety enhancements on the City's transportation system. During the application process, the Fatality Analysis Reporting System (FARS) and Annual Report File (ARF) were reviewed to determine fatalities within the City from 2016 to 2021. The University of California Berkeley Transportation Injury Mapping System (TIMS) was used to identify the locations with high collision rates within the City. Using FARS, ARF and TIMS, the City was able to narrow down the locations from the LRSP to the 10 locations identified in the SS4A Grant application. The improvements include edge line improvements, striping and signage, bicycle lanes, multi-use paths, pedestrian refuge islands and high-visibility crosswalks. The 10 locations and associated improvements are as follows:

1. **Amaretto Drive and Schulte Road Intersection:** Install high visibility crosswalk and signage.
2. **Parker Avenue and Eaton Avenue Intersection:** Install high visibility crosswalk, light-emitting diode (LED) stop signs, striping improvements, and raised pavement markings.
3. **Holly Drive from Larch Road to Sloan Court:** Add roadway segment lighting, bike lanes with green paint, and remove vegetation from the clear recovery zone.
4. **Pavilion Parkway from Robertson Drive to Auto Plaza Way:** Add roadway segment lighting, striping improvements, and raised pavement markings.
5. **Naglee Road and Grant Line Road Intersection:** Construct median refuge islands and high visibility crosswalks.
6. **Grant Line Road from Lammers Road to Byron Road:** Install variable speed feedback signage.
7. **Byron Road from Berg Road to Belconte Drive:** Extend the existing multi-use path, add segment lighting, install a raised median, and add variable speed feedback signage.
8. **Lowell Avenue and Corral Hollow Road Intersection:** Construct median refuge islands, high visibility crosswalks, bike lanes with green paint, and a pedestrian scramble.
9. **Lammers Road from 11th Street to Redbridge Road:** Install variable speed feedback signage and safety edges.
10. **Tracy Boulevard from Schulte Road to Menay Drive:** Install variable speed feedback signage.

On September 24, 2024, the Tracy Finance Committee approved recommending this agenda item to City Council.

ANALYSIS

On December 14, 2023, City staff was informed that the City's application was selected for an award in the amount of $3,764,800 (see Attachment B). The grant amount accounts for 80% of the total Project cost. Staff requests that the City Council accept the SS4A grant award and appropriate funds from gas taxes in the amount of $941,200 for the 20% local match required for the grant. The Project should result in decreased collisions at the 10 locations addressed and make our roadways safer for residents.

The SS4A grant will require various documents to be executed during its implementation, including a Grant Agreement, the draft of which is reflected in Attachment A (Agreement) with the DOT and an amendment to the Agreement after each phase of the Project is complete. The Project includes three phases. The Base Phase includes environmental review, supplemental planning, and preliminary design. Phase 1 includes final design and right-of-way, and Phase 2 includes construction of the Project. The amendments are required by the DOT to memorialize actual funds spent in each phase and to give the City an opportunity to change timelines as needed. City staff will have 60 months from the date of the award to complete the Project.

Staff anticipates the need to execute one Agreement and two Amendments to the Agreement. In addition, staff will need to accept a bid for the Project design and construction and enter into contracts for design and construction. Staff requests that the City Council provide authorization to the City Manager, for administrative efficiency, to execute all documents related to this grant as long as the documents are in acceptable form to the City Attorney's Office and within the Project budget as approved by the City Council.

FISCAL IMPACT

The Citywide Systemic Safety Enhancement Project, CIP 73201, has an estimated cost of $4,706,000. The Safe Streets and Roads for All grant award of $3,764,800 accounts for 80% of the funding. The 20% local match is $941,200 will be appropriated from Gas Tax Funds (F245) to fully fund this Project.

PUBLIC OUTREACH/INTEREST

Not applicable

COORDINATION

Not applicable

CEQA DETERMINATION

The Project is categorically exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15301, pertaining to minor alterations to existing facilities.

STRATEGIC PLAN

This agenda item supports the City of Tracy's Quality of Life Strategic Priority, which is to provide an outstanding quality of life by enhancing the City's amenities, business mix and services and cultivating connections to promote positive change and progress in our community.

ACTION REQUESTED OF THE CITY COUNCIL

The Tracy Finance Committee recommends that the City Council adopt a resolution:
(1) Approving a 20% local match for the Safe Streets and Roads for All (SS4A) grant from the United States Department of Transportation;
(2) Accepting the SS4A grant in the amount of $3,764,800;
(3) Appropriating to Capital Improvement Project 73201 (A) $941,200 in funds from gas taxes (Fund 245) to provide for the local match and (B) the total SS4A grant funds, for a total project amount of $4,706,000; and
(4) Authorizing the City Manager to execute the grant agreement and other documents to effectuate the grant.

Prepared by: Veronica Child, Management Analyst II
Selvi Sivaraj, Associate Engineer

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

Approved by: Midori Lichtwardt, City Manager

ATTACHMENTS:

Attachment A - SS4A FY23 Grant Agreement Draft
Attachment B - Award Letter

DRAFT

TEMPLATE; NOT INTENDED FOR EXECUTION WITHOUT MODIFICATION

01-04-2024

[Please complete all areas in red. When finished, and prior to submitting grant agreement for FHWA review, please remove the header, all drafting instructions (in Red and in the Comments Section) and change all text from red to black.]

1. Federal Award No.

2. Effective Date
See No. 16 Below

3. Assistance Listings No.
20.939

4. Award To
[Insert Recipient Name]
[Insert Recipient Address]

Unique Entity Id.: [Insert UEI]
TIN No.: [Insert Tax ID]

5. Sponsoring Office
U.S. Department of Transportation
Federal Highway Administration
Office of Safety
1200 New Jersey Avenue, SE
HSSA-1, Mail Drop E71-117
Washington, DC 20590

6. Period of Performance
Effective Date of Award – [insert date or number of months]

7. Total Amount

Federal Share:	$0amount
~~Recipient Share:~~	$0
Other Federal Funds:	$0
Other Funds:	$0
Total:	$0

8. Type of Agreement
Grant

9. Authority
Section 24112 of the Infrastructure Investment and Jobs Act (Pub. L. 117–58, November 15, 2021; also referred to as the "Bipartisan Infrastructure Law" or "BIL")

10. Procurement Request No.
[insert PR Number]

11. Federal Funds Obligated
[for phased agreement, enter phase number and name]: [Insert Amount $]

12. Submit Payment Requests To
See Article 5.

13. Accounting and Appropriations Data
[insert Data]

14. Description of the Project

Commented [U1]: Drafting Instruction: To be completed by the FHWA Office of Acquisition and Grants Management.

Commented [jgr2]: Drafting Instruction: Recipient's Name and Address should match the entity's registration information in SAM.gov.

Commented [jgr4]: Drafting Instruction: The amount information should match the SF-424 Box 18. The non-federal cost share must be a minimum 20% of the total. Any variance from the application should be discussed with the Division Office Lead Point of Contact.

Commented [jgr3]: Drafting Instruction: Insert the end date for the Period of Performance. For Planning and Demonstration Grants, this would generally be expected to be approximately 1-2 years from the effective date, but it could be longer. For Implementation Grants, this may be no more than 5 years from the effective date. This date can be inputted as a date or as the number of months expected to complete the project.

Commented [jgr5]: Drafting Instruction: To be completed by the FHWA Division Office.

Commented [U6]: Drafting Instruction: Generally, the amount of Federal Funds obligated will match the Federal share amount in Section 7. For phased agreements, insert the phase number and name along with the amount of funding to be obligated for the first (or for an amendment, the next) phase. Examples include:

- Base Phase: Pre-NEPA (includes Preliminary Design and NEPA)
- Option Phase 1: Final Design and, if applicable, Right-of-Way and Utility Relocation
- Option Phase 2: Construction

For the initial grant agreement, only include the Base Phase.

Commented [jgr8]: Drafting Instruction: To be completed by the FHWA Office of Acquisition and Grants Management.

Commented [U7]: Drafting Instruction: Provide a 1-2 sentences description of the project. If this is a phased agreement, note that in this description.

RECIPIENT	**FEDERAL HIGHWAY ADMINISTRATION**
15. Signature of Person Authorized to Sign	**16. Signature of Agreement Officer**
_____	_____
Signature Date	Signature Date
Name:	Name:
Title:	Title: Agreement Officer

Commented [jgr9]: Drafting Instruction: If your agency has specific legal requirements that require deviating from one signature then please notify the FHWA Division Office Lead Point of Contact.

U.S. DEPARTMENT OF TRANSPORTATION

GRANT AGREEMENT UNDER THE FISCAL YEAR 2023 SAFE STREETS AND ROADS FOR ALL GRANT PROGRAM

This agreement is between the United States Department of Transportation's (the "**USDOT**") Federal Highway Administration (the "**FHWA**") and the [insert full name of applicant] (the "**Recipient**").

This agreement reflects the selection of the Recipient to receive a Safe Streets and Roads for All ("**SS4A**") Grant for the [insert project name from the application].

The parties therefore agree to the following:

ARTICLE 1
GENERAL TERMS AND CONDITIONS

1.1 General Terms and Conditions.

(a) In this agreement, "**General Terms and Conditions**" means the content of the document titled "General Terms and Conditions Under the Fiscal Year 2023 Safe Streets and Roads for All ("SS4A") Grant Program,", which is available at https://www.transportation.gov/grants/ss4a/grant-agreements under "Fiscal Year 2023." Articles 7–30 are in the General Terms and Conditions. The General Terms and Conditions are part of this agreement.

(b) The Recipient acknowledges that it has knowledge of the General Terms and Conditions. Recipient also states that it is required to comply with all applicable Federal laws and regulations including, but not limited to, the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 CFR part 200); National Environmental Policy Act (NEPA) (42 U.S.C. § 4321 et seq.); and Build America, Buy America Act (BIL, div. G §§ 70901-27).

(c) The Recipient acknowledges that the General Terms and Conditions impose obligations on the Recipient and that the Recipient's non-compliance with the General Terms and Conditions may result in remedial action, termination of the SS4A Grant, disallowing costs incurred for the Project, requiring the Recipient to refund to the FHWA the SS4A Grant, and reporting the non-compliance in the Federal-government-wide integrity and performance system.

ARTICLE 2
APPLICATION, PROJECT, AND AWARD

2.1 Application.

Application Title: [insert full title from the submitted application]

Application Date: [insert the date in Box 3 of the SF-424 submitted with the application]

2.2 Award Amount.

SS4A Grant Amount: [$XXX]

2.3 Federal Obligation Information.

[**Alternative #1:** If all funds are being obligated at once:]

Federal Obligation Type: Single

[**Alternative #2:** If funds are to be obligated in multiple project phases:]

Federal Obligation Type: Multiple

Obligation Condition Table

Phase the Project	Allocation of the SS4A Grant	Obligation Condition
[insert name of first phase (*e.g.*, "Base Phase: Pre-NEPA")]	[$XXX]	

Commented [USDOT10]: Drafting Instruction: Use whole dollars.

Commented [USDOT11]: Drafting Instruction: Please list the total grant amount in whole dollars. For Recipients who receive funding for both Implementation and Planning and Demonstration activities, please also include those amounts separately.

Commented [jgr12]: Drafting Instructions: Choose the appropriate one of the two alternatives and delete the alternative not used. If this is a Planning and Demonstration Grant or an Implementation Grant where NEPA is substantially complete, please choose Alternative 1.

Commented [jgr13]: Additional Information: If the Federal Obligation Type is "Single" then the "Obligation Condition Table" is not required and should be deleted.

Commented [jgr14]: Drafting Instruction: This table should contain a row for each obligation, but not any other breakdown of the Project. *E.g.*, if the project consists of multiple components, but those are all being obligated together, do not break out the components here. The information in this table should match the information listed in #11 of Page 1.

Commented [jgr15]: Additional Information. To understand how this table is used and affects that Federal Obligation of funds, see Section 10.2(c)-10.2(h) in the General Terms and Conditions.

Obligation Condition Table		
Phase the Project	**Allocation of the SS4A Grant**	**Obligation Condition**
[insert name of second phase (*e.g.*, "Phase 1: Final Design, Right-of-Way, and Utility Relocation")]	[$XXX]	The Recipient shall not expend any funds (Federal or non-Federal) for, seek reimbursement of eligible costs, or otherwise begin any part of the final design and construction of an Implementation Project unless and until: (1) ~~The requirements of the National~~ Environmental Policy Act (42 U.S.C. § 4321 et seq.) ("NEPA"), Section 106 of the National Historic Preservation Act (16 U.S.C. § 470f) ("NHPA"), and any other applicable environmental laws and regulations have been met; and (2) FHWA, or a State with applicable NEPA Assignment authority, has approved the NEPA document for the Project and provided the Recipient with a written notice that the environmental review process is complete; and (3) FHWA has obligated additional funds for this phase and notified the Recipient in writing that the Recipient may proceed to the next activity after NEPA approval, and the Recipient has acknowledged receipt in writing of FHWA's notification. Recipient shall not proceed with any such activities until (2) and (3) as described in this section are met. Costs that are incurred before (2) and (3) as described in this section are met are not allowable costs under this agreement. Extent of activities that are permissible before NEPA is complete are those activities constituting "preliminary design" as specified in FHWA Order 6640.1A.

Commented [jgr14]: Drafting Instruction: This table should contain a row for each obligation, but not any other breakdown of the Project. *E.g.*, if the project consists of multiple components, but those are all being obligated together, do not break out the components here. The information in this table should match the information listed in #11 of Page 1.

Commented [jgr15]: Additional Information. To understand how this table is used and affects that Federal Obligation of funds, see Section 10.2(c)-10.2(h) in the General Terms and Conditions.

Commented [U16]: Drafting Instruction: If there are more than two phases or components, add a row for each phase.

Obligation Condition Table

Phase the Project	Allocation of the SS4A Grant	Obligation Condition
[insert name of third phase (*e.g.*, "Option Phase 2: Construction")]	[$XXX]	The Recipient shall not expend any funds (Federal or non-Federal) for, seek reimbursement of eligible costs, or otherwise begin any part of the construction or final design and construction of an Implementation Project unless and until: (1) The requirements of the National Environmental Policy Act (42 U.S.C. § 4321 et seq.) ("NEPA"), Section 106 of the National Historic Preservation Act (16 U.S.C. § 470f) ("NHPA"), and any other applicable environmental laws and regulations have been met; and (2) FHWA, or a State with applicable NEPA Assignment authority, has approved the NEPA document for the Project and provided the Recipient with a written notice that the environmental review process is complete; and (3) FHWA has obligated additional funds for this phase and notified the Recipient in writing that the Recipient may proceed to the next activity after NEPA approval, and the Recipient has acknowledged receipt in writing of FHWA's notification. Recipient shall not proceed with any such activities until (2) and (3) as described in this section are met. Costs that are incurred before (2) and (3) as described in this section are met are not allowable costs under this agreement. Extent of activities that are permissible before NEPA is complete are those activities constituting "preliminary design" as specified in FHWA Order 6640.1A.

Commented [jgr14]: Drafting Instruction: This table should contain a row for each obligation, but not any other breakdown of the Project. *E.g.*, if the project consists of multiple components, but those are all being obligated together, do not break out the components here. The information in this table should match the information listed in #11 of Page 1.

Commented [jgr15]: Additional Information. To understand how this table is used and affects that Federal Obligation of funds, see Section 10.2(c)-10.2(h) in the General Terms and Conditions.

2.4 Budget Period.

[Choose the appropriate one of these two alternatives.]
[**Alternative #1:** If all funds are being obligated at once:]

Budget Period: See Block 6 of Page 1

[**Alternative #2:** If funds are to be obligated in multiple project phases:]

Base Phase Budget Period: [insert start and end dates]

Option Phase 1 Budget Period: [reserved]

Commented [U17]: Drafting Instruction: For projects with multiple phases (i.e., Section 2.3 sets the obligation type to "Multiple"), there should be a budget period for each phase of the project, and the budget period for the first phase should be included in the grant agreement at the time of execution.

Option Phase 2 Budget Period: [reserved]

2.5 Grant Designation.

Designation: [Planning and Demonstration] or [Implementation]

ARTICLE 3
SUMMARY PROJECT INFORMATION

3.1 Summary of Project's Statement of Work.

Drafting Instructions: Provide a summary of the narrative from the grant application. Provide details on the work to be completed.

The project will be completed in [one/two/three] phases as follows:

Base Phase: Pre-NEPA: [describe work]

Option Phase 1: Final Design, Right-of-Way, and Utility Relocation: [describe work]

Option Phase 2: Construction: [describe work]

Commented [U18]: Drafting Instruction: If the project will be completed in phases, describe each phase. If the project has separate functional or geographic components, describe each component. The description of any phase that will be carried out should include a cross reference to the obligation condition in 2.3. Obligations of grant funds prior to the completion of NEPA are only those activities permissible under FHWA Order 6640.1A. available at https://www.fhwa.dot.gov/legsregs/directives/orders/66401a.cfm

3.2 Project's Estimated Schedule.

Drafting Instructions: Provide the schedule for each significant deliverable from the grant application. The purpose of this section is to ensure that all SS4A funded activities are completed before the end of the Period of Performance and/or the budget period. Use the table(s) that pertain(s) to your project and delete the others. Please add additional action plan schedules if multiple action plans will be developed.

Commented [USDOT19]: Drafting Instruction: If any of the dates required in 3.2 differ from the dates in the application, each difference must be described in Attachment B.

Action Plan Schedule

Milestone	Schedule Date
Planned NEPA Completion Date:	[INSERT DATE]
Planned Draft Plan Completion Date:	[INSERT DATE]
Planned Final Plan Completion Date:	[INSERT DATE]
Planned Final Plan Adoption Date:	[INSERT DATE]
Planned SS4A Final Report Date:	[INSERT DATE]

Commented [jgr20]: Drafting Instruction: The SS4A Final Report refers to Section F, 3(ii) of the FY 2023 SS4A NOFO which states that all award recipients shall submit a report by the end of the period of performance that describes the costs of each eligible project and strategy carried out using the grant; the roadway safety outcomes and any additional benefits (e.g., increased walking, biking, or transit use without a commensurate increase in serious and fatal crashes, etc.) that each such project and strategy has generated, as identified in the grant application and measured by data, to the maximum extent practicable; the percent of funds spent in, and providing benefits to, underserved communities; and the lessons learned and any recommendations relating to future projects or strategies to prevent death and serious injury on roads and streets.

Demonstration Activity Schedule

Milestone	Schedule Date
Planned NEPA Completion Date:	[INSERT DATE]
Planned Construction Start Date	[INSERT DATE]
Planned Evaluation Period End Date:	[INSERT DATE]
Planned SS4A Final Report Date:	[INSERT DATE]

Supplemental Planning Schedule

Milestone	Schedule Date
Planned NEPA Completion Date:	[INSERT DATE]
Planned Draft Plan Completion Date:	[INSERT DATE]
Planned Final Plan Completion Date:	[INSERT DATE]
Planned Final Plan Adoption Date:	[INSERT DATE]
Planned SS4A Final Report Date:	[INSERT DATE]

Implementation Schedule (Construction)

Milestone	Schedule Date
Planned NEPA Completion Date:	[INSERT DATE]
Planned Construction Start Date	[INSERT DATE]
Planned Construction Substantial Completion and Open to Public Use Date:	[INSERT DATE]
Planned SS4A Final Report Date:	[INSERT DATE]

Implementation Schedule (Non-Construction)

Milestone	Schedule Date
Planned NEPA Completion Date:	[INSERT DATE]
Planned Activity Completion Date:	[INSERT DATE]

Planned SS4A Final Report Date:	[INSERT DATE]

3.3 Project's Estimated Costs.

Provide the costs from the grant application. Any changes should be documented in Attachment B.

(a) Eligible Project Costs

Eligible Project Costs	
SS4A Grant Amount:	[$XXX]
Other Federal Funds:	[$XXX]
State Funds:	[$XXX]
Local Funds:	[$XXX]
In-Kind Match:	[$XXX]
Other Funds:	[$XXX]
Total Eligible Project Cost:	[$XXX]

(b) Cost Classification Table – Planning and Demonstration Grants with demonstration activities and Implementation Grants Only

Drafting Instructions: Utilize the descriptions from the SF-424C (https://www.grants.gov/forms/sf-424-family.html) to determine what cost goes in each row.

Commented [USDOT21]: Drafting Instruction: If any of the dates required in 3.2 differ from the dates in the application, each difference must be described in Attachment B.

Commented [JEB22]: Drafting Instruction: Insert a footnote below the table to identify all Other Federal Fund source(s).

Note: Any Recipient that intends to use funding under Title 23, United States Code, should discuss this with the Division Office Lead Point of Contact prior to completing the grant agreement.

Cost Classification	Total Costs	Non-SS4A Previously Incurred Costs	Eligible Costs
Administrative and legal expenses			
Land, structures, rights-of-way, appraisals, etc.			
Relocation expenses and payments			
Architectural and engineering fees			
Other architectural and engineering fees			
Project inspection fees			
Site work			
Demolition and removal			
Construction			
Equipment			
Miscellaneous			
Contingency			
Project Total			

[If no costs are anticipated in a category, remove the row from the table.]

(c) Indirect Costs

Indirect costs are allowable under this Agreement in accordance with 2 CFR part 200 and the Recipient's approved Budget Application. In the event the Recipient's indirect cost rate changes, the Recipient will notify FHWA of the planned adjustment and provide supporting documentation for such adjustment. This Indirect Cost provision does not operate to waive the limitations on Federal funding provided in this document. The Recipient's indirect costs are allowable only insofar as they do not cause the Recipient to exceed the total obligated funding.

ARTICLE 4

RECIPIENT INFORMATION

4.1 Recipient Contact(s).

[Insert information for the person designated as the official contact.]

[enter name]
[enter job title]
[enter organization]
[enter address]
[enter telephone]
[enter email address]

4.2 Recipient Key Personnel.

[Insert name of key personnel who will be responsible for completing the task. Add rows to identify as many key personnel as necessary]

Name	Title or Position
[Insert name]	[insert title]

4.3 USDOT Project Contact(s).

Safe Streets and Roads for All Program Manager
Federal Highway Administration
Office of Safety
HSSA-1, Mail Stop: E71-117
1200 New Jersey Avenue, S.E.
Washington, DC 20590
202-366-2822
SS4A.FHWA@dot.gov

and

Agreement Officer (AO)
Federal Highway Administration
Office of Acquisition and Grants Management
HCFA-33, Mail Stop E62-310
1200 New Jersey Avenue, S.E.
Washington, DC 20590
202-493-2402
HCFASS4A@dot.gov

and

Division Administrator – – [enter name of State]
Agreement Officer's Representative (AOR)
[enter Division Office address]
[enter Division Office telephone]
[enter Division Office email address]

and

[enter name]
[enter State] Division Office Lead Point of Contact
[enter job title]
[enter address]
[enter telephone]
[enter Division Office Email Address]

ARTICLE 5
USDOT ADMINISTRATIVE INFORMATION

5.1 Office for Subaward and Contract Authorization.

USDOT Office for Subaward and Contract Authorization: FHWA Office of Acquisition and Grants Management

SUBAWARDS AND CONTRACTS APPROVAL

Note: See 2 CFR § 200.331, Subrecipient and contractor determinations, for definitions of subrecipient (who is awarded a subaward) versus contractor (who is awarded a contract).

Note: Recipients with a procurement system deemed approved and accepted by the Government or by the Agreement Officer (the "**AO**") are exempt from the requirements of this clause. See 2 CFR 200.317 through 200.327. Note: This clause is only applicable to grants that do not include construction.

In accordance with 2 CFR 200.308(c)(6), unless described in the application and funded in the approved award, the Recipient must obtain prior written approval from the AO for the subaward, transfer, or contracting out of any work under this award above the Simplified Acquisition Threshold. This provision does not apply to the acquisition of supplies, material, equipment, or general support services. Approval will be issued through written notification from the AO or a formal amendment to the Agreement.

The following subawards and contracts are currently approved under the Agreement by the AO. This list does not include supplies, material, equipment, or general support services which are exempt from the pre-approval requirements of this clause.

5.2 Reimbursement Requests

(a) The Recipient may request reimbursement of costs incurred within the budget period of this agreement if those costs do not exceed the amount of funds obligated and are allowable under the applicable cost provisions of 2 C.F.R. Part 200, Subpart E. The Recipient shall not request reimbursement more frequently than monthly.

(b) The Recipient shall use the DELPHI iSupplier System to submit requests for reimbursement to the payment office. When requesting reimbursement of costs incurred or credit for cost share incurred, the Recipient shall electronically submit supporting cost detail with the SF-270 (Request for Advance or Reimbursement) or SF-271 (Outlay Report and Request for Reimbursement for Construction Programs) to clearly document all costs incurred.

(c) The Recipient's supporting cost detail shall include a detailed breakout of all costs incurred, including direct labor, indirect costs, other direct costs, travel, etc., and the Recipient shall identify the Federal share and the Recipient's share of costs. If the Recipient does not provide sufficient detail in a request for reimbursement, the Agreement Officer's Representative (the "**AOR**") may withhold processing that request until the Recipient provides sufficient detail.

(d) The USDOT shall not reimburse costs unless the AOR reviews and approves the costs to ensure that progress on this agreement is sufficient to substantiate payment.

(e) In the rare instance the Recipient is unable to receive electronic funds transfers (EFT), payment by EFT would impose a hardship on the Recipient because of their inability to manage an account at a financial

institution, and/or the Recipient is unable to use the DELPHI iSupplier System to submit their requests for disbursement, the FHWA may waive the requirement that the Recipient use the DELPHI iSupplier System. The Recipient shall contact the Division Office Lead Point of Contact for instructions on and requirements related to pursuing a waiver.

(f) The requirements set forth in these terms and conditions supersede previous financial invoicing requirements for Recipients.

ARTICLE 6
SPECIAL GRANT TERMS

6.1 SS4A funds must be expended within five years after the grant agreement is executed and DOT obligates the funds, which is the budget period end date in section 10.3 of the Terms and Conditions and section 2.4 in this agreement.

6.2. The Recipient demonstrates compliance with civil rights obligations and nondiscrimination laws, including Titles VI of the Civil Rights Act of 1964, the Americans with Disabilities Act (ADA), and Section 504 of the Rehabilitation Act, and accompanying regulations. Recipients of Federal transportation funding will also be required to comply fully with regulations and guidance for the ADA, Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, and all other civil rights requirements.

6.3 SS4A Funds will be allocated to the Recipient and made available to the Recipient in accordance with FHWA procedures.

6.4 The Recipient of a Planning and Demonstration Grant acknowledges that the [Action Plan] [Supplemental Action Plan] will be made publicly available and agrees that it will publish the final [Action Plan] [Supplemental Action Plan] on a publicly available website.

6.5 The Recipient of a Planning and Demonstration Grant that involves a demonstration activity agrees to provide an assessment of each demonstration activity and update the existing Action Plan, which will incorporate the information gathered in the Action Plan's list of projects or strategies and/or inform another part of the existing Action Plan. The Recipient also agrees that demonstration activities are temporary in nature and must be removed and/or ended following the conclusion of the project if the assessment of the demonstration activities does not affirm that the activities provide safety benefits.

6.6 The Recipient of an Implementation Grant agrees to update its Action Plan within two years of the date of this agreement to: align with all Comprehensive Safety Action Plan components in Table 1 of the SS4A FY 2023 NOFO corresponding with any "no" responses in the Self-Certification Eligibility Worksheet; ensure that the Action Plan's safety focus includes all road users, including pedestrians, bicyclists, and motor vehicle safety; and ensure that the Action Plan was last updated not more than three years prior.

6.7 The Recipient acknowledges that it is required to conduct certain environmental analyses and to prepare and submit to FHWA, or State with applicable NEPA Assignment authority, documents required under NEPA, and other applicable environmental statutes and regulations before the Government will obligate funds for Option Phase 1 under this agreement and provide the Recipient with a written notice to proceed with Option Phase 1.

6.8 The Government's execution of this agreement does not in any way constitute pre-approval or waiver of any of the regulations imposed upon Recipient under the applicable Federal rules, regulations and laws regarding SS4A projects undertaken in accordance with the terms and conditions of this agreement.

Commented [USDOT23]: Drafting Instruction: DOT and FHWA will consider whether additional special grant terms are needed on a project-by-project basis. For example, special grant terms may be considered for a project that requires agreements with a railroad. If this SS4A project will be carried out in phases and each phase will require a separate obligation of SS4A funds, please contact the FHWA Office of Acquisition and Grants Management agreement specialist for information about phasing the obligations in this agreement.

Commented [USDOT24]: Drafting Instruction: FHWA will consider whether additional special grant terms are needed on a project-by-project basis. For example, special grant terms may be considered for a project that requires agreements with a railroad.

Commented [U25]: Drafting Instruction: If the grant is not for an action plan or supplemental action plan, please remove clause 6.4 and re-number.

Commented [U26]: Drafting Instructions: If the grant does not include a demonstration activity, please remove clause 6.5 and re-number.

Commented [U27]: Drafting Instructions: If the grant is not an Implementation Grant or is an Implementation Grant that already meets these criteria, please remove clause 6.6 and re-number.

The Recipient shall comply with all applicable Federal requirements before incurring any costs under this agreement.

6.9 There are no other special grant requirements.

Commented [jgr28]: Drafting Instructions: For phased agreements, please include sections 6.7 and 6.8. If this is not a phased grant agreement, please remove clauses 6.7 and 6.8 and re-number.

Commented [jgr29]: Drafting Instruction: Please renumber this clause as appropriate based on which other special grant terms have been included.

ATTACHMENT A
PERFORMANCE MEASUREMENT INFORMATION

Study Area: [Insert description of the project location]
Baseline Measurement Date: [insert date when the Recipient anticipates beginning the construction of the project]
Baseline Report Date: [insert date two months after the Baseline Measurement Date]

Table 1: Performance Measure Table

Measure	Category and Description	Measurement Frequency and Reporting Deadline
Safety Performance [for Implementation Grants and Planning and Demonstration Grants with demonstration activities]	Fatalities: Total annual fatalities in the project location(s)	Annually and within 120 days after the end of the period of performance
Safety Performance [for Implementation Grants and Planning and Demonstration Grants with demonstration activities]	Serious Injuries: Total annual serious injuries in the project location(s) [if available]	Annually and within 120 days after the end of the period of performance
Safety Performance [for Implementation Grants and Planning and Demonstration Grants with demonstration activities]	Crashes by Road User Category: Total annual crashes in the project location(s) broken out by types of roadway users involved (e.g., pedestrians, bicyclists, motorcyclist, passenger vehicle occupant, commercial vehicle occupant)	Annually and within 120 days after the end of the period of performance
Equity [for all Grants]	Percent of Funds to Underserved Communities: Funding amount (of total project amount) benefitting underserved communities, as defined by USDOT	Within 120 days after the end of the period of performance
Costs [for all Grants]	Project Costs: Quantification of the cost of each eligible project carried out using the grant	Within 120 days after the end of the period of performance

Commented [jgr30]: Drafting Instructions: All Recipients must complete the Study Area. Demonstration and Implementation Grant recipients must insert dates for the Baseline Measurement Date and Baseline Report Date, but other planning grant recipients are not required to include the Baseline fields and may delete them. Delete the rows in the performance measure table that do not apply to this grant agreement.

Additional Information: See Section 3 of the SS4A FY 2023 NOFO for details on Reporting. Performance measures are required for all SS4A projects. Budget and recipient performance information will be gathered on a quarterly basis in the SF-425 and Quarterly Performance Progress Report. To fulfill the data collection requirements and in accordance with the USDOT Public Access Plan, award recipients must consider, budget for, and implement appropriate data management, for data and information outputs acquired or generated during the grant. Refer to Article 14 in the Terms and Conditions for additional information.

Commented [USDOT31]: Drafting Instruction: This Baseline Measurement date should be as current as possible before the start of construction in Section 3.2.

Commented [USDOT32]: Drafting Instruction: This Baseline Report Date should be not more than 2 months after the Baseline Measurement Date.

Commented [USDOT33]: Additional Information. See article 14 of the General Terms and Conditions for context on how this table is used to establish the data collection and reporting requirements.

Measure	**Category and Description**	**Measurement Frequency and Reporting Deadline**
Outcomes and Benefits [for Implementation Grants and Planning and Demonstration Grants with demonstration activities]	Quantitative Project Benefits: Quantification of evidence-based projects or strategies implemented (e.g., miles of sidewalks installed, number of pedestrian crossings upgraded, etc.)	Within 120 days after the end of the period of performance
Outcomes and Benefits [for Implementation Grants and Planning and Demonstration Grants with demonstration activities]	Qualitative Project Benefits: Qualitative description of evidence-based projects or strategies implemented (e.g., narrative descriptions, testimonials, high-quality before and after photos, etc.)	Within 120 days after the end of the period of performance
Outcomes and Benefits [for Implementation Grants and Planning and Demonstration Grants with demonstration activities]	Project Location(s): GIS/geo coordinate information identifying specific project location(s)	Within 120 days after the end of the period of performance
Lessons Learned and Recommendations [for all Grants]	Lessons Learned and Recommendations: Description of lessons learned and any recommendations relating to future projects or strategies to prevent death and serious injury on roads and streets.	Within 120 days after the end of the period of performance

ATTACHMENT B
CHANGES FROM APPLICATION

Describe all material differences between the scope, schedule, and budget described in the application and the scope, schedule, and budget described in Article 3. The purpose of Attachment B is to clearly and accurately document any differences in scope, schedule, and budget to establish the parties' knowledge and acceptance of those differences. See Article 11 for the Statement of Work, Schedule, and Budget Changes. If there are no changes, please insert "N/A" in Section 3.3 of the table.

Scope:

Schedule:

Budget:

The table below provides a summary comparison of the project budget.

	Application		**Section 3.3**	
Fund Source	$	%	$	%
Previously Incurred Costs (Non-Eligible Project Costs)				
Federal Funds	0	0	0	0
Non-Federal Funds	0	0	0	0
Total Previously Incurred Costs	0	0	0	0
Future Eligible Project Costs				
SS4AFunds		80		80
Other Federal Funds		0		0
Non-Federal Funds		20		20
Total Future Eligible Project Costs		100		100
Total Project Costs		100		100

ATTACHMENT C
RACIAL EQUITY AND BARRIERS TO OPPORTUNITY

1. Efforts to Improve Racial Equity and Reduce Barriers to Opportunity.

The Recipient states that rows marked with "X" in the following table align with the application:

	A racial equity impact analysis has been completed for the Project. *(Identify a report on that analysis or, if no report was produced, describe the analysis and its results in the supporting narrative below.)*
	The Recipient or a project partner has adopted an equity and inclusion program/plan or has otherwise instituted equity-focused policies related to project procurement, material sourcing, construction, inspection, hiring, or other activities designed to ensure racial equity in the overall delivery and implementation of the Project. *(Identify the relevant programs, plans, or policies in the supporting narrative below.)*
	The Project includes physical-barrier-mitigating land bridges, caps, lids, linear parks, and multimodal mobility investments that either redress past barriers to opportunity or that proactively create new connections and opportunities for underserved communities that are underserved by transportation. *(Identify the relevant investments in the supporting narrative below.)*
	The Project includes new or improved walking, biking, and rolling access for individuals with disabilities, especially access that reverses the disproportional impacts of crashes on people of color and mitigates neighborhood bifurcation. *(Identify the new or improved access in the supporting narrative below.)*
	The Project includes new or improved freight access to underserved communities to increase access to goods and job opportunities for those underserved communities. *(Identify the new or improved access in the supporting narrative below.)*
	The Recipient has taken other actions related to the Project to improve racial equity and reduce barriers to opportunity, as described in the supporting narrative below.
	The Recipient has not yet taken actions related to the Project to improve racial equity and reduce barriers to opportunity but intends to take relevant actions described in the supporting narrative below.
	The Recipient has not taken actions related to the Project to improve racial equity and reduce barriers to opportunity and will not take those actions under this award.

Commented [USDOT34]: Drafting Instruction: Insert an "X" in the left column of one or more rows of this table for each effort included in your application. For each row marked, follow the relevant instructions describing what information should be placed in the supporting narrative.

Commented [USDOT35]: Drafting Instruction: If this row is marked, the Supporting Narrative must describe relevant activities that will be completed before construction begins. If it is the only row marked, a critical milestone for completing those activities should be proposed at section 3.2.

2. Supporting Narrative.

[Insert supporting text, as described in the table above.]

Commented [USDOT37]: Drafting Instruction: This narrative should be only if necessary to address the prompts for the checked rows in the preceding table.

ATTACHMENT D
CLIMATE CHANGE AND ENVIRONMENTAL JUSTICE IMPACTS

Commented [jgr38]: Additional Information. FY 2023 SS4A NOFO section F.2.i requires each applicant selected for SS4A grant funding must demonstrate effort to consider climate change and environmental justice impacts as described in Section A. Projects that have not sufficiently considered climate change and environmental justice in their planning, as determined by the Department, will be required to do so before receiving funds, consistent with Executive Order 14008, Tackling the Climate Crisis at Home and Abroad (86 FR 7619).

Commented [USDOT39]: Drafting Instruction: Insert an "X" in the left column of one or more rows of this table for each effort included in your application. For each row marked, follow the relevant instructions describing what information should be placed in the supporting narrative.

1. Consideration of Climate Change and Environmental Justice Impacts.

The Recipient states that rows marked with "X" in the following table align with the application:

	The Project directly supports a Local/Regional/State Climate Action Plan that results in lower greenhouse gas emissions. *(Identify the plan in the supporting narrative below.)*
	The Project directly supports a Local/Regional/State Equitable Development Plan that results in lower greenhouse gas emissions. *(Identify the plan in the supporting narrative below.)*
	The Project directly supports a Local/Regional/State Energy Baseline Study that results in lower greenhouse gas emissions. *(Identify the plan in the supporting narrative below.)*
	The Recipient or a project partner used environmental justice tools, such as the EJScreen, to minimize adverse impacts of the Project on environmental justice communities. *(Identify the tool(s) in the supporting narrative below.)*
	The Project supports a modal shift in freight or passenger movement to reduce emissions or reduce induced travel demand. *(Describe that shift in the supporting narrative below.)*
	The Project utilizes demand management strategies to reduce congestion, induced travel demand, and greenhouse gas emissions. *(Describe those strategies in the supporting narrative below.)*
	The Project incorporates electrification infrastructure, zero-emission vehicle infrastructure, or both. *(Describe the incorporated infrastructure in the supporting narrative below.)*
	The Project supports the installation of electric vehicle charging stations. *(Describe that support in the supporting narrative below.)*
	The Project promotes energy efficiency. *(Describe how in the supporting narrative below.)*
	The Project serves the renewable energy supply chain. *(Describe how in the supporting narrative below.)*
	The Project improves disaster preparedness and resiliency *(Describe how in the supporting narrative below.)*
	The Project avoids adverse environmental impacts to air or water quality, wetlands, and endangered species, such as through reduction in Clean Air Act criteria pollutants and greenhouse gases, improved stormwater management, or improved habitat connectivity. *(Describe how in the supporting narrative below.)*
	The Project repairs existing dilapidated or idle infrastructure that is currently causing environmental harm. *(Describe that infrastructure in the supporting narrative below.)*
	The Project supports or incorporates the construction of energy- and location-efficient buildings. *(Describe how in the supporting narrative below.)*

	The Project includes recycling of materials, use of materials known to reduce or reverse carbon emissions, or both. *(Describe the materials in the supporting narrative below.)*
	The Recipient has taken other actions to consider climate change and environmental justice impacts of the Project, as described in the supporting narrative below.
	The Recipient has not yet taken actions to consider climate change and environmental justice impacts of the Project but will take relevant actions described in the supporting narrative below.
	The Recipient has not taken actions to consider climate change and environmental justice impacts of the Project and will not take those actions under this award.

Commented [USDOT40]: Drafting Instruction: If this row is marked, the Supporting Narrative must describe relevant activities that will be completed before construction begins. If it is the only row marked, a critical milestone for completing those activities should be proposed at section 3.2.

2. Supporting Narrative.

[Insert supporting text, as described in the table above.]

Commented [USDOT42]: Drafting Instruction: This narrative should be only if necessary to address the prompts for the checked rows in the preceding table.

ATTACHMENT E
LABOR AND WORKFORCE

1. Efforts to Support Good-Paying Jobs and Strong Labor Standards

The Recipient states that rows marked with "X" in the following table align with the application:

	The Recipient demonstrate, to the full extent possible consistent with the law, an effort to create good-paying jobs with the free and fair choice to join a union and incorporation of high labor standards. *(Identify the relevant agreements and describe the scope of activities they cover in the supporting narrative below.)*
	The Recipient or a project partner has adopted the use of local and economic hiring preferences in the overall delivery and implementation of the Project. *(Describe the relevant provisions in the supporting narrative below.)*
	The Recipient or a project partner has adopted the use of registered apprenticeships in the overall delivery and implementation of the Project. *(Describe the use of registered apprenticeship in the supporting narrative below.)*
	The Recipient or a project partner will provide training and placement programs for underrepresented workers in the overall delivery and implementation of the Project. *(Describe the training programs in the supporting narrative below.)*
	The Recipient or a project partner will support free and fair choice to join a union in the overall delivery and implementation of the Project by investing in workforce development services offered by labor-management training partnerships or setting expectations for contractors to develop labor-management training programs. *(Describe the workforce development services offered by labor-management training partnerships in the supporting narrative below.)*
	The Recipient or a project partner will provide supportive services and cash assistance to address systemic barriers to employment to be able to participate and thrive in training and employment, including childcare, emergency cash assistance for items such as tools, work clothing, application fees and other costs of apprenticeship or required pre-employment training, transportation and travel to training and work sites, and services aimed at helping to retain underrepresented groups like mentoring, support groups, and peer networking. *(Describe the supportive services and/or cash assistance provided to trainees and employees in the supporting narrative below.)*
	The Recipient or a project partner has documented agreements or ordinances in place to hire from certain workforce programs that serve underrepresented groups. *(Identify the relevant agreements and describe the scope of activities they cover in the supporting narrative below.)*

Commented [USDOT43]: Additional Information. NOFO section F.2.ii require project to sufficiently consider job quality and labor rights, standards, and protections in their planning, as determined by the Department, before receiving funds for construction. The purpose of this attachment is to document DOT's basis for determining the considerations were sufficient for this project. See also article 18 of the General Terms and Conditions.

Commented [USDOT44]: Additional Information. NOFO section F.2.vi requires each applicant selected for SS4A grant funding to demonstrate, to the full extent possible consistent with the law, an effort to create good-paying jobs with the free and fair choice to join a union and incorporation of high labor standards. To the extent that applicants have not sufficiently considered job quality and labor rights in their planning, as determined by the Department of Labor, the applicants will be required to do so before receiving funds, consistent with Executive Order 14025, Worker Organizing and Empowerment (86 FR 22829), and Executive Order 14052, Implementation of the Infrastructure Investment and Jobs Act (86 FR 64335).

Commented [USDOT45]: Drafting Instruction: Insert an "X" in the left column of one or more rows of this table for each effort included in your application. For each row marked, follow the relevant instructions describing what information should be placed in the supporting narrative.

	The Recipient or a project partner participates in a State/Regional/Local comprehensive plan to promote equal opportunity, including removing barriers to hire and preventing harassment on work sites, and that plan demonstrates action to create an inclusive environment with a commitment to equal opportunity, including: a. affirmative efforts to remove barriers to equal employment opportunity above and beyond complying with Federal law; b. proactive partnerships with the U.S. Department of Labor's Office of Federal Contract Compliance Programs to promote compliance with EO 11246 Equal Employment Opportunity requirements and meet the requirements as outlined in the Notice of Funding Opportunity to make good faith efforts to meet the goals of 6.9 percent of construction project hours being performed by women and goals that vary based on geography for construction work hours and for work being performed by people of color; c. no discriminatory use of criminal background screens and affirmative steps to recruit and include those with former justice involvement, in accordance with the Fair Chance Act and equal opportunity requirements; d. efforts to prevent harassment based on race, color, religion, sex, sexual orientation, gender identity, and national origin; e. training on anti-harassment and third-party reporting procedures covering employees and contractors; and f. maintaining robust anti-retaliation measures covering employees and contractors. *(Describe the equal opportunity plan in the supporting narrative below.)*
	The Recipient has taken other actions related to the Project to create good-paying jobs with the free and fair choice to join a union and incorporate strong labor standards. *(Describe those actions in the supporting narrative below.)*
	The Recipient has not yet taken actions related to the Project to create good-paying jobs with the free and fair choice to join a union and incorporate strong labor standards but, before beginning construction of the project, will take relevant actions described in the supporting narrative below.
	The Recipient has not taken actions related to the Project to improving good-paying jobs and strong labor standards and will not take those actions under this award.

Commented [USDOT46]: Drafting Instruction: If this row is marked, the Supporting Narrative must describe relevant activities that will be completed before construction begins. If it is the only row marked, a critical milestone for completing those activities should be proposed at section 3.2.

2. Supporting Narrative.

[Insert supporting text, as described in the table above.]

Commented [U48]: Drafting Instruction: This narrative should be only if necessary to address the prompts for the checked rows in the preceding table.

ATTACHMENT F
CRITICAL INFRASTRUCTURE SECURITY AND RESILIENCE

Commented [jgr49]: **Drafting Instructions:** Only complete this attachment if the grant includes the purchase of Information Technology and/or Operational Technology.

Additional Information. SS4A FY 2023 NOFO section F.2.viii requires each applicant selected for SS4A grant funding to demonstrate, prior to the signing of the grant agreement, efforts to consider and address physical and cyber security risks relevant to the transportation mode and type and scale of the activities. Award recipients that have not appropriately considered and addressed physical and cyber security and resilience in their planning, design, and oversight, as determined by the Department and the Department of Homeland Security, will be required to do so before receiving Implementation Grant funds for construction, consistent with Presidential Policy Directive 21, Critical Infrastructure Security and Resilience and the National Security Presidential Memorandum on Improving Cybersecurity for Critical Infrastructure Control Systems. Additionally, funding recipients must follow 2 CFR § 200.216 and the prohibition on certain telecommunications and video surveillance services or equipment.

1. Efforts to strengthen the Security and Resilience of Critical Infrastructure against both Physical and Cyber Threats.

The Recipient states that rows marked with "X" in the following table are accurate:

	The Recipient demonstrates, prior to the signing of this agreement, effort to consider and address physical and cyber security risks relevant to the transportation mode and type and scale of the activities.
	The Recipient appropriately considered and addressed physical and cyber security and resilience in the planning, design and oversight of the project, as determined by the Department and the Department of Homeland Security.
	For projects in floodplains: The Recipient appropriately considered whether the project was upgraded consistent with the Federal Flood Risk Management Standard, to the extent consistent with current law, in Executive Order 14030, Climate-Related Financial Risk (86 FR 27967), and Executive Order 13690, Establishing a Federal Flood Risk Management Standard and a Process for Further Solicit and Considering Stakeholder Input (80 FR 6425).

2. Supporting Narrative.

[Insert supporting text, as described in the table above.]

Commented [U50]: **Drafting Instruction:** This narrative should be only if necessary to address the prompts for the checked rows in the preceding table.

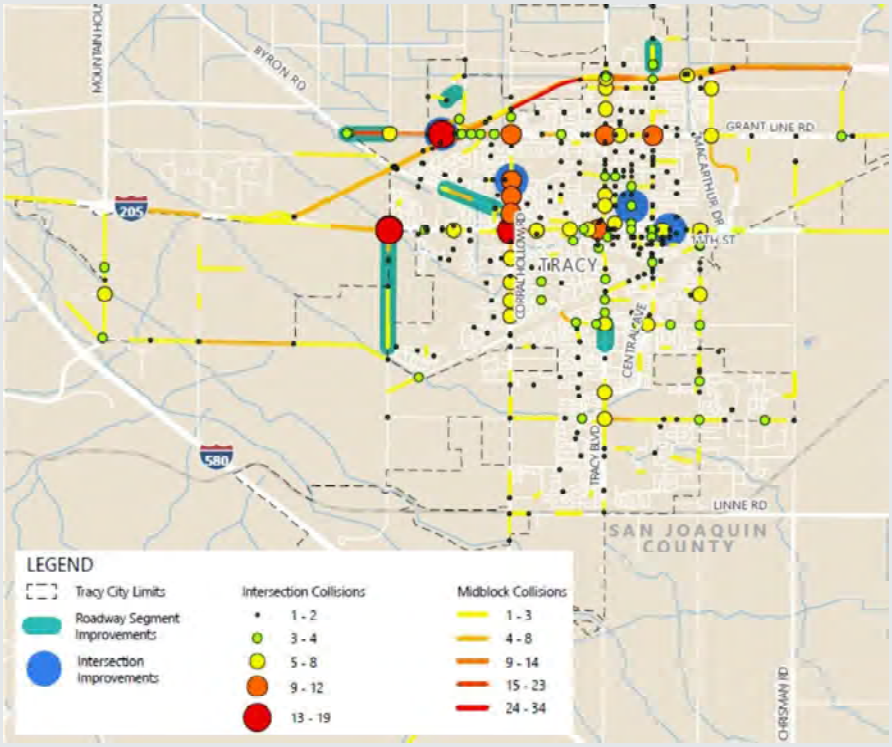
Citywide Systemic Safety Enhancements Project

Applicant: City of Tracy

Tracy, California

SS4A Award: $3,764,800

Project Description



The City of Tracy, located east of the Bay Area in California, is awarded funding to improve 10 locations along roadway segments and intersections with high concentrations of collisions.

Tracy's Local Road Safety Plan (LRSP) identified lane departure collisions and vulnerable roadway users as two of the emphasis areas for the City. The project addresses these two emphasis areas through low-cost safety countermeasures, including edge line improvements, striping and signage, bicycle lanes, multi-use paths, pedestrian refuge islands, and high-visibility crosswalks. Implementing countermeasures city-wide at high-injury and high-stress locations is a highly cost-effective way to reduce fatality and severe-injury collisions. The project includes supplemental planning activities to update the LRSP and engage the community.

APPROVED AS TO FORM AND LEGALITY

_____
CITY ATTORNEY'S OFFICE

TRACY CITY COUNCIL

RESOLUTION 2024-_____

---

(1) APPROVING A 20% LOCAL MATCH FOR THE SAFE STREETS AND ROADS FOR ALL (SS4A) GRANT FROM THE UNITED STATES DEPARTMENT OF TRANSPORTATION;
(2) ACCEPTING THE SS4A GRANT IN THE AMOUNT OF $3,764,800;
(3) APPROPRIATING TO CAPITAL IMPROVEMENT PROJECT 73201 (A) $941,200 IN FUNDS FROM GAS TAXES (FUND 245) TO PROVIDE FOR THE LOCAL MATCH AND (B) THE TOTAL SS4A GRANT FUNDS, FOR A TOTAL PROJECT AMOUNT OF $4,706,000; AND
(4) AUTHORIZING THE CITY MANAGER TO EXECUTE THE GRANT AGREEMENT AND OTHER DOCUMENTS TO EFFECTUATE THE GRANT.

WHEREAS, the US Department of Transportation (DOT) released a Notice of Funding Opportunity to solicit applications for Safe Streets and Roads for All (SS4A) Grants for Fiscal Year 2023; and

WHEREAS, the City of Tracy (City) applied for this grant opportunity for the Citywide Systemic Safety Enhancements Project, Capital Improvement Project (CIP) 73201 (Project), on July 10, 2023; and

WHEREAS, the Project includes safety improvements at 10 locations along roadway segments and intersections with high concentrations of collisions. The City Council adopted a Local Roadway and Safety Plan (LRSP) in 2023, through Resolution No. 2023-034, which established a framework to identify, analyze, and develop traffic safety enhancements on the City's transportation system. During the application process, the Fatality Analysis Reporting System (FARS), and Annual Report File (ARF) were reviewed to determine fatalities within the City from 2016 to 2021. The University of California Berkeley Transportation Injury Mapping System (TIMS) was used to identify the locations with high collision rates within the City. Using FARS, ARF, and TIMS, the City was able to narrow down the locations from the LRSP to the 10 identified locations in the SS4A Grant application. The improvements include edge line improvements, striping and signage, bicycle lanes, multi-use paths, pedestrian refuge islands and high-visibility crosswalks; and

WHEREAS, on December 14, 2023, staff was informed that the City's application was selected for an award in the amount of $3,764,800; and

WHEREAS, the SS4A grant accounts for 80% of the total Project cost and requires a local match of 20%; and

WHEREAS, staff requests that the City Council accept the SS4A grant award and appropriate funds from gas taxes (Fund 245) for the 20% local match for the Project in the amount of $941,200; and

WHEREAS, the SS4A Grant will require a grant agreement with the DOT and an amendment to the agreement after each phase of the Project is complete; and

WHEREAS, the amendments are required by the DOT to memorialize actual funds spent in each phase and to give the City an opportunity to change timelines as needed; and

WHEREAS, the Project includes 3 phases: the Base Phase includes environmental review, supplemental planning, and preliminary design, Phase 1 includes final design and right-of-way, and Phase 2 includes construction of the Project; and

WHEREAS, staff anticipates the need to execute one agreement and two amendments to the agreement during the grant phases; and

WHEREAS, for administrative efficiency, staff requests that the City Council provide authorization for the City Manager to execute all documents related to this grant as long as the documents are in acceptable form to the City Attorney's Office and within the Project budget as approved by the City Council; now, therefore, be it

RESOLVED: That the City Council of the City of Tracy hereby approves a 20% local match for the Safe Streets and Roads For All (SS4A) Grant from the United States Department of Transportation; and be it

FURTHER RESOLVED: That the City Council hereby accepts a Safe Streets and Roads for All grant award of $3,764,800; and be it

FURTHER RESOLVED: That the City Council hereby appropriates to Capital Improvement Project 73201 (A) $941,200 in funds from gas taxes (Fund 245) to provide for the local match and (B) the total SS4A grant funds, for a total project amount of $4,706,000; and be it

FURTHER RESOLVED: That the City Council hereby authorizes the City Manager to execute the Grant Agreement and other grant-related documents as long as the documents are in acceptable form to the City Attorney's Office and within the Project budget approved by the City Council; and be it

FURTHER RESOLVED: That the Project is categorically exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15301, pertaining to minor alterations to existing facilities.

* * * * * * * * * * * * * *

The foregoing Resolution 2024-_____ was adopted by the Tracy City Council on the 15th day of October 2024 by the following vote:

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

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

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

October 15, 2024

Agenda Item 1.E

RECOMMENDATION

Staff recommends that the City Council adopt a Resolution approving Amendment No. 4 to the Professional Services Agreement with Terracare Associates, (1) Increasing the annual not-to-exceed amount to $1,600,000, for streetscapes, park, and channelway landscape maintenance services; and (2) Extending the term for an additional year; and (3) Amending the billing rates by the CPI of 2.7% to account for inflationary increases

EXECUTIVE SUMMARY

This agenda item seeks adoption of a Resolution by the City Council approving an amendment to the Professional Services Agreement (PSA) with Terracare Associates (Terracare) increasing the annual not-to-exceed amount to $1,600,000 and extending the term for an additional one year for maintenance of landscaping within the City of Tracy's (City) streetscapes, parks, and channelways. Staff is also requesting to amend the billing rates by the CPI of 2.7% to account for inflationary increases. The City Council approved the original PSA on December 1, 2020, pursuant to Resolution 2020-200 with an initial term of two years and an option to extend for additional five years.

In 2022, through Amendment No. 1, the annual not-to-exceed amount was increased and set at $1,230,000 to ensure there was no interruption in landscaping services when new developments requiring landscaping services were accepted. The PSA has been amended twice after that by the City Manager approving Amendments No. 2 and No. 3, extending the term and end date and adjusting rates. Since 2022, when the annual not-to-exceed amount was increased, the City has accepted several new developments requiring an expansion of services for maintenance of new areas. To ensure there is no interruption of service, staff is requesting the City Council to approve Amendment No. 4.

BACKGROUND AND LEGISLATIVE HISTORY

In August 2020, staff issued a Request for Proposals (RFP) for landscape, park and channelway maintenance. Staff received a total of four (4) proposals and evaluated the proposals and conducted interviews. Terracare was determined to be the most responsive and met the City's needs. After detailed discussions with Terracare, the scope of work was negotiated, and a not-to-exceed amount was established. Language in the PSA provides for the option to add new areas, adjust service levels according to funding, have Terracare perform clean-up work, and minor landscape renovation or improvement projects as requested by the City.

In December 2020, through Resolution 2020-200, the City Council approved a two (2) year PSA with Terracare for an annual not-to-exceed amount of $900,000 and authorizing the City Manager to execute extensions for an additional five years and make minor amendments to the PSA.

In February 2022, the City Council approved Amendment No.1 to the PSA to amend the annual not-to-exceed amount to $1,230,000. This increase was to ensure timely and uninterrupted services when the City accepts new developments requiring landscaping services.

Subsequently, in December 2022 and February 2024, the City Manager approved Amendments No. 2 and No. 3, respectively extending the term end date and adjusting rates as permitted by the PSA, which did not require City Council approval.

ANALYSIS

The Parks, Recreation, and Community Services Department is responsible for the maintenance of landscaping within the City's streetscapes, parks, and channelways. This work is performed by a combination of both in-house staff and contracted services. Terracare provides basic landscape maintenance services, specifically for the 41 Zones in the Tracy Consolidated Landscape Maintenance District (LMD), Community Facilities District's (CFD), and a portion of the General Fund consisting of 11th Street and Lammers. At the time the PSA was approved, the estimated not-to-exceed amount was set at $900,000. Subsequently, additional developments were accepted by the City requiring expansion of landscape services into these new areas and the annual not-to-exceed amount was increased to $1,230,000 in 2022.

Since 2022, when the not-to-exceed amount was last adjusted, the City has accepted Western Park, Orchard Park, Gene Birk Park, Raymond P. Morelos Jr. Park, Tracy Hills 1A Basin, Tracy Hills Phase 1B Basin, Hillview Basin, and approximately 60,000 square feet of streetscapes. As growth continues at a rapid pace, primarily in the Tracy Hills and Ellis developments, so has the increase in new public landscaping and parks. It should also be noted that staff is anticipating the City will be accepting additional new parks, basins, and streetscapes in the next two (2) years in new development areas.

To ensure there is no interruption of service when the City accepts new developments, staff is recommending approval of Amendment No. 4 (Attachment A): (1) establishing an increased annual not-to-exceed amount of $1,600,000; (2) extending the term for an addition year pursuant to section 2.2 of the Agreement; and (3) amending the billing rates by the CPI of 2.7% to account for inflationary increases pursuant to section 3.4 of the Agreement. This Amendment will provide staff with the resources to continue covering all existing landscape services under agreement, new parks, basins, and streetscapes the City accepts in the near future, minor landscaping improvements, and annual inflationary rate increases permitted in the PSA. In 2025, staff anticipates releasing a Request For Proposals (RFP) for landscaping services.

FISCAL IMPACT

This Amendment will be funded from LMD and CFD Funds (Fd.271, 272, 273), and the General Fund (Fd.101). As new developments are accepted and additional funds are required for landscaping, staff will comply with the City's budget augmentation process.

It is important to note that the majority of the new developments requiring landscape services will be in the Tracy Hills and Ellis developments and will be funded through their respective CFD, Fund 272 and 273.

COORDINATION

This report was prepared by the Parks, Recreation, and Community Services Department in coordination with the Finance Department.

CALIFORNIA ENVIRONMENTAL QUALITY ACT

This item is exempt from review under the California Environmental Quality Act (California Public Resources Code §§ 21000, et seq., “CEQA”) and CEQA regulations (14 California Code of Regulations §§ 15000, et seq.; “CEQA Guidelines”) in that it is not a "project" for purposes of CEQA (as defined by CEQA Guidelines §15378) in that it involves the maintenance of existing areas and such maintenance will not result in a direct or indirect physical change in the environment (CEQA Guidelines §§15378(b)(5)). Further, even if this item was deemed a "project," and therefore subject to CEQA, the item would be exempt as it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment (CEQA Guidelines §15061(b)(3)).

STRATEGIC PLAN

This agenda item is consistent with the City Council’s adopted Quality of Life strategies.

ACTION REQUESTED OF THE CITY COUNCIL

Staff recommends that the City Council adopt a Resolution approving Amendment No. 4 to the Professional Services Agreement with Terracare Associates, (1) Increasing the annual not-to-exceed amount to $1,600,000, for streetscapes, park, and channelway landscape maintenance services; and (2) Extending the term for an additional year; and (3) Amending the billing rates by the CPI of 2.7% to account for inflationary increases**.**

Prepared by: Nilo Velazquez, Management Analyst II

Reviewed by: Richard Joaquin, Acting Asst. Director of Parks, Recreation, and Community Services
Brian MacDonald, Director of Parks, Recreation, and Community Services
Sara Castro, Director of Finance
Bijal Patel, City Attorney
Arturo Sanchez, Assistant City Manager

Approved by: Midori Lichtwardt, City Manager

Attachments:

Attachment A: Amendment No. 4

Docusign Envelope ID: 3FEC93F1-6211-49FD-BC44-0F6A071FC264

CITY OF TRACY
AMENDMENT NO. 4 TO
PROFESSIONAL SERVICES AGREEMENT WITH TERRACARE ASSOCIATES, LLC, A WHOLLY OWNED SUBSIDARY OF MONARCH LANDSCAPING, INC.
FOR LANDSCAPE, PARKS AND CHANNELWAY MAINTENANCE

This Amendment No. 4 (**Amendment**) to the Professional Services Agreement for landscape, parks, and channelway maintenance is entered into between the City of Tracy, a municipal corporation (**City**), and Terracare Associates, LLC, a wholly owned subsidiary of Monarch Landscaping, Inc., 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 for landscape, parks, and channelway maintenance services (**Agreement**), which was approved by the City Council on December 1, 2020, under Resolution No. 2020-200.

B. On March 2, 2022, the City Council approved Amendment No. 1 to the Agreement, increasing the not-to-exceed amount, under Resolution No. 2022-015.

C. On December 21, 2022, the City Manager approved Amendment No. 2 to the Agreement, extending the term of the Agreement until December 31, 2023, and increasing pay rates.

D. On February 15, 2024, the City Manager approved Amendment No. 3 to the Agreement, extending the term of the Agreement until December 31, 2024, and increasing pay rates.

E. The City added additional landscape areas, including parks, to its inventory that are serviced by Consultant.

F. The City desires to increase the not-to-exceed amount to account for new landscape areas and address inflationary costs.

G. The City desires to extend the term for an additional year, establishing a new term date of December 31, 2025, and amend the billing rates per Exhibit B-3 attached hereto.

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. Not to Exceed Amount. Section 3.1 is hereby amended and replaced in its entirety to read as follows:

   > Consultant's total compensation under this Agreement shall not exceed $1,600,000 annually. Consultant's billing rates shall cover all costs and expenses for Consultant's performance of this Agreement. No work shall be performed by

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Consultant in excess of the total compensation amount provided in this section without the City's prior written approval.

B. Term. Section 2.1 is herby amended and replaced in its entirety to read as follows:

The term of this Agreement shall be from January 1, 2025, and end on December 31, 2025, unless terminated in accordance with Section 6.

C. Compensation. Section 3 is hereby amended and replaced in its entirety to read as follows:

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

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: _____
Midori Lichtwardt

Title: City Manager

Date: _____

Attest:

By: _____
Adrianne Richardson, City Clerk

Approves as to from

By: _____
Bijal M. Patel, City Attorney

Terracare Associates, LLC.

By: DocuSigned by: Justin Stewart C0ABBBB0A0434A0...
Justin Stewart

Title: Vice President

Date: 9/30/2024 | 2:19 PM MDT

By: Signed by: Mark Neas D8A347BCD246429...
Mark Neas

Title: Chief Operating Officer

Date: 9/30/2024 | 2:14 PM PDT

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Exhibit B-3
Compensation New Area

New Area – Service Level A			
Base Proposal			
Turf (s/f)	Shrub (s/f)	Median (s/f)	Weed Abatement (s/f)
$0.098	$0.152	$0.175	$0.033

New Area – Service Level B			
Base Proposal			
Turf (s/f)	Shrub (s/f)	Median (s/f)	Weed Abatement (s/f)
$0.066	$0.120	$0.147	$0.033

New Area – Service Level C			
Base Proposal			
Turf (s/f)	Shrub (s/f)	Median (s/f)	Weed Abatement (s/f)
$0.043	$0.109	$0.131	$0.033

New Area – Tracy Hills / Ellis			
Base Proposal			
Turf (s/f)	Shrub (s/f)	Median (s/f)	Weed Abatement (s/f)
$0.087	$0.142	$0.164	$0.033

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Exhibit B-3
Compensation Service Levels

	Monthly			Yearly		
Zone	**Service Level A**	**Service Level B**	**Service Level C**	**Service Level A**	**Service Level B**	**Service Level C**
LMZ01	$203.88	$102.07	$55.35	$2,446.61	$1,224.89	$664.21
LMZ02	$349.14	$218.25	$161.67	$4,189.70	$2,619.04	$1,940.02
LMZ03	$9,184.77	$7,297.00	$5,603.96	$110,217.22	$87,564.04	$67,247.52
LMZ04	$16.64	$17.85	$8.65	$199.69	$214.22	$103.82
LMZ05						
LMZ06						
LMZ07	$8,119.46	$5,464.66	$4,586.58	$97,433.58	$65,575.91	$55,038.99
LMZ08	$1,492.27	$1,017.71	$823.17	$17,907.27	$12,212.50	$9,878.07
LMZ09	$10,325.43	$6,833.03	$5,595.02	$123,905.11	$81,996.31	$67,140.28
LMZ10	$4,565.29	$2,949.17	$2,558.38	$54,783.48	$35,389.99	$30,700.60
LMZ11	$216.75	$115.46	$65.71	$2,600.99	$1,385.54	$788.52
LMZ12	$1,769.82	$1,231.18	$1,039.56	$21,237.86	$14,774.19	$12,474.70
LMZ13	$2,122.46	$1,345.15	$1,061.78	$25,469.53	$16,141.76	$12,741.42
LMZ14	$1,451.78	$872.44	$662.89	$17,421.41	$10,469.30	$7,954.71
LMZ15	$6,922.37	$4,565.60	$3,698.74	$83,068.38	$54,787.24	$44,384.85
LMZ16	$1,157.10	$676.44	$482.22	$13,885.22	$8,117.34	$5,786.60
LMZ17	$3,503.30	$2,203.00	$1,814.55	$42,039.65	$26,435.98	$21,774.62
LMZ18	$2,242.27	$1,460.12	$1,166.62	$26,907.28	$17,521.47	$13,999.39
LMZ19	$3,250.38	$2,373.87	$2,072.98	$39,004.50	$28,486.39	$24,875.79
LMZ20	$534.55	$330.90	$247.37	$6,414.62	$3,970.74	$2,968.43
LMZ21	$1,504.01	$811.10	$560.03	$18,048.16	$9,733.24	$6,720.37
LMZ22	$511.43	$351.63	$284.57	$6,137.11	$4,219.56	$3,414.79
LMZ23	$545.26	$349.73	$269.93	$6,543.13	$4,196.70	$3,239.17
LMZ24	$1,375.39	$749.31	$492.74	$16,504.65	$8,991.72	$5,912.83
LMZ25						
LMZ26	$5,069.17	$3,061.95	$2,379.41	$60,830.01	$36,743.38	$28,552.87
LMZ27	$416.68	$321.62	$272.64	$5,000.16	$3,859.47	$3,271.63
LMZ28	$753.92	$449.49	$320.37	$9,047.02	$5,393.83	$3,844.41
LMZ29	$2,512.09	$1,706.72	$1,400.23	$30,145.12	$20,480.64	$16,802.73
LMZ30	$777.24	$474.94	$354.99	$9,326.86	$5,699.24	$4,259.86
LMZ31						
LMZ32						
LMZ33	$412.99	$254.35	$192.26	$4,955.89	$3,052.22	$2,307.14
LMZ34	$760.61	$590.38	$510.56	$9,127.30	$7,084.60	$6,126.77
LMZ35	$1,410.45	$857.31	$647.86	$16,925.43	$10,287.72	$7,774.30
LMZ36						
LMZ37						
LMZ40	$181.71	$96.49	$56.29	$2,180.48	$1,157.90	$675.51
LMZ41	$176.62	$89.46	$48.55	$2,119.44	$1,073.52	$582.62
LMZ42	$344.79	$208.57	$153.81	$4,137.43	$2,502.87	$1,845.69
LMZ43	$248.48	$149.33	$103.30	$2,981.72	$1,791.96	$1,239.56
Total	**$74,428.50**	**$49,596.28**	**$39,752.73**	**$893,142.02**	**$595,155.42**	**$477,032.79**
Channel Ways	**Monthly**			**Yearly**		
Zone	**Service Level A**	**Service Level B**	**Service Level C**	**Service Level A**	**Service Level B**	**Service Level C**
LMZ01	$584.06	$257.89	$222.92	$ 7,008.70	$ 3,094.65	$ 2,674.99
LMZ03	$1,868.57	$1,636.70	$1,601.72	$ 22,422.86	$ 19,640.40	$ 19,220.64
LMZ07	$1,422.17	$1,210.33	$1,175.35	$ 17,066.07	$ 14,523.99	$ 14,104.23
LMZ08	$1,226.06	$1,022.68	$987.70	$ 14,712.71	$ 12,272.13	$ 11,852.37
LMZ09	$3,709.25	$2,752.81	$2,717.83	$ 44,510.98	$ 33,033.66	$ 32,613.90
LMZ10	$1,264.35	$1,060.97	$1,025.99	$ 15,172.21	$ 12,731.63	$ 12,311.87
LMZ26	$1,119.45	$922.70	$887.72	$ 13,433.34	$ 11,072.38	$ 10,652.62
Total	**$11,193.91**	**$8,864.07**	**$8,619.22**	**$134,326.88**	**$106,368.85**	**$103,430.62**
Summary Total	**$85,622.41**	**$58,460.36**	**$48,371.95**	**$1,027,468.90**	**$701,524.26**	**$580,463.41**
Other	**Monthly**			**Yearly**		
Location	**Amount**			**Amount**		
Animal Shelter	$517.53			$6,210.40		
GF Parking Lots	$1,442.55			$17,310.66		
Transit Parking	$1,237.72			$14,852.69		
Median	$106.72			$1,280.61		
Walls	$1,365.45			$16,385.43		
GF 38	$5,200.97			$62,411.60		
Ellis	$3,969.42			$47,633.00		
City / Tracy Hills	$19,017.16			$228,205.92		

Docusign Envelope ID: 3FEC93F1-6211-49FD-BC44-0F6A071FC264

Exhibit B-3
Compensation Extra Work

Labor*	Regular	Overtime	Holidays Double Time
Supervisor	$87.16	$130.75	$174.33
Leadman	$81.72		
Crew Leader	$76.27		
Laborer	$70.82		

Equipment: Pickup, Utility Bed, Flatbed/Spray Rig, Tractor, Tractor Implement, Large Trailer, Small Trailer, Large Mower, 60”/70” Mower, 36”/48” Mower, 21” Mower, Weedeater, Chainsaw, Blower

*Equipment rates included in hourly labor.

APPROVED AS TO FORM AND LEGALITY

_____
CITY ATTORNEY'S OFFICE

TRACY CITY COUNCIL

RESOLUTION NO. _____

APPROVING AMENDMENT NO. 4 TO THE PROFESSIONAL SERVICES AGREEMENT WITH TERRACARE ASSOCIATES, LLC, (1) INCREASING THE ANNUAL NOT-TO-EXCEED AMOUNT TO $1,600,000, FOR LANDSCAPE MAINTENANCE SERVICES; AND (2) EXTENDING THE TERM FOR AN ADDITIONAL YEAR; AND (3) AMENDING THE BILLING RATES BY THE CPI OF 2.7% TO ACCOUNT FOR INFLATIONARY INCREASES

WHEREAS, the Parks, Recreation, and Community Services Department is responsible for the maintenance of landscaping within the City's streetscapes, parks, and channelways; and

WHEREAS, the work is performed by a combination of both in-house staff and contracted services; and

WHEREAS, in August 2020, staff issued a Request for Proposals (RFP) for landscape, park and channelway maintenance and received four (4) proposals; and

WHEREAS, staff evaluated the proposals and conducted interviews and Terracare Associates, LLC (Terracare) was determined to be the most responsive and met the City's needs; and

WHEREAS, on December 1, 2020, pursuant to Resolution 2020-200, the City Council approved a Professional Services Agreement (PSA) for an initial term of two years, for an annual not-to-exceed amount of $900,000 and an option to extend for additional five years with Terracare for landscape maintenance services; and

WHEREAS, on February 15, 2022, pursuant to Resolution 2022-015, the City Council approved Amendment No. 1 to the Agreement, increasing the not-to-exceed amount to $1,230,000 annually; and

WHEREAS, the PSA has been amended twice after that by the City Manager approving Amendments No. 2 and No. 3, extending the term and end date and adjusting rates; and

WHEREAS, the latest extension is set to expire on December 31, 2024; and

WHEREAS, the annual not-to-exceed amount was last increased in 2022 and since then City has accepted Western Park, Orchard Park, Gene Birk Park, Raymond P. Morelos Jr. Park, Tracy Hills 1A Basin, Tracy Hills 1B Basin, Hillview Basin, and approximately 60,000 square feet of streetscapes; and

WHEREAS, the rapid growth within areas, such as Tracy Hills and Ellis, has increased new public landscaping and parks; and

WHEREAS, to ensure there is no interruption of service, staff is recommending approval of Amendment No. 4 (Amendment), attached here to as Exhibit A, extending the term of the PSA to December 31, 2025, and establishing an annual not-to-exceed amount of $1,600,000 to account for existing landscape services, new parks, basins, streetscapes, enhanced landscaping, and annual inflationary rate increases; and

WHEREAS, this Amendment will be funded from Landscape Maintenance District, and Community Facility District Funds (Fd.271, 272, 273), and the General Fund (Fd.101); and

WHEREAS, this item is categorically exempt from review under the California Environmental Quality Act (CEQA) regulations as it is not a "project" for purposes of CEQA as defined by CEQA Guidelines §15378 in that it involves maintenance of existing areas and such maintenance will not result in a direct or indirect physical change in the environment (CEQA Guidelines §§15378(b)(5)); and further, even if this item was deemed a "project," and therefore subject to CEQA, the item would be exempt as it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment (CEQA Guidelines §15061(b)(3));

NOW, THEREFORE, be it,

RESOLVED: That the City Council of the City of Tracy hereby approves, Amendment No. 4, attached hereto as Exhibit A, to increase the annual not-to-exceed amount to the Professional Services Agreement with Terracare Associates, LLC, for landscape maintenance services to include language indicating the not-to-exceed amount is increased to $1,600,000 annually; extending the term date for an additional year, establishing a new term date of December 31, 2025; and amending the billing rates by the CPI of 2.7% to account for inflationary increases; and be it

FURTHER RESOVED: That the City Council finds that this item is not a project as defined under CEQA and even if deemed a project, it is categorically exempt under CEQA Guidelines §15061(b)(3) as it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment.

* * * * * * * * * * * * * *

The foregoing Resolution 2024-_____ was adopted by the Tracy City Council on October 15, 2024, by the following vote:

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

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

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

October 15, 2024

Agenda Item 1.F

RECOMMENDATION

Staff recommends that the City Council waive the second reading and adopt an Ordinance, pursuant to Government Code, § 36516, amending Chapter 2.04.060 of the Tracy Municipal Code increasing the monthly salary of the Mayor from $1,129 to $2,100 and increasing the monthly salary of Council Members from $1,029 to $1,900.

EXECUTIVE SUMMARY

Per the City Council Code of Conduct Section 6.1.2, the Mayor's and City Councils' compensation should be reviewed every two years. On December 7, 2021, the City Council approved Ordinance 1325 amending Chapter 2.04.060 of the Tracy Municipal Code (TMC) which set the current compensation of the Mayor and City Council, effective January 1, 2023. Also in 2021, per Resolution 2021-107, the City Council instated the practice of requiring the consideration of the elected City Treasurer's compensation to occur at the same time that the City Council's compensation is discussed.

At the June 4, 2024 City Council meeting, the City Council provided direction to staff to return to the City Council with an amendment to the TMC to set the Mayor's monthly compensation at $2,100 and the Council Members' monthly compensation at $1,900. In addition, the City Council provided direction to staff to return with a resolution that amends the City Treasurer's monthly compensation to $1,900.

On October 1, 2024, City Council introduced an ordinance amending Chapter 2.04.060 of the Tracy Municipal Code increasing the monthly salary of the Mayor from $1,129 to $2,100 and increasing the monthly salary of Council Members from $1,029 to $1,900**.**

The proposed Ordinance is before Council for adoption.

BACKGROUND AND LEGISLATIVE HISTORY

On December 7, 2021, the City Council approved Ordinance 1325 approving the compensation of the Mayor and City Council, effective January 1, 2023. The current compensation is $1,029 for the City Council and $1,129 for the Mayor. The City Council's Code of Conduct Section 6: Compensations states, "The salary of the Mayor and City Council should be reviewed every two years." Government Code section 36516.5 requires that any approved compensation increase go into effect for the next seated Mayor and City Council. Upon approval of Ordinance 1325, the City Council's compensation was effective January 1, 2023, following certification of the results of the November 2022 City Council election.

In June 2023, the Governor signed into law SB 329 amending Government Code Section 36516, effective January 1, 2024. The amendment allows cities to increase Council's compensation based on population size. Section 36516(a)(1)(d) states, "In cities over 75,000 up to and including 150,000 in population, up to and including one thousand nine hundred dollars ($1,900) per month." Previously approved in 1984, Government Code 36516 limited

compensation to $600 per month for the same population size, and increases to this amount were capped, in Section 36516(a)(4), at 5% per year which would equate to a monthly salary of $1,200. In addition to the increased monthly salary of $1,900 for cities such as Tracy, SB 329 amended Section 36516(a)(4) to state that going forward the salary could increase by, "the greater of either of the following: (A) An amount equal to 5 percent for each calendar year from the operative date of the last adjustment of the salary in effect when the ordinance or amendment is enacted, or (B) An amount equal to inflation since January 1, 2024, based upon the California Consumer Price Index, which shall not exceed 10 percent for each calendar year." Section 36516(a)5(c) also allows an additional "maximum amount (of) one hundred fifty dollars ($150) per month for each commission, committee, board, authority, or similar body."

Further, SB 329 states that the City Council's compensation must be adopted by an ordinance in open session with the second reading no less than seven (7) days after the first reading. Whereas the prior language in Government Code 36516 explicitly stated that the compensation was to be in effect after the next general election. As noted above, SB 329 does not amend Section 36516.5, which states: "A change in compensation does not apply to a council member during the council member's term of office. This prohibition shall not prevent the adjustment of the compensation of all members of a council serving staggered terms whenever one or more members of the city council becomes eligible for a salary increase by virtue of the council member beginning a new term of office."

In other words, regardless of when adopted by the City Council, any ordinance increasing the salary for City Council would take place only after the November 2024 election results are certified and new Council terms begin.

ANALYSIS

Government Code Section 36516 provides that the salaries of City Council Members of a general law city may be enacted by ordinance and establishes restrictions on the monthly salaries of Council Members based on the population of a city. On January 1, 2024, Senate Bill (SB) 329 amended Government Code Section 36516 to increase the maximum compensation for elected officials by population. Pursuant to Government Code Section 36516.5, any Council salary increase may take effect only when at least one member of the Council commences a new term.

The City of Tracy (City) is a general law city with a population of approximately 98,000. Pursuant to State law, effective as of January 1, 2024, the monthly salary of Mayor and Council Members may be increased up to $1,900 instead of the previous cap of $1,200. Traditionally, the City Council has approved a salary difference between the Mayor and City Council of $100. The current compensation is $1,029 for the City Council and $1,129 for the Mayor. Per SB 329, the City Council may set the compensation up to $1,900 per month. At the maximum for all City Council, the compensation would increase the General Fund budget by approximately $60,000. The City Treasurer's compensation is currently $1,075 monthly.

On June 4, 2024, the City Council reviewed the amendments to Government Code 36516 and discussed the compensation of its members and the Elected City Treasurer. Motion was made by Council Member Bedolla and seconded by Mayor Young to return with a first reading that amends the Tracy Municipal Code (TMC 2.04.060) to reflect the Mayor's monthly salary as $2,100 compensation and City Council Members' as $1,900 monthly salary compensation; and 2) return with a Resolution that reflects an amendment to the City of Tracy's Elected City

Treasurer monthly salary compensation to $1,900.

On October 1, 2024, City Council introduced an Ordinance amending Chapter 2.04.060 of the Tracy Municipal Code increasing the monthly salary of the Mayor from $1,129 to $2,100 and increasing the monthly salary of Council Members from $1,029 to $1,900, and adopted Resolution 2024-170 amending the City of Tracy's Elected City Treasurer monthly salary compensation to $1,900**.**

The effective date of the compensation increases will be the first full pay period after January 1, 2025.

FISCAL IMPACT

The compensation increase for the Mayor, City Council Members were considered in the Fiscal Year 2024-2025 Adopted Operating and Capital Budget.

PUBLIC OUTREACH

Staff completed survey of surrounding agencies for salary comparisons and presented this comparison on June 4, 2024.

STRATEGIC PLAN

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

ACTION REQUESTED OF THE CITY COUNCIL

Staff recommends that the City Council waive the second reading and adopt an ordinance, pursuant to Government Code, § 36516, amending Chapter 2.04.060 of the Tracy Municipal Code increasing the monthly salary of the Mayor from $1,129 to $2,100 and increasing the monthly salary of Council Members from $1,029 to $1,900.

Prepared by: Adrianne Richardson, City Clerk

Reviewed by: Karin Schnaider, Assistant City Manager
Bijal M. Patel, City Attorney

Approved by: Midori Lichtwardt, City Manager

ATTACHMENTS:

Attachment A: Ordinance

ATTACHMENT A

APPROVED AS TO FORM AND LEGALITY

_____

CITY ATTORNEY'S OFFICE

TRACY CITY COUNCIL

ORDINANCE NO. _____

PURSUANT TO GOVERNMENT CODE, § 36516, AMENDING CHAPTER 2.04.060 OF THE TRACY MUNICIPAL CODE INCREASING THE MONTHLY SALARY OF THE MAYOR FROM $1,129 TO $2,100 AND INCREASING THE MONTHLY SALARY OF COUNCIL MEMBERS FROM $1,029 TO $1,900

WHEREAS, On December 7, 2021, the City Council adopted Ordinance 1325 to amend Section 2.04.060 of Chapter 2.04 of Title 2 of the Tracy Municipal Code: Section 2.04.06 Council Member and Elected Mayor Compensation: (a) The salary of each member of the City Council of the City of Tracy shall be set at One Thousand and Twenty Nine ($1,029) per month; and (b) The Mayor shall receive an additional $100 per month in compensation; and

WHEREAS, The compensation was effective January 1, 2023, following certification of the results of the November 2022 City Council election; and

WHEREAS, On January 1, 2024, Senate Bill 329 amended Government Code Section 36516 City Council Compensation "In cities over 75,000 up to and including 150,000 in population, up to and including one thousand nine hundred dollars ($1,900) per month."; and

WHEREAS, Government Code 36516(a)(4)(b) further allows for City Council compensation to exceed this cap equal to "An amount equal to inflation since January 1, 2024, based upon the California Consumer Price Index, which shall not exceed 10 percent for each calendar year;" and

WHEREAS, Government Code 36516(a)(5) states, "No ordinance shall be enacted or amended to provide automatic future increases in salary", requiring the new salary to be effective 30 days from the upon approval of Ordinance second reading; and

WHEREAS, Government Code 36516(a)(5)(b) further caps the compensation of City Council receiving compensation includes payment for service by a City Council Member on a commission, committee, board, authority, or similar body on which the City Council Member serves to a maximum amount shall be one hundred fifty dollars ($150) per month for each commission, committee, board, authority, or similar body; and

WHEREAS, Government Code 36516.5 states, "A change in compensation does not apply to a council member during the council member's term of office. This prohibition shall not prevent the adjustment of the compensation of all members of a council serving staggered terms whenever one or more members of the city council becomes eligible for a

salary increase by virtue of the council member beginning a new term of office" requiring the effective date to be after the November 2024 election certification; and

WHEREAS, At the June 4, 2024, City Council meeting, the City Council provided direction to staff to return to the City Council with an amendment to the TMC to set the Mayor's monthly compensation at $2,100 and the Council Members' monthly compensation at $1,900; and

WHEREAS, In addition, the City Council provided direction to staff to return with a separate Resolution that amends the City Treasurer's monthly compensation to $1,900; and

WHEREAS, The City Council introduced the proposed Ordinance on October 1, 2024.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF TRACY DOES ORDAIN AS FOLLOWS:

SECTION 1: Section 2.04.060 of Chapter 2.04 of Title 2 of the Tracy Municipal Code is amended as follows (deletions shown in ~~strikethrough~~ and additions with underlining):

"Section 2.04.060 Council Member and Elected Mayor Compensation:

(a) The salary of each member of the City Council of the City of Tracy shall be set at ~~One Thousand and Twenty-Nine and no/100ths ($1,029.00) dollars per month~~ One Thousand Nine Hundred and no/100ths dollars ($1,900.00) per month.
(b) The Mayor shall receive an additional ~~One Hundred and no/100ths ($100.00)~~ Two Hundred and no/100ths ($200.00) dollars per month."

SECTION 2: This ordinance shall take effect January 1, 2025, following certification of the results of the November 2024 City election.

SECTION 3: This Ordinance shall either (1) be published once in a newspaper of general circulation, within 15 days after its final adoption, or (2) be published in summary form and posted in the City Clerk's office at least five days before the ordinance is adopted and within 15 days after adoption, with the name of the Council Members voting for and against the ordinance. (Gov't Code section 36933).

* *

The foregoing Ordinance _____ was introduced at a regular meeting of the Tracy City Council on the 1st day of October 2024, and finally adopted on the 15th day of October 2024, by the following vote:

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

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

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

Date of Attestation: _____

October 15, 2024

Agenda Item 1.G

RECOMMENDATION

Staff recommends that the City Council adopt a resolution approving the execution of a Freeway Agreement with the California Department of Transportation for the Interstate 580/Lammers Road Undercrossing Project.

EXECUTIVE SUMMARY

This agenda item seeks adoption of a resolution by the City Council approving the execution of a Freeway Agreement (Agreement) with the California Department of Transportation (Caltrans) for the Interstate 580/Lammers Road Undercrossing Project (Project). The execution of this Agreement is a prerequisite for Caltrans to accept the Lammers Road Undercrossing Improvements at Interstate 580 (Project) and get into a freeway maintenance agreement. Currently, the Tracy Hills Specific Plan (THSP) area is separated by the Interstate 580, and Corral Hollow is the only access to the development. The Tracy Hills development was conditioned to build the Project in order to connect Lammers Road within the existing subdivision portions, known as Tracy Hills Phase 1 (A and B), to the new subdivisions, known as Tracy Hills Phase 2, under the existing Interstate 580 bridge owned by Caltrans.

There are existing Freeway Agreements between Caltrans and the County of San Joaquin (County) governing the Project area, as the Project location was in County jurisdiction at the time. When the Freeway Agreements were executed, Lammers Road did not cross I-580 either with an overcrossing bridge or undercrossing but instead terminated north of the California Aqueduct. Since then, the City has annexed certain areas along the I-580, including the Project area, and portions of such freeway are covered by Freeway Agreements dated August 27, 1958, September 19, 1960, October 15, 1963, and June 22, 1965 between the County and Caltrans. A new Freeway Agreement and Freeway Maintenance Agreement are necessary between the City and Caltrans as the Project area is in City jurisdiction.

As per Caltrans protocols, the Freeway Agreement must be executed before construction begins. However, due to delays and changes in staffing from both the City and Caltrans, both parties agreed to approve the Agreement after the completion of the construction. The executed Freeway Agreement is then used to establish a Freeway Maintenance Agreement between the local agency and Caltrans, which staff will bring back to the City Council for consideration and approval.

BACKGROUND AND LEGISLATIVE HISTORY

Interstate 580 (I-580) was declared a freeway by resolution of the California Highway Commission on August 27, 1958, September 19, 1960, October 15, 1963, and June 22, 1965. Caltrans and the County entered into a Freeway Agreement dated June 22, 1965, with respect to the portion of I-580 and Interstate 5 between the Alameda County Line and the Stanislaus County Line. The City has subsequently annexed certain areas along Interstate 580, including portions of such freeway covered by Freeway Agreements dated August 27, 1958, September 19, 1960, October 15, 1963, and June 22, 1965.

Prior to the Project, Lammers Road was an existing local two-lane road that terminates on the north side of the California Aqueduct north of Interstate 580 with no existing crossing of Interstate 580. The existing bridges in each direction of I-580 are 3-spans with columns at the

bent supports between the spans and unpaved abutment slopes. In order to support circulation for THSP- development, Lammers Road had to be extended under I-580 to connect new local street networks being completed on both sides of I-580 and provide an alternative crossing under I-580 to the adjacent and existing Corral Hollow Road. City staff, in coordination with Integral Communities (Developer), worked with Caltrans with respect to the design and construction of the Lammers Road undercrossing at Interstate 580, Caltrans Project ID 1021000044 (Valpico Undercrossing – Caltrans Bridge No. 29-0165 R/L).

The Developer was responsible for the construction of the public roadway improvements for the Project. Upon final design approval by the City Engineering Division, the Developer entered into an Off-Site Improvement Agreement (OIA) with the City for 'Lammers Road Undercrossing Improvements at Interstate 580, ENG21-0037' per the authority granted in Resolution No. 2023-126 on July 5, 2023. The OIA granted the Developer the authority to construct the improvements per the approved plans and specifications. Once fully accepted and operational, the Project will provide a new two-lane local roadway and shared-use path for pedestrians and bicyclists within the Caltrans right-of-way under existing bridges along the eastbound (EB) and westbound (WB) Interstate 580 mainline. No ramp connections between Lammers Road and Interstate 580 were proposed with this Project and there were no proposed modifications to the Interstate 580 mainline.

The improvements included:

- Two-lane road with 10 ft lanes and 1 ft shoulders within Caltrans right-of-way.
- Retaining walls with concrete barriers adjacent to the roadway to protect existing columns supporting the bridges on the Interstate 580 mainline.
- Shared use path for bicyclists and pedestrians 12 ft wide to the east of the roadway between existing columns and abutments for the bridges on the Interstate 580 mainline with a retaining wall on the east side of the path.
- Installed new drainage systems connecting to existing cross culverts under the Interstate 580 mainline.
- Installed new lighting for the roadway and shared use path.
- Continuation of new utilities (electrical, communication, gas, and sewer) for the developments on both sides of Interstate 580.

ANALYSIS

On October 19, 2021, the Tracy City Council (City Council) adopted the Tracy Hills Specific Plan Amendment for Tracy Hills Phase 2 and approved various related land use entitlements, including that certain Vesting Tentative Subdivision Map for Tracy Hills Phase 2, Tract 4057, processed under Application No. TSM20-0003 and approved by Resolution No. 2021-154 (Tentative Map).

The approval of the Tentative Map by the City Council was subject to specified Conditions of Approval (Conditions). With Conditions of Approval C2.7.3 the Developer was obligated to construct improvements for the Lammers Road Extension, including the Lammers Road Undercrossing of Interstate 580. C2.7.3 outlines the following specifications for the Project:

"Lammers Road and Other In-tract Streets – Improvements
Design and construction details for Lammers Road, between Tracy Hills Drive and Corral Hollow Road, 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 Vesting Tentative Subdivision Map (VTSM), Traffic Study and City Regulations, and shall be shown on the Improvement Plans. Interim improvements under I-580 include 5' wide sidewalk on east side only. Improvements along Lammers Road and certain in-tract streets shall also include Class I bikeways or Class II bike lanes in accordance with the VTSM and Traffic Study. Interim improvements under I-580 do not include Class 1 bikeway or Class II bike lanes. Lammers Road and Street B improvements adjacent to the school site on Lot H shall be constructed in accordance with the VTSM and Traffic Study and are subject to the review and approval of Jefferson School District.

Since this undercrossing came into existence after the Project Area was incorporated within the City, a new Freeway Agreement and Freeway Maintenance Agreement are necessary between the local agency and Caltrans. As per Caltrans Freeway Agreement protocols, a Freeway Agreement gets executed first, and this process should take place before construction. However, due to delays and changes in staffing from both the City and Caltrans, both parties agreed to approve the Freeway Agreement after construction. The executed Freeway Agreement is then used to establish a Freeway Maintenance Agreement between the local agency and Caltrans.

On February 2, 2023, the City Project Manager and the Caltrans Project Lead determined that expediting the construction of the improvements would be in the best interest of both parties. They agreed to review and finalize the Freeway Agreement concurrently with the Project construction and to approve its execution before Project acceptance. The Project is completed, which necessitates the execution of this Agreement in preparation for the final acceptance of the improvements.

The purpose of this Agreement is to establish a framework for the partnership between the City and Caltrans for the construction acceptance of the Lammers Road Undercrossing improvements. The Agreement outlines how right-of-way will be acquired, and how the City will assume control and maintenance of relocated City streets, frontage roads, and other local roads constructed as part of the Project.

The Freeway Agreement is the first step required in order for Caltrans to accept the Project improvements. Upon approval by the City Council, the resolution will be shared with Caltrans to execute the Freeway Agreement and prepare the Maintenance Agreement that will follow the Freeway Agreement. The Maintenance Agreement will be brought back to the City Council when ready for consideration and approval. Staff recommends that the City Council adopt a resolution to execute the Freeway Agreement with Caltrans for the Project.

FISCAL IMPACT

There are no costs associated with execution of the Freeway Agreement. Upon execution of the Freeway Agreement, a future Maintenance Agreement will need to be approved and executed. Once both are executed, the maintenance of the improvements will be funded by the Community Facilities District (CFD) District No. 2016-1 (Tracy Hills) and included in the City's Public Works Operations budget.

COORDINATION

The Engineering Division coordinated with Caltrans and Developer for the execution of the Freeway Agreement.

CEQA DETERMINATION

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

STRATEGIC PLAN

This agenda item supports the City of Tracy's Quality of Life Strategic Priority, which is to provide an outstanding quality of life by enhancing the City's amenities, business mix, and services, and cultivating connections to promote positive change and progress in our community.

ACTION REQUESTED OF THE CITY COUNCIL

Staff recommends that the City Council, by resolution, approve the execution of a Freeway Agreement with the California Department of Transportation for the Interstate 580/Lammers Road Undercrossing Project.

Prepared by: Sharat Bandugula, PE, Senior Civil Engineer

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

Approved by: Midori Lichtwardt, City Manager

ATTACHMENTS

Attachment A – Caltrans Freeway Agreement

FREEWAY AGREEMENT

THIS AGREEMENT, made and entered into on this _____ day of _____ _____, 20_____, by and between the STATE OF CALIFORNIA acting by and through the Department of Transportation (herein referred to as "STATE"), and the City of Tracy (herein referred to as "CITY"),

WITNESSETH:

WHEREAS, the highway described above has been declared to be a freeway by Resolution of the California Highway Commission on June 22, 1965, and October 15, 1963, and September 19, 1960 and August 27, 1958 and;

WHEREAS, the California Highway Commission has adopted a resolution on August 27, 1958, declaring that certain section of State Highway Route 580 in the counties of Alameda and San Joaquin between Route 580, west of Tracy, and Route 5, southwest of Vernalis, to be freeway, and

WHEREAS, STATE and County of San Joaquin have entered into a Freeway Agreement dated on September 19, 1960, with respect to the portion of Route 580 and 5 between the Alameda County Line and the Stanislaus County Line, and

WHEREAS, STATE and County of San Joaquin have entered into a Freeway Agreement dated on October 15, 1963, with respect to the portion of Route 580 and 5 between the Alameda County Line and the Stanislaus County Line, and

WHEREAS, STATE and County of San Joaquin have entered into a Freeway Agreement dated on June 22, 1965, with respect to the portion of Route 580 and 5 between the Alameda County Line and the Stanislaus County Line, and

WHEREAS, a revised plan map for such freeway has been prepared showing the proposed plan of the STATE as it affects roads of the CITY; and

WHEREAS, it is the mutual desire of the parties hereto to enter into a new Freeway Agreement in accordance with the revised plan of said freeway;

NOW, THEREFORE, IT IS AGREED:

1. This Agreement supersedes in its entirety said that portion of Freeway Agreement, dated June 22, 1965.

2. This Agreement supersedes in its entirety said that portion of Freeway Agreement, dated October 15, 1963.

3. This Agreement supersedes in its entirety said that portion of Freeway Agreement, dated September 19, 1960.

4. This Agreement supersedes in its entry said that portion of Freeway Agreement dated August 27, 1958.

5. CITY agrees and consents to the closing of CITY roads, relocation of CITY roads, construction of frontage roads and other local roads, and other construction affecting CITY roads, all as shown on the plan map attached hereto, marked Exhibit A, and made a part hereof by reference.

6. The obligations of STATE and CITY with respect to the funding and construction of the freeway project will always be dealt with in separate Cooperative Agreement(s) between the parties, and any amendments thereto, or Encroachment Permits issued to CITY. The parties responsible for the construction of the freeway shall make any changes affecting CITY roads only in accordance with the plan map attached hereto, marked Exhibit A.

7. The obligations of STATE and CITY with respect to the acquisition of the rights of way required for the construction, reconstruction, or alteration of the freeway and CITY roads, frontage roads, and other local roads will always be dealt with in separate Cooperative Agreement(s) between the parties, and any amendments thereto or Encroachment Permits issued to CITY.

8. It is understood between the parties that the rights of way may be acquired in sections or units, and that both as to the acquisition of right of way and the construction of the freeway project, the obligations of STATE and CITY hereunder shall be carried out at such time and for such unit or units of the project as funds are budgeted and made lawfully available for such expenditures.

9. CITY will accept control and maintenance over each of the relocated or reconstructed CITY roads, any frontage roads, and other local roads constructed as part of the project, on receipt of written confirmation that the work thereon has been completed, except for any portion which is adopted by STATE as a part of the freeway proper. If acquired by STATE, CITY will accept title to the portions of such roads lying outside the freeway limits upon relinquishment by STATE.

10. This Agreement may be modified at any time by the mutual consent of the parties hereto, as needed to best accomplish, through STATE and CITY cooperation, the completion of the whole freeway project for the benefit of the people of the STATE and of the CITY.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective duly authorized officers.

STATE OF CALIFORNIA
Department of Transportation

TONY TAVARES
Director of Transportation
By

DENNIS T. AGAR
District 10 Director

APPROVED AS TO FORM:

Attorney (State)

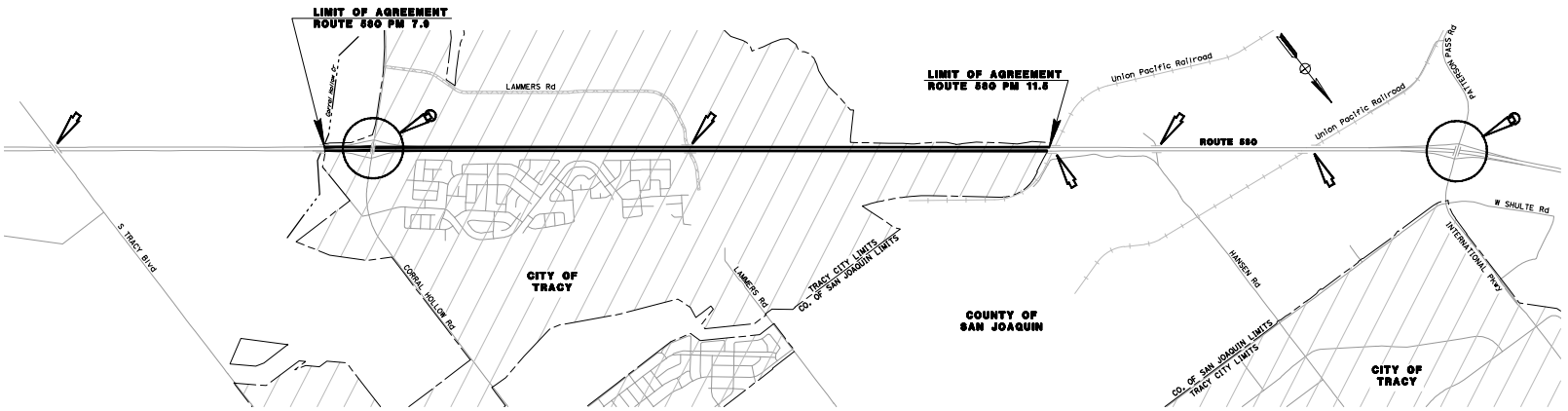
THE CITY OF_____
By

NANCY D. YOUNG
City Mayor

APPROVED AS TO FORM:

BIJAL M. PATEL
City Attorney

EXHIBIT A



LEGEND

- ROADS TO BE CONSTRUCTED, RECONSTRUCTED, OR RELOCATED
- FREEWAY AND CONNECTIONS
- SEPARATION
- INTERCHANGE

SCALE IN FEET
0 750 1500 3000

STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION
MAP SHOWING
10-SJ-580 PM 7.9/11.5

FREEWAY
IN THE CITY OF TRACY

ON ROUTE 580
FROM 0.2 MILE SOUTH OF CORRAL HOLLOW ROAD
TO 0.4 MILE NORTH OF CORRAL HOLLOW ROAD

May 24, 2023

IN SAN JOAQUIN Co PM 7.9/11.5

APPROVED AS TO FORM AND LEGALITY

_____
CITY ATTORNEY'S OFFICE

TRACY CITY COUNCIL

RESOLUTION NO. 2024-_____

APPROVING THE EXECUTION OF A FREEWAY AGREEMENT WITH THE CALIFORNIA DEPARTMENT OF TRANSPORTATION FOR THE INTERSTATE 580/LAMMERS ROAD UNDERCROSSING PROJECT.

WHEREAS, Interstate 580 (I-580) was declared a freeway by Resolutions of the California Highway Commission on August 27, 1958, September 19, 1960, October 15, 1963, and June 22, 1965; and

WHEREAS, the State and the County of San Joaquin (County) entered into a Freeway Agreement dated June 22, 1965, with respect to the portion of I-580 and Interstate 5 between the Alameda County Line and the Stanislaus County Line; and

WHEREAS, the City of Tracy (City) subsequently annexed certain areas along I-580, including portions of such freeway covered by Freeway Agreements dated August 27, 1958, September 19, 1960, October 15, 1963, and June 22, 1965; and

WHEREAS, Lammers Road is an existing local two-lane road that terminates on the north side of the California Aqueduct north of I-580 with no existing crossing of I-580; and

WHEREAS, in order to support circulation for Tracy Hills Specific Plan development, Lammers Road has to be extended under I-580 to connect new local street networks being completed on both sides of I-580 and provide an alternative crossing under I-580 to the adjacent and existing Corral Hollow Road (Project); and

WHEREAS, the Project falls within the areas incorporated and included by the City; and

WHEREAS, City staff, in coordination with Integral Communities (Developer), worked with Caltrans with respect to the design and construction of the Lammers Road Undercrossing at Interstate 580, Caltrans Project ID 1021000044 (Valpico Undercrossing – Caltrans Bridge No. 29-0165 R/L); and

WHEREAS, the Developer was responsible for the construction of the public roadway improvements for the Project; and

WHEREAS, the Developer entered into an Off-Site Improvement Agreement (OIA) with the City for 'Lammers Road Undercrossing Improvements at Interstate 580, ENG21-0037' under Resolution No. 2023-126 on July 5, 2023, granting them the authority to construct the improvements; and

WHEREAS, the Project with the new undercrossing will provide a new two-lane local roadway and shared-use path for pedestrians and bicyclists within the Caltrans right-of-way under existing bridges along the eastbound and westbound I-580 mainline; and

WHEREAS, the expansion and improvement of the roadway accessing the Caltrans right-of-way, is considered as a new interchange and as per the Caltrans protocol necessitates the execution of a new Freeway Agreement and Freeway Maintenance Agreement; and

WHEREAS, a new Freeway Agreement is needed between the City and Caltrans as the Project area is now within City jurisdiction instead of County jurisdiction; and

WHEREAS, as per Caltrans protocols, Freeway Agreements must be executed before construction, but due to delays and changes in staffing from both the City and Caltrans, both parties agreed to approve the Freeway Agreement after construction of the Project had been completed; and

WHEREAS, the Freeway Agreement is the first step required in order for Caltrans to accept the Project improvements; and

WHEREAS, the executed Freeway Agreement will then be used to establish a Freeway Maintenance Agreement between the City and Caltrans regarding the Project area, which staff will bring back to the City Council for review and consideration; now, therefore, be it

RESOLVED: That the City Council of the City of Tracy, hereby, approves the execution of a Freeway Agreement, attached hereto as Exhibit 1, with the California Department of Transportation for the Interstate 580/Lammers Road Undercrossing Project; and be it

FURTHER RESOLVED: That the City Council finds that the Project was categorically exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15301, which pertains to the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of an existing facility.

* * * * * * * * * * * * * *

The foregoing Resolution 2024-_____ was adopted by the Tracy City Council on the 15th day of October 2024 by the following vote:

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

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

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

EXHIBITS

Exhibit 1 – Caltrans Freeway Agreement

FREEWAY AGREEMENT

THIS AGREEMENT, made and entered into on this _____ day of _____ _____, 20_____, by and between the STATE OF CALIFORNIA acting by and through the Department of Transportation (herein referred to as "STATE"), and the City of Tracy (herein referred to as "CITY"),

WITNESSETH:

WHEREAS, the highway described above has been declared to be a freeway by Resolution of the California Highway Commission on June 22, 1965, and October 15, 1963, and September 19, 1960 and August 27, 1958 and;

WHEREAS, the California Highway Commission has adopted a resolution on August 27, 1958, declaring that certain section of State Highway Route 580 in the counties of Alameda and San Joaquin between Route 580, west of Tracy, and Route 5, southwest of Vernalis, to be freeway, and

WHEREAS, STATE and County of San Joaquin have entered into a Freeway Agreement dated on September 19, 1960, with respect to the portion of Route 580 and 5 between the Alameda County Line and the Stanislaus County Line, and

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WHEREAS, a revised plan map for such freeway has been prepared showing the proposed plan of the STATE as it affects roads of the CITY; and

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9. CITY will accept control and maintenance over each of the relocated or reconstructed CITY roads, any frontage roads, and other local roads constructed as part of the project, on receipt of written confirmation that the work thereon has been completed, except for any portion which is adopted by STATE as a part of the freeway proper. If acquired by STATE, CITY will accept title to the portions of such roads lying outside the freeway limits upon relinquishment by STATE.

10. This Agreement may be modified at any time by the mutual consent of the parties hereto, as needed to best accomplish, through STATE and CITY cooperation, the completion of the whole freeway project for the benefit of the people of the STATE and of the CITY.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective duly authorized officers.

STATE OF CALIFORNIA
Department of Transportation

TONY TAVARES
Director of Transportation
By

DENNIS T. AGAR
District 10 Director

APPROVED AS TO FORM:

Attorney (State)

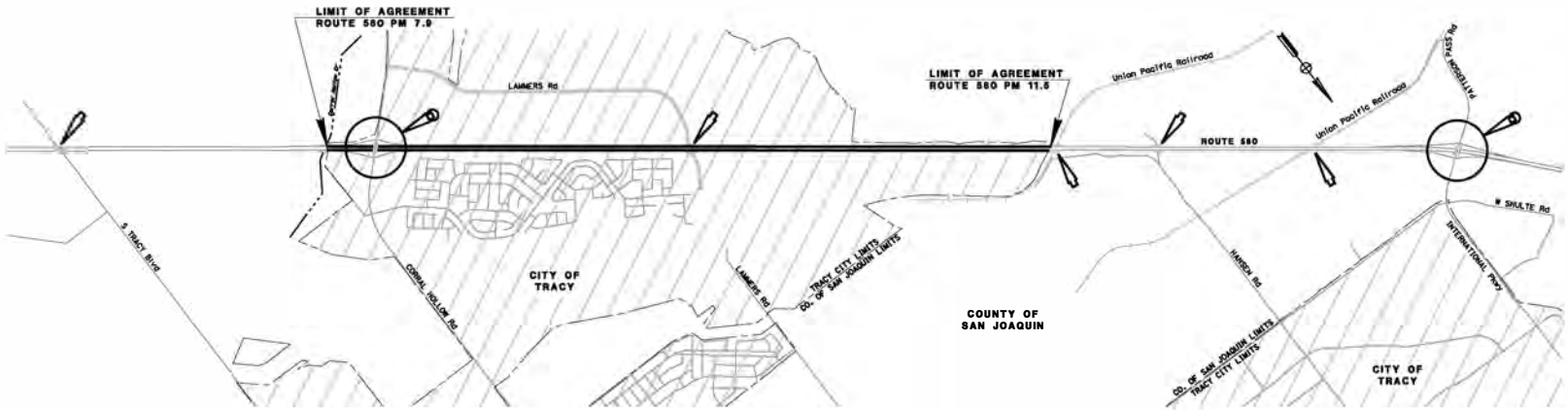
THE CITY OF_____
By

NANCY D. YOUNG
City Mayor

APPROVED AS TO FORM:

BIJAL M. PATEL
City Attorney

EXHIBIT A



LEGEND

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DEPARTMENT OF TRANSPORTATION
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FREEWAY
IN THE CITY OF TRACY

ON ROUTE 580
FROM 0.2 MILE SOUTH OF CORRAL HOLLOW ROAD
TO 3.4 MILE NORTH OF CORRAL HOLLOW ROAD

May 24, 2023

IN SAN JOAQUIN Co PM 7.9/11.5

October 15, 2024

Agenda Item 1.H

RECOMMENDATION

Staff recommends that the City Council adopt a resolution:
(1) Approving the execution of a Subdivision Improvement Agreement between the City and Lennar Homes of California, LLC, for construction of in-tract improvements for Tracy Hills Phase 2B Tract 4181 Villages 11 and 12, and
(2) Authorizing the City Clerk to Record the Subdivision Improvement Agreement with the Office of the San Joaquin County Recorder.

EXECUTIVE SUMMARY

This Agenda Item seeks approval of a Subdivision Improvement Agreement (SIA) for the construction of certain in-tract improvements for Tract 4181, located on an approximately 30.77 acre area on the Final Subdivision Map for Tract 4181 - Tracy Hills Phase 2B Village 11 and 12 (Project) by Lennar Homes (Developer). The construction of these public improvements is a condition of approval (Attachment C) of the Vesting Tentative Subdivision Map (VTSM) for Tracy Hills Phase 2B.

The Developer has executed the SIA (Attachment B) and posted the required security to guarantee the completion of the park improvements as required by the Conditions of Approval of the VTSM.

BACKGROUND AND LEGISLATIVE HISTORY

On April 5, 2016, the City Council approved the Tracy Hills Specific Plan Final Subsequent Environmental Impact Report (Resolution No. 2016-062), the Tracy Hills Specific Plan (Resolution No. 2016-063), and the Development Agreement executed between the City of Tracy and the Developers of the Tracy Hills Project (Ordinance 1213), among other related actions.

On November 10, 2020, the City Council approved the First Amendment to the Development Agreement (Ordinance 1300).

On October 19, 2021, the City Council approved a General Plan Amendment, under Application No. GPA21-0001 (Resolution No. 2021-153), the Tracy Hills Specific Plan Amendment for Tracy Hills Phase 2, under Application No. SPA21-0003 (Ordinance 1319), and the Vesting Tentative Subdivision Map for Tracy Hills Phase 2 - Tract 4057 (VTSM), under Application No. TSM20-0003 (Resolution No. 2021-154).

The VTSM proposes 1,470 single-family residential lots, public park parcels, open space parcels, retention basin parcels, school parcels, Homeowners Association (HOA) recreation center parcel, and numerous other parcels. The non-residential parcels are to be owned and maintained by the HOA, the Developer, or the City. The Project occupies approximately 1,143 acres within the Tracy Hills Specific Plan Area, located south of the Interstate 580 (I-580) Freeway and west of Corral Hollow Road.

The Developer has divided Phase 2 into two phases, as depicted in Attachment A, with Tracy Hills Phase 2A generally encompassing the eastern portion of the Project and Tracy Hills Phase 2B generally encompassing the western portion. Phase 2B consists of seven tracts containing eight villages totaling 744 residential lots and other numerous non-residential parcels on approximately 242.0 acres. Phase 2B Village 11 and 12 consists of 115 residential lots and numerous other non-residential parcels on approximately 30.77 acres.

On July 2, 2024, the City Council approved the final maps, SIAs, Conditional Subdivision Improvement Agreements, Offsite Improvement Agreements, Conditional Offsite Improvement Agreements, offers of dedications for easements, and accepted an access easement for the water tank for Phase 2A.

ANALYSIS

The approval of the VTSM by the City Council was subject to specified Conditions of Approval which require that the Developer complete construction of certain in-tract improvements including underground water, sewer, storm drain, joint trench, curb, gutter, sidewalk, landscaping, irrigation, fire hydrants, streetscape, and streetlights. For this approval, the SIA will address 100% of conditioned and required public in-tract improvements for this tract. The agreements and bonds to guarantee construction of offsite improvements for Tract 4181 were approved with Tracy Hills Phase 2A, which were on approved by City Council on July 2, 2024. The landscaping, streetscape, and irrigation will be maintained by the HOA and said maintenance will be paid by the Tracy Hills residents. The City will maintain the PCC curb, gutter, sidewalk, hydrants, streetlights, water, sewer, storm drain and roads.

Improvement plans and specifications, which describe in detail the Tracy Hills Phase 2B Village 11 and 12 public improvements required under the SIA (Attachment B), were prepared at the request of the Developer and have been approved by the City Engineer.

The Developer has executed the SIA and has submitted the required security to guarantee completion of the Tracy Hills Phase 2B Village 11 and 12 improvements. The SIA is attached and associated Improvement Plans are on file with the City Engineer.

FISCAL IMPACT

There will be no fiscal impact associated with this Agenda Item. The Developer has paid for the cost of plan checking, engineering inspection and processing of the associated agreements.

PUBLIC OUTREACH / INTEREST

All public outreach for the Tracy Hills Phase 2 development (notifications, public hearings, etc.) was conducted at the Planning Commission and the City Council hearings that were held in October 2021 to consider the General Plan Amendment, Specific Plan Amendment, and Vesting Tentative Subdivision Map for the overall Project. Additional public outreach, specifically for the associated agreement, is not required.

COORDINATION

This Staff Report was prepared by the Engineering Division. No coordination was required with other departments for the preparation of this report.

CEQA DETERMINATION

An Environmental Impact Report (EIR) for the Tracy Hills Specific Plan was certified by the City Council on April 5, 2016 (SCH#2013102053). An Addendum to the EIR was prepared in accordance with the provisions of California Environmental Act (CEQA) Guidelines Section 15162 and 15164 to address the General Plan Amendment, Specific Plan Amendment, and Vesting Tentative Subdivision Map for the Tracy Hills Phase 2 Project. All the in-tract associated with this Agenda Item are within the scope of the development evaluated by the EIR and the Addendum to the EIR and therefore no further environmental review is required for the Project.

STRATEGIC PLAN

This item is consistent with the City Council's approved Economic Development Strategy to ensure the construction of physical infrastructure necessary for development.

ACTION REQUESTED OF THE CITY COUNCIL

Staff recommends that the City Council, by resolution:
(1) Approve the execution of a Subdivision Improvement Agreement between the City and Lennar Homes of California, LLC, for construction of in-tract improvements for Tracy Hills Phase 2B Tract 4181 Villages 11 and 12, and
(2) Authorize the City Clerk to Record the Subdivision Improvement Agreement with the Office of the San Joaquin County Recorder.

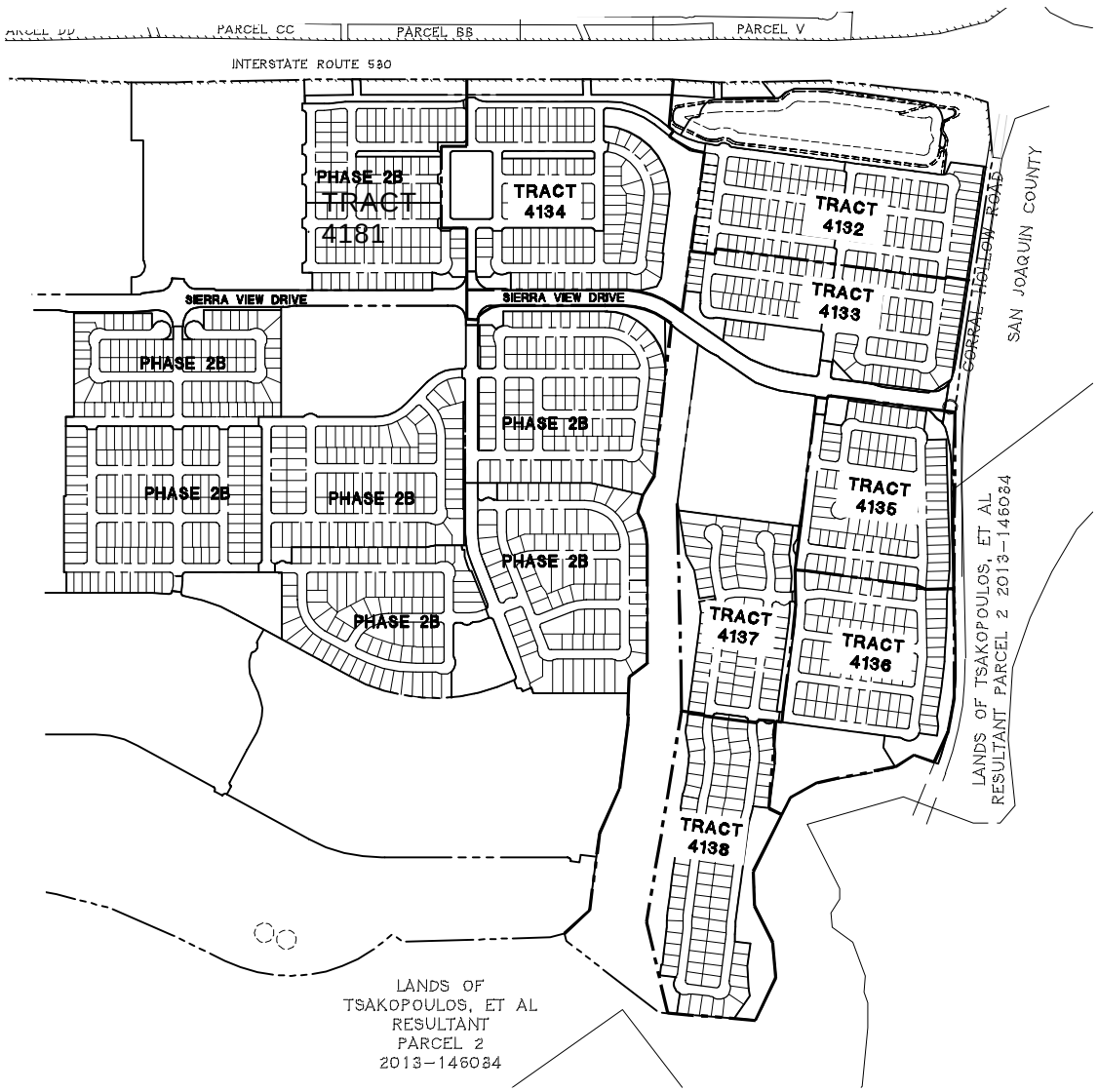
Prepared by: Al Gali, Associate Engineer

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

Approved by: Midori Lichtwardt, City Manager

ATTACHMENTS

Attachment A – Location Map and Phasing Exhibit
Attachment B – Subdivision Improvement Agreement
Attachment C – Tracy Hills Phase 2 VTSM COAs



ATTACHEMENT A - LOCATION MAP & PHASING EXHIBIT

RJA
RUGGERI-JENSEN-AZAR
ENGINEERS ▪ PLANNERS ▪ SURVEYORS
4690 CHABOT DRIVE, SUITE 200 PLEASANTON, CA 94588
PHONE: (925) 227-9100 FAX: (925) 227-9300

DATE: APRIL 24, 2024 JOB NO: 20106BVTM

City of Tracy – Subdivision Improvement Agreement
Tract 4181, Tracy Hills Village 11 and 12

Recording Requested By:

City of Tracy
Development Services
333 Civic Center Plaza
Tracy, CA 95376

And When Recorded Mail To:

City of Tracy
Office of the City Clerk
333 Civic Center Plaza
Tracy, CA 95376
Attn: Adrianne Richardson

(No recording fee under Government Code Section 27383)

SPACE ABOVE THIS LINE FOR RECORDER'S INFORMATION

City of Tracy
SUBDIVISION IMPROVEMENT AGREEMENT
Tract 4181 - Tracy Hills Villages 11 and 12

This **SUBDIVISION IMPROVEMENT AGREEMENT** ("**Agreement**") is made and entered into by and between the **CITY OF TRACY** a municipal corporation ("**City**"), and **LENNAR HOMES OF CALIFORNIA, LLC**, a California limited liability company (hereinafter "**Developer**"). The effective date of this Agreement shall be the date on which City executes the Agreement ("**Effective Date**").

Recitals

A. Developer is the party responsible for the construction of the public improvements within a portion of the real property comprising the subject Final Subdivision Map for Tract 4181 - Tracy Hills Village 11 and 12, and being more particularly described in ***Exhibit "A"*** attached hereto and incorporated herein by reference (hereinafter "**Project**"). DRP SOLARIS MULTISTATE, LLC is a landbank holding fee title to the property described in Exhibit A until such time as it is conveyed to Developer and consents to the recordation of this Agreement as evidenced by its signature below.

B. October 19, 2021, the Tracy City Council ("**City Council**") adopted the Tracy Hills Specific Plan Amendment for Tracy Hills Phase 2 and approved various related land use entitlements, including that certain Vesting Tentative Subdivision Map for Tracy Hills Phase 2, Tract 4057, processed under Application No. TSM20-0003 and approved by Resolution No. 2021-154 ("**Tentative Map**"). The Tentative Map includes 1,470 single-family residential lots, in addition to park parcels, HOA recreation area parcel, retention basin parcels, school parcels, and numerous other parcels to be owned and maintained by a Homeowner's Association, Developer or City on approximately 1,143 acres within

the Tracy Hills Specific Plan Area, located south of the I-580 Freeway and west of Corral Hollow Road. The Tentative Map is on file with the City Clerk, and is incorporated herein by this reference.

C. The approval of the Tentative Map by the City Council was subject to specified conditions of approval attached as Exhibit 1 to Resolution No. 2021-154 and are on file with the City Engineer ("**Conditions of Approval**"). The Conditions of Approval describe, among other things, improvements that are required for approval of the Final Subdivision Map pursuant to the Subdivision Map Act, the Subdivision Ordinance, and applicable City Standards.

D. In accordance with the Subdivision Map Act (California Government Code sections 66410, et seq) and the Subdivision Ordinance (Tracy Municipal Code, Title 12), Developer has submitted to the City the Final Subdivision Map for Tract 4181 - Tracy Hills Village 11 and 12 (the "**Final Subdivision Map**"), consisting of 115 single-family residential lots, and other parcels to be owned by a Homeowner's Association, all to be located on approximately 30.77+/- acres within the boundaries of the Project. **Exhibit "B"** shows the overall Project area and the location of the Final Subdivision Map for Tract 4181 - Tracy Hills Village 11 and 12. Developer is required to execute this Agreement as a condition of the City's approval of the Final Subdivision Map.

E. In accordance with the Conditions of Approval, Developer has prepared, and the City Engineer has approved, certain improvement plans and specifications (which incorporate portions of the City's Standard Specifications), which describe the improvements that are required for approval of the Final Subdivision Map and are incorporated herein by reference. The approved plans and specifications ("**Approved Plans and Specifications**") include: *(a) Fifteen (15) sheets of improvement plans entitled "Improvement Plans-Tract 4181- Villages 11& 12 Tracy Hills Phase 2B" prepared by Ruggeri-Jensen-Azar dated March 22, 2024; (b) five (5) sheets of joint trench plans entitled "Joint Trench Composite Plan Tracy Hills Phase 2B Villages 11&12" prepared by Power Systems Design dated February 29, 2024; (c) four (4) sheets of street light plans entitled "City of Tracy Street Light Plan Set Tracy Hills Villages 11 & 12" prepared by Power Systems Design dated February 29, 2024; (d) twenty-six (26) sheets of landscape construction drawings entitled "Village 11 Landscape Improvement Plans Tracy Hills Phase 2B-1", prepared by FORMA, dated April 10, 2024; and (e) twenty-six (26) sheets of landscape construction drawings entitled "Village 12 Landscape Improvement Plans Tracy Hills Phase 2b-1", prepared by FORMA, dated April 10, 2024.* The improvement plans, joint trench plans and street lighting plans are on file with the City Engineer under Tracking No. ENG23-0020 and the landscape plans are on file with the City Engineer under Tracking No. ENG23-0021/22 (the "**Landscape Plans**"), all incorporated herein by reference.

F. Because the required improvements have not been completed, Developer is required to execute this Agreement as authorized by Government Code section 66462.

NOW THEREFORE, THE PARTIES MUTUALLY AGREE AS FOLLOWS:

1. **Scope of Work; Location**. Developer shall perform, or cause to be performed, the work in the manner and as described in the Approved Plans and Specifications, to the satisfaction of the City Engineer pursuant to this Agreement (the "**Work**"). The Work shall be performed, and all materials and labor shall be provided, at Developer's sole expense. No material change shall be made to the scope of Work unless authorized in writing by the City Engineer. Developer may submit a written request to the City Engineer for a change in the Work, as required by Tracy Municipal Code Section 12.36.060(f). To the extent applicable, all of the Work shall be performed by Developer in accordance with the requirements of the State prevailing wage laws. Developer shall perform all Work at the locations and grades shown on the Approved Plans and Specifications. Developer (a) has acquired any necessary easement or right-of-way or(b) has entered into a separate Agreement with the City to acquire the necessary easement or right-of-way at Developer's expense.

2. **Time of Performance**. Time is of the essence in the performance of the Work, and the timing requirements set forth herein shall be strictly adhered to unless otherwise modified in writing in accordance with this Agreement. Developer shall submit all requests for extensions of time to the City, in writing, no later than ten (10) days after the start of the condition which purportedly caused the delay, and not later than the date on which performance is due.

   2.1 **Commencement of Work**. The Work shall begin within 60 days after the Effective Date of the Agreement. No later than fifteen (15) days prior to the commencement of such Work, Developer shall provide written notice to the City Engineer of the date on which Developer intends to commence Work. To the extent required, Developer shall not commence Work until after the notice required by this section is properly provided, and Developer shall not commence Work prior to the date specified in the written notice.

   2.2 **Schedule of Work**. Concurrently with the written notice of commencement of Work, Developer shall provide the City with a written schedule of Work, which shall be updated in writing as necessary to accurately reflect Developer's prosecution of the Work.

   2.3 **Completion of Work**. Developer shall complete all Work by no later than three hundred sixty-five (365) calendar days after Developer's submittal of its notice of commencement of Work pursuant to Section 2.1 above. If the Work is not completed by this date, City Engineer may grant an extension of time if (a) Developer submits a written request for extension at least ten (10) days prior to expiring date of completion, (b) the City Engineer determines that Work is progressing satisfactorily and an extension is warranted, and (c) Developer pays all processing fees for such time extension.

3. **Improvement Security**. Concurrently with the execution of this Agreement, Developer shall furnish contract security, in a form authorized by the Subdivision

Map Act including Government Code Sections 66499 *et seq.*) and Tracy Municipal Code Section 12.36.080, in the following amounts:

3.1 **Faithful Performance** security in the amount of **$5,321,015** to secure faithful performance of this Agreement.

3.2 **Labor and Material** security in the amount of **$5,321,015** to secure payment by Developer to laborers and materialmen.

3.3 **Warranty** security in the amount of **$532,101** to guarantee improvements against any defective work or labor done or defective materials used in performance of Work for one year from the date on which the City Council accepts the Work as complete.

3.4 **Monumentation** security in the amount of **$35,250.00** to secure faithful performance of setting monuments pursuant to Government Code section 66496.

4. **Indemnification**. Developer shall indemnify, defend, and hold harmless City (including its elected officials, officers, agents and employees) from and against any and all claims, demands, damages, liabilities, costs, and expenses (including court costs and attorney's fees) resulting from the performance of the Work by Developer or Developer's agents, representatives, contractors, subcontractors, or employees, except when caused by the active negligence or willful misconduct of City, until such time as all of the following have occurred: (1) the City Council accepts all of the improvements comprising the Work, (2) the City becomes responsible for the maintenance, operation and repair of all of the improvements comprising the Work, and (3) the one year warranty period set forth in Section 14, below, has expired, at which time the indemnification obligations under this Section 4 shall automatically terminate, with regard to any cause of action arising after such date. For avoidance of doubt, Developer's obligations under this Section 4 are in addition to all other Developer's obligations set forth in this Agreement, and shall not affect Developer's warranty obligations set forth in Section 14, below.

5. **Insurance**. Concurrently with the execution of this Agreement by Developer, and before beginning any Work, Developer shall furnish evidence to the City that the following insurance requirements have been satisfied. The insurance requirements contained in this Section 5 are material terms of this Agreement. These insurance coverage requirements below may be satisfied by umbrella or excess liability policies upon City approval.

5.1 **General**. Developer shall, throughout the duration of this Agreement, maintain insurance to cover Developer, its agents, representatives, contractors, subcontractors, and employees in connection with the

performance of services under this Agreement at the minimum levels set forth herein.

5.2 **Commercial General Liability** (with coverage at least as broad as ISO form CG 00 01) coverage shall be maintained in an amount not less than $4,000,000 per occurrence and $8,000,000 general aggregate for general liability, bodily injury, personal injury, and property damage, including without limitation, blanket contractual liability and coverage for explosion, collapse, and underground property hazards.

5.3 **Professional Contracts**. Developer shall cause its design professionals to maintain professional liability insurance that insures against professional errors and omissions that may be made in performing services related to the Work to be rendered in connection with this Agreement, in the minimum amount of one million dollars ($1,000,000) per claim and in the aggregate. Any policy inception date, continuity date, or retroactive date must be before the effective date of this Agreement, and Developer agrees to cause its design professionals to maintain continuous coverage through a period no less than three years after completion of the services required pursuant to this Agreement.

5.4 **Automobile Liability** (with coverage at least as broad as ISO form 00 01 07 97 for "any auto" including "hired autos" and "non-owned autos") coverage shall be maintained in an amount not less than $2,000,000 per accident for bodily injury and property damage.

5.4.1 If Developer has no employees, or does not own automobiles, then "hired autos" and "non-owned autos" coverage shall be maintained in an amount not less than $1,000,000 per accident for bodily injury and property damage.

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

5.6 **Endorsements**. Developer shall obtain endorsements to the commercial general liability and automobile policies with the following provisions:

5.6.1 The City (including its elected and appointed officials, officers, employees, agents, and volunteers) shall be named as an Additional Insured on Developer's Commercial General Liability policy utilizing endorsement form CG 20 10 (or its equivalent) for ongoing operations and CG 20 37 (or its equivalent) for products/completed operations.

5.6.2 For any claims related to this Agreement, Developer's coverage shall be primary insurance with respect to the City. Any insurance

maintained by the City shall be excess of Developer's insurance and shall not contribute with it.

5.6.3 Developer shall require its contractors and subcontractors providing services required by this Agreement (e.g. general contractors, design professionals) to name it and the City as Additional Insureds.

5.7 **Notice of Cancellation**. Developer shall notify the City of any cancellation of either the commercial general liability policy or automobile insurance policy before the expiration date. For the purpose of this notice requirement, any material change in the policy before the expiration shall be considered a cancellation. Developer shall immediately obtain a replacement policy.

5.8 **Authorized Insurers**. All insurance companies providing coverage to Developer shall be insurance organizations authorized by the Insurance Commissioner of the State of California to transact the business of insurance in the State of California, with an AM Best rating of at least A-VII.

5.9 **Insurance Certificate**. Developer shall provide evidence of compliance with the commercial general liability insurance and automobile insurance requirements listed above by providing a certificate of insurance and endorsements, in a form satisfactory to the City Attorney before the City executes this Agreement.

5.10 **Substitute Certificates**. No later than thirty (30) days before the policy expiration date of any insurance policy required by this Agreement, Developer shall provide a substitute certificate of insurance.

5.11 **Developer's Obligation**. Maintenance of insurance by Developer as specified in this Agreement shall in no way be interpreted as relieving Developer of any responsibility whatsoever (including indemnity obligations under this Agreement), and Developer may carry, at its own expense, such additional insurance as it deems necessary.

6. **Independent Contractor Status**. Developer is an independent contractor and is solely responsible for all acts of its employees, agents, or subcontractors, including any negligent acts or omissions. Developer is not City's employee and Developer shall have no authority, express or implied, to act on behalf of the City as an agent, or to bind the City to any obligation whatsoever, unless the City provides prior written authorization to Developer.

7. **Default**

7.1 **Notice of Default**. In the event that Developer is in default of this Agreement, as defined in this section, the City Engineer shall provide written

notice to Developer and Developer's surety (if any) in which the default is described.

7.2 **Events of default**. Developer shall be in default ("**Default**") of this Agreement if the City Engineer determines that any one of the following conditions exist (which conditions are not intended to constitute the exclusive bases for default):

7.2.1 Developer fails to complete the work by the Trigger Date as required by the Conditions.

7.2.2 Developer is insolvent, bankrupt, or makes a general assignment for the benefit of its creditors.

7.2.3 Developer abandons the Work site.

7.2.4 Developer fails to perform one or more requirements of this Agreement and fails to cure any such non-performance pursuant to Section 7.3 below.

7.2.5 Developer fails to replace or repair any damage caused by Developer or its agents, representatives, contractors, subcontractors, or employees in connection with performance of the Work.

7.2.6 Developer violates any legal requirement related to the Work and fails to cure such violation pursuant to Section 7.3 below.

7.3 **Cure of Default**. In the event that Developer fails, within thirty (30) calendar days after receipt of written notice from the City, to either cure the default or provide adequate written assurance to the reasonable satisfaction of the City Engineer that the cure will be promptly commenced and diligently prosecuted to its completion, the City may, in its discretion, take any or all of the following actions:

7.3.1 Demand that Developer complete performance of the Work.

7.3.2 Demand that Developer's surety (if any) complete performance of the Work.

7.3.3 Resort to any judicial remedies available to the City.

8. **Ownership of Work**. All original documents prepared by Developer for this Agreement are the property of the City and shall be given to the City at the completion of Developer's Work, or upon demand from the City. Prior to acceptance of the Work, Developer shall submit the as-built drawings in AutoCAD format Release-14 or higher.

9. **Repair of any Damage**. In the event and to the extent Developer or its agents, representatives, contractors, subcontractors, or employees, in connection with performance of the Work, cause any damage to property owned by City or other property owners, then Developer shall promptly take all reasonable steps to repair or replace (as necessary) such property to remedy the damage caused thereto.

10. **Inspection by the City; Inspection Fees**. To permit City to inspect the Work, Developer shall, at all times, provide to City reasonable and safe access to the Work site, and all portions of the Work, and to all shops wherein portions of the Work are in preparation.

    10.1 **Inspection Fees**. Concurrently with the execution of this Agreement by Developer, and prior to the commencement of any Work, Developer shall pay the City Inspection Fees in the amount of three and one-half percent (3.5%) of the estimated Project costs (as approved by the City Engineer).

    In the event that the City requires an independent inspection, the City may retain an independent inspector to inspect the Work and prepare an inspection report for the City, and all costs associated therewith shall be borne by Developer.

11. **[Intentionally Left Blank]**

12. **Developer's Authorized Representative**. At all times during the progress of the Work, Developer shall have a competent foreperson or superintendent ("**Authorized Representative**") on site with authority to act on Developer's behalf. Developer shall, at all times, keep the City Engineer informed in writing of the name and telephone number of the Authorized Representative. Developer shall, at all times, keep the City Engineer reasonably informed in writing of the names and telephone numbers of all contractors and subcontractors performing the Work. **Exhibit "C"** attached hereto includes the initial contact information referenced in this Section 12.

13. **Acceptance of Work**. Prior to acceptance of the Work by the City Council, Developer shall be solely responsible for maintaining the quality of the Work and maintaining safety at the Work site. Developer's obligations to perform the Work shall not be satisfied until after the City Engineer has made a written determination that all obligations of the Agreement have been satisfied and all outstanding fees and charges have been paid, and the City Council has accepted the Work as complete.

14. **Warranty Period**. Developer shall warrant the quality of the Work, in accordance with the terms of the Approved Plans and Specifications, for a period of one year after acceptance of the Work by the City Council. In the event that (during the one-year warranty period) any portion of the Work is determined by the City Engineer to be defective as a result of an obligation of Developer under this Agreement,

Developer shall be in default of this Agreement and shall without delay and without any cost to City repair, replace or reconstruct any defective improvements.

15. **[Intentionally Left Blank]**

16. **Miscellaneous**.

16.1 **Notices**. All notices, demands, or other communications which this Agreement contemplates or authorizes shall be in writing and shall be personally delivered or electronically mailed to the respective party as follows:

To City	To Developer:
City of Tracy 333 Civic Center Plaza Tracy, CA 95376 Attn: City Engineer notice@cityoftracy.org	Lennar Homes of California, LLC 2603 Camino Ramon, Suite 525 San Ramon, CA 94583 Attn: Bridgit Koller bridgit.koller@lennar.com
With a copy to:	With a copy to:
City Attorney 333 Civic Center Plaza Tracy, CA 95376 Attn: City Engineer attorney@cityoftracy.org	DRP Solaris Multistate, LLC 590 Madison Avenue, 13th Floor New York, NY 10022 Attn: Houdin Honarvar Houdin.honarvar@dwpartners.com

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

16.2 **Approvals by City**. Any approval or consent that is to be given by City under this Agreement shall be in writing, and any approval or consent that is not in writing shall not be binding on City.

16.3 **Modifications**. This Agreement may not be modified orally or in any manner other than by an agreement in writing signed by both parties.

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

16.5 **Assignment and Delegation**. This Agreement and any portion thereof shall not be assigned or transferred, nor shall any of Developer's duties be delegated, without the written consent of the City. Any attempt to assign or

delegate this Agreement without the written consent of the City shall be void and of no force and effect. Consent by the City to one assignment shall not be deemed to be consent to any subsequent assignment.

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

16.7 **Permits, Licenses, and Compliance with Law**. Developer shall, at its expense, obtain and maintain all necessary permits and licenses for the performance of the Work. Prior to the commencement of the Work, Developer shall obtain a City of Tracy Business License. Developer shall comply with all local, state, and federal laws, whether or not said laws are expressly stated in this Agreement.

16.8 **Entire Agreement; Exhibits; Severability**. The recitals and all defined terms in this Agreement are part of this Agreement. This Agreement, including all documents incorporated by reference, comprises the entire integrated understanding between the parties concerning the improvements to be constructed pursuant to this Agreement. This Agreement supersedes all prior negotiations, representations, or agreements. The following Exhibits attached hereto are incorporated into this Agreement and made a part hereof by this reference:

A. Description of Property (Recital A.)
B. Tract Location (Recital D.)
C. Subdivider's Authorized Representative Information (Section 12.)

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

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

[*Signatures of Following Pages*]

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

CITY OF TRACY,

a municipal corporation

By: Nancy D. Young
Title: Mayor

Date: _____

DEVELOPER:

LENNAR HOMES OF CALIFORNIA, LLC
a California limited liability company

By: Bridgit Koller
Title: Vice President

Date: 9/11/24

Attest:

By: Adrianne Richardson
Title: City Clerk

Date: _____

Approved As To Form:

By: Bijal M. Patel
Title: City Attorney

Date: _____

Consent to Recordation

DRP SOLARIS MULTISTATE, LLC, is the owner in fee simple of the real property described in Exhibit A and hereby consents to the recordation of this Subdivision Improvement Agreement.

DRP SOLARIS MULTISTATE, LLC
a Delaware Limited Liability Company

By: Domain Solaris Holdings, LLC
Its: Manager

By: DW General Partner, LLC, its Manager

By: Houdin Honarvar
Its: Authorized Signatory
Date: 9-12-2024

[ATTACHED]

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

STATE OF CALIFORNIA
COUNTY OF Contra Costa

On this 11 day of September, 20 4 before me, Ashley Edley, Notary Public, personally appeared Bridgit Keller, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/~~are~~ subscribed to the within instrument and acknowledged to me that ~~he~~/she/~~they~~ executed the same in ~~his~~/her/~~their~~ authorized capacity(~~ies~~), and that by ~~his~~/her/~~their~~ signature(~~s~~) on the instrument the person(~~s~~), or the entity upon behalf of which the person(~~s~~) acted, executed the instrument.

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

WITNESS my hand and official seal.

ASHLEY EDLEY
Notary Public - California
Contra Costa County
Commission # 2484939
My Comm. Expires Mar 19, 2028

Signature: Ashley Edley (Seal)

State of New York)
) ss.:
County of New York)

On the 12th day of September in the year 2024 before me, the undersigned, a Notary Public in and for said State, personally appeared Houdin Honarvar, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies),and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

(SEAL)

Josephine G. Cimino
Notary Public

JOSEPHINE G CIMINO
NOTARY PUBLIC, STATE OF NEW YORK
Registration No. 01CI0026551
Qualified in Nassau County
My Commission Expires 7-5 2028

EXHIBIT "A"

(Legal Description of Property)

REAL PROPERTY SITUATE IN THE CITY OF TRACY, COUNTY OF SAN JOAQUIN, STATE OF CALIFORNIA AND BEING A PORTION OF NEW PARCEL B AS SAID PARCEL IS DESCRIBED IN THE GRANT DEED TO TRACY PHASE 3, LLC RECORDED NOVEMBER 29, 2023, AS DOCUMENT NO. 2023-097077, OFFICIAL RECORDS OF SAN JOAQUIN COUNTY, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:
BEGINNING AT THE MOST NORTHEASTERN CORNER OF NEW PARCEL B, SAME CORNER COMMON WITH THE MOST NORTHERN CORNER OF TRACT 4134 (VILLAGES 5 & 6), OFFICIAL RECORDS OF SAN JOAQUIN COUNTY;
THENCE ALONG THE LINE COMMON TO SAID NEW PARCEL B AND TRACT 4134, THE FOLLOWING THIRTY (30) COURSES:
1) SOUTH 37° 53' 03" WEST - 182.06 FEET;
2) SOUTH 52° 06' 57" EAST - 5.00 FEET TO THE BEGINNING OF A CURVE TO THE RIGHT;
3) IN A SOUTHERLY DIRECTION 31.42 FEET ALONG THE ARC OF SAID CURVE TO THE RIGHT, HAVING A RADIUS OF 20.00 FEET AND THROUGH A CENTRAL ANGLE OF 90° 00' 00";
4) SOUTH 37° 53' 03" WEST - 5.00 FEET;
5) SOUTH 37° 53' 03" WEST - 167.00 FEET TO THE BEGINNING OF A CURVE TO THE RIGHT;
6) IN A WESTERLY DIRECTION 31.42 FEET ALONG THE ARC OF SAID CURVE TO THE RIGHT, HAVING A RADIUS OF 20.00 FEET AND THROUGH A CENTRAL ANGLE OF 90° 00' 00";
7) NORTH 52° 06' 57" WEST - 167.00 FEET;
8) SOUTH 37° 53' 03" WEST - 57.00 FEET;
9) SOUTH 52° 06' 57" EAST - 5.00 FEET TO THE BEGINNING OF A CURVE TO THE RIGHT;
10) IN A SOUTHERLY DIRECTION 31.42 FEET ALONG THE ARC OF SAID CURVE TO THE RIGHT, HAVING A RADIUS OF 20.00 FEET AND THROUGH A CENTRAL ANGLE OF 90° 00' 00";
11) SOUTH 37° 53' 03" WEST - 107.00 FEET TO THE BEGINNING OF A CURVE TO THE RIGHT;
12) IN A WESTERLY DIRECTION 31.42 FEET ALONG THE ARC OF SAID CURVE TO THE RIGHT, HAVING A RADIUS OF 20.00 FEET AND THROUGH A CENTRAL ANGLE OF 90° 00' 00";
13) NORTH 52° 06' 57" WEST - 5.00 FEET;
14) SOUTH 37° 53' 03" WEST - 57.00 FEET;
15) SOUTH 52° 06' 57" EAST - 5.00 FEET TO THE BEGINNING OF A CURVE TO THE RIGHT;
16) IN A SOUTHERLY DIRECTION 31.42 FEET ALONG THE ARC OF SAID CURVE TO THE RIGHT, HAVING A RADIUS OF 20.00 FEET AND THROUGH A CENTRAL ANGLE OF 90° 00' 00";
17) SOUTH 37° 53' 03" WEST - 180.00 FEET TO THE BEGINNING OF A CURVE TO THE RIGHT;
18) IN A WESTERLY DIRECTION 31.42 FEET ALONG THE ARC OF SAID CURVE TO THE RIGHT, HAVING A RADIUS OF 20.00 FEET AND THROUGH A CENTRAL ANGLE OF 90° 00' 00";
19) NORTH 52° 06' 57" WEST - 5.00 FEET;
20) SOUTH 37° 53' 03" WEST - 57.00 FEET;
21) SOUTH 52° 06' 57" EAST - 5.00 FEET TO THE BEGINNING OF A CURVE TO THE RIGHT;
22) IN A SOUTHERLY DIRECTION 31.42 FEET ALONG THE ARC OF SAID CURVE TO THE RIGHT, HAVING A RADIUS OF 20.00 FEET AND THROUGH A CENTRAL ANGLE OF 90° 00' 00";
23) SOUTH 37° 53' 03" WEST - 5.00 FEET;
24) SOUTH 52° 06' 57" EAST - 57.00 FEET;
25) NORTH 37° 53' 03" EAST - 5.00 FEET TO THE BEGINNING OF A CURVE TO THE RIGHT;
26) IN AN EASTERLY DIRECTION 31.42 FEET ALONG THE ARC OF SAID CURVE TO THE RIGHT, HAVING A RADIUS OF 20.00 FEET AND THROUGH A CENTRAL ANGLE OF 90° 00' 00";
27) SOUTH 52° 06' 57" EAST - 65.00 FEET TO THE BEGINNING OF A CURVE TO THE RIGHT;
28) IN A SOUTHERLY DIRECTION 31.42 FEET ALONG THE ARC OF SAID CURVE TO THE RIGHT, HAVING A RADIUS OF 20.00 FEET AND THROUGH A CENTRAL ANGLE OF 90° 00' 00";
29) SOUTH 37° 53' 03" WEST - 466.00 FEET TO AN EASTERLY CORNER OF SAID NEW PARCEL B, SAME CORNER COMMON WITH THE MOST SOUTHWEST CORNER OF SAID TRACT 4134;
30) SOUTH 52° 06' 57" EAST - 149.50 FEET FOR THE BEGINNING OF A CURVE TO THE LEFT FROM WHICH THE CENTER BEARS SOUTH 36° 25' 14" WEST;

THENCE CROSSING THROUGH SAID NEW PARCEL B THE FOLLOWING THREE (3) COURSES:
1) IN A WESTERLY DIRECTION 123.69 FEET ALONG THE ARC OF SAID CURVE TO THE LEFT, HAVING A RADIUS OF 80.04 FEET AND THROUGH A CENTRAL ANGLE OF 88° 32' 11";
2) SOUTH 37° 53' 03" WEST - 25.44 FEET;
3) NORTH 52° 06' 57" WEST - 79.00 FEET TO THE WEST LINE OF SAID NEW PARCEL B;
THENCE ALONG THE WEST LINE OF NEW PARCEL B THE FOLLOWING TWENTY-EIGHT (28) COURSES:
1) NORTH 37° 53' 03" EAST - 23.45 FEET FOR THE BEGINNING OF A CURVE TO THE LEFT;
2) IN A NORTHERLY DIRECTION 128.81 FEET ALONG THE ARC OF SAID CURVE TO THE LEFT, HAVING A RADIUS OF 82.00 FEET AND THROUGH A CENTRAL ANGLE OF 90° 00' 00";
3) NORTH 52° 06' 57" WEST - 876.82 FEET;
4) NORTH 37° 53' 03" EAST - 208.00 FEET;
5) NORTH 52° 06' 57" WEST - 64.68 FEET;
6) NORTH 37° 53' 03" EAST - 57.00 FEET TO THE BEGINNING OF A CURVE TO THE LEFT FROM WHICH THE CENTER BEARS NORTH 37° 53' 03" EAST;
7) IN AN EASTERLY DIRECTION 39.27 FEET ALONG THE ARC OF SAID CURVE TO THE LEFT, HAVING A RADIUS OF 25.00 FEET AND THROUGH A CENTRAL ANGLE OF 90° 00' 00";
8) NORTH 37° 53' 03" EAST - 176.00 FEET TO THE BEGINNING OF A CURVE TO THE LEFT;
9) IN A NORTHERLY DIRECTION 31.42 FEET ALONG THE ARC OF SAID CURVE TO THE LEFT, HAVING A RADIUS OF 20.00 FEET AND THROUGH A CENTRAL ANGLE OF 90° 00' 00";
10) NORTH 52° 06' 57" WEST - 5.00 FEET;
11) NORTH 37° 53' 03" EAST - 57.00 FEET;
12) TO THE BEGINNING OF A CURVE TO THE LEFT FROM WHICH THE CENTER BEARS NORTH 37° 53' 03" EAST;
13) IN AN EASTERLY DIRECTION 39.27 FEET ALONG THE ARC OF SAID CURVE TO THE LEFT, HAVING A RADIUS OF 25.00 FEET AND THROUGH A CENTRAL ANGLE OF 90° 00' 00";
14) NORTH 37° 53' 03" EAST - 168.00 FEET TO THE BEGINNING OF A CURVE TO THE LEFT;
15) IN A NORTHERLY DIRECTION 39.27 FEET ALONG THE ARC OF SAID CURVE TO THE LEFT, HAVING A RADIUS OF 25.00 FEET AND THROUGH A CENTRAL ANGLE OF 90° 00' 00";
16) NORTH 37° 53' 03" EAST - 57.00 FEET TO THE BEGINNING OF A CURVE TO THE LEFT FROM WHICH THE CENTER BEARS NORTH 37° 53' 03" EAST;
17) IN AN EASTERLY DIRECTION 39.27 FEET ALONG THE ARC OF SAID CURVE TO THE LEFT, HAVING A RADIUS OF 25.00 FEET AND THROUGH A CENTRAL ANGLE OF 90° 00' 00";
18) NORTH 37° 53' 03" EAST - 80.00 FEET TO THE BEGINNING OF A CURVE TO THE LEFT;
19) IN A NORTHERLY DIRECTION 39.27 FEET ALONG THE ARC OF SAID CURVE TO THE LEFT, HAVING A RADIUS OF 25.00 FEET AND THROUGH A CENTRAL ANGLE OF 90° 00' 00";
20) NORTH 37° 53' 03" EAST - 57.00 FEET TO THE BEGINNING OF A CURVE TO THE LEFT FROM WHICH THE CENTER BEARS NORTH 37° 53' 03" EAST;
21) IN AN EASTERLY DIRECTION 39.27 FEET ALONG THE ARC OF SAID CURVE TO THE LEFT, HAVING A RADIUS OF 25.00 FEET AND THROUGH A CENTRAL ANGLE OF 90° 00' 00";
22) NORTH 37° 53' 03" EAST - 167.00 FEET TO THE BEGINNING OF A CURVE TO THE LEFT;
23) IN A NORTHERLY DIRECTION 39.27 FEET ALONG THE ARC OF SAID CURVE TO THE LEFT, HAVING A RADIUS OF 25.00 FEET AND THROUGH A CENTRAL ANGLE OF 90° 00' 00";
24) NORTH 37° 53' 03" EAST - 41.50 FEET;
25) SOUTH 52° 06' 57" EAST - 17.00 FEET;
26) NORTH 36° 45' 28" EAST - 151.15 FEET;
27) SOUTH 53° 14' 32" EAST - 188.92 FEET;
28) SOUTH 52° 05' 47" EAST - 803.09 FEET TO THE POINT OF BEGINNING.
THIS LEGAL DESCRIPTION IS MADE PURSUANT TO THAT CERTAIN CERTIFICATE APPROVING A LOT LINE ADJUSTMENT LLA NO. MS 23-0004, RECORDED NOVEMBER 28, 2023, AS INSTRUMENT NO. 2023-096708 OF OFFICIAL RECORDS.
EXCEPT THEREFROM ALL OIL, GAS, HYDROCARBONS AND OTHER MINERALS AS CONVEYED TO BERTHA G. BERGER, A WIDOW, VERA GRUNAUER, A SINGLE WOMAN, AND DORIS G. POWELL, A SINGLE WOMAN, BY DEED RECORDED MARCH 27, 1959 IN BOOK 2160, PAGE 308, OF OFFICIAL RECORDS,

WHICH PROVIDES AS FOLLOWS: TOGETHER WITH ALL RIGHTS NECESSARY AND PROPER FOR THE PURPOSE OF DRILLING AND EXPLORING FOR SAID SUBSTANCES AND REMOVING THE SAME THEREFROM, AS TO THE PORTION OF SAID LAND DESCRIBED THEREIN.
ALSO EXCEPT THEREFROM ALL OIL, GAS, MINERAL AND HYDROCARBON SUBSTANCES LYING BELOW A DEPTH OF 500 FEET BELOW THE SURFACE, WITHOUT THE RIGHT OF SURFACE ENTRY, AS RESERVED IN THE DEED RECORDED JULY 20, 1992 AS DOCUMENT NO. 92083244 SAN JOAQUIN COUNTY RECORDS, AS TO THE PORTION OF SAID LAND DESCRIBED THEREIN.
ALSO EXCEPT THEREFROM ALL OIL, GAS, AND MINERAL RIGHTS LYING BELOW A DEPTH OF 500 FEET BELOW THE SURFACE, WITHOUT THE RIGHT OF SURFACE ENTRY, AS RESERVED IN THE DEED RECORDED FEBRUARY 23, 2006, INSTRUMENT NO. 2006-040904, OF OFFICIAL RECORDS, AS TO THE

PORTION OF SAID LAND DESCRIBED THEREIN.

EXHIBIT "B"
Tract Location

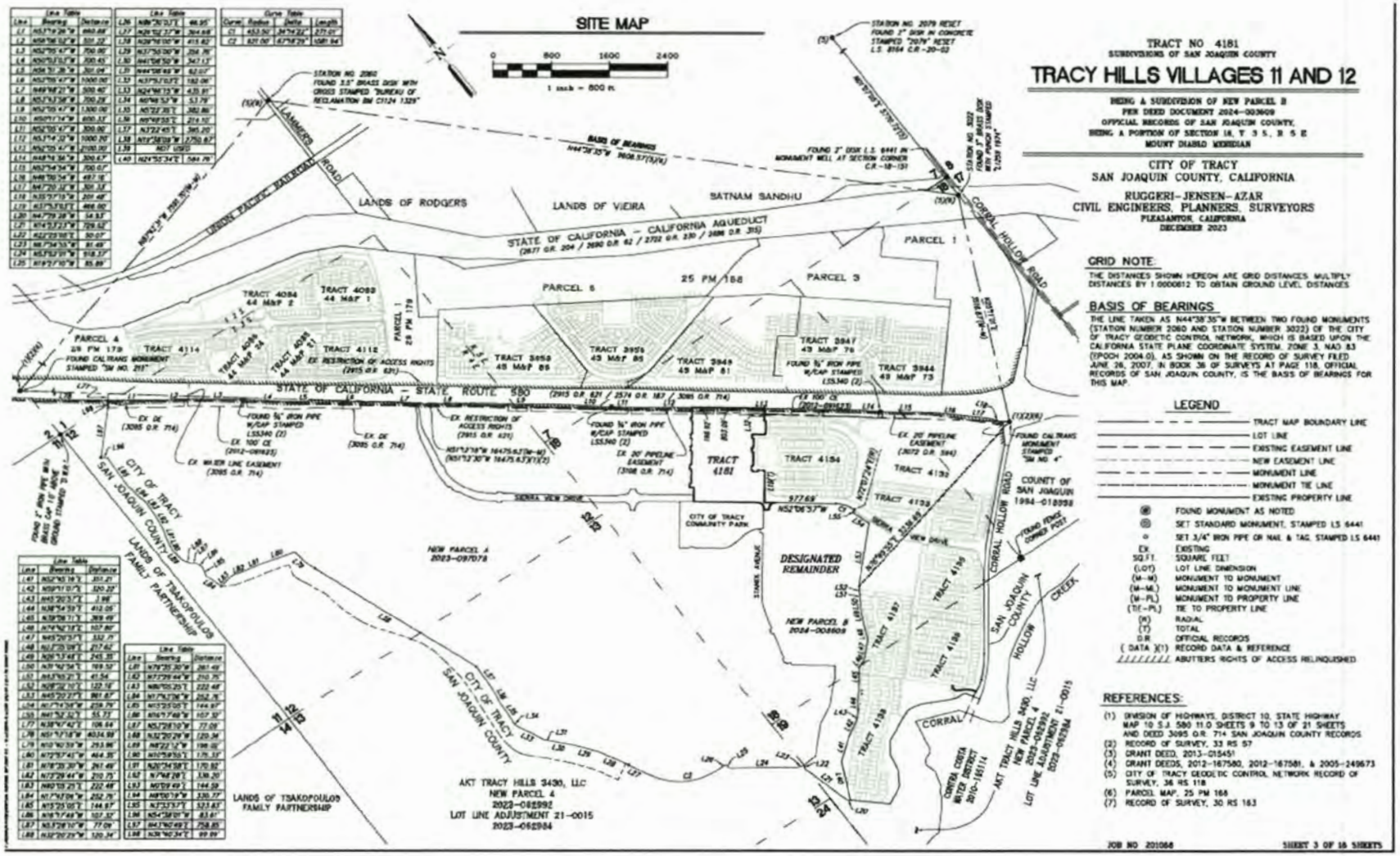

SITE MAP
0 800 1600 2400
1 inch = 800 ft.
TRACT NO 4181
SUBDIVISIONS OF SAN JOAQUIN COUNTY
TRACY HILLS VILLAGES 11 AND 12
BEING A SUBDIVISION OF NEW PARCEL B
PER DEED DOCUMENT 2024-003609
OFFICIAL RECORDS OF SAN JOAQUIN COUNTY,
BEING A PORTION OF SECTION 18, T 3 S., R 5 E
MOUNT DIABLO MERIDIAN
CITY OF TRACY
SAN JOAQUIN COUNTY, CALIFORNIA
RUGGERI-JENSEN-AZAR
CIVIL ENGINEERS, PLANNERS, SURVEYORS
PLEASANTON, CALIFORNIA
DECEMBER 2023
GRID NOTE
THE DISTANCES SHOWN HEREON ARE GRID DISTANCES. MULTIPLY DISTANCES BY 1.0000812 TO OBTAIN GROUND LEVEL DISTANCES
BASIS OF BEARINGS
THE LINE TAKEN AS N44°38'35"W BETWEEN TWO FOUND MONUMENTS (STATION NUMBER 2080 AND STATION NUMBER 3022) OF THE CITY OF TRACY GEODETIC CONTROL NETWORK, WHICH IS BASED UPON THE CALIFORNIA STATE PLANE COORDINATE SYSTEM, ZONE 3, NAD 83 (EPOCH 2004.0), AS SHOWN ON THE RECORD OF SURVEY FILED JUNE 26, 2007, IN BOOK 36 OF SURVEYS AT PAGE 118, OFFICIAL RECORDS OF SAN JOAQUIN COUNTY, IS THE BASIS OF BEARINGS FOR THIS MAP.
LEGEND
TRACT MAP BOUNDARY LINE
LOT LINE
EXISTING EASEMENT LINE
NEW EASEMENT LINE
MONUMENT LINE
MONUMENT TIE LINE
EXISTING PROPERTY LINE
FOUND MONUMENT AS NOTED
SET STANDARD MONUMENT, STAMPED LS 6441
SET 3/4" IRON PIPE OR NAIL & TAG, STAMPED LS 6441
EX. EXISTING
SQ.FT. SQUARE FEET
(LOT) LOT LINE DIMENSION
(M-M) MONUMENT TO MONUMENT
(M-ML) MONUMENT TO MONUMENT LINE
(M-PL) MONUMENT TO PROPERTY LINE
(TIE-PL) TIE TO PROPERTY LINE
(R) RADIAL
(T) TOTAL
O.R. OFFICIAL RECORDS
(DATA)(1) RECORD DATA & REFERENCE
ABUTTERS RIGHTS OF ACCESS RELINQUISHED
REFERENCES:
(1) DIVISION OF HIGHWAYS, DISTRICT 10, STATE HIGHWAY MAP 10 S.J. 580 11.0 SHEETS 9 TO 13 OF 21 SHEETS AND DEED 3095 O.R. 714 SAN JOAQUIN COUNTY RECORDS
(2) RECORD OF SURVEY, 33 RS 57
(3) GRANT DEED, 2013-015451
(4) GRANT DEEDS, 2012-167580, 2012-167581, & 2005-249673
(5) CITY OF TRACY GEODETIC CONTROL NETWORK RECORD OF SURVEY, 36 RS 118
(6) PARCEL MAP, 25 PM 168
(7) RECORD OF SURVEY, 30 RS 163
JOB NO 201068
SHEET 3 OF 16 SHEETS
STATE OF CALIFORNIA - STATE ROUTE 580
STATE OF CALIFORNIA - CALIFORNIA AQUEDUCT
UNION PACIFIC RAILROAD
LANDS OF RODGERS
LANDS OF VIEIRA
SATNAM SANDHU
PARCEL 1
PARCEL 2
PARCEL 3
PARCEL 4
PARCEL 5
PARCEL 6
25 PM 168
TRACT 4181
TRACT 4154
TRACT 4132
TRACT 4134
TRACT 4136
TRACT 4137
TRACT 4138
TRACT 4114
TRACT 4112
TRACT 4084
TRACT 4088
TRACT 3958
TRACT 3959
TRACT 3949
TRACT 3947
TRACT 3944
CORRAL HOLLOW ROAD
LAMMERS ROAD
CITY OF TRACY COMMUNITY PARK
DESIGNATED REMAINDER
NEW PARCEL A 2023-097078
NEW PARCEL B 2024-003609
COUNTY OF SAN JOAQUIN 1994-018958
LANDS OF TSAKOPOULOS FAMILY PARTNERSHIP
AKT TRACY HILLS 3430, LLC NEW PARCEL 4 2023-082992 LOT LINE ADJUSTMENT 21-0015 2023-082984
AKT TRACY HILLS 3430, LLC NEW PARCEL 4 2023-082992 LOT LINE ADJUSTMENT 21-0015 2023-082984
CONTRA COSTA WATER DISTRICT 2010-165114
SAN JOAQUIN COUNTY HOLLOW CREEK
CORRAL
STONES AVENUE
SIERRA VIEW DRIVE

Exhibit "C"

Subdivider's Authorized Representative Information

Name of Person	Company Name	Telephone Number
Sergio Perez	Lennar Homes	925.315.0366
Lisa A. Mikelonis, PE	Integral Communities	925.260.4753

Conditions of Approval for Tracy Hills Phase 2
Vesting Tentative Subdivision Map
Application Number TSM20-0003
October 19, 2021

Project: These Conditions of Approval shall apply to the Vesting Tentative Subdivision Map for Tracy Hills Phase 2, Application Number TSM20-0003, including approximately 1,470 single-family residential lots and various other parcels.

Property: The property consists of approximately 1,143 acres located in the Tracy Hills Specific Plan Area, south of I-580, west of Corral Hollow Road, Application Number TSM20-0003.

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 1,143 acres located in the Tracy Hills Specific Plan Area that is the subject of the Vesting Tentative Subdivision Map for Tracy Hills Phase 2, Application Number TSM20-0003.

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 TSM20-0003), which was received by the Development Services Department on October 12, 2021, unless modified by these Conditions.

7. Streets, Streetlights and Sidewalks

Before approval of the first Final Map or issuance of any building permit for the Property (except for up to fifteen (15) model homes), Subdivider shall provide for perpetual funding of the on-going costs of operation, maintenance and replacement for the traffic signals, streetlights, and street sweeping on the Property (including all costs required by PG&E), by doing one or more of the following, subject to the approval of the City's Finance Director:

a. Community Facilities District. Subdivider shall enter into an agreement with the City, to be signed by the Finance Director, which shall be recorded against the Property, which requires that prior to the issuance of a certificate of occupancy for a residential dwelling unit, Subdivider shall complete the annexation of the Property to City of Tracy Community Facilities District in compliance with the requirements of the Mello – Roos Community Facilities Act of 1982 (Gov. Code § 53311 et seq.) including, without limitation, affirmative votes, and the recordation of a Notice of Special Tax Lien. Subdivider shall be responsible for all costs associated with the CFD proceedings.

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 costs of operation, maintenance and replacement for the traffic signals, streetlights, and street sweeping on the Property (including all costs required by PG&E);

(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 prior to the final inspection or occupancy of the first dwelling (except for up to fifteen model homes), setting forth, among other things, the

required maintenance obligations, the standards of maintenance, and all other associated obligation(s) to ensure the long-term operation, maintenance and replacement by the HOA for the traffic signals, streetlights, and street sweeping on the Property;

(3) 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 operation, maintenance and replacement for the traffic signals, streetlights, and street sweeping on the Property. 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. Subdivider shall enter into an agreement with the City, which shall be recorded against the Property, which requires that prior to issuance of a certificate of occupancy for a residential dwelling unit, Subdivider shall deposit with the City an amount necessary, as reasonably determined by the City, to fund in perpetuity the on-going costs of operation, maintenance and replacement for the streets, streetlights, and sidewalks on the Property (including all costs required by PG&E).

If the provisions for adequate funding of the on-going costs of operation, maintenance and replacement for the traffic signals, streetlights, and street sweeping on the Property (including all costs required PG&E) are met prior to issuance of the first building permit for the Property, subject to the Finance Director's review and approval, the terms of this condition shall be considered to have been met and this condition shall become null and void.

8. Police/Public Safety & Public Works

Before approval of the first Final Map or issuance of any building permit for the Property (except for up to fifteen (15) model homes), Subdivider shall provide for perpetual funding of the on-going costs of providing Police and public safety and Public Works services for the Property, by doing one of the following, subject to the approval of the City's Finance Director:

a. Community Facilities District. Subdivider shall enter into an agreement with the City, to be signed by the Finance Director, which shall be recorded against the Property, which requires that prior to the issuance of a certificate of occupancy for a residential dwelling unit, Subdivider shall complete the annexation of the Property to City of Tracy Community Facilities District in compliance with the requirements of the Mello – Roos Community Facilities Act of 1982 (Gov. Code § 53311 et seq.) including, without limitation, affirmative votes, and the recordation of a Notice of

Special Tax Lien. Subdivider shall be responsible for all costs associated with the CFD proceedings.

Or

b. Direct funding. Subdivider shall enter into an agreement with the City, which shall be recorded against the Property, which requires that prior to issuance of a certificate of occupancy for a residential dwelling unit, Subdivider shall deposit with the City an amount necessary, as reasonably determined by the City, to fund in perpetuity the on-going costs of providing Police and public safety and Public Works services for the Property.

If the provisions for adequate funding of the on-going costs of providing Police and public safety and Public Works services for the Property are met prior to issuance of the first building permit for the Property, subject to the Finance Director's review and approval, the terms of this condition shall be considered to have been met and this condition shall become null and void.

9. Landscaping Maintenance

Before approval of the first Final Map or issuance of any building permit for the Property (except for up to fifteen (15) model homes), Subdivider shall provide for perpetual funding of the on-going costs of maintenance and replacement for public landscaping for the Property (but shall exclude the community park), by doing one or more 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, which shall be recorded against the Property, which stipulates the following: (1) prior to issuance of a building permit, the Subdivider shall form a Community Facilities District (CFD) for funding the on-going maintenance costs related to maintenance, operation, repair and replacement of public landscaping, public walls and any public amenities included in the Project, and ongoing public landscaping maintenance costs associated with major program roadways identified in the Citywide Roadway and Transportation Master Plan; (2) the items to be maintained include but are not limited to the following: 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; (3) formation of the CFD shall include, but not be limited to, affirmative votes and the recordation of a Notice of Special Tax Lien; (4) upon successful formation, the parcels will be subject to the maximum special tax rates as outlined in the Rate and Method of Apportionment; (5) prior to issuance of a building permit, the Subdivider shall deposit an amount equal to the first year's taxes; and (6) the Subdivider shall be responsible for all costs

associated with formation of the CFD.

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 prior to the final inspection or occupancy of the first dwelling (except for up to fifteen model homes), 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. 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, the Subdivider shall deposit with the City an amount necessary, as reasonably determined by the City, to fund in perpetuity the full on-going maintenance costs related to maintenance, operation, repair and replacement of public landscaping, public walls and any public amenities included in the Project, and ongoing public landscaping maintenance costs associated with major program roadways identified in the Citywide Roadway and Transportation Master Plan. The items to be maintained include but are not limited to the following: 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.

10. Neighborhood 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. Prior to the issuance of the 125th building permit that allows construction of a dwelling, not including plumbing only permits, the developer shall commence construction of the first neighborhood park. If the construction of the first neighborhood park has not commenced by the issuance of 125th building permit, no further building permits shall be issued until the first neighborhood park construction is commenced;

b. Prior to the issuance of the 500th building permit that allows construction of a dwelling, not including plumbing only permits, the developer shall commence construction of the second neighborhood park. If the construction of the second neighborhood park has not commenced by the issuance of 500th building permit, no further building permits shall be issued until the second neighborhood park construction is commenced;

c. Prior to the issuance of the 976th building permit that allows construction of a dwelling, not including plumbing only permits, the developer shall commence construction of the third neighborhood park. If the construction of the third neighborhood park has not commenced by the issuance of 976th building permit, no further building permits shall be issued until the third neighborhood park construction is commenced; and

d. Prior to the issuance of the 1,226th building permit that allows construction of a dwelling, not including plumbing only permits, the developer shall commence construction of the fourth neighborhood park. If the construction of the fourth neighborhood park has not commenced by the issuance of 1,226th building permit, no further building permits shall be issued until the fourth neighborhood park construction is commenced.

C. **Engineering Division Conditions of Approval**

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 by Resolution No. 2016-063, dated April 5, 2016, and any amendments thereto.

b) *Amendment to the Tracy Hills Specific Plan for Phase 2*, approved by the City Council by Resolution No. 2021-_____ on _____, 2021, including the *Transportation Consistency Analysis* prepared for the Amendment by Kimley-Horn and Associates, dated

September 23, 2021, and any updates or amendments thereto ("Specific Plan Amendment" or "SPA").

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 *Addendum to the Tracy Hills Specific Plan EIR*, prepared by Kimley-Horn and Associates, dated September 2021, including all mitigation measures incorporated therein (hereinafter referred to together as "EIR").

d) *Tracy Hills Phase 2 Traffic Study,* prepared by Kimley-Horn and Associates, dated September 30, 2021, and any updates or amendments thereto ("Traffic Study").

e) *City of Tracy Citywide Roadway and Transportation Master Plan*, prepared by RBF Consulting, dated November 2012 ("TMP")

f) *Tracy Hills Phase 2 VTM Drainage Analysis* prepared by Ruggeri-Jensen-Azar, dated December 17, 2020, and the review of said analysis contained in the *Technical Memorandum* prepared by Wood Rodgers, dated April 26, 2021 (draft), and any updates or amendments to either document ("Storm Drainage Study").

g) *Tracy Hills Storm Drainage Master Plan* prepared by Ruggeri-Jensen-Azar, dated November 2013 ("*Storm Drainage Master Plan*"), as reviewed by Storm Water Consulting, Inc and Stantec Consulting Services, Inc.

h) *Tracy Hills Phase 2 Sanitary Sewer Study Technical Memorandum* prepared by Black Water Consulting Engineers, dated October 1, 2021, and any updates or amendments thereto ("Sanitary Sewer Study").

i) *Peer Review and Hydraulic Evaluation for Tracy Hills Phase 2, 3, and 4* prepared by West Yost, dated July 13, 2021, and any updates or amendments thereto ("Water Study").

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 2 Vesting Tentative Subdivision Map, Application No. TSM20-0003.

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 the First Amendment to the Development Agreement, approved by the City

Council on November 10, 2020, by Ordinance No. 1300 ("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 and completed under a City-approved improvement 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 the 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 is/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.2.1 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 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.2.2.2 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.2.2.3 If an engineered slope is used to retain soil subject to approval by the City Engineer, 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.2.2.4 Erosion Control

Improvement Plans shall specify the method of erosion control to be employed and materials to be used.

C.2.2.5 If applicable, show all existing irrigation structure(s), channel(s) and pipe(s) that are to remain or relocated or to be removed, if any, 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 Site grading shall be designed such that the Project's storm drainage overland release point will be directed to a storm drainage easement or to public streets with a functional storm drainage system and that the storm drainage system within the public streets has adequate capacity to drain storm water from the Property.

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.

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 Master Plan, Storm Drainage Study and City Regulations.

C.2.4.4 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 Crimson crude oil 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 drainage collection channels, appropriately designed inlet structures and sedimentation/detention 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 terminal retention basins, 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 may 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 basins shall be contained within a parcel suitable for dedication to the City of Tracy. The basins shall be provided with appropriate fencing with warning signs, access roadways to and from public roadways and access roadways into the basins for maintenance purposes as approved by the City Engineer. All storm drainage inlets into the basins shall have inlet structures with design acceptable to the City Engineer.

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 in accordance with the Sanitary Sewer Study and City Regulations. Before approval of Final Map(s) for the Project, Subdivider shall submit improvement plans and obtain approval of plans for all on-site and off-site sewer improvements required to serve the Project.

C.2.5.2 As indicated in the Sewer Study, based on the projected sewer demand from approved projects within the Coral Hollow sewer contributory area, the Phase 2 of the Choke Points Improvements for Corral Hollow Road Sewer as

identified in the Wastewater Master Plan (“ Phase 2 Choke Points Improvements”) will be required to serve the Project. The City has commenced the design of Phase 2 Choke Point Improvements. In the event the City does not have adequate funding for Phase 2 Choke Points Improvements the Subdivider will contribute funding as determined by the City Engineer to cover shortfall in funding, so the City can proceed with the construction of the improvement. Building permits will only be issued up to available capacity in the Corral Hollow Sewer system as determined by the City Engineer. Subdivider will be eligible for fee credits and/or reimbursements in accordance with Tracy Municipal Code.

C.2.5.3 Based on the analysis of the capacity of Wastewater Treatment Plant (WWTP) and the projected growth over the next five years, it is estimated that Phase 2C of the WWTP improvements as identified in the Wastewater Master Plan will be required to be constructed and operational in 2023. City has identified a funding shortfall of approximately $33.5 Million for the WWTP Phase 2 improvements. In order for the City to undertake design and construction of the WWTP Phase 2C improvements to provide adequate treatment capacity of the Project, City has identified the need to collect upfront fees from developments within the City.

On or prior to December 31, 2022, the Developer shall pay the City half the amount of the wastewater treatment development impact fees (estimated at approximately $6 Million) for lots within the boundary of Tracy Hills Phase 2 Tentative Map and shall provide a Letter of Credit (or other guarantee) to the satisfaction of the City Engineer for the other half of the wastewater treatment development impact fees. On or prior to December 31, 2023, the Developer shall pay to the City the remaining half the amount of the wastewater treatment development impact fees. After the second payment, the City Engineer may release the Letter of Credit (or other guarantee). For building permits issued prior to December 31, 2022, the Developer shall pay wastewater development impact fees per lot consistent with its agreement with the City and Title 13 of the Tracy Municipal Code. The City Engineer will determine the amount due on December 22, 2022 based on the available wastewater development impact fees collected and the funding shortfall for WWTP Phase 2C improvements. The Developer shall be required to pay wastewater development impact fee up to the amounts as outlined above (for all lots for which building permits have not been issued on December 31, 2022). Building permits will

only be issued up to available capacity in the WWTP, as determined by the City Engineer.

In the event City collects adequate funding from other development projects within the City by December 31, 2022, Developer will not be required to pay the upfront fees as outlined above.

C.2.5.4 The Subdivider shall extend the sanitary sewer facilities within Lammers Road that are intended to serve future phases of the Tracy Hills Project northerly under I-580 and continuing north of I-580 within the Lammers Road right-of-way to connect to the sanitary sewer main stub to be installed with the Tracy Hills Drive improvements for Tracy Hills Phase 1B. Subdivider shall obtain an encroachment permit from Caltrans for the sewer improvements to be installed within the Caltrans right-of-way.

C.2.5.5 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.2.5.6 Subdivider shall pay impact fees at the time of issuance of building permit or in accordance with the Fee Deferral Agreement.

C.2.5.7 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.2.6 Water Distribution System

C.2.6.1 All potable and recycled water lines and associated improvements shall be designed and installed in accordance with the Water Study and City Regulations. Before approval of Final Map(s) for the Project, Subdivider shall submit improvement plans and obtain approval of plans for all potable and recycled water lines and associated improvements.

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 The Subdivider shall complete design and construction of one Zone 5/6 at-grade water storage tank with a holding capacity of at least 2.57 MG and water transition mains as necessary to serve the Project and in accordance the Water Study and City Regulations. These improvements are required to be complete and operational before the final inspection of the first residential building within the Project, unless an earlier time of completion is required to comply with Condition C.2.6.2. above.

All costs related to the design and construction of the water tanks and associated improvement are the responsibility of the Subdivider. Before approval of first Final Map within the Project, the Subdivider shall execute a Deferred Improvement Agreement (DIA) to address timing, scope of work and funding responsibilities. Subdivider may request formation of Benefit District for the water tanks and associated improvements per Condition C.10.4.

C.2.6.5 Subdivider shall install 12-inch and 16-inch recycled water mains in Lammers Road as required to serve the Project and as shown on Figures 9-2 and G-D1 in the draft (2020) Water System Master Plan Update. An approximately 1,150-foot segment of 16-inch recycled water main in Lammers Road under I-580 between the portions of Lammers Road north and south of the freeway will not be constructed with the interim two-lane Lammers Road undercrossing. Timing of the future installation of the above approximately 1,150-foot segment 16-inch recycled water main is to be determined by the City Engineer.

Initially, the 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 recycled water distribution main in Lammers Road will be disconnected from the potable water

system and connected to the recycled water system.

C.2.6.6 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.2.6.7 Where pressures at individual water services will be 80 psi or more, the Subdivider shall provide pressure reducing valves at the location approved by the City Engineer. The design operation of the individual pressure reducing valves for services shall be subject to approval by the Building Official.

C.2.6.8 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 Roadway 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, and Tracy Hills Design Standards and Specific Plan Amendments. 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, fire hydrants, median islands, turn lanes, landscaping, and all necessary related improvements as required by the City. Timing of completion of roadway improvements shall comply with these Conditions of Approval and as outlined in the Mitigation Measures listed in the EIR.

In the case of a discrepancy between the information shown on the Vesting Tentative Subdivision Map (“VTSM”) and/or Specific Plan Amendment 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.

C.2.7.2 Lammers Road and Other In-tract Streets – Right-of-Way

The Subdivider shall dedicate all rights-of-way that are necessary to construct Lammers Road, between Tracy Hills Drive and Corral Hollow Road, and all the in-tract streets, based on their respective cross sections shown on the 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 VTSM and the Traffic Study.

C.2.7.3 Lammers Road and Other In-tract Streets – Improvements

Design and construction details for Lammers Road, between Tracy Hills Drive and Corral Hollow Road, 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 VTSM, Traffic Study and City Regulations, and shall be shown on the Improvement Plans. Interim improvements under I-580 include 5’ wide sidewalk on east side only.

Improvements along Lammers Road and certain in-tract streets shall also include Class I bikeways or Class II bike lanes in accordance with the VTSM and Traffic Study. Interim improvements under I-580 do not include Class 1 bikeway or Class II bike lanes.

Lammers Road and Street B improvements adjacent to the school site on Lot H shall be constructed in accordance with the VTSM and Traffic Study and are subject to the review and approval of the Jefferson School District.

C.2.7.4 Corral Hollow Road - Right of Way

Per the TMP and SPA, Corral Hollow Road will be a 4-lane major arterial roadway with 11’ wide raised median, sidewalk/Class I bikeway on west side and landscaping between I-580 and Lammers Road and 2-lane arterial with sidewalk/Class I bikeway on west side and landscaping south of Lammers Road to the Project boundary. The Subdivider shall dedicate all rights-of-way along the Project frontage necessary for the widening of Corral Hollow Road per TMP and including any additional right-of-way required for the construction of roundabout improvements, turn lanes and transitions at the intersection of Corral Hollow Road and

Lammers Road in accordance with the VTSM and Traffic Study.

The width of travel lanes, turn lanes, street median, landscaping strips and sidewalks shall be in accordance with the VTSM and the Traffic Study.

The Subdivider may be eligible for fee Credits and/or reimbursements for right-of-way dedication beyond Project's frontage obligation per the TMP requirements. Temporary or interim improvements are not eligible for fee credits or reimbursements.

C.2.7.5 Corral Hollow Road - Improvements

Design and construction details for Corral Hollow Road 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, pavement marking and striping, traffic signs, curb ramps and all other street improvements shall comply with VTSM, SPA, Traffic Study and City Regulations, and shall be shown on the Improvement Plans.

Improvements along Corral Hollow Road shall also include Class I bikeway in accordance with the VTSM and Traffic Study.

C.2.7.6 Subdivider shall prepare improvement plans for Lammers Road and Corral Hollow Road improvements and obtain approval by the City Engineer. The timing and scope of the improvements to be shown on the improvement plans for Lammers Road and Corral Hollow Road shall be as determined by the City Engineer.

In order to guarantee completion of the Lammers Road and 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 SIA or OIA with the necessary improvement security at the time of approval of the Final Map that triggers the need for improvements as determined by the City Engineer.

C.2.7.7 For any Corral Hollow Road Improvements considered frontage improvements (such as Subdivider's Frontage Obligation per the TMP and landscape improvements behind

the curb) and improvements within Caltrans right-of-way at I-580/Corral Hollow Road interchange that are not constructed or security posted with OIA at the time of approval of the first Final Map, the Subdivider shall enter into a DIA with the City.

The Subdivider shall submit the signed and notarized DIA before approval of the first Final Map within the Project. The Subdivider shall post improvement security in the amounts and form in accordance with TMC section 12.36.080 at the times specified in the DIA.

C.2.7.8 Roadway Improvement Obligations per Traffic Study

The following roadway, intersection and interchange improvements are to be constructed by the Project:

a. I-580 & CORRAL HOLLOW ROAD RAMP TERMINALS.

Subdivider shall construct the I-580/Corral Hollow Road interchange improvements in accordance with the TMP, EIR and Traffic Study. Per the Traffic Study, interchange improvements are required to be completed prior to occupancy of the first residential unit within the Project because the interchange is already operating at a deficient level of service. Subdivider shall, in collaboration with the City Engineer and Caltrans, commence with the engineering design for the interchange improvements and initiate the Caltrans review, approval and permitting process no later than ninety (90) calendar days following approval of the Vesting Tentative Subdivision Map ("VSTM") for the Project.

If the Subdivider is unable to complete construction of the interchange prior to occupancy of the first residential unit, primarily as a consequence of the Caltrans approval and permitting process, City may issue occupancy permits including and beyond the first residential unit provided that the Subdivider has, to the reasonable satisfaction of the City Engineer, diligently pursued its efforts to obtain the required Caltrans permits and complete construction of the interchange improvements and has collaborated closely with City staff in this effort.

Funding of these improvements are the primary responsibility of the developer per the Tracy Municipal Code, the EIR, and the City's TMP. However, some funding may be provided in accordance with the Settlement Agreement and Development Agreement.

Funding sources may also include other regional transportation funds and/or grants that may become available, subject to eligibility and approval by the City and other approving agencies. Developer will be eligible for fee credits in accordance with Tracy Municipal Code provisions and Development Agreement.

b. LAMMERS ROAD - BETWEEN TRACY HILLS DRIVE AND CORRAL HOLLOW ROAD.

Subdivider shall construct Lammers Road between Tracy Hills Drive and Corral Hollow Road in accordance with the TMP, Traffic Study and per Conditions C.2.7.2 and C.2.7.3.

c. CORRAL HOLLOW ROAD/LAMMERS ROAD INTERSECTION.

Concurrent with the construction of Lammers Road between Tracy Hills Drive and Corral Hollow Road as described above and in Condition C.2.7.3, the Subdivider shall construct the Corral Hollow Road and Lammers Road intersection improvements, consisting of a two-lane roundabout and all associated improvements.

d. CORRAL HOLLOW ROAD WIDENING - FROM LINNE ROAD INTERSECTION TO THE AQUEDUCT.

Subdivider shall widen Corral Hollow Road to provide two lanes in each direction, including pedestrian and bicycle facilities, from the southern terminus of bridge crossing the California Aqueduct to the Linne Road intersection, including canal crossings, in accordance with the adopted Corral Hollow Road Precise Plan, the TMP, and the Traffic Study.

Construction of the above Corral Hollow Road Widening improvements shall commence upon or prior to the final inspection of the two thousand six hundredth (2,600th) dwelling unit within the project boundary (as defined in the Development Agreement).

e. CORRAL HOLLOW ROAD - I-580 TO LAMMERS ROAD.

Subdivider shall widen Corral Hollow Road to provide two lanes in each direction, including pedestrian and bicycle facilities, between I-580 and Lammers Road in accordance with the TMP, SPA, Traffic Study and Conditions C.2.7.4 and C.2.7.5.

C.2.7.9 The Subdivider shall construct an all-whether, emergency vehicle access across Lot CC as shown on the VTSM and in accordance with South San Joaquin County Fire Authority requirements.

C.2.7.10 Bus shelters on Lammers Road

The bus shelters (and turnouts if deemed necessary by the City) shall be constructed as part of the Lammers Road Improvements. Up to three bus shelters shall be placed on each side of Lammers Road between Corral Hollow Road and I-580 at the locations to be determined by the City Engineer. Timing of construction of bus shelters will be determined in the future based on the extension of TRACER's Fixed Route to serve the Project. In order to assure completion of construction of the bus shelters, the Subdivider may either enter into a DIA with security, or pay to the City the estimated cost for up to six bus shelters at the time of approval of the first Final Map within the Project.

C.2.7.11 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.2.7.12 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.2.7.13 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.2.7.14 All intersections shall be designed to accommodate fire truck movements as required by the Fire Department.

C.2.7.15 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.

C.2.9 Neighborhood and Community Parks

C.2.9.1 The Subdivider shall offer for dedication Parcels “G”, “M”, “P” and “Q” for neighborhood park purposes and Parcel “N” for community park purposes on the Final Map that corresponds to the timing of completion of respective parks as identified in the Planning Department’s Conditions of Approval.

The Subdivider shall design and construct the park improvements consistent with the Tracy Hills Specific Plan, Specific Plan Amendment, Development Agreement 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”) and Development Agreement.

C.2.9.2 The Subdivider shall submit park improvement plans, signed and notarized 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 or at such time as may be specified in the Deferred Improvement Agreement.

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 for approval.

C.2.10.3 Public Utility Easements on side yard lots shall be adjusted in final neighborhood designs based on actual joint trench design requirements.

C.2.11 Crimson (formerly Shell) Crude Oil Pipeline Easement and Facilities

C.2.11.1 A minimum of 72-hours prior to the beginning of grading operations that may impact the existing Crimson underground facilities within the Project, the Subdivider shall notify the appropriate person at Crimson of the impending work. Grading and improvements affecting Crimson facilities shall comply with applicable Crimson pipeline encroachment permit and construction specifications.

C.2.11.2 The Subdivider shall notify in writing the future buyers of lots about the existing Crimson crude oil pipeline and any requirements or restrictions relating to the existence of the pipeline as required by Crimson, State or Federal regulations .The Disclosure Statement(s) shall be made part of the Sale Deeds and recorded in compliance with the applicable law.

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 Bearings" 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.

C.3.8 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) 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. The form and amount of Improvement Security shall be in accordance with the DIA and Section 12.36.080 of the TMC.

C.3.9 Off-Site Improvement Agreement

Prior to the City's approval of the first Final Map within the Project, or as otherwise provided for in a Deferred Improvement Agreement, the Subdivider shall execute an Off-Site Improvement Agreement, in substantial conformance with the City's standard form agreement, 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 the OIA and Section 12.36.080 of the TMC.

C.3.10 Improvement Security.

The Subdivider shall provide improvement security for all public facilities as required by Subdivision Improvement Agreement, Offsite Improvement Agreement or Deferred 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.3.10.1 Faithful Performance (100% of the estimated cost of constructing the public facilities),

C.3.10.2 Labor & Material (100% of the estimated cost of constructing the public facilities), and

C.3.10.3 Warranty (10% of the estimated cost of constructing the public facilities)

C.3.10.4 Monumentation ($750 multiplied by the total number of street centerline monuments that are shown on the Final Map)

C.3.11 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.3.12 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.3.13 Subdivider has submitted hydrologic and storm drainage calculations for the design and sizing of in-tract storm drainage pipes located within the Project.

C.3.14 Subdivider has submitted signed and stamped Improvement Plans as required in Condition C.2 above.

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 Geotechnical 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 shall be provided with the submittal of the Improvement Plans. Partial submittal of Hydrologic and Storm Drainage Calculations may be required for Grading Plan review at the discretion of the City Engineer.

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 shall be submitted to the Building Safety Division at the time of building permit application for said structures.

C.4.12 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.4.13 Traffic Control Plan for each phase signed and stamped by a Registered Civil Engineer or Traffic Engineer licensed in the State of California.

C.4.14 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.4.15 As required per Mitigation Measure 4.8-2b of the EIR, prior to issuance of grading permits, the Subdivider shall work with Crimson to implement and observe a site damage prevention plan to the satisfaction of the City of Tracy Engineering Division.

C.4.16 Grading Permit Security to guarantee completion of the grading improvements that are necessary to serve the Project as required by these Conditions of Approval. The form and amount of Grading Permit Security shall be in accordance with Section 12.36.080 of the Tracy Municipal Code (TMC).

C.5 Building Permit

The City will not approve any building permit within the Project boundaries, (except for up to ten model homes and except for a plumbing permit issued for the purpose of perfecting a 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 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 by the City (except for model homes) 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-inch 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 Subdivider (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 Subdivider'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 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.

APPROVED AS TO FORM AND LEGALITY

_____
CITY ATTORNEY'S OFFICE

TRACY CITY COUNCIL

RESOLUTION NO. _____

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(1) APPROVING THE EXECUTION OF A SUBDIVISION IMPROVEMENT AGREEMENT BETWEEN THE CITY AND LENNAR HOMES OF CALIFORNIA, LLC, FOR CONSTRUCTION OF IN-TRACT IMPROVEMENTS FOR TRACY HILLS PHASE 2B TRACT 4181 VILLAGES 11 AND 12, AND
(2) AUTHORIZING THE CITY CLERK TO RECORD THE SUBDIVISION IMPROVEMENT AGREEMENT WITH THE OFFICE OF THE SAN JOAQUIN COUNTY RECORDER.

WHEREAS, on April 5, 2016, the City Council approved the Tracy Hills Specific Plan Final Subsequent Environmental Impact Report (Resolution No. 2016-062), the Tracy Hills Specific Plan (Resolution No. 2016-063), and the Development Agreement executed between the City of Tracy and the developers of the Tracy Hills Project (Ordinance 1213), among other related actions; and

WHEREAS, on November 10, 2020, the City Council approved the First Amendment to the Development Agreement (Ordinance 1300); and

WHEREAS, on October 19, 2021, the City Council approved a General Plan Amendment, under Application No. GPA21-0001 (Resolution No. 2021-153), the Tracy Hills Specific Plan Amendment for Tracy Hills Phase 2, under Application No. SPA21-0003 (Ordinance 1319), and The Vesting Tentative Subdivision Map for Tracy Hills Phase 2 - Tract 4057 (VTSM), under Application No. TSM20-0003 (Resolution No. 2021-154); and

WHEREAS, the VTSM proposes 1,470 single-family residential lots, public park parcels, open space parcels, retention basin parcels, school parcels, Homeowners Association (HOA) recreation center parcel, and numerous other parcels; the non-residential parcels are to be owned and maintained by the HOA, the Developer, or the City; the Project occupies approximately 1,143 acres within the Tracy Hills Specific Plan Area, located south of the Interstate 580 (I-580) Freeway and west of Corral Hollow Road; and

WHEREAS, Lennar Homes of California, LLC is the subdivider (Developer) of Tracy Hills Phase 2; and

WHEREAS, the Developer has divided Phase 2 into two phases, as depicted in (Attachment A), with Tracy Hills Phase 2A generally encompassing the eastern portion of the Project, and Tracy Hills Phase 2B generally encompassing the western portion. Phase 2B consists of seven tracts containing eight villages totaling 744 residential lots and other numerous non-residential parcels on approximately 242.0 acres. Phase 2B Village 11 and 12 consists of 115 residential lots and numerous other non-residential parcels on approximately 30.77 acres; and

WHEREAS, on July 2, 2024, the City Council approved the final maps, SIAs, Conditional Subdivision Improvement Agreements, Offsite Improvement Agreements, Conditional Offsite Improvement Agreements, offers of dedications for easements, and accepted an access easement for the water tank for Phase 2A; and

WHEREAS, the approval of the VTSM by the City Council was subject to specified Conditions of Approval which require that the Developer complete construction of certain in-tract improvements including underground water, sewer, storm drain, joint trench, curb, gutter, sidewalk, landscaping, irrigation, fire hydrants, streetscape, and streetlights; and

WHEREAS, this SIA will address 100% of conditioned and required public in-tract improvements for this tract. The agreements and bonds to guarantee construction of offsite improvements for Tract 4181 were approved with Tracy Hills Phase 2A, which were on approved by City Council on July 2, 2024; and

WHEREAS, landscaping, streetscape, and irrigation will be maintained by the HOA and said maintenance will be paid by the Tracy Hills residents. The City will maintain the PCC curb, gutter, sidewalk, hydrants, streetlights, water, sewer, storm drain and roads; and

WHEREAS, improvement plans and specifications, which describe in detail the Tracy Hills Phase 2B Village 11 and 12 public improvements required under the subject SIA (Attachment B), were prepared at the request of the Developer and have been approved by the City Engineer; and

WHEREAS, the Developer has executed the SIA and has submitted the required security to guarantee completion of the Tracy Hills Phase 2B Village 11 and 12 improvements. The SIA is attached and associated Improvement Plans are on file with the City Engineer; and

WHEREAS, there will be no fiscal impact associated with this Agenda Item, and the Developer has paid for the cost of plan checking, engineering inspection and processing of the associated agreements; now, therefore, be it

RESOLVED: That the City Council of the City of Tracy hereby approves the execution of a Subdivision Improvement Agreement between the City and Lennar Homes of California, LLC, for public improvements required as part of the Conditions of Approval, for Tracy Hills Tract 4181 Villages 11 and 12 in the form attached as Exhibit 1; and be it

FURTHER RESOLVED: That the City Council hereby authorizes the City Clerk to record the Subdivision Improvement Agreement with the Office of the San Joaquin County Recorder; and be it

FURTHER RESOLVED: That this action is consistent with the Environmental Impact Report (EIR) for the Tracy Hills Specific Plan that was certified by the City Council on April 5, 2016 (SCH#2013102053), and the Addendum to the EIR that was prepared in accordance with the provisions of CEQA (California Environmental Quality Act) Guidelines Section 15162 and 15164 to address the General Plan Amendment, Specific Plan Amendment, and Vesting Tentative Subdivision Map for the Tracy Hills Phase 2 development.

* * * * * * * * * * * * *

The foregoing Resolution 2024-_____ was adopted by the Tracy City Council on the 15th day of October 2024 by the following vote:

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

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

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

October 15, 2024

Agenda Item 1.I

RECOMMENDATION

Staff recommends that the City Council adopt the following:
(1) a Resolution approving an On-Call Professional Services List, for Geotechnical Engineering Services, for five years, and
(2) By separate Resolutions, authorizing the (A) Execution of Master Professional Services Agreements with BSK Associates and Ninyo & Moore to provide Geotechnical Engineering Services, each for an initial term of three years and a not-to-exceed amount of $300,000 per fiscal year; and (B) City Manager to extend, administratively, for up to two additional years.

EXECUTIVE SUMMARY

This agenda item seeks approval of an On-Call Professional Services List for Geotechnical Engineering Services for five years as well as authorization to execute Master Professional Services Agreements with BSK Associates and Ninyo & Moore, selected from this On-Call List, each to provide these services for an initial term of three years and a total not-to-exceed amount of $300,000 per fiscal year. Staff is also requesting authorization for the City Manager to extend each agreement, administratively, extensions for up to two additional years, based on performance, if needed.

BACKGROUND AND LEGISLATIVE HISTORY

On-Call Lists entail the practice of prequalifying consultants to be available at specific times for specific expertise areas, so that the City may utilize them on an as-needed basis by the terms outlined in separate agreements between the City of Tracy and qualified consultants.

On August 19, 2024, staff followed established procedures in accordance with Tracy Municipal Code, Section 2.20.140, and conducted a Request for Proposals (RFP) to solicit experienced and qualified consultants to provide On-Call Geotechnical Engineering Services for Engineering projects. The requested services include but are not limited to, geotechnical investigation and design services for public works projects, literation review of geotechnical reports and maps, site reconnaissance, underground service alert coordination, subsurface soil sampling, boring logs, geotechnical engineering analyses, seismicity, geotechnical design recommendation for grading and foundations overseen by a Registered Geotechnical Engineer, pavement evaluation and design, pavement coring, deflection testing, pavement analysis per Caltrans methodology that require a Registered Professional Engineer or pavement engineer to perform the review, review of geotechnical reports, review of grading and foundation plans, preparation of review sheets, coordination with Planning, Parks, Building and Operations and Utilities staff, presentation at City Council meetings, if required, and Registered Geotechnical Engineers and Certified Engineering Geologists to perform reviews.

On September 5, 2024, the City received six (6) proposals. The City's internal Selection Committee Sharat Bandugula, Acting Assistant City Engineer, Habibullah Habib, Associate Engineer, and Yemane Haile, Assistant Engineer carefully evaluated all six (6) proposals

received, based on the criteria described in the RFP. The committee determined that all six (6) consultant firms possess the skills, experience, competence, professional qualifications, and certifications required to provide the services requested by the City and should remain on the On-Call List for five years.

Supplemental geotechnical engineering services for Capital Improvement Projects and Land Development projects are currently pending. Staff recommends that the City Council authorize the execution of Master Professional Services Agreements (MPSAs) with BSK Associates and Ninyo & Moore which are on the proposed On-Call List, at this time to provide these services. These MPSAs are for a three-year term with an option to extend the term, administratively, for up to two years each, based on performance.

ANALYSIS

The City of Tracy Engineering Division consists of the following units: Capital Improvement Projects (CIP), Land Development, and Traffic Engineering, which collectively oversee a variety of projects. The pending projects require at least one of the following Geotechnical Engineering Services outlined in the RFP. The proposed On-Call List and MPSAs will allow staff to increase their current workload capacity to keep up with the demand for delivering projects in a timely fashion.

The Selection Committee has completed an extensive review of all six (6) proposals received and is recommending that all six (6) On-Call consultants remain on the On-Call List. The table below lists the On-Call consultants and the services they will be providing.

Consultant	Service Provided
BSK Associates	Geotechnical Engineering Services
Ninyo & Moore	Geotechnical Engineering Services
Crawford & Associate, Inc.	Geotechnical Engineering Services
Krazan & Associates, Inc.	Geotechnical Engineering Services
Terracon Consultants, Inc.	Geotechnical Engineering Services
Universal Engineering Sciences (UES)	Geotechnical Engineering Services

This On-Call List of selected consultants creates efficiency and does not bind the City or its budgets to a particular scope of work until it is required, as City needs arise. Having previously undertaken the public contracting procedures for each consultant on the list, as project needs arise the City may more readily move into contracting with one of the consultants on the list, and then return to the City Council for approval of a project-specific agreement.

As noted above, staff is also recommending that the City Council award MPSAs to BSK Associates and Ninyo & Moore, to assist with engineering projects, and provide services for active and upcoming CIPs.

The term of the MPSAs with BSK Associates and Ninyo & Moore will be for three (3) fiscal years with an option to extend for two (2) consecutive one (1) year terms based on their performance, if needed, with an annual fiscal year no-to-exceed amount of $300,000.

FISCAL IMPACT

The cost of the work performed by the BSK Associates and Ninyo & Moore will be funded through Cost Recovery Agreements, developer's fees, Capital Improvement Project budgets, or Federal and State grant funds. The funding for the MPSAs also exists on an annual basis within the department's annual adopted budget and the MPSAs include the ability to terminate if there is insufficient budget availability.

CEQA DETERMINATION

The approvals requested in this item are "planning and feasibility services" and, therefore, are not considered a "project" as defined by Section 21065 of the Public Resources Code. Any projects for which such services are performed will be reviewed as required under the California Environmental Quality Act before future discretionary actions are taken.

STRATEGIC PLAN

This agenda item supports the City of Tracy's Quality of Life Strategic Priority, which is to provide an outstanding quality of life by enhancing the City's amenities, business mix, and services and cultivating connections to promote positive change and progress in our community.

ACTION REQUESTED OF THE CITY COUNCIL

Staff recommends that the City Council adopt the following:

(1) a Resolution approving an On-Call Professional Services List, for Geotechnical Engineering Services, for five years, and
(2) By separate Resolutions, authorizing the (A) Execution of Master Professional Services Agreements with BSK Associates and Ninyo & Moore to provide Geotechnical Engineering Services, each for an initial term of three years and a not-to-exceed amount of $300,000 per fiscal year; and (B) City Manager to extend, administratively, for up to two additional years.

Prepared by: Habibullah Habib, PE, Associate Civil Engineer
Sharat Bandugula, PE, Acting Assistant City Engineer

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

Approved by: Midori Lichtwardt, City Manager

ATTACHMENTS:

Attachment A – Master Professional Service Agreement (MPSA) with BSK Associates
Attachment B – Master Professional Service Agreement (MPSA) with Ninyo & Moore

CITY OF TRACY
MASTER PROFESSIONAL SERVICES AGREEMENT WITH
BSK Associates for Geotechnical Engineering Services included geotechnical investigation and design services, literation review of geotechnical reports and maps, site reconnaissance, underground service alert coordination, subsurface soil sampling, boring logs, geotechnical engineering analyses, seismicity, geotechnical design recommendation for grading and foundations, pavement evaluation and design, pavement coring, deflection testing, review of grading and foundation plans, preparation of review sheets.

This Master Professional Services Agreement ("Agreement") is entered into between the City of Tracy, a municipal corporation ("City"), and BSK Associates 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 future Geotechnical Engineering Services] for Capital Improvement Projects (CIP), Land Development, and Traffic Engineering Projects as further described herein and in Exhibit A.

On August 19, 2024, staff followed established procedures in accordance with Tracy Municipal Code, Section 2.20.140, and conducted an RFP to solicit experienced and qualified consultants to provide On-Call Geotechnical Engineering Services for Engineering projects. This on-call list of Consultants creates an efficient process for future project proposal requests and does not bind the City or its budgets to a particular scope of work until it is required as City needs arise. Having previously undertaken the public contracting procedures for each Consultant on the list, as the project needs arise, the City may more readily move into contracting with one of the Consultants on the list and then return to the City Council for approval of a project-specific professional services agreement.

On September 5, 2024, the City received six (6) proposals including BSK Associates. Pursuant to Tracy Municipal Code Sections 2.20.140(a)(2) and 2.20.130, the City has determined that Consultant demonstrated that it was the best qualified and most responsible proposer, and best fits the City's needs for competence and professional qualifications necessary for the satisfactory performance of the Services.

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

B. This Agreement was approved on _____pursuant to Tracy Municipal Code Section 2.20.140 (3), [and City Council Resolution No. _____.

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

1. Scope of Services. Consultant shall perform professional services, tasks, and scope of work further described in Exhibit A hereto ("Services") for the City's benefit on an as-needed basis pursuant to individual approved Task Orders for services within the in accordance with the terms and conditions of this Agreement. The Services shall be performed by, or under the direct supervision of, Consultant's Authorized Representative: **Cristiano Melo, PE, GE**. Consultant shall not replace its Authorized Representative, nor shall Consultant replace any of the personnel listed in Exhibit A, nor

shall Consultant use or replace any subcontractor or subconsultant, without City's prior written consent. A failure to obtain the City's prior written consent for any change or replacement in personnel or subcontractor/subconsultant may result in the termination of this Agreement.

1.1 Task Order Forms. The Services within the Scope of Work will be comprised of Task Order Forms (in the form provided in Exhibit C hereto), approved, executed and delivered by the Director of **BSK Associates** ("Director") from time-to-time during the Term of this Agreement, on an as-needed basis. The Consultant cannot start performing any Work until the Director has executed a Task Order for such work. The City has no obligation to issue any Task Orders under this Master Agreement. The City may issue any number of Task Orders provided that the sum of the maximum compensation of all approved Task Orders cannot exceed the Total Not-to-Exceed amount stated in Section 3.1.

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

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

2.1 Term. The term of this Agreement shall commence on October 15, 2024, and expire and terminate automatically on June 30, 2027 or earlier by termination pursuant to Section 6 of this Agreement ("Term"). Subject to the Not-To-Exceed Amount defined in Section 3.1, the Term of this Agreement may be extended with express written amendment incorporating this Agreement signed by both Parties and one of the following City approvals: (a) City Council approval or (b) City Manager approval. An administrative extension of this Agreement by City Manager shall be limited to an additional term of two (2) years (s) and require written determination by the City Manager that Consultant has satisfactorily met all the requirements of this Agreement.

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

3.1 Annual Total Not to Exceed Amount. Consultant's total compensation for all Task Orders and Services under this Agreement shall not exceed $300,000.00 (Three hundred thousand Dollars) per City fiscal year ("Total Not-to-Exceed Amount"). Consultant's billing rates shall cover all costs and expenses for Consultant's performance of this Agreement. No work shall be performed by Consultant in excess of the Total Not-to-Exceed Amount. Consultant acknowledges City has no obligation to compensate or reimburse Consultant for any fees or costs incurred in excess of the Total Not-to-Exceed Amount. Unless specifically stated otherwise or agreed to in writing and approved by City Council, the fees proposed by Consultant, as set forth in Exhibit B hereto, shall remain unchanged for the entire term of this Agreement and any extensions of this Agreement.

3.1.2 For each Task Order issued under this Agreement, Consultant's Services shall not exceed the maximum compensation stated in that Task Order.

3.2 Invoices. No less than Ninety (90) days after performing Services, Consultant shall submit monthly written invoice(s) to the City that include copies of approved Task Orders, the Services performed, and identify times, dates, and names of persons performing the services.

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

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

3.2.3 Consultant shall submit invoices no later than 90 days after completion of a Task Order or portion of the Services. City has no obligation to pay invoices delivered greater than 90 days after the date of performance of the Services.

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

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

4. Indemnification. Consultant shall, to the fullest extent permitted by law, indemnify, defend (with independent counsel approved by the City), and hold harmless the City from and against any claims arising out of Consultant's performance or failure to comply with obligations under this Agreement, except to the extent caused by the sole, active negligence, or willful misconduct of the City. In this section, "City" means the City, its officials, officers, agents, employees, and volunteers; "Consultant" means the Consultant, its employees, agents and subcontractors; "Claims" includes claims, demands, actions, losses, damages, injuries, and liability, direct or indirect (including any and all related costs and expenses) and any allegations of these; and "Arising out of" includes "pertaining to" and "relating to". The Consultant's indemnification obligation applies to the maximum extent allowed by law and includes defending the City as set forth in Sections 2778 and 2782.8 of the California Civil Code. Upon the City's written request, the Consultant, at its own expense, shall defend any suit or action that is subject to this indemnification obligation. The provisions of this section survive completion of the services or the termination of this Agreement and are not limited by the provisions of Section 5 relating to insurance.

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

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

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

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

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

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

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

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

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

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

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

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

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

6. <u>Termination</u>.

6.1 The Parties may terminate this Agreement for any reason, including, but not limited to, convenience, by giving ten (10) days' written notice to the other Party. The City shall pay Consultant for all services satisfactorily performed in accordance with this Agreement, up to the date notice is given.

6.2 This Agreement shall automatically terminate immediately without notice to Consultant upon any of the following occurrences: (a) material breach of this Agreement by Consultant; (b) lack of City funds appropriated. In the event of termination by material breach of Consultant, if the City replaces any incomplete or defective Services from another consultant at a greater cost, the Consultant is responsible for such excess cost in addition to any other remedies available to the City.

6.3 Upon termination, Consultant shall return the City all original documents, including preliminary drafts and supporting documents, prepared by Consultant in connection with the Services performed under this Agreement.

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

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

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

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

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

To City:

Koosun Kim, PE
City Engineer
333 Civic Center Plaza
Tracy, CA 95376

To Consultant: BSK Associates

Cristiano Melo, PE, GE
Branch Manager
252 W. Larch Road, Suite 252-H
Tracy, CA 95304

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

12. Miscellaneous.

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

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

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

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

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

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

12.6.1 Prevailing Wage Laws. Consultant is aware of the requirements of California Labor Code Section 1720, et seq., and 1770, et seq., as well as California Code of Regulations, Title 8, Section 16000, et seq., ("Prevailing Wage Laws"), which require the payment of prevailing wage rates; employment of apprentices (§ 1777.5), certified payroll records (§1776), hours of labor (§1813 and §1815), debarment of contractors and subcontractors (§1777.1) and the performance of other requirements on "public works" and "maintenance" projects. If the services being performed under this Agreement are part of a "public works" or "maintenance" project, as defined in the Prevailing Wage

Laws, and if the total compensation is $1,000 or more, Consultant agrees to fully comply with such Prevailing Wage Laws. These prevailing rates are on file with the City and are available online at http://www.dir.ca.gov/DLSR. Consultant shall defend, indemnify and hold the City, its officials, officers, employees and agents, harmless from any and all claims, costs, penalties, or interests arising out of any failure or alleged failure to comply with the Prevailing Wage Laws.

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

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

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

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

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

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

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

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

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

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS HEREOF, the City and Consultant agree to the full performance of the foregoing terms as of the last signature date.

City of Tracy

By: Nancy Young
Title: Mayor
Date: _____

Attest:

_____
Adrianne Richardson, City Clerk

Approved as to form:

_____
Bijal M. Patel, City Attorney

Consultant
BSK Associates

Cristiano Melo

Digitally signed by Cristiano Melo
DN: cn=Cristiano Melo, c=US, o=BSK Associates, ou=Livermore Branch, email=cmelo@bskassociates.com
Date: 2024.09.12 13:44:30 -07'00'

By: Cristiano Melo, PE,GE
Title: Branch Manager
Date: 9/12/2024

Federal Employer Tax ID No. 94-1633676

By: Aaron Badavinac
Title: Chief Financial Officer
Date: 09/12/2024

Exhibits:

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

EXHIBIT A
Scope of Services

Consultant shall offer a complete range of Geotechnical Engineering Services to support the City's needs including professional Registered Geotechnical Engineers, Registered Professional Engineers, Certified Geologist, Certified Laboratory Technician and field crews, and office technicians. The Consultant shall ensure the tasks outlined herein are performed by the consultant's own responsible representative or designated alternate. The requirements described in these sections are neither limited nor comprehensive in nature but are the minimum necessary to meet the City's objectives.

Detailed work procedures are not included in the Scope of Work. The Consultant shall exercise independent, professional judgment and innovation in the performance of any services or tasks listed herein to achieve the most effective and efficient design and product. The Consultant is expected to expand on this scope in their proposal by incorporating specific areas of expertise and any other tasks required for a specific project and/or proposal requested The Consultant shall provide the services and deliverables set forth in this Exhibit A. The Consultant shall provide all services and deliverables required by this Exhibit A to the satisfaction of the City.

Geotechnical Engineering Services include but are not necessarily limited to, those items noted below.

1. Geotechnical investigation & design services for Public works projects:
    a. Literation review of geotechnical reports and maps
    b. Site reconnaissance
    c. Underground service alert coordination
    d. Subsurface soil sampling
    e. Boring logs
    f. Geotechnical engineering analyses
    g. Seismicity
    h. Geotechnical design recommendation for grading and foundations overseen by a Registered Geotechnical Engineer (GE)

2. Pavement evaluation and design:
    a. Pavement corings
    b. Deflection testing
    c. Pavement analysis per Caltrans methodology
    d. Require a Registered professional engineer (PE)/Pavement Engineer to Perform Review

3. Geotechnical review services:
    a. Review of geotechnical reports
    b. Review of grading and foundation plans
    c. Preparation of review sheets
    d. Coordination with planning, Parks,building &Public workstaff
    e. Presentation at City Council meetings if required
    f. Requires Registered Geotechnical Engineer (GE) and Certified Engineering Geologist (CEG) to perform reviews

Additional requirements are as follows:

All work shall be performed under the direction of a Registered Professional Engineer and or Registered Geotechnical Engineer in the State of California. The Registered Professional Engineer/Geotechnical Engineer shall maintain professional licenses required by the laws of the State of California at all times while under contract with the City of Tracy.

Personnel:

Cristiano Melo, PE, GE –Branch Manager/Lead Geotechnical Engineer
Carrie Foulk, PE, GE – Senior Geotechnical Engineer
Michael Romero, PG, CEG – Senior Geologist
Omar Khan, PGiT – Senior Project Geologist

Subconsultants/Subcontractors

Taber Drilling – Drilling and CPT Services
Exploration Geo Services – Drilling Services
CMC Traffic Specialists – Traffic Control Services
AWP Safety – Traffic Control Services
1st Call Utility Locating – Utility Locating Services
Geotech Utility Locating – Utility Locating Services
Advanced Geological Services – Geophysical Services
Cooper Testing Laboratory – Laboratory Testing and Analyses
CERCO Analytical – Laboratory Corrosivity Testing

EXHIBIT B

Compensation

PERSONNEL RATES						
PROFESSIONAL STAFF	2024	2025	2026	2027	2028	2029
Principal	$ 299.00	$ 314.00	$ 330.00	$ 347.00	$ 364.00	$ 382.00
Senior Professional	$ 263.00	$ 276.00	$ 290.00	$ 305.00	$ 320.00	$ 336.00
Project Professional II	$ 247.00	$ 259.00	$ 272.00	$ 286.00	$ 300.00	$ 315.00
Project Professional I	$ 210.00	$ 221.00	$ 232.00	$ 244.00	$ 256.00	$ 269.00
Staff Professional II	$ 184.00	$ 193.00	$ 203.00	$ 213.00	$ 224.00	$ 235.00
Staff Professional I	$ 163.00	$ 171.00	$ 180.00	$ 189.00	$ 198.00	$ 208.00
Project Administrator	$ 116.00	$ 122.00	$ 128.00	$ 134.00	$ 141.00	$ 148.00
Administrative Assistant / Clerical	$ 105.00	$ 110.00	$ 116.00	$ 122.00	$ 128.00	$ 134.00
Seismic GIS	$ 231.00	$ 243.00	$ 255.00	$ 268.00	$ 281.00	$ 295.00
GIS Specialist	$ 200.00	$ 210.00	$ 221.00	$ 232.00	$ 244.00	$ 256.00
Information Specialist II	$ 189.00	$ 198.00	$ 208.00	$ 218.00	$ 229.00	$ 240.00
Information Specialist I	$ 168.00	$ 176.00	$ 185.00	$ 194.00	$ 204.00	$ 214.00
CAD	$ 126.00	$ 132.00	$ 139.00	$ 146.00	$ 153.00	$ 161.00
Litigation support		1.5x standard rate				

TECHNICAL STAFF	2024	2025	2026	2027	2028	2029
Group 1 - Special Inspector	$ 189.00	$ 198.00	$ 208.00	$ 218.00	$ 229.00	$ 240.00
Group 2 - Special Inspector	$ 179.00	$ 188.00	$ 197.00	$ 207.00	$ 217.00	$ 228.00
Group 3 - Engineering Technician	$ 159.00	$ 167.00	$ 175.00	$ 184.00	$ 193.00	$ 203.00
Group 3 - Geotechnical Professional	$ 194.00	$ 204.00	$ 214.00	$ 225.00	$ 236.00	$ 248.00
Group 3 - Environmental Professional	$ 194.00	$ 204.00	$ 214.00	$ 225.00	$ 236.00	$ 248.00
Group 4 - Technician	$ 139.00	$ 146.00	$ 153.00	$ 161.00	$ 169.00	$ 177.00
Ground Penetrating Radar Scanning Technician	$ 331.00	$ 348.00	$ 365.00	$ 383.00	$ 402.00	$ 422.00
Core Drilling Technician	$ 257.00	$ 270.00	$ 284.00	$ 298.00	$ 313.00	$ 329.00
Floor Flatness Testing Technician	$ 221.00	$ 232.00	$ 244.00	$ 256.00	$ 269.00	$ 282.00
Sample Pickup / Transportation / Delivery	$ 126.00	$ 132.00	$ 139.00	$ 146.00	$ 153.00	$ 161.00
Laboratory Technician	$ 137.00	$ 144.00	$ 151.00	$ 159.00	$ 167.00	$ 175.00

2024-2029 BSK Rate Schedule

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BSK ASSOCIATES

OTHER RATES						
BASIS OF CHARGES FOR FIELD TECHNICIAN SERVICES	2024	2025	2026	2027	2028	2029
Field Work from 0 to 4 hours	Bill 4 hours					
Field Work from 4 to 6 hours	Bill 6 hours					
Field Work from 6 to 8 hours	Bill 8 hours					
Field Work over 8 hours / Saturdays	Bill time and a half base rate (1.5x)					
Sundays, holidays and over 12 hours	Bill two times base rate (2x)					
Night Shift (Shift commencing after 2pm / before 4am)	Base Rate x 12.5%					
Show-up time (no work performed), minimum charge	Bill 2 hours					
Sample or cylinder pickup, minimum charge	Bill 2 hours					

REIMBURSABLES	2024	2025	2026	2027	2028	2029
Mileage - 2x2 vehicle (Portal to Portal)	$1.00/mile or the IRS rate + 15%, whichever is higher					
Mileage - 4x4 vehicle (Portal to Portal)	$2.00/mile or the IRS rate + 15%, whichever is higher					
Per Diem (as required)	Quote / $250.00 min.					
Bridge Toll	Cost + 15%					
Parking Fees	Cost + 15%					
Subconsultant/Subcontractor Services, Vendors, and Expenses	Cost + 15%					

BSK SERVICES / DIR / PREVAILING WAGE ADMINISTRATION FEES	2024	2025	2026	2027	2028	2029
Certified Payroll / DIR Upload (Monthly) - per project	$ 300.00	$ 315.00	$ 331.00	$ 348.00	$ 365.00	$ 383.00
Non-Performance Certified Payroll / DIR Upload (Monthly) - per project	$ 100.00	$ 105.00	$ 110.00	$ 116.00	$ 122.00	$ 128.00
Subcontractor Management / Compliance Forms (Monthly) - per project	$ 100.00	$ 105.00	$ 110.00	$ 116.00	$ 122.00	$ 128.00
Additional LCP Tracker or Other Compliance Software (Monthly) - per project	$ 200.00	$ 210.00	$ 221.00	$ 232.00	$ 244.00	$ 256.00
Additional Special Forms, as required (Monthly) - per project	$ 150.00	$ 158.00	$ 166.00	$ 174.00	$ 183.00	$ 192.00

2024-2029 BSK Rate Schedule

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BSK ASSOCIATES

OTHER RATES (CONTINUED)

EQUIPMENT USAGE FEES	2024	2025	2026	2027	2028	2029
Nuclear Gauge (Day)	$ 74.00	$ 78.00	$ 82.00	$ 86.00	$ 90.00	$ 95.00
Skidmore Wilhelm Calibrator (Day)	$ 74.00	$ 78.00	$ 82.00	$ 86.00	$ 90.00	$ 95.00
NDT Weld Testing Equipment - UT/MT/PT (Day)	$ 74.00	$ 78.00	$ 82.00	$ 86.00	$ 90.00	$ 95.00
Proof Load Testing Equipment (Day)	$ 74.00	$ 78.00	$ 82.00	$ 86.00	$ 90.00	$ 95.00
Torque Wrench (Day)	$ 74.00	$ 78.00	$ 82.00	$ 86.00	$ 90.00	$ 95.00
GPR Scanning Equipment (Day)	$ 341.00	$ 358.00	$ 376.00	$ 395.00	$ 415.00	$ 436.00
Rebar Locator/Pachometer (Day)	$ 134.00	$ 141.00	$ 148.00	$ 155.00	$ 163.00	$ 171.00
Hand Auger (Day)	$ 158.00	$ 166.00	$ 174.00	$ 183.00	$ 192.00	$ 202.00
Water Meter (Day)	$ 68.00	$ 71.00	$ 75.00	$ 79.00	$ 83.00	$ 87.00
Hand-held GPS (Day)	$ 102.00	$ 107.00	$ 112.00	$ 118.00	$ 124.00	$ 130.00
Drilling Kit - Paint, stakes and lath - (Project)	$ 36.00	$ 38.00	$ 40.00	$ 42.00	$ 44.00	$ 46.00
Drilling Supplies - Tubes / Caps (Project)	$ 368.00	$ 386.00	$ 405.00	$ 425.00	$ 446.00	$ 468.00
Manometer (Day)	$ 259.00	$ 272.00	$ 286.00	$ 300.00	$ 315.00	$ 331.00
Double Ring Infiltrometer (Day)	$ 670.00	$ 704.00	$ 739.00	$ 776.00	$ 815.00	$ 856.00

ANALYSIS SOFTWARE USAGE FEES	2024	2025	2026	2027	2028	2029
gINT (Project)	$ 68.00	$ 71.00	$ 75.00	$ 79.00	$ 83.00	$ 87.00
LPile (Project)	$ 68.00	$ 71.00	$ 75.00	$ 79.00	$ 83.00	$ 87.00
APile (Project)	$ 68.00	$ 71.00	$ 75.00	$ 79.00	$ 83.00	$ 87.00
SHAFT (Project)	$ 68.00	$ 71.00	$ 75.00	$ 79.00	$ 83.00	$ 87.00
GROUP (Project)	$ 133.00	$ 140.00	$ 147.00	$ 154.00	$ 162.00	$ 170.00
Cliq (Project)	$ 68.00	$ 71.00	$ 75.00	$ 79.00	$ 83.00	$ 87.00
LiquefyPro (Project)	$ 68.00	$ 71.00	$ 75.00	$ 79.00	$ 83.00	$ 87.00
LiqIT (Project)	$ 68.00	$ 71.00	$ 75.00	$ 79.00	$ 83.00	$ 87.00
Slide (Project)	$ 133.00	$ 140.00	$ 147.00	$ 154.00	$ 162.00	$ 170.00
Settle3D (Project)	$ 133.00	$ 140.00	$ 147.00	$ 154.00	$ 162.00	$ 170.00
Cpet-IT (Project)	$ 68.00	$ 71.00	$ 75.00	$ 79.00	$ 83.00	$ 87.00
LiqSVs (Project)	$ 68.00	$ 71.00	$ 75.00	$ 79.00	$ 83.00	$ 87.00
ArcGIS (Project)	$ 68.00	$ 71.00	$ 75.00	$ 79.00	$ 83.00	$ 87.00
Surfer (Project)	$ 68.00	$ 71.00	$ 75.00	$ 79.00	$ 83.00	$ 87.00
Seep/W (Project)	$ 133.00	$ 140.00	$ 147.00	$ 154.00	$ 162.00	$ 170.00

MATERIALS LABORATORY TEST RATES						
SOILS	**2024**	**2025**	**2026**	**2027**	**2028**	**2029**
Modified or Standard Proctor - 4" or 6" Mold (ASTM / AASHTO)	$ 336.00	$ 353.00	$ 371.00	$ 390.00	$ 410.00	$ 431.00
Proctor with Oversize Material (ASTM / AASHTO)	$ 420.00	$ 441.00	$ 463.00	$ 486.00	$ 510.00	$ 536.00
Proctor Check Point (All Methods)	$ 180.00	$ 189.00	$ 198.00	$ 208.00	$ 218.00	$ 229.00
Caltrans Maximum Wet Density (CT 216)	$ 284.00	$ 298.00	$ 313.00	$ 329.00	$ 345.00	$ 362.00
Minus 200 Wash Soil (ASTM D1140)	$ 110.00	$ 116.00	$ 122.00	$ 128.00	$ 134.00	$ 141.00
Moisture Content of Soils (ASTM D2216)	$ 47.00	$ 49.00	$ 51.00	$ 54.00	$ 57.00	$ 60.00
Plasticity Index (ASTM D4318)	$ 290.00	$ 305.00	$ 320.00	$ 336.00	$ 353.00	$ 371.00
Expansion Index of Soils (UBC No. 29)	$ 311.00	$ 327.00	$ 343.00	$ 360.00	$ 378.00	$ 397.00
Collapse Potential of Soils (ASTM D2435)	$ 270.00	$ 284.00	$ 298.00	$ 313.00	$ 329.00	$ 345.00
Organic Impurities (ASTM C40 / CT 213)	$ 110.00	$ 116.00	$ 122.00	$ 128.00	$ 134.00	$ 141.00
Tube Density & Moisture Content of Soil	$ 57.00	$ 60.00	$ 63.00	$ 66.00	$ 69.00	$ 72.00
Visual Classification (ASTM D2488)	$ 57.00	$ 60.00	$ 63.00	$ 66.00	$ 69.00	$ 72.00
Hydrometer (ASTM D422 / CT 203)	$ 315.00	$ 331.00	$ 348.00	$ 365.00	$ 383.00	$ 402.00
Double Hydrometer (ASTM D4221)	$ 414.00	$ 435.00	$ 457.00	$ 480.00	$ 504.00	$ 529.00
Uncompacted Void Content (CT 234 / AASHTO T304)	$ 147.00	$ 154.00	$ 162.00	$ 170.00	$ 179.00	$ 188.00
Sand Density Calibration (ASTM D1566)	$ 231.00	$ 243.00	$ 255.00	$ 268.00	$ 281.00	$ 295.00
Minimum Resistivity of Soils (CT 643)	$ 186.00	$ 195.00	$ 205.00	$ 215.00	$ 226.00	$ 237.00
Consolidation (ASTM D2435) 2/2 Time Rates	$ 553.00	$ 581.00	$ 610.00	$ 641.00	$ 673.00	$ 707.00
Consolidation (ASTM D2435) w/ No Tim Rates	$ 368.00	$ 386.00	$ 405.00	$ 425.00	$ 446.00	$ 468.00
Uncofined Compression Strength, Soil (ASTM D2166)	$ 147.00	$ 154.00	$ 162.00	$ 170.00	$ 179.00	$ 188.00
Remolded Consolidation (ASTM D2435)	$ 468.00	$ 491.00	$ 516.00	$ 542.00	$ 569.00	$ 597.00
Minimum Index Density Soils (ASTM D4254)	$ 91.00	$ 96.00	$ 101.00	$ 106.00	$ 111.00	$ 117.00
Direct Shear Remolded (ASTM D3080)	$ 347.00	$ 364.00	$ 382.00	$ 401.00	$ 421.00	$ 442.00
Direct Shear (ASTM D3080)	$ 290.00	$ 305.00	$ 320.00	$ 336.00	$ 353.00	$ 371.00
Remolded Direct Shear (ASTM D3080)	$ 347.00	$ 364.00	$ 382.00	$ 401.00	$ 421.00	$ 442.00
Remolded Flexwall Perm (ASTM D5084)	$ 739.00	$ 776.00	$ 815.00	$ 856.00	$ 899.00	$ 944.00
% Crushed Particles / Fractured Particles (CT 205/AASHTO T335)	$ 218.00	$ 229.00	$ 240.00	$ 252.00	$ 265.00	$ 278.00
'% Flat & Elongated (ASTM D4791)	$ 167.00	$ 175.00	$ 184.00	$ 193.00	$ 203.00	$ 213.00
Minus 200 Wash/Aggregate (ASTM C117)	$ 110.00	$ 116.00	$ 122.00	$ 128.00	$ 134.00	$ 141.00
Sieve Analysis w/ Wash (ASTM C136 / CT 202 / AASHTO T27)	$ 226.00	$ 237.00	$ 249.00	$ 261.00	$ 274.00	$ 288.00
Sieve Analysis - Coarse Only (ASTM C136 / CT 202 / AASHTO T27)	$ 110.00	$ 116.00	$ 122.00	$ 128.00	$ 134.00	$ 141.00
Coarse Specific Gravity / Absorption (ASTM C127/CT 206/AASHTO T85)	$ 210.00	$ 221.00	$ 232.00	$ 244.00	$ 256.00	$ 269.00
Fine Specific Gravity / Absorption (ASTM C128/CT 207/AASHTO T84)	$ 210.00	$ 221.00	$ 232.00	$ 244.00	$ 256.00	$ 269.00
Sand Equivalent (ASTM D2419 / CT 217 / AASHTO T176)	$ 167.00	$ 175.00	$ 184.00	$ 193.00	$ 203.00	$ 213.00
Durability Index (CT 229)	$ 331.00	$ 348.00	$ 365.00	$ 383.00	$ 402.00	$ 422.00
Abrasion by LA Rattler, Large Size (ASTM C131/CT 211/AASHTO T96)	$ 378.00	$ 397.00	$ 417.00	$ 438.00	$ 460.00	$ 483.00
Abrasion by LA Rattler, Small Size (ASTM C131/CT 211/AASHTO T96)	$ 311.00	$ 327.00	$ 343.00	$ 360.00	$ 378.00	$ 397.00
Cleanness Value of Aggregate (CT 227)	$ 238.00	$ 250.00	$ 263.00	$ 276.00	$ 290.00	$ 305.00
Aggregate Wt pcf Compacted (ASTM C 29)	$ 117.00	$ 123.00	$ 129.00	$ 135.00	$ 142.00	$ 149.00
Gradation-Rip Rap - Per Sieve (D5519-Method A)	$ 298.00	$ 313.00	$ 329.00	$ 345.00	$ 362.00	$ 380.00
Sodium Sulfate Soundness-Min. Charge (ASTM C88/CT 214/AASHTO T104)	$ 462.00	$ 485.00	$ 509.00	$ 534.00	$ 561.00	$ 589.00
Sodium Sulfate Soundness-Per Sieve (ASTM C88/CT 214/AASHTO T104)	$ 147.00	$ 154.00	$ 162.00	$ 170.00	$ 179.00	$ 188.00
R-Value of Soils (CT 301)	$ 473.00	$ 497.00	$ 522.00	$ 548.00	$ 575.00	$ 604.00

2024-2029 BSK Rate Schedule

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MATERIALS LABORATORY TEST RATES (CONTINUED)

SOILS (CONTINUED)	2024	2025	2026	2027	2028	2029
Soil Cement Compression - Set (ASTM D1633)	$ 315.00	$ 331.00	$ 348.00	$ 365.00	$ 383.00	$ 402.00
CIR / FDR Compressive Strength Testing - Set	$ 315.00	$ 331.00	$ 348.00	$ 365.00	$ 383.00	$ 402.00
CIR / FDR Sample Preparation / Compaction	$ 289.00	$ 303.00	$ 318.00	$ 334.00	$ 351.00	$ 369.00
CBR (ASTM D1883/AASHTO T-180)	$ 1,313.00	$ 1,379.00	$ 1,448.00	$ 1,520.00	$ 1,596.00	$ 1,676.00
Preparation of Soil-Cement Samples	$ 994.00	$ 1,044.00	$ 1,096.00	$ 1,151.00	$ 1,209.00	$ 1,269.00
Soluble Sulfate Chloride & Sulfide	$ 172.00	$ 181.00	$ 190.00	$ 200.00	$ 210.00	$ 221.00
pH Sulphate & Chloride	$ 87.00	$ 91.00	$ 96.00	$ 101.00	$ 106.00	$ 111.00
% Lumps/Friable Particles (ASTM C142)	$ 107.00	$ 112.00	$ 118.00	$ 124.00	$ 130.00	$ 137.00
'% Organics in Soil (ASTM D2974)	$ 181.00	$ 190.00	$ 200.00	$ 210.00	$ 221.00	$ 232.00

HOT MIX ASPHALT	2024	2025	2026	2027	2028	2029
JMF Mix Design, Superpave / Caltrans	$ 11,838.00	$ 12,430.00	$ 13,052.00	$ 13,705.00	$ 14,390.00	$ 15,110.00
JMF Verification - HMA - Superpave / Caltrans	$ 6,860.00	$ 7,203.00	$ 7,563.00	$ 7,941.00	$ 8,338.00	$ 8,755.00
JMF Production Startup - Superpave / Caltrans	$ 6,382.00	$ 6,701.00	$ 7,036.00	$ 7,388.00	$ 7,757.00	$ 8,145.00
RAP Material Testing - Additional Fee	$ 830.00	$ 872.00	$ 916.00	$ 962.00	$ 1,010.00	$ 1,061.00
Rubberized RHMA Material - Additional Fee	$ 1,915.00	$ 2,011.00	$ 2,112.00	$ 2,218.00	$ 2,329.00	$ 2,445.00
JMF Mix Design, HVEEM	$ 4,095.00	$ 4,300.00	$ 4,515.00	$ 4,741.00	$ 4,978.00	$ 5,227.00
JMF Mix Design, Marshall	$ 4,858.00	$ 5,101.00	$ 5,356.00	$ 5,624.00	$ 5,905.00	$ 6,200.00
Open Graded Asphalt Optimum Bitumen Content (CT 368)	$ 2,924.00	$ 3,070.00	$ 3,224.00	$ 3,385.00	$ 3,554.00	$ 3,732.00
Gyratory Compaction - Set of 3 (AASHTO T312)	$ 442.00	$ 464.00	$ 487.00	$ 511.00	$ 537.00	$ 564.00
Hamburg Wheel Track (AASHTO T324)	$ 2,625.00	$ 2,756.00	$ 2,894.00	$ 3,039.00	$ 3,191.00	$ 3,351.00
Tensile Strength Ratio (CT 371 / AASHTO T283)	$ 1,449.00	$ 1,521.00	$ 1,597.00	$ 1,677.00	$ 1,761.00	$ 1,849.00
Marshall Maximum Density (ASTM D6926)	$ 386.00	$ 405.00	$ 425.00	$ 446.00	$ 468.00	$ 491.00
Marshall Stability & Flow (ASTM D6927)	$ 331.00	$ 348.00	$ 365.00	$ 383.00	$ 402.00	$ 422.00
Bitumen Content - Ignition (ASTM D6307 / CT382 / AASHTO T308)	$ 296.00	$ 311.00	$ 327.00	$ 343.00	$ 360.00	$ 378.00
Oil Content Correction Factor (ASTM D6307 / CT 382 / AASHTO T308)	$ 689.00	$ 723.00	$ 759.00	$ 797.00	$ 837.00	$ 879.00
Gradation from Extraction (ASTM D5444 / AASHTO T30)	$ 180.00	$ 189.00	$ 198.00	$ 208.00	$ 218.00	$ 229.00

HOT MIX ASPHALT (CONTINUED)	2024	2025	2026	2027	2028	2029
Bulk Specific Gravity (CT308 / AASHTO T275 / ASTM D2726)	$ 84.00	$ 88.00	$ 92.00	$ 97.00	$ 102.00	$ 107.00
HMA Theo. Max Density Rice Method (ASTM D2041 / CT 309 / AASHTO T209)	$ 331.00	$ 348.00	$ 365.00	$ 383.00	$ 402.00	$ 422.00
Volumetric Calculations (VMA, VFA, DP, AV, Eff. Calcs)	$ 70.00	$ 74.00	$ 78.00	$ 82.00	$ 86.00	$ 90.00
Moisture Content of Asphalt (CT 370 / AASHTO T329)	$ 87.00	$ 91.00	$ 96.00	$ 101.00	$ 106.00	$ 111.00
Film Stripping	$ 117.00	$ 123.00	$ 129.00	$ 135.00	$ 142.00	$ 149.00
Compaction/Preparation of HMA Briquette (CT 304)	$ 290.00	$ 305.00	$ 320.00	$ 336.00	$ 353.00	$ 371.00
Stabilometer Value - Set of 3 (CT366)	$ 368.00	$ 386.00	$ 405.00	$ 425.00	$ 446.00	$ 468.00
Lab Mixed TSR - Moisture Induced Damage (AASHTO T283 / CT 371)	$ 1,943.00	$ 2,040.00	$ 2,142.00	$ 2,249.00	$ 2,361.00	$ 2,479.00
Calculated AC Maximum Density (CT 367)	$ 131.00	$ 138.00	$ 145.00	$ 152.00	$ 160.00	$ 168.00
Thickness Determination of AC Cores	$ 28.00	$ 29.00	$ 30.00	$ 32.00	$ 34.00	$ 36.00

MATERIALS LABORATORY TEST RATES (CONTINUED)

CONCRETE & MASONRY	2024	2025	2026	2027	2028	2029
Compression Test Concrete - Per Cylinder (ASTM C39)	$ 37.00	$ 39.00	$ 41.00	$ 43.00	$ 45.00	$ 47.00
Compression Test Concrete - Set of 4/5 (ASTM C39)	$ 180.00	$ 189.00	$ 198.00	$ 208.00	$ 218.00	$ 229.00
Compression Test of Core (ASTM C42)	$ 80.00	$ 84.00	$ 88.00	$ 92.00	$ 97.00	$ 102.00
Compressive Strength of Shotcrete Panel	$ 420.00	$ 441.00	$ 463.00	$ 486.00	$ 510.00	$ 536.00
Compression Test Composite CMU Prism (1)	$ 218.00	$ 229.00	$ 240.00	$ 252.00	$ 265.00	$ 278.00
Compression Test Grout (Set of 4)	$ 159.00	$ 167.00	$ 175.00	$ 184.00	$ 193.00	$ 203.00
Compression Test Mortar (Set of 3)	$ 145.00	$ 152.00	$ 160.00	$ 168.00	$ 176.00	$ 185.00
Flexural Test per Beam (ASTM C78 / CT 523)	$ 118.00	$ 124.00	$ 130.00	$ 137.00	$ 144.00	$ 151.00
Linear Shrinkage - Set of 3 (ASTM C157)	$ 525.00	$ 551.00	$ 579.00	$ 608.00	$ 638.00	$ 670.00
Unit Weight Lt Wt Concrete (ASTM C567)	$ 74.00	$ 78.00	$ 82.00	$ 86.00	$ 90.00	$ 95.00
Splitting Tensile Strength of Concrete (ASTM C496)	$ 158.00	$ 166.00	$ 174.00	$ 183.00	$ 192.00	$ 202.00
Compressive Strength CMU Block (ASTM C140)	$ 252.00	$ 265.00	$ 278.00	$ 292.00	$ 307.00	$ 322.00
Comp. Strength, SG, & Abs. of CMU - Per Block (ASTM C140)	$ 290.00	$ 305.00	$ 320.00	$ 336.00	$ 353.00	$ 371.00
Masonry Linear Shrinkage (ASTM C426)	$ 532.00	$ 559.00	$ 587.00	$ 616.00	$ 647.00	$ 679.00
Masonry Core Shear Test (Title 24)	$ 248.00	$ 260.00	$ 273.00	$ 287.00	$ 301.00	$ 316.00

METALS & FIREPROOFING	2024	2025	2026	2027	2028	2029
Tensile & Bend of Rebar #3-11	$ 195.00	$ 205.00	$ 215.00	$ 226.00	$ 237.00	$ 249.00
Slip and Tensile Rebar Couplers (CT 670)	$ 284.00	$ 298.00	$ 313.00	$ 329.00	$ 345.00	$ 362.00
Bolt Proof & Ultimate Load	$ 338.00	$ 355.00	$ 373.00	$ 392.00	$ 412.00	$ 433.00
Bolt Hardness - Set of 3	$ 225.00	$ 236.00	$ 248.00	$ 260.00	$ 273.00	$ 287.00
Nut Proof Load - Set of 3	$ 338.00	$ 355.00	$ 373.00	$ 392.00	$ 412.00	$ 433.00
Nut Hardness - Set of 3	$ 225.00	$ 236.00	$ 248.00	$ 260.00	$ 273.00	$ 287.00
Washer Hardness - Set of 3	$ 225.00	$ 236.00	$ 248.00	$ 260.00	$ 273.00	$ 287.00
Dry Density Fireproofing (ASTM E605)	$ 125.00	$ 131.00	$ 138.00	$ 145.00	$ 152.00	$ 160.00
Brinell Hardness of Steel (ASTM E10)	$ 131.00	$ 138.00	$ 145.00	$ 152.00	$ 160.00	$ 168.00
Rockwell Hardness of Steel (ASTM E18)	$ 131.00	$ 138.00	$ 145.00	$ 152.00	$ 160.00	$ 168.00
Face Bend of Steel Coupon	$ 80.00	$ 84.00	$ 88.00	$ 92.00	$ 97.00	$ 102.00
Root Bend of Weld Coupon	$ 80.00	$ 84.00	$ 88.00	$ 92.00	$ 97.00	$ 102.00
Side Bend of Weld Coupon	$ 80.00	$ 84.00	$ 88.00	$ 92.00	$ 97.00	$ 102.00
Tensile Test of Steel Coupon	$ 110.00	$ 116.00	$ 122.00	$ 128.00	$ 134.00	$ 141.00
Bend Test of Steel Coupon	$ 95.00	$ 100.00	$ 105.00	$ 110.00	$ 116.00	$ 122.00
Adhesion / Cohesion Fireproofing Materials	$ 167.00	$ 175.00	$ 184.00	$ 193.00	$ 203.00	$ 213.00

ESCALATION: The rates presented herein are effective on July 1st of each year. If this contract is extended beyond June 30, 2030, our rate will be subject to an annual escalation rate of 5% effective on July 1st of 2030 and on July 1st of every year thereafter.

2024-2029 BSK Rate Schedule

Page 6 of 6

BSK ASSOCIATES

EXHIBIT C - Task Order Form

(See Attached)

[Use this Form or Create New Based on Same Substance---

TASK ORDER FORM

Project:	_____
Consultant:	_____
Project Task Order Number:	[X of X]
Description of Task and Services:	_____ _____ _____
Maximum Compensation for Task:	$_____.00
Task Completion Time:	The Consultant must complete the services and deliverable for this task in On or before: [DATE]
Year-to-Date Total Authorized Task Order Compensation:	$_____.00
Remaining Total Not to Exceed Amount upon completion of this Task:	$_____.00

APPROVED BY CITY REPRESENTATIVE

_____
[Insert Name and Position]

_____
Date

CITY OF TRACY
MASTER PROFESSIONAL SERVICES AGREEMENT WITH
Ninyo & Moore, for Geotechnical Engineering Services included geotechnical investigation and design services, literation review of geotechnical reports and maps, site reconnaissance, underground service alert coordination, subsurface soil sampling, boring logs, geotechnical engineering analyses, seismicity, geotechnical design recommendation for grading and foundations, pavement evaluation and design, pavement coring, deflection testing, review of grading and foundation plans, preparation of review sheets.

This Master Professional Services Agreement ("Agreement") is entered into between the City of Tracy, a municipal corporation ("City"), and Ninyo & Moore 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 future Geotechnical Engineering Services] for Capital Improvement Projects (CIP), Land Development, and Traffic Engineering Projects as further described herein and in Exhibit A.

On August 19, 2024, staff followed established procedures in accordance with Tracy Municipal Code, Section 2.20.140, and conducted an RFP to solicit experienced and qualified consultants to provide On-Call Geotechnical Engineering Services for Engineering projects. This on-call list of Consultants creates an efficient process for future project proposal requests and does not bind the City or its budgets to a particular scope of work until it is required as City needs arise. Having previously undertaken the public contracting procedures for each Consultant on the list, as the project needs arise, the City may more readily move into contracting with one of the Consultants on the list and then return to the City Council for approval of a project-specific professional services agreement.

On September 5, 2024, the City received six (6) proposals including Ninyo & Moore. Pursuant to Tracy Municipal Code Sections 2.20.140(a)(2) and 2.20.130, the City has determined that Consultant demonstrated that it was the best qualified and most responsible proposer, and best fits the City's needs for competence and professional qualifications necessary for the satisfactory performance of the Services.

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

B. This Agreement was approved on _____pursuant to Tracy Municipal Code Section 2.20.140 (3), [and City Council Resolution No. _____.

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

1. Scope of Services. Consultant shall perform professional services, tasks, and scope of work further described in Exhibit A hereto ("Services") for the City's benefit on an as-needed basis pursuant to individual approved Task Orders for services within the in accordance with the terms and conditions of this Agreement. The Services shall be performed by, or under the direct supervision of, Consultant's Authorized Representative: **Peter C. Connolly, PE, GE**. Consultant shall not replace its Authorized Representative, nor shall Consultant replace any of the personnel listed in Exhibit A, nor

shall Consultant use or replace any subcontractor or subconsultant, without City's prior written consent. A failure to obtain the City's prior written consent for any change or replacement in personnel or subcontractor/subconsultant may result in the termination of this Agreement.

1.1 Task Order Forms. The Services within the Scope of Work will be comprised of Task Order Forms (in the form provided in Exhibit C hereto), approved, executed and delivered by the Director of **Ninyo & Moore** ("Director") from time-to-time during the Term of this Agreement, on an as-needed basis. The Consultant cannot start performing any Work until the Director has executed a Task Order for such work. The City has no obligation to issue any Task Orders under this Master Agreement. The City may issue any number of Task Orders provided that the sum of the maximum compensation of all approved Task Orders cannot exceed the Total Not-to-Exceed amount stated in Section 3.1.

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

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

2.1 Term. The term of this Agreement shall commence on October 15, 2024, and expire and terminate automatically on June 30, 2027 or earlier by termination pursuant to Section 6 of this Agreement ("Term"). Subject to the Not-To-Exceed Amount defined in Section 3.1, the Term of this Agreement may be extended with express written amendment incorporating this Agreement signed by both Parties and one of the following City approvals: (a) City Council approval or (b) City Manager approval. An administrative extension of this Agreement by City Manager shall be limited to an additional term of two (2) years (s) and require written determination by the City Manager that Consultant has satisfactorily met all the requirements of this Agreement.

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

3.1 Annual Total Not to Exceed Amount. Consultant's total compensation for all Task Orders and Services under this Agreement shall not exceed $300,000.00 (Three hundred thousand Dollars) per City fiscal year ("Total Not-to-Exceed Amount"). Consultant's billing rates shall cover all costs and expenses for Consultant's performance of this Agreement. No work shall be performed by Consultant in excess of the Total Not-to-Exceed Amount. Consultant acknowledges City has no obligation to compensate or reimburse Consultant for any fees or costs incurred in excess of the Total Not-to-Exceed Amount. Unless specifically stated otherwise or agreed to in writing and approved by City Council, the fees proposed by Consultant, as set forth in Exhibit B hereto, shall remain unchanged for the entire term of this Agreement and any extensions of this Agreement.

3.1.2 For each Task Order issued under this Agreement, Consultant's Services shall not exceed the maximum compensation stated in that Task Order.

3.2 Invoices. No less than Ninety (90) days after performing Services, Consultant shall submit monthly written invoice(s) to the City that include copies of approved Task Orders, the Services performed, and identify times, dates, and names of persons performing the services.

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

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

3.2.3 Consultant shall submit invoices no later than 90 days after completion of a Task Order or portion of the Services. City has no obligation to pay invoices delivered greater than 90 days after the date of performance of the Services.

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

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

4. Indemnification. Consultant shall, to the fullest extent permitted by law, indemnify, defend (with independent counsel approved by the City), and hold harmless the City from and against any claims arising out of Consultant's performance or failure to comply with obligations under this Agreement, except to the extent caused by the sole, active negligence, or willful misconduct of the City. In this section, "City" means the City, its officials, officers, agents, employees, and volunteers; "Consultant" means the Consultant, its employees, agents and subcontractors; "Claims" includes claims, demands, actions, losses, damages, injuries, and liability, direct or indirect (including any and all related costs and expenses) and any allegations of these; and "Arising out of" includes "pertaining to" and "relating to". The Consultant's indemnification obligation applies to the maximum extent allowed by law and includes defending the City as set forth in Sections 2778 and 2782.8 of the California Civil Code. Upon the City's written request, the Consultant, at its own expense, shall defend any suit or action that is subject to this indemnification obligation. The provisions of this section survive completion of the services or the termination of this Agreement and are not limited by the provisions of Section 5 relating to insurance.

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

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

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

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

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

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

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

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

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

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

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

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

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

6. <u>Termination</u>.

6.1 The Parties may terminate this Agreement for any reason, including, but not limited to, convenience, by giving ten (10) days' written notice to the other Party. The City shall pay Consultant for all services satisfactorily performed in accordance with this Agreement, up to the date notice is given.

6.2 This Agreement shall automatically terminate immediately without notice to Consultant upon any of the following occurrences: (a) material breach of this Agreement by Consultant; (b) lack of City funds appropriated. In the event of termination by material breach of Consultant, if the City replaces any incomplete or defective Services from another consultant at a greater cost, the Consultant is responsible for such excess cost in addition to any other remedies available to the City.

6.3 Upon termination, Consultant shall return the City all original documents, including preliminary drafts and supporting documents, prepared by Consultant in connection with the Services performed under this Agreement.

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

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

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

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

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

To City:

Koosun Kim, PE
City Engineer
333 Civic Center Plaza
Tracy, CA 95376

To Consultant: Ninyo & Moore

Peter C. Connolly, PE, GE
Principal-in-Charge/Contract Manager
1301 Marina Village Parkway, Ste,110
Alameda, CA 94501

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

12. Miscellaneous.

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

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

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

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

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

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

12.6.1 Prevailing Wage Laws. Consultant is aware of the requirements of California Labor Code Section 1720, et seq., and 1770, et seq., as well as California Code of Regulations, Title 8, Section 16000, et seq., ("Prevailing Wage Laws"), which require the payment of prevailing wage rates; employment of apprentices (§ 1777.5), certified payroll records (§1776), hours of labor (§1813 and §1815), debarment of contractors and subcontractors (§1777.1) and the performance of other requirements on "public works" and "maintenance" projects. If the services being performed under this Agreement are part of a "public works" or "maintenance" project, as defined in the Prevailing Wage

Laws, and if the total compensation is $1,000 or more, Consultant agrees to fully comply with such Prevailing Wage Laws. These prevailing rates are on file with the City and are available online at http://www.dir.ca.gov/DLSR. Consultant shall defend, indemnify and hold the City, its officials, officers, employees and agents, harmless from any and all claims, costs, penalties, or interests arising out of any failure or alleged failure to comply with the Prevailing Wage Laws.

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

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

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

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

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

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

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

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

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

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS HEREOF, the City and Consultant agree to the full performance of the foregoing terms as of the last signature date.

City of Tracy

By: Nancy Young
Title: Mayor
Date: _____

Attest:

_____
Adrianne Richardson, City Clerk

Approved as to form:

_____
Bijal M. Patel, City Attorney

Consultant
Ninyo & Moore

By: Peter C. Connolly, PE, GE
Title: Principal-in-Charge/Contract Manager
Date: 9-12-2024

Federal Employer Tax ID No. 33-0269828

By: Tamera Richards
Title: Chief Financial Officer
Date: 9-12-2024

Exhibits:

A Scope of Work, including personnel and time of performance (See Agreement sections 1 and 2.)

B Compensation (See Agreement section 3.)

C Task Order Form

EXHIBIT A
Scope of Services

Consultant shall offer a complete range of Geotechnical Engineering Services to support the City's needs including professional Registered Geotechnical Engineers, Registered Professional Engineers, Certified Geologist, Certified Laboratory Technician and field crews, and office technicians. The Consultant shall ensure the tasks outlined herein are performed by the consultant's own responsible representative or designated alternate. The requirements described in these sections are neither limited nor comprehensive in nature but are the minimum necessary to meet the City's objectives.

Detailed work procedures are not included in the Scope of Work. The Consultant shall exercise independent, professional judgment and innovation in the performance of any services or tasks listed herein to achieve the most effective and efficient design and product. The Consultant is expected to expand on this scope in their proposal by incorporating specific areas of expertise and any other tasks required for a specific project and/or proposal requested The Consultant shall provide the services and deliverables set forth in this Exhibit A. The Consultant shall provide all services and deliverables required by this Exhibit A to the satisfaction of the City.

Geotechnical Engineering Services include but are not necessarily limited to, those items noted below.

1. Geotechnical investigation & design services for Public works projects:
    a. Literation review of geotechnical reports and maps
    b. Site reconnaissance
    c. Underground service alert coordination
    d. Subsurface soil sampling
    e. Boring logs
    f. Geotechnical engineering analyses
    g. Seismicity
    h. Geotechnical design recommendation for grading and foundations overseen by a Registered Geotechnical Engineer (GE)

2. Pavement evaluation and design:
    a. Pavement corings
    b. Deflection testing
    c. Pavement analysis per Caltrans methodology
    d. Require a Registered professional engineer (PE)/Pavement Engineer to Perform Review

3. Geotechnical review services:
    a. Review of geotechnical reports
    b. Review of grading and foundation plans
    c. Preparation of review sheets
    d. Coordination with planning, Parks,building &Public workstaff
    e. Presentation at City Council meetings if required
    f. Requires Registered Geotechnical Engineer (GE) and Certified Engineering Geologist (CEG) to perform reviews

Additional requirements are as follows:

All work shall be performed under the direction of a Registered Professional Engineer and or Registered Geotechnical Engineer in the State of California. The Registered Professional Engineer/Geotechnical Engineer shall maintain professional licenses required by the laws of the State of California at all times while under contract with the City of Tracy.

Personnel:
Peter C. Connolly, PE, GE Principal-In-Charge/ Contract Manager
Anthony Dover, PE, GE Project Manager
Marlene K. Watson, PE, GE Lead Technical Staff
Curtis E. Hall, PG, CEG Lead Technical Staff
Ransom H. Hennefer, PE, GE, ACI, ICC Lead Technical Staff
Scott Johnson, PG, CEG Lead Technical Staff
Bryan C. Steinbrueck, ACI, ICC, NICET, Laboratory Manager

Field Technicians
Isaak Arias-Pina, ACI, ICC
Joshua Muller, ACI
Johathan Urmeneta, ACI
Trajche Trajkovski, ACI
John McKenna, ACI, ICC, Caltrans
Ricky Alvarez Vega, ACI, ICC
Felipe Jimenez, ACI
Abrar Said, ACI

Geotechnical Support
Lothus Hennefer, PE, ACI, ICC
Caleb Hodnett, PE
Tatiana Gospe, PE
Kenneth Celino, EIT
Mingshen Chen, EIT
Mohammad Hammoud, EIT
Rathna Mothkuri, PMP
Shravya Anipindi, LEED
David Lin, EIT, ACI

EXHIBIT B

Compensation

Schedule of Fees

Hourly Charges for Personnel

Professional Staff

Principal Engineer/Geologist/Environmental Scientist/Certified Industrial Hygienist	$ 280
Senior Engineer/Geologist/Environmental Scientist	$ 260
Senior Project Engineer/Geologist/Environmental Scientist	$ 240
Project Engineer/Geologist/Environmental Scientist	$ 230
Senior Staff Engineer/Geologist/Environmental Scientist	$ 210
Staff Engineer/Geologist/Environmental Scientist	$ 190
GIS Analyst	$ 170
Technical Illustrator/CAD Operator	$ 160

Field Staff

Certified Asbestos/Lead Technician	$ 230
Field Operations Manager	$ 170
Nondestructive Examination Technician (UT, MT, LP)	$ 160
Supervisory Technician	$ 160
Special Inspector (Concrete, Masonry, Structural Steel, Welding, and Fireproofing)	$ 150
Senior Technician	$ 135
Technician	$ 130

Administrative Staff

Information Specialist	$ 120
Geotechnical/Environmental/Laboratory Assistant	$ 120
Data Processor	$ 95

Other Charges

Concrete Coring Equipment (includes technician)	$ 190/hr
Anchor Load Test Equipment (includes technician)	$ 190/hr
GPR Equipment	$ 180/hr
State of California Prevailing Wage Surcharge	$ 30/hr
Inclinometer	$ 100/hr
Hand Auger Equipment	$ 80/hr
Rebar Locator (Pachometer)	$ 25/hr
Vapor Emission Kit	$ 65/kit
Nuclear Density Gauge	$ 15/hr
X-Ray Fluorescence	$ 70/hr
PID/FID	$ 25/hr
Air Sampling Pump	$ 10/hr
Field Vehicle	$ 15/hr
Equipment	$ 15/hr
Expert Witness Testimony	$ 450/hr
Direct Expenses	Cost plus 15 %

Special equipment charges will be provided upon request.

Notes

Our field services, are charged at a 4-hour minimum, and 8-hour minimum for hours exceeding 4 hours. Overtime rates at 1.5 times the regular rates will be charged for work performed in excess of 8 hours in one day Monday through Friday and all day on Saturday. Rates at twice the regular rates will be charged for all work in excess of 12 hours in one day, all day Sunday and on holidays.

Field services that may be subject to prevailing wage in accordance with AB 1768 and Prevailing Wage Determinations, will be subject to a prevailing wage surcharge as shown in our Schedule of Fees. Our rates will be adjusted in conjunction with the increase in the Prevailing Wage Determination during the life of the project, as applicable.

The terms and conditions are included in Ninyo & Moore's Work Authorization and Agreement form.

Schedule of Fees for Laboratory Testing

SOILS

Atterberg Limits, D 4318, CT 204	$ 170
California Bearing Ratio (CBR), D 1883	$ 550
Chloride and Sulfate Content, CT 417 & CT 422	$ 175
Consolidation, D 2435, CT 219	$ 300
Consolidation, Hydro-Collapse only, D 2435	$ 150
Consolidation – Time Rate, D 2435, CT 219	$ 200
Direct Shear – Remolded, D 3080	$ 350
Direct Shear – Undisturbed, D 3080	$ 300
Durability Index, CT 229	$ 175
Expansion Index, D 4829, IBC 18-3	$ 190
Expansion Potential (Method A), D 4546	$ 170
Geofabric Tensile and Elongation Test, D 4632	$ 200
Hydraulic Conductivity, D 5084	$ 350
Hydrometer Analysis, D 6913, CT 203	$ 220
Moisture, Ash, & Organic Matter of Peat/Organic Soils	$ 120
Moisture Only, D 2216, CT 226	$ 35
Moisture and Density, D 2937	$ 45
Permeability, CH, D 2434, CT 220	$ 300
pH and Resistivity, CT 643	$ 175
Proctor Density D1557, D 698, CT 216, AASHTO T-180	$ 220
Proctor Density with Rock Correction D 1557	$ 340
R-value, D 2844, CT 301	$ 375
Sand Equivalent, D 2419, CT 217	$ 125
Sieve Analysis, D 6913, CT 202	$ 145
Sieve Analysis, 200 Wash, D 1140, CT 202	$ 100
Specific Gravity, D 854	$ 125
Thermal Resistivity (ASTM 5334, IEEE 442)	$ 925
Triaxial Shear, C.D, D 4767, T 297	$ 550
Triaxial Shear, C.U., w/pore pressure, D 4767, T 2297 per pt	$ 450
Triaxial Shear, C.U., w/o pore pressure, D 4767, T 2297 per pt	$ 350
Triaxial Shear, U.U., D 2850	$ 250
Unconfined Compression, D 2166, T 208	$ 180

MASONRY

Brick Absorption, 24-hour submersion, 5-hr boiling, 7-day, C 67	$ 70
Brick Compression Test, C 67	$ 55
Brick Efflorescence, C 67	$ 55
Brick Modulus of Rupture, C 67	$ 50
Brick Moisture as received, C 67	$ 45
Brick Saturation Coefficient, C 67	$ 60
Concrete Block Compression Test, 8x8x16, C 140	$ 70
Concrete Block Conformance Package, C 90	$ 500
Concrete Block Linear Shrinkage, C 426	$ 200
Concrete Block Unit Weight and Absorption, C 140	$ 70
Cores, Compression or Shear Bond, CA Code	$ 70
Masonry Grout, 3x3x6 prism compression, C 39	$ 45
Masonry Mortar, 2x2 cube compression, C 109	$ 35
Masonry Prism, half size, compression, C 1019	$ 120
Masonry Prism, Full size, compression, C 1019	$ 200

REINFORCING AND STRUCTURAL STEEL

Chemical Analysis, A 36, A 615	$ 135
Fireproofing Density Test, UBC 7-6	$ 90
Hardness Test, Rockwell, A 370	$ 80
High Strength Bolt, Nut & Washer Conformance, per assembly, A 325	$ 150
Mechanically Spliced Reinforcing Tensile Test, ACI	$ 175
Pre-Stress Strand (7 wire), A 416	$ 170
Reinforcing Tensile or Bend up to No. 11, A 615 & A 706	$ 75
Structural Steel Tensile Test: Up to 200,000 lbs., A 370	$ 90
Welded Reinforcing Tensile Test: Up to No. 11 bars, ACI	$ 80

CONCRETE

Compression Tests, 6x12 Cylinder, C 39	$ 35
Concrete Mix Design Review, Job Spec	$ 300
Concrete Mix Design, per Trial Batch, 6 cylinder, ACI	$ 850
Concrete Cores, Compression (excludes sampling), C 42	$ 120
Drying Shrinkage, C 157	$ 400
Flexural Test, C 78	$ 85
Flexural Test, C 293	$ 85
Flexural Test, CT 523	$ 95
Gunite/Shotcrete, Panels, 3 cut cores per panel and test, ACI	$ 275
Lightweight Concrete Fill, Compression, C 495	$ 80
Petrographic Analysis, C 856	$ 2,000
Restrained Expansion of Shrinkage Compensation	$ 450
Splitting Tensile Strength, C 496	$ 100
3x6 Grout, (CLSM), C 39	$ 55
2x2x2 Non-Shrink Grout, C 109	$ 55

ASPHALT

Air Voids, T 269	$ 85
Asphalt Mix Design, Caltrans (incl. Aggregate Quality)	$ 4,500
Asphalt Mix Design Review, Job Spec	$ 180
Dust Proportioning, CT LP-4	$ 85
Extraction, % Asphalt, including Gradation, D 2172, CT 382	$ 250
Extraction, % Asphalt without Gradation, D 2172, CT 382	$ 150
Film Stripping, CT 302	$ 120
Hveem Stability and Unit Weight D 1560, T 246, CT 366	$ 225
Marshall Stability, Flow and Unit Weight, T 245	$ 240
Maximum Theoretical Unit Weight, D 2041, CT 309	$ 150
Moisture Content, CT 370	$ 95
Moisture Susceptibility and Tensile Stress Ratio, T 238, CT 371	$ 1,000
Slurry Wet Track Abrasion, D 3910	$ 150
Superpave, Asphalt Mix Verification (incl. Aggregate Quality)	$ 4,900
Superpave, Gyratory Unit Wt., T 312	$ 100
Superpave, Hamburg Wheel, 20,000 passes, T 324	$ 1,000
Unit Weight sample or core, D 2726, CT 308	$ 100
Voids in Mineral Aggregate, (VMA) CT LP-2	$ 90
Voids filled with Asphalt, (VFA) CT LP-3	$ 90
Wax Density, D 1188	$ 140

AGGREGATES

Clay Lumps and Friable Particles, C 142	$ 180
Cleanness Value, CT 227	$ 180
Crushed Particles, CT 205	$ 175
Durability, Coarse or Fine, CT 229	$ 205
Fine Aggregate Angularity, ASTM C 1252, T 304, CT 234	$ 180
Flat and Elongated Particle, D 4791	$ 220
Lightweight Particles, C 123	$ 180
Los Angeles Abrasion, C 131 or C 535	$ 200
Material Finer than No. 200 Sieve by Washing, C 117	$ 90
Organic Impurities, C 40	$ 90
Potential Alkali Reactivity, Mortar Bar Method, Coarse, C 1260	$ 1,250
Potential Alkali Reactivity, Mortar Bar Method, Fine, C 1260	$ 950
Potential Reactivity of Aggregate (Chemical Method), C 289	$ 475
Sand Equivalent, T 176, CT 217	$ 125
Sieve Analysis, Coarse Aggregate, T 27, C 136	$ 120
Sieve Analysis, Fine Aggregate (including wash), T 27, C 136	$ 145
Sodium Sulfate Soundness, C 88	$ 450
Specific Gravity and Absorption, Coarse, C 127, CT 206	$ 115
Specific Gravity and Absorption, Fine, C 128, CT 207	$ 175

ROOFING

Roofing Tile Absorption, (set of 5), C 67	$ 250
Roofing Tile Strength Test, (set of 5), C 67	$ 250

Special preparation of standard test specimens will be charged at the technician's hourly rate.
Ninyo & Moore is accredited to perform the AASHTO equivalent of many ASTM test procedures.

EXHIBIT C - Task Order Form

(See Attached)

Use this Form or Create New Based on Same Substance---

TASK ORDER FORM

Project:	_____
Consultant:	_____
Project Task Order Number:	[X of X]
Description of Task and Services:	_____ _____ _____
Maximum Compensation for Task:	$_____.00
Task Completion Time:	The Consultant must complete the services and deliverable for this task in On or before: [DATE]
Year-to-Date Total Authorized Task Order Compensation:	$_____.00
Remaining Total Not to Exceed Amount upon completion of this Task:	$_____.00

APPROVED BY CITY REPRESENTATIVE

_____
[Insert Name and Position]

_____
Date

APPROVED AS TO FORM AND LEGALITY

_____
CITY ATTORNEY'S OFFICE

TRACY CITY COUNCIL

RESOLUTION NO. _____

APPROVING AN ON-CALL PROFESSIONAL SERVICES LIST, FOR GEOTECHNICAL ENGINEERING SERVICES, FOR FIVE YEARS.

WHEREAS, the City has a variety of Capital Improvement Projects (CIP), Land Development projects, and Transportation and Traffic projects requiring specialized professional services; and

WHEREAS, the City requires the support of professional, technical, and related services from outside firms to perform these tasks; and

WHEREAS, on August 19, 2024, staff, following established procedures in accordance with Tracy Municipal Code, Section 2.20.140, posted on the City's website a Request for Proposals (RFP) to solicit experienced and qualified consultants to provide On-Call Geotechnical Engineering Services for various engineering projects; and

WHEREAS, the requested On-Call Geotechnical Engineering Services include, but are not limited to, geotechnical investigation and design services for public works projects, literation review of geotechnical reports and maps, site reconnaissance, underground service alert coordination, subsurface soil sampling, boring logs, geotechnical engineering analyses, seismicity, geotechnical design recommendation for grading and foundations overseen by a Registered Geotechnical Engineer, pavement evaluation and design, pavement coring, deflection testing, pavement analysis per Caltrans methodology that require a Registered Professional Engineer or pavement engineer to perform the review, review of geotechnical reports, review of grading and foundation plans, preparation of review sheets, coordination with Planning, Parks, Building and Operations and Utilities staff, presentation at City Council meetings, if required, and Registered Geotechnical Engineers and Certified Engineering Geologists to perform reviews; and

WHEREAS, on September 5, 2024, the City received six (6) proposals to provide the required services and the table below lists all six (6) On-Call consultants and the proposed services:

Consultant	Service Provided
BSK Associates	Geotechnical Engineering Services
Ninyo & Moore	Geotechnical Engineering Services
Crawford & Associate, Inc.	Geotechnical Engineering Services
Krazan & Associates, Inc.	Geotechnical Engineering Services
Terracon Consultants, Inc.	Geotechnical Engineering Services
Universal Engineering Sciences (UES)	Geotechnical Engineering Services

WHEREAS, the City's internal Selection Committee carefully evaluated all six (6) proposals received based on the criteria described in the RFP, and determined that all six (6) possess the skills, experience, competence, professional qualifications, and certifications required to provide the services requested by the City and should remain on the On-Call List; and

WHEREAS, the City will utilize such services on an On-Call basis, and the City will execute Professional Services Agreements with each consultant and issue Task Orders for the scope of work needed, through future City Council action, as may be needed to comply with the Tracy Municipal Code; now, therefore, be it

RESOLVED: That the City Council of the City of Tracy, hereby approves an On-Call Professional Services List consisting of the consultants as shown in the table above, for five years, for Geotechnical Engineering Services; and be it

FURTHER RESOLVED: That the City Council directs staff to return for future approvals of any specific agreement with any specific firm listed on the foregoing On-Call List, to the extent it may be needed for either budgetary or contract authority under the Tracy Municipal Code; and be it

FURTHER RESOLVED: The approval requested in this item is "planning and feasibility services" and, therefore, is not considered a "project" as defined by Section 21065 of the Public Resources Code and that any projects for which such services are performed will be reviewed as required under the California Environmental Quality Act before future discretionary actions are taken.

* * * * * * * * * * * * * *

The foregoing Resolution 2024-_____ was adopted by the Tracy City Council on the 15th day of October 2024, by the following vote:

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

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

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

APPROVED AS TO FORM AND LEGALITY

_____
CITY ATTORNEY'S OFFICE

TRACY CITY COUNCIL

RESOLUTION NO. _____

AUTHORIZING THE A) EXECUTION OF A MASTER PROFESSIONAL SERVICES AGREEMENT WITH BSK ASSOCIATES TO PROVIDE GEOTECHNICAL ENGINEERING SERVICES FOR AN INITIAL TERM OF THREE YEARS FOR A NOT-TO-EXCEED AMOUNT OF $300,000 PER FISCAL YEAR, AND B) CITY MANAGER TO EXTEND, ADMINISTRATIVELY, FOR UP TO TWO ADDITIONAL YEARS

WHEREAS, the City has a variety of Capital Improvement Projects (CIP), Land Development projects, and Transportation and Traffic projects requiring specialized professional Geotechnical Engineering Services; and

WHEREAS, the City requires the support of professional, technical, and related services from outside consultants to perform these tasks; and

WHEREAS, following Tracy Municipal Code, Section 2.20.140, a Request for Proposals for On-Call Geotechnical Engineering Services (Services) was posted on the City's website on August 19, 2024; and

WHEREAS, the Services include, but are not limited to, geotechnical investigation and design services for public works projects, literation review of geotechnical reports and maps, site reconnaissance, underground service alert coordination, subsurface soil sampling, boring logs, geotechnical engineering analyses, seismicity, geotechnical design recommendation for grading and foundations overseen by a Registered Geotechnical Engineer, pavement evaluation and design, pavement coring, deflection testing pavement analysis per Caltrans methodology that require a Registered Professional Engineer or pavement engineer to perform the review, review of geotechnical reports, review of grading and foundation plans, preparation of review sheets, coordination with Planning, Parks, Building and Operations and Utilities staff, presentation at City Council meetings, if required, and Registered Geotechnical Engineers and Certified Engineering Geologists to perform reviews; and

WHEREAS, on September 5, 2024, the City received six (6) proposals including BSK Associates to provide the required Services, and after extensive review by the City's internal Selection Committee, the City selected all six (6) qualified consultants to provide these services; and

WHEREAS, the On-Call List of selected consultants creates efficiency and does not bind the City or its budgets to a particular scope of work until it is required as City needs arise; and

WHEREAS, concurrently with this agenda item, by separate Resolution, staff is recommending that the City Council approve the On-Call List of qualified consultants to provide Geotechnical Engineering Services; and

WHEREAS, to provide supplemental geotechnical engineering services for CIPs and Land Development projects that are currently pending, staff recommends that the City Council award a Master Professional Services Agreement (MPSA) for an initial term of three years for a not-to-exceed amount of $300,000 per fiscal year with BSK Associates which is on the On-Call List; and

WHEREAS, staff has successfully worked with BSK Associates since 2016 on several CIPs and seeks to continue to utilize their services to further implement geotechnical engineering services for the City's projects; and

WHEREAS, the City will issue Task Orders specifying the scope of work needed, and the consultant will invoice the City based on the scope of work for each Task Order; and

WHEREAS, the cost of the work performed by BSK Associates will be cost recoverable in part, through the developer's fee, Capital Improvement Project budgets, or Federal and State grant funds; and funding for MPSA will be through the department's annually adopted budget. The contract includes the ability to terminate if there is insufficient budget availability; now, therefore, be it

RESOLVED: That the City Council of the City of Tracy hereby approves a Master Professional Services Agreement, in the form attached as Exhibit 1, for Geotechnical Engineering services with BSK Associates for an initial term of three years and for a total not to exceed amount of $300,000 per fiscal year; and be it

FURTHER RESOLVED: That the City Council authorizes the City Manager, to administratively extend the term of the MPSA, for up to two, one-year terms based on performance, if needed; and be it

FURTHER RESOLVED: That the City Council finds that the MPSA is for services equivalent to "planning and feasibility services" and, therefore, is not considered a "project" as defined by Section 21065 of the Public Resources Code and that any projects for which such services are performed will be reviewed as required under the California Environmental Quality Act before future discretionary actions are taken.

* * * * * * * * * * * * * *

The foregoing Resolution 2024-_____ was adopted by the Tracy City Council on the 15th day of October by the following vote:

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

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

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

EXHIBITS:
Exhibit 1 - Master Professional Services Agreement (MPSA) with BSK Associates

CITY OF TRACY
MASTER PROFESSIONAL SERVICES AGREEMENT WITH
BSK Associates for Geotechnical Engineering Services included geotechnical investigation and design services, literation review of geotechnical reports and maps, site reconnaissance, underground service alert coordination, subsurface soil sampling, boring logs, geotechnical engineering analyses, seismicity, geotechnical design recommendation for grading and foundations, pavement evaluation and design, pavement coring, deflection testing, review of grading and foundation plans, preparation of review sheets.

This Master Professional Services Agreement ("Agreement") is entered into between the City of Tracy, a municipal corporation ("City"), and BSK Associates 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 future Geotechnical Engineering Services] for Capital Improvement Projects (CIP), Land Development, and Traffic Engineering Projects as further described herein and in Exhibit A.

On August 19, 2024, staff followed established procedures in accordance with Tracy Municipal Code, Section 2.20.140, and conducted an RFP to solicit experienced and qualified consultants to provide On-Call Geotechnical Engineering Services for Engineering projects. This on-call list of Consultants creates an efficient process for future project proposal requests and does not bind the City or its budgets to a particular scope of work until it is required as City needs arise. Having previously undertaken the public contracting procedures for each Consultant on the list, as the project needs arise, the City may more readily move into contracting with one of the Consultants on the list and then return to the City Council for approval of a project-specific professional services agreement.

On September 5, 2024, the City received six (6) proposals including BSK Associates. Pursuant to Tracy Municipal Code Sections 2.20.140(a)(2) and 2.20.130, the City has determined that Consultant demonstrated that it was the best qualified and most responsible proposer, and best fits the City's needs for competence and professional qualifications necessary for the satisfactory performance of the Services.

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

B. This Agreement was approved on _____pursuant to Tracy Municipal Code Section 2.20.140 (3), [and City Council Resolution No. _____.

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

1. Scope of Services. Consultant shall perform professional services, tasks, and scope of work further described in Exhibit A hereto ("Services") for the City's benefit on an as-needed basis pursuant to individual approved Task Orders for services within the in accordance with the terms and conditions of this Agreement. The Services shall be performed by, or under the direct supervision of, Consultant's Authorized Representative: **Cristiano Melo, PE, GE**. Consultant shall not replace its Authorized Representative, nor shall Consultant replace any of the personnel listed in Exhibit A, nor

shall Consultant use or replace any subcontractor or subconsultant, without City's prior written consent. A failure to obtain the City's prior written consent for any change or replacement in personnel or subcontractor/subconsultant may result in the termination of this Agreement.

1.1 Task Order Forms. The Services within the Scope of Work will be comprised of Task Order Forms (in the form provided in Exhibit C hereto), approved, executed and delivered by the Director of **BSK Associates** ("Director") from time-to-time during the Term of this Agreement, on an as-needed basis. The Consultant cannot start performing any Work until the Director has executed a Task Order for such work. The City has no obligation to issue any Task Orders under this Master Agreement. The City may issue any number of Task Orders provided that the sum of the maximum compensation of all approved Task Orders cannot exceed the Total Not-to-Exceed amount stated in Section 3.1.

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

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

2.1 Term. The term of this Agreement shall commence on October 15, 2024, and expire and terminate automatically on June 30, 2027 or earlier by termination pursuant to Section 6 of this Agreement ("Term"). Subject to the Not-To-Exceed Amount defined in Section 3.1, the Term of this Agreement may be extended with express written amendment incorporating this Agreement signed by both Parties and one of the following City approvals: (a) City Council approval or (b) City Manager approval. An administrative extension of this Agreement by City Manager shall be limited to an additional term of two (2) years (s) and require written determination by the City Manager that Consultant has satisfactorily met all the requirements of this Agreement.

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

3.1 Annual Total Not to Exceed Amount. Consultant's total compensation for all Task Orders and Services under this Agreement shall not exceed $300,000.00 (Three hundred thousand Dollars) per City fiscal year ("Total Not-to-Exceed Amount"). Consultant's billing rates shall cover all costs and expenses for Consultant's performance of this Agreement. No work shall be performed by Consultant in excess of the Total Not-to-Exceed Amount. Consultant acknowledges City has no obligation to compensate or reimburse Consultant for any fees or costs incurred in excess of the Total Not-to-Exceed Amount. Unless specifically stated otherwise or agreed to in writing and approved by City Council, the fees proposed by Consultant, as set forth in Exhibit B hereto, shall remain unchanged for the entire term of this Agreement and any extensions of this Agreement.

3.1.2 For each Task Order issued under this Agreement, Consultant's Services shall not exceed the maximum compensation stated in that Task Order.

3.2 Invoices. No less than Ninety (90) days after performing Services, Consultant shall submit monthly written invoice(s) to the City that include copies of approved Task Orders, the Services performed, and identify times, dates, and names of persons performing the services.

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

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

3.2.3 Consultant shall submit invoices no later than 90 days after completion of a Task Order or portion of the Services. City has no obligation to pay invoices delivered greater than 90 days after the date of performance of the Services.

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

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

4. Indemnification. Consultant shall, to the fullest extent permitted by law, indemnify, defend (with independent counsel approved by the City), and hold harmless the City from and against any claims arising out of Consultant's performance or failure to comply with obligations under this Agreement, except to the extent caused by the sole, active negligence, or willful misconduct of the City. In this section, "City" means the City, its officials, officers, agents, employees, and volunteers; "Consultant" means the Consultant, its employees, agents and subcontractors; "Claims" includes claims, demands, actions, losses, damages, injuries, and liability, direct or indirect (including any and all related costs and expenses) and any allegations of these; and "Arising out of" includes "pertaining to" and "relating to". The Consultant's indemnification obligation applies to the maximum extent allowed by law and includes defending the City as set forth in Sections 2778 and 2782.8 of the California Civil Code. Upon the City's written request, the Consultant, at its own expense, shall defend any suit or action that is subject to this indemnification obligation. The provisions of this section survive completion of the services or the termination of this Agreement and are not limited by the provisions of Section 5 relating to insurance.

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

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

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

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

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

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

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

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

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

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

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

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

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

6. <u>Termination</u>.

6.1 The Parties may terminate this Agreement for any reason, including, but not limited to, convenience, by giving ten (10) days' written notice to the other Party. The City shall pay Consultant for all services satisfactorily performed in accordance with this Agreement, up to the date notice is given.

6.2 This Agreement shall automatically terminate immediately without notice to Consultant upon any of the following occurrences: (a) material breach of this Agreement by Consultant; (b) lack of City funds appropriated. In the event of termination by material breach of Consultant, if the City replaces any incomplete or defective Services from another consultant at a greater cost, the Consultant is responsible for such excess cost in addition to any other remedies available to the City.

6.3 Upon termination, Consultant shall return the City all original documents, including preliminary drafts and supporting documents, prepared by Consultant in connection with the Services performed under this Agreement.

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

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

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

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

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

To City:

Koosun Kim, PE
City Engineer
333 Civic Center Plaza
Tracy, CA 95376

To Consultant: BSK Associates

Cristiano Melo, PE, GE
Branch Manager
252 W. Larch Road, Suite 252-H
Tracy, CA 95304

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

12. Miscellaneous.

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

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

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

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

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

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

12.6.1 Prevailing Wage Laws. Consultant is aware of the requirements of California Labor Code Section 1720, et seq., and 1770, et seq., as well as California Code of Regulations, Title 8, Section 16000, et seq., ("Prevailing Wage Laws"), which require the payment of prevailing wage rates; employment of apprentices (§ 1777.5), certified payroll records (§1776), hours of labor (§1813 and §1815), debarment of contractors and subcontractors (§1777.1) and the performance of other requirements on "public works" and "maintenance" projects. If the services being performed under this Agreement are part of a "public works" or "maintenance" project, as defined in the Prevailing Wage

Laws, and if the total compensation is $1,000 or more, Consultant agrees to fully comply with such Prevailing Wage Laws. These prevailing rates are on file with the City and are available online at http://www.dir.ca.gov/DLSR. Consultant shall defend, indemnify and hold the City, its officials, officers, employees and agents, harmless from any and all claims, costs, penalties, or interests arising out of any failure or alleged failure to comply with the Prevailing Wage Laws.

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

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

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

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

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

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

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

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

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

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS HEREOF, the City and Consultant agree to the full performance of the foregoing terms as of the last signature date.

City of Tracy

By: Nancy Young
Title: Mayor
Date: _____

Attest:

_____
Adrianne Richardson, City Clerk

Approved as to form:

_____
Bijal M. Patel, City Attorney

Consultant
BSK Associates

Cristiano Melo

Digitally signed by Cristiano Melo
DN: cn=Cristiano Melo, c=US, o=BSK Associates, ou=Livermore Branch, email=cmelo@bskassociates.com
Date: 2024.09.12 13:44:30 -07'00'

By: Cristiano Melo, PE,GE
Title: Branch Manager
Date: 9/12/2024

Federal Employer Tax ID No. 94-1633676

By: Aaron Badavinac
Title: Chief Financial Officer
Date: 09/12/2024

Exhibits:

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

EXHIBIT A
Scope of Services

Consultant shall offer a complete range of Geotechnical Engineering Services to support the City's needs including professional Registered Geotechnical Engineers, Registered Professional Engineers, Certified Geologist, Certified Laboratory Technician and field crews, and office technicians. The Consultant shall ensure the tasks outlined herein are performed by the consultant's own responsible representative or designated alternate. The requirements described in these sections are neither limited nor comprehensive in nature but are the minimum necessary to meet the City's objectives.

Detailed work procedures are not included in the Scope of Work. The Consultant shall exercise independent, professional judgment and innovation in the performance of any services or tasks listed herein to achieve the most effective and efficient design and product. The Consultant is expected to expand on this scope in their proposal by incorporating specific areas of expertise and any other tasks required for a specific project and/or proposal requested The Consultant shall provide the services and deliverables set forth in this Exhibit A. The Consultant shall provide all services and deliverables required by this Exhibit A to the satisfaction of the City.

Geotechnical Engineering Services include but are not necessarily limited to, those items noted below.

1. Geotechnical investigation & design services for Public works projects:
    a. Literation review of geotechnical reports and maps
    b. Site reconnaissance
    c. Underground service alert coordination
    d. Subsurface soil sampling
    e. Boring logs
    f. Geotechnical engineering analyses
    g. Seismicity
    h. Geotechnical design recommendation for grading and foundations overseen by a Registered Geotechnical Engineer (GE)

2. Pavement evaluation and design:
    a. Pavement corings
    b. Deflection testing
    c. Pavement analysis per Caltrans methodology
    d. Require a Registered professional engineer (PE)/Pavement Engineer to Perform Review

3. Geotechnical review services:
    a. Review of geotechnical reports
    b. Review of grading and foundation plans
    c. Preparation of review sheets
    d. Coordination with planning, Parks,building &Public workstaff
    e. Presentation at City Council meetings if required
    f. Requires Registered Geotechnical Engineer (GE) and Certified Engineering Geologist (CEG) to perform reviews

Additional requirements are as follows:

All work shall be performed under the direction of a Registered Professional Engineer and or Registered Geotechnical Engineer in the State of California. The Registered Professional Engineer/Geotechnical Engineer shall maintain professional licenses required by the laws of the State of California at all times while under contract with the City of Tracy.

Personnel:

Cristiano Melo, PE, GE –Branch Manager/Lead Geotechnical Engineer
Carrie Foulk, PE, GE – Senior Geotechnical Engineer
Michael Romero, PG, CEG – Senior Geologist
Omar Khan, PGiT – Senior Project Geologist

Subconsultants/Subcontractors

Taber Drilling – Drilling and CPT Services
Exploration Geo Services – Drilling Services
CMC Traffic Specialists – Traffic Control Services
AWP Safety – Traffic Control Services
1st Call Utility Locating – Utility Locating Services
Geotech Utility Locating – Utility Locating Services
Advanced Geological Services – Geophysical Services
Cooper Testing Laboratory – Laboratory Testing and Analyses
CERCO Analytical – Laboratory Corrosivity Testing

EXHIBIT B

Compensation

PERSONNEL RATES						
PROFESSIONAL STAFF	2024	2025	2026	2027	2028	2029
Principal	$ 299.00	$ 314.00	$ 330.00	$ 347.00	$ 364.00	$ 382.00
Senior Professional	$ 263.00	$ 276.00	$ 290.00	$ 305.00	$ 320.00	$ 336.00
Project Professional II	$ 247.00	$ 259.00	$ 272.00	$ 286.00	$ 300.00	$ 315.00
Project Professional I	$ 210.00	$ 221.00	$ 232.00	$ 244.00	$ 256.00	$ 269.00
Staff Professional II	$ 184.00	$ 193.00	$ 203.00	$ 213.00	$ 224.00	$ 235.00
Staff Professional I	$ 163.00	$ 171.00	$ 180.00	$ 189.00	$ 198.00	$ 208.00
Project Administrator	$ 116.00	$ 122.00	$ 128.00	$ 134.00	$ 141.00	$ 148.00
Administrative Assistant / Clerical	$ 105.00	$ 110.00	$ 116.00	$ 122.00	$ 128.00	$ 134.00
Seismic GIS	$ 231.00	$ 243.00	$ 255.00	$ 268.00	$ 281.00	$ 295.00
GIS Specialist	$ 200.00	$ 210.00	$ 221.00	$ 232.00	$ 244.00	$ 256.00
Information Specialist II	$ 189.00	$ 198.00	$ 208.00	$ 218.00	$ 229.00	$ 240.00
Information Specialist I	$ 168.00	$ 176.00	$ 185.00	$ 194.00	$ 204.00	$ 214.00
CAD	$ 126.00	$ 132.00	$ 139.00	$ 146.00	$ 153.00	$ 161.00
Litigation support		1.5x standard rate				

TECHNICAL STAFF	2024	2025	2026	2027	2028	2029
Group 1 - Special Inspector	$ 189.00	$ 198.00	$ 208.00	$ 218.00	$ 229.00	$ 240.00
Group 2 - Special Inspector	$ 179.00	$ 188.00	$ 197.00	$ 207.00	$ 217.00	$ 228.00
Group 3 - Engineering Technician	$ 159.00	$ 167.00	$ 175.00	$ 184.00	$ 193.00	$ 203.00
Group 3 - Geotechnical Professional	$ 194.00	$ 204.00	$ 214.00	$ 225.00	$ 236.00	$ 248.00
Group 3 - Environmental Professional	$ 194.00	$ 204.00	$ 214.00	$ 225.00	$ 236.00	$ 248.00
Group 4 - Technician	$ 139.00	$ 146.00	$ 153.00	$ 161.00	$ 169.00	$ 177.00
Ground Penetrating Radar Scanning Technician	$ 331.00	$ 348.00	$ 365.00	$ 383.00	$ 402.00	$ 422.00
Core Drilling Technician	$ 257.00	$ 270.00	$ 284.00	$ 298.00	$ 313.00	$ 329.00
Floor Flatness Testing Technician	$ 221.00	$ 232.00	$ 244.00	$ 256.00	$ 269.00	$ 282.00
Sample Pickup / Transportation / Delivery	$ 126.00	$ 132.00	$ 139.00	$ 146.00	$ 153.00	$ 161.00
Laboratory Technician	$ 137.00	$ 144.00	$ 151.00	$ 159.00	$ 167.00	$ 175.00

2024-2029 BSK Rate Schedule

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BSK ASSOCIATES

OTHER RATES						
BASIS OF CHARGES FOR FIELD TECHNICIAN SERVICES	2024	2025	2026	2027	2028	2029
Field Work from 0 to 4 hours	Bill 4 hours					
Field Work from 4 to 6 hours	Bill 6 hours					
Field Work from 6 to 8 hours	Bill 8 hours					
Field Work over 8 hours / Saturdays	Bill time and a half base rate (1.5x)					
Sundays, holidays and over 12 hours	Bill two times base rate (2x)					
Night Shift (Shift commencing after 2pm / before 4am)	Base Rate x 12.5%					
Show-up time (no work performed), minimum charge	Bill 2 hours					
Sample or cylinder pickup, minimum charge	Bill 2 hours					

REIMBURSABLES	2024	2025	2026	2027	2028	2029
Mileage - 2x2 vehicle (Portal to Portal)	$1.00/mile or the IRS rate + 15%, whichever is higher					
Mileage - 4x4 vehicle (Portal to Portal)	$2.00/mile or the IRS rate + 15%, whichever is higher					
Per Diem (as required)	Quote / $250.00 min.					
Bridge Toll	Cost + 15%					
Parking Fees	Cost + 15%					
Subconsultant/Subcontractor Services, Vendors, and Expenses	Cost + 15%					

BSK SERVICES / DIR / PREVAILING WAGE ADMINISTRATION FEES	2024	2025	2026	2027	2028	2029
Certified Payroll / DIR Upload (Monthly) - per project	$ 300.00	$ 315.00	$ 331.00	$ 348.00	$ 365.00	$ 383.00
Non-Performance Certified Payroll / DIR Upload (Monthly) - per project	$ 100.00	$ 105.00	$ 110.00	$ 116.00	$ 122.00	$ 128.00
Subcontractor Management / Compliance Forms (Monthly) - per project	$ 100.00	$ 105.00	$ 110.00	$ 116.00	$ 122.00	$ 128.00
Additional LCP Tracker or Other Compliance Software (Monthly) - per project	$ 200.00	$ 210.00	$ 221.00	$ 232.00	$ 244.00	$ 256.00
Additional Special Forms, as required (Monthly) - per project	$ 150.00	$ 158.00	$ 166.00	$ 174.00	$ 183.00	$ 192.00

2024-2029 BSK Rate Schedule

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BSK ASSOCIATES

OTHER RATES (CONTINUED)

EQUIPMENT USAGE FEES	2024	2025	2026	2027	2028	2029
Nuclear Gauge (Day)	$ 74.00	$ 78.00	$ 82.00	$ 86.00	$ 90.00	$ 95.00
Skidmore Wilhelm Calibrator (Day)	$ 74.00	$ 78.00	$ 82.00	$ 86.00	$ 90.00	$ 95.00
NDT Weld Testing Equipment - UT/MT/PT (Day)	$ 74.00	$ 78.00	$ 82.00	$ 86.00	$ 90.00	$ 95.00
Proof Load Testing Equipment (Day)	$ 74.00	$ 78.00	$ 82.00	$ 86.00	$ 90.00	$ 95.00
Torque Wrench (Day)	$ 74.00	$ 78.00	$ 82.00	$ 86.00	$ 90.00	$ 95.00
GPR Scanning Equipment (Day)	$ 341.00	$ 358.00	$ 376.00	$ 395.00	$ 415.00	$ 436.00
Rebar Locator/Pachometer (Day)	$ 134.00	$ 141.00	$ 148.00	$ 155.00	$ 163.00	$ 171.00
Hand Auger (Day)	$ 158.00	$ 166.00	$ 174.00	$ 183.00	$ 192.00	$ 202.00
Water Meter (Day)	$ 68.00	$ 71.00	$ 75.00	$ 79.00	$ 83.00	$ 87.00
Hand-held GPS (Day)	$ 102.00	$ 107.00	$ 112.00	$ 118.00	$ 124.00	$ 130.00
Drilling Kit - Paint, stakes and lath - (Project)	$ 36.00	$ 38.00	$ 40.00	$ 42.00	$ 44.00	$ 46.00
Drilling Supplies - Tubes / Caps (Project)	$ 368.00	$ 386.00	$ 405.00	$ 425.00	$ 446.00	$ 468.00
Manometer (Day)	$ 259.00	$ 272.00	$ 286.00	$ 300.00	$ 315.00	$ 331.00
Double Ring Infiltrometer (Day)	$ 670.00	$ 704.00	$ 739.00	$ 776.00	$ 815.00	$ 856.00

ANALYSIS SOFTWARE USAGE FEES	2024	2025	2026	2027	2028	2029
gINT (Project)	$ 68.00	$ 71.00	$ 75.00	$ 79.00	$ 83.00	$ 87.00
LPile (Project)	$ 68.00	$ 71.00	$ 75.00	$ 79.00	$ 83.00	$ 87.00
APile (Project)	$ 68.00	$ 71.00	$ 75.00	$ 79.00	$ 83.00	$ 87.00
SHAFT (Project)	$ 68.00	$ 71.00	$ 75.00	$ 79.00	$ 83.00	$ 87.00
GROUP (Project)	$ 133.00	$ 140.00	$ 147.00	$ 154.00	$ 162.00	$ 170.00
Cliq (Project)	$ 68.00	$ 71.00	$ 75.00	$ 79.00	$ 83.00	$ 87.00
LiquefyPro (Project)	$ 68.00	$ 71.00	$ 75.00	$ 79.00	$ 83.00	$ 87.00
LiqIT (Project)	$ 68.00	$ 71.00	$ 75.00	$ 79.00	$ 83.00	$ 87.00
Slide (Project)	$ 133.00	$ 140.00	$ 147.00	$ 154.00	$ 162.00	$ 170.00
Settle3D (Project)	$ 133.00	$ 140.00	$ 147.00	$ 154.00	$ 162.00	$ 170.00
Cpet-IT (Project)	$ 68.00	$ 71.00	$ 75.00	$ 79.00	$ 83.00	$ 87.00
LiqSVs (Project)	$ 68.00	$ 71.00	$ 75.00	$ 79.00	$ 83.00	$ 87.00
ArcGIS (Project)	$ 68.00	$ 71.00	$ 75.00	$ 79.00	$ 83.00	$ 87.00
Surfer (Project)	$ 68.00	$ 71.00	$ 75.00	$ 79.00	$ 83.00	$ 87.00
Seep/W (Project)	$ 133.00	$ 140.00	$ 147.00	$ 154.00	$ 162.00	$ 170.00

MATERIALS LABORATORY TEST RATES						
SOILS	**2024**	**2025**	**2026**	**2027**	**2028**	**2029**
Modified or Standard Proctor - 4" or 6" Mold (ASTM / AASHTO)	$ 336.00	$ 353.00	$ 371.00	$ 390.00	$ 410.00	$ 431.00
Proctor with Oversize Material (ASTM / AASHTO)	$ 420.00	$ 441.00	$ 463.00	$ 486.00	$ 510.00	$ 536.00
Proctor Check Point (All Methods)	$ 180.00	$ 189.00	$ 198.00	$ 208.00	$ 218.00	$ 229.00
Caltrans Maximum Wet Density (CT 216)	$ 284.00	$ 298.00	$ 313.00	$ 329.00	$ 345.00	$ 362.00
Minus 200 Wash Soil (ASTM D1140)	$ 110.00	$ 116.00	$ 122.00	$ 128.00	$ 134.00	$ 141.00
Moisture Content of Soils (ASTM D2216)	$ 47.00	$ 49.00	$ 51.00	$ 54.00	$ 57.00	$ 60.00
Plasticity Index (ASTM D4318)	$ 290.00	$ 305.00	$ 320.00	$ 336.00	$ 353.00	$ 371.00
Expansion Index of Soils (UBC No. 29)	$ 311.00	$ 327.00	$ 343.00	$ 360.00	$ 378.00	$ 397.00
Collapse Potential of Soils (ASTM D2435)	$ 270.00	$ 284.00	$ 298.00	$ 313.00	$ 329.00	$ 345.00
Organic Impurities (ASTM C40 / CT 213)	$ 110.00	$ 116.00	$ 122.00	$ 128.00	$ 134.00	$ 141.00
Tube Density & Moisture Content of Soil	$ 57.00	$ 60.00	$ 63.00	$ 66.00	$ 69.00	$ 72.00
Visual Classification (ASTM D2488)	$ 57.00	$ 60.00	$ 63.00	$ 66.00	$ 69.00	$ 72.00
Hydrometer (ASTM D422 / CT 203)	$ 315.00	$ 331.00	$ 348.00	$ 365.00	$ 383.00	$ 402.00
Double Hydrometer (ASTM D4221)	$ 414.00	$ 435.00	$ 457.00	$ 480.00	$ 504.00	$ 529.00
Uncompacted Void Content (CT 234 / AASHTO T304)	$ 147.00	$ 154.00	$ 162.00	$ 170.00	$ 179.00	$ 188.00
Sand Density Calibration (ASTM D1566)	$ 231.00	$ 243.00	$ 255.00	$ 268.00	$ 281.00	$ 295.00
Minimum Resistivity of Soils (CT 643)	$ 186.00	$ 195.00	$ 205.00	$ 215.00	$ 226.00	$ 237.00
Consolidation (ASTM D2435) 2/2 Time Rates	$ 553.00	$ 581.00	$ 610.00	$ 641.00	$ 673.00	$ 707.00
Consolidation (ASTM D2435) w/ No Tim Rates	$ 368.00	$ 386.00	$ 405.00	$ 425.00	$ 446.00	$ 468.00
Uncofined Compression Strength, Soil (ASTM D2166)	$ 147.00	$ 154.00	$ 162.00	$ 170.00	$ 179.00	$ 188.00
Remolded Consolidation (ASTM D2435)	$ 468.00	$ 491.00	$ 516.00	$ 542.00	$ 569.00	$ 597.00
Minimum Index Density Soils (ASTM D4254)	$ 91.00	$ 96.00	$ 101.00	$ 106.00	$ 111.00	$ 117.00
Direct Shear Remolded (ASTM D3080)	$ 347.00	$ 364.00	$ 382.00	$ 401.00	$ 421.00	$ 442.00
Direct Shear (ASTM D3080)	$ 290.00	$ 305.00	$ 320.00	$ 336.00	$ 353.00	$ 371.00
Remolded Direct Shear (ASTM D3080)	$ 347.00	$ 364.00	$ 382.00	$ 401.00	$ 421.00	$ 442.00
Remolded Flexwall Perm (ASTM D5084)	$ 739.00	$ 776.00	$ 815.00	$ 856.00	$ 899.00	$ 944.00
% Crushed Particles / Fractured Particles (CT 205/AASHTO T335)	$ 218.00	$ 229.00	$ 240.00	$ 252.00	$ 265.00	$ 278.00
'% Flat & Elongated (ASTM D4791)	$ 167.00	$ 175.00	$ 184.00	$ 193.00	$ 203.00	$ 213.00
Minus 200 Wash/Aggregate (ASTM C117)	$ 110.00	$ 116.00	$ 122.00	$ 128.00	$ 134.00	$ 141.00
Sieve Analysis w/ Wash (ASTM C136 / CT 202 / AASHTO T27)	$ 226.00	$ 237.00	$ 249.00	$ 261.00	$ 274.00	$ 288.00
Sieve Analysis - Coarse Only (ASTM C136 / CT 202 / AASHTO T27)	$ 110.00	$ 116.00	$ 122.00	$ 128.00	$ 134.00	$ 141.00
Coarse Specific Gravity / Absorption (ASTM C127/CT 206/AASHTO T85)	$ 210.00	$ 221.00	$ 232.00	$ 244.00	$ 256.00	$ 269.00
Fine Specific Gravity / Absorption (ASTM C128/CT 207/AASHTO T84)	$ 210.00	$ 221.00	$ 232.00	$ 244.00	$ 256.00	$ 269.00
Sand Equivalent (ASTM D2419 / CT 217 / AASHTO T176)	$ 167.00	$ 175.00	$ 184.00	$ 193.00	$ 203.00	$ 213.00
Durability Index (CT 229)	$ 331.00	$ 348.00	$ 365.00	$ 383.00	$ 402.00	$ 422.00
Abrasion by LA Rattler, Large Size (ASTM C131/CT 211/AASHTO T96)	$ 378.00	$ 397.00	$ 417.00	$ 438.00	$ 460.00	$ 483.00
Abrasion by LA Rattler, Small Size (ASTM C131/CT 211/AASHTO T96)	$ 311.00	$ 327.00	$ 343.00	$ 360.00	$ 378.00	$ 397.00
Cleanness Value of Aggregate (CT 227)	$ 238.00	$ 250.00	$ 263.00	$ 276.00	$ 290.00	$ 305.00
Aggregate Wt pcf Compacted (ASTM C 29)	$ 117.00	$ 123.00	$ 129.00	$ 135.00	$ 142.00	$ 149.00
Gradation-Rip Rap - Per Sieve (D5519-Method A)	$ 298.00	$ 313.00	$ 329.00	$ 345.00	$ 362.00	$ 380.00
Sodium Sulfate Soundness-Min. Charge (ASTM C88/CT 214/AASHTO T104)	$ 462.00	$ 485.00	$ 509.00	$ 534.00	$ 561.00	$ 589.00
Sodium Sulfate Soundness-Per Sieve (ASTM C88/CT 214/AASHTO T104)	$ 147.00	$ 154.00	$ 162.00	$ 170.00	$ 179.00	$ 188.00
R-Value of Soils (CT 301)	$ 473.00	$ 497.00	$ 522.00	$ 548.00	$ 575.00	$ 604.00

2024-2029 BSK Rate Schedule

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MATERIALS LABORATORY TEST RATES (CONTINUED)

SOILS (CONTINUED)	2024	2025	2026	2027	2028	2029
Soil Cement Compression - Set (ASTM D1633)	$ 315.00	$ 331.00	$ 348.00	$ 365.00	$ 383.00	$ 402.00
CIR / FDR Compressive Strength Testing - Set	$ 315.00	$ 331.00	$ 348.00	$ 365.00	$ 383.00	$ 402.00
CIR / FDR Sample Preparation / Compaction	$ 289.00	$ 303.00	$ 318.00	$ 334.00	$ 351.00	$ 369.00
CBR (ASTM D1883/AASHTO T-180)	$ 1,313.00	$ 1,379.00	$ 1,448.00	$ 1,520.00	$ 1,596.00	$ 1,676.00
Preparation of Soil-Cement Samples	$ 994.00	$ 1,044.00	$ 1,096.00	$ 1,151.00	$ 1,209.00	$ 1,269.00
Soluble Sulfate Chloride & Sulfide	$ 172.00	$ 181.00	$ 190.00	$ 200.00	$ 210.00	$ 221.00
pH Sulphate & Chloride	$ 87.00	$ 91.00	$ 96.00	$ 101.00	$ 106.00	$ 111.00
% Lumps/Friable Particles (ASTM C142)	$ 107.00	$ 112.00	$ 118.00	$ 124.00	$ 130.00	$ 137.00
'% Organics in Soil (ASTM D2974)	$ 181.00	$ 190.00	$ 200.00	$ 210.00	$ 221.00	$ 232.00

HOT MIX ASPHALT	2024	2025	2026	2027	2028	2029
JMF Mix Design, Superpave / Caltrans	$ 11,838.00	$ 12,430.00	$ 13,052.00	$ 13,705.00	$ 14,390.00	$ 15,110.00
JMF Verification - HMA - Superpave / Caltrans	$ 6,860.00	$ 7,203.00	$ 7,563.00	$ 7,941.00	$ 8,338.00	$ 8,755.00
JMF Production Startup - Superpave / Caltrans	$ 6,382.00	$ 6,701.00	$ 7,036.00	$ 7,388.00	$ 7,757.00	$ 8,145.00
RAP Material Testing - Additional Fee	$ 830.00	$ 872.00	$ 916.00	$ 962.00	$ 1,010.00	$ 1,061.00
Rubberized RHMA Material - Additional Fee	$ 1,915.00	$ 2,011.00	$ 2,112.00	$ 2,218.00	$ 2,329.00	$ 2,445.00
JMF Mix Design, HVEEM	$ 4,095.00	$ 4,300.00	$ 4,515.00	$ 4,741.00	$ 4,978.00	$ 5,227.00
JMF Mix Design, Marshall	$ 4,858.00	$ 5,101.00	$ 5,356.00	$ 5,624.00	$ 5,905.00	$ 6,200.00
Open Graded Asphalt Optimum Bitumen Content (CT 368)	$ 2,924.00	$ 3,070.00	$ 3,224.00	$ 3,385.00	$ 3,554.00	$ 3,732.00
Gyratory Compaction - Set of 3 (AASHTO T312)	$ 442.00	$ 464.00	$ 487.00	$ 511.00	$ 537.00	$ 564.00
Hamburg Wheel Track (AASHTO T324)	$ 2,625.00	$ 2,756.00	$ 2,894.00	$ 3,039.00	$ 3,191.00	$ 3,351.00
Tensile Strength Ratio (CT 371 / AASHTO T283)	$ 1,449.00	$ 1,521.00	$ 1,597.00	$ 1,677.00	$ 1,761.00	$ 1,849.00
Marshall Maximum Density (ASTM D6926)	$ 386.00	$ 405.00	$ 425.00	$ 446.00	$ 468.00	$ 491.00
Marshall Stability & Flow (ASTM D6927)	$ 331.00	$ 348.00	$ 365.00	$ 383.00	$ 402.00	$ 422.00
Bitumen Content - Ignition (ASTM D6307 / CT382 / AASHTO T308)	$ 296.00	$ 311.00	$ 327.00	$ 343.00	$ 360.00	$ 378.00
Oil Content Correction Factor (ASTM D6307 / CT 382 / AASHTO T308)	$ 689.00	$ 723.00	$ 759.00	$ 797.00	$ 837.00	$ 879.00
Gradation from Extraction (ASTM D5444 / AASHTO T30)	$ 180.00	$ 189.00	$ 198.00	$ 208.00	$ 218.00	$ 229.00

HOT MIX ASPHALT (CONTINUED)	2024	2025	2026	2027	2028	2029
Bulk Specific Gravity (CT308 / AASHTO T275 / ASTM D2726)	$ 84.00	$ 88.00	$ 92.00	$ 97.00	$ 102.00	$ 107.00
HMA Theo. Max Density Rice Method (ASTM D2041 / CT 309 / AASHTO T209)	$ 331.00	$ 348.00	$ 365.00	$ 383.00	$ 402.00	$ 422.00
Volumetric Calculations (VMA, VFA, DP, AV, Eff. Calcs)	$ 70.00	$ 74.00	$ 78.00	$ 82.00	$ 86.00	$ 90.00
Moisture Content of Asphalt (CT 370 / AASHTO T329)	$ 87.00	$ 91.00	$ 96.00	$ 101.00	$ 106.00	$ 111.00
Film Stripping	$ 117.00	$ 123.00	$ 129.00	$ 135.00	$ 142.00	$ 149.00
Compaction/Preparation of HMA Briquette (CT 304)	$ 290.00	$ 305.00	$ 320.00	$ 336.00	$ 353.00	$ 371.00
Stabilometer Value - Set of 3 (CT366)	$ 368.00	$ 386.00	$ 405.00	$ 425.00	$ 446.00	$ 468.00
Lab Mixed TSR - Moisture Induced Damage (AASHTO T283 / CT 371)	$ 1,943.00	$ 2,040.00	$ 2,142.00	$ 2,249.00	$ 2,361.00	$ 2,479.00
Calculated AC Maximum Density (CT 367)	$ 131.00	$ 138.00	$ 145.00	$ 152.00	$ 160.00	$ 168.00
Thickness Determination of AC Cores	$ 28.00	$ 29.00	$ 30.00	$ 32.00	$ 34.00	$ 36.00

MATERIALS LABORATORY TEST RATES (CONTINUED)

CONCRETE & MASONRY	2024	2025	2026	2027	2028	2029
Compression Test Concrete - Per Cylinder (ASTM C39)	$ 37.00	$ 39.00	$ 41.00	$ 43.00	$ 45.00	$ 47.00
Compression Test Concrete - Set of 4/5 (ASTM C39)	$ 180.00	$ 189.00	$ 198.00	$ 208.00	$ 218.00	$ 229.00
Compression Test of Core (ASTM C42)	$ 80.00	$ 84.00	$ 88.00	$ 92.00	$ 97.00	$ 102.00
Compressive Strength of Shotcrete Panel	$ 420.00	$ 441.00	$ 463.00	$ 486.00	$ 510.00	$ 536.00
Compression Test Composite CMU Prism (1)	$ 218.00	$ 229.00	$ 240.00	$ 252.00	$ 265.00	$ 278.00
Compression Test Grout (Set of 4)	$ 159.00	$ 167.00	$ 175.00	$ 184.00	$ 193.00	$ 203.00
Compression Test Mortar (Set of 3)	$ 145.00	$ 152.00	$ 160.00	$ 168.00	$ 176.00	$ 185.00
Flexural Test per Beam (ASTM C78 / CT 523)	$ 118.00	$ 124.00	$ 130.00	$ 137.00	$ 144.00	$ 151.00
Linear Shrinkage - Set of 3 (ASTM C157)	$ 525.00	$ 551.00	$ 579.00	$ 608.00	$ 638.00	$ 670.00
Unit Weight Lt Wt Concrete (ASTM C567)	$ 74.00	$ 78.00	$ 82.00	$ 86.00	$ 90.00	$ 95.00
Splitting Tensile Strength of Concrete (ASTM C496)	$ 158.00	$ 166.00	$ 174.00	$ 183.00	$ 192.00	$ 202.00
Compressive Strength CMU Block (ASTM C140)	$ 252.00	$ 265.00	$ 278.00	$ 292.00	$ 307.00	$ 322.00
Comp. Strength, SG, & Abs. of CMU - Per Block (ASTM C140)	$ 290.00	$ 305.00	$ 320.00	$ 336.00	$ 353.00	$ 371.00
Masonry Linear Shrinkage (ASTM C426)	$ 532.00	$ 559.00	$ 587.00	$ 616.00	$ 647.00	$ 679.00
Masonry Core Shear Test (Title 24)	$ 248.00	$ 260.00	$ 273.00	$ 287.00	$ 301.00	$ 316.00

METALS & FIREPROOFING	2024	2025	2026	2027	2028	2029
Tensile & Bend of Rebar #3-11	$ 195.00	$ 205.00	$ 215.00	$ 226.00	$ 237.00	$ 249.00
Slip and Tensile Rebar Couplers (CT 670)	$ 284.00	$ 298.00	$ 313.00	$ 329.00	$ 345.00	$ 362.00
Bolt Proof & Ultimate Load	$ 338.00	$ 355.00	$ 373.00	$ 392.00	$ 412.00	$ 433.00
Bolt Hardness - Set of 3	$ 225.00	$ 236.00	$ 248.00	$ 260.00	$ 273.00	$ 287.00
Nut Proof Load - Set of 3	$ 338.00	$ 355.00	$ 373.00	$ 392.00	$ 412.00	$ 433.00
Nut Hardness - Set of 3	$ 225.00	$ 236.00	$ 248.00	$ 260.00	$ 273.00	$ 287.00
Washer Hardness - Set of 3	$ 225.00	$ 236.00	$ 248.00	$ 260.00	$ 273.00	$ 287.00
Dry Density Fireproofing (ASTM E605)	$ 125.00	$ 131.00	$ 138.00	$ 145.00	$ 152.00	$ 160.00
Brinell Hardness of Steel (ASTM E10)	$ 131.00	$ 138.00	$ 145.00	$ 152.00	$ 160.00	$ 168.00
Rockwell Hardness of Steel (ASTM E18)	$ 131.00	$ 138.00	$ 145.00	$ 152.00	$ 160.00	$ 168.00
Face Bend of Steel Coupon	$ 80.00	$ 84.00	$ 88.00	$ 92.00	$ 97.00	$ 102.00
Root Bend of Weld Coupon	$ 80.00	$ 84.00	$ 88.00	$ 92.00	$ 97.00	$ 102.00
Side Bend of Weld Coupon	$ 80.00	$ 84.00	$ 88.00	$ 92.00	$ 97.00	$ 102.00
Tensile Test of Steel Coupon	$ 110.00	$ 116.00	$ 122.00	$ 128.00	$ 134.00	$ 141.00
Bend Test of Steel Coupon	$ 95.00	$ 100.00	$ 105.00	$ 110.00	$ 116.00	$ 122.00
Adhesion / Cohesion Fireproofing Materials	$ 167.00	$ 175.00	$ 184.00	$ 193.00	$ 203.00	$ 213.00

ESCALATION: The rates presented herein are effective on July 1st of each year. If this contract is extended beyond June 30, 2030, our rate will be subject to an annual escalation rate of 5% effective on July 1st of 2030 and on July 1st of every year thereafter.

2024-2029 BSK Rate Schedule

Page 6 of 6

BSK ASSOCIATES

EXHIBIT C - Task Order Form

(See Attached)

[Use this Form or Create New Based on Same Substance---

TASK ORDER FORM

Project:	_____
Consultant:	_____
Project Task Order Number:	[X of X]
Description of Task and Services:	_____ _____ _____
Maximum Compensation for Task:	$_____.00
Task Completion Time:	The Consultant must complete the services and deliverable for this task in On or before: [DATE]
Year-to-Date Total Authorized Task Order Compensation:	$_____.00
Remaining Total Not to Exceed Amount upon completion of this Task:	$_____.00

APPROVED BY CITY REPRESENTATIVE

_____
[Insert Name and Position]

_____
Date

APPROVED AS TO FORM AND LEGALITY

_____
CITY ATTORNEY'S OFFICE

TRACY CITY COUNCIL

RESOLUTION NO. _____

AUTHORIZING THE A) EXECUTION OF A MASTER PROFESSIONAL SERVICES AGREEMENT WITH NINYO & MOORE TO PROVIDE GEOTECHNICAL ENGINEERING SERVICES FOR AN INITIAL TERM OF THREE YEARS FOR A NOT-TO-EXCEED AMOUNT OF $300,000 PER FISCAL YEAR, AND B) CITY MANAGER TO EXTEND, ADMINISTRATIVELY, FOR UP TO TWO ADDITIONAL YEARS

WHEREAS, the City has a variety of Capital Improvement Projects (CIP), Land Development projects, and Transportation and Traffic projects requiring specialized professional Geotechnical Engineering Services; and

WHEREAS, the City requires the support of professional, technical, and related services from outside consultants to perform these tasks; and

WHEREAS, per Tracy Municipal Code, Section 2.20.140, a Request for Proposals for On-Call Geotechnical Engineering Services (Services) was posted on the City's website on August 19, 2024; and

WHEREAS, the Services include, but are not limited to, geotechnical investigation and design services for public works projects, literation review of geotechnical reports and maps, site reconnaissance, underground service alert coordination, subsurface soil sampling, boring logs, geotechnical engineering analyses, seismicity, geotechnical design recommendation for grading and foundations overseen by a Registered Geotechnical Engineer, pavement evaluation and design, pavement coring, deflection testing, pavement analysis per Caltrans methodology that require a Registered Professional Engineer or pavement engineer to perform the review, review of geotechnical reports, review of grading and foundation plans, preparation of review sheets, coordination with Planning, Parks, Building and Operations and Utilities staff, presentation at City Council meetings, if required, and Registered Geotechnical Engineers and Certified Engineering Geologists to perform reviews; and

WHEREAS, on September 5, 2024, the City received six (6) proposals to provide the required Services, and after extensive review by the City's internal Selection Committee, the City selected all six (6) qualified consultants to provide these services; and

WHEREAS, the On-Call List of selected consultants creates efficiency and does not bind the City or its budgets to a particular scope of work until it is required, as City needs arise; and

WHEREAS, concurrently with this agenda item, by separate Resolution, staff is recommending that the City Council approve the On-Call List of qualified consultants to provide Geotechnical Engineering Services; and

WHEREAS, to provide supplemental geotechnical engineering services for CIPs and Land Development projects that are currently pending, staff recommends that the City Council award a Master Professional Services Agreement (MPSA) for an initial term of three years for a not-to-exceed amount of $300,000 per fiscal year with Ninyo & Moore, which is on the On-Call List; and

WHEREAS, the City will issue Task Orders specifying the scope of work needed, and the Consultant will invoice the City based on the scope of work for each Task Order; and

WHEREAS, the cost of the work performed by Ninyo & Moore will be cost recoverable in part, through the developer's fee, Capital Improvement Project budgets, or Federal and State grant funds; and funding for MPSA will be through the department's annually adopted budget. The contract includes the ability to terminate if there is insufficient budget availability; now, therefore, be it

RESOLVED: That the City Council of the City of Tracy hereby approves a Master Professional Services Agreement, in the form attached as Exhibit 1, for Geotechnical Engineering services with Ninyo & Moore for an initial term of three years and for a total not to exceed amount of $300,000 per fiscal year; and be it

FURTHER RESOLVED: That the City Council authorizes the City Manager, to administratively extend the term of the MPSA, for up to two, one-year terms based on performance, if needed; and be it

FURTHER RESOLVED: That the City Council finds that the MPSA is for services equivalent to "planning and feasibility services" and, therefore, is not considered a "project" as defined by Section 21065 of the Public Resources Code and that any projects for which such services are performed will be reviewed as required under the California Environmental Quality Act before future discretionary actions are taken.

* * * * * * * * * * * * * *

The foregoing Resolution 2024-_____ was adopted by the Tracy City Council on the 15th day of October by the following vote:

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

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

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

EXHIBITS:
Exhibit 1 - Master Professional Services Agreement (MPSA) with Ninyo & Moore

CITY OF TRACY
MASTER PROFESSIONAL SERVICES AGREEMENT WITH
Ninyo & Moore, for Geotechnical Engineering Services included geotechnical investigation and design services, literation review of geotechnical reports and maps, site reconnaissance, underground service alert coordination, subsurface soil sampling, boring logs, geotechnical engineering analyses, seismicity, geotechnical design recommendation for grading and foundations, pavement evaluation and design, pavement coring, deflection testing, review of grading and foundation plans, preparation of review sheets.

This Master Professional Services Agreement ("Agreement") is entered into between the City of Tracy, a municipal corporation ("City"), and Ninyo & Moore 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 future Geotechnical Engineering Services] for Capital Improvement Projects (CIP), Land Development, and Traffic Engineering Projects as further described herein and in Exhibit A.

On August 19, 2024, staff followed established procedures in accordance with Tracy Municipal Code, Section 2.20.140, and conducted an RFP to solicit experienced and qualified consultants to provide On-Call Geotechnical Engineering Services for Engineering projects. This on-call list of Consultants creates an efficient process for future project proposal requests and does not bind the City or its budgets to a particular scope of work until it is required as City needs arise. Having previously undertaken the public contracting procedures for each Consultant on the list, as the project needs arise, the City may more readily move into contracting with one of the Consultants on the list and then return to the City Council for approval of a project-specific professional services agreement.

On September 5, 2024, the City received six (6) proposals including Ninyo & Moore. Pursuant to Tracy Municipal Code Sections 2.20.140(a)(2) and 2.20.130, the City has determined that Consultant demonstrated that it was the best qualified and most responsible proposer, and best fits the City's needs for competence and professional qualifications necessary for the satisfactory performance of the Services.

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

B. This Agreement was approved on _____pursuant to Tracy Municipal Code Section 2.20.140 (3), [and City Council Resolution No. _____.

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

1. Scope of Services. Consultant shall perform professional services, tasks, and scope of work further described in Exhibit A hereto ("Services") for the City's benefit on an as-needed basis pursuant to individual approved Task Orders for services within the in accordance with the terms and conditions of this Agreement. The Services shall be performed by, or under the direct supervision of, Consultant's Authorized Representative: **Peter C. Connolly, PE, GE**. Consultant shall not replace its Authorized Representative, nor shall Consultant replace any of the personnel listed in Exhibit A, nor

shall Consultant use or replace any subcontractor or subconsultant, without City's prior written consent. A failure to obtain the City's prior written consent for any change or replacement in personnel or subcontractor/subconsultant may result in the termination of this Agreement.

1.1 Task Order Forms. The Services within the Scope of Work will be comprised of Task Order Forms (in the form provided in Exhibit C hereto), approved, executed and delivered by the Director of **Ninyo & Moore** ("Director") from time-to-time during the Term of this Agreement, on an as-needed basis. The Consultant cannot start performing any Work until the Director has executed a Task Order for such work. The City has no obligation to issue any Task Orders under this Master Agreement. The City may issue any number of Task Orders provided that the sum of the maximum compensation of all approved Task Orders cannot exceed the Total Not-to-Exceed amount stated in Section 3.1.

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

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

2.1 Term. The term of this Agreement shall commence on October 15, 2024, and expire and terminate automatically on June 30, 2027 or earlier by termination pursuant to Section 6 of this Agreement ("Term"). Subject to the Not-To-Exceed Amount defined in Section 3.1, the Term of this Agreement may be extended with express written amendment incorporating this Agreement signed by both Parties and one of the following City approvals: (a) City Council approval or (b) City Manager approval. An administrative extension of this Agreement by City Manager shall be limited to an additional term of two (2) years (s) and require written determination by the City Manager that Consultant has satisfactorily met all the requirements of this Agreement.

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

3.1 Annual Total Not to Exceed Amount. Consultant's total compensation for all Task Orders and Services under this Agreement shall not exceed $300,000.00 (Three hundred thousand Dollars) per City fiscal year ("Total Not-to-Exceed Amount"). Consultant's billing rates shall cover all costs and expenses for Consultant's performance of this Agreement. No work shall be performed by Consultant in excess of the Total Not-to-Exceed Amount. Consultant acknowledges City has no obligation to compensate or reimburse Consultant for any fees or costs incurred in excess of the Total Not-to-Exceed Amount. Unless specifically stated otherwise or agreed to in writing and approved by City Council, the fees proposed by Consultant, as set forth in Exhibit B hereto, shall remain unchanged for the entire term of this Agreement and any extensions of this Agreement.

3.1.2 For each Task Order issued under this Agreement, Consultant's Services shall not exceed the maximum compensation stated in that Task Order.

3.2 Invoices. No less than Ninety (90) days after performing Services, Consultant shall submit monthly written invoice(s) to the City that include copies of approved Task Orders, the Services performed, and identify times, dates, and names of persons performing the services.

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

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

3.2.3 Consultant shall submit invoices no later than 90 days after completion of a Task Order or portion of the Services. City has no obligation to pay invoices delivered greater than 90 days after the date of performance of the Services.

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

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

4. Indemnification. Consultant shall, to the fullest extent permitted by law, indemnify, defend (with independent counsel approved by the City), and hold harmless the City from and against any claims arising out of Consultant's performance or failure to comply with obligations under this Agreement, except to the extent caused by the sole, active negligence, or willful misconduct of the City. In this section, "City" means the City, its officials, officers, agents, employees, and volunteers; "Consultant" means the Consultant, its employees, agents and subcontractors; "Claims" includes claims, demands, actions, losses, damages, injuries, and liability, direct or indirect (including any and all related costs and expenses) and any allegations of these; and "Arising out of" includes "pertaining to" and "relating to". The Consultant's indemnification obligation applies to the maximum extent allowed by law and includes defending the City as set forth in Sections 2778 and 2782.8 of the California Civil Code. Upon the City's written request, the Consultant, at its own expense, shall defend any suit or action that is subject to this indemnification obligation. The provisions of this section survive completion of the services or the termination of this Agreement and are not limited by the provisions of Section 5 relating to insurance.

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

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

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

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

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

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

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

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

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

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

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

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

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

6. <u>Termination</u>.

6.1 The Parties may terminate this Agreement for any reason, including, but not limited to, convenience, by giving ten (10) days' written notice to the other Party. The City shall pay Consultant for all services satisfactorily performed in accordance with this Agreement, up to the date notice is given.

6.2 This Agreement shall automatically terminate immediately without notice to Consultant upon any of the following occurrences: (a) material breach of this Agreement by Consultant; (b) lack of City funds appropriated. In the event of termination by material breach of Consultant, if the City replaces any incomplete or defective Services from another consultant at a greater cost, the Consultant is responsible for such excess cost in addition to any other remedies available to the City.

6.3 Upon termination, Consultant shall return the City all original documents, including preliminary drafts and supporting documents, prepared by Consultant in connection with the Services performed under this Agreement.

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

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

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

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

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

To City:

Koosun Kim, PE
City Engineer
333 Civic Center Plaza
Tracy, CA 95376

To Consultant: Ninyo & Moore

Peter C. Connolly, PE, GE
Principal-in-Charge/Contract Manager
1301 Marina Village Parkway, Ste,110
Alameda, CA 94501

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

12. Miscellaneous.

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

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

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

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

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

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

12.6.1 Prevailing Wage Laws. Consultant is aware of the requirements of California Labor Code Section 1720, et seq., and 1770, et seq., as well as California Code of Regulations, Title 8, Section 16000, et seq., ("Prevailing Wage Laws"), which require the payment of prevailing wage rates; employment of apprentices (§ 1777.5), certified payroll records (§1776), hours of labor (§1813 and §1815), debarment of contractors and subcontractors (§1777.1) and the performance of other requirements on "public works" and "maintenance" projects. If the services being performed under this Agreement are part of a "public works" or "maintenance" project, as defined in the Prevailing Wage

Laws, and if the total compensation is $1,000 or more, Consultant agrees to fully comply with such Prevailing Wage Laws. These prevailing rates are on file with the City and are available online at http://www.dir.ca.gov/DLSR. Consultant shall defend, indemnify and hold the City, its officials, officers, employees and agents, harmless from any and all claims, costs, penalties, or interests arising out of any failure or alleged failure to comply with the Prevailing Wage Laws.

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

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

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

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

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

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

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

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

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

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS HEREOF, the City and Consultant agree to the full performance of the foregoing terms as of the last signature date.

City of Tracy

By: Nancy Young
Title: Mayor
Date: _____

Attest:

_____
Adrianne Richardson, City Clerk

Approved as to form:

_____
Bijal M. Patel, City Attorney

Consultant
Ninyo & Moore

By: Peter C. Connolly, PE, GE
Title: Principal-in-Charge/Contract Manager
Date: 9-12-2024

Federal Employer Tax ID No. 33-0269828

By: Tamera Richards
Title: Chief Financial Officer
Date: 9-12-2024

Exhibits:

A Scope of Work, including personnel and time of performance (See Agreement sections 1 and 2.)

B Compensation (See Agreement section 3.)

C Task Order Form

EXHIBIT A
Scope of Services

Consultant shall offer a complete range of Geotechnical Engineering Services to support the City's needs including professional Registered Geotechnical Engineers, Registered Professional Engineers, Certified Geologist, Certified Laboratory Technician and field crews, and office technicians. The Consultant shall ensure the tasks outlined herein are performed by the consultant's own responsible representative or designated alternate. The requirements described in these sections are neither limited nor comprehensive in nature but are the minimum necessary to meet the City's objectives.

Detailed work procedures are not included in the Scope of Work. The Consultant shall exercise independent, professional judgment and innovation in the performance of any services or tasks listed herein to achieve the most effective and efficient design and product. The Consultant is expected to expand on this scope in their proposal by incorporating specific areas of expertise and any other tasks required for a specific project and/or proposal requested The Consultant shall provide the services and deliverables set forth in this Exhibit A. The Consultant shall provide all services and deliverables required by this Exhibit A to the satisfaction of the City.

Geotechnical Engineering Services include but are not necessarily limited to, those items noted below.

1. Geotechnical investigation & design services for Public works projects:
    a. Literation review of geotechnical reports and maps
    b. Site reconnaissance
    c. Underground service alert coordination
    d. Subsurface soil sampling
    e. Boring logs
    f. Geotechnical engineering analyses
    g. Seismicity
    h. Geotechnical design recommendation for grading and foundations overseen by a Registered Geotechnical Engineer (GE)

2. Pavement evaluation and design:
    a. Pavement corings
    b. Deflection testing
    c. Pavement analysis per Caltrans methodology
    d. Require a Registered professional engineer (PE)/Pavement Engineer to Perform Review

3. Geotechnical review services:
    a. Review of geotechnical reports
    b. Review of grading and foundation plans
    c. Preparation of review sheets
    d. Coordination with planning, Parks,building &Public workstaff
    e. Presentation at City Council meetings if required
    f. Requires Registered Geotechnical Engineer (GE) and Certified Engineering Geologist (CEG) to perform reviews

Additional requirements are as follows:

All work shall be performed under the direction of a Registered Professional Engineer and or Registered Geotechnical Engineer in the State of California. The Registered Professional Engineer/Geotechnical Engineer shall maintain professional licenses required by the laws of the State of California at all times while under contract with the City of Tracy.

Personnel:
Peter C. Connolly, PE, GE Principal-In-Charge/ Contract Manager
Anthony Dover, PE, GE Project Manager
Marlene K. Watson, PE, GE Lead Technical Staff
Curtis E. Hall, PG, CEG Lead Technical Staff
Ransom H. Hennefer, PE, GE, ACI, ICC Lead Technical Staff
Scott Johnson, PG, CEG Lead Technical Staff
Bryan C. Steinbrueck, ACI, ICC, NICET, Laboratory Manager

Field Technicians
Isaak Arias-Pina, ACI, ICC
Joshua Muller, ACI
Johathan Urmeneta, ACI
Trajche Trajkovski, ACI
John McKenna, ACI, ICC, Caltrans
Ricky Alvarez Vega, ACI, ICC
Felipe Jimenez, ACI
Abrar Said, ACI

Geotechnical Support
Lothus Hennefer, PE, ACI, ICC
Caleb Hodnett, PE
Tatiana Gospe, PE
Kenneth Celino, EIT
Mingshen Chen, EIT
Mohammad Hammoud, EIT
Rathna Mothkuri, PMP
Shravya Anipindi, LEED
David Lin, EIT, ACI

EXHIBIT B

Compensation

Schedule of Fees

Hourly Charges for Personnel

Professional Staff

Principal Engineer/Geologist/Environmental Scientist/Certified Industrial Hygienist	$ 280
Senior Engineer/Geologist/Environmental Scientist	$ 260
Senior Project Engineer/Geologist/Environmental Scientist	$ 240
Project Engineer/Geologist/Environmental Scientist	$ 230
Senior Staff Engineer/Geologist/Environmental Scientist	$ 210
Staff Engineer/Geologist/Environmental Scientist	$ 190
GIS Analyst	$ 170
Technical Illustrator/CAD Operator	$ 160

Field Staff

Certified Asbestos/Lead Technician	$ 230
Field Operations Manager	$ 170
Nondestructive Examination Technician (UT, MT, LP)	$ 160
Supervisory Technician	$ 160
Special Inspector (Concrete, Masonry, Structural Steel, Welding, and Fireproofing)	$ 150
Senior Technician	$ 135
Technician	$ 130

Administrative Staff

Information Specialist	$ 120
Geotechnical/Environmental/Laboratory Assistant	$ 120
Data Processor	$ 95

Other Charges

Concrete Coring Equipment (includes technician)	$ 190/hr
Anchor Load Test Equipment (includes technician)	$ 190/hr
GPR Equipment	$ 180/hr
State of California Prevailing Wage Surcharge	$ 30/hr
Inclinometer	$ 100/hr
Hand Auger Equipment	$ 80/hr
Rebar Locator (Pachometer)	$ 25/hr
Vapor Emission Kit	$ 65/kit
Nuclear Density Gauge	$ 15/hr
X-Ray Fluorescence	$ 70/hr
PID/FID	$ 25/hr
Air Sampling Pump	$ 10/hr
Field Vehicle	$ 15/hr
Equipment	$ 15/hr
Expert Witness Testimony	$ 450/hr
Direct Expenses	Cost plus 15 %

Special equipment charges will be provided upon request.

Notes

Our field services, are charged at a 4-hour minimum, and 8-hour minimum for hours exceeding 4 hours. Overtime rates at 1.5 times the regular rates will be charged for work performed in excess of 8 hours in one day Monday through Friday and all day on Saturday. Rates at twice the regular rates will be charged for all work in excess of 12 hours in one day, all day Sunday and on holidays.

Field services that may be subject to prevailing wage in accordance with AB 1768 and Prevailing Wage Determinations, will be subject to a prevailing wage surcharge as shown in our Schedule of Fees. Our rates will be adjusted in conjunction with the increase in the Prevailing Wage Determination during the life of the project, as applicable.

The terms and conditions are included in Ninyo & Moore's Work Authorization and Agreement form.

Schedule of Fees for Laboratory Testing

SOILS

Atterberg Limits, D 4318, CT 204	$ 170
California Bearing Ratio (CBR), D 1883	$ 550
Chloride and Sulfate Content, CT 417 & CT 422	$ 175
Consolidation, D 2435, CT 219	$ 300
Consolidation, Hydro-Collapse only, D 2435	$ 150
Consolidation – Time Rate, D 2435, CT 219	$ 200
Direct Shear – Remolded, D 3080	$ 350
Direct Shear – Undisturbed, D 3080	$ 300
Durability Index, CT 229	$ 175
Expansion Index, D 4829, IBC 18-3	$ 190
Expansion Potential (Method A), D 4546	$ 170
Geofabric Tensile and Elongation Test, D 4632	$ 200
Hydraulic Conductivity, D 5084	$ 350
Hydrometer Analysis, D 6913, CT 203	$ 220
Moisture, Ash, & Organic Matter of Peat/Organic Soils	$ 120
Moisture Only, D 2216, CT 226	$ 35
Moisture and Density, D 2937	$ 45
Permeability, CH, D 2434, CT 220	$ 300
pH and Resistivity, CT 643	$ 175
Proctor Density D1557, D 698, CT 216, AASHTO T-180	$ 220
Proctor Density with Rock Correction D 1557	$ 340
R-value, D 2844, CT 301	$ 375
Sand Equivalent, D 2419, CT 217	$ 125
Sieve Analysis, D 6913, CT 202	$ 145
Sieve Analysis, 200 Wash, D 1140, CT 202	$ 100
Specific Gravity, D 854	$ 125
Thermal Resistivity (ASTM 5334, IEEE 442)	$ 925
Triaxial Shear, C.D, D 4767, T 297	$ 550
Triaxial Shear, C.U., w/pore pressure, D 4767, T 2297 per pt	$ 450
Triaxial Shear, C.U., w/o pore pressure, D 4767, T 2297 per pt	$ 350
Triaxial Shear, U.U., D 2850	$ 250
Unconfined Compression, D 2166, T 208	$ 180

MASONRY

Brick Absorption, 24-hour submersion, 5-hr boiling, 7-day, C 67	$ 70
Brick Compression Test, C 67	$ 55
Brick Efflorescence, C 67	$ 55
Brick Modulus of Rupture, C 67	$ 50
Brick Moisture as received, C 67	$ 45
Brick Saturation Coefficient, C 67	$ 60
Concrete Block Compression Test, 8x8x16, C 140	$ 70
Concrete Block Conformance Package, C 90	$ 500
Concrete Block Linear Shrinkage, C 426	$ 200
Concrete Block Unit Weight and Absorption, C 140	$ 70
Cores, Compression or Shear Bond, CA Code	$ 70
Masonry Grout, 3x3x6 prism compression, C 39	$ 45
Masonry Mortar, 2x2 cube compression, C 109	$ 35
Masonry Prism, half size, compression, C 1019	$ 120
Masonry Prism, Full size, compression, C 1019	$ 200

REINFORCING AND STRUCTURAL STEEL

Chemical Analysis, A 36, A 615	$ 135
Fireproofing Density Test, UBC 7-6	$ 90
Hardness Test, Rockwell, A 370	$ 80
High Strength Bolt, Nut & Washer Conformance, per assembly, A 325	$ 150
Mechanically Spliced Reinforcing Tensile Test, ACI	$ 175
Pre-Stress Strand (7 wire), A 416	$ 170
Reinforcing Tensile or Bend up to No. 11, A 615 & A 706	$ 75
Structural Steel Tensile Test: Up to 200,000 lbs., A 370	$ 90
Welded Reinforcing Tensile Test: Up to No. 11 bars, ACI	$ 80

CONCRETE

Compression Tests, 6x12 Cylinder, C 39	$ 35
Concrete Mix Design Review, Job Spec	$ 300
Concrete Mix Design, per Trial Batch, 6 cylinder, ACI	$ 850
Concrete Cores, Compression (excludes sampling), C 42	$ 120
Drying Shrinkage, C 157	$ 400
Flexural Test, C 78	$ 85
Flexural Test, C 293	$ 85
Flexural Test, CT 523	$ 95
Gunite/Shotcrete, Panels, 3 cut cores per panel and test, ACI	$ 275
Lightweight Concrete Fill, Compression, C 495	$ 80
Petrographic Analysis, C 856	$ 2,000
Restrained Expansion of Shrinkage Compensation	$ 450
Splitting Tensile Strength, C 496	$ 100
3x6 Grout, (CLSM), C 39	$ 55
2x2x2 Non-Shrink Grout, C 109	$ 55

ASPHALT

Air Voids, T 269	$ 85
Asphalt Mix Design, Caltrans (incl. Aggregate Quality)	$ 4,500
Asphalt Mix Design Review, Job Spec	$ 180
Dust Proportioning, CT LP-4	$ 85
Extraction, % Asphalt, including Gradation, D 2172, CT 382	$ 250
Extraction, % Asphalt without Gradation, D 2172, CT 382	$ 150
Film Stripping, CT 302	$ 120
Hveem Stability and Unit Weight D 1560, T 246, CT 366	$ 225
Marshall Stability, Flow and Unit Weight, T 245	$ 240
Maximum Theoretical Unit Weight, D 2041, CT 309	$ 150
Moisture Content, CT 370	$ 95
Moisture Susceptibility and Tensile Stress Ratio, T 238, CT 371	$ 1,000
Slurry Wet Track Abrasion, D 3910	$ 150
Superpave, Asphalt Mix Verification (incl. Aggregate Quality)	$ 4,900
Superpave, Gyratory Unit Wt., T 312	$ 100
Superpave, Hamburg Wheel, 20,000 passes, T 324	$ 1,000
Unit Weight sample or core, D 2726, CT 308	$ 100
Voids in Mineral Aggregate, (VMA) CT LP-2	$ 90
Voids filled with Asphalt, (VFA) CT LP-3	$ 90
Wax Density, D 1188	$ 140

AGGREGATES

Clay Lumps and Friable Particles, C 142	$ 180
Cleanness Value, CT 227	$ 180
Crushed Particles, CT 205	$ 175
Durability, Coarse or Fine, CT 229	$ 205
Fine Aggregate Angularity, ASTM C 1252, T 304, CT 234	$ 180
Flat and Elongated Particle, D 4791	$ 220
Lightweight Particles, C 123	$ 180
Los Angeles Abrasion, C 131 or C 535	$ 200
Material Finer than No. 200 Sieve by Washing, C 117	$ 90
Organic Impurities, C 40	$ 90
Potential Alkali Reactivity, Mortar Bar Method, Coarse, C 1260	$ 1,250
Potential Alkali Reactivity, Mortar Bar Method, Fine, C 1260	$ 950
Potential Reactivity of Aggregate (Chemical Method), C 289	$ 475
Sand Equivalent, T 176, CT 217	$ 125
Sieve Analysis, Coarse Aggregate, T 27, C 136	$ 120
Sieve Analysis, Fine Aggregate (including wash), T 27, C 136	$ 145
Sodium Sulfate Soundness, C 88	$ 450
Specific Gravity and Absorption, Coarse, C 127, CT 206	$ 115
Specific Gravity and Absorption, Fine, C 128, CT 207	$ 175

ROOFING

Roofing Tile Absorption, (set of 5), C 67	$ 250
Roofing Tile Strength Test, (set of 5), C 67	$ 250

Special preparation of standard test specimens will be charged at the technician's hourly rate.
Ninyo & Moore is accredited to perform the AASHTO equivalent of many ASTM test procedures.

EXHIBIT C - Task Order Form

(See Attached)

Use this Form or Create New Based on Same Substance---

TASK ORDER FORM

Project:	_____
Consultant:	_____
Project Task Order Number:	[X of X]
Description of Task and Services:	_____ _____ _____
Maximum Compensation for Task:	$_____.00
Task Completion Time:	The Consultant must complete the services and deliverable for this task in On or before: [DATE]
Year-to-Date Total Authorized Task Order Compensation:	$_____.00
Remaining Total Not to Exceed Amount upon completion of this Task:	$_____.00

APPROVED BY CITY REPRESENTATIVE

_____
[Insert Name and Position]

_____
Date

October 15, 2024

Agenda Item 1.J

REQUEST

Staff recommends that the City Council adopt a Resolution: (1) authorizing the submittal of an application, and upon award, execution by the Mayor of a grant agreement with the California Department of Transportation Division of Aeronautics, in the amount of $6,300; and (2) subject to and upon award, accepting such grant funds and appropriating the full grant amount to Capital Improvement Project 77595 - Pavement Maintenance Management Plan Project.

EXECUTIVE SUMMARY

On August 20, 2024 the City Council approved the acceptance of a grant from the Federal Aviation Administration (FAA) in the amount of $126,00 for CIP 77595 – Pavement Maintenance Management Plan (Project) (Resolution 2024-132). This represents 90% of the total Project costs of $140,000. The City is responsible for the remaining 10% of the total Project cost in the amount of $14,000.

A State Airport Improvement Program (AIP) matching grant is available which will offset the City's required match amount. In order to finalize the State grant award process, the FAA requires that the City Council adopt a resolution authorizing the Mayor to submit the application and executing the grant agreement once awarded and accepting the allocation of State AIP Matching Grant funds. For efficiency, staff is also requesting that the City Council conditionally accept the grant and appropriate the funds Capital Improvement Project (CIP) 77595 – Pavement Maintenance Management Plan (Project). Receiving this grant will result in $6,300 from the State toward the Project, and reduce the amount paid by the City to $7,700, or approximately 5.5% of the total Project costs.

BACKGROUND AND LEGISLATIVE HISTORY

Staff recently applied for, and was offered, a grant in the amount of $126,000, through the FAA, to complete CIP 77595. This grant was accepted by the City Council at the August 20, 2024, regular City Council meeting (Resolution 2024-132). The FAA grant covers 90% of the total Project costs, and the City is required to provide a 10% match.

The State of California Department of Transportation Division of Aeronautics (Division of Aeronautics) provides matching grants of 5% of the FAA grant awards, not to exceed $50,000. The application for the grant must be submitted and approved before any work can be completed on the new Project. The Project is ready to begin, and City staff have identified this grant and are requesting to utilize it to offset the General Fund's grant match prior to starting the Project.

To apply for the Division of Aeronautics matching grant and receive the grant funds, the Mayor needs to sign the grant application and return it to the Division of Aeronautics. Staff is requesting the City Council approve a resolution: 1) authorizing the Mayor to sign the application so that staff may timely submit it and execute the grant agreement once awarded by the Division of Aeronautics; 2) conditionally accepting the allocation of State AIP Matching Grant funds, and 3)

conditionally appropriating the full grant amount to CIP 77595 - Pavement Maintenance Management Plan.

ANALYSIS

Applying for and accepting the Division of Aeronautics State Matching Grant will allow the City to complete the Project and reduce the previous General Fund appropriation approved by the City Council.

FISCAL IMPACT

The Airport Pavement Maintenance Management Plan (CIP 77595) is an approved CIP with a total Project budget of $140,000. Currently, the FAA has approved $126,000 in grant funding with a City match of $14,000. With acceptance and appropriation of the State grant from the Department of Transportation Division of Aeronautics in the amount of $6,300, the City's share of cost is reduced to $7,700.

Project Costs	
Engineering Cost	$135,000
Administration	$5,000
Total Project Costs	$140,000
Funding Sources	
FAA Participation- Entitlement/Discretionary	$126,000
Sponsor Local Match	$7,700
State Match	$6,300
Total Funding Sources	$140,000

COORDINATION

Engineering staff coordinated with the Public Works Department and the Airport Engineering consultant firm during the application phase of the project.

STRATEGIC PLAN

This agenda item supports the Quality-of-Life Strategic Priority which is to provide an outstanding quality of life by enhancing the City's amenities, business mix and services and cultivating connections to promote positive change and progress in our community.

ACTION REQUESTED OF THE CITY COUNCIL

Staff recommends that the City Council adopt a Resolution: (1) authorizing the submittal of an application, and upon award, execution by the Mayor of a grant agreement with the California Department of Transportation Division of Aeronautics in the amount of $6,300; and (2) subject to and upon award, accepting such grant funds and appropriating the full grant amount to Capital Improvement Project 77595 - Pavement Maintenance Management Plan Project.

Prepared by: Paula Jessup, Airport Manager

Reviewed by: David Murphy, Assistant Director of Operations
Sara Castro, Director of Finance
Bijal Patel, City Attorney
Karin Schnaider, Assistant City Manager

Approved by: Midori Lichtwardt, City Manager

Attachments:

Attachment A: Federal Aviation Administration Grant Agreement for AIP #3-06-0259-027-2025

Attachment B: Matching Grant Application

3-06-0259-027-2024

U.S. Department of Transportation
Federal Aviation Administration

Airports Division
Western-Pacific Region
California

San Francisco Airports District Office:
2999 Oak Road, Suite 200
Walnut Creek, CA 94597

September 5, 2024

Ms. Paula Jessup
Airport Manager
City of Tracy
5759 S. Tracy Boulevard
Tracy, CA 95377

Dear Ms. Jessup:

The Grant Offer for Airport Improvement Program (AIP) Project No. 3-06-0259-027-2024 at Tracy Municipal Airport is attached for execution. This letter outlines the steps you must take to properly enter into this agreement and provides other useful information. Please read the conditions, special conditions, and assurances that comprise the grant offer carefully.

You may not make any modification to the text, terms or conditions of the grant offer.

Steps You Must Take to Enter Into Agreement.

To properly enter into this agreement, you must do the following:

1. The governing body must give authority to execute the grant to the individual(s) signing the grant, i.e., the person signing the document must be the sponsor's authorized representative(s) (hereinafter "authorized representative").
2. The authorized representative must execute the grant by adding their electronic signature to the appropriate certificate at the end of the agreement.
3. Once the authorized representative has electronically signed the grant, the sponsor's attorney(s) will automatically receive an email notification.
4. On the **same day or after** the authorized representative has signed the grant, the sponsor's attorney(s) will add their electronic signature to the appropriate certificate at the end of the agreement.
5. If there are co-sponsors, the authorized representative(s) and sponsor's attorney(s) must follow the above procedures to fully execute the grant and finalize the process. Signatures must be obtained and finalized no later than **September 12, 2024**.
6. The fully executed grant will then be automatically sent to all parties as an email attachment.

Payment. Subject to the requirements in 2 CFR § 200.305 (Federal Payment), each payment request for reimbursement under this grant must be made electronically via the Delphi eInvoicing System. Please see the attached Grant Agreement for more information regarding the use of this System.

Project Timing. The terms and conditions of this agreement require you to complete the project without undue delay and no later than the Period of Performance end date (1,460 days from the grant execution date). We will be monitoring your progress to ensure proper stewardship of these Federal funds. We expect you to submit payment requests for reimbursement of allowable incurred project expenses

consistent with project progress. Your grant may be placed in "inactive" status if you do not make draws on a regular basis, which will affect your ability to receive future grant offers. Costs incurred after the Period of Performance ends are generally not allowable and will be rejected unless authorized by the FAA in advance.

Reporting. Until the grant is completed and closed, you are responsible for submitting formal reports as follows:

- For all grants, you must submit by December 31st of each year this grant is open:
  1. A signed/dated SF-270 (Request for Advance or Reimbursement for non-construction projects) or SF-271 or equivalent (Outlay Report and Request for Reimbursement for Construction Programs), and
  2. An SF-425 (Federal Financial Report).
- For non-construction projects, you must submit FAA Form 5100-140, Performance Report within 30 days of the end of the Federal fiscal year.
- For construction projects, you must submit FAA Form 5370-1, Construction Progress and Inspection Report, within 30 days of the end of each Federal fiscal quarter.

Audit Requirements. As a condition of receiving Federal assistance under this award, you must comply with audit requirements as established under 2 CFR Part 200. Subpart F requires non-Federal entities that expend $750,000 or more in Federal awards to conduct a single or program specific audit for that year. Note that this includes Federal expenditures made under other Federal-assistance programs. Please take appropriate and necessary action to ensure your organization will comply with applicable audit requirements and standards.

Closeout. Once the project(s) is completed and all costs are determined, we ask that you work with your FAA contact indicated below to close the project without delay and submit the necessary final closeout documentation as required by your Region/Airports District Office.

FAA Contact Information. Lemuel del Castillo, (925) 546-6440, lemuel.del.castillo@faa.gov is the assigned program manager for this grant and is readily available to assist you and your designated representative with the requirements stated herein.

We sincerely value your cooperation in these efforts and look forward to working with you to complete this important project.

Sincerely,

Amy Choi
Amy Choi (Sep 5, 2024 19:33 PDT)

Amy L. Choi
Manager

U.S. Department
of Transportation
Federal Aviation
Administration

FEDERAL AVIATION ADMINISTRATION AIRPORT IMPROVEMENT PROGRAM (AIP)

FY 2024 AIP

GRANT AGREEMENT

Part I - Offer

Federal Award Offer Date	September 5, 2024
Airport/Planning Area	Tracy Municipal Airport
Airport Infrastructure Grant Number	3-06-0259-027-2024
Unique Entity Identifier	EWFNJF9GM6U4

TO: City of Tracy

(herein called the "Sponsor") (For Co-Sponsors, list all Co-Sponsor names. The word "Sponsor" in this Grant Agreement also applies to a Co-Sponsor.)

FROM: **The United States of America** (acting through the Federal Aviation Administration, herein called the "FAA")

WHEREAS, the Sponsor has submitted to the FAA a Project Application dated February 26, 2024, for a grant of Federal funds for a project at or associated with the Tracy Municipal Airport, which is included as part of this Grant Agreement; and

WHEREAS, the FAA has approved a project for the Tracy Municipal Airport (herein called the "Project") consisting of the following:

Pavement Maintenance Management Plan

which is more fully described in the Project Application.

NOW THEREFORE, Pursuant to and for the purpose of carrying out the Title 49, United States Code (U.S.C.), Chapters 471 and 475; 49 U.S.C. §§ 40101 et seq., and 48103; FAA Reauthorization Act of 2018

(Public Law Number (P.L.) 115-254); the Department of Transportation Appropriations Act, 2021 (P.L. 116-260, Division L); the Consolidated Appropriations Act, 2022 (P.L. 117-103); Consolidated Appropriations Act, 2023 (P.L. 117-328); Consolidated Appropriations Act, 2024 (P.L. 118-42); FAA Reauthorization Act of 2024 (P.L. 118-63); and the representations contained in the Project Application; and in consideration of: (a) the Sponsor's adoption and ratification of the Grant Assurances dated May 2022, interpreted and applied consistent with the FAA Reauthorization Act of 2024 per Reauthorization Grant Condition 30 below; (b) the Sponsor's acceptance of this Offer; and (c) the benefits to accrue to the United States and the public from the accomplishment of the Project and compliance with the Grant Assurance and conditions as herein provided;

THE FEDERAL AVIATION ADMINISTRATION, FOR AND ON BEHALF OF THE UNITED STATES, HEREBY OFFERS AND AGREES to pay (90) % of the allowable costs incurred accomplishing the Project as the United States share of the Project.

Assistance Listings Number (Formerly CFDA Number): 20.106

This Offer is made on and SUBJECT TO THE FOLLOWING TERMS AND CONDITIONS:

CONDITIONS

1. **Maximum Obligation.** The maximum obligation of the United States payable under this Offer is $126,000.

   The following amounts represent a breakdown of the maximum obligation for the purpose of establishing allowable amounts for any future grant amendment, which may increase the foregoing maximum obligation of the United States under the provisions of 49 U.S.C. § 47108(b):
   $0 for planning
   $126,000 for airport development or noise program implementation; and,
   $0 for land acquisition.

2. **Grant Performance.** This Grant Agreement is subject to the following Federal award requirements:

   a. Period of Performance:

      1. Shall start on the date the Sponsor formally accepts this Agreement and is the date signed by the last Sponsor signatory to the Agreement. The end date of the Period of Performance is 4 years (1,460 calendar days) from the date of acceptance. The Period of Performance end date shall not affect, relieve, or reduce Sponsor obligations and assurances that extend beyond the closeout of this Grant Agreement.

      2. Means the total estimated time interval between the start of an initial Federal award and the planned end date, which may include one or more funded portions or budget periods (2 Code of Federal Regulations (CFR) § 200.1).

   b. Budget Period:

      1. For this Grant is 4 years (1,460 calendar days) and follows the same start and end date as the Period of Performance provided in paragraph 2(a)(1). Pursuant to 2 CFR § 200.403(h), the Sponsor may charge to the Grant only allowable costs incurred during the Budget Period.
      2. Means the time interval from the start date of a funded portion of an award to the end date of that funded portion during which the Sponsor is authorized to expend the funds awarded, including any funds carried forward or other revisions pursuant to 2 CFR § 200.308.

   c. Close Out and Termination

1. Unless the FAA authorizes a written extension, the Sponsor must submit all Grant closeout documentation and liquidate (pay-off) all obligations incurred under this award no later than 120 calendar days after the end date of the Period of Performance. If the Sponsor does not submit all required closeout documentation within this time period, the FAA will proceed to close out the grant within one year of the Period of Performance end date with the information available at the end of 120 days (2 CFR § 200.344).
2. The FAA may terminate this Grant, in whole or in part, in accordance with the conditions set forth in 2 CFR § 200.340, or other Federal regulatory or statutory authorities as applicable.

3. **Ineligible or Unallowable Costs.** The Sponsor must not include any costs in the project that the FAA has determined to be ineligible or unallowable.

4. **Indirect Costs - Sponsor.** The Sponsor may charge indirect costs under this award by applying the indirect cost rate identified in the project application as accepted by the FAA, to allowable costs for Sponsor direct salaries and wages.

5. **Determining the Final Federal Share of Costs.** The United States' share of allowable project costs will be made in accordance with 49 U.S.C. § 47109, the regulations, policies, and procedures of the Secretary of Transportation ("Secretary"), and any superseding legislation. Final determination of the United States' share will be based upon the final audit of the total amount of allowable project costs and settlement will be made for any upward or downward adjustments to the Federal share of costs.

6. **Completing the Project Without Delay and in Conformance with Requirements.** The Sponsor must carry out and complete the project without undue delays and in accordance with this Agreement, 49 U.S.C. Chapters 471 and 475, the regulations, policies, and procedures of the Secretary. Per 2 CFR § 200.308, the Sponsor agrees to report and request prior FAA approval for any disengagement from performing the project that exceeds three months or a 25 percent reduction in time devoted to the project. The report must include a reason for the project stoppage. The Sponsor also agrees to comply with the grant assurances, which are part of this Agreement.

7. **Amendments or Withdrawals before Grant Acceptance.** The FAA reserves the right to amend or withdraw this offer at any time prior to its acceptance by the Sponsor.

8. **Offer Expiration Date.** This offer will expire and the United States will not be obligated to pay any part of the costs of the project unless this offer has been accepted by the Sponsor on or before September 12, 2024, or such subsequent date as may be prescribed in writing by the FAA.

9. **Improper Use of Federal Funds.** The Sponsor must take all steps, including litigation if necessary, to recover Federal funds spent fraudulently, wastefully, or in violation of Federal antitrust statutes, or misused in any other manner for any project upon which Federal funds have been expended. For the purposes of this Grant Agreement, the term "Federal funds" means funds however used or dispersed by the Sponsor, that were originally paid pursuant to this or any other Federal grant agreement. The Sponsor must obtain the approval of the Secretary as to any determination of the amount of the Federal share of such funds. The Sponsor must return the recovered Federal share, including funds recovered by settlement, order, or judgment, to the Secretary. The Sponsor must furnish to the Secretary, upon request, all documents and records pertaining to the determination of the amount of the Federal share or to any settlement, litigation, negotiation, or other efforts taken to recover such funds. All settlements or other final positions of the Sponsor, in court or otherwise, involving the recovery of such Federal share require advance approval by the Secretary.

10. **United States Not Liable for Damage or Injury.** The United States is not responsible or liable for damage to property or injury to persons which may arise from, or be incident to, compliance with this Grant Agreement.

11. **System for Award Management (SAM) Registration and Unique Entity Identifier (UEI).**

    a. Requirement for System for Award Management (SAM): Unless the Sponsor is exempted from this requirement under 2 CFR § 25.110, the Sponsor must maintain the currency of its information in the SAM until the Sponsor submits the final financial report required under this Grant, or receives the final payment, whichever is later. This requires that the Sponsor review and update the information at least annually after the initial registration and more frequently if required by changes in information or another award term. Additional information about registration procedures may be found at the SAM website (currently at http://www.sam.gov).

    b. Unique entity identifier (UEI) means a 12-character alpha-numeric value used to identify a specific commercial, nonprofit or governmental entity. A UEI may be obtained from SAM.gov at https://sam.gov/content/entity-registration.

12. **Electronic Grant Payment(s).** Unless otherwise directed by the FAA, the Sponsor must make each payment request under this Agreement electronically via the Delphi eInvoicing System for Department of Transportation (DOT) Financial Assistance Awardees.

13. **Informal Letter Amendment of AIP Projects.** If, during the life of the project, the FAA determines that the maximum grant obligation of the United States exceeds the expected needs of the Sponsor by $25,000 or five percent (5%), whichever is greater, the FAA can issue a letter amendment to the Sponsor unilaterally reducing the maximum obligation.

    The FAA can also issue a letter to the Sponsor increasing the maximum obligation if there is an overrun in the total actual eligible and allowable project costs to cover the amount of the overrun provided it will not exceed the statutory limitations for grant amendments. The FAA's authority to increase the maximum obligation does not apply to the "planning" component of Condition No. 1, Maximum Obligation.

    The FAA can also issue an informal letter amendment that modifies the grant description to correct administrative errors or to delete work items if the FAA finds it advantageous and in the best interests of the United States.

    An informal letter amendment has the same force and effect as a formal grant amendment.

14. **Environmental Standards.** The Sponsor is required to comply with all applicable environmental standards, as further defined in the Grant Assurances, for all projects in this grant. If the Sponsor fails to comply with this requirement, the FAA may suspend, cancel, or terminate this Grant Agreement.

15. **Financial Reporting and Payment Requirements.** The Sponsor will comply with all Federal financial reporting requirements and payment requirements, including submittal of timely and accurate reports.

16. **Buy American.** Unless otherwise approved in advance by the FAA, in accordance with 49 U.S.C. § 50101, the Sponsor will not acquire or permit any contractor or subcontractor to acquire any steel or manufactured goods produced outside the United States to be used for any project for which funds are provided under this Grant. The Sponsor will include a provision implementing Buy American in every contract and subcontract awarded under this Grant.

17. **Build America, Buy America.** The Sponsor must comply with the requirements under the Build America, Buy America Act (P.L. 117-58).

18. **Maximum Obligation Increase.** In accordance with 49 U.S.C. § 47108(b)(3), as amended, the maximum obligation of the United States, as stated in Condition No. 1, Maximum Obligation, of this Grant:

    a. May not be increased for a planning project;

    b. May be increased by not more than 15 percent for development projects, if funds are available;

    c. May be increased by not more than the greater of the following for a land project, if funds are available:

        1. 15 percent; or

        2. 25 percent of the total increase in allowable project costs attributable to acquiring an interest in the land.

    If the Sponsor requests an increase, any eligible increase in funding will be subject to the United States Government share as provided in 49 U.S.C. § 47110, or other superseding legislation if applicable, for the fiscal year appropriation with which the increase is funded. The FAA is not responsible for the same Federal share provided herein for any amount increased over the initial grant amount. The FAA may adjust the Federal share as applicable through an informal letter of amendment.

19. **Audits for Sponsors.**

    PUBLIC SPONSORS. The Sponsor must provide for a Single Audit or program-specific audit in accordance with 2 CFR Part 200. The Sponsor must submit the audit reporting package to the Federal Audit Clearinghouse on the Federal Audit Clearinghouse's Internet Data Entry System at http://harvester.census.gov/facweb/. Upon request of the FAA, the Sponsor shall provide one copy of the completed audit to the FAA. Sponsors that expend less than $750,000 in Federal awards and are exempt from Federal audit requirements must make records available for review or audit by the appropriate Federal agency officials, State, and Government Accountability Office. The FAA and other appropriate Federal agencies may request additional information to meet all Federal audit requirements.

20. **Suspension or Debarment.** When entering into a "covered transaction" as defined by 2 CFR § 180.200, the Sponsor must:

    a. Verify the non-Federal entity is eligible to participate in this Federal program by:

        1. Checking the System for Award Management Exclusions in the System for Award Management (SAM) to determine if the non-Federal entity is excluded or disqualified; or
        2. Collecting a certification statement from the non-Federal entity attesting they are not excluded or disqualified from participating; or
        3. Adding a clause or condition to covered transactions attesting the individual or firm are not excluded or disqualified from participating.

    b. Require prime contractors to comply with 2 CFR § 180.330 when entering into lower-tier transactions with their contractors and sub-contractors.

c. Immediately disclose in writing to the FAA whenever (1) the Sponsor learns they have entered into a covered transaction with an ineligible entity or (2) the Public Sponsor suspends or debars a contractor, person, or entity.

21. **Ban on Texting While Driving.**

a. In accordance with Executive Order 13513, Federal Leadership on Reducing Text Messaging While Driving, October 1, 2009, and DOT Order 3902.10, Text Messaging While Driving, December 30, 2009, the Sponsor is encouraged to:

1. Adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers including policies to ban text messaging while driving when performing any work for, or on behalf of, the Federal government, including work relating to a grant or subgrant.

2. Conduct workplace safety initiatives in a manner commensurate with the size of the business, such as:

i. Establishment of new rules and programs or re-evaluation of existing programs to prohibit text messaging while driving; and

ii. Education, awareness, and other outreach to employees about the safety risks associated with texting while driving.

b. The Sponsor must insert the substance of this clause on banning texting while driving in all subgrants, contracts, and subcontracts funded with this Grant.

22. **Trafficking in Persons.**

a. *Posting of contact information.*

1. The Sponsor must post the contact information of the national human trafficking hotline (including options to reach out to the hotline such as through phone, text, or TTY) in all public airport restrooms.

b. *Provisions applicable to a recipient that is a private entity.*

1. You as the recipient, your employees, subrecipients under this Grant, and subrecipients' employees may not:

i. Engage in severe forms of trafficking in persons during the period of time that the Grant and applicable conditions are in effect;

ii. Procure a commercial sex act during the period of time that the Grant and applicable conditions are in effect; or

iii. Use forced labor in the performance of the Grant or any subgrants under this Grant.

2. We as the Federal awarding agency, may unilaterally terminate this Grant, without penalty, if you or a subrecipient that is a private entity –

i. Is determined to have violated a prohibition in paragraph (b) of this Grant Condition; or

ii. Has an employee who is determined by the agency official authorized to terminate the Grant to have violated a prohibition in paragraph (b) of this Grant Condition through conduct that is either –

a) Associated with performance under this Grant; or

b) Imputed to you or the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR Part 180, "OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," as implemented by our agency at 2 CFR Part 1200.

c. *Provision applicable to a recipient other than a private entity.* We as the Federal awarding agency may unilaterally terminate this Grant, without penalty, if a subrecipient that is a private entity –

1. Is determined to have violated an applicable prohibition in paragraph (b) of this Grant Condition; or
2. Has an employee who is determined by the agency official authorized to terminate the Grant to have violated an applicable prohibition in paragraph (b) of this Grant Condition through conduct that is either –
   i. Associated with performance under this Grant; or
   ii. Imputed to the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR Part 180, "OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," as implemented by our agency at 2 CFR Part 1200.

d. *Provisions applicable to any recipient.*

1. You must inform us immediately of any information you receive from any source alleging a violation of a prohibition in paragraph (b) of this Grant Condition.
2. Our right to terminate unilaterally that is described in paragraph (b) or (c) of this Grant Condition:
   i. Implements section 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), as amended [22 U.S.C. § 7104(g)], and
   ii. Is in addition to all other remedies for noncompliance that are available to us under this Grant.
3. You must include the requirements of paragraph (b) of this Grant Condition in any subgrant you make to a private entity.

e. *Definitions.* For purposes of this Grant Condition:

1. "Employee" means either:
   i. An individual employed by you or a subrecipient who is engaged in the performance of the project or program under this Grant; or
   ii. Another person engaged in the performance of the project or program under this Grant and not compensated by you including, but not limited to, a volunteer or individual whose services are contributed by a third party as an in-kind contribution toward cost sharing or matching requirements.
2. "Forced labor" means labor obtained by any of the following methods: the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.
3. "Private entity":

i. Means any entity other than a State, local government, Indian tribe, or foreign public entity, as those terms are defined in 2 CFR § 175.25.

ii. Includes:

a) A nonprofit organization, including any nonprofit institute of higher education, hospital, or tribal organization other than one included in the definition of Indian tribe at 2 CFR § 175.25(b).

b) A for-profit organization.

4. "Severe forms of trafficking in persons," "commercial sex act," and "coercion" have the meanings given at section 103 of the TVPA, as amended (22 U.S.C. § 7102).

23. **AIP Funded Work Included in a PFC Application.** Within 120 days of acceptance of this Grant Agreement, the Sponsor must submit to the FAA an amendment to any approved Passenger Facility Charge (PFC) application that contains an approved PFC project also covered under this Grant Agreement as described in the project application. The airport sponsor may not make any expenditure under this Grant Agreement until project work addressed under this Grant Agreement is removed from an approved PFC application by amendment.

24. **Exhibit "A" Property Map.** The Exhibit "A" Property Map dated September 18, 2014, is incorporated herein by reference or is submitted with the project application and made part of this Grant Agreement.

25. **Employee Protection from Reprisal.**

a. Prohibition of Reprisals.

1. In accordance with 41 U.S.C. § 4712, an employee of a Sponsor, grantee, subgrantee, contractor, or subcontractor may not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing to a person or body described in sub-paragraph (a)(2) below, information that the employee reasonably believes is evidence of:

i. Gross mismanagement of a Federal grant;

ii. Gross waste of Federal funds;

iii. An abuse of authority relating to implementation or use of Federal funds;

iv. A substantial and specific danger to public health or safety; or

v. A violation of law, rule, or regulation related to a Federal grant.

2. Persons and bodies covered. The persons and bodies to which a disclosure by an employee is covered are as follows:

i. A member of Congress or a representative of a committee of Congress;

ii. An Inspector General;

iii. The Government Accountability Office;

iv. A Federal employee responsible for contract or grant oversight or management at the relevant agency;

v. A court or grand jury;

vi. A management official or other employee of the Sponsor, contractor, or subcontractor who has the responsibility to investigate, discover, or address misconduct; or

vii. An authorized official of the Department of Justice or other law enforcement agency.

b. Investigation of Complaints.

1. Submission of Complaint. A person who believes that they have been subjected to a reprisal prohibited by paragraph (a) of this Condition may submit a complaint regarding the reprisal to the Office of Inspector General (OIG) for the U.S. Department of Transportation.

2. Time Limitation for Submittal of a Complaint. A complaint may not be brought under this subsection more than three years after the date on which the alleged reprisal took place.

3. Required Actions of the Inspector General. Actions, limitations, and exceptions of the Inspector General's office are established under 41 U.S.C. § 4712(b).

c. Remedy and Enforcement Authority.

1. Assumption of Rights to Civil Remedy. Upon receipt of an explanation of a decision not to conduct or continue an investigation by the OIG, the person submitting a complaint assumes the right to a civil remedy under 41 U.S.C. § 4712(c)(2).

26. **Prohibited Telecommunications and Video Surveillance Services and Equipment.** The Sponsor agrees to comply with mandatory standards and policies relating to use and procurement of certain telecommunications and video surveillance services or equipment in compliance with the National Defense Authorization Act [P.L. 115-232 § 889(f)(1)] and 2 CFR § 200.216.

27. **Critical Infrastructure Security and Resilience.** The Sponsor acknowledges that it has considered and addressed physical and cybersecurity and resilience in their project planning, design, and oversight, as determined by the DOT and the Department of Homeland Security (DHS). For airports that do not have specific DOT or DHS cybersecurity requirements, the FAA encourages the voluntary adoption of the cybersecurity requirements from the Transportation Security Administration and Federal Security Director identified for security risk Category X airports.

28. **Title VI of the Civil Rights Act.** As a condition of a grant award, the Sponsor shall demonstrate that it complies with the provisions of Title VI of the Civil Rights Act of 1964 (42 U.S.C. §§ 2000d et seq) and implementing regulations (49 CFR part 21), the Airport and Airway Improvement Act of 1982 (49 U.S.C. § 47123), the Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.), Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794 et seq.), the Americans with Disabilities Act of 1990 (42 U.S.C. § 12101, et seq.), U.S. Department of Transportation and Federal Aviation Administration (FAA) Assurances, and other relevant civil rights statutes, regulations, or authorities. This may include, as applicable, providing a current Title VI Program Plan and a Community Participation Plan (alternatively may be called a Public Participation Plan) to the FAA for approval, in the format and according to the timeline required by the FAA, and other information about the communities that will be benefited and impacted by the project. A completed FAA Title VI Pre-Grant Award Checklist is also required for every grant application, unless excused by the FAA. The Sponsor shall affirmatively ensure that when carrying out any project supported by this grant that it complies with all federal nondiscrimination and civil rights laws based on race, color, national origin (including limited English proficiency), sex (including sexual orientation and gender identity), creed, age, disability, genetic information, or environmental justice in consideration for federal financial assistance. The Sponsor, who has not sufficiently demonstrated the conditions of compliance with civil rights requirements will be required to do so before receiving funds. The Department's and FAA's Office of Civil Rights

may provide resources and technical assistance to recipients to ensure full and sustainable compliance with Federal civil rights requirements. Failure to comply with civil rights requirements will be considered a violation of the agreement or contract and be subject to any enforcement action as authorized by law.

29. **FAA Reauthorization Act of 2024.** This grant agreement is subject to the terms and conditions contained herein including the terms known as the Grant Assurances as they were published in the Federal Register on May 2022. On May 16, 2024, the FAA Reauthorization Act of 2024 made certain amendments to 49 U.S.C. chapter 471. The Reauthorization Act will require FAA to make certain amendments to the assurances in order to best achieve consistency with the statute. Federal law requires that FAA publish any amendments to the assurances in the Federal Register along with an opportunity to comment. In order not to delay the offer of this grant, the existing assurances are attached herein; however, FAA shall interpret and apply these assurances consistent with the Reauthorization Act. To the extent there is a conflict between the assurances and Federal statutes, the statutes shall apply. The full text of the FAA Reauthorization Act of 2024 is at https://www.congress.gov/bill/118th-congress/house-bill/3935/text.

SPECIAL CONDITIONS

30. **Pavement Maintenance Management Program.** The Sponsor agrees that it will implement an effective airport pavement maintenance management program as required by Airport Sponsor Grant Assurance 11, Pavement Preventive Maintenance-Management, which is codified at 49 U.S.C. § 47105(e). The Sponsor agrees that it will use the program for the useful life of any pavement constructed, reconstructed, rehabilitated, or repaired with Federal financial assistance at the airport. The Sponsor further agrees that the program will:

    a. Follow the current version of FAA Advisory Circular 150/5380-6, "Guidelines and Procedures for Maintenance of Airport Pavements," for specific guidelines and procedures for maintaining airport pavements, establishing an effective maintenance program, specific types of distress and its probable cause, inspection guidelines, and recommended methods of repair;

    b. Detail the procedures to be followed to assure that proper pavement maintenance, both preventive and repair, is performed;

    c. Include a Pavement Inventory, Inspection Schedule, Record Keeping, Information Retrieval, and Reference, meeting the following requirements:

        1. Pavement Inventory. The following must be depicted in an appropriate form and level of detail:

            i. Location of all runways, taxiways, and aprons;

            ii. Dimensions;

            iii. Type of pavement; and,

            iv. Year of construction or most recent major reconstruction, rehabilitation, or repair.

        2. Inspection Schedule.

            i. Detailed Inspection. A detailed inspection must be performed at least once a year. If a history of recorded pavement deterioration is available, i.e., Pavement Condition

Index (PCI) survey as set forth in the current version of Advisory Circular 150/5380-6, the frequency of inspections may be extended to three years.

ii. Drive-By Inspection. A drive-by inspection must be performed a minimum of once per month to detect unexpected changes in the pavement condition. For drive-by inspections, the date of inspection and any maintenance performed must be recorded.

3. Record Keeping. Complete information on the findings of all detailed inspections and on the maintenance performed must be recorded and kept on file for a minimum of five years. The type of distress, location, and remedial action, scheduled or performed, must be documented. The minimum information is:

   i. Inspection date;

   ii. Location;

   iii. Distress types; and

   iv. Maintenance scheduled or performed.

4. Information Retrieval System. The Sponsor must be able to retrieve the information and records produced by the pavement survey to provide a report to the FAA as may be required.

31. **Buy American Executive Orders.** The Sponsor agrees to abide by applicable Executive Orders in effect at the time this Grant Agreement is executed, including Executive Order 14005, Ensuring the Future Is Made in All of America by All of America's Workers.

32. **Leaded Fuel.** FAA Reauthorization Act of 2024 (P.L. 118-63) Section 770 "Grant Assurances" requires airports that made 100-octane low lead aviation gasoline (100LL) available, any time during calendar year 2022, to not prohibit or restrict the sale, or self-fueling, of such aviation gasoline. This requirement remains until the earlier of 2030, or the date on which the airport or any retail fuel seller at the airport makes available an FAA-authorized unleaded aviation gasoline replacement for 100LL meeting either an industry consensus standard or other standard that facilitates the safe use, production, and distribution of such unleaded aviation gasoline as deemed appropriate by the Administrator. The Sponsor understands and agrees, that any violations are subject to civil penalties.

The Sponsor's acceptance of this Offer and ratification and adoption of the Project Application incorporated herein shall be evidenced by execution of this instrument by the Sponsor, as hereinafter provided, and this Offer and Acceptance shall comprise a Grant Agreement, constituting the contractual obligations and rights of the United States and the Sponsor with respect to the accomplishment of the Project and compliance with the Grant Assurances, terms, and conditions as provided herein. Such Grant Agreement shall become effective upon the Sponsor's acceptance of this Offer.

Please read the following information: By signing this document, you are agreeing that you have reviewed the following consumer disclosure information and consent to transact business using electronic communications, to receive notices and disclosures electronically, and to utilize electronic signatures in lieu of using paper documents. You are not required to receive notices and disclosures or sign documents electronically. If you prefer not to do so, you may request to receive paper copies and withdraw your consent at any time.

I declare under penalty of perjury that the foregoing is true and correct.[1]

UNITED STATES OF AMERICA
FEDERAL AVIATION ADMINISTRATION

Amy Choi
Amy Choi (Sep 5, 2024 19:33 PDT)
(Signature)

Amy Choi
(Typed Name)

Manager, ADO SFO
(Title of FAA Official)

[1] Knowingly and willfully providing false information to the Federal government is a violation of 18 U.S.C. § 1001 (False Statements) and could subject you to fines, imprisonment, or both.

Part II - Acceptance

The Sponsor does hereby ratify and adopt all assurances, statements, representations, warranties, covenants, and agreements contained in the Project Application and incorporated materials referred to in the foregoing Offer, and does hereby accept this Offer and by such acceptance agrees to comply with all of the Grant Assurances, terms, and conditions in this Offer and in the Project Application.

Please read the following information: By signing this document, you are agreeing that you have reviewed the following consumer disclosure information and consent to transact business using electronic communications, to receive notices and disclosures electronically, and to utilize electronic signatures in lieu of using paper documents. You are not required to receive notices and disclosures or sign documents electronically. If you prefer not to do so, you may request to receive paper copies and withdraw your consent at any time.

I declare under penalty of perjury that the foregoing is true and correct.[2]

Dated September 10, 2024

City of Tracy

(Name of Sponsor)

Nancy D. Young (Sep 10, 2024 15:50 PDT)

(Signature of Sponsor's Authorized Official)

By: Nancy D. Young

(Typed Name of Sponsor's Authorized Official)

Title: Mayor

(Title of Sponsor's Authorized Official)

[2] Knowingly and willfully providing false information to the Federal government is a violation of 18 U.S.C. § 1001 (False Statements) and could subject you to fines, imprisonment, or both.

CERTIFICATE OF SPONSOR'S ATTORNEY

I, Bijal Patel , acting as Attorney for the Sponsor do hereby certify:

That in my opinion the Sponsor is empowered to enter into the foregoing Grant Agreement under the laws of the State of California. Further, I have examined the foregoing Grant Agreement and the actions taken by said Sponsor and Sponsor's official representative, who has been duly authorized to execute this Grant Agreement, which is in all respects due and proper and in accordance with the laws of the said State; and Title 49, United States Code (U.S.C.), Chapters 471 and 475; 49 U.S.C. §§ 40101 et seq., and 48103; FAA Reauthorization Act of 2018 (P.L. 115-254); the Department of Transportation Appropriations Act, 2021 (P.L. 116-260, Division L); the Consolidated Appropriations Act, 2022 (P.L. 117-103); Consolidated Appropriations Act, 2023 (P.L. 117-328); Consolidated Appropriations Act, 2024 (P.L. 118-42); FAA Reauthorization Act of 2024 (P.L. 118-63); and the representations contained in the Project Application. In addition, for grants involving projects to be carried out on property not owned by the Sponsor, there are no legal impediments that will prevent full performance by the Sponsor. Further, it is my opinion that the said Grant Agreement constitutes a legal and binding obligation of the Sponsor in accordance with the terms thereof.

Please read the following information: By signing this document, you are agreeing that you have reviewed the following consumer disclosure information and consent to transact business using electronic communications, to receive notices and disclosures electronically, and to utilize electronic signatures in lieu of using paper documents. You are not required to receive notices and disclosures or sign documents electronically. If you prefer not to do so, you may request to receive paper copies and withdraw your consent at any time.

I declare under penalty of perjury that the foregoing is true and correct.[3]

Dated at September 10, 2024

Bijal Patel

By: Bijal Patel (Sep 10, 2024 16:06 PDT)

(Signature of Sponsor's Attorney)

[3] Knowingly and willfully providing false information to the Federal government is a violation of 18 U.S.C. § 1001 (False Statements) and could subject you to fines, imprisonment, or both.

ASSURANCES

AIRPORT SPONSORS

A. General.

1. These assurances shall be complied with in the performance of grant agreements for airport development, airport planning, and noise compatibility program grants for airport sponsors.
2. These assurances are required to be submitted as part of the project application by sponsors requesting funds under the provisions of Title 49, U.S.C., subtitle VII, as amended. As used herein, the term "public agency sponsor" means a public agency with control of a public-use airport; the term "private sponsor" means a private owner of a public-use airport; and the term "sponsor" includes both public agency sponsors and private sponsors.
3. Upon acceptance of this grant offer by the sponsor, these assurances are incorporated in and become part of this Grant Agreement.

B. Duration and Applicability.

1. **Airport development or Noise Compatibility Program Projects Undertaken by a Public Agency Sponsor.**

   The terms, conditions and assurances of this Grant Agreement shall remain in full force and effect throughout the useful life of the facilities developed or equipment acquired for an airport development or noise compatibility program project, or throughout the useful life of the project items installed within a facility under a noise compatibility program project, but in any event not to exceed twenty (20) years from the date of acceptance of a grant offer of Federal funds for the project. However, there shall be no limit on the duration of the assurances regarding Exclusive Rights and Airport Revenue so long as the airport is used as an airport. There shall be no limit on the duration of the terms, conditions, and assurances with respect to real property acquired with federal funds. Furthermore, the duration of the Civil Rights assurance shall be specified in the assurances.

2. **Airport Development or Noise Compatibility Projects Undertaken by a Private Sponsor.**

   The preceding paragraph (1) also applies to a private sponsor except that the useful life of project items installed within a facility or the useful life of the facilities developed or equipment acquired under an airport development or noise compatibility program project shall be no less than ten (10) years from the date of acceptance of Federal aid for the project.

3. **Airport Planning Undertaken by a Sponsor.**

   Unless otherwise specified in this Grant Agreement, only Assurances 1, 2, 3, 5, 6, 13, 18, 23, 25, 30, 32, 33, 34, and 37 in Section C apply to planning projects. The terms, conditions, and assurances of this Grant Agreement shall remain in full force and effect during the life of the project; there shall be no limit on the duration of the assurances regarding Exclusive Rights and Airport Revenue so long as the airport is used as an airport.

C. Sponsor Certification.

The sponsor hereby assures and certifies, with respect to this grant that:

1. General Federal Requirements

It will comply with all applicable Federal laws, regulations, executive orders, policies, guidelines, and requirements as they relate to the application, acceptance, and use of Federal funds for this Grant including but not limited to the following:

FEDERAL LEGISLATION

a. 49 U.S.C. subtitle VII, as amended.
b. Davis-Bacon Act, as amended — 40 U.S.C. §§ 3141-3144, 3146, and 3147, et seq.[1]
c. Federal Fair Labor Standards Act – 29 U.S.C. § 201, et seq.
d. Hatch Act – 5 U.S.C. § 1501, et seq.[2]
e. Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 U.S.C. § 4601, et seq.[1, 2]
f. National Historic Preservation Act of 1966 – Section 106 – 54 U.S.C. § 306108.[1]
g. Archeological and Historic Preservation Act of 1974 – 54 U.S.C. § 312501, et seq.[1]
h. Native Americans Grave Repatriation Act – 25 U.S.C. § 3001, et seq.
i. Clean Air Act, P.L. 90-148, as amended – 42 U.S.C. § 7401, et seq.
j. Coastal Zone Management Act, P.L. 92-583, as amended – 16 U.S.C. § 1451, et seq.
k. Flood Disaster Protection Act of 1973 – Section 102(a) - 42 U.S.C. § 4012a.[1]
l. 49 U.S.C. § 303, (formerly known as Section 4(f)).
m. Rehabilitation Act of 1973 – 29 U.S.C. § 794.
n. Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252) (prohibits discrimination on the basis of race, color, national origin).
o. Americans with Disabilities Act of 1990, as amended, (42 U.S.C. § 12101 et seq.) (prohibits discrimination on the basis of disability).
p. Age Discrimination Act of 1975 – 42 U.S.C. § 6101, et seq.
q. American Indian Religious Freedom Act, P.L. 95-341, as amended.
r. Architectural Barriers Act of 1968, as amended – 42 U.S.C. § 4151, et seq.[1]
s. Powerplant and Industrial Fuel Use Act of 1978 – Section 403 – 42 U.S.C. § 8373.[1]
t. Contract Work Hours and Safety Standards Act – 40 U.S.C. § 3701, et seq.[1]
u. Copeland Anti-kickback Act – 18 U.S.C. § 874.[1]
v. National Environmental Policy Act of 1969 – 42 U.S.C. § 4321, et seq.[1]
w. Wild and Scenic Rivers Act, P.L. 90-542, as amended – 16 U.S.C. § 1271, et seq.
x. Single Audit Act of 1984 – 31 U.S.C. § 7501, et seq.[2]

y. Drug-Free Workplace Act of 1988 – 41 U.S.C. §§ 8101 through 8105.

z. The Federal Funding Accountability and Transparency Act of 2006, as amended (P.L. 109-282, as amended by section 6202 of P.L. 110-252).

aa. Civil Rights Restoration Act of 1987, P.L. 100-259.

bb. Build America, Buy America Act, P.L. 117-58, Title IX.

EXECUTIVE ORDERS

a. Executive Order 11246 – Equal Employment Opportunity[1]

b. Executive Order 11990 – Protection of Wetlands

c. Executive Order 11998 – Flood Plain Management

d. Executive Order 12372 – Intergovernmental Review of Federal Programs

e. Executive Order 12699 – Seismic Safety of Federal and Federally Assisted New Building Construction[1]

f. Executive Order 12898 – Environmental Justice

g. Executive Order 13166 – Improving Access to Services for Persons with Limited English Proficiency

h. Executive Order 13985 – Executive Order on Advancing Racial Equity and Support for Underserved Communities Through the Federal Government

i. Executive Order 13988 - Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation

j. Executive Order 14005 – Ensuring the Future is Made in all of America by All of America's Workers

k. Executive Order 14008 – Tackling the Climate Crisis at Home and Abroad

FEDERAL REGULATIONS

a. 2 CFR Part 180 – OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement).

b. 2 CFR Part 200 – Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards. [4, 5]

c. 2 CFR Part 1200 – Nonprocurement Suspension and Debarment.

d. 14 CFR Part 13 – Investigative and Enforcement Procedures.

e. 14 CFR Part 16 – Rules of Practice for Federally-Assisted Airport Enforcement Proceedings.

f. 14 CFR Part 150 – Airport Noise Compatibility Planning.

g. 28 CFR Part 35 – Nondiscrimination on the Basis of Disability in State and Local Government Services.

h. 28 CFR § 50.3 – U.S. Department of Justice Guidelines for the Enforcement of Title VI of the Civil Rights Act of 1964.

i. 29 CFR Part 1 – Procedures for Predetermination of Wage Rates.[1]

j. 29 CFR Part 3 – Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States.[1]

k. 29 CFR Part 5 – Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction (Also Labor Standards Provisions Applicable to Nonconstruction Contracts Subject to the Contract Work Hours and Safety Standards Act).[1]

l. 41 CFR Part 60 – Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor (Federal and Federally-assisted contracting requirements).[1]

m. 49 CFR Part 20 – New Restrictions on Lobbying.

n. 49 CFR Part 21 – Nondiscrimination in Federally-Assisted Programs of the Department of Transportation - Effectuation of Title VI of the Civil Rights Act of 1964.

o. 49 CFR Part 23 – Participation by Disadvantage Business Enterprise in Airport Concessions.

p. 49 CFR Part 24 – Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally-Assisted Programs.[1, 2]

q. 49 CFR Part 26 – Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs.

r. 49 CFR Part 27 – Nondiscrimination on the Basis of Disability in Programs or Activities Receiving Federal Financial Assistance.[1]

s. 49 CFR Part 28 – Enforcement of Nondiscrimination on the Basis of Handicap in Programs or Activities Conducted by the Department of Transportation.

t. 49 CFR Part 30 – Denial of Public Works Contracts to Suppliers of Goods and Services of Countries That Deny Procurement Market Access to U.S. Contractors.

u. 49 CFR Part 32 – Governmentwide Requirements for Drug-Free Workplace (Financial Assistance).

v. 49 CFR Part 37 – Transportation Services for Individuals with Disabilities (ADA).

w. 49 CFR Part 38 – Americans with Disabilities Act (ADA) Accessibility Specifications for Transportation Vehicles.

x. 49 CFR Part 41 – Seismic Safety.

FOOTNOTES TO ASSURANCE (C)(1)

[1] These laws do not apply to airport planning sponsors.

[2] These laws do not apply to private sponsors.

[3] 2 CFR Part 200 contains requirements for State and Local Governments receiving Federal assistance. Any requirement levied upon State and Local Governments by this regulation shall apply where applicable to private sponsors receiving Federal assistance under Title 49, United States Code.

[4] Cost principles established in 2 CFR part 200 subpart E must be used as guidelines for determining the eligibility of specific types of expenses.

[5] Audit requirements established in 2 CFR part 200 subpart F are the guidelines for audits.

SPECIFIC ASSURANCES

Specific assurances required to be included in grant agreements by any of the above laws, regulations or circulars are incorporated by reference in this Grant Agreement.

2. Responsibility and Authority of the Sponsor.

a. Public Agency Sponsor:

It has legal authority to apply for this Grant, and to finance and carry out the proposed project; that a resolution, motion or similar action has been duly adopted or passed as an official act of the applicant's governing body authorizing the filing of the application, including all understandings and assurances contained therein, and directing and authorizing the person identified as the official representative of the applicant to act in connection with the application and to provide such additional information as may be required.

b. Private Sponsor:

It has legal authority to apply for this Grant and to finance and carry out the proposed project and comply with all terms, conditions, and assurances of this Grant Agreement. It shall designate an official representative and shall in writing direct and authorize that person to file this application, including all understandings and assurances contained therein; to act in connection with this application; and to provide such additional information as may be required.

3. Sponsor Fund Availability.

It has sufficient funds available for that portion of the project costs which are not to be paid by the United States. It has sufficient funds available to assure operation and maintenance of items funded under this Grant Agreement which it will own or control.

4. Good Title.

a. It, a public agency or the Federal government, holds good title, satisfactory to the Secretary, to the landing area of the airport or site thereof, or will give assurance satisfactory to the Secretary that good title will be acquired.

b. For noise compatibility program projects to be carried out on the property of the sponsor, it holds good title satisfactory to the Secretary to that portion of the property upon which Federal funds will be expended or will give assurance to the Secretary that good title will be obtained.

5. Preserving Rights and Powers.

a. It will not take or permit any action which would operate to deprive it of any of the rights and powers necessary to perform any or all of the terms, conditions, and assurances in this Grant Agreement without the written approval of the Secretary, and will act promptly to acquire, extinguish or modify any outstanding rights or claims of right of others which would interfere with such performance by the sponsor. This shall be done in a manner acceptable to the Secretary.

b. Subject to the FAA Act of 2018, Public Law 115-254, Section 163, it will not sell, lease, encumber, or otherwise transfer or dispose of any part of its title or other interests in the property shown on Exhibit A to this application or, for a noise compatibility program project, that portion of the property upon which Federal funds have been expended, for the duration of the terms, conditions, and assurances in this Grant Agreement without approval by the

Secretary. If the transferee is found by the Secretary to be eligible under Title 49, United States Code, to assume the obligations of this Grant Agreement and to have the power, authority, and financial resources to carry out all such obligations, the sponsor shall insert in the contract or document transferring or disposing of the sponsor's interest, and make binding upon the transferee all of the terms, conditions, and assurances contained in this Grant Agreement.

c. For all noise compatibility program projects which are to be carried out by another unit of local government or are on property owned by a unit of local government other than the sponsor, it will enter into an agreement with that government. Except as otherwise specified by the Secretary, that agreement shall obligate that government to the same terms, conditions, and assurances that would be applicable to it if it applied directly to the FAA for a grant to undertake the noise compatibility program project. That agreement and changes thereto must be satisfactory to the Secretary. It will take steps to enforce this agreement against the local government if there is substantial non-compliance with the terms of the agreement.

d. For noise compatibility program projects to be carried out on privately owned property, it will enter into an agreement with the owner of that property which includes provisions specified by the Secretary. It will take steps to enforce this agreement against the property owner whenever there is substantial non-compliance with the terms of the agreement.

e. If the sponsor is a private sponsor, it will take steps satisfactory to the Secretary to ensure that the airport will continue to function as a public-use airport in accordance with these assurances for the duration of these assurances.

f. If an arrangement is made for management and operation of the airport by any agency or person other than the sponsor or an employee of the sponsor, the sponsor will reserve sufficient rights and authority to ensure that the airport will be operated and maintained in accordance with Title 49, United States Code, the regulations and the terms, conditions and assurances in this Grant Agreement and shall ensure that such arrangement also requires compliance therewith.

g. Sponsors of commercial service airports will not permit or enter into any arrangement that results in permission for the owner or tenant of a property used as a residence, or zoned for residential use, to taxi an aircraft between that property and any location on airport. Sponsors of general aviation airports entering into any arrangement that results in permission for the owner of residential real property adjacent to or near the airport must comply with the requirements of Sec. 136 of Public Law 112-95 and the sponsor assurances.

6. **Consistency with Local Plans.**

The project is reasonably consistent with plans (existing at the time of submission of this application) of public agencies that are authorized by the State in which the project is located to plan for the development of the area surrounding the airport.

7. **Consideration of Local Interest.**

It has given fair consideration to the interest of communities in or near where the project may be located.

8. **Consultation with Users.**

In making a decision to undertake any airport development project under Title 49, United States Code, it has undertaken reasonable consultations with affected parties using the airport at which project is proposed.

9. **Public Hearings.**

   In projects involving the location of an airport, an airport runway, or a major runway extension, it has afforded the opportunity for public hearings for the purpose of considering the economic, social, and environmental effects of the airport or runway location and its consistency with goals and objectives of such planning as has been carried out by the community and it shall, when requested by the Secretary, submit a copy of the transcript of such hearings to the Secretary. Further, for such projects, it has on its management board either voting representation from the communities where the project is located or has advised the communities that they have the right to petition the Secretary concerning a proposed project.

10. **Metropolitan Planning Organization.**

    In projects involving the location of an airport, an airport runway, or a major runway extension at a medium or large hub airport, the sponsor has made available to and has provided upon request to the metropolitan planning organization in the area in which the airport is located, if any, a copy of the proposed amendment to the airport layout plan to depict the project and a copy of any airport master plan in which the project is described or depicted.

11. **Pavement Preventive Maintenance-Management.**

    With respect to a project approved after January 1, 1995, for the replacement or reconstruction of pavement at the airport, it assures or certifies that it has implemented an effective airport pavement maintenance-management program and it assures that it will use such program for the useful life of any pavement constructed, reconstructed or repaired with Federal financial assistance at the airport. It will provide such reports on pavement condition and pavement management programs as the Secretary determines may be useful.

12. **Terminal Development Prerequisites.**

    For projects which include terminal development at a public use airport, as defined in Title 49, it has, on the date of submittal of the project grant application, all the safety equipment required for certification of such airport under 49 U.S.C. § 44706, and all the security equipment required by rule or regulation, and has provided for access to the passenger enplaning and deplaning area of such airport to passengers enplaning and deplaning from aircraft other than air carrier aircraft.

13. **Accounting System, Audit, and Record Keeping Requirements.**

    a. It shall keep all project accounts and records which fully disclose the amount and disposition by the recipient of the proceeds of this Grant, the total cost of the project in connection with which this Grant is given or used, and the amount or nature of that portion of the cost of the project supplied by other sources, and such other financial records pertinent to the project. The accounts and records shall be kept in accordance with an accounting system that will facilitate an effective audit in accordance with the Single Audit Act of 1984.

    b. It shall make available to the Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, for the purpose of audit and examination, any books, documents, papers, and records of the recipient that are pertinent to this Grant. The Secretary may require that an appropriate audit be conducted by a recipient. In any case in which an independent audit is made of the accounts of a sponsor relating to the disposition of the proceeds of a grant or relating to the project in connection with which this Grant was given or used, it shall file a certified copy of such audit with the Comptroller General of the United

States not later than six (6) months following the close of the fiscal year for which the audit was made.

14. Minimum Wage Rates.

It shall include, in all contracts in excess of $2,000 for work on any projects funded under this Grant Agreement which involve labor, provisions establishing minimum rates of wages, to be predetermined by the Secretary of Labor under 40 U.S.C. §§ 3141-3144, 3146, and 3147, Public Building, Property, and Works), which contractors shall pay to skilled and unskilled labor, and such minimum rates shall be stated in the invitation for bids and shall be included in proposals or bids for the work.

15. Veteran's Preference.

It shall include in all contracts for work on any project funded under this Grant Agreement which involve labor, such provisions as are necessary to insure that, in the employment of labor (except in executive, administrative, and supervisory positions), preference shall be given to Vietnam era veterans, Persian Gulf veterans, Afghanistan-Iraq war veterans, disabled veterans, and small business concerns owned and controlled by disabled veterans as defined in 49 U.S.C. § 47112. However, this preference shall apply only where the individuals are available and qualified to perform the work to which the employment relates.

16. Conformity to Plans and Specifications.

It will execute the project subject to plans, specifications, and schedules approved by the Secretary. Such plans, specifications, and schedules shall be submitted to the Secretary prior to commencement of site preparation, construction, or other performance under this Grant Agreement, and, upon approval of the Secretary, shall be incorporated into this Grant Agreement. Any modification to the approved plans, specifications, and schedules shall also be subject to approval of the Secretary, and incorporated into this Grant Agreement.

17. Construction Inspection and Approval.

It will provide and maintain competent technical supervision at the construction site throughout the project to assure that the work conforms to the plans, specifications, and schedules approved by the Secretary for the project. It shall subject the construction work on any project contained in an approved project application to inspection and approval by the Secretary and such work shall be in accordance with regulations and procedures prescribed by the Secretary. Such regulations and procedures shall require such cost and progress reporting by the sponsor or sponsors of such project as the Secretary shall deem necessary.

18. Planning Projects.

In carrying out planning projects:

a. It will execute the project in accordance with the approved program narrative contained in the project application or with the modifications similarly approved.

b. It will furnish the Secretary with such periodic reports as required pertaining to the planning project and planning work activities.

c. It will include in all published material prepared in connection with the planning project a notice that the material was prepared under a grant provided by the United States.

d. It will make such material available for examination by the public, and agrees that no material prepared with funds under this project shall be subject to copyright in the United States or any other country.

e. It will give the Secretary unrestricted authority to publish, disclose, distribute, and otherwise use any of the material prepared in connection with this grant.

f. It will grant the Secretary the right to disapprove the sponsor's employment of specific consultants and their subcontractors to do all or any part of this project as well as the right to disapprove the proposed scope and cost of professional services.

g. It will grant the Secretary the right to disapprove the use of the sponsor's employees to do all or any part of the project.

h. It understands and agrees that the Secretary's approval of this project grant or the Secretary's approval of any planning material developed as part of this grant does not constitute or imply any assurance or commitment on the part of the Secretary to approve any pending or future application for a Federal airport grant.

19. Operation and Maintenance.

a. The airport and all facilities which are necessary to serve the aeronautical users of the airport, other than facilities owned or controlled by the United States, shall be operated at all times in a safe and serviceable condition and in accordance with the minimum standards as may be required or prescribed by applicable Federal, state, and local agencies for maintenance and operation. It will not cause or permit any activity or action thereon which would interfere with its use for airport purposes. It will suitably operate and maintain the airport and all facilities thereon or connected therewith, with due regard to climatic and flood conditions. Any proposal to temporarily close the airport for non-aeronautical purposes must first be approved by the Secretary. In furtherance of this assurance, the sponsor will have in effect arrangements for:

   1. Operating the airport's aeronautical facilities whenever required;
   2. Promptly marking and lighting hazards resulting from airport conditions, including temporary conditions; and
   3. Promptly notifying pilots of any condition affecting aeronautical use of the airport. Nothing contained herein shall be construed to require that the airport be operated for aeronautical use during temporary periods when snow, flood, or other climatic conditions interfere with such operation and maintenance. Further, nothing herein shall be construed as requiring the maintenance, repair, restoration, or replacement of any structure or facility which is substantially damaged or destroyed due to an act of God or other condition or circumstance beyond the control of the sponsor.

b. It will suitably operate and maintain noise compatibility program items that it owns or controls upon which Federal funds have been expended.

20. Hazard Removal and Mitigation.

It will take appropriate action to assure that such terminal airspace as is required to protect instrument and visual operations to the airport (including established minimum flight altitudes) will be adequately cleared and protected by removing, lowering, relocating, marking, or lighting or otherwise mitigating existing airport hazards and by preventing the establishment or creation of future airport hazards.

21. Compatible Land Use.

It will take appropriate action, to the extent reasonable, including the adoption of zoning laws, to restrict the use of land adjacent to or in the immediate vicinity of the airport to activities and purposes compatible with normal airport operations, including landing and takeoff of aircraft. In addition, if the project is for noise compatibility program implementation, it will not cause or permit any change in land use, within its jurisdiction, that will reduce its compatibility, with respect to the airport, of the noise compatibility program measures upon which Federal funds have been expended.

22. Economic Nondiscrimination.

a. It will make the airport available as an airport for public use on reasonable terms and without unjust discrimination to all types, kinds and classes of aeronautical activities, including commercial aeronautical activities offering services to the public at the airport.

b. In any agreement, contract, lease, or other arrangement under which a right or privilege at the airport is granted to any person, firm, or corporation to conduct or to engage in any aeronautical activity for furnishing services to the public at the airport, the sponsor will insert and enforce provisions requiring the contractor to:

   1. Furnish said services on a reasonable, and not unjustly discriminatory, basis to all users thereof, and

   2. Charge reasonable, and not unjustly discriminatory, prices for each unit or service, provided that the contractor may be allowed to make reasonable and nondiscriminatory discounts, rebates, or other similar types of price reductions to volume purchasers.

c. Each fixed-based operator at the airport shall be subject to the same rates, fees, rentals, and other charges as are uniformly applicable to all other fixed-based operators making the same or similar uses of such airport and utilizing the same or similar facilities.

d. Each air carrier using such airport shall have the right to service itself or to use any fixed-based operator that is authorized or permitted by the airport to serve any air carrier at such airport.

e. Each air carrier using such airport (whether as a tenant, non-tenant, or subtenant of another air carrier tenant) shall be subject to such nondiscriminatory and substantially comparable rules, regulations, conditions, rates, fees, rentals, and other charges with respect to facilities directly and substantially related to providing air transportation as are applicable to all such air carriers which make similar use of such airport and utilize similar facilities, subject to reasonable classifications such as tenants or non-tenants and signatory carriers and non-signatory carriers. Classification or status as tenant or signatory shall not be unreasonably withheld by any airport provided an air carrier assumes obligations substantially similar to those already imposed on air carriers in such classification or status.

f. It will not exercise or grant any right or privilege which operates to prevent any person, firm, or corporation operating aircraft on the airport from performing any services on its own aircraft with its own employees (including, but not limited to maintenance, repair, and fueling) that it may choose to perform.

g. In the event the sponsor itself exercises any of the rights and privileges referred to in this assurance, the services involved will be provided on the same conditions as would apply to the furnishing of such services by commercial aeronautical service providers authorized by the sponsor under these provisions.

h. The sponsor may establish such reasonable, and not unjustly discriminatory, conditions to be met by all users of the airport as may be necessary for the safe and efficient operation of the airport.

i. The sponsor may prohibit or limit any given type, kind or class of aeronautical use of the airport if such action is necessary for the safe operation of the airport or necessary to serve the civil aviation needs of the public.

23. Exclusive Rights.

It will permit no exclusive right for the use of the airport by any person providing, or intending to provide, aeronautical services to the public. For purposes of this paragraph, the providing of the services at an airport by a single fixed-based operator shall not be construed as an exclusive right if both of the following apply:

a. It would be unreasonably costly, burdensome, or impractical for more than one fixed-based operator to provide such services, and

b. If allowing more than one fixed-based operator to provide such services would require the reduction of space leased pursuant to an existing agreement between such single fixed-based operator and such airport. It further agrees that it will not, either directly or indirectly, grant or permit any person, firm, or corporation, the exclusive right at the airport to conduct any aeronautical activities, including, but not limited to charter flights, pilot training, aircraft rental and sightseeing, aerial photography, crop dusting, aerial advertising and surveying, air carrier operations, aircraft sales and services, sale of aviation petroleum products whether or not conducted in conjunction with other aeronautical activity, repair and maintenance of aircraft, sale of aircraft parts, and any other activities which because of their direct relationship to the operation of aircraft can be regarded as an aeronautical activity, and that it will terminate any exclusive right to conduct an aeronautical activity now existing at such an airport before the grant of any assistance under Title 49, United States Code.

24. Fee and Rental Structure.

It will maintain a fee and rental structure for the facilities and services at the airport which will make the airport as self-sustaining as possible under the circumstances existing at the particular airport, taking into account such factors as the volume of traffic and economy of collection. No part of the Federal share of an airport development, airport planning or noise compatibility project for which a Grant is made under Title 49, United States Code, the Airport and Airway Improvement Act of 1982, the Federal Airport Act or the Airport and Airway Development Act of 1970 shall be included in the rate basis in establishing fees, rates, and charges for users of that airport.

25. Airport Revenues.

a. All revenues generated by the airport and any local taxes on aviation fuel established after December 30, 1987, will be expended by it for the capital or operating costs of the airport; the local airport system; or other local facilities which are owned or operated by the owner or operator of the airport and which are directly and substantially related to the actual air transportation of passengers or property; or for noise mitigation purposes on or off the airport. The following exceptions apply to this paragraph:

1. If covenants or assurances in debt obligations issued before September 3, 1982, by the owner or operator of the airport, or provisions enacted before September 3, 1982, in governing statutes controlling the owner or operator's financing, provide for the use of the

revenues from any of the airport owner or operator's facilities, including the airport, to support not only the airport but also the airport owner or operator's general debt obligations or other facilities, then this limitation on the use of all revenues generated by the airport (and, in the case of a public airport, local taxes on aviation fuel) shall not apply.

2. If the Secretary approves the sale of a privately owned airport to a public sponsor and provides funding for any portion of the public sponsor's acquisition of land, this limitation on the use of all revenues generated by the sale shall not apply to certain proceeds from the sale. This is conditioned on repayment to the Secretary by the private owner of an amount equal to the remaining unamortized portion (amortized over a 20-year period) of any airport improvement grant made to the private owner for any purpose other than land acquisition on or after October 1, 1996, plus an amount equal to the federal share of the current fair market value of any land acquired with an airport improvement grant made to that airport on or after October 1, 1996.
3. Certain revenue derived from or generated by mineral extraction, production, lease, or other means at a general aviation airport (as defined at 49 U.S.C. § 47102), if the FAA determines the airport sponsor meets the requirements set forth in Section 813 of Public Law 112-95.

b. As part of the annual audit required under the Single Audit Act of 1984, the sponsor will direct that the audit will review, and the resulting audit report will provide an opinion concerning, the use of airport revenue and taxes in paragraph (a), and indicating whether funds paid or transferred to the owner or operator are paid or transferred in a manner consistent with Title 49, United States Code and any other applicable provision of law, including any regulation promulgated by the Secretary or Administrator.

c. Any civil penalties or other sanctions will be imposed for violation of this assurance in accordance with the provisions of 49 U.S.C. § 47107.

26. Reports and Inspections.

It will:

a. submit to the Secretary such annual or special financial and operations reports as the Secretary may reasonably request and make such reports available to the public; make available to the public at reasonable times and places a report of the airport budget in a format prescribed by the Secretary;

b. for airport development projects, make the airport and all airport records and documents affecting the airport, including deeds, leases, operation and use agreements, regulations and other instruments, available for inspection by any duly authorized agent of the Secretary upon reasonable request;

c. for noise compatibility program projects, make records and documents relating to the project and continued compliance with the terms, conditions, and assurances of this Grant Agreement including deeds, leases, agreements, regulations, and other instruments, available for inspection by any duly authorized agent of the Secretary upon reasonable request; and

d. in a format and time prescribed by the Secretary, provide to the Secretary and make available to the public following each of its fiscal years, an annual report listing in detail:

1. all amounts paid by the airport to any other unit of government and the purposes for which each such payment was made; and

2. all services and property provided by the airport to other units of government and the amount of compensation received for provision of each such service and property.

27. Use by Government Aircraft.

It will make available all of the facilities of the airport developed with Federal financial assistance and all those usable for landing and takeoff of aircraft to the United States for use by Government aircraft in common with other aircraft at all times without charge, except, if the use by Government aircraft is substantial, charge may be made for a reasonable share, proportional to such use, for the cost of operating and maintaining the facilities used. Unless otherwise determined by the Secretary, or otherwise agreed to by the sponsor and the using agency, substantial use of an airport by Government aircraft will be considered to exist when operations of such aircraft are in excess of those which, in the opinion of the Secretary, would unduly interfere with use of the landing areas by other authorized aircraft, or during any calendar month that:

a. Five (5) or more Government aircraft are regularly based at the airport or on land adjacent thereto; or

b. The total number of movements (counting each landing as a movement) of Government aircraft is 300 or more, or the gross accumulative weight of Government aircraft using the airport (the total movement of Government aircraft multiplied by gross weights of such aircraft) is in excess of five million pounds.

28. Land for Federal Facilities.

It will furnish without cost to the Federal Government for use in connection with any air traffic control or air navigation activities, or weather-reporting and communication activities related to air traffic control, any areas of land or water, or estate therein as the Secretary considers necessary or desirable for construction, operation, and maintenance at Federal expense of space or facilities for such purposes. Such areas or any portion thereof will be made available as provided herein within four months after receipt of a written request from the Secretary.

29. Airport Layout Plan.

a. Subject to the FAA Reauthorization Act of 2018, Public Law 115-254, Section 163, it will keep up to date at all times an airport layout plan of the airport showing:

1. boundaries of the airport and all proposed additions thereto, together with the boundaries of all offsite areas owned or controlled by the sponsor for airport purposes and proposed additions thereto;

2. the location and nature of all existing and proposed airport facilities and structures (such as runways, taxiways, aprons, terminal buildings, hangars and roads), including all proposed extensions and reductions of existing airport facilities;

3. the location of all existing and proposed non-aviation areas and of all existing improvements thereon; and

4. all proposed and existing access points used to taxi aircraft across the airport's property boundary.

Such airport layout plans and each amendment, revision, or modification thereof, shall be subject to the approval of the Secretary which approval shall be evidenced by the signature of a duly authorized representative of the Secretary on the face of the airport layout plan. The sponsor will not make or permit any changes or alterations in the airport or any of its facilities

which are not in conformity with the airport layout plan as approved by the Secretary and which might, in the opinion of the Secretary, adversely affect the safety, utility or efficiency of the airport.

b. Subject to the FAA Reauthorization Act of 2018, Public Law 115-254, Section 163, if a change or alteration in the airport or the facilities is made which the Secretary determines adversely affects the safety, utility, or efficiency of any federally owned, leased, or funded property on or off the airport and which is not in conformity with the airport layout plan as approved by the Secretary, the owner or operator will, if requested, by the Secretary:

   1. eliminate such adverse effect in a manner approved by the Secretary; or
   2. bear all costs of relocating such property (or replacement thereof) to a site acceptable to the Secretary and all costs of restoring such property (or replacement thereof) to the level of safety, utility, efficiency, and cost of operation existing before the unapproved change in the airport or its facilities except in the case of a relocation or replacement of an existing airport facility due to a change in the Secretary's design standards beyond the control of the airport sponsor.

30. Civil Rights.

It will promptly take any measures necessary to ensure that no person in the United States shall, on the grounds of race, color, and national origin (including limited English proficiency) in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§ 2000d to 2000d-4); creed and sex (including sexual orientation and gender identity) per 49 U.S.C. § 47123 and related requirements; age per the Age Discrimination Act of 1975 and related requirements; or disability per the Americans with Disabilities Act of 1990 and related requirements, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination in any program and activity conducted with, or benefiting from, funds received from this Grant.

a. Using the definitions of activity, facility, and program as found and defined in 49 CFR §§ 21.23(b) and 21.23(e), the sponsor will facilitate all programs, operate all facilities, or conduct all programs in compliance with all non-discrimination requirements imposed by or pursuant to these assurances.

b. Applicability

   1. Programs and Activities. If the sponsor has received a grant (or other federal assistance) for any of the sponsor's program or activities, these requirements extend to all of the sponsor's programs and activities.
   2. Facilities. Where it receives a grant or other federal financial assistance to construct, expand, renovate, remodel, alter, or acquire a facility, or part of a facility, the assurance extends to the entire facility and facilities operated in connection therewith.
   3. Real Property. Where the sponsor receives a grant or other Federal financial assistance in the form of, or for the acquisition of real property or an interest in real property, the assurance will extend to rights to space on, over, or under such property.

c. Duration.

   The sponsor agrees that it is obligated to this assurance for the period during which Federal financial assistance is extended to the program, except where the Federal financial assistance is to provide, or is in the form of, personal property, or real property, or interest therein, or

structures or improvements thereon, in which case the assurance obligates the sponsor, or any transferee for the longer of the following periods:

1. So long as the airport is used as an airport, or for another purpose involving the provision of similar services or benefits; or
2. So long as the sponsor retains ownership or possession of the property.

d. Required Solicitation Language. It will include the following notification in all solicitations for bids, Requests For Proposals for work, or material under this Grant Agreement and in all proposals for agreements, including airport concessions, regardless of funding source:

"The (City of Tracy), in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§ 2000d to 2000d-4) and the Regulations, hereby notifies all bidders or offerors that it will affirmatively ensure that for any contract entered into pursuant to this advertisement, [select businesses, or disadvantaged business enterprises or airport concession disadvantaged business enterprises] will be afforded full and fair opportunity to submit bids in response to this invitation and no businesses will be discriminated against on the grounds of race, color, national origin (including limited English proficiency), creed, sex (including sexual orientation and gender identity), age, or disability in consideration for an award."

e. Required Contract Provisions.

1. It will insert the non-discrimination contract clauses requiring compliance with the acts and regulations relative to non-discrimination in Federally-assisted programs of the Department of Transportation (DOT), and incorporating the acts and regulations into the contracts by reference in every contract or agreement subject to the non-discrimination in Federally-assisted programs of the DOT acts and regulations.
2. It will include a list of the pertinent non-discrimination authorities in every contract that is subject to the non-discrimination acts and regulations.
3. It will insert non-discrimination contract clauses as a covenant running with the land, in any deed from the United States effecting or recording a transfer of real property, structures, use, or improvements thereon or interest therein to a sponsor.
4. It will insert non-discrimination contract clauses prohibiting discrimination on the basis of race, color, national origin (including limited English proficiency), creed, sex (including sexual orientation and gender identity), age, or disability as a covenant running with the land, in any future deeds, leases, license, permits, or similar instruments entered into by the sponsor with other parties:
    a. For the subsequent transfer of real property acquired or improved under the applicable activity, project, or program; and
    b. For the construction or use of, or access to, space on, over, or under real property acquired or improved under the applicable activity, project, or program.

f. It will provide for such methods of administration for the program as are found by the Secretary to give reasonable guarantee that it, other recipients, sub-recipients, sub-grantees, contractors, subcontractors, consultants, transferees, successors in interest, and other participants of Federal financial assistance under such program will comply with all requirements imposed or pursuant to the acts, the regulations, and this assurance.

g. It agrees that the United States has a right to seek judicial enforcement with regard to any matter arising under the acts, the regulations, and this assurance.

31. Disposal of Land.

a. For land purchased under a grant for airport noise compatibility purposes, including land serving as a noise buffer, it will dispose of the land, when the land is no longer needed for such purposes, at fair market value, at the earliest practicable time. That portion of the proceeds of such disposition which is proportionate to the United States' share of acquisition of such land will be, at the discretion of the Secretary, (1) reinvested in another project at the airport, or (2) transferred to another eligible airport as prescribed by the Secretary. The Secretary shall give preference to the following, in descending order:

1. Reinvestment in an approved noise compatibility project;
2. Reinvestment in an approved project that is eligible for grant funding under 49 U.S.C. § 47117(e);
3. Reinvestment in an approved airport development project that is eligible for grant funding under 49 U.S.C. §§ 47114, 47115, or 47117;
4. Transfer to an eligible sponsor of another public airport to be reinvested in an approved noise compatibility project at that airport; or
5. Payment to the Secretary for deposit in the Airport and Airway Trust Fund.

If land acquired under a grant for noise compatibility purposes is leased at fair market value and consistent with noise buffering purposes, the lease will not be considered a disposal of the land. Revenues derived from such a lease may be used for an approved airport development project that would otherwise be eligible for grant funding or any permitted use of airport revenue.

b. For land purchased under a grant for airport development purposes (other than noise compatibility), it will, when the land is no longer needed for airport purposes, dispose of such land at fair market value or make available to the Secretary an amount equal to the United States' proportionate share of the fair market value of the land. That portion of the proceeds of such disposition which is proportionate to the United States' share of the cost of acquisition of such land will, upon application to the Secretary, be reinvested or transferred to another eligible airport as prescribed by the Secretary. The Secretary shall give preference to the following, in descending order:

1. Reinvestment in an approved noise compatibility project;
2. Reinvestment in an approved project that is eligible for grant funding under 49 U.S.C. § 47117(e);
3. Reinvestment in an approved airport development project that is eligible for grant funding under 49 U.S.C. §§ 47114, 47115, or 47117;
4. Transfer to an eligible sponsor of another public airport to be reinvested in an approved noise compatibility project at that airport.

c. Land shall be considered to be needed for airport purposes under this assurance if (1) it may be needed for aeronautical purposes (including runway protection zones) or serve as noise buffer land, and (2) the revenue from interim uses of such land contributes to the financial self-

sufficiency of the airport. Further, land purchased with a grant received by an airport operator or owner before December 31, 1987, will be considered to be needed for airport purposes if the Secretary or Federal agency making such grant before December 31, 1987, was notified by the operator or owner of the uses of such land, did not object to such use, and the land continues to be used for that purpose, such use having commenced no later than December 15, 1989.

d. Disposition of such land under (a), (b), or (c) will be subject to the retention or reservation of any interest or right therein necessary to ensure that such land will only be used for purposes which are compatible with noise levels associated with operation of the airport.

32. Engineering and Design Services.

If any phase of such project has received Federal funds under Chapter 471 subchapter 1 of Title 49 U.S.C., it will award each contract, or sub-contract for program management, construction management, planning studies, feasibility studies, architectural services, preliminary engineering, design, engineering, surveying, mapping or related services in the same manner as a contract for architectural and engineering services is negotiated under Chapter 11 of Title 40 U S.C., or an equivalent qualifications-based requirement prescribed for or by the sponsor of the airport.

33. Foreign Market Restrictions.

It will not allow funds provided under this Grant to be used to fund any project which uses any product or service of a foreign country during the period in which such foreign country is listed by the United States Trade Representative as denying fair and equitable market opportunities for products and suppliers of the United States in procurement and construction.

34. Policies, Standards, and Specifications.

It will carry out any project funded under an Airport Improvement Program Grant in accordance with policies, standards, and specifications approved by the Secretary including, but not limited to, current FAA Advisory Circulars (https://www.faa.gov/airports/aip/media/aip-pfc-checklist.pdf) for AIP projects as of February 26, 2024.

35. Relocation and Real Property Acquisition.

a. It will be guided in acquiring real property, to the greatest extent practicable under State law, by the land acquisition policies in Subpart B of 49 CFR Part 24 and will pay or reimburse property owners for necessary expenses as specified in Subpart B.

b. It will provide a relocation assistance program offering the services described in Subpart C of 49 CFR Part 24 and fair and reasonable relocation payments and assistance to displaced persons as required in Subpart D and E of 49 CFR Part 24.

c. It will make available within a reasonable period of time prior to displacement, comparable replacement dwellings to displaced persons in accordance with Subpart E of 49 CFR Part 24.

36. Access By Intercity Buses.

The airport owner or operator will permit, to the maximum extent practicable, intercity buses or other modes of transportation to have access to the airport; however, it has no obligation to fund special facilities for intercity buses or for other modes of transportation.

37. Disadvantaged Business Enterprises.

The sponsor shall not discriminate on the basis of race, color, national origin, or sex, in the award and performance of any DOT-assisted contract covered by 49 CFR Part 26, or in the award and performance of any concession activity contract covered by 49 CFR Part 23. In addition, the sponsor shall not discriminate on the basis of race, color, national origin or sex in the administration of its Disadvantaged Business Enterprise (DBE) and Airport Concessions Disadvantaged Business Enterprise (ACDBE) programs or the requirements of 49 CFR Parts 23 and 26. The sponsor shall take all necessary and reasonable steps under 49 CFR Parts 23 and 26 to ensure nondiscrimination in the award and administration of DOT-assisted contracts, and/or concession contracts. The sponsor's DBE and ACDBE programs, as required by 49 CFR Parts 26 and 23, and as approved by DOT, are incorporated by reference in this agreement. Implementation of these programs is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the sponsor of its failure to carry out its approved program, the Department may impose sanctions as provided for under Parts 26 and 23 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. § 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. §§ 3801-3809, 3812).

38. Hangar Construction.

If the airport owner or operator and a person who owns an aircraft agree that a hangar is to be constructed at the airport for the aircraft at the aircraft owner's expense, the airport owner or operator will grant to the aircraft owner for the hangar a long term lease that is subject to such terms and conditions on the hangar as the airport owner or operator may impose.

39. Competitive Access.

a. If the airport owner or operator of a medium or large hub airport (as defined in 49 U.S.C. § 47102) has been unable to accommodate one or more requests by an air carrier for access to gates or other facilities at that airport in order to allow the air carrier to provide service to the airport or to expand service at the airport, the airport owner or operator shall transmit a report to the Secretary that:

   1. Describes the requests;
   2. Provides an explanation as to why the requests could not be accommodated; and
   3. Provides a time frame within which, if any, the airport will be able to accommodate the requests.

b. Such report shall be due on either February 1 or August 1 of each year if the airport has been unable to accommodate the request(s) in the six month period prior to the applicable due date.

STATE OF CALIFORNIA • DEPARTMENT OF TRANSPORTATION

STATE MATCHING GRANT FOR FAA AIRPORT IMPROVEMENT PROGRAM - APPLICATION

DOA-0012 (REV 12/2021)

PLEASE PRINT OR TYPE AND COMPLETE ALL APPLICABLE ITEMS

AIRPORT INFORMATION

PUBLIC ENTITY	COUNTY	
City of Tracy	San Joaquin	
AIRPORT NAME	PERMIT NUMBER	
Tracy Municipal Airport	SJ-2	
CONTACT NAME	TITLE	
Paula Jessup	Airport Manager	
MAILING ADDRESS	EMAIL	PHONE
5749 S. Tracy Boulevard, Tracy, CA 95377	Paula.Jessup@cityoftracy.org	(209) 831-6215

PROJECT INFORMATION

Project must be in the Department's most recent Capital Improvement Plan and the project cannot commence prior to the State's award of a matching grant or the project becomes ineligible for a matching grant. ☒ Check to acknowledge statement

DESCRIPTIVE TITLE OF APPLICANT'S PROJECT (as shown on page one of the executed federal grant and in the adopted Capital Improvement Plan):

Pavement Maintenance Management Plan (PMMP)

FEDERAL GRANT NUMBER	
3-06-0259-027-2024	
FEDERAL GRANT	$ 126,000
APPLICANT FUNDS	$ 7,700
STATE FUNDS*	$ 6,300
TOTAL COST OF PROJECT	$ 140,000

*Maximum is 5% of the federal grant amount.

REQUIRED SUPPORTING DOCUMENTS

Pursuant to Public Utilities Code Section 21681-21684 and Section 4067 of the CAAP Regulations, submit the following documents with this application:

- Local government approval *(resolution or minute order)* as described in Section 4067(a).
- FAA Grant Agreement with FAA and sponsor signatures.
- Verification of full compliance with the California Environmental Quality Act (CEQA) by submitting information to fulfill either 1. or 2. below:
  1. Copy of Notice of Exemption or provide the Categorical Exemption Class # 6 .
     (CEQA Guidelines Sections 15300-15333).
  2. Copy of Notice of Determination or provide the following information:
     - Environmental Impact Report (Title/Date) _____ State Clearinghouse (SCH) # _____ or
     - Negative Declaration (Title/Date) _____ State Clearinghouse (SCH) # _____ or
     - National Environmental Policy Act (NEPA) document (Title/Date) _____.
       (NEPA documents-Environmental Impact Statement or Finding of No Significant Impact must comply with CEQA provisions).
- Airport Layout Plan (ALP) showing project location(s) and dimensions or project sketch if no ALP exists.
- Completed CAAP Certification (Form DOA-0007), if not submitted to the Division of Aeronautics earlier for this fiscal year.
- Additional documentation may be required if items in the FAA AIP grant are not eligible for CAAP funding.

AUTHORIZATION

AUTHORIZED OFFICIAL'S SIGNATURE		DATE
PRINT NAME	TITLE	
Nancy Young	Mayor	
MAILING ADDRESS	EMAIL	PHONE
5749 S. Tracy Boulevard, Tracy, CA 95377	Nancy.Young@cityoftracy.org	( )

SEND COMPLETED FORM AND ALL REQUIRED DOCUMENTS TO:

AeronauticsGL@dot.ca.gov

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APPROVED AS TO FORM AND LEGALITY

_____
CITY ATTORNEY'S OFFICE

TRACY CITY COUNCIL

RESOLUTION NO. _____

AUTHORIZING THE SUBMITTAL OF AN APPLICATION, AND UPON AWARD, EXECUTION BY THE MAYOR OF A GRANT AGREEMENT WITH THE CALIFORNIA DEPARTMENT OF TRANSPORTATION DIVISION OF AERONAUTICS, IN THE AMOUNT OF $6,300; AND (2) SUBJECT TO AND UPON AWARD, ACCEPTING SUCH GRANT FUNDS AND APPROPRIATING THE FULL GRANT AMOUNT TO CAPITAL IMPROVEMENT PROJECT 77595 - PAVEMENT MAINTENANCE MANAGEMENT PLAN PROJECT.

WHEREAS, the Federal Aviation Administration (FAA) has a requirement that Airport Sponsors update their Pavement Maintenance Management Plan every five (5) to ten (10) years to remain eligible for Federal funding; and

WHEREAS, the Tracy Municipal Airport is subject to FAA jurisdiction; and

WHEREAS, the last Airport Pavement Maintenance Management Plan Project (PMMP) for the Tracy Municipal Airport was updated and accepted by the City Council in 2013; and

WHEREAS, the PMMP is an approved Capital Improvement Project (CIP) 77595 (Project), with a total Project budget of $140,000; and

WHEREAS, in order to meet FAA requirements staff submitted a grant application to the FAA and the application was approved, and on August 20, 2024, the City Council accepted the grant in the amount of $126,000 per Resolution 2024-132; and

WHEREAS, the grant required a 10% local match, and the City Council appropriated $14,000 from the General Fund and appropriated the full grant amount to CIP 77595, pursuant to Resolution 2024-134; and

WHEREAS, the California Department of Transportation Division of Aeronautics (Division of Aeronautics), pursuant to the Public Utilities Code section 21683.1, provides matching grants of 5% of FAA grants for airports, not to exceed $50,000; and

WHEREAS, a State Airport Improvement Program (AIP) matching grant is available through Division of Aeronautics, which will offset a portion of the City of Tracy's (City) required match amount; and

WHEREAS, in order to finalize the State grant award process, the FAA requires that the City Council adopts a resolution authorizing the Mayor to submit the application and execute the grant agreement once it's awarded and accept it; and

WHEREAS, once this grant is approved and accepted, the City will receive $6,300 from the Division of Aeronautics towards the Project, and reduce the amount paid by the City to $7,700, or approximately 5.5% of the total Project costs; and

WHEREAS, in order to finalize the Division of Aeronautics grant award process, a City Council resolution is required, authorizing the submittal of the application, and upon award, execution by the Mayor of the grant agreement; and

WHEREAS, for efficiency, staff is also requesting that the City Council conditionally accept the grant and appropriate the funds to CIP 77595;

NOW, THEREFORE, be it resolved as follows:

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

FURTHER RESOLVED: That the City Council of the City of Tracy hereby authorizes the Mayor (A) to submit an application, attached hereto as Exhibit 1 to the California Department of Transportation Division of Aeronautics, for Airport Improvement Program (AIP) Matching Grant 3-06-0259-027-2025, and (B) upon award of such grant, to execute the grant agreement; and be it

FURTHER RESOLVED: That subject to and upon award of the grant funds, the City Council hereby accepts such grant award and appropriates the full grant amount to Capital Improvement Project 77595 - Pavement Maintenance Management Plan Project; and be it

FURTHER RESOLVED: That the City Council hereby authorizes the City Manager to take such additional actions that may be necessary to consummate the intent of this Resolution, provided that such actions do not detrimentally impact the City and any contracts are reviewed and approved as to form and legality by the City Attorney.

* * * * * * * * * * * * * *

The foregoing Resolution 2024-_____ was adopted by the Tracy City Council on October 15, 2024, by the following vote:

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

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

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

Exhibit 1 - Matching Grant Application

Exhibit 1

STATE OF CALIFORNIA • DEPARTMENT OF TRANSPORTATION

STATE MATCHING GRANT FOR FAA AIRPORT IMPROVEMENT PROGRAM - APPLICATION

DOA-0012 (REV 12/2021)

PLEASE PRINT OR TYPE AND COMPLETE ALL APPLICABLE ITEMS

AIRPORT INFORMATION

PUBLIC ENTITY	COUNTY	
City of Tracy	San Joaquin	
AIRPORT NAME	PERMIT NUMBER	
Tracy Municipal Airport	SJ-2	
CONTACT NAME	TITLE	
Paula Jessup	Airport Manager	
MAILING ADDRESS	EMAIL	PHONE
5749 S. Tracy Boulevard, Tracy, CA 95377	Paula.Jessup@cityoftracy.org	(209) 831-6215

PROJECT INFORMATION

Project must be in the Department's most recent Capital Improvement Plan and the project cannot commence prior to the State's award of a matching grant or the project becomes ineligible for a matching grant. ☒ Check to acknowledge statement

DESCRIPTIVE TITLE OF APPLICANT'S PROJECT (as shown on page one of the executed federal grant and in the adopted Capital Improvement Plan):

Pavement Maintenance Management Plan (PMMP)

FEDERAL GRANT NUMBER	
3-06-0259-027-2024	
FEDERAL GRANT	$ 126,000
APPLICANT FUNDS	$ 7,700
STATE FUNDS*	$ 6,300
TOTAL COST OF PROJECT	$ 140,000

*Maximum is 5% of the federal grant amount.

REQUIRED SUPPORTING DOCUMENTS

Pursuant to Public Utilities Code Section 21681-21684 and Section 4067 of the CAAP Regulations, submit the following documents with this application:

- Local government approval *(resolution or minute order)* as described in Section 4067(a).
- FAA Grant Agreement with FAA and sponsor signatures.
- Verification of full compliance with the California Environmental Quality Act (CEQA) by submitting information to fulfill either 1. or 2. below:
  1. Copy of Notice of Exemption or provide the Categorical Exemption Class # 6 .
     (CEQA Guidelines Sections 15300-15333).
  2. Copy of Notice of Determination or provide the following information:
     - Environmental Impact Report (Title/Date) _____ State Clearinghouse (SCH) # _____ or
     - Negative Declaration (Title/Date) _____ State Clearinghouse (SCH) # _____ or
     - National Environmental Policy Act (NEPA) document (Title/Date) _____.
       (NEPA documents-Environmental Impact Statement or Finding of No Significant Impact must comply with CEQA provisions).
- Airport Layout Plan (ALP) showing project location(s) and dimensions or project sketch if no ALP exists.
- Completed CAAP Certification (Form DOA-0007), if not submitted to the Division of Aeronautics earlier for this fiscal year.
- Additional documentation may be required if items in the FAA AIP grant are not eligible for CAAP funding.

AUTHORIZATION

AUTHORIZED OFFICIAL'S SIGNATURE	DATE

PRINT NAME	TITLE	
Nancy Young	Mayor	
MAILING ADDRESS	EMAIL	PHONE
5749 S. Tracy Boulevard, Tracy, CA 95377	Nancy.Young@cityoftracy.org	( )

SEND COMPLETED FORM AND ALL REQUIRED DOCUMENTS TO:

AeronauticsGL@dot.ca.gov

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October 15, 2024

Agenda Item 1.K

RECOMMENDATION

Staff recommends that the City Council adopt a resolution: (1) Authorizing the acceptance of the Technology and Equipment Program Grant in the amount of $391,400 from the United States Department of Justice, Office of Community Oriented Policing Services and (2) Appropriating the full grant funds to the Police Department's Operational Budget for Fiscal Year 2024/2025.

EXECUTIVE SUMMARY

This agenda item seeks adoption of a resolution by the City Council authorizing the acceptance of the Technology and Equipment Program Grant (TEP) in the amount of $391,400 from the United States Department of Justice, Office of Community Oriented Policing Services (COPS) for the Real Time Information Center. There is no local match required for the acceptance of this grant. Staff also requests the City Council to concurrently appropriate the full grant funds to the Tracy Police Department's (TPD) Operational Budget for Fiscal Year (FY) 2024/2025.

The actions requested in this item will enable the creation of a Real Time Information Center which leverages many technologies including license plate readers, drone communication software, cameras, and other technology to provide real-time incident monitoring and improve the department's ability to rapidly respond, develop investigative leads, apprehend suspects, and solve crime. Through this program, the TPD can address known equipment and service gaps to ensure the overall reduction of these crimes in our expanding City.

BACKGROUND AND LEGISLATIVE HISTORY

In March 2023, TPD submitted a proposal to fund a Real Time Information Center through U.S. Representative Josh Harder's Office. The proposal was presented before the FY24 Federal Community Program Funding Appropriations Committee and was successfully approved by the Committee.

Through the federal process and to receive the award, the Tracy Police Department formally submitted its proposal to the United States Department of Justice, Office of Community Oriented Policing Services (COPS) Technology and Equipment Program Grant.

On September 30, 2024, TPD was notified of the award for $391,400.

ANALYSIS

Based on the department's crime statistics reported to the Federal Bureau of Investigations and the National Incident Based Reporting System (NIBRS) for a 24-month timeframe and as published in the department's annual report, TPD identified the Real

Time Information Center as a viable option to assist crime solvability including investigative leads, suspect identification and apprehension and overall crime reduction.

The creation of a Real Time Information Center with numerous technology pieces will allow TPD to respond to crimes in “real-time”. TPD will use automated license plate readers and cameras and partner them with the Real Time Information Center. The available technologies allow law enforcement agencies and officers to respond to crime events more efficiently, more deliberately, with improved operational intelligence, and with a proactive emphasis on officer, resident, and community safety.

The goals and objectives for this grant are (1) to reduce crime by identifying, locating, and apprehending individuals responsible for committing crime within the City of Tracy, and (2) to increase the use of technology to fight, deter, and reduce criminal activity. To accomplish these goals, the proposed Real Time Information Center will be staffed with personnel who will provide proactive monitoring at least 5 days a week to start. Eventually, the department hopes to expand to provide 24/7 monitoring. The Real Time Information Center will utilize various law enforcement platforms to integrate the technology such as license plates readers, fixed pole cameras, and Live 9-1-1 which provides live audio feed of in progress calls directly to patrol vehicles.

Grant funding will used to purchase technology including software and hardware for several programs including:

- FLOCK “Condor” pan-tilt-zoom cameras will be installed throughout the City to provide broad video coverage for real-time surveillance and monitoring of the City.
- Flock Falcon LPRs to expand the City’s license plate reader program and provide license plate information to staff working in the center and to the 9-1-1 Communications Center.
- Live 9-1-1 which provides live audio feed of in progress calls directly to patrol vehicles for improved situational awareness and faster response times.
- Extra-large Smart 4K televisions to create a video wall that will display all video coverage received from the Candor cameras.
- Workstations to include computers and desks for staff.
- RGB/CDWG Processor to provide necessary support and power to the computer technology used throughout the Real Time Information Center, and various accessories.

The equipment requested is necessary to outfit and staff the Real Time Information Center. The equipment has been carefully evaluated and aligns with the City of Tracy's procurement process as required through the City of Tracy Municipal Code.

TPD will procure a vendor to support license plate readers, cameras, and Live 9-1-1. This Professional Service Agreement will be brought before City Council once grant funding has been secured.

As the Real Time Information Center opens, staff will provide proactive monitoring at least (5) five days a week, 8-10 hours daily with the intention to expand to 24 hours, 7 days a week as the program develops and funding is secured beyond the terms of this federal grant. Through monitoring, staff in the center will communicate with the TPD 9-1-1

Communications to ensure expedited and efficient dispatching of resources to in progress crimes.

It is the hope of the Department that overall crime, specifically retail and motor vehicle theft rates, will decrease throughout the lifetime of the grant and that successful investigations, evidence collection, suspect apprehension, and other law enforcement program implementation metrics will increase throughout the duration of the project scope.

FISCAL IMPACT

The grant award of $391,400 will fund the Real Time Information Center, all requested equipment and technology one-time purchases, installation, and maintenance for 12 months. No City match is required. Future years would be supported through the Department's operational budget.

Upon acceptance, the $391,400 will be appropriated to the Police Department's Operational Budget for Fiscal Year 24/25.

PUBLIC OUTREACH/ INTEREST

Through many community engagement activities and proactive policing, residents have many opportunities to meet, interact with department personnel, and discuss issues impacting the community. The community supports the Police Department's initiatives and goals to promote officer safety and community safety, improve efficiency, and advance Department technology.

COORDINATION

TPD has coordinated with the City's Innovation and Technology Department and Public Works – Operations on various aspects of this project including purchasing quotes, infrastructure, room design, and computer technology.

CEQA DETERMINATION

The proposed action is not a "project" under the California Environmental Quality Act. Pursuant to CEQA Guidelines Section 15061(b)(3), there is no possibility that this action will have an effect on the physical environment.

STRATEGIC PLAN

This agenda item relates to Council's Strategic Priorities for Public Safety, specifically to continue to strengthen community safety through crime prevention reduction activities and continuing to enhance and implement the use of technology to generate evidence-based intelligence to enhance enforcement efforts.

ACTION REQUESTED OF THE CITY COUNCIL

Staff recommends that the City Council adopt a resolution: (1) Authorizing the acceptance of the Technology and Equipment Program Grant in the amount of $391,400 from the United States Department of Justice, Office of Community Oriented Policing Services and

(2) Appropriating the full grant funds to the Police Department's Operational Budget for Fiscal Year 2024/2025.

Prepared by: Beth Lyons-McCarthy, Support Operations Manager

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

Approved by: Midori Lichtwardt, City Manager

APPROVED AS TO FORM AND LEGALITY

_____
CITY ATTORNEY'S OFFICE

TRACY CITY COUNCIL

RESOLUTION NO. _____

---

(1) ACCEPTING THE TECHNOLOGY AND EQUIPMENT PROGRAM GRANT IN THE AMOUNT OF $391,400 FROM THE UNITED STATES DEPARTMENT OF JUSTICE, OFFICE OF COMMUNITY ORIENTED POLICING SERVICES; AND

(2) APPROPRIATING THE FULL GRANT FUNDS TO THE POLICE DEPARTMENT'S OPERATIONAL BUDGET FOR FISCAL YEAR 2024/25

WHEREAS, based on the crime statistics reported to the Federal Bureau of Investigations and the National Incident Based Reporting System (NIBRS) for a 24-month timeframe and as published in the Department's annual report, Tracy Police Department (TPD) identified the creation of Real Time Information Center as a viable option to assist crime solvability including investigative leads, suspect identification and apprehension and overall crime reduction; and

WHEREAS, in March 2023, TPD submitted a proposal to fund a Real Time Information Center through U.S. Representative Josh Harder's Office which was presented before the Fiscal Year 2024 Federal Community Program Funding Appropriations Committee and was successfully approved by the Committee; and

WHEREAS, per the Federal process and to receive the grant award, TPD formally submitted its proposal to the United States Department of Justice, Office of Community Oriented Policing Services (COPS) for the Technology and Equipment Program Grant**;** and

WHEREAS, on September 30, 2024, the TPD was notified the award of $391,400 from the COPS for a Technology and Equipment Grant; and

WHEREAS, no local match is required for the acceptance of this grant; and

WHEREAS, the grant will be used to create a Real Time Information Center which leverages many technologies including license plate readers, drone communication software, cameras, and other technology to provide real-time incident monitoring and improve our ability to rapidly respond, develop investigative leads, apprehend suspects, and solve crime; and

WHEREAS, more specifically, the grant will be used to purchase technology including software and hardware for several programs including:

- FLOCK "Condor" pan-tilt-zoom cameras will be installed throughout the City to provide broad video coverage for real-time surveillance and monitoring of the City.
- Flock Falcon LPRs to expand the City's license plate reader program and provide license plate information to staff working in the center and to the 9-1-1 Communications Center.
- Live 9-1-1 which provides live audio feed of in progress calls directly to patrol vehicles for improved situational awareness and faster response times.

- Extra-large Smart 4K televisions to create a video wall that will display all video coverage received from the Candor cameras.
- Workstations to include computers and desks for staff RGB/CDWG Processor to provide necessary support and power to the computer technology used throughout the Real Time Information Center, and various accessories; and

WHEREAS, the equipment requested is necessary to outfit and staff the Real Time Information Center and has been carefully evaluated and aligns with the City of Tracy's procurement process as required through the City of Tracy Municipal Code; and

WHEREAS, TPD will procure a vendor to support license plate readers, cameras, and Live 9-1-1 and the Professional Service Agreement will be brought before City Council once grant funding has been secured; and

WHEREAS, the grant award of $391,400 will fund the Real Time Information Center, all requested equipment and technology one-time purchases, installation, and maintenance for 12 months and future years would be supported through the Department's operational budget; and

WHEREAS, Staff requests that the City Council accept the COPS grant award and appropriate the full grant funds to the Police Department Operational Budget for Fiscal Year 2024/2025.

NOW, THEREFORE, be it resolved as follows:

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

FURTHER RESOLVED: That the City Council of the City of Tracy hereby accepts the grant award of $391,400 from the Bureau of Justice, COPS Office to fund the technology and equipment purchases for the Police Department's Real Time Information Center, and be it

FURTHER RESOLVED: That the City Council appropriates the full grant funds of $391,400 to the already approved Police Department's operational budget for Fiscal Year 2024/25, and be it

FURTHER RESOLVED: That the proposed action is not a "project" under the California Environmental Quality Act (CEQA), and pursuant to CEQA Guidelines Section 15061(b)(3), there is no possibility that this action will have an effect on the physical environment.

* * * * * * * * * * * * * *

The foregoing Resolution 2024-_____ was adopted by the Tracy City Council on October 15, 2024 by the following vote:

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

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

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

October 15, 2024

Agenda Item 1.L

RECOMMENDATION

Staff recommends that the City Council adopt a resolution approving a General Services Agreement with Stockton Petroleum Company, Inc. for gasoline and diesel fuel services for a term of two-years and a total not to exceed amount of $1,537,000 per fiscal year.

EXECUTIVE SUMMARY

This agenda items seeks adoption of a resolution approving a General Services Agreement (GSA) with Stockton Petroleum Company, Inc.(Contractor) to provide fuel for all City vehicles and equipment from October 1, 2024, to September 30, 2026, for a not to exceed amount of $1,537,000 per fiscal year for an estimated 200,000 gallons of gasoline and 75,000 gallons of diesel fuel per year for the City's fleet. On June 12, 2024, the City issued a Notice Inviting Bids (NIB) to provide the City with gasoline, diesel, and renewable diesel. The Contractor submitted the lowest responsive bid, which was based on meeting the bid requirements and offering the lowest discounts on the daily rack rate average.

BACKGROUND AND LEGISLATIVE HISTORY

The City of Tracy annually requires 200,000 gallons of gasoline and 75,000 gallons of diesel fuel for the daily operation of all 641 City vehicles and equipment, of which 439 use unleaded gasoline and 202 use diesel. Fuel is delivered to the City's fuel dispensing system at Boyd Service Center and usage is monitored by the vehicle number.

The City has contracted with Stockton Petroleum Company, Inc. since 2014 to provide this service.

On June 12, 2024, the City issued a Notice Inviting Bids to provide the City with gasoline, diesel, and renewable diesel. Currently, the City uses unleaded gasoline and standard diesel, but the City anticipates transitioning to renewable diesel, due to the possible cost savings, within the next 2-3 years. The City received three (3) responsive bid packages on July 01, 2024. Stockton Petroleum Company, Inc. submitted the lowest responsive bid, which was based on meeting the bid requirements, discounts on daily rack rate average, and City fuel consumption.

ANALYSIS

Pursuant to the Tracy Municipal Code (TMC), Section 2.20.180, the City issued a NIB for vendors to provide unleaded gasoline, standard diesel, and renewable diesel on June 12, 2024. Due to the volatility of fuel prices, bids were determined by which responsive bidder gives the most discounts on their daily rack rate average. The NIB required bids to be submitted in the form of cents-per-gallon (rounded to the nearest thousandths of a cent) markup over/under the Oil Price Information Service (OPIS) Stockton Daily Rack Average.

On July, 2024, three (3) responsive bid packages were received summarized as follows:

Supplier	Discount From OPIS Stockton Daily Rack Rate Average (Cents)		
	Unleaded	Standard Diesel	Renewable Diesel
Stockton Petroleum Company	$ (-0.0972)	$ (-0.0520)	$ (-0.0812)
Mansfield Oil Company	$ (-0.0708)	$ (-0.0213)	$ (-0.0213)
Ramos Oil Company	$ (-0.0525)	$ (-0.0550)	$ (-0.0450)

Stockton Petroleum Company, Inc. submitted the lowest responsive bid, which was based on the fact that they offered the largest discounts from the OPIS Stockton daily rack rate average. This bidder also met the other bid requirements.

If approved, the term of the Agreement will be from October 15, 2024, through September 30, 2026. Staff estimates that unleaded gasoline will average approximately $5.00 per gallon with the 2% increase of annual usage. The estimate equates to the proposed Not-to-Exceed amount of $1,537,000 per fiscal year and will adequately cover the duration of the contract, without need to return to City Council to increase the NTE amount.

STRATEGIC PLAN

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

FISCAL IMPACT

The cost of goods and services provided by the Contractor will not exceed $1,537,000 per fiscal year and will be accounted for in the annual adopted fuel budget in the Internal Services Fund: Fleet. This increase in our fuel budget is driven by several factors, including rising fuel prices, a 12% expansion in our motorized fleet, and higher fuel consumption rates- with unleaded fuel usage up nearly 4% and diesel usage rising about 0.8%. Additionally, our increased staffing levels allow us to operate more equipment consistently throughout the week, contributing to the overall rise in fuel consumption. This budget does not include the fuel used for generators at the Temporary Emergency Homeless Shelter, which is a separate contract.

The City has been contracted with Stockton Petroleum Company, Inc. since 2014 to current. The City has been highly satisfied with Stockton Petroleum's performance. Their responsiveness has been exceptional, often delivering fuel within one day rather than the usual two. Their customer service has been outstanding, as they have taken the time to review invoices the City has had questions on and make any necessary corrections. The most recent contract with the Contractor is from October 1, 2018, through September 30, 2024.

The table below identifies the actual expenses per fiscal year from 2018-2024.

Fiscal year	Expenses
2017-2018	$614,367
2018-2019	$677,782
2019-2020	$607,791
2020-2021	$599,105
2021-2022	$962,140
2022-2023	$1,028,811
2023-2024	$1,113,599
Total	**$5,603,595**

ACTION REQUESTED OF THE CITY COUNCIL

Staff recommends that the City Council of the City of Tracy adopt a resolution approving a General Services Agreement with Stockton Petroleum Company, Inc. for gasoline and diesel fuel services for a term of two-years and a total not to exceed amount of $1,537,000 per fiscal year.

Prepared by: Adrian Taylor, Fleet Supervisor

Reviewed by: Jim Thompson, Superintendent, Operations
David Murphy, Assistant Director of Operations
Sara Castro, Director of Finance
Bijal Patel, City Attorney
Karin Schnaider, Assistant City Manager

Approved by: Midori Lichtwardt, City Manager

Attachments:

Attachment A – General Services Agreement with Stockton Petroleum

CITY OF TRACY
GENERAL SERVICES AGREEMENT WITH
Stockton Petroleum Company, Inc., a California corporation

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

Recitals

A. City desires to retain Contractor to provide fuel services for the City as further described herein and in Exhibit A.

B. On June 12, 2024, the City issued a Notice Inviting Bids (NIB) for the Gasoline and Diesel Fuel Supply/Delivery 2024-2026. On July 1, 2024, the City received three (3) responsive bids. After reviewing the bids, the City has determined that Contractor submitted the most responsive and lowest bid and is the best fit for City's needs to provide the services in pursuant of the Tracy Municipal Code 2.20.140.

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

D. This Agreement is being executed pursuant to Resolution No. 2024-____ approved by Tracy City Council on October 15, 2024.

Now therefore, the Parties mutually agree as follows:

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

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

2.1 Term. The term of this Agreement shall begin on October 1, 2024, and end on September 30, 2026, unless terminated in accordance with Section 6. This Agreement may be extended, on an annual basis, for an additional 5 years by the City Manager following a written determination that Contractor has satisfactorily met all the requirements of this Agreement.

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

3.1 Not to Exceed Amount. Contractor's total compensation under this Agreement shall not exceed $1,537,000 (one million five hundred thirty-seven thousand) dollars per fiscal year. For the services performed by Contractor under this agreement, City shall pay Contractor on a time and expense basis, at the billing rates set forth at $0.0972 below OPIS Stockton Daily Rack Average price per gallon for unleaded gasoline, $0.0520 below OPIS Stockton Daily Rack Average price per gallon for standard diesel fuel, and $0.0520 below OPIS Daily Rack Average price per gallon for renewable diesel fuel. Contractor's billing rates shall cover all costs and expenses for Contractor's performance of this Agreement. No work shall be performed by Contractor in excess of the total compensation amount provided in this section without the City's prior written approval.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

To City:
Public Works Director
City of Tracy
520 Tracy Blvd

To Contractor:
Lori Toccoli
Stockton Petroleum Company, Inc.
PO Box 326

Tracy, CA 95376 *Stockton, CA 95021*

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

14. Miscellaneous.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[SIGNATURES ON FOLLOWING PAGE]

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

City of Tracy

By: Nancy D. Young
Title: Mayor
Date: _____

Attest:

_____
Adrianne Richardson, City Clerk

Approved as to form:

_____
Bijal M. Patel, City Attorney

Stockton Petroleum Company, Inc.

DocuSigned by:
Lori Toccoli
78E4E27604114...
By: Lori Toccoli
Title: President/CEO
Date: 9/4/2024 | 5:13 PM EDT

Federal Employer Tax ID No. 68-0099689

By: Mark Lill
Title: Secretary
Date: 8-30-2024

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

TECHNICAL SPECIFICATIONS

FOR

GASOLINE AND DIESEL FUEL SUPPLIER 2024 - 2026

FOR

CITY OF TRACY, A MUNICIPAL CORPORATION,

SAN JOAQUIN COUNTY, CALIFORNIA

* *

1. SCOPE OF WORK:

Contractor shall supply gasoline, diesel, and renewable diesel fuel to the City during the Agreement period. Contractor may be required to furnish information supporting their ability to supply, without major interruption, the products covered in this proposal.

3. DELIVERY REQUIREMENTS:

A. Products shall be delivered as ordered by a Public Works Department Supervisor or designee.

B. The City reserves the right to add or delete delivery locations as required by its operations. Contractor shall not charge a zone price differential for delivery.

C. If an order is placed for a truck and trailer quantity to be delivered to a truck and trailer location and the Contractor elects to make that delivery in a vehicle of lesser capacity, the Contractor shall not charge more than truck and trailer prices.

D. All deliveries shall be made in a metered truck or temperature correction adjustments to 60º F shall be made.

E. All deliveries shall be Free On Board (F.O.B.) destination to delivery locations as required. No delivery charges shall be made.

F. All deliveries shall be made within 24-36 hours after order has been placed. Orders shall be placed by authorized e-mail or phone call with follow-up e-mail.

4. DELIVERY LOCATION:

Contractor shall furnish the products at the following location:

Address	Tank Capacity (gallons)
Boyd Service Center 520 Tracy Boulevard Tracy, California	9,000 Diesel and/or Renewable Diesel 9,000 Unleaded Gasoline

Fuel delivery is not limited to these locations. The City may require periodic fuel delivery at other locations that are to be determined as necessary.

5. QUALITY:

Only products of new manufacture or distillation will be accepted. No reclaimed products will be accepted. Products shall be seasonally blended with appropriate vapor pressures. Contractor shall guarantee that the fuels they provide shall be of the highest quality and shall meet the intent of the specifications.

6. PRICE VERIFICATION:

During the Agreement period, the Contractor will be required to provide price verification. This may be supplied in the form of rack prices in effect at time of delivery and/or copy of Contractor's Rack Supplier invoices that show prices paid for product delivered. The Contractor agrees to make available at their office, at reasonable times during the period of the Agreement, any of the above records for inspection or audit by an authorized representative of the City.

EXHIBIT B - Compensation

Contractor's total compensation under this Agreement shall not exceed $2,400,000 (two million four hundred thousand) dollars per fiscal year. For the services performed by Contractor under this agreement, City shall pay Contractor on a time and expense basis, at the billing rates set forth at $0.0972 below OPIS Stockton Daily Rack Average price per gallon for unleaded gasoline, $0.0520 below OPIS Stockton Daily Rack Average price per gallon for standard diesel fuel, and $0.0520 below OPIS Daily Rack Average price per gallon for renewable diesel fuel.

APPROVED AS TO FORM AND LEGALITY

_____
CITY ATTORNEY'S OFFICE

TRACY CITY COUNCIL

RESOLUTION NO. 2024-_____

APPROVING A GENERAL SERVICES AGREEMENT WITH STOCKTON PETROLEUM COMPANY, INC. FOR THE GASOLINE AND DIESEL FUEL SERVICES FOR A TERM OF TWO-YEARS, COMMENCING ON OCTOBER 15, 2024, AND A TOTAL NOT TO EXCEED AMOUNT OF $1,537,000 PER FISCAL YEAR

WHEREAS, the City of Tracy requires 200,000 gallons of unleaded gasoline and 75,000 gallons of diesel for all 641 City owned vehicles and equipment, of which 439 use unleaded gasoline and 202 use diesel; and

WHEREAS, fuel is delivered to the City's fuel dispensing system at Boyd Service Center and is monitored by the vehicle number; and

WHEREAS, the City needs a supplier to provide fuel supply and services for the City's daily operations; and

WHEREAS, the City is currently contracted with Stockton Petroleum Company, Inc. (Contractor) for fuel supply and services and that contract expired on September 30, 2024; and

WHEREAS, the City issued a Notice Inviting Bids (NIB) on June 12, 2024, to acquire such supply and services, and received three (3) responsive bids on July 1, 2024; and

WHEREAS, the NIB required bids to be submitted in the form of cents-per-gallon (rounded to the nearest thousandths of a cent) markup over/under the Oil Price Information Service (OPIS) Stockton Daily Rack Average; and

WHEREAS, Stockton Petroleum Company, Inc. submitted the lowest responsive bid, which was based on the fact that they offered the largest discounts from the OPIS Stockton Daily Rack Rate Average; and this bidder also met the other bid requirements in the NIB; and

WHEREAS, staff recommends that the City Council authorize the execution of a General Services Agreement in the form attached as Exhibit 1 with Contractor to provide fuel supply and service for a two-year term, starting on October 15, 2024 and ending on September 30, 2026; and

WHEREAS, the cost of goods and services provided will be accounted for in the annual adopted fuel budget in the Internal Services Fund: Fleet; this budget does not include the fuel used for generators at the Temporary Emergency Homeless Shelter, which is a separate contract; and now, therefore, be it

RESOLVED: That the City Council of the City of Tracy hereby approves the execution of the General Services Agreement with Stockton Petroleum Company, Inc. attached as Exhibit 1, to provide fuel supply and services for a two-year term, commencing on October 15, 2024.

* * * * * * * * * * * * * *

The foregoing Resolution 2024-_____ was adopted by the Tracy City Council on October 15, 2024, by the following vote:

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

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

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

October 15, 2024

Agenda Item 1.M

RECOMMENDATION

The City Council adopt a Resolution waiving the City Council Appointment Policy process under Resolution 2024-042 and deferring, instead, to the Interview Process under the Bylaws of the Environmental Sustainability Commission to fill youth vacancies.

EXECUTIVE SUMMARY

On March 19, 2024, the City Council amended the *Council Policy Establishing a Selection Process for Appointments to City Advisory Bodies* (see Attachment A) through Resolution 2024-042 (Appointment Policy). Section D of the Appointment Policy defines the selection process, which requires the full City Council, in open session at a regular or special meeting, review applications, interview applicants, and make informal recommendations of specific candidates for the Mayor to consider as proposed appointees.

On October 1, 2024, Mayor Young proposed, and the City Council body approved, that the Appointment Policy process be suspended for the vacancies on the Youth Advisory Commission (YAC) and that, instead of the Appointment Policy process, the candidates for the vacancies on the YAC be interviewed through the process outlined in the YAC Bylaws. Mayor Young requested a similar process be applied to fill the youth vacancies on the Environmental Sustainability Commission (ESC). That request was seconded by Council Member Bedolla.

Staff has returned with this item to affirm the selection process for youth commissioners as provided in the ESC Bylaws.

BACKGROUND AND LEGISLATIVE HISTORY

The City Council's current selection process for appointment to Council boards, commissions, or committees is set forth in the Appointment Policy approved through Resolution 2024-042. The selection process is initiated through the preparation of the appointment list by the City Clerk on or before December 31 of each year. The list contains the list of appointees and terms for each board, commission, and committee whose members serve at the pleasure of the City Council. When a vacancy occurs, a special notice is posted within twenty (20) days of the vacancy. Specific terms apply to vacancies with less than six months remaining and when filled by an emergency appointment. The Appointment Policy also restricts appointment of an individual already serving on a City of Tracy board, committee, or commission from serving on an additional City of Tracy board, committee, or commission concurrently. In addition, individuals selected to a City of Tracy board, committee, or commission must meet residency requirements contained in the policy.

The City Council has established various boards and commissions over the years, and many of those bodies have adopted bylaws. The bylaws outline the processes for interviewing and recommending candidates to fill vacancies on the respective bodies. These processes now conflict with the recently adopted Appointment Policy. As the Appointment Policy most

accurately reflects the State law applicable to general law cities, it would supersede any conflicting bylaws. However, the City Council always retains the discretion to approve an alternative process (as long as it is otherwise consistent with State law) that may be proposed by the Mayor, who retains the sole power to appoint (subject to the approval of the Council body) to the City's boards and commissions.

On October 1, 2024, the City Council held a special meeting to interview and make recommendations to the Mayor for appointments for two adult vacancies on the YAC. The City has received 16 applications to fill youth vacancies on the YAC. For efficiency, Mayor Young, motioned, and the Council body approved, that the Appointment Policy be suspended this one time and have the youth be interviewed through the process outlined in the YAC bylaws instead.

Similarly, the ESC has two youth vacancies that need to be filled, and the ESC Bylaws (Attachment B) are inconsistent with the Appointment Policy in that they call for a specific selection panel to review and recommend youth applications. Staff proposes that the ESC youth commissioner appointments be filled by the ESC Bylaws instead of the Appointment Policy.

ANALYSIS

On May 15, 2024, the City Clerk opened a recruitment to fill two (2) youth vacancies on the ESC. This gave youth an opportunity to apply prior to summer vacation, however, only one application has been received. Recruitment remains open to date. At the Special Meeting on October 1, 2024, the City Council, via motion, elected to have all youth be interviewed through the process outlined in the existing YAC bylaws.

Staff recommends the City Council, by resolution, waive the Appointment Policy under Resolution 2024-042, and defer to the bylaws of the ESC for selection and recommendation of candidates for youth vacancies on this commission. This would allow both commissions to interview youth candidates in the same manner. The final recommendations will be brought back to the City Council at a future meeting, at which time the Mayor may propose appointments based on the recommendations of the YAC.

FISCAL IMPACT

There is no fiscal impact as a result of this agenda item.

STRATEGIC PLAN

This agenda item supports the City's Governance Strategy, and specifically implements the following goal:

Governance: Goal 1: Model Good Governance, Teamwork, and Transparency

ACTION REQUESTED OF THE CITY COUNCIL

The City Council adopt a Resolution waiving the City Council Appointment Policy process under Resolution 2024-042 and deferring, instead, to the Interview Process under the Bylaws of the Environmental Sustainability to fill youth vacancies.

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

Reviewed by: Sara Castro, Finance Director
Bijal Patel, City Attorney
Karin Schnaider, Assistant City Manager/Interim Public Works Director

Approved by: Midori Lichtwardt, City Manager

Attachments:

A – Council Policy Establishing a Selection Process for Appointments to City Advisory Bodies

B – Resolution 2023-068 - ESC Bylaws

APPROVED AS TO FORM AND LEGALITY

CITY ATTORNEY'S OFFICE

TRACY CITY COUNCIL

RESOLUTION 2024-042

AMENDING THE COUNCIL POLICY ESTABLISHING A SELECTION PROCESS FOR APPOINTMENTS TO CITY ADVISORY BODIES TO ALLOW THE FULL CITY COUNCIL TO INTERVIEW CANDIDATES AND MAKE INFORMAL RECOMMENDATIONS OF SPECIFIC CANDIDATES FOR THE MAYOR TO CONSIDER AS PROPOSED APPOINTEES, SUBJECT TO FINAL APPROVAL OF THE CITY COUNCIL

WHEREAS, the *Council Policy Establishing a Selection Process for Appointments to City Advisory Bodies* (Appointment Policy) sets forth the process by which vacancies on City committees, subcommittees, and commissions are filled; and

WHEREAS, the most recent version of the Appointment Policy was adopted on December 21, 2021, by the City Council through Resolution 2021-200; and

WHEREAS, under Government Code Section 40605, the elected mayor of a general law city solely has the authority to appoint, subject to council approval, to council committees, sub-committees. and commissions, as well as any regional bodies to which the council sends a delegate; and

WHEREAS, the selection process contained in the Council's Appointment Policy does not fully comply with Government Code Section 40605 as it states that the City Council appoints to a sub-committee to interview candidates and appoints, based on the recommendations of the sub-committee, and no explicit authority of the Mayor to propose appointments is noted; and

WHEREAS, on March 5, 2024, the City Council discussed options to align the Appointment Policy with Government Code Section 40605; and

WHEREAS, after discussion, the City Council directed staff to return with a proposed amendment to the Appointment Policy that would allow the full City Council to interview candidates, in open session at a regular or special meeting; and

WHEREAS, the City Council had not reached consensus on what the next steps would be after the Council interviews had been completed and asked staff to return with two options for the City Council's further deliberation and final selection; and

WHEREAS, the City Council deliberated further at its meeting on March 19, 2024 and finalized the option set forth herein; now, therefore, be it

RESOLVED: That the City Council of the City of Tracy hereby amends the Appointment Policy as set forth in **Exhibit A**, as amended, such that the full City Council shall interview candidates, in open session at a regular or special meeting, and upon completing the interviews,

shall make ~~final~~ informal recommendations of specific candidates for the Mayor to consider as proposed appointees; and be it

FURTHER RESOLVED: That the amended Appointment Policy shall become effective immediately upon adoption of this Resolution; and be it

FURTHER RESOLVED: That the City Council authorizes the City Clerk to proceed with the process to fill vacancies as set forth in the newly amended Appointment Policy.

* *

The foregoing Resolution 2024-042 was adopted by the Tracy City Council on the 19th day of March 2024 by the following vote:

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

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

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

COUNCIL POLICY ESTABLISHING A SELECTION PROCESS FOR APPOINTMENTS TO CITY ADVISORY BODIES

(Exhibit "A" to Resolution No. 2024-042)

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. This process acknowledges and is consistent with Government Code Section 40605, which requires that the elected mayor of a general law city solely has the authority to appoint, subject to council approval, to council committees, sub-committees. and commissions, as well as any regional bodies to which the council sends a delegate.

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 and Mayor shall use the following selection process to provide an equal opportunity for appointment to a board, commission or committee:

1. The full Council shall, in open session at a regular or special meeting, review applications, interview applicants and make ~~final~~ informal recommendations of specific candidates for the Mayor to consider as proposed appointees for appointment to the board, commission or committee.

2. Upon receiving the recommendations of the Council, the Mayor will propose an appointee to the board, commission or committee, which proposed appointee shall be approved or disapproved, by majority vote, of the Council. The Mayor ~~shall~~ may endeavor to propose appointees that are recommended by the Council, but the Mayor may propose alternate appointees pursuant to mayoral authority under Government Code 40605. ~~The alternates shall be chosen from the eligibility list, if it has been created pursuant to section 4 below.~~

3. If the Council disapproves an appointee proposed by the Mayor, the Mayor shall propose an alternate appointee, which shall be either approved or disapproved by the Council, by majority vote. This process shall continue until all vacancies on the board, commission or committee are filled; the Mayor may elect to reopen the application process~~.~~

4. If there are more qualified candidates than the number of current vacancies, the Council may establish an eligibility list that will be used to fill future vacancies that occur in the following twelve (12) months.

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.

APPROVED AS TO FORM AND LEGALITY

CITY ATTORNEY'S OFFICE

TRACY CITY COUNCIL

RESOLUTION NO. 2023-068

APPROVING THE FORMATION AND BYLAWS OF AN ENVIRONMENTAL SUSTAINABILITY COMMISSION OF THE CITY OF TRACY

WHEREAS, The Tracy Municipal Code allows the City Council to establish advisory, ad hoc and standing commissions, to address an explicit purpose or need; and

WHEREAS, On February 7, 2023, the City Council directed staff to return to the City Council with actions to form the Environmental Sustainability Commission; and

WHEREAS, The City Council has established an Environmental Sustainability Commission for the purpose of advising the Council on the issues related to the sustainability, environment stewardship, and opportunities for advancement on those fronts; and

WHEREAS, The purpose of the Commission is to develop comprehensive, integrated environmental policies for implementation by the City to protect and enhance the City's air, water, and land; and

WHEREAS, The Environmental Sustainability Commission is advisory to the City Council; and

WHEREAS, The Environmental Sustainability Commission shall consist of ~~five~~ seven (7) members. The composition of the Commission will include five (5) adult residents and two (2) youth residents with desirable background and expertise in specified areas of environmental sustainability practices, such as the water, wastewater, solid waste, climate action, landscape/urban forest, and/or sustainable energy; and

WHEREAS, Regular meetings of the Environmental Sustainability Commission shall be held on the 4th Thursday of each month and shall begin at 7:00 p.m.; and

WHEREAS, The Commission would be supported by the Utilities and Operations Department; and now, therefore, be it

RESOLVED: 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 of the City of Tracy hereby establishes a new standing commission of the City Council to be known as the Environmental Sustainability Commission, consisting of ~~five~~ seven members. The composition of the Commission will include five adult City of Tracy residents and two youth residents, to be appointed pursuant to the terms laid out in the amended bylaws with the following amendments:

1) Striking the sentence from Section E.3 of the bylaws.
2) Adding two voting youth that are considered high school students up to and including their senior graduating year for terms of one year that are voting members and residents of Tracy; and be it further

RESOLVED: The Commission's roles and responsibilities shall be, generally, to guide the development of an environmental sustainability plan for the City, and, more specifically, as set forth in their bylaws; and be it further

RESOLVED: The Commission shall have a regular meeting once a month on the fourth Thursday of each month, and may schedule additional special meetings, as needed, with all meetings to be noticed and conducted in compliance with the Brown Act; and be it further

RESOLVED: The Commission shall convene soon after appointments are made.

* * * * * * * * * * * * * * *

The foregoing Resolution 2023-068 was adopted by the Tracy City Council on the 18th day of April 2023 by the following vote:

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

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

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

BYLAWS OF THE
ENVIRNOMENTAL SUSTAINABILITY
COMMISSION
CITY OF TRACY, CALIFORNIA

WHEREAS, the City Council has established an Environmental Sustainability Commission for the purpose of advising the Council on the issues related to the sustainability, environment stewardship and opportunities for advancement on those fronts; and

WHEREAS, the Environmental Sustainability Commission is advisory to the City Council.

NOW, THEREFORE, these Bylaws govern the conduct of the meetings and the transaction of its affairs.

A. PURPOSE

1. The purpose of the Commission is to develop comprehensive, integrated environmental policies for implementation by the City to protect and enhance the City's air, water, and land.
2. The Commission is limited to performing tasks enumerated in its enabling Resolution No. 2023-068, these bylaws, and otherwise delegated to it by City Council. The Commission is responsible to the City Council and is charged with:
   2.1. Acting as an advocate for protecting, preserving, and enhancing the environment as it relates to issues under consideration by the City Council and Planning Commission.
   2.2. Serving in an advisory role to the City Council and all Boards and Commissions, as may be requested from time to time, on environmental and sustainability policy issues. The Commission may recommend new ordinances, amendments to existing ordinances, and other actions it deems appropriate.
   2.3. Providing a means for promoting discussion and education on issues related to the environment and sustainability.
   2.4. Preparing an annual report to be presented to the City Council which includes, but is not limited to these items:
      - Climate, Air and Energy
      - Stormwater
      - Urban Forest and Biodiversity
      - Consumption and Waste; including Recycling
      - Water and Conservation Resource
      - Protection and Preservation

B. ROLE AND RESPONSIBILITIES

The role of the Environmental Sustainability Commission is to provide citizen, youth, and community perspective and input on the development on emerging policy issues related to environmental sustainability, updates to the Climate Action Plan, and receive periodic progress reports from staff on meeting climate action goals.

C. MEMBERSHIP GUIDELINES

1. **Membership.** The Environmental Sustainability Commission shall consist of seven (7) members. The composition of the Commission will include five (5) adult residents, and two (2) youth residents (that are considered high school students up to and including their senior graduating year) with desirable backgrounds and expertise in specified areas of environmental sustainability practices, such as the water, wastewater, solid waste, Climate Action, landscape/urban forest, and/or sustainable energy.
2. **Term.** Each adult member shall serve a four-year term. To provide for Commissioner's terms to expire in a staggered manner, for the appointments of the initial Commissioners on the Environmental Sustainability Commission only, the City Council at its discretion will appoint two (2) Commissioners for a two-year term and three (3) Commissioners for a four-year term. After the expiration of the initial two-year and four-year terms, the terms will be four years for the adult Commissioners, and one-year term for the youth Commissioners.
3. **Attendance.** If a member of the Environmental Sustainability Commission fails to attend two (2) regular meetings in any calendar year, his or her position on the Environmental Sustainability Commission shall automatically become vacant and the staff liaison shall so inform the City Clerk. Absences may not be excused, subject to Section 4 below. 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.

   3.1. **Teleconferencing**. If a member of the Environmental Sustainability Commission chooses to participate remotely via teleconferencing, the member must abide by either: 1) teleconferencing rules under the Brown Act, or 2) use a justified excuse under AB 2449. If the member chooses to remotely participate under AB 2449, the member may only do so for two (2) regular meetings.
4. **Leave of Absence.** An Environmental Sustainability Commission member may submit a written request to the City Council for a leave of absence of up to six months, which may be approved in its discretion.
5. **AB 1234 Training and Form 700 Completion.** If a member of the Environmental Sustainability Commission who is required to complete AB 1234 training (State Mandated Ethics Training) and/or is required to complete form 700 (Statement of Economic Interest), does not do so in a timely manner, the City Clerk's Office will send two written notices at least 10 days apart to the member. If the member does not complete the required training and/or form and provide proof of compliance to the City Clerk's Office, within 30 days of receiving the second written notice, his or her appointment will automatically terminate.

D. QUORUM

A quorum of the Environmental Sustainability Commission shall consist of a majority of the members (including any vacancies). A quorum must be present in order for the Environmental Sustainability Commission to hold a meeting.

E. APPOINTMENT OF OFFICERS

1. The officers of the Environmental Sustainability Commission 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.
3. The Vice Chairperson shall assume all duties of the Chairperson in his or her absence or disability.
4. In case of the absence of both the Chairperson and Vice Chairperson from any meeting, an Acting Chairperson shall be elected from among the members present.
5. Appointment of officers. The officers will be selected by the membership for a one-year term The annual appointment of members shall take place at the last regular meeting in June of each year. The terms of members shall commence as of July 1st following the election and shall continue through June 30th of the following year. In the first year of formation, the election of officers shall take place at the first regular meeting.

F. DUTIES OF THE COMMISSION

1. Develop an annual work plan and presentation to the City Council.
2. Review and update from time to time, as necessary the Sustainability Action Plan
3. Develop policies and plans to provide for and advocate for environmental protection within the City of Tracy
4. Develop policies and plans for environmental awareness in cooperation with other public and private agencies
5. Provide recommendations to the City Council on such matters that may be referred to the Commission by City Council

G. APPOINTMENT OF MEMBERS

Membership of the Environmental Sustainability Commission will be conducted in accordance with the process set forth by the City Council under Resolution No. 2021-200, or any subsequent Resolutions.

Adult Membership Appointment

The five (5) adult members will be appointed by City Council for a four-year term.

Youth Membership Appointment

The two (2) youth members will be selected by an interview panel of three (3) members. In compliance with the City of Tracy's Youth Advisory Committee recruitment process, the panel will consist of:

- One staff member from the Operations and Utilities Division
- One Youth Advisory Committee advisor
- One Environmental Sustainability Commission officer (should no officer be available, one additional staff member from the Operations and Utilities Division will be assigned to the panel)

H. MEETINGS

1. Regular meetings of the Environmental Sustainability Commission shall be held on the 4th 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 Environmental Sustainability Commission, 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 City Council's Meeting Protocols and Rules of Procedures, section 5 Conduct of Meetings, which may be amended from time to time.

I. FUNDING

Any funding necessary for the operation of the Environmental Sustainability Commission 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 Commissions shall follow all applicable City administrative policies and procedures.

K. SUBCOMMITTEES

The Environmental Sustainability Commission may form ad hoc subcommittees in accordance with the Brown Act, and make appointments to that subcommittee, as it deems necessary. A quorum of Commission members may not be appointed to serve on a single subcommittee. Before forming a subcommittee, the Environmental Sustainability Commission shall establish a specific charge and term for the subcommittee.

APPROVED AS TO FORM AND LEGALITY

_____
CITY ATTORNEY'S OFFICE

TRACY CITY COUNCIL

RESOLUTION NO. _____

WAIVING THE CITY COUNCIL APPOINTMENT PROCESS UNDER RESOLUTION 2024-042 AND DEFERRING, INSTEAD, TO THE INTERVIEW PROCESS UNDER THE BYLAWS OF THE ENVIRONMENTAL SUSTAINABILITY COMMISSION TO FILL YOUTH VACANCIES

WHEREAS, on March 19, 2024, the City Council amended the *Council Policy Establishing a Selection Process for Appointments to City Advisory Bodies* through Resolution 2024-042 (Appointment Policy); and

WHEREAS, Section D of the Appointment Policy defines the selection process, which requires the full City Council, in open session at a regular or special meeting, review applications, interview applicants, and make informal recommendations of specific candidates for the Mayor to consider as proposed appointees; and

WHEREAS, The City Council has established various boards and commissions over the years, and many of those bodies have adopted bylaws outline the processes for interviewing and recommending candidates to fill vacancies on the respective bodies; and

WHEREAS, These processes in the bylaws now conflict with the recently adopted Appointment Policy; and

WHEREAS, As the Appointment Policy most accurately reflects the State law applicable to general law cities, it would supersede any conflicting bylaws; and

WHEREAS, The City Council retains the discretion to approve an alternative process (as long as it is otherwise consistent with State law) that may be proposed by the Mayor, who retains the sole power to appoint (subject to the approval of the Council body) to the City's boards and commissions; and

WHEREAS, On October 1, 2024, the City Council held a special meeting to interview and make recommendations to the Mayor for appointments for two adult vacancies on the YAC, and the City has received 16 applications to fill youth vacancies on the YAC; and

WHEREAS, For efficiency, Mayor Young, motioned, and the Council body approved, that the Appointment Policy be suspended this one time and have the youth be interviewed through the process outlined in the YAC bylaws instead; and

WHEREAS, The Environmental Sustainability Commission (ESC) Bylaws are inconsistent with the Appointment Policy in that they call for a specific selection panel to review new applications, youth and adults alike, and make recommendations for appointment to the City Council; and

WHEREAS, On May 15, 2024, the City Clerk opened a recruitment to fill two (2) youth vacancies on the ESC giving youth an opportunity to apply prior to summer vacation, however, only one application has been received and recruitment remains open to date; and

WHEREAS, Staff requested that the same action be taken for the youth vacancies on the Environmental Sustainability Commission allowing for the selection process through the existing ESC bylaws; and

WHEREAS, Once applicants are selected under the process in the existing bylaws, recommendations will be brought back to the Mayor for appointment and City Council for approval; and

NOW, THEREFORE, be it resolved as follows:

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

FURTHER RESOLVED: That the City Council of the City of Tracy, hereby waives the standard interview policy under Resolution 24-042 and defers to the bylaws of the Environmental Sustainability Commission for the selection and recommendation of candidates for youth vacancies; and be it

FURTHER RESOLVED: That staff will return to City Council with recommendations of candidates to fill available vacancies upon completion of the interview process.

****

The foregoing Resolution 2024-_____ was adopted by the Tracy City Council on October 15, 2024, by the following vote:

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

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

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

October 15, 2024

Agenda Item 1.N

RECOMMENDATION

Staff recommends that the City Council approve Amendment No. 2 to the Master Services Agreement between the City of Tracy and Paymentus Corporation to add updated web portal and other payment options for credit card merchant services and processing.

EXECUTIVE SUMMARY

The City accepts credit cards as a form of payment for most City services. The majority of these payments are made via the internet using the City's Self-Service website (CSS). The City has been absorbing the credit card fees for most services; costing the City an estimated $490,000 annually. In July 2023, the City issued a Request for Proposals (RFP) for a new payment portal and related credit card merchant services. Staff selected Paymentus as the preferred vendor to provide an updated web payment portal as well as provide additional payment options. Paymentus is currently a vendor with the City, for a different scope of work. As the base agreement already exists, staff is recommending an amendment to that agreement to reflect the additional scope of work the City is seeking to award to Paymentus as a result of the RFP process.

In addition to the Paymentus amendment, staff will be modifying the terms of the existing scope of work with Tyler, which provides the City's cashiering system. As this modification is within the City Manager's authority and there is an existing contract in place, that modification does not require City Council action.

BACKGROUND AND LEGISLATIVE HISTORY

The City of Tracy processes approximately 11,500 credit card transactions valued at $3M on a monthly basis or over $36 million annually. Of these transactions, 59% are made via the web and another 35% are made with the Interactive Voice Response (IVR) phone system. Only 5% of credit card transactions are made in-person, and this number continues to drop. Only 1% of transactions are recurring auto payments.

The City uses several different systems and vendors to process payments received by the City for utilities, planning/building, and miscellaneous receivables. These systems use older technology which provides a very poor user experience and are difficult to reconcile in the back office. In addition, our primary credit card processor will no longer be supported beginning in January 2025.

Staff seeks to modernize the payment experience for customers through a new payment portal and updated credit card machines for in-person transactions. This will allow additional payment types (e.g. Venmo, ApplePay, PayPal, etc.), mobile friendly payments and reminders, and an enhanced web payment experience. The secondary goal is to increase both paperless billing adoption and automatic payment enrollment.

Below is a list of existing payment methods.

Payment Method	In-Person	Web	IVR	Mobile
Cash	X			
Check	X			
eCheck/ACH		X	X	X
Credit/Debit Card	X	X	X	X
Venmo, Other Pays	X	X	X	X
Touchless	X			

The grid below summarizes the payment methods after this change:

Payment Method	In-Person	Web	IVR	Lockbox	PayNearMe[1]
Cash	X				X
Check	X			X	
eCheck/ACH		X	X		
Credit/Debit Card	X	X	X		
Venmo, Other Pays	N/A	N/A			
Touchless	X				

[1] PayNearMe is a service where a customer can pay a utility bill with cash at any 7-11 store.

BridgePay currently provides “gateway” services between the web portal or cashiering system and the merchant services provider. The gateway provider collects the customer card information, encrypts it for later processing and passes it on to the merchant/acquiring bank. BridgePay will no longer be supported starting in January 2025. The gateway will be replaced by the merchant services provider: Paymentus for web transactions and Tyler for in-person transaction.

ANALYSIS

Staff recognized the need to upgrade the payment system to provide an enhanced user experience and enhanced efficiency in the Finance back office. In July 2023, staff issued an RFP for an Online Payment Services Portal and Related Merchant Services. Staff received ten responses and five were disqualified for technical reasons. The remaining five vendors were invited to give presentations of their products. From these presentations, staff selected two vendors to ultimately provide these payment services.

One of the key technical requirements in the RFP was that the proposed system be 100% compatible with the City’s existing ERP system (Tyler Munis) and that the vendor have existing customers connected to Tyler Munis. The five excluded vendors did not meet this requirement.

Another key technical requirement is that the proposed system must be PCI Compliant. PCI compliance is adherence to the Payment Card Industry Data Security Standard (PCI DSS). The PCI DSS is a global security standard that applies to any organization that stores, processes, or transmits cardholder data. PCI compliance is a good business practice that protects consumer data and can improve an organization's brand reputation. PCI compliance involves three main components: handling credit card data, storing data securely, and validating security controls.

All proposed systems were certified as PCI Compliant.

Section 1.0.2 of the RFP included optional services including proposing a provider/gateway for in-person payments compatible with the City's cashiering system. The City currently uses Tyler for its cashiering system. Staff was hopeful that other vendors would be able to have compatible products. However, only one vendor, Tyler, was able to propose a solution that fully integrates with the City's existing cashiering system. So, by default, Tyler was accepted to provide processing for in-person payments. As there is an existing contract in place with Tyler and the proposed additional work is within the City Manager's authority, the modification to the scope of work does not require City Council action.

The proposed payment portal has many new and/or enhanced features including:

- Guest payments (ability to make a payment without logging in)
- Mobile payments (pay from your cell phone or tablet)
- Schedule automatic payments
- Digital Wallet
- Paperless billing and automatic payment enrollment
- Text to Pay payments
- Accepts additional payment types such as Venmo, ApplePay, GooglePay and PayPal
- Transfers most PCI Compliance liability to vendor
- Adds walk-in payments at all Walmart's
- Adds an A.I. Chat-Bot to answer frequently asked questions

Attachment "B" displays the matrix of the current payment processing and merchant grid, as well as the proposed changes. One significant change will be the ability to take eChecks instead of credit cards for non-utility payments. This will greatly enhance the ability for home builders to pay electronically instead of having to mail or deliver a check or pay with a credit card.

Currently, the City absorbs 100% of the credit card processing fees for all payments. This results in an annual cost of approximately $490,000. Of this amount, $270K is a result of utility payments, $216K is from planning, building and permitting and $4K from miscellaneous payments. The future costs are dependent on credit card autopay adoption rates, credit card mix, and overall transaction volume. Total costs are expected to remain stable.

In addition to the web-based transactions discussed above, the City utilizes various vendors and payment processors/providers for other types of service. Some of these providers charge a service fee while some do not. As the City has little control over these outside providers, they will not be affected by this change.

VENDOR SELECTION

After multiple presentations, staff selected Paymentus as the preferred choice for web, mobile and IVR payments. Paymentus is an existing vendor and is currently our IVR payment provider.

The second vendor selected is Tyler for in-person payments. Tyler is the only vendor that fully supports the point-of-sale hardware that interfaces to Tyler Munis. Tyler is our vendor for in-person payments.

FEES

Paymentus has proposed a fee based on the full pass-through of all interchange and assessments plus $1.10, or an optional 2.95% convenience fee. Tyler has proposed a fee based on the full pass-through of interchange and assessments plus .5% and $.50. Despite the date of the RFP, both vendors have agreed to honor these proposed fees.

FISCAL IMPACT

Staff estimates that the overall fees will be approximately the same at around $490,000 annually. Of this, $220,000 is considered a general fund expense and $270,000 is charged to the utility funds.

PUBLIC OUTREACH/ INTEREST

The Finance Department, in conjunction with the City's Public Information Officer, and the vendor, is developing a comprehensive outreach plan to City customers explaining the changes. The plan will begin upon approval of this amendment and continue for at least three months. Engagement will be through:

- Flyers
- Utility bill inserts
- Social media
- Tracy Press
- City website
- Finance phone system
- Videos on City website
- Channel 26

The outreach will occur in phases:

- Month 1 – "Changes Are Coming"
- Month 2 – First Reveal of New Website
- Month 3 – Detailed instructions and videos
- Month 4 & Beyond – Enrollment campaign for paperless bill and automatic payments

STRATEGIC PLAN

This agenda item supports the City's Governance Strategic Priorities, with Goal #2: Ensure Short and Long-term Fiscal Health, and Goal #3: Enhance Community Engagement Through Technology.

ACTION REQUESTED OF THE CITY COUNCIL

Staff recommends that the City Council approve Amendment No. 2 to the Master Services Agreement between the City of Tracy and Paymentus Corporation to add updated web portal and other payment options for credit card merchant services and processing.

Prepared by: Robert Harmon, Accounting Manager

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

Approved by: Midori Lichtwardt, City Manager

Attachments:

- Attachment A – Paymentus Agreement Amendment No. 2
- Attachment B – Current Payment Processing/Merchant Grid

Docusign Envelope ID: 336F8DE1-1C78-4913-AFA4-E1ED20D89957

ATTACHMENT A

Paymentus 11605 N. Community House Road, Suite 300
Charlotte, NC 28277

AMENDMENT NO. 2
TO MASTER SERVICES AGREEMENT EFFECTIVE May 10, 2018

This Amendment No. 2 ("Amendment") amends the Master Services Agreement (the "Agreement") effective as of May 10, 2018, which was modified by Amending Agreement on May 21, 2018 between City of Tracy, a California ("Client") with a principal place of business located at 333 Civic Center Plaza, Tracy, CA 95376 Paymentus Corporation, a State of Delaware Corporation with a principal place of business at 11605 N. Community House Rd, Suite 300, Charlotte, North Carolina 28277 ("Paymentus"). Client and Paymentus are also referred to as "Party" and collectively as the "Parties." This Amendment is effective at the time of the last to sign of the Parties ("Amendment Effective Date").

STATEMENT OF PURPOSE

Client and Paymentus entered into the Agreement for electronic bill payment services;

The Parties agree to amend the Agreement to update the Paymentus Fees and to add Non-Utility payments.

AGREEMENT

In consideration of mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Client and Paymentus agree as follows:

1. Amendment. The Agreement is hereby amended as of the Amendment Effective Date as follows:

1.1 Schedule A -– Paymentus Fee Schedule ("Schedule A") of the Agreement is hereby deleted and the new Schedule A attached here to is substituted in lieu thereof.

2. Miscellaneous:

2.1 This Amendment is binding and inures to the benefit of the Parties and their respective successors and assigns.

2.2 All other terms and conditions of the Agreement not modified by this Amendment remain in full force and effect.

2.3 This Amendment may be executed in two or more counterparts, each of which shall be deemed to be an original, but all of which shall constitute one and the same instrument.

CONFIDENTIAL AND PROPRIETARY
Paymentus legal | Revised 6.10.20

Docusign Envelope ID: 336F8DE1-1C78-4913-AFA4-E1ED20D89957

Paymentus
11605 N. Community House Road, Suite 300
Charlotte, NC 28277

IN WITNESS WHEREOF, the Parties hereto have caused this Amendment to be executed by their duly authorized representatives.

CITY OF TRACY, CA

By: _____

Printed Name: _____

Title: _____

Date: _____

APPROVED AS TO FORM:

By: _____

Name: _____

Title: _____

Date: _____

PAYMENTUS CORPORATION

By: DocuSigned by: Jerry Portocalis F9A76FE96FFA4F2...

Printed Name: Jerry Portocalis

Title: Chief Commercial Officer

Date: 10/10/2024 | 1:12 PM EDT

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Paymentus legal | Revised 6.10.20

Docusign Envelope ID: 336F8DE1-1C78-4913-AFA4-E1ED20D89957

Paymentus
11605 N. Community House Road, Suite 300
Charlotte, NC 28277

Schedule A – Paymentus Fee Schedule

The Paymentus Fee will be as specified below, and will be paid by either Client ("Client Fee") or User ("User Fee") based on the identified Fee Model

Payment Methods	Payment Type	Paymentus Fee	Fee Model
Instant Payment Network™ All payment methods offered under IPN and digital wallets such as PayPal, Venmo, PayPal Credit, Apple Pay, Google Pay, Amazon Pay, PayPal CFS and others as offered by Paymentus	Utility	Full pass through of all Interchange and Assessment plus $1.10	Client Fee
	Non-Utility	2.95% of payment total, or a minimum fee of $1.00 whichever is greater	User Fee
Credit, Debit	Utility	Full pass through of all Interchange and Assessment plus $1.10	Client Fee
	Non-Utility	2.95% of payment total, or a minimum fee of $1.00 whichever is greater.	User Fee
ACH	Utility	$0.99 per transaction	Client Fee
	Non-Utility	$0.99 per transaction	User Fee
Non-Qualified Card Payments	Utility	2.65% of the transaction amount	Client Fee
Enterprise Communication Manager ("ECM") Outbound Messaging (SMS, Email, IVR)		Client will receive 1,500 messages per month at no charge. Additional messages will be billed as shown below: • IVR: $0.15 per call • Email: $0.05 per message • SMS/Text: $0.25 per message	Client Fee
Chargeback and Returned Check Fee		$9.95 per item	Client Fee

Payment Type	Average Bill Amount	Maximum Payment Amount: ACH/eCheck	Maximum Payment Amount: Credit & Debit
Utility	$220.00	$100,000.00	$50,000.00
Non-Utility	Animal Services - $176.00 Develop Services - $6,536.00 Misc./Rec - $550.00 Police Department - $1,000.00	Animal Services - $5,000.00 Develop Services - $999,999.00 Misc./Rec - $25,000.00 Police Department - $5,000.00	Animal Services - $2,500.00 Develop Services - $100,000.00 Misc./Rec - $10,000.00 Police Department - $2,500.00

Note: The Paymentus Service Fee will be billed collected in addition to the end-user bill payment total. Paymentus may apply different limits per transaction for user adoption or to mitigate risks. Multiple payments are allowed.

CONFIDENTIAL AND PROPRIETARY
Paymentus legal | Revised 6.10.20

ATTACHMENT B

Current Payment Processing/Merchant Grid

Definitions:

System – The central business application, e.g. finance, community development, that incorporates and/or requires payments. The primary City systems are Munis, Cashiering and TRAKiT.

Gateway – A payment gateway collects customer card information, encrypts it for later processing and passes it on to the merchant/acquiring bank. Separate gateway software is no longer necessary.

Payment Processor – A service that connects the customers bank to the merchant account and facilitates the actual movement of money. The payment processor collects the interchange and various fees from the merchant and /or customer.

Payment Type	Source	Payment Methods	System	Credit Card/eCheck Gateway	Credit Card/eCheck Processor	Munis Integration Level
			UTILITIES			
Utilities	OTC	Cash, CC, Check	Tyler Cashiering	BridgePay	WFMS	1
	Web	CC, eCheck	Tyler CSS	BridgePay	WFMS	1
	Autopay	CC	Munis	BridgePay	WFMS	2
	Autopay	EFT	Munis	N/A	N/A	3
	Lockbox	Mail/Check/ Bank Bill Pay	Munis	N/A	N/A	3
	IVR	CC, eCheck	Paymentus IVR	PayPal Pro	Chase	1
Utility Payment Plans	OTC	Cash, CC, Check	Tyler Cashiering	BridgePay	WFMS	1
	Web	None	N/A	N/A	N/A	0
	Autopay	None	N/A	N/A	N/A	0
	Lockbox	Mail/Check/ Bank Bill Pay	Munis	N/A	N/A	3
			NON-UTILITIES			
Misc A/R	OTC	Cash, Check, CC	Tyler Cashiering	BridgePay	WFMS	1
	Web	Credit Card, eCheck	Tyler CSS	BridgePay	WFMS	1
	Autopay	None	N/A	N/A	N/A	0
	Autopay	EFT	Munis	N/A	N/A	3
	Lockbox	None	N/A	N/A	N/A	0
Permits/TRAKiT	OTC	Cash, Check, CC	Manual Entry/ Tyler Cashiering	BridgePay	WFMS	4
Permits/eTRAKiT	Web	CC	eTRAKiT Portal/ Manual Post	PayPal Pro	WFMS	4
Police	OTC	Cash, Check, CC	Tyler Cashiering	BridgePay	WFMS	5
Animal Services	OTC	Cash, Check, CC	Tyler Cashiering	BridgePay	WFMS	5

Autopay = Scheduled/recurring payments
CC = Credit Card
EFT = ACH Credit
Lockbox = Mailed checks, bank bill pay
OTC = Over-the-Counter/In-Person
Web = Web Portal
WFMS = Wells Fargo Merchant Services

0 No integration or payment method not available
1 Fully integrated, real-time display on customer account, batches posted daily by back office.
2 Fully integrated, real-time display on customer account once transaction file is submitted for processing
3 Partially integrated, real-time display on customer account once file received from bank
4 No integration, payments entered into Cashiering manually
5 Integrated for GL purposes, customer accounts are not used

Replaced by Paymentus

Replaced by Tyler

Chase – Processor dictated by software (e.g. Tyler or Paymentus)

APPROVED AS TO FORM AND LEGALITY

_____
CITY ATTORNEY'S OFFICE

TRACY CITY COUNCIL

RESOLUTION NO. 2024 - _____

APPROVING AMENDMENT NO. 2 TO THE MASTER SERVICES AGREEMENT BETWEEN THE CITY OF TRACY AND PAYMENTUS CORPORATION TO ADD UPDATED WEB PORTAL AND OTHER PAYMENT OPTIONS FOR CREDIT CARD MERCHANT SERVICES AND PROCESSING.

WHEREAS, the City of Tracy (City) accepts credit cards as a form of payment for most of the services provided by the City; and

WHEREAS, the majority of these payments are made via the internet using the City's Self-Service website (CSS) and the City absorbs the credit card costs for most services, costing an estimated $490,000 annually; and

WHEREAS, the City uses several different systems and vendors to process payments received by the City for utilities, planning/building, and miscellaneous receivables; and

WHEREAS, these systems use older technology which provides a very poor user experience and are difficult to reconcile in the back office and the City's primary credit card gateway, Bridgepay, will no longer be supported beginning in January 2025; and

WHEREAS, staff recognized the need to upgrade the payment system to provide an enhanced user experience and enhanced efficiency in the Finance back office and issued a Request for Proposals in July 2023 for an Online Payment Services Portal and Related Merchant Services; and

WHEREAS, the City received ten responses, five were disqualified for technical reasons and the remaining five vendors were invited to give presentations of their products; and

WHEREAS, after carefully reviewing all the proposals and through an extensive interview process staff has selected Paymentus Corporation (Consultant) as the most qualified vendor to provide an updated web payment portal as well as provide additional payment options that will meet City's requirements; and

WHEREAS, the City has an existing Master Services Agreement with the Consultant (2018 Agreement) for utility electronic bill payment services executed on May 10, 2018; and

WHEREAS, a technical amendment, Amendment No. 1 to the agreement, was approved on August 21, 2018; and

WHEREAS, the execution of this amendment is the most efficient method that will allow a smooth transition to this new payment portal without having any service interruption issues and will prevent any equipment failures in January 2025; and

WHEREAS, staff has also selected Tyler for in-person payments as Tyler is the only vendor that fully supports the point-of-sale hardware that interfaces to Tyler Munis; and

WHEREAS, Tyler is the City's existing vendor for in-person payments; and

WHEREAS, as there is an existing contract in place with Tyler and the proposed additional work is within the City Manager's authority, the modification to the scope of work in the Tyler contract does not require City Council action; and now therefore be it

RESOLVED: That the City Council of the City of Tracy hereby approves the execution of Amendment No. 2 to the Master Services Agreement with Paymentus Corporation, attached hereto as Exhibit A; and be it

FURTHER RESOLVED: That the City Council directs staff to take such actions needed to modify the scope of work to the Tyler contract to ensure that no overlapping work is provided by Paymentus and Tyler, after the new portal and processes have been implemented; and be it

FURTHER RESOLVED: That the City, after review and approval by the City Attorney's Office, may execute and take any and all further actions to effectuate the purposes of this Resolution.

* * * * * * * * * * * * * * * * * *

The foregoing Resolution 2024-_____ was adopted by the Tracy City Council on October 15, 2024, by the following vote:

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

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

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

Exhibit A - Master Services Agreement with Paymentus Corporation

Docusign Envelope ID: 336F8DE1-1C78-4913-AFA4-E1ED20D89957

EXHIBIT A

Paymentus 11605 N. Community House Road, Suite 300
Charlotte, NC 28277

AMENDMENT NO. 2
TO MASTER SERVICES AGREEMENT EFFECTIVE May 10, 2018

This Amendment No. 2 ("Amendment") amends the Master Services Agreement (the "Agreement") effective as of May 10, 2018, which was modified by Amending Agreement on May 21, 2018 between City of Tracy, a California ("Client") with a principal place of business located at 333 Civic Center Plaza, Tracy, CA 95376 Paymentus Corporation, a State of Delaware Corporation with a principal place of business at 11605 N. Community House Rd, Suite 300, Charlotte, North Carolina 28277 ("Paymentus"). Client and Paymentus are also referred to as "Party" and collectively as the "Parties." This Amendment is effective at the time of the last to sign of the Parties ("Amendment Effective Date").

STATEMENT OF PURPOSE

Client and Paymentus entered into the Agreement for electronic bill payment services;

The Parties agree to amend the Agreement to update the Paymentus Fees and to add Non-Utility payments.

AGREEMENT

In consideration of mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Client and Paymentus agree as follows:

1. Amendment. The Agreement is hereby amended as of the Amendment Effective Date as follows:

1.1 Schedule A -– Paymentus Fee Schedule ("Schedule A") of the Agreement is hereby deleted and the new Schedule A attached here to is substituted in lieu thereof.

2. Miscellaneous:

2.1 This Amendment is binding and inures to the benefit of the Parties and their respective successors and assigns.

2.2 All other terms and conditions of the Agreement not modified by this Amendment remain in full force and effect.

2.3 This Amendment may be executed in two or more counterparts, each of which shall be deemed to be an original, but all of which shall constitute one and the same instrument.

CONFIDENTIAL AND PROPRIETARY
Paymentus legal | Revised 6.10.20

Docusign Envelope ID: 336F8DE1-1C78-4913-AFA4-E1ED20D89957

Paymentus
11605 N. Community House Road, Suite 300
Charlotte, NC 28277

IN WITNESS WHEREOF, the Parties hereto have caused this Amendment to be executed by their duly authorized representatives.

CITY OF TRACY, CA

By: _____

Printed Name: _____

Title: _____

Date: _____

APPROVED AS TO FORM:

By: _____

Name: _____

Title: _____

Date: _____

PAYMENTUS CORPORATION

By: DocuSigned by: Jerry Portocalis F9A76FE96FFA4F2...

Printed Name: Jerry Portocalis

Title: Chief Commercial Officer

Date: 10/10/2024 | 1:12 PM EDT

CONFIDENTIAL AND PROPRIETARY
Paymentus legal | Revised 6.10.20

Docusign Envelope ID: 336F8DE1-1C78-4913-AFA4-E1ED20D89957

Paymentus
11605 N. Community House Road, Suite 300
Charlotte, NC 28277

Schedule A – Paymentus Fee Schedule

The Paymentus Fee will be as specified below, and will be paid by either Client ("Client Fee") or User ("User Fee") based on the identified Fee Model

Payment Methods	Payment Type	Paymentus Fee	Fee Model
Instant Payment Network™ All payment methods offered under IPN and digital wallets such as PayPal, Venmo, PayPal Credit, Apple Pay, Google Pay, Amazon Pay, PayPal CFS and others as offered by Paymentus	Utility	Full pass through of all Interchange and Assessment plus $1.10	Client Fee
	Non-Utility	2.95% of payment total, or a minimum fee of $1.00 whichever is greater	User Fee
Credit, Debit	Utility	Full pass through of all Interchange and Assessment plus $1.10	Client Fee
	Non-Utility	2.95% of payment total, or a minimum fee of $1.00 whichever is greater.	User Fee
ACH	Utility	$0.99 per transaction	Client Fee
	Non-Utility	$0.99 per transaction	User Fee
Non-Qualified Card Payments	Utility	2.65% of the transaction amount	Client Fee
Enterprise Communication Manager ("ECM") Outbound Messaging (SMS, Email, IVR)		Client will receive 1,500 messages per month at no charge. Additional messages will be billed as shown below: • IVR: $0.15 per call • Email: $0.05 per message • SMS/Text: $0.25 per message	Client Fee
Chargeback and Returned Check Fee		$9.95 per item	Client Fee

Payment Type	Average Bill Amount	Maximum Payment Amount: ACH/eCheck	Maximum Payment Amount: Credit & Debit
Utility	$220.00	$100,000.00	$50,000.00
Non-Utility	Animal Services - $176.00 Develop Services - $6,536.00 Misc./Rec - $550.00 Police Department - $1,000.00	Animal Services - $5,000.00 Develop Services - $999,999.00 Misc./Rec - $25,000.00 Police Department - $5,000.00	Animal Services - $2,500.00 Develop Services - $100,000.00 Misc./Rec - $10,000.00 Police Department - $2,500.00

Note: The Paymentus Service Fee will be billed collected in addition to the end-user bill payment total. Paymentus may apply different limits per transaction for user adoption or to mitigate risks. Multiple payments are allowed.

CONFIDENTIAL AND PROPRIETARY
Paymentus legal | Revised 6.10.20

October 15, 2024

Agenda Item 1.O

RECOMMENDATION

Staff recommends that the City Council adopt a resolution:
(1) Accepting a Grant of Easement from the Bureau of Reclamation for the International Parkway Bridge Replacement and Expansion Project, Capital Improvement Project 73148 and (2) Authorizing the City Clerk to record the Grant of Easement with the Office of the San Joaquin County Recorder.

EXECUTIVE SUMMARY

This agenda item seeks adoption of a resolution by the City Council accepting a Grant of Easement from the Bureau of Reclamation (BOR) for the International Parkway Bridge Replacement and Expansion Project, Capital Improvement Project 73148 (Project).

On June 15, 2021, the City of Tracy (City) accepted an Economic Development Administration Grant (EDA Grant) in the amount of $8,350,057 for the Project. The EDA Grant is a reimbursement grant and the City will receive reimbursements for expenses, if the Project moves forward. The acceptance of this Grant of Easement is one of the required 33 Specific Award Conditions from the BOR. Once this Grant of Easement is accepted by the City, all other permits and property rights needed to proceed with construction will have been completed.

However, as explained below, there is a significant funding shortfall, and the Project may not move forward at this time despite the procurement of all permits and property rights. As this Project is a critical infrastructure element for the International Park of Commerce (IPC) project area, in 2020 through Resolution 2020-118, the City entered into an Infrastructure Funding & Fee Credit Agreement (Funding Agreement, see Attachment B) with Prologis, L.P. (Prologis). Under this Funding Agreement, Prologis agreed to fund any shortfall in funding for the Project. Staff is actively working with Prologis to finalize its funding obligation for this Project pursuant to the Funding Agreement. While the City seeks to fully utilize all grant awards, this Project is not a priority for the City and the City cannot proceed unless Prologis finalizes in writing its commitment to fund the significant shortfall that currently exists.

BACKGROUND AND LEGISLATIVE HISTORY

For a number of years, staff has been working with Prologis to help identify funding for the Project, which involves the reconstruction and widening of the bridge on International Parkway over the Delta Mendota Canal. The bridge is located in the IPC area, on the west side of the City and is part of International Parkway, which is a major corridor connecting I-205 in the north to I-580 in the south. Ultimately, the Project will include the replacement and expansion of the bridge over the Delta Mendota Canal (DMC) on International Parkway. It is located in the Cordes Ranch Specific Plan (CRSP) area, on the west-side of the City (Attachment A). Prologis is the Master Developer of the CRSP.

In 2020, the Coronavirus Aid Relief and Economic Security (CARES) Act went into effect, making $1.5 billion dollars in economic development assistance available to communities through the EDA. Through this program, the Development Services staff applied for a grant to cover what was at the time, eighty percent (80%) of the cost of the Project. In order to submit

the application, the City had to commit to funding the remaining twenty percent (20%) of the Project cost. Resulting from discussions with Prologis, a primary benefactor of this improvement, Prologis agreed to provide the match funding through the Funding Agreement.

Through the Funding Agreement, Prologis committed to fund the 20% match (then estimated at approximately $2,200,000) in exchange for future fee credits. Pursuant to Recital E and Section 3 of the Funding Agreement, Prologis committed to providing, "all funding for the bridge project beyond that provided by the EDA grant", in exchange for fee credits against the City's Master Plan Traffic Impact Fee(s) that would otherwise apply to the Project.

On April 29, 2021, the City was awarded an EDA Grant in the amount of $8,350,057 for the Project. And on June 15, 2021, the City Council accepted the EDA Grant award through Resolution No. 2021-075.

Subsequent to the award of the EDA Grant, Prologis hired a consultant to work with the City to assist in perfecting several conditions of the grant.

ANALYSIS

The EDA Grant has 33 Specific Award Conditions (SACs) (Attachment C) that the City is required to comply with in order to move forward with the use of the EDA Grant funds. Since the award, staff has been working diligently with the EDA and Prologis to satisfy all of the SACs. Coordination between multiple governmental agencies, such as the Bureau of Reclamation and San Luis Delta-Mendota Water Authority, was required to clear up long-standing land title issues. The resolution of these issues required many back and forth discussions and took approximately three years to complete.

Per SAC 30, the City is required to provide evidence, that is satisfactory to the EDA, that it has coordinated access to the DMC with the BOR and the San Luis Delta Mendota Water Authority.

The Grant of Easement, (Attachment D), will satisfy SAC 30 with respect to the BOR. The Grant of Easement has been approved by the EDA and the City Attorney's Office. Staff requests that the City Council approve the execution of this document to satisfy one of the grant requirements. Three years of diligent staff and developer time has gone into clearing title to get this easement ready for acceptance. Irrespective of the EDA grant and whether the Project moves forward at this time (given the funding shortfall issues), staff believes it is in the City's best interest to accept the Grant of Easement at this time given the many years of work involved in getting resolution of title issues for this Project. There is minimal burden or legal impact to the City for accepting the Grant of Easement, even if the Project does not proceed.

The EDA Grant requires completion of construction to occur by March 2027. The Project is fully designed and permitted; the City is ready to proceed with construction bidding as soon as the funding is finalized with Prologis. If the funding issue is not resolved immediately, the City will likely lose the EDA Grant as the Project schedule requires a 24-month construction schedule, after bidding and procurement have been completed. Staff is hopeful that Prologis will finalize its funding commitment for the Project so that the EDA Grant funds are not lost and the Project may commence immediately.

FISCAL IMPACT

The cost of the Project was estimated at $10,437,571 at the time of the EDA Grant application. The EDA Grant would have provided funding for 80% in the amount of $8,350,057. Since that time, there has been a significant increase in construction costs, due to the sharp increases in steel and other construction materials. The current cost estimate for the Project is $17,530,188. The EDA grant is now estimated to cover approximately 53% of the Project cost, down from the original 80% estimate. The current estimated funding gap is $9,180,131 and is expected to be provided by Prologis pursuant to the Funding Agreement. City staff is actively working with Prologis to finalize this funding obligation; however, the Project may not move forward at this time if funding is not secured immediately.

PUBLIC OUTREACH/INTEREST

Not applicable

COORDINATION

Staff coordinated with Prologis, EDA, the Federal Bureau of Reclamation, San Luis Delta-Mendota Water Authority, and the City Attorney's Office for this item.

CEQA DETERMINATION

The project is within the scope of the development program evaluated in the certified Cordes Ranch Specific Plan EIR (CRSP EIR) and is consistent with the land use designations and development densities and intensities assigned to the proposed Project sites by the CRSP zoning. Cumulative and offsite impacts associated with development of the proposed Project, as proposed, were fully addressed in the CRSP EIR (SCH# 2011122015). Since the proposed Project is within the scope of the development program evaluated in the CRSP EIR and no subsequent EIR is required pursuant to Section 15162 of the California Environmental Qualtiy Act (CEQA) Guidelines, under Section 15168(c) of the CEQA Guidelines, no further environmental review is required for the Project.

STRATEGIC PLAN

This item is consistent with the City Council's approved Economic Development Strategy to ensure the construction of physical infrastructure necessary for development.

ACTION REQUESTED OF THE CITY COUNCIL

Staff recommends that the City Council, by resolution:
(1) Accept a Grant of Easement from the Bureau of Reclamation for the International Parkway Bridge Replacement and Expansion Project, Capital Improvement Project 73148 and (2) Authorize the City Clerk to record the Grant of Easement with the Office of the San Joaquin County Recorder.

Prepared by: Veronica Child, Management Analyst II

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

Approved by: Midori Lichtwardt, City Manager

ATTACHMENTS

Attachment A – Location Map
Attachment B – Funding Agreement
Attachment C – Special Award Conditions
Attachment D – Grant of Easement

Attachment A

International Park of Commerce (IPC)

International Parkway Bridge Project



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City of Tracy

Infrastructure Funding & Fee Credit Agreement

This Infrastructure Funding and Fee Credit Agreement (hereinafter "**Agreement**") is made and entered into by and between the City of Tracy, a municipal corporation (hereinafter "**City**"); and Prologis, LP, a Delaware limited partnership (hereinafter "**Prologis**"). City and Prologis are from time to time referred to in this Agreement as a "**Party**" and collectively as the "**Parties**".

RECITALS

A. Prologis is the master developer of the Cordes Ranch Specific Plan area property in Tracy (the "**Property**"). Development of the Property is the subject of that certain Development Agreement by and between the City of Tracy and Prologis, L.P., recorded in the official records of San Joaquin County as Document Number 2013-156135 on December 20, 2013 (hereafter, the "**Development Agreement**").

B. The Cordes Ranch Specific Plan provides for the development of up to thirty-one million (31,000,000) square feet of general commercial, general office, and business park/industrial uses, related on- and off-site infrastructure, and passive and active open space uses as described in greater detail in the Specific Plan (the "**IPC Project**").

C. Among the infrastructure improvements necessary to implement the Project are the traffic and road improvements necessary to widen International Parkway over and across the Delta-Mendota Canal (the "**Bridge Project**"). The Bridge Project is described in greater detail in Attachment A hereto.

D. To secure the necessary funding to implement the Bridge Project, the City has applied to the United State Economic Development Administration ("**EDA**") for grant assistance, which is expected to provide approximately eighty percent (80%) or eight million eight hundred thousand dollars ($8,800,000) of the estimated eleven million in total hard and soft costs ($11,000,0000) required to design, permit and complete the Bridge Project (the "**Cost Estimate**"), which includes associated street widening and other infrastructure work required for the Bridge Project in addition to the bridge itself, as reasonably determined by the City Engineer. To qualify for EDA funding, the City is required to commit to the EDA that it will provide the remainder of the funding, or approximately two million and two hundred thousand dollars ($2,200,000).

E. Prologis has agreed to provide all funding for the Bridge Project beyond that provided by the EDA grant (the "**Funding Contribution**"), in exchange for fee credits against the City's Master Plan Traffic Impact Fee(s) that would otherwise apply to the IPC Project under Chapter 13.32 of the City of Tracy Municipal Code and the Development

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Agreement (the "**Fee Credits**"), up to the entire amount of remaining Master Plan Traffic Impact Fees(s) available, in the event the costs of the Bridge Project exceeds the Cost Estimate. A central purpose of this Agreement is to provide Prologis with Fee Credits in exchange for all funds expended by Prologis in connection with the Bridge Project, including design and other costs incurred prior to the execution of this Agreement. At the time of the execution of this Agreement, the City estimates that $7,299,535 in total Fee Credits are available.

NOW THEREFORE, THE PARTIES MUTUALLY AGREE AS FOLLOWS:

1. **TIME AND PERFORMANCE.** Time is of the essence in performing the obligations and requirements of this Agreement and the timing requirements set forth herein shall be strictly adhered to unless otherwise modified in writing by mutual consent of the parties.

2. **TERM OF AGREEMENT.** The term of this Agreement shall begin upon the first date that it is fully executed by the City and Prologis and shall continue in effect until Prologis has exhausted its eligibility for the Fee Credits described in Section 3 below.

3. **FUNDING CONTRIBUTION; ALLOCATION OF EXCESS COSTS.** Not later than thirty (30) days after executing this Agreement, Prologis shall deliver to the City, a letter of credit in the amount of $2,200,000 (the "**Letter of Credit**"), which the City shall hold for and dedicate to the sole purposes of (a) enabling the City to qualify for the Bridge Project grant funding from the EDA and, (b) securing Prologis' Funding Contribution.

   Immediately upon receipt of a final determination the City will not receive the additional EDA funding in the amount described in Recital D above, then the City shall immediately notify Prologis and, at Prologis' request, the City shall release the Letter of Credit, without interest to Prologis, and Prologis shall be relieved of the Funding Contribution.

   Immediately upon the City's receipt of the EDA grant funds described in Recital D above, the following rights and obligations shall take effect:

   - Prologis shall be deemed to have earned, and shall be eligible to apply for, use and/or assign, as set forth in Section 4 below, $2,200,000 in Fee Credits, which will be immediately available and eligible for Prologis' use.

   - The City will immediately proceed to bid and implement the construction of the Bridge Project and proceed in good faith, and use all commercially reasonable efforts to complete the Bridge Project.

   - The City may, at any time, request from Prologis a portion of the Funding Contribution supported by an explanation, in reasonable detail, of the Bridge Project expenses requiring such funding, and Prologis shall not unreasonably deny such funding request. Prologis shall have the right, at its election, to meet

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and confer with the City regarding the City's funding request prior to providing the requested portion of the Funding Contribution. To the extent the costs of the Bridge Project exceeds the Cost Estimate and more than $2,200,000 is required from Prologis to complete the same, immediately upon Prologis' provision of the requested additional funding, Prologis shall have earned Fee Credits in an amount equal to the amount of the additional Funding Contribution provided by Prologis. As stated above, the original $2,200,000 of Fee Credits are immediately earned upon receipt of the EDA grant funds described in Recital D.

- Prologis shall receive Fee Credits in exchange for all funds expended by Prologis in connection with the Bridge Project in accordance with the terms of this Agreement, without reservation or exception, including design costs and other soft costs incurred prior to the execution of the Agreement.

Following completion of the Bridge Project, and not later than thirty (30) days following Prologis' payment of the final City funding request made for the Bridge Project made pursuant to this Section 3, City shall release and return to Prologis the Letter of Credit.

To the extent any increase to the Cost Estimate results from the willful misconduct or negligence of any contractor or subcontractor working on the Bridge Project, the City shall assign to Prologis any and all rights to recover such costs from the contractor or other tortfeasor.

4. **APPLICATION, ASSIGNMENT AND RECORDING OF FEE CREDITS.** Immediately upon earning the Fee Credits as described in Section 3 above, Prologis may apply such Fee Credits, in any amount up to the estimated $5,099,535 remaining Chapter 13.32 Fee Credits set forth in Recital F, to Prologis' obligation to pay traffic impact fees, pursuant the Development Agreement and to Chapter 13.32 of the TMC, arising from its development of the Property.

With respect to its earned Fee Credits, Prologis may assign such Fee Credits to any Property within the City, whether or not such Property is then owned by Prologis, provided such assignment and application of Fee Credits is consistent with Chapter 13.32 of the TMC as reasonably determined by the City Engineer. Prologis shall notify the City in writing of Prologis' intent to assign Fee Credits not later than ten (10) days prior to such assignment(s), such notice to include the identity of the assignee and/or assignee property(ies) and a waiver of Prologis' right to such Fee Credits or reimbursements effective upon the City's granting or disbursing such Fee Credits or reimbursements to the Prologis' assignee.

The City shall record each use and assignment of Fee Credits by Prologis and shall notify Prologis when it has exhausted its earned Fee Credits. Notwithstanding such termination, the City shall honor all outstanding Fee Credits held by assignees of

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Prologis for which the City has previously received from Prologis an effective notice of assignment and waiver as described in this Section 4.

5. **DISPUTE RESOLUTION.** In the event of a dispute between the Parties regarding their respective compliance with the terms and conditions of this Agreement, the Parties shall attempt to resolve the dispute(s) by informal negotiations. If all disputes are not resolved within ten (10) business days following the date of the Notice of Dispute, then the Parties shall comply with the following procedures.

Either Party may submit the dispute to JAMS (Judicial Arbitration and Mediation Service), ("Dispute Resolution Officer" or "DRO") or if JAMS is unavailable or unwilling to serve as the DRO, then to any other arbitrator or mediator who is agreed upon by the other Party (and if the Parties cannot agree on an arbitrator or mediator to serve as DRO within 2 business days, then each Party shall select an arbitrator or mediator in writing within one (1) additional business day from such date and such arbitrator or mediator shall select another arbitrator or mediator to serve as DRO within two (2) business days). If an arbitrator or mediator to serve as DRO is not selected within such time period, any court of competent jurisdiction may appoint an arbitrator or mediator to serve as DRO.

Once the DRO is selected, the Party submitting the Dispute shall, within five (5) days of the expiration of the informal negotiation period, deliver to the DRO and to the other Party a written request for determination of the Dispute (the "Request for Determination"). The Request for the Determination shall include all information and documents that the submitting Party desires the DRO to consider with respect to the Dispute, as well as notice of whether the submitting Party desires a hearing of the Dispute.

Upon receipt of a timely Request for Determination, the other Party shall have five (5) business days to serve the DRO and the submitting Party with any written information and documentation such Party desires the DRO to consider with respect to the Dispute (a "Rebuttal Notice"), as well as notice of whether such Party desires a hearing of the Dispute. If a hearing has been requested by any Party, then the DRO shall schedule an informal hearing within twenty (20) business days of the earliest received request for a hearing; provided, it shall be the responsibility of the Party requesting the hearing to insure that the hearing is scheduled in the time provided.

Within five (5) business days of the hearing, or if no hearing has been requested within five (5) business days of the Rebuttal Notice, or if no Rebuttal Notice was served within ten (10) business days of the Request for Determination, the DRO shall serve its written decision (the "DRO Decision") or shall provide a written notice to the Parties indicating the need for additional time to review the matter and shall provide the DRO Decision within such additional time period but in no event to exceed 30 days.

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The Parties shall cooperate with the DRO and one another in scheduling the proceedings so that an expeditious resolution can be reached. The costs of the services for the DRO shall be borne by the non-prevailing Party, as determined by the DRO. Each Party hereby fully releases and agrees to hold harmless the DRO, its officers, agents and employees from any and all claims, actions, liabilities, damages, losses, expenses, or costs (collectively, "Claims") arising from or related to the determinations or calculations of the DRO, except from those arising from the fraud or willful misconduct of the DRO.

Upon completion of these dispute resolution procedures, any Party that remains dissatisfied with the outcome may seek available legal remedies subject to the limitations of Section 10 below.

6. **NOTICES.** All notices, demands, or other communications which this Agreement contemplates or authorizes shall be in writing and shall be personally delivered, mailed or emailed to the respective Party as follows:

To City:
City of Tracy
333 Civic Center Plaza
Tracy, CA 95376
notice@cityoftracy.org, and
attorney@cityoftracy.org

To Prologis:
Attention: Jeff Major
Pier 1, Bay 1
San Francisco CA 94111
Tel 415 733 9793
Fax 415 733 2171
legalnotices@prologis.com

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

7. **MODIFICATIONS.** This Agreement may not be modified orally or in any manner other than by an agreement in writing signed by both parties.

8. **ASSIGNMENT OF AGREEMENT.** This Agreement may not be assigned by Prologis without the prior and express, written consent of the City, which consent shall not be unreasonably withheld.

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9. **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.

10. **NO MONEY DAMAGES.** The Parties hereby acknowledge and agree that money damages are excluded as a remedy available to either Party for a breach of this Agreement, and that specific performance is the sole and exclusive remedy available to either Party for a breach of this Agreement.

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

12. **INCORPORATION OF RECITALS; ENTIRE AGREEMENT.** This Agreement, including the preamble and recitals which the Parties hereby acknowledge and agree are true and correct and are by this reference incorporated in their entirety into this Agreement, comprises the entire integrated understanding between the Parties concerning its subject matter as described herein, and supersedes all prior negotiations, representations, or agreements relating thereto.

13. **SIGNATURES.** The individuals executing this Agreement represent and warrant that they have the right, power, legal capacity, and authority to enter into and to execute this Agreement on behalf of the respective legal entities of Prologis and the City. This Agreement shall inure to the benefit of and be binding upon the Parties hereto and their respective successors and assigns.

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

CITY OF TRACY	**PROLOGIS, L.P. a Delaware Limited Partnership**
Nancy Young, Mayor Date: 5-18-2021 Attest: Adrianne Richardson, City Clerk	By: Prologis, Inc. a Maryland corporation, its General Partner DocuSigned by: Ali Harandi 552BB3DC5D1E487... Ali Harandi Date: 30 June 2020

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Approved as to form: Leticia Ramirez, City Attorney	

PROLOGIS®

ASSISTANT SECRETARY'S CERTIFICATE

The undersigned, Marilyn Cartwright, a duly elected and qualified Assistant Secretary of (i) Prologis, Inc., a Maryland corporation ("Prologis"); (ii) Prologis, a Maryland real estate investment trust (the "REIT"); and (iii) ProLogis Logistics Services Incorporated, a Delaware corporation ("PLSI"), does hereby certify as follows:

1. That each of the REIT and PLSI are wholly-owned subsidiaries of Prologis; and

2. That each of Prologis, the REIT and PLSI are duly formed and registered with the Secretary of State of their respective jurisdictions, each in good standing; and

3. That the address of the registered office in the State of Maryland is 7 St. Paul Street, Suite 820, Baltimore, Maryland 21202. The name of the registered agent at such address is CSC-Lawyers Incorporating Service Company; and

4. That the address of the registered office in the State of Delaware is 251 Little Falls Drive, in the City of Wilmington, County of New Castle, 19808. The name of the registered agent at such address is Corporation Service Company; and

5. That the address of the principal place of business of Prologis, the REIT and PLSI is 1800 Wazee Street, Suite 500, Denver, Colorado 80202; and

6. That as of the date hereof, Ali Harandi, Vice President is a duly elected and qualified officer of (i) Prologis; (ii) the REIT; and (iii) PLSI, and as such, has the authority to execute documents for and on behalf of (i) Prologis; (ii) the REITand (iii) PLSI.

IN WITNESS WHEREOF, the undersigned has executed this Certificate as of the 14th day of May 2021.

Marilyn Cartwright, Assistant Secretary

SPECIFIC AWARD CONDITIONS
U.S. DEPARTMENT OF COMMERCE
Economic Development Administration (EDA)

CONSTRUCTION PROJECTS: Public Works and Economic Adjustment Assistance Programs under Sections 201 and 209 of the Public Works and Economic Development Act, as amended, 42 U.S.C. §§ 3141 and 3149

Public Works and Economic Adjustment Assistance Programs

Project Title: City of Tracy Int'l Parkway Bridge Replacement & Expansion Project	
Recipient Name: City of Tracy	**Project Number: 07-79-07715**

1. **AUTHORIZED SCOPE OF WORK**: This EDA Award supports the work described in the approved final scope of work, which is incorporated by reference into this Award, as the *Authorized Scope of Work*. All work on this project must be consistent with the *Authorized Scope of Work,* unless the Grants Officer has authorized a modification of the scope of work in writing through an amendment memorialized by a fully executed *Amendment to Financial Assistance Award* (Form CD-451).

The *Authorized Scope of Work* for this project includes:

> Remove existing 2-lane International Parkway Bridge over the Delta Mendota Canal. Construct two new parallel bridge spans each with 2-lanes, new piers and foundations, pedestrian safety barriers, and anchored utility runs. The southbound span will include a turn lane. Also included is approximately 700 LF of road improvements.

2. The Recipient Contact's name, title, address, and telephone number are:

Jenny Haruyama City Manager Phone: (209) 831-6115 Email: jenny.haruyama@cityoftracy.org	City of Tracy 333 Civic Center Plaza Tracy, CA 95376-4062

3. The Grants Officer is authorized to award, amend, suspend, and terminate financial assistance awards. The Grants Officer is:

Maiea Sellers Acting Regional Director Phone: (206) 220-7660 kmillius@eda.gov Email: msellers@eda.gov	Economic Development Administration Seattle Regional Office 915 Second Avenue, Room 1890 Seattle, Washington 98174-1012

4. The Federal Program Officer (Area Director) oversees the programmatic aspects of this Award. The Federal Program Officer is:

Kerstin Millius Area Director Phone: (206) 220-7700 Email: kmillius@eda.gov	Economic Development Administration Seattle Regional Office 915 Second Avenue, Room 1890 Seattle, Washington 98174-1012

5. The EDA Project Officer is responsible for day-to-day administration and liaison with the Recipient and receives all reports and payment requests. The Project Officer is:

Britany MacFarlane Civil Engineer Phone: (206) 666-7879 Email: BMacFarlane@eda.gov	Economic Development Administration Seattle Regional Office 915 Second Avenue, Room 1890 Seattle, Washington 98174-1012

6. CONTACT CHANGES: Changes to the contact information above may be made in writing by the EDA Project Officer without an amendment on Form CD-451.

7. ADDITIONAL INCLUDED DOCUMENTS: In addition to the regulations, documents, or authorities incorporated by reference on the *Financial Assistance Award* (Form CD-450), the following additional documents are hereby incorporated by reference into this Award:

- The Recipient's application, including any attachments, project descriptions, schedules, and subsequently submitted supplemental documentation.

Should there be a discrepancy among these documents, the Specific Award Conditions (this document), including any attachments, shall control.

8. PROJECT DEVELOPMENT TIME SCHEDULE: The Recipient agrees to the following Project Development Time Schedule:

Return of Executed Financial Assistance Award ……30 calendar days after receipt of Form CD-450/CD-451
Start of Construction …….. 18 Months from the Date of Award
Construction Completed ……..……60 Months from the Date of Award

Authorized Award End Date …… 60 Months from the Date of Award
Submission of Final Financial Report (Form SF-425) …No later than 120 calendar days from the Award End Date

Project Closeout – All project closeout documents, including final financial reports (Form SF 425 or any successor form) and any required program reports, shall be submitted to EDA not more than 120 calendar days after the date the Recipient accepts the completed project from the contractor(s).

The Recipient shall diligently pursue the development of the project so as to ensure completion within this time schedule and shall promptly notify EDA in writing of any event that could substantially delay meeting any of the prescribed time limits for the project as set forth above. The Recipient further acknowledges that failure to meet the development time schedule may result in EDA taking action to terminate the Award in accordance with the regulations set forth at 2 CFR §§ 200.339–200.343, as applicable.

9. PROJECT REPORTING AND FINANCIAL DISBURSEMENTS INSTRUCTIONS:

A. AWARD DISBURSEMENTS: Reimbursement basis only. EDA will make disbursements under this Award on a reimbursement basis only, based on actual costs incurred, after all preconditions set forth in these Specific Award Conditions have been met.

The "*Outlay Report and Request for Reimbursement*" (Form SF-271 or any successor form) is used to request a disbursement, which shall be approved in writing by the Project Officer.

Please note that prior to the initial disbursement, the Recipient must complete the attached Form SF-3881 (or any successor form) "*ACH Vendor/Miscellaneous Payment Enrollment Form*" and submit it to NOAA's Accounting Office by FAX at (301) 528-3675. (*FAX is required to secure confidentiality of sensitive information.*) The form must be completed by the respective parties (EDA, Recipient Bank, and Recipient) at the start of each new award.

B. REPORTS:

a. *Project Progress Reports*: The Recipient shall submit project progress reports to the Project Officer on a quarterly basis for the periods ending **December 31, March 31, June 30, and September 30**, or any portion thereof, until the final disbursement is made by EDA. Reports should be submitted using the approved EDA template, which will be provided by the Project Officer and discussed during the project kick-off meeting. Reports are due no later than 1 month following the end of the quarterly period.

b. *Financial Reports:* The Recipient shall submit a "*Federal Financial Report*" (Form SF-425 or any successor form) on a semi-annual basis for the periods ending **March 31** and **September 30**, or any portion thereof, for the entire period of performance. Form SF-425 and instructions for completing this form are available at: https://www.grants.gov/web/grants/forms/post-award-reporting-forms.html.

Reports are due no later than 1 month following the end of the semi-annual period.

A final Form SF-425 must be submitted no more than 120 calendar days after the expiration date of the Award (*i.e.*, the Award End Date specified on the Form CD-450 or a subsequently executed Form CD-451). Final Financial Reports should follow the guidance outlined in the instructions for submitting mid-term financial reports, but should ensure that all fields accurately reflect the total outlays for the entire period of performance and that all matching funds and program income (if applicable) are fully reported. Determination of the final grant rate and final balances owed to the government will be determined based on the information on the final Form SF-425, so it is imperative that it be submitted in a timely and accurate manner.

10. ALLOWABLE COSTS AND AUTHORIZED BUDGET: Total allowable costs will be determined after the final financial documents are submitted in accordance with the applicable authorities specified on the *Financial Assistance Award* (Form CD-450), including the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards at 2 CFR part 200 (Uniform Guidance).

Except as otherwise expressly provided for within these Specific Award Conditions, the Federal share of the allowable costs shall be based on the Investment Rate for the Award, as established on the Form CD-450 or any subsequent amendment (Form CD-451). In the event of an underrun in total allowable costs for this project, the Federal share of allowable costs shall be determined by the Investment Rate. The Federal share of total allowable costs shall not exceed the dollar amount specified on the original Award or any subsequent amendments.

Line Item Budget:

A. Under the terms of the Award, the total approved authorized budget is:

Federal Share (EDA Amount)	$8,350,057
Non-Federal Matching Share	$2,087,514
Total Project Cost	$10,437,571

B. Under the terms of this Award, the total approved line item budget is:

COST CLASSIFICATION	Proposed	Approved
Administrative and legal expenses		
Land, structures, rights-of-way, etc.		
Relocation expenses and payments		
Architectural and engineering fees		
Other architectural and engineering fees	$417,503	$417,503
Project inspection fees	$835,006	$835,006
Site work		
Demolition and removal		
Construction	$8,350,056	$8,350,056

Equipment		
Contingencies	$835,006	$835,006
Total Project Cost	$10,437,571	$10,437,571

11. MATCHING SHARE: The Recipient agrees to provide the Recipient's non-Federal Matching Share contribution for eligible project expenses in proportion to the Federal share requested for such project expenses (see 13 CFR § 300.3). By accepting the Award, the Recipient also certifies that the Matching Share of the project costs is committed to the project, is not encumbered in any way that would prevent its use for the project, and will be available as needed for the project.

12. REFUND CHECKS, INTEREST, OR UNUSED FUNDS: Treasury has given EDA two options for having payments deposited to EDA's account:

A. The first is the pay.gov website. This option allows the payee to pay EDA through the internet. The payee will have the option to make a one-time payment or to set up an account to make regular payments.

B. The second is paper check conversion. All checks must include on their face the name of the DOC agency funding the Award, the award number, and a description of no more than two words identifying the reason for the check. A copy of the check should be provided to the EDA Project Officer. This option allows the payee to send a check to NOAA's Accounting Office, which processes EDA's accounting functions, at the following address:

U.S. Department of Commerce
National Oceanic and Atmospheric Administration
Finance Office, AOD, EDA Grants
20020 Century Boulevard
Germantown, MD 20874

The accounting staff will scan the checks in to an encrypted file and transfer the file to the Federal Reserve Bank, where the funds will be deposited in EDA's account. While this process will not be an issue with most payees, there are occasionally issues for entities remitting funds to EDA via check. If you are remitting funds to EDA via check, please make note of the following:

- If a check is sent to EDA, it will be converted into an electronic funds transfer by copying the check and using the account information to electronically debit your account for the amount of the check. The debit from your account will usually occur within 24 hours and will appear on your regular account statement.

- EDA will not return your original check; the original will be destroyed and a copy will be maintained in our office. If the Electronic Funds Transfer (EFT) cannot be processed for technical reasons, the copy will be processed in place of the original check. If the EFT cannot be completed because of insufficient funds, EDA will charge you a one-time fee of $25.00, which will be collected by EFT.

13. **CONSTRUCTION COMPLETION:** In keeping with prudent grants management policy, EDA construction projects must be completed within five years of the date the Form CD-450 is signed by the Recipient accepting the Award. If construction is not completed by that date and the Grants Officer determines, after consultation with the Recipient, that construction to completion cannot reasonably be expected to be completed promptly and expeditiously, the grant may be terminated. Extensions beyond the five-year period of performance are exceedingly rare and can only be authorized by the Assistant Secretary. Nothing in this paragraph is intended to alter the Project Development Time Schedule set out above.

14. **USEFUL LIFE:** The useful life of this project is hereby determined to be 20 years from the date that the recorded statement (mortgage or covenant) is officially recorded.

15. **GOALS FOR WOMEN AND MINORITIES IN CONSTRUCTION:** Department of Labor regulations set forth at 41 CFR part 60-4 establish goals and timetables for the participation of minorities and women in the construction industry. Those regulations apply to all federally assisted construction contracts in excess of $10,000. The Recipient shall comply with those regulations and shall obtain compliance with 41 CFR part 60-4 from contractors and subcontractors employed on the project by including such notices, clauses, and provisions in the Solicitations for Offers or Bids as required by 41 CFR part 60-4. The goal for the participation of women in each trade area shall be as follows: from April 1, 1981 until further notice: 6.9 percent.

    All changes to this goal, as published in the Federal Register in accordance with the Office of Federal Contract Compliance Programs regulations at 41 CFR § 60-4.6, or any successor regulations, shall hereafter be incorporated by reference into these Specific Award Conditions.

    Goals for minority participation shall be as prescribed by Appendix B-80 of the *Federal Register* notice published October 3, 1980 at 45 FR 65984-65991, or any subsequently published amendments. The Recipient shall include the "*Standard Federal Equal Employment Opportunity Construction Contract Specifications*" (or cause them to be included, if appropriate) in all Federally-assisted contracts and subcontracts. The goals and timetables for minority and female participation may not be less than those published pursuant to 41 CFR § 60-4.6.

16. **ARCHITECT/ENGINEER AGREEMENT.** Prior to initial disbursement of funds by EDA, the Recipient must submit to the Government for approval, an Architect/Engineer Agreement that meets the requirements in the EDA's "Summary of EDA Construction Standards," as well as the competitive procurement standards of 2 C.F.R. Part 200 and EDA Regulations at 13 C.F.R. Chapter III. The fee for basic Architect/Engineer Services will be a lump sum or an agreed maximum, and no part of the fees for other services will be based on a cost-plus-a-percentage-of-cost or a cost using a multiplier.

17. **PROJECT INSPECTION AGREEMENT:** Prior to the initial disbursement of funds by EDA, the Recipient must submit to EDA for approval, a Project Inspection Agreement that meets the requirements in the EDA's "Summary of EDA Construction Standards," as well as the competitive procurement standards of 2 CFR part 200 and EDA Regulations in 13 CFR Chapter III. The fee for

basic Project Inspection Services will be a lump sum or an agreed maximum, and no part of the fees for other services will be based on a cost-plus-percentage-of-cost or a cost using a multiplier.

18. **PROCUREMENT:** The Recipient agrees that all procurement transactions shall be in accordance with the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards at 2 CFR §§ 200.317–200.327 and the EDA regulations contained in 13 CFR Chapter III, especially 13 CFR part 305 and 13 CFR § 302.17 ("Conflicts of Interest").

19. **EVIDENCE OF GOOD TITLE:** Before the initial disbursement of funds by EDA, the Recipient shall provide an opinion of counsel, satisfactory to EDA, that the Recipient has acquired good and marketable title to land, free of all encumbrances, to all real property necessary for completion of the project, as well as any necessary rights-of-way, easements, State or local government permits, or long-term lease interests necessary for the completion of the project, in accordance with 13 CFR part 314.

20. **PROPERTY MANAGEMENT STANDARDS FOR PRIVATE PROPERTY**: As a purpose of the project is to construct Recipient owned facilities to serve privately owned land, including an approximately 1,800-acre business and industrial park with sites for sale or lease, such ownership, sale or lease is permitted so long as EDA requirements continue to be met. The Recipient is responsible for ensuring the business and industrial park served by the improvements shall serve the purposes of the Award in accordance with the terms and conditions for the useful life of the project, which is 20 years from the date that the recorded statement (mortgage or covenant) is officially recorded.

    Prior to the initial disbursement of funds under the Award, EDA requires evidence that the private owner(s) has good marketable title to the business and industrial park and, if required by EDA, completes a Form ED-900B or equivalent.

    Prior to project closeout, the Recipient shall submit a binding, enforceable agreement acceptable to EDA between the private owner(s) and Recipient that for the useful life of the project assures consistency with the project purpose of supporting business and industrial development in the Region and enhancing supply chain movement for essential industries and the terms and conditions of the Award, even when parcels may be leased or sold. This requirement may be accomplished through a covenant or, with EDA permission, another instrument.

21. **NONRELOCATION:** By accepting this Award of financial assistance, the Recipient attests that the EDA-funded project will not be used to induce the relocation or the movement of existing jobs from one Region to another Region by a primary beneficiary of the Award (see 13 CFR § 300.3). In the event that EDA determines that its assistance was used for such purposes, EDA reserves the right to pursue all rights and remedies, including suspension of disbursements, termination of the Award for convenience or cause, and disallowance of any costs attributable, directly or indirectly, to the relocation.

    For purposes of ensuring that EDA assistance will not be used for relocation purposes, each applicant must inform EDA of all employers that constitute primary beneficiaries of the project. EDA considers an employer to be a "primary beneficiary" if the applicant estimates that such

employer will create or save 100 or more permanent jobs as a result of the investment assistance and specifically names the employer in its application to EDA. In smaller communities, EDA may consider a primary beneficiary to be an employer of 50 or more permanent jobs so identified.

22. **PERFORMANCE MEASURES:** The Recipient agrees to report on program performance measures and program outcomes in such a form and at such intervals as may be prescribed by EDA in compliance with the Government Performance and Results Act (GPRA) of 1993, and the Government Performance and Results Modernization Act of 2010.

    At this time, all Awards for construction assistance require Recipients to report actual job creation/retention and private investment leverage at three (3), six (6), and nine (9) years after an EDA investment. The Recipient must retain sufficient documentation so that they can submit these required reports. Failure to submit these reports may adversely impact the ability of the Recipient to secure future funding from EDA.

    Performance measures and reporting requirements that apply to program activities funded by this investment will be provided in a separate GPRA information collection document. EDA staff will contact the Recipient in writing within a reasonable period prior to the time of submission of the reports with information on how this data should be submitted. The Recipient must ensure adequate and sufficient records are kept to support the methodology for computing initial job creation/retention and private investment estimates and all subsequent actual performance data, and must make this information available at EDA's request, including in the event of an audit or performance site visit.

23. **REAL PROPERTY REPORTING:** Consistent with 2 CFR § 200.330 ("Reporting on real property"), the Recipient must submit reports (using Form SF-429 "Real Property Status Report" or any successor form). The initial SF-429 form must be returned to the EDA Project Officer no later than December 31 of the year of the initial disbursement of Federal funds. Because EDA's interest in this real property extends at least 15 years, successive reports will be required by December 31 every **two** years thereafter during the established useful life of the property, rather than on an annual basis. At its sole discretion, EDA reserves the right to require more or less frequent real property reporting for the duration of the useful life of real property in which it retains an interest under this project.

24. **WASTE, FRAUD AND ABUSE:** Consistent with 2 CFR part 200, Recipient personnel responsible for managing the Recipient's finances and overseeing any contractors, sub-contractors or Subrecipients, will complete the training PowerPoint entitled "Compliance with EDA Disaster Assistance Program Requirements" and return the signed Certificate of Training Completion (page 38 of the training) to EDA along with the signed Form CD-450 within 30 days of receipt.

    Further, Recipient will monitor Award activities for common fraud schemes, such as:

    - false claims for materials and labor,

    - bribes related to the acquisition of materials and labor,

• product substitution,

• mismarking or mislabeling on products and materials, and

• time and materials overcharging.

Should Recipient detect any suspicious activity, Recipient will contact EDA staff listed above and the Office of Inspector General, as indicated at https://www.oig.doc.gov/Pages/Contact-Us.aspx, as soon as possible.

25. **TRIBAL MONITOR:** Thirty (30) days prior to earth-disturbing activities funded under the EDA grant, the Recipient shall provide evidence satisfactory to the EDA that the Northern Valley Yokuts Tribe have been notified and given the opportunity to have a tribal monitor on-site during earth-disturbing activities.

26. **ARCHEOLOGICAL AND HISTORICAL RESOURCES:** If during construction of the project, historical and archeological resources, including burial grounds and artifacts are discovered, the Recipient shall immediately stop construction in the area, contact the applicable State Historic Preservation Officer (SHPO) or Tribal Historic Preservation Officer (THPO), interested Tribes, and EDA, and follow the SHPO or THPO instructions for the preservation of resources.

27. **STATE AND TRIBAL HISTORIC PRESERVATION OFFICER (SHPO/THPO)**: Prior to the start of any construction and/or earth-disturbing activities, the Recipient shall provide evidence satisfactory to the EDA that an Unanticipated Discovery Plan has been prepared for the project. If inadvertent discoveries are made, no further work will be allowed on the project until the SHPO and THPO have approved a plan for managing or preserving artifacts or features; and the SHPO and THPO will be notified of changes to the project scope.

28. **WATERS OF THE UNITED STATES**: Prior to the start of design, the Recipient shall provide evidence satisfactory to the EDA that the U.S. Army Corps of Engineers has been consulted for an updated jurisdictional determination to replace the expired letter dated May 5, 2015 (SPK-2011-01237).

29. **SAN JOAQUIN MULTI-SPECIES HABITAT CONSERVATION AND OPEN SPACE PLAN (SJMSCP)**: Prior to start of any construction and/or earth-disturbing activities, the Recipient shall provide evidence satisfactory to the EDA that project plans are consistent with participation in the San Joaquin Multi-Species Habitat Conservation and Open Space Plan (SJMSCP) and in compliance with all relevant Incidental Take Minimization Measures pertinent to the Specific Plan Area, including pre-construction surveys for covered species to confirm their presence or absence and provide for their relocation, if necessary.

30. **SAN LUIS DELTA MENDOTA WATER AUTHORITY AND BUREAU OF RECLAMATION:** Prior to the start of bridge demolition and removal, the Recipient shall provide evidence satisfactory to the EDA the either the canal does not need to be accessed in

order to complete bridge demolition and removal, or the work has been coordinated with the Water Authority as encroachment of the right-of-way is required.

31. **CENTRAL VALLEY REGIONAL WATER QUALITY CONTROL BOARD:** Prior to start of any construction and/or earth-disturbing activities, the Recipient shall provide evidence satisfactory to the EDA that a Waste Discharge Requirement (WDR) permit has been received.

32. **MIGRATORY BIRD TREATY ACT:** To ensure ground-disturbing activities do not result in "take" of an active nest or migratory bird protected under the Migratory Bird Treaty Act**, s**chedule all vegetation removal, trimming, and grading of vegetated areas outside of the peak bird breeding season to the maximum extent practicable. When project activities cannot occur outside the bird nesting season, conduct surveys prior to scheduled activity to determine if active nests are present within the area of impact and buffer any nesting locations found during surveys. Generally, the surveys should be conducted no more than five days prior to scheduled activity.

33. **HAZARDOUS OR TOXIC SUBSTANCES:** If visual or olfactory evidence of potential soil contamination from current or historical practices is encountered during construction, work will stop immediately upon discovery and the appropriate Ecology regional office will be notified.

Attachment D

WHEN RECORDED MAIL TO:
U.S. Department of the Interior
Bureau of Reclamation
California Great-Basin Region, CGB-450
2800 Cottage Way
Sacramento, CA 95825-1898

Portion of APN: **xxx-xxx-xx**

DOCUMENTARY TRANSFER TAX: None
This conveyance is exempt from any documentary transfer tax per (insert relevant statute(s) here)

San Joaquin County
Delta-Mendota Canal
Plat Page CVP-1813
Index 12, Unit B-16 and Index 13, Unit B-17
Central Valley Project
Contract No. 22-LC-20-3043

UNITED STATES DEPARTMENT OF THE INTERIOR, BUREAU OF RECLAMATION, CALIFORNIA GREAT BASIN REGION

GRANT OF EASEMENT TO THE CITY OF TRACY

GRANT OF EASEMENT, made this _____ day of _____, 2024, pursuant to the Act of Congress of June 17, 1902 (32 Stat. 388) and Acts amendatory thereof and supplemental thereto, particularly Section 10 of the Act of Congress approved August 4, 1939 (53 Stat. 1187) as amended August 18, 1950 (64 Stat. 463) between the United States of America, acting by and through the Department of the Interior, Bureau of Reclamation (hereinafter "Reclamation") and the City of Tracy (hereinafter "the Grantee") (collectively "the "Parties").

NOW THEREFORE, subject to the terms and conditions herein contained, the Parties hereto agree as follows:

The United States hereby grants to the Grantee, without warranty of title, a nonexclusive, easement for the construction, operation and maintenance of the replacement, widening, operation and maintenance of the International Parkway Bridge (Bridge), formerly known as Patterson Pass Road Bridge and also known as Caltrans Bridge No. 29CO335, on, over and across the Delta-Mendota Canal, and across those certain lands as further described on the Legal Description (**Exhibit A**), and as illustrated in the Map of Survey (**Exhibit B**), both attached and made a part hereof (the "Easement Premises").

a. The rights granted herein are subject to existing rights-of-way, or those subsequently granted, in favor of the public or third parties. The Grantee recognizes that it has sole responsibility to make whatever arrangements are necessary to obtain such rights as may be needed by the Grantee from any other party or parties holding any other interest in the Easement Premises.

b. The Grantee accepts the Easement Premises as is and acknowledges that the United States is under no obligation to improve the present condition of the Easement Premises.

c. The Bridge shall be maintained by the Grantee in a good and safe condition and to the reasonable satisfaction of Reclamation at the expense of the Grantee, and all construction, alterations and repairs shall be in accordance with plans previously approved by Reclamation.

IN WITNESS WHEREOF, the Parties hereto have caused this Grant of Easement to be executed the day and year first above written.

UNITED STATES OF AMERICA

By:_____
Melissa Vignau
Regional Resources Manager
California Great Basin Region
Bureau of Reclamation

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

ACKNOWLEDGMENT OF
THE UNITED STATES OF AMERICA

STATE OF CALIFORNIA
County of _____

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

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

WITNESS my hand and official seal.

Signature _____
(Seal)

By: _____ Date: _____

ACCEPTANCE OF GRANTEE

The foregoing conveyance is hereby accepted by the Grantee. The Grantee further agrees, by this acceptance, to the sufficiency of the conveyance and to comply with the terms and covenants of the within and foregoing Contract and Grant of Easement. The Grantee further agrees by this acceptance to assume and be bound by all the obligations, conditions, covenants, and agreements therein contained.

THE CITY OF TRACY

_____

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

ACKNOWLEDGMENT OF THE CITY OF TRACY

STATE OF CALIFORNIA
County of _____

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

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

WITNESS my hand and official seal.

Signature _____ (Seal)

EXHIBIT 'A'
LEGAL DESCRIPTION
TEMPORARY CONSTRUCTION EASEMENT FOR THE DELTA-MENDOTA CANAL

ALL THAT REAL PROPERTY SITUATE IN SECTIONS 27 & 28, TOWNSHIP 2 SOUTH, RANGE 4 EAST, MOUNT DIABLO BASE AND MERIDIAN, IN THE CITY OF TRACY, COUNTY OF SAN JOAQUIN, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

BEGINNING AT THE WESTERN QUARTER SECTION CORNER OF SECTION 27, SAID POINT ALSO BEING THE EASTERN QUARTER SECTION OF SECTION 28, SAID POINT BEING ON THE SOUTHERLY LINE OF THE RIGHT OF WAY OF THE DELTA-MENDOTA CANAL (1103 O.R. 459);

THENCE CONTINUING ALONG SAID SECTION LINE AND ALONG THE WESTERLY LINE OF THE DELTA-MENDOTA CANAL (1103 O.R. 459), NORTH 00° 18' 41" EAST, 181.74 FEET TO A POINT ON THE SOUTHERLY LINE OF THE DELTA-MENDOTA CANAL (1061 O.R. 209);

THENCE LEAVING SAID SECTION LINE, ALONG THE SOUTHERLY LINE OF THE DELTA-MENDOTA CANAL (1061 O.R. 209), NORTH 63° 51' 13" WEST, 47.15 FEET;

THENCE LEAVING SAID SOUTHERLY LINE, NORTH 00° 18' 37" EAST, 511.34 FEET TO A POINT ON THE NORTHERLY LINE OF THE DELTA-MENDOTA CANAL (1061 O.R. 209);

THENCE ALONG SAID NORTHERLY LINE, SOUTH 42° 43' 55" EAST, 62.18 FEET TO A POINT ON THE NORTHERLY LINE OF THE DELTA-MENDOTA CANAL (1103 O.R. 459) SAID POINT ALSO BEING ON THE SECTION LINE BETWEEN SECTIONS 27 & 28;

THENCE ALONG SAID NORTHERLY LINE, SOUTH 47° 38' 19" EAST, 108.78 FEET;

THENCE LEAVING SAID NORTHERLY LINE, SOUTH 00° 18' 37" WEST, 596.54 FEET TO A POINT ON THE AFOREMENTIONED SOUTHERLY LINE OF THE DELTA-MENDOTA CANAL (1103 O.R. 459);

THENCE ALONG SAID SOUTHERLY LINE, NORTH 88° 49' 37" WEST, 80.79 FEET TO THE **POINT OF BEGINNING.**

CONTAINING 72,253 SQUARE FEET OR 1.6587 ACRES OF LAND, MORE OR LESS.

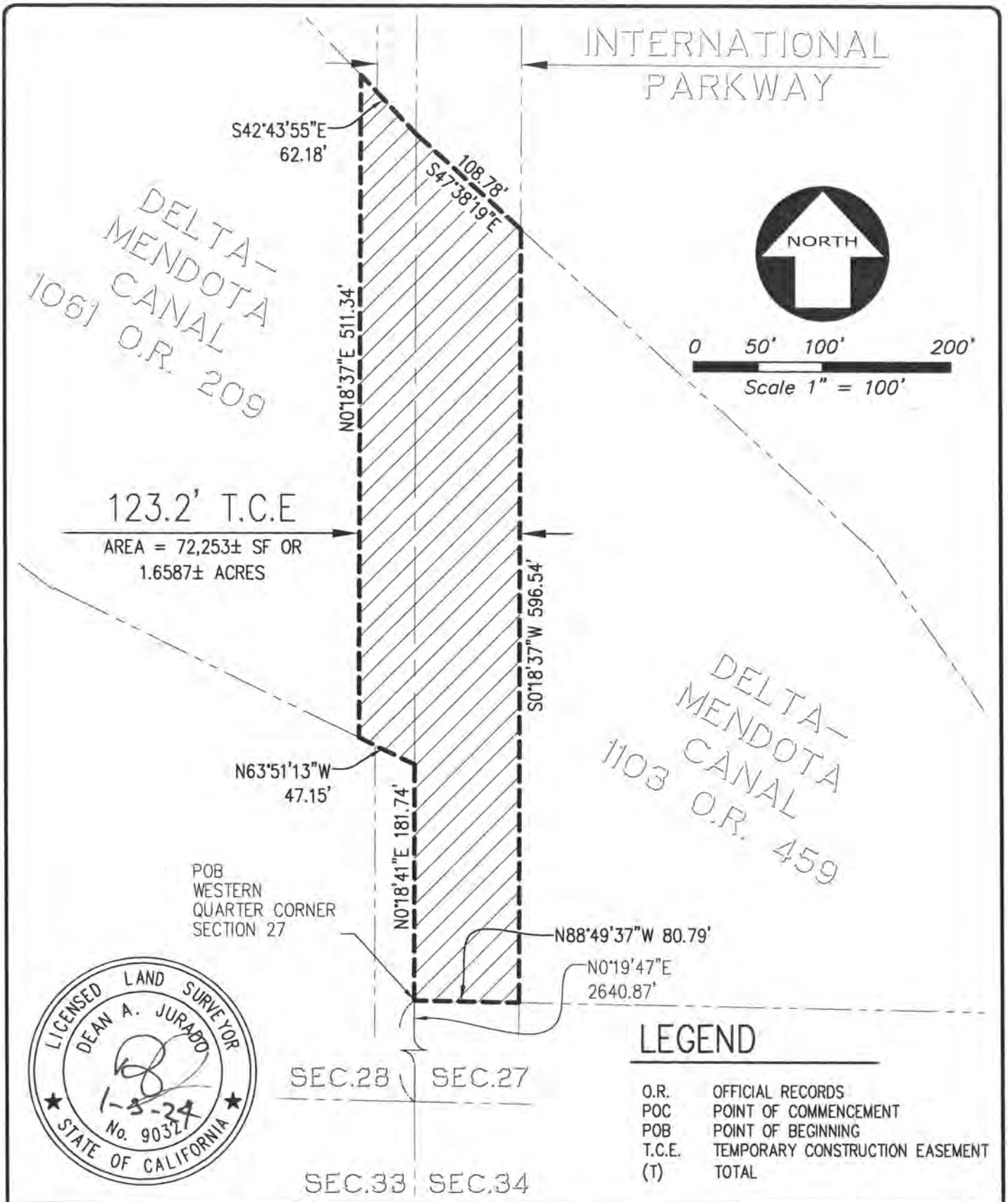
KIER & WRIGHT CIVIL ENGINEERS & SURVEYORS, INC.

THE BASIS OF BEARINGS FOR THIS PLAT AND LEGAL DESCRIPTION IS THE LINE TAKEN AS S89°05'42"E, BETWEEN TWO FOUND MONUMENTS (STATION NUMBER 2043 AND STATION NUMBER 2044) OF THE CITY OF TRACY GEODETIC CONTROL NETWORK, WHICH IS BASED UPON THE CALIFORNIA STATE PLANE COORDINATE SYSTEM, ZONE 3, NAD83 (EPOCH 2004.0), AS SHOWN ON THE RECORD OF SURVEY FILED JUNE 26, 2007, IN BOOK 36 OF SURVEYS AT PAGE 118, SAN JOAQUIN COUNTY RECORDS. THE DISTANCES SHOWN ARE GROUND DISTANCES. MULTIPLY DISTANCES SHOWN BY 0.99992068 TO OBTAIN GRID DISTANCES.



DEAN JURADO, P.L.S. 9032

1-3-24
DATE



LEGEND

O.R.	OFFICIAL RECORDS
POC	POINT OF COMMENCEMENT
POB	POINT OF BEGINNING
T.C.E.	TEMPORARY CONSTRUCTION EASEMENT
(T)	TOTAL

KIER+WRIGHT
250 Cherry Lane, Suite 107, 208
Manteca, CA 95337
Phone: (209) 328-1123
www.kierwright.com

EXHIBIT "B"
DMC BRIDGE
T.C.E.

TRACY, CALIFORNIA

DATE	APRIL, 2022
SCALE	1" = 100'
BY	CSW
JOB NO.	A09500-431
SHEET	1 OF 1

Z:\2009\A09500-431\DWG\SURVEY\PLATS\DWR-CANAL RD ROW ESMNTS\A09500-431-TCE-IPW.dwg 1-03-24 02:26:39 PM djurado

APPROVED AS TO FORM AND LEGALITY

_____
CITY ATTORNEY'S OFFICE

TRACY CITY COUNCIL

RESOLUTION 2024-_____

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(1) ACCEPTING A GRANT OF EASEMENT FROM THE BUREAU OF RECLAMATION FOR THE INTERNATIONAL PARKWAY BRIDGE REPLACEMENT AND EXPANSION PROJECT, CAPITAL IMPROVEMENT PROJECT 73148 AND (2) AUTHORIZING THE CITY CLERK TO RECORD THE GRANT OF EASEMENT WITH THE OFFICE OF THE SAN JOAQUIN COUNTY RECORDER

WHEREAS, for a number of years, staff has been working with Prologis to help identify funding for the International Parkway Bridge Replacement and Expansion Project (Project), Capital Improvement Project (CIP) 73148, which involves the reconstruction and widening of the bridge on International Parkway over the Delta Mendota Canal. The bridge is located in the IPC area, on the west side of the City and is part of International Parkway, which is a major corridor connecting I-205 in the north to I-580 in the south; and

WHEREAS, ultimately, the Project will include the replacement and expansion of the bridge over the Delta Mendota Canal (DMC) on International Parkway; and

WHEREAS, the Project is located in the Cordes Ranch Specific Plan (CRSP) area, on the west-side of the City. Prologis, L.P. (Prologis) is the Master Developer of the CRSP; and

WHEREAS, the Coronavirus Aid Relief and Economic Security (CARES) Act went into effect on March 27, 2020, making $1.5 billion dollars in economic development assistance available to communities through the Economic Development Administration (EDA); and

WHEREAS, through this program, the Development Services staff applied for a grant to cover what was at the time, eighty percent (80%) of the cost of the Project. In order to submit the application, the City had to commit to funding the remaining twenty percent (20%) of the Project cost. Resulting from discussions with Prologis, a primary benefactor of this improvement, Prologis agreed to provide the match funding through an Infrastructure Funding & Fee Credit Agreement (Funding Agreement). Pursuant to Resolution No. 2020-118, the City Council approved the Funding Agreement on July 7, 2020; and

WHEREAS, through the Funding Agreement, Prologis committed to fund the 20% match (then estimated at approximately, $2,200,000) in exchange for future fee credits. Pursuant to Recital E and Section 3 of the Funding Agreement, Prologis committed to providing, "all funding for the bridge project beyond that provided by the EDA grant", in exchange for fee credits against the City's Master Plan Traffic Impact Fee(s) that would otherwise apply to the Project; and

WHEREAS, under this Funding Agreement, Prologis agreed to fund any shortfall in funding for the Project. Staff is actively working with Prologis to finalize its funding obligation for this Project pursuant to the Funding Agreement. While the City seeks to fully utilize all grant

awards, this Project is not a priority for the City and the City cannot proceed unless Prologis finalizes in writing its commitment to fund the significant shortfall that currently exists; and

WHEREAS, on April 29, 2021, the City was awarded an EDA Grant in the amount of $8,350,057 for the Project. And on June 15, 2021, the City Council accepted the EDA Grant award through Resolution No. 2021-075; and

WHEREAS, subsequent to the award of the EDA Grant, Prologis hired a consultant to work with the City to assist in perfecting several conditions of the grant; and

WHEREAS, the EDA Grant has 33 Specific Award Conditions (SACs) that the City is required to comply with in order to move forward with the use of the EDA Grant funds. Since the award, staff has been working diligently with the EDA and Prologis to satisfy all of the SACs. Coordination between multiple governmental agencies, such as the Bureau of Reclamation and San Luis Delta-Mendota Water Authority, was required to clear up long-standing land title issues. The resolution of these issues required many back and forth discussions and took approximately three years to complete; and

WHEREAS, per SAC 30, the City is required to provide evidence, that is satisfactory to the EDA, that it has coordinated access to the DMC with the BOR and the San Luis Delta Mendota Water Authority; and

WHEREAS, the Grant of Easement will satisfy SAC 30 with respect to the BOR. The Grant of Easement has been approved by the EDA and the City Attorney's Office. Staff requests that the City Council approve the execution of this document to satisfy one of the grant requirements. Three years of diligent staff and developer time has gone into clearing title to get this easement ready for acceptance; and

WHEREAS, irrespective of the EDA grant and whether the Project moves forward at this time (given the funding shortfall issues), staff believes it is in the City's best interest to accept the Grant of Easement at this time given the many years of work involved in getting resolution of title issues for this Project. There is minimal burden or legal impact to the City for accepting the Grant of Easement, even if the Project does not proceed; and

WHEREAS, the EDA Grant requires completion of construction to occur by March 2027. The Project is fully designed and permitted; the City is ready to proceed with construction bidding as soon as the funding is finalized with Prologis. If the funding issue is not resolved immediately, the City will likely lose the EDA Grant as the Project schedule requires a 24-month construction schedule, after bidding and procurement have been completed. Staff is hopeful that Prologis will finalize its funding commitment for the Project so that the EDA Grant funds are not lost and the Project may commence immediately; and

WHEREAS, the cost of the Project was estimated at $10,437,571 at the time of the EDA Grant application. The EDA Grant would have provided funding for 80% in the amount of $8,350,057; and

WHEREAS, since that time, there has been a significant increase in construction costs, due to the sharp increases in steel and other construction materials. The current cost estimate for the Project is $17,530,188. The EDA grant is now estimated to cover approximately 53% of the Project cost, down from the original 80% estimate; and

WHEREAS, the current estimated funding gap is $9,180,131 and is expected to be provided by Prologis pursuant to the Funding Agreement. City staff is actively working with Prologis to finalize this funding obligation; however, the Project may not move forward at this time if funding is not secured immediately; and

WHEREAS, the EDA Grant is a reimbursement grant and the City will receive reimbursements for expenses, if the Project moves forward; now, therefore, be it

RESOLVED: That the City Council of the City of Tracy hereby accepts a Grant of Easement from the Bureau of Reclamation for the International Parkway Bridge Replacement and Expansion Project, CIP 73148; and be it

FURTHER RESOLVED: That the City Council hereby authorizes the City Clerk to record the Grant of Easement with the Office of the San Joaquin County Recorder; and be it

FURTHER RESOLVED: That the City Council hereby determines that the actions taken herein comply with CEQA pursuant to CEQA Guidelines Section 15183, because they are consistent with the existing EIR for the Cordes Ranch Specific Plan and the action requested does not raise any new unforeseen physical impacts.

* * * * * * * * * * * * * *

The foregoing Resolution 2024-_____ was adopted by the Tracy City Council on the 15th day of October 2024 by the following vote:

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

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

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

October 15, 2024

Agenda Item 3.A

Staff recommends that the City Council adopt a Resolution approving annexation of property into "Improvement Area No. 3 of the City of Tracy Community Facilities District No. 2016-1 (Tracy Hills)" and confirming, ordering and directing other related matters.

EXECUTIVE SUMMARY

This item relates to Phase 2A of the Tracy Hills Project (Project). Phase 2A will include approximately 726 residential units as well as public parks, a stormwater basin, a school site, and open space.

The developer of Phase 2A is Lennar Homes of California, LLC (Lennar), although the land is currently owned by Lennar and two affiliated entities of Essential Housing Asset Management, LLC in a land banking arrangement (Essential Housing).

As explained in detail below, the City Council established Community Facilities District (CFD) No. 2016-1 for the Tracy Hills development area. The purpose of the CFD is to provide special tax financing for public infrastructure for the Project and certain ongoing public services. The CFD is designed to allow annexations of additional phases of the development area, as they are developed, only with the unanimous approval of the respective owners without further public hearings or proceedings. In order to comply with the annexation procedures established by the Resolution of Formation creating the CFD, the City Council is being asked to approve the annexation of Phase 2A into the CFD as Improvement Area No. 3 and authorize related matters.

BACKGROUND

On July 19, 2016, pursuant to the Mello-Roos Act Community Facilities Act of 1982 (Mello-Roos Act), the City Council adopted Resolution No. 2016-157 (Resolution of Formation), establishing Community Facilities District No. 2016-1 (Tracy Hills) (CFD), an Improvement Area No. 1 within the CFD (Improvement Area No. 1) and a Future Annexation Area for the CFD.

Also on July 19, 2016, the City Council adopted Resolution No. 2016-158 (Resolution of Necessity) declaring the necessity for the City to issue special tax bonds or other forms of debt obligations for the CFD in the maximum principal amount of $285,000,000. The Resolution of Necessity allocated $70,000,000 of the aggregate $285,000,000 limit to Improvement Area No. 1 (Improvement Area No. 1 Indebtedness Limit) and $215,000,000 to the Future Annexation Area (Non-Improvement Area No. 1 Indebtedness Limit). Under the Resolution of Necessity, debt limits for improvement areas created with properties in the Future Annexation Area will be identified and approved in a Unanimous Approval as part of the future annexation process.

Subsequently, the City Council undertook change proceedings for the CFD, including a landowner vote, which culminated in the adoption by the City Council on August 21, 2018, of Resolution No. 2018-169 (Resolution of Change). Subsequently, the City Council undertook

change proceedings for the CFD, including a landowner vote, which culminated in the adoption by the City Council on August 21, 2018, of the Resolution of Change, to (i) increase the Improvement Area No. 1 Indebtedness Limit to $80,000,000, (ii) increase the Non-Improvement Area No. 1 Indebtedness Limit to $305,000,000, (iii) increase the Improvement Area No. 1 Appropriations Limit to $80,000,000, (iv) amend the boundaries of the CFD, Improvement Area No. 1 and the Future Annexation Area, and (v) amend the Improvement Area No. 1 Rate and Method (Amended Improvement Area No. 1 Rate and Method).

Following those actions, the City Council, on September 6, 2022, among other things, approved the annexation of certain property to the CFD as Improvement Area No. 2, and established a maximum indebtedness limit and an annual appropriations limit for Improvement Area No. 2 of $50,000,000.

The purpose of the CFD is to provide special tax financing for public infrastructure for the Tracy Hills (Project) and certain ongoing public services.

Additionally, the public services provided within Improvement Area 3 will be annexed to the City's Community Facility District No. 2021-2 Maintenance and Public Services (CFD 2021-2). This annexation will allow for the financing and provision of essential public services, including Public Safety, Street Maintenance, Landscaping and Lighting.

The Mello-Roos Act allows for annexation of property from the Future Annexation Area into the CFD by unanimous approval (Unanimous Approval) of the property owner. The Resolution of Formation established a process for annexation of property from the Future Annexation Area into the CFD without further Council action as long as certain conditions were met.

Lennar and the two affiliated entities of Essential Housing have executed Unanimous Approvals to annex the following parcels to the CFD as Improvement Area No. 3 of the City of Tracy Community Facilities District No. 2016-1 (Tracy Hills) (Improvement Area No. 3). Below is a chart identifying the ownership of each of the parcels in Phase 2A

Ownership of Tracy Phase 2A after September 18, 2024			
Owner	**Village**	**Tract Map References**	**APNs**
AG EHC II (LEN) CA 1, L.P.	1 + 4	[Tract Map 4132] Lots 1-11, 25-44, 55-60, 71-116, and 119-139	251-060-270(P)
	2 + 3	[Tract 4133] Lots 29-72, 77-82, and 105-115	251-060-270(P) and 251-060-290(P)
	5 + 6	[[Tract 4134] 47-72 and 77-131	251-060-270(P)
AG EHC II (LEN) CA 2, L.P.	7	[Tract Map 4135] Lots 3-40, 43-72, and 91-97	251-060-350(P), 251-060-290(P), and 251-060-360(P)
	8	[Tract Map 4136] Lots 5-20, 24-39, and 83-89	251-060-350(P) and 251-060-360(P)
	9	[Tract Map 4137] Lots 37-42 and 63-67	251-060-350(P) and 251-060-360(P)
	10	[Tract Map 4138] Lots 33, 35-56 and 80-84	251-060-360(P)
Lennar Homes of California, LLC	1 + 4	[Tract Map 4132] Lots 12-24, 45-54, 61-70, and 117-118	251-060-270(P)
	2 + 3	[Tract 4133] Lots 1-28, 73-76, and 83-104	251-060-270(P) and 251-060-29(P)
	5 + 6	Tract 4134] Lots 1-46 and 73-76	251-060-270(P)
	7	[Tract Map 4135] Lots 1-2, 41-42 and 73-90	251-060-350(P), 251-060-290(P), and 251-060-360(P)
	8	[Tract Map 4136] Lots 1-4, 21-23, and 40-82	251-060-350(P) and 251-060-360(P)
	9	[Tract Map 4137] Lots 1-36, 43-62, and 68-69	251-060-350(P) and 251-060-360(P)
	10	[Tract Map 4138] Lots 1-32, 34, 57-79, and 85-86	251-060-360(P)

The Unanimous Approvals are attached as Attachment B.

ANALYSIS

ANNEXATION PROCEDURE UNDER THE MELLO-ROOS ACT AND THE CFD RESOLUTION OF FORMATION

Annexation from the Future Annexation Area by Unanimous Approval. The Mello-Roos Act allows for annexation of property from the Future Annexation Area into the CFD by Unanimous Approval of the property owner. The Resolution of Formation established a process for annexation of property from the Future Annexation Area into the CFD without further Council action as long as certain conditions were met.

Designation of a New Improvement Area and Related Matters. The Mello-Roos Act allows Council to designate a parcel or parcels as an improvement area within the community facilities district as long as the designation of a parcel or parcels as an improvement area is specified and approved by the Unanimous Approval. No additional hearings or procedures are required. Accordingly, in the Resolution of Formation, Council provided that property within the Future Annexation Area may be annexed into the CFD as its own improvement area (Future Improvement Area) or to an existing improvement area.

In the Resolution of Formation and the Resolution of Necessity, Council further provided that, in connection with an annexation of property into a Future Improvement Area, the following would be identified and approved in the Unanimous Approval and then implemented and completed without the need for Council approval as long as certain conditions are met:

A. the maximum amount of bonded indebtedness and other debt for such improvement area;

B. the rate and method of apportionment of special tax for such improvement area; and

C. the appropriations limit for such improvement area.

UNANIMOUS APPROVAL FROM THE PROPERTY OWNER

The three property owners of the Annexation Property – Lennar and two affiliates of Essential Housing -- have executed Unanimous Approvals to annex the Annexation Property as Improvement Area No. 3.

The City Council is being asked to approve the annexation of the Annexation Property as Improvement Area No. 3 and related matters because the rate and method of apportionment for Improvement Area No. 3 in the form attached as Exhibit A to the Resolution (Improvement Area No. 3 Rate and Method) establishes a maximum special tax amount for the initial fiscal year in which the special tax may be levied for one or more categories of special tax that is greater than 120% of the maximum amount of the same category of special tax for the same fiscal year calculated pursuant to the Amended Improvement Area No. 1 Rate and Method.

Under the Mello-Roos Act, a Unanimous Approval constitutes the vote of the Property Owner for purposes of the California Constitution. Accordingly, the Unanimous Approval declares the Property Owner's vote for the following matters:

A. Improvement Area No. 3 Maximum Bonded Indebtedness Limit

The Unanimous Approval approves a maximum principal amount of bonded indebtedness and other debt for Improvement Area No. 3 of $80,000,000.

In the Resolution of Necessity, Council provided that the maximum indebtedness of a Future Improvement Area will be subtracted from the Non-Improvement Area No. 1 Indebtedness Limit. As a result of subtracting $80,000,000 from the remaining Non-Improvement Area No. 1 Indebtedness Limit ($255,000,000), the remaining Non-Improvement Area No. 1 Indebtedness Limit that will be available for Future Improvement Areas will be $175,000,000.

B. Improvement Area No. 3 Rate and Method

The Unanimous Approval approves the levy of special taxes on the taxable property in Improvement Area No. 3 in accordance with the rate and method of apportionment for Improvement Area No. 3.

In Ordinance 1260 adopted by Council on September 4, 2018, Council previously authorized and levied special taxes on any parcels in the Future Annexation Area that are annexed into a Future Improvement Area at the rate and in accordance with the formula set forth in a Unanimous Approval.

C. Improvement Area No. 3 Appropriations Limit

The Unanimous Approval approves an annual appropriations limit for Improvement Area No. 3 of $80,000,000.

REQUESTED ACTION

In this agenda item, the City Council is being asked to do the following:

1. ***Annexation into Improvement Area No. 3***. Approve the annexation of the Annexation to the CFD as "Improvement Area No. 3 of the City of Tracy Community Facilities District No. 2016-1 (Tracy Hills)."

2. ***Improvement Area No. 3 Indebtedness Limit***. Approve that the maximum aggregate principal amount of bonds and other debt for Improvement Area No. 3 is $80,000,000 and that, as a result of subtracting $80,000,000 from the remaining Non-Improvement Area No. 1 Indebtedness Limit of $255,000,000, the remaining Non-Improvement Area No. 1 Indebtedness Limit is $175,000,000.

3. ***Improvement Area No. 3 Rate and Method***. Confirm that the rate and method of apportionment of the Special Tax for Improvement Area No. 3 are shown in Exhibit A to the Resolution.

4. ***Improvement Area No. 3 Appropriations Limit***. Confirm that the annual appropriations limit of Improvement Area No. 3 is $80,000,000.

5. ***Notice of Annexation***. Direct the City Clerk to record notice of the annexation pursuant to Section 3117.5 of the Streets & Highways Code. A form of the notice is attached as Attachment C.

6. ***Annexation Map***. Direct the City Clerk to record a map of the Annexation Property in the real property records of the County of San Joaquin. A form of the map is attached as Attachment D.

STRATEGIC PLAN

This action to approve the annexation of property into the CFD is related to Council's Governance Strategic Plan, Goal 2: "Ensure continued fiscal sustainability through financial and budgetary stewardship."

FISCAL IMPACT

There is no cost to the General Fund associated with this request.

RECOMMENDATION

Staff recommends that the City Council adopt a Resolution approving annexation of property into "Improvement Area No. 3 of the City of Tracy Community Facilities District No. 2016-1 (Tracy Hills)" and confirming, ordering and directing other related matters.

Prepared by: Sara Castro, Finance Director
Susan Goodwin, Goodwin Consulting Group
Scott Smith, CSG Advisors Incorporated
Chris Lynch, Jones Hall (Special Counsel)

Reviewed by: Karin Schnaider, Assistant City Manager
Bijal Patel, City Attorney

Approved by: Midori Lichtwardt, City Manager

ATTACHMENTS

Attachment A – Unanimous Approvals
Attachment B – Unanimous Approvals
Attachment C – Unanimous Approvals
Attachment D – Notice of Special Tax Lien
Attachment E – Boundary Map

City of Tracy
Community Facilities District No. 2016-1 (Tracy Hills)

Request and Unanimous Approval for Annexation and Landowner-Voter Ballot

Recitals

A. The undersigned is an authorized representative of AG EHC II (LEN) CA 1, L.P., a Delaware limited partnership (the "**Landowner**").

B. The Landowner owns the real property identified in Exhibit A, attached hereto and by this reference incorporated herein (the "**Property**").

C. Pursuant to the Mello-Roos Community Facilities Act of 1982 (the "**Mello-Roos Act**"), on July 19, 2016, the City Council (the "**City Council**") of the City of Tracy adopted its Resolution No. 2016-157 (the "**Resolution of Formation**"), which, among other things:

1. established the City of Tracy Community Facilities District No. 2016-1 (Tracy Hills) ("**CFD**") and a future annexation area for the CFD ("**Future Annexation Area**") and designated Improvement Area No. 1 of the City of Tracy Community Facilities District No. 2016-1 (Tracy Hills)" ("**Improvement Area No. 1**"), with the initial boundaries of the CFD, the Future Annexation Area and Improvement Area No. 1 shown on a boundary map (the "**Boundary Map**") that was recorded on June 15, 2016 in the records of the San Joaquin County Recorder in Book 6 of Maps of Assessment and Community Facilities Districts at Page 84 as Document No. 2016-069400;

2. authorized the CFD and every improvement area annexed thereto to finance the costs and expenses of certain public facilities and fees (together, the "**Facilities**") and certain public services (the "**Services**"); and

3. approved the form of the rate and method of apportionment for Improvement Area No. 1 (the "**Original Improvement Area No. 1 RMA**").

D. The Resolution of Formation further provided that property in the Future Annexation Area may be annexed into the CFD as its own improvement area or to an existing improvement area, and that the designation as an improvement area of any territory annexing to the CFD, the maximum amount of bonded indebtedness and other debt for such improvement area, the rate and method of apportionment of special tax for such improvement area and the appropriations limit for such improvement area shall be identified and approved in a unanimous approval (a "**Unanimous Approval**") executed by property owners in connection with an annexation to the CFD, without the need for Council approval as long as certain conditions were met.

E. Pursuant to the Mello-Roos Act, on July 19, 2016, the City Council adopted its Resolution No. 2016-158 (the "**Resolution of Necessity**"), which set forth the necessity for the City to issue special tax bonds or other forms of debt obligations for the CFD in the maximum

principal amount of $285,000,000. The Resolution of Necessity preliminarily allocated $70,000,000 of the aggregate $285,000,000 limit to Improvement Area No. 1 (the "**Improvement Area No. 1 Indebtedness Limit**") and $215,000,000 to the Future Annexation Area (the "**Non-Improvement Area No. 1 Indebtedness Limit**"), with the actual limit for an improvement area created from annexation of all or part of the Future Annexation Area to be identified and approved in a Unanimous Approval so long as the overall bonded indebtedness limit for the CFD did not exceed $285,000,000.

F. Subsequently, the City Council undertook change proceedings, including a landowner vote, which culminated in the adoption by the City Council on August 21, 2018, of Resolution No. 2018-169, entitled "**Resolution of Change**," to (i) increase the Improvement Area No. 1 Indebtedness Limit to $80,000,000, (ii) increase the Non-Improvement Area No. 1 Indebtedness Limit to $305,000,000, (iii) increase the Improvement Area No. 1 Appropriations Limit to $80,000,000, (iv) amend the boundaries of the CFD, Improvement Area No. 1 and the Future Annexation Area by removing San Joaquin County Assessor's Parcel Number 253-360-15 from Improvement Area No. 1 (the "**Transferred Parcel**") and adding it to the Future Annexation Area, and (v) amend the Improvement Area No. 1 Rate and Method (as amended, the "**Improvement Area No. 1 RMA**"). A map of the amended boundaries of the CFD, Improvement Area No. 1 and the Future Annexation Area was recorded on August 27, 2018 in the records of the San Joaquin County Recorder in Book 6 of Maps of Assessment and Community Facilities Districts at Page 134 as Document No. 2018-095098.

G. Pursuant to Resolution No. 2022-130, adopted on September 6, 2022, the City Council, among other things, approved the annexation of certain property to the CFD as Improvement Area No. 2 of the City of Tracy Community Facilities District No. 2016-1 (Tracy Hills), and confirmed the maximum aggregate principal amount of bonds and other debt and an annual appropriations limit for Improvement Area No. 2 of $50,000,000.

H. The Landowner has sole ownership of the Property. The Property is part of the Future Annexation Area. By this instrument, the Landowner identifies, specifies and approves the annexation of the Property to the CFD as "Improvement Area No. 3 of the City of Tracy Community Facilities District No. 2016-1 (Tracy Hills)" ("**Improvement Area No. 3**") and the other matters included herein, without a public hearing, as authorized by the Mello-Roos Act and the Resolution of Formation.

I. The Landowner hereby acknowledges that the Resolution of Formation requires City Council approval of the annexation of the property as Improvement Area No. 3, as proposed, because the Improvement Area No. 3 RMA (as defined below) establishes a maximum special tax amount for the initial fiscal year in which the special tax may be levied for one or more categories of special tax that is greater than 120% of the maximum amount of the same category of special tax for the same fiscal year calculated pursuant to the Improvement Area No. 1 RMA.

J. The Landowner hereby represents and warrants that, to the best of its knowledge without inquiry, there are no persons resident on the property that are registered voters.

Approval and Vote

1. The Landowner, as the sole owner of the Property, hereby identifies, specifies and provides its unanimous approval of the annexation of the Property to the CFD as

Improvement Area No. 3 and related matters, as prescribed and authorized by Section 53339.7 and Section 53350(b) of the Mello-Roos Act, the Resolution of Formation and the Resolution of Necessity.

2. The Landowner, as the sole qualified elector with respect to the annexation of the Property, hereby votes in favor of (a) the levy of special taxes on the taxable property being annexed to Improvement Area No. 3 in accordance with the rate and method of apportionment for Improvement Area No. 3 in the form attached hereto as Exhibit B (the "**Improvement Area No. 3 RMA**") and by this reference incorporated herein for the purpose of financing the Facilities and the Services, (b) the issuance of bonds and other debt of Improvement Area No. 3 in a principal amount not to exceed $80,000,000, which bonds and other debt shall be secured solely by and be payable solely from the proceeds of the special taxes levied upon the taxable property within Improvement Area No. 3, and (c) an initial appropriations limit for Improvement Area No. 3 of $80,000,000. The Improvement Area No. 3 RMA describes the maximum special tax rate applicable to the Property.

3. The Landowner hereby requests that an annexation map showing the land (including the Property) to be annexed as Improvement Area No. 3 be as shown on the map attached hereto as Exhibit C.

4. The Landowner hereby acknowledges the following:

   a. As soon as practicable following receipt of this Unanimous Approval by the City, the City Council will consider whether to approve the proposed annexation and, if directed by the City Council, the City Clerk will record (i) a Notice of Special Tax Lien for Improvement Area No. 3, listing the name of the Landowner and the assessor's parcel number(s) of the Property, which will result in the establishment of a lien to secure payment of the special tax on the Property and (ii) the proposed annexation map.

   b. The City will levy a special tax upon the taxable property within Improvement Area No. 3 at the time and in accordance with the Resolution of Formation, the Resolution of Change and the Improvement Area No. 3 RMA.

   c. This Unanimous Approval constitutes the Landowner's approval and unanimous vote as described herein and as contemplated by Section 53339.3 et seq. of the Mello-Roos Act and Articles XIIIA and XIIIC of the California Constitution. The Landowner hereby waives all other rights with respect to the annexation of the Property, the levy of the special taxes on the Property and the other matters covered in this Unanimous Approval, including any right the Landowner may otherwise have to protest or challenge the validity of the proceedings to form or change the CFD and to authorize the annexation of any property (including the Property) to the CFD, and any necessity, requirement or right for further public hearings or any election pertaining to the annexation of the Property to the CFD as Improvement Area No. 3 or the levy of special taxes on the Property.

   d. The specific purpose of the bonds and other debt is to finance the acquisition and construction of the Facilities described in the Resolution of Formation and pay related costs. Any proceeds received from the sale of any bonds and other debt will be applied only for such purpose. The proceeds of any bonds and other debt

will be deposited into special accounts to be created therefor as part of the issuance of the bonds and other debt. The City will cause a report to be prepared annually under Section 53411 of the Government Code.

e. The Expected Land Uses (as defined in the Improvement Area No. 3 RMA) of the Property shall be as specified in the Improvement Area No. 3 RMA.

5. The Landowner warrants to the City that the presentation of this Unanimous Approval, any votes, consents or waivers contained herein, and other actions mandated by the City for the annexation of the Property to the CFD as Improvement Area No. 3 shall not constitute or be construed as events of default or delinquencies under any existing or proposed financing documents entered into or to be entered into by the Landowner for the Property, including any "due-on-encumbrance" clauses under any existing security instruments secured by the Property.

6. The Landowner agrees to cooperate with the City and its attorneys and consultants and to provide to any subsequent purchaser with notice of the special tax that may be levied by the City Council on the Property pursuant to the Improvement Area No. 3 RMA, to the extent required by applicable law.

7. The Landowner further agrees to execute such additional or supplemental agreements as may be required by the City to provide for any of the actions and conditions described in this Unanimous Approval.

Dated: September 23, 2024

AG EHC II (LEN) CA 1, L.P.,
a Delaware limited partnership

By: Essential Housing Asset Management, LLC,
an Arizona limited liability company,
its Authorized Agent

By: Wendy Stoeckel
Wendy Stoeckel, its Authorized Representative

Exhibit A - Identification of the Property

Exhibit B - Improvement Area No. 3 RMA

Exhibit C - Proposed Annexation Map

STATE OF ARIZONA)
)
COUNTY OF MARICOPA)

The foregoing instrument was acknowledged before me this 23 day of September 2024, by Wendy Stoeckel, the Authorized Representative of Essential Housing Asset Management, LLC, an Arizona limited liability company, the Authorized Agent of AG EHC II (LEN) CA 1, L.P., a Delaware limited partnership, for and on behalf thereof.

Jaime Marie Adams
Notary Public
Maricopa County, Arizona
My Comm. Expires 07-01-25
Commission No. 607030

Notary Public

(SEAL)

EXHIBIT A

IDENTIFICATION OF THE PROPERTY

Owner	Village	Tract Map References	APNs
AG EHC II (LEN) CA 1, L.P.	1 + 4	[Tract Map 4132] Lots 1-11, 25-44, 55-60, 71-116, and 119-139	251-060-270(P)
	2 + 3	[Tract 4133] Lots 29-72, 77-82, and 105-115	251-060-270(P) and 251-060-290(P)
	5 + 6	[Tract 4134] Lots 47-72 and 77-131	251-060-270(P)

EXHIBIT B

IMPROVEMENT AREA NO. 3 RMA

[attached]

IMPROVEMENT AREA NO. 3 OF THE
CITY OF TRACY
COMMUNITY FACILITIES DISTRICT NO. 2016-1
(TRACY HILLS)

RATE AND METHOD OF APPORTIONMENT OF SPECIAL TAXES

Special Taxes applicable to each Assessor's Parcel in Improvement Area No. 3 of the City of Tracy Community Facilities District No. 2016-1 (Tracy Hills) shall be levied and collected according to the tax liability determined by the City through the application of the appropriate amount or rate for Taxable Property, as described below. All of the property in Improvement Area No. 3, unless exempted by law or by the provisions of Section G below, shall be taxed for the purposes, to the extent, and in the manner herein provided.

A. DEFINITIONS

The terms hereinafter set forth have the following meanings:

"Accessory Unit" means a second residential unit of limited size (e.g., granny cottage, second unit) that shares a Parcel with a single-family detached unit.

"Acre" or **"Acreage"** means the land area of an Assessor's Parcel as shown on an Assessor's Parcel Map, or if the land area is not shown on an Assessor's Parcel Map, the land area shown on the applicable Final Map or other parcel map recorded at the County Recorder's Office.

"Act" means the Mello-Roos Community Facilities Act of 1982, as amended, being Chapter 2.5, (commencing with Section 53311), Division 2 of Title 5 of the Government Code of the State of California.

"Administrative Expenses" means any or all of the following: the fees and expenses of any fiscal agent or trustee (including any fees or expenses of its counsel) employed in connection with any Bonds, and the expenses of the City in carrying out its duties with respect to the CFD and the Bonds, including, but not limited to, the levy and collection of Special Taxes, the fees and expenses of its legal counsel, charges levied by the County in connection with the levy and collection of Special Taxes, costs related to property owner inquiries regarding the Special Taxes, costs associated with appeals or requests for interpretation associated with the Special Taxes and this RMA, costs of the dissemination agent, whether for the City or another party that has undertaken to provide continuing disclosure, amounts needed to pay rebate to the federal government with respect to the Bonds, costs associated with complying with any continuing disclosure requirements with respect to the Bonds and the Special Taxes, costs associated with foreclosure and collection of delinquent Special Taxes and all other costs and expenses of the City and County in any way related to the establishment or administration of the CFD.

"Administrator" means the person or firm designated by the City to administer the Special Taxes according to this RMA.

"Assessor's Parcel" or **"Parcel"** means a lot or parcel shown on an Assessor's Parcel Map with an assigned Assessor's parcel number.

"Assessor's Parcel Map" means an official map of the County Assessor designating Parcels by Assessor's Parcel number.

"Authorized Facilities" means the public facilities authorized to be financed, in whole or in part, by the CFD.

"Authorized Services" means the public services authorized to be funded, in whole or in part, by the CFD.

"Bonds" means bonds or other debt (as defined in the Act), whether in one or more series, issued or assumed by Improvement Area No. 3 to fund Authorized Facilities.

"Capitalized Interest" means funds in any capitalized interest account available to pay interest on Bonds.

"CFD" means the City of Tracy Community Facilities District No. 2016-1 (Tracy Hills).

"City" means the City of Tracy.

"City Council" means the City Council of the City of Tracy.

"County" means the County of San Joaquin.

"Developed Property" means, in any Fiscal Year, all Parcels of Taxable Property, excluding Taxable HOA Property, Taxable Welfare Exemption Property, and Taxable Public Property, for which a building permit was issued prior to June 30 of the preceding Fiscal Year.

"Development Class" means, individually, Developed Property, Undeveloped Property, Taxable HOA Property, Taxable Welfare Exemption Property, and Taxable Public Property.

"Escalation Factor" means, in any Fiscal Year, the lesser of (i) the percentage increase from the prior Fiscal Year, if any, in the Index, or (ii) four percent (4%). The Index used shall be as determined by the Bureau of Labor Statistics from April to April beginning with the period from April 2023 to April 2024.

"Expected Land Uses" means the number of Residential Units and acres of Other Property expected within Improvement Area No. 3 at the time of the IA No. 3 Lien Date, as identified in Attachment 1 and as amended from time to time as set forth in this RMA.

"Expected Maximum Facilities Special Tax Revenues" means the amount of annual revenue that would be available in Improvement Area No. 3 if the Maximum Facilities Special Tax was levied on the Expected Land Uses. The Expected Maximum Facilities Special Tax Revenues as of the IA No. 3 Lien Date are shown in Attachment 1 of this RMA and may be reduced due to prepayments in future Fiscal Years and/or pursuant to Section D below.

"Facilities Special Tax" means a special tax levied in any Fiscal Year to pay the Facilities Special Tax Requirement.

"Facilities Special Tax Requirement" means the amount necessary in any Fiscal Year (i) to pay principal and interest on Bonds which are due in the calendar year which begins in such Fiscal Year, (ii) to create or replenish reserve funds to the extent such replenishment has not been included in a computation of Facilities Special Tax Requirement in a previous Fiscal Year, (iii) to cure any delinquencies in the payment of principal or interest on Bonds which have occurred in the prior Fiscal Year, (iv) to pay Administrative Expenses, and (v) to pay the costs of Authorized Facilities to be funded directly from Facilities Special Tax proceeds to the extent that paying directly for such costs does not increase the Facilities Special Tax levied on Undeveloped Property. The amounts referred to in clauses (i) and (ii) of the preceding sentence may be reduced in any Fiscal Year by (i) interest earnings on or surplus balances in funds and accounts for Bonds to the extent that such earnings or balances are available to apply against debt service pursuant to the Indenture, (ii) proceeds from the collection of penalties associated with delinquent Facilities Special Taxes, and (iii) any other revenues available to pay debt service on the Bonds as determined by the Administrator.

"Final Bond Sale" means, at any point in time, the last series of Bonds issued for Improvement Area No. 3, which issuance uses up virtually all of the remaining capacity available from the Maximum Facilities Special Tax revenues that can be generated within Improvement Area No. 3, as determined by the City. If additional Bonds are expected to be issued after outstanding Bonds retire, the "Final Bond Sale" may not be the last series of Bonds ever issued for Improvement Area No. 3, but instead the last sale of Bonds that can be issued before some or all of the outstanding Bonds retire.

"Final Map" means a final map, or portion thereof, recorded by the County pursuant to the Subdivision Map Act (California Government Code Section 66410 et seq.) that creates lots that do not need to be further subdivided prior to issuance of a building permit for a residential structure. The term "Final Map" shall not include any Assessor's Parcel map or subdivision map, or portion thereof, that does not create lots that are in their final configuration, including Assessor's Parcels that are designated as remainder parcels.

"First Bond Sale" means issuance of the first series of Bonds secured, in whole or in part, by Facilities Special Taxes levied and collected from Parcels in Improvement Area No. 3.

"Fiscal Year" means the period starting July 1 and ending on the following June 30.

"Homeowners Association" or **"HOA"** means the homeowners association that provides services to, and collects dues, fees, or charges from, property within Improvement Area No. 3.

"HOA Property" means any property within the boundaries of Improvement Area No. 3 that is owned in fee or by easement by the Homeowners Association, not including any such property that is located directly under a residential structure.

"IA No. 3 Lien Date" means the date that the Notice of Special Tax Lien affecting the Parcels in Improvement Area No. 3 was recorded in the official records of the County.

"Improvement Area No. 3" means Improvement Area No. 3 of the City of Tracy Community Facilities District No. 2016-1 (Tracy Hills).

"Improvement Fund" means the account (regardless of its name) identified in the Indenture to hold funds which are available to acquire or construct Authorized Facilities.

"Indenture" means the bond indenture, fiscal agent agreement, trust agreement, resolution or other instrument pursuant to which Bonds are issued, as modified, amended, and/or supplemented from time to time, and any instrument replacing or supplementing the same.

"Index" means the Consumer Price Index of the San Francisco-Oakland-Hayward area for all urban consumers.

"Land Use Change" means a proposed or approved change to the Expected Land Uses within Improvement Area No. 3 after the IA No. 3 Lien Date.

"**Maximum Facilities Special Tax"** means the greatest amount of Facilities Special Tax that can be levied on an Assessor's Parcel in any Fiscal Year as determined in accordance with Sections C and D below.

"**Maximum Services Special Tax"** means the greatest amount of Services Special Tax that can be levied on an Assessor's Parcel in any Fiscal Year as determined in accordance with Section C.2 below.

"Maximum Special Taxes" means, collectively, the Maximum Facilities Special Tax and Maximum Services Special Tax.

"Other Property" means, in any Fiscal Year, all Parcels of Developed Property within Improvement Area No. 3 that are not Single Family Residential Property.

"Proportionately" means, for each Development Class, that the ratio of the actual Special Tax levied in any Fiscal Year to the Maximum Special Tax authorized to be levied in that Fiscal Year is equal for all Parcels assigned to the Development Class.

"Public Property" means any property within the boundaries of Improvement Area No. 3 that is owned by the federal government, State of California or other local governments or public agencies.

"Recycled Water Facilities Cost" means the total cost, as determined by the City, of funding the design, engineering, construction, and/or acquisition of recycled water facilities that will serve development within the CFD. If, in the future, the City determines that there is a preferred alternative to the recycled water facilities that were expected at the time of the IA No. 3 Lien Date, the cost of such facilities shall qualify as Recycled Water Facilities Costs for purposes of this RMA.

"Remainder Taxes" means, after September 1st and before December 31st of any Fiscal Year, any Facilities Special Tax revenues that were levied and collected in the prior Fiscal Year and were not needed to (i) pay debt service on the Bonds that was due in the calendar year in which the Remainder Taxes are being calculated, (ii) replenish Bond reserves, or (iii) pay Administrative Expenses that have been incurred, or are expected to be incurred, by the City prior to the receipt of additional Facilities Special Tax proceeds.

"Required Coverage" means the amount by which the Expected Maximum Facilities Special Tax Revenues must exceed the Bond debt service and required Administrative Expenses, as set forth in the Indenture, Certificate of Special Tax Consultant, or other formation or bond document that sets forth the minimum required debt service coverage.

"Residential Unit" means an individual single-family unit that does not share a common wall with another residential unit, or an individual residential unit within a duplex, halfplex, triplex, fourplex, townhome, live/work or condominium structure. An Accessory Unit shall not be considered a Residential Unit for purposes of this RMA.

"RMA" means this Rate and Method of Apportionment of Special Tax.

"Services Special Tax" means a special tax levied in any Fiscal Year to pay the Services Special Tax Requirement.

"Services Special Tax Requirement" means the amount of revenue needed in any Fiscal Year after the Trigger Event to pay for: (i) Authorized Services, (ii) Administrative Expenses, and (iii) amounts needed to cure any delinquencies in the payment of Services Special Taxes which have occurred in the prior Fiscal Year. In any Fiscal Year, the Services Special Tax Requirement shall be reduced by surplus amounts available (as determined by the City) from the levy of the Services Special Tax in prior Fiscal Years, including revenues from the collection of delinquent Services Special Taxes and associated penalties and interest.

"Single Family Residential Property" means, in any Fiscal Year, all Parcels of Developed Property for which a building permit was issued for construction of one or more Residential Units.

"Special Taxes" means, collectively, the Facilities Special Tax and the Services Special Tax.

"Taxable HOA Property" means, in any Fiscal Year after the First Bond Sale, any Parcel of HOA Property that satisfies all three of the following conditions: (i) the Parcel had not been HOA Property on the date of the First Bond Sale; (ii) based on reference to Attachments 1 and 2 (as may be updated pursuant to Section D below), the Parcel was not anticipated to be HOA Property based on the Expected Land Uses, as determined by the Administrator; and (iii) if the Parcel were to be exempt from the Facilities Special Tax because it has become HOA Property, the Expected Maximum Facilities Special Tax Revenues would be reduced to a point at which Required Coverage could not be maintained.

"Taxable Property" means all Parcels within the boundaries of Improvement Area No. 3 which are not exempt from the Special Taxes pursuant to law or Section G below.

"Taxable Public Property" means, in any Fiscal Year after the First Bond Sale, any Parcel of Public Property that satisfies all three of the following conditions: (i) the Parcel had not been Public Property on the date of the First Bond Sale, (ii) based on reference to Attachments 1 and 2 (as may be updated pursuant to Section D.1 below), the Parcel was not anticipated to be Public Property based on the Expected Land Uses, as determined by the Administrator, and (iii) if the Parcel were to be exempt from the Facilities Special Tax because it has become Public Property, the Expected Maximum Facilities Special Tax Revenues would be reduced to a point at which Required Coverage could not be maintained.

"Taxable Welfare Exemption Property" means in any Fiscal Year after the First Bond Sale, any Parcel of Welfare Exemption Property that satisfies all three of the following conditions: (i) the Parcel had not been Welfare Exemption Property on the date of issuance of the First Bond Sale; (ii) based on reference to Attachments 1 and 2 (as may be updated pursuant to Section D herein), the Parcel was not anticipated to be Welfare Exemption Property based on the Expected Land Uses, as determined by the Administrator; and (iii) if the Parcel were to be exempt from the Facilities Special Tax because it has become Welfare Exemption Property, the Expected Maximum Facilities Special Tax Revenues would be reduced to a point at which Required Coverage could not be maintained.

"Tentative Map" means any tentative map or vesting tentative map for Phase 2A of the Tracy Hills project, approved by the City Council and as may be amended from time to time.

"Trigger Event" means, in any Fiscal Year, that, on or before June 30 of the prior Fiscal Year, the Administrator made a finding that (i) all Bonds secured by the levy and collection of Facilities Special Taxes in the CFD have been fully repaid, (ii) all Administrative Expenses from prior Fiscal Years have been paid or reimbursed to the City, (iii) the Recycled Water Facilities Costs have been fully funded, and (iv) there are no other Authorized Facilities that the City intends to fund with Facilities Special Taxes. In the first Fiscal Year in which the Administrator determines that the Trigger Event occurred in the prior Fiscal Year, and in each Fiscal Year thereafter, the Facilities Special Tax shall cease to be levied, and the Maximum Services Special Tax for each Parcel shall be adjusted pursuant to Section C.2 below.

"Undeveloped Property" means, in any Fiscal Year, all Parcels of Taxable Property that are not Developed Property, Taxable HOA Property, Taxable Welfare Exemption Property, or Taxable Public Property.

"Village" means a specific geographic area within Improvement Area No. 3 that (i) is identified by an assigned number on the Tentative Map, (ii) is expected to have single family lots that are all of a similar size, and (iii) is assigned Expected Maximum Facilities Special Tax Revenues in Attachment 1 based on the Expected Land Uses for that Village.

"Welfare Exemption Property" means, in any Fiscal Year, any Parcels in Improvement Area No. 3 that have received a welfare exemption under subdivision (g) of Section 214 of the Revenue and Taxation Code and for which such welfare exemption is still in place.

B. DATA FOR ADMINISTRATION OF SPECIAL TAX

Each Fiscal Year, the Administrator shall (i) categorize each Parcel of Taxable Property as Developed Property, Undeveloped Property, Taxable Public Property, Taxable HOA Property, or Taxable Welfare Exemption Property; (ii) for Single Family Residential Property, determine within which Village each Parcel of Developed Property is located and the number of Residential Units on the Parcel; and (iii) determine the Facilities Special Tax Requirement and Services Special Tax Requirement for the Fiscal Year. In addition, the Administrator shall, ***on an ongoing basis***, monitor Final Maps and condominium plans to determine if there are any proposed changes to the Expected Land Uses that would reduce the Expected Maximum Facilities Special Tax Revenues for a Village. If the Expected Maximum Facilities Special Tax Revenues will be reduced pursuant to a proposed Land Use Change, the Administrator shall apply the steps set forth in Section D.1 below.

In any Fiscal Year, if it is determined that: (i) a parcel map for property in Improvement Area No. 3 was recorded after January 1 of the prior Fiscal Year (or any other date after which the Assessor will not incorporate the newly-created Parcels into the then current tax roll), (ii) because of the date the parcel map was recorded, the Assessor does not yet recognize the new Parcels created by the parcel map, and (iii) one or more of the newly-created Parcels is in a different Development Class than other Parcels created by the subdivision, the Administrator shall calculate the Special Taxes for the property affected by recordation of the parcel map by determining the Special Taxes that apply separately to the property within each Development Class, then applying the sum of the individual Special Taxes to the Parcel that was subdivided by recordation of the parcel map.

C. MAXIMUM SPECIAL TAX

1. Facilities Special Tax

Table 1 below identifies the Maximum Facilities Special Tax, before and after the Trigger Event, for Taxable Property in Improvement Area No. 3, subject to potential adjustments that may occur pursuant to Section D below.

TABLE 1
IMPROVEMENT AREA NO. 3
MAXIMUM FACILITIES SPECIAL TAX

Land Use	Maximum Facilities Special Tax Prior to Trigger Event Fiscal Year 2024-25*	Maximum Facilities Special Tax After Trigger Event
Single Family Residential Property		
Villages 1 & 4	$4,398 per Residential Unit	$0 per Residential Unit
Village 2 & 3	$4,649 per Residential Unit	$0 per Residential Unit
Village 5 & 6	$5,124 per Residential Unit	$0 per Residential Unit
Village 7	$5,295 per Residential Unit	$0 per Residential Unit
Village 8	$5,277 per Residential Unit	$0 per Residential Unit
Village 9	$5,658 per Residential Unit	$0 per Residential Unit
Village 10	$6,149 per Residential Unit	$0 per Residential Unit
Other Property, Undeveloped Property, Taxable Public Property Taxable HOA Property Taxable Welfare Exemption Property		
Villages 1 & 4	$40,235 per Acre	$0 per Acre
Village 2 & 3	$41,543 per Acre	$0 per Acre
Village 5 & 6	$39,217 per Acre	$0 per Acre
Village 7	$58,407 per Acre	$0 per Acre
Village 8	$65,506 per Acre	$0 per Acre
Village 9	$61,422 per Acre	$0 per Acre
Village 10	$40,406 per Acre	$0 per Acre

* On July 1, 2025 and on each July 1 thereafter, all figures shown in Table 1 above shall be increased by an amount equal to 2.0% of the amount in effect for the prior Fiscal Year.

2. Services Special Tax

Table 2 below identifies the Maximum Services Special Tax, before and after the Trigger Event, for Taxable Property in Improvement Area No. 3.

TABLE 2
IMPROVEMENT AREA NO. 3
MAXIMUM SERVICES SPECIAL TAX

Type of Property	Maximum Services Special Tax Prior to Trigger Event	Maximum Services Special Tax After Trigger Event Fiscal Year 2024-25*
Single Family Residential Property		
Villages 1 & 4	$0 per Residential Unit	$880 per Residential Unit
Village 2 & 3	$0 per Residential Unit	$930 per Residential Unit
Village 5 & 6	$0 per Residential Unit	$1,025 per Residential Unit
Village 7	$0 per Residential Unit	$1,059 per Residential Unit
Village 8	$0 per Residential Unit	$1,055 per Residential Unit
Village 9	$0 per Residential Unit	$1,132 per Residential Unit
Village 10	$0 per Residential Unit	$1,230 per Residential Unit
Other Property, Undeveloped Property, Taxable Public Property Taxable HOA Property		
Villages 1 & 4	$0 per Acre	$8,047 per Acre
Village 2 & 3	$0 per Acre	$8,309 per Acre
Village 5 & 6	$0 per Acre	$7,843 per Acre
Village 7	$0 per Acre	$11,681 per Acre
Village 8	$0 per Acre	$13,101 per Acre
Village 9	$0 per Acre	$12,284 per Acre
Village 10	$0 per Acre	$8,081 per Acre

* Beginning July 1, 2025 and each July 1 thereafter until the Trigger Event, the Services Special Taxes in Table 2 shall be increased by 2.0% of the amount in effect in the prior Fiscal Year. On July 1 of the Fiscal Year after the Trigger Event and each July 1 thereafter, the Services Special Taxes and the Maximum Services Special Tax assigned to each Parcel shall be adjusted by the Escalation Factor.

Once Special Taxes have been levied on a Parcel of Developed Property, the Maximum Special Taxes applicable to that Parcel shall not be reduced in future Fiscal Years regardless of changes in land use on the Parcel, except (i) in the event of a partial prepayment pursuant to Section H, and (ii) pursuant to Section D. Notwithstanding the foregoing: (i) if Bonds have yet to be issued for Improvement Area No. 3, the Parcels can be assigned to the appropriate special tax category based on the Land Use Change, and the Administrator shall recalculate the Expected Maximum Facilities Special Tax Revenues based on the corresponding change in revenues, and (ii) the actual Special Taxes levied on a Parcel of Developed Property in any Fiscal Year may be less than the Maximum Special Taxes if lower Special Taxes are calculated pursuant to Step 1 in Sections E.1 and E.2 below.

D. CHANGES TO MAXIMUM SPECIAL TAXES

The Expected Maximum Facilities Special Tax Revenues were calculated based on the Expected Land Uses at the IA No. 3 Lien Date. The Administrator shall review Final Maps, Tentative Map revisions, and other changes to land uses proposed within Improvement Area No. 3 and compare the revised land uses to the Expected Land Uses to evaluate the impact on the Expected Maximum Facilities Special Tax Revenues.

1. Changes in Expected Land Uses

If, prior to the First Bond Sale, a Land Use Change is proposed that will result in a reduction in the Expected Maximum Facilities Special Tax Revenues, no action will be needed pursuant to this Section D.1. Upon approval of the Land Use Change, the Administrator shall update Attachment 1 to show the reduced Expected Maximum Facilities Special Tax Revenues.

If, prior to the Final Bond Sale, a Land Use Change is proposed that will result in a reduction in the Expected Maximum Facilities Special Tax Revenues, no action will be needed pursuant to this Section D.1 as long as the reduction does not reduce debt service coverage on outstanding Bonds below the Required Coverage. Upon approval of the Land Use Change, the Administrator shall update Attachment 1 to show the reduced Expected Maximum Facilities Special Tax Revenues, which amount shall be used to size the Final Bond Sale.

If a Land Use Change is proposed after the Final Bond Sale, the following steps shall be applied:

Step 1: By reference to Attachment 1 (which will be updated by the Administrator each time a Land Use Change has been processed according to this Section D.1 and or pursuant to Section D.2), the Administrator shall identify the Expected Maximum Facilities Special Tax Revenues for Improvement Area No. 3.

Step 2: The Administrator shall calculate the Expected Maximum Facilities Special Tax Revenues that could be collected from property in Improvement Area No. 3 if the Land Use Change is approved.

Step 3: If the amount calculated in Step 2 is higher than that determined in Step 1, no further action is needed. If the revenues calculated in Step 2 are less than those calculated in Step 1, and if the landowner requesting the Land Use Change does not prepay the portion of the Expected Maximum Facilities Special Tax Revenues in an amount that corresponds to the lost revenue, then the Maximum Facilities Special Tax for each Parcel of Taxable Property in the area affected by the Land Use Change shall be increased proportionately until the aggregate Expected Maximum Facilities Special Tax Revenues that can be generated from the area affected by the Land Use Change is the same as it was prior to the Land Use Change.

If multiple Land Use Changes are proposed simultaneously by a single landowner (which may include approval of multiple Final Maps at one time), the Administrator may consider the combined effect of all the Land Use Changes to determine if there is a reduction in Expected Maximum Facilities Special Tax Revenues. If there is a reduction, the Administrator shall increase the Maximum Facilities Special Tax proportionately in all of the Final Maps being proposed by

the landowner until the aggregate amount that can be levied within the Final Maps is equal to the amount that could have been levied prior to the proposed Land Use Changes. If Land Use Changes are proposed simultaneously by multiple landowners, the Administrator shall consider the proposed Land Use Changes individually.

2. Transfer of Expected Maximum Facilities Special Tax Revenues from One Village to Another

The Expected Maximum Facilities Special Tax Revenues were determined for each Village based on the Expected Land Uses within that Village. If the expected number of Residential Units is transferred from one Village to another, the City may, in its sole discretion, allow for a corresponding transfer of Expected Maximum Facilities Special Tax Revenues between the Villages. Such a transfer shall only be allowed if (i) all adjustments are agreed to in writing by the affected property owners and the City, and (ii) there is no reduction in the total Expected Maximum Facilities Special Tax Revenues as a result of the transfer.

3. Conversion of a Parcel of Public Property to Private Use

If, in any Fiscal Year, a Parcel of Public Property is converted to private use, such Parcel shall be subject to the levy of Special Taxes. The Maximum Special Taxes for each such Parcel shall be determined based on the average Maximum Special Taxes for Parcels with similar land use designations, as determined by the Administrator.

E. METHOD OF LEVY OF THE SPECIAL TAXES

1. Facilities Special Tax

Each Fiscal Year, the Administrator shall determine the Facilities Special Tax Requirement and levy the Facilities Special Tax on all Parcels of Taxable Property as follows:

Step 1: In the first twenty (20) Fiscal Years in which a Facilities Special Tax is levied within Improvement Area No. 3, the Maximum Facilities Special Tax shall be levied on all Parcels of Developed Property. In the first nine (9) Fiscal Years in which Facilities Special Taxes are collected, and in the 16th, 17th, 18th, 19th and 20th Fiscal Years in which Facilities Special Taxes are collected, Facilities Special Tax proceeds that are determined by the Administrator to be Remainder Taxes shall be deposited into the Improvement Fund to pay any costs associated with the acquisition of Authorized Facilities that were not paid with Bond proceeds or Facilities Special Taxes levied in prior Fiscal Years. Any Remainder Taxes collected in the 10th, 11th, 12th, 13th, 14th and 15th Fiscal Years in which Facilities Special Taxes are levied shall be available to pay for Authorized Facilities or Authorized Services as determined in the sole discretion of the City.

Beginning in the 21st Fiscal Year in which a Facilities Special Tax is levied within Improvement Area No. 3 and continuing until the Trigger Event, the Facilities Special Tax shall be levied Proportionately on each Parcel of Developed Property up to 100% of the Maximum Facilities Special Tax for each Parcel of Developed Property until the amount levied is equal to the

Facilities Special Tax Requirement, the calculation of which will include funding for Recycled Water Facilities Costs and/or other Authorized Facilities designated for funding, as determined in the sole discretion of the City. After the Trigger Event, the Facilities Special Tax shall no longer be levied.

Step 2: If additional revenue is needed after Step 1 and after applying Capitalized Interest to the Facilities Special Tax Requirement, the Facilities Special Tax shall be levied Proportionately on each Parcel of Undeveloped Property up to 100% of the Maximum Facilities Special Tax for each Parcel of Undeveloped Property.

Step 3: If additional revenue is needed after Step 2, the Facilities Special Tax shall be levied Proportionately on each Parcel of Taxable Welfare Exemption Property, up to 100% of the Maximum Facilities Special Tax for each Parcel of Taxable Welfare Exemption Property.

Step 4: If additional revenue is needed after Step 3, the Facilities Special Tax shall be levied Proportionately on each Parcel of Taxable HOA Property, up to 100% of the Maximum Facilities Special Tax for each Parcel of Taxable HOA Property.

Step 5: If additional revenue is needed after Step 4, the Facilities Special Tax shall be levied Proportionately on each Parcel of Taxable Public Property, up to 100% of the Maximum Facilities Special Tax for each Parcel of Taxable Public Property.

2. *Services Special Tax*

Each Fiscal Year after the Trigger Event, the Administrator shall determine the Services Special Tax Requirement and levy the Services Special Tax on all Parcels of Taxable Property as follows:

Step 1: The Services Special Tax shall be levied Proportionately on each Parcel of Developed Property up to 100% of the Maximum Services Special Tax for each Parcel of Developed Property until the amount levied is equal to the Services Special Tax Requirement.

Step 2: If additional revenue is needed after Step 1, the Services Special Tax shall be levied Proportionately on each Parcel of Undeveloped Property, up to 100% of the Maximum Services Special Tax for each Parcel of Undeveloped Property.

Step 3: If additional revenue is needed after Step 2, the Services Special Tax shall be levied Proportionately on each Parcel of Taxable HOA Property, up to 100% of the Maximum Services Special Tax for each Parcel of Taxable HOA Property.

Step 4: If additional revenue is needed after Step 3, the Services Special Tax shall be levied Proportionately on each Parcel of Taxable Public Property, up to 100% of the Maximum Services Special Tax for each Parcel of Taxable Public Property.

F. MANNER OF COLLECTION OF SPECIAL TAXES

The Special Taxes for Improvement Area No. 3 shall be collected in the same manner and at the same time as ordinary ad valorem property taxes, provided, however, that partial prepayments are permitted as set forth in Section H below and provided further that the City may directly bill the Special Taxes, may collect Special Taxes at a different time or in a different manner, and may collect delinquent Special Taxes through foreclosure or other available methods.

The Facilities Special Tax shall be levied and collected until principal and interest on Bonds have been repaid, costs of constructing or acquiring Authorized Facilities from Facilities Special Tax proceeds have been paid, and all Administrative Expenses have been paid or reimbursed. However, in no event shall Facilities Special Taxes be levied for more than eighty (80) Fiscal Years. Under no circumstances may the Facilities Special Tax on a Parcel in residential use be increased in any Fiscal Year as a consequence of delinquency or default in payment of the Facilities Special Tax levied on another Parcel or Parcels by more than ten percent (10%) above the amount that would have been levied in that Fiscal Year had there never been any such delinquencies or defaults. After the Trigger Event, the Services Special Tax may be levied and collected in perpetuity.

G. EXEMPTIONS

Any Parcel that becomes HOA Property, Public Property, or Welfare Exemption Property prior to the First Bond Sale shall be exempt from both the Services Special Tax and the Facilities Special Tax; the Administrator shall reduce the Expected Maximum Facilities Special Tax Revenues to reflect any such exemption, and the First Bond Sale shall be sized based on the reduced Expected Maximum Facilities Special Tax Revenues. Any Parcel that becomes HOA Property, Public Property, or Welfare Exemption Property after the First Bond Sale shall be exempt from both the Services Special Tax and the Facilities Special Tax provided such Parcel is not Taxable HOA Property, Taxable Public Property or Taxable Welfare Exemption Property.

In addition, no Special Taxes shall be levied on (i) Parcels that are designated as permanent open space or common space on which no structure is permitted to be constructed, (ii) Parcels owned by a public utility for an unmanned facility, and (iii) Parcels subject to an easement that precludes any use on the Parcel other than that permitted by the easement. Notwithstanding the foregoing, if a Facilities Special Tax has been levied on a Parcel in any Fiscal Year, and the entire Parcel subsequently meets the criteria in (i), (ii) or (iii) above, the Parcel shall remain subject to the Facilities Special Tax levy, unless the First Bond Sale has not occurred, in which case such property shall be categorized as Public Property, and the Administrator shall recalculate the Expected Maximum Facilities Special Tax Revenues based on the corresponding loss in revenues.

H. PARTIAL PREPAYMENT OF FACILITIES SPECIAL TAX

The following definitions apply to this Section H:

> **"Outstanding Bonds"** means all Previously Issued Bonds which remain outstanding, with the following exception: if a Facilities Special Tax has been levied against, or already paid by, an Assessor's Parcel making a prepayment, and a portion of the Facilities Special Tax will be used to pay a portion of the next principal payment on the Bonds that remain

outstanding (as determined by the Administrator), that next principal payment shall be subtracted from the total Bond principal that remains outstanding, and the difference shall be used as the amount of Outstanding Bonds for purposes of this prepayment formula.

"Previously Issued Bonds" means all Bonds that have been issued prior to the date of prepayment.

"Public Facilities Requirements" means: (i) $54.5 million in Fiscal Year 2024-25 dollars, which amount shall, on July 1, 2025 and on each July 1 thereafter, be increased by an amount equal to 2.0% of the amount in effect for the prior Fiscal Year, or (ii) such other number as shall be determined by the City to be an appropriate estimate of the net construction proceeds that will be generated from all Bonds that have been or are expected to be issued on behalf of Improvement Area No. 3.

"Remaining Facilities Costs" means the Public Facilities Requirements (as defined above), minus public facility costs funded by Previously Issued Bonds (as defined above), Remainder Taxes, or prepayments.

A property owner may prepay up to 80% of the Facilities Special Tax obligation applicable to a Parcel in Improvement Area No. 3, thereby reducing the Maximum Facilities Special Tax applicable to the Parcel, provided that a prepayment may be made only if there are no delinquent Special Taxes with respect to such Parcel at the time of prepayment. An owner of a Parcel intending to prepay a portion of the Facilities Special Tax obligation shall provide the City with written notice of intent to prepay, which shall identify the percentage of the Maximum Facilities Special Tax that is to be prepaid. Within 30 days of receipt of such written notice, the City or its designee shall notify such owner of the prepayment amount for such Parcel. Prepayment must be made not less than 50 days prior to any redemption date for Bonds to be redeemed with the proceeds of such prepaid Facilities Special Taxes.

The Prepayment Amount shall be calculated as follows (capitalized terms as defined below):

	Bond Redemption Amount
plus	Remaining Facilities Amount
plus	Redemption Premium
plus	Defeasance Requirement
plus	Administrative Fees and Expenses
less	Reserve Fund Credit
equals	Prepayment Amount

As of the proposed date of prepayment, the Prepayment Amount for a Parcel shall be determined by application of the following steps:

Step 1. Determine the Maximum Facilities Special Tax that could be levied on the Parcel based on the Expected Land Uses for the Parcel at the time the prepayment is calculated.

Step 2. Divide the Maximum Facilities Special Tax computed pursuant to Step 1 by the Expected Maximum Facilities Special Tax Revenues in that Fiscal Year.

Step 3. Multiply the quotient computed in Step 2 by the percentage of the Maximum Facilities Special Tax that the property owner wants to prepay, which percentage shall not exceed 80%.

Step 4. Multiply the quotient computed pursuant to Step 3 by the Outstanding Bonds to compute the amount of Outstanding Bonds to be retired and prepaid (*the "**Bond Redemption Amount**"*).

Step 5. Compute the current Remaining Facilities Costs (if any).

Step 6. Multiply the quotient computed pursuant to Step 3 by the amount determined pursuant to Step 5 to compute the amount of Remaining Facilities Costs to be prepaid (*the "**Remaining Facilities Amount**"*).

Step 7. Multiply the Bond Redemption Amount computed pursuant to Step 4 by the applicable redemption premium, if any, on the Outstanding Bonds to be redeemed (*the "**Redemption Premium**"*).

Step 8. Compute the amount needed to pay interest on the Bond Redemption Amount starting with the last Bond interest payment date on which interest has been or will be paid by Facilities Special Taxes already levied until the earliest redemption date for the Outstanding Bonds.

Step 9: Compute the amount of interest the City reasonably expects to derive from reinvestment of the Bond Redemption Amount plus the Redemption Premium from the first Bond interest payment date after which the prepayment has been received until the redemption date for the Outstanding Bonds.

Step 10: Take the amount computed pursuant to Step 8 and subtract the amount computed pursuant to Step 9 (the ***"Defeasance Requirement"***).

Step 11. Determine the costs of computing the prepayment amount, redeeming Bonds, and recording any notices to evidence the prepayment and redemption (the *"**Administrative Fees and Expenses**"*).

Step 12. If and to the extent so provided in the Indenture, a reserve fund credit shall be calculated as a reduction in the applicable reserve fund for the Outstanding Bonds to be redeemed pursuant to the prepayment (the "***Reserve Fund Credit***").

Step 13. The Facilities Special Tax prepayment is equal to the sum of the amounts computed pursuant to Steps 4, 6, 7, 10, and 11, less the amount computed pursuant to Step 12 (the *"**Prepayment Amount**"*).

Step 14. From the Prepayment Amount, the amounts computed pursuant to Steps 4, 7, and 10 shall be deposited into the appropriate fund as established under the Indenture and be used to retire Outstanding Bonds or make debt service payments. The amount computed pursuant to Step 6 shall be deposited into the Improvement Fund. The amount computed pursuant to Step 11 shall be retained in the account or fund that is established to pay Administrative Expenses.

Once a partial prepayment of a Facilities Special Tax has been received, an Amendment to Special Tax Lien shall be recorded against the Parcel to reflect the reduced Facilities Special Tax lien for the Parcel, which shall be equal to the portion of the Maximum Facilities Special Tax that was not prepaid. However, an Amendment to Special Tax Lien shall not be recorded until all Facilities Special Taxes levied on the Parcel in the current or prior Fiscal Years have been collected. The prepayment of a portion of the Facilities Special Tax shall not affect the perpetual obligation to pay the Services Special Tax.

Notwithstanding the foregoing, if at any point in time the Administrator determines that the Maximum Facilities Special Tax revenue that could be collected from Taxable Property that remains subject to the Facilities Special Tax after the proposed prepayment would be less than the Required Coverage on Bonds that will remain outstanding after defeasance or redemption of Bonds from proceeds of the estimated prepayment, the amount of the prepayment shall be increased until the amount of Bonds defeased or redeemed is sufficient to reduce remaining annual debt service to a point at which Required Coverage is maintained.

I. INTERPRETATION OF SPECIAL TAX FORMULA

The City may interpret, clarify, and revise this RMA to correct any inconsistency, vagueness, or ambiguity, by resolution and/or ordinance, that does not create a material adverse effect on the levy and collection of the Special Taxes and any security for any Bonds.

ATTACHMENT 1

Improvement Area No. 3 of the
City of Tracy
Community Facilities District No. 2016-1
(Tracy Hills)

Expected Land Uses and Expected Maximum Facilities Special Tax Revenues

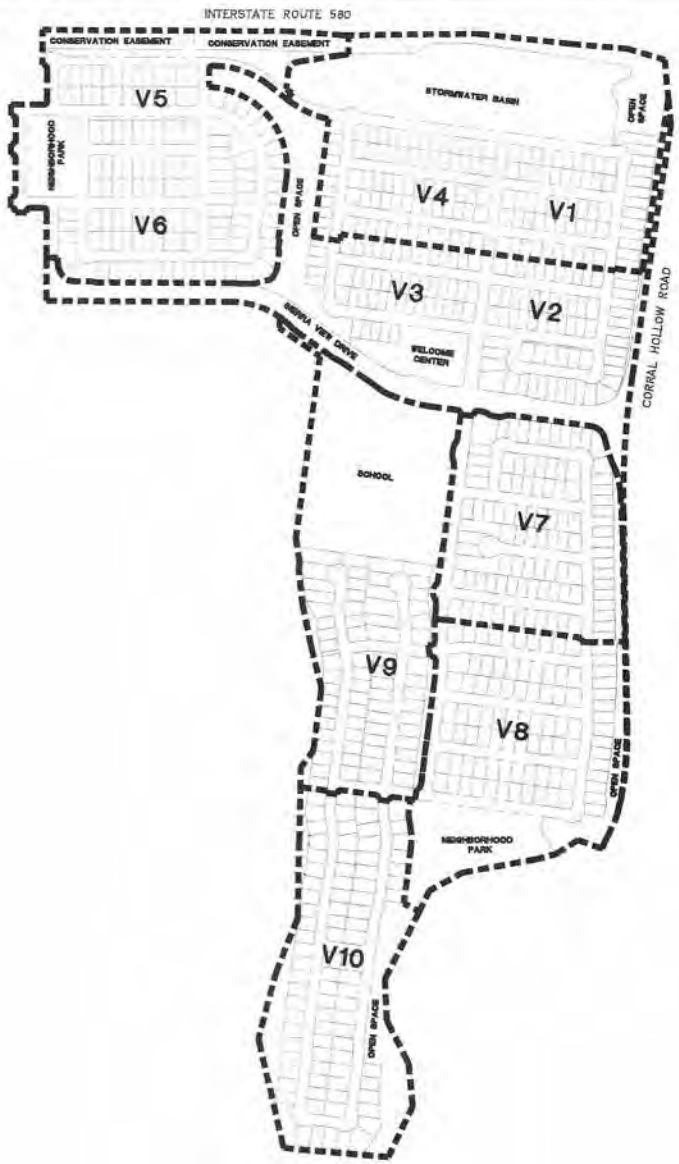
Village	Expected Land Uses	Maximum Facilities Special Tax per Unit FY 2024-25 /1	Expected Maximum Facilities Special Tax Revenues FY 2024-25 /1
Village 1 & 4	139 Residential Units	$4,398 per Residential Unit	$611,322
Village 2 & 3	115 Residential Units	$4,649 per Residential Unit	$534,635
Village 5 & 6	131 Residential Units	$5,124 per Residential Unit	$671,244
Village 7	97 Residential Units	$5,295 per Residential Unit	$513,615
Village 8	89 Residential Units	$5,277 per Residential Unit	$469,653
Village 9	69 Residential Units	$5,658 per Residential Unit	$390,402
Village 10	86 Residential Units	$6,149 per Residential Unit	$528,814
Total	726 Residential Units	N/A	$3,719,685

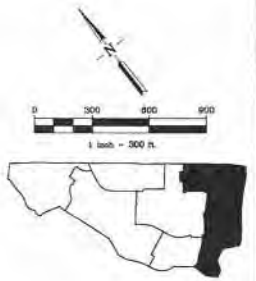
1. On July 1, 2025 and each July 1 thereafter, the Maximum Facilities Special Tax per Residential Unit and the Expected Maximum Facilities Special Tax Revenues shall be increased by two percent (2%) of the amount in effect in the prior Fiscal Year.

ATTACHMENT 2

Improvement Area No. 3 of the
City of Tracy
Community Facilities District No. 2016-1
(Tracy Hills)

Expected Lot Layout





ATTACHMENT 2

TRACY HILLS 2A EXPECTED LAYOUT IN IMPROVEMENT AREA NO. 3 OF THE TRACY HILLS CFD 2016-1

CITY OF TRACY, SAN JOAQUIN COUNTY, CALIFORNIA
FOR: INTEGRAL COMMUNITIES

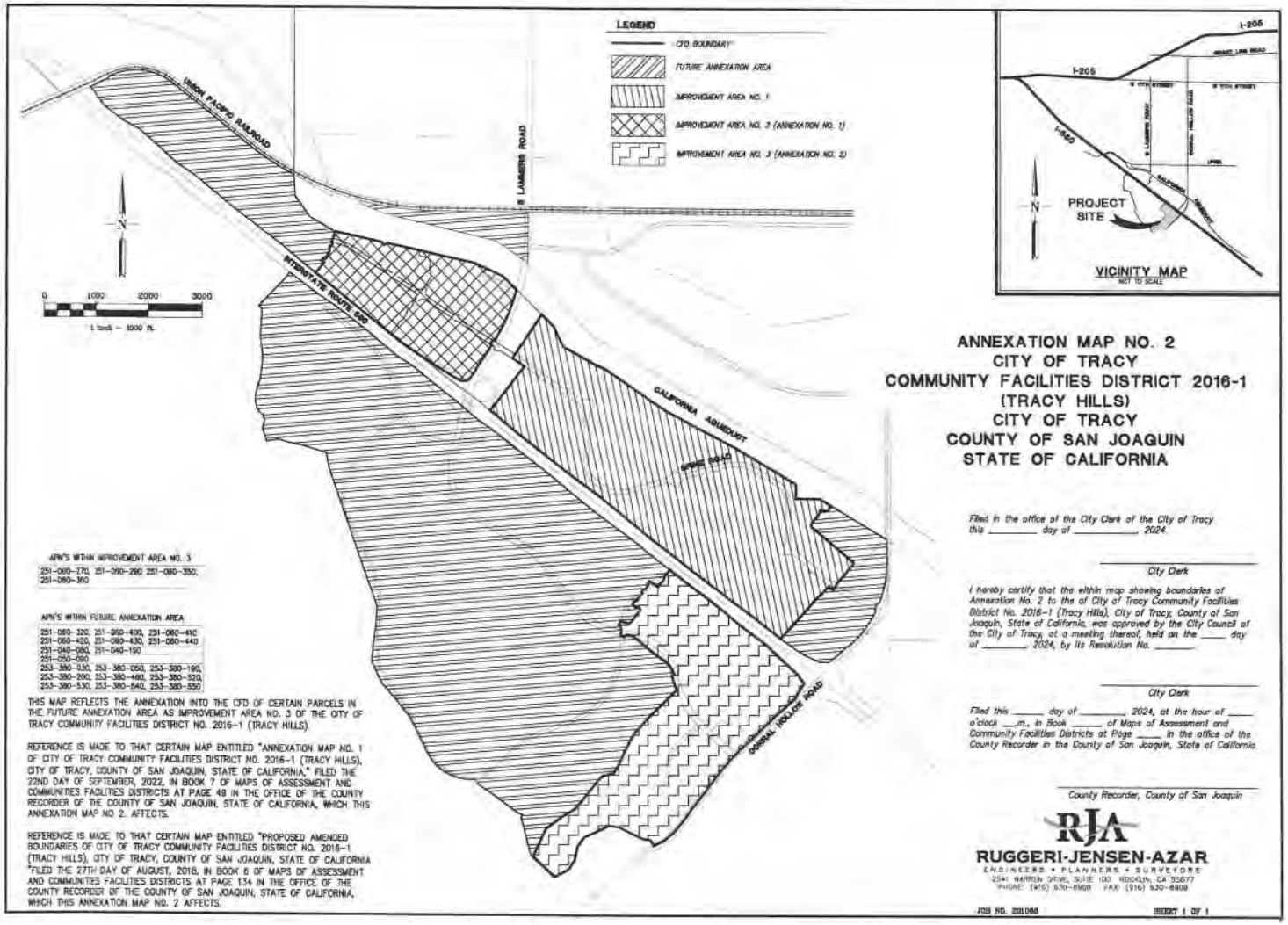
RJA
RUGGERI-JENSEN-AZAR
ENGINEERS • PLANNERS • SURVEYORS
4690 CHABOT DRIVE, SUITE 205 PLEASANTON, CA 94588
PHONE: (925) 227-9100 FAX: (925) 227-9300

DATE: SEPTEMBER 08, 2023 JOB NO. 201068 SHEET 1 OF 1

EXHIBIT C

PROPOSED ANNEXATION MAP

[attached]



APN'S WITHIN IMPROVEMENT AREA NO. 3

251-060-270, 251-060-290 251-080-350, 251-080-360

APN'S WITHIN FUTURE ANNEXATION AREA

251-060-320, 251-060-400, 251-060-410, 251-060-420, 251-080-430, 251-080-440, 251-040-080, 251-040-190, 251-050-080, 253-380-050, 253-380-060, 253-380-190, 253-380-200, 253-380-480, 253-380-520, 253-380-530, 253-380-540, 253-380-550

THIS MAP REFLECTS THE ANNEXATION INTO THE CFD OF CERTAIN PARCELS IN THE FUTURE ANNEXATION AREA AS IMPROVEMENT AREA NO. 3 OF THE CITY OF TRACY COMMUNITY FACILITIES DISTRICT NO. 2016-1 (TRACY HILLS).

REFERENCE IS MADE TO THAT CERTAIN MAP ENTITLED "ANNEXATION MAP NO. 1 OF CITY OF TRACY COMMUNITY FACILITIES DISTRICT NO. 2016-1 (TRACY HILLS), CITY OF TRACY, COUNTY OF SAN JOAQUIN, STATE OF CALIFORNIA," FILED THE 22ND DAY OF SEPTEMBER, 2022, IN BOOK 7 OF MAPS OF ASSESSMENT AND COMMUNITIES FACILITIES DISTRICTS AT PAGE 49 IN THE OFFICE OF THE COUNTY RECORDER OF THE COUNTY OF SAN JOAQUIN, STATE OF CALIFORNIA, WHICH THIS ANNEXATION MAP NO 2. AFFECTS.

REFERENCE IS MADE TO THAT CERTAIN MAP ENTITLED "PROPOSED AMENDED BOUNDARIES OF CITY OF TRACY COMMUNITY FACILITIES DISTRICT NO. 2016-1 (TRACY HILLS), CITY OF TRACY, COUNTY OF SAN JOAQUIN, STATE OF CALIFORNIA "FILED THE 27TH DAY OF AUGUST, 2018, IN BOOK 6 OF MAPS OF ASSESSMENT AND COMMUNITIES FACILITIES DISTRICTS AT PAGE 134 IN THE OFFICE OF THE COUNTY RECORDER OF THE COUNTY OF SAN JOAQUIN, STATE OF CALIFORNIA, WHICH THIS ANNEXATION MAP NO. 2 AFFECTS.

ANNEXATION MAP NO. 2
CITY OF TRACY
COMMUNITY FACILITIES DISTRICT 2016-1
(TRACY HILLS)
CITY OF TRACY
COUNTY OF SAN JOAQUIN
STATE OF CALIFORNIA

Filed in the office of the City Clerk of the City of Tracy this _____ day of _____, 2024.

City Clerk

I hereby certify that the within map showing boundaries of Annexation No. 2 to the of City of Tracy Community Facilities District No. 2016-1 (Tracy Hills), City of Tracy, County of San Joaquin, State of California, was approved by the City Council of the City of Tracy, at a meeting thereof, held on the _____ day of _____, 2024, by its Resolution No. _____.

City Clerk

Filed this _____ day of _____, 2024, at the hour of _____ o'clock ___m., in Book _____ of Maps of Assessment and Community Facilities Districts at Page ____ in the office of the County Recorder in the County of San Joaquin, State of California.

County Recorder, County of San Joaquin

RJA
RUGGERI-JENSEN-AZAR
ENGINEERS • PLANNERS • SURVEYORS
2541 WARREN DRIVE, SUITE 100 REDOLIN, CA 95677
PHONE: (916) 630-8900 FAX: (916) 630-8909

JOB NO. 201068 SHEET 1 OF 1

City of Tracy
Community Facilities District No. 2016-1 (Tracy Hills)

Request and Unanimous Approval for Annexation and Landowner-Voter Ballot

Recitals

A. The undersigned is an authorized representative of AG EHC II (LEN) CA 2, L.P., a Delaware limited partnership (the "**Landowner**").

B. The Landowner owns the real property identified in Exhibit A, attached hereto and by this reference incorporated herein (the "**Property**").

C. Pursuant to the Mello-Roos Community Facilities Act of 1982 (the "**Mello-Roos Act**"), on July 19, 2016, the City Council (the "**City Council**") of the City of Tracy adopted its Resolution No. 2016-157 (the "**Resolution of Formation**"), which, among other things:

1. established the City of Tracy Community Facilities District No. 2016-1 (Tracy Hills) ("**CFD**") and a future annexation area for the CFD ("**Future Annexation Area**") and designated Improvement Area No. 1 of the City of Tracy Community Facilities District No. 2016-1 (Tracy Hills)" ("**Improvement Area No. 1**"), with the initial boundaries of the CFD, the Future Annexation Area and Improvement Area No. 1 shown on a boundary map (the "**Boundary Map**") that was recorded on June 15, 2016 in the records of the San Joaquin County Recorder in Book 6 of Maps of Assessment and Community Facilities Districts at Page 84 as Document No. 2016-069400;

2. authorized the CFD and every improvement area annexed thereto to finance the costs and expenses of certain public facilities and fees (together, the "**Facilities**") and certain public services (the "**Services**"); and

3. approved the form of the rate and method of apportionment for Improvement Area No. 1 (the "**Original Improvement Area No. 1 RMA**").

D. The Resolution of Formation further provided that property in the Future Annexation Area may be annexed into the CFD as its own improvement area or to an existing improvement area, and that the designation as an improvement area of any territory annexing to the CFD, the maximum amount of bonded indebtedness and other debt for such improvement area, the rate and method of apportionment of special tax for such improvement area and the appropriations limit for such improvement area shall be identified and approved in a unanimous approval (a "**Unanimous Approval**") executed by property owners in connection with an annexation to the CFD, without the need for Council approval as long as certain conditions were met.

E. Pursuant to the Mello-Roos Act, on July 19, 2016, the City Council adopted its Resolution No. 2016-158 (the "**Resolution of Necessity**"), which set forth the necessity for the City to issue special tax bonds or other forms of debt obligations for the CFD in the maximum

principal amount of $285,000,000. The Resolution of Necessity preliminarily allocated $70,000,000 of the aggregate $285,000,000 limit to Improvement Area No. 1 (the "**Improvement Area No. 1 Indebtedness Limit**") and $215,000,000 to the Future Annexation Area (the "**Non-Improvement Area No. 1 Indebtedness Limit**"), with the actual limit for an improvement area created from annexation of all or part of the Future Annexation Area to be identified and approved in a Unanimous Approval so long as the overall bonded indebtedness limit for the CFD did not exceed $285,000,000.

F. Subsequently, the City Council undertook change proceedings, including a landowner vote, which culminated in the adoption by the City Council on August 21, 2018, of Resolution No. 2018-169, entitled "**Resolution of Change**," to (i) increase the Improvement Area No. 1 Indebtedness Limit to $80,000,000, (ii) increase the Non-Improvement Area No. 1 Indebtedness Limit to $305,000,000, (iii) increase the Improvement Area No. 1 Appropriations Limit to $80,000,000, (iv) amend the boundaries of the CFD, Improvement Area No. 1 and the Future Annexation Area by removing San Joaquin County Assessor's Parcel Number 253-360-15 from Improvement Area No. 1 (the "**Transferred Parcel**") and adding it to the Future Annexation Area, and (v) amend the Improvement Area No. 1 Rate and Method (as amended, the "**Improvement Area No. 1 RMA**"). A map of the amended boundaries of the CFD, Improvement Area No. 1 and the Future Annexation Area was recorded on August 27, 2018 in the records of the San Joaquin County Recorder in Book 6 of Maps of Assessment and Community Facilities Districts at Page 134 as Document No. 2018-095098.

G. Pursuant to Resolution No. 2022-130, adopted on September 6, 2022, the City Council, among other things, approved the annexation of certain property to the CFD as Improvement Area No. 2 of the City of Tracy Community Facilities District No. 2016-1 (Tracy Hills), and confirmed the maximum aggregate principal amount of bonds and other debt and an annual appropriations limit for Improvement Area No. 2 of $50,000,000.

H. The Landowner has sole ownership of the Property. The Property is part of the Future Annexation Area. By this instrument, the Landowner identifies, specifies and approves the annexation of the Property to the CFD as "Improvement Area No. 3 of the City of Tracy Community Facilities District No. 2016-1 (Tracy Hills)" ("**Improvement Area No. 3**") and the other matters included herein, without a public hearing, as authorized by the Mello-Roos Act and the Resolution of Formation.

I. The Landowner hereby acknowledges that the Resolution of Formation requires City Council approval of the annexation of the property as Improvement Area No. 3, as proposed, because the Improvement Area No. 3 RMA (as defined below) establishes a maximum special tax amount for the initial fiscal year in which the special tax may be levied for one or more categories of special tax that is greater than 120% of the maximum amount of the same category of special tax for the same fiscal year calculated pursuant to the Improvement Area No. 1 RMA.

J. The Landowner hereby represents and warrants that, to the best of its knowledge without inquiry, there are no persons resident on the property that are registered voters.

Approval and Vote

1. The Landowner, as the sole owner of the Property, hereby identifies, specifies and provides its unanimous approval of the annexation of the Property to the CFD as

Improvement Area No. 3 and related matters, as prescribed and authorized by Section 53339.7 and Section 53350(b) of the Mello-Roos Act, the Resolution of Formation and the Resolution of Necessity.

2. The Landowner, as the sole qualified elector with respect to the annexation of the Property, hereby votes in favor of (a) the levy of special taxes on the taxable property being annexed to Improvement Area No. 3 in accordance with the rate and method of apportionment for Improvement Area No. 3 in the form attached hereto as Exhibit B (the "**Improvement Area No. 3 RMA**") and by this reference incorporated herein for the purpose of financing the Facilities and the Services, (b) the issuance of bonds and other debt of Improvement Area No. 3 in a principal amount not to exceed $80,000,000, which bonds and other debt shall be secured solely by and be payable solely from the proceeds of the special taxes levied upon the taxable property within Improvement Area No. 3, and (c) an initial appropriations limit for Improvement Area No. 3 of $80,000,000. The Improvement Area No. 3 RMA describes the maximum special tax rate applicable to the Property.

3. The Landowner hereby requests that an annexation map showing the land (including the Property) to be annexed as Improvement Area No. 3 be as shown on the map attached hereto as Exhibit C.

4. The Landowner hereby acknowledges the following:

   a. As soon as practicable following receipt of this Unanimous Approval by the City, the City Council will consider whether to approve the proposed annexation and, if directed by the City Council, the City Clerk will record (i) a Notice of Special Tax Lien for Improvement Area No. 3, listing the name of the Landowner and the assessor's parcel number(s) of the Property, which will result in the establishment of a lien to secure payment of the special tax on the Property and (ii) the proposed annexation map.

   b. The City will levy a special tax upon the taxable property within Improvement Area No. 3 at the time and in accordance with the Resolution of Formation, the Resolution of Change and the Improvement Area No. 3 RMA.

   c. This Unanimous Approval constitutes the Landowner's approval and unanimous vote as described herein and as contemplated by Section 53339.3 et seq. of the Mello-Roos Act and Articles XIIIA and XIIIC of the California Constitution. The Landowner hereby waives all other rights with respect to the annexation of the Property, the levy of the special taxes on the Property and the other matters covered in this Unanimous Approval, including any right the Landowner may otherwise have to protest or challenge the validity of the proceedings to form or change the CFD and to authorize the annexation of any property (including the Property) to the CFD, and any necessity, requirement or right for further public hearings or any election pertaining to the annexation of the Property to the CFD as Improvement Area No. 3 or the levy of special taxes on the Property.

   d. The specific purpose of the bonds and other debt is to finance the acquisition and construction of the Facilities described in the Resolution of Formation and pay related costs. Any proceeds received from the sale of any bonds and other debt will be applied only for such purpose. The proceeds of any bonds and other debt

will be deposited into special accounts to be created therefor as part of the issuance of the bonds and other debt. The City will cause a report to be prepared annually under Section 53411 of the Government Code.

e. The Expected Land Uses (as defined in the Improvement Area No. 3 RMA) of the Property shall be as specified in the Improvement Area No. 3 RMA.

5. The Landowner warrants to the City that the presentation of this Unanimous Approval, any votes, consents or waivers contained herein, and other actions mandated by the City for the annexation of the Property to the CFD as Improvement Area No. 3 shall not constitute or be construed as events of default or delinquencies under any existing or proposed financing documents entered into or to be entered into by the Landowner for the Property, including any "due-on-encumbrance" clauses under any existing security instruments secured by the Property.

6. The Landowner agrees to cooperate with the City and its attorneys and consultants and to provide to any subsequent purchaser with notice of the special tax that may be levied by the City Council on the Property pursuant to the Improvement Area No. 3 RMA, to the extent required by applicable law.

7. The Landowner further agrees to execute such additional or supplemental agreements as may be required by the City to provide for any of the actions and conditions described in this Unanimous Approval.

Dated: September 23, 2024

AG EHC II (LEN) CA 2, L.P.,
a Delaware limited partnership

By: Essential Housing Asset Management, LLC,
an Arizona limited liability company,
its Authorized Agent

By: Wendy Stoeckel
Wendy Stoeckel, its Authorized Representative

Exhibit A - Identification of the Property

Exhibit B - Improvement Area No. 3 RMA

Exhibit C - Proposed Annexation Map

STATE OF ARIZONA)
)
COUNTY OF MARICOPA)

The foregoing instrument was acknowledged before me this 23 day of September, 2024, by Wendy Stoeckel, the Authorized Representative of Essential Housing Asset Management, LLC, an Arizona limited liability company, the Authorized Agent of AG EHC II (LEN) CA 2, L.P., a Delaware limited partnership, for and on behalf thereof.

Jaime Marie Adams
Notary Public
Maricopa County, Arizona
My Comm. Expires 07-01-25
Commission No. 607030

Notary Public

(SEAL)

EXHIBIT A

IDENTIFICATION OF THE PROPERTY

Owner	Village	Tract Map References	APNs
AG EHC II (LEN) CA 2, L.P.	7	[Tract Map 4135] Lots 3-40, 43-72, and 91-97	251-060-350(P), 251-060-290(P), and 251-060-360(P)
	8	[Tract Map 4136] Lots 5-20, 24-39, and 83-89	251-060-350(P) and 251-060-360(P)
	9	[Tract Map 4137] Lots 37-42 and 63-67	251-060-350(P) and 251-060-360(P)
	10	[Tract Map 4138] Lots 33, 35-56 and 80-84	251-060-360(P)

EXHIBIT B

IMPROVEMENT AREA NO. 3 RMA

[attached]

IMPROVEMENT AREA NO. 3 OF THE
CITY OF TRACY
COMMUNITY FACILITIES DISTRICT NO. 2016-1
(TRACY HILLS)

RATE AND METHOD OF APPORTIONMENT OF SPECIAL TAXES

Special Taxes applicable to each Assessor's Parcel in Improvement Area No. 3 of the City of Tracy Community Facilities District No. 2016-1 (Tracy Hills) shall be levied and collected according to the tax liability determined by the City through the application of the appropriate amount or rate for Taxable Property, as described below. All of the property in Improvement Area No. 3, unless exempted by law or by the provisions of Section G below, shall be taxed for the purposes, to the extent, and in the manner herein provided.

A. DEFINITIONS

The terms hereinafter set forth have the following meanings:

"Accessory Unit" means a second residential unit of limited size (e.g., granny cottage, second unit) that shares a Parcel with a single-family detached unit.

"Acre" or **"Acreage"** means the land area of an Assessor's Parcel as shown on an Assessor's Parcel Map, or if the land area is not shown on an Assessor's Parcel Map, the land area shown on the applicable Final Map or other parcel map recorded at the County Recorder's Office.

"Act" means the Mello-Roos Community Facilities Act of 1982, as amended, being Chapter 2.5, (commencing with Section 53311), Division 2 of Title 5 of the Government Code of the State of California.

"Administrative Expenses" means any or all of the following: the fees and expenses of any fiscal agent or trustee (including any fees or expenses of its counsel) employed in connection with any Bonds, and the expenses of the City in carrying out its duties with respect to the CFD and the Bonds, including, but not limited to, the levy and collection of Special Taxes, the fees and expenses of its legal counsel, charges levied by the County in connection with the levy and collection of Special Taxes, costs related to property owner inquiries regarding the Special Taxes, costs associated with appeals or requests for interpretation associated with the Special Taxes and this RMA, costs of the dissemination agent, whether for the City or another party that has undertaken to provide continuing disclosure, amounts needed to pay rebate to the federal government with respect to the Bonds, costs associated with complying with any continuing disclosure requirements with respect to the Bonds and the Special Taxes, costs associated with foreclosure and collection of delinquent Special Taxes and all other costs and expenses of the City and County in any way related to the establishment or administration of the CFD.

"Administrator" means the person or firm designated by the City to administer the Special Taxes according to this RMA.

"Assessor's Parcel" or **"Parcel"** means a lot or parcel shown on an Assessor's Parcel Map with an assigned Assessor's parcel number.

"Assessor's Parcel Map" means an official map of the County Assessor designating Parcels by Assessor's Parcel number.

"Authorized Facilities" means the public facilities authorized to be financed, in whole or in part, by the CFD.

"Authorized Services" means the public services authorized to be funded, in whole or in part, by the CFD.

"Bonds" means bonds or other debt (as defined in the Act), whether in one or more series, issued or assumed by Improvement Area No. 3 to fund Authorized Facilities.

"Capitalized Interest" means funds in any capitalized interest account available to pay interest on Bonds.

"CFD" means the City of Tracy Community Facilities District No. 2016-1 (Tracy Hills).

"City" means the City of Tracy.

"City Council" means the City Council of the City of Tracy.

"County" means the County of San Joaquin.

"Developed Property" means, in any Fiscal Year, all Parcels of Taxable Property, excluding Taxable HOA Property, Taxable Welfare Exemption Property, and Taxable Public Property, for which a building permit was issued prior to June 30 of the preceding Fiscal Year.

"Development Class" means, individually, Developed Property, Undeveloped Property, Taxable HOA Property, Taxable Welfare Exemption Property, and Taxable Public Property.

"Escalation Factor" means, in any Fiscal Year, the lesser of (i) the percentage increase from the prior Fiscal Year, if any, in the Index, or (ii) four percent (4%). The Index used shall be as determined by the Bureau of Labor Statistics from April to April beginning with the period from April 2023 to April 2024.

"Expected Land Uses" means the number of Residential Units and acres of Other Property expected within Improvement Area No. 3 at the time of the IA No. 3 Lien Date, as identified in Attachment 1 and as amended from time to time as set forth in this RMA.

"Expected Maximum Facilities Special Tax Revenues" means the amount of annual revenue that would be available in Improvement Area No. 3 if the Maximum Facilities Special Tax was levied on the Expected Land Uses. The Expected Maximum Facilities Special Tax Revenues as of the IA No. 3 Lien Date are shown in Attachment 1 of this RMA and may be reduced due to prepayments in future Fiscal Years and/or pursuant to Section D below.

"Facilities Special Tax" means a special tax levied in any Fiscal Year to pay the Facilities Special Tax Requirement.

"Facilities Special Tax Requirement" means the amount necessary in any Fiscal Year (i) to pay principal and interest on Bonds which are due in the calendar year which begins in such Fiscal Year, (ii) to create or replenish reserve funds to the extent such replenishment has not been included in a computation of Facilities Special Tax Requirement in a previous Fiscal Year, (iii) to cure any delinquencies in the payment of principal or interest on Bonds which have occurred in the prior Fiscal Year, (iv) to pay Administrative Expenses, and (v) to pay the costs of Authorized Facilities to be funded directly from Facilities Special Tax proceeds to the extent that paying directly for such costs does not increase the Facilities Special Tax levied on Undeveloped Property. The amounts referred to in clauses (i) and (ii) of the preceding sentence may be reduced in any Fiscal Year by (i) interest earnings on or surplus balances in funds and accounts for Bonds to the extent that such earnings or balances are available to apply against debt service pursuant to the Indenture, (ii) proceeds from the collection of penalties associated with delinquent Facilities Special Taxes, and (iii) any other revenues available to pay debt service on the Bonds as determined by the Administrator.

"Final Bond Sale" means, at any point in time, the last series of Bonds issued for Improvement Area No. 3, which issuance uses up virtually all of the remaining capacity available from the Maximum Facilities Special Tax revenues that can be generated within Improvement Area No. 3, as determined by the City. If additional Bonds are expected to be issued after outstanding Bonds retire, the "Final Bond Sale" may not be the last series of Bonds ever issued for Improvement Area No. 3, but instead the last sale of Bonds that can be issued before some or all of the outstanding Bonds retire.

"Final Map" means a final map, or portion thereof, recorded by the County pursuant to the Subdivision Map Act (California Government Code Section 66410 et seq.) that creates lots that do not need to be further subdivided prior to issuance of a building permit for a residential structure. The term "Final Map" shall not include any Assessor's Parcel map or subdivision map, or portion thereof, that does not create lots that are in their final configuration, including Assessor's Parcels that are designated as remainder parcels.

"First Bond Sale" means issuance of the first series of Bonds secured, in whole or in part, by Facilities Special Taxes levied and collected from Parcels in Improvement Area No. 3.

"Fiscal Year" means the period starting July 1 and ending on the following June 30.

"Homeowners Association" or **"HOA"** means the homeowners association that provides services to, and collects dues, fees, or charges from, property within Improvement Area No. 3.

"HOA Property" means any property within the boundaries of Improvement Area No. 3 that is owned in fee or by easement by the Homeowners Association, not including any such property that is located directly under a residential structure.

"IA No. 3 Lien Date" means the date that the Notice of Special Tax Lien affecting the Parcels in Improvement Area No. 3 was recorded in the official records of the County.

"Improvement Area No. 3" means Improvement Area No. 3 of the City of Tracy Community Facilities District No. 2016-1 (Tracy Hills).

"Improvement Fund" means the account (regardless of its name) identified in the Indenture to hold funds which are available to acquire or construct Authorized Facilities.

"Indenture" means the bond indenture, fiscal agent agreement, trust agreement, resolution or other instrument pursuant to which Bonds are issued, as modified, amended, and/or supplemented from time to time, and any instrument replacing or supplementing the same.

"Index" means the Consumer Price Index of the San Francisco-Oakland-Hayward area for all urban consumers.

"Land Use Change" means a proposed or approved change to the Expected Land Uses within Improvement Area No. 3 after the IA No. 3 Lien Date.

"**Maximum Facilities Special Tax"** means the greatest amount of Facilities Special Tax that can be levied on an Assessor's Parcel in any Fiscal Year as determined in accordance with Sections C and D below.

"**Maximum Services Special Tax"** means the greatest amount of Services Special Tax that can be levied on an Assessor's Parcel in any Fiscal Year as determined in accordance with Section C.2 below.

"Maximum Special Taxes" means, collectively, the Maximum Facilities Special Tax and Maximum Services Special Tax.

"Other Property" means, in any Fiscal Year, all Parcels of Developed Property within Improvement Area No. 3 that are not Single Family Residential Property.

"Proportionately" means, for each Development Class, that the ratio of the actual Special Tax levied in any Fiscal Year to the Maximum Special Tax authorized to be levied in that Fiscal Year is equal for all Parcels assigned to the Development Class.

"Public Property" means any property within the boundaries of Improvement Area No. 3 that is owned by the federal government, State of California or other local governments or public agencies.

"Recycled Water Facilities Cost" means the total cost, as determined by the City, of funding the design, engineering, construction, and/or acquisition of recycled water facilities that will serve development within the CFD. If, in the future, the City determines that there is a preferred alternative to the recycled water facilities that were expected at the time of the IA No. 3 Lien Date, the cost of such facilities shall qualify as Recycled Water Facilities Costs for purposes of this RMA.

"Remainder Taxes" means, after September 1st and before December 31st of any Fiscal Year, any Facilities Special Tax revenues that were levied and collected in the prior Fiscal Year and were not needed to (i) pay debt service on the Bonds that was due in the calendar year in which the Remainder Taxes are being calculated, (ii) replenish Bond reserves, or (iii) pay Administrative Expenses that have been incurred, or are expected to be incurred, by the City prior to the receipt of additional Facilities Special Tax proceeds.

"Required Coverage" means the amount by which the Expected Maximum Facilities Special Tax Revenues must exceed the Bond debt service and required Administrative Expenses, as set forth in the Indenture, Certificate of Special Tax Consultant, or other formation or bond document that sets forth the minimum required debt service coverage.

"Residential Unit" means an individual single-family unit that does not share a common wall with another residential unit, or an individual residential unit within a duplex, halfplex, triplex, fourplex, townhome, live/work or condominium structure. An Accessory Unit shall not be considered a Residential Unit for purposes of this RMA.

"RMA" means this Rate and Method of Apportionment of Special Tax.

"Services Special Tax" means a special tax levied in any Fiscal Year to pay the Services Special Tax Requirement.

"Services Special Tax Requirement" means the amount of revenue needed in any Fiscal Year after the Trigger Event to pay for: (i) Authorized Services, (ii) Administrative Expenses, and (iii) amounts needed to cure any delinquencies in the payment of Services Special Taxes which have occurred in the prior Fiscal Year. In any Fiscal Year, the Services Special Tax Requirement shall be reduced by surplus amounts available (as determined by the City) from the levy of the Services Special Tax in prior Fiscal Years, including revenues from the collection of delinquent Services Special Taxes and associated penalties and interest.

"Single Family Residential Property" means, in any Fiscal Year, all Parcels of Developed Property for which a building permit was issued for construction of one or more Residential Units.

"Special Taxes" means, collectively, the Facilities Special Tax and the Services Special Tax.

"Taxable HOA Property" means, in any Fiscal Year after the First Bond Sale, any Parcel of HOA Property that satisfies all three of the following conditions: (i) the Parcel had not been HOA Property on the date of the First Bond Sale; (ii) based on reference to Attachments 1 and 2 (as may be updated pursuant to Section D below), the Parcel was not anticipated to be HOA Property based on the Expected Land Uses, as determined by the Administrator; and (iii) if the Parcel were to be exempt from the Facilities Special Tax because it has become HOA Property, the Expected Maximum Facilities Special Tax Revenues would be reduced to a point at which Required Coverage could not be maintained.

"Taxable Property" means all Parcels within the boundaries of Improvement Area No. 3 which are not exempt from the Special Taxes pursuant to law or Section G below.

"Taxable Public Property" means, in any Fiscal Year after the First Bond Sale, any Parcel of Public Property that satisfies all three of the following conditions: (i) the Parcel had not been Public Property on the date of the First Bond Sale, (ii) based on reference to Attachments 1 and 2 (as may be updated pursuant to Section D.1 below), the Parcel was not anticipated to be Public Property based on the Expected Land Uses, as determined by the Administrator, and (iii) if the Parcel were to be exempt from the Facilities Special Tax because it has become Public Property, the Expected Maximum Facilities Special Tax Revenues would be reduced to a point at which Required Coverage could not be maintained.

"Taxable Welfare Exemption Property" means in any Fiscal Year after the First Bond Sale, any Parcel of Welfare Exemption Property that satisfies all three of the following conditions: (i) the Parcel had not been Welfare Exemption Property on the date of issuance of the First Bond Sale; (ii) based on reference to Attachments 1 and 2 (as may be updated pursuant to Section D herein), the Parcel was not anticipated to be Welfare Exemption Property based on the Expected Land Uses, as determined by the Administrator; and (iii) if the Parcel were to be exempt from the Facilities Special Tax because it has become Welfare Exemption Property, the Expected Maximum Facilities Special Tax Revenues would be reduced to a point at which Required Coverage could not be maintained.

"Tentative Map" means any tentative map or vesting tentative map for Phase 2A of the Tracy Hills project, approved by the City Council and as may be amended from time to time.

"Trigger Event" means, in any Fiscal Year, that, on or before June 30 of the prior Fiscal Year, the Administrator made a finding that (i) all Bonds secured by the levy and collection of Facilities Special Taxes in the CFD have been fully repaid, (ii) all Administrative Expenses from prior Fiscal Years have been paid or reimbursed to the City, (iii) the Recycled Water Facilities Costs have been fully funded, and (iv) there are no other Authorized Facilities that the City intends to fund with Facilities Special Taxes. In the first Fiscal Year in which the Administrator determines that the Trigger Event occurred in the prior Fiscal Year, and in each Fiscal Year thereafter, the Facilities Special Tax shall cease to be levied, and the Maximum Services Special Tax for each Parcel shall be adjusted pursuant to Section C.2 below.

"Undeveloped Property" means, in any Fiscal Year, all Parcels of Taxable Property that are not Developed Property, Taxable HOA Property, Taxable Welfare Exemption Property, or Taxable Public Property.

"Village" means a specific geographic area within Improvement Area No. 3 that (i) is identified by an assigned number on the Tentative Map, (ii) is expected to have single family lots that are all of a similar size, and (iii) is assigned Expected Maximum Facilities Special Tax Revenues in Attachment 1 based on the Expected Land Uses for that Village.

"Welfare Exemption Property" means, in any Fiscal Year, any Parcels in Improvement Area No. 3 that have received a welfare exemption under subdivision (g) of Section 214 of the Revenue and Taxation Code and for which such welfare exemption is still in place.

B. DATA FOR ADMINISTRATION OF SPECIAL TAX

Each Fiscal Year, the Administrator shall (i) categorize each Parcel of Taxable Property as Developed Property, Undeveloped Property, Taxable Public Property, Taxable HOA Property, or Taxable Welfare Exemption Property; (ii) for Single Family Residential Property, determine within which Village each Parcel of Developed Property is located and the number of Residential Units on the Parcel; and (iii) determine the Facilities Special Tax Requirement and Services Special Tax Requirement for the Fiscal Year. In addition, the Administrator shall, ***on an ongoing basis***, monitor Final Maps and condominium plans to determine if there are any proposed changes to the Expected Land Uses that would reduce the Expected Maximum Facilities Special Tax Revenues for a Village. If the Expected Maximum Facilities Special Tax Revenues will be reduced pursuant to a proposed Land Use Change, the Administrator shall apply the steps set forth in Section D.1 below.

In any Fiscal Year, if it is determined that: (i) a parcel map for property in Improvement Area No. 3 was recorded after January 1 of the prior Fiscal Year (or any other date after which the Assessor will not incorporate the newly-created Parcels into the then current tax roll), (ii) because of the date the parcel map was recorded, the Assessor does not yet recognize the new Parcels created by the parcel map, and (iii) one or more of the newly-created Parcels is in a different Development Class than other Parcels created by the subdivision, the Administrator shall calculate the Special Taxes for the property affected by recordation of the parcel map by determining the Special Taxes that apply separately to the property within each Development Class, then applying the sum of the individual Special Taxes to the Parcel that was subdivided by recordation of the parcel map.

C. MAXIMUM SPECIAL TAX

1. Facilities Special Tax

Table 1 below identifies the Maximum Facilities Special Tax, before and after the Trigger Event, for Taxable Property in Improvement Area No. 3, subject to potential adjustments that may occur pursuant to Section D below.

TABLE 1
IMPROVEMENT AREA NO. 3
MAXIMUM FACILITIES SPECIAL TAX

Land Use	Maximum Facilities Special Tax Prior to Trigger Event Fiscal Year 2024-25*	Maximum Facilities Special Tax After Trigger Event
Single Family Residential Property		
Villages 1 & 4	$4,398 per Residential Unit	$0 per Residential Unit
Village 2 & 3	$4,649 per Residential Unit	$0 per Residential Unit
Village 5 & 6	$5,124 per Residential Unit	$0 per Residential Unit
Village 7	$5,295 per Residential Unit	$0 per Residential Unit
Village 8	$5,277 per Residential Unit	$0 per Residential Unit
Village 9	$5,658 per Residential Unit	$0 per Residential Unit
Village 10	$6,149 per Residential Unit	$0 per Residential Unit
Other Property, Undeveloped Property, Taxable Public Property Taxable HOA Property Taxable Welfare Exemption Property		
Villages 1 & 4	$40,235 per Acre	$0 per Acre
Village 2 & 3	$41,543 per Acre	$0 per Acre
Village 5 & 6	$39,217 per Acre	$0 per Acre
Village 7	$58,407 per Acre	$0 per Acre
Village 8	$65,506 per Acre	$0 per Acre
Village 9	$61,422 per Acre	$0 per Acre
Village 10	$40,406 per Acre	$0 per Acre

* On July 1, 2025 and on each July 1 thereafter, all figures shown in Table 1 above shall be increased by an amount equal to 2.0% of the amount in effect for the prior Fiscal Year.

2. Services Special Tax

Table 2 below identifies the Maximum Services Special Tax, before and after the Trigger Event, for Taxable Property in Improvement Area No. 3.

TABLE 2
IMPROVEMENT AREA NO. 3
MAXIMUM SERVICES SPECIAL TAX

Type of Property	Maximum Services Special Tax Prior to Trigger Event	Maximum Services Special Tax After Trigger Event Fiscal Year 2024-25*
Single Family Residential Property		
Villages 1 & 4	$0 per Residential Unit	$880 per Residential Unit
Village 2 & 3	$0 per Residential Unit	$930 per Residential Unit
Village 5 & 6	$0 per Residential Unit	$1,025 per Residential Unit
Village 7	$0 per Residential Unit	$1,059 per Residential Unit
Village 8	$0 per Residential Unit	$1,055 per Residential Unit
Village 9	$0 per Residential Unit	$1,132 per Residential Unit
Village 10	$0 per Residential Unit	$1,230 per Residential Unit
Other Property, Undeveloped Property, Taxable Public Property Taxable HOA Property		
Villages 1 & 4	$0 per Acre	$8,047 per Acre
Village 2 & 3	$0 per Acre	$8,309 per Acre
Village 5 & 6	$0 per Acre	$7,843 per Acre
Village 7	$0 per Acre	$11,681 per Acre
Village 8	$0 per Acre	$13,101 per Acre
Village 9	$0 per Acre	$12,284 per Acre
Village 10	$0 per Acre	$8,081 per Acre

* Beginning July 1, 2025 and each July 1 thereafter until the Trigger Event, the Services Special Taxes in Table 2 shall be increased by 2.0% of the amount in effect in the prior Fiscal Year. On July 1 of the Fiscal Year after the Trigger Event and each July 1 thereafter, the Services Special Taxes and the Maximum Services Special Tax assigned to each Parcel shall be adjusted by the Escalation Factor.

Once Special Taxes have been levied on a Parcel of Developed Property, the Maximum Special Taxes applicable to that Parcel shall not be reduced in future Fiscal Years regardless of changes in land use on the Parcel, except (i) in the event of a partial prepayment pursuant to Section H, and (ii) pursuant to Section D. Notwithstanding the foregoing: (i) if Bonds have yet to be issued for Improvement Area No. 3, the Parcels can be assigned to the appropriate special tax category based on the Land Use Change, and the Administrator shall recalculate the Expected Maximum Facilities Special Tax Revenues based on the corresponding change in revenues, and (ii) the actual Special Taxes levied on a Parcel of Developed Property in any Fiscal Year may be less than the Maximum Special Taxes if lower Special Taxes are calculated pursuant to Step 1 in Sections E.1 and E.2 below.

D. CHANGES TO MAXIMUM SPECIAL TAXES

The Expected Maximum Facilities Special Tax Revenues were calculated based on the Expected Land Uses at the IA No. 3 Lien Date. The Administrator shall review Final Maps, Tentative Map revisions, and other changes to land uses proposed within Improvement Area No. 3 and compare the revised land uses to the Expected Land Uses to evaluate the impact on the Expected Maximum Facilities Special Tax Revenues.

1. Changes in Expected Land Uses

If, prior to the First Bond Sale, a Land Use Change is proposed that will result in a reduction in the Expected Maximum Facilities Special Tax Revenues, no action will be needed pursuant to this Section D.1. Upon approval of the Land Use Change, the Administrator shall update Attachment 1 to show the reduced Expected Maximum Facilities Special Tax Revenues.

If, prior to the Final Bond Sale, a Land Use Change is proposed that will result in a reduction in the Expected Maximum Facilities Special Tax Revenues, no action will be needed pursuant to this Section D.1 as long as the reduction does not reduce debt service coverage on outstanding Bonds below the Required Coverage. Upon approval of the Land Use Change, the Administrator shall update Attachment 1 to show the reduced Expected Maximum Facilities Special Tax Revenues, which amount shall be used to size the Final Bond Sale.

If a Land Use Change is proposed after the Final Bond Sale, the following steps shall be applied:

Step 1: By reference to Attachment 1 (which will be updated by the Administrator each time a Land Use Change has been processed according to this Section D.1 and or pursuant to Section D.2), the Administrator shall identify the Expected Maximum Facilities Special Tax Revenues for Improvement Area No. 3.

Step 2: The Administrator shall calculate the Expected Maximum Facilities Special Tax Revenues that could be collected from property in Improvement Area No. 3 if the Land Use Change is approved.

Step 3: If the amount calculated in Step 2 is higher than that determined in Step 1, no further action is needed. If the revenues calculated in Step 2 are less than those calculated in Step 1, and if the landowner requesting the Land Use Change does not prepay the portion of the Expected Maximum Facilities Special Tax Revenues in an amount that corresponds to the lost revenue, then the Maximum Facilities Special Tax for each Parcel of Taxable Property in the area affected by the Land Use Change shall be increased proportionately until the aggregate Expected Maximum Facilities Special Tax Revenues that can be generated from the area affected by the Land Use Change is the same as it was prior to the Land Use Change.

If multiple Land Use Changes are proposed simultaneously by a single landowner (which may include approval of multiple Final Maps at one time), the Administrator may consider the combined effect of all the Land Use Changes to determine if there is a reduction in Expected Maximum Facilities Special Tax Revenues. If there is a reduction, the Administrator shall increase the Maximum Facilities Special Tax proportionately in all of the Final Maps being proposed by

the landowner until the aggregate amount that can be levied within the Final Maps is equal to the amount that could have been levied prior to the proposed Land Use Changes. If Land Use Changes are proposed simultaneously by multiple landowners, the Administrator shall consider the proposed Land Use Changes individually.

2. Transfer of Expected Maximum Facilities Special Tax Revenues from One Village to Another

The Expected Maximum Facilities Special Tax Revenues were determined for each Village based on the Expected Land Uses within that Village. If the expected number of Residential Units is transferred from one Village to another, the City may, in its sole discretion, allow for a corresponding transfer of Expected Maximum Facilities Special Tax Revenues between the Villages. Such a transfer shall only be allowed if (i) all adjustments are agreed to in writing by the affected property owners and the City, and (ii) there is no reduction in the total Expected Maximum Facilities Special Tax Revenues as a result of the transfer.

3. Conversion of a Parcel of Public Property to Private Use

If, in any Fiscal Year, a Parcel of Public Property is converted to private use, such Parcel shall be subject to the levy of Special Taxes. The Maximum Special Taxes for each such Parcel shall be determined based on the average Maximum Special Taxes for Parcels with similar land use designations, as determined by the Administrator.

E. METHOD OF LEVY OF THE SPECIAL TAXES

1. Facilities Special Tax

Each Fiscal Year, the Administrator shall determine the Facilities Special Tax Requirement and levy the Facilities Special Tax on all Parcels of Taxable Property as follows:

Step 1: In the first twenty (20) Fiscal Years in which a Facilities Special Tax is levied within Improvement Area No. 3, the Maximum Facilities Special Tax shall be levied on all Parcels of Developed Property. In the first nine (9) Fiscal Years in which Facilities Special Taxes are collected, and in the 16th, 17th, 18th, 19th and 20th Fiscal Years in which Facilities Special Taxes are collected, Facilities Special Tax proceeds that are determined by the Administrator to be Remainder Taxes shall be deposited into the Improvement Fund to pay any costs associated with the acquisition of Authorized Facilities that were not paid with Bond proceeds or Facilities Special Taxes levied in prior Fiscal Years. Any Remainder Taxes collected in the 10th, 11th, 12th, 13th, 14th and 15th Fiscal Years in which Facilities Special Taxes are levied shall be available to pay for Authorized Facilities or Authorized Services as determined in the sole discretion of the City.

Beginning in the 21st Fiscal Year in which a Facilities Special Tax is levied within Improvement Area No. 3 and continuing until the Trigger Event, the Facilities Special Tax shall be levied Proportionately on each Parcel of Developed Property up to 100% of the Maximum Facilities Special Tax for each Parcel of Developed Property until the amount levied is equal to the

Facilities Special Tax Requirement, the calculation of which will include funding for Recycled Water Facilities Costs and/or other Authorized Facilities designated for funding, as determined in the sole discretion of the City. After the Trigger Event, the Facilities Special Tax shall no longer be levied.

Step 2: If additional revenue is needed after Step 1 and after applying Capitalized Interest to the Facilities Special Tax Requirement, the Facilities Special Tax shall be levied Proportionately on each Parcel of Undeveloped Property up to 100% of the Maximum Facilities Special Tax for each Parcel of Undeveloped Property.

Step 3: If additional revenue is needed after Step 2, the Facilities Special Tax shall be levied Proportionately on each Parcel of Taxable Welfare Exemption Property, up to 100% of the Maximum Facilities Special Tax for each Parcel of Taxable Welfare Exemption Property.

Step 4: If additional revenue is needed after Step 3, the Facilities Special Tax shall be levied Proportionately on each Parcel of Taxable HOA Property, up to 100% of the Maximum Facilities Special Tax for each Parcel of Taxable HOA Property.

Step 5: If additional revenue is needed after Step 4, the Facilities Special Tax shall be levied Proportionately on each Parcel of Taxable Public Property, up to 100% of the Maximum Facilities Special Tax for each Parcel of Taxable Public Property.

2. *Services Special Tax*

Each Fiscal Year after the Trigger Event, the Administrator shall determine the Services Special Tax Requirement and levy the Services Special Tax on all Parcels of Taxable Property as follows:

Step 1: The Services Special Tax shall be levied Proportionately on each Parcel of Developed Property up to 100% of the Maximum Services Special Tax for each Parcel of Developed Property until the amount levied is equal to the Services Special Tax Requirement.

Step 2: If additional revenue is needed after Step 1, the Services Special Tax shall be levied Proportionately on each Parcel of Undeveloped Property, up to 100% of the Maximum Services Special Tax for each Parcel of Undeveloped Property.

Step 3: If additional revenue is needed after Step 2, the Services Special Tax shall be levied Proportionately on each Parcel of Taxable HOA Property, up to 100% of the Maximum Services Special Tax for each Parcel of Taxable HOA Property.

Step 4: If additional revenue is needed after Step 3, the Services Special Tax shall be levied Proportionately on each Parcel of Taxable Public Property, up to 100% of the Maximum Services Special Tax for each Parcel of Taxable Public Property.

F. MANNER OF COLLECTION OF SPECIAL TAXES

The Special Taxes for Improvement Area No. 3 shall be collected in the same manner and at the same time as ordinary ad valorem property taxes, provided, however, that partial prepayments are permitted as set forth in Section H below and provided further that the City may directly bill the Special Taxes, may collect Special Taxes at a different time or in a different manner, and may collect delinquent Special Taxes through foreclosure or other available methods.

The Facilities Special Tax shall be levied and collected until principal and interest on Bonds have been repaid, costs of constructing or acquiring Authorized Facilities from Facilities Special Tax proceeds have been paid, and all Administrative Expenses have been paid or reimbursed. However, in no event shall Facilities Special Taxes be levied for more than eighty (80) Fiscal Years. Under no circumstances may the Facilities Special Tax on a Parcel in residential use be increased in any Fiscal Year as a consequence of delinquency or default in payment of the Facilities Special Tax levied on another Parcel or Parcels by more than ten percent (10%) above the amount that would have been levied in that Fiscal Year had there never been any such delinquencies or defaults. After the Trigger Event, the Services Special Tax may be levied and collected in perpetuity.

G. EXEMPTIONS

Any Parcel that becomes HOA Property, Public Property, or Welfare Exemption Property prior to the First Bond Sale shall be exempt from both the Services Special Tax and the Facilities Special Tax; the Administrator shall reduce the Expected Maximum Facilities Special Tax Revenues to reflect any such exemption, and the First Bond Sale shall be sized based on the reduced Expected Maximum Facilities Special Tax Revenues. Any Parcel that becomes HOA Property, Public Property, or Welfare Exemption Property after the First Bond Sale shall be exempt from both the Services Special Tax and the Facilities Special Tax provided such Parcel is not Taxable HOA Property, Taxable Public Property or Taxable Welfare Exemption Property.

In addition, no Special Taxes shall be levied on (i) Parcels that are designated as permanent open space or common space on which no structure is permitted to be constructed, (ii) Parcels owned by a public utility for an unmanned facility, and (iii) Parcels subject to an easement that precludes any use on the Parcel other than that permitted by the easement. Notwithstanding the foregoing, if a Facilities Special Tax has been levied on a Parcel in any Fiscal Year, and the entire Parcel subsequently meets the criteria in (i), (ii) or (iii) above, the Parcel shall remain subject to the Facilities Special Tax levy, unless the First Bond Sale has not occurred, in which case such property shall be categorized as Public Property, and the Administrator shall recalculate the Expected Maximum Facilities Special Tax Revenues based on the corresponding loss in revenues.

H. PARTIAL PREPAYMENT OF FACILITIES SPECIAL TAX

The following definitions apply to this Section H:

> **"Outstanding Bonds"** means all Previously Issued Bonds which remain outstanding, with the following exception: if a Facilities Special Tax has been levied against, or already paid by, an Assessor's Parcel making a prepayment, and a portion of the Facilities Special Tax will be used to pay a portion of the next principal payment on the Bonds that remain

outstanding (as determined by the Administrator), that next principal payment shall be subtracted from the total Bond principal that remains outstanding, and the difference shall be used as the amount of Outstanding Bonds for purposes of this prepayment formula.

"Previously Issued Bonds" means all Bonds that have been issued prior to the date of prepayment.

"Public Facilities Requirements" means: (i) $54.5 million in Fiscal Year 2024-25 dollars, which amount shall, on July 1, 2025 and on each July 1 thereafter, be increased by an amount equal to 2.0% of the amount in effect for the prior Fiscal Year, or (ii) such other number as shall be determined by the City to be an appropriate estimate of the net construction proceeds that will be generated from all Bonds that have been or are expected to be issued on behalf of Improvement Area No. 3.

"Remaining Facilities Costs" means the Public Facilities Requirements (as defined above), minus public facility costs funded by Previously Issued Bonds (as defined above), Remainder Taxes, or prepayments.

A property owner may prepay up to 80% of the Facilities Special Tax obligation applicable to a Parcel in Improvement Area No. 3, thereby reducing the Maximum Facilities Special Tax applicable to the Parcel, provided that a prepayment may be made only if there are no delinquent Special Taxes with respect to such Parcel at the time of prepayment. An owner of a Parcel intending to prepay a portion of the Facilities Special Tax obligation shall provide the City with written notice of intent to prepay, which shall identify the percentage of the Maximum Facilities Special Tax that is to be prepaid. Within 30 days of receipt of such written notice, the City or its designee shall notify such owner of the prepayment amount for such Parcel. Prepayment must be made not less than 50 days prior to any redemption date for Bonds to be redeemed with the proceeds of such prepaid Facilities Special Taxes.

The Prepayment Amount shall be calculated as follows (capitalized terms as defined below):

	Bond Redemption Amount
plus	Remaining Facilities Amount
plus	Redemption Premium
plus	Defeasance Requirement
plus	Administrative Fees and Expenses
less	Reserve Fund Credit
equals	Prepayment Amount

As of the proposed date of prepayment, the Prepayment Amount for a Parcel shall be determined by application of the following steps:

Step 1. Determine the Maximum Facilities Special Tax that could be levied on the Parcel based on the Expected Land Uses for the Parcel at the time the prepayment is calculated.

Step 2. Divide the Maximum Facilities Special Tax computed pursuant to Step 1 by the Expected Maximum Facilities Special Tax Revenues in that Fiscal Year.

Step 3. Multiply the quotient computed in Step 2 by the percentage of the Maximum Facilities Special Tax that the property owner wants to prepay, which percentage shall not exceed 80%.

Step 4. Multiply the quotient computed pursuant to Step 3 by the Outstanding Bonds to compute the amount of Outstanding Bonds to be retired and prepaid (*the "**Bond Redemption Amount**"*).

Step 5. Compute the current Remaining Facilities Costs (if any).

Step 6. Multiply the quotient computed pursuant to Step 3 by the amount determined pursuant to Step 5 to compute the amount of Remaining Facilities Costs to be prepaid (*the "**Remaining Facilities Amount**"*).

Step 7. Multiply the Bond Redemption Amount computed pursuant to Step 4 by the applicable redemption premium, if any, on the Outstanding Bonds to be redeemed (*the "**Redemption Premium**"*).

Step 8. Compute the amount needed to pay interest on the Bond Redemption Amount starting with the last Bond interest payment date on which interest has been or will be paid by Facilities Special Taxes already levied until the earliest redemption date for the Outstanding Bonds.

Step 9: Compute the amount of interest the City reasonably expects to derive from reinvestment of the Bond Redemption Amount plus the Redemption Premium from the first Bond interest payment date after which the prepayment has been received until the redemption date for the Outstanding Bonds.

Step 10: Take the amount computed pursuant to Step 8 and subtract the amount computed pursuant to Step 9 (the ***"Defeasance Requirement"***).

Step 11. Determine the costs of computing the prepayment amount, redeeming Bonds, and recording any notices to evidence the prepayment and redemption (the *"**Administrative Fees and Expenses**"*).

Step 12. If and to the extent so provided in the Indenture, a reserve fund credit shall be calculated as a reduction in the applicable reserve fund for the Outstanding Bonds to be redeemed pursuant to the prepayment (the *"**Reserve Fund Credit**"*).

Step 13. The Facilities Special Tax prepayment is equal to the sum of the amounts computed pursuant to Steps 4, 6, 7, 10, and 11, less the amount computed pursuant to Step 12 (the *"**Prepayment Amount**"*).

Step 14. From the Prepayment Amount, the amounts computed pursuant to Steps 4, 7, and 10 shall be deposited into the appropriate fund as established under the Indenture and be used to retire Outstanding Bonds or make debt service payments. The amount computed pursuant to Step 6 shall be deposited into the Improvement Fund. The amount computed pursuant to Step 11 shall be retained in the account or fund that is established to pay Administrative Expenses.

Once a partial prepayment of a Facilities Special Tax has been received, an Amendment to Special Tax Lien shall be recorded against the Parcel to reflect the reduced Facilities Special Tax lien for the Parcel, which shall be equal to the portion of the Maximum Facilities Special Tax that was not prepaid. However, an Amendment to Special Tax Lien shall not be recorded until all Facilities Special Taxes levied on the Parcel in the current or prior Fiscal Years have been collected. The prepayment of a portion of the Facilities Special Tax shall not affect the perpetual obligation to pay the Services Special Tax.

Notwithstanding the foregoing, if at any point in time the Administrator determines that the Maximum Facilities Special Tax revenue that could be collected from Taxable Property that remains subject to the Facilities Special Tax after the proposed prepayment would be less than the Required Coverage on Bonds that will remain outstanding after defeasance or redemption of Bonds from proceeds of the estimated prepayment, the amount of the prepayment shall be increased until the amount of Bonds defeased or redeemed is sufficient to reduce remaining annual debt service to a point at which Required Coverage is maintained.

I. INTERPRETATION OF SPECIAL TAX FORMULA

The City may interpret, clarify, and revise this RMA to correct any inconsistency, vagueness, or ambiguity, by resolution and/or ordinance, that does not create a material adverse effect on the levy and collection of the Special Taxes and any security for any Bonds.

ATTACHMENT 1

Improvement Area No. 3 of the
City of Tracy
Community Facilities District No. 2016-1
(Tracy Hills)

Expected Land Uses and Expected Maximum Facilities Special Tax Revenues

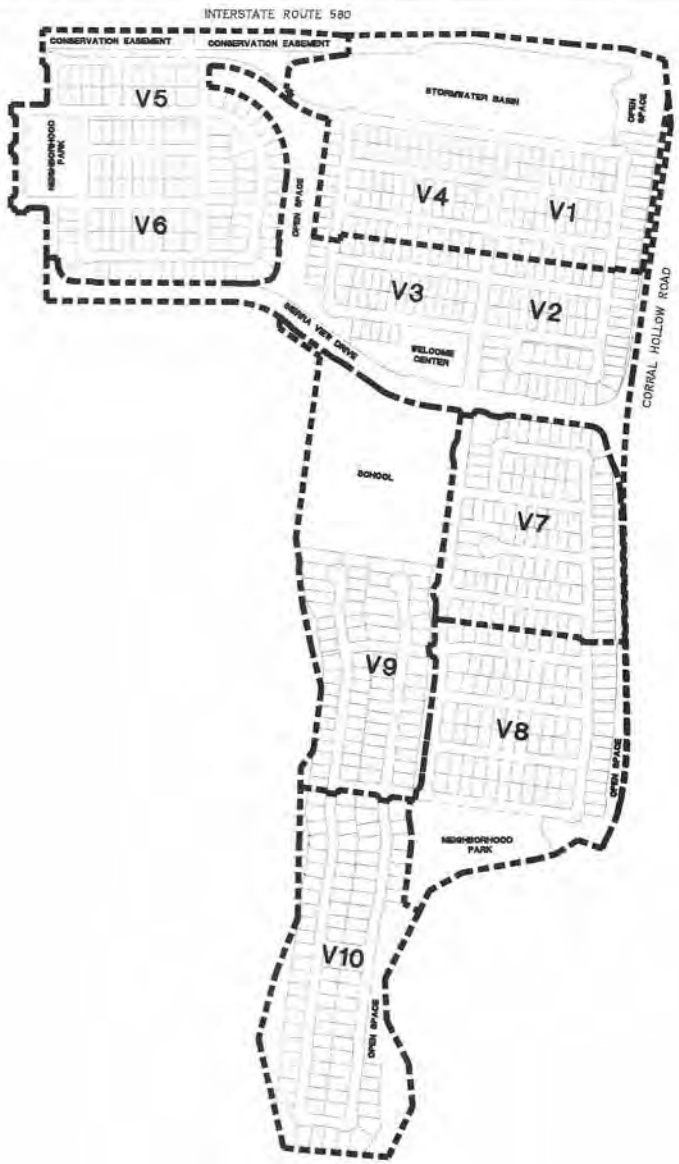
Village	Expected Land Uses	Maximum Facilities Special Tax per Unit FY 2024-25 /1	Expected Maximum Facilities Special Tax Revenues FY 2024-25 /1
Village 1 & 4	139 Residential Units	$4,398 per Residential Unit	$611,322
Village 2 & 3	115 Residential Units	$4,649 per Residential Unit	$534,635
Village 5 & 6	131 Residential Units	$5,124 per Residential Unit	$671,244
Village 7	97 Residential Units	$5,295 per Residential Unit	$513,615
Village 8	89 Residential Units	$5,277 per Residential Unit	$469,653
Village 9	69 Residential Units	$5,658 per Residential Unit	$390,402
Village 10	86 Residential Units	$6,149 per Residential Unit	$528,814
Total	726 Residential Units	N/A	$3,719,685

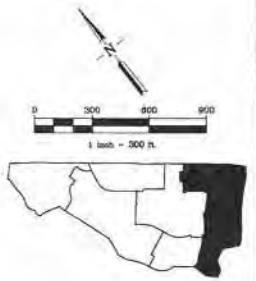
1. On July 1, 2025 and each July 1 thereafter, the Maximum Facilities Special Tax per Residential Unit and the Expected Maximum Facilities Special Tax Revenues shall be increased by two percent (2%) of the amount in effect in the prior Fiscal Year.

ATTACHMENT 2

Improvement Area No. 3 of the
City of Tracy
Community Facilities District No. 2016-1
(Tracy Hills)

Expected Lot Layout





ATTACHMENT 2

TRACY HILLS 2A EXPECTED LAYOUT IN IMPROVEMENT AREA NO. 3 OF THE TRACY HILLS CFD 2016-1

CITY OF TRACY, SAN JOAQUIN COUNTY, CALIFORNIA
FOR: INTEGRAL COMMUNITIES

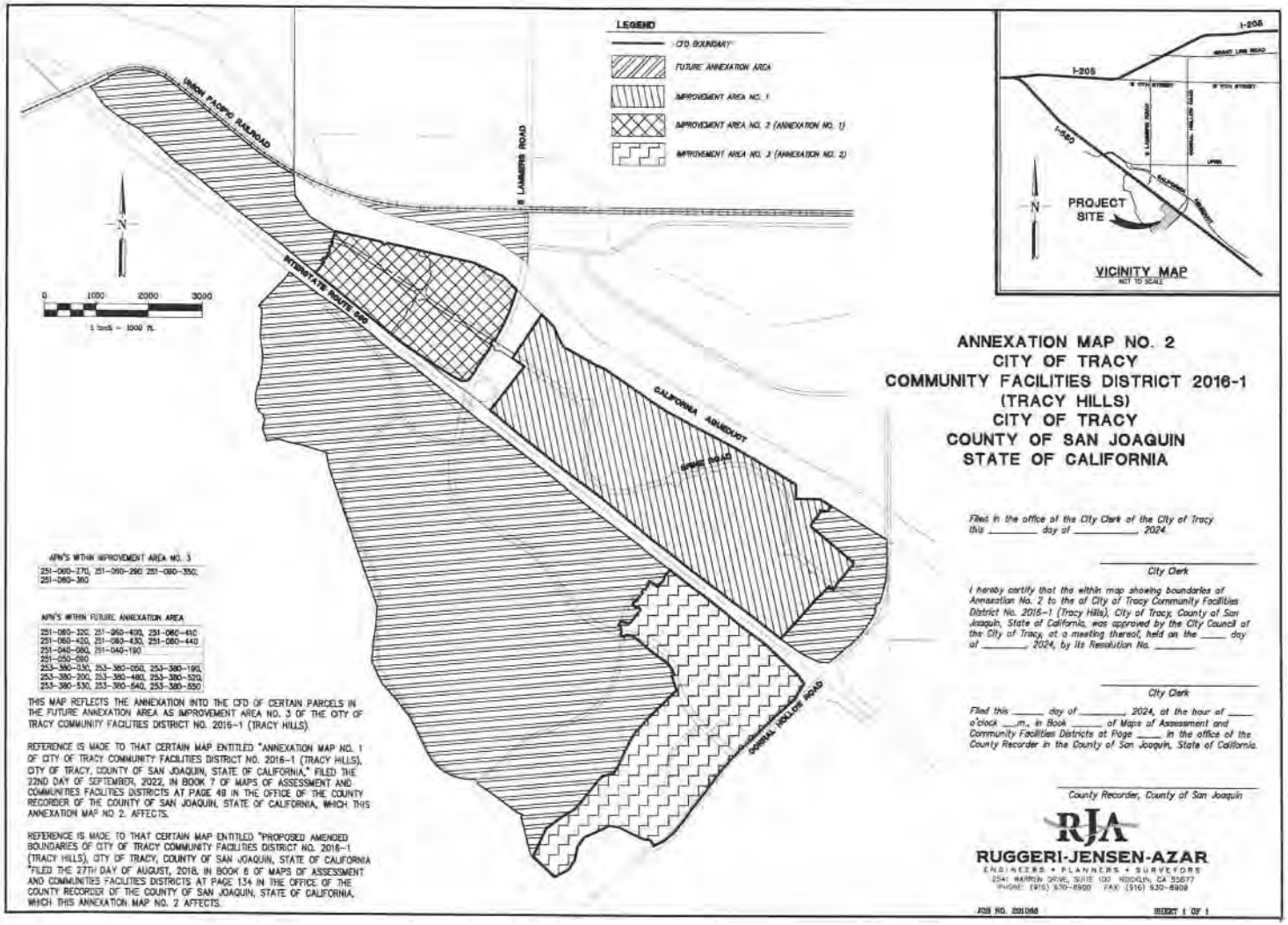
RJA
RUGGERI-JENSEN-AZAR
ENGINEERS • PLANNERS • SURVEYORS
4690 CHABOT DRIVE, SUITE 205 PLEASANTON, CA 94588
PHONE: (925) 227-9100 FAX: (925) 227-9300

DATE: SEPTEMBER 08, 2023 JOB NO. 201068 SHEET 1 OF 1

EXHIBIT C

PROPOSED ANNEXATION MAP

[attached]



APN'S WITHIN IMPROVEMENT AREA NO. 3

251-060-270, 251-060-290 251-080-350, 251-080-360

APN'S WITHIN FUTURE ANNEXATION AREA

251-060-320, 251-060-400, 251-060-410, 251-060-420, 251-080-430, 251-080-440, 251-040-080, 251-040-190, 251-050-080, 253-380-050, 253-380-060, 253-380-190, 253-380-200, 253-380-480, 253-380-520, 253-380-530, 253-380-540, 253-380-550

THIS MAP REFLECTS THE ANNEXATION INTO THE CFD OF CERTAIN PARCELS IN THE FUTURE ANNEXATION AREA AS IMPROVEMENT AREA NO. 3 OF THE CITY OF TRACY COMMUNITY FACILITIES DISTRICT NO. 2016-1 (TRACY HILLS).

REFERENCE IS MADE TO THAT CERTAIN MAP ENTITLED "ANNEXATION MAP NO. 1 OF CITY OF TRACY COMMUNITY FACILITIES DISTRICT NO. 2016-1 (TRACY HILLS), CITY OF TRACY, COUNTY OF SAN JOAQUIN, STATE OF CALIFORNIA," FILED THE 22ND DAY OF SEPTEMBER, 2022, IN BOOK 7 OF MAPS OF ASSESSMENT AND COMMUNITIES FACILITIES DISTRICTS AT PAGE 49 IN THE OFFICE OF THE COUNTY RECORDER OF THE COUNTY OF SAN JOAQUIN, STATE OF CALIFORNIA, WHICH THIS ANNEXATION MAP NO 2. AFFECTS.

REFERENCE IS MADE TO THAT CERTAIN MAP ENTITLED "PROPOSED AMENDED BOUNDARIES OF CITY OF TRACY COMMUNITY FACILITIES DISTRICT NO. 2016-1 (TRACY HILLS), CITY OF TRACY, COUNTY OF SAN JOAQUIN, STATE OF CALIFORNIA "FILED THE 27TH DAY OF AUGUST, 2018, IN BOOK 6 OF MAPS OF ASSESSMENT AND COMMUNITIES FACILITIES DISTRICTS AT PAGE 134 IN THE OFFICE OF THE COUNTY RECORDER OF THE COUNTY OF SAN JOAQUIN, STATE OF CALIFORNIA, WHICH THIS ANNEXATION MAP NO. 2 AFFECTS.

ANNEXATION MAP NO. 2
CITY OF TRACY
COMMUNITY FACILITIES DISTRICT 2016-1
(TRACY HILLS)
CITY OF TRACY
COUNTY OF SAN JOAQUIN
STATE OF CALIFORNIA

Filed in the office of the City Clerk of the City of Tracy this _____ day of _____, 2024.

City Clerk

I hereby certify that the within map showing boundaries of Annexation No. 2 to the of City of Tracy Community Facilities District No. 2016-1 (Tracy Hills), City of Tracy, County of San Joaquin, State of California, was approved by the City Council of the City of Tracy, at a meeting thereof, held on the _____ day of _____, 2024, by its Resolution No. _____.

City Clerk

Filed this _____ day of _____, 2024, at the hour of _____ o'clock ___m., in Book _____ of Maps of Assessment and Community Facilities Districts at Page ____ in the office of the County Recorder in the County of San Joaquin, State of California.

County Recorder, County of San Joaquin

RJA
RUGGERI-JENSEN-AZAR
ENGINEERS • PLANNERS • SURVEYORS
2541 WARREN DRIVE, SUITE 100 REDOLIN, CA 95677
PHONE: (916) 630-8900 FAX: (916) 630-8909

JOB NO. 201068 SHEET 1 OF 1

City of Tracy
Community Facilities District No. 2016-1 (Tracy Hills)

Request and Unanimous Approval for Annexation and Landowner-Voter Ballot

Recitals

A. The undersigned is an authorized representative of Lennar Homes of California, LLC, a California limited liability company (the "**Landowner**").

B. The Landowner owns the real property identified in Exhibit A, attached hereto and by this reference incorporated herein (the "**Property**").

C. Pursuant to the Mello-Roos Community Facilities Act of 1982 (the "**Mello-Roos Act**"), on July 19, 2016, the City Council (the "**City Council**") of the City of Tracy adopted its Resolution No. 2016-157 (the "**Resolution of Formation**"), which, among other things:

1. established the City of Tracy Community Facilities District No. 2016-1 (Tracy Hills) ("**CFD**") and a future annexation area for the CFD ("**Future Annexation Area**") and designated Improvement Area No. 1 of the City of Tracy Community Facilities District No. 2016-1 (Tracy Hills)" ("**Improvement Area No. 1**"), with the initial boundaries of the CFD, the Future Annexation Area and Improvement Area No. 1 shown on a boundary map (the "**Boundary Map**") that was recorded on June 15, 2016 in the records of the San Joaquin County Recorder in Book 6 of Maps of Assessment and Community Facilities Districts at Page 84 as Document No. 2016-069400;

2. authorized the CFD and every improvement area annexed thereto to finance the costs and expenses of certain public facilities and fees (together, the "**Facilities**") and certain public services (the "**Services**"); and

3. approved the form of the rate and method of apportionment for Improvement Area No. 1 (the "**Original Improvement Area No. 1 RMA**").

D. The Resolution of Formation further provided that property in the Future Annexation Area may be annexed into the CFD as its own improvement area or to an existing improvement area, and that the designation as an improvement area of any territory annexing to the CFD, the maximum amount of bonded indebtedness and other debt for such improvement area, the rate and method of apportionment of special tax for such improvement area and the appropriations limit for such improvement area shall be identified and approved in a unanimous approval (a "**Unanimous Approval**") executed by property owners in connection with an annexation to the CFD, without the need for Council approval as long as certain conditions were met.

E. Pursuant to the Mello-Roos Act, on July 19, 2016, the City Council adopted its Resolution No. 2016-158 (the "**Resolution of Necessity**"), which set forth the necessity for the City to issue special tax bonds or other forms of debt obligations for the CFD in the maximum

principal amount of $285,000,000. The Resolution of Necessity preliminarily allocated $70,000,000 of the aggregate $285,000,000 limit to Improvement Area No. 1 (the "**Improvement Area No. 1 Indebtedness Limit**") and $215,000,000 to the Future Annexation Area (the "**Non-Improvement Area No. 1 Indebtedness Limit**"), with the actual limit for an improvement area created from annexation of all or part of the Future Annexation Area to be identified and approved in a Unanimous Approval so long as the overall bonded indebtedness limit for the CFD did not exceed $285,000,000.

F. Subsequently, the City Council undertook change proceedings, including a landowner vote, which culminated in the adoption by the City Council on August 21, 2018, of Resolution No. 2018-169, entitled "**Resolution of Change**," to (i) increase the Improvement Area No. 1 Indebtedness Limit to $80,000,000, (ii) increase the Non-Improvement Area No. 1 Indebtedness Limit to $305,000,000, (iii) increase the Improvement Area No. 1 Appropriations Limit to $80,000,000, (iv) amend the boundaries of the CFD, Improvement Area No. 1 and the Future Annexation Area by removing San Joaquin County Assessor's Parcel Number 253-360-15 from Improvement Area No. 1 (the "**Transferred Parcel**") and adding it to the Future Annexation Area, and (v) amend the Improvement Area No. 1 Rate and Method (as amended, the "**Improvement Area No. 1 RMA**"). A map of the amended boundaries of the CFD, Improvement Area No. 1 and the Future Annexation Area was recorded on August 27, 2018 in the records of the San Joaquin County Recorder in Book 6 of Maps of Assessment and Community Facilities Districts at Page 134 as Document No. 2018-095098.

G. Pursuant to Resolution No. 2022-130, adopted on September 6, 2022, the City Council, among other things, approved the annexation of certain property to the CFD as Improvement Area No. 2 of the City of Tracy Community Facilities District No. 2016-1 (Tracy Hills), and confirmed the maximum aggregate principal amount of bonds and other debt and an annual appropriations limit for Improvement Area No. 2 of $50,000,000.

H. The Landowner has sole ownership of the Property. The Property is part of the Future Annexation Area. By this instrument, the Landowner identifies, specifies and approves the annexation of the Property to the CFD as "Improvement Area No. 3 of the City of Tracy Community Facilities District No. 2016-1 (Tracy Hills)" ("**Improvement Area No. 3**") and the other matters included herein, without a public hearing, as authorized by the Mello-Roos Act and the Resolution of Formation.

I. The Landowner hereby acknowledges that the Resolution of Formation requires City Council approval of the annexation of the property as Improvement Area No. 3, as proposed, because the Improvement Area No. 3 RMA (as defined below) establishes a maximum special tax amount for the initial fiscal year in which the special tax may be levied for one or more categories of special tax that is greater than 120% of the maximum amount of the same category of special tax for the same fiscal year calculated pursuant to the Improvement Area No. 1 RMA.

J. The Landowner hereby represents and warrants that, to the best of its knowledge without inquiry, there are no persons resident on the property that are registered voters.

Approval and Vote

1. The Landowner, as the sole owner of the Property, hereby identifies, specifies and provides its unanimous approval of the annexation of the Property to the CFD as

Improvement Area No. 3 and related matters, as prescribed and authorized by Section 53339.7 and Section 53350(b) of the Mello-Roos Act, the Resolution of Formation and the Resolution of Necessity.

2. The Landowner, as the sole qualified elector with respect to the annexation of the Property, hereby votes in favor of (a) the levy of special taxes on the taxable property being annexed to Improvement Area No. 3 in accordance with the rate and method of apportionment for Improvement Area No. 3 in the form attached hereto as Exhibit B (the "**Improvement Area No. 3 RMA**") and by this reference incorporated herein for the purpose of financing the Facilities and the Services, (b) the issuance of bonds and other debt of Improvement Area No. 3 in a principal amount not to exceed $80,000,000, which bonds and other debt shall be secured solely by and be payable solely from the proceeds of the special taxes levied upon the taxable property within Improvement Area No. 3, and (c) an initial appropriations limit for Improvement Area No. 3 of $80,000,000. The Improvement Area No. 3 RMA describes the maximum special tax rate applicable to the Property.

3. The Landowner hereby requests that an annexation map showing the land (including the Property) to be annexed as Improvement Area No. 3 be as shown on the map attached hereto as Exhibit C.

4. The Landowner hereby acknowledges the following:

   a. As soon as practicable following receipt of this Unanimous Approval by the City, the City Council will consider whether to approve the proposed annexation and, if directed by the City Council, the City Clerk will record (i) a Notice of Special Tax Lien for Improvement Area No. 3, listing the name of the Landowner and the assessor's parcel number(s) of the Property, which will result in the establishment of a lien to secure payment of the special tax on the Property and (ii) the proposed annexation map.

   b. The City will levy a special tax upon the taxable property within Improvement Area No. 3 at the time and in accordance with the Resolution of Formation, the Resolution of Change and the Improvement Area No. 3 RMA.

   c. This Unanimous Approval constitutes the Landowner's approval and unanimous vote as described herein and as contemplated by Section 53339.3 et seq. of the Mello-Roos Act and Articles XIIIA and XIIIC of the California Constitution. The Landowner hereby waives all other rights with respect to the annexation of the Property, the levy of the special taxes on the Property and the other matters covered in this Unanimous Approval, including any right the Landowner may otherwise have to protest or challenge the validity of the proceedings to form or change the CFD and to authorize the annexation of any property (including the Property) to the CFD, and any necessity, requirement or right for further public hearings or any election pertaining to the annexation of the Property to the CFD as Improvement Area No. 3 or the levy of special taxes on the Property.

   d. The specific purpose of the bonds and other debt is to finance the acquisition and construction of the Facilities described in the Resolution of Formation and pay related costs. Any proceeds received from the sale of any bonds and other debt will be applied only for such purpose. The proceeds of any bonds and other debt

will be deposited into special accounts to be created therefor as part of the issuance of the bonds and other debt. The City will cause a report to be prepared annually under Section 53411 of the Government Code.

e. The Expected Land Uses (as defined in the Improvement Area No. 3 RMA) of the Property shall be as specified in the Improvement Area No. 3 RMA.

5. The Landowner warrants to the City that the presentation of this Unanimous Approval, any votes, consents or waivers contained herein, and other actions mandated by the City for the annexation of the Property to the CFD as Improvement Area No. 3 shall not constitute or be construed as events of default or delinquencies under any existing or proposed financing documents entered into or to be entered into by the Landowner for the Property, including any "due-on-encumbrance" clauses under any existing security instruments secured by the Property.

6. The Landowner agrees to cooperate with the City and its attorneys and consultants and to provide to any subsequent purchaser with notice of the special tax that may be levied by the City Council on the Property pursuant to the Improvement Area No. 3 RMA, to the extent required by applicable law.

7. The Landowner further agrees to execute such additional or supplemental agreements as may be required by the City to provide for any of the actions and conditions described in this Unanimous Approval.

Dated: Sept 23, 2024

Lennar Homes of California, LLC,
a California limited liability company

By: _____

Name: BRIDGET KOLLER

Title: VICE PRESIDENT

Exhibit A - Identification of the Property

Exhibit B - Improvement Area No. 3 RMA

Exhibit C - Proposed Annexation Map

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

STATE OF CALIFORNIA)
)
COUNTY OF Contra Costa)

On September 23, 2024 before me, Ashley Edley,
Notary Public, personally appeared Bridgit Keller, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature: Ashley Edley (seal)

ASHLEY EDLEY
Notary Public - California
Contra Costa County
Commission # 2484939
My Comm. Expires Mar 19, 2028

EXHIBIT A

IDENTIFICATION OF THE PROPERTY

Owner	Village	Tract Map References	APNs
Lennar Homes of California, LLC	1 + 4	[Tract Map 4132] Lots 12-24, 45-54, 61-70, and 117-118	251-060-270(P)
	2 + 3	[Tract 4133] Lots 1-28, 73-76, and 83-104	251-060-270(P) and 251-060-290(P)
	5 + 6	[Tract 4134] Lots 1-46 and 73-76	251-060-270(P)
	7	[Tract Map 4135] Lots 1-2, 41-42 and 73-90	251-060-350(P), 251-060-290(P), and 251-060-360(P)
	8	[Tract Map 4136] Lots 1-4, 21-23, and 40-82	251-060-350(P) and 251-060-360(P)
	9	[Tract Map 4137] Lots 1-36, 43-62, and 68-69	251-060-350(P) and 251-060-360(P)
	10	[Tract Map 4138] Lots 1-32, 34, 57-79, and 85-86	251-060-360(P)

EXHIBIT B

IMPROVEMENT AREA NO. 3 RMA

[attached]

IMPROVEMENT AREA NO. 3 OF THE
CITY OF TRACY
COMMUNITY FACILITIES DISTRICT NO. 2016-1
(TRACY HILLS)

RATE AND METHOD OF APPORTIONMENT OF SPECIAL TAXES

Special Taxes applicable to each Assessor's Parcel in Improvement Area No. 3 of the City of Tracy Community Facilities District No. 2016-1 (Tracy Hills) shall be levied and collected according to the tax liability determined by the City through the application of the appropriate amount or rate for Taxable Property, as described below. All of the property in Improvement Area No. 3, unless exempted by law or by the provisions of Section G below, shall be taxed for the purposes, to the extent, and in the manner herein provided.

A. DEFINITIONS

The terms hereinafter set forth have the following meanings:

"Accessory Unit" means a second residential unit of limited size (e.g., granny cottage, second unit) that shares a Parcel with a single-family detached unit.

"Acre" or **"Acreage"** means the land area of an Assessor's Parcel as shown on an Assessor's Parcel Map, or if the land area is not shown on an Assessor's Parcel Map, the land area shown on the applicable Final Map or other parcel map recorded at the County Recorder's Office.

"Act" means the Mello-Roos Community Facilities Act of 1982, as amended, being Chapter 2.5, (commencing with Section 53311), Division 2 of Title 5 of the Government Code of the State of California.

"Administrative Expenses" means any or all of the following: the fees and expenses of any fiscal agent or trustee (including any fees or expenses of its counsel) employed in connection with any Bonds, and the expenses of the City in carrying out its duties with respect to the CFD and the Bonds, including, but not limited to, the levy and collection of Special Taxes, the fees and expenses of its legal counsel, charges levied by the County in connection with the levy and collection of Special Taxes, costs related to property owner inquiries regarding the Special Taxes, costs associated with appeals or requests for interpretation associated with the Special Taxes and this RMA, costs of the dissemination agent, whether for the City or another party that has undertaken to provide continuing disclosure, amounts needed to pay rebate to the federal government with respect to the Bonds, costs associated with complying with any continuing disclosure requirements with respect to the Bonds and the Special Taxes, costs associated with foreclosure and collection of delinquent Special Taxes and all other costs and expenses of the City and County in any way related to the establishment or administration of the CFD.

"Administrator" means the person or firm designated by the City to administer the Special Taxes according to this RMA.

"Assessor's Parcel" or **"Parcel"** means a lot or parcel shown on an Assessor's Parcel Map with an assigned Assessor's parcel number.

"Assessor's Parcel Map" means an official map of the County Assessor designating Parcels by Assessor's Parcel number.

"Authorized Facilities" means the public facilities authorized to be financed, in whole or in part, by the CFD.

"Authorized Services" means the public services authorized to be funded, in whole or in part, by the CFD.

"Bonds" means bonds or other debt (as defined in the Act), whether in one or more series, issued or assumed by Improvement Area No. 3 to fund Authorized Facilities.

"Capitalized Interest" means funds in any capitalized interest account available to pay interest on Bonds.

"CFD" means the City of Tracy Community Facilities District No. 2016-1 (Tracy Hills).

"City" means the City of Tracy.

"City Council" means the City Council of the City of Tracy.

"County" means the County of San Joaquin.

"Developed Property" means, in any Fiscal Year, all Parcels of Taxable Property, excluding Taxable HOA Property, Taxable Welfare Exemption Property, and Taxable Public Property, for which a building permit was issued prior to June 30 of the preceding Fiscal Year.

"Development Class" means, individually, Developed Property, Undeveloped Property, Taxable HOA Property, Taxable Welfare Exemption Property, and Taxable Public Property.

"Escalation Factor" means, in any Fiscal Year, the lesser of (i) the percentage increase from the prior Fiscal Year, if any, in the Index, or (ii) four percent (4%). The Index used shall be as determined by the Bureau of Labor Statistics from April to April beginning with the period from April 2023 to April 2024.

"Expected Land Uses" means the number of Residential Units and acres of Other Property expected within Improvement Area No. 3 at the time of the IA No. 3 Lien Date, as identified in Attachment 1 and as amended from time to time as set forth in this RMA.

"Expected Maximum Facilities Special Tax Revenues" means the amount of annual revenue that would be available in Improvement Area No. 3 if the Maximum Facilities Special Tax was levied on the Expected Land Uses. The Expected Maximum Facilities Special Tax Revenues as of the IA No. 3 Lien Date are shown in Attachment 1 of this RMA and may be reduced due to prepayments in future Fiscal Years and/or pursuant to Section D below.

"Facilities Special Tax" means a special tax levied in any Fiscal Year to pay the Facilities Special Tax Requirement.

"Facilities Special Tax Requirement" means the amount necessary in any Fiscal Year (i) to pay principal and interest on Bonds which are due in the calendar year which begins in such Fiscal Year, (ii) to create or replenish reserve funds to the extent such replenishment has not been included in a computation of Facilities Special Tax Requirement in a previous Fiscal Year, (iii) to cure any delinquencies in the payment of principal or interest on Bonds which have occurred in the prior Fiscal Year, (iv) to pay Administrative Expenses, and (v) to pay the costs of Authorized Facilities to be funded directly from Facilities Special Tax proceeds to the extent that paying directly for such costs does not increase the Facilities Special Tax levied on Undeveloped Property. The amounts referred to in clauses (i) and (ii) of the preceding sentence may be reduced in any Fiscal Year by (i) interest earnings on or surplus balances in funds and accounts for Bonds to the extent that such earnings or balances are available to apply against debt service pursuant to the Indenture, (ii) proceeds from the collection of penalties associated with delinquent Facilities Special Taxes, and (iii) any other revenues available to pay debt service on the Bonds as determined by the Administrator.

"Final Bond Sale" means, at any point in time, the last series of Bonds issued for Improvement Area No. 3, which issuance uses up virtually all of the remaining capacity available from the Maximum Facilities Special Tax revenues that can be generated within Improvement Area No. 3, as determined by the City. If additional Bonds are expected to be issued after outstanding Bonds retire, the "Final Bond Sale" may not be the last series of Bonds ever issued for Improvement Area No. 3, but instead the last sale of Bonds that can be issued before some or all of the outstanding Bonds retire.

"Final Map" means a final map, or portion thereof, recorded by the County pursuant to the Subdivision Map Act (California Government Code Section 66410 et seq.) that creates lots that do not need to be further subdivided prior to issuance of a building permit for a residential structure. The term "Final Map" shall not include any Assessor's Parcel map or subdivision map, or portion thereof, that does not create lots that are in their final configuration, including Assessor's Parcels that are designated as remainder parcels.

"First Bond Sale" means issuance of the first series of Bonds secured, in whole or in part, by Facilities Special Taxes levied and collected from Parcels in Improvement Area No. 3.

"Fiscal Year" means the period starting July 1 and ending on the following June 30.

"Homeowners Association" or **"HOA"** means the homeowners association that provides services to, and collects dues, fees, or charges from, property within Improvement Area No. 3.

"HOA Property" means any property within the boundaries of Improvement Area No. 3 that is owned in fee or by easement by the Homeowners Association, not including any such property that is located directly under a residential structure.

"IA No. 3 Lien Date" means the date that the Notice of Special Tax Lien affecting the Parcels in Improvement Area No. 3 was recorded in the official records of the County.

"Improvement Area No. 3" means Improvement Area No. 3 of the City of Tracy Community Facilities District No. 2016-1 (Tracy Hills).

"Improvement Fund" means the account (regardless of its name) identified in the Indenture to hold funds which are available to acquire or construct Authorized Facilities.

"Indenture" means the bond indenture, fiscal agent agreement, trust agreement, resolution or other instrument pursuant to which Bonds are issued, as modified, amended, and/or supplemented from time to time, and any instrument replacing or supplementing the same.

"Index" means the Consumer Price Index of the San Francisco-Oakland-Hayward area for all urban consumers.

"Land Use Change" means a proposed or approved change to the Expected Land Uses within Improvement Area No. 3 after the IA No. 3 Lien Date.

"**Maximum Facilities Special Tax"** means the greatest amount of Facilities Special Tax that can be levied on an Assessor's Parcel in any Fiscal Year as determined in accordance with Sections C and D below.

"**Maximum Services Special Tax"** means the greatest amount of Services Special Tax that can be levied on an Assessor's Parcel in any Fiscal Year as determined in accordance with Section C.2 below.

"Maximum Special Taxes" means, collectively, the Maximum Facilities Special Tax and Maximum Services Special Tax.

"Other Property" means, in any Fiscal Year, all Parcels of Developed Property within Improvement Area No. 3 that are not Single Family Residential Property.

"Proportionately" means, for each Development Class, that the ratio of the actual Special Tax levied in any Fiscal Year to the Maximum Special Tax authorized to be levied in that Fiscal Year is equal for all Parcels assigned to the Development Class.

"Public Property" means any property within the boundaries of Improvement Area No. 3 that is owned by the federal government, State of California or other local governments or public agencies.

"Recycled Water Facilities Cost" means the total cost, as determined by the City, of funding the design, engineering, construction, and/or acquisition of recycled water facilities that will serve development within the CFD. If, in the future, the City determines that there is a preferred alternative to the recycled water facilities that were expected at the time of the IA No. 3 Lien Date, the cost of such facilities shall qualify as Recycled Water Facilities Costs for purposes of this RMA.

"Remainder Taxes" means, after September 1st and before December 31st of any Fiscal Year, any Facilities Special Tax revenues that were levied and collected in the prior Fiscal Year and were not needed to (i) pay debt service on the Bonds that was due in the calendar year in which the Remainder Taxes are being calculated, (ii) replenish Bond reserves, or (iii) pay Administrative Expenses that have been incurred, or are expected to be incurred, by the City prior to the receipt of additional Facilities Special Tax proceeds.

"Required Coverage" means the amount by which the Expected Maximum Facilities Special Tax Revenues must exceed the Bond debt service and required Administrative Expenses, as set forth in the Indenture, Certificate of Special Tax Consultant, or other formation or bond document that sets forth the minimum required debt service coverage.

"Residential Unit" means an individual single-family unit that does not share a common wall with another residential unit, or an individual residential unit within a duplex, halfplex, triplex, fourplex, townhome, live/work or condominium structure. An Accessory Unit shall not be considered a Residential Unit for purposes of this RMA.

"RMA" means this Rate and Method of Apportionment of Special Tax.

"Services Special Tax" means a special tax levied in any Fiscal Year to pay the Services Special Tax Requirement.

"Services Special Tax Requirement" means the amount of revenue needed in any Fiscal Year after the Trigger Event to pay for: (i) Authorized Services, (ii) Administrative Expenses, and (iii) amounts needed to cure any delinquencies in the payment of Services Special Taxes which have occurred in the prior Fiscal Year. In any Fiscal Year, the Services Special Tax Requirement shall be reduced by surplus amounts available (as determined by the City) from the levy of the Services Special Tax in prior Fiscal Years, including revenues from the collection of delinquent Services Special Taxes and associated penalties and interest.

"Single Family Residential Property" means, in any Fiscal Year, all Parcels of Developed Property for which a building permit was issued for construction of one or more Residential Units.

"Special Taxes" means, collectively, the Facilities Special Tax and the Services Special Tax.

"Taxable HOA Property" means, in any Fiscal Year after the First Bond Sale, any Parcel of HOA Property that satisfies all three of the following conditions: (i) the Parcel had not been HOA Property on the date of the First Bond Sale; (ii) based on reference to Attachments 1 and 2 (as may be updated pursuant to Section D below), the Parcel was not anticipated to be HOA Property based on the Expected Land Uses, as determined by the Administrator; and (iii) if the Parcel were to be exempt from the Facilities Special Tax because it has become HOA Property, the Expected Maximum Facilities Special Tax Revenues would be reduced to a point at which Required Coverage could not be maintained.

"Taxable Property" means all Parcels within the boundaries of Improvement Area No. 3 which are not exempt from the Special Taxes pursuant to law or Section G below.

"Taxable Public Property" means, in any Fiscal Year after the First Bond Sale, any Parcel of Public Property that satisfies all three of the following conditions: (i) the Parcel had not been Public Property on the date of the First Bond Sale, (ii) based on reference to Attachments 1 and 2 (as may be updated pursuant to Section D.1 below), the Parcel was not anticipated to be Public Property based on the Expected Land Uses, as determined by the Administrator, and (iii) if the Parcel were to be exempt from the Facilities Special Tax because it has become Public Property, the Expected Maximum Facilities Special Tax Revenues would be reduced to a point at which Required Coverage could not be maintained.

"Taxable Welfare Exemption Property" means in any Fiscal Year after the First Bond Sale, any Parcel of Welfare Exemption Property that satisfies all three of the following conditions: (i) the Parcel had not been Welfare Exemption Property on the date of issuance of the First Bond Sale; (ii) based on reference to Attachments 1 and 2 (as may be updated pursuant to Section D herein), the Parcel was not anticipated to be Welfare Exemption Property based on the Expected Land Uses, as determined by the Administrator; and (iii) if the Parcel were to be exempt from the Facilities Special Tax because it has become Welfare Exemption Property, the Expected Maximum Facilities Special Tax Revenues would be reduced to a point at which Required Coverage could not be maintained.

"Tentative Map" means any tentative map or vesting tentative map for Phase 2A of the Tracy Hills project, approved by the City Council and as may be amended from time to time.

"Trigger Event" means, in any Fiscal Year, that, on or before June 30 of the prior Fiscal Year, the Administrator made a finding that (i) all Bonds secured by the levy and collection of Facilities Special Taxes in the CFD have been fully repaid, (ii) all Administrative Expenses from prior Fiscal Years have been paid or reimbursed to the City, (iii) the Recycled Water Facilities Costs have been fully funded, and (iv) there are no other Authorized Facilities that the City intends to fund with Facilities Special Taxes. In the first Fiscal Year in which the Administrator determines that the Trigger Event occurred in the prior Fiscal Year, and in each Fiscal Year thereafter, the Facilities Special Tax shall cease to be levied, and the Maximum Services Special Tax for each Parcel shall be adjusted pursuant to Section C.2 below.

"Undeveloped Property" means, in any Fiscal Year, all Parcels of Taxable Property that are not Developed Property, Taxable HOA Property, Taxable Welfare Exemption Property, or Taxable Public Property.

"Village" means a specific geographic area within Improvement Area No. 3 that (i) is identified by an assigned number on the Tentative Map, (ii) is expected to have single family lots that are all of a similar size, and (iii) is assigned Expected Maximum Facilities Special Tax Revenues in Attachment 1 based on the Expected Land Uses for that Village.

"Welfare Exemption Property" means, in any Fiscal Year, any Parcels in Improvement Area No. 3 that have received a welfare exemption under subdivision (g) of Section 214 of the Revenue and Taxation Code and for which such welfare exemption is still in place.

B. DATA FOR ADMINISTRATION OF SPECIAL TAX

Each Fiscal Year, the Administrator shall (i) categorize each Parcel of Taxable Property as Developed Property, Undeveloped Property, Taxable Public Property, Taxable HOA Property, or Taxable Welfare Exemption Property; (ii) for Single Family Residential Property, determine within which Village each Parcel of Developed Property is located and the number of Residential Units on the Parcel; and (iii) determine the Facilities Special Tax Requirement and Services Special Tax Requirement for the Fiscal Year. In addition, the Administrator shall, ***on an ongoing basis***, monitor Final Maps and condominium plans to determine if there are any proposed changes to the Expected Land Uses that would reduce the Expected Maximum Facilities Special Tax Revenues for a Village. If the Expected Maximum Facilities Special Tax Revenues will be reduced pursuant to a proposed Land Use Change, the Administrator shall apply the steps set forth in Section D.1 below.

In any Fiscal Year, if it is determined that: (i) a parcel map for property in Improvement Area No. 3 was recorded after January 1 of the prior Fiscal Year (or any other date after which the Assessor will not incorporate the newly-created Parcels into the then current tax roll), (ii) because of the date the parcel map was recorded, the Assessor does not yet recognize the new Parcels created by the parcel map, and (iii) one or more of the newly-created Parcels is in a different Development Class than other Parcels created by the subdivision, the Administrator shall calculate the Special Taxes for the property affected by recordation of the parcel map by determining the Special Taxes that apply separately to the property within each Development Class, then applying the sum of the individual Special Taxes to the Parcel that was subdivided by recordation of the parcel map.

C. MAXIMUM SPECIAL TAX

1. Facilities Special Tax

Table 1 below identifies the Maximum Facilities Special Tax, before and after the Trigger Event, for Taxable Property in Improvement Area No. 3, subject to potential adjustments that may occur pursuant to Section D below.

TABLE 1
IMPROVEMENT AREA NO. 3
MAXIMUM FACILITIES SPECIAL TAX

Land Use	Maximum Facilities Special Tax Prior to Trigger Event Fiscal Year 2024-25*	Maximum Facilities Special Tax After Trigger Event
Single Family Residential Property		
Villages 1 & 4	$4,398 per Residential Unit	$0 per Residential Unit
Village 2 & 3	$4,649 per Residential Unit	$0 per Residential Unit
Village 5 & 6	$5,124 per Residential Unit	$0 per Residential Unit
Village 7	$5,295 per Residential Unit	$0 per Residential Unit
Village 8	$5,277 per Residential Unit	$0 per Residential Unit
Village 9	$5,658 per Residential Unit	$0 per Residential Unit
Village 10	$6,149 per Residential Unit	$0 per Residential Unit
Other Property, Undeveloped Property, Taxable Public Property Taxable HOA Property Taxable Welfare Exemption Property		
Villages 1 & 4	$40,235 per Acre	$0 per Acre
Village 2 & 3	$41,543 per Acre	$0 per Acre
Village 5 & 6	$39,217 per Acre	$0 per Acre
Village 7	$58,407 per Acre	$0 per Acre
Village 8	$65,506 per Acre	$0 per Acre
Village 9	$61,422 per Acre	$0 per Acre
Village 10	$40,406 per Acre	$0 per Acre

* On July 1, 2025 and on each July 1 thereafter, all figures shown in Table 1 above shall be increased by an amount equal to 2.0% of the amount in effect for the prior Fiscal Year.

2. Services Special Tax

Table 2 below identifies the Maximum Services Special Tax, before and after the Trigger Event, for Taxable Property in Improvement Area No. 3.

TABLE 2
IMPROVEMENT AREA NO. 3
MAXIMUM SERVICES SPECIAL TAX

Type of Property	Maximum Services Special Tax Prior to Trigger Event	Maximum Services Special Tax After Trigger Event Fiscal Year 2024-25*
Single Family Residential Property		
Villages 1 & 4	$0 per Residential Unit	$880 per Residential Unit
Village 2 & 3	$0 per Residential Unit	$930 per Residential Unit
Village 5 & 6	$0 per Residential Unit	$1,025 per Residential Unit
Village 7	$0 per Residential Unit	$1,059 per Residential Unit
Village 8	$0 per Residential Unit	$1,055 per Residential Unit
Village 9	$0 per Residential Unit	$1,132 per Residential Unit
Village 10	$0 per Residential Unit	$1,230 per Residential Unit
Other Property, Undeveloped Property, Taxable Public Property		
Taxable HOA Property		
Villages 1 & 4	$0 per Acre	$8,047 per Acre
Village 2 & 3	$0 per Acre	$8,309 per Acre
Village 5 & 6	$0 per Acre	$7,843 per Acre
Village 7	$0 per Acre	$11,681 per Acre
Village 8	$0 per Acre	$13,101 per Acre
Village 9	$0 per Acre	$12,284 per Acre
Village 10	$0 per Acre	$8,081 per Acre

* Beginning July 1, 2025 and each July 1 thereafter until the Trigger Event, the Services Special Taxes in Table 2 shall be increased by 2.0% of the amount in effect in the prior Fiscal Year. On July 1 of the Fiscal Year after the Trigger Event and each July 1 thereafter, the Services Special Taxes and the Maximum Services Special Tax assigned to each Parcel shall be adjusted by the Escalation Factor.

Once Special Taxes have been levied on a Parcel of Developed Property, the Maximum Special Taxes applicable to that Parcel shall not be reduced in future Fiscal Years regardless of changes in land use on the Parcel, except (i) in the event of a partial prepayment pursuant to Section H, and (ii) pursuant to Section D. Notwithstanding the foregoing: (i) if Bonds have yet to be issued for Improvement Area No. 3, the Parcels can be assigned to the appropriate special tax category based on the Land Use Change, and the Administrator shall recalculate the Expected Maximum Facilities Special Tax Revenues based on the corresponding change in revenues, and (ii) the actual Special Taxes levied on a Parcel of Developed Property in any Fiscal Year may be less than the Maximum Special Taxes if lower Special Taxes are calculated pursuant to Step 1 in Sections E.1 and E.2 below.

D. CHANGES TO MAXIMUM SPECIAL TAXES

The Expected Maximum Facilities Special Tax Revenues were calculated based on the Expected Land Uses at the IA No. 3 Lien Date. The Administrator shall review Final Maps, Tentative Map revisions, and other changes to land uses proposed within Improvement Area No. 3 and compare the revised land uses to the Expected Land Uses to evaluate the impact on the Expected Maximum Facilities Special Tax Revenues.

1. Changes in Expected Land Uses

If, prior to the First Bond Sale, a Land Use Change is proposed that will result in a reduction in the Expected Maximum Facilities Special Tax Revenues, no action will be needed pursuant to this Section D.1. Upon approval of the Land Use Change, the Administrator shall update Attachment 1 to show the reduced Expected Maximum Facilities Special Tax Revenues.

If, prior to the Final Bond Sale, a Land Use Change is proposed that will result in a reduction in the Expected Maximum Facilities Special Tax Revenues, no action will be needed pursuant to this Section D.1 as long as the reduction does not reduce debt service coverage on outstanding Bonds below the Required Coverage. Upon approval of the Land Use Change, the Administrator shall update Attachment 1 to show the reduced Expected Maximum Facilities Special Tax Revenues, which amount shall be used to size the Final Bond Sale.

If a Land Use Change is proposed after the Final Bond Sale, the following steps shall be applied:

Step 1: By reference to Attachment 1 (which will be updated by the Administrator each time a Land Use Change has been processed according to this Section D.1 and or pursuant to Section D.2), the Administrator shall identify the Expected Maximum Facilities Special Tax Revenues for Improvement Area No. 3.

Step 2: The Administrator shall calculate the Expected Maximum Facilities Special Tax Revenues that could be collected from property in Improvement Area No. 3 if the Land Use Change is approved.

Step 3: If the amount calculated in Step 2 is higher than that determined in Step 1, no further action is needed. If the revenues calculated in Step 2 are less than those calculated in Step 1, and if the landowner requesting the Land Use Change does not prepay the portion of the Expected Maximum Facilities Special Tax Revenues in an amount that corresponds to the lost revenue, then the Maximum Facilities Special Tax for each Parcel of Taxable Property in the area affected by the Land Use Change shall be increased proportionately until the aggregate Expected Maximum Facilities Special Tax Revenues that can be generated from the area affected by the Land Use Change is the same as it was prior to the Land Use Change.

If multiple Land Use Changes are proposed simultaneously by a single landowner (which may include approval of multiple Final Maps at one time), the Administrator may consider the combined effect of all the Land Use Changes to determine if there is a reduction in Expected Maximum Facilities Special Tax Revenues. If there is a reduction, the Administrator shall increase the Maximum Facilities Special Tax proportionately in all of the Final Maps being proposed by

the landowner until the aggregate amount that can be levied within the Final Maps is equal to the amount that could have been levied prior to the proposed Land Use Changes. If Land Use Changes are proposed simultaneously by multiple landowners, the Administrator shall consider the proposed Land Use Changes individually.

2. Transfer of Expected Maximum Facilities Special Tax Revenues from One Village to Another

The Expected Maximum Facilities Special Tax Revenues were determined for each Village based on the Expected Land Uses within that Village. If the expected number of Residential Units is transferred from one Village to another, the City may, in its sole discretion, allow for a corresponding transfer of Expected Maximum Facilities Special Tax Revenues between the Villages. Such a transfer shall only be allowed if (i) all adjustments are agreed to in writing by the affected property owners and the City, and (ii) there is no reduction in the total Expected Maximum Facilities Special Tax Revenues as a result of the transfer.

3. Conversion of a Parcel of Public Property to Private Use

If, in any Fiscal Year, a Parcel of Public Property is converted to private use, such Parcel shall be subject to the levy of Special Taxes. The Maximum Special Taxes for each such Parcel shall be determined based on the average Maximum Special Taxes for Parcels with similar land use designations, as determined by the Administrator.

E. METHOD OF LEVY OF THE SPECIAL TAXES

1. Facilities Special Tax

Each Fiscal Year, the Administrator shall determine the Facilities Special Tax Requirement and levy the Facilities Special Tax on all Parcels of Taxable Property as follows:

Step 1: In the first twenty (20) Fiscal Years in which a Facilities Special Tax is levied within Improvement Area No. 3, the Maximum Facilities Special Tax shall be levied on all Parcels of Developed Property. In the first nine (9) Fiscal Years in which Facilities Special Taxes are collected, and in the 16th, 17th, 18th, 19th and 20th Fiscal Years in which Facilities Special Taxes are collected, Facilities Special Tax proceeds that are determined by the Administrator to be Remainder Taxes shall be deposited into the Improvement Fund to pay any costs associated with the acquisition of Authorized Facilities that were not paid with Bond proceeds or Facilities Special Taxes levied in prior Fiscal Years. Any Remainder Taxes collected in the 10th, 11th, 12th, 13th, 14th and 15th Fiscal Years in which Facilities Special Taxes are levied shall be available to pay for Authorized Facilities or Authorized Services as determined in the sole discretion of the City.

Beginning in the 21st Fiscal Year in which a Facilities Special Tax is levied within Improvement Area No. 3 and continuing until the Trigger Event, the Facilities Special Tax shall be levied Proportionately on each Parcel of Developed Property up to 100% of the Maximum Facilities Special Tax for each Parcel of Developed Property until the amount levied is equal to the

Facilities Special Tax Requirement, the calculation of which will include funding for Recycled Water Facilities Costs and/or other Authorized Facilities designated for funding, as determined in the sole discretion of the City. After the Trigger Event, the Facilities Special Tax shall no longer be levied.

Step 2: If additional revenue is needed after Step 1 and after applying Capitalized Interest to the Facilities Special Tax Requirement, the Facilities Special Tax shall be levied Proportionately on each Parcel of Undeveloped Property up to 100% of the Maximum Facilities Special Tax for each Parcel of Undeveloped Property.

Step 3: If additional revenue is needed after Step 2, the Facilities Special Tax shall be levied Proportionately on each Parcel of Taxable Welfare Exemption Property, up to 100% of the Maximum Facilities Special Tax for each Parcel of Taxable Welfare Exemption Property.

Step 4: If additional revenue is needed after Step 3, the Facilities Special Tax shall be levied Proportionately on each Parcel of Taxable HOA Property, up to 100% of the Maximum Facilities Special Tax for each Parcel of Taxable HOA Property.

Step 5: If additional revenue is needed after Step 4, the Facilities Special Tax shall be levied Proportionately on each Parcel of Taxable Public Property, up to 100% of the Maximum Facilities Special Tax for each Parcel of Taxable Public Property.

2. *Services Special Tax*

Each Fiscal Year after the Trigger Event, the Administrator shall determine the Services Special Tax Requirement and levy the Services Special Tax on all Parcels of Taxable Property as follows:

Step 1: The Services Special Tax shall be levied Proportionately on each Parcel of Developed Property up to 100% of the Maximum Services Special Tax for each Parcel of Developed Property until the amount levied is equal to the Services Special Tax Requirement.

Step 2: If additional revenue is needed after Step 1, the Services Special Tax shall be levied Proportionately on each Parcel of Undeveloped Property, up to 100% of the Maximum Services Special Tax for each Parcel of Undeveloped Property.

Step 3: If additional revenue is needed after Step 2, the Services Special Tax shall be levied Proportionately on each Parcel of Taxable HOA Property, up to 100% of the Maximum Services Special Tax for each Parcel of Taxable HOA Property.

Step 4: If additional revenue is needed after Step 3, the Services Special Tax shall be levied Proportionately on each Parcel of Taxable Public Property, up to 100% of the Maximum Services Special Tax for each Parcel of Taxable Public Property.

F. MANNER OF COLLECTION OF SPECIAL TAXES

The Special Taxes for Improvement Area No. 3 shall be collected in the same manner and at the same time as ordinary ad valorem property taxes, provided, however, that partial prepayments are permitted as set forth in Section H below and provided further that the City may directly bill the Special Taxes, may collect Special Taxes at a different time or in a different manner, and may collect delinquent Special Taxes through foreclosure or other available methods.

The Facilities Special Tax shall be levied and collected until principal and interest on Bonds have been repaid, costs of constructing or acquiring Authorized Facilities from Facilities Special Tax proceeds have been paid, and all Administrative Expenses have been paid or reimbursed. However, in no event shall Facilities Special Taxes be levied for more than eighty (80) Fiscal Years. Under no circumstances may the Facilities Special Tax on a Parcel in residential use be increased in any Fiscal Year as a consequence of delinquency or default in payment of the Facilities Special Tax levied on another Parcel or Parcels by more than ten percent (10%) above the amount that would have been levied in that Fiscal Year had there never been any such delinquencies or defaults. After the Trigger Event, the Services Special Tax may be levied and collected in perpetuity.

G. EXEMPTIONS

Any Parcel that becomes HOA Property, Public Property, or Welfare Exemption Property prior to the First Bond Sale shall be exempt from both the Services Special Tax and the Facilities Special Tax; the Administrator shall reduce the Expected Maximum Facilities Special Tax Revenues to reflect any such exemption, and the First Bond Sale shall be sized based on the reduced Expected Maximum Facilities Special Tax Revenues. Any Parcel that becomes HOA Property, Public Property, or Welfare Exemption Property after the First Bond Sale shall be exempt from both the Services Special Tax and the Facilities Special Tax provided such Parcel is not Taxable HOA Property, Taxable Public Property or Taxable Welfare Exemption Property.

In addition, no Special Taxes shall be levied on (i) Parcels that are designated as permanent open space or common space on which no structure is permitted to be constructed, (ii) Parcels owned by a public utility for an unmanned facility, and (iii) Parcels subject to an easement that precludes any use on the Parcel other than that permitted by the easement. Notwithstanding the foregoing, if a Facilities Special Tax has been levied on a Parcel in any Fiscal Year, and the entire Parcel subsequently meets the criteria in (i), (ii) or (iii) above, the Parcel shall remain subject to the Facilities Special Tax levy, unless the First Bond Sale has not occurred, in which case such property shall be categorized as Public Property, and the Administrator shall recalculate the Expected Maximum Facilities Special Tax Revenues based on the corresponding loss in revenues.

H. PARTIAL PREPAYMENT OF FACILITIES SPECIAL TAX

The following definitions apply to this Section H:

> **"Outstanding Bonds"** means all Previously Issued Bonds which remain outstanding, with the following exception: if a Facilities Special Tax has been levied against, or already paid by, an Assessor's Parcel making a prepayment, and a portion of the Facilities Special Tax will be used to pay a portion of the next principal payment on the Bonds that remain

outstanding (as determined by the Administrator), that next principal payment shall be subtracted from the total Bond principal that remains outstanding, and the difference shall be used as the amount of Outstanding Bonds for purposes of this prepayment formula.

"Previously Issued Bonds" means all Bonds that have been issued prior to the date of prepayment.

"Public Facilities Requirements" means: (i) $54.5 million in Fiscal Year 2024-25 dollars, which amount shall, on July 1, 2025 and on each July 1 thereafter, be increased by an amount equal to 2.0% of the amount in effect for the prior Fiscal Year, or (ii) such other number as shall be determined by the City to be an appropriate estimate of the net construction proceeds that will be generated from all Bonds that have been or are expected to be issued on behalf of Improvement Area No. 3.

"Remaining Facilities Costs" means the Public Facilities Requirements (as defined above), minus public facility costs funded by Previously Issued Bonds (as defined above), Remainder Taxes, or prepayments.

A property owner may prepay up to 80% of the Facilities Special Tax obligation applicable to a Parcel in Improvement Area No. 3, thereby reducing the Maximum Facilities Special Tax applicable to the Parcel, provided that a prepayment may be made only if there are no delinquent Special Taxes with respect to such Parcel at the time of prepayment. An owner of a Parcel intending to prepay a portion of the Facilities Special Tax obligation shall provide the City with written notice of intent to prepay, which shall identify the percentage of the Maximum Facilities Special Tax that is to be prepaid. Within 30 days of receipt of such written notice, the City or its designee shall notify such owner of the prepayment amount for such Parcel. Prepayment must be made not less than 50 days prior to any redemption date for Bonds to be redeemed with the proceeds of such prepaid Facilities Special Taxes.

The Prepayment Amount shall be calculated as follows (capitalized terms as defined below):

	Bond Redemption Amount
plus	Remaining Facilities Amount
plus	Redemption Premium
plus	Defeasance Requirement
plus	Administrative Fees and Expenses
less	Reserve Fund Credit
equals	Prepayment Amount

As of the proposed date of prepayment, the Prepayment Amount for a Parcel shall be determined by application of the following steps:

Step 1. Determine the Maximum Facilities Special Tax that could be levied on the Parcel based on the Expected Land Uses for the Parcel at the time the prepayment is calculated.

Step 2. Divide the Maximum Facilities Special Tax computed pursuant to Step 1 by the Expected Maximum Facilities Special Tax Revenues in that Fiscal Year.

Step 3. Multiply the quotient computed in Step 2 by the percentage of the Maximum Facilities Special Tax that the property owner wants to prepay, which percentage shall not exceed 80%.

Step 4. Multiply the quotient computed pursuant to Step 3 by the Outstanding Bonds to compute the amount of Outstanding Bonds to be retired and prepaid (*the "**Bond Redemption Amount**"*).

Step 5. Compute the current Remaining Facilities Costs (if any).

Step 6. Multiply the quotient computed pursuant to Step 3 by the amount determined pursuant to Step 5 to compute the amount of Remaining Facilities Costs to be prepaid (*the "**Remaining Facilities Amount**"*).

Step 7. Multiply the Bond Redemption Amount computed pursuant to Step 4 by the applicable redemption premium, if any, on the Outstanding Bonds to be redeemed (*the "**Redemption Premium**"*).

Step 8. Compute the amount needed to pay interest on the Bond Redemption Amount starting with the last Bond interest payment date on which interest has been or will be paid by Facilities Special Taxes already levied until the earliest redemption date for the Outstanding Bonds.

Step 9: Compute the amount of interest the City reasonably expects to derive from reinvestment of the Bond Redemption Amount plus the Redemption Premium from the first Bond interest payment date after which the prepayment has been received until the redemption date for the Outstanding Bonds.

Step 10: Take the amount computed pursuant to Step 8 and subtract the amount computed pursuant to Step 9 (the ***"Defeasance Requirement"***).

Step 11. Determine the costs of computing the prepayment amount, redeeming Bonds, and recording any notices to evidence the prepayment and redemption (the *"**Administrative Fees and Expenses**"*).

Step 12. If and to the extent so provided in the Indenture, a reserve fund credit shall be calculated as a reduction in the applicable reserve fund for the Outstanding Bonds to be redeemed pursuant to the prepayment (the *"**Reserve Fund Credit**"*).

Step 13. The Facilities Special Tax prepayment is equal to the sum of the amounts computed pursuant to Steps 4, 6, 7, 10, and 11, less the amount computed pursuant to Step 12 (the *"**Prepayment Amount**"*).

Step 14. From the Prepayment Amount, the amounts computed pursuant to Steps 4, 7, and 10 shall be deposited into the appropriate fund as established under the Indenture and be used to retire Outstanding Bonds or make debt service payments. The amount computed pursuant to Step 6 shall be deposited into the Improvement Fund. The amount computed pursuant to Step 11 shall be retained in the account or fund that is established to pay Administrative Expenses.

Once a partial prepayment of a Facilities Special Tax has been received, an Amendment to Special Tax Lien shall be recorded against the Parcel to reflect the reduced Facilities Special Tax lien for the Parcel, which shall be equal to the portion of the Maximum Facilities Special Tax that was not prepaid. However, an Amendment to Special Tax Lien shall not be recorded until all Facilities Special Taxes levied on the Parcel in the current or prior Fiscal Years have been collected. The prepayment of a portion of the Facilities Special Tax shall not affect the perpetual obligation to pay the Services Special Tax.

Notwithstanding the foregoing, if at any point in time the Administrator determines that the Maximum Facilities Special Tax revenue that could be collected from Taxable Property that remains subject to the Facilities Special Tax after the proposed prepayment would be less than the Required Coverage on Bonds that will remain outstanding after defeasance or redemption of Bonds from proceeds of the estimated prepayment, the amount of the prepayment shall be increased until the amount of Bonds defeased or redeemed is sufficient to reduce remaining annual debt service to a point at which Required Coverage is maintained.

I. INTERPRETATION OF SPECIAL TAX FORMULA

The City may interpret, clarify, and revise this RMA to correct any inconsistency, vagueness, or ambiguity, by resolution and/or ordinance, that does not create a material adverse effect on the levy and collection of the Special Taxes and any security for any Bonds.

ATTACHMENT 1

Improvement Area No. 3 of the
City of Tracy
Community Facilities District No. 2016-1
(Tracy Hills)

Expected Land Uses and Expected Maximum Facilities Special Tax Revenues

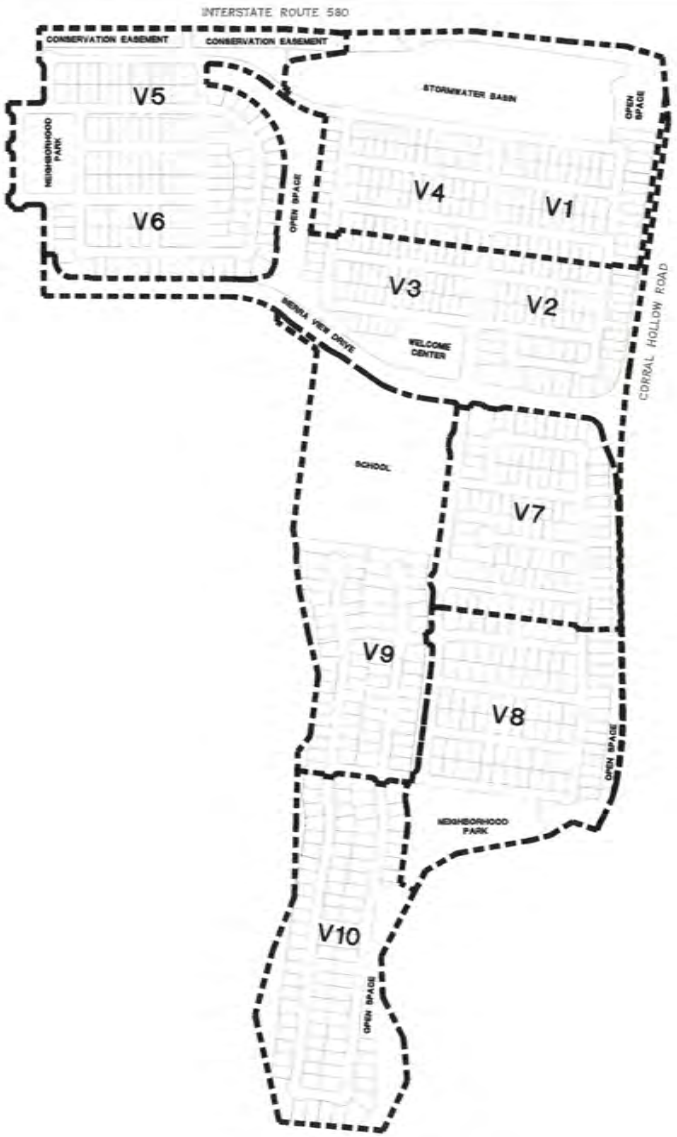
Village	Expected Land Uses	Maximum Facilities Special Tax per Unit FY 2024-25 /1	Expected Maximum Facilities Special Tax Revenues FY 2024-25 /1
Village 1 & 4	139 Residential Units	$4,398 per Residential Unit	$611,322
Village 2 & 3	115 Residential Units	$4,649 per Residential Unit	$534,635
Village 5 & 6	131 Residential Units	$5,124 per Residential Unit	$671,244
Village 7	97 Residential Units	$5,295 per Residential Unit	$513,615
Village 8	89 Residential Units	$5,277 per Residential Unit	$469,653
Village 9	69 Residential Units	$5,658 per Residential Unit	$390,402
Village 10	86 Residential Units	$6,149 per Residential Unit	$528,814
Total	726 Residential Units	N/A	$3,719,685

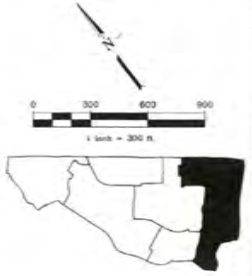
1. On July 1, 2025 and each July 1 thereafter, the Maximum Facilities Special Tax per Residential Unit and the Expected Maximum Facilities Special Tax Revenues shall be increased by two percent (2%) of the amount in effect in the prior Fiscal Year.

ATTACHMENT 2

Improvement Area No. 3 of the
City of Tracy
Community Facilities District No. 2016-1
(Tracy Hills)

Expected Lot Layout





ATTACHMENT 2

TRACY HILLS 2A EXPECTED LAYOUT IN IMPROVEMENT AREA NO. 3 OF THE TRACY HILLS CFD 2016-1

CITY OF TRACY, SAN JOAQUIN COUNTY, CALIFORNIA
FOR: INTEGRAL COMMUNITIES

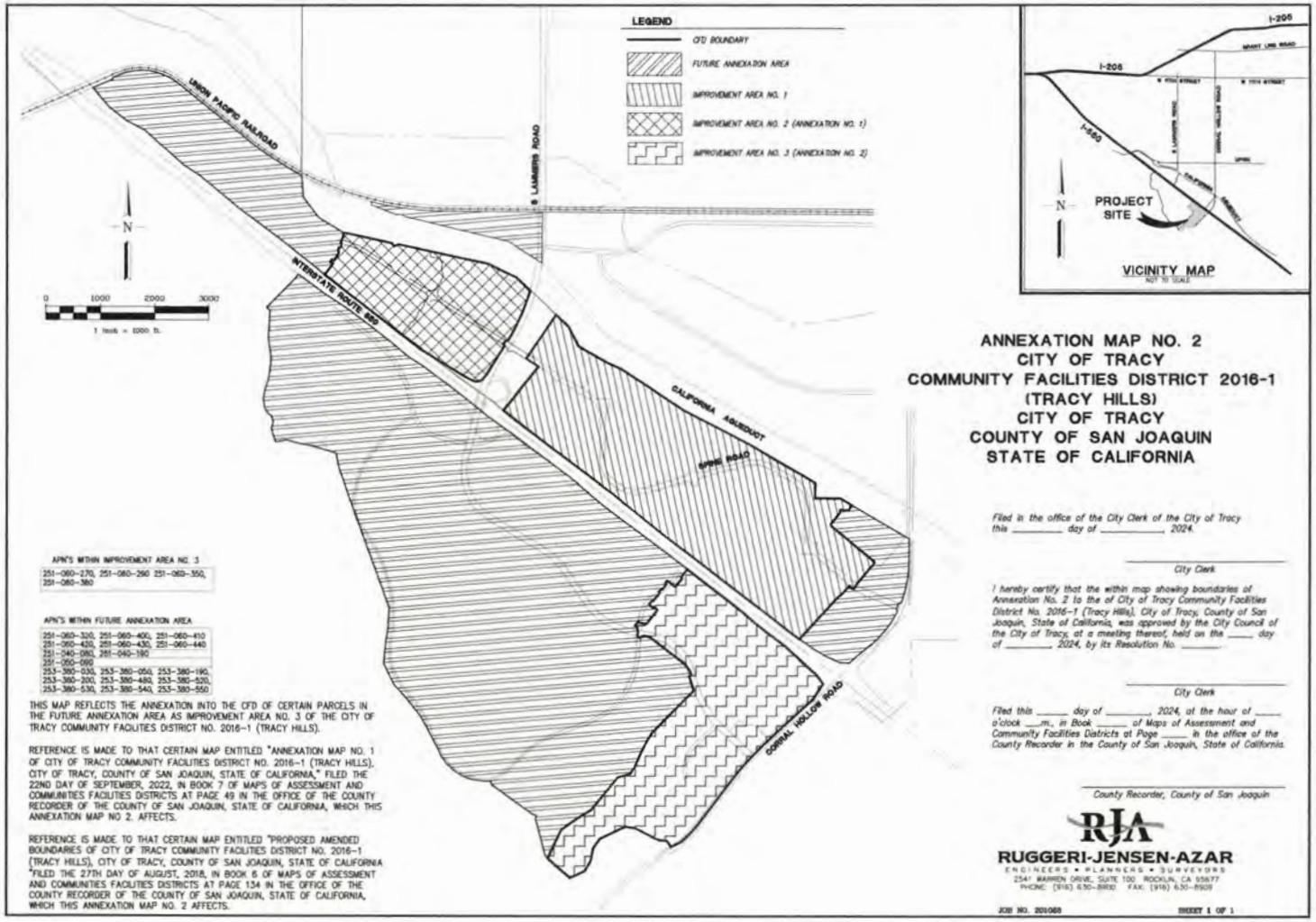
RJA
RUGGERI-JENSEN-AZAR
ENGINEERS • PLANNERS • SURVEYORS
4690 CHABOT DRIVE, SUITE 200 PLEASANTON, CA 94588
PHONE: (925) 227-9100 FAX: (925) 227-9300

DATE: SEPTEMBER 08, 2023 JOB NO. 209068 SHEET 1 OF 1

EXHIBIT C

PROPOSED ANNEXATION MAP

[attached]



APN'S WITHIN IMPROVEMENT AREA NO. 3

251-060-270, 251-060-290 251-060-350, 251-060-360

APN'S WITHIN FUTURE ANNEXATION AREA

251-060-320, 251-060-400, 251-060-410
251-060-420, 251-060-430, 251-060-440
251-040-080, 251-040-190
251-050-090
253-380-030, 253-380-050, 253-380-190,
253-380-200, 253-380-480, 253-380-520,
253-380-530, 253-380-540, 253-380-550

THIS MAP REFLECTS THE ANNEXATION INTO THE CFD OF CERTAIN PARCELS IN THE FUTURE ANNEXATION AREA AS IMPROVEMENT AREA NO. 3 OF THE CITY OF TRACY COMMUNITY FACILITIES DISTRICT NO. 2016-1 (TRACY HILLS).

REFERENCE IS MADE TO THAT CERTAIN MAP ENTITLED "ANNEXATION MAP NO. 1 OF CITY OF TRACY COMMUNITY FACILITIES DISTRICT NO. 2016-1 (TRACY HILLS), CITY OF TRACY, COUNTY OF SAN JOAQUIN, STATE OF CALIFORNIA," FILED THE 22ND DAY OF SEPTEMBER, 2022, IN BOOK 7 OF MAPS OF ASSESSMENT AND COMMUNITIES FACILITIES DISTRICTS AT PAGE 49 IN THE OFFICE OF THE COUNTY RECORDER OF THE COUNTY OF SAN JOAQUIN, STATE OF CALIFORNIA, WHICH THIS ANNEXATION MAP NO 2. AFFECTS.

REFERENCE IS MADE TO THAT CERTAIN MAP ENTITLED "PROPOSED AMENDED BOUNDARIES OF CITY OF TRACY COMMUNITY FACILITIES DISTRICT NO. 2016-1 (TRACY HILLS), CITY OF TRACY, COUNTY OF SAN JOAQUIN, STATE OF CALIFORNIA "FILED THE 27TH DAY OF AUGUST, 2018, IN BOOK 6 OF MAPS OF ASSESSMENT AND COMMUNITIES FACILITIES DISTRICTS AT PAGE 134 IN THE OFFICE OF THE COUNTY RECORDER OF THE COUNTY OF SAN JOAQUIN, STATE OF CALIFORNIA, WHICH THIS ANNEXATION MAP NO. 2 AFFECTS.

ANNEXATION MAP NO. 2
CITY OF TRACY
COMMUNITY FACILITIES DISTRICT 2016-1
(TRACY HILLS)
CITY OF TRACY
COUNTY OF SAN JOAQUIN
STATE OF CALIFORNIA

Filed in the office of the City Clerk of the City of Tracy this _____ day of _____, 2024.

_____
City Clerk

I hereby certify that the within map showing boundaries of Annexation No. 2 to the of City of Tracy Community Facilities District No. 2016-1 (Tracy Hills), City of Tracy, County of San Joaquin, State of California, was approved by the City Council of the City of Tracy, at a meeting thereof, held on the _____ day of _____, 2024, by its Resolution No. _____.

_____
City Clerk

Filed this _____ day of _____, 2024, at the hour of _____ o'clock ___m., in Book _____ of Maps of Assessment and Community Facilities Districts at Page _____ in the office of the County Recorder in the County of San Joaquin, State of California.

_____
County Recorder, County of San Joaquin

RJA
RUGGERI-JENSEN-AZAR
ENGINEERS • PLANNERS • SURVEYORS
2541 WARREN DRIVE, SUITE 100 ROCKLIN, CA 95677
PHONE: (916) 630-8800 FAX: (916) 630-8909

JOB NO. 201068 SHEET 1 OF 1

RECORDING REQUESTED BY AND
AFTER RECORDATION RETURN TO:
City Clerk
City of Tracy
333 Civic Center Plaza
Tracy, CA 95376

NOTICE OF SPECIAL TAX LIEN

IMPROVEMENT AREA NO. 3 OF THE CITY OF TRACY COMMUNITY FACILITIES DISTRICT 2016-1 (TRACY HILLS)

Pursuant to the requirements of Sections 3114.5 and 3117.5 of the California Streets and Highways Code and Section 53328.3 of the California Government Code, the undersigned City Clerk of the City of Tracy, County of San Joaquin, State of California, hereby gives notice that a lien to secure payment of a special tax is hereby imposed by the City Council of the City of Tracy, County of San Joaquin, on the property described in Exhibit C (the "Property"). The special tax secured by this lien is authorized to be levied for the purpose of paying principal and interest on bonds and other debt, the proceeds of which are being used to finance the acquisition and construction of all or a portion of the public facilities described in Exhibit A attached hereto and hereby made a part hereof, to pay the cost of the public facilities and the public services described in Exhibit A, and to pay the cost of administering Improvement Area No. 3 (defined below).

Formation of CFD, Improvement Area No. 1, Future Annexation Area

The City Council of the City of Tracy previously formed the "City of Tracy Community Facilities District 2016-1 (Tracy Hills)" (the "CFD"), including an improvement area within the CFD designated "Improvement Area No. 1 of the City of Tracy Community Facilities District 2016-1 (Tracy Hills)" ("Improvement Area No. 1"), and the territory designated the "City of Tracy Community Facilities District 2016-1 (Tracy Hills) (Future Annexation Area)" (the "Future Annexation Area"); the boundaries of the CFD, Improvement Area No. 1 and the Future Annexation Area were set forth in the boundary map that was recorded on June 15, 2016 in the records of the San Joaquin County Recorder in Book 6 of Maps of Assessment and Community Facilities Districts at Page 84 as Document No. 2016-069400 (the "Original Boundary Map").

Change Proceedings

Subsequent to formation of the CFD, Improvement Area No. 1 and the Future Annexation Area, the City Council undertook change proceedings, and the boundaries of the CFD, Improvement Area No. 1 and the Future Annexation Area were amended, as set forth in the boundary map recorded on August 27, 2018 as Document No. 2018-095098 in Book 6 Page 134 of the Book of Maps of Assessment and Community Facilities Districts in the office of the County Recorder for the County of San Joaquin, State of California (the "Amended Boundary Map").

An Amended and Restated Notice of Special Tax Lien was recorded for the territory included in Improvement Area No. 1 on August 27, 2018 as Document No. 2018-095091 in the office of the Recorder for the County of San Joaquin, State of California.

Improvement Area No. 2

Subsequent to the change proceedings, certain property annexed into the CFD and was designated "Improvement Area No. 2 of the City of Tracy Community Facilities District 2016-1 (Tracy Hills)" ("Improvement Area No. 2") pursuant to Resolution No. 2022-130.

In connection with the annexation of territory into Improvement Area No. 2, (i) an Annexation Map No. 1 was recorded on September 22, 2022, as Document No. 2022-110954 in Book 7 Page 49 of the Book of Maps of Assessment and Community Facilities Districts in the office of the County Recorder for the County of San Joaquin, State of California and (ii) a Notice of Special Tax Lien was recorded for the territory included in Improvement Area No. 2 on September 22, 2022 as Document No. 22-110955 in the office of the Recorder for the County of San Joaquin, State of California.

Improvement Area No. 3

The Property was included in the Future Annexation Area. The Property has been annexed into the CFD and the owners of the Property have identified, specified and approved the designation of the Property as "Improvement Area No. 3 of the City of Tracy Community Facilities District 2016-1 (Tracy Hills)" ("Improvement Area No. 3"), pursuant to separate Unanimous Approvals of the owners of the Property dated September 23, 2024. The City Council of the City of Tracy approved the annexation of the Property to the CFD and designated the Property as Improvement Area No. 3 pursuant to Resolution No. 2023-___ adopted on October 15, 2024.

The special tax is authorized to be levied within Improvement Area No. 3 which has now been officially formed and the lien of the special tax is a continuing lien which shall secure each annual levy of the special tax and which shall continue in force and effect until the special tax obligation is prepaid, permanently satisfied, and canceled in accordance with law or until the special tax ceases to be levied and a notice of cessation of special tax is recorded in accordance with Section 53330.5 of the Government Code.

The rate, method of apportionment, and manner of collection of the authorized special tax within Improvement Area No. 3 is as set forth in Exhibit B attached hereto and hereby made a part hereof. Conditions under which the obligation to pay the special tax may be prepaid and permanently satisfied and the lien of the special tax canceled are as set forth in said Exhibit B and hereby incorporated herein by this reference.

Notice is further given that upon the recording of this notice in the office of the County Recorder of the County of San Joaquin the obligation to pay the special tax levy shall become a lien upon all nonexempt real property within Improvement Area No. 3 in accordance with Section 3115.5 of the Streets and Highways Code of California.

The name(s) of the owner(s) and the assessor's tax parcel numbers of the Property and not exempt from the special tax are as set forth in Exhibit C attached hereto and hereby made a part hereof.

Reference is made to the Annexation Map No. 2 (the "Annexation Map"), which shows the boundaries of Improvement Area No. 3, which was recorded on _____, 2022 at _____ _.m. in Book _____ of Maps of Assessment and Community Facilities Districts at Page _____, as Document No. _____ in the office of the County Recorder for the County

of San Joaquin, State of California, which Annexation Map is now the final boundary map of Improvement Area No. 3.

For further information concerning the current and estimated future tax liability of owners or purchasers of real property subject to this special tax lien, interested persons should contact the Finance Director, City of Tracy, 333 Civic Center Plaza, Tracy, California, 95376; Telephone: (209) 831-6800.

Dated: As of _____, 2024

By: _____
City Clerk,
City of Tracy

EXHIBIT A

NOTICE OF SPECIAL TAX LIEN

IMPROVEMENT AREA NO. 3 OF THE CITY OF TRACY COMMUNITY FACILITIES DISTRICT 2016-1 (TRACY HILLS)

DESCRIPTION OF FACILITIES AND SERVICES TO BE FINANCED BY THE CFD AND EACH IMPROVEMENT AREA THEREIN

FACILITIES

The CFD (and each Improvement Area therein, as originally designated and as designated in the future in conjunction with the annexation of the Future Annexation Area) shall be authorized to finance all or a portion of the costs of the acquisition, construction and improvement of facilities permitted under the Mello-Roos Act and that are required as conditions of development of the property within the CFD and the Future Annexation Area, including, but not limited to, the following:

- Roadway Improvements (and all curb and gutter, sidewalks, lighting, signalization, landscaping, monumentation, and dry and wet utilities) - including, but not limited to:
  - Spine Road north of I-580.
  - Spine Road south of I-580.
  - Emergency Vehicle Access roads.
  - Corral Hollow Road.
  - Lammers Road.
  - Linne Road.
  - Tracy Boulevard.
  - In-tract streets and roads.
  - All streets within the City of Tracy impacted by the development of the Project Property.
  - I-580/Corral Hollow Road Interchange
  - I-580/Lammers Road Interchange

- Wastewater Treatment Facilities - including, but not limited to, a wastewater treatment facility and/or expansion, pump stations, force main and gravity lines.

- Water Facilities - including, but not limited to, a water treatment facility, pump stations, new water transmission lines, additional storage reservoirs or tanks with booster pumps, production wells, backup generators at existing wells, and pressure reducing valves.

- Reclaimed Water Facilities - including, but not limited to, reclaimed water treatment facilities, pump stations, new reclaimed water transmission lines, and additional storage reservoirs or tanks with booster bumps.

- Drainage Improvements - including, but not limited to, pipes, culverts, retention basins, drop inlets, and filtration areas.

- Landscaping - including, but not limited to, entryways, streets, buffers, and slopes.

- Open Space Improvements

- Parks and Park Equipment - including, but not limited to, construction of parks, park equipment and structures.

- Public Safety Improvements - including, but not limited to:
  - Constructing and equipping two firehouses.
  - Police facilities and equipment.

- Soundwalls - including, but not limited to, the soundwall along I-580.

- Improvements Financed by City Master Plan and Public Benefit Payments - including, but not limited to:
  - Public Benefit payments.
  - Transportation Master Plan Fee.
  - Wastewater Mater Plan Fee.
  - Wastewater Conveyance Master Plan Fee.
  - Water Treatment Master Plan Fee.
  - Water Conveyance Mater Plan Fee.
  - Water Treatment Master Plan Fee.
  - Recycled Water Master Plan Fee.
  - Public Safety Master Plan Fee.
  - Public Facilities Master Plan Fee.
  - Parks Master Plan Fee.

Any facility authorized to be financed by the CFD and its Improvement Areas may be financed through the construction and acquisition of the facility or through the payment of fees for such facility.

The facilities constructed or acquired may be located within or outside the CFD.

The facilities to be financed shall include all hard and soft costs associated with the facilities, including the costs of the acquisition of land and rights-of-way, the costs of design, engineering and planning, the costs of any environmental or traffic studies, surveys or other reports, costs related to landscaping and irrigation, soils testing, permits, plan check, and inspection fees, insurance, legal and related overhead costs, coordination and supervision and any other costs or appurtenances related to any of the foregoing as further defined in one or more acquisition agreements with the developer of the Property in the CFD.

SERVICES

Special taxes collected in the CFD (and each Improvement Area therein, as originally designated and as designated in the future in conjunction with the annexation of the Future Annexation Area) may finance, in whole or in part, the following services ("services" shall have the meaning given that term in the Mello-Roos Community Facilities Act of 1982):

- Maintenance and operation of the Facilities

OTHER

The CFD (and each Improvement Area therein, as originally designated and as designated in the future in conjunction with the annexation of the Future Annexation Area) may also finance any of the following:

1. Bond related expenses, including underwriters discount, reserve fund, capitalized interest, letter of credit fees and expenses, bond and disclosure counsel fees and expenses, bond remarketing costs, and all other incidental expenses.

2. Administrative fees of the City and the bond trustee or fiscal agent related to the CFD (and each Improvement Area therein, as originally designated and as designated in the future in conjunction with the annexation of the Future Annexation Area) and the Bonds.

3. Reimbursement of costs related to the formation of the CFD (and each Improvement Area therein, as originally designated and as designated in the future in conjunction with the annexation of the Future Annexation Area) advanced by the City, the landowner(s) in the CFD (and each Improvement Area therein, as originally designated and as designated in the future in conjunction with the annexation of the Future Annexation Area), or any party related to any of the foregoing, as well as reimbursement of any costs advanced by the City, the landowner(s) in the CFD (and each Improvement Area therein, as originally designated and as designated in the future in conjunction with the annexation of the Future Annexation Area) or any party related to any of the foregoing, for facilities, fees or other purposes or costs of the CFD (and each Improvement Area therein, as originally designated and as designated in the future in conjunction with the annexation of the Future Annexation Area).

EXHIBIT B

NOTICE OF SPECIAL TAX LIEN

IMPROVEMENT AREA NO. 3 OF THE CITY OF TRACY COMMUNITY FACILITIES DISTRICT 2016-1 (TRACY HILLS)

RATE AND METHOD OF APPORTIONMENT OF SPECIAL TAX

EXHIBIT C

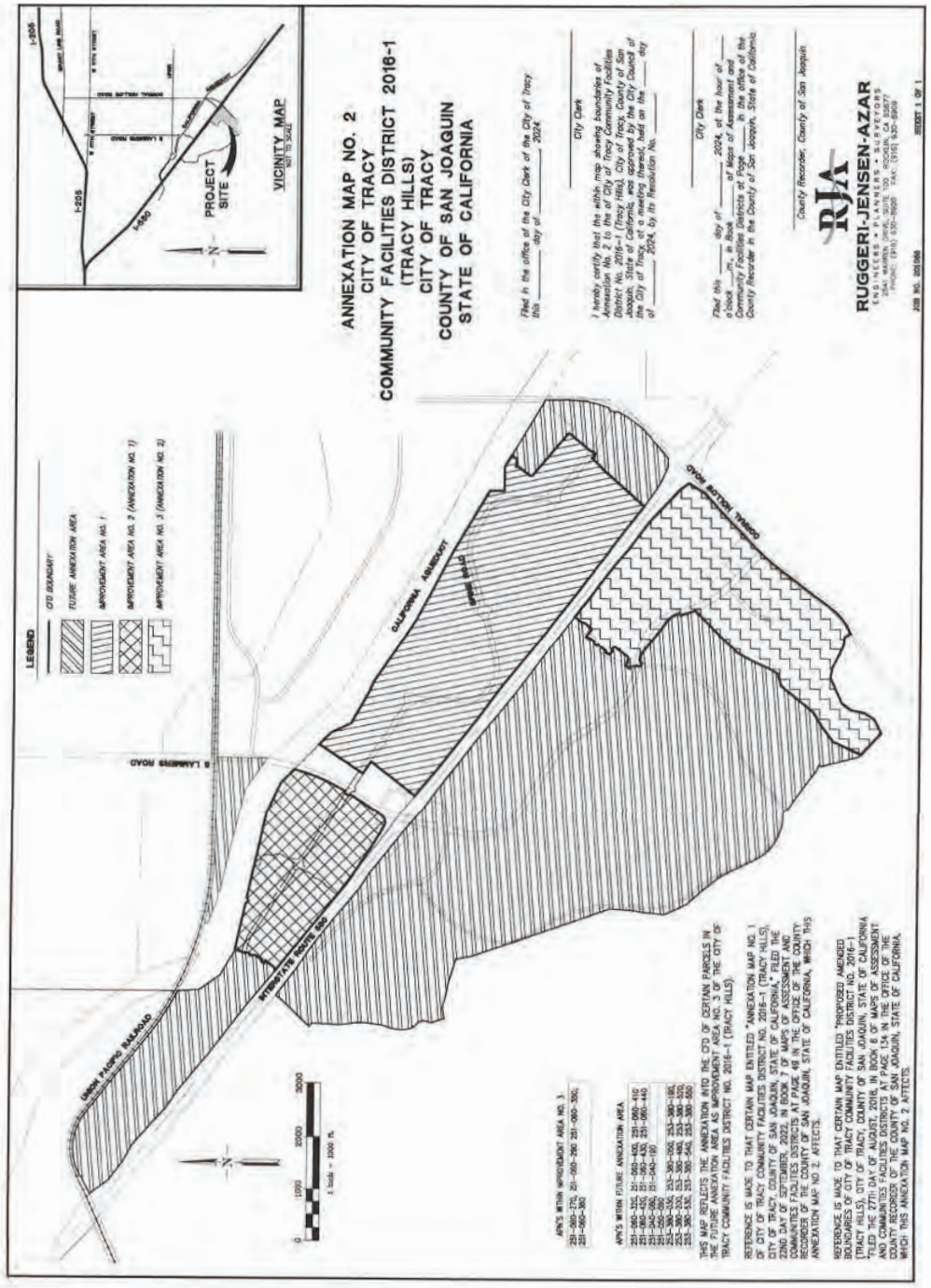
NOTICE OF SPECIAL TAX LIEN

IMPROVEMENT AREA NO. 3 OF THE CITY OF TRACY COMMUNITY FACILITIES DISTRICT 2016-1 (TRACY HILLS)

ASSESSOR'S PARCEL NUMBERS AND OWNERS OF LAND WITHIN IMPROVEMENT AREA NO. 3

Owner	Village	Tract Map References	APNs
AG EHC II (LEN) CA 1, L.P.	1 + 4	[Tract Map 4132] Lots 1-11, 25-44, 55-60, 71-116, and 119-139	251-060-270(P)
	2 + 3	[Tract 4133] Lots 29-72, 77-82, and 105-115	251-060-270(P) and 251-060-290(P)
	5 + 6	[Tract 4134] 47-72 and 77-131	251-060-270(P)
AG EHC II (LEN) CA 2, L.P.	7	[Tract Map 4135] Lots 3-40, 43-72, and 91-97	251-060-350(P), 251-060-290(P), and 251-060-360(P)
	8	[Tract Map 4136] Lots 5-20, 24-39, and 83-89	251-060-350(P) and 251-060-360(P)
	9	[Tract Map 4137] Lots 37-42 and 63-67	251-060-350(P) and 251-060-360(P)
	10	[Tract Map 4138] Lots 33, 35-56 and 80-84	251-060-360(P)
Lennar Homes of California, LLC	1 + 4	[Tract Map 4132] Lots 12-24, 45-54, 61-70, and 117-118	251-060-270(P)
	2 + 3	[Tract 4133] Lots 1-28, 73-76, and 83-104	251-060-270(P) and 251-060-290(P)
	5 + 6	[Tract 4134] Lots 1-46 and 73-76	251-060-270(P)
	7	[Tract Map 4135] Lots 1-2, 41-42 and 73-90	251-060-350(P), 251-060-290(P), and 251-060-360(P)
	8	[Tract Map 4136] Lots 1-4, 21-23, and 40-82	251-060-350(P) and 251-060-360(P)
	9	[Tract Map 4137] Lots 1-36, 43-62, and 68-69	251-060-350(P) and 251-060-360(P)
	10	[Tract Map 4138] Lots 1-32, 34, 57-79, and 85-86	251-060-360(P)

Attachment E



APPROVED AS TO FORM AND LEGALITY

_____

CITY ATTORNEY'S OFFICE

TRACY CITY COUNCIL

RESOLUTION NO. ____

APPROVING ANNEXATION OF PROPERTY INTO "IMPROVEMENT AREA NO. 3 OF THE CITY OF TRACY COMMUNITY FACILITIES DISTRICT NO. 2016-1 (TRACY HILLS)" AND CONFIRMING, ORDERING AND DIRECTING OTHER RELATED MATTERS

WHEREAS, on July 19, 2016, pursuant to the Mello-Roos Community Facilities Act of 1982, Chapter 2.5 of Part 1 of Division 2 of Title 5, commencing with Section 53311, of the California Government Code (the "Mello-Roos Act"), the City Council of the City of Tracy (the "City") adopted its Resolution No. 2016-157 entitled "Resolution of Formation of Community Facilities District" (the "Resolution of Formation") which resolution (i) established the "City of Tracy Community Facilities District No. 2016-1 (Tracy Hills)" (the "CFD"), "Improvement Area No. 1 of the City of Tracy Community Facilities District No. 2016-1 (Tracy Hills)" ("Improvement Area No. 1") and the "City of Tracy Community Facilities District No. 2016-1 (Tracy Hills) (Future Annexation Area)" (the "Future Annexation Area"), (ii) authorized the levy of a special tax on property within Improvement Area No. 1 and (iii) preliminarily established an appropriations limit for Improvement Area No. 1; and

WHEREAS, the boundaries of the CFD, Improvement Area No. 1 and the Future Annexation Area are set forth in the boundary map that was recorded on June 15, 2016 in Book 6 of Maps of Assessment and Community Facilities Districts at Page 84 as Document No. 2016-069400 in the office of the County Recorder for the County of San Joaquin, State of California; and

WHEREAS, in the Resolution of Formation, the City Council resolved that parcels within the Future Annexation Area shall be annexed to the CFD only with the unanimous approval (each, a "Unanimous Approval") of the owner or owners of each parcel or parcels at the time that parcel or those parcels are annexed, without any requirement for further public hearings or additional proceedings; and

WHEREAS, Section 53329.6 of the Mello-Roos Act provides that a Unanimous Approval constitutes the vote of the qualified elector in favor of the matters addressed in the Unanimous Approval for purposes of the California Constitution, including, but not limited to, Articles XIII A and XIII C; and

WHEREAS, Section 53350(b) of the Mello-Roos Act provides that, (i) in connection with the annexation by Unanimous Approval to a community facilities district of a parcel that was included in territory proposed for annexation in the future to the community facilities district, the local agency may designate a parcel or parcels as an improvement area within the community facilities district, (ii) the designation of a parcel or parcels as an improvement area shall be

specified and approved by the Unanimous Approval of the owner or owners of each parcel or parcels at the time that the parcel or parcels are annexed to the community facilities district, (iii) no additional hearings or procedures are required and (iv) after the designation of a parcel or parcels as an improvement area, all proceedings for approval of the appropriations limit, the rate and method of apportionment and manner of collection of special taxes, and the authorization to incur bonded indebtedness for the parcel or parcels shall apply only to the improvement area; and

WHEREAS, in the Resolution of Formation, the City Council provided that property within the Future Annexation Area may be annexed into the CFD as its own improvement area (a "Future Improvement Area") or to an existing improvement area; and

WHEREAS, in the Resolution of Formation, the City Council further provided that the designation of any territory annexing to the CFD as a Future Improvement Area, the maximum amount of bonded indebtedness and other debt for such Future Improvement Area, the rate and method of apportionment of special tax for such Future Improvement Area and the appropriations limit for such Future Improvement Area shall be identified and approved in the Unanimous Approval executed by property owners in connection with their annexation to the CFD, and that the annexation and related matters described in the Unanimous Approval shall be implemented and completed without the need for Council approval as long as the following conditions are met:

(i) The rate and method of apportionment of special tax for the Future Improvement Area is prepared by a special tax consultant retained by the City and paid for by the developer of the Future Improvement Area or the applicable property owners submitting the Unanimous Approval.

(ii) The rate and method of apportionment of special tax for the Future Improvement Area complies with the local goals and policies established by the City concerning the use of the Mello-Roos Act.

(iii) The rate and method of apportionment of special tax for the Future Improvement Area does not establish a maximum special tax amount for the initial fiscal year in which the special tax may be levied for any category of special tax that is greater than 120% of the maximum amount of the same category of special tax for the same fiscal year calculated pursuant to the Improvement Area No. 1 Rate and Method.

(iv) The rate and method of apportionment of special tax for the Future Improvement Area does not introduce a special tax that was not included in the Improvement Area No. 1 Rate and Method (e.g., a special tax that is levied and must be paid in a single fiscal year or over a shorter time period than 30 years).

(v) The rate and method of apportionment of special tax for the Future Improvement Area gives the City the discretion to convert Facilities Special Taxes to Services Special Taxes subject to a similar "Trigger Event" as the Improvement Area No. 1 Rate and Method (modified, as applicable, to represent the timing of the new rate and method of apportionment of special tax for the Future Improvement Area).

(vi) The rate and method of apportionment of special tax for the Future Improvement Area is not inconsistent with the terms of the development agreement with the City that is applicable to the annexing territory, whether or not it is still operative.

(vii) The rate and method of apportionment of special tax for the Future Improvement Area includes a mechanism that protects against revenue loss as a result of land use changes; and

WHEREAS, on July 19, 2016, the City Council adopted its Resolution No. 2016-158 (the "Resolution of Necessity"), which set forth the necessity for the City to issue special tax bonds or other forms of debt obligations for the CFD in the maximum principal amount of $285,000,000. The Resolution of Necessity preliminarily allocated $70,000,000 of the aggregate $285,000,000 limit to Improvement Area No. 1 (the "Improvement Area No. 1 Indebtedness Limit") and $215,000,000 to the Future Annexation Area (the "Non-Improvement Area No. 1 Indebtedness Limit"), with the actual limit for an improvement area created from annexation of all or part of the Future Annexation Area to be identified and approved in a Unanimous Approval so long as the overall bonded indebtedness limit for CFD No. 2016-1 did not exceed $285,000,000; and

WHEREAS, subsequently, the City Council undertook change proceedings, including a landowner vote, which culminated in the adoption by the City Council on August 21, 2018, of Resolution No. 2018-169, entitled "Resolution of Change," to (i) increase the Improvement Area No. 1 Indebtedness Limit to $80,000,000, (ii) increase the Non-Improvement Area No. 1 Indebtedness Limit to $305,000,000, (iii) increase the Improvement Area No. 1 Appropriations Limit to $80,000,000, (iv) amend the boundaries of the CFD, Improvement Area No. 1 and the Future Annexation Area by removing San Joaquin County Assessor's Parcel Number 253-360-15 from Improvement Area No. 1 (the "Transferred Parcel") and adding it to the Future Annexation Area, and (v) amend the Improvement Area No. 1 Rate and Method (the "Amended Improvement Area No. 1 Rate and Method"); and

WHEREAS, a map of the amended boundaries of the CFD, Improvement Area No. 1 and the Future Annexation Area was recorded on August 27, 2018 in the records of the San Joaquin County Recorder in Book 6 of Maps of Assessment and Community Facilities Districts at Page 134 as Document No. 2018-095098; and

WHEREAS, Section 53340 of the Mello-Roos Act provides that (i) after a community facilities district has been created and authorized to levy specified special taxes, the legislative body may, by ordinance, levy the special taxes at the rate and apportion them in the manner specified in the resolution of formation for the community facilities district and (ii) after creation of a community facilities district that includes a future annexation area, the legislative body may, by ordinance, provide for the levy of special taxes on parcels that will be annexed to the community facilities district at the rate or rates to be approved unanimously by the owner or owners of each parcel or parcels to be annexed to the community facilities district and for apportionment and collection of the special taxes in the manner specified in the resolution of formation; and

WHEREAS, in Ordinance 1224 adopted by this City Council on August 16, 2016 (the "Special Tax Ordinance"), the City Council authorized and levied special taxes within Improvement Area No. 1 at the rate and in accordance with the Improvement Area No. 1 Rate and Method set forth in the Resolution of Formation and on any parcels in the Future Annexation Area that are annexed into a Future Improvement Area pursuant to the Mello-Roos Act at the rate and in accordance with the formula approved by the qualified electors in the Future Improvement Areas; and

WHEREAS, in Ordinance 1260 adopted by this City Council after completion of the change proceedings on September 4, 2018 (the "Special Tax Ordinance"), the City Council authorized and levied special taxes within Improvement Area No. 1 at the rate and in accordance

with the formula set forth in the Amended Improvement Area No. 1 Rate and Method and on any parcels in the Future Annexation Area that are annexed into a Future Improvement Area pursuant to the Mello-Roos Act at the rate and in accordance with the formula approved by the qualified electors in the Future Improvement Areas; and

WHEREAS, pursuant to Resolution No. 2022-130, adopted on September 6, 2022, the City Council, among other things, approved the annexation of certain property to the CFD as Improvement Area No. 2 of the City of Tracy Community Facilities District No. 2016-1 (Tracy Hills) ("Improvement Area No. 2"), and confirmed the maximum aggregate principal amount of bonds and other debt and an annual appropriations limit for Improvement Area No. 2 of $50,000,000; and

WHEREAS, in connection with the annexation of territory into Improvement Area No. 2, the City Council caused to be recorded in the office of the County Recorder for the County of San Joaquin, State of California (i) an Annexation Map No. 1, which was recorded on September 22, 2022, as Document No. 2022-110954 in Book 7 Page 49 of the Book of Maps of Assessment and Community Facilities Districts and (ii) a Notice of Special Tax Lien for the territory included in Improvement Area No. 2, which was recorded on September 22, 2022 as Document No. 2022-110955; and

WHEREAS, this City Council has been provided with a separate Unanimous Approval executed by each of Lennar Homes of California, LLC, a California limited liability company, AG EHC II (LEN) CA 1, L.P., a Delaware limited partnership, and AG EHC II (LEN) CA 2, L.P., a Delaware limited partnership, who are the three owners of certain property in the Future Annexation Area, as such property is shown in the map attached hereto as Exhibit B and hereby incorporated herein (collectively, the "Annexation Property"), and the Unanimous Approvals identify, specify and approve the annexation of the Annexation Property to the CFD as "Improvement Area No. 3 of the City of Tracy Community Facilities District No. 2016-1 (Tracy Hills)" ("Improvement Area No. 3") and other related matters; and

WHEREAS, the Resolution of Formation requires City Council approval of the annexation of the property as Improvement Area No. 3, as proposed, because the rate and method of apportionment for Improvement Area No. 3 in the form attached hereto as Exhibit A and hereby incorporated herein (the "Improvement Area No. 3 Rate and Method") establishes a maximum special tax amount for the initial fiscal year in which the special tax may be levied for one or more categories of special tax that is greater than 120% of the maximum amount of the same category of special tax for the same fiscal year calculated pursuant to the Amended Improvement Area No. 1 Rate and Method; and

WHEREAS, the City Council wishes to approve the annexation of the Annexation Property to the CFD as Improvement Area No. 3, and the City Council wishes to direct the City Clerk to record a map showing the boundaries of the Annexation Property and Improvement Area No. 3 in accordance with Streets & Highways Code Section 3110.5; and

WHEREAS, Section 53339.8 of the Mello-Roos Act provides that upon a determination by the legislative body that the area proposed to be annexed is added to the existing community facilities district, the clerk of the legislative body shall record notice of the annexation pursuant to Section 3117.5 of the California Streets and Highways Code; and

WHEREAS, the City Council wishes to direct the City Clerk to record a notice of special tax lien for Improvement Area No. 3 pursuant to Section 3117.5 of the Streets & Highways Code; now, therefore, be it

RESOLVED: That the City Council of the City of Tracy hereby finds that foregoing recitals are true and correct; and be it further

RESOLVED: The City Council hereby confirms it has received the Unanimous Approvals specifying and approving the annexation of the Annexation Property as Improvement Area No. 3 and approving other related matters; and be it further

RESOLVED: In furtherance of the Resolution of Formation and the Resolution of Change, and in conformance with the Mello-Roos Act, the City Council hereby approves the annexation of the Annexation Property to the CFD as a Future Improvement Area and designates such Future Improvement Area as "Improvement Area No. 3 of the City of Tracy Community Facilities District No. 2016-1 (Tracy Hills)"; and be it further

RESOLVED: This City Council hereby directs the City Clerk to record notice of the annexation pursuant to Section 3117.5 of the California Streets and Highways Code; and be it further

RESOLVED: The owners of the Annexation Property have caused to be prepared a map showing the Annexation Property designated as Improvement Area No. 3 in conformance with Section 3110.5 of the California Streets and Highways Code, which map is set forth in Exhibit B attached hereto and hereby incorporated herein, and the City Council hereby directs the City Clerk to record such map; and be it further

RESOLVED: The City Council hereby approves the maximum aggregate principal amount of bonds and other debt for Improvement Area No. 3 of $80,000,000, as specified and approved by a vote of the qualified electors in Improvement Area No. 3 pursuant to the Unanimous Approvals; and be it further

RESOLVED: The City Council hereby confirms that, as a result of subtracting such amount from the remaining Non-Improvement Area No. 1 Indebtedness Limit, the Non-Improvement Area No. 1 Indebtedness Limit shall be $175,000,000; and be it further

RESOLVED: . The City Council hereby approves the rate and method of apportionment of the Special Tax among the parcels of real property within Improvement Area No. 3, as specified and approved by a vote of the qualified electors in Improvement Area No. 3 pursuant to the Unanimous Approvals, and the Improvement Area No. 3 Rate and Method is set forth in Exhibit A; and be it further

RESOLVED: The City Council approves the $80,000,000 annual appropriations limit of Improvement Area No. 3, as defined by subdivision (h) of Section 8 of Article XIII B of the California Constitution, as specified and approved by a vote of the qualified electors in Improvement Area No. 3 pursuant to the Unanimous Approvals; and be it further

RESOLVED: This resolution shall take effect from and after its adoption.

* * * * * * * *

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

AYES:	COUNCIL MEMBERS:
NOES:	COUNCIL MEMBERS:
ABSTAIN:	COUNCIL MEMBERS:
ABSTENTION:	COUNCIL MEMBERS:

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

ATTEST: _____

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

Exhibits:

Exhibit 1 - Improvement Area No. 3 Rate and Method
Exhibit 2 – Map of Annexation Property

IMPROVEMENT AREA NO. 3 OF THE
CITY OF TRACY
COMMUNITY FACILITIES DISTRICT NO. 2016-1
(TRACY HILLS)

RATE AND METHOD OF APPORTIONMENT OF SPECIAL TAXES

Special Taxes applicable to each Assessor's Parcel in Improvement Area No. 3 of the City of Tracy Community Facilities District No. 2016-1 (Tracy Hills) shall be levied and collected according to the tax liability determined by the City through the application of the appropriate amount or rate for Taxable Property, as described below. All of the property in Improvement Area No. 3, unless exempted by law or by the provisions of Section G below, shall be taxed for the purposes, to the extent, and in the manner herein provided.

A. DEFINITIONS

The terms hereinafter set forth have the following meanings:

"Accessory Unit" means a second residential unit of limited size (e.g., granny cottage, second unit) that shares a Parcel with a single-family detached unit.

"Acre" or **"Acreage"** means the land area of an Assessor's Parcel as shown on an Assessor's Parcel Map, or if the land area is not shown on an Assessor's Parcel Map, the land area shown on the applicable Final Map or other parcel map recorded at the County Recorder's Office.

"Act" means the Mello-Roos Community Facilities Act of 1982, as amended, being Chapter 2.5, (commencing with Section 53311), Division 2 of Title 5 of the Government Code of the State of California.

"Administrative Expenses" means any or all of the following: the fees and expenses of any fiscal agent or trustee (including any fees or expenses of its counsel) employed in connection with any Bonds, and the expenses of the City in carrying out its duties with respect to the CFD and the Bonds, including, but not limited to, the levy and collection of Special Taxes, the fees and expenses of its legal counsel, charges levied by the County in connection with the levy and collection of Special Taxes, costs related to property owner inquiries regarding the Special Taxes, costs associated with appeals or requests for interpretation associated with the Special Taxes and this RMA, costs of the dissemination agent, whether for the City or another party that has undertaken to provide continuing disclosure, amounts needed to pay rebate to the federal government with respect to the Bonds, costs associated with complying with any continuing disclosure requirements with respect to the Bonds and the Special Taxes, costs associated with foreclosure and collection of delinquent Special Taxes and all other costs and expenses of the City and County in any way related to the establishment or administration of the CFD.

"Administrator" means the person or firm designated by the City to administer the Special Taxes according to this RMA.

"Assessor's Parcel" or **"Parcel"** means a lot or parcel shown on an Assessor's Parcel Map with an assigned Assessor's parcel number.

"Assessor's Parcel Map" means an official map of the County Assessor designating Parcels by Assessor's Parcel number.

"Authorized Facilities" means the public facilities authorized to be financed, in whole or in part, by the CFD.

"Authorized Services" means the public services authorized to be funded, in whole or in part, by the CFD.

"Bonds" means bonds or other debt (as defined in the Act), whether in one or more series, issued or assumed by Improvement Area No. 3 to fund Authorized Facilities.

"Capitalized Interest" means funds in any capitalized interest account available to pay interest on Bonds.

"CFD" means the City of Tracy Community Facilities District No. 2016-1 (Tracy Hills).

"City" means the City of Tracy.

"City Council" means the City Council of the City of Tracy.

"County" means the County of San Joaquin.

"Developed Property" means, in any Fiscal Year, all Parcels of Taxable Property, excluding Taxable HOA Property, Taxable Welfare Exemption Property, and Taxable Public Property, for which a building permit was issued prior to June 30 of the preceding Fiscal Year.

"Development Class" means, individually, Developed Property, Undeveloped Property, Taxable HOA Property, Taxable Welfare Exemption Property, and Taxable Public Property.

"Escalation Factor" means, in any Fiscal Year, the lesser of (i) the percentage increase from the prior Fiscal Year, if any, in the Index, or (ii) four percent (4%). The Index used shall be as determined by the Bureau of Labor Statistics from April to April beginning with the period from April 2023 to April 2024.

"Expected Land Uses" means the number of Residential Units and acres of Other Property expected within Improvement Area No. 3 at the time of the IA No. 3 Lien Date, as identified in Attachment 1 and as amended from time to time as set forth in this RMA.

"Expected Maximum Facilities Special Tax Revenues" means the amount of annual revenue that would be available in Improvement Area No. 3 if the Maximum Facilities Special Tax was levied on the Expected Land Uses. The Expected Maximum Facilities Special Tax Revenues as of the IA No. 3 Lien Date are shown in Attachment 1 of this RMA and may be reduced due to prepayments in future Fiscal Years and/or pursuant to Section D below.

"Facilities Special Tax" means a special tax levied in any Fiscal Year to pay the Facilities Special Tax Requirement.

"Facilities Special Tax Requirement" means the amount necessary in any Fiscal Year (i) to pay principal and interest on Bonds which are due in the calendar year which begins in such Fiscal Year, (ii) to create or replenish reserve funds to the extent such replenishment has not been included in a computation of Facilities Special Tax Requirement in a previous Fiscal Year, (iii) to cure any delinquencies in the payment of principal or interest on Bonds which have occurred in the prior Fiscal Year, (iv) to pay Administrative Expenses, and (v) to pay the costs of Authorized Facilities to be funded directly from Facilities Special Tax proceeds to the extent that paying directly for such costs does not increase the Facilities Special Tax levied on Undeveloped Property. The amounts referred to in clauses (i) and (ii) of the preceding sentence may be reduced in any Fiscal Year by (i) interest earnings on or surplus balances in funds and accounts for Bonds to the extent that such earnings or balances are available to apply against debt service pursuant to the Indenture, (ii) proceeds from the collection of penalties associated with delinquent Facilities Special Taxes, and (iii) any other revenues available to pay debt service on the Bonds as determined by the Administrator.

"Final Bond Sale" means, at any point in time, the last series of Bonds issued for Improvement Area No. 3, which issuance uses up virtually all of the remaining capacity available from the Maximum Facilities Special Tax revenues that can be generated within Improvement Area No. 3, as determined by the City. If additional Bonds are expected to be issued after outstanding Bonds retire, the "Final Bond Sale" may not be the last series of Bonds ever issued for Improvement Area No. 3, but instead the last sale of Bonds that can be issued before some or all of the outstanding Bonds retire.

"Final Map" means a final map, or portion thereof, recorded by the County pursuant to the Subdivision Map Act (California Government Code Section 66410 et seq.) that creates lots that do not need to be further subdivided prior to issuance of a building permit for a residential structure. The term "Final Map" shall not include any Assessor's Parcel map or subdivision map, or portion thereof, that does not create lots that are in their final configuration, including Assessor's Parcels that are designated as remainder parcels.

"First Bond Sale" means issuance of the first series of Bonds secured, in whole or in part, by Facilities Special Taxes levied and collected from Parcels in Improvement Area No. 3.

"Fiscal Year" means the period starting July 1 and ending on the following June 30.

"Homeowners Association" or **"HOA"** means the homeowners association that provides services to, and collects dues, fees, or charges from, property within Improvement Area No. 3.

"HOA Property" means any property within the boundaries of Improvement Area No. 3 that is owned in fee or by easement by the Homeowners Association, not including any such property that is located directly under a residential structure.

"IA No. 3 Lien Date" means the date that the Notice of Special Tax Lien affecting the Parcels in Improvement Area No. 3 was recorded in the official records of the County.

"Improvement Area No. 3" means Improvement Area No. 3 of the City of Tracy Community Facilities District No. 2016-1 (Tracy Hills).

"Improvement Fund" means the account (regardless of its name) identified in the Indenture to hold funds which are available to acquire or construct Authorized Facilities.

"Indenture" means the bond indenture, fiscal agent agreement, trust agreement, resolution or other instrument pursuant to which Bonds are issued, as modified, amended, and/or supplemented from time to time, and any instrument replacing or supplementing the same.

"Index" means the Consumer Price Index of the San Francisco-Oakland-Hayward area for all urban consumers.

"Land Use Change" means a proposed or approved change to the Expected Land Uses within Improvement Area No. 3 after the IA No. 3 Lien Date.

"**Maximum Facilities Special Tax"** means the greatest amount of Facilities Special Tax that can be levied on an Assessor's Parcel in any Fiscal Year as determined in accordance with Sections C and D below.

"**Maximum Services Special Tax"** means the greatest amount of Services Special Tax that can be levied on an Assessor's Parcel in any Fiscal Year as determined in accordance with Section C.2 below.

"Maximum Special Taxes" means, collectively, the Maximum Facilities Special Tax and Maximum Services Special Tax.

"Other Property" means, in any Fiscal Year, all Parcels of Developed Property within Improvement Area No. 3 that are not Single Family Residential Property.

"Proportionately" means, for each Development Class, that the ratio of the actual Special Tax levied in any Fiscal Year to the Maximum Special Tax authorized to be levied in that Fiscal Year is equal for all Parcels assigned to the Development Class.

"Public Property" means any property within the boundaries of Improvement Area No. 3 that is owned by the federal government, State of California or other local governments or public agencies.

"Recycled Water Facilities Cost" means the total cost, as determined by the City, of funding the design, engineering, construction, and/or acquisition of recycled water facilities that will serve development within the CFD. If, in the future, the City determines that there is a preferred alternative to the recycled water facilities that were expected at the time of the IA No. 3 Lien Date, the cost of such facilities shall qualify as Recycled Water Facilities Costs for purposes of this RMA.

"Remainder Taxes" means, after September 1st and before December 31st of any Fiscal Year, any Facilities Special Tax revenues that were levied and collected in the prior Fiscal Year and were not needed to (i) pay debt service on the Bonds that was due in the calendar year in which the Remainder Taxes are being calculated, (ii) replenish Bond reserves, or (iii) pay Administrative Expenses that have been incurred, or are expected to be incurred, by the City prior to the receipt of additional Facilities Special Tax proceeds.

"Required Coverage" means the amount by which the Expected Maximum Facilities Special Tax Revenues must exceed the Bond debt service and required Administrative Expenses, as set forth in the Indenture, Certificate of Special Tax Consultant, or other formation or bond document that sets forth the minimum required debt service coverage.

"Residential Unit" means an individual single-family unit that does not share a common wall with another residential unit, or an individual residential unit within a duplex, halfplex, triplex, fourplex, townhome, live/work or condominium structure. An Accessory Unit shall not be considered a Residential Unit for purposes of this RMA.

"RMA" means this Rate and Method of Apportionment of Special Tax.

"Services Special Tax" means a special tax levied in any Fiscal Year to pay the Services Special Tax Requirement.

"Services Special Tax Requirement" means the amount of revenue needed in any Fiscal Year after the Trigger Event to pay for: (i) Authorized Services, (ii) Administrative Expenses, and (iii) amounts needed to cure any delinquencies in the payment of Services Special Taxes which have occurred in the prior Fiscal Year. In any Fiscal Year, the Services Special Tax Requirement shall be reduced by surplus amounts available (as determined by the City) from the levy of the Services Special Tax in prior Fiscal Years, including revenues from the collection of delinquent Services Special Taxes and associated penalties and interest.

"Single Family Residential Property" means, in any Fiscal Year, all Parcels of Developed Property for which a building permit was issued for construction of one or more Residential Units.

"Special Taxes" means, collectively, the Facilities Special Tax and the Services Special Tax.

"Taxable HOA Property" means, in any Fiscal Year after the First Bond Sale, any Parcel of HOA Property that satisfies all three of the following conditions: (i) the Parcel had not been HOA Property on the date of the First Bond Sale; (ii) based on reference to Attachments 1 and 2 (as may be updated pursuant to Section D below), the Parcel was not anticipated to be HOA Property based on the Expected Land Uses, as determined by the Administrator; and (iii) if the Parcel were to be exempt from the Facilities Special Tax because it has become HOA Property, the Expected Maximum Facilities Special Tax Revenues would be reduced to a point at which Required Coverage could not be maintained.

"Taxable Property" means all Parcels within the boundaries of Improvement Area No. 3 which are not exempt from the Special Taxes pursuant to law or Section G below.

"Taxable Public Property" means, in any Fiscal Year after the First Bond Sale, any Parcel of Public Property that satisfies all three of the following conditions: (i) the Parcel had not been Public Property on the date of the First Bond Sale, (ii) based on reference to Attachments 1 and 2 (as may be updated pursuant to Section D.1 below), the Parcel was not anticipated to be Public Property based on the Expected Land Uses, as determined by the Administrator, and (iii) if the Parcel were to be exempt from the Facilities Special Tax because it has become Public Property, the Expected Maximum Facilities Special Tax Revenues would be reduced to a point at which Required Coverage could not be maintained.

"Taxable Welfare Exemption Property" means in any Fiscal Year after the First Bond Sale, any Parcel of Welfare Exemption Property that satisfies all three of the following conditions: (i) the Parcel had not been Welfare Exemption Property on the date of issuance of the First Bond Sale; (ii) based on reference to Attachments 1 and 2 (as may be updated pursuant to Section D herein), the Parcel was not anticipated to be Welfare Exemption Property based on the Expected Land Uses, as determined by the Administrator; and (iii) if the Parcel were to be exempt from the Facilities Special Tax because it has become Welfare Exemption Property, the Expected Maximum Facilities Special Tax Revenues would be reduced to a point at which Required Coverage could not be maintained.

"Tentative Map" means any tentative map or vesting tentative map for Phase 2A of the Tracy Hills project, approved by the City Council and as may be amended from time to time.

"Trigger Event" means, in any Fiscal Year, that, on or before June 30 of the prior Fiscal Year, the Administrator made a finding that (i) all Bonds secured by the levy and collection of Facilities Special Taxes in the CFD have been fully repaid, (ii) all Administrative Expenses from prior Fiscal Years have been paid or reimbursed to the City, (iii) the Recycled Water Facilities Costs have been fully funded, and (iv) there are no other Authorized Facilities that the City intends to fund with Facilities Special Taxes. In the first Fiscal Year in which the Administrator determines that the Trigger Event occurred in the prior Fiscal Year, and in each Fiscal Year thereafter, the Facilities Special Tax shall cease to be levied, and the Maximum Services Special Tax for each Parcel shall be adjusted pursuant to Section C.2 below.

"Undeveloped Property" means, in any Fiscal Year, all Parcels of Taxable Property that are not Developed Property, Taxable HOA Property, Taxable Welfare Exemption Property, or Taxable Public Property.

"Village" means a specific geographic area within Improvement Area No. 3 that (i) is identified by an assigned number on the Tentative Map, (ii) is expected to have single family lots that are all of a similar size, and (iii) is assigned Expected Maximum Facilities Special Tax Revenues in Attachment 1 based on the Expected Land Uses for that Village.

"Welfare Exemption Property" means, in any Fiscal Year, any Parcels in Improvement Area No. 3 that have received a welfare exemption under subdivision (g) of Section 214 of the Revenue and Taxation Code and for which such welfare exemption is still in place.

B. DATA FOR ADMINISTRATION OF SPECIAL TAX

Each Fiscal Year, the Administrator shall (i) categorize each Parcel of Taxable Property as Developed Property, Undeveloped Property, Taxable Public Property, Taxable HOA Property, or Taxable Welfare Exemption Property; (ii) for Single Family Residential Property, determine within which Village each Parcel of Developed Property is located and the number of Residential Units on the Parcel; and (iii) determine the Facilities Special Tax Requirement and Services Special Tax Requirement for the Fiscal Year. In addition, the Administrator shall, ***on an ongoing basis***, monitor Final Maps and condominium plans to determine if there are any proposed changes to the Expected Land Uses that would reduce the Expected Maximum Facilities Special Tax Revenues for a Village. If the Expected Maximum Facilities Special Tax Revenues will be reduced pursuant to a proposed Land Use Change, the Administrator shall apply the steps set forth in Section D.1 below.

In any Fiscal Year, if it is determined that: (i) a parcel map for property in Improvement Area No. 3 was recorded after January 1 of the prior Fiscal Year (or any other date after which the Assessor will not incorporate the newly-created Parcels into the then current tax roll), (ii) because of the date the parcel map was recorded, the Assessor does not yet recognize the new Parcels created by the parcel map, and (iii) one or more of the newly-created Parcels is in a different Development Class than other Parcels created by the subdivision, the Administrator shall calculate the Special Taxes for the property affected by recordation of the parcel map by determining the Special Taxes that apply separately to the property within each Development Class, then applying the sum of the individual Special Taxes to the Parcel that was subdivided by recordation of the parcel map.

C. MAXIMUM SPECIAL TAX

1. Facilities Special Tax

Table 1 below identifies the Maximum Facilities Special Tax, before and after the Trigger Event, for Taxable Property in Improvement Area No. 3, subject to potential adjustments that may occur pursuant to Section D below.

TABLE 1
IMPROVEMENT AREA NO. 3
MAXIMUM FACILITIES SPECIAL TAX

Land Use	Maximum Facilities Special Tax Prior to Trigger Event Fiscal Year 2024-25*	Maximum Facilities Special Tax After Trigger Event
Single Family Residential Property		
Villages 1 & 4	$4,398 per Residential Unit	$0 per Residential Unit
Village 2 & 3	$4,649 per Residential Unit	$0 per Residential Unit
Village 5 & 6	$5,124 per Residential Unit	$0 per Residential Unit
Village 7	$5,295 per Residential Unit	$0 per Residential Unit
Village 8	$5,277 per Residential Unit	$0 per Residential Unit
Village 9	$5,658 per Residential Unit	$0 per Residential Unit
Village 10	$6,149 per Residential Unit	$0 per Residential Unit
Other Property, Undeveloped Property, Taxable Public Property Taxable HOA Property Taxable Welfare Exemption Property		
Villages 1 & 4	$40,235 per Acre	$0 per Acre
Village 2 & 3	$41,543 per Acre	$0 per Acre
Village 5 & 6	$39,217 per Acre	$0 per Acre
Village 7	$58,407 per Acre	$0 per Acre
Village 8	$65,506 per Acre	$0 per Acre
Village 9	$61,422 per Acre	$0 per Acre
Village 10	$40,406 per Acre	$0 per Acre

* On July 1, 2025 and on each July 1 thereafter, all figures shown in Table 1 above shall be increased by an amount equal to 2.0% of the amount in effect for the prior Fiscal Year.

2. *Services Special Tax*

Table 2 below identifies the Maximum Services Special Tax, before and after the Trigger Event, for Taxable Property in Improvement Area No. 3.

TABLE 2
IMPROVEMENT AREA NO. 3
MAXIMUM SERVICES SPECIAL TAX

Type of Property	Maximum Services Special Tax Prior to Trigger Event	Maximum Services Special Tax After Trigger Event Fiscal Year 2024-25*
Single Family Residential Property		
Villages 1 & 4	$0 per Residential Unit	$880 per Residential Unit
Village 2 & 3	$0 per Residential Unit	$930 per Residential Unit
Village 5 & 6	$0 per Residential Unit	$1,025 per Residential Unit
Village 7	$0 per Residential Unit	$1,059 per Residential Unit
Village 8	$0 per Residential Unit	$1,055 per Residential Unit
Village 9	$0 per Residential Unit	$1,132 per Residential Unit
Village 10	$0 per Residential Unit	$1,230 per Residential Unit
Other Property, Undeveloped Property, Taxable Public Property Taxable HOA Property		
Villages 1 & 4	$0 per Acre	$8,047 per Acre
Village 2 & 3	$0 per Acre	$8,309 per Acre
Village 5 & 6	$0 per Acre	$7,843 per Acre
Village 7	$0 per Acre	$11,681 per Acre
Village 8	$0 per Acre	$13,101 per Acre
Village 9	$0 per Acre	$12,284 per Acre
Village 10	$0 per Acre	$8,081 per Acre

* Beginning July 1, 2025 and each July 1 thereafter until the Trigger Event, the Services Special Taxes in Table 2 shall be increased by 2.0% of the amount in effect in the prior Fiscal Year. On July 1 of the Fiscal Year after the Trigger Event and each July 1 thereafter, the Services Special Taxes and the Maximum Services Special Tax assigned to each Parcel shall be adjusted by the Escalation Factor.

Once Special Taxes have been levied on a Parcel of Developed Property, the Maximum Special Taxes applicable to that Parcel shall not be reduced in future Fiscal Years regardless of changes in land use on the Parcel, except (i) in the event of a partial prepayment pursuant to Section H, and (ii) pursuant to Section D. Notwithstanding the foregoing: (i) if Bonds have yet to be issued for Improvement Area No. 3, the Parcels can be assigned to the appropriate special tax category based on the Land Use Change, and the Administrator shall recalculate the Expected Maximum Facilities Special Tax Revenues based on the corresponding change in revenues, and (ii) the actual Special Taxes levied on a Parcel of Developed Property in any Fiscal Year may be less than the Maximum Special Taxes if lower Special Taxes are calculated pursuant to Step 1 in Sections E.1 and E.2 below.

D. CHANGES TO MAXIMUM SPECIAL TAXES

The Expected Maximum Facilities Special Tax Revenues were calculated based on the Expected Land Uses at the IA No. 3 Lien Date. The Administrator shall review Final Maps, Tentative Map revisions, and other changes to land uses proposed within Improvement Area No. 3 and compare the revised land uses to the Expected Land Uses to evaluate the impact on the Expected Maximum Facilities Special Tax Revenues.

1. Changes in Expected Land Uses

If, prior to the First Bond Sale, a Land Use Change is proposed that will result in a reduction in the Expected Maximum Facilities Special Tax Revenues, no action will be needed pursuant to this Section D.1. Upon approval of the Land Use Change, the Administrator shall update Attachment 1 to show the reduced Expected Maximum Facilities Special Tax Revenues.

If, prior to the Final Bond Sale, a Land Use Change is proposed that will result in a reduction in the Expected Maximum Facilities Special Tax Revenues, no action will be needed pursuant to this Section D.1 as long as the reduction does not reduce debt service coverage on outstanding Bonds below the Required Coverage. Upon approval of the Land Use Change, the Administrator shall update Attachment 1 to show the reduced Expected Maximum Facilities Special Tax Revenues, which amount shall be used to size the Final Bond Sale.

If a Land Use Change is proposed after the Final Bond Sale, the following steps shall be applied:

Step 1: By reference to Attachment 1 (which will be updated by the Administrator each time a Land Use Change has been processed according to this Section D.1 and or pursuant to Section D.2), the Administrator shall identify the Expected Maximum Facilities Special Tax Revenues for Improvement Area No. 3.

Step 2: The Administrator shall calculate the Expected Maximum Facilities Special Tax Revenues that could be collected from property in Improvement Area No. 3 if the Land Use Change is approved.

Step 3: If the amount calculated in Step 2 is higher than that determined in Step 1, no further action is needed. If the revenues calculated in Step 2 are less than those calculated in Step 1, and if the landowner requesting the Land Use Change does not prepay the portion of the Expected Maximum Facilities Special Tax Revenues in an amount that corresponds to the lost revenue, then the Maximum Facilities Special Tax for each Parcel of Taxable Property in the area affected by the Land Use Change shall be increased proportionately until the aggregate Expected Maximum Facilities Special Tax Revenues that can be generated from the area affected by the Land Use Change is the same as it was prior to the Land Use Change.

If multiple Land Use Changes are proposed simultaneously by a single landowner (which may include approval of multiple Final Maps at one time), the Administrator may consider the combined effect of all the Land Use Changes to determine if there is a reduction in Expected Maximum Facilities Special Tax Revenues. If there is a reduction, the Administrator shall increase the Maximum Facilities Special Tax proportionately in all of the Final Maps being proposed by

the landowner until the aggregate amount that can be levied within the Final Maps is equal to the amount that could have been levied prior to the proposed Land Use Changes. If Land Use Changes are proposed simultaneously by multiple landowners, the Administrator shall consider the proposed Land Use Changes individually.

2. Transfer of Expected Maximum Facilities Special Tax Revenues from One Village to Another

The Expected Maximum Facilities Special Tax Revenues were determined for each Village based on the Expected Land Uses within that Village. If the expected number of Residential Units is transferred from one Village to another, the City may, in its sole discretion, allow for a corresponding transfer of Expected Maximum Facilities Special Tax Revenues between the Villages. Such a transfer shall only be allowed if (i) all adjustments are agreed to in writing by the affected property owners and the City, and (ii) there is no reduction in the total Expected Maximum Facilities Special Tax Revenues as a result of the transfer.

3. Conversion of a Parcel of Public Property to Private Use

If, in any Fiscal Year, a Parcel of Public Property is converted to private use, such Parcel shall be subject to the levy of Special Taxes. The Maximum Special Taxes for each such Parcel shall be determined based on the average Maximum Special Taxes for Parcels with similar land use designations, as determined by the Administrator.

E. METHOD OF LEVY OF THE SPECIAL TAXES

1. Facilities Special Tax

Each Fiscal Year, the Administrator shall determine the Facilities Special Tax Requirement and levy the Facilities Special Tax on all Parcels of Taxable Property as follows:

Step 1: In the first twenty (20) Fiscal Years in which a Facilities Special Tax is levied within Improvement Area No. 3, the Maximum Facilities Special Tax shall be levied on all Parcels of Developed Property. In the first nine (9) Fiscal Years in which Facilities Special Taxes are collected, and in the 16th, 17th, 18th, 19th and 20th Fiscal Years in which Facilities Special Taxes are collected, Facilities Special Tax proceeds that are determined by the Administrator to be Remainder Taxes shall be deposited into the Improvement Fund to pay any costs associated with the acquisition of Authorized Facilities that were not paid with Bond proceeds or Facilities Special Taxes levied in prior Fiscal Years. Any Remainder Taxes collected in the 10th, 11th, 12th, 13th, 14th and 15th Fiscal Years in which Facilities Special Taxes are levied shall be available to pay for Authorized Facilities or Authorized Services as determined in the sole discretion of the City.

Beginning in the 21st Fiscal Year in which a Facilities Special Tax is levied within Improvement Area No. 3 and continuing until the Trigger Event, the Facilities Special Tax shall be levied Proportionately on each Parcel of Developed Property up to 100% of the Maximum Facilities Special Tax for each Parcel of Developed Property until the amount levied is equal to the

Facilities Special Tax Requirement, the calculation of which will include funding for Recycled Water Facilities Costs and/or other Authorized Facilities designated for funding, as determined in the sole discretion of the City. After the Trigger Event, the Facilities Special Tax shall no longer be levied.

Step 2: If additional revenue is needed after Step 1 and after applying Capitalized Interest to the Facilities Special Tax Requirement, the Facilities Special Tax shall be levied Proportionately on each Parcel of Undeveloped Property up to 100% of the Maximum Facilities Special Tax for each Parcel of Undeveloped Property.

Step 3: If additional revenue is needed after Step 2, the Facilities Special Tax shall be levied Proportionately on each Parcel of Taxable Welfare Exemption Property, up to 100% of the Maximum Facilities Special Tax for each Parcel of Taxable Welfare Exemption Property.

Step 4: If additional revenue is needed after Step 3, the Facilities Special Tax shall be levied Proportionately on each Parcel of Taxable HOA Property, up to 100% of the Maximum Facilities Special Tax for each Parcel of Taxable HOA Property.

Step 5: If additional revenue is needed after Step 4, the Facilities Special Tax shall be levied Proportionately on each Parcel of Taxable Public Property, up to 100% of the Maximum Facilities Special Tax for each Parcel of Taxable Public Property.

2. *Services Special Tax*

Each Fiscal Year after the Trigger Event, the Administrator shall determine the Services Special Tax Requirement and levy the Services Special Tax on all Parcels of Taxable Property as follows:

Step 1: The Services Special Tax shall be levied Proportionately on each Parcel of Developed Property up to 100% of the Maximum Services Special Tax for each Parcel of Developed Property until the amount levied is equal to the Services Special Tax Requirement.

Step 2: If additional revenue is needed after Step 1, the Services Special Tax shall be levied Proportionately on each Parcel of Undeveloped Property, up to 100% of the Maximum Services Special Tax for each Parcel of Undeveloped Property.

Step 3: If additional revenue is needed after Step 2, the Services Special Tax shall be levied Proportionately on each Parcel of Taxable HOA Property, up to 100% of the Maximum Services Special Tax for each Parcel of Taxable HOA Property.

Step 4: If additional revenue is needed after Step 3, the Services Special Tax shall be levied Proportionately on each Parcel of Taxable Public Property, up to 100% of the Maximum Services Special Tax for each Parcel of Taxable Public Property.

F. MANNER OF COLLECTION OF SPECIAL TAXES

The Special Taxes for Improvement Area No. 3 shall be collected in the same manner and at the same time as ordinary ad valorem property taxes, provided, however, that partial prepayments are permitted as set forth in Section H below and provided further that the City may directly bill the Special Taxes, may collect Special Taxes at a different time or in a different manner, and may collect delinquent Special Taxes through foreclosure or other available methods.

The Facilities Special Tax shall be levied and collected until principal and interest on Bonds have been repaid, costs of constructing or acquiring Authorized Facilities from Facilities Special Tax proceeds have been paid, and all Administrative Expenses have been paid or reimbursed. However, in no event shall Facilities Special Taxes be levied for more than eighty (80) Fiscal Years. Under no circumstances may the Facilities Special Tax on a Parcel in residential use be increased in any Fiscal Year as a consequence of delinquency or default in payment of the Facilities Special Tax levied on another Parcel or Parcels by more than ten percent (10%) above the amount that would have been levied in that Fiscal Year had there never been any such delinquencies or defaults. After the Trigger Event, the Services Special Tax may be levied and collected in perpetuity.

G. EXEMPTIONS

Any Parcel that becomes HOA Property, Public Property, or Welfare Exemption Property prior to the First Bond Sale shall be exempt from both the Services Special Tax and the Facilities Special Tax; the Administrator shall reduce the Expected Maximum Facilities Special Tax Revenues to reflect any such exemption, and the First Bond Sale shall be sized based on the reduced Expected Maximum Facilities Special Tax Revenues. Any Parcel that becomes HOA Property, Public Property, or Welfare Exemption Property after the First Bond Sale shall be exempt from both the Services Special Tax and the Facilities Special Tax provided such Parcel is not Taxable HOA Property, Taxable Public Property or Taxable Welfare Exemption Property.

In addition, no Special Taxes shall be levied on (i) Parcels that are designated as permanent open space or common space on which no structure is permitted to be constructed, (ii) Parcels owned by a public utility for an unmanned facility, and (iii) Parcels subject to an easement that precludes any use on the Parcel other than that permitted by the easement. Notwithstanding the foregoing, if a Facilities Special Tax has been levied on a Parcel in any Fiscal Year, and the entire Parcel subsequently meets the criteria in (i), (ii) or (iii) above, the Parcel shall remain subject to the Facilities Special Tax levy, unless the First Bond Sale has not occurred, in which case such property shall be categorized as Public Property, and the Administrator shall recalculate the Expected Maximum Facilities Special Tax Revenues based on the corresponding loss in revenues.

H. PARTIAL PREPAYMENT OF FACILITIES SPECIAL TAX

The following definitions apply to this Section H:

> **"Outstanding Bonds"** means all Previously Issued Bonds which remain outstanding, with the following exception: if a Facilities Special Tax has been levied against, or already paid by, an Assessor's Parcel making a prepayment, and a portion of the Facilities Special Tax will be used to pay a portion of the next principal payment on the Bonds that remain

outstanding (as determined by the Administrator), that next principal payment shall be subtracted from the total Bond principal that remains outstanding, and the difference shall be used as the amount of Outstanding Bonds for purposes of this prepayment formula.

"Previously Issued Bonds" means all Bonds that have been issued prior to the date of prepayment.

"Public Facilities Requirements" means: (i) $54.5 million in Fiscal Year 2024-25 dollars, which amount shall, on July 1, 2025 and on each July 1 thereafter, be increased by an amount equal to 2.0% of the amount in effect for the prior Fiscal Year, or (ii) such other number as shall be determined by the City to be an appropriate estimate of the net construction proceeds that will be generated from all Bonds that have been or are expected to be issued on behalf of Improvement Area No. 3.

"Remaining Facilities Costs" means the Public Facilities Requirements (as defined above), minus public facility costs funded by Previously Issued Bonds (as defined above), Remainder Taxes, or prepayments.

A property owner may prepay up to 80% of the Facilities Special Tax obligation applicable to a Parcel in Improvement Area No. 3, thereby reducing the Maximum Facilities Special Tax applicable to the Parcel, provided that a prepayment may be made only if there are no delinquent Special Taxes with respect to such Parcel at the time of prepayment. An owner of a Parcel intending to prepay a portion of the Facilities Special Tax obligation shall provide the City with written notice of intent to prepay, which shall identify the percentage of the Maximum Facilities Special Tax that is to be prepaid. Within 30 days of receipt of such written notice, the City or its designee shall notify such owner of the prepayment amount for such Parcel. Prepayment must be made not less than 50 days prior to any redemption date for Bonds to be redeemed with the proceeds of such prepaid Facilities Special Taxes.

The Prepayment Amount shall be calculated as follows (capitalized terms as defined below):

	Bond Redemption Amount
plus	Remaining Facilities Amount
plus	Redemption Premium
plus	Defeasance Requirement
plus	Administrative Fees and Expenses
less	Reserve Fund Credit
equals	Prepayment Amount

As of the proposed date of prepayment, the Prepayment Amount for a Parcel shall be determined by application of the following steps:

Step 1. Determine the Maximum Facilities Special Tax that could be levied on the Parcel based on the Expected Land Uses for the Parcel at the time the prepayment is calculated.

Step 2. Divide the Maximum Facilities Special Tax computed pursuant to Step 1 by the Expected Maximum Facilities Special Tax Revenues in that Fiscal Year.

Step 3. Multiply the quotient computed in Step 2 by the percentage of the Maximum Facilities Special Tax that the property owner wants to prepay, which percentage shall not exceed 80%.

Step 4. Multiply the quotient computed pursuant to Step 3 by the Outstanding Bonds to compute the amount of Outstanding Bonds to be retired and prepaid (*the "**Bond Redemption Amount**"*).

Step 5. Compute the current Remaining Facilities Costs (if any).

Step 6. Multiply the quotient computed pursuant to Step 3 by the amount determined pursuant to Step 5 to compute the amount of Remaining Facilities Costs to be prepaid (*the "**Remaining Facilities Amount**"*).

Step 7. Multiply the Bond Redemption Amount computed pursuant to Step 4 by the applicable redemption premium, if any, on the Outstanding Bonds to be redeemed (*the "**Redemption Premium**"*).

Step 8. Compute the amount needed to pay interest on the Bond Redemption Amount starting with the last Bond interest payment date on which interest has been or will be paid by Facilities Special Taxes already levied until the earliest redemption date for the Outstanding Bonds.

Step 9: Compute the amount of interest the City reasonably expects to derive from reinvestment of the Bond Redemption Amount plus the Redemption Premium from the first Bond interest payment date after which the prepayment has been received until the redemption date for the Outstanding Bonds.

Step 10: Take the amount computed pursuant to Step 8 and subtract the amount computed pursuant to Step 9 (the ***"Defeasance Requirement"***).

Step 11. Determine the costs of computing the prepayment amount, redeeming Bonds, and recording any notices to evidence the prepayment and redemption (the *"**Administrative Fees and Expenses**"*).

Step 12. If and to the extent so provided in the Indenture, a reserve fund credit shall be calculated as a reduction in the applicable reserve fund for the Outstanding Bonds to be redeemed pursuant to the prepayment (the "***Reserve Fund Credit***").

Step 13. The Facilities Special Tax prepayment is equal to the sum of the amounts computed pursuant to Steps 4, 6, 7, 10, and 11, less the amount computed pursuant to Step 12 (the *"**Prepayment Amount**"*).

Step 14. From the Prepayment Amount, the amounts computed pursuant to Steps 4, 7, and 10 shall be deposited into the appropriate fund as established under the Indenture and be used to retire Outstanding Bonds or make debt service payments. The amount computed pursuant to Step 6 shall be deposited into the Improvement Fund. The amount computed pursuant to Step 11 shall be retained in the account or fund that is established to pay Administrative Expenses.

Once a partial prepayment of a Facilities Special Tax has been received, an Amendment to Special Tax Lien shall be recorded against the Parcel to reflect the reduced Facilities Special Tax lien for the Parcel, which shall be equal to the portion of the Maximum Facilities Special Tax that was not prepaid. However, an Amendment to Special Tax Lien shall not be recorded until all Facilities Special Taxes levied on the Parcel in the current or prior Fiscal Years have been collected. The prepayment of a portion of the Facilities Special Tax shall not affect the perpetual obligation to pay the Services Special Tax.

Notwithstanding the foregoing, if at any point in time the Administrator determines that the Maximum Facilities Special Tax revenue that could be collected from Taxable Property that remains subject to the Facilities Special Tax after the proposed prepayment would be less than the Required Coverage on Bonds that will remain outstanding after defeasance or redemption of Bonds from proceeds of the estimated prepayment, the amount of the prepayment shall be increased until the amount of Bonds defeased or redeemed is sufficient to reduce remaining annual debt service to a point at which Required Coverage is maintained.

I. INTERPRETATION OF SPECIAL TAX FORMULA

The City may interpret, clarify, and revise this RMA to correct any inconsistency, vagueness, or ambiguity, by resolution and/or ordinance, that does not create a material adverse effect on the levy and collection of the Special Taxes and any security for any Bonds.

ATTACHMENT 1

Improvement Area No. 3 of the
City of Tracy
Community Facilities District No. 2016-1
(Tracy Hills)

Expected Land Uses and Expected Maximum Facilities Special Tax Revenues

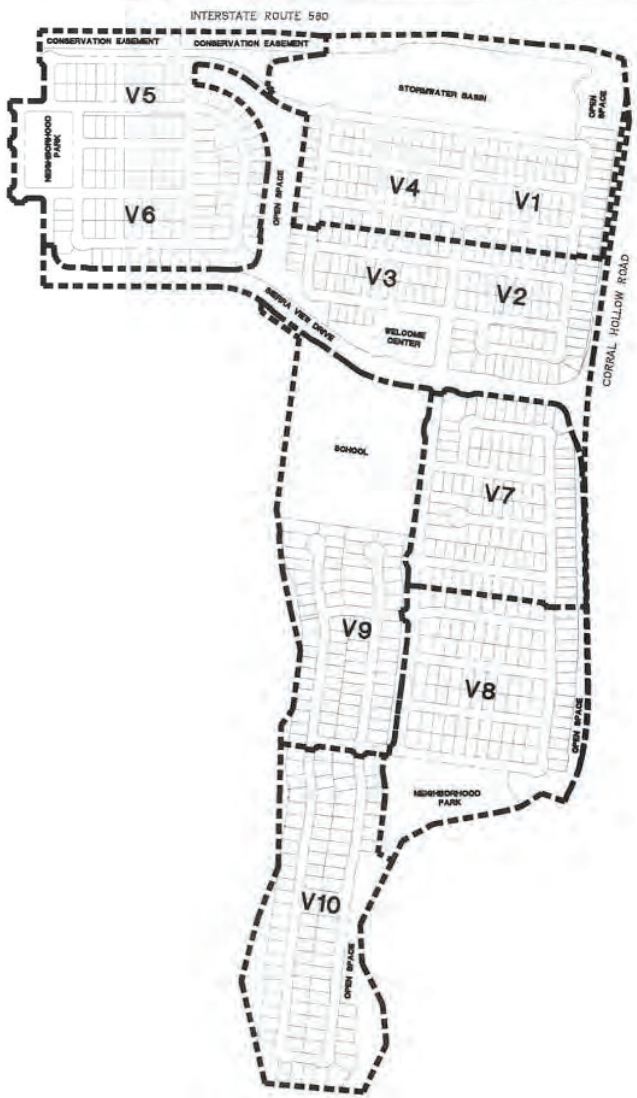
Village	Expected Land Uses	Maximum Facilities Special Tax per Unit FY 2024-25 /1	Expected Maximum Facilities Special Tax Revenues FY 2024-25 /1
Village 1 & 4	139 Residential Units	$4,398 per Residential Unit	$611,322
Village 2 & 3	115 Residential Units	$4,649 per Residential Unit	$534,635
Village 5 & 6	131 Residential Units	$5,124 per Residential Unit	$671,244
Village 7	97 Residential Units	$5,295 per Residential Unit	$513,615
Village 8	89 Residential Units	$5,277 per Residential Unit	$469,653
Village 9	69 Residential Units	$5,658 per Residential Unit	$390,402
Village 10	86 Residential Units	$6,149 per Residential Unit	$528,814
Total	726 Residential Units	N/A	$3,719,685

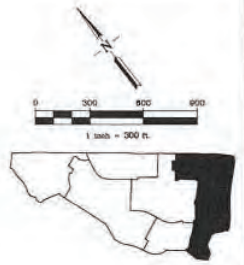
1. On July 1, 2025 and each July 1 thereafter, the Maximum Facilities Special Tax per Residential Unit and the Expected Maximum Facilities Special Tax Revenues shall be increased by two percent (2%) of the amount in effect in the prior Fiscal Year.

ATTACHMENT 2

Improvement Area No. 3 of the
City of Tracy
Community Facilities District No. 2016-1
(Tracy Hills)

Expected Lot Layout





ATTACHMENT 2

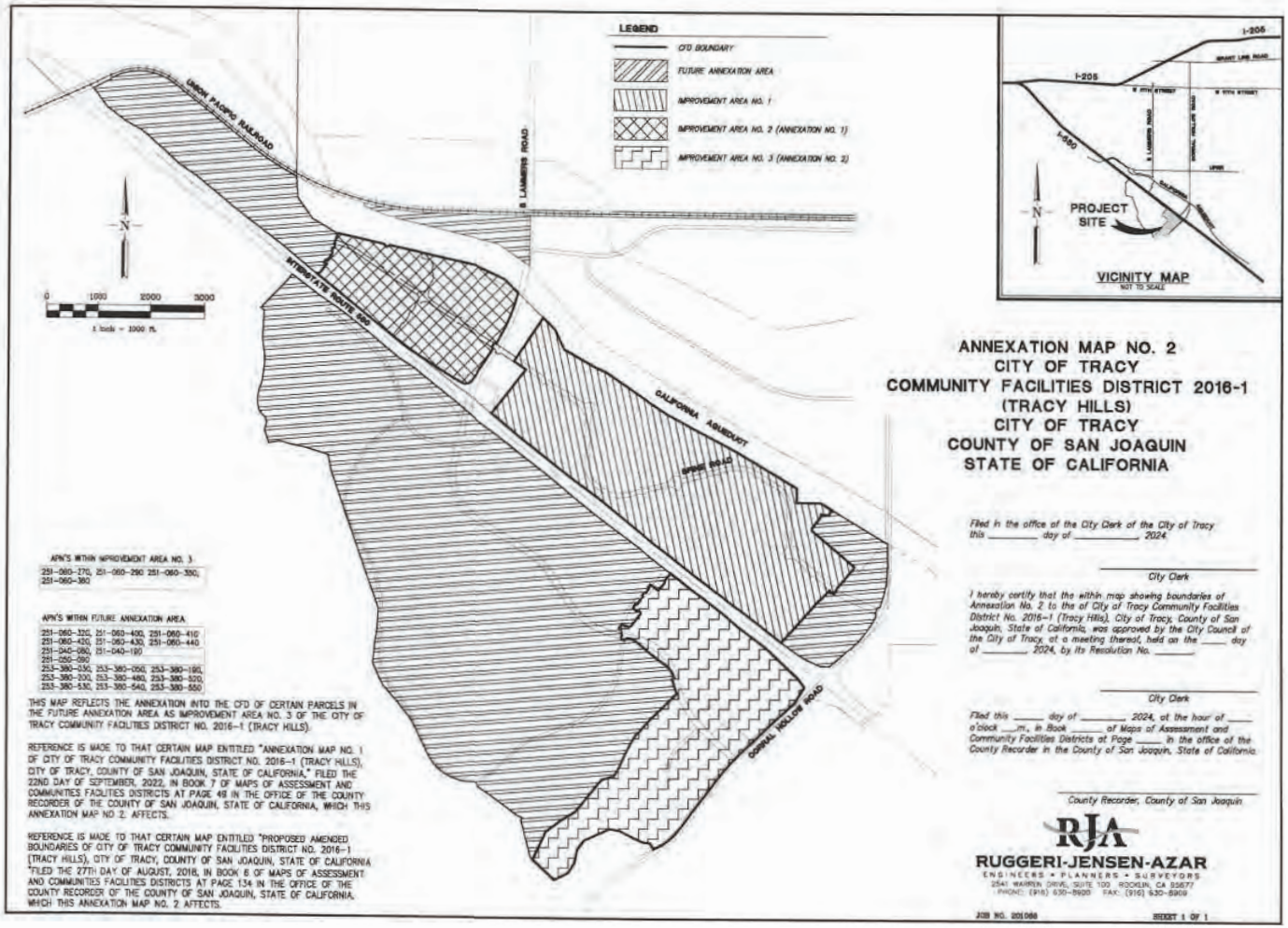
TRACY HILLS 2A EXPECTED LAYOUT IN
IMPROVEMENT AREA NO. 3 OF THE TRACY HILLS CFD 2016-1

CITY OF TRACY, SAN JOAQUIN COUNTY, CALIFORNIA
FOR: INTEGRAL COMMUNITIES

RJA
RUGGERI-JENSEN-AZAR
ENGINEERS • PLANNERS • SURVEYORS
4690 CHABOT DRIVE, SUITE 200 PLEASANTON, CA 94588
PHONE: (925) 227-9100 FAX: (925) 227-9300

DATE: SEPTEMBER 06, 2023 JOB NO. 201058 SHEET 1 OF 1

G:\JOBS\201058\DRAWINGS\EXHIBITS\PHASE 2A VILLAGE 1 IA EXHIBIT.DWG 9/6/2023 8:33:33 AM ALBERT CANABAL



APN'S WITHIN IMPROVEMENT AREA NO. 3

251-060-170, 251-060-290 251-060-330, 251-060-380

APN'S WITHIN FUTURE ANNEXATION AREA

251-060-320, 251-060-400, 251-060-410, 251-060-420, 251-060-430, 251-060-440, 251-040-080, 251-040-120, 251-050-090, 253-380-030, 253-380-050, 253-380-180, 253-380-200, 253-380-480, 253-380-520, 253-380-530, 253-380-540, 253-380-550

THIS MAP REFLECTS THE ANNEXATION INTO THE CFD OF CERTAIN PARCELS IN THE FUTURE ANNEXATION AREA AS IMPROVEMENT AREA NO. 3 OF THE CITY OF TRACY COMMUNITY FACILITIES DISTRICT NO. 2016-1 (TRACY HILLS).

REFERENCE IS MADE TO THAT CERTAIN MAP ENTITLED "ANNEXATION MAP NO. 1 OF CITY OF TRACY COMMUNITY FACILITIES DISTRICT NO. 2016-1 (TRACY HILLS), CITY OF TRACY, COUNTY OF SAN JOAQUIN, STATE OF CALIFORNIA," FILED THE 22ND DAY OF SEPTEMBER, 2022, IN BOOK 7 OF MAPS OF ASSESSMENT AND COMMUNITIES FACILITIES DISTRICTS AT PAGE 48 IN THE OFFICE OF THE COUNTY RECORDER OF THE COUNTY OF SAN JOAQUIN, STATE OF CALIFORNIA, WHICH THIS ANNEXATION MAP NO 2. AFFECTS.

REFERENCE IS MADE TO THAT CERTAIN MAP ENTITLED "PROPOSED AMENDED BOUNDARIES OF CITY OF TRACY COMMUNITY FACILITIES DISTRICT NO. 2016-1 (TRACY HILLS), CITY OF TRACY, COUNTY OF SAN JOAQUIN, STATE OF CALIFORNIA "FILED THE 27TH DAY OF AUGUST, 2018, IN BOOK 6 OF MAPS OF ASSESSMENT AND COMMUNITIES FACILITIES DISTRICTS AT PAGE 134 IN THE OFFICE OF THE COUNTY RECORDER OF THE COUNTY OF SAN JOAQUIN, STATE OF CALIFORNIA, WHICH THIS ANNEXATION MAP NO. 2 AFFECTS.

ANNEXATION MAP NO. 2
CITY OF TRACY
COMMUNITY FACILITIES DISTRICT 2016-1
(TRACY HILLS)
CITY OF TRACY
COUNTY OF SAN JOAQUIN
STATE OF CALIFORNIA

Filed in the office of the City Clerk of the City of Tracy this _____ day of _____, 2024.

City Clerk

I hereby certify that the within map showing boundaries of Annexation No. 2 to the of City of Tracy Community Facilities District No. 2016-1 (Tracy Hills), City of Tracy, County of San Joaquin, State of California, was approved by the City Council of the City of Tracy, at a meeting thereof, held on the ____ day of _____ 2024, by its Resolution No. _____

City Clerk

Filed this ____ day of _____ 2024, at the hour of ____ o'clock ___m., in Book _____ of Maps of Assessment and Community Facilities Districts at Page _____ in the office of the County Recorder in the County of San Joaquin, State of California.

County Recorder, County of San Joaquin

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JOB NO. 201088 SHEET 1 OF 1

Exhibit 2

October 15, 2024

Agenda Item 3.B

RECOMMENDATION

Staff recommends that the City Council receive an informational report on the fiscal health of the City of Tracy Consolidated Landscape Maintenance District.

EXECUTIVE SUMMARY

On June 18, 2024, by Resolution 2024-105, the City Council ordered the levy and collection of assessments for the Tracy Consolidated Landscape Maintenance District (LMD) for Fiscal Year (FY) 2024/2025. At the request of Council at that same meeting, staff informed the Council they would return in Fall 2024 with an informational report regarding the LMD and the maintenance of the forty-one (41) zones within the LMD.

In an effort to educate the public and Council on this pressing issue, staff is bringing back this informational item to help stakeholders understand the existing funding shortfalls. Depending on the will and direction of the Council, further analysis will be required to understand the resource impacts and the various funding strategies required per zone to close funding shortfalls. With Council direction, staff will perform the necessary research and return at a later date with funding options.

BACKGROUND AND LEGISLATIVE HISTORY

A Landscape Maintenance District (LMD) is a funding mechanism established by local governments. The purpose of LMD's is to provide benefit to property owners in a defined geographic area, via the opportunity to pay for maintenance of certain public landscaping improvements through property assessments. The maintenance services provided in the zones are funded through annual assessments levied upon properties within each zone and collected with property taxes. The assessments from each zone are then utilized to provide maintenance to landscape infrastructure within their zone.

The Tracy LMD has financially struggled for several years. The primary reason for this struggle is that the 41 Zones, when originally formed, did not account for collecting the necessary reserves for capital repair and replacement projects for park infrastructure and landscape. The undercapitalization of the zones is exacerbated by the cost escalation on goods and services over time, which is then compounded by inflation. Stated plainly, there is not enough money to repair, replace, replant, or re-seed the undercapitalized zones. As a result, staff must balance using available funds for necessary maintenance costs while attempting to retain some nominal funding for future capital expenses.

The City collects annual assessments per zone and the rates vary based on the level of benefit the zone receives from the public improvements in the defied boundary. The service levels are directly correlated to available zone funding. Over the years, the City has created a tiered system of service levels that helps simplify maintenance standards in Zones with varying levels of funding as a strategy to mitigate the insufficient funding. The current system of service levels being utilized are as follows:

- Level A: Weekly maintenance of parks and streetscapes, with tree trimming every five (5) years.
- Level B: Bi-weekly (every other week) maintenance of parks and streetscapes, with tree trimming every seven (7) to eight (8) years.
- Level C: Monthly maintenance of parks and streetscapes, with tree trimming every nine (9) to ten (10) years.

The benefit of having an LMD special assessment district is that the funding is dedicated for the maintenance and operation of the public improvements in the zone. This benefit is diminished if the zone lacks the funding to provide Level A service.

ANALYSIS

On October 4, 2022, by Resolution 2022-150, the City Council adopted the Citywide Parks, Recreation and Trails Master Plan Update (PRTMP). Within the PRTMP, a number of overarching goals were established based on significant public outreach and analysis. The community expressed a strong desire for parks to be well-maintained (Goal 2 PRTMP) and nearly 4 out of 5 residents prioritized the maintenance and improvement of existing parks over building new parks. The PRTMP also identified operational guidelines pertaining to maintenance and staffing. The operational maintenance guidelines indicate the optimal level of funding needed per park acre. In today's dollars, annual funding ranges from approximately $20,000 – $27,000 for mini parks and $17,000 – $23,000 for neighborhood parks. The staffing guidelines indicate the appropriate number of labor hours per park acre ranges from 350 – 400 for mini parks and 250 – 300 for neighborhood parks.

Utilizing the above PRTMP guidelines, to maintain solely the 48 parks within the LMD at a Service Level A, a maintenance budget of $1.25 - $1.69 million is required. In addition, approximately 24,000 labor hours are needed, which is the equivalent of 12 full-time employees (FTE). Applying the standards identified in the PRTMP, the current LMD budget is not sufficient as resources have to be stretched to also account for the maintenance of streetscapes and channelways (approximately 170 acres), as well as the 48 parks. In addition, resources for capital investment and lifecycle replacement need to be accounted for to fully understand the total cost of ownership.

The LMD is at a crossroads where 66% of the Zones are at their maximum assessment and the majority of those Zones are unable to cover cost of maintenance or the appropriate accumulation for capital reserves. Rising maintenance costs coupled with the need to plan for capital expenses, have placed a number of Zones in a serious financial predicament. The trajectory is that expenses will continue to outpace assessments. In addition, many assets within Zones have, or in the near term, will reach their useful life requiring significant financial investment. The impacts of the funding shortfall will vary Zone to Zone and may result in reduced service levels, inability to have assets replaced and refreshed, an expedited depletion of Zone reserves, Zone's incurring a deficit, or greater reliance on an approved funding source.

As a full-service municipality, the City has a wide array of needs with limited resources. Moreover, the LMD has unique challenges due to restrictions imposed by legislative statutes. The Council may wish to have staff return with information on how to improve or increase the assessments for the LMD's.

FISCAL IMPACT

Fiscal impacts may vary based on City Council direction at a future meeting.

PUBLIC OUTREACH / INTEREST

Staff has developed an LMD landing page on the City's website (https://www.cityoftracy.org/our-city/departments/parks-recreation-department/parks-and-facilities/landscape-maintenance-district-lmd) to provide stakeholders with valuable information pertaining to their Zone. Also, an LMD brochure has been created along with business cards with a QR code that links to the City's LMD webpage.

COORDINATION

This report was prepared by the Parks, Recreation, and Community Services Department in coordination with Public Works (Urban Forestry) and Finance Department.

CEQA DETERMINATION

This item is exempt from review under the California Environmental Quality Act (California Public Resources Code §§ 21000, et seq., "CEQA") and CEQA regulations (14 California Code of Regulations §§ 15000, et seq.; "CEQA Guidelines") in that it is not a "project" for purposes of CEQA (as defined by CEQA Guidelines §15378). Specifically, this item proposes an organizational or administrative activity that will not result in a direct or indirect physical change in the environment (CEQA Guidelines §§15378(b)(5)). Further, even if this item was deemed a "project," and therefore subject to CEQA, the item would be exempt as it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment (CEQA Guidelines §15061(b)(3)).

STRATEGIC PLAN

This agenda item is consistent with the City Council's adopted Quality of Life strategies.

ACTION REQUESTED OF THE CITY COUNCIL

Staff recommends that the City Council receive an informational report on the fiscal health of the City of Tracy Consolidated Landscape Maintenance District.

Prepared by: Nilo Velazquez, Management Analyst II

Reviewed by: Richard Joaquin, Acting Assistant Director of Parks, Recreation & Community Services
Brian MacDonald, Director of Parks, Recreation & Community Services
Sara Castro, Director of Finance
Arturo Sanchez, Assistant City Manager
Bijal Patel, City Attorney

Approved by: Midori Lichtwardt, City Manager

ATTACHMENTS:

Attachment A: Powerpoint Presentation

ATTACHMENT A

LMD
Informational Item

October 15, 2024

LMD Overview

- 1 District with 41 Zones
  - 17,000+ parcels
- Parks, greenbelts, and streetscapes
  - 48 Parks
  - 220+ acres of landscaping
  - 28,000+ trees
- 27 of the 41 Zones (66%) have reached their maximum assessment rate



Service Levels

- Level A:
  - Weekly maintenance of parks and streetscapes
  - Tree trimming every 5-years.
- Level B:
  - Bi-weekly (every other week) maintenance of parks and streetscapes
  - Tree trimming every 7-8 years.
- Level C:
  - Monthly maintenance of parks and streetscapes
  - Tree trimming every 9-10 years.

TRACY

Think Inside the Triangle™



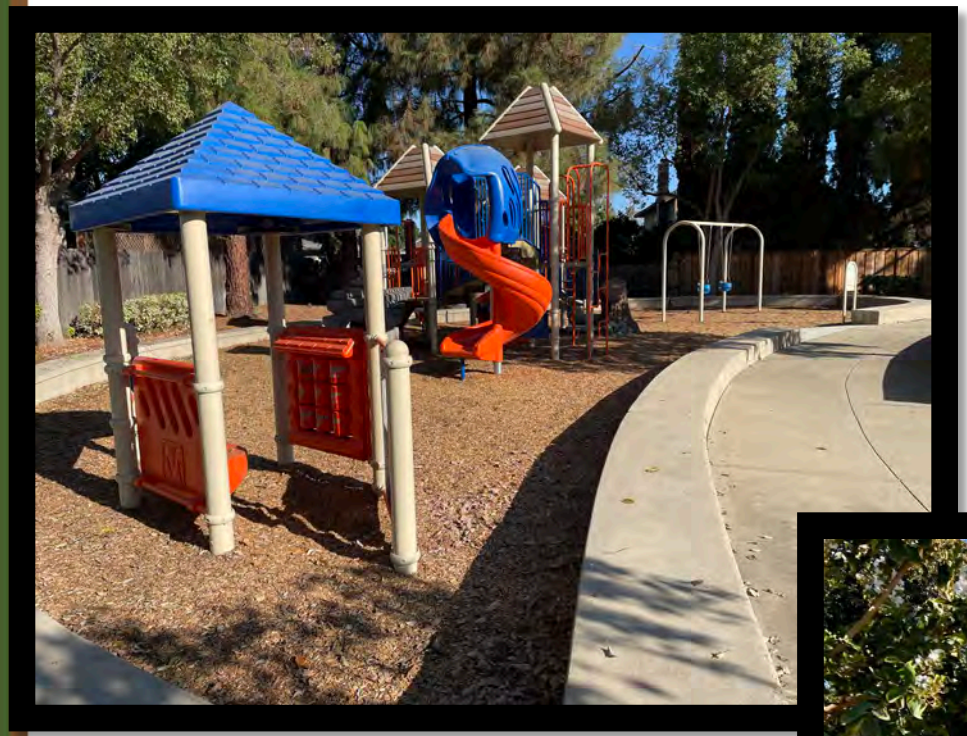
Funded Zones

- Service Level A
- Enhanced landscaping
- Assets repaired / replaced
- Preventative maintenance
- Reserve balance

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Funded – Amenities / Streetscape





Funded - Turf

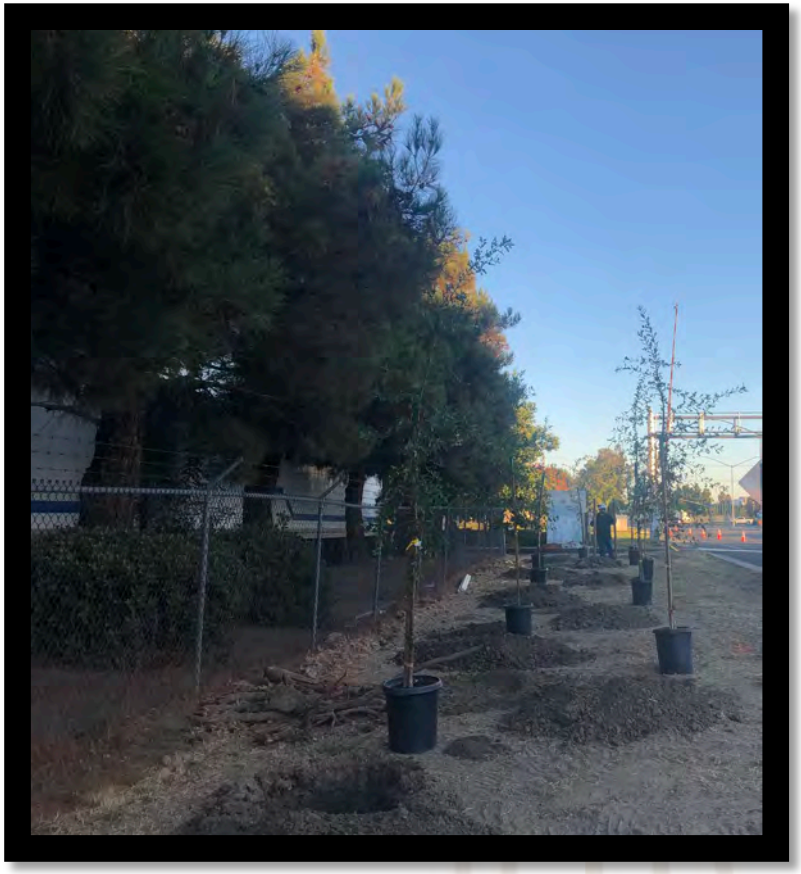




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Funded - Trees





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Underfunded Impacts

- Reduced service levels
- Assests removed if deemed unsafe
- Utilization of reserves
- Limited repairs / replacements of assets
- Incurring a deficit
- Dependent on other funding sources

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Think Inside the Triangle™

Underfunded – Streetscape / Turf



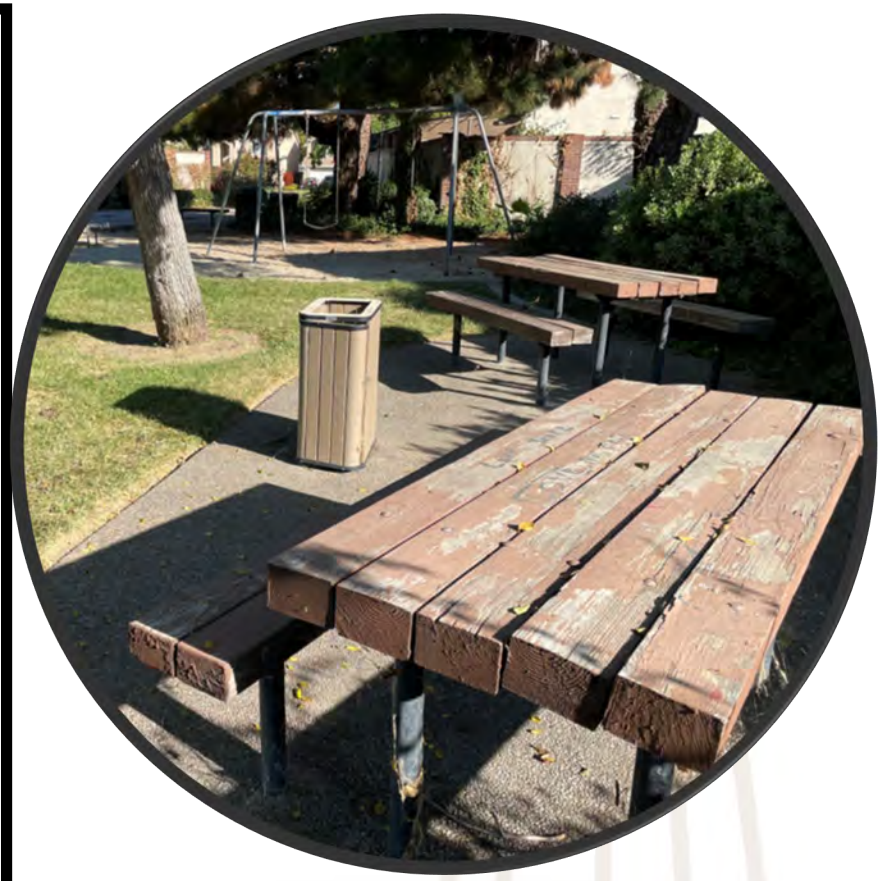


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Underfunded – Amenities





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Underfunded – Trees



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Think Inside the Triangle™

Next Steps

- Identify potential strategies to overcome funding shortfalls.

- Present strategies at a future meeting

Questions

October 15, 2024

Agenda Item 3.C

RECOMMENDATION

Staff recommends that the City Council receive an informational report on the findings and recommendations of the City of Tracy Communication Strategy study conducted through the Bloomberg Harvard City Leadership Initiative.

EXECUTIVE SUMMARY

This agenda item requests the City Council to receive an informational report on the recently completed City of Tracy Communication Strategy study. The study, conducted by Jordan Weatherl, a Bloomberg Harvard City Leadership Initiative Summer Fellow, assessed current internal and external communication practices and provides recommendations to enhance the City's communication efforts.

BACKGROUND AND LEGISLATIVE HISTORY

In 2021, the City Council adopted a short-term strategic priority plan which included revamping the City's communication strategy to improve community outreach and leverage new technological solutions. On August 15, 2023, City Council adopted the 2023-2025 Strategic Priorities. These include Governance – Goal 1) model good governance, teamwork, and transparency; Goal 3) Enhance Community outreach and engagement to all Tracy residents; Goal 4) Foster a culture of innovation and efficiency to improve service delivery to the public. To address these priorities, the City participated in the Bloomberg Harvard City Leadership Initiative, which provided a summer fellow to conduct a comprehensive study of the City's communication practices and develop recommendations for improvement.

ANALYSIS

The Bloomberg Harvard City Leadership Initiative Summer Fellowship program aims to inspire and prepare graduate students for careers in local government through immersive, paid summer experiences. Fellows are embedded in city governments, where they contribute to key projects that address pressing challenges, utilizing skills in data-driven decision-making and cross-sector collaboration to enhance government performance and service delivery.

The Fellowship program started on June 3 and concluded on August 8. During this time the Fellow met with a large number of stakeholders in a format of one-on-one meetings to explore the Research Questions (RQ’s).

The study identified several key findings and recommendations for both internal and external communications:

Internal Communications Findings:

Internal communication significantly impacts overall culture, morale, and effectiveness.

There is a wide variance in communication mediums, mostly informal.
Structure of organization has created different views on how feedback is given and received.
Cultural challenges include misinformation.
Council Members highlighted helpful tactics and priorities for communication.

External Communications Findings:

Most information is shared via social media, with less engagement than desired.
Most citizen interactions focus on redressing issues or requesting specific information. Key stakeholders have specific collaboration preferences, but broader community data is sparse.

Recommendations:
Internal Communication Solutions:

A. Short-term: Implement monthly City Manager newsletters.
B. Medium-term: Develop and deploy internal pulse surveys.
C. Long-term: Create shared expectations and practices for consistent communication.

External Communication Solutions:

A. Short-term: Conduct regularly occurring issue-based town halls.
B. Medium-term: Launch a success-focused communication campaign.
C. Long-term: Revamp the City website for improved transparency and accessibility.
D. Long-term: Develop and deploy a community engagement survey.

These recommendations aim to improve trust, responsiveness, transparency, and civic engagement, ultimately enhancing City Hall's communications and residents' quality of life.

FISCAL IMPACT

Most proposed solutions have relatively low direct costs. Some solutions, such as pulse surveys and social media management systems, may require minimal expenditures (less than $500 annually). The website revamp is likely to be the costliest intervention, depending on outside vendors and additional staff hours. Specific cost estimates will be developed for each recommendation as they are considered for implementation.

PUBLIC OUTREACH/ INTEREST

The study involved interviews with over 70 participants, including City staff across all departments and levels of authority, as well as external stakeholders from nonprofits, foundations, county services, associations, civic organizations, education, and businesses. The recommendations include increased public engagement through town halls and community surveys.

CEQA DETERMINATION

Not applicable

STRATEGIC PLAN

This communication strategy study directly addresses the City Council's 2021 strategic priority to revamp the City's communication strategy, improve community outreach, and leverage new technological solutions.

ACTION REQUESTED OF THE CITY COUNCIL

Staff recommends that the City Council receive this informational report on the City of Tracy Communication Strategy study and provide direction on which recommendations to prioritize for implementation.

Prepared by: Jordan Weatherl, Bloomberg City Leadership Harvard Fellow
Norbert Ruijling, Chief Innovation Officer

Reviewed by: Sara Castro, Director of Finance

Bijal Patel, City Attorney
Arturo Sanchez, Assistant City Manager

Approved by: Midori Lichtwardt, City Manager

Attachments:

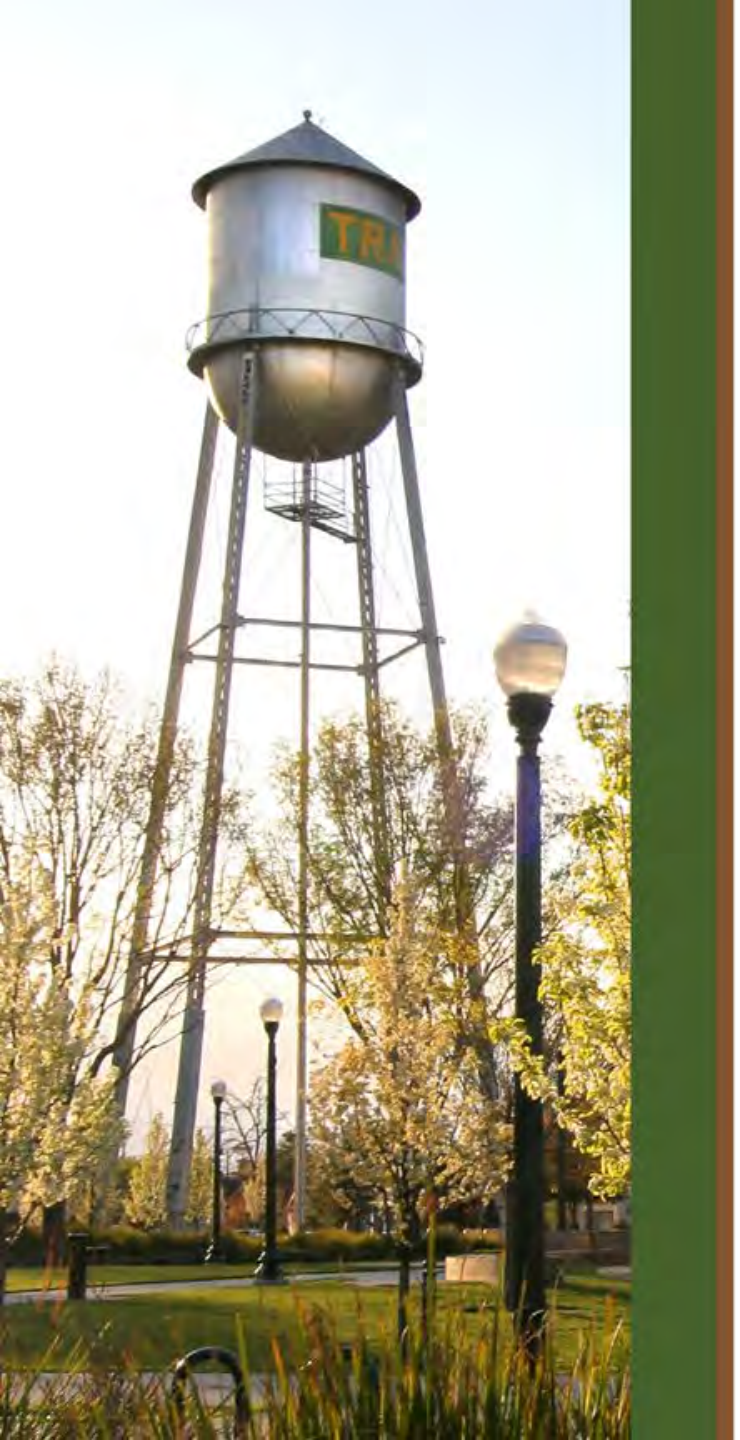
Attachment A: Powerpoint Presentation

ATTACHMENT A

Communication Strategy Study

Bloomberg Harvard City Leadership Initiative
Jordan Weatherl, Ed.M.

October 15th, 2024



Context and Opportunity:

- 2021 City Council Strategic Priority Plan included revamping the *City's communication strategy*.
  - Seeking to improve community outreach and leverage new technological solutions.
- To address this previous priority and the 2023-2025 Strategic Priorities, the City participated in the *Bloomberg Harvard City Leadership Initiative*.
  - The program provided a summer fellow to conduct a study of the City's communication practices and make recommendations for improvements.



Guiding Questions:

- What information does the City share with residents and what mediums seem most effective? *(RQ1)*
- What information do citizens share with the City and how do residents work with the City? *(RQ2)*
- Who is under-engaged and why? What can the City do to better engage with citizens and vice versa? *(RQ3)*
- What information do City Staff and City Council want, and how do they communicate with each other? *(RQ4)*
- What are the best steps to improve inclusivity, transparency, and effectiveness in the City's internal and external communication? *(RQ5)*



Analysis and Methods:

- **70 participants** were interviewed inside and outside of City Hall. Interview questions were developed then deployed in a *mixture of individual and focus groups*.
- Participants inside of City Hall were a part of *each department* and ranged across *levels of authority*.
- **Key stakeholders** outside of the City were part of nonprofits, foundations, county services, associations, civic organizations, education and businesses.
- Any identifying data has been *anonymized*.
- **Additional research** was conducted to quantify key audiences, platforms and practices by the City.



Internal Recommendations:

A. **Monthly City Manager Newsletters** would help by giving high level overviews of city business, highlights from department heads, available roles and summaries of City Council meetings to *support consistent, timely and critical updates to all staff.*

B. **Quarterly internal pulse surveys** that are reviewed and summarized by executive leadership then sent to all staff in order to *formalize feedback systems while increasing trust and transparency.*

C. **Creating shared expectations and practices** for normed communications to *improve consistent and efficient cross-team communication.*



External Recommendations:

A. **Regularly occurring issue-based town halls** with relevant City leadership to *improve community outreach and communication on critical projects or unique challenges.*

B. **Success focused communications campaign** that highlights how City services benefit residents to *foster positive public perception and proactively inform residents.*

C. **Website revamp** to prioritize access to common services, highlight initiatives through dashboards, deploy multi-lingual AI chatbot to *improve functionality, transparency and use.*

D. **Deploy a community engagement survey** to capture an equitable snapshot of community desires and inform City Hall's strategic operations.

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Considerations:

- **Alignment:** These solutions may address the unique challenges facing the city, but will only be effective if *City Staff and City Council are in unison with implementation.*
- **Direct Cost:** The *proposed solutions are comparatively low-cost* (pulse survey, newsletters, external town halls), but the communication campaign and website redesign may incur higher costs based on *scope and scale.*
- **Onramps for civics:** with 50% of residents being commuters, *time and interest* will be significant barriers to address with implementation of external solutions.
- **Continued questions:** There remain vital questions about what residents know about the City, how to best engage with distinct communities, and how to address long-term equity challenges. Continued work is necessary.

Questions?

TRACY

Think Inside the Triangle™

October 15, 2024

Agenda Item 3.D

RECOMMENDATION

Staff recommends that the City Council receive information and provide direction on adding a bus route within the Tracy Hills' subdivision to accommodate the bell schedule for the Corral Hollow Elementary School.

EXECUTIVE SUMMARY

The Jefferson School District (Jefferson) opened Corral Hollow Elementary School in the Tracy Hills subdivision in August 2024. Jefferson School District only provides bussing service to their schools outside of Tracy Hills and does not provide bussing service within Tracy Hills itself. Residents of some areas in Tracy Hills have expressed desire to have bus service provided due to the long distance they live from the school. While Jefferson is working on a solution, it will depend on their ability to hire and fund additional staff to provide the service. The City of Tracy's TRACER bus service could potentially provide a service to meet the needs in that area, however, there are limitations as to the type of service that can be provided. On September 3, 2024, Mayor Pro Tem Davis, seconded by Council Member Evans, requested that a discussion item return to the City Council by October 15, 2024, on the use of the City's TRACER busses for students in the Tracy Hills subdivision. Staff is requesting that the City Council receive an informational item and provide further direction to staff.

BACKGROUND AND LEGISLATIVE HISTORY

Jefferson, which serves areas of Tracy south of Valpico Road for K-8 students, opened Corral Hollow Elementary School in August 2024. Jefferson has designated Corral Hollow Elementary School as a non-transportation school and does not provide transportation for students attending that school, with a few exceptions for students who live in designated non-walkable areas. California does not have a law that requires schools to provide transportation for general education students, regardless of how far they live from the school. Schools are, however, federally mandated to provide school bus service to certain groups of students, such as those who have a disability. Jefferson does provide transportation to students who go to a school that is outside of their designated school boundary.

The City of Tracy currently provides public transit service, known as TRACER, to the community and is funded by both Federal and State funding. Federally funded public transit systems are prohibited from providing school bus service exclusively for students. TRACER does provide, however, what is termed a tripper service. This service is open to the general public, is designed to meet the needs of the school students and stops at bus stops that are designated in published schedules. These routes are designated as Commuter Routes and generally align primarily with the boundaries of the local high schools and to a lesser extent, some of the middle schools. There is currently one commuter route that runs through Tracy Hills (Route H), but its schedule does not coincide with the Corral Hollow Elementary School bell times as the route is designed to meet the bell times of Kimball High School.

ANALYSIS

City staff spoke with Jefferson staff regarding potential transportation options for Corral Hollow Elementary School. While Jefferson staff have looked into providing additional bus service for

those who live further into the Tracy Hills subdivision, they are currently not in position to start that service due to resource availability. Jefferson is currently short bus drivers to be able to start an additional route. Depending on the license status of an applicant, it could take anywhere from one to three months to bring a driver fully on to drive a route. Jefferson has indicated that depending on the number of students who wish to use the bus, more than one bus may be required to provide the service. If that were the case, an additional bus would need to be purchased, and well as an additional driver hired, which would take time and additional funding to accomplish.

Another consideration would be the timing of occupancy of Phase 2 of Tracy Hills. According to Jefferson, until a school site is built in that area, students in that phase of the development would become a priority for transportation.

The TRACER could run an additional route that coincides with the Corral Hollow Elementary School bell times as there are existing bus stops within Tracy Hills. This route, however, could not be designated as a “school only” or “students only” route and would have to be open to the general public. Additionally, the TRACER fixed route buses have a smaller capacity than a typical large school bus. The largest TRACER buses only have 31 seats plus standing capacity, something that is not allowed on a school bus.

In order to provide an additional TRACER route in that area and at the peak periods of the day, it would require, at minimum, an additional driver and bus to be assigned in that area in addition to providing the information in a published schedule. TRACER drivers operate their schedule based on shift bids. Adding another route would either have to coincide with the next shift bid (which is scheduled to take effect in January 2025) or staff would need to analyze whether the additional service could be covered with a standby driver.

TRACER currently offers free rides for student grades K-12 though a grant received from the Caltrans Low Carbon Transit Operations Program (LCTOP).

On September 3, 2024, Mayor Pro Tem Davis, seconded by Council Member Evans, requested an analysis regarding Tracy Hills’ residents request for help from the City in transporting students in the Tracy Hills subdivision bus to school, and whether regulations related to TRACER operations would allow the City to offer interim assistance until the School District can get their transportation systems in place. The estimated cost of adding a bus route to accommodate the Corral Hollow Elementary School bell schedule is $552.20 per week (as described in more detail below), or approximately $12,248 for six months. As noted above, K-12 students currently ride free on TRACER routes under an existing grant. If the City Council directs to add an interim route as described, then students would ride free under that grant program until grant funds have been exhausted, however, fees are in place for non-students using any TRACER route. Staff is requesting that the City Council discuss this informational item and provide further direction to staff. As noted above, if the City Council directs staff to implement the interim route, then staff will need to implement various actions before the route will be operational, which likely would be no earlier than January 2025.

FISCAL IMPACT

The City of Tracy currently contracts the operations of the TRACER service with MTM Transit, Inc. The current contract has a revenue vehicle hourly rate of $55.22. An additional route would require a minimum of two hours per day (one for an AM route and one for a PM route), for a

total of 10 hours per week. This would cost an additional $552.20 per week to run an additional bus. Assuming a service could be started in January 2025, it would cost an additional $12,248 to operate for the remainder of FY24/25. There is sufficient funding within the existing contract to cover this potential increase. There would be no farebox recovery for this route as most of the riders would be students who would ride for free.

STRATEGIC PLAN

This agenda item supports the Council's Economic Development Strategic Priority 2.C. – Promote TRACER Bus Services to increase awareness and ridership.

CEQA DETERMINATION

This item is exempt from review under the California Environmental Quality Act because this item proposes an organizational or administrative activity that will not result in a direct or indirect physical change in the environment and is therefore not a "project." (CEQA Guidelines §§15378(b)(5)).

ACTION REQUESTED OF THE CITY COUNCIL

Staff recommends that the City Council receive information and provide direction on adding a bus route within the Tracy Hills' subdivision to accommodate the bell schedule for the Corral Hollow Elementary School.

Prepared by: Ed Lovell, Transit Manager

Reviewed by: David Murphy, Assistant Director of Public Works
Sara Castro, Finance Director
Karin Schnaider, Assistant City Manager
Bijal Patel, City Attorney

Approved by: Midori Lichtwardt, City Manager

October 15, 2024

Agenda Item 3.E

RECOMMENDATION

Adopt one of two Resolutions replacing the *City Council Policy on Filling City Council Vacancies* with a new policy that requires all vacancies, regardless of when occurring during a term, to be appointed based on the next highest vote-getter at either (A) the last most recent General Municipal Election, or, alternatively, (B) the General Municipal Election through which the vacant seat was originally filled.

EXECUTIVE SUMMARY

On October 1, 2024, Council Member Evans moved, with a second from Council Member Arriola, that the City Attorney and the City Manager return to the City Council with a proposed revision to the *City Council Policy on Filling City Council Vacancies* (Policy C-10), adopted pursuant to Resolution No. 2019-250 on December 17, 2019. Specifically, the motion makers directed the City Attorney to return with an amendment to Policy C-10 that would require all vacancies on the City Council, regardless of when any such vacancies occur during a term, be filled by the next highest vote-getter in an election. Currently, Policy C-10 election results are used to fill only vacancies occurring within 365 days of the start of a term. Vacancies occurring after that period are filled through a Council-led appointment process. The motion also included the direction to bring back two alternatives related to which election results are used to fill the vacancies: the last most recent election results, or alternatively, the results of the election in which the seat was originally filled.

BACKGROUND AND LEGISLATIVE HISTORY

On December 17, 2019, the City Council, in response to the 2019 San Joaquin Grand Jury Report (Case No. 0418) recommendations, amended the Council's then existing policy that had been adopted in 2017 via Resolution No. 2017-001. Under the 2017 policy, vacancies on the City Council were filled through a Council-led appointment process. The Grand Jury recommend that an amendment to the policy be adopted so as to create a policy that adhered to the "will of the voters" and did not foster "loyalty, allegiance, and personal obligation" to Council Members making the appointment. While the initial draft amendment presented to the City Council reflected the stated recommendation of the Grand Jury, the final version adopted by the City Council pursuant to Resolution No. 2019-250 (Attachment A) amended the policy to implement the Grand Jury's recommendation only for vacancies occurring within the first 365 days of a term (Policy C-10).

On October 1, 2024, Council Member Evans raised a concern with the adopted policy as it did not fill all vacancies automatically by appointing the "next highest vote-getter" from the previous election. Council Member Evans, with a second from Council Member Arriola, moved to have the City Attorney and the City Manager return with an amendment that required all vacancies to be filled by election results rather than a Council-led appointment process.

ANALYSIS

A. Current Policy

The process for filling City Council vacancies (other than for an elective Mayor) is set forth in Government Code section 36512(b), which provides that if a vacancy occurs, then the City Council, within
60 days from the commencement of the vacancy, must either fill the vacancy by appointment or call a
special election to fill the vacancy. The State law does not prescribe any procedure for selection of appointees. As noted above, the City Council has opted to fill vacancies on the City Council through an appointment process rather than a special election.

The current policy (Policy C-10) creates two distinct processes for filling vacant Council Member positions. Based on a motion to amend that was made on the floor at the December 17, 2019, City Council meeting (at which time Policy C-10 was adopted), vacancies occurring after 365 days of the vacant position's term are filled by a Council appointment process involving candidate nominations, interviews and a final selection. This was the process that the 2019 Grand Jury had found to be deficient as it reflected the will of the Council body only rather than that of voters. A step-by-step outline of this process is set forth in Section B of the current policy.

The other process, contained in Section A, was adopted in response to the Grand Jury's recommendation. This process requires Council vacancies to be filled by the next highest vote getter. However, this process applies only for vacancies occurring within 365 days of the commencement of the vacant position's term and is not express on which election applies. Given that this process applies only in the first year after a new Council seat term starts, it can be presumed that the vacancy would be based on the results of the election in which the seat originally had been filled.

The specific language set forth in Section A is as follows:

> **"A. Vacancy Occurring within the First Year (365 days or less) of the Vacant Position's Term**
>
> The City Council will appoint the next highest vote-getter to fill a vacancy on Council occurring 365 days or less from the commencement of the vacant position's term. In the event the next highest vote-getter is not interested in filling the vacancy, Council will appoint the candidate with the next highest votes, and so on and so forth until filled.
>
> The appointment to fill the vacancy shall be made by resolution of the City Council."

B. Proposed Amendments

As directed by the motion, this agenda item includes a replacement of Policy C-10 with a new policy that requires all vacancies to be filled based upon election results. The motion makers requested that two options be considered with respect to which election results are considered in determining the highest vote getter.

Attachment B reflects a draft that requires election results to be based upon the last most recent General Municipal Election, as follows:

> The City Council will appoint to fill a vacancy for a Council Member's seat with the next highest vote-getter in the last most recent General Municipal Election. In the event the next highest vote-getter is not interested, available or no longer qualified to fill the vacancy, the City Council will appoint the candidate with the next highest votes, and so on and so forth until filled.

Attachment C reflects a draft that requires election results to be based upon the General Municipal Election in which the vacant seat had been originally filled, as follows:

> The City Council will appoint to fill a vacancy for a Council Member's seat with the next highest vote-getter in the General Municipal Election in which the vacant seat had been originally filled. In the event the next highest vote-getter is not interested, available or no longer qualified to fill the vacancy, the City Council will appoint the candidate with the next highest votes, and so on and so forth until filled.

The above proposed language is intended to make clear that regardless of how and when the vacancy was created or occurs the vacancy must be filled by the next highest vote getter from the certified election results.

C. Duration of Term

Government Code section 36512(b)(2) prescribes the duration of a term for a vacant seat that is filled by a City Council appointment. If the vacancy occurs in the first half of a term of office and at least 130 days prior to the next general municipal election, the State law stipulates that the person appointed to fill the vacancy may only hold that office until the next person is elected and qualified at the next General Municipal Election. The person elected to fill the vacancy then holds the office for the unexpired balance of the term.

However, if the vacancy occurs in the first half of a term of office, but less than 130 days prior to the next General Municipal Election, or if the vacancy occurs in the second half of a term of office, the person appointed to fill the vacancy holds office for the unexpired term of the former incumbent.

Further, Government Code section 36512(b) requires that a vacancy must be filled, if by appointment, within 60 days of the commencement of the vacancy. The proposed amendment adds language to clarify compliance with above State law requirements.

FISCAL IMPACT

Costs associated with implementing this policy are included within the City Clerk's existing operating budget.

CALIFORNIA ENVIRONMENTAL QUALITY ACT

This item is exempt from review under the California Environmental Quality Act (California Public

Resources Code §§ 21000, et seq., "CEQA") and CEQA regulations (14 California Code of Regulations §§ 15000, et seq.; "CEQA Guidelines") in that it is not a "project" for purposes of CEQA (as defined by CEQA Guidelines §15378). Specifically, this item proposes an organizational or administrative activity that will not result in a direct or indirect physical change in the environment (CEQA Guidelines §§15378(b)(5)).

STRATEGIC PLAN

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

ACTION REQUESTED OF THE CITY COUNCIL

Adopt one of two Resolutions replacing the *City Council Policy on Filling City Council Vacancies* with a new policy that requires all vacancies, regardless of when occurring during a term, to be appointed based on the next highest vote-getter at either (A) the last most recent General Municipal Election, or, alternatively, (B) the General Municipal Election through which the vacant seat was originally filled**.**

Prepared by: Bijal Patel, City Attorney
Arturo M. Sanchez, Assistant City Manager

Approved by: Midori Lichtwardt, City Manager

Attachments:

A. Resolution 2019-250
B. Attachment B – New City Council Policy Re Appointments Based on Recent Election
C. Attachment C - New City Council Policy Re Appointments Based on Prior Election

RESOLUTION 2019-250

REVISING CITY COUNCIL POLICY FOR FILLING CITY COUNCIL VACANCIES AND REPEALING RESOLUTION NO. 2017-001

WHEREAS, State law provides that if a vacancy occurs in the City Council, the Council shall, within 60 days from the commencement of the vacancy, either fill the vacancy by appointment or call a special election to fill the vacancy, and

WHEREAS, State law does not prescribe any procedure for selection of appointees. Therefore, the City Council may choose any selection method it desires, and

WHEREAS, The City Council adopted a policy regarding filling City Council vacancies on January 1, 2017 via Resolution 2017-001, and

WHEREAS, The City Council wishes to amend the policy to establish two different appointment processes for Council vacancies depending on the timing of the vacancy.

NOW, THEREFORE BE IT RESOLVED, by the City Council of the City of Tracy that it hereby adopts the revised policy regarding filling City Council vacancies attached hereto as Exhibit A and repeals Resolution No. 2017-001.

* * * * * * * * * * * * * * * * * * * *

The foregoing Resolution 2019-250 was passed and adopted by the City Council of the City of Tracy on the 17th day of December, 2019, by the following vote:

AYES: COUNCIL MEMBERS: ARRIOLA, RANSOM, VARGAS, YOUNG, RICKMAN

NOES: COUNCIL MEMBERS: NONE

ABSENT: COUNCIL MEMBERS: NONE

ABSTAIN: COUNCIL MEMBERS: NONE

MAYOR

ATTEST:

CITY CLERK

CITY COUNCIL POLICY ON FILLING CITY COUNCIL VACANCIES

Adopted by Resolution No. 2019-250

I. BACKGROUND

The process for filling City Council vacancies (other than for an elective Mayor) is set forth in Government Code section 36512(b), which provides that:

If a vacancy occurs in an elective office provided for in this chapter, the City Council shall, within 60 days from the commencement of the vacancy, either fill the vacancy by appointment or call a special election to fill the vacancy. The special election shall be held on the next regularly established election date not less than 114 days from the call of the special election. A person appointed or elected to fill a vacancy holds office for the unexpired term of the former incumbent.

State law does not prescribe any procedure for selection of appointees. Therefore, the City Council may choose any selection method it desires.

II. POLICY

The following procedures will be used by the City Council to fill a City Council vacancy if the City Council chooses to fill such a vacancy by appointment rather than by special election:

A. Vacancy Occurring within the First Year (365 days or less) of the Vacant Position's Term

The City Council will appoint the next highest vote-getter to fill a vacancy on Council occurring 365 days or less from the commencement of the vacant position's term. In the event, the next highest vote-getter is not interested in filling the vacancy, Council will appoint the candidate with the next highest votes, and so on and so forth until filled.

The appointment to fill the vacancy shall be made by resolution of the City Council.

B. Vacancy Occurring More After the First Year (more than 365 days) of the Vacant Position's Term

i. Schedule

At the earliest possible time after a vacancy occurs, the City Council shall adopt a time schedule:

a. Setting a time and date by which any qualified person interested in being appointed shall submit an application;
b. Setting a time and date by which questions for the applicants may be submitted by the public; and
c. Setting a date or dates on which applicants will be interviewed by the City Council at a public meeting.

ii. Applications

The application of a person interested in being appointed to the City Council shall state background, qualifications and why he or she wishes to be appointed. In addition to completing an application any person applying for the vacancy shall be required to file with the City Clerk the following additional documents:

a. A Nomination Form containing valid signatures of at least 20 registered voters of the City of Tracy. The fact that a voter has signed nomination papers for more than one applicant shall not invalidate the signature; and
b. A completed Statement of Economic Interests (Form 700) provided by the Fair Political Practices Commission.

iii. Disclosure of Applications

Following the deadline set by the City Council for the submittal of applications, copies of all applications and the names of the applicants shall be filed in the City Clerk's office and made public. No information shall be disclosed prior to the close of the application deadline.

iv. Questions from the Public

Questions for or concerning applicants may be submitted in writing by the public to the City Clerk. Following the deadline set by the City Council for the submittal of questions, all such questions shall be forwarded to City Council Members, who may use them in the applicant interviews.

v. Questions for Applicants

The City Council may choose to present questions in advance of the interviews to the applicants and may choose to require applicants to answer such questions at the interviews and/or provide written responses to such questions prior to the interviews. Questions may be suggested by the public, individual City Council Members or may be drafted by an ad hoc committee of the City Council appointed by the Mayor for that purpose.

vi. City Council Interviews

Applicant interviews shall be conducted in a public meeting, which may be televised and recorded. The first round of interviews, under the Voting Procedure set forth below, shall be limited to ten minutes per applicant. During the first round of interviews under the Voting Procedures set forth below, all applicants will be asked to respond to the same or standard questions approved by a majority Council vote [and any other questions individual City Council members may ask of a particular applicant]. The order of interviews will be based on a random drawing. At the time and date set for applicant interviews, each applicant shall be interviewed separately and shall be given the opportunity to make a brief statement concerning his or her qualifications and to answer question(s) approved by the City Council. Thereafter, [for each

round after the first round of interviews,] in addition to the same or standard questions approved by a majority of the City Council and asked of each remaining applicant, each City Council Member may question each remaining applicant on any subject he or she feels is relevant to that applicant's qualifications to sit on the City Council. Each subsequent round of interviews shall be limited to fifteen minutes per applicant [, provided, however, that based on the time available and the number of candidates, the City Council, by majority vote, may extend the time limit on interviews].

vii. Voting Procedure

The person to fill the City Council vacancy shall be selected from all applicants by the following process of elimination:

a. If one or two applicants exist:
    1. each City Council Member shall vote for one applicant; and
    2. the applicant who receives a majority vote shall be appointed to fill the vacancy.

b. If three or more applicants exist:
    1. each City Council Member shall vote for two applicants; and
    2. all applicants receiving the least number of votes (including no votes) shall be eliminated; and
    3. subsequent votes shall be taken with each City Council Member voting for two applicants until one or two applicants remain; and
    4. each City Council Member shall then vote for one applicant and the applicant who receives a majority vote shall be appointed to fill the vacancy.

    In the event of a tie between two or more applicants with the highest number of votes, Council may ask those applicants to respond to additional questions. Council may also choose to resolve a tie between two or more applicants with the highest number of votes by any method approved by a majority vote.

c. If no applicant receives a majority vote, the City Council may adopt such other procedures to fill the vacancy as it deems appropriate.

d. Notwithstanding the voting procedure described above, at any time during the appointment process, the City Council in its discretion may abandon the process and call a special election to fill the vacancy.

e. If no applicant receives a majority vote within 60 days of the commencement of the vacancy, the City Council shall call a special election to fill the vacancy.

viii. Appointment by the City Council

The appointment to fill the vacancy shall be made by resolution of the City Council.

ATTACHMENT B

CITY COUNCIL POLICY ON FILLING CITY COUNCIL VACANCIES

Adopted by Resolution No. 20241~~9~~-xxx~~250~~

I. BACKGROUND

The process for filling City Council vacancies (other than for an elective Mayor) is set forth in Government Code section 36512(b), which provides that:

"If a vacancy occurs in an elective office provided for in this chapter, the City Council shall, within 60 days from the commencement of the vacancy, either fill the vacancy by appointment or call a special election to fill the vacancy. The special election shall be held on the next regularly established election date not less than 114 days from the call of the special election. A person appointed or elected to fill a vacancy holds office for the unexpired term of the former incumbent."

State law does not prescribe any procedure for selection of appointees. Therefore, the City Council may choose any selection method it desires.

II. POLICY

The following procedures will be used by the City Council to fill a City Council vacancy ~~if the City Council chooses to fill such a vacancy~~ by appointment rather than by special election:

A. Vacancy Occurring ~~within the First Year (365 days or less) of~~During the Vacant Position's Term

The City Council will appoint the next highest vote-getter in the last most recent General Municipal Election to fill a vacancy on Council ~~occurring 365 days or less from the commencement of~~occurring during the vacant position's term. In the event, the next highest vote-getter is not interested in filling the vacancy, Council will appoint the candidate with the next highest votes, and so on and so forth until filled.

The appointment to fill the vacancy shall be made by resolution of the City Council, by simple majority.

B. Additional Requirements

1. The appointment process set forth in this Policy shall apply to all vacancies, regardless of whether the vacancy occurs as a result of election or appointment to alternate office, death, incapacity, resignation, or removal.

2. The appointment process set forth in this Policy reflects plenary powers granted to the City Council under Government Code section 36512(b), and the Mayor's power of appointment under Government Code section 40605 is not applicable.

3. This Policy is intended to comply with Government Code section 35612 and other

applicable law and to the extent of conflict, such statutory provisions shall govern over this Policy.

~~B. Vacancy Occurring More After the First Year (more than 365 days) of the Vacant Position's Term~~

~~i. Schedule~~

~~At the earliest possible time after a vacancy occurs, the City Council shall adopt a time schedule:~~

~~a. Setting a time and date by which any qualified person interested in being appointed shall submit an application;~~
~~b. Setting a time and date by which questions for the applicants may be submitted by the public; and~~
~~c. Setting a date or dates on which applicants will be interviewed by the City Council at a public meeting.~~

ii. Applications

The application of a person interested in being appointed to the City Council shall state background, qualifications and why he or she wishes to be appointed. In addition to completing an application any person applying for the vacancy shall be required to file with the City Clerk the following additional documents:

a. A Nomination Form containing valid signatures of at least 20 registered voters of the City of Tracy. The fact that a voter has signed nomination papers for more than one applicant shall not invalidate the signature; and
b. A completed Statement of Economic Interests (Form 700) provided by the Fair Political Practices Commission.

iii. Disclosure of Applications

Following the deadline set by the City Council for the submittal of applications, copies of all applications and the names of the applicants shall be filed in the City Clerk's office and made public. No information shall be disclosed prior to the close of the application deadline.

iv. Questions from the Public

Questions for or concerning applicants may be submitted in writing by the public to the City Clerk. Following the deadline set by the City Council for the submittal of questions, all such questions shall be forwarded to City Council Members, who may use them in the applicant interviews.

v. Questions for Applicants

The City Council may choose to present questions in advance of the interviews to the applicants and may choose to require applicants to answer such questions at the interviews and/or provide written responses to such questions prior to the interviews. Questions may be suggested by the public, individual City Council Members or may be drafted by an ad hoc committee of the City Council appointed by the Mayor for that purpose.

vi. City Council Interviews

Applicant interviews shall be conducted in a public meeting, which may be televised and recorded. The first round of interviews, under the Voting Procedure set forth below, shall be limited to ten minutes per applicant. During the first round of interviews under the Voting Procedures set forth below, all applicants will be asked to respond to the same or standard questions approved by a majority Council vote [and any other questions individual City Council members may ask of a particular applicant]. The order of interviews will be based on a random drawing. At the time and date set for applicant interviews, each applicant shall be interviewed separately and shall be given the opportunity to make a brief statement concerning his or her qualifications and to answer question(s) approved by the City Council. Thereafter, [for each

round after the first round of interviews,] in addition to the same or standard questions approved by a majority of the City Council and asked of each remaining applicant, each City Council Member may question each remaining applicant on any subject he or she feels is relevant to that applicant's qualifications to sit on the City Council. Each subsequent round of interviews shall be limited to fifteen minutes per applicant [, provided, however, that based on the time available and the number of candidates, the City Council, by majority vote, may extend the time limit on interviews].

vii. Voting Procedure

The person to fill the City Council vacancy shall be selected from all applicants by the following process of elimination:

a. If one or two applicants exist:
    1. each City Council Member shall vote for one applicant; and
    2. the applicant who receives a majority vote shall be appointed to fill the vacancy.

b. If three or more applicants exist:
    1. each City Council Member shall vote for two applicants; and
    2. all applicants receiving the least number of votes (including no votes) shall be eliminated; and
    3. subsequent votes shall be taken with each City Council Member voting for two applicants until one or two applicants remain; and
    4. each City Council Member shall then vote for one applicant and the applicant who receives a majority vote shall be appointed to fill the vacancy.

    In the event of a tie between two or more applicants with the highest number of votes, Council may ask those applicants to respond to additional questions. Council may also choose to resolve a tie between two or more applicants with the highest number of votes by any method approved by a majority vote.

c. If no applicant receives a majority vote, the City Council may adopt such other procedures to fill the vacancy as it deems appropriate.

d. Notwithstanding the voting procedure described above, at any time during the appointment process, the City Council in its discretion may abandon the process and call a special election to fill the vacancy.

e. If no applicant receives a majority vote within 60 days of the commencement of the vacancy, the City Council shall call a special election to fill the vacancy.

viii. Appointment by the City Council

The appointment to fill the vacancy shall be made by resolution of the City Council.

ATTACHMENT C

CITY COUNCIL POLICY ON FILLING CITY COUNCIL VACANCIES

Adopted by Resolution No. 20241~~9~~-xxx~~250~~

I. BACKGROUND

The process for filling City Council vacancies (other than for an elective Mayor) is set forth in Government Code section 36512(b), which provides that:

"If a vacancy occurs in an elective office provided for in this chapter, the City Council shall, within 60 days from the commencement of the vacancy, either fill the vacancy by appointment or call a special election to fill the vacancy. The special election shall be held on the next regularly established election date not less than 114 days from the call of the special election. A person appointed or elected to fill a vacancy holds office for the unexpired term of the former incumbent."

State law does not prescribe any procedure for selection of appointees. Therefore, the City Council may choose any selection method it desires.

II. POLICY

The following procedures will be used by the City Council to fill a City Council vacancy ~~if the City Council chooses to fill such a vacancy~~ by appointment rather than by special election:

A. Vacancy Occurring ~~within the First Year (365 days or less) of~~During the Vacant Position's Term

The City Council will appoint the next highest vote-getter in the General Municipal Election in which the vacant seat had been originally filled to fill a vacancy on Council ~~occurring 365 days or less from the commencement of~~occurring during the vacant position's term. In the event, the next highest vote-getter is not interested in filling the vacancy, Council will appoint the candidate with the next highest votes, and so on and so forth until filled.

The appointment to fill the vacancy shall be made by resolution of the City Council, by simple majority.

B. Additional Requirements

1. The appointment process set forth in this Policy shall apply to all vacancies, regardless of whether the vacancy occurs as a result of election or appointment to alternate office, death, incapacity, resignation, or removal.

2. The appointment process set forth in this Policy reflects plenary powers granted to the City Council under Government Code section 36512(b), and the Mayor's power of appointment under Government Code section 40605 is not applicable.

3. This Policy is intended to comply with Government Code section 35612 and other

applicable law and to the extent of conflict, such statutory provisions shall govern over this Policy.

~~B. Vacancy Occurring More After the First Year (more than 365 days) of the Vacant Position's Term~~

~~i. Schedule~~

~~At the earliest possible time after a vacancy occurs, the City Council shall adopt a time schedule:~~

~~a. Setting a time and date by which any qualified person interested in being appointed shall submit an application;~~
~~b. Setting a time and date by which questions for the applicants may be submitted by the public; and~~
~~c. Setting a date or dates on which applicants will be interviewed by the City Council at a public meeting.~~

ii. Applications

The application of a person interested in being appointed to the City Council shall state background, qualifications and why he or she wishes to be appointed. In addition to completing an application any person applying for the vacancy shall be required to file with the City Clerk the following additional documents:

a. A Nomination Form containing valid signatures of at least 20 registered voters of the City of Tracy. The fact that a voter has signed nomination papers for more than one applicant shall not invalidate the signature; and
b. A completed Statement of Economic Interests (Form 700) provided by the Fair Political Practices Commission.

iii. Disclosure of Applications

Following the deadline set by the City Council for the submittal of applications, copies of all applications and the names of the applicants shall be filed in the City Clerk's office and made public. No information shall be disclosed prior to the close of the application deadline.

iv. Questions from the Public

Questions for or concerning applicants may be submitted in writing by the public to the City Clerk. Following the deadline set by the City Council for the submittal of questions, all such questions shall be forwarded to City Council Members, who may use them in the applicant interviews.

v. Questions for Applicants

The City Council may choose to present questions in advance of the interviews to the applicants and may choose to require applicants to answer such questions at the interviews and/or provide written responses to such questions prior to the interviews. Questions may be suggested by the public, individual City Council Members or may be drafted by an ad hoc committee of the City Council appointed by the Mayor for that purpose.

vi. City Council Interviews

Applicant interviews shall be conducted in a public meeting, which may be televised and recorded. The first round of interviews, under the Voting Procedure set forth below, shall be limited to ten minutes per applicant. During the first round of interviews under the Voting Procedures set forth below, all applicants will be asked to respond to the same or standard questions approved by a majority Council vote [and any other questions individual City Council members may ask of a particular applicant]. The order of interviews will be based on a random drawing. At the time and date set for applicant interviews, each applicant shall be interviewed separately and shall be given the opportunity to make a brief statement concerning his or her qualifications and to answer question(s) approved by the City Council. Thereafter, [for each

round after the first round of interviews,] in addition to the same or standard questions approved by a majority of the City Council and asked of each remaining applicant, each City Council Member may question each remaining applicant on any subject he or she feels is relevant to that applicant's qualifications to sit on the City Council. Each subsequent round of interviews shall be limited to fifteen minutes per applicant [, provided, however, that based on the time available and the number of candidates, the City Council, by majority vote, may extend the time limit on interviews].

vii. Voting Procedure

The person to fill the City Council vacancy shall be selected from all applicants by the following process of elimination:

a. If one or two applicants exist:
1. each City Council Member shall vote for one applicant; and
2. the applicant who receives a majority vote shall be appointed to fill the vacancy.

b. If three or more applicants exist:
1. each City Council Member shall vote for two applicants; and
2. all applicants receiving the least number of votes (including no votes) shall be eliminated; and
3. subsequent votes shall be taken with each City Council Member voting for two applicants until one or two applicants remain; and
4. each City Council Member shall then vote for one applicant and the applicant who receives a majority vote shall be appointed to fill the vacancy.

In the event of a tie between two or more applicants with the highest number of votes, Council may ask those applicants to respond to additional questions. Council may also choose to resolve a tie between two or more applicants with the highest number of votes by any method approved by a majority vote.

c. If no applicant receives a majority vote, the City Council may adopt such other procedures to fill the vacancy as it deems appropriate.

d. Notwithstanding the voting procedure described above, at any time during the appointment process, the City Council in its discretion may abandon the process and call a special election to fill the vacancy.

~~e. If no applicant receives a majority vote within 60 days of the commencement of the vacancy, the City Council shall call a special election to fill the vacancy.~~

~~viii. Appointment by the City Council~~

~~The appointment to fill the vacancy shall be made by resolution of the City Council.~~

APPROVED AS TO FORM AND LEGALITY

_____
CITY ATTORNEY'S OFFICE

TRACY CITY COUNCIL

RESOLUTION NO. 2024 - _____

REPLACING THE *CITY COUNCIL POLICY ON FILLING CITY COUNCIL VACANCIES* WITH A NEW POLICY THAT REQUIRES ALL VACANCIES, REGARDLESS OF WHEN OCCURRING DURING A TERM, TO BE APPOINTED BASED ON THE GENERAL MUNICIPAL ELECTION THROUGH THE MOST RECENT GENERAL MUNICIPAL ELECTION CREATING THE VACANCY

WHEREAS, the process for filling City Council vacancies (other than for an elective Mayor) is set forth in Government Code section 36512(b), which provides that if a vacancy occurs, then the City Council, within 60 days from the commencement of the vacancy, must either fill the vacancy by appointment or call a special election to fill the vacancy; and

WHEREAS, the City Council has opted to fill vacancies on the City Council through an appointment process rather than a special election; and

WHEREAS, the State law does not prescribe any procedure for selection of appointees; and

WHEREAS, via Resolution No. 2017-001, the City Council adopted the *City Council Policy On Filling City Council Vacancies* (Policy) which required that all vacancies on the City Council were filled through a Council-led appointment process based on nominations, interviews and selection; and

WHEREAS, the 2019 San Joaquin Grand Jury Report (Case No. 0418) recommended that the City Council amend the Policy so as to create a policy that adhered to the "will of the voters" and did not foster "loyalty, allegiance, and personal obligation" to Council Members making the appointment; and

WHEREAS, while the initial draft amendment to the Policy presented to the City Council reflected the stated recommendation of the Grand Jury, the final version adopted by the City Council pursuant to Resolution No. 2019-250 amended the Policy to implement the Grand Jury's recommendation only for vacancies occurring within the first 365 days of a term and vacancies occurring after the first year continue through a Council-led selection process; and

WHEREAS, the City Council hereby seeks to have all appointments for vacancies on the City Council to be based on election results, regardless of when such vacancies occur; and

WHEREAS, the election results shall be based upon the last most recent General Municipal Election; now, therefore, be it

RESOLVED: That pursuant to the plenary powers granted under California Government Code section 36512, the City Council of the City of Tracy hereby adopts the new *City Council Policy On Filling City Council Vacancies* set forth in Exhibit 1 (New Policy); and be it

FURTHER RESOLVED: That the City Council hereby rescinds the existing *City Council Policy On Filling City Council Vacancies* and replaces it in its entirety with the New Policy; and be it

FURTHER RESOLVED: That the New Policy shall become effective immediately upon adoption of this Resolution.

* * * * * * * * * * * * * * * * * *

The foregoing Resolution 2024-_____ was adopted by the Tracy City Council on October 15, 2024, by the following vote:

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

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

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

Exhibit l – City Council Policy on filling City Council Vacancies

EXHIBIT 1

CITY COUNCIL POLICY ON FILLING CITY COUNCIL VACANCIES

Adopted by Resolution No. 2024-xxx

I. BACKGROUND

The process for filling City Council vacancies (other than for an elective Mayor) is set forth in Government Code section 36512(b), which provides that:

"If a vacancy occurs in an elective office provided for in this chapter, the City Council shall, within 60 days from the commencement of the vacancy, either fill the vacancy by appointment or call a special election to fill the vacancy. The special election shall be held on the next regularly established election date not less than 114 days from the call of the special election. A person appointed or elected to fill a vacancy holds office for the unexpired term of the former incumbent."

State law does not prescribe any procedure for selection of appointees. Therefore, the City Council may choose any selection method it desires.

II. POLICY

The following procedures will be used by the City Council to fill a City Council vacancy by appointment rather than by special election:

A. Vacancy Occurring During the Vacant Position's Term

The City Council will appoint the next highest vote-getter in the last most recent General Municipal Election to fill a vacancy on Council occurring during the vacant position's term. In the event, the next highest vote-getter is not interested in filling the vacancy, Council will appoint the candidate with the next highest votes, and so on and so forth until filled.

The appointment to fill the vacancy shall be made by resolution of the City Council, by simple majority.

B. Additional Requirements

1. The appointment process set forth in this Policy shall apply to all vacancies, regardless of whether the vacancy occurs as a result of election or appointment to alternate office, death, incapacity, resignation, or removal.

2. The appointment process set forth in this Policy reflects plenary powers granted to the City Council under Government Code section 36512(b), and the Mayor's power of

appointment under Government Code section 40605 is not applicable.

3. This Policy is intended to comply with Government Code section 35612 and other applicable law and to the extent of conflict, such statutory provisions shall govern over this Policy.

APPROVED AS TO FORM AND LEGALITY

_____
CITY ATTORNEY'S OFFICE

TRACY CITY COUNCIL

RESOLUTION NO. 2024 - _____

REPLACING THE *CITY COUNCIL POLICY ON FILLING CITY COUNCIL VACANCIES* WITH A NEW POLICY THAT REQUIRES ALL VACANCIES, REGARDLESS OF WHEN OCCURRING DURING A TERM, TO BE APPOINTED BASED ON THE GENERAL MUNICIPAL ELECTION THROUGH WHICH THE VACANT SEAT WAS ORIGINALLY FILLED

WHEREAS, the process for filling City Council vacancies (other than for an elective Mayor) is set forth in Government Code section 36512(b), which provides that if a vacancy occurs, then the City Council, within 60 days from the commencement of the vacancy, must either fill the vacancy by appointment or call a special election to fill the vacancy; and

WHEREAS, the City Council has opted to fill vacancies on the City Council through an appointment process rather than a special election; and

WHEREAS, the State law does not prescribe any procedure for selection of appointees; and

WHEREAS, via Resolution No. 2017-001, the City Council adopted the *City Council Policy On Filling City Council Vacancies* (Policy) which required that all vacancies on the City Council were filled through a Council-led appointment process based on nominations, interviews and selection; and

WHEREAS, the 2019 San Joaquin Grand Jury Report (Case No. 0418) recommended that the City Council amend the Policy so as to create a policy that adhered to the "will of the voters" and did not foster "loyalty, allegiance, and personal obligation" to Council Members making the appointment; and

WHEREAS, while the initial draft amendment to the Policy presented to the City Council reflected the stated recommendation of the Grand Jury, the final version adopted by the City Council pursuant to Resolution No. 2019-250 amended the Policy to implement the Grand Jury's recommendation only for vacancies occurring within the first 365 days of a term and vacancies occurring after the first year continue through a Council-led selection process; and

WHEREAS, the City Council hereby seeks to have all appointments for vacancies on the City Council to be based on election results, regardless of when such vacancies occur; and

WHEREAS, the election results shall be based upon the General Municipal Election through which the vacant seat was originally filled; now, therefore, be it

RESOLVED: That pursuant to the plenary powers granted under California Government Code section 36512, the City Council of the City of Tracy hereby adopts the new *City Council Policy On Filling City Council Vacancies* set forth in Exhibit 1 (New Policy); and be it

FURTHER RESOLVED: That the City Council hereby rescinds the existing *City Council Policy On Filling City Council Vacancies* and replaces it in its entirety with the New Policy; and be it

FURTHER RESOLVED: That the New Policy shall become effective immediately upon adoption of this Resolution.

* * * * * * * * * * * * * * * * * *

The foregoing Resolution 2024-_____ was adopted by the Tracy City Council on October, 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

Exhibit 1 – City Council Policy on Filling City Council Vacancies

Exhibit 1

CITY COUNCIL POLICY ON FILLING CITY COUNCIL VACANCIES

Adopted by Resolution No. 2024-xxx

I. BACKGROUND

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The City Council will appoint the next highest vote-getter in the General Municipal Election in which the vacant seat had been originally filled to fill a vacancy on Council occurring during the vacant position's term. In the event, the next highest vote-getter is not interested in filling the vacancy, Council will appoint the candidate with the next highest votes, and so on and so forth until filled.

The appointment to fill the vacancy shall be made by resolution of the City Council, by simple majority.

B. Additional Requirements

1. The appointment process set forth in this Policy shall apply to all vacancies, regardless of whether the vacancy occurs as a result of election or appointment to alternate office, death, incapacity, resignation, or removal.

2. The appointment process set forth in this Policy reflects plenary powers granted to

the City Council under Government Code section 36512(b), and the Mayor's power of appointment under Government Code section 40605 is not applicable.

3. This Policy is intended to comply with Government Code section 35612 and other applicable law and to the extent of conflict, such statutory provisions shall govern over this Policy.

October 15, 2024

Agenda Item 3.F

RECOMMENDATION

(1) Accepting the following in accordance with the City's Donation & Gift Policy adopted by Resolution 2021-108:

(A) A donation of a historical display entitled "Tracy's Leadership History" from Mayor Nancy D. Young; and
(B) Monetary gift in the amount of $2,000 from Good Samaritan, Inc. to cover the cost of installation of the historical display in the City Hall foyer; and

(2) Approving the execution of a General Services Agreement (GSA) with 7 Thunder Productions LLC Doing Business As Signarama in the amount of $2,000 for the installation of the historical display and authorizing the City Manager to execute the GSA; and

(3) Appropriating the donated funds for the GSA

EXECUTIVE SUMMARY

On October 1, 2024, the City Council heard a presentation by Nancy D. Young, Mayor, summarizing the proposed installation of a historical display recognizing Tracy Mayors and elected and appointed officials from 1910 to present (2024) (see Attachment A). The proposal included a gift of a physical display and also a monetary donation to cover the cost associated with the installation of the display. Based on the presentation, the City Council found that the proposed gift conforms to the Council's Policy on Donation and Gifts, adopted per Resolution 2021-108 (Attachment B) and directed staff to prepare and return to Council with implementation actions.

Acceptance of the donation will be in two parts: the acceptance of the donated displays as well as an execution of the agreement with the vendor who will install the displays. As the displays are being proposed to be installed on City property (inside the City Hall foyer), the City must directly contract with the vendor who will do the installation work through a General Services Agreement (GSA). The cost associated with the GSA will be covered by the donation funds.

BACKGROUND AND LEGISLATIVE HISTORY

On August 20, 2024, the City Manager was provided a binder by Nancy D. Young, Mayor (Mayor Young) which included a high-level presentation of the proposed display commemorating all the Mayors, elected and appointed officials of the City of Tracy from 1910 to present day.

On October 1, 2024, the City Council heard and received a power point presentation on the historical display, including the research conducted to verify the information proposed to be contained on the display, the potential configuration of the display and the proposed location for such a display within City Hall. The display is to include a machine-readable (QR) code consisting of an array of black and white squares, typically used for storing URLs or other information for reading by the camera on a smartphone, for residents and visitors to be able to find out additional information about the displayed Mayors and the City of Tracy's history.

Various options were presented at that meeting regarding the display locations and orientations. After the presentation, the City Council determined that option # 3 (Attachment D), which was described as having a right to left split separating out the Mayors by eras and method of election, was the most appropriate design and that it should be placed in the City Hall Foyer. The City Council also requested staff ensure that any necessary modifications which may be required to make it accessible to all visitors are done and to coordinate with the Mayor on the landing page for the QR code.

ANALYSIS

The City Council determined that the donation conformed to the City's Donation Policy. The receipt of the physical display is only one component of the proposed gift. The physical display would need to be installed at the proposed location at the City. Because the services will be performed at premises owned by the City, the City would need to execute a GSA with the vendor installing the display. The cost associated with this GSA will be covered by the monies donated by Good Samaritan, Inc. The proposed vendor, 7 Thunder Productions LLC doing business as Signarama (Contractor), is the same one that is creating the historical displays for Mayor Young and is located in Manteca. Staff has negotiated the terms of a GSA with the Contractor, which is being presented here for approval by the City Council, through it the City Manager has authority to execute it by separate delegation of authority based on the dollar amount of the contract.

Good Samaritan will provide $2,000 to be used for the GSA. Per discussions with the Contractor and as reflected in the draft GSA, this amount will cover the cost associated with the installation as described in the agreement. The Mayor will prefund fabrication of pieces to be added for the next 20-40 years of election results or as replacement in the case of damage.

Staff will need to assure that the installation meets Americans with Disability Act (ADA) requirements applicable to directional and informational signs. These can include finish, contract visual character tactile character and mounting requirements. Staff will also seek to validate and confirm the information gathered by Mayor Young, and work with the City Attorney's Office to determine what if any releases may be required for the installation of the images of the former elected and appointed officials. Finally, staff will need to create a landing page for the QR code and develop the pages content to include information consistent with what is presented in the display.

FISCAL IMPACT

Good Samaritan will donate $2,000 to be utilized for the initial installation of the display and the cost of replacements and installation that may be needed within the next 12 months. Once the donated funds are expended, any future repairs, installations or maintenance that may be required will have to be provided for by the General Fund. The display will need to be maintained and cared for along with other similar items in City Hall. The cost of labor and supplies to maintain City Hall are included in the adopted Public Works operating budget.

CALIFORNIA ENVIRONMENTAL QUALITY ACT

This item is exempt from review under the California Environmental Quality Act (California Public Resources Code §§ 21000, et seq., "CEQA") and CEQA regulations (14 California Code of Regulations §§ 15000, et seq.; "CEQA Guidelines") in that it is not a "project" for purposes of CEQA

(as defined by CEQA Guidelines §15378) in that it involves maintenance of existing areas and such maintenance will not result in a direct or indirect physical change in the environment (CEQA Guidelines §§15378(b)(5)). Further, even if this item was deemed a "project," and therefore subject to CEQA, the item would be exempt as it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment (CEQA Guidelines §15061(b)(3)).

STRATEGIC PLAN

This agenda item applies to the Quality-of-Life strategic plan.

ACTION REQUESTED OF THE CITY COUNCIL

(1) Accepting the following in accordance with the City's Donation & Gift Policy adopted by Resolution 2021-108:

(A) A donation of a historical display entitled "Tracy's Leadership History" from Mayor Nancy D. Young; and

(B) Monetary gift in the amount of $2,000 to cover the cost of installation of the historical display in the City Hall foyer; and

(2) Approving the execution of a General Services Agreement (GSA) with 7 Thunder Productions LLC Doing Business As Signarama in the amount of $2,000 for the installation of the historical display and authorizing the City Manager to execute the GSA; and

(3) Appropriating the donated funds for the GSA.

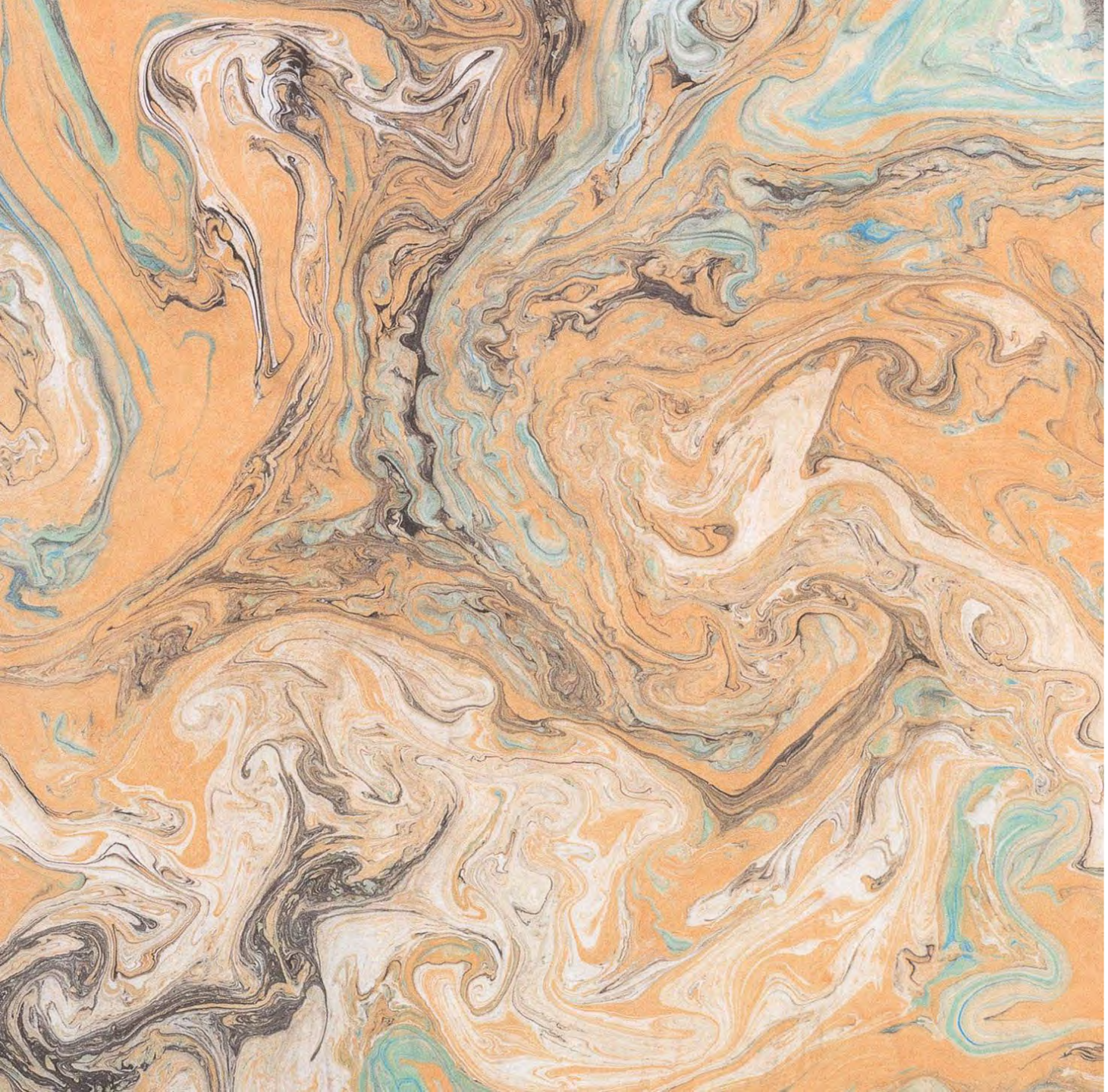
Prepared by: Arturo M. Sanchez, Assistant City Manager

Reviewed by: Sara Castro, Finance Director
Bijal Patel, City Attorney

Approved by: Midori Lichtwardt, City Manager

Attachments:

A. Presentation by Nancy D. Young, Mayor, delivered by Shivani Shibu
B. City Donation Policy
C. General Services Agreement
D. Option 3 Depiction



TRACY HISTORICAL LEADERS WALL

DR. NANCY YOUNG, MAYOR, TRACY

Presentation: Shivani Shibu



Mayor Nancy Young's Donated Wall

A Gift to the Community
Mayor Nancy Young has generously offered to donate this wall to the City of Tracy (through the fundraising efforts of the Tracy Mayor’s Gala via Good Samaritan Community Services), aiming to create a significant historical monument that stands as a tribute to the city's leadership and growth over the years.

A Monument for Generations
The wall is designed to preserve the rich history of Tracy. Mayor Young's vision is to leave behind a timeless symbol of leadership and community, reflecting the city’s journey through the lens of its leaders.

Celebrating Tracy’s Leadership
This monument will showcase portraits or images of every mayor who has served Tracy, ensuring that their contributions are remembered. It will also include the names of every council member, recognizing the collective efforts that have shaped the city.

A Vision of Legacy and Unity
Through this wall, Mayor Young hopes to inspire future generations to value the city's history, fostering a sense of unity and pride in the community. It’s not just a tribute, but a lasting reminder of the teamwork and leadership that built Tracy.

Research for Leaders Wall — May to August 2024 — Mayor Nancy Young and Intern Shivani Shibu

Overview:

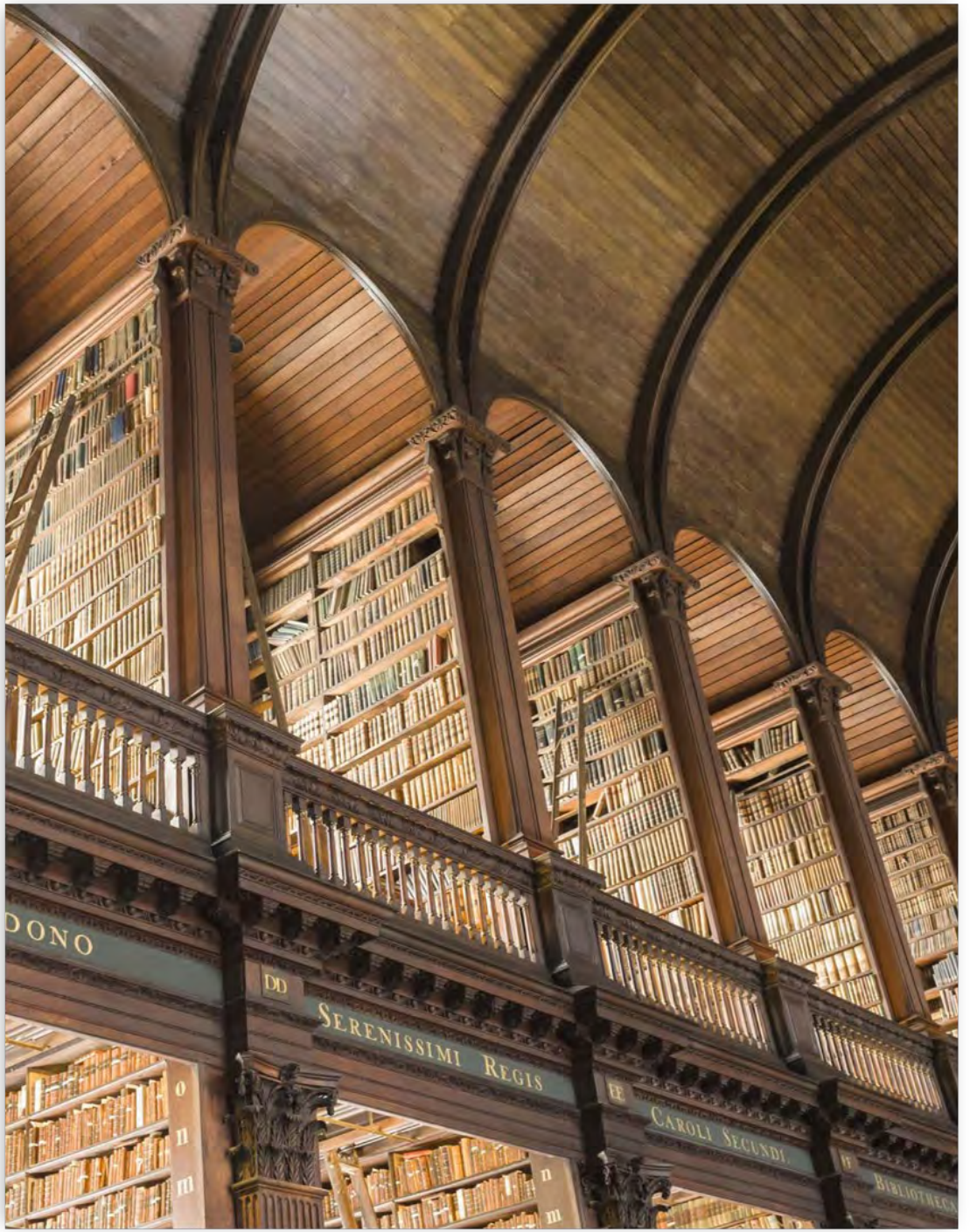
- This project encapsulates the leadership history that will be displayed at Tracy City Hall, available online, and shared in other venues such as the Tracy Museum and the San Joaquin County Historical Museum.

Research for content included:

- “Images of America-Tracy” from the Tracy Historical Society, Tracy Museum Binders of past Presidents/Mayors and councilmembers, Tracy Press and other Newspaper per the San Joaquin County Historical Museum, Documents from Tracy City Clerk.
- “Council elections”, discussions with Tracy Historical Society and Museum Staff, and Discussions with and including research and verifications by the San Joaquin historical museum.
- Referrals for display art to ensure aesthetic fit for City Hall was provided by Tracy City Staff.

Costs:

- Value of Not-To-Exceed $7,000 with ZERO $0 COST to the City of Tracy as this is a Gift of Preservation of History by Mayor Nancy D. Young
- Tracy Mayor’s Gala, held on Sept 7, 2024 – Raised the Funds to Preserve and Honor the History of Tracy.



Presidents/Mayors for Tracy 1910-2024

These are the presidents of Tracy from 1910 to 1928. This spreadsheet tells us the date and years they were in office.

Names	Years in Office	Date Took Office*
PRESIDENTS 1910 - 1928		
Abraham "Abe" Grunauer	1910-1914	July 1910; April 1912
David R. Payne	1914-1916	April 1914
Nelson S. Dwelly	1916-1922	April 1916; April 1918; April 1920
Thomas Garner	1922-1924	April 1922
John W. Shaw	1924-1925	April 1924
Edward J. DeVine	1925-1926	April 1925
William T. Tschierschky	1926	March 1926
James N. "Jim" Lamb	1926-1928	April 1926

Presidents/Mayors for Tracy 1910-2024

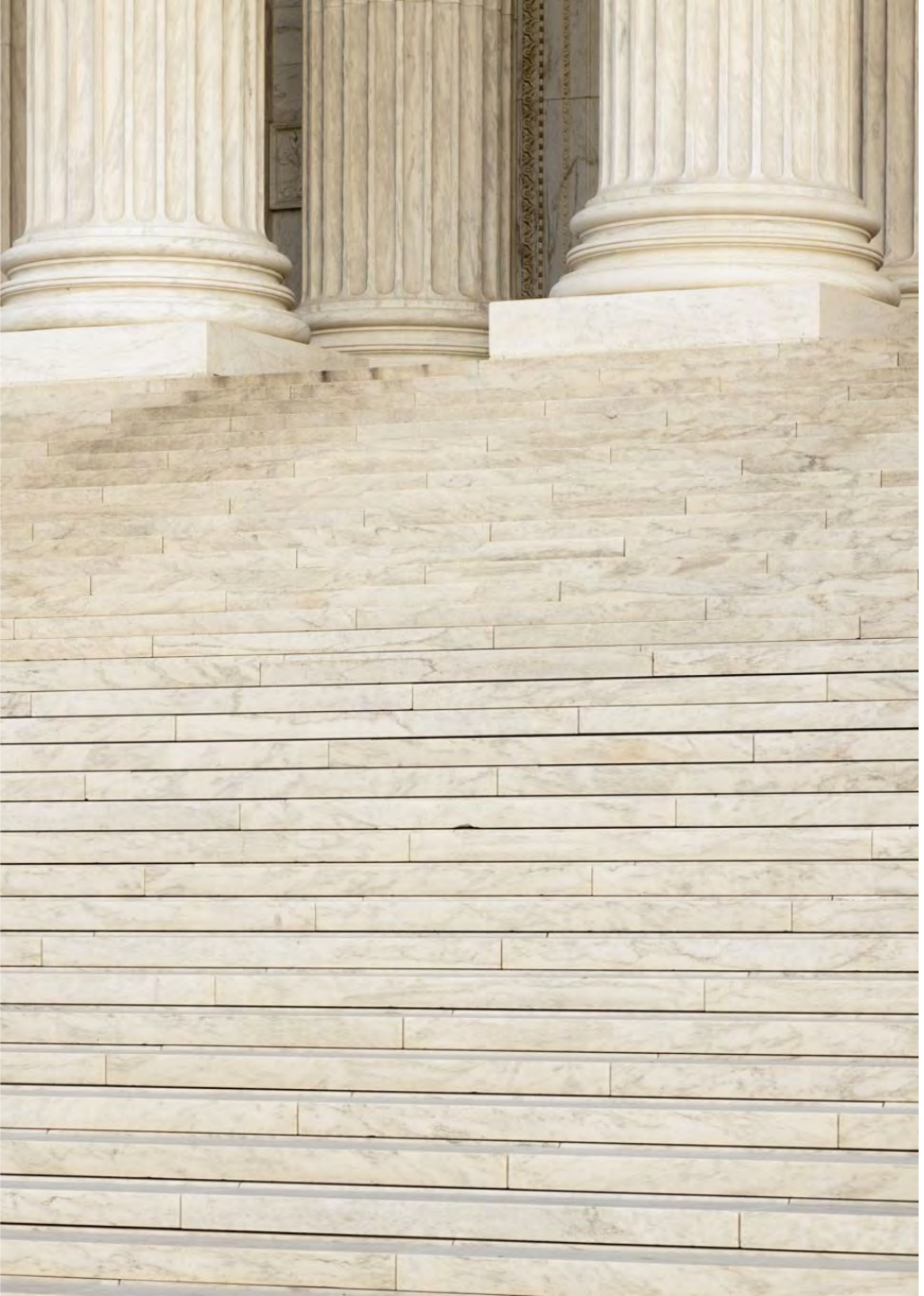
APPOINTED MAYORS 1928 - 1986		
James N. "Jim" Lamb	1928-1930; 1938-1942	April 1928; April 1938; April 1940
John Ranley	1930-1931	April 1930
Charles F. Sheppard	1931-1934; 1944-1946	December 1931; April 1932; May 1944
Frederick Herzog	1934-1938; 1942-1944	April 1934; April 1936; April 1942
John W. Stocking	1946-1948	April 1946
William Larsen	1948-1952	April 1948; April 1950
Irvine Jensen	1952-1954	April 1952
Manuel Rico	1954-1958	April 1954; April 1956
Henry James Buthmann	1958-1960; 1961-1962	April 1958; Jan 1961
Robert Monagan	1960-1961	April 1960
W. E. Brown	1962-1964	April 1962
Loren H. Jolley	1964-1966	April 1964
Clyde L. Abott	1966-1968	April 1966
William C. Adams	1968-1969; 1970-1971	April 1968; June 1970
Richard O. "Dick" Hastie	1969-1970; 1971-1973	April 1969; 'April 1971; April 1972
Earle E. Williams	1970	March 1970
Travis Foster	1970	April 1970
Robert C. Wilburn	1973-1974	April 1973
John D. Hobin	1974-1975	March 1974
Vernon F. Hanson	1975-1976	March 1975
James T. "Jim" Bell	1976-1977	March 1976
Robert A. Canclini	1977-1978; 1980-1981	March 1977; 'April 1980
Aymon Hall	1978-1979	March 1978
Fred S. Icardi	1979-1980	March 1979
Don Simpson	1981-1982; 1984-1985	April 1981; July 1984
Dorothy Zanussi	1982-1983; 1985-1986	July 1982, July 1985
Joan Sparks	1983-1984	July 1983

These are all the appointed mayors 1928 - 1986.

Presidents/Mayors for Tracy 1910-2024

ELECTED MAYORS 1986 - Present		
Richard O. “Dick” Hastie	1986-1988	July 1986
Lester "Scotty" Scott	1988-1990	November 1988
Clyde Bland	1990-1994	Nov 1990; Nov 1992
Dan Bilbrey	1994-2006	Nov 1994; Nov 1996; Nov 1998; Nov 2000; Nov 2002; Nov 2004
Brent Ives	2006-2014	Nov 2006; Nov 2008; Nov 2010; Nov 2012
Michael "Mike" Macial	2014-2016	Nov 2014
Robert Rickman	2016-2020	Nov 2016; Nov 2018
Nancy D. Young	2020-2024	Nov 2020; Nov 2022

These are all the elected mayors from 1986 to 2024 of Tracy.



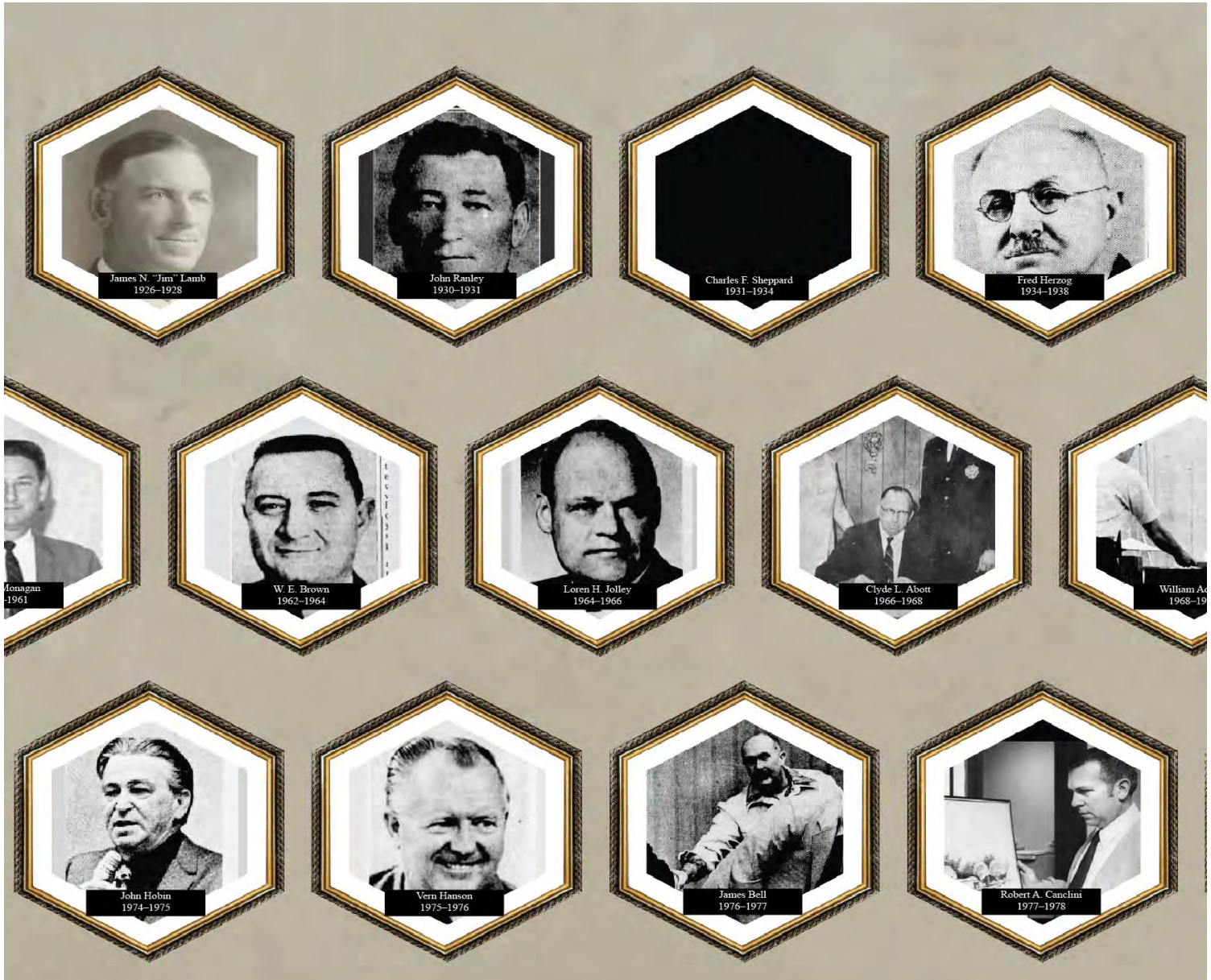
Proposed Location

- Marble Wall in City Hall Foyer on South Wall (per consult with art staff)
- Will be an eye-catcher for everyone that enters Tracy City Hall.
- Will include a location for 43 current mayor pictures that is scalable with 10 extra spaces, totaling 52 spaces for mayor pictures to expand the next 20-40 years.
- Will include an extended plaque for council member names with prints on Acrylic. Current number is 97 names that will include total of 120 spaces to add additional names and dates spanning more than 20 years.

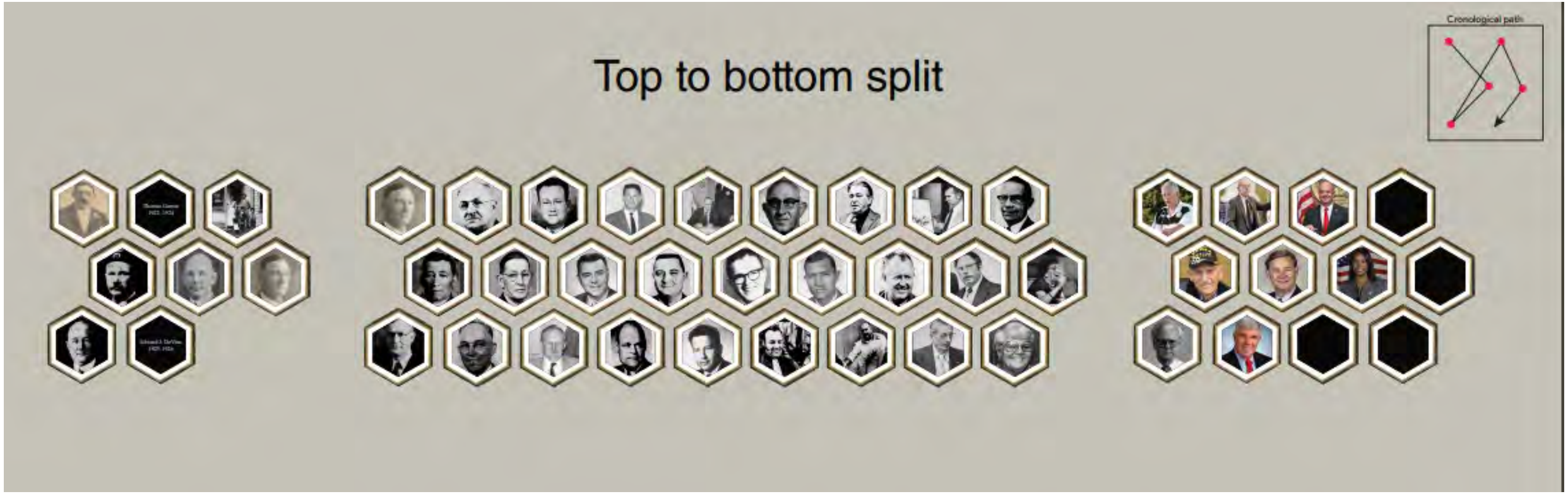
Option 1of 3 - Designs



Close Up


James N. "Jim" Lamb
1926–1928
John Ranley
1930–1931
Charles F. Sheppard
1931–1934
Fred Herzog
1934–1938
W. E. Brown
1962–1964
Loren H. Jolley
1964–1966
Clyde L. Abott
1966–1968
John Hobin
1974–1975
Vern Hanson
1975–1976
James Bell
1976–1977
Robert A. Canclini
1977–1978

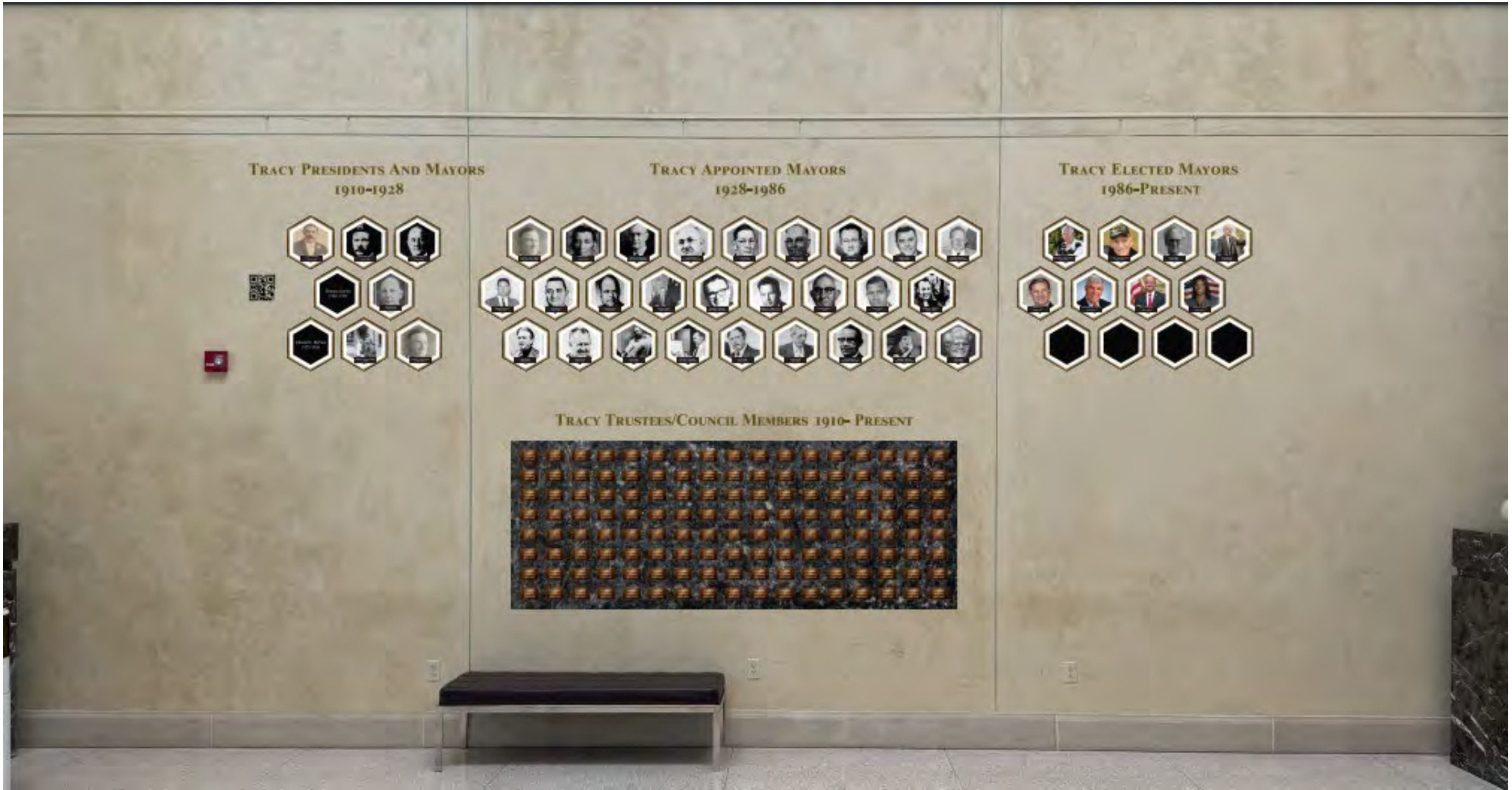
Option 2 of 3 - Designs



Option 3 of 3 - Designs



Option 3 of 3 – Mock up*



Interactive Website With QR Code

Enhancing the Experience

In addition to the pictures and names displayed on the wall, we are introducing a digital element to make the monument more engaging.

Learn More About Tracy's Leaders

The website will feature biographies, stories, and historical contributions of each mayor and council member, offering a deeper look into their impact on Tracy.

Scan the QR Code

Visitors can scan a QR code placed near the wall, which will lead them to a dedicated website. This site will provide detailed information about the mayors and council members who have served the city.

Community Interaction

Visitors are encouraged to leave comments or share memories on the website. This allows people to contribute personal stories or thoughts in remembrance of these leaders, creating a space for community reflection and engagement.



Maintenance and Installation

Project will be donated including full design and complete installation at zero cost to the City of Tracy

Extra spaces designed and pre-purchased so no cost for expansion for next 20-40 years for both the Mayor section and Councilmember plaque

Maintenance – Anticipated to be minimal, consisting of dusting. With Council approval of gift and their direction to staff to proceed, Installers will meet with Public Works to discuss installation

Extra components – Specs will be provided for future expansion beyond 20 - 40 years

If approved tonight, October 1, 2024, the project can be completed the week of October 21-26, 2024



THANK YOU

This historical project, by Mayor Dr. Nancy Young, will serve as a lasting tribute to the leadership of Tracy from 1910 to 2024 and beyond, while engaging citizens with modern technology.

RESOLUTION 2021-108

APPROVING A COUNCIL POLICY ESTABLISHING RULES AND PROCEDURES FOR ACCEPTING DONATIONS AND GIFTS FROM THE PUBLIC

WHEREAS, The City of Tracy has been offered gifts and donations from the public; and

WHEREAS, The City does not have local rules or guidelines regarding the acceptance of donations and/or gifts from the public, and

WHEREAS, The City wishes to adopt a policy to provide clear guidelines regarding the acceptance of donations and gifts so as to ensure transparent handling of such offers, consistent with the City's commitment to treating all individuals and entities with whom it conducts business fairly and impartially; and

WHEREAS, The City Manager will be responsible for the implementation of the policy.

NOW, THEREFORE BE IT RESOLVED, that the City Council of the City of Tracy hereby adopts the policy establishing rules and procedures for accepting donations and gifts from the public as described in the attachment to this resolution.

****

The foregoing Resolution 2021-108 was adopted by the Tracy City Council on the 20th day of July, 2021, by the following vote:

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

MAYOR

ATTEST:

CITY CLERK

CITY OF TRACY
ADMINISTRATIVE POLICY AND PROCEDURE MANUAL

SUBJECT: : DONATIONS – *Policy & Procedure*

DATE ISSUED: : July 20, 2021

SECTION: : D

SECTION 1: PURPOSE

The purpose of this policy is to establish rules and procedures for the acceptance of gifts and donations ("Donations") to the City of Tracy ("City"), as authorized by Government Code section 37354. This policy is necessary to ensure that Donations can be accepted, processed and accounted for in a transparent manner and consistent with the City's commitment to treating all individuals and entities with whom it conducts business fairly and impartially. Implementation of this policy is the responsibility of the City Manager or designee. This Policy is separate and apart from the City's Ticket Policy and Gift Policy and Procedure (See Section 3).

SECTION 2: OVERVIEW

All Donations received by the City must be reported and reviewed carefully for consistency with the City's policies, including policies and procedures for accepting cash and other inventory. Only individuals authorized by this Policy may accept Donations on behalf of the City. Before accepting a Donation, the authorized individual must review the Donation and determine that it satisfies all of the following requirements:

1. The Donation must be consistent with the City's policies, including any applicable ordinances or resolutions.

2. The Donation must not conflict with any provision of the state or federal law. Any questions regarding whether a Donation conflicts with state or federal law should be directed to the City Attorney's Office.

3. The Donation will not add to the City's workload unless it provides a net benefit to the City.

4. The Donation will not impose future/new costs such as starting an on-going program or additional staff responsibilities.

5. Any restrictions placed on the Donation by the donor are consistent with City's goals and policies. Donor restrictions may not include any requirement that any specific individual employee benefit from the Donation.

6. The City will not accept Donations of any weapons, hazardous materials or dangerous items (excluding programs where the City accepts such items for the purpose of disposal).

7. Donations of tobacco, cannabis, or alcohol products of any kind are prohibited. Donations may not be accepted from any individual or entity that has an application for any discretionary approval pending with the City. Additionally, donations may not be accepted from any individual or entity that could benefit in any way from a pending and/or upcoming Council policy decision.

8. Donations of marketing goods (e.g. hats, t-shirts, etc.) may not be accepted from vendors, consultants or service providers unless they are made available to the overall general staff of the City or given department.

SECTION 3: APPLICABILITY OF THIS POLICY

This policy shall apply to any Donation offered or given to the City, including Donations from community groups that support various City operations or events. This policy does not apply to any gift or sponsorship of a City event or program that is made in exchange for any type of public acknowledgement or recognition, except for acknowledgment as provided for herein. This policy also does not apply to any gift, donation or financial or in-kind contribution made in accordance with an agreement (e.g. MOU, development agreement, community benefit agreement, etc.) with the City. Additionally, this policy does not apply to tickets or passes given to the City and distributed in accordance with the City's Ticket and Pass policy adopted by Resolution No. 2018-041 (Appendix A). Finally, this policy does not apply to gifts made to individual employees or officials of the City, which are governed by the City's Gift Policy and Procedure (Appendix B), as may be amended from time to time, as well as the Political Reform Act and regulations of the Fair Political Practices Commission ("FPPC"). Donations made to officials directly or for which the donor designates by name, class, or other title the official who may use the Donation are not Donations to the City, but rather individual gifts that may be required to be reported on FPPC Form 700.

SECTION 4: PROCEDURES FOR ACCEPTING AND ACKNOWLEDGING DONATIONS

A. Authorized Individuals

Only the individuals identified herein are authorized to accept Donations on behalf of the City.
The estimated value of a Donation is based on the donor's estimate. The City will not independently assign a value to the donation unless it is cash.

1. City Council
   a. Donations of $5,000 or more may be accepted, via resolution, by the City Council.
   b. Any donation that does not comply with the requirements of this Policy, regardless of value, may only be accepted by the City Council.

2. City Manager
   a. Donations of between $1,000 - $4,999 may be accepted by the City Manager.
   b. Notwithstanding any other limitation contained in this Policy, the City Manager may accept any Donation to the City when the City Manager deems it necessary for the health and safety of City employees, City property, or the public.

   c. The City Manager, at their sole discretion, may decline a Donation when doing so is deemed necessary for the health and safety of City employees, City property, or the public

   d. The City Manager shall notify the City Council of a Donation at the next practicable City Council meeting or in writing as soon as possible.

3. Department Head
   a. Donations of less than $1,000 may be accepted by a Department Head
   b. The Department Head shall notify the City Manager of a Donation as soon as possible, but in no event later than one (1) business day after receipt.
   c. Any Donation that includes an ongoing obligation by the City, regardless of the value of the donation, must be approved by the City Manager.

B. Cash Donations

The following additional requirements apply to cash Donations, or the Donation of any cash equivalent:

1. The Donation shall be recorded in the appropriate revenue fund. The daily cash receipts should also indicate the account number used and the last name of the donor as a reference. All such funds shall remain earmarked within that specific fund for use only for the intended purpose and carried over within the budget until such time as it is expended. The Finance Director or designee may take any other necessary steps to properly document the donation.

2. For small Donations that include restrictions and/or obligations accepted by the City, the money should be used as soon as reasonably possible toward the specific category indicated by the donor.

3. A budget amendment is required for budget appropriation of any portion of Donation funds.

C. Acknowledgment of Donations

If requested by the donor, an acknowledgment letter on behalf of the City for any gift valued less than $1,000 may be provided by a Department Head, and by the City Manager for any gift valued $1,000 or more. The letter should clearly identify the nature of the Donation. Except for Donations of cash

or cash equivalents, where the donor amount is apparent, no dollar amount should be stated in the letter. Instead, the letter should contain the following paragraph: "Your donations may be tax deductible. To determine the amount you may properly deduct for tax purposes, you should consult your tax preparer or tax attorney." The City will not provide any tax services or documentation to donors.

D. Records

A record of cash Donations shall be made in accordance with Section B above and any other applicable policies of the Finance Department. A record of any non-cash donation valued by the donor at over five hundred dollars ($1,000) shall be created by the City Manager, or designee, and kept on file with the City Clerk. In addition, the City Manager, or designee, shall complete and submit to the FPPC a Form 801 for qualifying Donations when required by FPPC Regulations Sections 18944 and 18950.1. Examples of such qualifying Donations include the payment of travel expenses by third parties for official City business. Consult the City Attorney's Office to determine whether or not a Form 801 is required.

E. Declined Donations

The City reserves the right to decline any donation, if upon review and in the sole discretion of the City, acceptance of the donation is determined not to be in the best interests of the City.

CITY OF TRACY
GENERAL SERVICES AGREEMENT

This General Services Agreement (**Agreement**) is entered into between the City of Tracy, a municipal corporation (**City**), and 7 Thunder Productions LLC, DBA Signarama Manteca, a California limited liability company (**Contractor**). City and Contractor are referred to individually as "Party" and collectively as "Parties."

Recitals

A. City desires to retain Contractor to perform professional services as described in Exhibit A Scope of Work; and

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

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

Now therefore, the Parties mutually agree as follows:

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

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

2.1 Term. The term of this Agreement shall begin on _____ and end on _____, unless terminated in accordance with Section 6.

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

3.1 Not to Exceed Amount. Contractor's total compensation under this Agreement shall not exceed $2000. Contractor's billing rates shall cover all costs and expenses for Contractor's performance of this Agreement. No work shall be performed by Contractor in excess of the total compensation amount provided in this section without the City's prior written approval.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

To City:

City Manager's Office
333 Civic Center Plaza
Tracy, CA 95376

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

To Contractor:

Signarama Manteca
1411 W. Yosemite Ave.
Manteca, CA 953377

14. Miscellaneous.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[SIGNATURES ON FOLLOWING PAGE]

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

City of Tracy
City Manager

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

Attest:

_____
Adrianne Richardson, City Clerk

Approved as to form:

_____
Bijal M. Patel, City Attorney

Contractor

7 Thunder Productions LLC, DBA Signarama Manteca, a California limited liability company

By: Marta Molina Paul
Title: VP Sales
Date: October 8, 2024

Federal Employer Tax ID No. 83-1231727

Exhibits:

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

EXHIBIT A - Scope of Work

Contractor will provide the pictures of Mayor's from 1910 through 2024 as paid for and Donated by Mayor Nancy E. Young. Before printing pictures for installation Contractor shall have the information validated and confirmed by the City of Tracy.

Create and Install a historical display of approximately nine (9) feet high and twenty (20) feet wide that depicts the Mayors, elected and appointed officials of the City of Tracy from 1910 through 2024, to be installed as follows:

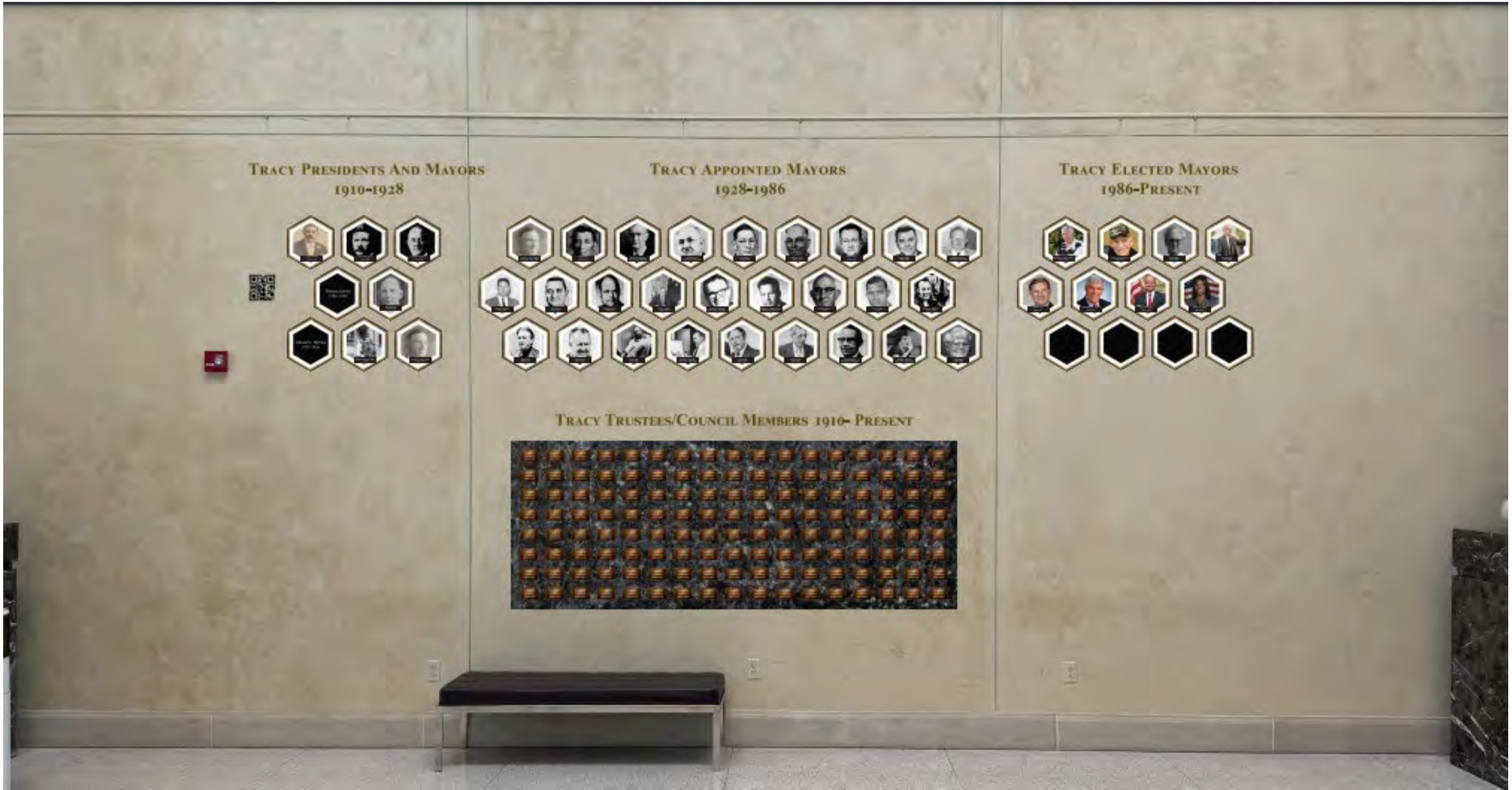
1. Create and install placement templates for Mayor Plaques
2. Create and Install Placement templates for all titles on walls
3. Install all acrylic letters for titles on walls
4. Place 52 acrylic plaques of mayor portraits on walls
5. Install dibond backer for Council Member plaques
6. Install 120 council member plaques on dibond backers
7. Installation shall comply with ADA requirements for an Identification Sign

EXHIBIT B - Compensation

1	Create and install placement templates for Mayor Plaques	1	$200.00	$200.00
2	Create and Install Placement templates for all titles on walls	1	$200.00	$200.00
3	Install all acrylic letters for titles on walls	1	$250.00	$250.00
4	Place 52 acrylic plaques of mayor portraits on walls	1	$375.00	$375.00
5	Install dibond backer for Council Member plaques	1	$125.00	$125.00
6	Install 120 council member plaques on dibond backers	1	$375.00	$375.00

Total: $1,525.00

Option 3 of 3 – Mock up*



APPROVED AS TO FORM AND LEGALITY

_____
CITY ATTORNEY'S OFFICE

TRACY CITY COUNCIL

RESOLUTION NO. _____

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(1) ACCEPTING THE FOLLOWING IN ACCORDANCE WITH THE CITY'S DONATION & GIFT POLICY ADOPTED BY RESOLUTION 2021-108:

(A) A DONATION OF A HISTORICAL DISPLAY ENTITLED "TRACY'S LEADERSHIP HISTORY" FROM MAYOR NANCY D. YOUNG; AND
(B) A MONETARY GIFT FROM GOOD SAMARITAN, INC. IN THE AMOUNT OF $2,000 TO COVER THE COST OF INSTALLATION OF THE HISTORICAL DISPLAY IN THE CITY HALL FOYER; AND
(2) APPROVING THE EXECUTION OF A GENERAL SERVICE AGREEMENT (GSA) WITH 7 THUNDER PRODUCTIONS LLC DOING BUSINESS AS SIGNARAMA IN THE AMOUNT OF $2,000 FOR THE INSTALLATION OF THE HISTORICAL DISPLAY AND AUTHORIZING THE CITY MANAGER TO EXECUTE IT; AND

(3) APPROPRIATING THE DONATED FUNDS FOR THE GSA

WHEREAS, on October 1, 2024, the City Council heard a presentation by Mayor Nancy D. Young (Mayor Young) summarizing the proposed installation of a historical display recognizing Tracy Mayors and elected and appointed officials from 1910 to present; and

WHEREAS, the proposal included a gift of a physical display and also a monetary donation to cover the cost associated with the installation of the display; and

WHEREAS, based on the presentation, the City Council found that the proposal conforms to the Council's Policy on Donation and Gifts, adopted per Resolution 2021-108 and directed the staff to return with implementation actions; and

WHEREAS, the receipt of the physical display is only one component of the proposed gift as the display would need to be installed at the proposed location on City property; and

WHEREAS, since the displays are being proposed to be installed on City property (inside the City Hall Foyer), the City must directly contract with the vendor who will do the installation work through a General Services Agreement (GSA) and the cost associated with the GSA will be covered by funds to be donated by Good Samaritan, Inc.; and

WHEREAS, the proposed vendor, 7 Thunder Productions LLC Doing Business As Signarama (Contractor), is the same one that is creating the historical displays for Mayor Young and

is located in Manteca; and

WHEREAS, staff has negotiated the terms of a GSA with the Contractor, which is being presented here for approval by the City Council, although the City Manager has authority to execute it by separate delegation of authority based on the dollar amount of the contract; and

WHEREAS, Good Samaritan, Inc. will donate $2,000 to be used for the GSA, and per discussions with the Contractor and as reflected in the draft GSA, this amount will cover the cost associated with the installation as outlined in the GSA; and

WHEREAS, this item is categorically exempt from review under the California Environmental Quality Act (CEQA) regulations as it is not a "project" for purposes of CEQA as defined by CEQA Guidelines §15378 in that it involves maintenance of existing areas and such maintenance will not result in a direct or indirect physical change in the environment (CEQA Guidelines §§15378(b)(5)); and further, even if this item was deemed a "project," and therefore subject to CEQA, the item would be exempt as it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment (CEQA Guidelines §15061(b)(3)); and

WHEREAS, Mayor Young has placed no restrictions or requirements on the donations, only specifying that the display be mounted in an appropriate location within City Hall;

NOW, THEREFORE, be it,

RESOLVED: That the City Council of the City of Tracy accepts the proposed donation of historical displays from Mayor Young, in accordance with the City of Tracy Policy Establishing Rules and Procedures for Accepting Donations and Gifts from the Public; and be it

FURTHER RESOLVED: That the City Council hereby accepts the monetary donation from Good Samaritan, Inc., in the amount of $2,000; and be it

FURTHER RESOLVED: That the City Council approves the execution of a General Services Agreement (GSA) with 7 Thunder Productions LLC Doing Business As Signarama in the form shown on Exhibit 1 in the amount of $2,000 for the installation of the historical display, and authorizes the City Manager to execute the GSA; and be it

FURTHER RESOLVED: That the City Council appropriates the donated funds from Good Samaritan, Inc. to be used to pay for the costs to be incurred under the GSA; and be it

FURTHER RESOLVED: That the City Council directs staff to take all actions needed to implement the installation of the historical display in the Foyer of City Hall; and be it

FURTHER RESOLVED: That the City Council finds that this item is not a project as defined under CEQA and even if deemed a project, it is categorically exempt under CEQA Guidelines §15061(b)(3) as it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment.

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* * * * * * * * * * * * * * *

The foregoing Resolution 2024-_____ was adopted by the Tracy City Council on October 15, 2024, by the following vote:

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

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

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

Exhibit 1 - General Services Agreement

CITY OF TRACY
GENERAL SERVICES AGREEMENT

This General Services Agreement (**Agreement**) is entered into between the City of Tracy, a municipal corporation (**City**), and 7 Thunder Productions LLC, DBA Signarama Manteca, a California limited liability company (**Contractor**). City and Contractor are referred to individually as "Party" and collectively as "Parties."

Recitals

A. City desires to retain Contractor to perform professional services as described in Exhibit A Scope of Work; and

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

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

Now therefore, the Parties mutually agree as follows:

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

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

2.1 Term. The term of this Agreement shall begin on _____ and end on _____, unless terminated in accordance with Section 6.

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

3.1 Not to Exceed Amount. Contractor's total compensation under this Agreement shall not exceed $2000. Contractor's billing rates shall cover all costs and expenses for Contractor's performance of this Agreement. No work shall be performed by Contractor in excess of the total compensation amount provided in this section without the City's prior written approval.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

To City:

City Manager's Office
333 Civic Center Plaza
Tracy, CA 95376

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

To Contractor:

Signarama Manteca
1411 W. Yosemite Ave.
Manteca, CA 953377

14. Miscellaneous.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[SIGNATURES ON FOLLOWING PAGE]

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

City of Tracy
City Manager

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

Attest:

_____
Adrianne Richardson, City Clerk

Approved as to form:

_____
Bijal M. Patel, City Attorney

Contractor

7 Thunder Productions LLC, DBA Signarama Manteca, a California limited liability company

By: Marta Molina Paul
Title: VP Sales
Date: October 8, 2024

Federal Employer Tax ID No. 83-1231727

Exhibits:

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

EXHIBIT A - Scope of Work

Contractor will provide the pictures of Mayor's from 1910 through 2024 as paid for and Donated by Mayor Nancy E. Young. Before printing pictures for installation Contractor shall have the information validated and confirmed by the City of Tracy.

Create and Install a historical display of approximately nine (9) feet high and twenty (20) feet wide that depicts the Mayors, elected and appointed officials of the City of Tracy from 1910 through 2024, to be installed as follows:

1. Create and install placement templates for Mayor Plaques
2. Create and Install Placement templates for all titles on walls
3. Install all acrylic letters for titles on walls
4. Place 52 acrylic plaques of mayor portraits on walls
5. Install dibond backer for Council Member plaques
6. Install 120 council member plaques on dibond backers
7. Installation shall comply with ADA requirements for an Identification Sign

EXHIBIT B - Compensation

1	Create and install placement templates for Mayor Plaques	1	$200.00	$200.00
2	Create and Install Placement templates for all titles on walls	1	$200.00	$200.00
3	Install all acrylic letters for titles on walls	1	$250.00	$250.00
4	Place 52 acrylic plaques of mayor portraits on walls	1	$375.00	$375.00
5	Install dibond backer for Council Member plaques	1	$125.00	$125.00
6	Install 120 council member plaques on dibond backers	1	$375.00	$375.00

Total: $1,525.00