

Tuesday, September 15, 2020, 7:00 P.M.

Tracy City Hall, 333 Civic Center Plaza, Tracy

Web Site: www.cityoftracy.org

**THIS REGULAR MEETING WILL BE CONDUCTED PURSUANT TO THE
PROVISIONS OF THE GOVERNOR'S EXECUTIVE ORDER N-29-20
WHICH SUSPENDS CERTAIN REQUIREMENTS OF THE RALPH M.
BROWN ACT**

**RESIDENTS ARE STRONGLY ENCOURAGED TO PARTICIPATE
REMOTELY AT THE SEPTEMBER 15, 2020 MEETING**

Remote Access to City of Tracy Council Meeting:

In accordance with the guidelines provided in Executive Order N-29-20 on social distancing measures, the City of Tracy will allow for remote participation at the upcoming City Council meeting on Tuesday, September 15, 2020.

As always, the public may view the City Council meetings live on the City of Tracy's website at www.CityofTracy.org or on Channel 26. To view from the City's website, select "Watch Live Council Meetings" from the drop down menu "Select an Online Service" at the top of the City's homepage. You will be directed to the "Council Meeting Videos" page where you may select the video for the appropriate date under "Upcoming Events."

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:

*Public comment, limited to 250 words or less, submitted via email **will be accepted for agendized items before the start of the Council meeting at 7:00 p.m. Please send an email to publiccomment@cityoftracy.org and Identify the item you wish to comment on in your email's subject line.***

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:*
 - **Phone** by dialing (209) 831-6010, or
 - **Online** by visiting <https://cityoftracyevents.webex.com> and using the following **Event Number:** 126 275 1491 and **Event Password:** TracyCC
 - **If you would like to participate in the public comment anonymously**, you may submit your comment via phone or 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.

- **Protocols for submitting comments by phone:**
 - *If you wish to discuss an item on the “Consent Calendar” identify the item when calling in. All requests to discuss an item on the “Consent Calendar” must be submitted before the Mayor announces that the time to submit such a request has expired.*
 - *Identify the item you wish to comment on to staff when calling in. Comments received by phone will be accepted for the “Items from the Audience/Public Comment” and “Regular Items” portions of the agenda.*
 - *Comments received by phone for the “Items from the Audience/Public Comment” portion of the agenda must be received by the time the Mayor opens that portion of the agenda for discussion.*
 - *Comments received by phone on each “Regular Item” will be accepted until the Mayor announces that public comment for that item is closed.*
- **Protocols for commenting via WebEx:**
 - *If you wish to comment on the “Consent Calendar”, “Items from the Audience/Public Comment” or “Regular Agenda” portions of the agenda:*
 - *Listen for the Mayor to open that portion of the agenda for discussion, then raise your hand to speak by clicking on the Hand icon on the Participants panel to the right of your screen.*
 - *If you no longer wish to comment, you may lower your hand by clicking on the Hand icon again.*
 - *Comments for the “Consent Calendar” “Items from the Agenda/Public Comment” or “Regular Agenda” portions of the agenda will be accepted until the public comment for that item is closed.*
- **The total allotted time for public comment will be as follows:**
 - **Consent Calendar: 10 minutes**
 - **Items from the Audience: 15 minutes**
 - **Regular Items: 10 minutes**

Comments received by publiccomment@cityoftracy.org, phone call, or on Webex outside of the comment periods outlined above will not be included in the record.

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

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

each speaker should avoid repetition of the remarks of the prior speakers. To promote time efficiency and an orderly meeting, the Presiding Officer may request that a spokesperson be designated to represent similar views. A designated spokesperson shall have 10 minutes to speak. At the Presiding Officer's discretion, additional time may be granted. The City Clerk shall be the timekeeper.

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

Addressing the Council on Items not on the Agenda – The Brown Act prohibits discussion or action on items not on the posted agenda. The City Council's Meeting Protocols and Rules of Procedure provide that in the interest of allowing Council to have adequate time to address the 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.ci.tracy.ca.us

CALL TO ORDER
PLEDGE OF ALLEGIANCE
INVOCATION
ROLL CALL

1. CONSENT CALENDAR

- 1.A. APPROVAL OF SEPTEMBER 1, 2020 CLOSED SESSION AND REGULAR MEETING MINUTES
- 1.B. AUTHORIZE THE PURCHASE OF MULTIPLE TRAILERS IN THE AMOUNT OF \$105,534
- 1.C. APPROVE A SITE LEASE AGREEMENT WITH T-MOBILE WEST TO UPDATE ONE LIGHT STANDARD AT RITTER FAMILY BALLPARK, PLACE TELECOMMUNICATION DEVICES ON THE LIGHT STANDARD AND LEASE GROUND SPACE FOR AN INITIAL TERM OF FIVE YEARS, NOT TO EXCEED TWENTY YEARS

- 1.D. APPROVE TWO MASTER PROFESSIONAL SERVICES AGREEMENTS WITH HARRIS AND ASSOCIATES (HA20-01 AND HA20-02) EACH FOR A NOT-TO-EXCEED AMOUNT OF \$800,000 PER FISCAL YEAR FOR PROGRAM MANAGEMENT SERVICES
- 1.E. APPROVE OPTION CONTRACT TERM SHEET TO CONVEY 200 ACRES (APNs 209-230-029 AND 209-230-030) TO VALLEY LINK FOR A FUTURE OPERATIONS AND MAINTENANCE FACILITY AND AUTHORIZE THE CITY MANAGER TO EXECUTE THE TERM SHEET
2. ITEMS FROM THE AUDIENCE
3. REGULAR AGENDA
 - 3.A. DISCUSS CITY'S RESPONSE TO COVID-19 (VERBAL REPORT)
 - 3.B. RECEIVE AN UPDATE ON THE FY 2019-20 BUDGET UNAUDITED ACTUALS
 - 3.C. RECEIVE UPDATE REGARDING SENATE BILL 793 PROHIBITING THE SALE OF FLAVORED TOBACCO IN CALIFORNIA, DISCUSS PROPOSED CITY ORDINANCE RESTRICTING LOCATION OF TOBACCO RETAILERS, AND PROVIDE DIRECTION TO STAFF
 - 3.D. APPOINTMENT OF CITY COUNCIL SUBCOMMITTEE TO INTERVIEW APPLICANTS TO FILL A VACANCY ON THE MEASURE V RESIDENTS' OVERSIGHT COMMITTEE
4. ITEMS FROM THE AUDIENCE
5. STAFF ITEMS
6. COUNCIL ITEMS
7. ADJOURNMENT

TRACY CITY COUNCIL - SPECIAL MEETING MINUTES

September 1, 2020, 6:45 p.m.

Tracy City Hall, 333 Civic Center Plaza, Tracy

Due to the COVID-19 emergency, the Closed Session meeting was conducted pursuant to the provisions of the Governor's Executive Order N-29-20 which suspends certain requirements of the Ralph M. Brown Act. Residents can participate under Items from the Audience remotely via email, phone and WebEx during the meeting.

1. CALL TO ORDER – Mayor Rickman called the meeting to order at 6:45 p.m. for the purpose of a closed session to discuss the items outlined below.

2. ROLL CALL – Roll call found Council Member Vargas, Mayor Pro Tem Young and Mayor Rickman present.

Council Member Arriola arrived at 6:46 p.m.

Council Member Ransom arrived at 6:47 p.m.

3. ITEMS FROM THE AUDIENCE – There was no public comment.

4. CLOSED SESSION

1. Real Property Negotiations (Gov. Code § 54956.8)

Property Location: 800 W. Beechnut Ave – APN 234-070-04
900 W. Beechnut Ave – APN 234-070-06
1000 W. Beechnut Ave – APN 234-070-01

Negotiators for the City: Kevin Tobeck, Project Specialist
Brian MacDonald, Parks & Recreation Director
Don Scholl, Public Works Director
Ed Lovell, Management Analyst
Midori Lichtwardt, Assistant City Manager
Jenny Haruyama, City Manager
Leticia Ramirez, City Attorney

Negotiating Parties: Chevron – Simon Bhavilai, Real Estate Representation
Union Pacific – Peter Kenney, Senior Manager – Real Estate

Under Negotiation: Price and Terms of Payment

5. RECESS TO CLOSED SESSION - Motion was made by Council Member Vargas and seconded by Council Member Arriola to recess the meeting to closed session at 6:48 p.m. Roll call vote found all in favor; passed and so ordered.

6. RECONVENE TO OPEN SESSION – The meeting reconvened to open session at 7:04 p.m.
7. REPORT OF FINAL ACTION – There was no report of final action.
8. ADJOURNMENT – Time: 7:05 p.m.

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

The agenda was posted at City Hall on August 27, 2020. The above are action minutes.

Mayor

ATTEST:

City Clerk

September 1, 2020, 7:00 p.m.

City Hall, 333 Civic Center Plaza, Tracy

Web Site: www.ci.tracy.ca.us

Due to the COVID-19 emergency, the regular meeting was conducted pursuant to the provisions of the Governor's Executive Order N-29-20, which suspends certain requirements of the Ralph M. Brown Act. Residents participated remotely via email, phone and WebEx during the meeting.

Mayor Rickman called the meeting to order at 7:05 p.m.

Mayor Rickman led the Pledge of Allegiance.

Pastor Scott McFarland, Journey Christian Church offered the invocation.

Roll call found Council Members Arriola, Ransom, Vargas, Mayor Pro Tem Young and Mayor Rickman present.

1. CONSENT CALENDAR – Following the removal of items 1.H and 1.G by Council Member Vargas and item 1.E by Council Member Ransom motion was made by Council Member Vargas and seconded by Mayor Pro Tem Young to adopt the Consent Calendar. Roll call vote found all in favor; passed and so ordered.
 - 1.A APPROVAL OF AUGUST 18 2020 SPECIAL MEETING AND REGULAR MEETING MINUTES AND AUGUST 26, 2020 SPECIAL MEETING MINUTES – Minutes were adopted.
 - 1.B AUTHORIZE THE PURCHASE OF EIGHT GENFARE FAST FARE MODEL FARE BOXES FOR TRACER VEHICLES (CIP 77560) IN THE AMOUNT OF \$145,464.22 AND MAKE A BEST INTEREST FINDING TO FOREGO FORMAL BIDDING PROCEDURES – Resolution 2020-155 authorized the purchase of the eight Genfare Fast Fare Model Fare Boxes for Tracer vehicles.
 - 1.C AUTHORIZE THE ACCEPTANCE OF \$11,654 FROM THE 2020 EDWARD BYRNE MEMORIAL JUSTICE ASSISTANCE GRANT (JAG) PROGRAM FOR FUNDING HEALTH AND WELLNESS RELATED TRAINING, SERVICES, EQUIPMENT, AND TECHNOLOGY FOR LAW ENFORCEMENT OFFICERS AND APPROVE THE APPROPRIATION TO THE POLICE DEPARTMENT BUDGET FOR FISCAL YEAR 20/21 – Resolution 2020-156 authorized the acceptance of \$11,654 from the 2020 Edward Byrne Memorial Justice Grant (JAG) Program.
 - 1.D AUTHORIZE AMENDMENT OF THE CITY'S POSITION CONTROL ROSTER BY APPROVING THE ADDITION OF A FULL-TIME LIEUTENANT AND DELETING A PART-TIME PROFESSIONAL STANDARDS OFFICER POSITION WITHIN THE POLICE DEPARTMENT AND APPROVING THE ADDITION OF A FULL-TIME BUILDING MAINTENANCE WORKER AND THE DELETION OF A FULL-TIME BUILDING MAINTENANCE ASSISTANT WITHIN THE PUBLIC WORKS DEPARTMENT – Resolution 2020-157 authorized the amendments to the City's position control roster.

1.F APPROVE A GENERAL SERVICES AGREEMENT WITH DENALI WATER SOLUTIONS LLC, FOR THE PURPOSES OF LOADING, HAULING AND DISPOSING OF WASTEWATER TREATMENT BIOSOLIDS FOR FISCAL YEAR 2020-21 – **Resolution 2020-158** approved the General Services Agreement with Denali Water Solutions, LLC.

1.E AUTHORIZE TRACY POLICE DEPARTMENT TO ACCESS STATE AND FEDERAL LEVEL SUMMARY CRIMINAL HISTORY INFORMATION FOR COMMERCIAL CANNABIS BUSINESS OWNERS, EMPLOYEES, VOLUNTEERS, AND CONTRACTORS PERMITTING AND CERTIFICATION PURPOSES

Council Member Ransom pulled the item to talk about the City not having the authority to dictate who people hire as part of their business.

Bianca Rodriguez, Assistant City Attorney provided the staff report.

There was no public comment.

City Council questions and comments followed.

ACTION: Motion was made by Council Member Arriola and seconded by Council Member Vargas to adopt **Resolution 2020-159** a resolution of the City Council of the City of Tracy authorizing the Tracy Police Department to access state and federal level summary criminal history information for employment, volunteers, and contractors, licensing or certification purposes. Roll call found all in favor; passed and so ordered.

1.G APPROVE MASTER PROFESSIONAL SERVICES AGREEMENTS WITH VVH CONSULTING ENGINEERS AND KJELDSEN, SINNOCK, NEUDECK CIVIL ENGINEERS AND LAND SURVEYORS, INC. TO PROVIDE LAND SURVEYING SERVICES AND OTHER ENGINEERING SUPPORT SERVICES FOR CAPITAL IMPROVEMENT PROJECTS AND AUTHORIZE THE DEVELOPMENT SERVICES DIRECTOR TO EXECUTE FUTURE TASK ORDERS RELATED TO THE AGREEMENTS, FOR A NOT-TO-EXCEED AMOUNT OF \$200,000 FOR EACH CONSULTANT PER FISCAL YEAR

Council Member Vargas pulled the item to clarify that the intent is to provide better customer service to our clients and CIP project, and include CIP projects as part of the etracking.

There was no public comment.

Council questions followed.

ACTION: Motion was made by Mayor Pro Tem Young and seconded by Council Member Arriola to adopt **Resolution 2020-160** approving Master Professional Services Agreements with VVH Consulting Engineers and Kjeldsen, Sinnock, Neudeck Civil Engineers and Land Surveyors, Inc. to provide land surveying services and other engineering support services for Capital Improvement Projects, and

authorizing the Development Services Director to execute future task orders related to the agreements, for a not-to-exceed amount of \$200,000 for each consultant per fiscal year. Roll call found all in favor; passed and so ordered.

1.H APPROVE MASTER PROFESSIONAL SERVICES AGREEMENTS WITH WEST YOST & ASSOCIATES, BLACK WATER CONSULTING ENGINEERS, INC., AND BENNETT ENGINEERING SERVICES, INC. TO PROVIDE WATER PRESSURE AND CAPACITY ANALYSES AND ENGINEERING SERVICES FOR LAND DEVELOPMENT PROJECTS, AND AUTHORIZE THE DEVELOPMENT SERVICES DIRECTOR TO ISSUE FUTURE NOTICES TO PROCEED RELATED TO THE AGREEMENTS, FOR A NOT-TO-EXCEED AMOUNT OF \$200,000 FOR EACH CONSULTANT PER CALENDAR YEAR

Council Member Vargas pulled the item to clarify that it is in the spirit of servicing our community and clients, and have an expedient process and to ask staff to update the CIP projects on etracker.

There was no public comment.

ACTION: Motion was made by Council Member Vargas and seconded by Council Member Arriola to adopt **Resolution 2020-161** approving Master Professional Services Agreements with West Yost & Associates, Black Water Consulting Engineers, Inc. and Bennett Engineering Services, Inc. to provide water pressure and capacity analyses and engineering services for land development projects, and authorizing the Development Services Director to issue future notices to proceed related to the agreements, for a not-to-exceed amount of \$200,000 for each consultant per calendar year. Roll call found all in favor; passed and so ordered.

2. ITEMS FROM THE AUDIENCE – Veronica Vargas reminded Council to be mindful of the timelines when they speak. Ms. Vargas requested Council to look at the Code of Conduct, Ethics and enforce those policies, and requested that Council look into making a policy on timelines for Council, so all Council and the public can participate.

Mr. Evans, Patriot Coalition of Americans shared his concerns and opposition regarding Council Members Arriola and Ransom's Equity Empowerment Initiative, stating it will divide the community.

Council Member Ransom responded to Mr. Evans' comment.

Robin Cole spoke in support of Council Member Arriola and Ransom's Equity Empowerment Initiative, and spoke about systemic racism. Ms. Cole encouraged Council to continue with the Equity and Empowerment Initiative.

Tony Vars shared his concerns regarding El Pescadero Park being turned into a homeless encampment, and added our parks are there for the community to enjoy and camping is not permitted in parks.

Robert Tanner shared his concerns regarding Council not spending \$9 million to complete the paved parking lot and bathrooms at Legacy Fields, and added Council needs to complete one amenity for the City and that is Legacy Fields.

Council Members Ransom and Arriola objected to some of the comments stated by Mr. Tanner.

Mary Mitracos spoke about the City of Tracy structural deficit, reserves and percentage of general fund, provided a history regarding Legacy Fields, stated the City has a structural deficit again now, and encouraged Council to finish Legacy Fields.

Mayor Pro Tem Young responded to comments made by Ms. Mitracos.

Alex Monceaux shared his concerns regarding no distribution or manufacturing applications being allowed after the September 30 cannabis application processing closure date. Mr. Monceaux asked if the City has a plan on how to vet who is a local and who is going to run the business versus someone who has just been put on the license to score points.

3. **REGULAR AGENDA**

3.A **DISCUSS CITY'S RESPONSE TO COVID-19 (VERBAL REPORT)**

Jenny Haruyama, City Manager provided an update and presentation on the City's response to COVID-19.

City Council questions and comments followed.

City Council accepted the update.

3.B **PUBLIC HEARING TO CONSIDER A VESTING TENTATIVE SUBDIVISION MAP (LARKSPUR ESTATES UNIT 4) TO DIVIDE ONE PARCEL INTO 13 PARCELS ON 1.89 ACRES LOCATED ON THE SOUTH SIDE OF DE BORD DRIVE AND CAIRO COURT, ASSESSOR'S PARCEL NUMBER 246-330-50, AND A DEVELOPMENT REVIEW APPLICATION FOR THE ARCHITECTURE OF 14 SINGLE FAMILY HOMES TO BE PLACED ON THE NEW SUBDIVISION LOTS AS WELL A LOT FORMERLY USED FOR EMERGENCY VEHICLE ACCESS, ASSESSOR'S PARCEL NUMBER 246-310-08**

Victoria Lombardo, Senior Planner provided the staff report.

Mayor Rickman opened the public hearing.

There was no public comment.

Mayor Rickman closed the public hearing.

Dave Butz, Bright Development stated he was happy with the Conditions of Approval. Mr. Butz responded to Council Member Vargas's questions.

City Council questions and comments followed.

ACTION: Motion was made by Mayor Pro Tem Young and seconded by Council Member Vargas to adopt **Resolution 2020-162** approving a Vesting Tentative Subdivision Map (Larkspur Estates Unit 4) to divide one parcel into 13 parcels on 1.89 acres located on the south side of DeBord Drive and Cairo Court, Assessor's Parcel

Number 246-330-50, and a development review application for the architecture of 14 single family homes to be placed on the new subdivision lots as well a lot formerly used for emergency vehicle access, Assessor's Parcel Number 246-310-08. Roll call found all in favor; passed and so ordered.

3.C RECEIVE UPDATE FROM THE SOUTH SAN JOAQUIN COUNTY FIRE AUTHORITY ON THE EMPLOYEE TRANSITION PLAN AND PROVIDE DIRECTION TO STAFF

Randall Bradley, Fire Chief, provided the staff report.

A member of the public asked how the JPA works and who the Fire Chief reports to, why there are only four members on the Fire Authority, and requested public workshops on this matter to discuss governance and employment structure for public awareness.

Cliff Hudson asked why there are only four members on the Fire Authority, and requested public workshops on this matter to discuss governance and employment structure for public awareness.

John Muniz explained that the JPA had only four members to allow other agencies to have a seat at the table if the JPA grew. Mr. Muniz stated he would like to get the JPA completed by the end of the year.

Mary Mitracos asked about the fiscal impacts, and stated the decision will impact the City for decades. Ms. Mitracos supported the JPA, but the City should take the time and bring everyone along, and educate the public.

Ryan Gall, on behalf of Tracy Firefighters Association provided a brief history about the governance models, and stated he is confident the Fire Chief is moving the Fire Department in the right direction.

Council questions and comments followed.

Council Member Arriola and Council Member Vargas requested to see the employee transition plan.

Jenny Haruyama, City Manager summarized Council's consensus: Have an independent third party to look at fiscal piece of the transition plan, make sure the JPA is involved and it's a collaborative effort, and bring back at a regular scheduled meeting. Ms. Haruyama added that the item may not come back before November, but will keep Council apprised.

3.D RECEIVE UPDATE CONCERNING THE CITY OF TRACY COMPREHENSIVE EMERGENCY MANAGEMENT PLAN AND PROVIDE DIRECTION TO STAFF

Jenny Haruyama, City Manager provided brief input regarding the item.

Randall Bradley, Fire Chief, provided the staff report.

There was no public comment.

Council questions and comments followed.

ACTION: Motion was made by Council Member Vargas and seconded by Council Member Arriola to receive update regarding the City of Tracy Comprehensive Emergency Management Plan and directed staff to reengage conversation with Sutter Hospital regarding their future plans on their property at Gateway.

City Council questions and comments continued.

Mayor Pro Tem Young made a friendly amendment to include Council communication plan and training in the EMP. Council Member Vargas accepted the friendly amendment.

Roll call vote found all in favor; passed and so ordered.

3.E DESIGNATE 500 W ARBOR ROAD AS A TEMPORARY EMERGENCY HOUSING SITE FOR UNSHELTERED INDIVIDUALS IN TRACY; APPROPRIATE FUNDS FOR CONSTRUCTION AND PROVISION OF SERVICES IN THE AMOUNT OF \$690,000 FROM HOUSING ASSET FUNDS, \$100,000 FROM CDBG, \$109,000 CARES ACT; AUTHORIZE STAFF TO SUBMIT GRANT APPLICATIONS; AUTHORIZE STAFF TO ISSUE A REQUEST FOR PROPOSAL FOR A SERVICE PROVIDER TO OPERATE THE FACILITY; AND PROVIDE DIRECTION TO STAFF

Midori Lichtwardt, Assistant City Manager, provided the staff report.

Teresa Brown shared concerns regarding the homeless situation in Tracy and encouraged stepping up to care about those who need help when left without a place to live.

Tim Silva stated the item should be taken off the agenda, and shared his concerns regarding using the animal shelter as temporary emergency housing for displaced residents of Tracy and suggested Council and staff should speak with the displaced residents.

Jim Osborne, Tracy Community Connections Center expressed support of the proposition stating this is a step in the right direction to get people off the streets.

Jennifer Rowell advocated that the City move on the temporary emergency housing as this is step one of the strategic plan. Ms. Rowell added that we need to make sure shelters are low no barrier shelters that incorporate people, pets and possessions.

Council questions and comments followed.

ACTION: Motion was made by Council Member Arriola and seconded by Council Member Ransom to adopt **Resolution 2020-163** designating 500 W Arbor Road as a temporary emergency housing site for unsheltered individuals in Tracy, appropriate funds for construction and provision of services in the amount of \$690,000 from Housing Asset Funds, \$100,000 from CDBG, \$109,000 CARES

Act, authorize staff to submit related grant applications and issue a request for proposals for a service provider to operate the facility. Roll call vote found all in favor; passed and so ordered.

Mayor Rickman called for a recess at 11:17 p.m.

Mayor Rickman reconvened the meeting at 11:26 p.m.

3.F DESIGNATE VOTING DELEGATE AND UP TO TWO ALTERNATE VOTING DELEGATES FOR THE LEAGUE OF CALIFORNIA CITIES 2020 ANNUAL CONFERENCE BUSINESS MEETING AND DETERMINE CITY COUNCIL'S POSITION ON THE RESOLUTION TO BE CONSIDERED AT THE ANNUAL CONFERENCE BUSINESS MEETING

Adrienne Richardson, City Clerk, provided the staff report.

There were no comments from the public.

Mayor Pro Tem Young nominated Jenny Haruyama, City Manager as the voting delegate on behalf of the City. Mayor Rickman seconded the nomination.

Council Member Vargas volunteered to be an alternate voting delegate.

Council questions and comments followed.

ACTION: Motion was made by Mayor Pro Tem Young and seconded by Council Member Arriola to adopt **Resolution 2020-163** to designate Jenny Haruyama, City Manager as the voting delegate and Council Member Vargas as the alternate voting delegate for the League of California Cities 2020 Annual Conference Business Meeting and determined City Council's position as being in favor of the resolution to be considered at the Annual Conference Business Meeting. Roll call found all in favor; passed and so ordered.

4. ITEMS FROM THE AUDIENCE – There was no public comment.
5. STAFF ITEMS – None
6. COUNCIL ITEMS – Council Member Arriola thanked firefighters for their efforts during the wildfire crisis and wished everyone a happy Labor Day.

Council Member Vargas thanked the firefighters for their efforts and thanked all the volunteers who protected structures. Council Member Vargas wished everyone a happy Labor Day.

Mayor Pro Tem Young wished everyone a safe Labor Day. Mayor Pro Tem Young provided staff clarification regarding her request at the last Council meeting to bring back 1) Discussion on Legacy Fields and 2) Discussion on the gymnasium before November. Mayor Pro Tem Young stated it is important to know where we have been, where we are and what we collectively want to do as this Council going forward with Legacy Fields as well what we are going to do about the gymnasium and aquatics so things are solidified before this Council expires. Council Member Ransom seconded the request.

Mayor Rickman added to include Legacy Fields as a whole, what is included in the funding the \$9 million. Council Member Vargas seconded the request.

Council Member Arriola asked to include phasing.

Jenny Haruyama, City Manager asked Mayor Rickman if he was asking for background on the cost of the \$9 million, what it would get. Phasing is a completely different discussion because staff has to wait on the developer's proposal for phasing.

Mayor Pro Tem Young wanted to make sure that we are looking at what needs to be done, and not making decisions on what is to be done – informational to understand how we got to where we are and what the plan is for the future.

Leticia Ramirez, City Attorney clarified informational means no action or only provide direction to staff so staff can make sure to have the appropriate desired action.

Mayor Pro Tem Young requested informational, the need that is being requested should be filtered into a Measure V conversation, and added she is not looking to spend \$9 million right now.

Ms. Ramirez clarified for purposes of agenda title and Brown Act compliance Mayor Pro Tem Young is seeking an item that discusses these projects with no action and direction to staff.

Mayor Pro Tem Young responded on Legacy Fields we have already completed what we said we would to do with Measure V. The gymnasium needs to be an action and much more information is needed.

Ms. Haruyama clarified the request is to bring back as informational for Legacy Fields and action oriented for the gymnasium and asked if Mayor Pro Tem Young is requesting both to come back before November because the gymnasium will be a heavy lift.

Mayor Pro Tem Young stated Council has made many different commitments pre this Council, last Council and the current Council and this Council will be changing and things need to be solidified.

Ms. Haruyama reminded Council that they have a lot going on and this will impact her scheduling ability to deliver things to Council.

Mayor Rickman stated the City Manager makes up the agendized items, Council cannot have everything and the City Manager is going to have to prioritize. Not everything can be brought back as a priority.

Mayor Pro Tem Young stated this is so crucial it should not go on to a third Council to make decisions.

Council Member Vargas responded absolutely, everything else should wait and we should go on this first. Council Member Vargas added the second she provided for Mayor Rickman's request on Legacy Fields and the \$9 million remaining; she did not want as an informational item, and was hoping to have the opportunity to make a decision. Mayor Rickman seconded the request.

Ms. Haruyama stated there are two conflicting Council requests. Ms. Ramirez suggested the City Attorney and the City Manager confer and get back to Council.

Mayor Pro Tem Young added if there is another update on Measure V then bring back the Legacy Fields part of that to look at finances. The gymnasium has already been decided as far as the framework so that is a separate conversation.

Ms. Haruyama responded she did not receive direction at the Measure V discussion but if the Council wants that item brought back to let her know now, and she will do her best to prioritize.

Mayor Pro Tem Young stated it is important in the context of the finances.

Ms. Haruyama responded staff provides Measure V updates in context of the quarterly fiscal updates so there will be some discussion but if you want to talk about actionable decisions with respect on how you spend, direction from Council is needed.

Council Member Arriola stated he would second that only in the context of the discussion on phasing of all Measure V.

Ms. Haruyama to figure it out and get back to Council.

Council Member Ransom wished everyone a happy Labor Day and thanked the firefighters especially our team for their efforts to help the statewide community. Council Member Ransom shared her concerns regarding fair, ethical and local government and value statement and things that are not in the spirit of the City's Code of Conduct and requested to revisit the Code of Conduct to look at how Council can address the gap. Mayor Pro Tem Young supported the request.

Council Member Vargas asked to bring back the speaking time limits for Council. Mayor Rickman supported the request.

Mayor Rickman responded to comments made by Council Member Ransom. Mayor Rickman announced the following: Wished everyone a happy Labor Day, South San Joaquin County Fire Authority did an exceptional job with limited resources, wished all new students good luck with the new school year, and reminded everyone to shop local and support local businesses.

7. ADJOURNMENT – Time: 12:04 a.m. Date: Wednesday, September 2, 2020.

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

The above agenda was posted at the Tracy City Hall on August 27, 2020. The above are action minutes. A recording is available at the office of the City Clerk.

Mayor

ATTEST:

City Clerk

September 15, 2020

AGENDA ITEM 1.B

REQUEST

**AUTHORIZE THE PURCHASE OF MULTIPLE TRAILERS IN THE AMOUNT OF
\$105,534**

EXECUTIVE SUMMARY

A current need exists to replace antiquated trailers, for the operation and maintenance of City infrastructure. This request seeks authorization to make the necessary purchases.

DISCUSSION

The Public Works Department is responsible for managing most of the City's vehicle and equipment fleet. There is an existing need to replace antiquated equipment, for use throughout the City. These trailers will allow staff to transport portable equipment that is too heavy to lift to a truck in a safe and efficient manner. The current trailers cannot accommodate the new and heavier portable equipment we own. The Public Works Department received authorization through the Fiscal Year 2020-2021 budget process for the replacement and purchase of the equipment.

On July 16, 2020, staff issued a Request for Bids to provide the City with various replacement fleet vehicle and equipment. In order to allow more vendors to bid, and to receive the best price for each unit, dealers were allowed to bid on only the vehicle(s) and equipment they wanted to bid on - instead of the entire list. Bid packets were opened on July 30, 2020. One vendor submitted bids to the City. As a result, staff recommends purchasing multiple trailers from Travln Toys of Tracy, California, based on the lowest priced trailers – including any adjustments allowed through the City's Local Preference ordinance.

Below is a list of the equipment being purchased and the vendor that will be used.

Description	Replaces Asset	Vendor	Cost	Reason for award
Enclosed Drop Down Trailer (1)	9610	Travln Toys	\$30,664	Low bid
Enclosed Trailer (1)	9718	Travln Toys	\$14,187	Low bid
Enclosed Drop Down Trailer (1)	9904	Travln Toys	\$23,556	Low bid
Utility Trailer (1)	2002	Travln Toys	\$4,395	Low bid
Utility Tilt Trailer (2)	2046 & 2049	Travln Toys	\$32,732	Low bid

The total purchase amount for the various trailers from Travln Toys is \$105,534.

STRATEGIC PLAN

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

FISCAL IMPACT

Funding was budgeted \$854,362 and is available in the fiscal year 2020-2021 equipment replacement budget for the acquisition of this equipment.

RECOMMENDATION

That City Council, by resolution, authorize the purchase of multiple trailers in the amount of \$105,534.

Prepared by: Frank Desousa, Fleet Supervisor
Nancy Chapman, Management Analyst

Reviewed by: Robert Gravelle, Public Works Superintendent
Don Scholl, Public Works Director
Karin Schnaider, Finance Director
Midori Lichtwardt, Assistant City Manager

Approved by: Jennifer D. Haruyama, City Manager

RESOLUTION _____

AUTHORIZING THE PURCHASE OF MULTIPLE TRAILERS IN THE AMOUNT OF
\$105,534

WHEREAS, As part of the equipment purchasing and replacement program for the City of Tracy (City), there are multiple trailers needing replacement, needed for the operation and maintenance of City infrastructure, which is funded in the Fiscal Year 2020-2021 budget, and

WHEREAS, On July 16, 2020, the City issued a Request for Bids for various replacement fleet vehicle and equipment, and

WHEREAS, On July 30, 2020, staff opened and reviewed the bids that were received from vendors for a portion of the individual vehicles and pieces of equipment, and

WHEREAS, Staff recommends purchasing multiple trailers from Travln Toys of Tracy, California, to ensure that the best price is received for each unit based on lowest bid;

NOW, THEREFORE, BE IT RESOLVED, That the City Council of the City of Tracy hereby authorizes the purchase of multiple trailers in the amount of \$105,534 as set forth in the staff report accompanying this item.

* * * * *

The foregoing Resolution _____ is hereby passed and adopted by the Tracy City Council this 15th day of September 2020, by the following vote:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

MAYOR

ATTEST:

CITY CLERK

September 15, 2020

AGENDA ITEM 1.C

REQUEST

APPROVE A SITE LEASE AGREEMENT WITH T-MOBILE WEST TO UPDATE ONE LIGHT STANDARD AT RITTER FAMILY BALLPARK, PLACE TELECOMMUNICATION DEVICES ON THE LIGHT STANDARD AND LEASE GROUND SPACE FOR AN INITIAL TERM OF FIVE YEARS, NOT TO EXCEED TWENTY YEARS

EXECUTIVE SUMMARY

This is a continuation from the March 19, 2019 meeting. Shortly, after the request to continue, the contract asked to hold the lease as T-Mobile was in negotiations to merge with Sprint. T-Mobile West, a Delaware limited liability company (T-Mobile), has requested a site lease agreement with the City of Tracy (City) at Ritter Family Ballpark. The initial term of the lease is for five years, with three additional five-year terms, not to exceed twenty years. T-Mobile will replace one light standard and utilize a 17' by 17' space on the ground for required support facilities. Rent for the location will be \$2,000 per month with an increase of 3.5% of the preceding years amount on each anniversary of the commencement date.

DISCUSSION

The City has been approached by T-Mobile to secure a site to place a telecommunication device (cell antenna) on City property. Negotiations ensued resulting in the recommendation of Ritter Family Ballpark for the location of the device. The specific location is along the third-base line of the north baseball diamond. T-Mobile will also be providing an upgraded light standard and improved, current-technology sports field lights at their expense on this one pole.

The initial term of the lease is for five years, with three additional five-year terms, not to exceed twenty years. Per Section 20 of the contract, T-Mobile has also agreed that in the event the Park is renovated *“The City agrees to pay for the relocation of New Light Standard and the Tenant shall pay for interconnection therefore and the reinstallation of the antenna to the New Light Standard.”*

This is comparable to similar leases entered into between the City and other communication companies. In return for the option for a Site Lease, the City will receive \$2,000 a month in addition to the previously noted field lighting improvements. Rent shall be increased on each anniversary of the Commencement Date by an amount equal to three and one-half percent (3.5%) of the rent for the immediately preceding year.

Attachment B is a study that Hammett & Edison, Inc. completed for the evaluation of a new cell tower site at Ritter Ballpark. The report concludes that, “Based on the information and analysis above, it is the undersigned’s professional opinion that operation of the base station proposed by T-Mobile West LLC at 2300 North Tracy

Boulevard in Tracy, California, will comply with the prevailing standards for limiting public exposure to radio frequency energy and, therefore, will not for this reason cause a significant impact on the environment."

The federal government regulates interstate and international communications by radio, television, wire, satellite, and cable. The Federal Communications Commission (FCC) is responsible for implementing and enforcing federal communication laws and regulations including rules regarding telecommunications facilities such as cell towers. Federal law generally limits local control over telecommunication facilities. A state or local jurisdiction is prohibited from regulating "the placement, construction, and modification of personal wireless service facilities on the basis of environmental effects of radio frequency emissions to the extent that such facilities comply with" FCC rules (42 U.S.C. § 332 (c) (7) (B) (iv)).

FISCAL IMPACT

The General Fund (101) will receive an increase in revenue by \$24,000 for the first year with an increase of 3.5% each renewal term.

STRATEGIC PLAN

This agenda item is consistent with the priority of Quality of Life Goal 1, Section 3 to cost recovery to protect and preserve our current amenities.

RECOMMENDATION

That the City Council, by resolution, authorize a site lease agreement with T-Mobile West to update one light standard and field lights, place telecommunication devices on the light standard, and lease ground space for an initial term of five years, not to exceed twenty years.

Prepared by Robin Kloepfer, Management Analyst II

Reviewed by Don Scholl, Director of Public Works
Brian MacDonald, Parks & Recreation Director
Karin Schnaider, Finance Director
Midori Lichtwardt, Assistant City Manager

Approved by Jennifer D. Haruyama, City Manager

ATTACHMENTS

Attachment A – Site Lease Agreement between City of Tracy and T-Mobile West LLC
Attachment B – T-Mobile West Evaluation of Location

**SITE LEASE AGREEMENT BETWEEN
CITY OF TRACY AND T-MOBILE WEST LLC**

This Site Lease Agreement (the "Lease") is entered into between the City of Tracy, a California municipal corporation ("Landlord"), and T-Mobile West LLC, a Delaware limited liability company ("Tenant"). For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

- 1. Premises.** Subject to the following terms and conditions, Landlord grants to Tenant a lease for ground space and space on the New Light Standard (as defined below) (collectively, the "Premises") that is a portion of certain real property located at 2300 Tracy Boulevard, Tracy, California 95376 (APN # 233-020-01) (the "Property"). The Property is comprised of approximately 10.09 acres and is further described in Exhibit A, attached hereto and incorporated herein by this reference. The Premises includes an approximately 100 square foot area on the Property for the construction of the New Light Standard, together with an approximately 180 square foot area of ground space on the Property for Tenant's communication equipment as permitted by Development Review Application D18-013. The Premises are depicted in Exhibit B, attached hereto and incorporated herein by this reference. Subject to the following terms and conditions herein, Landlord leases the Premises to Tenant, including any applicable easements for access and utilities.
- 2. Cooperation.** From and after the Effective Date (as defined below) and during the Term (also defined below), Landlord agrees to cooperate with Tenant in obtaining and maintaining, at Tenant's sole expense, all licenses and permits required for Tenant's use of the Premises and Tenant's construction and operation of its communications facilities (collectively, the "Governmental Approvals") and Landlord agrees to allow Tenant to perform surveys, soils testing, and other engineering procedures on, under, and over the Property necessary to determine whether or not the Premises will be acceptable to Tenant's engineering specifications, system design, and Governmental Approvals. Any such testing will not unreasonably interfere with Landlord's operations.
- 3. Lease Term.** The initial term of this Lease will be five (5) years commencing with the start of construction by Tenant of its communications facilities on the Premises (the "Commencement Date"), and ending at 11:59 p.m. on the day immediately preceding the fifth (5th) anniversary of the Commencement Date (the "Initial Term"). The Initial Term may renew for three (3) additional and successive terms of five (5) years each (each a "Renewal Term"), for a maximum of twenty (20) years. Each Renewal Term will be on the same terms and conditions as set forth herein. The Initial Term, together with any Renewal Terms, are referred to collectively as the "Term." Tenant may elect not to renew, provided Tenant notifies Landlord in writing of Tenant's intention not to extend this Lease at least ninety (90) days prior to the expiration of the then current Term. Landlord may elect not to renew, provided Landlord notifies Tenant in writing of Landlord's intention not to extend this Lease at least one hundred eighty (180) days prior to the expiration of the then current term.
- 4. Use.** The Premises may be used by Tenant solely for the provision of Tenant's wireless communications services, including without limitation, the transmission, reception and amplification of radio communication signals in any and all frequencies and the construction, maintenance and operation of related communications facilities, and related equipment and activities. The "Antenna Facilities" that the Tenant may install pursuant to this Lease are

generally described in Section 8 below. Tenant will be solely responsible for maintaining the Antenna Facilities.

5. Consideration. In addition to the Rent required in Section 6 below, Landlord and Tenant agree to the following:

- a. Upon the Commencement Date, Tenant, at its sole cost and expense, shall dismantle, remove and discard an existing light standard from the Property and shall design, permit, construct and install a new light standard (the "New Light Standard") in accordance with Tenant's construction plans in the location shown on Exhibit B attached hereto. The New Light Standard shall be constructed in a good and workmanlike manner. Tenant shall also install light fixtures (the "Light Fixtures") upon the New Light Standard which shall be attached thereto at the location and height shown on Exhibit B. Upon installation of the New Light Standard, Tenant shall maintain title and ownership of the New Light Standard and shall be responsible for conducting all repair and maintenance thereon at its sole cost and expense. Landlord shall have no obligation to replace or repair the New Light Standard and no liability for failure to do so.
- b. Tenant expressly covenants not to sue Landlord for any claims, injury, and/or causes of action arising from or related to Tenant's failure to maintain, replace or repair the New Light Standard. Tenant shall be responsible for and shall have the right to maintain, modify, repair, change-out, and remove the Antenna Facilities and ancillary equipment thereto and hereby expressly covenants not to sue Landlord for any causes of action arising from or related to Tenant's acts or omissions regarding such.
- c. Upon the expiration or earlier termination of this Lease, and upon the mutual written consent of the parties, title and ownership of the New Light Standard shall automatically, without need for execution of further documentation, transfer to Landlord, in its "AS IS" and "WHERE IS" condition, without warranty or representation of any kind. Following such transfer, Landlord will be solely responsible for the ongoing maintenance and upkeep of the New Light Standard and Tenant shall have no further responsibility in relation thereto.

6. Rent.

- a. Within twenty (20) business days of the Commencement Date and on the first day of each month thereafter, Tenant shall pay Landlord the amount of Two Thousand and No/100 Dollars (\$2,000.00) per month (the "Rent"). Rent will be payable on the first (1st) day of each month in advance to the Landlord at Landlord's address specified in Section 15 below. If the Lease is commenced on a day other than the first day of the month, the Rent will be prorated for that first month for the number of days from the date of execution to the end of the month.
- b. If this Lease is terminated on a day other than on the last day of a month, the Rent will be prorated as of the date of termination, and in the event of termination for any reason other than the nonpayment of Rent, all prepaid Rents will be refunded to Tenant.
- c. Throughout the Term and any Renewal Terms, Rent shall be increased on each anniversary of the Commencement Date by an amount equal to three and one-half percent (3.5%) of the Rent for the immediately preceding year.

7. Non-Interference. Landlord will not use, nor will Landlord permit its employees, tenants, licensees, invitees or agents to use any portion of the Property in any way which unreasonably interferes with the operations of the Tenant. Such unreasonable interferences will be deemed a material breach by Landlord, and Landlord will have the responsibility to terminate said unreasonable interference if Landlord has the power to do so. Interference by third parties, beyond the control of Landlord, will not be deemed a breach by Landlord. In the event any such interference does not cease promptly, the parties acknowledge that continuing interference will cause irreparable injury to Tenant, and therefore Tenant will have the right, in addition to any other rights that it may have at law or in equity, to elect to enjoin such interference or to terminate this Lease, upon proper notice to Landlord. For the purposes of this section, any interference with the operations of the Tenant that is reasonably necessary for Landlord to fulfill its function as a public entity will not be unreasonable.

8. Improvements; Utilities; Access.

- a. Tenant will have the right, at its sole expense, to erect and maintain on the Premises improvement, personal property, communication equipment cabinets, cabling, optical fiber, radios, remote radio units, amplifiers, transmitting and receiving antennas and dishes, back-up batteries, GPS receiver and ancillary equipment related thereto (collectively, the "Antenna Facilities), in conformance with the improvements identified in Development Review Application D18-0013. Nothing in this Lease will excuse any requirement that Tenant obtain zoning and building permits from the City of Tracy, as necessary, for any changes to the equipment installed at the Premises. Tenant will not expand the Premises without prior written approval by the Landlord, which approval will not be unreasonably denied, conditioned, or delayed. Tenant will have the right to alter, replace, enhance and upgrade the Antenna Facilities at any time during the term of this Lease so long as such equipment is within the Premises. Tenant agrees to pay Landlord's reasonable costs of review, as performed by Landlord's Development Services Department, not to exceed Landlord's actual fully loaded cost for such review, for any Tenant requested increases in the number of antennas in excess of twelve (12).
- b. Tenant will pay to install a dedicated meter and pay for the electricity it consumes in its operations at the rate charged by the servicing utility company. Tenant will have the right to draw electricity and other utilities from the existing utilities on the Property or obtain separate utility service from any utility company that will provide service to the Property. Tenant will also have the right to bring onto the Premises a standby power generator for Tenant's exclusive use. The use of any such generator must comply with the City's noise ordinance and must not interfere with City's use of Property as of the Effective Date. Landlord agrees to sign such documents or easements as may be required by said utility companies to provide such service to the Premises, including the grant to Tenant or the servicing utility company, at no cost to the Tenant, of an easement in, over, across, or through the Property as required by such servicing utility company to provide utility services as provided herein. Any easement necessary for such power or other utilities will be at a location reasonably acceptable to Landlord and the servicing utility company, provided, however, Landlord is deemed to have approved all easements in their location as depicted on Exhibit B, attached hereto.
- c. Landlord will provide to Tenant, at a mutually agreeable location, ingress, egress, and access to the Premises adequate to service the Premises and Antenna Facilities twenty-four (24) hours-a-day, seven (7) days-a-week, during the Term of this Lease and any renewals thereof at no additional charge to Tenant. A recorded easement or

Memorandum of Lease will evidence said right of access. Tenant will provide a minimum of two (2) business days advance telephonic notice for need of ingress to Premises in instances not considered an emergency. Landlord's non-emergency contact phone number for access notice is (209) 831-6300 ("Access Number"). Tenant may leave a voicemail at the Access Number as sufficient notice of Tenant's intent to access the Premises if no one answers.

- d. Tenant will perform all of its construction and installation work at the Premises at its sole cost and expense and in a good and workmanlike manner. Tenant will maintain the Antenna Facilities and the Premises in a neat and safe condition in compliance with all applicable codes and governmental regulations. Landlord, in its capacity as Landlord, reserves the right to undertake structural, civil, and architectural review and approval of the improvements, including, but not limited to, approval of plans, specifications, and proof of permits, which approval will not be unreasonably withheld or delayed. Nothing in this Lease will excuse Tenant's obligation to follow the City of Tracy's, or other governmental entity's customary, applicable, and usual regulatory procedures and to pay the City of Tracy's, or other governmental entity's customary, applicable, and usual fees or charges for same.
9. **Termination.** Except as otherwise provided herein, this Lease may be terminated without any penalty or further liability on sixty (60) days prior written notice as follows:
 - a. By either party upon a default of any covenant or term hereof by the other party, which is not cured within sixty (60) days of receipt of written notice of default, provided that the grace period for any monetary default is ten (10) days from receipt of written notice; provided further that, if the default cannot reasonably be cured within such sixty (60) day period, the notified party shall not be in default of this Lease if such party commences to cure the default within the sixty (60) day period and diligently and in good faith continues to cure the default (without, however, limiting any other rights available to the parties pursuant to any other provisions hereof);
 - b. By Tenant if it is unable to obtain or maintain, through no fault of Tenant, any license, permit or other Governmental Approval necessary to the construction and/or operation of the Antenna Facilities or Tenant's business; or
 - c. By Tenant, if the Tenant determines that the Premises are not appropriate for its operations for economic, environmental or technological reasons, including without limitation, signal strength, coverage or interference.

Upon termination by either party, for reasons other than casualty and condemnation, Tenant must restore the Premises to its original or better condition as of the Commencement Date of this Lease, normal wear and tear excepted. It is understood that the Antenna Facilities will remain the exclusive property of Tenant.

10. **Taxes.** Tenant will pay any personal property taxes and/or possessory interest taxes assessed on, or any portion of such taxes attributable to, the Antenna Facilities. Tenant will pay, as additional Rent, any increase in real property taxes levied against the Premises which is directly attributable to Tenant's use of the Premises, and Landlord agrees to furnish proof of such increase to Tenant. If Landlord receives a notice of assessment that imposes taxes

or assessments on Tenant's leasehold improvements on the Premises, Landlord shall provide Tenant with copies of each such notice immediately upon receipt, but in no event later than thirty (30) days after the date of such notice of assessment. If Landlord provides a notice of assessment to Tenant within such time period and requests reimbursement from Tenant, then Tenant shall, in its sole discretion, have the option to either: (i) reimburse Landlord for the tax or assessments identified on the notice of assessment on Tenant's leasehold improvements, or (ii) challenge any such tax or assessment at Tenant's sole cost and expense, with Landlord's full cooperation. This provision constitutes written notice to Tenant pursuant to California Revenue and Taxation Code section 107.

- 11. Insurance.** Tenant will provide Commercial Liability Insurance in an aggregate amount of \$2,000,000 and include Landlord as an additional insured on the policy or policies. Tenant may satisfy this requirement by obtaining appropriate endorsements, to any umbrella policy of liability insurance Tenant may maintain. Tenant may self-insure with respect to any of the above insurance so long as Tenant provides documentation reasonably acceptable to Landlord.
- 12. Destruction of Property (Includes Acts of God).** If the Property or the Premises are destroyed or damaged, other than by Tenant, or as a result of Landlord's negligence, so as in Tenant's judgment, to hinder the effective use of the Antenna Facilities, Tenant may elect to terminate this Lease as of the date of the damage or destruction by so notifying Landlord not more than one hundred (180) days following the date of damage. In such event, all rights and obligations of the parties will cease as of the date of the damage or destruction and Tenant will be entitled to the reimbursement of any Rent prepaid by Tenant.
- 13. Location.** The location of the Premises will be subject to prior written approval of the Landlord, which will not be unreasonably withheld, conditioned, or delayed, provided however, that Landlord's approval of Exhibit B attached hereto shall constitute Landlord's approval of the location of the Premises as shown thereon.
- 14. Indemnity and Hold Harmless.** Tenant agrees to indemnify and hold Landlord harmless from any and all claims to the extent caused by the installation, use, maintenance, repair or removal of Tenant's Antenna Facilities, except to the extent such claims arise from work performed by others not at, or under, Tenant's direction.
- 15. Notices.** All notices, requests, demands, and other communications hereunder must be in writing and will be deemed given if personally delivered or mailed, certified mail, return receipt requested, or sent by overnight carrier to the following addresses:

To Landlord:

City of Tracy
333 Civic Center Plaza
Tracy, CA 95376
Attn: Public Works Director

To Tenant:

T-Mobile USA, Inc.
12920 SE 38th Street
Bellevue, WA 98006
Attn: Lease Compliance/SC07259A

With a copy to:

City Attorney
333 Civic Center Plaza
Tracy, CA 95376

16. Title and Quiet Enjoyment; Hazardous Substances.

- a. Landlord warrants that it:
 - i. Has full right, power and authority to execute this Lease; and
 - ii. Has good and unencumbered title to the Property free and clear of any liens or mortgages. Landlord further warrants that Tenant will have quiet enjoyment of the Premises during the Term of this Lease and all renewals thereof.
- b. Landlord represents and warrants to Tenant that, to the best of Landlord's knowledge, Hazardous Substances have not been generated, stored, or disposed of on the Property. "Hazardous Substances" will be interpreted broadly to mean any substance or material defined or designated as hazardous or toxic waste, hazardous or toxic material, hazardous or toxic or radioactive substance, or other similar terms by any federal, state, or local environmental law, regulation or rule presently in effect or promulgated in the future as such laws, regulations, or rules may be amended from time to time; and it will be interpreted to include, but not be limited to, any substance which, after release into the environment, will or may reasonably be anticipated to cause sickness, death, or disease. Landlord agrees to be responsible for all losses or damage caused by any Hazardous Substances on or entering the Property, except those brought onto the Property by Tenant, and will indemnify Tenant for all such losses or damages including the cost of any investigation or remediation, or other actions required to comply with applicable law. Nothing in this section will be construed as making Landlord liable in any manner, including but not limited to, any indemnity or hold harmless obligations, as to any hazardous Substance generated, stored, or disposed of by Tenant.

17. Assignment. Tenant will not assign this Lease, or sublet the Premises, without the prior written consent of Landlord, which consent will not be unreasonably withheld, conditioned or delayed; provided, however, that Tenant may, without Landlord's consent, assign its interest in this Lease to its parent company, or to any subsidiary or affiliate of it or its parent company, or to any successor-in-interest by merger, consolidation or sale of all or substantially all of its assets in the market where the Property is located. Upon assignment, Tenant shall be relieved of all liabilities and obligations hereunder and Landlord shall look solely to the assignee for performance under this Lease and all obligations hereunder. Any sublease that is entered into by Tenant will be subject to the provisions of this Lease. Tenant may also assign or sublet, without Landlord's consent, to its lender and said lender's assignees, to any or all of its general partners, or to any party controlling, controlled by, or under common control with Tenant or to any party which acquires substantially all of the assets of Tenant in the market where the Property is located.

Additionally, Tenant may, upon notice to Landlord, mortgage or grant a security interest in this Lease and the Antenna Facilities, and may assign this Lease and the Antenna Facilities to any such mortgages or holder of security interests including their successor or assigns (hereinafter collectively referred to as "Mortgagees"). If a Mortgagee requires Landlord to issue a written consent to the leasehold financing, Tenant agrees to pay Landlord's reasonable costs incurred in reviewing such Mortgagees' requests for consent to leasehold financing. Landlord agrees to notify Tenant and Tenant's Mortgagees simultaneously of any default by Tenant and to give Mortgagees the same right to cure any default as Tenant except

that the cure period for any Mortgagee will not be less than thirty (30) days after receipt of the default notice.

Landlord may assign this Lease upon Tenant's written consent, which will not be unreasonably withheld, and shall be subject to the assignee assuming all of Landlord's obligation herein. In the event of a change of ownership of the Property, within five (5) days of such transfer, Landlord, or its successor, shall send to Tenant the following: (i) new vesting deed to the Property evidencing the sale or transfer, (ii) Internal Revenue Service Form W-9 and other required tax documents completed by the transferee, (iii) successor Landlord's contact information, including address for notice, and (iv) other documentation reasonably requested by Tenant.

18. Successors and Assigns. This Lease will run with the Property described in Exhibit A. This Lease will be binding upon and inure to the benefit of the parties, their respective successors personal representatives, and assigns.

19. Conformance with Conditions. Tenant must comply with all conditions of Development Review Application D18-0013 and all the terms of Chapter 10.25, Telecommunications Facilities, of the Tracy Municipal Code, in effect as of the date of this Lease.

20. Redevelopment. Subject to the other provisions of this Lease, in the event Landlord desires to redevelop, modify, remodel or in any way alter the Property and any improvements thereon ("Redevelopment"), Landlord shall in good faith use its best effort to fully accommodate Tenant's continuing use of the Premises. In the event that Landlords plans require movement of the new Light Standard, the parties shall negotiate in good faith an acceptable location. The City agrees to pay for the relocation of New Light Standard and the Tenant shall pay for interconnection therefore and the reinstallation of the antenna to the New Light Standard.

21. Miscellaneous.

- a. The prevailing party in any litigation or other proceeding arising hereunder will be entitled to its reasonable attorneys' fees and court costs, including appeals, if any.
- b. This Lease constitutes the entire agreement and understanding of the parties, and supersedes all offers, negotiations and other agreements. There are no representations or understandings of any kind not set forth herein. Any amendments to this Lease must be in writing and executed by both parties.
- c. If either party is represented by a real estate broker or other broker or professional in this transaction, that party will be fully responsible for any fee due such broker or other professional, and will hold the other party harmless from any claims for commission by such broker or other professional.
- d. Landlord agrees to cooperate with Tenant in executing any documents (including, but not limited to, a Memorandum of Lease) necessary to protect Tenant's right hereunder or Tenant's use of the Premises. Landlord and Tenant agree to cooperate with each other in executing said Memorandum of Lease and further agree to the recordation of same in the Official Records of San Joaquin County. Said Memorandum of Lease must be in a form substantially similar to the sample attached hereto as Exhibit C. Within ninety (90) days of the expiration or earlier termination of this Lease, Tenant agrees to record a

quitclaim deed in the official Records of San Joaquin County to evidence the termination of Tenant's interest in the Property.

- e. This Lease will be construed in accordance with the laws of the State of California.
- f. If any term(s) of this Lease is found to be void or invalid, such invalidity will not affect the remaining terms of this Lease, which will continue in full force and effect.
- g. Tenant will not allow any mechanics' or materialman's liens to be filed against the Premises or the Property by reason of work or materials performed or furnished to or for Tenant. If such a lien is filed, Tenant may contest the same in good faith, but will cause the lien to be released of record within thirty (30) days of filing by payment, bond or otherwise.
- h. Tenant herein covenants by and for itself, its assigns, and all persons claiming under or through Tenant, that this Lease is made and accepted upon and subject to the following conditions:

"That there shall be no discrimination against or segregation of any persons or group of persons, on account of race, color, creed, religion, sex, marital status, national origin, age or ancestry in the leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of the Premises herein leased, nor shall the Tenant, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, occupancy, or tenants, sublessees, subtenants, or vendees in the Premises of herein leased."

22. Waiver of Landlord's Lien.

- a. Landlord waives any lien rights it may have concerning the Antenna Facilities which are deemed Tenant's personal property and not fixtures, and Tenant has the right to remove the same at any time without Landlord's consent.
- b. Landlord acknowledges that Tenant may enter into a financing arrangement including promissory notes and financial and security agreement for the financing of the Antenna Facilities (the "Collateral") with a third party financing entity (and may in the future enter into additional financing arrangements with other financing entities). In connection therewith, Landlord:
 - i. Consents to the installation of the Collateral;
 - ii. Disclaims any interest in the Collateral, as fixtures or otherwise; and
 - iii. Agrees that the Collateral will be exempt from execution, foreclosure, sale, levy, attachment, or distress for any Rent due or to become due and that such Collateral may be removed at any time without recourse to legal proceedings.

23. Marking and Lighting Requirements. Tenant will be responsible for the compliance of its Antenna Facilities with all applicable marking and lighting requirements of the Federal Aviation Administration (FAA) and the Federal Communications Commission (FCC).

24. Signatures. The individuals executing this Lease represent and warrant that they have the right, power, legal capacity, and authority to enter into this agreement on behalf of the respective legal entities of the Tenant and the Landlord. This Lease shall inure to the benefit of and be binding upon the parties and their respective successors and assigns.

IN WITNESS WHEREOF, the parties have executed this Lease on the day and year last signed below (the "Effective Date").

Landlord: City of Tracy, a California municipal corporation <hr/>	Tenant: T-Mobile West LLC, a Delaware limited liability company  <hr/>
By: _____	By <u>Todd Wheeler</u> Area Director, Engineering & Operations
Title: _____	Title: _____
Date: _____	Date: <u>2/5/19</u>
Approved by City Council on (date) by Resolution No. _____	Federal Employer Tax ID No. <u>91-1983600</u>
Attest:	<hr/>
Adrienne Richardson, City Clerk	By: _____
Approved as to form:	Title: _____
Thomas T. Watson, City Attorney	Date: _____


T-Mobile Legal Approval
Lois Duran

EXHIBIT A
DESCRIPTION OF PROPERTY

APN # 233-020-01

The Property is described as follows:

Property located in San Joaquin, CA

PARCEL 1:

The South one-half (S½) of Lot 73 of Parker Acres, except the Easterly 860 feet thereof, and all of Lot 72 of Parker Acres, except the Easterly 860 feet thereof, all as per map of Parker Acres now on file in the office of the County Recorder of said San Joaquin County. (All measurements computed from Lot lines.) (\$4.95 I. R. Stamps attached and cancelled.)

LESS AND EXCEPT that portion of property conveyed to James McDermott Post #172 The American Legion Department of California, a corporation from City of Tracy, a municipal corporation by Grant Deed dated August 03, 1955 and recorded August 16, 1955 in Deed Book 1780, Page 216.

LESS AND EXCEPT that portion of property conveyed to James McDermott Post #172 The American Legion Department of California from City of Tracy, a municipal corporation by Grant Deed dated August 08, 1961 and recorded August 24, 1961 in Deed Book 2450, Page 265.

AND BEING a portion of the same property conveyed to City of Tracy, a California municipal corporation from C. E. Ritter and Margaret H. Ritter, his wife by Deed dated November 29, 1944 and recorded December 22, 1944 in Deed Book 902, Page 296.

PARCEL 2:

The real property in the City of Tracy, County of San Joaquin, State of California, described as follows:

All that portion of Lot 72 PARKER ACRES, according to the Official Map or Plat thereof filed for record August 06, 1923 in Vol. 10 of Maps and Plats, Page 73, lying West of the West line of Sunset Park Subdivision and South of the South line of 20th Street extended Westerly as shown on the Sunset Park Subdivision.

EXCEPT the Westerly 141.8 feet thereof (the East line thereof being parallel with the East line of McKinley Avenue).

LESS AND EXCEPT that portion of property conveyed to James McDermott Post #172 The American Legion Department of California from City of Tracy, a municipal corporation by Grant Deed dated August 08, 1961 and recorded August 24, 1961 in Deed Book 2450, Page 265.

AND BEING a portion of the same property conveyed to City of Tracy, a California municipal corporation from James McDermott Post No. 172 The American Legion Department of the California, a corporation by Grant Deed dated August 31, 1955 and recorded October 27, 1955 in Deed Book 1803, Page 287.

Tax Parcel No. 233-020-01

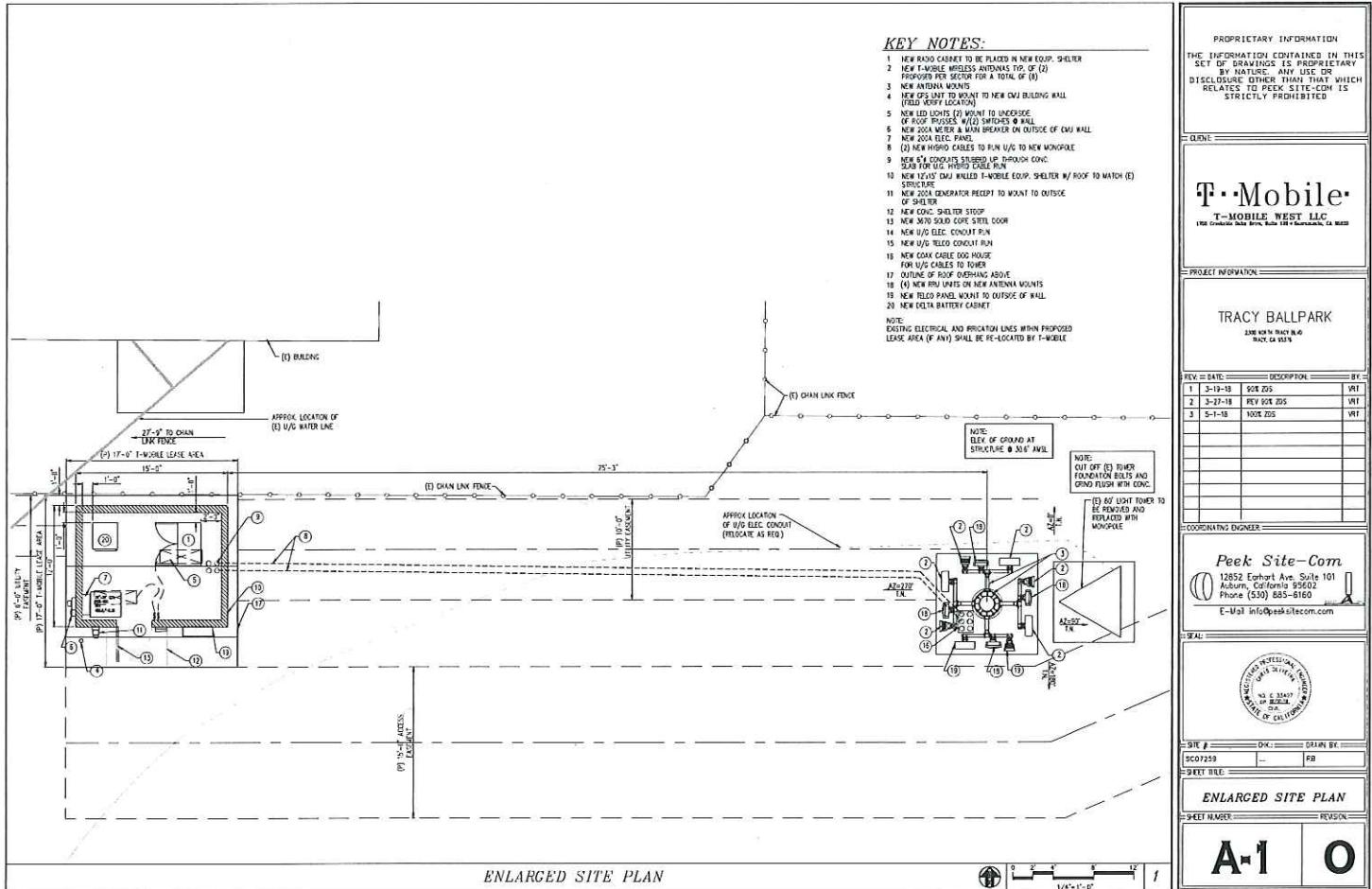
EXHIBIT B
DESCRIPTION OF PREMISES

The Premises are described and/or depicted as follows:

(See Attached)

Notes:

1. This Exhibit may be replaced by a land survey of the Premises once it is received by Tenant.
2. Setback of the Premises from the Property boundaries shall be the distance required by the applicable governmental authorities.
3. Width of the access road shall be the width required by the applicable governmental authorities, including police and fire departments.
4. The type, number and mounting positions and locations of antennas and transmission lines are illustrative only. Actual types, numbers, mounting positions and locations may vary from what is shown above.
5. The location of any utility easement is illustrative only. The actual location will be determined by the servicing utility company in compliance with all local laws and regulations.



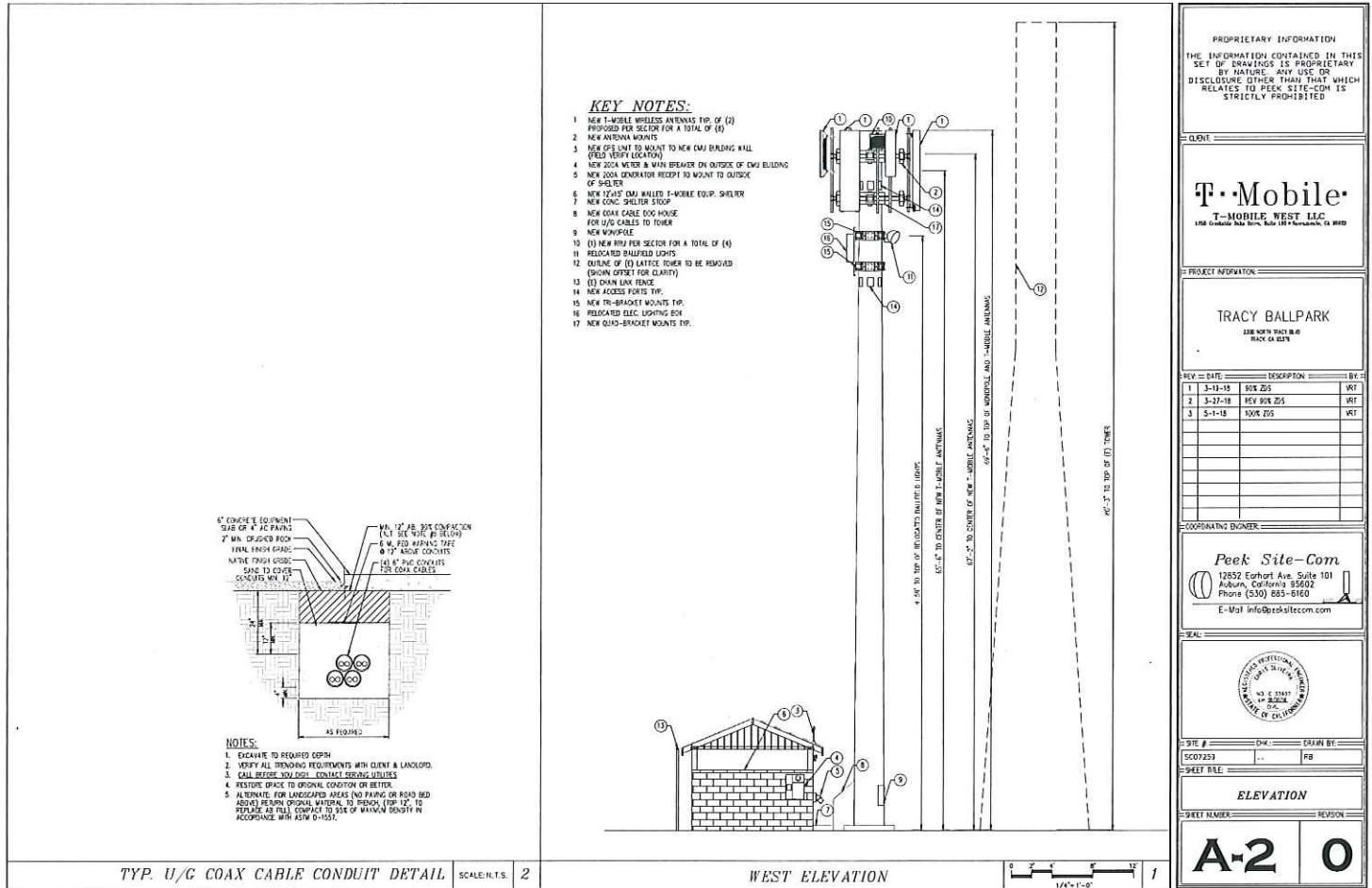


EXHIBIT C

MEMORANDUM OF LEASE

After Recording, Mail To:
T-Mobile West LLC
12920 SE 38th Street
Bellevue, WA 98006
Attn: Lease Compliance/SC07259A

APN: 233-020-01

MEMORANDUM OF LEASE

A Site Lease Agreement (the "Lease") by and between the City of Tracy, a California municipal ("Landlord") and T-Mobile West LLC, a Delaware limited liability company ("Tenant") was made regarding a portion of the following property (as more particularly described in the Lease, the "Premises"):

See Attached Exhibit A incorporated herein for all purposes.

Without limiting the terms and conditions of the Lease, Landlord and Tenant hereby acknowledge the following:

1. Capitalized terms used, but not otherwise defined herein, shall have the meanings ascribed to such terms in the Lease.
2. Pursuant to the Lease, the initial term of the Lease shall be for five (5) years and will commence on the date that Tenant commences construction of its communications facilities on the Premises.
3. After the initial term, the Lease may renew for three (3) additional and successive terms of five (5) years each (each a "Renewal Term"), for a maximum of twenty (20) years.
4. This memorandum is not a complete summary of the Lease. It is being executed and recorded solely to give public record notice of the existence of the Lease with respect to the Premises. Provisions in this memorandum shall not be used in interpreting the Lease provisions and in the event of conflict between this memorandum and the said unrecorded Lease, the unrecorded Lease shall control.
5. This memorandum may be signed in any number of counterparts, each of which shall be an original, with the same effect as if the signatures thereto were upon the same instrument.

IN WITNESS WHEREOF, the parties hereto have respectively executed this memorandum effective as of the date of the last party to sign.

Landlord:

City of Tracy, a California municipal corporation

By: _____

Title: _____

Date: _____

Approved by City Council on (date) by
Resolution No. _____

Attest:

Adrienne Richardson, City Clerk

Approved as to form:

Thomas T. Watson, City Attorney

Tenant:

T-Mobile West LLC,
a Delaware limited liability company

By: _____

Title: _____

Date: _____

By: _____

Title: _____

Date: _____

[Notary block for Landlord]

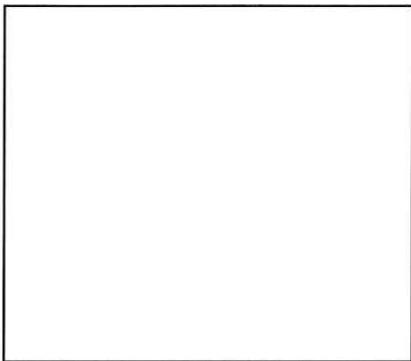
STATE OF CALIFORNIA)
) ss.
COUNTY OF _____)

On _____ before me, _____, personally appeared, _____ who proved to me 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 forgoing paragraph is true and correct.

WITNESS my hand and official seal.

Dated: _____



Notary Public
Print Name _____
My commission expires _____

(Use this space for notary stamp/seal)

[Notary block for Tenant]

STATE OF CALIFORNIA)
) ss.
COUNTY OF _____)

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the _____ of T-Mobile West LLC, a Delaware limited liability company, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: _____

Notary Public
Print Name _____
My commission expires _____

(Use this space for notary stamp/seal)

Memorandum of Lease - Exhibit A
Legal Description

The Property is legally described as follows:

Property located in San Joaquin, CA

PARCEL 1:

The South one-half (5½) of Lot 73 of Parker Acres, except the Easterly 860 feet thereof, and all of Lot 72 of Parker Acres, except the Easterly 860 feet thereof, all as per map of Parker Acres now on file in the office of the County Recorder of said San Joaquin County. (All measurements computed from Lot lines.) (\$4.95 I. R. Stamps attached and cancelled.)

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EXCEPT the Westerly 141.8 feet thereof (the East line thereof being parallel with the East line of McKinley Avenue).

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Tax Parcel No. 233-020-01

T-Mobile West LLC • Proposed Base Station (Site No. SC07259A)
2300 North Tracy Boulevard • Tracy, California

Statement of Hammett & Edison, Inc., Consulting Engineers

The firm of Hammett & Edison, Inc., Consulting Engineers, has been retained by T-Mobile West LLC, a personal wireless telecommunications carrier, to evaluate the base station (Site No. SC07259A) proposed to be located at 2300 North Tracy Boulevard in Tracy, California, for compliance with appropriate guidelines limiting human exposure to radio frequency ("RF") electromagnetic fields.

Executive Summary

T-Mobile proposes to install directional panel antennas on a tall light pole at Ritter Family Ball Park, located at 2300 North Tracy Boulevard in Tracy. The proposed operation will comply with the FCC guidelines limiting public exposure to RF energy.

Prevailing Exposure Standards

The U.S. Congress requires that the Federal Communications Commission ("FCC") evaluate its actions for possible significant impact on the environment. A summary of the FCC's exposure limits is shown in Figure 1. These limits apply for continuous exposures and are intended to provide a prudent margin of safety for all persons, regardless of age, gender, size, or health. The most restrictive limit for exposures of unlimited duration at several wireless service bands are as follows:

Wireless Service Band	Transmit Frequency	"Uncontrolled" Public Limit	Occupational Limit (5 times Public)
Microwave (point-to-point)	1–80 GHz	1.0 mW/cm ²	5.0 mW/cm ²
Millimeter-wave	24–47	1.0	5.0
Part 15 (WiFi & other unlicensed)	2–6	1.0	5.0
BRS (Broadband Radio)	2,490 MHz	1.0	5.0
WCS (Wireless Communication)	2,305	1.0	5.0
AWS (Advanced Wireless)	2,110	1.0	5.0
PCS (Personal Communication)	1,930	1.0	5.0
Cellular	869	0.58	2.9
SMR (Specialized Mobile Radio)	854	0.57	2.85
700 MHz	716	0.48	2.4
600 MHz	617	0.41	2.05
[most restrictive frequency range]	30–300	0.20	1.0

General Facility Requirements

Base stations typically consist of two distinct parts: the electronic transceivers (also called "radios" or "channels") that are connected to the traditional wired telephone lines, and the passive antennas that send the wireless signals created by the radios out to be received by individual subscriber units. The transceivers are often located at ground level and are connected to the antennas by coaxial cables. A



**T-Mobile West LLC • Proposed Base Station (Site No. SC07259A)
2300 North Tracy Boulevard • Tracy, California**

small antenna for reception of GPS signals is also required, mounted with a clear view of the sky. Because of the short wavelength of the frequencies assigned by the FCC for wireless services, the antennas require line-of-sight paths for their signals to propagate well and so are installed at some height above ground. The antennas are designed to concentrate their energy toward the horizon, with very little energy wasted toward the sky or the ground. This means that it is generally not possible for exposure conditions to approach the maximum permissible exposure limits without being physically very near the antennas.

Computer Modeling Method

The FCC provides direction for determining compliance in its Office of Engineering and Technology Bulletin No. 65, “Evaluating Compliance with FCC-Specified Guidelines for Human Exposure to Radio Frequency Radiation,” dated August 1997. Figure 2 describes the calculation methodologies, reflecting the facts that a directional antenna’s radiation pattern is not fully formed at locations very close by (the “near-field” effect) and that at greater distances the power level from an energy source decreases with the square of the distance from it (the “inverse square law”). The conservative nature of this method for evaluating exposure conditions has been verified by numerous field tests.

Site and Facility Description

Based upon information provided by T-Mobile, including zoning drawings by Peek Site-Com, dated August 28, 2018, it is proposed to install eight directional panel antennas – four Ericsson Model AIR32 and four RFS Model APXVAA24_43-U-A20 – on a 69½-foot light pole to replace the existing 80-foot light tower sited behind the third-base “dug-out” of the northern ball field at Ritter Family Ball Park, located at 2300 North Tracy Boulevard in Tracy. The antennas would employ 2° downtilt, would be mounted at effective heights of about 67 and 65½ feet above ground, and would be oriented in identical pairs toward 0°T, 90°T, 180°T, and 270°T, to provide service in all directions. The maximum effective radiated power in any direction would be 15,800 watts, representing simultaneous operation at 4,400 watts for AWS, 4,400 watts for PCS, 3,620 watts for 700 MHz, and 3,380 watts for 600 MHz service. There are reported no other wireless telecommunications base stations at the site or nearby.

Study Results

For a person anywhere at ground, the maximum RF exposure level due to the proposed T-Mobile operation is calculated to be 0.017 mW/cm², which is 2.6% of the applicable public exposure limit. The maximum calculated level at the second-floor elevation of any nearby building* is 3.7% of the public exposure limit. The maximum calculated level at the second-floor elevation of any nearby

* Located at least 55 feet away, based on photographs from Google Maps.

**T-Mobile West LLC • Proposed Base Station (Site No. SC07259A)
2300 North Tracy Boulevard • Tracy, California**

residence[†] is 2.2% of the public exposure limit. It should be noted that these results include several “worst-case” assumptions and therefore are expected to overstate actual power density levels from the proposed operation.

Recommended Compliance Measures

Due to their mounting location and height, the T-Mobile antennas would not be accessible to unauthorized persons, and so no measures are necessary to comply with the FCC public exposure guidelines. To prevent occupational exposures in excess of the FCC guidelines, it is recommended that appropriate RF safety training, to include review of personal monitor use and lockout/tagout procedures, be provided to all authorized personnel who have access to the lights and/or antennas, including employees and contractors of T-Mobile and of the property owner. No access within 18 feet directly in front of the antennas themselves, such as might occur during certain maintenance activities, should be allowed while the base station is in operation, unless other measures can be demonstrated to ensure that occupational protection requirements are met. It is recommended that explanatory signs[‡] be posted at the antennas and/or on the pole below the antennas, readily visible from any angle of approach to persons who might need to work within that distance.

Conclusion

Based on the information and analysis above, it is the undersigned’s professional opinion that operation of the base station proposed by T-Mobile West LLC at 2300 North Tracy Boulevard in Tracy, California, will comply with the prevailing standards for limiting public exposure to radio frequency energy and, therefore, will not for this reason cause a significant impact on the environment. The highest calculated level in publicly accessible areas is much less than the prevailing standards allow for exposures of unlimited duration. This finding is consistent with measurements of actual exposure conditions taken at other operating base stations. Training authorized personnel and posting explanatory signs are recommended to establish compliance with occupational exposure limits.

[†] Located at least 170 feet away, based on photographs from Google Maps.

[‡] Signs should comply with OET-65 color, symbol, and content recommendations. Contact information should be provided (e.g., a telephone number) to arrange for access to restricted areas. The selection of language(s) is not an engineering matter, and guidance from the landlord, local zoning or health authority, or appropriate professionals may be required.

T-Mobile West LLC • Proposed Base Station (Site No. SC07259A)
2300 North Tracy Boulevard • Tracy, California

Authorship

The undersigned author of this statement is a qualified Professional Engineer, holding California Registration Nos. E-13026 and M-20676, which expire on June 30, 2021. This work has been carried out under his direction, and all statements are true and correct of his own knowledge except, where noted, when data has been supplied by others, which data he believes to be correct.



William F. Hammett

William F. Hammett, P.E.
707/996-5200

June 13, 2019



HAMMETT & EDISON, INC.
CONSULTING ENGINEERS
SAN FRANCISCO

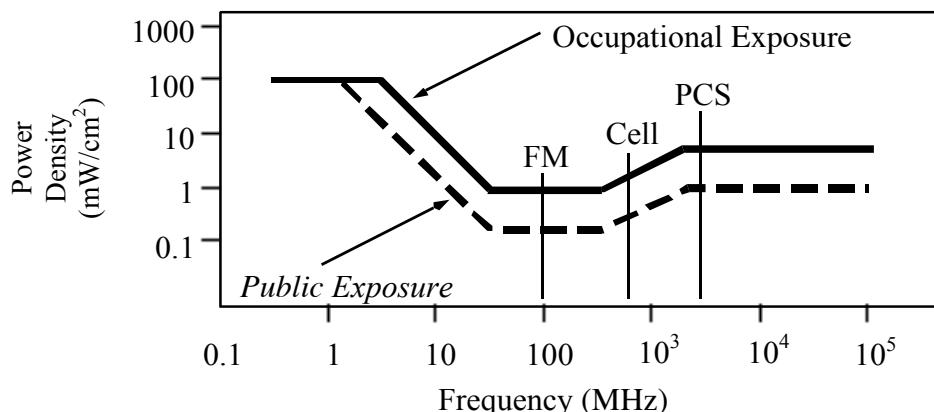
©2019

FCC Radio Frequency Protection Guide

The U.S. Congress required (1996 Telecom Act) the Federal Communications Commission (“FCC”) to adopt a nationwide human exposure standard to ensure that its licensees do not, cumulatively, have a significant impact on the environment. The FCC adopted the limits from Report No. 86, “Biological Effects and Exposure Criteria for Radiofrequency Electromagnetic Fields,” published in 1986 by the Congressionally chartered National Council on Radiation Protection and Measurements (“NCRP”). Separate limits apply for occupational and public exposure conditions, with the latter limits generally five times more restrictive. The more recent standard, developed by the Institute of Electrical and Electronics Engineers and approved as American National Standard ANSI/IEEE C95.1-2006, “Safety Levels with Respect to Human Exposure to Radio Frequency Electromagnetic Fields, 3 kHz to 300 GHz,” includes similar limits. These limits apply for continuous exposures from all sources and are intended to provide a prudent margin of safety for all persons, regardless of age, gender, size, or health.

As shown in the table and chart below, separate limits apply for occupational and public exposure conditions, with the latter limits (in *italics* and/or dashed) up to five times more restrictive:

Frequency	Electromagnetic Fields (f is frequency of emission in MHz)					
	Applicable Range (MHz)	Electric Field Strength (V/m)	Magnetic Field Strength (A/m)	Equivalent Far-Field Power Density (mW/cm ²)		
0.3 – 1.34	614	<i>614</i>	1.63	<i>1.63</i>	100	<i>100</i>
1.34 – 3.0	614	<i>823.8/f</i>	1.63	<i>2.19/f</i>	100	<i>180/f²</i>
3.0 – 30	1842/f	<i>823.8/f</i>	4.89/f	<i>2.19/f</i>	900/f ²	<i>180/f²</i>
30 – 300	61.4	<i>27.5</i>	0.163	<i>0.0729</i>	1.0	<i>0.2</i>
300 – 1,500	3.54√f	<i>1.59√f</i>	√f/106	<i>√f/238</i>	f/300	<i>f/1500</i>
1,500 – 100,000	137	<i>61.4</i>	0.364	<i>0.163</i>	5.0	<i>1.0</i>



Higher levels are allowed for short periods of time, such that total exposure levels averaged over six or thirty minutes, for occupational or public settings, respectively, do not exceed the limits, and higher levels also are allowed for exposures to small areas, such that the spatially averaged levels do not exceed the limits. However, neither of these allowances is incorporated in the conservative calculation formulas in the FCC Office of Engineering and Technology Bulletin No. 65 (August 1997) for projecting field levels. Hammett & Edison has built those formulas into a proprietary program that calculates, at each location on an arbitrary rectangular grid, the total expected power density from any number of individual radio sources. The program allows for the description of buildings and uneven terrain, if required to obtain more accurate projections.



RFR.CALC™ Calculation Methodology

Assessment by Calculation of Compliance with FCC Exposure Guidelines

The U.S. Congress required (1996 Telecom Act) the Federal Communications Commission (“FCC”) to adopt a nationwide human exposure standard to ensure that its licensees do not, cumulatively, have a significant impact on the environment. The maximum permissible exposure limits adopted by the FCC (see Figure 1) apply for continuous exposures from all sources and are intended to provide a prudent margin of safety for all persons, regardless of age, gender, size, or health. Higher levels are allowed for short periods of time, such that total exposure levels averaged over six or thirty minutes, for occupational or public settings, respectively, do not exceed the limits.

Near Field.

Prediction methods have been developed for the near field zone of panel (directional) and whip (omnidirectional) antennas, typical at wireless telecommunications base stations, as well as dish (aperture) antennas, typically used for microwave links. The antenna patterns are not fully formed in the near field at these antennas, and the FCC Office of Engineering and Technology Bulletin No. 65 (August 1997) gives suitable formulas for calculating power density within such zones.

$$\text{For a panel or whip antenna, power density } S = \frac{180}{\theta_{\text{BW}}} \times \frac{0.1 \times P_{\text{net}}}{\pi \times D \times h}, \text{ in mW/cm}^2,$$

$$\text{and for an aperture antenna, maximum power density } S_{\text{max}} = \frac{0.1 \times 16 \times \eta \times P_{\text{net}}}{\pi \times h^2}, \text{ in mW/cm}^2,$$

where θ_{BW} = half-power beamwidth of antenna, in degrees,

P_{net} = net power input to antenna, in watts,

D = distance from antenna, in meters,

h = aperture height of antenna, in meters, and

η = aperture efficiency (unitless, typically 0.5-0.8).

The factor of 0.1 in the numerators converts to the desired units of power density.

Far Field.

OET-65 gives this formula for calculating power density in the far field of an individual RF source:

$$\text{power density } S = \frac{2.56 \times 1.64 \times 100 \times RFF^2 \times ERP}{4 \times \pi \times D^2}, \text{ in mW/cm}^2,$$

where ERP = total ERP (all polarizations), in kilowatts,

RFF = three-dimensional relative field factor toward point of calculation, and

D = distance from antenna effective height to point of calculation, in meters.

The factor of 2.56 accounts for the increase in power density due to ground reflection, assuming a reflection coefficient of 1.6 ($1.6 \times 1.6 = 2.56$). The factor of 1.64 is the gain of a half-wave dipole relative to an isotropic radiator. The factor of 100 in the numerator converts to the desired units of power density. This formula is used in a computer program capable of calculating, at thousands of locations on an arbitrary grid, the total expected power density from any number of individual radio frequency sources. The program also allows for the inclusion of uneven terrain in the vicinity, as well as any number of nearby buildings, to obtain more accurate projections.



RESOLUTION _____

APPROVING A SITE LEASE AGREEMENT WITH T-MOBILE WEST TO UPDATE ONE LIGHT STANDARD AT RITTER FAMILY BALLPARK, PLACE TELECOMMUNICATION DEVICES ON THE LIGHT STANDARD AND LEASE GROUND SPACE FOR AN INITIAL TERM OF FIVE YEARS, NOT TO EXCEED TWENTY YEARS

WHEREAS, The City has been approached by T-Mobile to secure a site to place a telecommunication device (cell antenna) on City property, and

WHEREAS, Negotiations ensued resulting in the selection of a suitable location for the device at Ritter Family Ballpark, and

WHEREAS, T-Mobile will provide an upgraded light standard and improved, current-technology sports field lights at their expense on this one pole, and

WHEREAS, The initial term of the lease is for five years, with three additional five-year terms, not to exceed twenty years, and

WHEREAS, The General Fund (101) will receive monthly lease payments starting at \$2,000 resulting in an increase in revenue by \$24,000 for the first year with an increase of 3.5% each renewal period;

NOW, THEREFORE, BE IT RESOLVED, That the City Council of the City of Tracy authorizes a site lease agreement with T-Mobile West to update one light standard and field lights, place telecommunication devices on the light standard, and lease ground space for an initial term of five years, not to exceed twenty years.

* * * * *

The foregoing Resolution 2020-____ was passed and adopted by the Tracy City Council on the 15th day of September, 2020, by the following vote:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

MAYOR

ATTEST:

CITY CLERK

September 15, 2020

AGENDA ITEM 1.D

REQUEST

APPROVE TWO MASTER PROFESSIONAL SERVICES AGREEMENTS WITH HARRIS AND ASSOCIATES (HA20-01 AND HA20-02) EACH FOR A NOT-TO-EXCEED AMOUNT OF \$800,000 PER FISCAL YEAR FOR PROGRAM MANAGEMENT SERVICES

EXECUTIVE SUMMARY

This agenda item would approve the Master Professional Services Agreements (MPSAs) with Harris & Associates for acquisition audit services and program management on multiple projects through September 14, 2023. The services of consultants are needed to supplement staff and provide expertise for development impact fee program management.

DISCUSSION

On June 10, 2020, staff released a Request for Proposal (RFP) for program management services and received two responses. One response indicated that the company was unable to submit a proposal at this time due to staffing issues but would like to be considered in the future. The second response was from Harris & Associates (Harris). After review of their proposal, it was determined that Harris has the skills needed to support the City.

Harris has been providing program management services to the City for the past 30 years, and is familiar with the City's impact fee programs. Program management services primarily involve updating development impact fees, preparing impact fee quotes, preparing revenue projections, tracking credits and reimbursements, updating Finance and Implementation Plans (FIPs), forecasting fee revenue and project expenses, updating construction cost estimates, forming benefit districts, assisting in acquisition of infrastructure through CFDs, calculating reimbursements and managing infrastructure master plans. The cost to provide such services are covered through development impact fees, other fees paid by developers, and administrative fees levied through the CFDs.

Due to an increasing level of development and the specialized nature of the scope of work, services of consultants are needed to continue providing effective program management services.

Staff recommends that Council approve the MPSAs with Harris, each for a not-to-exceed amount of \$800,000 per fiscal year to be billed on a time and materials basis through September 2023.

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.

FISCAL IMPACT

These services are covered through the program management portion of development impact fees, other fees from developers, and administrative fees levied through CFDs.

RECOMMENDATION

Staff recommends that City Council, by resolution, approve two Master Professional Services Agreements with Harris & Associates, each for a not-to-exceed amount of \$800,000 per fiscal year, for program management services.

Prepared by: Veronica Child, Management Analyst II

Reviewed by: Robert Armijo, PE, City Engineer / Assistant Development Services Director
Karin Schnaider, Finance Director
Andrew Malik, Assistant City Manager

Approved by: Jenny Haruyama, City Manager

ATTACHMENTS

Attachment A – HA20-01 MPSA with Harris & Associates
Attachment B – HA20-02 MPSA with Harris & Associates

**CITY OF TRACY
MASTER PROFESSIONAL SERVICES AGREEMENT WITH
HARRIS & ASSOCIATES, INC.
Program Management Services HA20-01**

This Master Professional Services Agreement (**Agreement**) is entered into between the City of Tracy, a municipal corporation (**City**), and HARRIS & ASSOCIATES, Inc., 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 provide program management services for new development, including coordinating, managing and providing technical assistance, updating existing and completing new finance and implementation plans, assisting with City budget reviews, reimbursement assistance and a variety of other program management services.; and
- B.** On June 10, 2020, the City issued a Request for Proposals (RFP) for Program Management Services (**Project**). On July 10, 2020, Consultant submitted its proposal for the Project to the City. City has determined that Consultant possesses the skills, experience and certification required to provide the services.
- C.** After negotiations between the City and Consultant, the Parties have reached an agreement for the performance of services in accordance with the terms set forth in this Agreement.
- D.** This Agreement is being executed pursuant to Resolution No. _____ approved by Tracy City Council on September 15, 2020.

Now therefore, the Parties mutually agree as follows:

1. Scope of Work. Consultant shall perform the services generally described in Exhibit "A" attached, and incorporated by reference, as directed by written Notice to Proceed by the City's Development Services Director or his designee. The services shall be performed by, or under the direct supervision of, Consultant's Authorized Representative: Alison Bouley. 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 Non-Exclusive Agreement. The City reserves the right to contract with other consultants providing the same or similar scope of services described above during the term of this Agreement. The City further reserves the right to, assign work, at its sole discretion, to 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 Notice to Proceed. Any services for which times for performance are not specified in each individual Notice to Proceed 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 begin on September 15, 2020 and end on September 14, 2023, unless terminated for any reason, including a lack of appropriated funds to compensate services provided under this Agreement, in accordance with Section 6. Any such termination of this Agreement due to failure of the City of Tracy Council to appropriate funds for payment for services under this Agreement shall not be a breach of the Agreement.

2.1.1 Option to Extend. This Agreement may be extended for an additional two (2) years by the City Manager following a written determination that Consultant has satisfactorily met all the requirements of this Agreement.

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

3.1 Not to Exceed Amount. Consultant’s total compensation under this Agreement shall not exceed \$800,000 per fiscal year. Consultant’s billing rates shall cover all costs and expenses for Consultant’s performance of this Agreement. No work shall be performed by Consultant in excess of the total compensation amount provided in this section without the City’s prior written approval. Effective January 1, 2022, Consultant’s billing rates under this Agreement may be annually increased in January of each year by the lesser of 3% or the annual increase in the Cost of Living Index – All Items, for the Sacramento Metropolitan Region.

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

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

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

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

4. Indemnification. Consultant shall, to the fullest extent permitted by law, indemnify, defend (with independent counsel approved by the City), and hold harmless the City from and against any claims to the extent arising out of Consultant’s negligent performance of services 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 “Arising out of” includes “pertaining to” and “relating to”.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

To City:

Robert Armijo
City Engineer
Development Services
333 Civic Center Plaza

To Consultant:

Alison Bouley
Senior Director
Harris & Associates
1401 Willow Pass Road, Suite 500

Tracy, CA 95376

Concord, CA 94520

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

13. Miscellaneous.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[SIGNATURES ON FOLLOWING PAGE]

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

City of Tracy

By: Robert Rickman

Title: Mayor

Date: _____

Attest:

Adrienne Richardson, City Clerk

Approved as to form:

Leticia M. Ramirez, City Attorney

Consultant

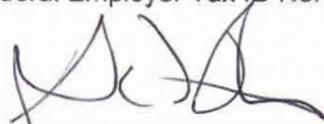


By: Michael McCormick

Title: Senior Vice President

Date: 8/27/2020

Federal Employer Tax ID No. 94-2385238



By: Steven Winchester

Title: Chief Financial Officer

Date: 8/27/2020

Exhibits:

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

EXHIBIT A
MASTER PROFESSIONAL SERVICES AGREEMENT HA20-01
SCOPE OF SERVICES

SCOPE OF SERVICES. Services for various programs included in this MPSA will include but are not limited to the following development areas within the City and its sphere of influence:

- Plan C Development Area
- South MacArthur Development Area
- North East Industrial Phase I and Phase II
- ISP South
- Gateway
- Presidio
- Infill Development Area
- I-205 Specific Plan
- Citywide Master Plans
- New General Plan Areas
- Cordes Ranch
- Ellis Specific Plan
- Tracy Hills Specific Plan

The City reserves the right to add or delete any of the areas or Specific Plans listed above from the proposed scope of work at any time during the period of this Master Professional Services Agreement.

Work assignments will be issued by issuing a Notice to Proceed, which will specify the scope of services, schedule, duration, staffing, hourly rates, not-to-exceed fee, and other relevant items. Notices to Proceed may be amended in accordance with provisions of the MPSA. The specific scope of services for a Notice to Proceed may include, but are not limited to, the following tasks:

- Review and update Development Impact Fees.
- Assist in reconciliation of various funds related to Development Impact Fees.
- Assist in close-out of programs as requested by the City.
- Preparation and/or update of Finance and Implementation Plans for various Specific Plans.
- Coordinate with the infrastructure consultants, and manage, review and recommend City approval of various infrastructure studies/master plans.
- Assist in the formation of Benefit Districts.
- Prepare City Council agenda items and make presentations during City Council meetings.
- Meet with City staff, development community and other consultants to strategize and implement various elements of the programs.
- Prepare cost estimates of various infrastructure projects.

- Assist in calculating and monitoring reimbursements owed to developers for infrastructure design and construction.
- Assist in calculating and monitoring credits for infrastructure design and construction.
- Assist the City in the annual budget review of the CIP projects.
- Answer questions from developers and prepare fee estimates as needed.

PROJECT PERSONNEL. Consultant shall assign the following personnel to perform the tasks set forth in this agreement. Additional staff may be assigned subject to approval of City.

Project Director:	Alison Bouley, PE
Acquisition Audit Lead:	Adam Marston
Impact Fee Lead:	Joel Nagamine, PE
Nexus Study Lead:	Megan Quinn
Assessment District Lead:	Rick Clark
Senior Project Analyst:	Diana Sheng
Project Analyst	Arn Selorio
Acquisition Audit QA/QC	Anna Tan-Gatue, PE

EXHIBIT B - Compensation
MASTER PROFESSIONAL SERVICES AGREEMENT HA20-01
BILLING RATE SCHEDULE

Effective through December 31, 2021

Hourly Rates of Named “Key Team Members” (2020-2021):

Alison Bouley	Project Director	\$240
Adam Marston	Acquisition Audit Lead	\$155
Joel Nagamine	Impact Fee Lead	\$155
Megan Quinn	Nexus Study Lead	\$200
Rick Clark	Assessment District Lead	\$175
Diana Sheng	Senior Project Analyst	\$145
Arn Selorio	Project Analyst	\$135
Anna Tan-Gatue	Acquisition Audit QA/QC	\$175

FINANCIAL ENGINEERING SERVICES

Hourly Rate Range

Senior Directors	\$240-280
Directors	\$235-260
Senior Project Managers	\$190-250
Project Managers	\$175-220
Senior Project Engineers	\$170-210
Project Engineers	\$130-180
Senior Project Analyst	\$115-165
Project Analyst	\$95-145
Technical Support	\$90-120
Administration	\$85-100

CONSTRUCTION / PROGRAM MANAGEMENT SERVICES

Hourly Rate Range

Senior Directors	\$250-280
Directors	\$235-260
Senior Project Managers	\$190-250
Project Managers	\$180-220
Construction Managers	\$145-230
Resident Engineers	\$165-230
Construction Engineers	\$125-230
Scheduling Engineers	\$125-200
Cost Engineers	\$125-200
Inspectors*	\$105-170
Technicians	\$105-170
Administration	\$65-140

*Inspectors working in the State of California are subject to the Prevailing Wage Rates established for that area.

**CITY OF TRACY
MASTER PROFESSIONAL SERVICES AGREEMENT WITH
HARRIS & ASSOCIATES, INC.
Program Management Services HA20-02**

This Master Professional Services Agreement (**Agreement**) is entered into between the City of Tracy, a municipal corporation (**City**), and HARRIS & ASSOCIATES, Inc., 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 provide reimbursement audit services for new development which includes reviewing contracts, change order, invoices, checks, and lien releases to establish the acquisition price of developer constructed facilities; and
- B.** On June 10, 2020, the City issued a Request for Proposals (RFP) for Program Management Services (**Project**). On July 10, 2020, Consultant submitted its proposal for the Project to the City. City has determined that Consultant possesses the skills, experience and certification required to provide the services.
- C.** After negotiations between the City and Consultant, the Parties have reached an agreement for the performance of services in accordance with the terms set forth in this Agreement.
- D.** This Agreement is being executed pursuant to Resolution No. ____ approved by Tracy City Council on September 15, 2020.

Now therefore, the Parties mutually agree as follows:

1. Scope of Work. Consultant shall perform the services generally described in Exhibit "A" attached, and incorporated by reference, as directed by written Notice to Proceed by the City's Development Services Director or his designee. The services shall be performed by, or under the direct supervision of, Consultant's Authorized Representative: Alison Bouley. 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 Non-Exclusive Agreement. The City reserves the right to contract with other consultants providing the same or similar scope of services described above during the term of this Agreement. The City further reserves the right to, assign work, at its sole discretion, to consultants other than Consultant based on City's budget, experience, and skills of consultants based on the City's specific needs.

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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 “Arising out of” includes “pertaining to” and “relating to”.

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

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

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

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

To City:

Robert Armijo
City Engineer
Development Services
333 Civic Center Plaza

To Consultant:

Alison Bouley
Senior Director
Harris & Associates
1401 Willow Pass Road, Suite 500

Tracy, CA 95376

Concord, CA 94520

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

13. Miscellaneous.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[SIGNATURES ON FOLLOWING PAGE]

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

City of Tracy

By: Robert Rickman

Title: Mayor

Date: _____

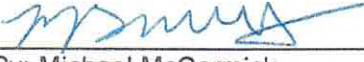
Attest:

Adrienne Richardson, City Clerk

Approved as to form:

Leticia M. Ramirez, City Attorney

Consultant


By: Michael McCormick

Title: Senior Vice President

Date: 8/27/2020

Federal Employer Tax ID No. 94-2385238



By: Steven Winchester

Title: Chief Financial Officer

Date: 8/27/2020

Exhibits:

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

EXHIBIT A
MASTER PROFESSIONAL SERVICES AGREEMENT HA20-02
SCOPE OF SERVICES

SCOPE OF SERVICES. Harris will review reimbursement requests relating to the City's master plan/program fees received from developers and determine a recommended eligible reimbursement amount. This includes reviewing all invoices, proof of payment, cancelled checks, approved change orders, and construction documents. As required, Harris will prepare and submit an additional information request (AIR) to the developer in order to request missing documentation or clarify any information received.

Once all questions have been answered, Harris will prepare a written Audit Report that includes:

1. A summary of costs to be reimbursed by the improvement fund for each eligible facility and/or discrete component, as specified in the Acquisition Agreement
2. An executive summary and audit summary
3. Improvement location map
4. A summary listing of hard and soft costs by eligible facility
5. A contract summary outlining the original price, change orders (if any), final contract price, and the eligible portions for reimbursement
6. Verification that invoices, canceled checks, and unconditional lien releases have been submitted
7. A recommendation of the costs that are eligible and appropriate for reimbursement
8. A description of any cost that have been disallowed or determined to be ineligible for reimbursement

Harris will prepare and maintain a submittal tracking spreadsheet that will track dates of all submittals, due dates, and approved amounts. Harris will provide the spreadsheet to the City and developer as necessary and give status reports as requested.

Harris will participate in a conference call with the City and developer to review the audit report and recommendations as needed.

COMPENSATION. The total for all Notices to Proceed under the agreement shall not exceed Eight Hundred Thousand Dollars (\$800,000.00) per fiscal year.

PROJECT PERSONNEL. Consultant shall assign the following personnel to perform the tasks set forth in this agreement. Additional staff may be assigned subject to approval of CITY.

Project Director:

Alison Bouley, PE

Acquisition Audit Lead:	Adam Marston
Impact Fee Lead:	Joel Nagamine, PE
Nexus Study Lead:	Megan Quinn
Assessment District Lead:	Rick Clark
Senior Project Analyst:	Diana Sheng
Project Analyst	Arn Selorio
Acquisition Audit QA/QC	Anna Tan-Gatue, PE

EXHIBIT B - Compensation
MASTER PROFESSIONAL SERVICES AGREEMENT HA20-01
BILLING RATE SCHEDULE

Effective through December 31, 2021

Hourly Rates of Named “Key Team Members” (2020-2021):

Alison Bouley	Project Director	\$240
Adam Marston	Acquisition Audit Lead	\$155
Joel Nagamine	Impact Fee Lead	\$155
Megan Quinn	Nexus Study Lead	\$200
Rick Clark	Assessment District Lead	\$175
Diana Sheng	Senior Project Analyst	\$145
Arn Selorio	Project Analyst	\$135
Anna Tan-Gatue	Acquisition Audit QA/QC	\$175

FINANCIAL ENGINEERING SERVICES

Hourly Rate Range

Senior Directors	\$240-280
Directors	\$235-260
Senior Project Managers	\$190-250
Project Managers	\$175-220
Senior Project Engineers	\$170-210
Project Engineers	\$130-180
Senior Project Analyst	\$115-165
Project Analyst	\$95-145
Technical Support	\$90-120
Administration	\$85-100

CONSTRUCTION / PROGRAM MANAGEMENT SERVICES

Hourly Rate Range

Senior Directors	\$250-280
Directors	\$235-260
Senior Project Managers	\$190-250
Project Managers	\$180-220
Construction Managers	\$145-230
Resident Engineers	\$165-230
Construction Engineers	\$125-230
Scheduling Engineers	\$125-200
Cost Engineers	\$125-200
Inspectors*	\$105-170
Technicians	\$105-170
Administration	\$65-140

*Inspectors working in the State of California are subject to the Prevailing Wage Rates established for that area.

RESOLUTION 2020-_____

APPROVING TWO MASTER PROFESSIONAL SERVICES AGREEMENTS WITH HARRIS AND ASSOCIATES (HA20-01 AND HA20-02) EACH FOR A NOT-TO-EXCEED AMOUNT OF \$800,000 PER FISCAL YEAR FOR PROGRAM MANAGEMENT SERVICES

WHEREAS, Staff is managing various development projects that require fee calculations, tracking of credits and reimbursements and program management, and

WHEREAS, The developers expect timely completion of the required quotes, reimbursements and credit tracking, and

WHEREAS, On June 10, 2020, staff issued a Request for Proposal (RFP) for program management services and received two responses, and

WHEREAS, Staff reviewed the responses and determined that Harris and Associates (Consultant) have the skills to support the City, and

WHEREAS, City and Consultant wish to enter into Master Professional Services Agreements, each for a not-to-exceed amount of \$800,000 per fiscal year through September 2023;

NOW, THEREFORE, BE IT RESOLVED, That the City Council of the City of Tracy hereby approves two Master Professional Services Agreements with Harris and Associates (HA20-01 and HA20-02) each for a not-to-exceed amount of \$800,000 per fiscal year, for program management services.

* * * * *

The foregoing Resolution 2020-_____ was adopted by the City Council on the 15th day of September 2020, by the following vote:

AYES: COUNCIL MEMBERS:
NOES: COUNCIL MEMBERS:
ABSENT: COUNCIL MEMBERS:
ABSTAIN: COUNCIL MEMBERS:

MAYOR

ATTEST:

CITY CLERK

September 15, 2020

AGENDA ITEM 1.E

REQUEST

APPROVE OPTION CONTRACT TERM SHEET TO CONVEY 200 ACRES (APNs 209-230-029 AND 209-230-030) TO VALLEY LINK FOR A FUTURE OPERATIONS AND MAINTENANCE FACILITY AND AUTHORIZE THE CITY MANAGER TO EXECUTE THE TERM SHEET

EXECUTIVE SUMMARY

The Tri-Valley-San Joaquin Valley Regional Rail Authority known as "Valley Link" has completed a Feasibility Report that identifies the project infrastructure including alignment, future rail stations, and facilities. The Valley Link Feasibility Report identified the City of Tracy as a location for a future Valley Link rail station and a proposed operations and maintenance facility ("O&M Facility").

Valley Link is in the process of preparing a draft environmental impact report (EIR) based on the Feasibility Report that is expected to be adopted by the end of this calendar year. For purposes of completing the EIR, Valley Link approached the City about two City-owned parcels (APNs 209-230-029 and 209-230-030) as a potential site for the O&M Facility.

This item requests City Council approval of an option contract term sheet that provides Valley Link with the option to own these parcels for purposes of constructing an O&M Facility. Said transfer of property to Valley Link would be an in-kind contribution from the City to Valley Link and serve as a local match for purposes of seeking federal funds. This item further requests that the Council authorize the City Manager to execute the term sheet.

DISCUSSION

The California Legislature adopted Assembly Bill (AB) 758 in 2017 to establish the Tri-Valley-San Joaquin Valley Regional Rail Authority, known as Valley Link, "to plan and help deliver a cost-effective connection from the San Joaquin Valley to the Bay Area Rapid Transit District's rapid transit system and the Altamont Corridor Express in the Tri-Valley, to address regional economic and transportation challenges." A board of directors representing the following fifteen entities governs Valley Link: Bay Area Rapid Transit District (BART); the San Joaquin Regional Rail Commission; the Livermore Amador Valley Transit Authority; the Mountain House Community Services District; the counties of Alameda and San Joaquin; and the cities of Dublin, Lathrop, Livermore, Manteca, Pleasanton, Stockton, Danville, San Ramon and Tracy.

The Project Feasibility Report prepared by Valley Link identified a need for an O&M Facility to serve Valley Link trains, tracks, and associated equipment. The O&M Facility is projected to create about 400 jobs. Valley Link is in the process of completing a draft EIR to identify and analyze the project's environmental impacts, including those related to the O&M Facility.

Valley Link approached the City about two City-owned parcels totaling approximately 200 acres (APNs 209-230-029 and 209-230-030), commonly referred to as the “Old Antenna Farm” as a potential site for the O&M Facility. The parties have negotiated a term sheet for an “option contract” (Attachment A) for the conveyance of the Old Antenna Farm.

An option contract provides a party with the option to lease or purchase a property. In this case, the parties have discussed entering into an option contract through which Valley Link will be granted an exclusive and irrecoverable option to “purchase” the Old Antenna Farm as an in-kind contribution from the City, subject to certain conditions. The proposed term sheet reflects the parties understanding of the basis for an option contract to be negotiated and executed in the future. The following are key provisions of the non-binding term sheet that if approved by Council will be the basis of an option contract:

- City will grant an exclusive and irrevocable option to Valley Link to purchase the Old Antenna Farm.
- Purchase Price: No cost to Valley Link. The value of the property will be considered an in-kind contribution by the City to Valley Link to be leveraged for additional grant funding.
- Term of Option Contract: 10 years. Valley Link may only exercise option to purchase the property after the EIR has been adopted which is expected to occur at the end of this calendar year.
- Consideration for Option: \$100 upon execution of Option Contract.
- Reversion to City: If site is not used by the Valley Link Project within 10 years of the purchase date the property shall revert to the City. The final provision is subject to review by federal-grant making agencies to ensure compliance with grant requirements for a local match.
- Non-Binding: The term sheet is non-binding meaning that the execution of the term sheet does not create a legally binding obligation.

This item also requests that Council authorize the City Manager to execute the term sheet. The final option contract and purchase and sale agreement will return to Council for approval at a later date.

FISCAL IMPACT

The value of the property will be determined prior to the exercise of the Option and as indicated above the value will be attributed as the City’s contribution to the Valley Link project.

STRATEGIC PLAN

This agenda item supports the City of Tracy’s Economic Development Strategic Priority, which is to continue to advance transit oriented development opportunities and work with Valley Link and other stakeholders to develop a Downtown Tracy Station.

RECOMMENDATION

Staff recommends that Council approve the option contract term sheet with Valley Link and authorize the City Manager to execute the term sheet.

Prepared by: Leticia Ramirez, City Attorney

Reviewed by: Karin Schnaider, Finance Director
Andrew Malik, Assistant City Manager

Approved by: Jennifer D. Haruyama, City Manager

ATTACHMENTS

ATTACHMENT A – Option Contract Term Sheet

OPTION CONTRACT TERM SHEET

This Option Contract Term Sheet ("**Agreement**") sets forth the basic terms and conditions upon which the City of Tracy ("**Seller**") agrees to conveying to the Tri-Valley–San Joaquin Valley Regional Rail Authority ("**Buyer**") the real property commonly referred to as 15580 and 15178 W. Schulte Road (APNs 209-230-29 and 209-230-30) in the City of Tracy, County of San Joaquin, State of California (the "**Property**"), which is described in Exhibit A, attached hereto and incorporated herein by this reference. Buyer and Seller are referred to individually as a "Party" and together as "the Parties,"

Upon mutual assent of the Parties, a binding Option Contract and Purchase and Sale Agreement ("**Option Contract**") will be prepared based on the terms and conditions contained herein.

- 1. Grant of Option** Seller will grant to Buyer, for the Option Term, an exclusive and irrevocable option ("**Option**") to purchase the Property under the terms of the Option Contract if and when such Option is exercised.
- 2. Option Payment** The grant of such Option is conditioned upon the payment by Buyer of \$100 within 30 days after Execution of the Option Contract.
- 3. Term of Option** The term of the option will commence on the Effective Date of the Option Contract and expire 10 years after that Effective Date.
- 4. Memorandum of Option** Buyer and Seller shall execute and record in the Official Records of the County of San Joaquin a Memorandum of Option Agreement within 10 days after the Effective Date of the Option Contract. If the Option becomes null or void, Buyer shall record a Quitclaim Deed and take any further actions necessary to remove any cloud on title due to the recordation of the Memorandum of Option.
- 5. Compensation** Buyer shall pay no cash compensation for the Property. Transfer of the Property is intended to partially offset the contribution of Bay Area transportation agencies to the Valley Link Project.
- 6. Exercise of Offer** The Option must be exercised by Buyer, if at all, by giving notice of its exercise of the Option ("**Exercise Notice**") but only when Buyer shall have adopted a final environmental impact report for the Valley Link project and the selected alternative includes use of the Property or these conditions are waived in writing by Seller.
- 7. Due Diligence** Buyer will have a period of ninety (90) days from the date it delivers the Exercise Notice to Seller to complete all necessary due diligence ("**Due Diligence Period**"). Seller will provide the due diligence materials in Seller's possession within five (5) business days of the date of the delivery of the Exercise Notice. Seller will also promptly provide to Buyer such additional materials as Buyer may reasonably request from time to time during the Due Diligence Period. The Option Contract will grant to Buyer a right of entry to enter onto the

Property during the Due Diligence Period for all necessary due diligence purposes, but require Buyer to indemnify Seller for liabilities arising from its investigations, to carry appropriate insurance, and to maintain confidentiality. Each party will bear its own costs in connection with due diligence and negotiation of this Agreement and the Purchase and Sale Agreement. If Buyer is unsatisfied with the results of its due diligence review before the end of the Due Diligence Period, it may terminate the Purchase and Sale Agreement. Buyer may, at its cost, perform additional studies on the Property, including, but not limited to, a Phase I or Phase II environmental report, as Buyer deems necessary or desirable and Seller shall provide Buyer and Buyer's consultants with reasonable access to the Property for this purpose.

8. Purchase and Sale Agreement

Within thirty (30) business days of acceptance of this Agreement, Buyer will deliver to Seller or Seller's counsel a first draft of the Option Contract that shall contain provisions, representations and warranties related to the real property as customarily provided. The Option Contract shall include a term providing that once the Property is acquired, it will revert to the City in the event the Property is not used by for the Valley Link Project within 10 years of the purchase date. The specific wording of this term shall be subject to review by federal grant-making agencies to ensure it will not interfere with the use of the property as the local match for potential federal aid for the Valley Link Project.

9. Closing Conditions

The closing will be contingent upon due diligence approval before the end of the Due Diligence Period.

10. Title/Survey

The Owner's Title Policy shall be obtained through a nationally recognized title company determined by Buyer. Buyer, at its election and cost, may obtain an ALTA survey for the Property. Buyer shall also pay the costs of any fees for the title search, title commitment, owners' title policies (with extended coverage), and the cost of any other endorsements or lender's title policies. At closing, Seller shall convey to Buyer good and marketable fee simple title to the real property by grant deed.

11. Closing Date

The closing shall occur on or before 60 days following expiration of the Due Diligence Period, provided all conditions to close have been met at least five (5) business days prior ("Closing Date").

12. Brokers' Fees

Each party represents to the other that it has not engaged or otherwise involved a broker to represent its interests in connection with this transaction. Each party will indemnify, defend, and hold harmless the other party from and against any costs, expenses, and liabilities

arising from a breach of the foregoing representation.

13. Expenses

Each party will bear their own expenses associated with this Agreement, the acquisition and other transactions contemplated herein, including, without limitation, legal, accounting, due diligence and other fees and disbursements of consultants and advisors.

14. Non-Binding

All terms and conditions of this Agreement are not legally binding and do not constitute a binding agreement on either party hereto, or even an obligation to negotiate further in good faith, but rather are intended to serve as reflection of the parties' preliminary understanding of terms to consider in negotiation of a binding agreement. Neither party may claim any legal rights against the other by reason of signing of this Agreement or by taking any action in reliance thereon.

This Agreement will be construed and enforced in accordance with the laws of the State of California, without regard to the conflict of law provisions thereunder. This Agreement may be executed in one or more counterparts and exchanged electronically by .pdf.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date last written below.

SELLER:

CITY OF TRACY

By: _____

Name: Jennifer D. Haruyama

Its: City Manager

Approved as to form:

By: _____

Name: Leticia Ramirez

Title: City Attorney

BUYER:

TRI-VALLEY-SAN JOAQUIN VALLEY REGIONAL RAIL AUTHORITY

By: _____

Name: _____

Its: _____

Approved as to form:

By: _____

Name: _____

Title: Counsel for Buyer

209-23



RESOLUTION 2020-_____

APPROVING OPTION CONTRACT TERM SHEET TO CONVEY 200 ACRES (APNs 209-230-029 AND 209-230-030) TO VALLEY LINK FOR A FUTURE OPERATIONS AND MAINTENANCE FACILITY AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE TERM SHEET

WHEREAS, The California Legislature adopted Assembly Bill (AB) 758 in 2017 to establish the Tri-Valley-San Joaquin Valley Regional Rail Authority, known as Valley Link, "to plan and help deliver a cost-effective connection from the San Joaquin Valley to the Bay Area Rapid Transit District's rapid transit system and the Altamont Corridor Express in the Tri-Valley, to address regional economic and transportation challenges," and

WHEREAS, The City of Tracy is a member of the board of directors governing Valley Link, and

WHEREAS, The Valley Link Feasibility Report identified the City of Tracy as a location for a future Valley Link rail station and a proposed operations and maintenance facility ("O&M Facility"), and

WHEREAS, Valley Link approached the City about two City-owned parcels totaling approximately 200 acres (APNs 209-230-029 and 209-230-030), commonly referred to as the "Old Antenna Farm" as a potential site for the O&M Facility, and

WHEREAS, The parties have negotiated a term sheet for an "option contract" that will grant Valley Link an exclusive and irrecoverable option to "purchase" the Old Antenna Farm at no cost and as an in-kind contribution from the City, subject to certain conditions, and

NOW, THEREFORE, BE IT RESOLVED, That the City Council of the City of Tracy hereby approves the Option Contract Term Sheet presented to Council on this date and authorizes the City Manager to execute the Term Sheet on behalf of the City of Tracy.

* * * * *

The foregoing Resolution 2020-_____ was passed and adopted by the Tracy City Council on the 15th day of September, 2020, by the following vote:

AYES: COUNCIL MEMBERS:
NOES: COUNCIL MEMBERS:
ABSENT: COUNCIL MEMBERS:
ABSTAIN: COUNCIL MEMBERS:

MAYOR

ATTEST:

CITY CLERK

September 15, 2020

AGENDA ITEM 3.B

REQUEST

RECEIVE AN UPDATE ON THE FY 2019-20 BUDGET UNAUDITED ACTUALS

EXECUTIVE SUMMARY

On June 16, 2020, the Council amended the FY 2019-20 budget to reflect the fiscal condition of General Fund and the economic impacts of COVID-19. Staff was directed to return to the City Council with a financial summary of the fiscal year once the fourth quarter revenues and expenditures were known. The City is expected to complete the annual audit in December 2020. The next financial update to the City Council will occur in October with the first quarter FY 2020-21.

DISCUSSION

On June 16, 2020, the City Council approved the FY 2020-21 Operating and Capital Budget after holding two budget workshops. During the budget workshops, the City Council considered both the upcoming budget adoption and proposed amendments to the FY 2019-20 budget; both of which were negatively impacted by the fiscal strain related to COVID-19 and the State's Stay in Place order that began in March 2020. The City's General Fund was projected to have a \$7 million deficit; of which, approximately half (\$3.5 million) would require funding appropriations from the 10% Economic/Budget Stabilization Reserves.

The updated unaudited actuals for FY 2019-20 reflect a slightly better position on the General Fund. While some of the Economic/Budget Stabilization Reserves will be needed to balance the budget, there was improvement in both the revenues and greater savings in expenditures to reduce the need to appropriate from reserves. Total General Fund Taxes improved by a net of \$600,000 (or approximately 1%) not including Measure V Sales Tax. Measure V Sales Tax improved an additional \$2.2 million which increased the Transfers Out to the Aquatic Center-capital reserves. An additional transfer of prior year Measure V fund balance was also moved to the Aquatic Center-capital CIP for a total transfer out of approximately \$14 million to the Aquatic Center for the last two years. Staff is optimistic these trends in tax revenue may continue into the FY 2020-21 budget; however it too soon to be certain. The City is still in a modified statewide Stay-In-Place order that continues to impact employment levels in the State, County, and City. It is anticipated this will have prolonged effect on the fiscal recovery of the economy. Staff will continue to monitor these trends carefully over the upcoming quarters.

The City also experienced improvements in Other Revenues of \$1.5 million. More than half of this increase came from Investment Earnings that resulted from some interest revenue and adjustment to market value. It is unlikely that the City will experience similar earnings in FY 2020-21 as these are a reflection of the national economy before COVID-19.

Finally, the City experienced marginal savings in the expenditures, most of which are a result of timing and will be spent in FY 2020-21. Overall, the City's net position is \$2 million better than estimates made last quarter.

Should some of these revenue trends continue into FY 2020-21, the City will likely have sufficient funds remaining in the Economic/Budget Stabilization Reserves to cover the FY 2020-21 deficit; and, therefore, the City may not require funds from Measure V to balance the budget. Staff will continue to monitor the City's financial position throughout the year and make quarterly updates to the City Council.

	FY 2019-20 Amended Budget	FY 2019-20 Unaudited Actuals	Change
Total Taxes (w/o Measure V)	\$52.9M	\$53.5M	\$0.6M
Measure V-Sales Tax	\$ 8.5M	\$10.7M	\$2.2M
Other Revenue	\$16.0M	\$17.5M	\$1.5M
Total Revenue	\$77.4M	\$81.7M	\$4.3M
Total Expenditures	\$72.8M	\$72.5M	(S0.3M)
Net Transfers (w/o Measure V)	\$ 3.2M	\$ 3.4M	\$0.2M
Measure V-capital transfers*	\$ 8.2M	\$ 14.0M	\$5.8M*
Total Expenditure	\$84.2M	\$89.9M	\$5.7M
TOTAL DEFICIT	<\$6.8M>	<\$8.2M>	<\$1.4M>*

*Measure V transfers include \$3.6M in fund balance from prior year moved to Capital Fund.

STRATEGIC PLAN

This item is in accordance with Goal 3, Objective 1 of City Council's Governance Strategy:

- Goal 2: Ensure Short and Long Term Financial Sustainability
- Objective 1) Develop cost containment and revenue enhancement strategies for consideration as part of the FY 2020/21 budget development process

FISCAL IMPACT

The General Fund Unaudited Fund Balance as of June 30, 2020 is approximately \$21,230 million. The City contributed approximately \$14 million to the Aquatic Center-capital CIP from the General Fund's Measure V Sales tax FY 2018-19 (~\$3.6 million) and FY 2020-19 (~\$10.4 million).

Summary of the FY 2019-20 Unaudited Actuals:

(in thousands)	FY 2020 Amended Budget	FY 2020 Unaudited Actuals	FY 2021 Adopted Budget
<u>Revenue</u>			
Taxes	\$ 61,363	\$ 64,320	\$ 60,457
Other Revenues	16,024	17,564	18,470
Total Revenue	77,387	81,885	78,927
<u>Total Expenditures</u>			
Personnel	\$ 57,112	\$ 56,962	\$ 58,846
Non-Personnel	15,729	15,615	16,161
Total Expenditures	72,841	72,578	75,007
Net Transfers In/(Out)	(11,472)	(17,397)	(7,096)
Change to Fund Balance	\$ (6,927)	\$ (8,090)	\$ (3,176)
		FY 2020 Projected Fund Balance	FY 2020 Unaudited Fund Balance
Unaudited Fund Balance	\$ 32,671	\$ 21,230	
Components of Fund Balance			
10% Economic/Budget Stabilization	7,441	7,441	
<i>(Use of Reserves)</i>	<i>(4,264)</i>	<i>(1,593)</i>	
~Revised Economic/Budget Stabilization	3,176	5,848	
20% Catastrophic Reserve	14,882	14,882	
Encumbrance Carryovers	-	500	
Measure V *	14,120	-	
Other Commitments	492	-	

*Measure V fund balance moved to Aquatic Center – capital fund

RECOMMENDATION

Staff recommends receiving the report on the FY 2019-20 Unaudited Actuals.

Budget Summary

- The City's June 30, 2020 Fund Balance is approximately \$2 million better than projected;
 - Will require less than 10% Economic/Budget Stabilization to balance the budget in FY 19-20.
- Revenues are trending slightly higher (1%) higher than projected and may continue into FY 2020-21;
- Expenses are trending slightly lower in both the Fourth Quarter FY 2019-20 and First Quarter FY 2020-21;
- While the City's structural deficit remains, it may be reduced if revenue and expenditure trends continue into FY 20-21.

Key Takeaways

- If 2019-20 4Q revenue trends continue, the City may not need to use funds from Measure V to cover part of the deficit in FY 2020-21.
- The State is now entering its 7th month of restrictions related to COVID-19; this may lead to slower fiscal recovery throughout the County and State.
- Staff will continue to develop actions and policies to address the City's structural deficit and fiscal impacts related to COVID-19.

Prepared by: Karin Schnaider, Finance Director

Reviewed by: Midori Lichtwardt, Assistant City Manager

Approved by: Jenny Haruyama, City Manager

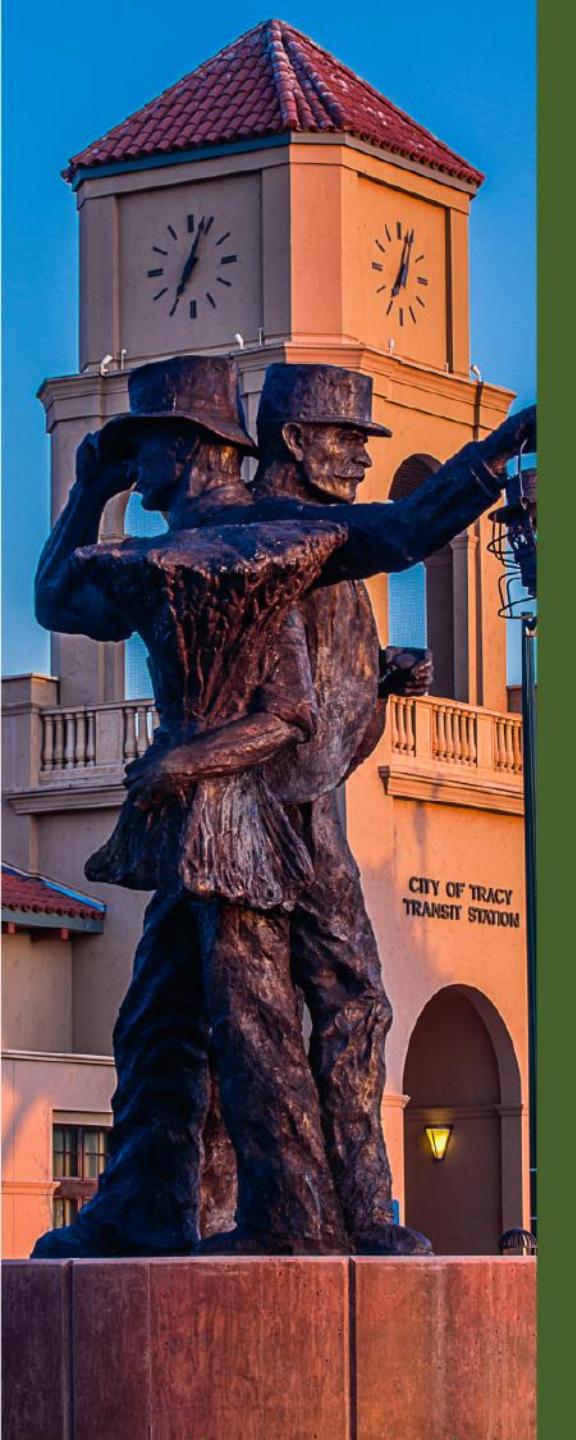
ATTACHMENT

FY 2019-20 Unaudited Actuals & Fund Balances Power Point Presentation



FY 2019-20 Unaudited Actuals and Fund Balances

September 15, 2020
City Council Meeting



PRESENTATION OUTLINE

- FY 2019-20 General Fund Budget Summary
 - Budget to Actual Comparison
 - Fund Balance Comparison
- Budget Highlights
 - Budget Overview
 - Key Takeaways
 - Fiscal Sustainability Plan Update
- Next Steps



Unaudited General Fund

for June 30, 2020

FY 2019-20 BUDGET TO ACTUAL

	FY 2019-20 Amended Budget	FY 2019-20 Unaudited Actuals	Change
Total Taxes (w/o Measure V)	\$52.9M	\$53.5M	\$0.6M
Measure V-Sales Tax	\$ 8.5M	\$10.7M	\$2.2M
Other Revenue	\$16.0M	\$17.5M	\$1.5M
Total Revenue	\$77.4M	\$81.7M	\$4.3M
Total Expenditures	\$72.8M	\$72.5M	(S0.3M)
Net Transfers (w/o Measure V)	\$ 3.2M	\$ 3.4M	\$0.2M
Measure V-capital transfers*	\$ 8.2M	\$ 14.0M	\$5.8M*
Total Expenditure	\$84.2M	\$89.9M	\$5.7M
TOTAL DEFICIT	<\$6.8M>	<\$8.2M>	<\$1.4M>*

*Measure V transfers include \$3.6M in fund balance from prior year moved to Capital Fund.

REVISED GENERAL FUND RESERVES FOR 06/30/2020

Fund Balance (FB)	FY 19/20 Projected	Net Change	FY 19/20 Unaudited
Revised Ending Fund Balance	32,671	(11,441)	21,230
20% Catastrophic Reserve	14,882	0	14,882
10% Budget Stabilization Reserve (net)	3,176	2,672	5,848
Measure V*	14,120	(14,120)	0
Other Committed Reserves	492	(492)	0
Carryover Encumbrances	0	500	500

*Measure V fund balance moved to Capital Fund.



Budget Highlights

Budget Summary

- ❑ City's June 30, 2020 Fund Balance is approximately \$2 million better than projected;
 - ❑ Will require less than 10% Economic/Budget Stabilization to balance the budget in FY 19-20.
- ❑ Revenues are trending slightly higher (1%) higher than projected and may continue into FY 2020-21;
- ❑ Expenses are trending slightly lower in both the Fourth Quarter FY 2019-20 and First Quarter FY 2020-21;
- ❑ While the City's structural deficit remains, it may be reduced if revenue and expenditure trends continue into FY 20-21.



Key Takeaways

- If 2019-20 4Q revenue trends continue, the City may not need to use funds from Measure V to cover part of the deficit in FY 2020-21.
- The State is now entering its 7th month of restrictions related to COVID-19; this may lead to slower fiscal recovery throughout the County and State.
- Staff will continue to develop actions and policies to address the City's structural deficit and fiscal impacts related to COVID-19.



Think Inside the Triangle™

Fiscal Sustainability Plan Update

- Fiscal Sustainability Council Ad Hoc Subcommittee
 - ❖ Staff and the Council Subcommittee met a total of four times during the months of July, August and September.
- Topics discussed included:
 - ✓ Overview of Governmental Budgeting
 - ✓ Review of City Adopted Budget
 - ✓ Discussion of Financial Forecasting Tools and Practices
 - ✓ Review of City's 5-Year Financial Forecast
- Council Subcommittee Next Steps:
 - Discussion of Budget Policy Framework for Decision Making
 - Exploration of Short and Long Term Budget Strategies



Think Inside the Triangle™



ON THE HORIZON

- First Quarter Update (July, August, September) Tentatively Scheduled for October 2020

September 15, 2020

AGENDA ITEM 3.C

REQUEST

RECEIVE UPDATE REGARDING SENATE BILL 793 PROHIBITING THE SALE OF FLAVORED TOBACCO IN CALIFORNIA, DISCUSS PROPOSED CITY ORDINANCE RESTRICTING LOCATION OF TOBACCO RETAILERS, AND PROVIDE DIRECTION TO STAFF

EXECUTIVE SUMMARY

On December 3, 2019, the City Council directed staff to prepare an ordinance to ban the sale of flavored tobacco and restrict tobacco retailers from locating within 600 feet of sensitive youth uses in the City of Tracy. Since then the State Legislature passed Senate Bill (SB) 793 which prohibits tobacco retailers from selling or possessing with the intent to sell flavored tobacco products or product flavor enhancers, including flavored vaping products and menthol cigarettes, with certain exceptions. SB 793 was signed into law by Governor Newsom on August 28, 2020.

This item provides Council with an update regarding SB 793 and requests Council discuss a proposed ordinance that establishes location restrictions for future tobacco retailers in the City of Tracy and provide direction to staff, as desired.

DISCUSSION

On December 3, 2019, the Tracy City Council discussed a potential ordinance regulating the sale of e-cigarettes/vapes and/or the sale of flavored tobacco. That discussion resulted in Council consensus to have staff prepare an ordinance banning the sale of flavored tobacco and restricting tobacco retailers from locating within 600 feet of sensitive youth uses in Tracy. Council specifically requested that staff return with enforcement options (e.g. administrative citations, infractions, or criminal penalties) for Council, as well as a delayed effective date in order to provide tobacco retailers with an opportunity to comply with the proposed ban.

Due to other priorities including those related to COVID-19, staff was unable to return to Council with the requested ordinance until now. However, given the enactment of SB 793, staff is presenting a proposed ordinance that only addresses the location restrictions for future tobacco retail establishments. This item requests that Council provide direction to staff, as desired.

Overview of SB 793

On August 28, 2020, Governor Newsom signed into law SB 793 which bans the sale of flavored tobacco in California, subject to certain exceptions (Attachment A). The following is a summary of key provisions of this bill that are codified as California Health and Safety Code section 104559.5:

- Prohibits a tobacco retailer, including agents and employees, from selling, offering to sell, or possessing with intent to sell a flavored tobacco product or a tobacco product flavor enhancers.

- Establishes a rebuttable presumption that a tobacco product is a “flavored tobacco product” if manufacturer has made a statement or claim that tobacco product has or produces a characterizing flavor
- Exception to ban for:
 - Flavored shisha tobacco products sold by hookah tobacco retailers
 - Premium cigars
 - Loose leaf tobacco
- Violation of ban is an infraction punishable by a fine of \$250 for each violation.
- Does not preempt or otherwise prohibit the adoption of a local ordinance that imposes greater restrictions on access to tobacco products.
 - If any inconsistency between SB 793 and local ordinance that establishes greater restrictions on access to tobacco products, local standard applies.

Proposed Ordinance Establishing Location Restrictions for Tobacco Retailers

Staff has prepared a draft ordinance to establish zoning restrictions on where a tobacco retail use can locate in the City (Attachment B). Generally the City's zoning ordinance found in Title 10 of the Tracy Municipal Code (TMC) does not identify the sale of tobacco or tobacco retailing as its own use and this use is treated like other retail uses.

The proposed ordinance would establish the following:

- Requires “tobacco retailers” to be located at least 600 feet from a sensitive youth use.
- “Tobacco retailer” defined as “any person who sells, offers for sale, exchanges, or offers to exchange any tobacco, tobacco, tobacco product, or tobacco paraphernalia for consideration, without regard to the quantity sold, offered for sale, exchanged, or offered to exchange.”
- Sensitive youth uses are: day care centers, schools, and youth centers, which include parks. This is consistent with location restrictions on cannabis uses.
- Existing tobacco retailers in Tracy are “grandfathered” and will be considered legal nonconforming uses and can continue to operate in accordance with Article 25 of Chapter 10.08 of the TMC.

There are approximately 58 retail establishments that sell tobacco, tobacco products, or tobacco paraphernalia. Planning staff prepared a map outlining the location of these retailers and the 600-foot sensitive youth use buffer (Attachment C).

Next Steps

If the Council directs staff to proceed with the proposed ordinance, the TMC requires that amendments to the City's zoning ordinance be presented to the Planning Commission. The proposed ordinance will be presented to Planning Commission for their review and recommendation and will return to Council for final consideration.

STRATEGIC PLAN

This agenda item does not align with a Council strategic priority.

FISCAL IMPACT

None.

RECOMMENDATION

Staff recommends that the City Council receive an update regarding SB 793, discuss the proposed City ordinance establishing location restrictions on tobacco retailers and provide direction to staff.

Prepared by: Leticia Ramirez, City Attorney

Reviewed by: William Dean, Assistant Development Services Director
Karin Schnaider, Finance Director
Andrew Malik, Assistant City Manager

Approved by: Jenny Haruyama, City Manager

ATTACHMENTS

Attachment A – Senate Bill 793
Attachment B – Draft Tobacco Retailer Ordinance
Attachment C – Map of Tobacco Retailers and 600-foot buffer

Senate Bill No. 793

CHAPTER 34

An act to add Article 5 (commencing with Section 104559.5) to Chapter 1 of Part 3 of Division 103 of the Health and Safety Code, relating to tobacco products.

[Approved by Governor August 28, 2020. Filed with Secretary of State August 28, 2020.]

LEGISLATIVE COUNSEL'S DIGEST

SB 793, Hill. Flavored tobacco products.

Existing law, the Stop Tobacco Access to Kids Enforcement (STAKE) Act, prohibits a person from selling or otherwise furnishing tobacco products, as defined, to a person under 21 years of age. Existing law also prohibits the use of tobacco products in county offices of education, on charter school or school district property, or near a playground or youth sports event, as specified.

This bill would prohibit a tobacco retailer, or any of the tobacco retailer's agents or employees, from selling, offering for sale, or possessing with the intent to sell or offer for sale, a flavored tobacco product or a tobacco product flavor enhancer, as those terms are defined, except as specified. The bill would make a violation of this prohibition an infraction punishable by a fine of \$250 for each violation. The bill would state the intent of the Legislature that these provisions do not preempt or prohibit the adoption and implementation of local ordinances that impose greater restrictions on the access to tobacco products than the restrictions imposed by the bill, as specified. The bill would state that its provisions are severable. By creating a new crime, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

The people of the State of California do enact as follows:

SECTION 1. Article 5 (commencing with Section 104559.5) is added to Chapter 1 of Part 3 of Division 103 of the Health and Safety Code, to read:

Article 5. Tobacco Sale Prohibition

104559.5. (a) For purposes of this section, the following definitions apply:

(1) "Characterizing flavor" means a distinguishable taste or aroma, or both, other than the taste or aroma of tobacco, imparted by a tobacco product or any byproduct produced by the tobacco product. Characterizing flavors include, but are not limited to, tastes or aromas relating to any fruit, chocolate, vanilla, honey, candy, cocoa, dessert, alcoholic beverage, menthol, mint, wintergreen, herb, or spice. A tobacco product shall not be determined to have a characterizing flavor solely because of the use of additives or flavorings or the provision of ingredient information. Rather, it is the presence of a distinguishable taste or aroma, or both, as described in the first sentence of this definition, that constitutes a characterizing flavor.

(2) "Constituent" means any ingredient, substance, chemical, or compound, other than tobacco, water, or reconstituted tobacco sheet, that is added by the manufacturer to a tobacco product during the processing, manufacture, or packing of the tobacco product.

(3) "Flavored shisha tobacco product" means any shisha tobacco product that contains a constituent that imparts a characterizing flavor.

(4) "Flavored tobacco product" means any tobacco product that contains a constituent that imparts a characterizing flavor.

(5) "Hookah" means a type of waterpipe, used to smoke shisha or other tobacco products, with a long flexible tube for drawing aerosol through water. Components of a hookah may include heads, stems, bowls, and hoses.

(6) "Hookah tobacco retailer" means a tobacco retailer that is engaged in the retail sale of shisha tobacco products, hookah, and hookah smoking accessories.

(7) "Labeling" means written, printed, pictorial, or graphic matter upon a tobacco product or any of its packaging.

(8) "Loose leaf tobacco" consists of cut or shredded pipe tobacco, usually sold in pouches, excluding any tobacco product which, because of its appearance, type, packaging, or labeling, is suitable for use and likely to be offered to, or purchased by, consumers as tobacco for making cigarettes, including roll-your-own cigarettes.

(9) "Packaging" means a pack, box, carton, or container of any kind, or, if no other container, any wrapping, including cellophane, in which a tobacco product is sold or offered for sale to a consumer.

(10) "Premium cigar" means any cigar that is handmade, is not mass produced by use of mechanization, has a wrapper that is made entirely from whole tobacco leaf, and has a wholesale price of no less than twelve dollars (\$12). A premium cigar does not have a filter, tip, or nontobacco mouthpiece and is capped by hand.

(11) "Retail location" means both of the following:

- (A) A building from which tobacco products are sold at retail.
- (B) A vending machine.

(12) "Sale" or "sold" means a sale as that term is defined in Section 30006 of the Revenue and Taxation Code.

(13) "Shisha tobacco product" means a tobacco product smoked or intended to be smoked in a hookah. "Shisha tobacco product" includes, and may be referred to as, hookah tobacco, waterpipe tobacco, maassel, narghile, and argileh. "Shisha tobacco product" does not include any electronic devices, such as an electronic hookah, electronic cigarette, or electronic tobacco product.

(14) "Tobacco product" means a tobacco product as defined in paragraph (8) of subdivision (a) of Section 104495, as that provision may be amended from time to time.

(15) "Tobacco product flavor enhancer" means a product designed, manufactured, produced, marketed, or sold to produce a characterizing flavor when added to a tobacco product.

(16) "Tobacco retailer" means a person who engages in this state in the sale of tobacco products directly to the public from a retail location. "Tobacco retailer" includes a person who operates vending machines from which tobacco products are sold in this state.

(b) (1) A tobacco retailer, or any of the tobacco retailer's agents or employees, shall not sell, offer for sale, or possess with the intent to sell or offer for sale, a flavored tobacco product or a tobacco product flavor enhancer.

(2) There is a rebuttable presumption that a tobacco product is a flavored tobacco product if a manufacturer or any of the manufacturer's agents or employees, in the course of their agency or employment, has made a statement or claim directed to consumers or to the public that the tobacco product has or produces a characterizing flavor, including, but not limited to, text, color, images, or all, on the product's labeling or packaging that are used to explicitly or implicitly communicate that the tobacco product has a characterizing flavor.

(c) Subdivision (b) does not apply to the sale of flavored shisha tobacco products by a hookah tobacco retailer if all of the following conditions are met:

(1) The hookah tobacco retailer has a valid license to sell tobacco products issued pursuant to Chapter 2 (commencing with Section 22971.7) of Division 8.6 of the Business and Professions Code.

(2) The hookah tobacco retailer does not permit any person under 21 years of age to be present or enter the premises at any time.

(3) The hookah tobacco retailer shall operate in accordance with all relevant state and local laws relating to the sale of tobacco products.

(4) If consumption of tobacco products is allowed on the premises of the hookah tobacco retailer, the hookah tobacco retailer shall operate in accordance with all state and local laws relating to the consumption of tobacco products on the premises of a tobacco retailer, including, but not limited to, Section 6404.5 of the Labor Code.

(d) Subdivision (b) does not apply to sales of premium cigars sold in cigar lounges where products are purchased and consumed only on the premises.

(e) Subdivision (b) does not apply to loose leaf tobacco or premium cigars.

(f) A tobacco retailer, or agent or employee of a tobacco retailer, who violates this section is guilty of an infraction and shall be punished by a fine of two hundred fifty dollars (\$250) for each violation of this section.

(g) This section does not preempt or otherwise prohibit the adoption of a local standard that imposes greater restrictions on the access to tobacco products than the restrictions imposed by this section. To the extent that there is an inconsistency between this section and a local standard that imposes greater restrictions on the access to tobacco products, the greater restriction on the access to tobacco products in the local standard shall prevail.

SEC. 2. The provisions of this act are severable. If any provision of this act or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

PROPOSED TOBACCO RETAIL ORDINANCE

10.08.3194 – Tobacco Retail Use.

- (a) Purpose and Intent. The purpose of this section is to impose zoning restrictions on tobacco retailers to limit youth exposure and access to tobacco, tobacco products, and tobacco paraphernalia. This section is not intended to give any person or entity authority to engage in tobacco retailing in the City of Tracy.
- (b) Definitions. Unless otherwise provided in this section, the definitions set forth in Chapter 10.08 (Zoning Regulations) apply. The following words shall have the meanings set forth below when used in this section:
 - (1) "Day care center" means a child day care facility other than a family day care home, and includes infant centers, preschools, extended day care facilities, and school age child care centers, as well as child care centers pursuant to Section 1596.951 of the California Health and Safety Code. This definition shall have the same meaning as set forth in Section 1596.76 of the California Health and Safety Code, as the same may be amended from time to time.
 - (2) "Sensitive youth use" means a school, day care center, or youth center as defined in this section.
 - (3) "School" means those sites upon which full-time instruction in any of the grades K through 12 is provided where the primary purpose is education. "School" includes public schools, private schools, and charter schools, but does not include any private site upon which education is primarily conducted in private homes.
 - (4) "Tobacco paraphernalia" means cigarette papers or wrappers, pipes, holders of smoking materials of all types, cigarette-rolling machines, electronic cigarettes, e-cigarettes, electronic smoking devices, electronic cigarette cartridges, electronic smoking device cartridges and related products, and any other item designed or used for the smoking or ingestion of tobacco products.
 - (5) "Tobacco product" means any tobacco cigarette, cigar, pipe tobacco, smokeless tobacco, snuff, chewing tobacco, e-cigarette or electronic smoking device, or any other form of tobacco or product containing at least 50 percent tobacco which may be utilized for smoking, chewing, inhalation or other manner of ingestion. "Tobacco product" does not include any product that has been approved by the United States Food and Drug Administration for sale as a tobacco cessation product (e.g. skin patches, lozenges, gym and prescription medications). or for other therapeutic purposes where that product is marketed and sold solely for such approved use.
 - (6) "Tobacco retailer" means any person who sells, offers for sale, exchanges, or offers to exchange any tobacco, , tobacco product, or tobacco paraphernalia for consideration, without regard to the quantity sold, offered for sale, exchanged, or offered to exchange.
 - (7) "Tobacco retailing" means the conduct of selling, offering for sale, exchanging, or offering to exchange any tobacco, tobacco product, or tobacco paraphernalia for any form of consideration, without regard to the quantity sold, offered for sale, exchanged or offered to exchange.
 - (8) "Youth center" means any public or private facility that is primarily used to host recreational or social activities for minors, including but not limited to: private youth membership organizations or clubs, social service teenage club facilities, video arcades where ten (10) or more video games or game machines or devices are operated, and where minors are legally permitted to accept services, or similar amusement park facilities. It shall also include a park, playground or recreational area specifically designed to be used by children which has play equipment installed, including public grounds designed for athletic activities such as baseball, softball, soccer, or basketball or any similar facility located on a public or private school grounds, or in City, county, or state parks. This definition shall not include any private gym, martial arts, yoga, ballet, music, art studio or similar studio of this nature, nor shall it include any athletic training facility, pizza parlor, dentist office, doctor's office primarily serving children or a location which is primarily utilized as an administrative office or facility for youth programs or organizations.
- (c) Location Requirements for Tobacco Retailers.

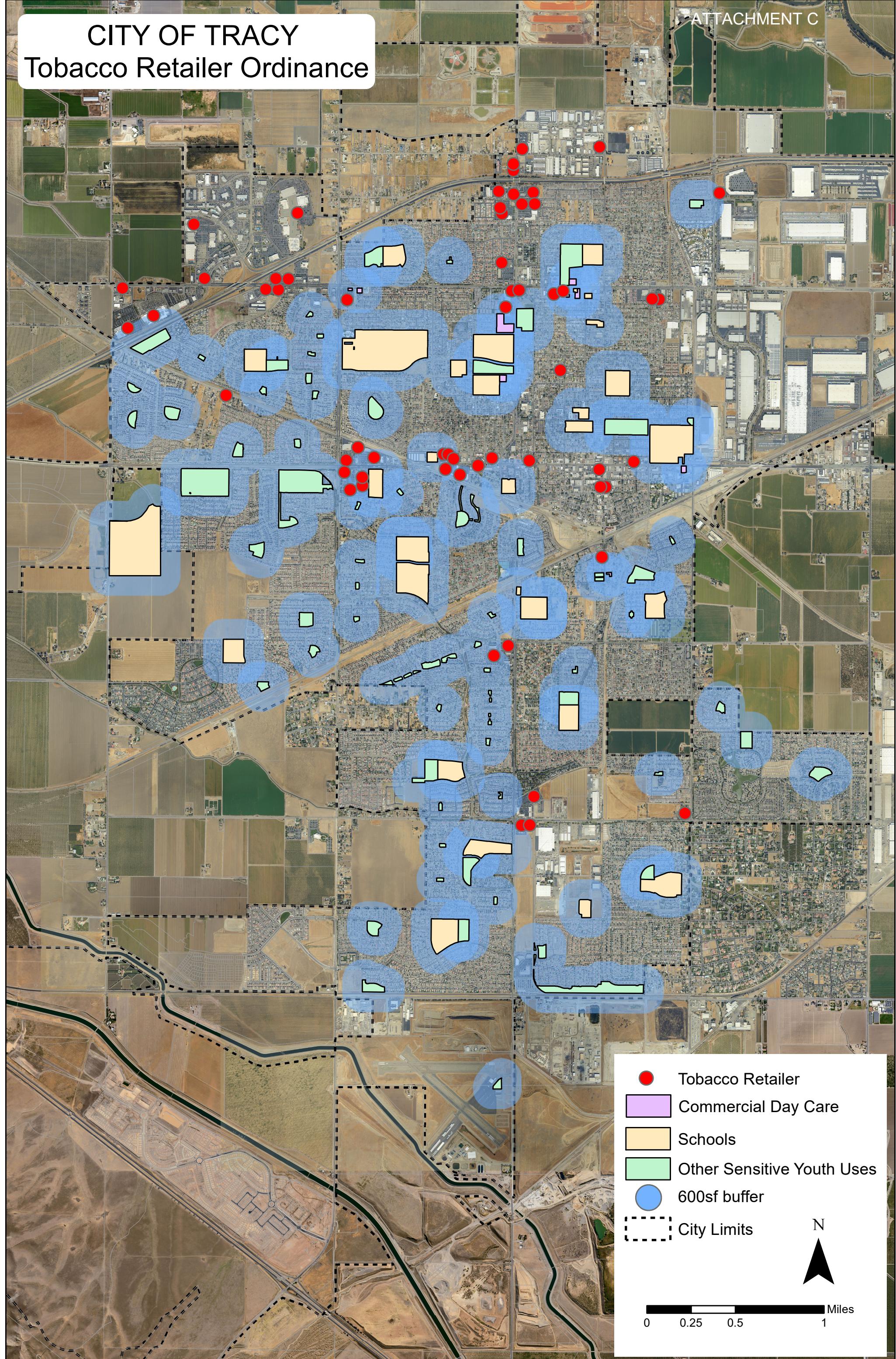
PROPOSED TOBACCO RETAIL ORDINANCE

- (1) Tobacco retailing shall only be conducted at fixed locations.
- (2) Tobacco retailers shall be located at least 600 feet from any parcel containing a sensitive youth use; and
- (3) If located on separate parcels, the distance between the tobacco retailer and the sensitive youth use property shall be measured from the outer boundaries of the sensitive youth use parcel to the closest structure containing the tobacco retailer, and
- (4) If located on the same parcel, the distance between the structures containing the tobacco retailer and any sensitive youth use shall be at least 600 feet.
- (5) Nonconforming Tobacco Retail Use.
 - i. Any tobacco retailer lawfully operating in the City of Tracy on the date this ordinance is adopted shall be considered a nonconforming use and may continue to operate at their existing location subject to Article 25 of Chapter 10.08 of the Tracy Municipal Code.
 - ii. The establishment of a sensitive youth use within 600 feet of a tobacco retailer after a tobacco retailer commences legal operations shall render the tobacco retailer a nonconforming use which may continue to operate at their existing location subject to Article 25 of Chapter 10.08 of the Tracy Municipal Code.

CITY OF TRACY

Tobacco Retailer Ordinance

ATTACHMENT C



*This map has not been updated to include Ellis or Tracy Hills Subdivision parks

September 2020

September 15, 2020

AGENDA ITEM 3.D

REQUEST

APPOINTMENT OF CITY COUNCIL SUBCOMMITTEE TO INTERVIEW APPLICANTS TO FILL A VACANCY ON THE MEASURE V RESIDENTS' OVERSIGHT COMMITTEE

EXECUTIVE SUMMARY

This item requests that Council appoint members to a subcommittee to interview applicants to fill a vacancy on the Measure V Residents' Oversight Committee.

DISCUSSION

On June 16, 2020, one of the Measure V Residents' Oversight Committee Members resigned. A recruitment was conducted and an appointment needs to be made to fill the position.

In accordance with Resolution No. 2020-009, a two-member subcommittee needs to be appointed to interview the applicants and make a recommendation to the full Council.

STRATEGIC PLAN

This item is a routine operational item and does not relate to any of the Council's strategic plans.

FISCAL IMPACT

None.

RECOMMENDATION

That Council appoint, by motion, a two-member subcommittee to interview applicants to fill one vacancy on the Measure V Residents' Oversight Committee.

Prepared by: Necy Lopez, Deputy City Clerk

Reviewed by: Adrienne Richardson, City Clerk
Midori Lichtwardt, Assistant City Manager

Approved by: Jenny Haruyama, City Manager

ATTACHMENT

A – Resolution No. 2020-009

RESOLUTION 2020-009

ADOPTING A COUNCIL POLICY ESTABLISHING A SELECTION PROCESS FOR
APPOINTMENTS TO CITY ADVISORY BODIES AND REPEALING RESOLUTION NO.
2004-089 AND RESOLUTION NO. 2004-152

WHEREAS, In March 2004, the Tracy City Council adopted Resolution No. 2004-089 establishing a policy for the selection process and defining residency requirements for appointee bodies ("Policy") in accordance with Government Code sections 54970 et seq. that was last amended in May 2004, via Resolution No. 2004-152;

WHEREAS, The current policy states that the Mayor (or designee) and a selected Council member shall serve on a selection subcommittee to review applications to serve on an advisory body, interview applicants, and make a recommendation to the full Council on a candidate for appointment to an advisory body,

WHEREAS, In practice, Council appoints any two Council members to a subcommittee to review applications and interview applicants for an appointment to an advisory body, and

WHEREAS, Council wishes to amend the policy to accurately reflect its current practice.

NOW, THEREFORE, the City Council of the City of Tracy hereby adopts the Council Policy Establishing a Selection Process for Appointments to City Advisory Bodies, attached as Exhibit A, and thereby repeals and supersedes Resolution No. 2004-089, and Resolution No. 2004-152.

* * * * *

The foregoing Resolution 2020-009 was passed and adopted by the Tracy City Council on the 21st day of January, 2020, 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

**COUNCIL POLICY ESTABLISHING A SELECTION PROCESS FOR APPOINTMENTS TO
CITY ADVISORY BODIES**

(Exhibit "A" to Resolution No. 2020-009)

SECTION 1: **PURPOSE**

To establish a selection process for appointments to City advisory bodies including defining residency requirements, in accordance with Government Code sections 54970 et seq.

SECTION 2: **SELECTION PROCESS FOR APPOINTEE BODIES**

- A. On or before December 31st of each year, the City Clerk shall prepare an appointment list of all regular and ongoing boards, commissions and committees that are appointed by the City Council of the City of Tracy. The list shall contain the following information:
 1. A list of all appointee terms which will expire during the next calendar year, with the name of the incumbent appointee, the date of the appointment, the date the term expires and the necessary qualifications for the position.
 2. A list of all boards, commissions and committees whose members serve at the pleasure of the Council and the necessary qualifications of each position.
 3. The list of appointments shall be made available to the public for a reasonable fee that shall not exceed actual cost of production. The Tracy Public Library shall receive a copy of the list.
- B. Whenever a vacancy occurs in any board, commission or committee, whether due to expiration of an appointee's term, resignation, death, termination or other causes, a special notice shall be posted in the office of the City Clerk, The Tracy Public Library, the City website, and in other places as directed within twenty (20) days after the vacancy occurs. Final appointment to the board, commission or committee shall not be made by the City Council for at least ten (10) working days after the posting of the notice in the Clerk's office. If Council finds an emergency exists, the Council may fill the unscheduled vacancy immediately.
- C. Appointments shall be made for the remainder of the term created by the vacancy except as follows:
 1. If appointee will fill an un-expired term with six months or less remaining, the appointment shall be deemed to be for the new term.
 2. If the vacancy is filled by an emergency appointment the appointee shall serve only on an acting basis until the final appointment is made pursuant to section 2.
- D. The Council shall use the following selection process to provide an equal opportunity for appointment to a board, commission or committee:

1. Council shall appoint two Council members to serve on a subcommittee to review applications, interview applicants and recommend a candidate for appointment to the board, commission or committee.
2. If the Council subcommittee determines there are multiple qualified candidates, the subcommittee can recommend the Council establish an eligibility list that can be used to fill vacancies that occur in the following twelve (12) months.
3. At the Council subcommittee's discretion, the chair (or designee) of the board, committee or commission for which a member will be appointed, can participate in the interviews.

E. In the event there are not two or more applicants than vacancies on any board, commission or committee, the filing deadline may be extended by the City Clerk.

F. 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.