

Tuesday, September 7, 2021, 7:00 P.M.

Tracy City Hall, 333 Civic Center Plaza, Tracy

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

**THIS MEETING WILL BE OPEN TO THE PUBLIC FOR IN-PERSON AND REMOTE PARTICIPATION. IN ACCORDANCE WITH THE CALIFORNIA DEPARTMENT OF PUBLIC HEALTH GUIDELINES, UNIVERSAL MASKING INDOORS IS RECOMMENDED. MASKS ARE REQUIRED FOR UNVACCINATED INDIVIDUALS IN INDOOR PUBLIC SETTINGS. MEMBERS OF THE PUBLIC MAY PARTICIPATE REMOTELY IN THE MEETING VIA THE FOLLOWING METHOD:**

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

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

**Remote Public Comment:**

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

- *Comments via:*
  - **Online by visiting** <https://cityoftracyevents.webex.com> and using the following **Event Number: 2552 934 2765** and **Event Password: TracyCC**
  - **If you would like to participate in the public comment anonymously**, you may submit your comment in WebEx by typing "Anonymous" when prompted to provide a First and Last Name and inserting [Anonymous@example.com](mailto:Anonymous@example.com) when prompted to provide an email address.
  
- *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 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.cityoftracy.org](http://www.cityoftracy.org)

CALL TO ORDER

PLEDGE OF ALLEGIANCE

INVOCATION

ROLL CALL

PRESENTATIONS

1. Employee of the Month

1. CONSENT CALENDAR

- 1.A. ADOPTION OF AUGUST 17, 2021 REGULAR MEETING MINUTES
- 1.B. APPROVE A COOPERATIVE AGREEMENT BETWEEN THE SAN JOAQUIN COUNCIL OF GOVERNMENTS AND THE CITY OF TRACY TO RECEIVE FUNDS THROUGH THE CALIFORNIA DEPARTMENT OF TRANSPORTATION'S PUBLIC TRANSPORTATION MODERNIZATION, IMPROVEMENT, AND SERVICE ENHANCEMENT ACCOUNT PROGRAM AND AUTHORIZE SUBMISSION OF CLAIMS FOR REIMBURSEMENT
- 1.C. APPROVE THE DEFERRED IMPROVEMENT AGREEMENT (DIA) FOR TRACY VILLAGE TRACT 3917, AND AUTHORIZE THE CITY CLERK TO FILE THE DEFERRED IMPROVEMENT AGREEMENT WITH THE OFFICE OF THE SAN JOAQUIN COUNTY RECORDER
- 1.D. APPROVE AMENDMENT NO. 1 TO THE GENERAL SERVICES AGREEMENT BETWEEN THE CITY OF TRACY AND INTELLISITE FOR SERVICES INVOLVING PROVIDING REMOTE SURVEILLANCE UNITS, VIDEO SURVEILLANCE AND MONITORING IN CITY PARKS, INCREASING THE NOT TO EXCEED ANNUAL AMOUNT BY \$150,307 FOR A TOTAL NOT TO EXCEED ANNUAL AMOUNT OF \$250,000 AND EXTENDING THE TERM TO FIVE (5) YEARS
- 1.E. ADOPT A RESOLUTION AUTHORIZING EXECUTION AND DELIVERY OF AN AMENDED AND RESTATED MASTER ACQUISITION AGREEMENT RELATED TO CITY OF TRACY COMMUNITY FACILITIES DISTRICT NO. 2016-2 (ECFD)

2. ITEMS FROM THE AUDIENCE

3. REGULAR AGENDA

- 3.A DISCUSS CITY'S RESPONSE TO COVID-19 (VERBAL REPORT)
- 3.B. ADOPT A RESOLUTION OF INTENTION TO ESTABLISH COMMUNITY FACILITIES DISTRICT (CFD) NO. 2021-1 (HILLVIEW); ADOPT A RESOLUTION OF INTENTION TO INCUR BONDED INDEBTEDNESS AND OTHER DEBT; SET THE PUBLIC HEARING DATE FOR NOVEMBER 2, 2021 TO CONSIDER QUESTIONS OF ESTABLISHING THE CFD, LEVYING THE SPECIAL TAX AND INCURRING BONDED INDEBTEDNESS AND OTHER DEBT; AND DIRECT STAFF TO PREPARE A CFD REPORT

- 3.C. ADOPT A RESOLUTION AUTHORIZING THE ISSUANCE AND SALE OF SPECIAL TAX BONDS FOR THE PURPOSE OF FINANCING AUTHORIZED FACILITIES FOR COMMUNITY FACILITIES DISTRICT NO. 2016-2, AND APPROVING AND AUTHORIZING RELATED DOCUMENTS AND ACTIONS
  - 3.D. INTRODUCE AN ORDINANCE AMENDING ARTICLE 1 "CARD ROOMS" OF CHAPTER 4.04 OF THE TRACY MUNICIPAL CODE TO INCREASE THE NUMBER OF CARD ROOM TABLES ALLOWED AND PLAYER CAPACITY PER TABLE AND CHANGE OTHER OPERATIONAL REQUIREMENTS
  - 3.E. RECEIVE REPORT REGARDING THE INSTALLATION OF CELL TOWERS IN PUBLIC PARKS AND PROVIDE STAFF DIRECTION ON THE ESTABLISHMENT OF POLICIES REGARDING CELL TOWERS IN CITY PARKS AND THE DISTRIBUTION OF LEASE REVENUES
  - 3.F. INTRODUCE AN ORDINANCE AMENDING VARIOUS SECTIONS OF TITLE 1 OF THE TRACY MUNICIPAL CODE REGARDING CODE ENFORCEMENT, ADMINISTRATIVE CITATIONS AND PENALTIES, AND PUBLIC NUISANCE ABATEMENT
  - 3.G. AMEND THE COUNCIL POLICY REGARDING SELECTION PROCESS FOR COUNCIL APPOINTEE BODIES SUCH AS BOARDS AND COMMISSIONS
- 4. ITEMS FROM THE AUDIENCE
  - 5. STAFF ITEMS
  - 6. COUNCIL ITEMS AND COMMENTS
  - 7. ADJOURNMENT

**August 17, 2021, 7:00 p.m.**

City Hall, 333 Civic Center Plaza, Tracy

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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 in-person and remotely via WebEx during the meeting.

Mayor Young called the meeting to order at 7:07 p.m.

Mayor Young led the Pledge of Allegiance.

Pastor Kal Waetzig, St. Paul's Lutheran Church offered the invocation.

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

Midori Lichtwardt, Assistant City Manager presented the Employee of the Month award for August 2021, to Diana Ruiz-Del Re, Police Department.

Christina Carrillo, District Director from Assemblymember Carlos Villapudua's Office provided an informational legislative update.

1. CONSENT CALENDAR – Following the removal of consent items 1.C, 1.G and 1.K by Midori Lichtwardt, Assistant City Manager motion was made by Mayor Pro Tem Vargas and seconded by Council Member Davis to adopt the consent calendar. Roll call found all in favor; passed and so ordered.

- 1.A ADOPTION OF JULY 13, 2021 SPECIAL MEETING MINUTES, JULY 16, 2021 CLOSED SESSION AND JULY 20, 2021 CLOSED SESSION, SPECIAL MEETING AND REGULAR MEETING MINUTES – **Minutes were adopted.**

- 1.B. APPROVE A GENERAL SERVICES AGREEMENT WITH JHA REMEDIATION, LLC FOR THE PURPOSES OF LOADING, HAULING AND DISPOSING OF WASTEWATER TREATMENT BIOSOLIDS FOR FISCAL YEAR 2021-22 – **Resolution 2021-109** approved the General Services Agreement with JHA Remediation LLC.

- 1.D AUTHORIZE THE ACCEPTANCE OF \$50,000 FROM THE 2021 STATE OF CALIFORNIA OFFICE OF TRAFFIC SAFETY FOR FUNDING A SELECTIVE TRAFFIC ENFORCEMENT PROGRAM AND APPROVE THE APPROPRIATION TO THE POLICE DEPARTMENT BUDGET FOR FISCAL YEAR 21/22 - **Resolution 2021-110** authorized the acceptance of the grant.

- 1.E APPROVE A PROFESSIONAL SERVICES AGREEMENT WITH JACOBS PROJECT MANAGEMENT COMPANY, A DELAWARE CORPORATION, FOR NOT-TO-EXCEED AMOUNT OF \$1,695,000 TO PROVIDE CONSTRUCTION

MANAGEMENT SERVICES FOR EXPANSION OF THE WASTEWATER TREATMENT PLANT (WWTP) PHASE 2B, CIP 74107 AND DECLARE THE INTENTION TO REIMBURSE EXPENDITURES FROM PROCEEDS OF TAX-EXEMPT OBLIGATIONS TO BE ISSUED BY THE CITY- Resolution 2021-111 approved the Professional Services Agreement with Jacobs Project Management Company.

- 1.F AUTHORIZE AMENDMENTS TO THE CITY'S CLASSIFICATION AND COMPENSATION PLANS, MASTER SALARY SCHEDULE, AND POSITION CONTROL ROSTER RELATING TO THE POLICE COMMUNITY RELATIONS COORDINATOR, CRIME PREVENTION SPECIALIST, CITY TREASURER, AND UTILITIES LABORATORY SUPERINTENDENT – Resolution 2021-112 authorized amendments to the City's Classification and Compensation Plans, Master Salary Schedule and Position Control Roster.
- 1.H ADOPT A RESOLUTION AMENDING THE SCOPE OF THE CITY COUNCIL FISCAL SUSTAINABILITY AD-HOC SUBCOMMITTEE TO INCLUDE REVIEW OF SALES TAX REVENUE – Resolution 2021-113
- 1.I AWARD A CONSTRUCTION CONTRACT TO GOWAN CONSTRUCTION COMPANY, INC. OF TRACY, CALIFORNIA, IN THE AMOUNT OF \$880,402 FOR THE TRACY TRANSIT STATION RENOVATIONS, CIP 77584, WITH A NOT-TO-EXCEED BUDGET OF \$1,144,522, APPROVE A CONTINGENCY AMOUNT OF \$132,060, IF NEEDED, AND AUTHORIZE AN APPROPRIATION OF \$174,000 FROM THE TRANSPORTATION DEVELOPMENT ACT FUND (F241) – Resolution 2021-114 awarded the Construction Contract to Gowan Construction Company, Inc.
- 1.J APPROVE AN AGREEMENT WITH BYRON BETHANY IRRIGATION DISTRICT (BBID) GRANTING EXCLUSIVE RIGHTS TO DIVERT CITY OF TRACY'S TREATED WASTEWATER DISCHARGES TO THE OLD RIVER FOR IRRIGATIONAL PURPOSES WITHIN THE DISTRICT AND AUTHORIZE THE CITY MANAGER TO EXECUTE A ONE-YEAR EXTENSION, IF NEEDED – Resolution 2021-115 approved an agreement with Byron Bethany Irrigation District (BBID).
- 1.C CANCELLATION OF THE REGULAR CITY COUNCIL MEETING SCHEDULED FOR TUESDAY, OCTOBER 19, 2021 – Item moved to September 21, 2021 Council meeting.
- 1.G APPROVE THE AGREEMENT FOR DEFERRAL OF CERTAIN IMPACT FEES FOR ELLIS TOWN AND COUNTRY (TRACT 4007) AND AUTHORIZE THE CITY CLERK TO FILE THE FEE DEFERRAL AGREEMENT WITH OFFICE OF THE SAN JOAQUIN COUNTY RECORDER

Midori Lichtwardt, Assistant City Manager pulled the item due to a clerical typo error, an omission on the last page of the staff report which did not have the approved by City Manager. Ms. Lichtwardt confirmed former City Manager Jenny Haruyama did approve the staff report.

Council questions followed.

Mary Mitracos objected to the policy stating it will cost the City money, is unfair to others who want to do anything else in the City, and is based on an illegal contract. Ms. Mitracos shared her concerns regarding the Surland Development Agreement, strongly objected to the City only getting the Aquatic Center out of the Development Agreement.

Daniel Helm echoed the previous speakers comment and asked if this a special favor or discrimination against everyone else that is trying to build in the City.

City Council questions and comments followed.

Robert Armijo, City Engineer responded to Council questions.

**ACTION:** Motion was made by Council Member Arriola and seconded by Mayor Young to adopt **Resolution 2021-116** approving the Agreement for Deferral of Certain Impact Fees for Ellis Town and Country (Tract 4007). Roll call found Council Members Arriola, Bedolla and Mayor Young in favor; passed and so ordered. Council Member Davis and Mayor Pro Tem Vargas opposed.

1.K APPROVE MEMORANDA OF UNDERSTANDING BETWEEN THE CITY OF TRACY AND THE TRACY POLICE MANAGERS ASSOCIATION, TRACY FIREFIGHTERS ASSOCIATION AND SOUTH COUNTY FIRE CHIEF OFFICERS ASSOCIATION AND AUTHORIZE THE CITY MANAGER TO AMEND THE FY 2021-22 BUDGET AND CITY MASTER SALARY SCHEDULE TO REFLECT THE MOUs

Kimberly Murdaugh, Human Resources Director pulled the item to announce that the Council will only be considering approval of the resolutions approving the MOUs with the Tracy Police Managers Association and South County Fire Chiefs Association. Tracy Firefighters Association is still going through the ratification process.

There was no public comment.

There were no comments from City Council.

**ACTION:** Motion was made by Council Member Bedolla and seconded by Council Member Davis to adopt Resolution **2021-117** approving a new Memorandum of Understanding between the City of Tracy and the Tracy Police Managers Association (TPMA), authorizing the City Manager to amend the FY 2021-22 Budget and City Master Salary Schedule to reflect the MOU. Roll call found all in favor; passed and so ordered.

**ACTION:** Motion was made by Council Member Bedolla and seconded by Council Member Davis to adopt **Resolution 2021-118** approving a new Memorandum of Understanding between the City of Tracy and the South County Fire Chief Officers Association (SCFCOA), authorizing the City Manager to amend the FY 2021-22 Budget and City Master Salary Schedule to reflect the MOU. Roll call found all in favor; passed and so ordered.

2. ITEMS FROM THE AUDIENCE – Priscilla Hilton shared her concerns regarding traffic in the Banta area, Amazon warehouse causing more traffic, Chrisman/Pescadero, was told when an overpass on 11<sup>th</sup> Street would take traffic off of Grant Line Road.

Daniel Helm stated he is the brother and executor of the late Dave Helm and has taken possession of documents regarding the City of Tracy, its employees and elected officials. Mr. Helm listed some of the items his brother had pursued.

Pete Moyer stated he has been at the last two Council meetings complaining about traffic on Hansen Road. Mr. Moyer shared his concerns regarding lack of infrastructure, roads, overpass on Hansen Road over the freeway which belongs to Caltrans is in very poor condition, public safety and road problems, and requested help from the City.

Tom Heckman echoed Mr. Moyer's comments.

A member of the public stated he read the City approved a homeless shelter for \$3 million, and the City does not need a homeless shelter, does not have a homeless crisis, has a homeless problem, and a senior housing crisis.

Alice English spoke about redistricting this year which will impact Tracy, and announced there is a website: [Wedrawthelines@ca.org](mailto:Wedrawthelines@ca.org) that will affect Congress and Assembly, and a meeting on August 25, 2021. Will impact District 10. There is also a workshop in Tracy on September 15, 2021 and will affect San Joaquin Board of Supervisors. Will impact District 5, and provided a website address for information: [Redistricting@sigov.org](mailto:Redistricting@sigov.org).

Robert Tanner stated at the last special meeting Council approved an increase of revenue of \$25 million additional sales tax revenue which will go towards reserves with no increase in budget. Mr. Tanner urged Council to give \$5 million towards Police budget, increase their new personnel by additional 10 to 13, and add a squad car.

Lisa Delasha Silveria shared concerns regarding traffic through the Banta area, building Amazon will affect the area, impacted by traffic so badly that cannot get in and out of their home, and has asked for help for years.

Mayor Pro Tem Vargas requested an update to see if the County has any plans on those roadways. Midori Lichtwardt, Assistant City Manager responded staff will include in the email update to Council.

Mayor Young added also contact regarding Police because part of the roads are City.

Justin shared concerns regarding building more warehouses, houses in subdivisions, street conditions, getting a sidewalk on MacArthur Drive for kids to walk to Tracy High, and Council listening to citizens and not the developers or landowners who live outside the City.

Zoe Schreiber, Garden of Eden Tracy, a final applicant for commercial cannabis retail permit shared concerns about actions of City staff regarding the cannabis retail permit process and supported Council's repeated direction to bring the cannabis item with an amendment to allow the ten final cannabis retail applicants to move forward with the CUP process.

### 3. REGULAR AGENDA

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

Midori Lichtwardt, Assistant City Manager provided an update and presentation on the City's response to COVID-19.

City Council comments and questions followed.

There was no public comment.

City Council accepted the report.

#### DEVIATION:

6. COUNCIL ITEMS - Mayor Pro Tem Vargas spoke about Council giving direction to staff to bring a number of items back to Council such as Master Planning, Transportation Master Planning, Airport Master Planning, TOD Planning, the Downtown Specific Plan, the Parklets and Downtown Redevelopment, the JPA Financial Analysis, 11<sup>th</sup> and Grant Line cross walks, and recently requested the cannabis item be brought back for discussion at the very next meeting. It is challenging to move items forward and allocate funding when the items are not brought back to Council for discussion. Mayor Pro Tem Vargas also spoke about false media narratives on social media, public shaming tactics by special interest groups, and shared the following: None of her family members or children got jobs working for any local developers, none of her children or immediate family have advanced their careers or salary increases because of her and her position. She will continue to question things that do not sound right. Mayor Pro Tem Vargas spoke about controlling the transparency in Tracy, fighting for the best use of our taxpayer's dollars, not creating unnecessary red tape and bureaucracy. Mayor Pro Tem Vargas added when Council specifically asks for items to be brought back for discussion the very next agenda, to have them brought back and not be told we cannot when there is support to discuss these items.

Council Member Bedolla requested discussion about the City preparing construction and phasing documents for the Aquatic Center. Mayor Pro Tem Vargas seconded the request. Mayor Young also supported the request.

Mayor Young requested support to update the City of Tracy Travel Policy for elected and appointed officials - Resolution 2007-075 to reflect or clarify any event where the Mayor or Council Members are requested to attend and/or present a certificate on behalf of the City of Tracy, very specifically to add that is a reimbursable expense. Mayor Pro Tem Vargas supported the request.

Mayor Pro Tem Vargas stated she is going to ask again for the cannabis item to be brought back at the very next agenda for Council to discuss. Council Member Davis seconded the request for the third time. Mayor Young also supported the request.

Council Member Arriola stated we currently do not have a sitting City Manager so would appreciate approving the City Manager so Council can discuss it with that person

because we are in such a transitional period for our City and want to make sure our daily functions still happen.

Mayor Pro Tem Vargas responded even though today we have a transitional City Manager we still have a heavy lift on this agenda, there is a lot of things happening that are incredibly important and very impactful to our community and we are not holding back.

Mayor Young reported on meetings and events she has attended.

Alice English asked Council to consider moving the Fire Authority item after the Westside out of courtesy and respect to the audience.

3.B RECEIVE SUMMARY OF COMMUNITY OUTREACH FOR THE WESTSIDE SPECIFIC PLAN PROJECT (FORMERLY TRACY GATEWAY), INCLUDING THE PROPERTY OWNERS REVISED LAND USE PLAN ALTERNATIVES, AND PROVIDE DIRECTION TO STAFF

Mayor Pro Tem Vargas recused herself from the item because she had a client on the corner of that property which would exclude her from participating on this item until the end of the year.

Alan Bell, Senior Planner provided the staff report and responded to Council questions.

Bill Wiseman, Kimley-Horn provided a presentation regarding the conclusions from the public outreach regarding the Westside Specific Plan Project and responded to Council questions.

City Council questions and comments followed.

Bernal Schull spoke about the City not needing any more warehouses. The City needs a hospital, doctors' offices, small businesses, high tech, and beautify the entrance to Tracy.

A member of the public stated the last thing we want to see is warehouses, we want people to shop in Tracy, and the Council is here for us not developers. The City should be attracting businesses like crazy.

Mayor Young clarified warehouses have multiple layers and we have to be careful what we are asking for and ran on jobs for everybody because we need a variety.

Mary Mitracos shared support for education in particular, and would love to see 30-50 acres set aside for education that this town deserves.

Jacara Perry was not in favor of more warehouses and asked when it comes to higher paying jobs, what is considered higher paying, when it comes to multi-layered facilities has there been discussion on what percentage will be higher paying versus general operations and logistics.

Dan Evans shared income information regarding a warehouse worker he knew who asked Mr. Evans to convey a message to Council - no more industrial, no more housing, and why are we not seeking out career opportunities for Tracy. Hacienda Business Park today has hundreds of businesses with career jobs. No reason we shouldn't be going after this, and we need to look to the future.

Daniel Helms asked why the City is not going after businesses like Gillig. There are many opportunities here and many people that have to commute. This city has much potential and it's sad to see so much of this community have to survive 580 every day. Mr. Helms requested Council not make Tracy look like Dublin.

Mr. Moyer stated we are not going to stop growth, don't have roads and infrastructure, residential communities and commercial do not work well together unless separated, and suggested putting land to good use where it is advantageous to all. Mr. Moyer added we want a solution for roads.

Mr. Heckman, Lammersville resident spoke about traffic and safety issues and lack of infrastructure to support Cordes Ranch. Economic development will come, but we have to figure out best way to protect what is here. Strongly opposed residential development in the new project, and spoke about the world post COVID and jobs are a more remote workforce.

Shawn Strickland, Lammersville resident stated he chose to come to Tracy because it is a smaller town, need the right kind of growth which needs the right infrastructure. If you want to be desirable to Tracy, listen to these reports and take action.

Vijet Sandhu stated as someone who is a younger person in the tech field, office buildings are not the way to go, everyone is working from home as the pandemic has killed office buildings. Need to understand a lot of revenue comes from warehouses and work on infrastructure.

Jeff Major stated he has a small development company, and does contract services with Prologis, and provided information regarding Prologis's contributions regarding infrastructure, hospitals, open space, recreation, fish and game, and spoke about median income and high tech jobs currently in Tracy. Sales tax is being generated by warehouses in Tracy, \$34 million in sales tax revenue is coming from e-commerce to the City.

Alice English reminded Council AB32 is that California Cities are required to reduce gas emissions, and stated we are not saying no warehouses as they bring revenue, but the City has 1,200 acres for that. Preserve our Gateway to Tracy and be our voice.

Mark Gouveia stated he lived 300 feet from Medline, and suggested skipping residential and do the business and industrial. There's good paying jobs in industrial but has to be heavy industrial.

Alie Grandi, Investment Officer for Prologis shared information regarding warehouse uses. Responsible industrial development with high image

commercial building and landscaping along a setback provide an excellent land use for the parcel.

Luis Hernandez, Labor Local 73 shared support for Alternative A business park and urged Council to adopt Alternative A and continue to grow.

Manny Chin, Army Veteran and Union member encouraged proposed Plan A.

Jason Lindsey, Iron Workers Local 378 advocated for Option A which creates work opportunities for constituents and members, and spoke about the benefits of Option A.

Mike Souza, representing property owners of Westside Specific Plan area spoke about two groups of developers who went broke since 2001 trying to make this project work. Mr. Souza shared input regarding the Specific Plan, proposed uses and zoning of the area. Important to look at buffers to limit uses in industrial and residential which put us back in the place where the developers failed, and supported either of the two land use alternatives.

Michael Mark, Sheet Metal Workers Local 104 stated there is one chance to build something right in construction, overall the property owners have presented a great plan and synergy in its entirety, and recommend going with Option A.

Gorgina Halafia, IBEW 595 urged Council to go forward with Option A for a portion of panhandle.

Diego Hernandez, Building and Trades Unions encouraged Council to consider land use for Alternative A as it will bring benefits and jobs and permanent career opportunities.

Justin stated Prologis is not here for the community. No more warehouses. Take care of your community first.

Steve Stephenson, UA Local 442 supported Option A as it would lead to good paying construction jobs, and requested Council support Option A.

Mayor Young called for a recess at 11:17 a.m.

Mayor Young reconvened the meeting at 11:27 a.m.

City Council comments followed.

Council Member Bedolla moved to direct staff to prepare a Specific Plan that consists of only a hospital and associated health care and education uses, office space, more land for restaurants, shops and public or private recreation, and have Economic Development work with the owners on potential end users. There was no second for the motion.

City Council questions and comments continued.

Michael Nimon, Economic Development Manager responded to Council questions.

Karin Schnaider, Finance Director answered Council questions.

Council comments continued.

Mayor Young asked Council if there was support to go with Alternative 1 - Business Park Industrial as the option.

Council Member Arriola stated he would support Alternative 1 with the amendment of non-warehouse definition for industrial. Mayor Young supported the amendment.

Council Member Davis confirmed she was not in favor of anything that looks remotely like a warehouse near 11<sup>th</sup> Street or within the Specific Plan, and also not in favor of houses in the whole Specific Plan.

Council comments continued.

Council Member Bedolla stated for the Westside Specific Plan he was not in favor of residential unless a minimum of a simple majority of dwelling units are affordable to households of a gross income of 120% or below the County medium income. Council Member Bedolla restated his original motion to direct to prepare of Specific Plan that consists of only a hospital and associated health care and education uses, office space, more land for restaurants, shops and public or private recreation, and have the City's Economic Development work with the owners on potential end users.

Council comments and questions continued.

Council Member Arriola asked Council Member Bedolla if he would be open to proceeding with Alternative 1 as amended as long as Council has the discussion of affordable housing and workforce housing citywide before that.

Council Member Bedolla clarified where he described his position for the Westside Specific Plan that was not part of his motion. Just providing input on the type of zoning that has been presented to us and been presented to us in the past.

**ACTION:** Council Member Bedolla restated his motion to direct staff to prepare a Specific Plan that consists only of a hospital and associated health care and education uses, office space, to dedicate more land for restaurants, shops and public and private recreation, and add to the motion and have the City's Economic Development division work with the owners on potential end users. Council Member Davis supported the motion.

Council comments continued.

Council Member Bedolla restated his motion.

Staff and Council comments continued.

Roll call found Council Members Bedolla and Council Member Davis in favor. Council Member Arriola and Mayor Young opposed. Mayor Pro Tem Vargas absent. Motion failed.

Mayor Young motioned to consider Alternative 1 as the option and that is the first step and then go back and do the defining.

Council Member Arriola motioned Alternative 1 with the amendment of no warehouses. Mayor Young seconded the motion.

Council questions and comments continued.

**ACTION:** Motion was made by Council Member Arriola and seconded by Mayor Young to consider Alternative 1 with the amendment of no warehouses. Roll call found Council Member Arriola and Mayor Young in favor. Council Members Bedolla and Davis opposed. Mayor Pro Tem Vargas absent. Motion failed.

Mayor Young motioned to continue the item and come back with more clarity from staff as far as the parameters because the open ended confusion based on what the former agenda was to bring into this, we have gone through too much time, effort work and a lot of money has been put into this and effort and ownership. We need to be considerate of the property owners, and make sure we can come back with some clear parameters as far as what our decisions are to be. Council Member Arriola seconded the motion. Council Member Davis was open to the motion.

Mayor Pro Tem Vargas rejoined the meeting at 12:45 a.m.

3.C APPOINT ROBERT ADAMS TO SERVE AS INTERIM CITY MANAGER AND APPROVE AN EMPLOYMENT AGREEMENT BETWEEN MR. ADAMS AND THE CITY OF TRACY

Kimberly Murdaugh, Director of Human Resources provided the staff report.

There was no public comment.

There were no Council comments.

**ACTION:** Motion was made by Council Member Arriola and seconded by Mayor Pro Tem Vargas to adopt **Resolution 2021-119** approving the appointment of Robert Adams to serve as Interim City Manager and approving an Employment Agreement between Mr. Adams and the City of Tracy. Roll call found all in favor, passed and so ordered.

3.D DESIGNATE VOTING DELEGATE AND UP TO TWO ALTERNATE VOTING DELEGATES FOR THE LEAGUE OF CALIFORNIA CITIES 2021 ANNUAL CONFERENCE BUSINESS MEETING AND DETERMINE CITY COUNCIL'S POSITION ON THE RESOLUTION TO BE CONSIDERED AT THE ANNUAL CONFERENCE BUSINESS MEETING – Item Continued to August 31 special meeting.

Mayor Young announced that Mayor Pro Tem Vargas will be recusing herself from Item 3.E.

Mayor Pro Tem Vargas left the meeting at 12:52 a.m.

Mayor Young called for a recess at 12:52 a.m.

Mayor Young reconvened the meeting at 1:05 a.m.

3.E APPROVE THE SOUTH SAN JOAQUIN COUNTY FIRE AUTHORITY PERSONNEL TRANSITION PLAN

Mayor Young provided opening comments regarding the item.

Randall Bradley, Fire Chief provided the staff report.

Paul O'Neil, President of the Tracy Firefighters Association stated they fully support the transition plan, have been dealing with pandemic and delay of transition plan, and it is time to make a decision and move on with transition plan.

Alice English stated she is a supporter of first responders, and is happy to hear that it is getting resolved and hoped all Council agrees on the partnership, the transition is good for Tracy, will help our quality of life and we need more Fire and Police.

Jeff Ramsey, member of the Tracy Rural Fire Board of Directors and the JPA – spoke in support of passing the resolution for phase 2. Since 1999, population has doubled and the City has not had to build another fire station because of the partnership. Mr. Ramsey shared his frustrations regarding the contract not being done and added if Council passes the resolution they are setting the table for excellent firefighting.

**ACTION:** Council Member Arriola moved to adopt **Resolution 2021-120** approving the South San Joaquin County Fire Authority Personnel Transition Plan. Council Member Davis supported the motion.

City Council comments followed.

Council Member Bedolla moved to formally amend the motion to include two conditions on the motion. 1) The JPA contracts with the City for financial matters and human resources, and 2) That the Fire Chief provides quarterly transition reports. There was no second to the motion.

Fire Chief Bradley stated the driver was independent finances. The City would provide payroll services and quarterly reports are required in our JPA agreement. Would be open to that and think it is captured in the resolution.

Council Member Bedolla responded those two conditions would not stop anything from happening. It is more transparency, and may be in the resolution but does not hurt to have explicitly stated. Don't have opposition from stakeholders.

Mayor Young responded that she does not want to be redundant.

Leticia Ramirez, City Attorney clarified the language in the resolution.

Tad Neave, Division Chief responded to Council questions.

Karin Schnaider, Finance Director responded to Council questions.

Fire Chief Bradley recommended if Council was going to amend the motion that it would be for initial payroll services and human resources services.

Council Member Arriola accepted the friendly amendment.

Council Member Bedolla moved to amend the motion as was stated by Council Member Arriola and seconded by Council Member Davis to approve the Personnel Transition Plan on the condition the JPA contracts with the City for payroll and Human Resources services and the Fire Chief provides quarterly transitional reports. Council Member Arriola and Council Member Davis accepted the amendment.

Mayor Young clarified the report states there will be a separate agreement that is drawn up and the resolution would refer to these two agreements and within the agreements staff can come up with the wording that could be phased out as appropriate.

Leticia Ramirez, City Attorney confirmed the agreement would come back to Council and there is work to be done in the next 60-90 days and that includes that agreement.

Roll call found Council Members Arriola, Bedolla, Davis and Mayor Young in favor; passed and so ordered. Mayor Pro Tem Vargas absent.

4. ITEMS FROM THE AUDIENCE – None
5. STAFF ITEMS – None
7. ADJOURNMENT – Time: 1:48 a.m. Wednesday, August 18, 2021.

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

The above agenda was posted at the Tracy City Hall on August 12, 2021. The above are action minutes. A recording is available at the office of the City Clerk.

\_\_\_\_\_  
Mayor

ATTEST:

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

AGENDA ITEM 1.B

REQUEST

**APPROVE A COOPERATIVE AGREEMENT BETWEEN THE SAN JOAQUIN COUNCIL OF GOVERNMENTS AND THE CITY OF TRACY TO RECEIVE FUNDS THROUGH THE CALIFORNIA DEPARTMENT OF TRANSPORTATION'S PUBLIC TRANSPORTATION MODERNIZATION, IMPROVEMENT, AND SERVICE ENHANCEMENT ACCOUNT PROGRAM AND AUTHORIZE SUBMISSION OF CLAIMS FOR REIMBURSEMENT**

EXECUTIVE SUMMARY

The City of Tracy (City) applied to receive funding through the San Joaquin Council of Governments (SJCOG) for the California Department of Transportation's (Caltrans) Public Transportation Modernization, Improvement, and Service Enhancement Account (PTMISEA) Program. In order to receive the funds, the City must enter into a cooperative agreement with SJCOG in order to receive \$1,819,440 in PTMISEA funding. This item requests Council approval of the cooperative agreement.

DISCUSSION

The City of Tracy submitted applications for the funding of two projects through SJCOG for Caltrans' PTMISEA Program. The two projects being funded are the purchasing of new fixed route and paratransit buses, and the purchasing of upgraded fare boxes for the City's bus fleet. The total amount of funding awarded to the City for these projects is \$1,819,440.

These funds will be used toward the purchase of four fixed route buses, four paratransit buses, and 11 fare boxes.

Funds for this program are distributed by Caltrans to SJCOG, who then disburses the money to applicants within San Joaquin County once projects are underway and expenses are incurred. In order to receive the funds, the City must enter into a cooperative agreement with SJCOG. Upon execution of the agreement, the City will be able to submit reimbursement requests to receive funds for expenses incurred on the projects.

Staff requests the Council approve the agreement and authorize submission of claims for reimbursement through SJCOG.

STRATEGIC PLAN

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

FISCAL IMPACT

Approval of the cooperative agreement is necessary for the City to receive reimbursement of funds used for the purchase of buses and fare boxes. These funds were budgeted as part of the FY20/21 budget.

RECOMMENDATION

Staff recommends that City Council approve, by resolution, the cooperative agreement between the San Joaquin Council of Governments and the City to receive funds through the California Department of Transportation's Public Transportation Modernization, Improvement, and Service Enhancement Account Program and authorize submission of claims for reimbursement

Prepared by: Ed Lovell, Transit Manager

Reviewed by: Brian MacDonald, Parks & Recreation Director  
Karin Schnaider, Finance Director  
Midori Lichtwardt, Assistant City Manager

Approved by: Bob Adams, Interim City Manager

ATTACHMENTS

Attachment A – SJCOG Cooperative Agreement

ATTACHMENT A

**COOPERATIVE AGREEMENT**

THIS AGREEMENT, ENTERED INTO EFFECTIVE ON APRIL 9, 2019, is between the City of Tracy, referred to herein as "CITY", and the

SAN JOAQUIN COUNCIL OF GOVERNMENTS,  
a public entity,  
referred to herein as "SJCOG"

## **RECITALS**

1. CITY and SJCOG, pursuant to the authority provided by the Highway Safety, Traffic Reduction, Air Quality, and Port Security Bond Act of 2006, passed by voters as Proposition 1B on November 7, 2006 are authorized to enter into a Cooperative Agreement for the Tracy Vehicle Purchases and Farebox Upgrades as defined in the California Department of Transportation approved (June 17, 2015) City of Tracy Public Transportation Modernization, Improvement, and Service Enhancement Account Program Application (PTMISEA) (see Attachment B).
2. CITY proposes to make vehicle purchases and replacements, referred to herein as the "PROJECT".
3. SJCOG is willing to fund an amount not to exceed \$1,819,440 (plus any interest earned) of total PROJECT costs from FY 14/15 PTMISEA Section 99313 allocated funds.
4. The terms of this Agreement ("Agreement") shall supersede any inconsistent terms of any prior Memorandum of Understanding (MOU) or agreement relating to PROJECT.
5. The parties now define herein below the terms and conditions under which PROJECT is to be developed and financed.

## **SECTION I**

### **SJCOG AGREES:**

1. To fund \$1,819,440 (plus any interest earned) of all Project costs.

## **SECTION II**

### **CITY AGREES:**

1. CITY shall provide all necessary information to complete semiannual reporting requirements to SJCOG within reporting timeframes as identified by the California Department of Transportation in compliance with California Government Code section 8879.50(f)(1) which requires semiannual reports on the activities and progress made on the PROJECT to the California Department of Transportation to ensure the projects and activities funded through bond proceeds are being executed in a timely fashion, and are achieving the intended purposes.
2. All PROJECT work performed by CITY, or performed on CITY's behalf, shall be performed in accordance with all State and Federal laws, regulations, policies, procedures, and standards that CITY would normally follow.

3. If CITY terminates the PROJECT prior to completion, CITY shall also be liable to compensate SJCOG for all the expenses incurred by SJCOG with regard to this Agreement.
4. To notify SJCOG when funds have been encumbered in compliance with Caltrans PTMISEA (October 2011) guidelines.
5. If PROJECT is expected to exceed the California Department of Transportation approved (October 26, 2011) City of Tracy Public Transportation Modernization, Improvement, and Service Enhancement Program Application project budget, CITY shall provide a revised plan to SJCOG indicating how CITY will address the cost increase.
6. CITY agrees to obtain, as a PROJECT cost, all necessary PROJECT permits, agreements, and/or approvals from appropriate regulatory agencies.
7. To notify SJCOG, by letter or email, when the PROJECT is complete.
8. CITY shall provide all necessary information to complete the Final Project Report, as required within six months after PROJECT completion, to SJCOG. The Final Project Report compares the actual project performance to the projected performance.
9. CITY shall provide all necessary information to complete the Additional Outcome Report to SJCOG 12 months following the completion of the PROJECT. The Additional Outcome Report documents the long-term benefits the PROJECT.

### **SECTION III**

#### **IT IS MUTUALLY AGREED:**

1. All obligations of SJCOG under the terms of this Agreement are subject to the appropriation of resources by the Legislature, State Budget Act authority and the allocation of funds by the State Controller's Office.
2. All PROJECT work is to be performed by CITY.
3. Nothing within the provisions of this Agreement is intended to create duties or obligations to or rights in third parties not parties to this Agreement or to affect the legal liability of either party to the Agreement.
4. Neither CITY nor any officer or employee thereof is responsible for any injury, damage, or liability occurring by reason of anything done or omitted to be done by CITY under or in connection with any work, authority, or jurisdiction conferred upon CITY or arising under this agreement. It is understood and agreed that, CITY will fully defend, indemnify, and save harmless SJCOG and all of its officers and employees from all claims, suits, or actions of every name, kind and description brought forth under, including, but not limited to, tortious,

contractual, inverse condemnation, or other theories or assertions of liability occurring by reason of anything done or omitted to be done by CITY under this Agreement.

5. Prior to the commencement of any work pursuant to this Agreement, either CITY or SJCOG may terminate this Agreement by written notice to the other party.
6. No alteration or variation of the terms of this Agreement shall be valid unless made by a formal amendment executed by the parties hereto and no oral understanding or agreement not incorporated herein shall be binding on any of the parties hereto.
7. This Agreement shall terminate upon satisfactory completion of all post-PROJECT construction obligations of CITY and the delivery of required PROJECT construction documents, with concurrence of SJCOG, or on June 30, 2023, whichever is earlier in time, except that the ownership, operation, maintenance, indemnification, environmental commitments, legal challenges, and claims articles shall remain in effect until terminated or modified, in writing, by mutual agreement. Should any construction related or other claims arising out of PROJECT be asserted against one of the parties, the parties agree to extend the fixed termination date of this Agreement, until such time as the construction related or other claims are settled, dismissed or paid.

CITY OF TRACY

SAN JOAQUIN COUNCIL OF  
GOVERNMENTS

By: \_\_\_\_\_  
Nancy Young  
Mayor

By: \_\_\_\_\_  
Diane Nguyen, AICP  
Executive Director

APPROVED AS TO FORM AND  
PROCEDURE

APPROVED AS TO FORM AND  
PROCEDURE

By: \_\_\_\_\_  
Leticia Ramirez  
City Attorney

By: | \_\_\_\_\_  
Steve Dial  
Deputy Executive Director/  
Chief Financial Officer

Attachment A

SJCOG Resolution R-21-07 Authorizing the SJCOG Executive Director to Execute All Transportation  
Funding Contracts and Related Amendments with California Department of Transportation



**RESOLUTION  
SAN JOAQUIN COUNCIL OF GOVERNMENTS**

**R-21-07**

**RESOLUTION AUTHORIZING THE SJCOG EXECUTIVE DIRECTOR  
OR HIS/HER DESIGNEE TO EXECUTE ALL TRANSPORTATION FUNDING  
CONTRACTS AND RELATED AMENDMENTS WITH CALIFORNIA DEPARTMENT  
OF TRANSPORTATION**

WHEREAS, the San Joaquin Council of Governments (SJCOG) is the Metropolitan Planning Organization (MPO) and Regional Transportation Planning Agency for San Joaquin County; and,

WHEREAS, the SJCOG is eligible to receive Federal and/or State funding for certain transportation projects and activities, through the California Department of Transportation (Caltrans); and,

WHEREAS, these transportation funding contracts and related amendments need to be executed with Caltrans before such funds can be claimed; and,

WHEREAS, the SJCOG wishes to delegate authorization to execute these contracts and any amendments thereto to the Executive Director of the SJCOG; and,

NOW THEREFORE, BE IT RESOLVED by the Governing Board of the SJCOG that the Executive Director of the SJCOG or his/her designee, which may include the Deputy Executive Director or other designee, is authorized to execute all transportation funding contracts and any amendments thereto with the California Department of Transportation.

PASSED AND ADOPTED this 27<sup>th</sup> day of August 2020, by the following vote of the San Joaquin Council of Governments Board of Directors, to wit:

AYES: Councilmember Andrade, Stockton; Supervisor Elliot, SJC; Councilmember Jobrack, Stockton  
Mayor Kuehne, Lodi; Supervisor Miller, SJC; Councilmember Singh, Manteca; Supervisor Winn,  
SJC; Vice Mayor Wright, Stockton; Councilmember Zuber, Ripon.

NOES: None.

ABSENT: Mayor Dhaliwal, Lathrop; Councilmember Murken, Escalon; Mayor Rickman, Tracy.

A handwritten signature in blue ink, appearing to read 'S. Jobrack', written over a horizontal line.

SOL JOBRACK  
Chair

Attachment B

City of Tracy Vehicle Purchase Allocation Requests

**Public Transportation Modernization, Improvement and  
 Service Enhancement Program (PTMISEA)  
 PROJECT DESCRIPTION AND ALLOCATION REQUEST**

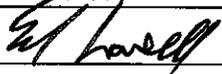
<b>Project Lead*:</b> City of Tracy	<b>Regional Entity:</b> SJCOG
<b>Project Title:</b> Bus Farebox Upgrade	<b>County:</b> San Joaquin

I certify the scope, cost, schedule, and benefits as identified in the attached Project Description and Allocation Request (Request) and attachments are true and accurate and demonstrate a fully funded operable project. I understand the Request is subject to any additional restrictions, limitations or conditions that may be enacted by the State Legislature, including the State's budgetary process, which may effect the amount of bond proceeds received by the project sponsor now and in the future. Project sponsors may need to consider alternative funding sources if bond proceeds are not available. In the event the project cannot be completed as originally scoped, scheduled and estimated, or the project is terminated prior to completion, project sponsor shall, at its own expense, ensure that the project is in a safe and operable condition for the public. I understand this project will be monitored by the California Department of Transportation -- Division of Mass Transportation.

---

**Name:** Ed Lovell

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**Signature:** 

---

**Title:** Management Analyst II

---

**Agency:** City of Tracy

---

**Date:** 11/14/2017

\*If this project includes funding from more than one project sponsor, the project sponsor above becomes the "recipient agency" and the additional contributing project sponsor(s) must also sign and state the amount and type of PTMISEA funds (GC Section 8879.55(a)(2) and/or Section 8879.55(a)(3)) contribution. Sign below or **attach a separate officially signed letter providing that information.**

---

**Name:** \_\_\_\_\_

---

**Signature:** \_\_\_\_\_

---

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

---

**Agency:** \_\_\_\_\_

---

**Date:** \_\_\_\_\_ **Amount:** \_\_\_\_\_

## PTMISEA PROJECT DESCRIPTION AND ALLOCATION REQUEST

	9/10	10/11	14/15	<b>RESIDUAL</b>
Request Amount per GC 8879.55(a)(2)/PUC 99313:	\$0	\$0	\$0	\$205,000
Request Amount per GC 8879.55(a)(3)/PUC 99314:	\$0	\$0	\$0	\$0
<b>Total Project Allocation Request:</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$205,000</b>
<b>Project Title:</b>	<b>Bus Farebox Upgrade</b>			
<b>Project Location/Address:</b>	<b>Tracy Transit Station, 50 E. 6th Street, Tracy, CA 95376</b>			

Table 1: Project Lead/Recipient Agency Information			
<b>Project Lead/</b>	<b>Legislative District Numbers</b>		
<b>Recipient Agency:</b> <u>City of Tracy</u>		<b>Assembly:</b>	<u>13</u>
<b>Contact:</b> <u>Ed Lovell</u>		<b>Senate:</b>	<u>5</u>
<b>Contact Phone #:</b> <u>209-831-6204</u>		<b>Congressional:</b>	<u>10</u>
<b>Email Address:</b> <u>ed.lovell@cityoftracy.org</u>	<b>Amount:</b>	<b>Fund Type:</b>	
<b>Address:</b> <u>50 E. 6th Street</u>	\$ _____		
<u>Tracy, CA 95376</u>	\$ _____		

Table 2: Contributing PTMISEA-Eligible Project Sponsor Information		
<b>PTMISEA Contributors:</b> <u>SJCOG</u>	<b>Amount :</b>	<b>Fund Type:</b>
<b>Contact:</b> <u>Ryan Niblock</u>	<u>\$205,000</u>	<u>99313</u>
<b>Contact Phone #:</b> <u>209-235-0588</u>	\$ _____	_____
<b>Email Address:</b> <u>niblock@sicog.org</u>		
<b>Address:</b> <u>555 E. Weber Ave.</u>		
<u>Stockton, CA 95202</u>		
<b>Other PTMISEA Contributors ( Attach sheet with contact info)</b>	<b>Amount:</b>	<b>Fund Type:</b>
_____	\$ _____	_____
_____	\$ _____	_____
_____	\$ _____	_____
<b>TOTAL</b>	<b>\$205,000</b>	<b>99313</b>

(\*Contributing project sponsors attach signed letters of verification as to amount and eligibility or sign cover page)

Table 3: Project Category	
Check only 1 box that best fits the description of the project being funded.	
<input checked="" type="checkbox"/> <b>Rehabilitation, Safety or Modernization Improvement</b>	<input type="checkbox"/> <b>Bus Rapid Transit</b>
<input type="checkbox"/> <b>Capital Service Enhancement or Expansion</b>	<input type="checkbox"/> <b>Rolling Stock Procurement:</b>
<input type="checkbox"/> <b>New Capital Project</b>	_____ <b>Expansion</b>
	_____ <b>Rehabilitation</b>
	_____ <b>Replacement</b>

**Table 4: Project Summary**

a) Describe the project (or minimum operable segment) for which you are applying for funds. Attach additional sheets if necessary. If the application is for the purchase of vehicles or rolling stock, please include information on number of vehicles, size, passenger count, accessibility, and fuel type:

Write here:

The City of Tracy is applying for funds to replace upgrade its fareboxes in 11 vehicles. The City has new Genfare electronic fareboxes on 5 vehilces. Upgrading the rest of the fareboxes will allow for uniform collection of fares. The electronic fareboxes will enable a more efficient way of collecting fares as well as provide the system with a more accurate way of tracking the revenues received and the passenger counts. This will also allow for future coordination of fares and transfers with other transit agencies who utilize the same type of fare boxes.

b) Useful Life of the Project:   7   years

**Table 5: Description of Major Benefits/Outcomes**

a) Please check appropriate Benefit/Outcome:

Increase Ridership by \_\_\_\_\_ %  
 Reduce Operating/Maintenance Cost by \_\_\_\_\_ %  
 Reduce Emissions by \_\_\_\_\_ %  
 Increase System Reliability by \_\_\_\_\_ %

b) Please summarize and describe any other benefits:

Upgrading the fareboxes will allow for easier coordination with other transit providers who utilize the same types of fareboxes. This will also allow for better tracking of passengers and tracking of fare revenues.

**Table 6: Project Schedule**

	Date
Begin Project Approval & Environmental Document Phase	
CEQA/ Environmental Compliance	
End Project Approval & Environmental Document Phase	
Begin Plans, Specifications & Estimates Phase	
End Plans, Specifications & Estimates Phase	
Begin Right of Way Phase	
End Right of Way Phase	
Begin Construction Phase (Contract Award)	
End Construction Phase (Contract Acceptance)	
Begin Vehicle/Equipment Order (Contract Award)	2/20/2018
End Vehicle/Equipment Order (Contract Acceptance)	5/31/2018
Begin Closeout Phase	6/1/2018
End Closeout Phase	8/1/2018

**Table 7: Tax Compliance Information**

Is it reasonably anticipated that any money will be derived at any point in the future as a result of the project that will be paid to the State?

YES  
 NO

If yes, please describe the source of the money and provide an estimate of the amount:

Estimate: \$ \_\_\_\_\_

**Public Transportation Modernization, Improvement, and Service Enhancement Account  
 Total Project Cost and Funding Plan**

Shaded fields are automatically calculated. Please do not fill these fields.

Proposed Total Project Cost									
Component	Prior	10/11	11/12	12/13	13/14	14/15	15/16	16/17	Project Total
PA&ED	0	0	0	0	0	0	0	0	0
PS&E	0	0	0	0	0	0	0	0	0
R/W	0	0	0	0	0	0	0	0	0
CON	0	0	0	0	0	0	0	0	0
Veh/Equip Purchase	0	0	0	0	0	0	205,000	0	205,000
Other	0	0	0	0	0	0	0	0	0
<b>TOTAL</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>205,000</b>	<b>0</b>	<b>205,000</b>

Public Transportation Modernization, Improvement, and Service Enhancement Account (PTMISEA)									
Component	Prior	10/11	11/12	12/13	13/14	14/15	RESIDUAL	16/17	Total
PA&ED									0
PS&E									0
R/W									0
CON									0
Veh/Equip Purchase							205,000		205,000
Other									0
<b>TOTAL</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>205,000</b>	<b>0</b>	<b>205,000</b>

Funding Source:									
Component	Prior	10/11	11/12	12/13	13/14	14/15	15/16	16/17	Total
PA&ED									0
PS&E									0
R/W									0
CON									0
Veh/Equip Purchase									0
Other									0
<b>TOTAL</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

Funding Source:									
Component	Prior	10/11	11/12	12/13	13/14	14/15	15/16	16/17	Total
PA&ED									0
PS&E									0
R/W									0
CON									0
Veh/Equip Purchase									0
Other									0
<b>TOTAL</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

Funding Source:									
Component	Prior	10/11	11/12	12/13	13/14	14/15	15/16	16/17	Total
PA&ED									0
PS&E									0
R/W									0
CON									0
Veh/Equip Purchase									0
Other									0
<b>TOTAL</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

Funding Source:									
Component	Prior	10/11	11/12	12/13	13/14	14/15	15/16	16/17	Total
PA&ED									0
PS&E									0
R/W									0
CON									0
Veh/Equip Purchase									0
Other									0
<b>TOTAL</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

## Public Transportation Modernization, Improvement, and Service Enhancement Program (PTMISEA) Projected Cash Flow Schedule

Project Title: Bus Farebox Upgrade  
 Sponsor Agency: City of Tracy  
 Sponsor Contact: Ed Lovell, 209-831-6204, ed.lovell@cityoftracy.org

	PTMISEA Funded Phase	Start Date	Prior	PTMISEA : Cash Flow Projections				Total this request	Future requests
				Jan 2016 - Jun 2016	Jul 2016 - Dec 2016	Jan 2017 - Jun 2017	Jul 2017 - Dec 2017		
	PS&E							\$0	
	Right of Way							\$0	
	Construction - Scope of work task #1							\$0	
	Construction - Scope of work task #2							\$0	
	Construction - Scope of work task #3							\$0	
	Construction - Scope of work task #4							\$0	
	Vehicle / Equipment Order							\$205,000	
				<b>PTMISEA Cash-Flow Projections</b>					
				Jan 2016 - Jun 2016	Jul 2016 - Dec 2016	Jan 2017 - Jun 2017	Jul 2017 - Dec 2017	Jan 2018 - Dec 2018	Total
				\$0	\$0	\$0	\$0	\$205,000	\$205,000
				<b>Totals:</b>					
				\$0	\$0	\$0	\$0	\$205,000	\$205,000

**Public Transportation Modernization, Improvement and  
 Service Enhancement Program (PTMISEA)  
 PROJECT DESCRIPTION AND ALLOCATION REQUEST**

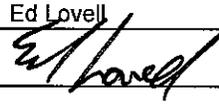
<b>Project Lead*:</b> City of Tracy		<b>Regional Entity:</b> SJCOG
		<b>County:</b> San Joaquin
<b>Project Title:</b> Fixed Route Bus Replacement		

I certify the scope, cost, schedule, and benefits as identified in the attached Project Description and Allocation Request (Request) and attachments are true and accurate and demonstrate a fully funded operable project. I understand the Request is subject to any additional restrictions, limitations or conditions that may be enacted by the State Legislature, including the State's budgetary process, which may effect the amount of bond proceeds received by the project sponsor now and in the future. Project sponsors may need to consider alternative funding sources if bond proceeds are not available. In the event the project cannot be completed as originally scoped, scheduled and estimated, or the project is terminated prior to completion, project sponsor shall, at its own expense, ensure that the project is in a safe and operable condition for the public. I understand this project will be monitored by the California Department of Transportation -- Division of Mass Transportation.

---

**Name:** Ed Lovell

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**Signature:** 

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**Title:** Management Analyst II

---

**Agency:** City of Tracy

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**Date:** 11/14/2017

\*If this project includes funding from more than one project sponsor, the project sponsor above becomes the "recipient agency" and the additional contributing project sponsor(s) must also sign and state the amount and type of PTMISEA funds (GC Section 8879.55(a)(2) and/or Section 8879.55(a)(3)) contribution. Sign below or **attach a separate officially signed letter providing that information.**

---

**Name:** \_\_\_\_\_

---

**Signature:** \_\_\_\_\_

---

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

---

**Agency:** \_\_\_\_\_

---

**Date:** \_\_\_\_\_ **Amount:** \_\_\_\_\_

## PTMISEA PROJECT DESCRIPTION AND ALLOCATION REQUEST

	9/10	10/11	14/15	<b>RESIDUAL</b>
Request Amount per GC 8879.55(a)(2)/PUC 99313:	\$0	\$0	\$0	\$974,440
Request Amount per GC 8879.55(a)(3)/PUC 99314:	\$0	\$0	\$0	\$0
<b>Total Project Allocation Request:</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$974,440</b>
<b>Project Title:</b>	Fixed Route Bus Replacement			
<b>Project Location/Address:</b>	Tracy Transit Station, 50 E. 6th Street, Tracy, CA 95376			

**Table 1: Project Lead/Recipient Agency Information**

Project Lead/ Recipient Agency: <u>City of Tracy</u> Contact: <u>Ed Lovell</u> Contact Phone #: <u>209-831-6204</u> Email Address: <u>ed.lovell@cityoftracy.org</u> Address: <u>50 E. 6th Street</u> <u>Tracy, CA 95376</u>	Legislative District Numbers Assembly: <u>13</u> Senate: <u>5</u> Congressional: <u>10</u> Amount: \$ _____ Fund Type: _____
---	---

**Table 2: Contributing PTMISEA-Eligible Project Sponsor Information**

PTMISEA Contributors: <u>SJCOG</u> Contact: <u>Ryan Niblock</u> Contact Phone #: <u>209-235-0588</u> Email Address: <u>niblock@sjcog.org</u> Address: <u>555 E. Weber Ave.</u> <u>Stockton, CA 95202</u>	Amount : <u>\$974,440</u> \$ _____ \$ _____ \$ _____	Fund Type: <u>99313</u> _____ _____ _____
Other PTMISEA Contributors ( Attach sheet with contact info) _____ _____ _____	Amount: \$ _____ \$ _____ \$ _____	Fund Type: _____ _____ _____
<b>TOTAL</b>	<b>\$974,440</b>	<b>99313</b>

(\*Contributing project sponsors attach signed letters of verification as to amount and eligibility or sign cover page)

**Table 3: Project Category**

Check **only 1** box that best fits the description of the project being funded.

<input type="checkbox"/> Rehabilitation, Safety or Modernization Improvement	<input type="checkbox"/> Bus Rapid Transit
<input type="checkbox"/> Capital Service Enhancement or Expansion	<input checked="" type="checkbox"/> Rolling Stock Procurement:
<input type="checkbox"/> New Capital Project	<input type="checkbox"/> Expansion <input type="checkbox"/> Rehabilitation <input checked="" type="checkbox"/> Replacement

**Table 4: Project Summary**

a) Describe the project (or minimum operable segment) for which you are applying for funds. Attach additional sheets if necessary. If the application is for the purchase of vehicles or rolling stock, please include information on number of vehicles, size, passenger count, accessibility, and fuel type:

Write here:

The City of Tracy is applying for funds to replace 2 fixed route buses. The fixed route buses being replaced are beyond their useful life of 7 years and are becoming increasingly costly to maintain, and less reliable in being able to provide transit service. The replacement buses will be used fixed route service. Each of the 2 vehicles will be approximately 29' in length, have low floors for ADA accessibility, be able to hold 3 wheelchairs and approximately 28 seated passengers, and be fueled by diesel. Once the vehicles are ordered, it will take approximately 18 months for the vehicles to arrive.

b) Useful Life of the Project: 12 years

**Table 5: Description of Major Benefits/Outcomes**

a) Please check appropriate Benefit/Outcome:

<input type="checkbox"/> Increase Ridership	by _____ %
<input checked="" type="checkbox"/> Reduce Operating/Maintenance Cost	by <u>15</u> %
<input type="checkbox"/> Reduce Emissions	by _____ %
<input checked="" type="checkbox"/> Increase System Reliability	by <u>15</u> %

b) Please summarize and describe any other benefits:

**Table 6: Project Schedule**

	Date
Begin Project Approval & Environmental Document Phase	
CEQA/ Environmental Compliance	
End Project Approval & Environmental Document Phase	
Begin Plans, Specifications & Estimates Phase	
End Plans, Specifications & Estimates Phase	
Begin Right of Way Phase	
End Right of Way Phase	
Begin Construction Phase (Contract Award)	
End Construction Phase (Contract Acceptance)	
Begin Vehicle/Equipment Order (Contract Award)	2/20/2018
End Vehicle/Equipment Order (Contract Acceptance)	7/31/2019
Begin Closeout Phase	8/1/2019
End Closeout Phase	10/1/2019

**Table 7: Tax Compliance Information**

Is it reasonably anticipated that any money will be derived at any point in the future as a result of the project that will be paid to the State?

YES  
 NO

If yes, please describe the source of the money and provide an estimate of the amount:

Estimate:

\$

**Public Transportation Modernization, Improvement, and Service Enhancement Account  
 Total Project Cost and Funding Plan**

Shaded fields are automatically calculated. Please do not fill these fields.

Proposed Total Project Cost									
Component	Prior	10/11	11/12	12/13	13/14	14/15	15/16	16/17	Project Total
PA&ED	0	0	0	0	0	0	0	0	0
PS&E	0	0	0	0	0	0	0	0	0
R/W	0	0	0	0	0	0	0	0	0
CON	0	0	0	0	0	0	0	0	0
Veh/Equip Purchase	0	0	0	0	0	0	974,440	0	974,440
Other	0	0	0	0	0	0	0	0	0
<b>TOTAL</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>974,440</b>	<b>0</b>	<b>974,440</b>

Public Transportation Modernization, Improvement, and Service Enhancement Account (PTMISEA)									
Component	Prior	10/11	11/12	12/13	13/14	14/15	RESIDUAL	16/17	Total
PA&ED									0
PS&E									0
R/W									0
CON									0
Veh/Equip Purchase							974,440		974,440
Other									0
<b>TOTAL</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>974,440</b>	<b>0</b>	<b>974,440</b>

Funding Source:									
Component	Prior	10/11	11/12	12/13	13/14	14/15	15/16	16/17	Total
PA&ED									0
PS&E									0
R/W									0
CON									0
Veh/Equip Purchase									0
Other									0
<b>TOTAL</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

Funding Source:									
Component	Prior	10/11	11/12	12/13	13/14	14/15	15/16	16/17	Total
PA&ED									0
PS&E									0
R/W									0
CON									0
Veh/Equip Purchase									0
Other									0
<b>TOTAL</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

Funding Source:									
Component	Prior	10/11	11/12	12/13	13/14	14/15	15/16	16/17	Total
PA&ED									0
PS&E									0
R/W									0
CON									0
Veh/Equip Purchase									0
Other									0
<b>TOTAL</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

Funding Source:									
Component	Prior	10/11	11/12	12/13	13/14	14/15	15/16	16/17	Total
PA&ED									0
PS&E									0
R/W									0
CON									0
Veh/Equip Purchase									0
Other									0
<b>TOTAL</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

## Public Transportation Modernization, Improvement, and Service Enhancement Program (PTMISEA) Projected Cash Flow Schedule

Project Title: Fixed Route Bus Replacement  
 Sponsor Agency: City of Tracy  
 Sponsor Contact: Ed Lovell, 209-831-6204, ed.lovell@cityoftracy.org

PTMISEA Funded Phase	Start Date	Prior	PTMISEA : Cash Flow Projections				Total this request	Future requests
			Jan 2016 - Jun 2016	Jul 2016 - Dec 2016	Jan 2017 - Jun 2017	Jul 2017 - Dec 2017		
PS&E							\$0	
Right of Way							\$0	
Construction - Scope of work task #1							\$0	
Construction - Scope of work task #2							\$0	
Construction - Scope of work task #3							\$0	
Construction - Scope of work task #4							\$0	
Vehicle / Equipment Order							\$974,440	
			PTMISEA Cash Flow Projections					
Totals:			Jan 2016 - Jun 2016	Jul 2016 - Dec 2016	Jan 2017 - Jun 2017	Jul 2017 - Dec 2017	Jan 2019 - Dec 2019	Total
			\$0	\$0	\$0	\$0	\$974,440	\$974,440

**Public Transportation Modernization, Improvement and  
 Service Enhancement Program (PTMISEA)  
 PROJECT DESCRIPTION AND ALLOCATION REQUEST**

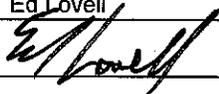
	<b>Regional Entity:</b> SJCOG
<b>Project Lead*:</b> City of Tracy	<b>County:</b> San Joaquin
<b>Project Title:</b> Paratransit Bus Replacement	

I certify the scope, cost, schedule, and benefits as identified in the attached Project Description and Allocation Request (Request) and attachments are true and accurate and demonstrate a fully funded operable project. I understand the Request is subject to any additional restrictions, limitations or conditions that may be enacted by the State Legislature, including the State's budgetary process, which may effect the amount of bond proceeds received by the project sponsor now and in the future. Project sponsors may need to consider alternative funding sources if bond proceeds are not available. In the event the project cannot be completed as originally scoped, scheduled and estimated, or the project is terminated prior to completion, project sponsor shall, at its own expense, ensure that the project is in a safe and operable condition for the public. I understand this project will be monitored by the California Department of Transportation -- Division of Mass Transportation.

---

**Name:** Ed Lovell

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**Signature:** 

---

**Title:** Management Analyst II

---

**Agency:** City of Tracy

---

**Date:** 11/14/2017

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\*If this project includes funding from more than one project sponsor, the project sponsor above becomes the "recipient agency" and the additional contributing project sponsor(s) must also sign and state the amount and type of PTMISEA funds (GC Section 8879.55(a)(2) and/or Section 8879.55(a)(3)) contribution. Sign below or **attach a separate officially signed letter providing that information.**

---

**Name:** \_\_\_\_\_

---

**Signature:** \_\_\_\_\_

---

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

---

**Agency:** \_\_\_\_\_

---

**Date:** \_\_\_\_\_ **Amount:** \_\_\_\_\_

---

## PTMISEA PROJECT DESCRIPTION AND ALLOCATION REQUEST

	9/10	10/11	14/15	<b>RESIDUAL</b>
Request Amount per GC 8879.55(a)(2)/PUC 99313:	\$0	\$0	\$0	\$640,000
Request Amount per GC 8879.55(a)(3)/PUC 99314:	\$0	\$0	\$0	\$0
<b>Total Project Allocation Request:</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$640,000</b>
<b>Project Title:</b>	Paratransit Bus Replacement			
<b>Project Location/Address:</b>	Tracy Transit Station, 50 E. 6th Street, Tracy, CA 95376			

**Table 1: Project Lead/Recipient Agency Information**

Project Lead/ Recipient Agency: <u>City of Tracy</u> Contact: <u>Ed Lovell</u> Contact Phone #: <u>209-831-6204</u> Email Address: <u>ed.lovell@cityoftracy.org</u> Address: <u>50 E. 6th Street</u> <u>Tracy, CA 95376</u>	Legislative District Numbers Assembly: <u>13</u> Senate: <u>5</u> Congressional: <u>10</u> Amount: \$ _____ Fund Type: _____
---	---

**Table 2: Contributing PTMISEA-Eligible Project Sponsor Information**

PTMISEA Contributors: <u>SJCOG</u> Contact: <u>Ryan Niblock</u> Contact Phone #: <u>209-235-0588</u> Email Address: <u>niblock@sjcog.org</u> Address: <u>555 E. Weber Ave.</u> <u>Stockton, CA 95202</u>	Amount : _____ Fund Type: _____ \$640,000 _____ 99313 _____ \$ _____ _____ \$ _____ _____
Other PTMISEA Contributors ( Attach sheet with contact info) _____ _____ _____	Amount: _____ Fund Type: _____ \$ _____ \$ _____ \$ _____ _____
<b>TOTAL</b>	<b>\$640,000</b> _____ <b>99313</b> _____

(\*Contributing project sponsors attach signed letters of verification as to amount and eligibility or sign cover page)

**Table 3: Project Category**

Check only 1 box that best fits the description of the project being funded.

<input type="checkbox"/> Rehabilitation, Safety or Modernization Improvement	<input type="checkbox"/> Bus Rapid Transit
<input type="checkbox"/> Capital Service Enhancement or Expansion	<input checked="" type="checkbox"/> Rolling Stock Procurement:
<input type="checkbox"/> New Capital Project	<input type="checkbox"/> Expansion <input type="checkbox"/> Rehabilitation <input checked="" type="checkbox"/> Replacement

**Table 4: Project Summary**

a) Describe the project (or minimum operable segment) for which you are applying for funds. Attach additional sheets if necessary. If the application is for the purchase of vehicles or rolling stock, please include information on number of vehicles, size, passenger count, accessibility, and fuel type:

Write here:

The City of Tracy is applying for funds to replace 4 cutaway buses. The cutaway buses being replaced are beyond their useful life of 5 years and are becoming increasingly costly to maintain, and less reliable in being able to provide transit service. The replacement buses will be used primarily for paratranist service. Each of the 4 vehicles will be approximately 23' - 26' in length, have low floors for ADA accessibility, be able to hold 3 wheelchairs and approximately 9 seated passengers, and be fueled by gasoline. Once the vehicles are ordered, it will take approximately 6 - 8 months for the vehicles to arrive.

b) Useful Life of the Project:   5   years

**Table 5: Description of Major Benefits/Outcomes**

a) Please check appropriate Benefit/Outcome:

<input type="checkbox"/>	Increase Ridership	by	<u>      </u>	%
<input checked="" type="checkbox"/>	Reduce Operating/Maintenance Cost	by	<u>  20  </u>	%
<input type="checkbox"/>	Reduce Emissions	by	<u>      </u>	%
<input checked="" type="checkbox"/>	Increase System Reliability	by	<u>  20  </u>	%

b) Please summarize and describe any other benefits:

**Table 6: Project Schedule**

	Date
Begin Project Approval & Environmental Document Phase	
CEQA/ Environmental Compliance	
End Project Approval & Environmental Document Phase	
Begin Plans, Specifications & Estimates Phase	
End Plans, Specifications & Estimates Phase	
Begin Right of Way Phase	
End Right of Way Phase	
Begin Construction Phase (Contract Award)	
End Construction Phase (Contract Acceptance)	
Begin Vehicle/Equipment Order (Contract Award)	2/20/2018
End Vehicle/Equipment Order (Contract Acceptance)	10/31/2018
Begin Closeout Phase	11/1/2018
End Closeout Phase	12/31/2018

**Table 7: Tax Compliance Information**

Is it reasonably anticipated that any money will be derived at any point in the future as a result of the project that will be paid to the State?

YES  
 NO

If yes, please describe the source of the money and provide an estimate of the amount:

Estimate: \$ \_\_\_\_\_

**Public Transportation Modernization, Improvement, and Service Enhancement Account  
 Total Project Cost and Funding Plan**

Shaded fields are automatically calculated. Please do not fill these fields.

Proposed Total Project Cost									
Component	Prior	10/11	11/12	12/13	13/14	14/15	15/16	16/17	Project Total
PA&ED	0	0	0	0	0	0	0	0	0
PS&E	0	0	0	0	0	0	0	0	0
R/W	0	0	0	0	0	0	0	0	0
CON	0	0	0	0	0	0	0	0	0
Veh/Equip Purchase	0	0	0	0	0	0	640,000	0	640,000
Other	0	0	0	0	0	0	0	0	0
<b>TOTAL</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>640,000</b>	<b>0</b>	<b>640,000</b>

Public Transportation Modernization, Improvement, and Service Enhancement Account (PTMISEA)									
Component	Prior	10/11	11/12	12/13	13/14	14/15	RESIDUAL	16/17	Total
PA&ED									0
PS&E									0
R/W									0
CON									0
Veh/Equip Purchase							640,000		640,000
Other									0
<b>TOTAL</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>640,000</b>	<b>0</b>	<b>640,000</b>

Funding Source:									
Component	Prior	10/11	11/12	12/13	13/14	14/15	15/16	16/17	Total
PA&ED									0
PS&E									0
R/W									0
CON									0
Veh/Equip Purchase									0
Other									0
<b>TOTAL</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

Funding Source:									
Component	Prior	10/11	11/12	12/13	13/14	14/15	15/16	16/17	Total
PA&ED									0
PS&E									0
R/W									0
CON									0
Veh/Equip Purchase									0
Other									0
<b>TOTAL</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

Funding Source:									
Component	Prior	10/11	11/12	12/13	13/14	14/15	15/16	16/17	Total
PA&ED									0
PS&E									0
R/W									0
CON									0
Veh/Equip Purchase									0
Other									0
<b>TOTAL</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

Funding Source:									
Component	Prior	10/11	11/12	12/13	13/14	14/15	15/16	16/17	Total
PA&ED									0
PS&E									0
R/W									0
CON									0
Veh/Equip Purchase									0
Other									0
<b>TOTAL</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

## Public Transportation Modernization, Improvement, and Service Enhancement Program (PTMISEA) Projected Cash Flow Schedule

Project Title: Paratransit Bus Replacement  
 Sponsor Agency: City of Tracy  
 Sponsor Contact: Ed Lovell, 209-831-6204, ed.lovell@cityoftracy.org

PTMISEA Funded Phase	Start Date	Prior	PTMISEA : Cash Flow Projections				Total this request	Future requests
			Jan 2016 - Jun 2016	Jul 2016 - Dec 2016	Jan 2017 - Jun 2017	Jul 2017 - Dec 2017		
PS&E							\$0	
Right of Way							\$0	
Construction - Scope of work task #1							\$0	
Construction - Scope of work task #2							\$0	
Construction - Scope of work task #3							\$0	
Construction - Scope of work task #4							\$0	
Vehicle / Equipment Order							\$640,000	
			PTMISEA Cash Flow Projections					
			Jan 2016 - Jun 2016	Jul 2016 - Dec 2016	Jan 2017 - Jun 2017	Jul 2017 - Dec 2017	Jan 2018 - Dec 2018	Total
<b>Totals:</b>			\$0	\$0	\$0	\$0	\$640,000	\$640,000

RESOLUTION 2021-\_\_\_\_\_

APPROVING A COOPERATIVE AGREEMENT BETWEEN THE SAN JOAQUIN COUNCIL OF GOVERNMENTS AND THE CITY OF TRACY TO RECEIVE FUNDS THROUGH THE CALIFORNIA DEPARTMENT OF TRANSPORTATION'S PUBLIC TRANSPORTATION MODERNIZATION, IMPROVEMENT, AND SERVICE ENHANCEMENT ACCOUNT PROGRAM AND AUTHORIZE SUBMISSION OF CLAIMS FOR REIMBURSEMENT

WHEREAS, The City of Tracy (City) submitted applications for the funding of two projects through the San Joaquin Council of Governments (SJCOG) for the California Department of Transportation's (Caltrans) Public Transportation Modernization, Improvement, and Service Enhancement Account (PTMISEA) Program, and

WHEREAS, The City has been granted a total of \$1,819,440 for the two projects, being the purchase of fixed route and paratransit buses and the purchase of upgraded fare boxes, and

WHEREAS, In order to receive the funding, the City must enter into a cooperative agreement with SJCOG to complete the projects and request reimbursement;

NOW, THEREFORE, BE IT RESOLVED, That the City Council of the City of Tracy hereby approves a cooperative agreement between the San Joaquin Council of Governments and the City of Tracy to receive funds through the California Department of Transportation's Public Transportation Modernization, Improvement, and Service Enhancement Account Program and authorize submission of claims for reimbursement.

\* \* \* \* \*

The foregoing Resolution 2021-\_\_\_\_\_ was adopted by the Tracy City Council on the 7<sup>th</sup> day of September, 2021, by the following vote:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

\_\_\_\_\_  
MAYOR

ATTEST:

\_\_\_\_\_  
CITY CLERK

AGENDA ITEM 1.C

REQUEST

**APPROVE THE DEFERRED IMPROVEMENT AGREEMENT (DIA) FOR TRACY VILLAGE TRACT 3917, AND AUTHORIZE THE CITY CLERK TO FILE THE DEFERRED IMPROVEMENT AGREEMENT WITH THE OFFICE OF THE SAN JOAQUIN COUNTY RECORDER**

EXECUTIVE SUMMARY

Toll Brothers West, Inc., a Delaware corporation (Subdivider) has requested that the construction of certain improvements required under the Conditions of Approval for Tracy Village Tract 3917 be deferred to a later date. The Subdivider has signed the Deferred Improvement Agreement (DIA) to guarantee completion of the deferred improvements. This item requests that Council approve the DIA and authorize the City Clerk to record the agreement with the Office of the San Joaquin County Recorder.

DISCUSSION

On May 15, 2018, the City Council approved the Vesting Tentative Map, TSM17-0003 for Tracy Village Tract 3917, pursuant to Resolution No. 2018-087 for the construction of gated community consisting of 590 single-family detached residential homes on 135.2 acres, located on the south side of Valpico Road and east of Corral Hollow Road.

In accordance with the improvement plans and conditions of approval, the Subdivider is responsible for installation of Recycled Water facilities from the Project to the intersection of Lammers Road and Old Schulte Road to connect the City's Recycled Water facilities. The Subdivider has a shared responsibility towards the interim improvements at the intersection of Lammers Road and Valpico Road. The Subdivider is also responsible for the installation of sidewalk on the north side of Valpico Road.

As timing of completion of these improvements depend on acquisition of right-of-way/ easements, work by PG&E and completion of certain improvements by the City, the Subdivider requested that these improvements be deferred to certain times in the future. The City Engineer has reviewed the scope and timing of completion of deferred improvements and has determined the time limits for completion of each of these improvements. The DIA lists the improvements and timing of completion of improvements. The Subdivider has executed the DIA with required security, to guarantee the completion of the Deferred Improvements. The DIA, and Improvement Plans are on file with the City Engineer and are available for review upon request.

All other off-site improvements required per the Conditions of Approval will be completed by the Subdivider per the Offsite Improvement Agreement (OIA) that will be executed by Toll Brothers West, Inc. at the time of approval of first final map within the Project.

FISCAL IMPACT

The Subdivider has paid the applicable engineering review fees which include the cost of processing the Deferred Improvement Agreement.

STRATEGIC PLAN

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

RECOMMENDATION

That City Council, by resolution, approve the Deferred Improvement Agreement for Tracy Village Tract 3917, and authorize the City Clerk to file the Deferred Improvement Agreement with the Office of the San Joaquin County Recorder.

Prepared by: Nanda Gottiparthi, PE, SNG & Associates, Inc.

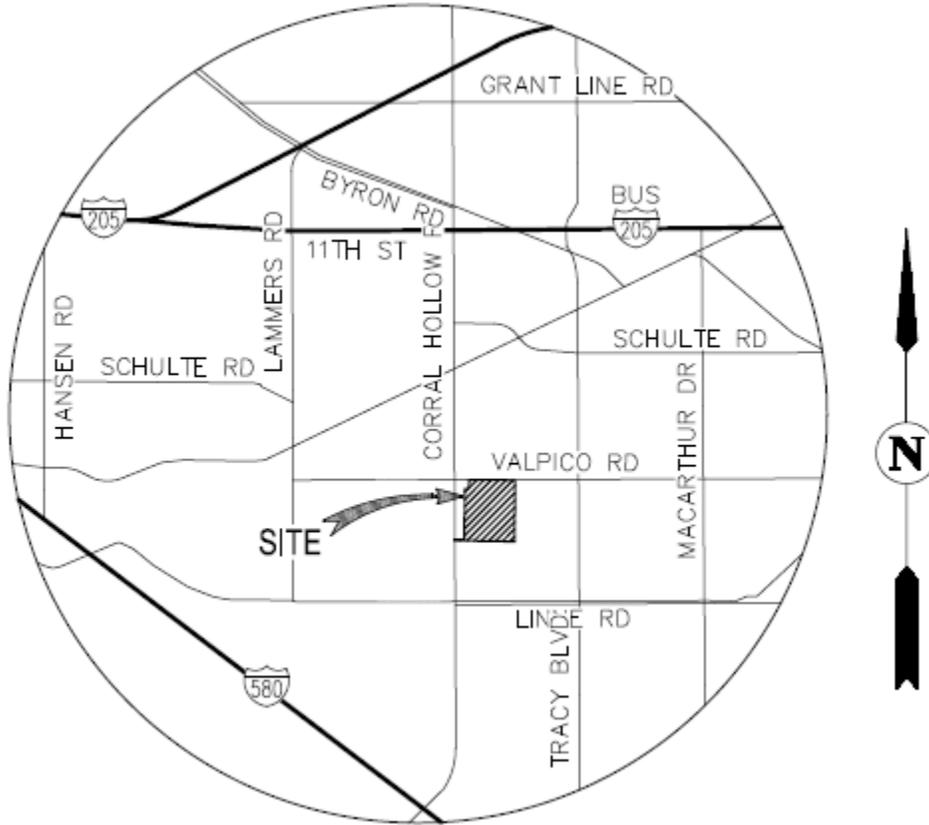
Reviewed by: Robert Armijo, PE, City Engineer / Assistant Director of Development Services  
Karin Schnaider, Finance Director  
William Dean, Interim Director of Development Services  
Midori Lichtwardt, Assistant City Manager

Approved by: Robert Adams, Interim City Manager

ATTACHMENTS

Attachment A – Vicinity Map  
Attachment B – Deferred Improvement Agreement

# Attachment A



RECORDING REQUESTED BY:  
City of Tracy  
Development & Engineering Services  
333 Civic Center Plaza  
Tracy, CA 95376

WHEN RECORDED MAIL TO:  
City of Tracy  
Office of the City Clerk  
333 Civic Center Plaza  
Tracy, CA 95376  
Attn: Adrienne Richardson

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SPACE ABOVE THIS LINE FOR RECORDER'S INFORMATION

**CITY OF TRACY  
DEFERRED IMPROVEMENT AGREEMENT  
TRACY VILLAGE TRACT 3917**

This **DEFERRED IMPROVEMENT AGREEMENT** (hereinafter "Agreement") is made and entered into by and between the **CITY OF TRACY**, a municipal corporation (hereinafter "City"), and Toll West Inc. which will do business in California as Toll Brothers West Inc., a Delaware corporation (hereinafter "Subdivider").

**RECITALS**

- A. Subdivider is currently the owner of the real property located (hereinafter "**Property**"), and more particularly described in Exhibit "A", attached and incorporated herein by this reference.
- B. The Project is geographically situated on the south side of Valpico Road, east of Corral Hollow Road (Assessor's Parcel Numbers 244-040-01, 244-030-01 & 244-030-02).
- C. The Tentative Subdivision Map (#TSM 17-0003) for the Tracy Village Tract 3917 (hereinafter "**Project**") was approved by the City Council, Resolution No. 2018-087 on May 15, 2018. Approval of the Project was subject to specified conditions of approval (hereinafter "**Conditions**"). The Conditions are attached hereto as Exhibit "B," and incorporated herein by reference.
- D. The Subdivider has requested construction of certain off-site improvements be deferred to a later date (hereinafter "**Deferred Improvements**"). The Deferred improvements are described in Exhibit "C", attached hereto, and incorporated herein by reference.

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

1. **SCOPE OF WORK; SUBSEQUENT AGREEMENT.** The scope of the work that is the subject of this Agreement is set forth in Exhibit C hereto. Prior to commencing the work described in Exhibit C, Developer shall execute an Off-Site Improvement Agreement with City, in a form approved by the City Engineer, to govern Developer's performance of the work.

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2. **IMPROVEMENT SECURITY.** Concurrently with Subdivider's execution of this Agreement, the Subdivider shall furnish improvement security for the Deferred Improvements, in a form authorized by the Subdivision Map Act (Government Code sections 66499 *et seq.*) and Tracy Municipal Code section 12.36.080, in the following amounts:

2.1. **Faithful Performance for Offsite Recycled Water Improvements** Security in the amount of **\$4,185,000** for Offsite Recycled Water Improvements to secure faithful performance of this Agreement (until the date when the City Council accepts the Deferred Improvements as complete).

2.2. **Faithful Performance for Lammers Road / Valpico Road Intersection improvements** Security in the amount of **\$1,812,800** to secure faithful performance of this Agreement (until the date when the City Council accepts the Deferred Improvements as complete).

2.3. **Faithful Performance for Valpico Road Frontage Improvements** Security in the amount of **\$832,000** for Valpico Road Phase 2 Improvements to secure faithful performance of this Agreement (until the date when the City Council accepts the Deferred Improvements as complete).

2.4. **Faithful Performance for Valpico Road Improvements at Zambetti Parcels (APNs 244-030-03 and 244-030-04)** Security in the amount of **\$83,000** for Valpico Road (Zambetti Frontage) Improvements to secure faithful performance of this Agreement (until the date when the City Council accepts the Deferred Improvements as complete).

3. **TIME OF PERFORMANCE.** Time is of the essence in the performance of the Deferred Improvements, and the timing requirements set forth herein shall be strictly adhered to unless otherwise modified in writing in accordance with this Agreement. The timing requirements for the Deferred Improvements are set forth in Exhibit "C." The Subdivider shall submit all requests for extensions of time to the City, in writing, no later than fifteen (15) days after the start of the condition that purportedly caused the delay, and not later than the date on which performance is due.
4. **OBLIGATIONS RUN WITH THE LAND.** All obligations and provisions of this Agreement shall run with the real property described in Exhibit "A," and shall bind the Subdivider and its respective successors and assigns.

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**5. NOTICES.**

5.1. All notices, demands, or other communications which this Agreement contemplates or authorizes shall be in writing and shall be personally delivered or electronically mailed to the respective party as follows:

City: City of Tracy  
Attn: City Engineer  
333 Civic Center  
Plaza  
Tracy, CA 95376

Subdivider: Toll West Inc. which will do  
business in California as  
Toll Brothers West Inc.,  
a Delaware corporation

Attn: Todd Callahan, Division President  
6800 Koll Center Parkway,  
Ste. 320, Pleasanton, CA, 94566

Copy to: City Attorney's  
Office  
Attn: City Attorney  
333 Civic Center  
Plaza  
Tracy, CA 95376

Tel: (925) 249-6047  
Email: [tcallahan@tollbrothers.com](mailto:tcallahan@tollbrothers.com)

Copy to: Toll West Inc.  
Attn: Scott M. Cwiertny,  
AVP and Counsel  
725 W. Town and Country Rd.,  
Suite 200 Orange, CA, 92868

[attorney@cityoftracy.org](mailto:attorney@cityoftracy.org)

Tel: (714) 347-1321  
Email: [scwiertny@tollbrothers.com](mailto:scwiertny@tollbrothers.com)

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

6. **ASSIGNMENT AND DELEGATION.** This Agreement and any portion thereof shall not be assigned or transferred, nor shall any of the Subdivider's duties be delegated, without the written consent of the City. Any attempt to assign or delegate this Agreement without the written consent of the City shall be void and of no force and effect. A written consent by the City to one assignment shall not be deemed to be the consent to any subsequent assignment.

7. **INDEMNIFICATION.** Subdivider shall indemnify, defend and hold harmless the City (including its elected officials, officers, agents and employees) from and against any and all claims, demands, liabilities, costs and expenses (including court costs and attorney's fees) resulting from or arising out of the performance of the Deferred Improvements by Subdivider or Subdivider's agents, representatives, contractors, subcontractors or employees.

8. **MODIFICATIONS.** This Agreement may not be modified orally or in any manner other than by an agreement in writing signed by both parties.

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9. **WAIVERS.** Waiver of a breach or default under this Agreement shall not constitute a continuing waiver or a waiver of a subsequent breach of the same or any other provision of this Agreement.
10. **SEVERABILITY.** In the event, any term of this Agreement is held invalid by a court of competent jurisdiction, the Agreement shall be construed as not containing that term, and the remainder of this Agreement shall remain in full force and effect.
11. **JURISDICTION AND VENUE.** The interpretation, validity, and enforcement of the Agreement shall be governed by and construed under the laws of the State of California. Any suit, claim, or legal proceeding of any kind related to this Agreement shall be filed and heard in a court of competent jurisdiction in the County of San Joaquin.
12. **ENTIRE AGREEMENT.** This Agreement comprises the entire integrated understanding between the parties concerning the Deferred Improvements described herein to be constructed for this Project. This Agreement supersedes all prior negotiations, representations, or agreements related to the Deferred Improvements.
13. **SIGNATURES.** The individuals executing this Agreement represent and warrant that they have the right, power, legal capacity, and authority to enter into and to execute this Agreement on behalf of the respective legal entities of the Subdivider and the City. This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

*[remainder of this page intentionally left blank]*

**CITY OF TRACY –DEFERRED IMPROVEMENT AGREEMENT  
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PAGE 5 OF 5**

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

**City of Tracy**

\_\_\_\_\_

Nancy Young, Mayor

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

Approved by City Council on \_\_\_\_\_ by  
Resolution No. \_\_\_\_\_.]

Attest:

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

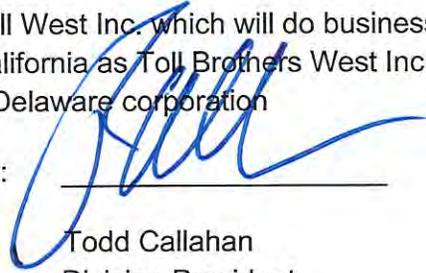
Approved As To Form:

By: \_\_\_\_\_  
Leticia Ramirez, City Attorney

**Subdivider**

Toll West Inc. which will do business in California as Toll Brothers West Inc., a Delaware corporation

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



Todd Callahan  
Division President

Date: 6/22/2021

Federal Employer Tax ID No.  
83-3070946

**EXHIBITS**

- A – Legal Property Description
- B – Conditions of Approval
- C – Deferred Improvements

## ACKNOWLEDGMENT

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

State of California  
County of Alameda )

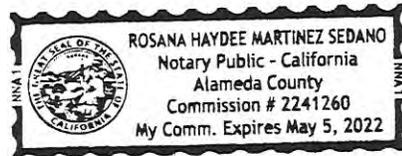
On June 22, 2021 before me, Rosana Haydee Martinez Sedano, Notary Public  
(insert name and title of the officer)

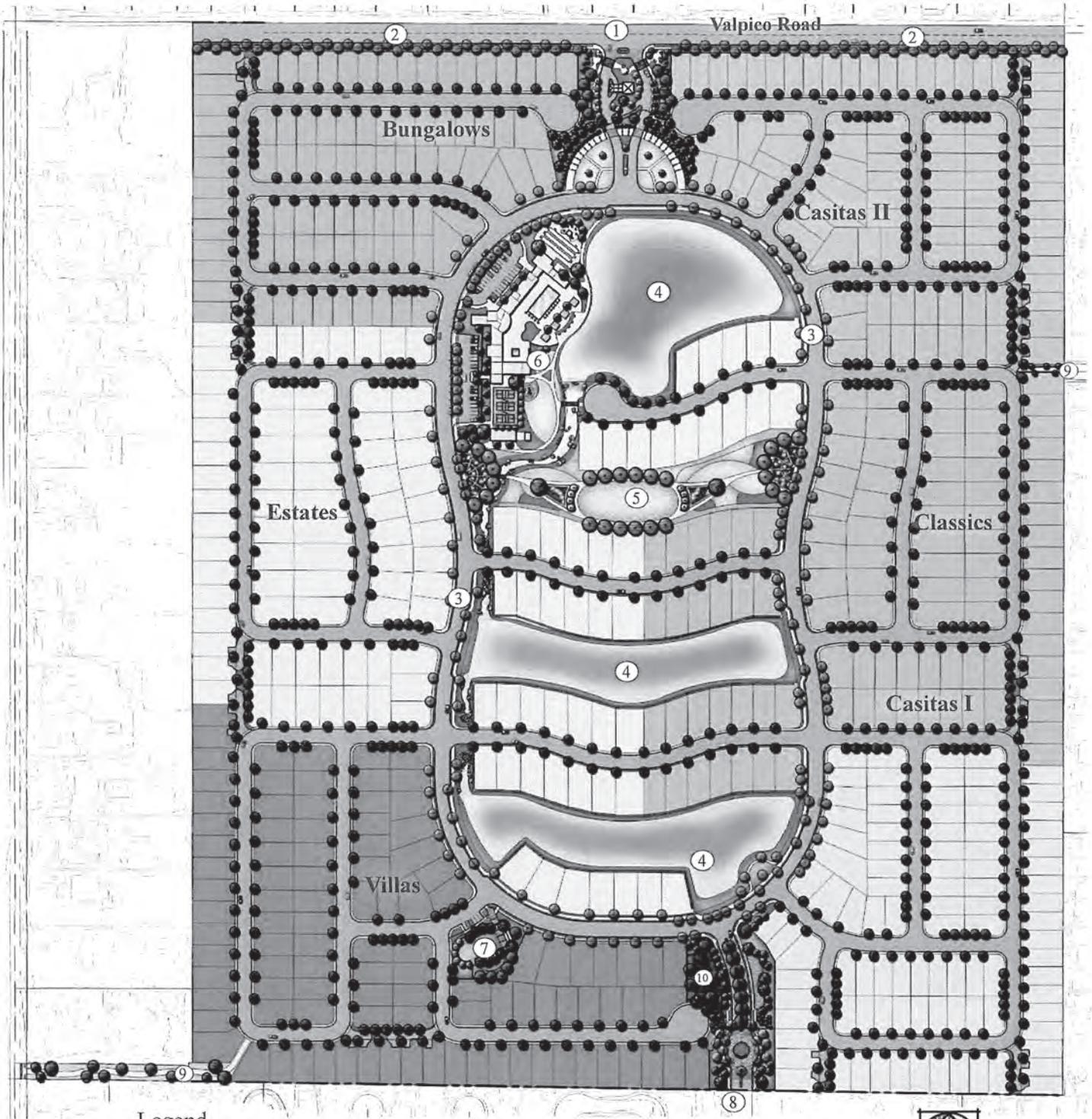
personally appeared Todd Callahan,  
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/~~are~~  
subscribed to the within instrument and acknowledged to me that he/~~she/they~~ executed the same in  
his/~~her/their~~ authorized capacity(~~ies~~), and that by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

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

WITNESS my hand and official seal.

Signature *Rosana Martinez* (Seal)





**Legend**

- |                  |                          |
|------------------|--------------------------|
| ① Main Entrance  | ⑥ Main Recreation        |
| ② Public ROW     | ⑦ Minor Recreation       |
| ③ Main Loop Road | ⑧ Secondary Entrance     |
| ④ Lake           | ⑨ Pedestrian Connections |
| ⑤ Park           | ⑩ Dog Park               |



RESOLUTION 2018-087

EXECUTING AN APPLICATION TO LAFCO FOR ANNEXATION/PREZONING OF THE 590 TRACY VILLAGE DEVELOPMENT PROJECT LOTS AND 42 ADJACENT LOTS (A/P13-0002), APPROVING THE TRACY VILLAGE SPECIFIC PLAN (SPA18-0001), APPROVING A TENTATIVE SUBDIVISION MAP (TSM17-0003) FOR THE TRACY VILLAGE DEVELOPMENT PROJECT, AND ADOPTING A STATEMENT OF OVERRIDING CONSIDERATIONS AND MITIGATION MONITORING AND REPORTING PROGRAM AND CERTIFYING THE ENVIRONMENTAL IMPACT REPORT FOR THE TRACY VILLAGE DEVELOPMENT PROJECT

WHEREAS, Applications have been filed or initiated for development of a 135-acre gated age-restricted residential community (Tracy Village or Project) located on the south side of Valpico Road, East of Corral Hollow Road. The Project proposes annexation/prezoning of the lands to the City, and includes a Specific Plan and Tentative Subdivision Map on Assessor's Parcel Numbers 244-040-01, and 244-030-01 and 02. Additionally, the Project includes the annexation/prezoning to Residential Estate of 42 lots currently located in unincorporated San Joaquin County, situated immediately west of the Tracy Village project site along Corral Hollow Road and north of the Tracy Village project site along Valpico Road, consisting of Assessor's Parcel Numbers 244-030-03 through 244-030-022 and 242-050-01 through 242-050-021, and 242-040-29, and

WHEREAS, The subject Tracy Village property is designated Active Adult Residential by the City of Tracy General Plan, is well suited for residential development, and promotes a compact development pattern that includes up to 600 residential lots, community center, and related open space and infrastructure improvements. The Project will also include a man-made lake system to provide a focal aesthetic feature for the community, serve as the primary drainage conveyance and peak attenuation/storage facility, and provide water quality treatment for urban storm water runoff, and

WHEREAS, The annexation and prezoning to Residential Estate of the additional 42 lots of record to the City will provide for the logical, sequential extension of the City limits in conjunction with the annexation and prezoning of the Tracy Village project site. The majority of the lots are developed with single-family residences. The proposed prezoning for the properties is Residential Estate, which reflects the type and intensity of residential development on the lots, and permits single family residential development on the undeveloped sites, and

WHEREAS, The Project is consistent with General Plan Land Use and Housing Goals and Policies, including maintaining a Sphere of Influence that is consistent with the long-term land use vision of the General Plan; encouraging residential growth that follows an orderly pattern with initial expansion in Secondary Residential Growth Areas; provision of residential neighborhoods that contain a mix of housing types including single family homes on a range of lot sizes; and promotion of efficient residential development patterns and orderly expansion of residential areas to maximize the use of existing public services and infrastructure, and

WHEREAS, The Project has been evaluated in accordance with California Environmental Quality Act (CEQA) Guidelines, and an Environmental Impact Report has been prepared and is proposed for certification along with the adoption of a statement of overriding considerations and mitigation monitoring and reporting program, and

WHEREAS, The Planning Commission conducted a noticed public hearing to receive public input and review the Project on April 11, 2018 and recommended City Council approval of the project;

NOW, THEREFORE, BE IT RESOLVED, That the City Council of the City of Tracy hereby approves the following:

1. Environmental Impact Report
  - A. The project was evaluated under an Environmental Impact Report (EIR), which evaluated potential environmental impacts associated with project development. Based on the EIR analysis, a series of mitigation measures has been identified which would ensure mitigation of potentially significant environment impacts to levels of insignificance. These include mitigation in the areas of air quality, geology, cultural resources, hydrology, land use, traffic/transportation, utilities and cumulative impacts. A statement of overriding considerations has been prepared to address air quality impacts.
  - B. The City Council does hereby certify the project EIR, attached to the staff report accompanying this resolution and incorporated herein by reference, and based on the findings as established in Exhibit 1 and adopts the statement of overriding considerations contained therein. The City Council also adopts the Mitigation Monitoring and Reporting Program contained in Exhibit 2.
2. Annexation/Prezoning (Application Number A/P13-0001)
  - A. The Project proposes that the City Council apply to LAFCO for annexation and prezoning of the Tracy Village project site and the adjoining 42 lots of record.
  - B. The City Council shall execute application number A/P13-0001 for annexation/prezoning of the Tracy Village project site and the adjoining 42 lots of record.
3. Tracy Village Specific Plan (Application Number SPA18-001)
  - A. The Tracy Village Specific Plan (TVSP or Specific Plan) is consistent with the General Plan, because the permitted uses of the Specific Plan's Residential uses are allowed within the General Plan designation of Active Adult Residential and are consistent with goals and policies of the Housing Element. Also, the Specific Plan's Design Standards and Guidelines, particularly related to siting requirements (site planning, architecture, and parking) and design standards (infrastructure, auxiliary site features, fencing and walls) are consistent with Land Use and Community Character Element goals and policies.
  - B. The TVSP includes a finance and implementation chapter that addresses Tracy Village development costs and developer responsibilities for project maintenance. The Project will also be subject to payment of applicable development impact fees and other infrastructure mitigation requirements to mitigate the Project's fair share of infrastructure costs required by the City's infrastructure master plans.

- C. The Specific Plan also addresses the annexation and zoning/prezoning of the 42 adjacent lots, utilizing the Residential Estate zone development standards of the Tracy Municipal Code.
- D. The City Council approves the Specific Plan for the project, application number SPA18-001, contained in Exhibit 3, attached to the staff report accompanying this resolution and incorporated herein by reference.

4. Tentative Subdivision Map

- A. The Project includes an initial Tentative Subdivision Map that provides for creation of a master lotting program that will facilitate phased development of the project site.
- B. The City Council approves the Tentative Subdivision Map, TSM17-0003, contained in Exhibit 4, attached to the staff report accompanying this resolution and incorporated herein by reference, as conditioned in Exhibit 5, and based on the following findings:
  - 1. The project is a Vesting Tentative Subdivision Map to create 590 single-family dwelling units and common area spaces on approximately 135 acres, with an overall density of approximately 4.4 dwelling units per gross acre, which is consistent with the amended General Plan land use and density requirements.
  - 2. The proposed map is consistent with the General Plan, and Title 12, the Subdivision Ordinance, of the Tracy Municipal Code. The General Plan designation of the property is Active Adult Residential.
  - 3. The site is physically suitable for the type of development, as the site is virtually flat and the characteristically high clay content of Tracy's soils may require amendments and treatment for proposed landscaping, foundations, and other surface and utility work. The physical qualities of the property make it suitable for residential development and the proposed recreational amenities in accordance with City standards.
  - 4. The site is physically suitable for the proposed density of development. Traffic circulation is designed in accordance with City standards for the proposed density to ensure adequate traffic service levels are met.
  - 5. The design of the subdivision or the proposed improvements will not cause substantial environmental damage or substantially and avoidably injure fish or wildlife or their habitat. The Tracy Village EIR was completed to analyze the potential impacts of the project.
  - 6. The design of the subdivision or the type of improvements will not conflict with easements, acquired by the public at large, for access through or use of, property within the proposed subdivision.
  - 7. The project complies with all other applicable ordinances, regulations and

guidelines of the City, including but not limited to, the local floodplain ordinance. The subject property is not located within any floodplain and the project, with conditions, will meet all applicable City design and improvement standards.

- 8. All the public facilities necessary to serve the subdivision will be in place prior to the issuance of building permits. All the public facilities necessary to serve the subdivision or mitigate the impacts created by the subdivision will be assured through a subdivision improvement agreement prior to the approval of a final map.

\*\*\*\*\*

The foregoing Resolution 2018-087, was adopted by the Tracy City Council on the 15<sup>th</sup> day of May, 2018, by the following vote:

AYES: COUNCIL MEMBERS: DEMENT, RANSOM, YOUNG, VARGAS, RICKMAN  
NOES: COUNCIL MEMBERS: NONE  
ABSENT: COUNCIL MEMBERS: NONE  
ABSTAIN: COUNCIL MEMBERS: NONE

  
MAYOR

ATTEST:  
  
CITY CLERK

EXHIBIT B  
PAGE 5 OF 27

**City of Tracy**  
**Conditions of Approval**  
**Tracy Village**  
**Application Number (Tract 3917)**  
**May 15, 2018**

These Conditions of Approval shall apply to the real property described as the Tracy Village Development. The Tracy Village Development Project is proposed as a gated community consisting of 590 single-family detached residential homes, and would include three man-made lakes totaling approximately 10 acres, along with a community recreation center with pool, spa and bocce courts, open space and trails/pathways (Assessor's Parcel Number 244-040-01 and 244-030-01 and 02), located on the south side of Valpico Road, east of Corral Hollow Road. The project also includes the proposed annexation into the City of an additional 42 residential properties (Residential Annexation Area) fronting Corral Hollow Road and Valpico Road, and an adjoining drainage canal north of Valpico Road (Parcel Numbers 244-030-03 through 22 and 242-050-01 through 21, and 242-040-29).

The following definitions shall apply to these Conditions of Approval:

1. "Applicant" means any person, or other legal entity, defined as a "Developer."
2. "City Engineer" means the City Engineer of the City of Tracy, or any other duly licensed engineer designated by the City Manager, or the Development Services Director, or the City Engineer to perform the duties set forth herein.
3. "City Regulations" means all written laws, rules and policies established by the City, including those set forth in the City of Tracy General Plan (also known as Urban Management Plan), the Tracy Municipal Code, ordinances, resolutions, policies, procedures, and the City's Design documents (the Streets and Utilities Standard Plans, Design Standards, Parks and Streetscape Standard Plans, Standard Specifications, and Manual of Storm Water Quality Control Standards for New Development and Redevelopment, and Relevant Public Facilities Master Plans).
4. "Conditions of Approval" shall mean the conditions of approval applicable to the Tracy Village Development project. The Conditions of Approval shall specifically include all Development Services Department, including Planning, Engineering, and Building Divisions, Finance Department, Fire Department, and Public Works conditions set forth herein.
5. "Development Services Director" means the Development Services Director of the City of Tracy, or any other person designated by the City Manager or the Development Services Director to perform the duties set forth herein.
6. "Project" means the real property consisting of approximately 135 acres located on the south side of Valpico Road, east of Corral Hollow Road, Assessor's Parcel Number 244-040-01, and 244-030-01 and 02, and 42 residential properties fronting Corral Hollow Road and Valpico Road (Parcel Numbers 244-030-03 through 22 and 242-050-01 through 21 and 242-040-29).
7. "Property" means the real property generally located on the south side of

Valpico Road, east of Corral Hollow Road, Assessor's Parcel Number 244-040-01, 244-030-01 and 02, and 42 residential properties fronting Corral Hollow Road and Valpico Road (Parcel Numbers 244-030-03 through 22 and 242-050-01 through 21, and 242-040-29).

8. "Subdivider" means any person, or other legal entity, who applies to the City to divide or cause to be divided real property within the Project boundaries, or who applies to the City to develop or improve any portion of the real property within the Project boundaries. "Subdivider" also means Developer. The term "Developer" shall include all successors in interest.

B. Planning Division Conditions of Approval:

1. The Developer shall comply with all laws (federal, state, and local) related to the development of real property within the Project, including, but not limited to: the Planning and Zoning Law (Government Code sections 65000, *et seq.*), the Subdivision Map Act (Government Code sections 66410, *et seq.*), the California Environmental Quality Act (Public Resources Code sections 21000, *et seq.*, "CEQA"), and the Guidelines for California Environmental Quality Act (California Administrative Code, title 14, sections 15000, *et seq.*, "CEQA Guidelines").
2. Unless specifically modified by these Conditions of Approval, the Project shall comply with all City Regulations.
3. Unless specifically modified by these Conditions of Approval, the Developer shall comply with all mitigation measures identified in the Tracy Village Development Project Environmental Impact Report dated April 11, 2018.
4. Pursuant to Government Code section 66020, including section 66020(d)(1), the City HEREBY NOTIFIES the Developer that the 90-day approval period (in which the Developer may protest the imposition of any fees, dedications, reservations, or other exactions imposed on this Project by these Conditions of Approval) will begin on the date of the conditional approval of this Project. If the Developer fails to file a protest within this 90-day period, complying with all of the requirements of Government Code section 66020, the Developer will be legally barred from later challenging any such fees, dedications, reservations or other exactions.
5. Except as otherwise modified herein, all construction shall be consistent with the Vesting Tentative Subdivision Map received by the Development and Engineering Services Department on April 2, 2018 and as modified on the project site plan and Tracy Village Specific Plan dated March 2018.
6. Prior to the issuance of any building permits for the community buildings, the applicant shall provide a detailed landscape and irrigation plan consistent with City landscape and irrigation standards and the approved plan, including, but not limited to Tracy Municipal Code Section 10.08.3560, the City's Design Goals and Standards, and the applicable Department of Water Resources Model Efficient Landscape Ordinance on

- private property, and the Parks and Parkways Design Manual for public property, to the satisfaction of the Development Services Director. Newly planted, on-site trees shall be a minimum size of 24-inch box and shrubs shall be a minimum size of five gallons.
7. No signs are approved as a part of this development application. Prior to the installation of any signs, the applicant shall submit a sign permit application and receive approval from the Development Services Director in accordance with City Regulations.
  8. Prior to the issuance of any building permits, the developer shall document compliance with the City of Tracy Manual of Stormwater Quality Control Standards for New Development and Redevelopment (Manual) to the satisfaction of the Public Works Director, which includes the requirement for Site Design Control Measures, Source Control Measures and Treatment Control Measures under the guidelines in a project Stormwater Quality Control Plan (SWQCP). Compliance with the Manual includes, but is not limited to, addressing outdoor storage areas, trash enclosures, parking areas, any wash areas and maintenance areas. The SWQCP must conform to the content and format requirements indicated in Appendix D of the Manual and must be approved by the Public Works Director prior to issuance of grading or building permits. Stormwater treatment shall be consistent with the approved plans, subject to approval by the City's Utility Department.
  9. The project shall comply with all applicable provisions of the San Joaquin County Multi-Species Habitat Conservation and Open Space Plan, including Incidental Take Minimization Measures applicable at the time of permit and a pre-construction survey prior to ground disturbance, to the satisfaction of San Joaquin Council of Governments.
  10. The developer shall design and construct all buildings with fire sprinklers in accordance with City Regulations to the satisfaction of the Fire Marshal.
  11. Development of the 42 residential properties (Residential Annexation Area) shall be governed by the following: The majority of the 42 lots are developed with detached single-family residences, and are served by private wells and septic systems. Connection to city water and sewer systems shall be voluntary, unless new residential development (building permits for new construction) is proposed by the property owners.
  12. The project shall utilize the building elevations as shown in the Tracy Village Specific Plan for the Tracy Village residential community, consistent with requirements of the City Design Standards and Guidelines and the project Planned Unit Development provisions. The final design plans shall be subject to review and approval of the Development services Director prior to first building permit issuance.
  13. All of the houses that border existing developed lots on the west, east and south sides of the Tracy Village project shall be limited to a single-story in height.

14. All common area lots and open spaces, including landscaping, shall be maintained by the Project homeowner's association (HOA). Final covenants, conditions and restrictions (CC&Rs) shall be submitted to the City for review and approval prior to their recordation. The CC&Rs shall be recorded prior to City issuance of a grading plan or improvement plans for the Project.
15. All proposed Emergency Vehicle Access (EVA) points connecting the project to public streets shall be built subject to Fire Department and Engineering Division approval, including with respect to width, loads, turn radius, and use of gates or other barriers.
16. All vents, gutters, downspouts, flashing, electrical conduit, and other wall-mounted or building-attached utilities shall be painted to match the color of the adjacent surface or otherwise designed in harmony with the building exterior to the satisfaction of the Development Services Director.
17. All ground-mounted equipment, including, but not limited to air conditioning units, water heaters, gas meter and utility boxes shall be screened from view from common areas with decorative walls, fences or landscaping, to the satisfaction of the Development Services Director.
18. Prior to final inspection or certificate of occupancy, all exterior and parking area lighting shall be directed downward or shielded, to prevent glare or spray of light into any adjacent properties, to the satisfaction of the Development Services Director.
19. All PG&E transformers, phone company boxes, Fire Department connections, backflow preventers, irrigation controllers, and other on-site utilities, shall be vaulted or screened from view from any public right-of-way, behind structures or landscaping, to the satisfaction of the Development Services Director.
20. Prior to the issuance of a building permit, the Developer shall submit detailed trash and recycling enclosure plans which include the following, to the satisfaction of the Development Services Director: the walls shall be of masonry construction, at least eight feet in height, include solid metal doors, a solid roof, and an interior perimeter concrete curb. The enclosures shall include exterior color and material compatible with adjacent or nearby building exteriors of the project.
21. Prior to the issuance of a building permit, the developer shall design a recycling program consistent with State Assembly Bill 341, to the satisfaction of the Public Works Director. The program shall include or have access to enclosures with adequate space for both refuse and recycling and shall be incorporated with the trash and recycling enclosures. Each enclosure shall have signs that clearly indicate refuse and recycling locations as well as prohibition of scavenging. The program shall include recycling options or elements at the pool area and other common areas for the residents.
22. The developer shall be required to pay all applicable City impact fees, including park fees. No fee credit shall be given for the developer private parks and facilities within

the Tracy Village Development.

C. Finance Department Conditions of Approval

1. Prior to recording the Final Map, the applicant shall do one of the following, subject to the approval of the Finance Director:

a. CFD or other funding mechanism. The applicant shall enter into an agreement with the City, which shall be recorded against the property, which stipulates that prior to the issuance of the first building permit, the applicant will form a Community Facilities District (CFD) or establish another lawful funding mechanism that is reasonably acceptable to the City for funding the on-going operational costs of providing Police services, Public Works services and other City services to serve the Project area. Formation of the CFD shall include, but not be limited to, affirmative votes and the recordation of a Notice of Special Tax Lien. Upon successful formation, the parcels will be subject to the maximum special tax rates as outlined in the Rate and Method of Apportionment.

Or

b. Direct funding. The applicant shall enter into an agreement with the City, which shall be recorded against the property, which stipulates that prior to the issuance of the first building permit, the applicant will fund a fiscal impact study to be conducted and approved by the City to determine the long term on-going operational costs of providing Police services, Public Works services and other City services to serve the Project area, and deposit with the City an amount necessary, as reasonably determined by the City, to fund the full costs in perpetuity as identified by the approved study.

If the provisions for adequate funding of the on-going operational costs of providing Police services, Public Works services and other City services are met prior to issuance of the first building permit for the project, subject to the Finance Director's review and approval, the terms of this condition shall be considered to have been met and this condition shall become null and void.

D. Building Division Conditions of Approval

1. The developer shall demonstrate that the proposed residential buildings are designed and constructed in conformance with all applicable City and State Regulations to the satisfaction of the Chief Building Official, including but not limited to CalGreen Building Standards and Title 24-11A accessibility standards.
2. The developer shall demonstrate that all improvements, in-tract and offsite, required to serve the Project Site described by the final map and Vesting Tentative Subdivision Map

are in accordance with the City Regulations. The Improvement Plans shall specifically include all the requirements specified below.

- a. The Improvement Plans shall consist of the Grading and Storm Drainage Plans, Irrigation and Landscaping Plans, Composite / Joint Utility Plans, In-tract Civil and Utility Plans, Street Lighting Plans, Sewer Plans, Water Distribution Plans, Fire Hydrant distribution Plans, Signing and Striping Plans, Masonry Wall Plans, and Storm Water Plans, Curb, Sidewalk, Gutter, Fire Department EVA road and additional associated features, Road profiles and construction details, Handicap Accessibility Plans and construction details in accordance with City of Tracy Standards and Regulations.
  - b. Improvement plans shall also include Lake Construction plans to include but not limited to retaining walls, all applicable distribution features, piping, pumps, out-fall structures, inlets and connection to City storm water.
  - c. All supporting engineering calculations, soils reports, material and technical specifications, and reports related to the design of the subdivision improvements, and as required by the City Engineer shall be provided. The engineering calculations shall include calculations for determining the size and capacity of sewer, water and storm drainage facilities.
3. No Temporary or Final Building Certificate of Occupancy will be issued by the City (excluding model homes) until after the Subdivider provides reasonable documentation which demonstrates, to the satisfaction of the City Engineer, that the Subdivider has completed construction of all required public facilities for the building for which a certificate of occupancy is requested and all the improvements required in these Conditions of Approval.
  4. All gates are to be accessible by the Fire Department in the case of an emergency, by means such as a Knox box, Knox padlock, Opticon sensors or other means to the satisfaction of the Fire Chief and Chief Building Official.
  5. All hydrants, FDCs and DDCVs shall be provided with a minimum of three feet of clearance at all times. Therefore, landscaping shall be designed so that no adjacent plants can grow into and obscure these pieces of equipment.

#### E. Engineering Division Conditions of Approval

##### E.1. General Conditions

The Subdivider shall comply with the applicable requirements of the approved documents, technical analyses/ reports prepared for the Project listed as follows:

- a) "Tracy Village Traffic Impact Impact Analysis", prepared by Kimley-Horn Associates, dated March 14, 2018, and Memorandum titled "Tracy-Village – Tentative Map Review" prepared by Kimley-Horn Associates, dated February 12, 2018 and any subsequent amendments and updates (Collectively "Traffic Report").

b) "Tracy Village Water Distribution System Hydraulic Network Analysis", prepared by West Yost Associates, dated February 16, 2018, and any subsequent amendments and updates. ("Water Report")

c) Technical Memorandum by Storm Water Consulting, Inc., dated January 8, 2018, and any subsequent amendments and updates. ("Storm Drainage Report").

## E.2. Grading Permit

The Subdivider shall submit all relevant documents related to grading permit required by the applicable City Regulations and these Conditions of Approval, to the satisfaction of the City Engineer, including, but not limited to, the following:

E.2.1. Grading and Drainage Plans prepared on a 24" x 36" size polyester film (mylar). Grading and Drainage Plans shall be prepared under the supervision of, and stamped and signed by a Registered Civil Engineer.

a) The Subdivider shall obtain all applicable signatures by City departments and outside agencies (where applicable) on the mylars including signatures by Building Official and Fire Code Official prior to submitting the mylars to Engineering Division for City Engineer's approval.

b) Prior to the issuance of Grading Permit for the Project, Subdivider shall submit improvement plans and secure approval of plans from the City's Building Division, for the design of on-site sewer improvements and the Project's sewer connection.

E.2.2. Payment of the applicable Grading Permit fees which include grading plan checking and inspection fees, and other applicable fees as required by these Conditions of Approval.

E.2.3. Two (2) copies of the Project's Geo-technical /Soils Report prepared by Geo-technical Engineer.

E.2.4. Copy of recorded slope easements or construction/grading easements on adjacent properties (if applicable).

E.2.5. Three (3) sets of the Storm Water Pollution Prevention Plan (SWPPP) for the Project with a copy of the Notice of Intent (NOI) submitted to the State Water Quality Control Board (SWQCB) and any relevant documentation or written approvals from the SWQCB, including the Wastewater Discharge Identification Number (WDID#).

a. After the completion of the Project, the Subdivider is responsible for filing the Notice of Termination (NOT) required by SWQCB. The Subdivider shall provide the City with a copy of the completed Notice of Termination.

b. The cost of preparing the SWPPP, NOI and NOT, including the filing fee of the NOI and NOT, shall be paid by the Subdivider.

c. The Subdivider shall comply with all the requirements of the SWPPP and applicable Best Management Practices (BMPs) and the applicable provisions of the City's Storm Water

Management Program.

E.2.6. Two (2) sets of the Project's Geotechnical Report signed and stamped by a licensed Geotechnical Engineer licensed to practice in the State of California.

a. The technical report must include relevant information related to soil types and characteristics, soil bearing capacity, pavement design recommendations, and elevation of the highest observed groundwater level.

E.2.7. A copy of the Approved Fugitive Dust and Emissions Control Plan that meets San Joaquin Valley Air Pollution Control District (SJVAPCD) as required in Mitigation Measure AQ-1 of the Mitigation Monitoring and Reporting Program of the Environmental Impact Report (EIR).

E.2.8. A copy of the approved Air Impact Assessment (AIA) with an Indirect Source Review (ISR) from San Joaquin Valley Air Pollution Control District (SJVAPCD).

E.2.9. Two (2) sets of Hydrologic and Storm Drainage Calculations for the design of the on-site storm drainage system and for determining the size of the project's storm drainage connection, as required in Conditions E.4.2.d and E.4.3.k, below.

E.3. Encroachment Permit – Subdivider shall submit all relevant documents related to encroachment permit required by the applicable City Regulations and these Conditions of Approval, to the satisfaction of the City Engineer, including, but not limited to, the following:

E.3.1. Improvement Plans prepared on a 24" x 36" size 4-mil thick polyester film (mylar), if necessary that incorporate all the requirements described in these Conditions of Approval. Improvement Plans shall be prepared under the supervision of, and stamped and signed by a Registered Civil, Traffic, Electrical, Mechanical Engineer, and Registered Landscape Architect for the relevant work.

a. The Subdivider shall obtain all applicable signatures by City departments and outside agencies (where applicable) on the mylars including signatures by Building Official and Fire Code Official prior to submitting the mylars to Engineering Division for City Engineer's approval.

E.3.2. Signed and stamped Engineer's Estimate that summarizes the cost of constructing all the public improvements shown on the Improvement Plans.

E.3.3. Traffic Control Plan shall be prepared under the supervision of, signed and stamped by a Registered Civil Engineer or Traffic Engineer licensed in the State of California, as required in Condition E.4, below.

E.3.4. Tracy's Fire Official's signature on the Improvement Plans indicating their approval for the fire service connection and fire and emergency vehicle access for the Project.

E.3.5. Signed and notarized Offsite Improvement Agreement (OIA) and Improvement Security, to guarantee completion of the identified public improvements that are necessary to serve the Project as required by these Conditions of Approval. The form and amount of Improvement Security shall be in accordance with Section 12.36.080 of the Tracy Municipal Code (TMC), and the OIA. The Subdivider's obligations in the OIA shall be deemed to be satisfied upon City Council's acceptance of the public improvements and release of the Improvement Security.

E.3.6. Check payment for the applicable of engineering review fees which include plan checking, permit and agreement processing, testing, construction inspection, and other applicable fees as required by these Conditions of Approval. The engineering review fees will be calculated based on the fee rate adopted by the City Council on May 17, 2016, per Resolution 2016-094.

E.4. Improvement Plans - Improvement Plans shall contain the design, construction details and specifications of public improvements and all subdivision improvements that are required to serve the Project. The Improvement Plans shall be drawn on a 24" x 36" size 4-mil thick polyester film (mylar) and shall be prepared under the supervision of, and stamped and signed by a Registered Civil, Traffic, Electrical, Mechanical Engineer, and Registered Landscape Architect for the relevant work. The Improvement Plans shall be completed to comply with City Regulations, these Conditions of Approval, and the following requirements:

E.4.1. The Improvement Plans including the Grading and Drainage Plans prepared in accordance with the City's Subdivision Ordinance and Design Standards. The improvement plans for all improvements (onsite and off-site) required to serve the Project in accordance with the City Design Documents, and these Conditions of Approval.

a. The Improvement Plans shall be prepared in mylar with the standard title and signature block.

b. The Subdivider shall obtain all applicable signatures by City departments and outside agencies (where applicable) on the mylar including signatures by the Chief Building Official and Fire Code Official or Fire Safety Officer, prior to submitting the mylars to Engineering Division for City Engineer's approval.

E.4.2. The improvement plans shall be prepared to specifically include, but not be limited to, the following items:

a. All existing and proposed utilities such as domestic water line, irrigation service, fire service line, storm drain, and sanitary sewer, including the size and location of the pipes.

b. All supporting engineering calculations, materials information or technical specifications, cost estimate, and technical reports.

c. Two (2) copies of the Project's Geotechnical /Soils Report, prepared or signed and stamped by a Geotechnical Engineer.

d. The Project's on-site drainage connections to City's storm drainage system and on-site storm water treatment as approved by the City Engineer. Improvement Plans to be submitted with the hydrology and storm drainage calculations for the sizing of the on-site storm drainage system.

e. Three (3) sets of the Project's Storm Water Pollution Prevention Plan (SWPPP), Best Management Practices (BMPs) and a copy of the Notice of Intent (NOI) with the State-issued Wastewater Discharge Identification number (WDID#).

#### E.4.3. Grading and Storm Drainage Plans

##### Site Grading

- a. Include all proposed erosion control methods and construction details to be employed and specify materials to be used.
- b. All grading work shall be performed and completed in accordance with the recommendation(s) of the Project's Geotechnical Engineer. A copy of the Project's Geotechnical Report must be submitted with the Grading and Storm Drainage Plans.
- c. Site grading shall be designed such that the Project's storm water can gravity drain directly to an existing storm drain system with adequate capacity to drain storm water from the Project Site in the event that the on-site storm drainage system fails or is clogged. The storm drainage release point is recommended to be at least 0.70 foot lower than the building finish floor elevation and shall be improved to the satisfaction of the City Engineer.
- d. When the grade differential between the Project Site and adjacent property(s) exceeds 12 inches, a reinforced or masonry block, or engineered retaining wall is required for retaining soil. The Grading Plan shall show construction detail(s) of the retaining wall or masonry wall. The entire retaining wall and footing shall be constructed within the Project Site. A structural calculation shall be submitted with the Grading and Storm Drainage Plans.
- e. An engineered fill between the Project site and adjacent properties may be accepted as a substitute of a retaining wall, if the grade differential is less than 2 feet and subject to approval by the City Engineer. The Grading and Storm Drainage Plans must show the extent of the slope easement(s). The Subdivider shall be responsible for obtaining permission from owner(s) of the adjacent and affected property(s). The slope easement must be recorded, prior to the issuance of the final building certificate of occupancy.

##### Storm Drainage

- f. The Subdivider shall design and install the Project's storm drainage connection(s) to the City's storm drain facilities per the City of Tracy Citywide Stormwater Master Plan and the "Storm Drainage Study" and as required by the City Engineer.
- g. The Subdivider shall submit design calculations and obtain approval of improvement plans for the off-site storm drain line to connect to existing channel at Sycamore Parkway. The Subdivider shall execute Offsite Improvement Agreement prior to beginning of work. The Subdivider will be required to overlay half street section on Valpico Road along the full length of the storm drain line after completion of installation of the storm drain line.
- h. All on-site SD facilities, lakes, channels and associated facilities including the proposed connection(s) to the City's public drainage facilities, shall be owned and maintained by the HOA.
- i. The Subdivider shall provide a Stormwater Quality Control Plan (SWQCP) detailing the methods in which the development will address compliance with the applicable City's Multi-Agency Post-Construction Stormwater Standards Manual (Manual).

The proposed stormwater treatment within the lake system will be subject review and approval by the City. Prior to the issuance of the grading permit for the project, the SWQCP shall be approved by the City Engineer.

j. Prior to the final inspection of the first building to be constructed on the Property, the Subdivider shall submit a signed and notarized Stormwater Treatment Facilities Maintenance Agreement (STFMA) as a guarantee for the performance of Subdivider's responsibility towards the repair and maintenance of on-site storm water treatment facilities. Calculations related to the design and sizing of on-site storm water treatment facilities must be submitted with the STFMA and the Grading and Storm Drainage Plans.

#### E.4.4. Sanitary Sewer Facilities

a. The Subdivider shall design and install sanitary sewer facilities including the Project's sewer connection in accordance with City Regulations and utility improvement plans approved by the City Engineer.

b. The Subdivider shall build and dedicate, to the satisfaction of the City Engineer, public sewer mains, manholes and associated improvements required to serve the entire subdivision. All public infrastructure shall be located in the private subdivision roadways. The Subdivider shall provide easements, to the satisfaction of the City Engineer, across the entire road plus 5 feet on either side as measured from the back of curb. Repair and maintenance of all sewer lines outside of easements which includes (but it not limited to) laterals and appurtenances shall be a private maintenance obligation either from the fronting property owner, HOA, or another City approved maintenance entity.

c. In the event the permanent sewer main in Corral Hollow Road and downstream improvements required to provide permanent capacity for the Project have not been constructed (by others) at the time of request for first building permit within the Project, the Subdivider shall complete the design and install master plan facilities within Corral Hollow Road from the Project to Node 4W-1 as shown in Figure 5-1 of Tracy Wastewater Master Plan.

d. Interim capacity in the existing sewer main north of Node 4W-1 may be temporarily available and the Project may be permitted to utilize existing capacity in the system north of Node 4W-1 subject to verification of availability of capacity in the existing facilities by completion of a technical analysis by City's Consultant ("Interim Sewer Capacity Analysis"). The cost of the Interim Sewer Capacity Analysis shall be funded by the Subdivider, and shall be completed prior to issuance of first building permit. If the Interim Sewer Capacity Analysis indicates that there is no capacity available for the Project, the Subdivider shall design and construct master plan facilities to provide additional capacity per the Wastewater Master Plan.

e. The Subdivider shall design and install wastewater services to existing homes on the north side of Valpico Road as part of the Offsite Improvements. The subdivider will be eligible for fee credits for the cost of installation of the water services.

f. In order to facilitate installation of wastewater service connections to existing homes fronting Corral Hollow Road as part of City's CIP project, a funding requirement in the amount

of \$100,000 has been identified. The Subdivider shall pay to the City the amount specified above within 30 days from written request from the City Engineer. City will identify funding source for reimbursement of the amount to the Subdivider, and enter into a Reimbursement Agreement prior to payment by the Subdivider.

g. The Subdivider is hereby notified that the City has limited wastewater treatment capacity in the City's Wastewater Treatment Plant until current and future expansion capital improvement projects are completed and operational. As of January 2017, the City had an unused capacity of approximately 1851 EDU's within its wastewater treatment plant available to new development within the City on a first come-first served basis. These EDU's are currently available to serve the proposed project, but as other development projects within the City come forward and building permits are issued, this remaining capacity will be reduced.

#### E.4.5. Water Distribution System

a. Water line sizing, layout and looping requirements for this Project shall comply with recommendations of the analysis by the City's Water Consultant.

b. If development of the Project is phased (e.g., the north part of the Project is developed as Phase 1 and the south part of the Project is developed as Phase 2), both connections to the City's existing potable water system (at Valpico Road and at Middlefield Drive), should be constructed with the first phase of development to provide for water supply redundancy and ensure adequate fire flow availability under all phases of Project development.

c. All water connections that are bigger than 2 inches in diameter shall be Ductile Iron Pipe (DIP).

d. During the construction of the Project, the Subdivider is responsible for providing water infrastructure (temporary or permanent) capable of delivering adequate fire flows and pressure appropriate to the various stages of construction and as approved by the City of Tracy Fire Code Official.

e. All costs associated with the installation of the Project's permanent water connection(s) as identified in the Water Study including the cost of removing and replacing asphalt concrete pavement, pavement marking and striping such as crosswalk lines and lane line markings, replacing traffic detecting loops, conduits, and wires, relocating existing utilities that may be in conflict with the water connection(s), and other improvements shall be paid by the Subdivider.

f. Subdivider shall obtain an account for the water service to the Project and register the water meter with the Finance Department. Subdivider shall prepare and submit a map depicting the location of the water meter(s) to Finance Department.

g. If water main shut down is necessary, the City will allow a maximum of 4-hour water supply shutdown. The Subdivider shall be responsible for notifying residents or business owner(s), regarding the water main shutdown. The written notice, as approved by the City Engineer, shall be delivered to the affected residents or business owner(s) at least 72 hours before the water main shutdown. Prior to starting the work described in this section, the Subdivider shall submit a Water Shutdown Plan and Traffic Control Plan to be used during the

installation of the offsite water mains.

h. The Subdivider shall design and install domestic water service connections, including remote-read water meter (the water meter to be located within City's easement) in accordance with City Regulations.

i. The Subdivider shall build and dedicate, to the satisfaction of the City Engineer, public water mains, valves, fittings, fire hydrants and associated improvements required to serve the entire subdivision. All public infrastructure shall be located in the private subdivision roadways. The Subdivider shall provide easements, to the satisfaction of the City Engineer, across the entire road plus 5 feet on either side as measured from the back of curb to maintain the valves, fitting, fire hydrants and other associated improvements. Repair and maintenance of all water lines outside of easements which includes (but it not limited to) laterals, meters and appurtenances shall be a private maintenance obligation either from the fronting property owner, HOA, or another City approved maintenance entity.

j. The Subdivider shall design and install fire hydrants at the locations approved by the City's Fire Safety Officer and Chief Building Official. Prior to the approval of the Improvement Plans, the Subdivider shall obtain written approval from the City's Fire Safety Officer and Chief Building Official, for the design, location and construction details of the fire service connection to the Project, and for the location and spacing of fire hydrants that are to be installed to serve the Project.

k. The Subdivider shall design and install water services to existing homes on the north side of Valpico Road as part of the Offsite Improvements. The Subdivider will be eligible for fee credits for the cost of installation of the water services.

l. In order to facilitate installation of water service connections to existing homes fronting Corral Hollow Road as part of City's CIP project, a funding requirement in the amount of \$100,000 has been identified. The Subdivider shall pay to the City the amount specified above within 30 days from written request from the City Engineer. City will identify funding source for reimbursement of the amount to the Subdivider, and enter into a Reimbursement Agreement prior to payment by the Subdivider.

m. Recycled Water

On-site Recycled Water is proposed to fill and maintain the water levels in the proposed project's lakes. On-site and off-site recycled water lines shall be designed per City Standards and applicable Regulations. The Subdivider shall install Recycled Water main in Valpico Road with construction of required roadway improvements on Valpico Road.

City will be installing Recycled Water facilities from the Wastewater Treatment Plant upto the intersection of Lammers Road and Old Schulte Road. Prior to final inspection of 150th home excluding model homes, the Subdivider shall complete installation of Recycled Water facilities from the Project to the intersection of Lammers Road and Old Schulte Road to connect to Recycled Water line, if City's project has installed the Recycled Water Mains from the WWTP upto this junction.

If City's Recycled Water facilities are not completed, or are partially completed prior to final inspection of 150th home excluding model homes, the Subdivider shall construct needed facilities to extend Recycled Water facilities to connect the Project to Recycled Water lines. If no Recycled Water facilities are available to connect, the Subdivider shall demonstrate that City's domestic water supplies and water network are adequate to provide water to the Project and lakes. In such event, City's consultant will prepare a report with recommendations for any improvements to the City's water system or other means of addressing the additional demand on City's domestic water system. The Subdivider shall be responsible for costs of full compliance with the recommendations.

If the Subdivider installs Recycled Water Facilities that are funded by the Development Impact Fees or other sources, the Subdivider will be eligible to request fee credits and/or reimbursements pursuant to Tracy Municipal Code.

#### E.4.6. Utility Easements

- a. Utilities within private streets shall be located within utility easements dedicated to the City, and shall be subject to review and approval by the City Engineer. Proposed Maintenance access roads or curb cuts shall be reviewed and approved by the City Engineer.
- b. The Subdivider shall coordinate with local service providers and dedicate necessary Public Utility Easements (PUE) along the Project's frontage on Valpico Road and within the Project for Joint Trench Utilities to serve the Project.

#### E.4.7 Street Improvements:

- a) Right of Way on Valpico Road Per the Citywide Roadway & Transportation Master Plan (CRTMP) that was adopted by the City Council on November 26, 2012, pursuant to Resolution 2012-240, Valpico Road will be a 4-lane major arterial street with a minimum right-of-way of 99 feet. The street section proposed consists of 102' wide right-of-way.

The Subdivider shall dedicate 47 feet right-of-way from the existing right-of-way line of Valpico Road towards the Property along the entire frontage of the Property on Valpico Road, for the construction of Valpico Road Frontage Improvements. The Subdivider shall dedicate the right-of-way on Final Map, or execute a Grant Deed to convey the land in fee title and submit legal description and plat map that describes the area to be dedicated, prior to the issuance of the Grading Permit. The cost of preparing the legal description and plat map will be the sole responsibility of the Subdivider.

Subdivider shall acquire right-of-way required on the north side of Valpico Road (County parcels) to install the roadway and sidewalk improvements including undergrounding of overhead utilities. City may assist Subdivider in acquisition of the right-of-way. Cost of acquisition of right-of-way shall be reimbursable to the Subdivider from the program fees as determined by the City Engineer.

Subdivider will be eligible to request fee credits and/or reimbursements for the cost of right-of-way in excess of Subdivider's obligation as defined in Traffic Master Plan and pursuant to Tracy Municipal Code requirements.

The City will assume responsibility to maintain the public improvements and accept the offer of dedication for right-of-way on Valpico Road after the City Council accepts the public improvements.

b) Frontage Improvements on Valpico Road – The Subdivider shall design and construct all roadway improvements on Valpico Road that are necessary to provide safe and functional access(s) to the Project for each phase and at Project's build-out condition, as described by the Traffic Report, and as required by the Conditions of Approval.

(i) The Frontage Improvements involve the widening of the south side of Valpico Road along the frontage of the Project and pavement transitions on both sides on Valpico Road and other improvements which include but not limited to, the installation of new asphalt concrete pavement, concrete curb, gutter, sidewalk, Class I bike lane, handicap ramp(s), crosswalk, bus shelter with turnout and associated improvements, parkway landscaping improvements with automatic irrigation system, storm drainage, catch basin/ drop inlet, fire hydrant, domestic, irrigation and fire services, street lights traffic sign(s), pavement marking and striping along the entire frontage on Valpico Road, and other improvements such as barricades, signing, and striping that are necessary to provide a safe transition to and from existing roadway section of Valpico Road (Frontage Improvements).

(ii) The roadway improvements shall also include the installation of a traffic signal at the Main Entry Street at Valpico Road. The intersection improvements will include but not limited to, traffic detection loops, pull boxes, conduits and wires, audible pedestrian warning, electronic sign, crosswalk, pavement legends and markings, lane markings, traffic signs, and other improvements as determined by the City Engineer that are deemed to be necessary to have a safe and functional traffic signal. The traffic signal is not included in funded improvements in City's fee program, and hence costs of design, acquisition of right-of-way (if required) and installation of the traffic signal is not eligible for fee credits or reimbursements.

(iii) The sidewalk along the frontage of the project shall be extended east of the Project boundary to connect to the existing sidewalk. Cost of acquiring right-of-way or easements and installation of the sidewalk shall be the responsibility of the Subdivider.

(iv) Subdivider shall design and install improvements on Valpico Road west of the Project to provide safe transitions to existing improvements. Subdivider shall acquire needed right-of-way on both sides of Valpico Road. Scope of roadway improvements shall be as determined by the City Engineer during the review of the improvement plans for the Project.

(v) Subdivider will be eligible to request fee credits and/or reimbursements for the cost of design and construction of improvements on Valpico Road that are in excess of Subdivider's obligation as defined in Traffic Master Plan and pursuant to Tracy Municipal Code requirements.

(vi) The Subdivider may request formation of a benefit district for recovering cost of right-of-way and construction of improvements beyond the Subdivider's frontage responsibility and not included in City's fee program. The City will collect administrative fee, formation cost, and program management fees for forming, administering, and managing the benefit district. The Subdivider is responsible for submitting all documents such as materials receipts, payroll,

equipment rental and others to show actual construction cost or expenses incurred or to support claim for reimbursement.

(vii) Improvement plans to be prepared for Valpico Road improvements shall include transition paving, widening, striping and signage, modification or removal of the existing guard rail (if required) to the east of the Project to conform to existing 4-lane street section in compliance with applicable standards to ensure safe transition for eastbound and westbound traffic on Valpico Road. The improvement plans shall also include transition paving, widening, striping and signage, modification or removal of the existing private improvements, relocation of existing overhead utility poles (if required) to the west of the Project to conform to existing street section in compliance with applicable standards to ensure safe transition for eastbound and westbound traffic on Valpico Road. The improvements shall be as approved by the City Engineer.

(viii) City has approved improvement plans to construct improvements on Corral Hollow Road to widen the street section to 4-lane configuration. The improvements on Valpico Road to be installed with the Project shall match the improvements per the approved improvement plans for Corral Hollow Road Improvements project at the intersection of Corral Hollow Road and Valpico Road. If the improvements at the intersection of Corral Hollow Road and Valpico Road are completed by the City at the time of construction of Valpico Road improvements by the Subdivider, the Subdivider shall design and construct improvements on Valpico Road to match the intersection improvements.

(ix) The construction details and specifications of bus turnout and bus shelter on Valpico Road shall be submitted for City's review at the time of review of Offsite Improvement Plans. The cost of the bus shelters and turnout and associated improvements are to be paid by the Subdivider without any reimbursement from the City.

(x) The Subdivider shall dedicate an easement for maintenance of traffic signal loops within Entry Street 1 on the Final Map, or execute a Grant Of Easement to the City, and submit legal description and plat map that describes the easement area.

(xi) Any travel lane(s) or left-turn and right-turn lane(s) and traffic signal at Entry Street 1 are considered to be site specific offsite improvements and they are Subdivider's responsibility to design and construct without any fee credits or reimbursements.

(xii) Prior to the issuance of a Building Permit for the project, the Subdivider shall dedicate a Public Utility Easement (PUE) along the full frontage of the Project on Valpico Road.

(xiii) CMU wall that is proposed to be constructed along the frontage of the project shall be located behind the right-of-way on Valpico Road. Maintenance of the wall, monument and decorative pavement at Entry Street 1 shall be the responsibility of the HOA.

c. Roadway Improvements on North side of Valpico Road- The Subdivider shall design and construct all roadway improvements on north side Valpico Road per the Valpico Road Typical section shown on the Tentative Map and City Standards.

(i) Improvement plans to be prepared for Valpico Road improvements shall include

improvements required to construct 4-lane arterial section with 5' wide Class II bike lane, curb and gutter, 5' wide sidewalk and improvements behind the sidewalk within the 3' setback to the right-of-way on the north side of Valpico Road. The improvement plans shall also include modification or removal of the existing private improvements as required to construct improvements and undergrounding of existing overhead utility poles in compliance with applicable standards. The improvement plans shall show modifications of driveways, landscape, fences, walls, mailboxes and other structures that may be impacted with the construction of the improvements.

The Subdivider shall coordinate modifications with property owners to minimize impacts to the parcels. City may require preparation of detailed exhibits for each of the parcels to provide necessary information to the owners.

d. All roadway improvements described in these Conditions of Approval must be designed and constructed by the Subdivider to meet the applicable requirements of the latest edition of the California Department of Transportation Highway Design Manual (HDM) and the California Manual of Uniform Traffic Control Devices (MUTCD), all applicable City Regulations, and these Conditions of Approval.

The Subdivider may complete the construction of improvements on Valpico Road in two phases:

First phase consisting of design and construction of Frontage Improvements on the south side of Valpico Road, four traffic lanes (two lanes for eastbound and two lanes for westbound traffic) with interim asphalt curb on the north side of Valpico Road, and installation of the traffic signal shall be completed by the Subdivider prior to issuance of 100th building permit within the Property.

Second phase consisting of removal of interim improvements, undergrounding of overhead utilities and sidewalk on the northside of Valpico Road shall be completed by the Subdivider prior to issuance of 200th building permit within the Property.

e. The Subdivider shall be responsible for any repairs or reconstruction of street pavement, curb, gutter and sidewalk and other public improvements on Valpico Road, if determined by the City Engineer to be in poor condition or damaged by construction activities related to the Project.

f. If the Subdivider completes the construction of roadway improvements on Valpico Road as described in these Conditions of Approval that are beyond the frontage responsibility of the Project, the Subdivider may be entitled to fee credits and/or reimbursement for the program portion of the roadway improvements on Valpico Road in accordance with the OIA and Title 13 of the Tracy Municipal Code. The amount of fee credit and/or reimbursement shall be determined during the review of improvement plans.

#### E.4.8. Project Access and Traffic Circulation

a. Design and construction of all streets and Entry Street 1 and 2 shall comply with the findings of the Traffic Analysis by Kimley-Horn Associates, and applicable City Standards.

b. The Subdivider shall construct complete street improvements for the Private internal streets and alleys as generally shown in the Tentative Map Tract No. 3917. Subdivider shall comply with the requirements of Fire Department and Public Works Department for access and design of structural pavement for Maintenance Access roads and Fire Lane access Roads within the Development. Improvement Plans shall be submitted to Engineering Division for review and approval by the City Engineer.

i) Private Streets and alleys will be maintained by the HOA.

ii) The Subdivider shall prepare a Signing and Striping Plan for the on-site private streets and alleys. The Signing and Striping Plan shall include all stop bars, stop legends, stop signs, right-turn or left turn arrows, centerline stripes, traffic control signage, etc. as necessary for internal traffic circulation.

iii) Striping and signage for on-street parking on the internal private streets and for designated parking lots for resident, guest, employees, and visitor parking shall comply with City's standards for Off Street Parking.

iv) The Subdivider shall submit detailed plans for Parcel L, Pedestrian Access to Corral Hollow Road. The improvements proposed within Parcel L shall be submitted for review and approval by City Engineer, Public Works Director and Police Chief.

#### E.4.9. Irrigation and Landscaping Plans

a. All parkway landscaping improvements along the frontage of the Property on Valpico Road shall be designed and constructed in accordance with City Regulations and completed as part of the Valpico Road Frontage Improvements. Design and construction details of these improvements shall be included in the Irrigation and Landscaping Plans. Parkway landscaping shall be maintained by the HOA as part of the Long-Term Maintenance Agreement between the City and Subdivider or HOA. The parkway landscape planting and irrigation system shall be separate from the onsite landscaping plan, including a separate irrigation meter, irrigation main(s), and irrigation controller(s). Parkway landscape improvements shall conform to City standards.

b. The Subdivider shall design and install public and private improvements, including street trees, monument signs, decorative fences and walls, and other improvements at locations that shall meet requirements related to horizontal sight distance.

#### E.4.10. Undergrounding of Overhead Existing Overhead Utilities

a. The Subdivider shall design and underground existing utilities on the north side of Valpico Road across from the Project as part of the Frontage Improvements. The Subdivider shall coordinate design and installation of underground utilities with the utility companies and the property owners. Undergrounding of services to the existing homes shall be completed with the undergrounding. City will provide assistance in seeking cooperation of the property owners in undergrounding of services to homes. The Subdivider shall acquire easements if required to install the underground utilities. If the Subdivider is unable to acquire the necessary easements, City may extend its power of eminent domain subject approval of the City Council.

b. Pursuant to Tracy Municipal Code, Subdivider is responsible for 50% of the cost of undergrounding of overhead utilities on the north side of Valpico Road. City may reimburse the Subdivider for costs in excess of Subdivider's obligation towards the cost of undergrounding subject to availability of funds. At the time of approval of this Development Application, City has not identified funding sources for reimbursement. City will continue its evaluation of funding sources including Rule 20-A funding.

c. The Subdivider has requested the City to explore the option of the City performing the undergrounding of utilities using Rule 20A funding; with the developer providing 50% of the requisite funding of such undergrounding. The City will make its best efforts to perform the undergrounding under Rule 20A funding. If the City is not successful in obtaining funding and/or approvals under Rule 20A in sufficient time to allow for completion of undergrounding of utilities as required in Condition E.4.7(d) above, the Subdivider shall complete the undergrounding of utilities as required per these Conditions of Approval.

#### E.4.11. Offsite Improvement Agreement

a. Prior to starting any work on Valpico Road Frontage Improvements, the Subdivider shall sign an improvement agreement (Offsite Improvement Agreement or OIA) and post improvement security in accordance with Section 12.36.080 of the TMC, to guarantee completion of the public improvements. The OIA requires approval from the City Council.

#### E.4.12. Traffic Impact Mitigations

a. All Applicable traffic impact mitigations identified in the Environmental Impact Report shall be complied with.

E.4.13. Traffic Control Plan - Prior to starting the work, the Subdivider shall submit a Traffic Control Plan, to show the method and type of construction signs to be used for regulating traffic at the work areas within these streets. The Traffic Control Plan shall be prepared by a Civil Engineer or Traffic Engineer licensed to practice in the State of California.

E.4.14. Joint Utility Trench Plans – The Subdivider shall prepare joint trench plans in compliance with utility companies' requirements and City regulations, and obtain approval of the plans. All private utility services to serve Project, including electric, telephone and cable TV to the building must be installed underground, and to be installed at the location approved by the respective owner(s) of the utilities.

a. The Subdivider shall submit Joint Utility Trench Plans for the installation of electric, gas, telephone and TV cable main and service lines that are necessary to be installed to serve the Project. These utilities shall be installed within the Public Utility Easement (PUE) that will be offered for dedication to the City. The Subdivider shall coordinate, as feasible, with the respective owner(s) of the utilities for the design of these underground utilities to ensure they can be installed within the PUE to the extent feasible (and except in the event, that additional space beyond the PUE is required, as determined by the utilities owner(s)).

b. The Subdivider shall verify with the respective utility owner(s) if they will allow the

installation of private landscaping within the public utility easement. Subdivider shall provide the utilities' owner(s) written notification and receive permission to construct the improvements, prior to the approval of the building permit.

E.5. Building Permit - No building permit will be approved by the City until the Subdivider demonstrates, to the satisfaction of the City Engineer, compliance with all required Conditions of Approval, including, but not limited to, the following:

E.5.1. Payment of the Master Plan Fees for Citywide Roadway and Traffic, Water, Recycled Water, Wastewater, Storm Drainage, Public Safety, Public Facilities, and Park adopted by the City Council on January 7, 2014, per Resolution 2014-010.

E.5.2. Payment of the San Joaquin County Facilities Fees as required in Chapter 13.24 of the TMC, and these Conditions of Approval.

E.5.3. Payment of the Agricultural Conversion or Mitigation Fee as required in Chapter 13.28 of the TMC, and these Conditions of Approval.

E.5.4. Payment of the Regional Transportation Impact Fees (RTIF) as required in Chapter 13.32 of the TMC, and these Conditions of Approval.

E.6. Acceptance of Public Improvements - Public improvements will not be accepted by the City Council until after the Subdivider completes construction of the relevant public improvements, and also demonstrates to the City Engineer satisfactory completion of the following:

E.6.1. Correction of all items listed in the deficiency report prepared by the assigned Engineering Inspector relating to public improvements subject to City Council's acceptance.

E.6.2. Certified "As-Built" Improvement Plans (or Record Drawings). Upon completion of the construction by the Subdivider, the City shall temporarily release the originals of the Improvement Plans to the Subdivider so that the Subdivider will be able to document revisions to show the "As Built" configuration of all improvements.

E.6.3. Reasonable written permission from irrigation district or affected owner(s), if applicable, as required in Condition E.10.3, below. The cost of relocating and/or removing irrigation facilities and/or tile drains is the sole responsibility of the Subdivider.

E.7. Temporary or Final Building Certificate of Occupancy or Final Building Inspection - No Temporary or Final Building Certificate of Occupancy will be issued by the City until after the Subdivider provides reasonable documentation which demonstrates, to the satisfaction of the City Engineer, that:

E.7.1. The Subdivider has satisfied all applicable requirements set forth in Condition E.6, above.

E.7.2. The Subdivider has completed construction of all required public facilities for the building for which a certificate of occupancy is requested and all the improvements required in these

Conditions of Approval. Unless specifically provided in these Conditions of Approval, or some other applicable City Regulations, the Subdivider shall use diligent and good faith efforts in taking all actions necessary to construct all public facilities required to serve the Project, and the Subdivider shall bear all costs related to construction of the public facilities (including all costs of design, construction, construction management, plan check, inspection, land acquisition, program implementation, and contingency).

E.7.3. Unless dedicated on the Final Map, signed and notarized Grant Deed with the legal description and plat map that describes the area to be dedicated to the City, for the construction of Valpico Road Improvements.

E.7.4. Unless dedicated on the Final Map, signed and notarized Grant of Public Access Easements, Emergency Vehicle Access Easements, and Utility Easements with legal description and plat maps as applicable.

E.8. Improvement Security – The Subdivider shall provide improvement security for all public facilities, as required by the OIA and these Conditions of Approval. The form of the improvement security may be a surety bond, letter of credit or other form in accordance with section 12.36.080 of the TMC. The amount of improvement security shall be as follows:

E.8.1. Faithful Performance (100% of the estimated cost of constructing the public facilities),

E.8.2. Labor & Materials (100% of the estimated cost of constructing the public facilities), and

E.8.3. Warranty (10% of the estimated cost of constructing the public facilities)

E.9. Release of Improvement Security - Improvement Security(s) described herein shall be released to the Subdivider after City Council's acceptance of public improvements, and after the Subdivider demonstrates, to the satisfaction of the City Engineer, compliance of these Conditions of Approval, and completion of the following:

E.9.1. Improvement Security for Faithful Performance, Labor & Materials, and Warranty shall be released to the Subdivider in accordance with Section 12.36.080 of the TMC.

E.9.2. Written request from the Subdivider and a copy of the recorded Notice of Completion.

E.10. Special Conditions

E.10.1. All streets and utilities improvements within City's right-of-way shall be designed and constructed in accordance with City Regulations, and City's Design documents including the City's Facilities Master Plan for storm drainage, roadway, wastewater and water adopted by the City, or as otherwise specifically approved by the City.

E.10.2. All existing on-site wells, if any, shall be abandoned or removed in accordance with the City and San Joaquin County requirements. The Subdivider shall be responsible for all costs associated with the abandonment or removal of the existing well(s) including the cost of permit(s) and inspection. The Subdivider shall submit a copy of written approval(s) or permit(s) obtained from San Joaquin County regarding the removal and abandonment of any existing

well(s), prior to the issuance of the Grading Permit.

E.10.3. The Subdivider shall abandon or remove all existing irrigation structures, channels and pipes, if any, as directed by the City after coordination with the irrigation district, if the facilities are no longer required for irrigation purposes. If irrigation facilities including tile drains, if any, are required to remain to serve existing adjacent agricultural uses, the Subdivider will design, coordinate and construct required modifications to the facilities to the satisfaction of the affected agency and the City. Written permission from irrigation district or affected owner(s) will be required to be submitted to the City prior to the issuance of the Grading Permit. The cost of relocating and/or removing irrigation facilities and/or tile drains is the sole responsibility of the Subdivider.

E.10.4. Nothing contained herein shall be construed to permit any violation of relevant ordinances and regulations of the City of Tracy, or another public agency having jurisdiction. This Condition of Approval does not preclude the City from requiring pertinent revisions and additional requirements to the Grading Permit, Encroachment Permit, Building Permit, Improvement Plans, and OIA, if the City Engineer finds it necessary due to public health and safety reasons, and it is in the best interest of the City. The Subdivider shall bear all the cost for the inclusion, design, and implementations of such additions and requirements, without reimbursement or any payment from the City.

#### F. Fire Department Conditions of Approval

1. Prior to occupancy of any structures, monitored NFPA 13-R automatic sprinkler and smoke alarm systems must be installed.
2. Trees planted along fire apparatus access roads or alleys shall be maintained/pruned to provide the minimum 13.5 feet of clear vertical height or the variety provided shall be the type which will not naturally encroach into this right-of-way for emergency vehicle access.
3. Any cul-de-sac bulb that cannot accommodate fire truck turning with on-street parking shall be striped and signed "no parking" to the satisfaction of the Fire Chief.
4. All alleys shall be signed and striped "no parking" to ensure a 20-foot clear travel way at all times for emergency vehicle access.

#### G. Public Works Conditions of Approval

1. The City requires that the Tracy Village Development project homeowners association (HOA) provide for maintenance of all landscape areas within the project boundaries, and shall join a Community Facilities district (CFD) for landscape maintenance adjacent to the project within the City's right-of-way along both Corral Hollow and Valpico Roads. While required to join the CFD, it will be kept in a "dormant" status for the private streets landscape maintenance and only activated if the HOA does not provide for maintenance as needed. Landscape maintenance on each privately owned lot will be the responsibility of the individual homeowners.
2. Landscaping shall be provided consistent with standard details of the City Master Plans.

3. The developer shall coordinate with the City's trash collector (currently Tracy Delta disposal) to allow for access through the entry gates, and shall either plan for manual collection on the alley-loaded lots, or ensure that the toters are located for pick-up by the trucks on the right hand side only.

**CITY OF TRACY**  
**DEFERRED IMPROVEMENT AGREEMENT**  
**TRACY VILLAGE TRACT 3917**  
**EXHIBIT "C"**  
**Page 1 of 7**

I. Work: Time for Commencement and Performance

The work described in this Exhibit "C" (hereinafter "Deferred Improvements") shall be completed within the timelines as specified in this Exhibit "C" of this Deferred Agreement. The City shall have no obligation to construct or complete the Deferred Improvements.

II. Description of Work

A. Recycled Water Main

Prior to final inspection of the 150<sup>th</sup> home (excluding model homes), the Subdivider shall complete installation of Recycled Water facilities from the Project to the intersection of Lammers Road and Old Schulte Road to connect the City's Recycled Water facilities.

If the City's Recycled Water facilities are not completed or are partially completed prior to final inspection of the 150<sup>th</sup> home (excluding model homes) Subdivider shall construct needed facilities to extend Recycled Water facilities to connect the project to Recycled Water lines.

B. Lammers Road/ Valpico Road Intersection

Per Mitigation Measure MMTrans-3, and as outlined in the Technical Memorandum titled "Tracy Intersection Fair Share Calculations – Tracy Village dated December 7, 2020 ("Fair Share Calculations") the Subdivider has a shared responsibility towards the interim improvements at the intersection of Lammers Road and Valpico Road ("Intersection Improvements").

If at the time of issuance of building permit for 1<sup>st</sup> home (excluding model homes) the Intersection Improvements are constructed by others, or if an Offsite Improvement Agreement with security has been executed by others to complete the improvements, the Subdivider shall pay its fair share cost to the City (to be reimbursed to the party that constructs the improvements) at the time of issuance of first building permit.

If the Intersection Improvements are not constructed by others prior to issuance of building permit for 150<sup>th</sup> home (excluding model homes), the Subdivider shall execute an Offsite improvement Agreement with security and shall commence construction prior to issuance of building permit for 150<sup>th</sup> home (excluding model homes). The Subdivider will be eligible to receive reimbursement of costs (beyond its fair share costs of the Intersection Improvements) from the payments collected by the City from other benefiting properties identified in the Fair Share Calculations.

**CITY OF TRACY  
DEFERRED IMPROVEMENT AGREEMENT  
TRACY VILLAGE TRACT 3917**

**EXHIBIT "C"  
Page 2 of 2**

C. Valpico Road Frontage Improvements

As required in the Conditions of Approval, the First Phase of Frontage Improvements on the south side of Valpico Road, and installation of the traffic signal shall be completed by the Subdivider prior to issuance of 100th building permit within the Property.

Construction of improvements within the second phase consisting of removal of interim improvements and installation of sidewalk on the northside of Valpico Road shall commence within six months from the date of completion of undergrounding of overhead utilities by PG&E.

D. Valpico Road Improvements at Zambetti Parcels (APNs 244-030-03 and 244-030-04)

Construction of Valpico Road improvements on the frontage of Zambetti parcels (APNs 244-030-03 and 244-030-04) as shown on the Improvement Plans titled Valpico Road Improvements – Tracy Village ("Valpico Road Plans") shall be completed the later of 1) within 180 days from the date of acquisition of the required right-of-way on Zambetti parcels, or 2) subject to availability of right-of-way, these improvements shall be completed on the date the remainder of Valpico Road improvements shown on Valpico Road Plans are completed.

If the required right-of-way is not acquired prior to issuance of 500th building permit, the Subdivider shall deposit with the City the estimated cost of improvements as approved by City Engineer. The estimated cost shall be sufficient for the City to acquire the right-of-way and complete such improvements as determined by the City Engineer. Upon payment of the deposit, the Subdivider shall no longer be required to acquire and improve the frontage of Zambetti parcels.

RESOLUTION 2021-\_\_\_\_\_

APPROVING THE DEFERRED IMPROVEMENT AGREEMENT FOR TRACY VILLAGE TRACT 3917, AND AUTHORIZING THE CITY CLERK TO FILE THE DEFERRED IMPROVEMENT AGREEMENT WITH THE SAN JOAQUIN COUNTY RECORDER

WHEREAS, A Vesting Tentative Map for Tracy Village Tract 3917, with 590 single-family detached residential homes on 135.2 acres located on the south side of Valpico Road and east of Corral Hollow Road was approved by Tracy City Council on May 15, 2018, pursuant to Resolution No. 2018-087, and

WHEREAS, The Developer is required to construct certain improvements in accordance with their Conditions of Approval, and

WHEREAS, The improvements to be deferred to a future date are outlined in the Deferred Improvement Agreement and include installation of recycled water facilities from the project to the intersection of Lammers Road and Old Schulte Road to connect the city's recycled water facilities, shared responsibility towards the interim improvements at the intersection of Lammers Road and Valpico Road ("Intersection Improvements"), construction of improvements within the second phase consisting of installation of sidewalk on the north side of Valpico Road, and

WHEREAS, The Subdivider will pay for the cost of inspection and processing the agreement;

NOW, THEREFORE, BE IT RESOLVED, That the City Council of the City of Tracy hereby approves the Deferred Improvement Agreement between the City and Toll Brothers West, Inc., a Delaware corporation, and authorizes the City Clerk to record the Deferred Improvement Agreement with the San Joaquin County Recorder.

\*\*\*\*\*

The foregoing Resolution 2021-\_\_\_\_\_ was adopted by the Tracy City Council on the 7<sup>th</sup> day of September 2021 by the following vote:

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

\_\_\_\_\_  
MAYOR

ATTEST:

\_\_\_\_\_  
CITY CLERK

AGENDA ITEM 1.D

REQUEST

**APPROVE AMENDMENT NO. 1 TO THE GENERAL SERVICES AGREEMENT BETWEEN THE CITY OF TRACY AND INTELLISITE FOR SERVICES INVOLVING PROVIDING REMOTE SURVEILLANCE UNITS, VIDEO SURVEILLANCE AND MONITORING IN CITY PARKS, INCREASING THE NOT TO EXCEED ANNUAL AMOUNT BY \$150,307 FOR A TOTAL NOT TO EXCEED ANNUAL AMOUNT OF \$250,000 AND EXTENDING THE TERM TO FIVE (5) YEARS**

EXECUTIVE SUMMARY

The City of Tracy and IntelliSite entered into a General Services Agreement (Agreement) to provide services involving providing remote surveillance units, video surveillance and monitoring for various city parks that was approved on September 8, 2020. This item requests that Council approve an amendment to the Agreement in order to increase the annual not-to-exceed amount by \$150,307 to provide flexibility to make on-demand decisions related to park safety as needed and extend the term to five years, along with other minor changes.

DISCUSSION

On September 8, 2020 the City of Tracy launched a new Park Camera Program (Program) to enhance safety and security of community and neighborhood parks. Park safety and security has become a growing topic of discussion in the City of Tracy, and in response, the City Council approved funding for a General Services Agreement with IntelliSite to provide remote surveillance units, video surveillance, and monitoring in City parks within the Fiscal Year 2020-2021 budget.

The Program currently includes the following parks: Clyde Bland Park, Dr. Power's Park, El Pescadero Park, Legacy Fields Sports Complex, Lincoln Park, and Veteran's Park. Staff has been working with IntelliSite over the past year to enhance safety at each of these locations with targeted surveillance and site-specific parameters. Multiple departments including Parks and Recreation, Public Works, and the Police Department have been seeing the positive effects of the enhance level of surveillance at each of these locations.

Significant staff time has gone into coordinating installation of required equipment, establishing site-specific parameters for monitoring and building a new dashboard for staff to view and download footage. Furthermore, the installation requirements for these cameras are fairly simple and can be done expeditiously which creates an on-demand security solution for parks and other facilities within the City. Staff is asking that the annual not-to-exceed amount is increased by \$150,307 for a total annual not-to-exceed amount of \$250,000 and the term of the agreement is extended an additional five (5) years. This will allow staff to build off the first year of work and have the flexibility in the contract to meet other security needs in our parks. The amendment to this agreement also includes a "free rent agreement" for a billing credit due to the City acquiring certain software and/or services and has agreed to forego use of those assets in lieu of Contractor's software. This contractor and product may also be considered for security needs at the future Temporary Emergency Housing Facility planned on Arbor Avenue.

### FISCAL IMPACT

There is sufficient budget to cover the contract this year, future budgets will be adjusted as needed based on expansion of the camera program.

### STRATEGIC PLAN

This agenda item supports the City of Tracy's Public Safety Strategic Priority, and specifically implements the following goals:

Goal 3: Continue to strengthen community safety through crime prevention reduction activities

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

### RECOMMENDATION

Staff recommends that City Council approve by resolution Amendment No. 1 to the General Services Agreement with IntelliSite, for services involving providing remote surveillance units, video surveillance and monitoring in City parks.

Prepared by: Richard Joaquin, Parks Planning & Development Manager

Reviewed by: Brian MacDonald, Director of Parks and Recreation  
Sekou Millington, Chief of Police  
Karin Schnaider, Director of Finance

Approved by: Bob Adams, Interim City Manager

### ATTACHMENTS:

Attachment A – Amendment No. 1 to General Services Agreement with IntelliSite, LLC

**CITY OF TRACY**  
**AMENDMENT NO. 1 TO**  
*General Services Agreement with IntelliSite LLC.*

This Amendment No. 1 (**Amendment**) to the *General Services Agreement* is entered into between the City of Tracy, a municipal corporation (**City**), and *IntelliSite LLC* (**Contractor**). City and Contractor are referred to individually as "**Party**" and collectively as "**Parties**."

**Recitals**

- A.** The City and Contractor entered into a *General Services Agreement* (**Agreement**) for Contractor to provide services involving remote surveillance units, video surveillance and monitoring for various City parks, which was executed on September 8, 2020 pursuant to Ordinance No. 1289 and adopted by the Tracy City Council on May 19, 2020.
- B.** The City desires to include security cameras installed at Legacy Fields Sports Complex, which was done as a separate capital improvement project.
- C.** The Parties desire to codify a "Free Rent Agreement" for a billing credit due to the City acquiring certain software and/or services and has agreed to forego use of those assets in lieu of Contractor's software.

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

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

**2. Terms of Amendment.**

**A. Section 2, Scope of Work**

Section 2 is hereby amended to read as follows: "Contractor shall perform the services described in Exhibit "B-1" attached and incorporated by reference. The services shall be performed by, or under the direct supervision of, Contractor's Authorized Representative: Sarah Sevier. Contractor shall not replace its Authorized Representative, nor shall Contractor use or replace any subcontractors or subconsultants, without City's prior written consent. A failure to obtain the City's prior written consent for any change or replacement in personnel or subcontractor may result in the termination of this Agreement.

**B. Section 3, Time of Performance**

Subsection 3.1 of Section 3 is hereby amended to read as follows: "The term of this Agreement shall begin on September 8, 2021 for a five (5) year term, unless terminated in accordance with Section 6."

**C. Section 4, Compensation**

Section 4 is hereby amended to read as follows: “City shall pay Contractor on a lump sum basis, at the monthly rate set forth in Exhibit “C-1,” attached and incorporated by reference for services performed under this agreement.

Subsection 4.1 of Section 4 is hereby amended to read as follows: “Contractor’s total compensation under this Agreement shall not exceed \$175,000 annually. Contractor’s billing rates shall cover all costs and expenses for Contractor’s performance of this Agreement. No work shall be performed by Contractor in excess of the total compensation amount provided in this section without the City’s prior written approval.

Subsection 4.4 Free Rent Agreement is attached as “Exhibit D-1” and incorporated by reference codifying an upfront billing credit of \$20,000 to the City from Contractor.

- D. Exhibit “B-1” “Master Subscription Agreement” attached hereto shall replace and supersede Exhibit “B” attached to the Agreement.
- E. Exhibit “C-1” “Quote #000369” attached hereto shall replace and supersede Exhibit “B” attached to the Agreement.
- F. Exhibit “D-1” “Free Rent Agreement” attached hereto shall be incorporated by reference codifying an upfront billing credit of \$20,000 to the City from Contractor.

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

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

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

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

City of Tracy

*IntelliSite LLC.*

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

By:   
\_\_\_\_\_ *Ken Mills, IntelliSite LLC*  
CEO

Title: Mayor

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

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

Date: 8-30-2021

Attest:

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

By: Steve Martin  
Steve Martin, IntelliSite LLC

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

Date: 8/30/2021 \_\_\_\_\_

Approved as to form

By: \_\_\_\_\_  
Leticia Ramirez, City Attorney

**MASTER SUBSCRIPTION AGREEMENT****EXHIBIT "B-1"**

This Master Subscription Agreement (the "Agreement"), by and between IntelliSite LLC, a California limited liability company having its principal place of business at 3463 Lakemont Blvd, Ft Mill, SC 29708 ("IntelliSite") and the Customer identified below ("Customer"), is dated as of the date of latest signature shown on City of Tracy Amendment #1 to GSA Agreement with IntelliSite LLC (the "Effective Date"). This Agreement is governed by and subject to the IntelliSite Terms and Conditions (the "Ts and Cs," located at: <https://scaas.intellisite.io/compliance-tc.html>) and the IntelliSite End User License Agreement (the "EULA," located at: <https://scaas.intellisite.io/compliance-eula.html>), which are incorporated herein by reference. Capitalized terms used but not defined herein shall have the meaning set forth in the Terms and Conditions. IntelliSite and Customer are each referred to herein as a "Party", and together, the "Parties."

**RECITALS**

This agreement sets forth the terms under which IntelliSite will provide a subscription to Customer to access and use certain IntelliSite-owned hardware and software for a defined duration following the Effective Date.

THEREFORE, in consideration of the mutual promises set forth herein, the Parties agree as follows:

**1. Definitions.**

"Documentation" shall mean all manuals, user documentation, technical information and other related materials, or portions thereof, pertaining to the Software or Hardware furnished to Customer by IntelliSite in connection with this Agreement.

"Hardware" shall mean IntelliSite-owned equipment and devices furnished to Customer by IntelliSite pursuant to the terms of this Agreement, for use in Customer's network, facility, or other applications.

"Pricing Sheet" shall be the attached Schedule 3, which details the Products and pricing available to Customer from IntelliSite under an SOW. IntelliSite may change the Pricing Sheet from time to time upon notice to the Customer, but no such change shall affect any SOW in place as of such update.

"Software" shall mean IntelliSite's suite of software products, applications, features, and associated documentation furnished by IntelliSite to Customer for use pursuant to the terms of this Agreement, and exclusively in connection with hardware, equipment and devices supplied by IntelliSite or one of its certified agents or resellers.

"SOW" shall mean a Statement of Work issued by IntelliSite in connection with this Agreement, which may be executed by the Parties from time to time during the Term.

"Support Services" shall mean services provided by IntelliSite's to promote the continued function and operation of Hardware and Software during and in connection with this Agreement, as more fully defined in the attached Schedule 2 or an SOW issued pursuant to this Agreement.

## **2. Subscription; Grant of Rights.**

IntelliSite agrees to furnish to Customer access to the Hardware and Software set forth on one or more SOW's, including the attached Schedule 1 (together, the "Products"), pursuant to a five-year subscription, starting as of the Effective Date of each SOW and ending as of the fifth anniversary thereof (the "Initial Term"). As of the end of the Initial Term, each SOW is Agreement shall renew bi-annually for successive two-year terms, unless a Party delivers written notice of non-renewal not less than 60 days (about 2 months) prior to the expiration of the then-current term (each a "Renewal Term" and together with the Initial Term, the "Term"). This subscription includes a limited, non-transferrable license to use the Products, subject to the EULA, which license shall immediately terminate upon the expiration or any termination hereof.

For the avoidance of doubt, (i) all SOWs shall remain subject in all respects to the terms and provisions of this Agreement; (ii) the Term of each SOW shall be based on the effective date of such SOW, and (iii) this Agreement shall survive until the expiration or termination of any SOW issued in connection herewith.

## **3. Subscription Fee.**

As consideration for IntelliSite's agreement hereto, Customer agrees to pay the Subscription Fee as defined and set forth in each SOW.

## **4. Support Services.**

During the Term, IntelliSite agrees to provide Support Services to Customer in connection with the Products, as defined and pursuant to the terms set forth in the attached Schedule 2, and as further defined by any SOW. In the event Customer desires that IntelliSite provide functions or services excess of those set forth on Schedule 2 and/or an SOW, additional charges will apply.

## **5. Limited Warranty.**

During the Term, IntelliSite warrants that the Products shall be in working order, be free from material defects and will substantially conform in all material respects with the user documentation (user manual, release notes, etc.). In the event of a Product failure, upon receipt of notice from the Customer, IntelliSite shall, at its election and within the time periods defined in Schedule 2, either replace or repair the Products, either: (1) use its reasonable commercial efforts to repair any material defect in the Products or (2) replace the Products to comply with the user documentation.

The warranty described herein does not extend to failure caused by Customer's installation, mishandling, misuse, or damage to the Products. Except as specifically set forth in this Agreement the EULA and Ts and Cs, IntelliSite expressly excludes all other warranties express or implied, including any warranty of merchantability or fitness for any particular purpose. IntelliSite in no way warrants or guarantees that the Customer's purpose in using the Products will be achieved, including without limitation, as they may relate to public safety, or prevention of loss or damage to persons or property.

## **6. Title to Products; Return; Damage.**

At all times during and after the Term, the Products shall remain the sole and exclusive property of IntelliSite, and Customer's right to possess and operate the Products shall be limited as set forth herein. Upon acceptance of Products, Customer agrees to use best efforts to cover rental property under its property insurance for risk of loss, damage, theft, or destruction of the Products and assumes risk of loss from misuse, fault or negligence by Customer. IntelliSite warrants risk of loss from negligence in project design or workmanship by IntelliSite. Should damage not be covered by Customer's insurance, IntelliSite agrees to replace one time, which may

include adjustments in design to limit future damage. Upon the expiration or any termination of this Agreement, Customer agrees to promptly return the Products to IntelliSite's address set forth above. In the event the Products are not returned within 15 days following the end of the Term, or are damaged or destroyed while in Customer's possession, Customer shall pay the Replacement Cost set forth on the applicable SOW for each such Product.

#### **7. Termination.**

Unless otherwise provided in an SOW, the subscription created by this Agreement shall be non-cancellable and may not be terminated by either party during the Term, except in the case of a material breach by the other party, which remains uncured more than 30 days following receipt of written notice from the non-breaching party. Upon any termination of this Agreement by IntelliSite, the full Subscription Fee for the remainder of the Term, along with all other amounts then due and owing by the Customer, shall accelerate and become immediately due and payable.

#### **8. Insurance.**

IntelliSite agrees to maintain insurance policies to insure against loss arising from General Liability, Automobile Liability and Worker's Compensation. IntelliSite agrees that the limits of each policy shall not be less than \$1,000,000 per occurrence, and the Customer shall be named as additional insured of such policies.

#### **9. Indemnity.**

Each party (i) hereby agrees to supply adequate insurance to secure the risks underlying the Products and the scope of the SOW, indemnify, defend and hold the other party harmless and (ii) agrees to indemnify and hold the other party harmless against any third-party acts or claims to the extent arising out of or resulting from a party's negligent acts or omissions.

#### **10. Notices.**

Any notice to a Party pursuant to this Agreement shall be deemed delivered upon the earlier of a) the receiving Party's acknowledgment of receipt; or b) the third business day after delivery via a tracked delivery method. Notices to IntelliSite shall be sent to the address set forth above. Notices to the Customer shall be delivered to the address set forth below.

#### **11. Miscellaneous.**

- a. No assignment or transfer of this Agreement by Customer shall be valid without IntelliSite's written consent.
- b. This Agreement shall be interpreted under the laws of the state of Delaware, and any proceeding to enforce or interpret this Agreement shall be brought before a court of competent jurisdiction in Charlotte, North Carolina.
- c. Publicity. Customer acknowledges and consents to IntelliSite's use of Customer name and non-economic details of the Products for promotional and training purposes. To Opt-out of this provision, check box:
- d. Third-Party Services: IntelliSite does not self-perform any installation or security alarm monitoring services. To the extent such components are included in the Products subject to this Agreement, they will be performed by licensed and insured third parties, and IntelliSite's role shall be limited to project management of such scopes.

- e. IntelliSite shall not be liable for failures or shortfalls of performance that are due to the occurrence of a force majeure event.

This Agreement, its schedules and SOWs, together with the EULA and Ts and Cs, contain the entire understanding and agreement between the parties respecting the subject matter hereof. This Agreement may not be modified or amended except by written agreement of the Parties. All captions and headings in this Agreement are for purposes of convenience only and shall not affect the Construction or interpretation of any of its provisions. Any waiver by either party of any default or breach hereunder shall not constitute a waiver of any provision of this Agreement or of any subsequent default or breach of the same or a different kind.

## SCHEDULE 1

### SUBSCRIPTION STATEMENT OF WORK

#### Statement of Work The City of Tracy, CA – Parks and Recreation Department

IntelliSite's Smart Community as a Service (SCaaS) brings immediate value to local communities across the country as an affordable monthly subscription. Delivered through City of Tracy powered by IntelliSite as a cloud-based solution. IntelliSite SCaaS addresses the needs of today's communities with the latest state-of-the-art safety and security monitoring solutions.

IntelliSite's SCaaS solution helps communities efficiently and cost-effectively manage safety and security with the intent to reduce crime rates and deliver data enablement. IntelliSite offers a complete video management solution featuring AI-based edge analytics, LPR, sensors, video recording, LED lighting, and loudspeakers. IntelliSite provides remote and interactive access to video footage via fiber or LTE/cellular networks.

IntelliSite is with you every step of the way. IntelliSite will help you plan, design, implement and operate your IoT, Safety and Security, and Computer Vision deployments.

IntelliSite offers a turnkey solution paired with best-in-class program with; backend platform to deliver services, enable customer support and bill the county clients. Support with development of joint marketing materials and development of a sales website for the county.

- 1. Effective Date.**            **September 8, 2021**
- 2. Master Subscription Agreement.**    This Statement of Work ("**SOW**") is made subject to and will be governed by the terms and conditions of the Master Subscription Agreement (the "**Agreement**") between IntelliSite and Customer. All capitalized terms not otherwise defined herein shall have the meanings given to them in the Agreement. Capitalized terms have the definitions given to them in the Agreement. In addition, as used throughout this SOW, the following terms will have the meanings set forth.
- 3. Purpose.**            This SOW establishes the Products and Services to be furnished by IntelliSite to Customer, and the deliverables to be delivered by IntelliSite under this SOW as described below (the "**Deliverables**"), and consistent with any Customer-supplied project plan, if applicable and attached to this SOW as an exhibit (the "**Project Plan**"). In the event of a conflict between the terms and conditions of the Agreement and this SOW, the provisions of this SOW will prevail, but only with respect to Services and Deliverables provided under this SOW.

**4. Acceptance of Quote.** Customer hereby accepts all terms of the IntelliSite quote attached hereto as Exhibit 1 (the “Quote”).

**5. Engagement/Purpose.** For purposes of this SOW, Customer requires the work and services of IntelliSite specifically for the following: SCaaS Platform for Parks and Recreation Department, The City of Tracy, California

**6. Product and Subscription Details/Fees.** The Customer hereby subscribes for the following Products in the quantities and at the Subscription Fees set forth below. Unless otherwise defined below, all subscriptions set forth herein shall be for a term of five years from the Effective Date of this SOW.

No.	Products	Start Date	MSRP	Subscription Fee
1	IOT-UIGAI-2CAS-R: Universal IoT Gateway - 2-Camera Bundle	TBD	\$824.00	\$510.88
2	IOT-UIGAI-3CAS-R: Universal IoT Gateway - 3-Camera Bundle	TBD	\$927.00	\$574.74
3	IOT-UIGAI-4CAS-R: Universal IoT Gateway - 4-Camera Bundle	9/8/21	\$1030.00	\$645.00
5	IOT-UIG-OSFI-R-UF: One-Time UIG Field Install (price per UIG)	9/8/21	\$3,000.00	\$1,250.00
6	IOT-UIG-K2M SCaaS Self-Service Kiosk Workstation (2 HD Monitors + High Power CPU)	TBD	\$650.00	\$403.00
7	FSN-UNLTD4GLTE-US FirstNet mobile UNL Aircards/MiFi 4G LTE	9/8/21	\$132.00	\$60.00

Attachments may be added to this SOW to further detail the Deliverables, Services, pertinent specifications, requirements, rules and Timelines so long as all such attachments are approved and acknowledged by authorized representatives of both Customer and IntelliSite in writing.

**7. Inspections, Approval and Acceptance.** The services and Deliverables to be provided by IntelliSite will meet all requirements, specifications and instructions set out in this SOW and the Agreement (the “Specifications”) unless specifically waived or amended in writing by Customer. Customer may inspect the services and Deliverables at any time for compliance with the specifications. If Customer determines that the services and Deliverables meet all applicable Specifications, then such Services and Deliverables will be deemed accepted by Customer upon written notice to IntelliSite.

**8. Installation Services.** [This section applicable only if installation services are included in SOW] Installation and other services shall be supplied by IntelliSite through the use of third-party contracts, and shall be performed pursuant to the Project Plan, if applicable. Unless otherwise agreed and detailed in this SOW, Customer agrees to deliver the installation site in clean and suitable condition for IntelliSite to perform the work without additional site preparation, including availability of suitable power supply and a detailed site plan depicting power locations and other relevant details for installation.

**9. IntelliSite’s Responsibilities.**

A. Materials. Unless otherwise specifically set out in this SOW, IntelliSite will furnish (directly or through third parties or subcontractors) at its cost and expense all labor, equipment, materials, travel, supervision, training and all other items necessary to provide the services and Deliverables under the scope of this SOW.

B. Conduct. For this Engagement, IntelliSite will perform its obligations under this SOW in a good and workmanlike manner and to the reasonable satisfaction of Customer. IntelliSite will provide the Services in accordance with applicable laws, regulations and ordinances, and the Agreement. IntelliSite will use Customer-approved tools and methodologies only.

C. Timely Completion. Subject to Customer requirements of Section 8 above, IntelliSite will use best efforts to complete all installation and related services within 30 days of execution of this SOW.

**10. Customer Responsibilities.** Customer will provide IntelliSite with access to all site(s) and Customer property necessary to complete this SOW, as well as Customer’s dedicated representative (“**Customer Representative**”) set forth below:

Customer Representative: Richard Joaquin

Other Customer personnel: Kurt Tavares

**11. IntelliSite Representative Requirements and Qualifications.**

A. Representatives. The IntelliSite Engagement Manager for this Engagement is set forth below. In addition, IntelliSite key personnel performing work or services for the Engagement are identified below by name and title (“**IntelliSite Representatives**”). IntelliSite will notify Customer in writing of changes in the identity of the IntelliSite Engagement Manager and of any IntelliSite Representatives working on this Engagement.

IntelliSite Representative Name	Job Title
Eva Thomas	RSD
JP Kenney	Chief Revenue Officer
Sarah Sevier	Account Manager

B. Qualifications. IntelliSite Engagement Manager and all IntelliSite Representatives (collectively, “**IntelliSite Personnel**”) will be fully trained prior to commencement of work under this SOW. All training costs will be borne by IntelliSite.

**13. Reporting Requirements.** IntelliSite will provide periodic progress reports to Customer Representative or as otherwise instructed by Customer. Any such reports shall contain reasonable detail about status, site conditions, pending information requests, open change requests and target delivery date(s).

**14. Changes.** Any change or modification in the scope, type, quality or requirements of the Deliverables and Services, Engagement Fees, or any other aspect of this SOW, will be by SOW Amendment, signed by Customer and IntelliSite.

**15. Confidentiality.** Except as set forth in the Agreement, the terms of this SOW are deemed Confidential Information. Each Party will keep this SOW and its terms confidential in accordance with the Agreement.

**16. Connectivity.** Hardware provided by IntelliSite includes necessary components to obtain connectivity for units. IntelliSite’s proposal includes provision of SIM, broadband, support and related services (“Connectivity Services”). Customer acknowledges that if IntelliSite’s inclusion of Connectivity Services is waived:

- a) Customer assumes all costs and obligations related to such services, including provision of SIM, subscription and payment of broadband services and any support for connectivity related outages
- b) Additional installation fees may apply if SIM’s are not provided by Customer prior to equipment installation,
- c) IntelliSite is not responsible for any operational or service failures of monitoring or remote support due to loss of Customer provided Connectivity Services.

## SCHEDULE 2

### DESCRIPTION OF SERVICES INCLUDED

#### SERVICE OVERALL DESCRIPTION

Provide a remote monitoring solution for the CCTV security related hardware. These services will be provided to The City of Tracy, California. IntelliSite will provide a complete Health Monitoring service that is designed to help proactively monitor and maintain the performance of the IntelliSite hardware such as Universal IoT Gateway (UIG) and HD Video Security Cameras. IntelliCare™ features an easy-to-use dashboard with event warnings that enable remote diagnosis of server and camera status. Our team will be able to check the health of your UIG network system without having to deploy a technician in the field. We will be able to assess health notifications prior to arriving on site for repairs, saving valuable time and resources while ensuring minimum system downtime.

#### General Maintenance Plan Tasks

- Customer Support from our support engineers. Availability of our Technicians is 24/7.
- All work carried out remotely (for configuration management), the Service engineer will also note down any deficiencies in the system and recommend work required to maintain, full, trouble-free operation.
- A secure web address to access historical support ticket information and details of specific repairs that have been completed.
- Check system logs and verify continuous up-time.
- Carry out remote inspection of all major components: UIG®, Security Cameras, Accessories, and other IoT hardware devices that are part of the CCTV network.
- Verify video recording capabilities and hard drive recording capacity
- Ensure cameras are connected and configured for maximum and optimal coverage.
- Verify camera angles are appropriate for each site, and lens zooming is in accordance with the camera specifications and field of view requirements.
- Check operation of auto-iris and infrared filter switch (IR filter)
- Check condition of Pan / Tilt / Zoom (PTZ) unit, adjusting position of end stops and presets where applicable.
- Check operation of infrared illuminator units
- Check loud speaker functionality and proper functioning (using self-test of audio horn)

## IntelliCare™ Security Service

With our IntelliCare™ Security Service, the overall intent is to provide a comprehensive integrated security solution designed to assist in the overall betterment of the security at the customer site.

Through the use of High-End Video Analytics and Loudspeakers deployed at strategic locations, our IntelliCare™ security agents are able to react to alarms, engage any suspicious individuals found onsite, contact law enforcement if required, and overall provide a great sense of security at the customer location.

The foundation of the IntelliCare™ Security Service is our ability to make live, real-time verifications of alarms, to help diffuse identified situations before they escalate out of control. 96% of the time when we make an announcement, we do not have to call police or security to assist in the situation. Another very important attribute of the IntelliCare™ Security Service is the artificial intelligence also known as video analytics.

This technology combines automated event detection based on rules we define. The result is the most proactive, comprehensive IP video surveillance solution to keep your organization and its most important assets safe.

When a situation or event is identified, an IntelliSite® agent will then follow the Account protocols as created by the customer (i.e. call security, building management, or the police, send e-mail, fax, or text information such as the incident report or video clips). All events and patrols are documented and recorded and will be distributed on a daily, weekly, or monthly basis according to your protocols.

## REPAIR OF EQUIPMENT

IntelliSite agrees that it will, subject to the terms, conditions, and limitations hereof and provided through the maintenance agreement, provide repair service notifications to the City of Tracy, in order to ensure proper up-time of the CCTV system and minimize the risk of lack of video recording when an incident occurs. All efforts will be made to take advantage of any hardware manufacturer's warranties as appropriate. IntelliSite will also be responsible for all repairs and maintenance of the UIG systems, Cameras and other accessories provided as part of the solution.

## SCHEDULE 2

### GENERAL SUPPORT SERVICES

1. Basic Support: Upon customer request, IntelliSite will provide remote, dial-in support and diagnostic services for the Products to promote functionality.
2. Active Support: IntelliSite to provide periodic monitoring services to monitor status and functionality, with support notifications.

Exclusions: Support Services does not include on-site technician service, except in the case of a specific warranty claim that may be rendered by a third party. On site services available at additional fees.

### SCHEDULE 3

#### SERVICE LEVEL AGREEMENT

This Agreement includes IntelliSite’s standard service level of support, which include the following:

- Guaranteed Response Time** - All Service Requests related to this agreement warrant first response, evaluation, and/or attempted resolution via Phone and/or Remote Troubleshooting conducted by IntelliSite authorized support personnel within (4) business hours.
- Remote Support Service** - IntelliSite will provide unlimited hours of remote support service relating to IntelliSite’s Cloud or Software Components that are currently under subscription and current on payments. If issues are deemed not related to the software such as underlying hardware or network issues, support services will be suspended until underlying issues not covered by IntelliSite are remedied. All initial evaluation and remediation for Software and Hardware covered by a Warranty or Support Subscription will be done remotely within the Guaranteed Response Time prior to any onsite service being ordered. Onsite Service is only available if IntelliSite is contracted to provide such services and customer is current on payments. If required Onsite Service is not covered under contract or customer is not current on payments, client may request such services on a time & materials basis paid in advance. Any onsite troubleshooting or repair effort response up to and including product replacement will be scheduled for the first available appointment considering availability of replacement parts and resources. IntelliSite reserves the right to replace all or part of the equipment in lieu of repairs.
- Availability** - IntelliSite guarantees 99.9% uptime for IntelliSite’s Cloud Platform. Availability means that the Cloud Platform will be available for access. Availability does not mean that the solution will be 100% functional as factors outside of IntelliSite’s control may cause varied levels of functionality such as power outages, Internet Provider Outages, Public Cloud Outages, DNS Outages, Emergency Security Maintenance Windows, etc. All of these are deemed outside of IntelliSite’s control and are not subject to the standard availability guarantee.

#### IntelliSite Cloud Platform SLA (not On-Premises)

Priority	Business Impact Examples	SLA: First Response
(P1) Widespread Outage	Enterprise-wide outage, Significant Impact to business	45 Min. (24/7)
(P2) Widespread Degradation	Enterprise-wide service degraded, moderate impact to business	1 Hr. (24/7)
(P3) Local Outage	Departmental/ Group Outage with significant impact to multiple users	2.5 Hrs. (24/7)
(P4) Local Degradation	Departmental/Group service degraded, moderate impact to multiple users	2.5 Hrs. (24/7)
(P5) Isolated Outage	Single User/Limited outage, significant impact to a single user	4 Hrs. (Business Hours)
(P6) Isolated Degradation	Single User/Limited service degraded, moderate impact to a single user	4 Hrs. (Business Hours)

## IntelliSite On-Premises Cloud Platform SLA

*Note: All Support is Remote unless Contracted Separately. All Supported Systems must have an Active Support Contract, be running IntelliSite RMM Toolset and be up to date on Payments.*

Priority	Business Impact Examples	SLA: First Response
(P1) Widespread Outage	Enterprise-wide outage, Significant Impact to business	2 Hrs. (24/7)
(P2) Widespread Degradation	Enterprise-wide service degraded, moderate impact to business	3 Hrs. (24/7)
(P3) Local Outage	Departmental/ Group Outage with significant impact to multiple users	4 Hrs. (24/7)
(P4) Local Degradation	Departmental/Group service degraded, moderate impact to multiple users	6 Hrs. (24/7)
(P5) Isolated Outage	Single User/Limited outage, significant impact to a single user	4 Hrs. (Business Hours)
(P6) Isolated Degradation	Single User/Limited service degraded, moderate impact to a single user	4 Hrs. (Business Hours)

## IntelliSite Hardware (Ex. UIG) Support

*Note: All Support is Remote unless Contracted Separately. All Supported Systems must have an Active Support Contract, be running IntelliSite RMM Toolset and be up to date on Payments.*

Priority	Business Impact Examples	SLA: First Response
(P1) Complete Outage	System outage, Significant Impact to business	4 Hrs. (24/7)
(P2) Service Degradation	System service degraded, moderate impact to business	8 Hrs. (24/7)
(P3) Isolated Outage/Degradation	Single User/Limited outage/degradation, significant impact to a single user	4 Hrs. (Business Hours)

## IntelliSite Hardware (Ex. UIG) Warranty Replacement

*Note: All Support is Remote unless Contracted Separately. All Supported Systems must have an Active Support Contract, be running IntelliSite RMM Toolset and be up to date on Payments.*

Priority	Business Impact Examples	SLA: First Response
(P1) Complete Hardware Failure	System outage, Significant Impact to business	Replacement Ships Same Day
(P2) Limited Hardware Failure	System service degraded, moderate impact to business	Replacement Ships When Exact Issue is Determined
(P3) Sporadic Service Issues	Single User/Limited outage, significant impact to a single user	Replacement Ships When Exact Issue is Determined



IntelliSite



Thursday, May 20, 2021

EXHIBIT "C-1"

City of Tracy  
Richard Joaquin  
333 Civic Center Plaza  
Tracy, CA 95376  
Richard.Joaquin@cityoftracy.org

Dear Richard,

IntelliSite's Smart Community as a Service (SCaaS) brings immediate value to local communities across the country as an affordable monthly subscription. Delivered as a cloud-based or on-premises solution, IntelliSite SCaaS addresses the needs of today's communities with the latest state-of-the-art safety and security monitoring solutions.

IntelliSite's SCaaS solution helps communities efficiently and cost-effectively manage safety and security with the intent to reduce crime rates. IntelliSite offers a complete video management solution featuring AI-based edge analytics, sensors, video recording, LED lighting and loudspeakers. IntelliSite provides remote and interactive access to video footage via fiber or LTE/cellular networks.

IntelliSite is with you every step of the way. IntelliSite will help you plan, design, implement and operate your IoT, Safety and Security and Computer Vision deployments. IntelliSite offers a turnkey solution paired with best-in-class customer experience.

Please do not hesitate to reach out to me with your questions and concerns. Thank you and I look forward to working with you.

JP Kenney  
Chief Revenue Officer  
IntelliSite, LLC





## City Parks & Service Yard

Product Details	Recurring Suggested Price	Recurring	Qty	Ext. Recurring
<b>IOT-UIG-4CAS-R IOT UIG 4-Camera Bundle</b> IntelliSite UIG 4 Cameras, Speaker, Basic AI, VMS, Modem, Eyes On, Remote Support	\$1,030.00	\$645.00	11	\$7,095.00
<b>INT-EYES-ON-CREDIT Remove Eyes ON</b> Remove Eyes On Services	(\$25.00)	(\$25.00)	11	(\$275.00)
<b>FSN-UNLTD4GLTE-US FirstNet mobile UNL Aircards/MiFi 4G LTE</b> FirstNet mobile UNL Aircards/MiFi 4G LTE -FirstNet is a public safety only 4G/LTE network which enables agencies to benefit from unrestricted data access with the ability to prioritize video access during an emergency and when cellular networks before saturated. AT&T FirstNet is first-in-class 4G/LTE & 5G network.	\$132.00	\$48.00	11	\$528.00

Monthly - 5 Year Subtotal: **\$7,348.00**

## Legacy Fields Services

Description	Recurring	Qty	Ext. Recurring
<b>INT-CARE-U-STND -Tracy IntelliCare Standard UIG Monthly</b> IntelliSite IntelliCare Standard UIG Support (8X5) - Monthly	\$83.00	10	\$830.00
<b>INT-CARE-RMMR-Tracy IntelliCare 24X7 Remote Monitoring and Mgmt with Remediation</b> IntelliCare 24X7 Remote Monitoring and Management with Remote Remediation - Monthly	\$20.00	10	\$200.00
<b>INT-CARE-U-AR-Tracy IntelliCare Adv Rplmnt UIG</b> IntelliSite IntelliCare Advanced Replacement - UIG - Monthly	\$61.50	10	\$615.00
<b>INT-MAINTENANCE-TRACY City of Tracy Maintenance Agreement</b> City of Tracy Maintenance Agreement - Monthly	\$80.00	10	\$800.00





## Legacy Fields Services

Description	Recurring	Qty	Ext. Recurring
IOT-UIG-EyesOn- Tracy <b>IOT Eyes On Service Per Gateway</b> IOT Eyes On Service Per Gateway 1 Year	\$25.00	10	\$250.00
INT-EYES-ON-CREDIT <b>Remove Eyes ON</b> Remove Eyes On Services	(\$25.00)	10	(\$250.00)

Subtotal: **\$2,445.00**





### City of Tracy - SCaaS - Parks

Prepared by:

**IntelliSite, LLC**

JP Kenney  
803-904-8519  
jp.kenney@intellisite.io

Prepared for:

**City of Tracy**

333 Civic Center Plaza  
Tracy, CA 95376  
Richard Joaquin

Quote Information:

**Quote #: 000369**

Version: 1  
Delivery Date: 05/20/2021  
Expiration Date: 05/28/2021

Richard.Joaquin@cityoftracy.org

### Expenses Summary

Description	Amount
Legacy Fields Services	\$2,445.00
<b>Total: \$2,445.00</b>	

### Monthly - 5 Year Expenses Summary

Description	Amount
City Parks & Service Yard	\$7,348.00
<b>Monthly - 5 Year Total: \$7,348.00</b>	

### Payment Options

Description	Payments	Interval	Amount
Term Options			

Jurisdictional taxes will be applied whenever applicable. Shipping, handling, and other fees may also apply. We reserve the right to cancel orders arising from pricing or other errors.

### IntelliSite, LLC

Signature: \_\_\_\_\_

Name: JP Kenney

Title: Chief Revenue Officer

Date: 05/20/2021

### City of Tracy

Signature: \_\_\_\_\_

Name: Richard Joaquin

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



## EXHIBIT "D-1"

### FREE RENT AGREEMENT

This Free Rent Agreement dated September 8, 2021 (the "Effective Date") is executed and delivered by City of Tracy (the "Buyer"), to IntelliSite, LLC (IntelliSite).

WHEREAS, the Buyer has acquired license in certain software and/or services and has agreed to forego use of those assets and is entering a Statement of Work (SOW) subject to a Master Subscription Agreement (MSA) of even date herewith;

NOW, THEREFORE, in consideration of IntelliSite's payment or upfront credit to Buyer of [**Free Rent**] (\$20,000.00), the receipt and sufficiency of which is hereby acknowledged, the parties hereby agrees as follows: The Buyer hereby warrants to IntelliSite, its successors and assigns, its intent to forego Buyer's rights in use of the Ocularis video management system in favor of IntelliSite's integrated video management system for locations subject to the MSA.

IntelliSite shall assume no liabilities of Buyer.

Concurrent with the later of executing the Master Subscription Agreement or completion of work under the SOW, at Buyer's option, IntelliSite will issue payment or credit to Buyer for the Free Rent in entirety. If credit is issued, IntelliSite will offset such credit against invoices issued in connection with the SOW without any further action of Buyer until such credit is exhausted.

Buyer agrees that in the event the SOW or MSA are cancelled for any reason prior to completion of the Initial Term as defined in those agreements, Buyer shall owe IntelliSite full reimbursement for the Free Rent.

This Agreement shall be binding upon, and inure to the benefit of, the parties and their successors and assigns, and shall be governed by the laws of the State of California without regard to conflicts of law principles.

RESOLUTION 2021-\_\_\_\_\_

APPROVING AMENDMENT NO. 1 TO THE GENERAL SERVICES AGREEMENT BETWEEN THE CITY OF TRACY AND INTELLISITE FOR SERVICES INVOLVING PROVIDING REMOTE SURVEILLANCE UNITS, VIDEO SURVEILLANCE AND MONITORING IN CITY PARKS

WHEREAS, The City of Tracy and IntelliSite entered into a General Services Agreement to provide services involving remote surveillance units, video surveillance and monitoring for City parks that was approved on September 8, 2020, and

WHEREAS, Due to the Agreement term being one year and staff asking for additional funding to provide on-demand security in City parks, and

WHEREAS, The total annual not to exceed amount for the General Services Agreement will now be \$ 250,000, and

WHEREAS, The new term of the agreement is five (5) years;

NOW, THEREFORE, BE IT RESOLVED, That the City Council of the City of Tracy hereby approves Amendment No. 1 to the General Services Agreement between the City of Tracy and IntelliSite to provide remote surveillance units, video surveillance and monitoring in City Parks, increasing the not to exceed amount by \$150,307 for a total not to exceed amount of \$250,000 and extending the term for agreement for an additional five years.

\* \* \* \* \*

The foregoing Resolution 2021-\_\_\_\_\_ was adopted by the Tracy City Council on the 7<sup>th</sup> day of September, 2021, by the following vote:

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

\_\_\_\_\_  
MAYOR

ATTEST:

\_\_\_\_\_  
CITY CLERK

AGENDA ITEM 1.E

REQUEST

**ADOPT A RESOLUTION AUTHORIZING EXECUTION AND DELIVERY OF AN AMENDED AND RESTATED MASTER ACQUISITION AGREEMENT RELATED TO CITY OF TRACY COMMUNITY FACILITIES DISTRICT NO. 2016-2 (ECFD)**

EXECUTIVE SUMMARY

For the purpose of financing public facilities, authorized fees and public services for development in the Ellis Specific Plan, the City Council previously acted under the Mello-Roos Community Facilities Act of 1982 (the "Mello-Roos Act") to establish the following:

- City of Tracy Community Facilities District No. 2016-2 (ECFD) (the "CFD"),
- Improvement Area No. 1 of the City of Tracy Community Facilities District No. 2016-2 (ECFD) ("Improvement Area No. 1"), and
- City of Tracy Community Facilities District No. 2016-2 (ECFD) (Future Annexation Area) (the "Future Annexation Area").

In connection with formation of the CFD, the City Council approved a Master Acquisition Agreement between the City and Surland Communities, LLC (the "Developer"). The Developer has requested certain changes to the Master Acquisition Agreement and staff recommends that the City Council approve the form of and authorize execution and delivery of an Amended and Restated Master Acquisition Agreement.

DISCUSSION

Under the Mello-Roos Act, the City previously formed the CFD and Improvement Area No. 1 for the purpose of financing the public facilities ("Authorized Facilities"), impact fees ("Authorized Fees") and services described in the City Council's Resolution No. 2017-021 adopted on February 7, 2017 (the "Resolution of Formation").

Section 53314.9 of the Mello-Roos Act provides that, either before or after formation of the CFD, the City may accept work in-kind from any source, including, but not limited to, private persons or private entities, the City may provide, by resolution, for the use of that work in-kind for any authorized purpose, and the City Council may enter into an agreement (an "Acquisition Agreement"), by resolution, with the person or entity advancing the work in-kind, to reimburse the person or entity for the value, or cost, whichever is less, of the work in-kind, as determined by the City Council, with or without interest, under the conditions specified in the Mello-Roos Act.

In the Resolution of Formation, the City Council also approved the form of an Acquisition Agreement related to the CFD, and the City and Surland Communities, LLC (the "Developer") subsequently executed a Master Acquisition Agreement dated February 1, 2017 (the "Master Acquisition Agreement");

The Master Acquisition Agreement authorized each improvement area in the CFD to finance all of the Authorized Facilities, regardless of their location, but only authorized an improvement area in the CFD to finance Authorized Fees related to development of the property within such improvement area.

The Developer has asked the City to amend and restate the Master Acquisition Agreement for the purpose of (i) clarifying that certain costs incurred by the Developer in connection with the financing of Authorized Facilities and Authorized Fees are eligible to be financed by the CFD and (ii) authorizing any improvement area in the CFD to finance Authorized Fees related to development of property anywhere in the CFD, and staff recommends that the City Council approve those changes, as set forth in an Amended and Restated Master Acquisition Agreement in substantially the form on file with the City Clerk.

### STRATEGIC PLAN

This agenda item supports Governance Strategic Goal 2: Ensure Short and Long-term fiscal health and Goal 3: Increase Public Awareness around City finances and other civic matters.

### FISCAL IMPACT

There is no cost to the General Fund associated with this request. The fees and expenses of City staff and its consultants will be paid through an existing Cost Recovery Agreement with the developer.

### RECOMMENDATION

That Council adopt a resolution authorizing execution and delivery of an Amended and Restated Master Acquisition Agreement for the CFD.

Prepared by: Karin Schnaider, Finance Director  
Christopher Lynch, Jones Hall

Reviewed by: Midori Lichtwardt, Assistant City Manager

Approved by: Bob Adams, Interim City Manager

### ATTACHMENTS

Attachment A - Amended and Restated Master Acquisition Agreement

**AMENDED AND RESTATED  
MASTER ACQUISITION AGREEMENT**

**Relating to:**

**City of Tracy  
Community Facilities District No. 2016-2  
(ECFD)**

THIS AMENDED AND RESTATED MASTER ACQUISITION AGREEMENT (this "Agreement"), dated as of September 1, 2021, is by and between the City of Tracy, a municipal corporation and general law city (the "City"), for itself and on behalf of City of Tracy Community Facilities District No. 2016-2 (ECFD) (the "CFD"), and Surland Communities, LLC, a California limited liability company (the "Developer"). This Agreement amends and restates in full the Master Acquisition Agreement dated February 1, 2017, by and between the City, for itself and on behalf of the CFD, and the Developer. The City and the Developer may each be referred to herein as a "Party," and together may be referred to as the "Parties." Capitalized terms used in this Agreement, in addition to those defined in this preamble and in the Recitals to this Agreement, shall have the meanings given such terms in "Definitions" herein.

**RECITALS**

A. The City Council of the City has established the CFD under the Mello-Roos Community Facilities Act of 1982, as amended, Part 1 (commencing with Section 53311) of Division 2 of Title 5 of the California Government Code (the "Act") for the financing of the public facilities described in the City's Resolution No. 2017-021 (the "Resolution of Formation") adopted by the City Council on February 7, 2017, certain capital facility fees, and certain public services described in the Resolution of Formation. A portion of the facilities authorized by the Resolution of Formation are listed on Exhibit A.1 attached hereto (the "Facilities"). Exhibit A.1 may be modified from time to time by the City or the Developer with prior written approval of the other Party (which shall include a replacement Exhibit A.1 and the date of such modification), so long as the modified list of Facilities is consistent with the Resolution of Formation. Certain water, sewer or other capacity or connection fees are authorized to be financed by the City under the Resolution of Formation ("Authorized Fees") and are listed in Exhibit A.2. Exhibit A.2 may be modified from time to time by the City or the Developer with prior written approval of the other Party (which shall include a replacement Exhibit A.2 and the date of such modification), so long as the modified list of Authorized Fees is consistent with the Resolution of Formation. The Authorized Fees will be used by the City to finance one or more facilities.

B. The CFD was created to assist in financing Facilities and Authorized Fees required to be constructed or paid as a condition of developing the Ellis project, as described in that certain Modified Ellis Specific Plan dated December 2012 (the "Ellis Specific Plan") and further described in the Ellis Finance and Implementation Plan (the "FIP") adopted and approved by implementing resolution by the City Council on August 20, 2013 (the "Project").

C. The CFD initially consisted of Improvement Area No. 1 only ("Improvement Area No. 1"), and the remainder of the Project was identified as Future Annexation Area (herein, "Future Annexation Area"). The property in Improvement Area No. 1 will eventually be owned by CalAtlantic Group, Inc. ("CalAtlantic") and the Developer. The Developer is the owner of all of the property comprising the Future Annexation Area.

D. The Developer intends to develop, or cause to be developed, the property in Improvement Area No. 1 and does not intend that CalAtlantic shall construct any Facilities or make deposits of any Authorized Fees. Accordingly, this Agreement will not be assigned to CalAtlantic and CalAtlantic will have no rights to any of the Sources or the return of any Deposits.

E. The Developer intends to develop, or cause to be developed, the property in the future phases of the Project by selling the property in phases to builders (herein, a "Builder") who shall construct the necessary infrastructure (including some or all of the Facilities), deposit the required fees (including some or all of the Authorized Fees), and construct homes on the property. In connection with the subsequent phases, the Developer (i) may contractually agree with the Builder that the purchase price for the Facilities constructed by the Builder and the reimbursement of the Authorized Fees (or Deposits made) paid by the Builder shall be paid directly to the Developer, (ii) may assign this Agreement to a Builder, but only with respect to the portion of the Project and the Facilities and Authorized Fees identified in the Assignment and Assumption Agreement, or (iii) may agree to some combination of (i) and (ii), as set forth in the contract with the Builder.

F. As the Future Annexation Area is ready for development, the Developer (or a subsequent Builder of such Future Annexation Area) may, from time to time, annex all or some of the Future Annexation Area into the CFD to a then-existing Improvement Area or to a new Improvement Area. The Rate and Method for each Improvement Area containing all or part of the Future Annexation Area will provide for a facilities special tax (the "Facilities Special Tax") and a services special tax (the "Services Special Tax"). Upon the occurrence of a Trigger Event (as defined and set forth in the Rate and Method), a portion of the Facilities Special Tax will be converted to and increase the Services Special Tax.

G. The Developer also owns, or intends to acquire and develop, property outside of the Future Annexation Area ("Additional Property"). When any Additional Property is ready for development, the Developer (or a subsequent Builder of such future phases) may apply to the City to annex such Additional Property into the CFD to a then-existing Improvement Area or to a new Improvement Area. If annexed to the CFD, the Rate and Method for each Improvement Area containing such Additional Property will provide for a Facilities Special Tax and a Services Special Tax. Upon the occurrence of a Trigger Event (as defined and set forth in the Rate and Method), a portion of the Facilities Special Tax will be converted to and increase the Services Special Tax. Notwithstanding the foregoing, nothing in this Agreement is intended to express any position of the City with respect to the development and annexation of any Additional Property, and any and all such Additional Property shall be subject to approval by the City Council, in its sole and exclusive discretion, at the time such annexation or development is proposed by the Developer or its successors in interest.

H. The Facilities and Authorized Fees are necessary to mitigate impacts arising from development occurring from the Project and any Additional Property, and the City will benefit from a coordinated plan of design, engineering and construction of the Facilities, the development of the Project and any Additional Property, and the payment of Authorized Fees.

I. The City has determined that it will obtain no advantage from undertaking the construction of the Facilities and that the Facilities may be constructed, or cause to be constructed, by the Developer as if they had been constructed under the direction and supervision, or under the authority of, the City (as such direction, supervision, and authority is set forth in this Agreement).

J. The City is proceeding with the authorization and issuance of bonds and other debt (as defined in the Act) for and on behalf of the CFD, as the CFD exists at formation and as it expands with the annexation of property from the Future Annexation Area and any Additional Property (collectively, the "Bonds") under the Act.

## DEFINITIONS

"Accept," "Acceptance," and "Accepted" mean, with respect to a Facility or Land Interest, acceptance by resolution of the City Council of the City of Tracy of the proffered Facility or Land Interest.

"Act" is defined in Recital A.

"Actual Cost" means, with respect to a Facility, an amount equal to the sum of (a) the actual, reasonable cost of constructing such Facility, including labor, material and equipment costs, (b) the actual, reasonable cost of preparing the Plans for such Facility, (c) the actual, reasonable cost of environmental evaluations required in the City's reasonable determination specifically for such Facility, (d) the amount of the fees actually paid to governmental agencies in order to obtain permits, licenses or other necessary governmental approvals for such Facility, (e) the actual, reasonable cost for professional services directly related to the construction of such Facility, including engineering, inspection, construction staking, materials testing and similar professional services, (f) the costs incurred for construction management and supervision, which cost shall not exceed 5% of the cost of constructing such Facility, as determined pursuant to clause (a) of this definition, (g) the actual, reasonable cost of any title insurance required hereby for such Facility, (h) the actual cost of any payment and performance bonds required to construct the Facility, (i) any construction management and program management fees charged by the City for the construction of a Facility, (j) any administration and oversight charges paid to the City for the implementation of this Agreement, (k) the actual, reasonable cost of compiling, reviewing, and preparing payment requests and the materials required to submit payment requests, paid by the Developer to both companies that the Developer has engaged (such as DPFG) and companies retained by the City to evaluate the payment requests (such as Harris and Associates), and (l) the actual, reasonable cost of any real property or interest therein acquired from a party other than the Developer, which real property or interest therein is either necessary for the construction of such Facility (e.g., temporary construction easements, haul roads, etc.) or is required to be conveyed with such Facility in order to convey title thereto to the City; *provided, however*, that no item of cost relating to a Facility shall be included in more than one category of cost under this definition; and *provided further, however*, that each item of cost shall be chargeable to the capital account for the Facility under generally accepted accounting principles.

"Additional Property" has the meaning given such term in Recital G.

"Agreed-Upon Allocation" has the meaning given such term in Section 5(f) herein.

"Approved Assignment" means an assignment and assumption of this Agreement pursuant to an Assignment and Assumption Agreement with either (i) an affiliate of the Developer or (ii) an entity affiliated with a publicly-traded company.

"Assignment and Assumption Agreement" means an agreement by which a full or partial assignment of the Developer's rights and obligations under this Agreement may be made by the Developer, and an assumption of all or a portion of the Developer's rights and obligations under this Agreement may be made by the Builder, in the form attached hereto as Exhibit B.

"Authorize" or "Authorization" means either of the following, as the context requires: (i) where payment of a requisition is to be made from Sources held and maintained by the Fiscal Agent, the terms mean that the City provides whatever documentation and written authorization under the Fiscal Agent Agreement as is necessary for the Fiscal Agent to make payment on the requisition from the applicable Sources; and (ii) where payment of a requisition is to be made from Sources held and maintained by the City, the terms mean that the City authorizes and pays the applicable amount to the Developer pursuant to the requisition.

"Authorized Fees" means the water, sewer, storm drainage system, or other capacity or connection fees that are authorized to be financed by the CFD and that are to be used to acquire or construct facilities, as further described in Exhibit A.2 attached hereto, as modified from time to time pursuant to this Agreement. Exhibit A.2 may be modified at any time by the City or the Developer, subject to the written approval of the other Party, without City Council approval.

"Builder" means an entity to whom the Developer conveys a portion of the Project, which may be an affiliated or unaffiliated entity of the Developer.

"CFD Goals" means the City of Tracy Local Goals and Policies for Community Facilities Districts adopted by the City Council of the City of Tracy on February 4, 2014 by Resolution No. 2014-19.

"City Engineer" means the City Engineer of the City or such other official of the City acting in such capacity, or the designee of such official.

"City Facilities" means the Facilities (and Discrete Components thereof) that are to be acquired by the City.

"Conditions of Approval" means any and all conditions of approvals and mitigation measures imposed in connection with the granting of the land use entitlements, permits and approvals for the development of the Project, including but not limited to any subdivision improvement agreement, owner participation agreement, development agreement (including the Development Agreement), the FIP, the Ellis Specific Plan, or other agreement with the City relating to the development of the Project or the installation of the Facilities.

"Deposit" has the meaning given such term in Section 8(f) herein.

"Developer Allocation" has the meaning given such term in Section 5(f) herein.

"Development Agreement" means the Development Agreement with an effective date of April 18, 2013, by and between the Developer and the City.

"Discrete Components" means the components of each Facility, as described in Exhibit A.3 attached hereto, as modified from time to time pursuant to this Agreement. Discrete Components may, as provided herein, be the subject of a payment request under Section 5.b of this Agreement. Discrete Components do not have to be Accepted by the City as a condition precedent to the payment of the Purchase Price therefor, but any such payment shall not be made until the Discrete Component has been constructed in accordance with the Plans therefor, as determined by the City Engineer, and Developer shall provide for maintenance of each Discrete Component, in a manner acceptable to the City, until each Discrete Component has been Accepted by the City. Exhibit A.3 may be modified at any time by the City or the Developer, subject to the written approval of the other Party, without City Council approval.

"Ellis Specific Plan" has the meaning given such term in Recital B.

"Facilities" means, collectively, each and every Facility.

"Facility" means (A) for City Facilities, infrastructure facilities (i) that are the subject of a subdivision improvement agreement or an offsite improvement agreement with the City and (ii) that are described in Exhibit A.1 hereto, as modified from time to time pursuant to this Agreement, and (B) for other than City Facilities, infrastructure facilities that are described in Exhibit A.1 hereto, as modified from time to time pursuant to this Agreement. Exhibit A.1 may be modified at any time by the City or the Developer, subject to the written approval of the other Party, without City Council approval.

"FIP" has the meaning given such term in Recital B.

"Fiscal Agent" means the fiscal agent, trustee, or other paying agent under a Fiscal Agent Agreement.

"Fiscal Agent Agreement" means an indenture, fiscal agent agreement, resolution or other agreement under which the Bonds are issued, as such Fiscal Agent Agreement may be supplemented from time to time to accommodate additional bond issuances or as it may be amended from time to time.

"Improvement Area" means any current or future improvement area of the CFD, as described in Section 53350 of the Act.

"Improvement Fund" has the meaning given such term in Section 3(b) herein.

"Indemnified Parties" has the meaning given such term in Section 9 herein.

"Land Interest" has the meaning given such term in Section 6(a) herein.

"Plans" means the plans, specifications, schedules and related construction contracts for the Facilities and/or any Discrete Components thereof approved by, and pursuant to the applicable standards of, the City or other entity that will own, operate or maintain the Facilities when completed and acquired.

"Prepayment Fund" has the meaning given such term in Section 3(a) herein.

"Principal Payment Date" shall mean, with respect to Bonds issued with respect to an Improvement Area, the semi-annual payment date on which principal or sinking fund payments on such Bonds are, in any year, payable. For example, if the principal amount of Bonds are payable on September 1, the Principal Payment Date shall be September 1, regardless of whether principal payments are actually due in any particular year.

"Project" has the meaning given such term in Recital B.

"Purchase Price" means the amount paid by the City for a Facility and/or any Discrete Components thereof determined in accordance with this Agreement.

"Rate and Method" means the rate and method of apportionment of the special tax for an Improvement Area.

"Remainder Taxes" shall mean, for each Improvement Area, the special taxes collected for such Improvement Area, calculated and payable as follows: (i) if Bonds have been issued for such Improvement Area, then in each year as of the day following the Principal Payment Date, any special taxes collected from property within such Improvement Area in excess of: (a) debt service on such outstanding Bonds for such Improvement Area due in the current calendar year, if any; (b) reasonable administrative costs for such Improvement Area (including any priority administrative costs); and (c) amounts required to replenish the reserve fund as of the previous Principal Payment Date; and (ii) if Bonds have not been issued on behalf of such Improvement Area, then as of May 1 and November 1 of each year, any special taxes collected from property within such Improvement Area during the prior six month period in excess of any reasonable administrative costs for such Improvement Area payable in the preceding six month period. Remainder Taxes shall no longer be collected for an Improvement Area once the Trigger Event occurs.

"Remainder Taxes Fund" has the meaning given such term in Section 3(c)(iii) herein.

"Retainage Escrow" has the meaning given such term in Section 5(e)(iii) herein.

"Sources" shall mean, collectively, with respect to each Improvement Area (i) the proceeds of Bonds for such Improvement Area, (ii) Remainder Taxes for such Improvement Area, (iii) prepayments of special taxes under the Rate and Method prior to the issuance of the first series of Bonds for such Improvement Area, and (iv) prepayments of special taxes under the Rate and Method after the issuance of the first series of Bonds in such Improvement Area to the extent that such prepayments are allocated to the costs of Facilities and Authorized Fees pursuant to the applicable Rate and Method, all as further described in Section 3 herein.

"Trigger Event" has the meaning given such term in the Rate and Method for the applicable Improvement Area.

## **AGREEMENT**

In consideration of the mutual promises and covenants set forth herein, and for other valuable consideration, the sufficiency of which is hereby acknowledged, the City and the Developer agree as follows:

1. Recitals; Applicability; Assignment to Builders.

a. Recitals. The City and the Developer represent and warrant, each to the other, that the above recitals, as applicable to each, are true and correct.

b. Applicability. This Agreement is applicable to the acquisition of the Facilities and the funding of the Authorized Fees from the Sources generated from the CFD and each Improvement Area that currently exists or that may be designated in the future from the Future Annexation Area and any Additional Property.

c. Assignment to Builders. The Developer intends to, over time, develop all or part of the Project through one or more of the following:

(i) by developing the Project itself; or

(ii) by conveying portions of the Project to one or more Builders, but agreeing to construct the Facilities and depositing the Authorized Fees and seeking the payment of the Purchase Prices of the Facilities and the return of the Deposits hereunder without assigning this Agreement to the Builder; or

(iii) by conveying portions of the Project to one or more Builders, assigning this Agreement to the Builder whereby the Builder agrees to construct certain identified Facilities and deposit certain identified Authorized Fees, but reserving the right of the Developer to receive the payment of the Purchase Prices of the Facilities and the return of the Deposits; or

(iv) by conveying portions of the Project to one or more Builders and assigning this Agreement to the Builder whereby the Builder agrees to construct certain identified Facilities and deposit certain identified Authorized Fees and the Builder shall be entitled to receive the payment of the Purchase Prices of the Facilities and the return of the Deposits; or

(v) by some combination of the foregoing.

If the Developer determines to assign this Agreement to a Builder, the Developer and the Builder will enter into an Assignment and Assumption Agreement. Under any such Assignment and Assumption Agreement, the Builder will be responsible for the development of the property conveyed to it and will be obligated to construct the Facilities identified in the Assignment and Assumption Agreement and will be entitled to the benefits of this Agreement identified in the Assignment and Assumption Agreement.

Exhibit A.3 to this Agreement may not identify Discrete Components of the Facilities for future phases upon execution of this Agreement, but it is anticipated that the Assignment and Assumption Agreement will designate Discrete Components of the Facilities identified in the Assignment and Assumption Agreement, subject to the prior written approval of the City if required below.

The provisions of this Agreement that relate to the issuance of Bonds for an Improvement Area will apply to the Improvement Area in which the portion of the Project conveyed to the Builder is located. All references to Facilities (and Discrete Components thereof) and Authorized Fees in this Agreement will mean the Facilities (and Discrete Components thereof) and Authorized Fees identified in the Assignment and Assumption Agreement.

As set forth in Section 16, the execution of the Assignment and Assumption Agreement, subject to the prior written consent of the City if required below, will relieve the Developer of any further obligations under this Agreement with respect to the Facilities and Authorized Fees identified in the Assignment and Assumption Agreement. Notwithstanding the foregoing or anything else in this Agreement to the contrary, the Developer and the Builder may in the Assignment and Assumption Agreement identify Facilities and Authorized Fees that were paid for by the Developer but that benefit the property of the Builder and set forth that the Developer shall be paid for those Facilities and Authorized Fees by the applicable Sources, in the amounts and in the priority set forth in the Assignment and Assumption Agreement.

Other than with respect to an Approved Assignment, the City must reasonably consent to any assignment to be effected by an Assignment and Assumption Agreement. The City may withhold its reasonable consent to any proposed assignment that is not an Approved Assignment if the City reasonably determines, based upon information requested by the City and provided by the Developer, that the proposed assignee has not provided evidence that it has the experience and the financial capacity to satisfy the obligations to be assigned to it and assumed by it under the Assignment and Assumption Agreement. The City will provide or withhold its consent pursuant to this paragraph within ten (10) business days after submission of the information requested by the City.

Any assignment or assumption of this Agreement that is not an Approved Assignment must be consented to by the City or the proposed assignment or assumption shall be null, void and without effect.

All obligations of the Developer set forth in this Agreement may be performed by the Developer itself, by contractors employed by the Developer, or by a third-party (including a Builder or contractor) that constructs the Facilities or deposits the Authorized Fees on behalf of, the Developer. For example, Section 4(c) requires that the Developer follow certain bid procedures to allow Facilities to be acquired under this Agreement. If the Developer contracts with a third-party to perform the construction and the third-party follows the bid procedures in Section 4(c), then the Developer shall be deemed to have followed the bid procedures under this Agreement.

## 2. Sale of Bonds.

a. City Proceedings. The City intends to issue one or more series of Bonds with respect to each Improvement Area to finance the Facilities and Authorized Fees, and to carry out the purposes of the Development Agreement. The City shall consider the issuance of Bonds upon the written request of the Developer, but the City shall not act on any petition or request by a Builder to issue Bonds without the written consent of the Developer. Developer may submit written requests that City issue Bonds, specifying requested issuance dates, amounts, and main financing terms. Following Developer's request, Developer and City will meet with City's public financing consultants to determine reasonable and appropriate issuance dates, amounts, and main financing terms that are consistent with this Agreement, and the CFD Goals. Nothing herein shall be construed as requiring the City to issue Bonds for an Improvement Area or as requiring the Developer to construct the Facilities, except as specifically provided in this Agreement.

### 3. Sources of Funds.

a. Prepayments. To the extent authorized under the applicable Rate and Method, any prepayments of special tax obligations with respect to an Improvement Area before the issuance of the first series of Bonds for such Improvement Area shall be placed in a special fund to be held by the City (the "Prepayment Fund"), separate and apart from the proceeds of the Bonds and Remainder Taxes. A separate Prepayment Fund will be created and maintained for each Improvement Area. In addition, after the issuance of the first series of Bonds for an Improvement Area, but only to the extent that a portion of such prepayments are required by the applicable Rate and Method to be allocated to the costs of Facilities and Authorized Fees, such portion of the prepayments of special tax obligations with respect to an Improvement Area shall be deposited in the Prepayment Fund for the applicable Improvement Area. Moneys in the Prepayment Fund for an Improvement Area shall be a source for the payment of the costs of the acquisition of the Facilities and the Discrete Components thereof, and for the payment of Authorized Fees and shall be applied in the same manner as the proceeds of Bonds and Remainder Taxes.

#### b. Bond Proceeds.

(i) The proceeds of each series of Bonds for an Improvement Area shall be deposited, held, invested, reinvested and disbursed as provided in the Fiscal Agent Agreement. The net proceeds of the Bonds shall be set aside under the Fiscal Agent Agreement in a separate improvement fund (the "Improvement Fund"). A separate Improvement Fund will be created and maintained for each Improvement Area. Moneys in the Improvement Fund for an Improvement Area shall be withdrawn therefrom, in accordance with the provisions of a Fiscal Agent Agreement, for payment of all or a portion of the costs of acquisition of the Facilities and the payment for Discrete Components thereof, and for the payment of Authorized Fees, all as herein provided.

(ii) The Developer agrees that the City shall direct the investment of the funds on deposit in the funds and accounts established by or pursuant to a Fiscal Agent Agreement, including the Improvement Fund, and that the Developer has no right whatsoever to direct investments under a Fiscal Agent Agreement.

(iii) The City shall have no responsibility whatsoever to the Developer with respect to any investment of funds under a Fiscal Agent Agreement, including any loss of all or a portion of the principal invested or any penalty for liquidation of an investment. Any such loss may diminish the amounts available in an Improvement Fund for an Improvement Area to pay the Purchase Price of Facilities and Discrete Components hereunder, and to pay Authorized Fees in connection with the development of any Improvement Area. The Developer further acknowledges that the obligation of any owner of real property in the CFD, including the Developer to the extent it owns any real property in the CFD, to pay special taxes levied in the CFD is not in any way dependent on (i) the availability of amounts in any Improvement Fund to pay for all or any portion of the Facilities or Discrete Components thereof hereunder or to pay any Authorized Fees, or (ii) the alleged or actual misconduct of the City in the performance of its obligations under this Agreement, the Fiscal Agent Agreement, any subdivision agreement or amendment thereto or any other agreement to which the Developer and the City are signatories.

(iv) Under the Rate and Method, in an Improvement Area, the Facilities Special Tax will be used, among other things, to pay the debt service on any Bonds issued in such Improvement Area. Upon the occurrence of the Trigger Event, a portion of the Facilities Special Tax will be converted into and increase the Services Special Tax. The City and the Developer understand and agree that, within an Improvement Area, Bonds shall be issued in one or more series over time as necessary to finance the acquisition of the Facilities and the payment of the Authorized Fees, and that the Trigger Event cannot occur until all series of Bonds within an Improvement Area have been issued and fully repaid.

c. Remainder Taxes.

(i) As set forth in the Rate and Method, for each Improvement Area, through the 15th fiscal year in which the special tax is first levied in such Improvement Area, the Facilities Special Tax will be levied on Developed Property (as defined in the Rate and Method) in the amount of the Maximum Facilities Special Tax (as defined in the Rate and Method), and any Remainder Taxes will be used to finance the acquisition costs of any Facilities, Discrete Components, and the Authorized Fees. Notwithstanding the foregoing, the City and the Developer acknowledge that under the Rate and Method for each Improvement Area, after the 15-year period described above, the City, in its discretion but subject to this Agreement, has the ability to levy Special Taxes to pay directly for Facilities and Authorized Fees, and, in such a case, any Remainder Taxes collected from such levy may be used for the acquisition costs of the Facilities, Discrete Components, and the Authorized Fees.

(ii) Once all of the Facilities, Discrete Components, and Authorized Fees for the CFD are paid for, the City may direct the use of the Remainder Taxes.

(iii) All Remainder Taxes generated in an Improvement Area shall be placed in a special fund to be held by the City (the "Remainder Taxes Fund") for such Improvement Area, separate and apart from the proceeds of the Bonds and prepayments of special taxes. A separate Remainder Taxes Fund will be created and maintained for each Improvement Area. Moneys in the Remainder Taxes Fund for an Improvement Area shall be a source for the payment of the costs of the acquisition of the Facilities and the Discrete Components thereof, and for the payment of the Authorized Fees being made in connection with the development of any Improvement Area, and shall be applied in the same manner as the proceeds of Bonds and prepayments of special taxes for such Improvement Area.

d. Limitation. The City shall not be obligated to pay the Purchase Price of the Facilities or any Discrete Components thereof, or for the Authorized Fees being made in connection with the development of one or more Improvement Areas, except from amounts on deposit in the Prepayment Fund, the Improvement Fund, and the Remainder Taxes Fund (however such funds are denominated) for such Improvement Area. The City makes no warranty, express or implied, that amounts on deposit in the Prepayment Fund, the Improvement Fund, and the Remainder Taxes Fund for an Improvement Area will be sufficient for payment of the Purchase Price of the Facilities or any Discrete Components thereof or the Authorized Fees being made in connection with the development of one or more Improvement Areas. The Developer acknowledges that any lack of availability of amounts in the Prepayment Fund, the Improvement Fund, and the Remainder Taxes Fund for an Improvement Area to pay

the Purchase Price of Facilities or any Discrete Components thereof and the Authorized Fees being made in connection with the development of one or more Improvement Areas shall in no way diminish any obligation of the Developer with respect to the construction of or contributions for public facilities or the payment of fees required for such Improvement Area by the Conditions of Approval to the extent that the Developer is so obligated.

4. Construction of the Facilities. Except as provided in the next sentence, the provisions of this Section 4 apply to both the City Facilities and the Facilities to be acquired by a utility or other local agency (other than the City). The provisions of subsections (c), (e), (f), (g), and (h) apply only to the City Facilities.

a. Plans and Specifications. The Developer represents that it has obtained or will obtain approval of the Plans from all appropriate departments of the City and from any other public entity or public utility from which such approval must be obtained. The Developer further represents that the Facilities have been or will be constructed in full compliance with such Plans and any change orders thereto. Copies of all Plans for City Facilities shall be provided by the Developer to the City Engineer.

b. Duty of Developer to Construct. All Facilities to be acquired hereunder shall be constructed by or at the direction of the Developer in accordance with the approved Plans and the Conditions of Approval. The Developer shall perform all of its obligations hereunder and shall conduct all operations with respect to the construction of the Facilities in a good, workmanlike and commercially reasonable manner, with the standard of diligence and care normally employed by duly qualified persons utilizing their best efforts in the performance of comparable work and in accordance with generally accepted practices appropriate to the activities undertaken. The Developer shall employ at all times adequate staff or consultants with the requisite experience necessary to administer and coordinate all work related to the design, engineering, acquisition, construction and installation of the Facilities to be acquired by the City from the Developer hereunder.

The Developer shall be obligated: (i) to construct, or cause to be constructed, and cause conveyance to the City all City Facilities (including Discrete Components thereof) in accordance with the Conditions of Approval and the Developer's timing of development of the Project, and subject to acquisition by the City and other local agencies pursuant to this Agreement, (ii) to use its own funds to pay all costs associated with such construction and conveyance(s), except as may be otherwise expressly provided in the Conditions of Approval, and (iii) to assign to the City all warranties and guarantees provided to Developer in connection with the construction of such Facilities (including Discrete Components thereof).

The Developer shall not be relieved of its obligation to construct each City Facility (including Discrete Components thereof) and convey each such Facility to the City in accordance with the Conditions of Approval, even if the total Sources available over time is insufficient to pay the Purchase Price thereof. This Agreement shall not affect any obligation of any owner of land in the Project relating to the public improvements required in connection with the development of land within the Project, whether such obligation is imposed as a Condition of Approval or arises under any other law, regulation, government approval, or for any other reason.

c. Bid Procedures. The following bid procedures shall apply to all work to be performed by Developer under this Agreement:

(i) Developer shall prepare a bid package and the form of the required notices for review and comment by the City Engineer. The City Engineer shall respond with any comments within ten (10) calendar days. The failure of the City Engineer to respond shall be deemed approval.

(ii) Developer shall mail notices inviting formal bids. The notices shall be distributed (by mail or electronic mail) no more than thirty (30) calendar days before the opening date of the bids. The notices shall distinctly describe the project and state the time and place for submission of bids and disclose the Developer's right to elect to perform the work under Section 53329.5 of the Act.

(iii) Bids shall be submitted to the Developer either via hard copy or email. The bids shall be received and opened by the Developer and there shall be no requirement for a public bid opening. After the bids are received and opened by the Developer, the Developer may contact one or more of the bidders and request clarification of any bid or adjustments to the bid to comply with the specifications of the proposed project so that all bids may be evaluated on a comparable basis.

(iv) Developer shall submit to the City written evidence of compliance with the competitive bidding procedures set forth herein, including evidence of the required noticing, a listing of all responsive bids and their amounts (as adjusted pursuant to subsection (iii), if applicable), and the name or names of the contractor or contractors to whom Developer proposed to award the contracts for such construction.

(v) The contract for the construction of a Facility shall be awarded to the responsible bidder submitting the lowest responsive bid (as adjusted pursuant to subsection (iii), if applicable) for the construction of such Facility or, if the Developer elects to perform the work pursuant to Section 53329.5 of the Act, the Developer shall perform the work at the prices specified in the bid of the lowest responsible bidder.

d. Prevailing Wages. The Developer covenants that, with respect to any contracts or subcontracts for the construction of the Facilities, it will assure complete compliance with any applicable law or regulation for the payment of prevailing wages for such construction.

e. Relationship to Public Works. This Agreement is for the acquisition of the Facilities or Discrete Components thereof by the City from the Developer and is not intended to be a public works contract. The City and the Developer agree that the provisions of the California Public Contracts Code do not apply to the construction of the Facilities. The City and the Developer agree that this Agreement is necessary to assure the timely and satisfactory completion of the Facilities and establishes the terms under which the Facilities shall be constructed as if they were constructed under the direction and supervision, or under the authority of, the City, as required by the Act.

f. Contracts and Change Orders. The Developer shall be responsible for entering into all contracts and any change orders required for the construction of the Facilities. Except as provided in the next sentence, all such contracts and change orders shall be submitted to the City Engineer for review and approval. Change orders shall not be required to be submitted to the City Engineer for review or approval provided both of the following are satisfied: (i) the amount of such change order is the lesser of 10% of the contract price or \$100,000, and (ii) the cumulative dollar amount of change orders for the applicable Discrete Component or Facility

implemented without the review and approval of the City Engineer does not exceed the lesser of 10% of the total contract value for the Discrete Component or Facility or \$250,000.

g. Independent Contractor. In performing this Agreement, the Developer is an independent contractor and not the agent or employee of the City or the CFD. Neither the City nor the CFD shall be responsible for making any payments to any contractor, subcontractor, agent, employee or supplier of the Developer.

h. Periodic Meetings. From time to time at the request of the City Engineer or the Developer, representatives of the Developer and the City Engineer shall meet and confer with City staff, consultants and contractors regarding matters arising hereunder with respect to the Facilities and the progress in constructing and acquiring the same, and as to any other matter related to the Facilities or this Agreement. The Developer shall advise the City Engineer in advance of any coordination and scheduling meetings to be held with contractors relating to the Facilities, in the ordinary course of performance of an individual contract. The City Engineer or its designated representative shall have the right to be present at such meetings, and to meet and confer with individual contractors if deemed advisable by the City Engineer to resolve disputes and/or ensure the proper completion of the Facilities.

i. Non-City Facilities. Any Facilities (and any Discrete Components thereof) to be owned by a utility or a local agency other than the City shall be bid and constructed in accordance with an agreement between the Developer and the utility or agency.

j. Reimbursement for Costs of Facilities on Property Not Owned by Developer. In some cases, with respect to Facilities that may be located outside of the CFD, the Developer may purchase land through an affiliated entity and use that affiliated entity to construct Facilities on such land. For purposes of this Agreement, Facilities constructed by Developer's affiliate on the affiliate's property are referred to as "Affiliate Facilities." The City agrees that so long as the Affiliate Facilities are constructed in accordance with the provisions of this Agreement, the Affiliate Facilities may be financed by available Sources notwithstanding that the land and Affiliate Facilities being acquired hereunder will be purchased from an affiliated entity and that the affiliated entity bid and entered into, and paid the costs under, the contracts for the constructed Affiliate Facilities. Developer agrees that, notwithstanding its use of an affiliate for the described purposes, Developer shall remain liable to the City for all aspects of the Affiliate Facilities' compliance with the terms of this Agreement, in the same manner and to the same extent as if the Affiliate Facilities were constructed on Developer's property.

5. Payment for the Facilities. The Developer hereby agrees to sell the City Facilities to the City, and the City hereby agrees to use the Sources to pay the Purchase Price thereof to the Developer, subject to the terms and conditions hereof.

a. Inspection. No payment hereunder shall be made by the City to the Developer for a Facility or Discrete Component thereof until the Facility or Discrete Component thereof has been inspected by the City or other applicable public entity or utility and found to be constructed in accordance with the Plans approved by the City or other applicable public entity or utility. For Facilities to be acquired by the City, the Developer shall request inspection using applicable City procedures. For Facilities to be acquired by other public entities or utilities, the Developer shall be responsible for obtaining such inspections and providing written evidence thereof, to the reasonable satisfaction of the City Engineer. The Developer agrees to pay all inspection, permit and other fees of the City applicable to construction of the Facilities, which fees may be subject to reimbursement under this Agreement as part of the Actual Cost of the Facilities.

b. Request for Payment. Any request for payment hereunder by the Developer shall be in a form acceptable to the City and shall include such supporting documentation to substantiate such request as the City may require. For any request for payment, the following shall apply:

(i) Substantiation of Costs. The Developer shall provide any documentation substantiating the Actual Cost of the Facilities reasonably requested by the City Engineer. There shall be a presumption of reasonableness as to the Actual Costs incurred under a construction contract (or change order) entered into as a result of a call for bids by the Developer in accordance with this Agreement (or similar procedure approved by the City Engineer), provided that no extraordinary limitations or requirements (such as a short time frame) are imposed by the Developer on the performance of such contracts. For any Facility to be acquired by a public entity or utility other than the City, the Developer shall, at the City's request, provide written evidence, to the reasonable satisfaction of the City Engineer, of the approval of such Actual Cost substantiation and approval of such Facility from such entity or utility when requesting payment.

(ii) Payment Request and Supporting Materials. In order to receive the Purchase Price for a completed Facility or Discrete Component, inspection thereof under Section 5(a) shall have been made and the Developer shall deliver to the City Engineer: (i) a payment request for such Facility or Discrete Component, together with all supporting documentation required by this Agreement to be included therewith, and (ii) if payment is requested for a completed Facility, (a) if the property on which the Facility is located is not owned by the City (or other applicable public agency that will own the Facility) at the time of the request, a copy of the recorded irrevocable offer of dedication or the recorded documents conveying to the City (or other applicable public agency that will own the Facility) title to the real property on, in or over which such Facility is located, as described in Section 6 hereof, (b) a copy of the recorded notice of completion of such Facility (for a Facility or the final Discrete Component only, if applicable), (c) to the extent paid for with the proceeds of the Bonds, an assignment to the City of any reimbursements that may be payable with respect to the Facility, such as public or private utility reimbursements, and (d) an assignment of the warranties and guaranties for such Facility, as described in Section 6 hereof, in a form acceptable to the City.

c. Conditions for Payment. The City shall not be obligated to pay the Purchase Price of any Facility or Discrete Component until the Facility or Discrete Component is constructed and the processing requirements of this Section 5 for such Facility or Discrete Component have occurred. The Developer acknowledges that the Discrete Components have been identified for payment purposes only, and that the City shall not Accept a Facility of which a Discrete Component is a part until the Facility has been completed. The City acknowledges that the Discrete Components (or the Facility of which the Discrete Component is a part) do not have to be Accepted by the City as a condition precedent to the payment of the Purchase Price for such Discrete Component, but any such payment shall not be made until the Discrete Component has been constructed in accordance with the Plans therefor, as determined by the City Engineer or other agency or utility, and, for City Facilities, the Developer shall provide for maintenance of the Discrete Component, in a manner acceptable to the City, until the Discrete Component is Accepted by the City. In any event, the City shall not be obligated to pay the Purchase Price for any Facility or Discrete Component except from the Sources.

d. Purchase Price. The Purchase Price shall be determined by the City Engineer as described in paragraph (e)(ii) below and the criteria of Section 5(a)-(c) above. The Purchase Price paid hereunder for any Facility or Discrete Component thereof may be paid in any number of installments as Sources become available.

e. Payments to the Developer. The Developer may request in writing a payment of the Purchase Price of any Facility or Discrete Component thereof as described in Exhibits A.1 and A.3 hereto subject to the following:

(i) Compliance with Conditions. The Developer shall first comply with Subsections 5 (a) through (c) above and shall have demonstrated the ability to comply with Section 6 below, all to the satisfaction of the City Engineer.

(ii) Amounts of Payments. The Purchase Price shall be determined to fairly reflect the Actual Cost of the Facility or Discrete Component thereof to be acquired, and specified in a cost certificate therefor prepared by the City Engineer. The Purchase Price shall in no event exceed Actual Costs of the Facility or Discrete Component thereof.

(iii) Retainage. Retainage will not be taken from any payment made from the Improvement Fund, the Prepayment Fund, or the Remainder Taxes Fund for the cost of any Facility or Discrete Component thereof being acquired by the City. However, the City and the Developer acknowledge and agree that for any City Facility that is the subject of a contract with a contractor, for each payment requested by the contractor, a 5% retainage shall be withheld by the Developer, and the Developer will deposit all such retainage amounts into an escrow fund in which funds may be released only upon the joint written instructions of the City and the Developer (the "Retainage Escrow"). Funds in the Retainage Escrow will remain therein pending final completion, inspection, and Acceptance of the Facility. No Retainage shall be released for completion of a Discrete Component of a Facility unless and until the entire Facility has been Accepted by the City. When the Developer presents evidence substantiating payment to contractors for purposes of payment hereunder, the City shall consider the payment of the retained amounts to the Retainage Escrow as the payment for the Facility or Discrete Component for which payment is sought hereunder. The City and Developer also acknowledge and agree that no retainage needs to be deposited to the Retainage Escrow for (1) design costs or (2) construction contracts for Facilities or Discrete Components thereof to be acquired by other public entities or utilities.

(iv) City Response to Requests for Payment. Any request for payment by the Developer for a Discrete Component or Facility shall be made to the City Engineer in a form acceptable to the City and include the supporting documentation herein specified. Within fourteen (14) calendar days of receipt of any request, or such longer period to which the City and the Developer may agree, the City Engineer shall review such request to: (i) determine that it is complete; or (ii) determine that the request is incomplete and to request in writing additional information and documentation reasonably necessary for the City Engineer to complete the review. If the City Engineer notifies Developer that the request is incomplete, the time period for the City Engineer to determine whether or not the request is complete shall be extended until fourteen (14) calendar days following the date that Developer provides the additional information and documentation requested by the City. If the City Engineer fails to notify Developer within the applicable 14-day review period that a request is incomplete, the request will be deemed complete. Within eighteen (18) calendar days after the date a request is

determined or deemed to be complete, the City Engineer will review the request to confirm that all conditions in this Agreement have been satisfied, to the extent applicable, and provide notice to Developer either that: (i) the request is approved (which will be confirmed by counter-signing the request); (ii) the request is disapproved in whole, specifying in the notice the reason(s) for disapproval; or (iii) subject to the last sentence of Section 5.e.(vi) below, the request is disapproved in part, specifying in the notice the reason(s) for disapproval. If the request is disapproved in part and meets the requirements of the last sentence of Section 5.e.(vi) below, the City Engineer will process the portion of the request that was not disapproved for payment under subsection (e)(v) below. Developer may resubmit any request disapproved in whole or in part with additional supporting documentation, which resubmission shall be processed by the City in the same manner as an original request for payment under this Section 5.e.(iv). If, at the end of the 18-day review period, the City Engineer fails to approve or disapprove a request for payment, the Developer may send a written notice to the City Engineer notifying the City Engineer of such failure and informing the City Engineer that it has ten (10) calendar days to approve or disapprove the request for payment or the request shall be deemed approved. The foregoing request shall not be deemed a default notice under Section 11(c) herein. The process for review of all payment requests made pursuant to this Section 5 are subject to subsection (e)(vi) below.

(v) Payment by the City from the Sources. Within seven (7) calendar days after approving a request (in whole or in part) or after the deemed approval of a request, the City shall Authorize payment to be made to the Developer exclusively from one or more of the Sources pursuant to the applicable provisions of the Fiscal Agent Agreement or otherwise. The City may Authorize any payment jointly to the Developer and any mortgagee or trust deed beneficiary, contractor or supplier of materials, as their interests may appear, or solely to any such third party, if the Developer so requests the same in writing or as the City otherwise determines such joint or third party payment is necessary to obtain lien releases. If there are insufficient Sources to pay the full amount of a payment request, then the City shall Authorize payment of as much of the amount on the payment request as there are Sources available, and the payment of the balance of the payment request shall be deferred until there are sufficient Sources available to pay the remaining balance of the payment request. Promptly following the availability of Sources, the City shall, from time to time and in as many installments as necessary, Authorize payment of the remaining balance of the payment request. Any provision in this Agreement to the contrary notwithstanding, in response to any request for payment under this Section 5, the City shall not be required to make any payments from Sources held and maintained by the City unless, at the time payment is required under this Agreement, (i) there are insufficient funds available in the Sources held and maintained by the Fiscal Agent to fully satisfy the request or (ii) the Sources held and maintained by the Fiscal Agent may not be applied to pay for the Facilities that are the subject of the payment request under federal tax law or otherwise. Payment requests may be paid (i) in any number of installments as Sources become available and (ii) irrespective of the length of time of such deferral of payment. In no event shall the City be required to Authorize or make payments for Facilities or Discrete Components from any funding sources other than the Sources.

(vi) General Cooperation. In connection with processing any payment request under this Agreement, the City and the City Engineer will use good faith efforts to request any additional information required to process the request as soon as practicable following the submission of the original materials, and to make each

additional information request comprehensive and thorough to minimize the number of requests delivered, and Developer will use its good faith efforts to provide a thorough, organized, and complete response to each request. Developer is authorized to communicate directly with the City, the City Engineer, and their designees, agents, and contractors to facilitate any additional information request, to facilitate the prompt resolution of any technical issues, and to minimize the amount of time it takes to resolve outstanding issues. In addition to the foregoing, and except as otherwise is provided for herein, the Parties agree that: (1) if a payment request includes more than one Discrete Component or Facility, the City will not withhold payment Authorization on any Discrete Component or Facility that has been approved and will withhold payment Authorization only on such Discrete Components and Facilities that have not been approved; and (2) in no event will the City make a partial payment for a single Discrete Component or Facility (except in cases where the Facility is comprised of more than one Discrete Component, in which case the City will make separate payments for each Discrete Component of such Facility otherwise eligible for payment hereunder).

f. Allocation of Costs. If Developer incurs costs that (1) apply to more than one Facility or Discrete Component (e.g., soft costs (which shall not exceed forty percent (40%) of the construction costs of the Facility or Discrete Component)) or (2) apply to both Facilities or Discrete Components and improvements other than the Facilities or Discrete Components (e.g., grading), Developer shall allocate, or cause the contractor to reasonably allocate, such costs between the Facilities or Discrete Components (in the case of clause (1)) or between the Facilities or Discrete Components and the improvements other than the Facilities or Discrete Components (in the case of clause (2)) (the "Developer Allocation"). The Developer Allocation shall be presumed to be reasonable and shall be accepted for all purposes of this Agreement unless the City notifies Developer of its good-faith reasonable disapproval of the allocation as part of the City's written response to the applicable payment request under Section 5.e.(iv) above. If the City has properly disapproved the Developer Allocation, then the City and Developer shall promptly allocate such costs, on a reasonable basis, between the Facilities or Discrete Components (in the case of clause (1)) or between the Facilities or Discrete Components and the improvements other than the Facilities or Discrete Components (in the case of clause (2)) (the "Agreed-Upon Allocation"). Based on the Developer Allocation or the Agreed-Upon Allocation, as applicable, the City shall include the costs allocated to a specific Facility or Discrete Component as part of the Actual Costs of such Facility or Discrete Component when such Facility or Discrete Component is subject to a payment request.

g. Expectations of the Parties. The Parties understand and agree that (i) Developer will be constructing Facilities or Discrete Components prior to the availability of Sources that will be used to pay for such Facilities or Discrete Components, (ii) the City or the other public agencies that will own and operate such Facilities or Discrete Components may be inspecting such Facilities or Discrete Components and processing and completing payment requests for the payment on such Facilities or Discrete Components with knowledge that there may be insufficient Sources available at such time, (iii) the Facilities or Discrete Components may be conveyed to and Accepted by the City or other local agency that will own and operate such Facilities or Discrete Components when there are insufficient Sources to pay the Purchase Prices of such Facilities or Discrete Components, and (iv) in any such case, the payment of any approved payment requests for the Purchase Prices of such Facilities or Discrete Components will be deferred until there are sufficient Sources available to pay the Purchase Prices of such Facilities or Discrete Components, at which time the City will make such payments in accordance with this Agreement. At all times, Developer will be constructing such Facilities or Discrete Components with the expectation that the Purchase Prices for such Facilities or

Discrete Components will be paid solely from the Sources. The conveyance of Facilities or Discrete Components to the City or a local agency that will own and operate such Facilities or Discrete Components prior to receipt of the Purchase Prices for such Facilities or Discrete Components shall not be construed as a dedication or gift, or a waiver of the payment of the Purchase Prices, or any part thereof, for such Facilities or Discrete Components.

6. Ownership and Transfer of the Facilities; Maintenance; Warranties. Any of the Facilities to be owned by public entities or utilities other than the City shall be conveyed in accordance with the entity's or utility's policies and procedures. For the Facilities to be owned by the City, the following applies:

a. Land. For purposes of this Agreement, the term "Land Interest" includes fee simple title or such lesser interests (including easement and/or rights of way) as are required and approved by the City and are included in the description of the Facilities to be acquired. The Developer agrees to cause the owners of real property required for the operation and maintenance of the Facilities to execute and deliver to the City such documents as are required to complete the transfer, free and clear of all liens, taxes, assessments, easements, leases, or other encumbrances (whether recorded or not), except for those which the City Engineer determines in writing will not interfere with the intended use of the land or related Facilities, of all Land Interests necessary for the operation and maintenance of the Facilities. If any real property required for the operation and maintenance of the Facilities is within the boundaries of any existing community facilities district (including the CFD), an assessment district, or other financing district, then the lien of the special taxes or assessments shall be a permitted exception to the Land Interests conveyed to the City or other public agency, so long as the property owned by the City or other public agency is exempt from the special tax or assessments to be levied by the community facilities district, assessment district, or other financing district. Completion of the transfer of the Land Interests required under this Agreement shall be evidenced by recordation of the Acceptance thereof by the City Council or the legislative body of the other public agency (as applicable), or the designee thereof.

b. Facilities Constructed on Private Lands. If any Facility to be acquired is located on privately-owned land, the owner thereof shall retain title to the land and the completed Facility until Acceptance of the Facility and all associated Land Interests under Subsection 6(a) above. Pending the completion of such transfer, the Developer shall be responsible for maintaining the land and any Facilities in good and safe condition.

c. Facilities Constructed on City Land. If the Facilities to be acquired are on land owned by the City, the City hereby grants to the Developer a license to enter upon such land for purposes related to the construction (and maintenance pending acquisition) of the Facilities. The provisions for inspection and Acceptance of such Facilities otherwise provided herein shall apply.

d. Warranties; Maintenance. The Developer shall maintain each Discrete Component in good and safe condition until the date of Acceptance of the Facility of which such Discrete Component is a part. Prior to the Acceptance date, the Developer shall be responsible for performing any required maintenance on any completed Discrete Component or Facility.

On or before the Acceptance date, the Developer shall assign, or cause to be assigned, to the City all of the Developer's rights in any warranties, guarantees, maintenance obligations or other evidence of contingent obligations of third persons with respect to such Facility. The Developer shall maintain or cause to be maintained each Facility to be owned by the City

(including the repair or replacement thereof) for a period of one year from the Acceptance date thereof, or, alternatively, shall provide a bond reasonably acceptable in form and substance to the City Engineer for such period and for such purpose, to insure that defects, which appear within said period will be repaired, replaced, or corrected by the Developer, at its own cost and expense, to the satisfaction of the City Engineer. During any such one-year period, the Developer shall commence to repair, replace or correct any such defects within 10 days after written notice thereof by the City to the Developer, or at such later time as the City and Developer mutually agree, and shall complete such repairs, replacement or correction as soon as practicable. After such one-year period, the City shall be responsible for maintaining such Facility. Any warranties, guarantees or other evidences of contingent obligations of third persons with respect to the Facilities to be acquired by the City shall be delivered to the City Engineer as part of the transfer of the Facility and associated Land Interests.

For purposes of this Section 6, after the City has Accepted a Facility, the terms “maintain” and “maintenance” mean the repair, replacement, or correction of any defects in the Facility or Discrete Component, and shall not mean the day-to-day upkeep or correction of normal wear and tear of the Facility or Discrete Component (such as watering or weeding for landscape improvements, painting, graffiti removal, etc.).

7. Limitation of Liability. The Developer agrees that any and all obligations of the City arising out of or related to this Agreement are special and limited obligations of the City and the City’s obligations to make any payments hereunder are restricted entirely to the Sources and from no other source. The Developer agrees to pay all costs of the Facilities in excess of the Sources available therefor from time to time. No City Council member, City staff member, employee or agent shall incur any liability hereunder to the Developer or any other party in their individual capacities by reason of their actions hereunder or execution hereof.

If the construction and acquisition of all the Facilities has been completed and the Purchase Price with respect thereto has been paid, and all Authorized Fees have been paid, and funds remain on deposit in the Improvement Fund or become available through the issuance of additional Bonds in the Improvement Area, the City and the Developer may designate in a supplement hereto, Facilities (and/or Discrete Components thereof) to be constructed and acquired with such remaining or additional funds to be selected from the list of Facilities authorized by the CFD; provided, however, the City shall determine the use of such funds consistent with the terms of the CFD Goals and the Fiscal Agent Agreement.

8. Payment of Authorized Fees.

a. Authorization. The Sources from any Improvement Area may be used to pay for the Authorized Fees at any time in any Improvement Area (irrespective of whether the Authorized Fees are payable in the Improvement Area).

b. Request for Payment of Authorized Fees. The Developer may request payment of Authorized Fees from the Sources by executing and submitting to the City Engineer a request for payment in a form acceptable to the City and shall include such supporting documentation to substantiate such request as the City may require. Upon receipt of such payment request, the City shall pay, or cause to be paid, the Authorized Fees requested in such payment request in accordance with this Agreement and to the extent of such Sources.

c. City Response to Request for Payment of Authorized Fees. Any request for payment by the Developer for Authorized Fees shall be made to the City Engineer in a form

acceptable to the City and include the supporting documentation herein specified. Within fourteen (14) calendar days of receipt of any request, or such longer period to which the City and the Developer may agree, the City Engineer shall review such request to: (i) determine that it is complete; or (ii) determine that the request is incomplete and to request in writing additional information and documentation reasonably necessary for the City Engineer to complete the review. If the City Engineer notifies Developer that the request is incomplete, the time period for the City Engineer to determine whether or not the request is complete shall be extended until fourteen (14) calendar days following the date that Developer provides the additional information and documentation requested by the City. If the City Engineer fails to notify Developer within the applicable 14-calendar day review period that a request is incomplete, the request will be deemed complete. Within eighteen (18) calendar days after the date a request is determined or deemed to be complete, the City Engineer will review the request to confirm that all conditions in this Agreement for the payment of Authorized Fees have been satisfied, to the extent applicable, and provide notice to Developer either that: (i) the request is approved (which will be confirmed by counter-signing the request); or (ii) the request is disapproved in whole or in part, specifying in the notice the portion of the request that is disapproved and the reason(s) for disapproval. If the request is disapproved in part, the City Engineer will process the request for partial payment under subsection (d) below. Developer may resubmit any request disapproved in whole or in part with additional supporting documentation, which resubmission shall be processed by the City in the same manner as an original request for payment under this Section 8.c. If, at the end of the 18-day review period, the City Engineer fails to approve or disapprove a request for payment, the Developer may send a written notice to the City Engineer notifying the City Engineer of such failure and informing the City Engineer that it has ten (10) calendar days to approve or disapprove the request for payment or the request shall be deemed approved. The foregoing request shall not be deemed a default notice under Section 11(c) herein. The process for review of all payment requests made pursuant to this Section 8 are subject to subsection (e) below.

d. Payment of Authorized Fees. Within seven (7) calendar days after approving a request for Authorized Fees (in whole or in part) or after the deemed approval of a request for the payment of Authorized Fees, the City shall Authorize payment of such Authorized Fees to be made exclusively from one or more of the Sources pursuant to the applicable provisions of the Fiscal Agent Agreement or otherwise. If there are insufficient Sources to pay the full amount of a payment request, then the City shall Authorize payment of as much of the amount on the payment request for Authorized Fees as there are Sources available, and the payment of the balance of the payment request for such Authorized Fees shall be deferred until there are sufficient Sources available to pay the remaining balance of the payment request. Promptly following the availability of Sources, the City shall, from time to time and in as many installments as necessary, Authorize payment of the remaining balance of the payment request for Authorized Fees. Any provision in this Agreement to the contrary notwithstanding, in response to any request for payment under this Section 5, the City shall not be required to make any payments from Sources held and maintained by the City unless, at the time payment is required under this Agreement, (i) there are insufficient funds available in the Sources held and maintained by the Fiscal Agent to fully satisfy the request or (ii) the Sources held and maintained by the Fiscal Agent may not be applied to pay for the Authorized Fees that is the subject of the payment request under federal tax law or otherwise. Payment requests may be paid (i) in any number of installments as Sources become available and (ii) irrespective of the length of time of such deferral of payment. In no event shall the City be required to Authorize or make payments for Authorized Fees from any funding sources other than the Sources.

e. General Cooperation. In connection with processing any payment request for Authorized Fees under this Agreement, the City and the City Engineer will use good faith efforts to request any additional information required to process the request as soon as practicable following the submission of the original materials, and to make each additional information request comprehensive and thorough to minimize the number of requests delivered, and Developer will use its good faith efforts to provide a thorough, organized, and complete response to each request. Developer is authorized to communicate directly with the City, the City Engineer, and their designees, agents, and contractors to facilitate any additional information request, to facilitate the prompt resolution of any technical issues, and to minimize the amount of time it takes to resolve outstanding issues. In addition to the foregoing, and except as otherwise is provided for herein, the City agrees that if a payment request includes more than one Authorized Fee, it will not withhold payment Authorization on any Authorized Fee that has been approved and will withhold payment Authorization only on such Authorized Fee that has not been approved.

f. Payment of Authorized Fees in Advance of Availability of Sources. The Developer or a merchant builder may be required pursuant to the Conditions of Approval or the fee ordinance to pay the Authorized Fees for an Improvement Area prior to the availability of the Sources to pay such Authorized Fees. In the event such Authorized Fees are paid prior to the availability of such Sources, the amounts paid to the City shall be deemed to be deposits (each a "Deposit") that are subject to refund by the City to Developer (and the Developer only, regardless of the entity that paid the Deposits) in the manner set forth in subsection (g) of this Section 8. Any Deposits made to the City shall be deposited in a separate capital facilities account(s) created for each Improvement Area and may be expended by the City in the ordinary course of business. The Developer acknowledges that the City may finance Authorized Fees with proceeds of tax-exempt bonds only if the City can meet certain requirements of federal tax law.

g. Return of Deposits. If the Developer or a merchant builder has made any Deposits, then following deposit of Sources with the City for the corresponding Authorized Fees, the City shall return to the Developer (and the Developer only, regardless of the entity that paid the Deposit) from the capital account in which the Deposits were deposited an amount equal to the Deposits paid by the Developer or merchant builder, without interest or other earnings thereon. The City shall be so obligated to return an amount equal to such Deposits to the Developer only to the extent that an amount equivalent to the amount of the Deposits made by the Developer or merchant builder is deposited with the City from the Sources. An amount equal to such Deposits may be returned to the Developer from time to time as additional Sources become available.

h. Deposits Allocated First. Sources used to pay Authorized Fees shall be allocated first for return of all Deposits prior to being allocated to the payment of Authorized Fees not previously deposited by the Developer or a merchant builder. For example, if the Developer has paid \$10,000 in Deposits, and Sources become available in the amount of \$15,000, the City shall apply the first \$10,000 of the Sources to the payment of the Authorized Fees that were paid by the Deposits (and, thereafter, return the Deposits to the Developer) and use the remaining \$5,000 of the Sources to the payment of Authorized Fees not previously paid by the Deposits and identified in the payment request.

i. Application of Deposits. Any Deposits that have not been returned to the Developer at the time it is determined that there will be no further Sources available (now or in the future) shall be retained by the City and may be used (to the extent it has not already been

so used) for the purposes for which the Authorized Fee was required, and the unrefunded Deposits shall constitute full and final payment for such Authorized Fees, without any increase of any kind.

j. Expectations. The Developer or merchant builder may pay Authorized Fees (as Deposits) prior to the availability of Sources to pay such Authorized Fees. Any Authorized Fees paid (as Deposits) by the Developer or a merchant builder for an Improvement Area shall be made with the understanding that such Deposits will be returned from the Sources if, and when, such Sources become available. The payment of Deposits prior to the availability of the Sources shall not be construed as a dedication or gift of the Authorized Fees, or a waiver of the return of the Deposits, it being the intention that the Authorized Fees be paid by the Sources to the extent of the Sources.

9. Indemnification and Hold Harmless. The Developer shall take and assume all responsibility for the work performed as part of the Facilities constructed pursuant to this Agreement for an Improvement Area until the Acceptance by the City of the respective Facilities occurs.

The Developer shall, to the fullest extent permitted by law, assume the defense of and indemnify and save harmless the City, the CFD and the City's consultants, Councilmembers, officers, employees and agents (the "Indemnified Parties"), from and against (i) any claims by a third party against an Indemnified Party regarding the preparation, adoption, execution and performance of this Agreement, and (ii) any and all claims, losses, damage, expenses and liability of every kind, nature, and description, arising or resulting from the nature and performance of the work covered by this Agreement, from the Developer's or any other entity's negligent design, engineering and/or construction of any of the Facilities for an Improvement Area acquired from the Developer hereunder, the Developer's non-payment under contracts between the Developer and its consultants, engineer's, advisors, contractors, subcontractors and suppliers in the provision of the Facilities for an Improvement Area, or any claims of persons employed by the Developer or its agents to construct the Facilities for an Improvement Area. In accordance with Civil Code section 2782, nothing in this Section shall require defense or indemnification for death, bodily injury, injury to property, or any other loss, damage or expense arising from the active or sole negligence or willful misconduct of any Indemnified Parties, or for defects in design, engineering, and/or construction furnished by any Indemnified Party, or for a default hereunder by the City or the CFD. Moreover, nothing in this Section shall apply to impose on the Developer, or to relieve the City from, liability for active negligence of the Indemnified Parties as delineated in Civil Code Section 2782. Any relief for determining the City's sole or active negligence shall be determined by a court of law.

The City does not, and shall not, waive any rights against the Developer which it may have by reason of the aforesaid hold harmless agreements because of the acceptance by the City, or deposit with the City by the Developer of any insurance policies required by the City. The hold harmless agreement by the Developer set forth in this Section 9 shall apply to all damages and claims for damages of every kind suffered, or alleged to have been suffered by reasons of any of the aforesaid operations of the Developer, or any subcontractor, regardless of whether or not such insurance policies are determined to be applicable to any of such damages or claims for damages.

No act by the City, or its representatives in processing or accepting any plans, in releasing any bond, in inspecting or accepting any work, or of any other nature, shall in any

respect relieve the Developer or anyone else from any legal responsibility, obligation or liability it might otherwise have.

The obligations of the Developer in this Section 9 with respect to the Facilities that are the subject of an executed Assignment and Assumption Agreement shall terminate, subject to the prior written consent of the City if required by Section 1, upon the execution of the Assignment and Assumption Agreement (wherein a Builder has assumed the obligations of this Section 9 with respect to the Facilities identified in the Assignment and Assumption Agreement).

10. Representations and Covenants of the Developer.

a. Representations of the Developer. The Developer represents and warrants for the benefit of the City and the CFD as follows:

(i) Organization. The Developer is a limited liability company duly organized and validly existing under the laws of its state of organization, is in compliance with all applicable laws of the State of California, and has the power and authority to own its properties and assets and to carry on its business as now being conducted and as now contemplated.

(ii) Authority. The Developer has the power and authority to enter into this Agreement, and has taken all action necessary to cause this Agreement to be executed and delivered, and this Agreement has been duly and validly executed and delivered by the Developer.

(iii) Binding Obligation. This Agreement is a legal, valid and binding obligation of the Developer, enforceable against the Developer in accordance with its terms, subject to bankruptcy and other equitable principles.

(iv) Requests for Payment. The Developer represents and warrants that (i) it will not request payment from the City for the acquisition of any improvements that are not part of the Facilities; and (ii) it will diligently follow all procedures set forth in this Agreement with respect to the payment requests. In addition, the Developer shall not request payment for any portion of the cost of a Facility that may be reimbursed to the Developer pursuant to a utility agreement, an oversizing agreement, or any other method of reimbursement that would result in Developer being reimbursed more than once for the same Facility or portion of a Facility.

(v) Plans. The Developer represents that it has obtained or will obtain approval of the Plans for the City Facilities to be acquired from the Developer hereunder from all appropriate departments of the City. The Developer further agrees that the City Facilities to be acquired from the Developer hereunder have been or will be constructed in full compliance with such approved plans and specifications and any supplemental agreements (change orders) thereto.

b. Covenants of the Developer. The Developer covenants for the benefit of the City and the CFD as follows:

(i) Financial Records. Until all Bonds issued to finance the Facilities have been fully redeemed, the Developer covenants to maintain proper books of record and account for the construction of the Facilities and all costs related thereto. Such

accounting books shall be maintained in accordance with generally accepted accounting principles, and shall be available for inspection by the City or its agent at any reasonable time during regular business hours on reasonable notice.

(ii) Prevailing Wages. The Developer covenants that, with respect to any contracts or subcontracts for the construction of the Facilities (including Discrete Components) to be acquired from the Developer hereunder, it will assure complete compliance with any applicable law or regulation for the payment of prevailing wages under the California Labor Code.

(iii) Compliance with Laws. The Developer shall not with knowledge commit, suffer or permit any act to be done in, upon or to the lands of the Developer in the CFD or the Facilities in violation of any law, ordinance, rule, regulation or order of any governmental authority or any covenant, condition or restriction now or hereafter affecting the lands in the CFD or the Facilities.

(iv) Land Owners. The Developer agrees that in the event that it sells any land owned by it within the boundaries of the Project (other than to homeowners), the Developer will (i) notify the City within 30 days of the sale, in writing, identifying the legal name of and mailing address for the purchaser, the applicable County Assessor's parcel number or numbers for the land sold and the acreage of the land sold, (ii) notify the purchaser in writing prior to the closing of any such sale of the existence of this Agreement and, in general, the Developer's rights and obligations hereunder with respect to the construction of and payment for the Facilities, and (iii) notify the purchaser in writing of the existence of the CFD and the special tax lien in connection therewith, and otherwise comply with any applicable provision of Section 53341.5 of the Act.

(v) Initial Disclosure; Continuing Disclosure. The Developer agrees to provide such information about its development and its financing plan as may reasonably be requested by the City, the City's bond counsel or disclosure counsel or a bond underwriter. The Developer agrees to comply with all of its obligations, if any, under any continuing disclosure agreement or certificate executed by it in connection with the offering and sale of any of the Bonds.

(vi) Compliance With Applicable Law. The Developer accepts responsibility for and shall be responsible for identification of and compliance with all applicable laws pertaining to the construction and installation of the Facilities and the contract or contracts pertaining thereto, including but not limited to such applicable laws as may be contained in the California Labor Code, the California Public Contract Code, and the California Government Code. The Developer will neither seek to hold or hold the City liable for, and will hold the City harmless with respect to, any consequences of any failure by the Developer to correctly determine the applicability of any such requirements to any contract it enters into. This paragraph shall apply with respect to any enforcement action, whether public or private, and whether brought by a public enforcement agency or by private civil litigation, against the Developer, the City or the CFD, or any of them, with respect to the matters addressed by this paragraph.

## 11. Events of Default.

a. Grounds for Termination. Subject to the notice and opportunity to cure as set forth in subsection (b), the following events shall constitute grounds for the City, at its option, to terminate this Agreement, without the consent of Developer:

(i) Developer voluntarily files for reorganization or other relief under any Federal or State bankruptcy or insolvency law.

(ii) Developer has any involuntary bankruptcy or insolvency action filed against it, or suffers a trustee in bankruptcy or insolvency or receiver to take possession of the assets of Developer, or suffers an attachment or levy of execution made against the property it owns within the CFD unless, in any of such cases, such circumstance shall have been terminated or released within ninety (90) days thereafter.

(iii) Developer at any time challenges the validity of the CFD, or any Bonds issued in the CFD, or the levy of special taxes within the CFD, other than on the grounds that (A) such special tax levy was not made in accordance with the terms of the applicable Rate and Method, or (B) the special taxes were not applied pursuant to the applicable Rate and Method, this Agreement, or any other agreement between the Developer and the City or another public agency relating to the CFD, or any agreement relating to the CFD for which the Developer is a third party beneficiary.

(iv) Breach by the Developer of any obligations under this Agreement.

b. Notice and Opportunity to Cure. If any such event described in Section 11(a) occurs, the City shall give notice of its knowledge thereof to Developer, and Developer shall agree to meet and confer with the City Engineer and other appropriate City staff and consultants as to options available to assure timely completion of the Facilities not yet constructed. Such options may include, but not be limited to the termination of this Agreement by the City. If the City elects to terminate this Agreement, the City shall first notify Developer (and any mortgagee or trust deed beneficiary specified in writing by Developer to the City to receive such notice) of the grounds for such termination and allow Developer thirty (30) days to eliminate or mitigate to the satisfaction of the City Engineer the grounds for such termination. Such period may be extended, at the sole discretion of the City, if Developer, to the satisfaction of the City, is proceeding with diligence to eliminate or mitigate such grounds for termination. If at the end of such period (and any extension thereof), as determined reasonably by the City, Developer has not eliminated or completely mitigated such grounds, to the reasonable satisfaction of the City, the City may then terminate this Agreement.

c. Breach by the City. In the event that the City breaches its obligations under this Agreement, Developer shall give notice of its knowledge thereof to the City. For defaults other than the failure to Authorize payment of a requisition, the City shall have, from the date of Developer's notice, the greater of (i) the same number of days for which the City has an obligation to complete the defaulted obligation under this Agreement or (ii) thirty (30) calendar days, to eliminate or mitigate the breach to the satisfaction of Developer. For a default for the failure to Authorize payment of a requisition, the City shall have, from the date of Developer's notice, the greater of (i) the same number of days for which the City has an obligation to complete the defaulted obligation under this Agreement or (ii) ten (10) calendar days, to eliminate or mitigate the breach to the satisfaction of Developer. Such period may be extended, at the sole discretion of Developer, if the City, to the satisfaction of Developer, is proceeding

with diligence to eliminate or mitigate such breach. If at the end of such period (and any extension thereof), as determined reasonably by Developer, the City has not eliminated or completely mitigated such breach, to the reasonable satisfaction of Developer, Developer may exercise its remedies under law.

d. Unapproved Payment Requests. Notwithstanding the foregoing, so long as any event listed in Section 11(a) has occurred, notice of which has been given by the City to Developer, and such event has not been cured or otherwise eliminated by Developer, the City may in its discretion cease approval of any previously submitted but unapproved payment requests; provided that Developer shall receive payment of the Purchase Price of any Facility or Discrete Component or the payment of Authorized Fees that the City previously determined was completed at the time of the occurrence of an event listed in Section 11(a) upon submission of the documents and compliance with the other applicable requirements of this Agreement and that all such payment requests shall continue to be paid in the manner set forth in this Agreement.

e. Force Majeure. No party shall be deemed to be in default where failure or delay in the performance of any of its obligations under this Agreement is caused by floods, earthquakes, other acts of God, fires, wars, terrorism, riots or similar hostilities, strikes and other labor difficulties beyond a party's control, shortage of materials (exclusive of prefab/modular building products), prohibitory court actions (such as restraining orders or injunctions) or other causes beyond a party's control. If any such events shall occur, the time for performance by any party of its obligations hereunder shall be extended for the period of time that such events prevented such performance.

f. Assignment. To the extent that an Assignment and Assumption Agreement is executed and effective as set forth in Section 1, the provisions of this Section 11 shall apply separately to each Builder (with respect to the Assignment and Assumption Agreement) and the Developer (with respect to the remainder of this Agreement). A default by a Builder under the terms of this Agreement assigned to such Builder by the Assignment and Assumption Agreement shall not be a default of the Developer under this Agreement or be a cause for termination of this Agreement with respect to the Developer. Likewise, a default by the Developer under this Agreement shall not be a default by a Builder under any Assignment and Assumption Agreement or be a cause for termination of this Agreement assigned to such Builder under the Assignment and Assumption Agreement.

12. Audit. The City Engineer and the City's chief financial officer shall have the right, during normal business hours and upon the giving of ten days written notice to the Developer, to review all books and records of the Developer pertaining to costs and expenses incurred by the Developer in constructing any of the Facilities and any bids taken or received for the construction thereof or materials therefor.

13. Attorney's Fees. In the event of the bringing of any action or suit by either party against the other arising out of this Agreement, the party in whose favor final judgment shall be entered shall be entitled to recover from the other party all costs and expenses of suit, including reasonable attorneys' fees. This provision shall apply separately to the Developer and to each Builder that assumes obligations hereunder by an executed and effective Assignment and Assumption Agreement. A Builder shall not be liable for attorneys' fees resulting from an action or suit for which the Builder was not a party. Likewise, the Developer shall not be liable for attorney's fees resulting from an action or suit for which the Developer was not a party.

14. Notices. Any notice, payment or instrument required or permitted by this Agreement to be given or delivered to either party shall be deemed to have been received when personally delivered or one week following deposit of the same in any United States Post Office, registered or certified mail, postage prepaid, addressed as follows:

Developer: Surland Communities, LLC  
1024 Central Avenue  
Tracy, California 95376  
Attention: Ellis Project Manager

City or CFD: City of Tracy  
333 Civic Center Plaza  
Tracy, CA 95376  
Attn: Finance Director

Each party may change its address or addresses for delivery of notice by delivering written notice of such change of address to the other party.

15. Severability. If any part of this Agreement is held to be illegal or unenforceable by a court of competent jurisdiction, the remainder of this Agreement shall be given effect to the fullest extent reasonably possible.

16. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto. This Agreement may be assigned in whole or in part by the Developer, subject to the prior written consent of the City if required by Section 1. Any assignment of this Agreement shall be made pursuant to the form of the Assignment and Assumption Agreement attached hereto as Exhibit B. Any Assignment and Assumption Agreement executed shall be delivered to the City. This Agreement remains binding upon and inures to the benefit of the Developer with respect to all of the Future Annexation Area and any Additional Property and the Facilities and Authorized Fees that are not subject to an executed Assignment and Assumption Agreement. Unless otherwise provided in an Assignment and Assumption Agreement, the Developer shall be relieved of any obligation and benefit of this Agreement with respect to the Facilities and Authorized Fees indicated in an executed Assignment and Assumption Agreement.

17. Waiver. Failure by a party to insist upon the strict performance of any of the provisions of this Agreement by the other party, or the failure by a party to exercise its rights upon the default of the other party, shall not constitute a waiver of such party's right to insist and demand strict compliance by the other party with the terms of this Agreement thereafter.

18. Merger. No other agreement, statement or promise made by any party or any employee, officer or agent of any party with respect to any matters covered hereby that is not in writing and signed by all the parties to this Agreement shall be binding.

19. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original.

20. Amendments. Amendments to this Agreement shall be made only by written instrument executed by each of the parties hereto.

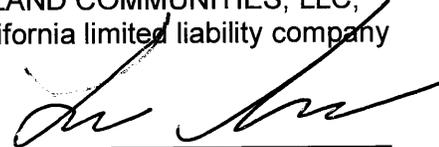
21. Governing Law. The provisions of this Agreement shall be governed by the laws of the State of California applicable to contracts made and performed in the State of California.

**IN WITNESS WHEREOF**, the parties have executed this Agreement as of the day and year first-above written.

CITY OF TRACY, for itself and on behalf of  
CITY OF TRACY COMMUNITY  
FACILITIES DISTRICT NO. 2016-2 (ECFD)

By: \_\_\_\_\_  
City Manager

SURLAND COMMUNITIES, LLC,  
a California limited liability company

By:  \_\_\_\_\_  
Les Serpa  
President / Chief Executive Officer

## EXHIBIT A.1

### AUTHORIZED FACILITIES

The City of Tracy Community Facilities District No. 2016-2 (ECFD) (the "CFD") (and each Improvement Area therein, as originally designated and as designated in the future in conjunction with subsequent annexations of all or any part of the Future Annexation Area or any other property) shall be authorized to finance all or a portion of the costs of acquisition, construction, and improvement of facilities permitted under the Mello-Roos Community Facilities Act of 1982 and that are required as conditions of development of the property within the CFD, the Future Annexation Area, and other property that may be annexed to the CFD, including, but not limited to, the following:

1. Public Buildings and Facilities (excluding Aquatic or Swim Center);
2. Wastewater Treatment Plant Improvements and Facilities;
3. Wastewater Collection Pipeline Improvements and Facilities;
4. Drainage Improvements and Facilities;
5. Water Improvements and Facilities;
6. Roadway Improvements and Facilities, including street lights, traffic signals, landscaped parkways, landscaped medians, curb, gutter, sidewalk, pavement;
7. Public Parks and Facilities (excluding Aquatic or Swim Center), including trails and bike paths;
8. Ancillary Improvements and Facilities such as, publicly-owned masonry walls and fences.

Any facility authorized to be financed by the CFD and each Improvement Area (as originally designated and as designated in the future in conjunction with subsequent annexations of all or any part of the Future Annexation Area or any other property) may be financed through the construction and acquisition of the facility or through the payment of fees for such facility.

The facilities authorized to be financed may be located within or outside the boundaries of the CFD or any Improvement Area (as originally designated and as designated in the future in conjunction with subsequent annexations of all or any part of the Future Annexation Area or any other property).

The facilities to be financed shall include all hard and soft costs associated with the facilities, including the costs of the acquisition of land and rights-of-way, the costs of design, engineering and planning, the costs of any environmental or traffic studies, surveys or other reports, costs related to landscaping and irrigation, soils testing, permits, plan check, and inspection fees, insurance, legal and related overhead costs, coordination and supervision and any other costs or appurtenances related to any of the foregoing as further defined in one or more acquisition agreements with the developer of the property in the CFD (and each Improvement Area therein, as originally designated and as designated in the future in conjunction with subsequent annexations of all or any part of the Future Annexation Area or any other property).

## EXHIBIT A.2

### AUTHORIZED FEES

Set forth below is a description of the water, sewer, or other capacity or connection fees authorized to be financed by the CFD (and any applicable Improvement Area therein) under this Agreement:

The City of Tracy Community Facilities District No. 2016-2 (ECFD) (the "CFD") (and each Improvement Area therein, as originally designated and as designated in the future in conjunction with subsequent annexations of all or any part of the Future Annexation Area or any other property) shall be authorized to finance all or a portion of the costs of the eligible fees permitted under the Act and that are required in connection with the development of the property within the CFD, the Future Annexation Area, and another property that may be annexed to the CFD, including, but not limited to, the following:

- Improvements Financed by the Ellis Finance and Implementation Plan ("EFIP") and the City Master Plan and Public Benefit Payments - including, but not limited to:
  - Public Benefit payments.
  - Transportation EFIP Fee and Master Plan Fee.
  - Wastewater EFIP Fee and Master Plan Fee.
  - Wastewater Conveyance EFIP Fee and Master Plan Fee.
  - Water Conveyance EFIP Fee and Master Plan Fee.
  - Water Treatment EFIP Fee and Master Plan Fee.
  - Recycled Water EFIP Fee and Master Plan Fee.
  - Public Safety EFIP Fee and Master Plan Fee.
  - Public Facilities EFIP Fee and Master Plan Fee.
  - Parks Master EFIP Fee and Plan Fee.

The facilities financed through the payment of fees for such facility may be located within or outside the CFD.

### **EXHIBIT A.3**

#### **DISCRETE COMPONENTS**

Attached hereto is a list of the components of Facilities that are deemed to be Discrete Components under this Agreement.

The attached list of Discrete Components may be amended at any time by the mutual agreement of the City and the Developer.

In addition, the Parties acknowledge and agree that Section 53313.51 of the Act (i) authorizes the purchase of Discrete Components of a Facility with an estimated cost of up to one million dollars (\$1,000,000), but only if the Discrete Component is capable of serviceable use as determined by the City and (ii) authorizes the purchase of Discrete Components whether or not the Discrete Components are capable of serviceable use if the estimated cost of a Facility exceeds one million dollars (\$1,000,000).

EXHIBIT B

FORM OF ASSIGNMENT AND ASSUMPTION AGREEMENT

ASSIGNMENT AND ASSUMPTION AGREEMENT

Relating to:

City of Tracy  
Community Facilities District No. 2016-2  
(ECFD)

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT (this "Assignment"), dated as of \_\_\_\_\_, \_\_\_\_\_, is by and between Surland Communities, LLC, a California limited liability company (the "Developer") and \_\_\_\_\_, a \_\_\_\_\_ (the "Builder") with respect only to (i) the property identified in Appendix A attached hereto (the "Property") and (ii) the Facilities and Authorized Fees identified in Appendix B attached hereto.

RECITALS

A. The City Council of the City of Tracy (the "City") has established the City of Tracy Community Facilities District No. 2016-2 (ECFD) (the "CFD") under the Mello-Roos Community Facilities Act of 1982, as amended, Part 1 (commencing with Section 53311) of Division 2 of Title 5 of the California Government Code (the "Act") for the financing of the public facilities (the "Facilities"), water, sewer or other capacity or connection fees ("Authorized Fees"), and public services described in the City's Resolution No. 2017-021 (the "Resolution of Formation") adopted by the City Council on February 7, 2017.

B. The CFD was created to assist in financing the Facilities and the Authorized Fees described in the Resolution of Formation required in connection with the development of the Ellis project (the "Project").

C. The Developer conveyed the Property to the Builder. The Builder intends to develop the Property, including the construction of a portion of the Facilities that are described in Exhibit B (the "Builder Facilities") and the payment of a portion of the Authorized Fees that are identified in Exhibit B (the "Builder Authorized Fees").

D. The Builder Facilities and the Builder Authorized Fees are authorized to be financed by the CFD by the Resolution of Formation.

E. To assist in the financing of the Builder Facilities and the Builder Authorized Fees, the Property has been annexed into the CFD as Improvement Area No. \_\_\_\_ (the "Improvement Area"). The CFD is authorized to levy special taxes upon the Property pursuant to the Rate and Method of Apportionment of Special Tax (the "RMA") attached to the Notice of Special Tax Lien recorded in the Official Records of San Joaquin County on \_\_\_\_\_, \_\_\_\_ as instrument number \_\_\_\_\_ (the "Notice of Special Tax Lien").

F. The Developer previously entered into the Amended and Restated Master Acquisition Agreement dated as of September 1, 2021, by and between the City, on behalf of itself and the CFD, and the Developer (the "Master Acquisition Agreement"). The Master Acquisition Agreement sets forth the conditions for the financing of authorized facilities and capital facility fees from the Sources (as defined in the Master Acquisition Agreement). The Master Acquisition Agreement may be assigned to a builder of a future phase of the Project.

G. The Developer desires to assign the Master Acquisition Agreement to the Builder, but only with respect to the construction and acquisition of the Builder Facilities and the financing of the Builder Authorized Fees, and only from the Sources derived from the Improvement Area.

H. The Builder desires to assume all of the obligations and receive all of the benefits of the Master Acquisition Agreement, but only with respect to the Builder Facilities and the Builder Authorized Fees and from the Sources derived from the Improvement Area.

NOW, THEREFORE, for good and valuable consideration, receipt of which is hereby acknowledged, the parties hereto hereby agree as follows:

## **AGREEMENTS**

### Section 1: Assignment.

The Developer hereby assigns to Builder all of the rights, duties, and obligations of, and all of the benefits accruing to, the Developer in an under the Master Acquisition Agreement arising or accruing solely from (i) the construction, and acquisition by the CFD, of the Builder Facilities and (ii) the payment and reimbursement from the CFD, or the return of applicable Deposits by the City, of the Builder Authorized Fees [except for the following: \_\_\_\_]. The parties understand and agree that the Developer is assigning the Master Acquisition Agreement only to the extent that the Master Acquisition Agreement pertains to the construction and acquisition of the Builder Facilities and the payment [and reimbursement] of the Builder Authorized Fees, and this Assignment does not apply to any other Facilities or Authorized Fees that may be constructed or paid in connection with the development of any other property in the Project.

### Section 2: Assumption.

The Builder fully accepts and assumes from the Developer all of the rights, duties, and obligations of, and all of the benefits accruing to, the Developer in and under the Master Acquisition Agreement arising or accruing solely from (i) the construction, and acquisition by the CFD, of the Builder Facilities and (ii) the payment [and reimbursement] from the CFD, or the return of applicable Deposits by the City, of the Builder Authorized Fees [except for the following: \_\_\_\_]. The parties understand and agree that the Builder is assuming the Master Acquisition Agreement only to the extent that the Master Acquisition Agreement pertains to the

construction and acquisition of the Builder Facilities and the payment [and reimbursement] of the Builder Authorized Fees, and this Assignment does not apply to any other Facilities or Authorized Fees that may be constructed or paid in connection with the development of any other property in the Project.

Section 3: Sources.

The Builder acknowledges and agrees that (i) the Sources identified in the Master Acquisition Agreement for the financing of the Builder Facilities and the Builder Authorized Fees are limited to \_\_\_\_\_ [insert limitations if any], (ii) any Sources that are not identified in (i) are not available to finance the Builder Facilities and the Builder Authorized Fees, and (iii) the Builder must comply with the provisions of the Master Acquisition Agreement in order for the Builder Facilities and the Builder Authorized Fees to be eligible for financing from the Sources derived from the Improvement Area. [IF REQUIRED: As identified in Exhibit B, a portion of the Builder Facilities and the Builder Authorized Fees were paid for by the Seller, and the first available Sources will be used to pay the Developer for such Builder Facilities and Builder Authorized Fees.]

Section 4: Specific Provisions.

The Builder shall be bound in every way by all of the duties and obligations of the Developer in the Master Acquisition Agreement with respect to the Builder Facilities and Builder Authorized Fees, including, but not limited to, the following:

- (i) The Builder shall be responsible to indemnify and hold harmless the City with respect to the Builder Facilities and the Builder Authorized Fees as set forth in Section 9 of the Master Acquisition Agreement, and the Developer shall have no liability whatsoever under Section 9 of the Master Acquisition Agreement with respect to the Builder Facilities and Builder Authorized Fees.
- (ii) The indemnity obligations under Section 10(b)(vi) of the Master Acquisition Agreement with respect to the Builder Facilities.
- (iii) The Builder shall be responsible to pay attorney's fees to the extent the Builder is named in any action or suit, as set forth in Section 13 of the Master Acquisition Agreement.
- (iv) The Builder shall be responsible to provide notices pursuant to Section 53341.5 of the Act with respect to the sale of any of the Property.

Section 5: Release of the Developer.

The Developer is released from any of the duties and obligations under the Master Acquisition Agreement with respect to the Builder Facilities and the Builder Authorized Fees, including, but not limited to, the indemnity provisions of Section 9 and Section 10(b)(vi) of the Master Acquisition Agreement.

Section 6: Remaining Obligations.

To the extent not assigned and assumed by this Assignment (and any previous assignments), the Developer shall remain obligated under, and entitled to the benefits of, the Master Acquisition Agreement with respect to the remaining Facilities and Authorized Fees.

Section 7: Notices.

Any notice, payment or instrument required or permitted by this Assignment or by the Master Acquisition Agreement to be given or delivered to either party shall be deemed to have been received when personally delivered or one week following deposit of the same in any United States Post Office, registered or certified mail, postage prepaid, addressed as follows:

Developer: Surland Communities, LLC  
1024 Central Avenue  
Tracy, California 95376  
Attention: Ellis Project Manager

Builder: [insert contact information]

City or CFD: City of Tracy  
333 Civic Center Plaza  
Tracy, CA 95376  
Attn: Administrative Services Director

Each party may change its address or addresses for delivery of notice by delivering written notice of such change of address to the other party.

Section 8: Severability.

If any part of this Assignment is held to be illegal or unenforceable by a court of competent jurisdiction, the remainder of this Assignment shall be given effect to the fullest extent reasonably possible.

Section 9: Successors and Assigns.

This Assignment shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto. Any assignment of this Assignment shall be delivered to the City.

Section 10: Waiver.

Failure by a party to insist upon the strict performance of any of the provisions of this Assignment by the other party, or the failure by a party to exercise its rights upon the default of the other party, shall not constitute a waiver of such party's right to insist and demand strict compliance by the other party with the terms of this Assignment thereafter.

Section 11: Merger.

No other agreement, statement or promise made by any party or any employee, officer or agent of any party with respect to any matters covered hereby that is not in writing and signed by all the parties to this Assignment shall be binding.

Section 12: Counterparts.

This Assignment may be executed in counterparts, each of which shall be deemed an original.

Section 13: Amendments.

Amendments to this Assignment shall be made only by written instrument executed by each of the parties hereto.

Section 14: Governing Law.

The provisions of this Assignment shall be governed by the laws of the State of California applicable to contracts made and performed in the State of California.

**IN WITNESS WHEREOF**, the parties have executed this Assignment as of the day and year first-above written.

[ADD SIGNATURE BLOCK FOR BUILDER]

SURLAND COMMUNITIES, LLC,  
a California limited liability company

By: \_\_\_\_\_  
Les Serpa  
President / Chief Executive Officer

ACKNOWLEDGED AND CONSENTED TO:

CITY OF TRACY

By: \_\_\_\_\_  
Authorized Representative

APPENDIX A  
DESCRIPTION OF PROPERTY

APPENDIX B

BUILDER FACILITIES AND BUILDER AUTHORIZED FEES

RESOLUTION NO. \_\_\_\_

**A RESOLUTION AUTHORIZING EXECUTION AND DELIVERY OF AN AMENDED AND RESTATED MASTER ACQUISITION AGREEMENT RELATED TO CITY OF TRACY COMMUNITY FACILITIES DISTRICT NO. 2016-2 (ECFD)**

RESOLVED, by this City Council (the "Council") of the City of Tracy (the "City"), County of San Joaquin, State of California, that:

WHEREAS, this Council previously conducted proceedings under and pursuant to the Mello-Roos Community Facilities Act of 1982, as amended, Chapter 2.5 of Part 1 of Division 2 of Title 5 (commencing with Section 53311) of the California Government Code (the "Act"), to establish (i) "City of Tracy Community Facilities District No. 2016-2 (ECFD)" (the "CFD"), (ii) an initial improvement area in the CFD designated "Improvement Area No. 1 of the City of Tracy Community Facilities District No. 2016-2 (ECFD)" ("Improvement Area No. 1"), and (iii) a future annexation area for the CFD (the "Future Annexation Area"); and

WHEREAS, Section 53314.9 of the Act provides that, either before or after formation of the CFD, the City may accept work in-kind from any source, including, but not limited to, private persons or private entities, the City may provide, by resolution, for the use of that work in-kind for any authorized purpose, and the City Council may enter into an agreement (an "Acquisition Agreement"), by resolution, with the person or entity advancing the work in-kind, to reimburse the person or entity for the value, or cost, whichever is less, of the work in-kind, as determined by the City Council, with or without interest, under the conditions specified in the Act; and

WHEREAS, pursuant to Resolution No. 2017-21, adopted by the Council on February 7, 2017 (the "Resolution of Formation"), the Council, among other things, approved the form of an Acquisition Agreement related to the CFD, and the City and Surland Communities, LLC (the "Developer") subsequently executed a Master Acquisition Agreement dated February 1, 2017 (the "Master Acquisition Agreement"); and

WHEREAS, the Developer has asked the City to amend and restate the Master Acquisition Agreement for the purpose of (i) clarifying that certain costs incurred by the Developer in connection with the financing of authorized improvements are eligible to be financed by the CFD and (ii) authorizing any improvement area in the CFD to finance authorized impact fees payable by the properties in the CFD ; and

WHEREAS, there have been submitted to this Council a proposed Amended and Restated Master Acquisition Agreement incorporating the requested amendments, and this Council with the aid of its staff, has reviewed the Amended and Restated Master Acquisition Agreement and found it to be in proper order;

NOW THEREFORE BE IT RESOLVED, as follows:

1. Recitals. The foregoing recitals are all true and correct.

2. Amended and Restated Master Acquisition Agreement. This Council hereby approves the Amended and Restated Master Acquisition Agreement, in substantially the form on file with the City Clerk. The Mayor, City Manager, Assistant City Manager, Finance Director, or such other official of the City as may be designated by such officer pursuant to Section 3 hereof (each, an "Authorized Officer") is hereby authorized and directed to execute the Amended and Restated Master Acquisition Agreement on behalf of the City, with such minor changes, additions or deletions as may be approved by the Authorized Officer, and the City Clerk is hereby authorized and directed to attest thereto.

3. Actions Authorized. The appropriate officers of the City are hereby authorized and directed to do any and all things and take any and all actions and execute any and all certificates, agreements and other documents, which they, or any of them, may deem necessary or advisable in order to accomplish the purposes of this resolution. All actions to be taken by an Authorized Officer, as defined herein, may be taken by such Authorized Officer or any designee, with the same force and effect as if taken by the Authorized Officer.

4. Effectiveness. This resolution shall take effect from and after its adoption. The provisions of any previous resolutions in any way inconsistent with the provisions hereof in and for the issuance of the Bonds as herein described are hereby repealed.

The foregoing Resolution \_\_\_\_\_ was adopted by the Tracy City Council the 7th day of September, 2021, by the following vote:

AYES: COUNCILMEMBERS:

NOES: COUNCILMEMBERS:

ABSTAIN: COUNCILMEMBERS:

ABSENT: COUNCILMEMBERS:

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

ATTEST:

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

AGENDA ITEM 3.B

REQUEST

**ADOPT A RESOLUTION OF INTENTION TO ESTABLISH COMMUNITY FACILITIES DISTRICT (CFD) NO. 2021-1 (HILLVIEW); ADOPT A RESOLUTION OF INTENTION TO INCUR BONDED INDEBTEDNESS AND OTHER DEBT; SET THE PUBLIC HEARING DATE FOR NOVEMBER 2, 2021 TO CONSIDER QUESTIONS OF ESTABLISHING THE CFD, LEVYING THE SPECIAL TAX AND INCURRING BONDED INDEBTEDNESS AND OTHER DEBT; AND DIRECT STAFF TO PREPARE A CFD REPORT**

EXECUTIVE SUMMARY

AG Essential Housing CA 4, L.P., a Delaware limited partnership (“AGEH”) is the owner of certain land in the Tracy Hills Specific Plan area. Lennar Homes of California, Inc., a California corporation (the “Developer”) has an option to acquire the land and intends to develop the land with 214 single-family detached homes and commercial uses (the “Project”). The land is described in the proposed boundary map for the CFD (Attachment B).

AGEH has petitioned the City (Attachment A) to form a community facilities district under the Mello-Roos Community Facilities Act of 1982, as amended (the “Mello-Roos Act”), in order to finance the infrastructure required to develop the Project and certain public services. The Project will also pay special taxes levied in Community Facilities District No. 2018-1 (Maintenance and Public Services) to certain public services.

The formation process will require three City Council meetings, including tonight’s meeting.

DISCUSSION

For this agenda item, the City Council will be asked to consider the following actions:

- adoption of a Resolution of Intention to Establish Community Facilities District for “City of Tracy Community Facilities District No. 2021-1 (Hillview) (the “CFD”);
- adoption of a Resolution of Intention to Incur Bonded Indebtedness and Other Debt;
- setting a public hearing date of November 2, 2021 to consider questions of establishing the CFD, levying the special tax and issuing bonded indebtedness and other debt; and
- directing the preparation of a CFD Report.

**BRIEF PROJECT HISTORY**

The land proposed to be included in the CFD is located in the Tracy Hills Specific Plan Area, east of Phase 1A and Corral Hollow Road, north of Interstate 580 (I-580) and south of the California Aqueduct.

The land is owned by AGEH. The Developer has an option to acquire the land and intends to develop the Project with 214 single-family detached homes and commercial uses.

### **PROPOSED CFD**

#### ***What the CFD Does***

The CFD is a mechanism for funding the public infrastructure that the Project developer is required to build as a condition of development for the Project (the “Facilities”), and it will also fund certain public services (the “Services”). The Facilities and the Services are described in Exhibit A to the Resolution of Intention to Establish Community Facilities District.

The Project will also annex into the City’s Community Facilities District No. 2018-1 (Maintenance and Public Services) to finance additional public services.

The Rate and Method of Apportionment of Special Tax (the “RMA”) for the CFD, which is set forth in Exhibit B of the Resolution of Intention to Establish Community Facilities District, establishes two special taxes: (i) a Facilities Special Tax, that will be used over a 40-year period to finance the Facilities and (ii) a perpetual Services Special Tax that will be used to pay for Services. As homes are sold, the new property owners assume the responsibility to pay the Facilities Special Tax and the Services Special Tax in the amount specified in the RMA.

#### ***Deposit and Reimbursement Agreement***

The Developer has agreed to advance funds to pay for the costs of forming the CFD and certain non-contingent costs of issuing bonds. The Developer’s obligation to advance these funds and the City’s agreement to reimburse those advances with proceeds of bonds and special taxes from the CFD will be documented in a Deposit and Reimbursement Agreement, to be considered by the City Council at this meeting (Attachment C).

#### ***The Proposed Cost of Financing the Improvements***

The City will be asked to issue bonds to finance the Facilities.<sup>1</sup> The bonds issued by the City for the CFD will not exceed the principal amount of \$12,000,000 (the “Bonded Indebtedness Limit”). The CFD will also be authorized to incur other debt (as defined in the Mello-Roos Act).

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<sup>1</sup> The facilities constructed or acquired may be located within or outside the CFD.

**Facilities Special Taxes.** The maximum Facilities Special Tax in the CFD for fiscal year 2021-22 is established by the RMA, as follows:

<p align="center"><b>Table 1</b>  <b>Maximum Facilities Special Tax</b></p> <p align="center"><b>Land Use</b></p>	<p align="center"><b>Maximum Facilities Special Tax Before Transition Year (in Fiscal Year 2021-22 \$)*</b></p>	<p align="center"><b>Maximum Facilities Special Tax In and After Transition Year</b></p>
<p align="center">Single Family Residential Property</p>	<p align="center">\$1,969 per Residential Unit</p>	<p align="center">\$0 per Residential Unit</p>
<p align="center">Other Property</p>	<p align="center">\$33,087 per Acre</p>	<p align="center">\$0 per Acre</p>
<p align="center">Taxable Public Property            Taxable HOA Property            Taxable Welfare Exemption Property</p>	<p align="center">\$33,087 per Acre</p>	<p align="center">\$0 per Acre</p>
<p align="center">Undeveloped Property</p>	<p align="center">\$33,087 per Acre</p>	<p align="center">\$0 per Acre</p>

\* On July 1, 2022 and on each July 1 thereafter, all figures shown in Table 1 above shall be increased by an amount equal to 2.0% of the amount in effect for the prior Fiscal Year.

It is expected that the maximum annual Facilities Special Taxes will be used to service the bonds and other debt issued by the City for the CFD and to pay for Facilities on a “pay as you go” basis.

For the first 15 years in which the Facilities Special Tax is levied in the CFD, the City will levy the maximum Facilities Special Tax on developed property and any Remainder Taxes (Facilities Special Tax revenues in excess of (i) debt service for outstanding bonds, (ii) administrative costs, (iii) amounts required to replenish reserve fund, (iv) amounts needed cure delinquencies occurring in the prior Fiscal Year; or (v) administrative expenses from the prior six months if bonds have not been issued) will be used to reimburse the Project developer. Thereafter, the City will levy the Facilities Special Tax as necessary to pay debt service, administrative expenses and costs of the Facilities, among other authorized purposes.

**Services Special Taxes.** The maximum Services Special Tax in the CFD is established by the RMA, as follows:

**TABLE 2  
 Maximum Services Special Tax**

Land Use	Maximum Services Special Tax Before Transition Year	Maximum Services Special Tax In and After Transition Year ( in Fiscal Year 2021-22 \$)*
Single Family Residential Property	\$0 per Residential Unit	\$394 per Residential Unit
Taxable Public Property Taxable HOA Property	\$0 per Acre	\$1,127 per Acre
Undeveloped Property	\$0 per Acre	\$1,127 per Acre

\* Beginning July 1, 2022 and each July 1 thereafter until the Transition Year, the Services Special Taxes in Table 2 shall be increased by 2.0% of the amount in effect in the prior Fiscal Year. On July 1 of the Transition Year and each July 1 thereafter, the Services Special Taxes and the Maximum Services Special Tax assigned to each Parcel shall be adjusted by the Escalation Factor.

The RMA establishes a two-phase structure for Services Special Taxes, in which the Services Special Tax will be \$0 until the occurrence of the “Transition Event”, which is defined in the RMA to mean that (i) all Bonds secured by the levy and collection of Facilities Special Taxes have been fully repaid, (ii) all Administrative Expenses from prior Fiscal Years have been paid, funded, and/or reimbursed to the City, and (iii) there are no other Authorized Facilities that the City intends to fund with Bonds and Facilities Special Taxes.

***How Long will it Take to Pay Off the Bonds***

This CFD allows for multiple bond issues for the CFD, each of which is expected to have a term of thirty years. The Facilities Special Tax can be levied in the CFD for only 40 fiscal years.

***The Financing Team***

The financing team for the CFD has been selected and used by the City in other bond issues and includes Jones Hall as Bond Counsel and Disclosure Counsel, Piper Sandler, as the negotiated underwriter, Harris and Associates as Program Manager, and Goodwin Consulting Group as Special Tax Consultant and CFD Administrator.

***Acquisition Agreements***

In general, community facilities districts can be “construction districts” (in which the community facilities district finances public infrastructure to be constructed by a public agency) or “acquisition districts” (in which the community facilities district finances the acquisition of public infrastructure that has been built by a developer in the community facilities district). Community facilities districts can also finance connection fees payable by a developer.

It is expected that the CFD will primarily be an acquisition district, and that the City will enter into an Acquisition Agreement with the Developer. Staff expects to ask the City

Council to approve the form of an Acquisition Agreement at a future meeting.

### **REQUIRED CFD LEGISLATIVE ACTIONS**

#### ***First Legislative Action (first Council meeting)***

The Mello-Roos Act is both a procedural law (establishing a community facilities district and authorizing the levy of a special tax) and a bond law (authorizing issuance of bonded indebtedness and other debt). Under the Mello-Roos Act, adoption of the Resolution of Intention to Establish Community Facilities District formally starts the process for formation of the CFD by describing the Facilities and Services to be financed, proposing a special tax formula and setting a public hearing on the questions of establishing the CFD and levying the special taxes. This resolution also directs the preparation of a CFD Report which must contain, among other things, a brief description of the public facilities and services by type which will be "required to adequately meet the needs of the district" and the estimated cost (including estimated bonding and administrative costs) of providing those facilities and services.

The City Council may also begin a concurrent process for issuance of bonds and other debt. The bonds and other debt will be special obligations of the City payable only from special taxes levied in the CFD. The Resolution of Intention to Incur Bonded Indebtedness and Other Debt begins the debt process; it sets forth the maximum amount of bonded debt to be incurred for the CFD. This resolution also calls for a public hearing on the proposed bonded and other debt, which is set for the same time as the hearing on formation of the CFD.

#### ***Second Legislative Action (second Council meeting)***

The two public hearings are proposed for November 2, 2021. Protests against the establishment of the CFD, the extent of the CFD or the proposed facilities or services may be made orally or in writing by any interested persons or taxpayers. If 50 percent or more of the registered voters residing in the CFD, or 6 registered voters residing in the CFD, whichever is greater, or the owners of 50% or more of the non-exempt land in the CFD, file written protests against establishment of the CFD, the proceedings must stop for at least one year.

On November 2, 2021, after completion of the public hearings, the City Council will be asked to adopt the following resolutions:

1. Resolution of Formation of Community Facilities District, which forms the CFD, establishes the scope of the Facilities and Services, and adopts the special tax formula for the CFD.
2. Resolution of Necessity to Incur Bonded Indebtedness and Other Debt. This resolution declares the necessity to incur bonded indebtedness and other debt, and establishes the maximum amount of any bonded debt.
3. Resolution Calling Special Election. This resolution calls for the required vote by the qualified electors in the CFD on (i) the levy of the special taxes, (ii) issuance of a not-to-exceed bonded and other debt and (iii) an appropriations limit.

Under the Mello-Roos Act, if the CFD, at the end of the public hearing, contains fewer than 12 registered voters (this includes any registered voters living in the CFD, including

renters), the vote is by landowners with each owner having one vote for each acre or portion of acre owned.

Staff has confirmed that there are no registered voters living on the property to be included in the CFD, and AGEH is expected to be the only qualified elector for the proposed election in the CFD. Because, as permitted by the Mello-Roos Act, AGEH has waived the waiting period otherwise required by the Mello-Roos Act between adoption of the Resolution of Formation and the election, the election will be held at the same meeting as the hearing and after the adoption of the Resolution Calling Special Election.

Following a successful election, the following actions would need to be taken:

1. The City Council will be asked to adopt a Resolution Confirming Results and Directing Recording of Notice of Special Tax Lien, which determines the outcome of the election and provides for the required recording of the special tax lien notice. Recordation of the notice of special tax lien gives constructive notice of the existence of the ability of the City Council to levy special taxes to finance the Facilities and Services according to the RMA.

2. Introduction (First Reading) of the Ordinance Ordering Levy of Special Taxes. This ordinance orders the levy of the Facilities Special Tax and the Services Special Tax to finance the Facilities and Services according to the RMA.

At a third Council meeting, the City would perform the second reading and adoption of the Ordinance Ordering the Levy of Special Taxes.

At such time as the City and the Developer are ready to issue bonds to pay for authorized Facilities, staff will return for approval of bonds and related documents.

### STRATEGIC PLAN

This action to initiate the formation of a CFD to finance the Facilities is not related to any of Council's strategic plans. This action to initiate the formation of a CFD to finance the Services for the Project supports goal 2 of the Strategic Plan: "Ensure continued fiscal sustainability through financial and budgetary stewardship."

### FISCAL IMPACT

There is no cost to the General Fund associated with this request. Bond Counsel/Disclosure Counsel, Underwriter, Tax Consultant/CFD Administrator, and Project Manager expenses are either contingent upon the successful sale and closure of the bonds and paid from bond proceeds and/or are paid through an existing Cost Recovery Agreement with the developer.

### RECOMMENDATION

That Council:

- adopt a Resolution of Intention to Establish Community Facilities District;
- adopt a Resolution of Intention to Incur Bonded Indebtedness and Other Debt;

- set a Public Hearing date of November 2, 2021 to consider questions of establishing the CFD, levying the special tax and incurring bonded indebtedness and other debt; and
- direct the preparation of a CFD Report.

Prepared by: Karin Schnaider, Finance Director  
Chris Lynch, Jones Hall

Reviewed by: Midori Lichtwardt, Assistant City Manager

Approved by: Bob Adams, Interim City Manager

ATTACHMENTS

- A: Petition
- B: Boundary Map
- C: Deposit and Reimbursement Agreement

**PETITION TO CREATE A  
COMMUNITY FACILITIES DISTRICT  
(Including Waivers)**

August 26, 2021

City Council of the  
City of Tracy  
333 Civic Center Plaza  
Tracy, CA 95376

Members of the Council:

This is a petition to create a community facilities district and related matters (the "Petition") submitted pursuant to the Mello-Roos Community Facilities Act of 1982 (Section 53311 and following of the California Government Code) (the "Act").

1. Petitioners. This Petition is submitted pursuant to the Act to the City of Tracy (the "City") by the owner (the "Property Owner") of 100% of the fee simple interest in the parcels of land identified by Assessor Parcel Numbers shown below (the "Property") and further shown on the map attached hereto as Exhibit B. The Property Owner warrants to the City with respect to the Property that the signatories are authorized to execute this Petition and that the submission of this Petition and participation in the City's proceedings under the Act will not constitute a violation or event of default under any existing financing arrangement in any way affecting the Property Owner and such Property, including any "due-on-encumbrance" clauses under any existing deeds of trust secured by the Property.

2. Request to Institute Proceedings. The City Council is hereby requested to do all of the following:

- a. Undertake proceedings under the Act to create a community facilities district to be designated "City of Tracy Community Facilities District No. 2021-1 (Hillview)" (the "CFD"), which CFD shall initially include only the Property; and
- b. Conduct a landowner-voter election in accordance with the Act to obtain authorization (1) to levy a special tax for facilities (the "Facilities Special Tax") on the non-exempt property located within the CFD, (2) to levy a special tax for public services (the "Services Special Tax") on the non-exempt property located within the CFD and (3) to authorize the issue of bonded indebtedness and other debt (as defined in the Act) for the CFD, all as shall be more fully established during the course of the requested legal proceedings for establishment of the CFD.

3. Boundaries of CFD. The Property Owner hereby asks that the territory within the boundaries of the CFD be as shown on the map attached hereto as Exhibit B.

4. Purpose of CFD. The CFD shall be created for the purpose of financing the facilities (the "Facilities") and the public services described in Exhibit A attached hereto and incorporated herein by reference. The Property Owner will request from time to time that the City

Council issue special tax bonds and other debt in one or more series to finance the Facilities and the related incidental expenses of the proceedings and bond financing.

5. Elections. The Property Owner hereby asks that the special election to be held under the Act to authorize the special taxes and the issuance of the bonded indebtedness and to establish an appropriations limit for the CFD be consolidated into a single election and that the election be conducted by the City and its officials, using mailed or hand-delivered ballots, and that such ballots be opened and canvassed and the results certified at the same meeting of the City Council as the public hearings on the CFD under the Act or as soon thereafter as possible.

6. Waivers. To expedite the completion of the proceedings for the CFD, all notices of hearings and all notices of election, applicable waiting periods under the Act for the election and all ballot analyses and arguments for the election are hereby waived. The Property Owner also waives any requirement as to the specific form of the ballot to be used for the election, whether under the Act, the California Elections Code or otherwise.

7. Deposits. Compliance with the provisions of subsection (d) of Section 53318 of the Act has been accomplished by a deposit of funds by the Property Owner with the City, made not later than the date of submission of this petition to the City Clerk, pursuant to a Deposit and Reimbursement Agreement, between the City and Lennar Homes of California, Inc., to pay the estimated costs to be incurred by the City in conducting proceedings for establishment of the CFD.

8. Counterparts. This Petition may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

By executing this Petition, the persons below agree to all of the above.

The property that is the subject of this Petition is identified as Assessor Parcel Nos. 253-100-150-000, 253-00-23 (26.14 acres)

The name of the owner of record of such property and the petitioner and its mailing address is:

AG ESSENTIAL HOUSING CA 4, L.P., a Delaware limited partnership

By:   
Steven S. Benson, the manager of AGWIP Asset Management LLC, an Arizona limited liability company, the Authorized Agent of AG Essential Housing CA 4, L.P.

Mailing Address:  
8585 East Hartford Drive  
Suite 118  
Scottsdale, AZ. 85255  
Attn: Steve Benson

## EXHIBIT A

### PROPOSED DESCRIPTION OF FACILITIES AND SERVICES TO BE FINANCED BY THE CFD

**City of Tracy  
Community Facilities District No. 2021-1  
(Hillview)**

#### FACILITIES

The CFD shall be authorized to finance all or a portion of the costs of the acquisition, construction and improvement of facilities permitted under the Mello-Roos Act and that are required as conditions of development of the property within the CFD, including, but not limited to, the following:

1. Roadway Improvements (and all curb and gutter, sidewalks, lighting, signalization, landscaping, monumentation, and dry and wet utilities) - including, but not limited to:
  - o Arterial roadways
  - o Collector roadways
2. Wastewater Facilities - including, but not limited to, a wastewater treatment facility and/or expansion, pump stations, life stations, force main and gravity lines.
3. Water Facilities - including, but not limited to, a water treatment facility, pump stations, new water transmission lines, additional storage reservoirs or tanks with booster pumps, production wells, backup generators at existing wells, and pressure reducing valves.
4. Reclaimed Water Facilities - including, but not limited to, reclaimed water treatment facilities, pump stations, new reclaimed water transmission lines, and additional storage reservoirs or tanks with booster bumps.
5. Drainage Improvements - including, but not limited to, pipes, culverts, retention basins, drop inlets, and filtration areas.
6. Landscaping - including, but not limited to, entryways, streets, buffers, and slopes.
7. Open Space Improvements
8. Parks and Park Equipment - including, but not limited to, construction of parks, park equipment and structures.
9. Improvements Financed by City Master Plan and Public Benefit Payments - including, but not limited to:
  - o Public Benefit payments.
  - o Transportation Master Plan Fee.
  - o Wastewater Master Plan Fee.
  - o Wastewater Conveyance Master Plan Fee.
  - o Water Treatment Master Plan Fee.
  - o Water Conveyance Master Plan Fee.
  - o Water Supply Master Plan Fee.

- Water Treatment Master Plan Fee.
- Recycled Water Master Plan Fee.
- Public Safety Master Plan Fee (including, but not limited to, Fire, Police, Communication and Program Fees).
- Public Facilities Master Plan Fee.
- Parks Master Plan Fee.

10. Any other real or other tangible property with an estimated useful life of five years or longer.

Any facility authorized to be financed by the CFD may be financed through the construction and acquisition of the facility or through the payment of fees for such facility.

The facilities constructed or acquired may be located within or outside the CFD.

The facilities to be financed shall include all hard and soft costs associated with the facilities, including the costs of the acquisition of land and rights-of-way, the costs of design, engineering and planning, the costs of any environmental or traffic studies, surveys or other reports, costs related to landscaping and irrigation, soils testing, permits, plan check, and inspection fees, insurance, legal and related overhead costs, coordination and supervision and any other costs or appurtenances related to any of the foregoing as further defined in one or more acquisition agreements with the developer of the Property in the CFD.

### SERVICES

Special taxes collected in the CFD may finance, in whole or in part, the following services (“services” and “maintenance” shall have the meaning given those terms in the Mello-Roos Community Facilities Act of 1982):

Maintenance and operation of the Facilities.

### OTHER

The CFD may also finance any of the following:

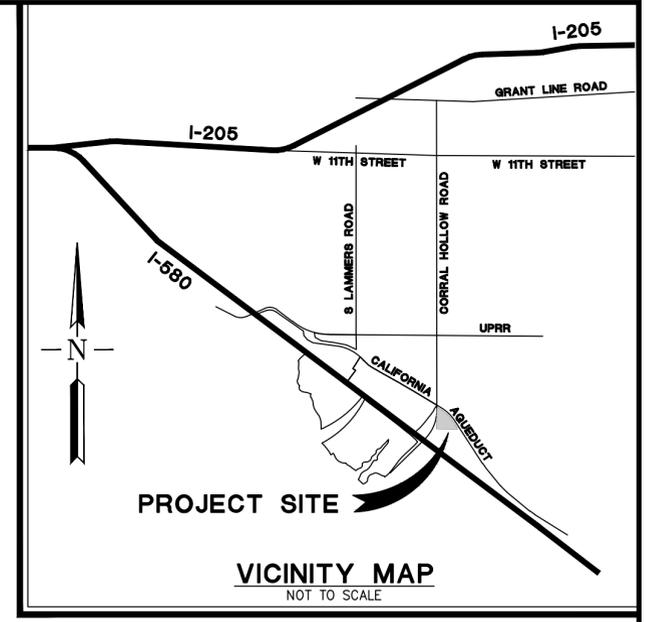
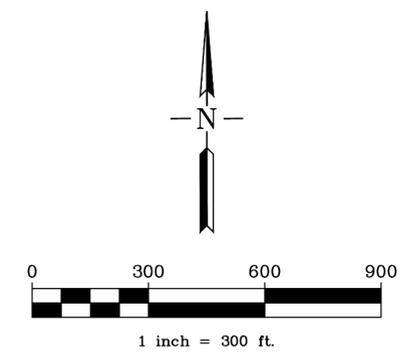
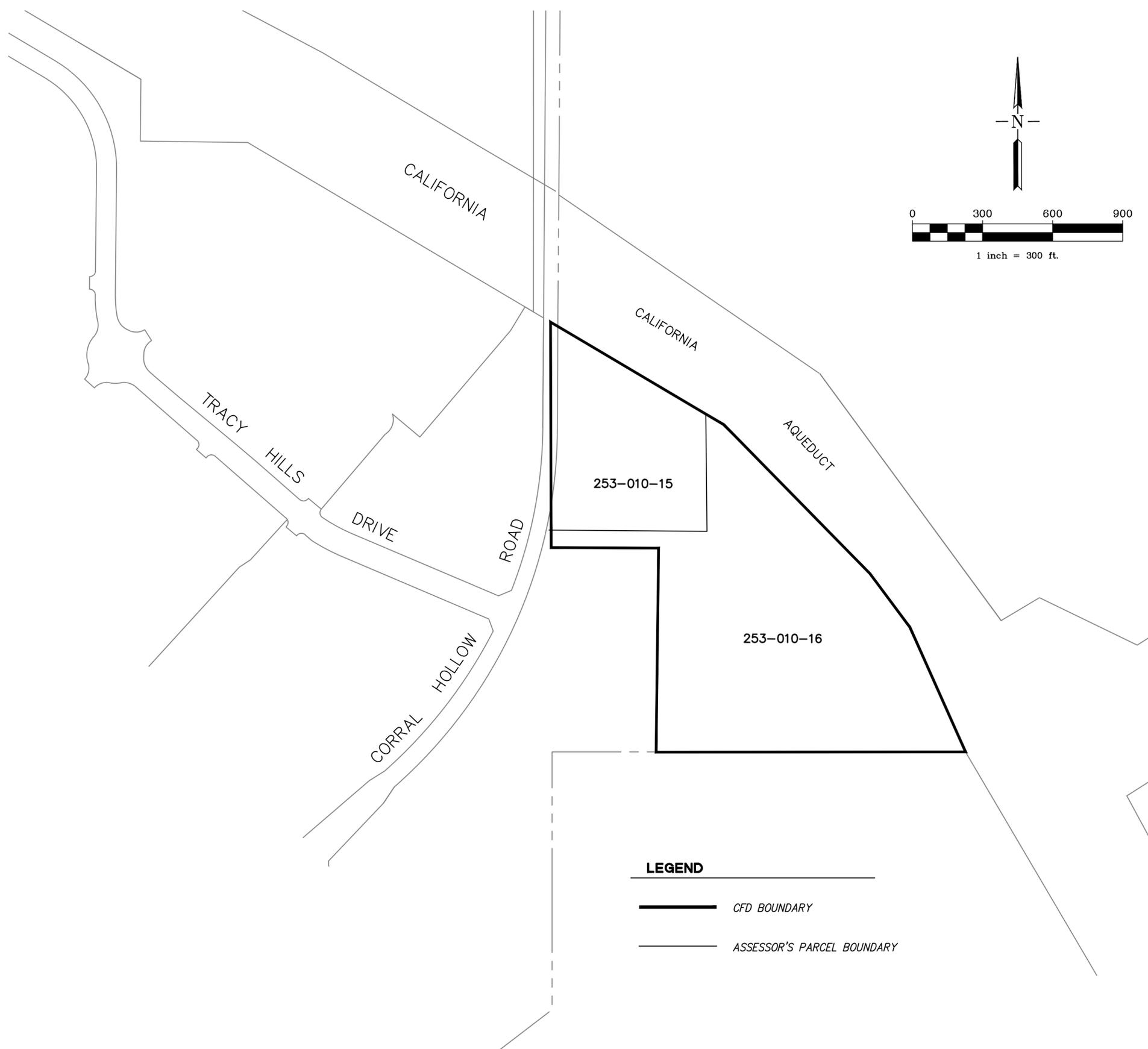
1. Bond related expenses, including underwriters discount, reserve fund, capitalized interest, letter of credit fees and expenses, bond and disclosure counsel fees and expenses, bond remarketing costs, and all other incidental expenses.
2. Administrative fees of the City and the bond trustee or fiscal agent related to the CFD and the Bonds.
3. Reimbursement of costs related to the formation of the CFD advanced by the City, the landowner(s) in the CFD, or any party related to any of the foregoing, as well as reimbursement of any costs advanced by the City, the landowner(s) in the CFD or any party related to any of the foregoing, for facilities, fees or other purposes or costs of the CFD.

Special Taxes may be collected and set-aside in designated funds and collected over several years, and used to fund Facilities or Services authorized to be financed by the CFD.

**EXHIBIT B**

**PROPOSED BOUNDARY MAP**

**City of Tracy  
Community Facilities District No. 2021-1  
(Hillview)**



**PROPOSED BOUNDARIES OF  
CITY OF TRACY  
COMMUNITY FACILITIES DISTRICT No. 2021-1  
(HILLVIEW)  
CITY OF TRACY  
COUNTY OF SAN JOAQUIN  
STATE OF CALIFORNIA**

Filed in the office of the City Clerk of the City of Tracy  
this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

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

I hereby certify that the within map showing proposed boundaries  
of City of Tracy Community Facilities District No. 2021-1  
(Hillview), City of Tracy, County of San Joaquin, State of  
California, was approved by the City Council of the City of Tracy,  
at a meeting thereof, held on the \_\_\_\_ day of \_\_\_\_\_, 2021,  
by its Resolution No. \_\_\_\_\_.

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

Filed this \_\_\_\_\_ day of \_\_\_\_\_, 2021, at the hour of \_\_\_\_\_  
o'clock \_\_\_\_m., in Book \_\_\_\_\_ of Maps of Assessment and  
Community Facilities Districts at Page \_\_\_\_\_ in the office of the  
County Recorder in the County of San Joaquin, State of  
California.

\_\_\_\_\_  
County Recorder, County of San Joaquin

**LEGEND**

————— CFD BOUNDARY

————— ASSESSOR'S PARCEL BOUNDARY

**RJA**  
**RUGGERI-JENSEN-AZAR**  
ENGINEERS ■ PLANNERS ■ SURVEYORS  
2541 WARREN DRIVE, SUITE 100 ROCKLIN, CA 95677  
PHONE: (916) 630-8900 FAX: (916) 630-8909

**CITY OF TRACY**  
**COMMUNITY FACILITIES DISTRICT NO. 2021-1**  
**(HILLVIEW)**

**RATE AND METHOD OF APPORTIONMENT OF SPECIAL TAXES**

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Special Taxes applicable to each Assessor's Parcel in the City of Tracy Community Facilities District No. 2021-1 (Hillview) shall be levied and collected according to the tax liability determined by the City through the application of the appropriate amount or rate for Taxable Property, as described below. All of the property in the CFD, unless exempted by law or by the provisions of Section G below, shall be taxed for the purposes, to the extent, and in the manner herein provided.

**A. DEFINITIONS**

The terms hereinafter set forth have the following meanings:

**“Accessory Unit”** means a second residential unit of limited size (e.g., granny cottage, second unit) that shares a Parcel with a single-family detached unit.

**“Acre”** or **“Acreage”** means the land area of an Assessor's Parcel as shown on an Assessor's Parcel Map, or if the land area is not shown on an Assessor's Parcel Map, the land area shown on the applicable Final Map or other parcel map recorded at the County Recorder's Office.

**“Act”** means the Mello-Roos Community Facilities Act of 1982, as amended, being Chapter 2.5, (commencing with Section 53311), Division 2 of Title 5 of the Government Code of the State of California.

**“Administrative Expenses”** means any or all of the following: the fees and expenses of any fiscal agent or trustee (including any fees or expenses of its counsel) employed in connection with any Bonds, and the expenses of the City in carrying out its duties with respect to the CFD and the Bonds, including, but not limited to, the levy and collection of Special Taxes, the fees and expenses of its legal counsel, charges levied by the County in connection with the levy and collection of Special Taxes, costs related to property owner inquiries regarding the Special Taxes, costs associated with appeals or requests for interpretation associated with the Special Taxes and this RMA, costs of the dissemination agent, whether for the City or another party that has undertaken to provide continuing disclosure, amounts needed to pay rebate to the federal government with respect to the Bonds, costs associated with complying with any continuing disclosure requirements with respect to the Bonds and the Special Taxes, costs associated with foreclosure and collection of delinquent Special Taxes and all other costs and expenses of the City and County in any way related to the establishment or administration of the CFD.

**“Administrator”** means the person or firm designated by the City to administer the Special Taxes according to this RMA.

**“Assessor's Parcel”** or **“Parcel”** means a lot or parcel shown on an Assessor's Parcel Map with an assigned Assessor's parcel number.

**“Assessor’s Parcel Map”** means an official map of the County Assessor designating Parcels by Assessor’s Parcel number.

**“Authorized Facilities”** means the public facilities authorized to be financed, in whole or in part, by the CFD.

**“Authorized Services”** means the public services authorized to be funded, in whole or in part, by the CFD.

**“Bonds”** means bonds or other debt (as defined in the Act), whether in one or more series, issued or assumed by the CFD to fund Authorized Facilities.

**“Building Permit”** means a single permit or set of permits required to construct a residential or non-residential structure. If a permit is issued for a foundation, parking, landscaping or other related facility or amenity, but a building permit has not yet been issued for the structure served by these facilities or amenities, such permit shall not be considered a “Building Permit” for purposes of application of the Special Taxes herein.

**“Capitalized Interest”** means funds in any capitalized interest account available to pay interest on Bonds.

**“CFD”** means the City of Tracy Community Facilities District No. 2021-1 (Hillview).

**“CFD Formation”** means the date on which the Resolution of Formation to form the CFD was adopted by the City Council.

**“City”** means the City of Tracy.

**“City Council”** means the City Council of the City of Tracy.

**“County”** means the County of San Joaquin.

**“Developed Property”** means, in any Fiscal Year, all Parcels of Taxable Property that are not Taxable HOA Property, Taxable Public Property, or Taxable Welfare Exemption Property for which a Building Permit for new construction was issued prior to June 30 of the preceding Fiscal Year.

**“Development Class”** means, individually, Developed Property, Undeveloped Property, Taxable HOA Property, Taxable Welfare Exemption Property, and Taxable Public Property.

**“Escalation Factor”** means, in any Fiscal Year, the lesser of (i) the percentage increase from the prior Fiscal Year, if any, in the Index, or (ii) four percent (4%). The Index used shall be as determined by the Bureau of Labor Statistics from April to April beginning with the period from April 2021 to April 2022.

**“Expected Land Uses”** means the number of Residential Units and the acreage of Other Property expected within the CFD at CFD Formation, as identified in Attachments 1 and 2 of

this RMA. Pursuant to Section D of this RMA, the Administrator shall update Attachment 2 each time there is a Land Use Change. Such update shall be maintained internally by the Administrator and shall not require recordation of an amended RMA.

**“Expected Maximum Facilities Special Tax Revenues”** means the amount of annual revenue that would be available in the CFD if the Maximum Facilities Special Tax was levied on the Expected Land Uses. The Expected Maximum Facilities Special Tax Revenues are shown in Attachment 2 of this RMA and may be may be revised pursuant to Section D and H below.

**“Facilities Special Tax”** means a special tax levied in any Fiscal Year to pay the Facilities Special Tax Requirement.

**“Facilities Special Tax Requirement”** means the amount necessary in any Fiscal Year (i) to pay principal and interest on Bonds which are due in the calendar year which begins in such Fiscal Year, (ii) to create or replenish reserve funds to the extent such replenishment has not been included in a computation of Facilities Special Tax Requirement in a previous Fiscal Year, (iii) to cure any delinquencies in the payment of principal or interest on Bonds which have occurred in the prior Fiscal Year, (iv) to pay Administrative Expenses, and (v) to pay the costs of Authorized Facilities to be funded directly from Facilities Special Tax proceeds to the extent that paying directly for such costs does not increase the Special Taxes levied on Undeveloped Property. The amounts referred to in clauses (i) and (ii) of the preceding sentence may be reduced in any Fiscal Year by (i) interest earnings on or surplus balances in funds and accounts for Bonds to the extent that such earnings or balances are available to apply against debt service pursuant to the Indenture, (ii) proceeds from the collection of penalties associated with delinquent Facilities Special Taxes, and (iii) any other revenues available to pay debt service on the Bonds as determined by the Administrator.

**“Final Map”** means a final map, or portion thereof, recorded by the County pursuant to the Subdivision Map Act (California Government Code Section 66410 et seq.) that creates lots that do not need to be further subdivided prior to issuance of a Building Permit for a residential structure. The term “Final Map” shall not include any Assessor’s Parcel map or subdivision map, or portion thereof, that does not create lots that are in their final configuration, including Assessor’s Parcels that are designated as remainder parcels.

**“First Bond Sale”** means issuance of the first series of Bonds secured, in whole or in part, by Special Taxes levied and collected from Parcels of Taxable Property in the CFD.

**“Fiscal Year”** means the period starting July 1 and ending on the following June 30.

**“HOA Property”** means any property within the boundaries of the CFD that is owned in fee or by easement by the Homeowners Association, not including any such property that is located directly under a residential structure.

**“Homeowners Association”** or **“HOA”** means the homeowners association that provides services to, and collects dues, fees, or charges from, property within the CFD.

**“Improvement Fund”** means the account (regardless of its name) identified in the Indenture to hold funds which are available to acquire or construct Authorized Facilities.

**“Indenture”** means the bond indenture, fiscal agent agreement, trust agreement, resolution or other instrument pursuant to which Bonds are issued, as modified, amended, and/or supplemented from time to time, and any instrument replacing or supplementing the same.

**“Index”** means the Consumer Price Index of the San Francisco-Oakland-San Jose area for all urban consumers.

**“Land Use Change”** means a proposed or approved change to the Expected Land Uses after CFD Formation.

**“Maximum Facilities Special Tax”** means the greatest amount of Facilities Special Tax that can be levied on an Assessor’s Parcel in any Fiscal Year as determined in accordance with Sections C.1 and D below.

**“Maximum Services Special Tax”** means the greatest amount of Services Special Tax that can be levied on an Assessor’s Parcel in any Fiscal Year as determined in accordance with Section C.2 below.

**“Maximum Special Taxes”** means, collectively, the Maximum Facilities Special Tax and Maximum Services Special Tax.

**“Other Property”** means, in any Fiscal Year, all Parcels of Developed Property within the CFD that are not Single Family Residential Property, Taxable HOA Property, Taxable Public Property, or Taxable Welfare Exemption Property.

**“Proportionately”** means, for each Development Class, that the ratio of the actual Special Tax levied in any Fiscal Year to the Maximum Special Tax authorized to be levied in that Fiscal Year is equal for all parcels assigned to the Development Class.

**“Public Property”** means any property within the boundaries of the CFD that is owned by the federal government, State of California, the City, or other local governments or public agencies.

**“Remainder Taxes”** means, after September 1<sup>st</sup> and before December 31<sup>st</sup> of any Fiscal Year, any Facilities Special Tax revenues that were levied and collected in the prior Fiscal Year and were not needed to (i) pay debt service on the Bonds that was due in the calendar year in which the Remainder Taxes are being calculated, (ii) replenish Bond reserves, or (iii) pay Administrative Expenses that have been incurred, or are expected to be incurred, by the City prior to the receipt of additional Facilities Special Tax proceeds.

**“Required Coverage”** means the amount by which the Maximum Facilities Special Tax Revenues must exceed the Bond debt service and required Administrative Expenses, as set forth in the Indenture, Certificate of Special Tax Consultant, or other formation or bond document that sets forth the minimum required debt service coverage.

**“Residential Unit”** means an individual single-family unit that does not share a common wall with another residential unit, or an individual residential unit within a duplex, halfplex, triplex,

fourplex, townhome, live/work or condominium structure. An Accessory Unit shall not be considered a Residential Unit for purposes of this RMA.

**“RMA”** means this Rate and Method of Apportionment of Special Tax.

**“Services Special Tax”** means a special tax levied in any Fiscal Year to pay the Services Special Tax Requirement.

**“Services Special Tax Requirement”** means the amount of revenue needed in any Fiscal Year in and after the Transition Year to pay for: (i) Authorized Services, (ii) Administrative Expenses, and (iii) amounts needed to cure any delinquencies in the payment of Services Special Taxes which have occurred in the prior Fiscal Year. In any Fiscal Year, the Services Special Tax Requirement shall be reduced by surplus amounts available (as determined by the City) from the levy of the Services Special Tax in prior Fiscal Years, including revenues from the collection of delinquent Services Special Taxes and associated penalties and interest.

**“Single Family Residential Property”** means, in any Fiscal Year, all Parcels of Developed Property for which a Building Permit was issued for construction of one or more Residential Units.

**“Special Taxes”** means, collectively, the Facilities Special Tax and the Services Special Tax.

**“Taxable HOA Property”** means, in any Fiscal Year after the First Bond Sale, any Parcel of HOA Property that satisfies all three of the following conditions: (i) the Parcel had not been HOA Property on the date of the First Bond Sale; (ii) based on reference to Attachments 1 and 2 (as may be updated pursuant to Section D below), the Parcel was not anticipated to be HOA Property as determined by the Administrator; and (iii) if the Parcel were to be exempt from the Facilities Special Tax because it is HOA Property, the Expected Maximum Facilities Special Tax Revenues would be reduced to a point at which Required Coverage could not be maintained.

**“Taxable Property”** means all Parcels within the boundaries of the CFD that are not exempt from the Special Tax pursuant to law or Section G below.

**“Taxable Public Property”** means in any Fiscal Year after the First Bond Sale, any Parcel of Public Property that satisfies all three of the following conditions: (i) the Parcel had not been Public Property on the date of the First Bond Sale; (ii) based on reference to Attachments 1 and 2 (as may be updated pursuant to Section D below), the Parcel was not anticipated to be Public Property as determined by the Administrator; and (iii) if the Parcel were to be exempt from the Facilities Special Tax because it is Public Property, the Expected Maximum Facilities Special Tax Revenues would be reduced to a point at which Required Coverage could not be maintained.

**“Taxable Welfare Exemption Property”** means in any Fiscal Year after the First Bond Sale, any Parcel of Welfare Exemption Property that satisfies all three of the following conditions: (i) the Parcel had not been Welfare Exemption Property on the date of issuance of the First Bond Sale; (ii) based on reference to Attachments 1 and 2 (as may be updated pursuant to Section D herein), the Parcel was not anticipated to be Welfare Exemption Property based on the Expected Land Uses, as determined by the Administrator; and (iii) if the Parcel were to be exempt from the Facilities Special Tax because it has become Welfare Exemption Property, the Expected

Maximum Facilities Special Tax Revenues would be reduced to a point at which Required Coverage could not be maintained.

**“Tentative Map”** means a tentative map or substantial conformance exhibit for property in the CFD, including any adjustments or amendments thereto.

**“Transition Event”** means, in any Fiscal Year, that, on or before June 30 of the prior Fiscal Year, the Administrator made a finding that (i) all Bonds secured by the levy and collection of Facilities Special Taxes in the CFD have been fully repaid, (ii) all Administrative Expenses from prior Fiscal Years have been paid or reimbursed to the City, and (iii) there are no other Authorized Facilities that the City intends to fund with Facilities Special Taxes.

**“Transition Year”** means the first Fiscal Year in which the Administrator determines that the Transition Event occurred in the prior Fiscal Year.

**“Undeveloped Property”** means, in any Fiscal Year, all Parcels of Taxable Property that are not Developed Property, Taxable HOA Property, Taxable Public Property, or Taxable Welfare Exemption Property as defined herein.

**“Welfare Exemption Property”** means, in any Fiscal Year, any Parcels in the CFD that have received a welfare exemption under subdivision (g) of Section 214 of the Revenue and Taxation Code and for which such welfare exemption is still in place.

## **B. DATA FOR ADMINISTRATION OF SPECIAL TAX**

Each Fiscal Year, the Administrator shall (i) assign each Parcel of Taxable Property to the appropriate Development Class; (ii) for Developed Property, categorize each Parcel as Single Family Residential Property or Other Property; (iii) determine if a Transition Event occurred in the prior Fiscal Year; (iv) for Other Property, determine the Acreage of each Parcel; and (v) prior to the Transition Year, determine the Facilities Special Tax Requirement for the Fiscal Year or, in and after the Transition Year, determine the Services Special Tax Requirement for the Fiscal Year. In addition, the Administrator shall, *on an ongoing basis*, monitor Final Maps and condominium plans to determine if there are any proposed changes to the Expected Land Uses that would change the Expected Maximum Facilities Special Tax Revenues. If the Expected Maximum Facilities Special Tax Revenues will be revised pursuant to a proposed Land Use Change, the Administrator shall apply the steps set forth in Section D below.

In any Fiscal Year, if it is determined that: (i) a parcel map for property in the CFD was recorded after January 1 of the prior Fiscal Year (or any other date after which the Assessor will not incorporate the newly-created Parcels into the then current tax roll), (ii) because of the date the parcel map was recorded, the Assessor does not yet recognize the new Parcels created by the parcel map, and (iii) one or more of the newly-created Parcels is in a different Development Class than other Parcels created by the subdivision, the Administrator shall calculate the Special Taxes for the property affected by recordation of the parcel map by determining the Special Taxes that apply separately to the property within each Development Class, then applying the sum of the individual Special Taxes to the Parcel that was subdivided by recordation of the parcel map.

**C. MAXIMUM SPECIAL TAXES**

*1. Facilities Special Tax*

Table 1 below identifies the Maximum Facilities Special Tax for Taxable Property in the CFD, subject to potential adjustments that may occur pursuant to Section D below.

**Table 1  
Maximum Facilities Special Tax**

<b>Land Use</b>	<b>Maximum Facilities Special Tax Before Transition Year (in Fiscal Year 2021-22 \$)*</b>	<b>Maximum Facilities Special Tax In and After Transition Year</b>
Single Family Residential Property	\$1,969 per Residential Unit	\$0 per Residential Unit
Other Property	\$33,087 per Acre	\$0 per Acre
Taxable Public Property Taxable HOA Property Taxable Welfare Exemption Property	\$33,087 per Acre	\$0 per Acre
Undeveloped Property	\$33,087 per Acre	\$0 per Acre

\* On July 1, 2022 and on each July 1 thereafter, all figures shown in Table 1 above shall be increased by an amount equal to 2.0% of the amount in effect for the prior Fiscal Year.

*2. Services Special Tax*

Table 2 below identifies the Maximum Services Special Tax for Taxable Property in the CFD.

**Table 2  
Maximum Services Special Tax**

<b>Land Use</b>	<b>Maximum Services Special Tax Before Transition Year</b>	<b>Maximum Services Special Tax In and After Transition Year (in Fiscal Year 2021-22 \$)*</b>
Single Family Residential Property	\$0 per Residential Unit	\$394 per Residential Unit
Other Property	\$0 per Acre	\$1,127 per Acre
Undeveloped Property	\$0 per Acre	\$1,127 per Acre

\* Beginning July 1, 2022 and each July 1 thereafter until the Transition Year, the Services Special Taxes in Table 2 shall be increased by 2.0% of the amount in effect in the prior Fiscal Year. On July 1 of the Transition Year and each July 1 thereafter, the Services Special Taxes and the Maximum Services Special Tax assigned to each Parcel shall be adjusted by the Escalation Factor.

Once a Facilities Special Tax has been levied on a Parcel of Developed Property, the Maximum Facilities Special Tax applicable to that Parcel shall not be reduced in future Fiscal Years regardless of changes in land use on the Parcel, except (i) in the event of a partial prepayment pursuant to Section H, and (ii) pursuant to Section D. Notwithstanding the foregoing: (i) prior to the First Bond Sale, Parcels can be assigned to the appropriate Facilities Special Tax category based on a Land Use Change, and the Administrator shall recalculate the Expected Maximum Facilities Special Tax Revenues based on the corresponding change in revenues, and (ii) the actual Facilities Special Taxes levied on a Parcel of Developed Property in any Fiscal Year may be less than the Maximum Facilities Special Taxes if lower Facilities Special Taxes are calculated pursuant to Step 1 in Section E.1 below.

#### **D. CHANGES TO MAXIMUM SPECIAL TAXES**

##### *1. Land Use Changes*

The Expected Maximum Facilities Special Tax Revenues shown in Attachment 2 were originally calculated based on the Expected Land Uses at CFD Formation. Attachment 2 is subject to modification upon the occurrence of Land Use Changes, as described below. The Administrator shall review all Land Use Changes and compare the revised land uses to the Expected Land Uses to evaluate the impact on the Expected Maximum Facilities Special Tax Revenues.

**Prior to the First Bond Sale**, if a Land Use Change is proposed or identified that will result in a change in the Expected Maximum Facilities Special Tax Revenues, no action will be needed pursuant to this Section D. Upon approval of the Land Use Change, the Administrator shall update Attachment 2 to show the revised Expected Maximum Facilities Special Tax Revenues.

**After the First Bond Sale**, if a Land Use Change is proposed or identified, Steps 1 through 3 below must be applied:

- Step 1:** By reference to Attachment 2 (which shall be updated by the Administrator each time a Land Use Change has been processed according to this Section D or a partial prepayment has been made), the Administrator shall identify the Expected Maximum Facilities Special Tax Revenues prior to the Land Use Change.
- Step 2:** The Administrator shall calculate the Expected Maximum Facilities Special Tax Revenues that could be collected from Taxable Property in the CFD after the Land Use Change based on application of the Maximum Facilities Special Taxes from Table 1.
- Step 3:** If the revenues calculated in Step 2 are (i) higher than those determined in Step 1 or (ii) less than those calculated in Step 1, but the reduction in Expected Maximum Facilities Special Tax Revenues does not reduce debt service coverage on outstanding Bonds below Required Coverage, no further action is needed, and the Administrator shall update Attachment 2 to show the revised Expected Maximum Facilities Special Tax Revenues.

If the revenues calculated in Step 2 are less than those calculated in Step 1, and the Administrator determines that the reduction in Expected Maximum Facilities Special Tax Revenues would reduce debt service coverage on outstanding Bonds below the Required Coverage, one of the following shall occur:

**3.a.** The landowner requesting the Land Use Change (the “Requesting Landowner”) may make a prepayment in an amount that will ensure that the reduced Expected Maximum Facilities Special Tax Revenues are sufficient to provide Required Coverage, as determined pursuant to Section H below. If the Requesting Landowner notifies the Administrator that he/she would like to remedy the reduction by making a prepayment, such prepayment must be made by the earlier of (i) 30 days from the date of delivery of the prepayment estimate or (ii) the date of issuance of any Building Permits for any Parcel owned by the Requesting Landowner that was Undeveloped Property at the time the Administrator prepared the prepayment estimate, **or**

**3.b.** If a prepayment is not received by the due date specified above, the Maximum Facilities Special Tax for each Parcel of Taxable Property in the area affected by the Land Use Change shall be increased proportionately until the Expected Maximum Facilities Special Tax Revenues are sufficient to maintain Required Coverage.

Pursuant to this Section D.3, the Administrator may from time to time update Attachment 2 to reflect revised Expected Maximum Facilities Special Tax Revenues. Such update shall be maintained internally by the Administrator and shall not require recordation of an amended RMA.

If multiple Land Use Changes are proposed simultaneously by a single landowner (which may include approval of multiple Final Maps at one time), and the landowner requests that the impact of two or more of the Land Use Changes be considered together, the Administrator shall consider the combined effect of the Land Use Changes to determine if there is a reduction in Expected Maximum Facilities Special Tax Revenues. If there is a reduction that would reduce debt service coverage below the Required Coverage, and no prepayment has been received, then the Maximum Facilities Special Tax for each Parcel of Taxable Property in the areas affected by the Land Use Changes shall be increased proportionately until the aggregate amount that can be levied within such areas is equal to the amount that could have been levied prior to the proposed Land Use Changes. If Land Use Changes are proposed simultaneously by multiple landowners, or if an individual landowner proposing multiple Land Use Changes does not request that such Land Use Changes be considered together, the Administrator shall consider the proposed Land Use Changes individually.

Notwithstanding the foregoing, once a certificate of occupancy has been issued for a Residential Unit on a Parcel, the Maximum Facilities Special Tax for the Parcel cannot be increased because of subsequent Land Use Changes that may occur within the area in which the Parcel is located.

The duties imposed on the Administrator pursuant to this Section D to review Land Use Changes, and to review Final Maps and make certain calculations, are intended only to facilitate

the administration of the Facilities Special Tax and to better assure the sufficiency of tax capacity to pay debt service on Bonds. Such duties are not intended to give any developer, subdivider, or owner of property the right to receive notice of the potential impact of Land Use Changes on the Special Tax applicable to a Parcel; and each developer, subdivider, or owner of property whose property is the subject of a Land Use Change shall be responsible for understanding the impact thereof on the Facilities Special Tax applicable to such property.

2. *Partial Prepayments*

If a Parcel makes a partial prepayment, the Administrator shall recalculate the Maximum Facilities Special Tax for the Parcel pursuant to Section H below. In addition, the Administrator shall update Attachment 2 to reflect the prepayment and the revised Expected Maximum Facilities Special Tax Revenues. After the prepayment has been received, the application of Sections D, E, and H of this RMA shall be based on the adjusted Expected Maximum Facilities Special Tax Revenues after the prepayment.

3. *Conversion of a Parcel of Public Property to Private Use*

If, in any Fiscal Year, a Parcel of Public Property is converted to private use, such Parcel shall be subject to the levy of the Special Tax. The Maximum Special Tax for each such Parcel shall be determined by the Administrator.

**E. METHOD OF LEVY OF THE SPECIAL TAXES**

1. *Facilities Special Tax*

Each Fiscal Year until the Transition Year, the Administrator shall determine the Facilities Special Tax Requirement and levy the Facilities Special Tax on all Parcels of Taxable Property as follows:

**Step 1:** In the first fifteen (15) Fiscal Years in which a Facilities Special Tax is levied within the CFD, the Maximum Facilities Special Tax shall be levied on all Parcels of Developed Property. Any Facilities Special Tax proceeds collected that are determined by the Administrator to be Remainder Taxes shall be deposited into the Improvement Fund to pay any costs associated with the acquisition of Authorized Facilities that were not paid with Bond proceeds or Facilities Special Taxes levied in prior Fiscal Years.

Beginning in the sixteenth (16<sup>th</sup>) Fiscal Year in which a Facilities Special Tax is levied within the CFD and continuing until the Transition Year, the Facilities Special Tax shall be levied Proportionately on each Parcel of Developed Property up to 100% of the Maximum Facilities Special Tax for each Parcel of Developed Property until the amount levied is equal to the Facilities Special Tax Requirement.

**Step 2:** If additional revenue is needed after Step 1 and after applying Capitalized Interest to the Facilities Special Tax Requirement, the Facilities

Special Tax shall be levied Proportionately on each Parcel of Undeveloped Property up to 100% of the Maximum Facilities Special Tax for each Parcel of Undeveloped Property.

**Step 3:** If additional revenue is needed after Step 2, the Facilities Special Tax shall be levied Proportionately on each Parcel of Taxable Welfare Exemption Property, up to 100% of the Maximum Facilities Special Tax for each Parcel of Taxable Welfare Exemption Property.

**Step 4:** If additional revenue is needed after Step 3, the Facilities Special Tax shall be levied Proportionately on each Parcel of Taxable HOA Property, up to 100% of the Maximum Facilities Special Tax for each Parcel of Taxable HOA Property.

**Step 5:** If additional revenue is needed after Step 4, the Facilities Special Tax shall be levied Proportionately on each Parcel of Taxable Public Property, up to 100% of the Maximum Facilities Special Tax for each Parcel of Taxable Public Property.

## 2. *Services Special Tax*

Beginning in the Transition Year and each Fiscal Year thereafter, the Administrator shall determine the Services Special Tax Requirement and levy the Services Special Tax on all Parcels of Taxable Property as follows:

**Step 1:** The Services Special Tax shall be levied Proportionately on each Parcel of Developed Property up to 100% of the Maximum Services Special Tax for each Parcel of Developed Property until the amount levied is equal to the Services Special Tax Requirement.

**Step 2:** If additional revenue is needed after Step 1, the Services Special Tax shall be levied Proportionately on each Parcel of Undeveloped Property, up to 100% of the Maximum Services Special Tax for each Parcel of Undeveloped Property.

## F. MANNER OF COLLECTION OF SPECIAL TAXES

The Special Taxes shall be collected in the same manner and at the same time as ordinary ad valorem property taxes, provided, however, that partial prepayments are permitted as set forth in Section H below and provided further that the City may directly bill the Special Taxes, may collect Special Taxes at a different time or in a different manner, and may collect delinquent Special Taxes through foreclosure or other available methods.

The Facilities Special Tax shall be levied and collected until the earlier of (i) the Transition Year, or (ii) Fiscal Year 2061-62. Under no circumstances may the Facilities Special Tax on a Parcel in residential use be increased in any Fiscal Year as a consequence of delinquency or default in payment of the Facilities Special Tax levied on another Parcel or Parcels by more than ten

percent (10%) above the amount that would have been levied in that Fiscal Year had there never been any such delinquencies or defaults. After the Transition Year, the Services Special Tax may be levied and collected in perpetuity.

#### **G. EXEMPTIONS**

Any Parcel that is or is expected to be Public Property, HOA Property, or Welfare Exemption Property prior to the First Bond Sale shall be exempt from both the Services Special Tax and the Facilities Special Tax. The Administrator shall reduce the Expected Maximum Facilities Special Tax Revenues to reflect any such exemptions that were not expected at the time of CFD Formation, and the First Bond Sale shall be sized based on the reduced Expected Maximum Facilities Special Tax Revenues. Any Parcel that becomes Public Property, HOA Property, or Welfare Exemption Property after the First Bond Sale shall be exempt from: (i) the Services Special Tax, and (ii) the Facilities Special Tax provided such Parcel is not Taxable Public Property, Taxable HOA Property, or Taxable Welfare Exemption Property.

In addition, no Special Taxes shall be levied on (i) Parcels that are designated as permanent open space or common space on which no structure is permitted to be constructed, (ii) Parcels owned by a public utility for an unmanned facility, and (iii) Parcels subject to an easement that precludes any use on the Parcel other than that permitted by the easement. Notwithstanding the foregoing, if a Facilities Special Tax has been levied on a Parcel in any Fiscal Year, and the entire Parcel subsequently meets the criteria in (i), (ii) or (iii) above, the Parcel shall remain subject to the Facilities Special Tax levy, unless the First Bond Sale hasn't occurred, in which case such property shall be categorized as Public Property, and the Administrator shall recalculate the Expected Maximum Facilities Special Tax Revenues based on the corresponding loss in revenues.

#### **H. PARTIAL PREPAYMENT OF FACILITIES SPECIAL TAX**

The following definitions apply to this Section H:

**“Outstanding Bonds”** means all Previously Issued Bonds which remain outstanding, with the following exception: if a Facilities Special Tax has been levied against, or already paid by, an Assessor's Parcel making a prepayment, and a portion of the Facilities Special Tax will be used to pay a portion of the next principal payment on the Bonds that remain outstanding (as determined by the Administrator), that next principal payment shall be subtracted from the total Bond principal that remains outstanding, and the difference shall be used as the amount of Outstanding Bonds for purposes of this prepayment formula.

**“Previously Issued Bonds”** means all Bonds that have been issued prior to the date of prepayment.

**“Public Facilities Requirements”** means: (i) \$7.5 million in fiscal year 2021-22 dollars, which amount shall, on July 1, 2022 and on each July 1 thereafter, be increased by an amount equal to 2.0% of the amount in effect for the prior Fiscal Year, or (ii) such other

number as shall be determined by the City to be an appropriate estimate of the net construction proceeds that will be generated from all Bonds that have been or are expected to be issued on behalf of the CFD.

**“Remaining Facilities Costs”** means the Public Facilities Requirements (as defined above), minus public facility costs funded by Previously Issued Bonds (as defined above), Remainder Taxes, or prepayments. Notwithstanding the foregoing, the Remaining Facilities Costs shall never be less than zero.

A property owner may prepay up to 80% of the Facilities Special Tax obligation applicable to a Parcel in the CFD, thereby reducing the Maximum Facilities Special Tax applicable to the Parcel, provided that a prepayment may be made only if there are no delinquent Special Taxes with respect to such Parcel at the time of prepayment. An owner of a Parcel intending to prepay a portion of the Facilities Special Tax obligation shall provide the City with written notice of intent to prepay, which shall identify the percentage of the Maximum Facilities Special Tax that is to be prepaid. Within 30 days of receipt of such written notice, the City or its designee shall notify such owner of the prepayment amount for such Parcel. Prepayment must be made not less than 50 days prior to any redemption date for Bonds to be redeemed with the proceeds of such prepaid Facilities Special Taxes.

The Prepayment Amount shall be calculated as follows (capitalized terms as defined below):

	Bond Redemption Amount
plus	Remaining Facilities Amount
plus	Redemption Premium
plus	Defeasance Requirement
plus	Administrative Fees and Expenses
less	<u>Reserve Fund Credit</u>
equals	Prepayment Amount

As of the proposed date of prepayment, the Prepayment Amount for a Parcel shall be determined by application of the following steps:

- Step 1.** Determine the Maximum Facilities Special Tax that could be levied on the Parcel based on the Expected Land Uses for the Parcel at the time the prepayment is calculated.
- Step 2.** Divide the Maximum Facilities Special Tax computed pursuant to Step 1 by the Expected Maximum Facilities Special Tax Revenues in that Fiscal Year.
- Step 3.** Multiply the quotient computed in Step 2 by the percentage of the Maximum Facilities Special Tax that the property owner wants to prepay, which percentage shall not exceed 80%.
- Step 4.** Multiply the quotient computed pursuant to Step 3 by the Outstanding Bonds to compute the amount of Outstanding Bonds to be retired and prepaid (*the “Bond Redemption Amount”*).

- Step 5.** Compute the current Remaining Facilities Costs (if any).
- Step 6.** Multiply the quotient computed pursuant to Step 3 by the amount determined pursuant to Step 5 to compute the amount of Remaining Facilities Costs to be prepaid (*the “Remaining Facilities Amount”*).
- Step 7.** Multiply the Bond Redemption Amount computed pursuant to Step 4 by the applicable redemption premium, if any, on the Outstanding Bonds to be redeemed (*the “Redemption Premium”*).
- Step 8.** Compute the amount needed to pay interest on the Bond Redemption Amount starting with the last Bond interest payment date on which interest has been or will be paid by Facilities Special Taxes already levied until the earliest redemption date for the Outstanding Bonds.
- Step 9:** Compute the amount of interest the City reasonably expects to derive from reinvestment of the Bond Redemption Amount plus the Redemption Premium from the first Bond interest payment date after which the prepayment has been received until the redemption date for the Outstanding Bonds.
- Step 10:** Subtract the amount computed pursuant to Step 9 from the amount computed pursuant to Step 8 (*the “Defeasance Requirement”*).
- Step 11.** The administrative fees and expenses associated with the prepayment will be determined by the Administrator and include the costs of computing the prepayment, redeeming Bonds, and recording any notices to evidence the prepayment and the redemption (*the “Administrative Fees and Expenses”*).
- Step 12.** If and to the extent so provided in the Indenture, a reserve fund credit shall be calculated as a reduction in the applicable reserve fund for the Outstanding Bonds to be redeemed pursuant to the prepayment (*the “Reserve Fund Credit”*).
- Step 13.** The Facilities Special Tax prepayment is equal to the sum of the amounts computed pursuant to Steps 4, 6, 7, 10, and 11, less the amount computed pursuant to Step 12 (*the “Prepayment Amount”*).
- Step 14.** From the Prepayment Amount, the amounts computed pursuant to Steps 4, 7, and 10 shall be deposited into the appropriate fund as established under the Indenture and be used to retire Outstanding Bonds or make debt service payments. The amount computed pursuant to Step 6 shall be deposited into the Improvement Fund. The amount computed pursuant to Step 11 shall be retained in the account or fund that is established to pay Administrative Expenses.

Once a partial prepayment of a Facilities Special Tax has been received, an Amendment to Special Tax Lien shall be recorded against the Parcel to reflect the reduced Facilities Special Tax lien for the Parcel, which shall be equal to the portion of the Maximum Facilities Special Tax that was not prepaid. However, an Amendment to Special Tax Lien shall not be recorded until all Facilities Special Taxes levied on the Parcel in the current or prior Fiscal Years have been collected. The prepayment of a portion of the Facilities Special Tax shall not affect the perpetual obligation to pay the Services Special Tax.

Notwithstanding the foregoing, if at any point in time the Administrator determines that the Maximum Facilities Special Tax revenue that could be collected from Taxable Property that remains subject to the Facilities Special Tax after the proposed prepayment would be less than the Required Coverage on Bonds that will remain outstanding after defeasance or redemption of Bonds from proceeds of the estimated prepayment, the amount of the prepayment shall be increased until the amount of Bonds defeased or redeemed is sufficient to reduce remaining annual debt service to a point at which Required Coverage is maintained.

#### **I. INTERPRETATION OF SPECIAL TAX FORMULA**

The City may interpret, clarify, and revise this RMA to correct any inconsistency, vagueness, or ambiguity, by resolution and/or ordinance, that does not create a material adverse effect on the levy and collection of the Special Taxes and any security for any Bonds.

**ATTACHMENT 1**

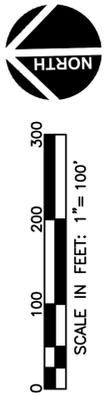
**City of Tracy  
Community Facilities District No. 2021-1  
(Hillview)**

**Expected Lot Layout**



**ATTACHMENT 1**  
**HILL VIEW**  
**EXPECTED LOT LAYOUT**

TRACY, CALIFORNIA  
 11/06/2021  
 JOB #185023



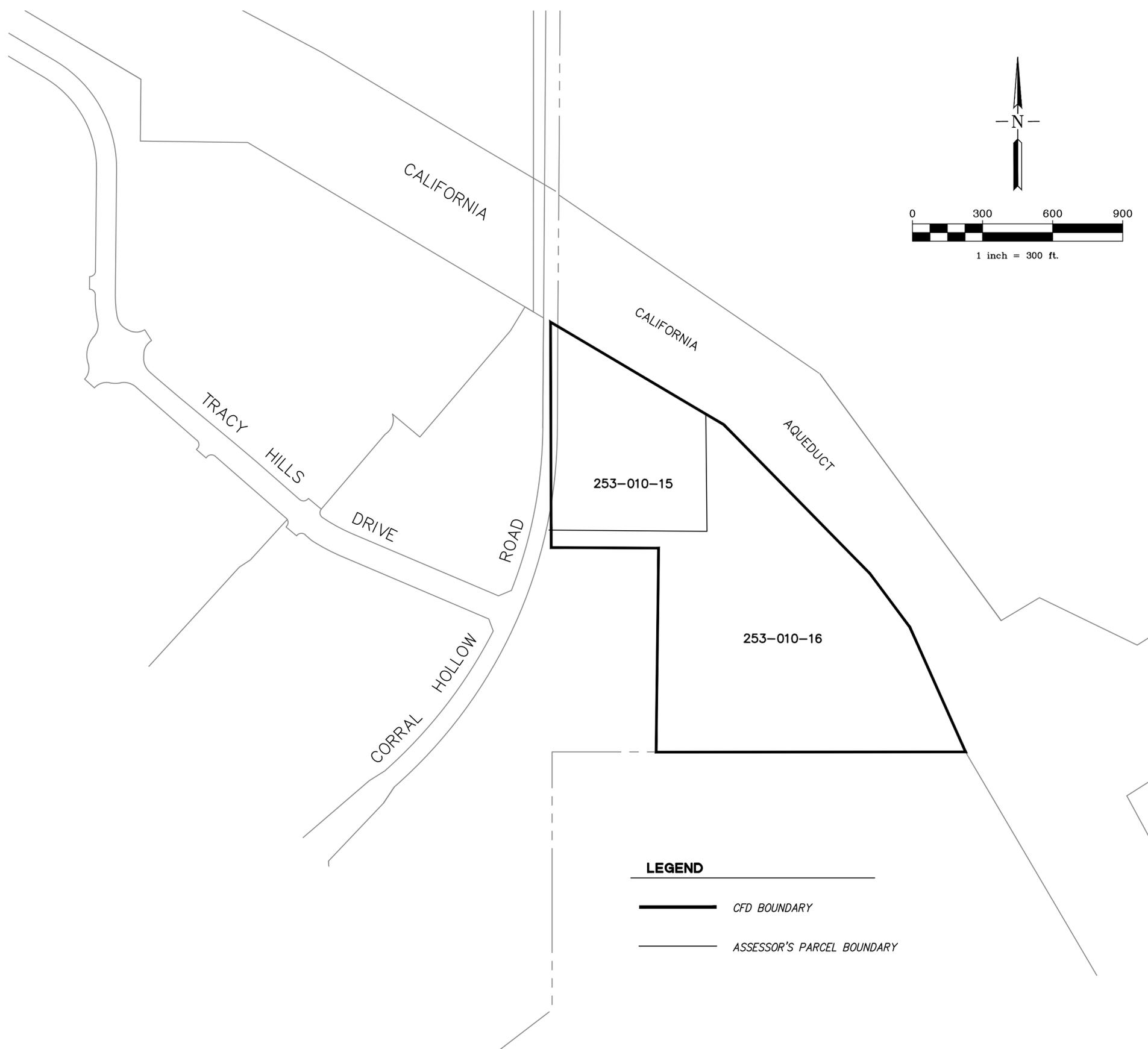
**ATTACHMENT 2**

**City of Tracy  
Community Facilities District No. 2021-1  
(Hillview)**

**Expected Land Uses and Expected Maximum Facilities Special Tax Revenues**

<b>Land Use Category</b>	<b>Expected Units / Acres</b>	<b>Maximum Facilities Special Tax (FY 2021-22) *</b>	<b>Expected Maximum Facilities Special Tax Revenues (FY 2021-22) *</b>
Single Family Residential Property	214 Residential Units	\$1,969 per Residential Unit	\$421,366
Other Property	0 Acres	\$33,087 per Acre	\$0
<b>Expected Maximum Facilities Special Tax Revenues (FY 2021-22 \$)</b>			<b>\$421,366</b>

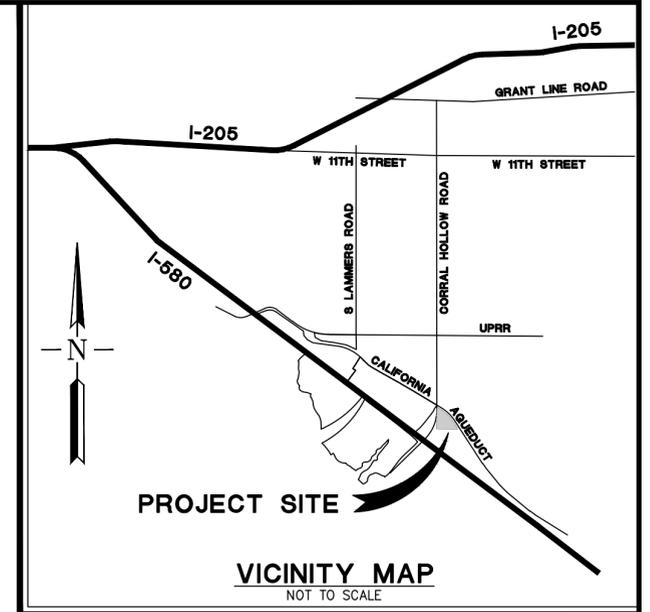
\* On July 1, 2022, and each July 1 thereafter, all dollar amounts shown above shall be increased by 2% of the amount in effect in the prior Fiscal Year.



**LEGEND**

———— CFD BOUNDARY

———— ASSESSOR'S PARCEL BOUNDARY



**PROPOSED BOUNDARIES OF  
CITY OF TRACY  
COMMUNITY FACILITIES DISTRICT No. 2021-1  
(HILLVIEW)  
CITY OF TRACY  
COUNTY OF SAN JOAQUIN  
STATE OF CALIFORNIA**

Filed in the office of the City Clerk of the City of Tracy  
this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

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

I hereby certify that the within map showing proposed boundaries  
of City of Tracy Community Facilities District No. 2021-1  
(Hillview), City of Tracy, County of San Joaquin, State of  
California, was approved by the City Council of the City of Tracy,  
at a meeting thereof, held on the \_\_\_\_ day of \_\_\_\_\_, 2021,  
by its Resolution No. \_\_\_\_\_.

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

Filed this \_\_\_\_\_ day of \_\_\_\_\_, 2021, at the hour of \_\_\_\_\_  
o'clock \_\_\_\_m., in Book \_\_\_\_\_ of Maps of Assessment and  
Community Facilities Districts at Page \_\_\_\_\_ in the office of the  
County Recorder in the County of San Joaquin, State of  
California.

\_\_\_\_\_  
County Recorder, County of San Joaquin

**RJA**  
**RUGGERI-JENSEN-AZAR**  
ENGINEERS ■ PLANNERS ■ SURVEYORS  
2541 WARREN DRIVE, SUITE 100 ROCKLIN, CA 95677  
PHONE: (916) 630-8900 FAX: (916) 630-8909

DEPOSIT AND REIMBURSEMENT AGREEMENT

City of Tracy  
Community Facilities District No. 2021-1  
(Hillview)

THIS DEPOSIT AND REIMBURSEMENT AGREEMENT (the "Agreement"), dated for convenience as of September 1, 2021, is by and between the City of Tracy (the "City"), for the proposed City of Tracy Community Facilities District No. 2021-1 (Hillview) (the "CFD") and Lennar Homes of California, Inc., a California corporation (the "Developer").

RECITALS:

WHEREAS, AG Essential Housing CA 4, L.P., a Delaware limited partnership ("AGEH") is the owner of certain property in the City of Tracy, and the Developer has an option to purchase the property in a series of takedowns over time;

WHEREAS, AGEH and the Developer would like the City to consider taking actions necessary to form the CFD under Sections 53311 *et seq.* of the California Government Code (the "Act");

WHEREAS, the Developer is willing to advance funds to the City or to its agents and consultants as necessary to ensure payment of any and all costs of the City in forming the CFD, provided that any advances are reimbursed to the Developer from the proceeds of any bonds issued by the City for the CFD to the extent legally permissible;

WHEREAS, Section 53314.9 of the Act provides that, either before or after formation of the CFD, the City may accept advances of funds and may provide, by resolution, for the use of those funds, including but not limited to pay any cost incurred by the local agency in creating the CFD, and may agree to reimburse the advances under all of the following conditions: (1) the proposal to repay the advances is included both in the resolution of intention and the resolution of formation to establish the CFD; and (2) any proposed special tax is approved by the qualified electors of the CFD and, if the qualified electors of the district do not approve the proposed special tax, the local agency shall return any funds which have not been committed for any authorized purpose by the time of the election; and

WHEREAS, the City and the Developer now desire to specify the terms of the advances of funds and reimbursement.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants set forth herein, and for other consideration the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

AGREEMENT:

Section 1. The Advances. The Developer hereby agrees to provide \$62,500, in the form of cash or a check payable to the City (the "Initial Advance"), to be used by the City to pay the "Initial Costs" (as defined below); the Initial Advance shall be delivered to the Finance Director of the City by September 21, 2021.

The Developer further agrees to advance any additional amounts (collectively with the Initial Advance, the "Advances") incurred or reasonably expected to be incurred by the City, promptly upon written demand therefore by the Finance Director of the City, said Advances to be made to the City or directly to the City's consultants as specified by the Finance Director in writing to the Developer. In the event that the Developer shall fail or refuse to remit any such amounts to or at the direction of the Finance Director of the City, all processing by the City of the proceedings for the CFD shall cease until such time as the requested amounts are paid by the Developer.

The Initial Costs include, but are not limited to: (i) the fees and expenses of any consultants to the City employed in connection with the formation of the CFD (such as engineering, legal counsel, including special counsel to the City, financial advisory and special tax consultant); (ii) the costs of appraisals, absorption studies and other reports necessary or deemed advisable by City staff in forming the CFD and issuing bonds for the CFD; (iii) costs of publication of notices, preparation and mailing of ballots and other costs related to any election with respect to the CFD, any special tax to be levied therein or any bonded indebtedness thereof; (iv) the costs of any action prosecuted in the superior court to validate the formation of the CFD, said special tax and/or any bonded indebtedness; (v) a reasonable charge, as determined by the Finance Director, in her sole discretion, for an allocable share of administrative expense with respect to City staff engaged in analyzing and participating in the CFD formation, special tax formulation, facilities acquisition and bond issuance proceedings; and (vi) any and all other actual costs and expenses incurred by the City with respect to the creation of the CFD.

Section 2. Use of Funds. Pursuant to Section 53314.9 of the Act, the Advances are subject to reimbursement only as follows:

(a) If the CFD is formed and bonds are issued under the Act by the City secured by special taxes levied upon the land within the CFD, the City shall provide for reimbursement to the Developer, without interest, of all Advances, said reimbursement to be made solely from the proceeds of such bonds and only to the extent otherwise permitted under the Act. On or within ten (10) business days after the date of issuance and delivery of the bonds, the Finance Director of the City shall return any then unexpended Advances to the Developer, without interest, together with an amount equal

to the Advances theretofore expended, without interest, to the extent such amount is funded with proceeds of the bonds and said reimbursement is otherwise permitted under the Act.

(b) If the qualified electors of the CFD do not approve the proposed special tax to be levied on the property within the CFD and the issuance of bonds by the City for the CFD, the Finance Director of the City shall, within ten (10) business days of the confirmation of the election results by the City Council of the City, return any then unexpended Advances to the Developer, without interest, less an amount equal to any Initial Costs which have been incurred or committed, but not yet paid by the City from the Advances.

(c) If the election is successful and the CFD is formed, but such bonds are not issued, the Finance Director of the City shall, within ten (10) business days after adoption of the resolution stating the intent of the City to terminate proceedings under the Act with respect to the issuance of bonds for the CFD, return any then unexpended Advances to the Developer, without interest, less an amount equal to any Initial Costs incurred by the City or that the City is otherwise committed to pay, which costs would be subject to payment under Section 1 above but have not yet been paid by the City.

Section 3. Reimbursement of Other Developer Costs. Nothing contained herein shall prohibit reimbursement of other costs and expenses of the Developer incurred in connection with the CFD from the proceeds of such bonds. Any such reimbursement shall be made solely from the proceeds of such bonds and only to the extent otherwise permitted under the Act and otherwise provided for in the proceedings for the formation of the CFD and the issuance of such bonds.

Section 4. Agreement Not Debt or Liability of City. It is hereby acknowledged and agreed that this Agreement is not a debt or liability of the City, as provided in Section 53314.9(b) of the Act. The City shall in no event be liable hereunder other than to return any unexpended and uncommitted portions of any Advances as provided in Section 2 above and provide an accounting under Section 7 below. The City shall not be obligated to advance any of its own funds with respect to the establishment of the CFD or for any of the other purposes listed in Section 1 hereof. No member of the City Council of the City or member, associate member, director, officer, employee or agent of the City shall to any extent be personally liable hereunder.

Section 5. No Obligation to Form CFD. The provisions of this Agreement shall in no way obligate the City to form the CFD or to take any action with respect thereto.

Section 6. Severability. If any part of this Agreement is held to be illegal or unenforceable by a court of competent jurisdiction, the remainder of this Agreement shall be given effect to the fullest extent reasonably possible.

Section 7. Accounting. The Advances may be commingled with other funds of the City for purposes of investment and safekeeping, but the City shall at all times maintain records of the

expenditure of the Advances. The City shall provide the Developer with a written accounting, including copies of supporting invoices, of Advances expended pursuant to this Agreement within ten (10) business days of receipt by the Finance Director of the City of a written request therefor submitted by an authorized officer of the Developer. No more than one accounting will be provided in any calendar month and the cost of providing the accounting shall be considered an Initial Cost.

Section 8. Indemnification. The Developer hereby agrees to assume the defense of, indemnify and hold harmless the City, and each of its members, officers, employees and agents, from and against all actions, claims or proceedings of every type and description to which they or any of them may be subjected or put, by reason of, or arising out of, any acts or omissions of the Developer or any of its members, officers, employees, contractors or agents in connection with the establishment of the CFD and the issuance of any bonds by the City for the CFD. The City shall promptly notify the Developer of any such claim, action or proceeding, and the City shall cooperate in the defense thereof. The obligations of the Developer under this Section shall not apply to any claims, actions or proceedings arising through the negligence or willful misconduct of the City, its members, officers, employees or agents.

Section 9. Governing Law. This Agreement shall be governed and construed in accordance with the laws of the State of California.

Section 10. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto.

Section 11. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original.

\* \* \* \* \*

IN WITNESS THEREOF, the parties have executed this Agreement as of the day and year first written above.

DEVELOPER:

LENNAR HOMES OF CALIFORNIA, INC.,  
a California corporation

By:  \_\_\_\_\_  
Name: Bridgit Koller \_\_\_\_\_  
Its: Vice President \_\_\_\_\_  
Dated: 9/1/2021 \_\_\_\_\_

CITY:

CITY OF TRACY

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_  
Dated: \_\_\_\_\_

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

**RESOLUTION OF INTENTION TO ESTABLISH  
COMMUNITY FACILITIES DISTRICT**

**CITY OF TRACY  
Community Facilities District No. 2021-1  
(Hillview)**

RESOLVED, by the City Council (the "Council") of the City of Tracy (the "City"), State of California that:

WHEREAS, under the Mello-Roos Community Facilities Act of 1982, as amended (the "Act"), Chapter 2.5 of Part 1 of Division 2 of Title 5, commencing at Section 53311, of the California Government Code, this Council is authorized to establish a community facilities district and to act as the legislative body for a community facilities district;

WHEREAS, AG Essential Housing CA 4, L.P., a Delaware limited partnership ("AGEH") and Lennar Homes of California, Inc., a California corporation (the "Developer"), are the owner and developer, respectively, of certain land in the City; and

WHEREAS, this Council, having received a petition from AGEH proposing that such land be included in a community facilities district, now desires to proceed with the establishment of a community facilities district in order to finance costs of public infrastructure and certain public services necessary or incident to development within the proposed boundaries of the proposed community facilities district;

NOW, THEREFORE, BE IT RESOLVED as follows:

1. Recitals Correct. The foregoing recitals are true and correct.
2. Authority. This Council proposes to conduct proceedings to establish a community facilities district pursuant to the Act.
3. Name of CFD. The name proposed for the community facilities district is City of Tracy Community Facilities District No. 2021-1 (Hillview) (the "CFD").
4. Boundaries Described. The proposed boundaries of the CFD are as shown on the map of it on file with the City Clerk, which boundaries are hereby preliminarily approved and to which map reference is hereby made for further particulars. The City Clerk is hereby directed to record, or cause to be recorded, the map of the boundaries of the CFD in the office of the Recorder of San Joaquin County within 15 days of the date of adoption of this Resolution.
5. Facilities and Services. The type of public facilities proposed to be financed by the CFD and pursuant to the Act shall consist of those listed as facilities on Exhibit A hereto and hereby incorporated herein (the "Facilities"). The Council hereby determines that the Facilities are necessary to meet increased demands placed upon local agencies as the result of development occurring within the CFD. The Council hereby finds and determines that the

public interest will not be served by allowing the property owners in the CFD to enter into a contract in accordance with Section 53329.5(a) of the Act. Notwithstanding the foregoing, the Council, on behalf of CFD, may enter into one or more contracts directly with any of the property owners with respect to the construction and/or acquisition of the any portion of the Facilities.

The City Manager is hereby authorized and directed to enter into joint community facilities agreements with any entity that will own or operate any of the Facilities, as may be necessary to comply with the provisions of Section 53316.2(a) and (b) of the Act. The Council hereby declares that such joint agreements will be beneficial to owners of property in the area of the CFD.

The type of services proposed to be financed by the CFD and pursuant to the Act shall consist of those listed in Exhibit A hereto and hereby incorporated herein (the "Services"). The Council hereby determines that the Services are necessary to meet increased demands for such services placed upon local agencies as the result of development occurring within the area of the CFD. The Services are in addition to those provided in the territory of the CFD as of the date hereof and will not supplant services already available within the territory of the CFD as of the date hereof.

6. Special Tax. Except to the extent that funds are otherwise available, the City will levy a special tax (the "Special Tax") to pay directly for the Facilities, pay the principal and interest on bonds and other debt (as defined in the Act) of the City issued to finance the Facilities and to pay for the Services. The Special Tax will be secured by recordation of a continuing lien against all non-exempt real property in the CFD, will be levied annually within the CFD, and collected in the same manner as ordinary ad valorem property taxes, or in such other manner as this Council or its designee shall determine, including direct billing of the affected property owners. The proposed rate and method of apportionment of the Special Tax among the parcels of real property within the CFD in sufficient detail to allow each landowner within the proposed CFD to estimate the maximum amount such owner will have to pay, are described in Exhibit B attached hereto and hereby incorporated herein (the "Rate and Method").

This Council hereby finds that the provisions of Section 53313.6, 53313.7 and 53313.9 of the Act (relating to adjustments to *ad valorem* property taxes and schools financed by a community facilities district) are inapplicable to the proposed CFD.

7. Exempt Property. Except as may otherwise be provided by law or by the rate and method of apportionment of the Special Tax for the CFD, all lands owned by any public entity, including the United States, the State of California and/or the City, or any departments or political subdivisions thereof, shall be omitted from the levy of the Special Tax to be made to cover the costs and expenses of the Facilities, the Services and the CFD. In the event that a portion of the property within the CFD shall become for any reason exempt, wholly or in part, from the levy of the Special Tax, this Council will, on behalf of the CFD, increase the levy to the extent necessary upon the remaining property within the CFD which is not exempt in order to yield the required debt service payments and other annual expenses of the CFD, if any, subject to the provisions of the rate and method of apportionment of the Special Tax.

8. Election. The levy of the Special Tax shall be subject to the approval of the qualified electors of the CFD at a special election. The proposed voting procedure shall be by mailed or hand-delivered ballot among the landowners in the proposed CFD, with each owner having one vote for each acre or portion of an acre such owner owns in the CFD.

9. Special Tax Bonds. It is the intention of this Council, acting as the legislative body for the CFD, to cause bonds and other debt (as defined in the Act) of the City to be issued for the CFD pursuant to the Act to finance in whole or in part the construction and/or acquisition of the Facilities. The bonds shall be issued in such series and bear interest payable semi-annually or in such other manner as this Council shall determine, at a rate not to exceed the maximum rate of interest as may be authorized by applicable law at the time of sale of such bonds or other debt, and shall mature not to exceed 40 years from the date of the issuance thereof. The bonds shall be in the aggregate principal amount of not to exceed \$12,000,000. The amount of debt other than bonds that may be issued by the City for the CFD shall not be subject to such limit.

10. CFD Report. The City's City Engineer, as the officer having charge and control of the Facilities and the Services in and for the CFD, or the designee of such officer, is hereby directed to study said proposed Facilities and to make, or cause to be made, and file with the City Clerk a report in writing, (the "CFD Report") presenting the following:

(a) A description of the Facilities and the Services by type which will be required to adequately meet the needs of the CFD.

(b) An estimate of the fair and reasonable cost of the Facilities including the cost of acquisition of lands, rights-of-way and easements, any physical facilities required in conjunction therewith and incidental expenses in connection therewith, including the costs of the proposed bond financing and all other related costs as provided in Section 53345.3 of the Act.

(c) An estimate of the fair and reasonable cost of the Services and incidental expenses in connection therewith, and all other related costs.

The CFD Report shall be made a part of the record of the public hearing specified below.

11. Public Hearing. Tuesday, November 2, 2021 at 7:00 p.m., or as soon as possible thereafter, in the Council Chambers, 333 Civic Center Plaza, Tracy, California 95376 (or by teleconference as required by State or County emergency health orders), be, and the same are hereby appointed and fixed as the time and place when and where this Council, as legislative body for the CFD, will conduct a public hearing on the establishment of the CFD and consider and finally determine whether the public interest, convenience and necessity require the formation of the CFD and the levy of the Special Tax.

12. Notice of Hearing. The City Clerk is hereby directed to cause notice of the public hearing to be given by publication one time in a newspaper published in the area of the CFD. The publication shall be completed at least seven days before the date of the public hearing specified above. Such mailing shall be completed not less than 15 days before the date of the public hearing. Each of the notices shall be substantially in the form specified in Section 53322 of the Act, with the form summarizing the provisions hereof hereby specifically approved.

13. Deposit and Reimbursement Agreement. The Developer has submitted a Deposit and Reimbursement Agreement (the "Deposit Agreement"), to be executed by the Developer and the City. The Deposit Agreement, in the form on file with the City Clerk, is hereby approved. The Finance Director of the City is hereby authorized and directed to accept from the Developer the Initial Advance described in the Deposit Agreement and to request subsequent Advances from the Developer to pay Initial Costs, as such terms are defined in the Deposit Agreement,

and to use the Advances in the manner contemplated by the Deposit Agreement. The Finance Director is hereby authorized and directed to execute the Deposit Agreement for and on behalf of the City, and to take all actions necessary to implement the Deposit Agreement.

14. Acquisition Agreement. Section 53314.9 of the Act provides that, either before or after formation of the CFD, the City may accept work in-kind from any source, including, but not limited to, private persons or private entities, may provide, by resolution, for the use of that work in-kind for any authorized purpose and the City Council may enter into an agreement (an "Acquisition Agreement"), by resolution, with the person or entity advancing the work in-kind, to reimburse the person or entity for the value, or cost, whichever is less, of the work in-kind, as determined by the City Council, with or without interest, under the conditions specified in the Act. Any work in-kind must be performed or constructed as if the work had been performed or constructed under the direction and supervision, or under the authority of, the City. The City anticipates entering into an acquisition and reimbursement agreement in compliance with Section 53314.9 and Section 53313.51 with the Developer.

15. Tender. The City Council reserves to itself the right and authority set forth in Section 53344.1 of the Act, subject to any limitations set forth in any bond resolution or trust indenture related to the issuance of bonds.

16. Approval of Professional Services Related to the CFD.

(a) Approval of Underwriter. The firm of Piper Sandler is hereby designated as underwriter to the City for any bonds to be issued for the CFD. Any and all compensation of such firm shall be contingent upon the issuance of bonds of the City for the CFD, and shall be payable from the proceeds of such bonds or by means of a discount upon the purchase of the bonds.

(b) Special Tax Consultant. The firm of Goodwin Consulting Group is hereby designated as Special Tax Consultant to the City for the CFD. The Finance Director of the City is hereby authorized and directed to execute an agreement with said firm for its services in connection with the CFD, in the form on file with the City Clerk; provided that all compensation to such firm shall be payable solely from Advances pursuant to the Agreement or the proceeds of bonds issued by the City for the CFD.

(c) Bond Counsel and Disclosure Counsel. The firm of Jones Hall, A Professional Law Corporation is hereby designated as Bond Counsel and Disclosure Counsel to the City for the CFD. The City Attorney of the City is hereby authorized and directed to execute a supplement to the Master Legal Services Agreement with said firm for its services in connection with the CFD; provided that all compensation to such firm shall be payable solely from Advances pursuant to the Agreement or the proceeds of bonds issued by the City for the CFD

(d) Municipal Advisor. The firm of CSG Advisors, Inc. is hereby designated as Municipal Advisor to the City for the CFD. The Finance Director of the City is hereby authorized and directed to execute an agreement with said firm for its services in connection with the CFD, in the form on file with the City Clerk; provided that all compensation to such firm shall be payable solely from Advances pursuant to the Agreement or the proceeds of bonds issued by the City for the CFD.

(e) Trustee or Fiscal Agent; Appraiser; Absorption Consultant. An Authorized Representative is hereby authorized and directed to select a trustee or fiscal agent for

any bonds issued for the CFD and, if required by the underwriter, an appraiser and/or an absorption consultant, in each case, on such terms as are acceptable to an Authorized Representative; provided that all compensation to any firms so selected shall be payable solely from money advanced pursuant to the Deposit Agreement or the proceeds of bonds issued by the City for the CFD.

17. Further Action. The Authorized Representatives, the City Clerk and all other officers and agents of the City are hereby authorized and directed to take all actions necessary or advisable to give effect to the transactions contemplated by this Resolution.

18. No Obligation. This Resolution shall in no way obligate the City Council of the City to form the CFD. The formation of the CFD shall be subject to the approval of this Council by resolution following the holding of the public hearing referred to above.

19. Effective Date. This resolution shall take effect upon its adoption.

The foregoing Resolution \_\_\_\_\_ was adopted by the Tracy City Council on the \_\_\_ day of \_\_\_\_, 2021, by the following vote:

AYES: COUNCILMEMBERS:

NOES: COUNCILMEMBERS:

ABSENT: COUNCILMEMBERS:

ABSTAIN: COUNCILMEMBERS:

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

ATTEST:

\_\_\_\_\_  
CITY CLERK

## EXHIBIT A

### **CITY OF TRACY Community Facilities District No. 2021-1 (Hillview)**

#### **DESCRIPTION OF FACILITIES AND SERVICES TO BE FINANCED BY THE CFD**

##### FACILITIES

The CFD shall be authorized to finance all or a portion of the costs of the acquisition, construction and improvement of facilities permitted under the Mello-Roos Act and that are required as conditions of development of the property within the CFD, including, but not limited to, the following:

1. Roadway Improvements (and all curb and gutter, sidewalks, lighting, signalization, landscaping, monumentation, and dry and wet utilities) - including, but not limited to:
  - o Arterial roadways
  - o Collector roadways
2. Wastewater Facilities - including, but not limited to, a wastewater treatment facility and/or expansion, pump stations, lift stations, force main and gravity lines.
3. Water Facilities - including, but not limited to, a water treatment facility, pump stations, new water transmission lines, additional storage reservoirs or tanks with booster pumps, production wells, backup generators at existing wells, and pressure reducing valves.
4. Reclaimed Water Facilities - including, but not limited to, reclaimed water treatment facilities, pump stations, new reclaimed water transmission lines, and additional storage reservoirs or tanks with booster pumps.
5. Drainage Improvements - including, but not limited to, pipes, culverts, retention basins, drop inlets, and filtration areas.
6. Landscaping - including, but not limited to, entryways, streets, buffers, and slopes.
7. Open Space Improvements
8. Parks and Park Equipment - including, but not limited to, construction of parks, park equipment and structures.
9. Improvements Financed by City Master Plan and Public Benefit Payments - including, but not limited to:
  - o Public Benefit payments.
  - o Transportation Master Plan Fee.
  - o Wastewater Master Plan Fee.
  - o Wastewater Conveyance Master Plan Fee.
  - o Water Treatment Master Plan Fee.

- Water Conveyance Mater Plan Fee.
- Water Supply Master Plan Fee.
- Water Treatment Master Plan Fee.
- Recycled Water Master Plan Fee.
- Public Safety Master Plan Fee (including, but not limited to, Fire, Police, Communication and Program Fees).
- Public Facilities Master Plan Fee.
- Parks Master Plan Fee.

10. Any other real or other tangible property with an estimated useful life of five years or longer.

Any facility authorized to be financed by the CFD may be financed through the construction and acquisition of the facility or through the payment of fees for such facility.

The facilities constructed or acquired may be located within or outside the CFD.

The facilities to be financed shall include all hard and soft costs associated with the facilities, including the costs of the acquisition of land and rights-of-way, the costs of design, engineering and planning, the costs of any environmental or traffic studies, surveys or other reports, costs related to landscaping and irrigation, soils testing, permits, plan check, and inspection fees, insurance, legal and related overhead costs, coordination and supervision and any other costs or appurtenances related to any of the foregoing as further defined in one or more acquisition agreements with the developer of the Property in the CFD.

### SERVICES

Special taxes collected in the CFD may finance, in whole or in part, the following services ("services" and "maintenance" shall have the meaning given those terms in the Mello-Roos Community Facilities Act of 1982):

Maintenance and operation of the Facilities.

### OTHER

The CFD may also finance any of the following:

1. Bond related expenses, including underwriters discount, reserve fund, capitalized interest, letter of credit fees and expenses, bond and disclosure counsel fees and expenses, bond remarketing costs, and all other incidental expenses.

2. Administrative fees of the City and the bond trustee or fiscal agent related to the CFD and the Bonds.

3. Reimbursement of costs related to the formation of the CFD advanced by the City, the landowner(s) in the CFD, or any party related to any of the foregoing, as well as reimbursement of any costs advanced by the City, the landowner(s) in the CFD or any party related to any of the foregoing, for facilities, fees or other purposes or costs of the CFD.

Special Taxes may be collected and set-aside in designated funds and collected over several years, and used to fund Facilities or Services authorized to be financed by the CFD.



**EXHIBIT B**

**CITY OF TRACY  
Community Facilities District No. 2021-1  
(Hillview)**

**RATE AND METHOD OF APPORTIONMENT OF SPECIAL TAX**

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

**RESOLUTION OF INTENTION  
TO INCUR BONDED INDEBTEDNESS AND OTHER DEBT**

**CITY OF TRACY  
Community Facilities District No. 2021-1  
(Hillview)**

RESOLVED, by the City Council (the "Council") of the City of Tracy (the "City"), State of California that:

WHEREAS, this Council has this date adopted its "Resolution of Intention to Establish Community Facilities District", stating its intention to form the "City of Tracy Community Facilities District No. 2021-1 (Hillview)" (the "CFD") pursuant to the Mello-Roos Community Facilities Act of 1982, as amended, Chapter 2.5 of Part 1 of Division 2 of Title 5 of the California Government Code (the "Act"), for the purpose of financing certain public improvements (the "Facilities") as further provided in that Resolution; and

WHEREAS, this Council estimates the amount required for the financing of the costs of the Facilities to be the sum of not to exceed \$12,000,000 and

WHEREAS, in order to finance the costs of the Facilities it is necessary to incur bonded indebtedness in the amount of not to exceed \$12,000,000 on behalf of the CFD; and

WHEREAS, in order to finance the costs of the Facilities it is further necessary to incur debt (as defined in the Act), although any such debt shall not be subject to the limitations on bonded indebtedness set forth above; and

WHEREAS, United States Income Tax Regulations section 1.150-2 provides generally that proceeds of tax-exempt debt are not deemed to be expended when such proceeds are used for reimbursement of expenditures made prior to the date of issuance of such debt unless certain procedures are followed, one of which is a requirement that (with certain exceptions), prior to the payment of any such expenditure, the issuer declares an intention to reimburse such expenditure; and

WHEREAS, it is in the public interest and for the public benefit that the City declares its official intent to reimburse the expenditures referenced herein.

NOW THEREFORE BE IT RESOLVED AS FOLLOWS:

1. Recitals Correct. The foregoing recitals are true and correct.
2. Bonded Debt and Other Debt. It is necessary to incur bonded indebtedness within the boundaries of the proposed CFD in the amount of up to \$12,000,000 to finance the costs of the Facilities.

It is further necessary to incur, and the City Council hereby declares its intent to incur, debt (as defined in the Act) for the CFD, in one or more series, although any such debt shall not be subject to the limitations on bonded indebtedness set forth above.

3. Purposes of Bonded Debt and Other Debt. The bonded indebtedness and other debt are proposed to be incurred for the purpose of financing the costs of the Facilities, including acquisition and improvement costs and all costs incidental to or connected with the accomplishment of said purposes and of the financing thereof, as permitted by Section 53345.3 of the Act.

The City hereby declares that it reasonably expects (i) to pay certain costs of the Facilities prior to the date of issuance of the bonded indebtedness and other debt and (ii) to use a portion of the proceeds of the bonded indebtedness and other debt for reimbursement of expenditures for the Facilities that are paid before the date of issuance of the bonded indebtedness and other debt.

4. Terms of Bonds and Other Debt. This Council, acting as legislative body for the CFD intends to authorize the issuance and sale of bonds in one or more series in the maximum aggregate principal amount of not to exceed \$12,000,000 bearing interest payable semi-annually or in such other manner as this Council shall determine, at a rate not to exceed the maximum rate of interest as may be authorized by applicable law at the time of sale of such bonds, and maturing not to exceed 40 years from the date of the issuance of the bonds.

This Council, acting as legislative body for the CFD, further intends to authorize the issuance and sale of debt in one or more series in the amounts and bearing interest payable semi-annually or in such other manner as this Council shall determine, at a rate not to exceed the maximum rate of interest as may be authorized by applicable law at the time of sale of such debt.

5. Public Hearing. Tuesday, November 2, 2021 at 7:00 p.m. or as soon as possible thereafter, in the Council Chambers, 333 Civic Center Plaza, Tracy, California, Tracy, California, be, and the same are hereby appointed and fixed as the time and place when and where this Council, as legislative body for the CFD, will conduct a public hearing on the proposed debt issue and consider and finally determine whether the public interest, convenience and necessity require the issuance of bonds and other debt of the of the City on behalf of the CFD.

6. Notices of Hearing. The City Clerk is hereby directed to cause notice of the public hearing to be given by publication one time in a newspaper of general circulation circulated within the CFD. The publication of the notice shall be completed at least 7 days before the date specified above for the public hearing. The City Clerk may also cause notice of the hearing to be given to each property owner within the CFD by first class mail, postage prepaid, to each such owner's addresses as it appear on the most recent tax records of San Joaquin County or as otherwise known to the City Clerk to be correct. Such mailing shall be completed not less than 15 days before the date of the hearing. Each of the notices shall be substantially in the form specified in Section 53346 of the Act, with the form summarizing the provisions hereof hereby specifically approved.

7. No Obligation. This Resolution shall in no way obligate the City Council of the City to form the CFD or to issue bonds or other debt for the CFD. Issuance of the bonds and other debt shall be subject to the approval of this City Council by resolution following the holding of the public hearing referred to above.

8. Effective Date. This resolution shall take effect upon its adoption.

The foregoing Resolution \_\_\_\_\_ was adopted by the Tracy City Council the \_\_\_\_\_ day of \_\_\_\_\_, 2021, by the following vote:

AYES: COUNCILMEMBERS:

NOES: COUNCILMEMBERS:

ABSENT: COUNCILMEMBERS:

ABSTAIN: COUNCILMEMBERS:

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

ATTEST:

\_\_\_\_\_  
CITY CLERK

AGENDA ITEM 3.C

REQUEST

**ADOPT A RESOLUTION AUTHORIZING THE ISSUANCE AND SALE OF SPECIAL TAX BONDS FOR THE PURPOSE OF FINANCING AUTHORIZED FACILITIES FOR COMMUNITY FACILITIES DISTRICT NO. 2016-2, AND APPROVING AND AUTHORIZING RELATED DOCUMENTS AND ACTIONS**

EXECUTIVE SUMMARY

For the purpose of financing public facilities and public services for development in the Ellis Specific Plan, the City Council previously acted under the Mello-Roos Community Facilities Act of 1982 (the “Mello-Roos Act”) to establish the following:

- City of Tracy Community Facilities District No. 2016-2 (ECFD) (the “CFD”),
- Improvement Area No. 2 of the City of Tracy Community Facilities District No. 2016-2 (ECFD) (“Improvement Area No. 2”), and
- City of Tracy Community Facilities District No. 2016-2 (ECFD) (Future Annexation Area) (the “Future Annexation Area”).

Staff recommends that the City Council adopt the referenced resolution (the “2021 Bond Resolution”) for the purpose of authorizing the issuance of an initial series of bonds on behalf of the CFD with respect to Improvement Area No. 2 and approving and authorizing related documents and actions.

DISCUSSION

**LOCAL GOALS AND POLICIES**

Section 53312.7(a) of the Mello-Roos Act requires the City to consider and adopt local goals and policies concerning the use of the Mello-Roos Act prior to the initiation of proceedings on or after January 1, 1994 to establish a new community facilities district.

The City adopted “Amended Local Goals and Policies for Community Facilities Districts (CFDs)” on February 4, 2014, by Resolution No. 2014-019 (“Goals and Policies”).

The Goals and Policies provide guidance and conditions for the conduct by the City of proceedings for, and the issuance of bonds secured by special taxes levied in, a community facilities district established under the Mello-Roos Act.

**CFD FORMATION PROCESS AND APPROVAL OF BONDS**

Original CFD Proceedings. Under the Mello-Roos Act, and pursuant to Resolution No. 2017-21, adopted by the City Council on February 7, 2017 (the “Resolution of Formation”), the City previously formed (i) the CFD, (ii) an initial improvement area in the CFD designated “Improvement Area No. 1 of the City of Tracy Community Facilities

District No. 2016-2 (ECFD)” (“Improvement Area No. 1”), and (iii) a future annexation area for the CFD (the “Future Annexation Area”).

Pursuant to Resolution No. 2017-22, adopted by the Council on February 7, 2017, the Council declared the necessity to issue and sells bonds and incur other debt to finance the authorized facilities and impact fees, including an amount not to exceed \$53,000,000 in those portions of the CFD that are not in Improvement Area No. 1, with such amount to be allocated to Future Improvement Areas as described in the Resolution of Formation.

#### Proceedings Related to Improvement Area No. 2.

Pursuant to Resolution No. 2019-074, adopted by the Council on April 16, 2019 (the “Annexation Resolution”), the City Council took certain actions to add property from the Future Annexation Area to the CFD as a new improvement area:

- acknowledged receipt of a Unanimous Approval executed by the owner (the “Property Owner”) of Assessor’s Parcel Numbers 240-140-44, 240-140-45 and 240-140-46 (the “Annexation Property”), which Unanimous Approval (i) identified, specified and approved the annexation of the Annexation Property to the CFD as a separate improvement area and other related matters and (ii) confirmed that the Unanimous Approval constituted the approval and unanimous vote of the Property Owner with respect to the matters addressed in the Unanimous Approval under the Act and Article XIII A of the California Constitution,
- confirmed that the Annexation Property had been added to the CFD as “Improvement Area No. 2 of the City of Tracy Community Facilities District No. 2016-2 (ECFD)” (“Improvement Area No. 2”),
- confirmed that the maximum aggregate principal amount of bonds and other debt for Improvement Area No. 2, as specified in the Unanimous Approval, is \$16,000,000 and
- confirmed the rate and method of apportionment of the special tax among the parcels of real property within Improvement Area No. 2, was specified in the Unanimous Approval (the “Improvement Area No. 2 Rate and Method”), and set forth in Exhibit A to the Annexation Resolution.

#### **PROPOSED 2021 BONDS**

Staff recommends that the City Council adopt a resolution (the “2021 Bond Resolution”) for the following purposes:

- (i) provide for an initial series of bonds for the CFD with respect to Improvement Area No. 2 (the “2021 Bonds”) in a principal amount not to exceed \$16,000,000,
- (ii) approve the sale of the 2021 Bonds to Piper Sandler & Co. (the “Underwriter”)
- (iii) approve the documents related to the 2021 Bonds, and

(iv) authorize staff to take all actions necessary related to issuance of the 2021 Bonds.

### **TERMS OF THE 2021 BONDS**

Pursuant to the Resolution, the true interest cost of the 2021 Bonds cannot exceed 5.00% and the principal amount of the 2021 Bonds cannot exceed \$16,000,000. Government Code Section 5852.1 requires the City to obtain and disclose a good faith estimate of certain information about the 2021 Bonds, including the true interest cost, the financing costs, the use of proceeds and the total payment amount, and the information is included in Appendix A of the 2021 Bond Resolution. Based upon current market conditions, the 2021 Bonds are estimated to be issued in the amount of \$13,055,000 (excluding net original issue premium of an additional \$1,621,000) and carry a true interest cost of approximately 3.23%.

The Goals and Policies require a minimum value to lien ratio for special tax financings of 3:1 (the value-to-lien calculation compares the value of the property to the proposed principal amount of the 2021 Bonds and bonds issued by overlapping community facilities districts and assessment districts).

The current draft of the appraisal (the "Appraisal") prepared by Integra Realty Resources (the "Appraiser") was prepared consistent with the Goals and Policies.

The Appraisal reports that the taxable property in the CFD has a total value of \$122,135,950, resulting in an estimated value to lien ratio of approximately 7.63:1 based on the \$16,000,000 maximum authorized principal amount of the 2021 Bonds (there are no overlapping special tax or assessment bonds). The value described in the Appraisal includes two components:

Assessed Value of Completed Homes: The Appraisal reports that the assessed value of taxable parcels within the boundaries of the CFD that are completed homes with full assessed value on the San Joaquin County 2020-21 assessor's tax roll is \$53,286,950.

Appraised Value: The Appraisal estimates that the market value of taxable parcels within the boundaries of the CFD that are not completed homes with full assessed value on the San Joaquin County 2020-21 assessor's tax roll is \$68,849,000.

Because the Appraisal is not final, the proposed Resolution authorizes staff to execute a bond purchase agreement with the Underwriter only if the value to lien ratio based on the final principal amount of the 2021 Bonds will be at least 3:1.

The 2021 Bonds are a limited obligation of the City, payable only from special taxes levied in Improvement Area No. 2 and moneys in the funds and accounts established under the Fiscal Agent Agreement described below.

### **DOCUMENTS RELATED TO THE 2021 BONDS**

The City Council is being asked to approve each of the following:

- Preliminary Official Statement. The Official Statement is the primary disclosure document for investors in the 2021 Bonds. A Preliminary Official Statement will be circulated to potential investors prior to the pricing of the 2021 Bonds. After the 2021 Bonds have been priced, a Final Official Statement will be circulated to investors; the Final Official Statement should be identical to the Preliminary Official Statement except for the addition of pricing information (principal amount, interest rates, redemption terms).

The Preliminary Official Statement describes the special taxes to be levied in Improvement Area No. 2, each of the parcels to be taxed, and, based on information by the developers of property in Improvement Area No. 2, the development plans for the parcels within Improvement Area No. 2. The Preliminary Official Statement will also include the Appraisal of the taxable parcels in Improvement Area No. 2.

The Preliminary Official Statement is prepared by Jones Hall, serving the City as Bond Counsel and Disclosure Counsel for this transaction, with the assistance of the remainder of the financing team, including City staff; the property owners in Improvement Area No. 2; CSG Advisors Incorporated, the City's municipal advisor ("Municipal Advisor"); the Underwriter; and Goodwin Consulting, the City's special tax consultant ("Special Tax Consultant").

The Preliminary Official Statement has been reviewed and approved for transmittal to the City Council by the City's financing team. The distribution of the Preliminary Official Statement by the City is subject to federal securities laws, including the Securities Act of 1933 and the Securities Exchange Act of 1934. These laws require the Preliminary Official Statement to include all facts that would be material to an investor in the 2021 Bonds. Material information is information that there is a substantial likelihood would have actual significance in the deliberations of the reasonable investor when deciding whether to buy or sell the bonds. If the City Council concludes that the Preliminary Official Statement includes all facts that would be material to an investor in the 2021 Bonds, it must adopt a resolution that authorizes staff to execute a certificate to the effect that the Preliminary Official Statement has been "deemed final."

The Securities and Exchange Commission (the "SEC"), the agency with regulatory authority over the City's compliance with the federal securities laws, has issued guidance as to the duties of the City Council with respect to its approval of the Preliminary Official Statement. In its "Report of Investigation in the Matter of County of Orange, California as it Relates to the Conduct of the Members of the Board of Supervisors" (Release No. 36761 / January 24, 1996) (the "Release"), the SEC stated that, if a member of the City Council has knowledge of any facts or circumstances that an investor would want to know about prior to investing in the 2021 Bonds, whether relating to their repayment, tax-exempt status, undisclosed conflicts of interest with interested parties, or otherwise, he or she should endeavor to discover whether such facts are adequately disclosed in the Preliminary Official Statement. In the Release, the SEC stated that the steps that a member of the City Council could take include becoming familiar with the Preliminary Official Statement and questioning staff and consultants about the disclosure of such facts.

The key sections of the Preliminary Official Statement are summarized below:

- “THE 2021 BONDS”: This section summarizes the key terms of the 2021 Bonds, including payment dates and redemption provisions.
  - “SECURITY FOR THE 2021 BONDS”: This section summarizes key security terms, including the City’s pledge of special tax revenues, its covenant to levy special taxes according to the Improvement Area No. 2 Rate and Method, as amended, and its covenant to foreclose on parcels that are delinquent in the payment of special taxes. As described above, the 2021 Bonds are a limited obligation of the City, payable only from special taxes levied in Improvement Area No. 2 and moneys in the funds and accounts established under the Fiscal Agent Agreement.
  - “THE DISTRICT AND IMPROVEMENT AREA NO. 2”: This section summarizes certain features of Improvement Area No. 2, including the appraised value of taxable property, overlapping taxes, assessments and debt and anticipated debt service coverage provided by maximum special taxes that may be levied under the RMA.
  - “OWNERSHIP AND DEVELOPMENT OF IMPROVEMENT AREA NO. 2”: This section includes information provided by the property owners in Improvement Area No. 2, and describes the proposed development in Improvement Area No. 2 and its current status.
  - “BOND OWNERS’ RISK”: This section highlights the primary risks associated with the 2021 Bonds, including failure to complete the proposed development, natural disasters and failure of property owners to pay their special taxes.
  - “LEGAL MATTERS - Tax Exemption”: This section describes the tax-exempt nature of interest on the 2021 Bonds.
- 
- Continuing Disclosure Certificate. Under SEC Rule 15c2-12, the underwriter of the 2021 Bonds may only purchase the 2021 Bonds if it has determined that the City is obligated to provide continuing disclosure, including annual updates of the financial and operating data included in the Official Statement and notices of certain specified events.
  - Fiscal Agent Agreement. This document governs the 2021 Bonds and the use of special taxes from Improvement Area No. 2 to pay debt service on the 2021 Bonds. The special taxes will be levied on the regular County tax roll and collected by the County from each taxable parcel in Improvement Area No. 2. The County will remit these special taxes to the City. The City will remit them to the fiscal agent specified therein (“Fiscal Agent”) as provided for in the Fiscal Agent Agreement. The Fiscal Agent will use the revenues to (1) pay administrative costs of the CFD and (2) pay principal of and interest on the 2021 Bonds to the bond owners.
  - Bond Purchase Agreement. At the time the 2021 Bonds are sold, the City will enter into a Bond Purchase Agreement with the Underwriter, who will agree to underwrite the 2021 Bonds subject to satisfaction of the conditions described in the Bond Purchase Agreement. The resolution provides the Underwriter’s discount on the purchase of the 2021 Bonds may not exceed 1.50% of the par

amount of the 2021 Bonds. The Underwriter was selected as underwriter for the 2021 Bonds through an RFP process, and was chosen based upon the combination of its qualifications and proposed fees.

#### STRATEGIC PLAN

This agenda item supports Governance Strategic Goal 2: Ensure Short and Long-term fiscal health and Goal 3: Increase Public Awareness around City finances and other civic matters.

#### FISCAL IMPACT

The fees and expenses of the financing team, including Bond Counsel, Disclosure Counsel, Underwriter, Municipal Advisor, Special Tax Consultant and Appraiser are paid from proceeds of the 2021 Bonds or paid through an existing Cost Recovery Agreement with the developer.

#### RECOMMENDATION

That Council adopt the 2021 Bond Resolution.

Prepared by: Karin Schnaider, Finance Director  
Christopher Lynch, Jones Hall  
Scott Smith, CSG Advisors Incorporated

Reviewed by: Midori Lichtwardt, Assistant City Manager

Approved by: Bob Adams, Interim City Manager

#### ATTACHMENTS

- A: Preliminary Official Statement (including Continuing Disclosure Certificates)
- B: Fiscal Agent Agreement
- C: Bond Purchase Agreement

**PRELIMINARY OFFICIAL STATEMENT DATED SEPTEMBER \_\_, 2021**

**NEW ISSUE – BOOK-ENTRY ONLY**

**NOT RATED**

*In the opinion of Jones Hall, A Professional Law Corporation, San Francisco, California, Bond Counsel, subject, however to certain qualifications described herein, under existing law, the interest on the 2021 Bonds is excluded from gross income for federal income tax purposes and such interest is not an item of tax preference for purposes of the federal alternative minimum tax. In the further opinion of Bond Counsel, such interest is exempt from California personal income taxes. See "LEGAL MATTERS – Tax Exemption."*

**\$13,055,000\***  
**IMPROVEMENT AREA NO. 2**  
**OF THE CITY OF TRACY**  
**COMMUNITY FACILITIES DISTRICT NO. 2016-2 (ECFD)**  
**SPECIAL TAX BONDS, SERIES 2021**

**Dated: Date of Delivery**

**Due: September 1, as shown on inside cover.**

**Authority for Issuance.** The bonds captioned above (the "2021 Bonds") are being issued by the City of Tracy (the "City") for and on behalf of the City of Tracy Community Facilities District No. 2016-2 (ECFD) (the "District") with respect to its Improvement Area No. 2 ("Improvement Area No. 2") under the Mello-Roos Community Facilities Act of 1982, as amended (the "Act"), the Resolution of Issuance (as defined herein), and a Fiscal Agent Agreement dated as of \_\_\_\_\_, 2021 (the "Fiscal Agent Agreement"), by and between the City and U.S. Bank National Association, as fiscal agent (the "Fiscal Agent"). See "THE 2021 BONDS – Authority for Issuance."

**Security and Sources of Payment.** The 2021 Bonds are payable from proceeds of Special Tax Revenues (as defined herein) levied on property within Improvement Area No. 2 according to the rate and method of apportionment of special tax approved by the City Council of the City (the "City Council"), acting as legislative body of the District, and the eligible landowner voters in Improvement Area No. 2 of the District. The 2021 Bonds are secured by a first pledge of the revenues derived from the Special Tax Revenues and the money on deposit in certain funds held by the Fiscal Agent under the Fiscal Agent Agreement, on a parity with bonds that may be issued in the future, subject to the conditions set forth in the Fiscal Agent Agreement. See "SECURITY FOR THE 2021 BONDS." The 2021 Bonds and any Parity Bonds (as defined herein) are referred to herein as the "Bonds."

**Use of Proceeds.** The 2021 Bonds are being issued to (i) finance the acquisition and construction of certain public improvements and payment of impact fees to be used to finance public facilities, (ii) fund a debt service reserve fund for the 2021 Bonds, (iii) fund capitalized interest through September 1, 2022, and (iv) pay the costs of issuing the 2021 Bonds. See "FINANCING PLAN."

**Bond Terms.** Interest on the 2021 Bonds is payable on March 1, 2022, and semiannually thereafter on each March 1 and September 1. The 2021 Bonds will be issued in denominations of \$5,000 or integral multiples of \$5,000. The 2021 Bonds, when delivered, will be initially registered in the name of Cede & Co., as nominee of The Depository Trust Company ("DTC"). DTC will act as securities depository for the 2021 Bonds. See "THE 2021 BONDS – General Bond Terms" and "APPENDIX D – DTC and the Book-Entry Only System."

**Redemption\*.** The 2021 Bonds are subject to optional redemption, mandatory sinking fund redemption and special redemption from prepaid Special Taxes. See "THE 2021 BONDS – Redemption."

**The 2021 Bonds are not general obligations of the City, but are limited obligations, payable solely from the Special Tax Revenues and the funds pledged therefor under the Fiscal Agent Agreement. Neither the faith and credit nor the taxing power of the City (except to the limited extent set forth in the Fiscal Agent Agreement) or of the State of California (the "State") or any political subdivision thereof is pledged to the payment of the 2021 Bonds.**

**MATURITY SCHEDULE**  
(see inside cover)

***This cover page contains certain information for quick reference only. It is not a summary of the issue. Potential investors must read the entire Official Statement to obtain information essential to the making of an informed investment decision. Investment in the 2021 Bonds involves risks which may not be appropriate for some investors. See "BOND OWNERS' RISKS" for a discussion of special risk factors that should be considered in evaluating the investment quality of the 2021 Bonds.***

The 2021 Bonds are offered when, as and if issued and accepted by the Underwriter, subject to approval as to their legality by Jones Hall, A Professional Law Corporation, San Francisco, California, Bond Counsel, and subject to certain other conditions. Jones Hall, A Professional Law Corporation, has served as disclosure counsel to the City. Stradling Yocca Carlson & Rauth, A Professional Corporation, Newport Beach, California, is serving as counsel to the Underwriter and Holland & Knight LLP, San Francisco, California, is serving as counsel to the Developer. It is anticipated that the 2021 Bonds, in book-entry form, will be available for delivery through the facilities of DTC on or about \_\_\_\_\_, 2021.

[Piper Sandler Logo]

The date of this Official Statement is: \_\_\_\_\_, 2021.

\* Preliminary; subject to change.

*This Preliminary Official Statement and the information contained herein are subject to completion or amendment. Under no circumstances shall this Preliminary Official Statement constitute an offer to sell or a solicitation of an offer to buy nor shall there be any sale of these securities in any jurisdiction in which such offer solicitation or sale would be unlawful prior to registration or qualification under the securities laws of such jurisdiction.*

**MATURITY SCHEDULE\***

\$ \_\_\_\_\_ **Serial Bonds**  
(Base CUSIP†: \_\_\_\_\_)

<u>Maturity (September 1)</u>	<u>Principal Amount</u>	<u>Interest Rate</u>	<u>Yield</u>	<u>Price</u>	<u>CUSIP†</u>
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\$ \_\_\_\_ % Term Bond due September 1, 20\_\_\_\_, Yield: \_\_%, Price: \_\_%  
CUSIP† No. \_\_\_\_

\$ \_\_\_\_ % Term Bond due September 1, 20\_\_\_\_, Yield: \_\_%, Price: \_\_%  
CUSIP† No. \_\_\_\_

\* Preliminary; subject to change.

† CUSIP® is a registered trademark of the American Bankers Association. CUSIP Global Services (CGS) is managed on behalf of the American Bankers Association by S&P Global Market Intelligence. Copyright(c) 2021 CUSIP Global Services. All rights reserved. CUSIP® data herein is provided by CUSIP Global Services. This data is not intended to create a database and does not serve in any way as a substitute for the CGS database. CUSIP® numbers are provided for convenience of reference only. Neither the City nor the Underwriter or their agents or counsel assume responsibility for the accuracy of such numbers.

## **CITY OF TRACY**

### **CITY COUNCIL**

Nancy Young, *Mayor*  
Veronica Vargas, *Mayor Pro Tem*  
Dan Arriola, *Council Member*  
Mateo Bedolla, *Council Member*  
Eleassia Davis, *Council Member*

### **CITY STAFF**

Bob Adams, *Interim City Manager*  
Karin Schnaider, *Finance Director*  
Adrienne Richardson, *City Clerk*  
Leticia Ramirez, *City Attorney*

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### **PROFESSIONAL SERVICES**

#### **BOND COUNSEL and DISCLOSURE COUNSEL**

Jones Hall, A Professional Law Corporation  
*San Francisco, California*

#### **MUNICIPAL ADVISOR**

CSG Advisors Incorporated  
*San Francisco, California*

#### **SPECIAL TAX CONSULTANT**

Goodwin Consulting Group, Inc.  
*Sacramento, California*

#### **APPRAISER**

Integra Realty Resources  
*San Francisco, California*

#### **FISCAL AGENT**

U.S. Bank National Association  
*San Francisco, California*

[INSERT REGIONAL MAP]

[INSERT LOCATION MAP]

## GENERAL INFORMATION ABOUT THIS OFFICIAL STATEMENT

**No Offering May Be Made Except by this Official Statement.** No dealer, broker, salesperson or other person has been authorized to give any information or to make any representations with respect to the 2021 Bonds other than as contained in this Official Statement, and if given or made, such other information or representation must not be relied upon as having been authorized.

**No Unlawful Offers or Solicitations.** This Official Statement does not constitute an offer to sell or the solicitation of an offer to buy in any state in which such offer or solicitation is not authorized or in which the person making such offer or solicitation is not qualified to do so or to any person to whom it is unlawful to make such offer or solicitation.

**Effective Date.** This Official Statement speaks only as of its date, and the information and expressions of opinion contained in this Official Statement are subject to change without notice. Neither the delivery of this Official Statement nor any sale of the 2021 Bonds will, under any circumstances, create any implication that there has been no change in the affairs of the City, the District, any other parties described in this Official Statement, or in the condition of property within Improvement Area No. 2 of the District since the date of this Official Statement.

**Use of this Official Statement.** This Official Statement is submitted in connection with the sale of the 2021 Bonds referred to herein and may not be reproduced or used, in whole or in part, for any other purpose. This Official Statement is not a contract with the purchasers of the 2021 Bonds.

**Preparation of this Official Statement.** The information contained in this Official Statement has been obtained from sources that are believed to be reliable, but this information is not guaranteed as to accuracy or completeness.

The Underwriter has provided the following sentence for inclusion in this Official Statement: The Underwriter has reviewed the information in this Official Statement in accordance with, and as part of, its responsibilities to investors under the federal securities laws as applied to the facts and circumstances of this transaction, but the Underwriter does not guarantee the accuracy or completeness of such information.

**Document References and Summaries.** All references to and summaries of the Fiscal Agent Agreement or other documents contained in this Official Statement are subject to the provisions of those documents and do not purport to be complete statements of those documents.

**Stabilization of and Changes to Offering Prices.** The Underwriter may over allot or take other steps that stabilize or maintain the market prices of the 2021 Bonds at levels above those that might otherwise prevail in the open market. If commenced, the Underwriter may discontinue such market stabilization at any time. The Underwriter may offer and sell the 2021 Bonds to certain securities dealers, dealer banks and banks acting as agent at prices lower than the public offering prices stated on the inside cover page of this Official Statement, and those public offering prices may be changed from time to time by the Underwriter.

**Bonds are Exempt from Securities Laws Registration.** The issuance and sale of the 2021 Bonds have not been registered under the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended, in reliance upon exemptions for the issuance and sale of municipal securities provided under Section 3(a)(2) of the Securities Act of 1933 and Section 3(a)(12) of the Securities Exchange Act of 1934.

**Estimates and Projections.** Certain statements included or incorporated by reference in this Official Statement constitute "forward-looking statements" within the meaning of the United States Private Securities Litigation Reform Act of 1995, Section 21E of the United States Securities Exchange Act of 1934, as amended, and Section 27A of the United States Securities Act of 1933, as amended. Such statements are generally identifiable by the terminology used such as "plan," "expect," "estimate," "budget" or other similar words.

**The achievement of certain results or other expectations contained in such forward-looking statements involve known and unknown risks, uncertainties and other factors which may cause actual results, performance or achievements described to be materially different from any future results, performance or achievements expressed or implied by such forward-looking statements. The District does not plan to issue any updates or revisions to those forward-looking statements if or when its expectations, or events, conditions or circumstances on which such statements are based occur.**

The City maintains an Internet website, but the information on the website is not incorporated in this Official Statement.

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## OFFICIAL STATEMENT

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**\$13,055,000\***  
**IMPROVEMENT AREA NO. 2 OF THE CITY OF TRACY**  
**COMMUNITY FACILITIES DISTRICT NO. 2016-2 (ECFD)**  
**SPECIAL TAX BONDS, SERIES 2021**

### INTRODUCTION

This Official Statement, including the cover page, inside cover and attached appendices, is provided to furnish information regarding the bonds captioned above (the “**2021 Bonds**”) to be issued by the City of Tracy (the “**City**”) on behalf of the City of Tracy Community Facilities District No. 2016-2 (ECFD) (the “**District**”) with respect to its Improvement Area No. 2 (“**Improvement Area No. 2**”).

*This introduction is not a summary of this Official Statement. It is only a brief description of and guide to, and is qualified by, more complete and detailed information contained in the entire Official Statement, including the cover page, the inside cover and attached appendices, and the documents summarized or described in this Official Statement. A full review should be made of the entire Official Statement. The offering of the 2021 Bonds to potential investors is made only by means of the entire Official Statement. Capitalized terms used but not defined in this Official Statement have the definitions given in the Fiscal Agent Agreement (as defined below).*

**The District and Improvement Area No. 2.** The District is located in the southwestern part of the City. At the time of establishment of the District, a future annexation area was also established for the District (the “**Future Annexation Area**”). Since the establishment of the District, certain parcels in the Future Annexation Area have annexed into Improvement Area No. 2 and further parcels may annex into one or more improvement areas in the future. Unless and until parcels annex into Improvement Area No. 2, they do not serve as security for the 2021 Bonds. The City currently expects that future annexations will be in one or more improvement areas other than Improvement Area No. 2.

The District was formed and established by the City Council of the City (the “**City Council**”), as legislative body of the District, under the Mello-Roos Community Facilities Act of 1982, as amended (the “**Act**”), pursuant to a resolution adopted by the City Council following a public hearing, and the landowners of the property included in Improvement Area No. 2, by unanimous approval, approved the annexation of Improvement Area No. 2 to the District, authorized the City to incur bonded indebtedness with respect to Improvement Area No. 2, and approved the levy of special taxes within Improvement Area No. 2. See “THE DISTRICT AND IMPROVEMENT AREA NO. 2 – Formation and Background.”

**Authority for Issuance of the 2021 Bonds.** The 2021 Bonds are issued under the Act, a resolution adopted by the City Council on February 7, 2017 (the “**Original Resolution**”), a resolution adopted by the City Council on April 16, 2019 (the “**Annexation Resolution**”), and a resolution adopted by the City Council on [September 7], 2021 (the “**Supplemental Resolution**” and together with the Original Resolution and Annexation Resolution, the “**Resolution of Issuance**”), and a Fiscal Agent Agreement, dated as of \_\_\_\_\_ 1, 2021 (the “**Fiscal Agent Agreement**”), by and between the City and U.S. Bank National Association, as fiscal agent (the “**Fiscal Agent**”). The City Council, as legislative

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\* Preliminary; subject to change.

body of the District, has authorized the issuance of the 2021 Bonds in an aggregate principal amount not to exceed \$16,000,000. See “THE 2021 BONDS – Authority for Issuance.”

**Purpose of the 2021 Bonds.** Proceeds of the 2021 Bonds will be used primarily to finance the acquisition and construction of certain authorized improvements and payment of impact fees to be used to finance public facilities. Proceeds of the 2021 Bonds will also fund a debt service reserve fund for the 2021 Bonds, to fund capitalized interest on the 2021 Bonds through September 1, 2022, and to pay the costs of issuing the 2021 Bonds. See “FINANCING PLAN.”

**Redemption of Bonds before Maturity.** The 2021 Bonds are subject to optional redemption, mandatory sinking fund redemption and special redemption from prepaid Special Taxes (as defined below). See “THE 2021 BONDS – Redemption.”

**Security and Sources of Payment for the 2021 Bonds.** The City Council annually levies special taxes on the property in Improvement Area No. 2 (the “**Special Taxes**”) in accordance with the Rate and Method of Apportionment for Improvement Area No. 2 (the “**Rate and Method**”). As used in this Official Statement, Special Taxes refers only to the Facilities Special Tax levied under the Rate and Method. See “SECURITY FOR THE 2021 BONDS – Rate and Method.” The 2021 Bonds are secured by and payable from a first pledge of the net proceeds of the Special Taxes (as more particularly defined in the Fiscal Agent Agreement, the “**Special Tax Revenues**”), on a parity with any bonds that may be issued in the future, subject to the conditions set forth in the Fiscal Agent Agreement. The 2021 Bonds will be additionally secured by certain funds and accounts established and held under the Fiscal Agent Agreement. See “SECURITY FOR THE 2021 BONDS.”

**Debt Service Reserve Fund.** In order to further secure the payment of principal of and interest on the 2021 Bonds (and any series of Parity Bonds the principal of and interest on which is payable from amounts in the 2021 Reserve Fund), certain proceeds of the 2021 Bonds will be deposited into the 2021 Reserve Fund in an amount equal to the 2021 Reserve Requirement (as defined herein). See “FINANCING PLAN” and “SECURITY FOR THE 2021 BONDS – 2021 Reserve Fund.”

**Covenant to Foreclose.** The City has covenanted in the Fiscal Agent Agreement to cause foreclosure proceedings to be commenced and prosecuted against certain parcels with delinquent installments of the Special Taxes. For a more detailed description of the foreclosure covenant see “SECURITY FOR THE 2021 BONDS – Covenant to Foreclose.”

**Property Ownership and Development Status.** The property in Improvement Area No. 2 (herein, the “**Property**”) consists of approximately 55.1 acres, comprising 51 lots in Final Tract Map No. 3877, 99 lots in Final Tract Map No. 3906, and 72 lots in Final Tract Map No. 3907. On September 7, 2018, all of the property in Improvement Area No. 2 was sold to Woodside 05N, LP, a California limited partnership (“**Woodside Homes**”). All required off-site improvements for Improvement Area No. 2 for occupancy are complete. Woodside Homes has completed all site improvements, and the paving of streets was completed in October 2019. Woodside Homes held a grand opening featuring 9 model homes (all located in Improvement Area No. 1) in February of 2020. As of August 1, 2021, Woodside Homes has pulled 205 building permits, with the remaining 17 to be pulled by October 2021. As of August 1, 2021, ownership of the 222 lots within Improvement Area No. 2 was as follows:

<b>Owner</b>	<b># of Lots/Acres</b>
Individual Homeowners	163 Residential Lots
Woodside Homes	59 Residential Lots

For additional information about the current development status and proposed development plans for the Property in Improvement Area No. 2, see “OWNERSHIP AND DEVELOPMENT OF IMPROVEMENT AREA NO. 2.”

The land in Improvement Area No. 2 is part of a larger residential community referred to as the “Ellis Development” being developed by Surland Communities LLC, a California limited liability company (the “**Developer**”), which includes property within Improvement Area No. 1, the Property within Improvement Area No. 2, property within Improvement Area No. 3, property identified as part of the Future Annexation Area, and future additional property that may annex into the District to a then-existing Improvement Area or to a new Improvement Area. The City currently expects that any future annexations will be into a new improvement area (Improvement Area No. 4).

**Appraised and Assessed Value of Property in Improvement Area No. 2.** An appraisal of certain property within Improvement Area No. 2, dated July 22, 2021 (the “**Appraisal**”), was prepared by Integra Realty Resources, San Francisco, California (the “**Appraiser**”) in connection with issuance of the 2021 Bonds. The Appraisal has a date of value of July 1, 2021 and appraised property as of that date consisted of 20 finished lots, 65 homes under construction, and 57 completed homes that, as of the date of value, did not have a complete assessed value for both land and improvements. The remaining 80 completed homes in Improvement Area No. 2 have improvement assessed values on the Fiscal Year 2020-21 assessment roll and are not included in the property appraised in the Appraisal, although their assessed values are used in the Appraisal in calculating the cumulative, or aggregate, value. The purpose of the Appraisal was to estimate the market value of the fee simple estate, subject to lien of the Special Taxes and overlapping liens, for all the taxable property within Improvement Area No. 2 as of a July 1, 2021 date of value. Subject to the assumptions contained in the Appraisal, the Appraiser estimated that the taxable property within Improvement Area No. 2, subject to the lien of the Special Taxes and overlapping liens, had an estimated appraised and assessed value of \$122,135,950. See “THE DISTRICT AND IMPROVEMENT AREA NO. 2 – Value of Property in Improvement Area No. 2” for further information on the Appraisal. A complete copy of the Appraisal is included in this Official Statement as APPENDIX H.

**Estimated Value-to-Lien Ratios in Improvement Area No. 2.** Based on the appraised and assessed value of the taxable property within Improvement Area No. 2 of \$122,135,950 and an estimated par amount of 2021 Bonds of \$13,055,000\*, the overall value-to-lien ratio of the taxable property within Improvement Area No. 2 is approximately 9.4\* to 1, not including overlapping general obligation bond indebtedness. See “THE DISTRICT AND IMPROVEMENT AREA NO. 2 – Direct and Overlapping Governmental Obligations.” This is an overall estimate, however, and the value-to-lien ratios of individual parcels varies widely from this ratio.

**Risk Factors Associated with Purchasing the 2021 Bonds.** Investment in the 2021 Bonds involves risks that may not be appropriate for some investors. See “BOND OWNERS’ RISKS” for a discussion of certain risk factors which should be considered, in addition to the other matters set forth in this Official Statement, in considering the investment quality of the 2021 Bonds.

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\* Preliminary; subject to change.

## FINANCING PLAN

### Authorized Facilities

The net proceeds of the 2021 Bonds will be used to construct and/or acquire various facilities authorized to be financed by the District, including Improvement Area No. 2, and payment of certain impact fees to be used to finance public facilities. For a complete list of the authorized facilities, see “THE DISTRICT AND IMPROVEMENT AREA NO. 2 – Authorized Facilities.”

Currently, the City intends to use a portion of the proceeds of the 2021 Bonds to pay a portion of the costs of acquiring and/or constructing authorized facilities serving the Ellis Development.

### Sources and Uses of Funds

The estimated proceeds from the sale of the 2021 Bonds will be used as follows:

#### SOURCES

Principal Amount of 2021 Bonds	\$
<i>Plus/Less: Net Original Issue Premium/Discount</i>	
<i>Total Sources</i>	<hr/> \$

#### USES

Deposit into Improvement Fund	\$
Deposit into 2021 Reserve Fund <sup>(1)</sup>	
Deposit into Capitalized Interest Account <sup>(2)</sup>	
Costs of Issuance <sup>(3)</sup>	
<i>Total Uses</i>	<hr/> \$

- 
- (1) Equal to the Reserve Requirement with respect to the 2021 Bonds as of their date of delivery.
  - (2) Represents capitalized interest on the 2021 Bonds through September 1, 2022.
  - (3) Includes, among other things, the fees and expenses of Bond Counsel and Disclosure Counsel, printing the Preliminary and Final Official Statements, the Fiscal Agent, the Municipal Advisor, and the Special Tax Consultant, and Underwriter's discount.

## THE 2021 BONDS

*This section generally describes the terms of the 2021 Bonds contained in the Fiscal Agent Agreement, which is summarized in more detail in APPENDIX C. Capitalized terms used but not defined in this section are defined in APPENDIX C.*

### Authority for Issuance

The 2021 Bonds are issued under the Act, the Resolution of Issuance and the Fiscal Agent Agreement. Under the Resolution of Issuance, the 2021 Bonds may be issued in a maximum principal amount of \$16,000,000.

### General Bond Terms

**Dated Date, Maturity and Authorized Denominations.** The 2021 Bonds will be dated their date of delivery (the “Closing Date”) and will mature in the amounts and on the dates set forth on the inside cover page of this Official Statement. The 2021 Bonds will be issued in fully registered form in denominations of \$5,000 each or any integral multiple of \$5,000 in excess thereof.

**Calculation of Interest.** Interest will be calculated on the basis of a 360-day year composed of twelve 30-day months. The 2021 Bonds will bear interest at the annual rates set forth on the inside cover page of this Official Statement, payable semiannually on each March 1 and September 1, commencing March 1, 2022 (each, an “Interest Payment Date”).

Each 2021 Bond will bear interest from the Interest Payment Date next preceding its date of authentication unless:

(i) it is authenticated on an Interest Payment Date, in which event it will bear interest from such date of authentication, or

(ii) it is authenticated prior to an Interest Payment Date and after the close of business on the Record Date (as defined below) preceding such Interest Payment Date, in which event it will bear interest from such Interest Payment Date, or

(iii) it is authenticated prior to the Record Date preceding the first Interest Payment Date, in which event it will bear interest from the Closing Date;

provided, however, that if at the time of authentication of a 2021 Bond, interest is in default thereon, such 2021 Bond will bear interest from the Interest Payment Date to which interest has previously been paid or made available for payment thereon.

“Record Date” means the 15th day of the calendar month next preceding the applicable Interest Payment Date, whether or not such day is a Business Day.

**DTC and Book-Entry Only System.** DTC will act as securities depository for the 2021 Bonds. The 2021 Bonds will be issued as fully-registered securities registered initially in the name of Cede & Co. (DTC’s partnership nominee). See APPENDIX D – “DTC AND THE BOOK-ENTRY ONLY SYSTEM.”

**Payments of Interest and Principal.** For so long as DTC is used as depository for the 2021 Bonds, principal of, premium, if any, and interest payments on the 2021 Bonds will be made solely to DTC or its nominee, Cede & Co., as registered owner of the 2021 Bonds, for distribution to the beneficial owners of the 2021 Bonds in accordance with the procedures adopted by DTC.

Interest on the 2021 Bonds (including the final interest payment upon maturity or earlier redemption), is payable on the applicable Interest Payment Date by check of the Fiscal Agent mailed by first-class mail to the registered Owner thereof at such registered Owner’s address as it appears on the registration books maintained by the Fiscal Agent at the close of business on the Record Date preceding the Interest Payment Date, or by wire transfer made on such Interest Payment Date upon written instructions of any Owner of \$1,000,000 or more in aggregate principal amount of 2021 Bonds delivered to the Fiscal Agent prior to the applicable Record Date, which will continue in effect until revoked in writing, or until such 2021 Bonds are transferred to a new Owner.

The principal of the 2021 Bonds and any premium on the 2021 Bonds are payable in lawful money of the United States of America upon surrender of the 2021 Bonds at the Principal Office of the Fiscal Agent.

**Redemption\***

**Optional Redemption from any Source other than Prepayments.** The 2021 Bonds maturing on or after September 1, 20\_\_\_, are subject to optional redemption as directed by the City, from sources of funds other than prepayments of Special Taxes, prior to their stated maturity on any date on or after September 1, 20\_\_\_, as a whole or in part, at a redemption price (expressed as a percentage of the principal amount of the 2021 Bonds to be redeemed), as set forth below, together with accrued interest thereon to the date fixed for redemption:

<u>Redemption Dates</u>	<u>Redemption Price</u>
September 1, ___ through August 31, ___	___%
September 1, ___ through August 31, ___	___
September 1, ___ through August 31, ___	___
September 1, ___ and any date thereafter	___

**Mandatory Sinking Fund Redemption.** The 2021 Bonds maturing on September 1, 20\_\_ (the “Term Bonds”), are subject to mandatory redemption in part by lot, from sinking fund payments made by the City from the Bond Fund, at a redemption price equal to the principal amount thereof to be redeemed, without premium, in the aggregate respective principal amounts all as set forth in the following table:

<u>Sinking Fund Redemption Date (September 1)</u>	<u>Sinking Payments</u>
	\$

(maturity)

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\* Preliminary; subject to change.

However, if some but not all of the Term Bonds of a given maturity have been redeemed through optional redemption or mandatory prepayment redemption, the total amount of all future Sinking Fund Payments relating to such maturity will be reduced by the aggregate principal amount of Term Bonds of such maturity so redeemed, to be allocated among such Sinking Fund Payments on a pro rata basis in integral multiples of \$5,000 as determined by the City, notice of which will be given by the City to the Fiscal Agent.

**Redemption from Special Tax Prepayments.** Special Tax Prepayments and any corresponding transfers from the Reserve Fund under the Fiscal Agent Agreement will be used to redeem 2021 Bonds on the next Interest Payment Date for which notice of redemption can timely be given under the Fiscal Agent Agreement, among maturities so as to maintain substantially the same debt service profile for the 2021 Bonds as in effect prior to such redemption and by lot within a maturity, at a redemption price (expressed as a percentage of the principal amount of the 2021 Bonds to be redeemed), as set forth below, together with accrued interest to the date fixed for redemption:

<u>Redemption Dates</u>	<u>Redemption Price</u>
Any Interest Payment Date on or before March 1, ____	____%
September 1, ____ and March 1, ____	____%
September 1, ____ and March 1, ____	____%
September 1, ____ and any Interest Payment Date thereafter	____%

See “BOND OWNERS’ RISKS – Potential Early Redemption of Bonds from Prepayments” for a discussion of the potential for the 2021 Bonds to be priced with original issue premium and then be redeemed from Special Tax prepayments prior to maturity or the optional redemption date.

**Purchase in Lieu of Redemption.** In lieu of redemption, moneys in the Bond Fund may be used and withdrawn by the Fiscal Agent for purchase of Outstanding 2021 Bonds upon the filing with the Fiscal Agent of an Officer’s Certificate requesting such purchase, at public or private sale as and when, and at such prices (including brokerage and other charges) as such Officer’s Certificate may provide, but in no event may 2021 Bonds be purchased at a price in excess of the principal amount thereof, plus interest accrued to the date of purchase and any premium which would otherwise be due if such 2021 Bonds were to be redeemed in accordance with the Fiscal Agent Agreement.

**Notice of Redemption.** The Fiscal Agent will cause notice of any redemption to be mailed by first-class mail, postage prepaid, at least 30 days but not more than 60 days prior to the date fixed for redemption, to the Original Purchaser, the Securities Depositories, and to the respective registered Owners of any 2021 Bonds designated for redemption, at their addresses appearing on the 2021 Bond registration books in the Principal Office of the Fiscal Agent; but such mailing will not be a condition precedent to such redemption and failure to mail or to receive any such notice, or any defect therein, will not affect the validity of the proceedings for the redemption of such 2021 Bonds. In addition, the Fiscal Agent will file each notice of redemption with the MSRB through its EMMA system.

*However, while the 2021 Bonds are subject to DTC’s book-entry system, the Fiscal Agent will be required to give notice of redemption only to DTC as provided in the letter of representations executed by the City and received and accepted by DTC. DTC and the Participants will have sole responsibility for providing any such notice of redemption to the Beneficial Owners of the 2021 Bonds to be redeemed. Any failure of DTC to notify any Participant, or any failure of Participants to notify the Beneficial Owner of any 2021 Bonds to be redeemed, of a notice of redemption or its content or effect will not affect the validity of the notice of redemption, or alter the effect of redemption set forth in the Fiscal Agent Agreement.*

**Conditional Redemption Notice and Rescission of Redemption.** Any redemption notice may specify that redemption on the specified date will be subject to receipt by the City of moneys sufficient to cause such redemption (and will specify the proposed source of such moneys), and neither the City nor

the Fiscal Agent will have any liability to the Owners or any other party as a result of its failure to redeem the Series 2021 Bonds as a result of insufficient moneys.

The City will have the right to rescind any notice of the optional redemption of 2021 Bonds by written notice to the Fiscal Agent on or prior to the date fixed for redemption. Any notice of redemption will be cancelled and annulled if for any reason funds will not be or are not available on the date fixed for redemption for the payment in full of the 2021 Bonds then called for redemption, and such cancellation will not constitute a default under the Fiscal Agent Agreement.

The City and the Fiscal Agent have no liability to the Owners or any other party related to or arising from such rescission of redemption. The Fiscal Agent will mail notice of such rescission of redemption in the same manner as the original notice of redemption was sent under the Fiscal Agent Agreement.

**Selection of 2021 Bonds for Redemption.** Whenever provision is made in the Fiscal Agent Agreement for the redemption of less than all the 2021 Bonds of any maturity or any given portion thereof, the Fiscal Agent will select the 2021 Bonds to be redeemed from all 2021 Bonds or such given portion thereof not previously called for redemption as directed by the City or, in the absence of direction by the City, on a pro rata basis among maturities, and, within a maturity, by lot in any manner which the Fiscal Agent in its sole discretion deems appropriate.

**Effect of Redemption.** From and after the date fixed for redemption, if funds available for the payment of the principal of, and interest and any premium on, the 2021 Bonds called for redemption have been deposited in the Bond Fund, those 2021 Bonds will cease to be entitled to any benefit under the Fiscal Agent Agreement other than the right to receive payment of the redemption price, and no interest will accrue thereon on or after the redemption date specified in the notice of redemption.

## **Registration, Transfer and Exchange**

*The following provisions regarding the exchange and transfer of the 2021 Bonds apply only during any period in which the 2021 Bonds are not subject to DTC's book-entry system. While the 2021 Bonds are subject to DTC's book-entry system, their exchange and transfer will be effected through DTC and the Participants and will be subject to the procedures, rules and requirements established by DTC. See "APPENDIX D – DTC and the Book-Entry Only System."*

**Registration.** The Fiscal Agent will keep, or cause to be kept, at its Principal Office sufficient books for the registration and transfer of the 2021 Bonds, which will show the series number, date, amount, rate of interest and last known owner of each 2021 Bond and will at all times be open to inspection by the City during regular business hours upon reasonable notice; and, upon presentation for such purpose, the Fiscal Agent will, under such reasonable regulations as it may prescribe, register or transfer or cause to be registered or transferred, on said books, the ownership of the 2021 Bonds as provided in the Fiscal Agent Agreement.

The City and the Fiscal Agent will treat the Owner of any 2021 Bond whose name appears on the Bond register as the absolute Owner of such 2021 Bond for any and all purposes, and the City and the Fiscal Agent will not be affected by any notice to the contrary. The City and the Fiscal Agent may rely on the address of the Bondowner as it appears in the Bond register for any and all purposes.

**Registration of Exchange or Transfer.** Any 2021 Bond may, in accordance with its terms, be transferred, upon the Bond register by the person in whose name it is registered, in person or by such person's duly authorized attorney, upon surrender of such 2021 Bond for cancellation, accompanied by delivery of a duly written instrument of transfer in a form acceptable to the Fiscal Agent.

2021 Bonds may be exchanged at the Principal Office of the Fiscal Agent solely for a like aggregate principal amount of 2021 Bonds of authorized denominations and of the same maturity.

The cost for any services rendered or any expenses incurred by the Fiscal Agent in connection with any such transfer or exchange will be paid by the City. The Fiscal Agent will collect from the Owner requesting such transfer or exchange any tax or other governmental charge required to be paid with respect to such transfer or exchange. Whenever any 2021 Bond or 2021 Bonds are surrendered for transfer or exchange, the City will execute and the Fiscal Agent will authenticate and deliver a new 2021 Bond or 2021 Bonds, for a like aggregate principal amount.

No transfers or exchanges of 2021 Bonds will be required to be made (i) 15 days prior to the date established by the Fiscal Agent for selection of 2021 Bonds for redemption or (ii) with respect to a 2021 Bond after such 2021 Bond has been selected for redemption; or (iii) between a Record Date and the succeeding Interest Payment Date.

## DEBT SERVICE SCHEDULE

**Debt Service Schedule.** The following table presents the annual debt service on the 2021 Bonds (including mandatory sinking fund redemptions), assuming there are no optional redemptions or special redemptions from Special Tax Prepayments.

Year Ending September 1	2021 Bonds Principal	2021 Bonds Interest	2021 Bonds Total
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Total: \_\_\_\_\_

### Special Tax Revenues and Projected Debt Service Coverage

Debt service on the 2021 Bonds is structured so that annual Special Tax Revenues, if levied at the Maximum Special Tax rates in the Rate and Method, assuming all properties are Developed Properties, net of Administrative Expenses, will result in an annual debt service coverage ratio of at least 110%.

## SECURITY FOR THE 2021 BONDS

*This section generally describes the security for the 2021 Bonds set forth in the Fiscal Agent Agreement, which is summarized in more detail in APPENDIX C. Capitalized terms used but not defined in the section are defined in APPENDIX C.*

### General

The 2021 Bonds and any Parity Bonds (collectively, the “**Bonds**”) are secured by a first pledge (which will be effected in the manner and to the extent provided in the Fiscal Agent Agreement) of all of the Special Tax Revenues and all moneys deposited in the Bond Fund (including the Special Tax Prepayments Account), and, until disbursed as provided therein, in the Special Tax Fund.

The Special Tax Revenues and all moneys deposited into such funds (except as otherwise provided in the Fiscal Agent Agreement) are dedicated to the payment of the principal of, and interest and any premium on, the Bonds as provided in the Fiscal Agent Agreement and in the Act until all of the Bonds have been paid and retired or until moneys or Federal Securities have been set aside irrevocably for that purpose under the Fiscal Agent Agreement.

The 2021 Bonds and all Parity Bonds (as defined herein) will be secured by a first pledge (which pledge will be effected in the manner and to the extent provided in the Fiscal Agent Agreement) of all moneys deposited in the 2021 Reserve Fund. The moneys in the 2021 Reserve Fund (except as otherwise provided in the Fiscal Agent Agreement) are dedicated to the payment of the principal of, and interest and any premium on, the 2021 Bonds and all Parity Bonds as provided in the Fiscal Agent Agreement and in the Act until all of the 2021 Bonds and all Parity Bonds have been paid and retired or until moneys or Federal Securities have been set aside irrevocably for that purpose under the Fiscal Agent Agreement.

Amounts in the Improvement Fund (and the accounts therein), the Administrative Expense Fund and the Costs of Issuance Fund are not pledged to the repayment of the Bonds. The Project is not pledged to the repayment of the Bonds, nor are the proceeds of any condemnation or insurance award received by the City with respect to the Project.

“**Special Tax Revenues**” are defined in the Fiscal Agent Agreement as the proceeds of the Special Taxes received by the City, including any scheduled payments thereof and any Special Tax Prepayments, interest thereon and proceeds of the redemption or sale of property sold as a result of foreclosure of the lien of the Special Taxes to the amount of said lien and interest thereon. *However*, Special Tax Revenues do not include any interest in excess of the interest due on the Bonds, or any penalties collected in connection with any such foreclosure.

### Limited Obligation

**The 2021 Bonds are not general obligations of the City, but are limited obligations, payable solely from the Special Tax Revenues and the funds pledged therefor under the Fiscal Agent Agreement. Neither the faith and credit nor the taxing power of the City (except to the limited extent set forth in the Fiscal Agent Agreement) or of the State or any political subdivision thereof is pledged to the payment of the 2021 Bonds.**

### Special Taxes

***Covenant to Levy Special Taxes.*** The Finance Director will fix and levy the amount of Special Taxes within Improvement Area No. 2 required for (i) the payment of principal of and interest on any outstanding Bonds of the District with respect to Improvement Area No. 2 becoming due and payable

during the ensuing calendar year, (ii) including any necessary replenishment or expenditure of the 2021 Reserve Fund, to the extent such replenishment has not been included in the computation of the Special Taxes in a previous Fiscal Year, (iii) an amount estimated to be sufficient to pay the Administrative Expenses, including amounts necessary to discharge any rebate obligation, during such year, (iv) an amount to cure delinquencies in the payment of principal or interest on 2021 Bonds that occurred in the previous Fiscal Year, and (v) any Project costs to be paid from Special Taxes to the extent that paying for such costs does not increase the Special Taxes levied on Undeveloped Property, all taking into account the balances in the applicable funds established under the Fiscal Agent Agreement funds and in the Special Tax Fund.

The Special Taxes so levied may not exceed the authorized amounts as provided in the proceedings under the Resolution of Formation.

**Manner of Collection.** Except as set forth in the Ordinance, the Fiscal Agent Agreement provides that the Special Taxes will be payable and be collected in the same manner and at the same time and in the same installment as the general taxes on real property are payable, and have the same priority, become delinquent at the same time and in the same proportionate amounts and bear the same proportionate penalties and interest after delinquency as do the *ad valorem* taxes on real property.

*Because the Special Tax levy is limited to the maximum Special Tax rates set forth in the Rate and Method, no assurance can be given that, in the event of Special Tax delinquencies, the receipts of Special Taxes will, in fact, be collected in sufficient amounts in any given year to pay debt service on the Bonds. Further, under no circumstances will the Special Tax levied against any parcel of residential property for which an occupancy permit for private residential use has been issued be increased by more than 10% as a consequence of delinquency or default by the owner of any other parcel within the District. In addition, in no event shall Special Taxes be levied after fiscal year 2059-60. See "BOND OWNERS' RISKS – Property Tax Delinquencies."*

## **Rate and Method**

**General.** The Special Taxes will be levied and collected according to the Rate and Method, which provides the means by which the City Council may annually levy the Special Taxes within Improvement Area No. 2, up to the maximum Special Tax rates, and to determine the amount of the Special Taxes that will need to be collected each fiscal year from the "**Taxable Property**" within Improvement Area No. 2. *As used in this Official Statement, Special Tax refers only to the Facilities Special Tax levied under the Rate and Method; although a Services Special Tax is also authorized to be levied under the Rate and Method, the Services Special Tax is not pledged to repay the 2021 Bonds.*

The following is a summary of the provisions of the Rate and Method, which should be read in conjunction with the complete text of the Rate and Method, including its attachments, which is attached as APPENDIX B. Capitalized terms used but not defined in this section have the meanings as set forth in APPENDIX B. *This section provides only a summary of the Rate and Method, and is qualified by more complete and detailed information contained in the entire Rate and Method attached as APPENDIX B.*

**Facilities Special Tax Requirement** Annually, at the time of levying the Special Tax, the District administrator (the "**Administrator**") will determine the minimum amount of money to be levied on Taxable Property (the "**Facilities Special Tax Requirement**"), which will be the amount required in any Fiscal Year for the following purposes:

- (i) to pay principal and interest on Bonds when due in the calendar year which begins in such Fiscal Year,

(ii) to replenish reserve funds to the extent such replenishment has not been included in the computation of the Facilities Special Tax Requirement in a previous Fiscal Year,

(iii) to cure any delinquencies in the payment of principal or interest on Bonds which have occurred in the prior Fiscal Year,

(iv) to pay Administrative Expenses, and

(v) to pay the costs of Authorized Facilities, to the extent that paying directly for such costs does not increase the Facilities Special Taxes levied on Undeveloped Property.

**Annual Determination of Property Categories for Administration of Special Tax.** Each Fiscal Year, the Administrator will: (i) categorize each parcel of Taxable Property as Developed Property, Undeveloped Property, Taxable Owners Association Property, or Taxable Public Property, (ii) for Developed Property, categorize each Parcel as Single Family Detached Residential Property or Other Property, (iii) based on Square Footage reflected on Building Permits issued by June 30 of the prior Fiscal Year, assign each Residential Unit to the appropriate Square Footage Category, (iv) determine the Facilities Special Tax Requirement and Services Facilities Special Tax Requirement for the Fiscal Year, and (v) determine if the Trigger Event occurred in the prior Fiscal Year. In addition, the Administrator shall, on an ongoing basis, monitor Final Maps and track the Square Footage on all Building Permits that have been issued to determine if there are any proposed Land Use Changes that would change the Expected Maximum Special Tax Revenues. If the Expected Maximum Special Tax Revenues will be revised pursuant to a proposed Land Use Change, the Administrator shall apply the steps set forth in the Rate and Method, as described further below.

In any Fiscal Year, if it is determined that:

(i) a parcel map for a portion of property in Improvement Area No. 2 was recorded after January 1 of the prior Fiscal Year (or any other date after which the Assessor will not incorporate the newly-created Parcels into the then-current tax roll),

(ii) because of the date the parcel map was recorded, the Assessor does not yet recognize the new Parcels created by the parcel map, and

(iii) one or more of the newly-created Parcels is in a different Development Class than other parcels created by the subdivision,

the Administrator will calculate the Special Tax for the property affected by recordation of the parcel map by determining the Special Tax that applies separately to the property within each Development Class, then applying the sum of the individual Special Taxes to the Parcel that was subdivided by recordation of the parcel map.

**Maximum Special Tax.** The Maximum Special Tax for Fiscal Year 2021-22 for Parcels of Single-Family Detached Residential Property shall be the greater of (i) the Target Special Taxes set forth in Table 1 below, or, (ii) if there are Land Use Changes that would reduce debt service coverage on outstanding Bonds below the Required Coverage, the Maximum Special Tax determined pursuant to Section D of the Rate and Method.

**Other Property.** The Maximum Special Tax for Fiscal Year 2021-22 for Other Property is shown in Table 1. If Other Property is developed with condominium or town home units, the Administrator will apply the following steps to allocate the Maximum Special Tax to the Parcels within the condominium or town home buildings:

- Step 1:** Determine the Acreage of the underlying land Parcel on which the building(s) is located.
- Step 2:** Multiply the Acreage from Step 1 by the Maximum Special Tax for Other Property in the current Fiscal Year.
- Step 3:** Divide the product from Step 2 by the total number of townhomes or condominium units built or expected to be built on the underlying land Parcel to determine the Maximum Special Tax for each condominium or townhome unit, which amount will escalate by 2.0% in the next Fiscal Year and each following Fiscal Year.

Once a Special Tax has been levied and collected on a Parcel of Developed Property, the Maximum Special Tax applicable to that Parcel will not be reduced in future Fiscal Years regardless of changes in land use on the Parcel, except (i) in the event of a partial prepayment, and (ii) pursuant to Section D of the Rate and Method. Notwithstanding the foregoing, (i) if Bonds have yet to be issued for Improvement Area No. 2, the Parcels can be assigned to the appropriate Square Footage Category, and the Administrator will recalculate the Expected Maximum Special Tax Revenues based on the corresponding changes in revenues, and (ii) the actual Special Tax levied on the Parcel in any Fiscal Year may be less than the Maximum Special Tax if a lower Special Tax is calculated pursuant to the Rate and Method.

***Undeveloped Property, Taxable Owners Association Property, and Taxable Public Property.*** The Maximum Special Tax for Fiscal Year 2021-22 for Undeveloped Property, Taxable Owners Association Property, and Taxable Public Property is set forth in Table 1. In addition, any amount levied on a landowner's Parcel(s) of Undeveloped Property due to such landowner's failure to make a prepayment pursuant to the Rate and Method will be added to the amount determined in the prior sentence to calculate the total Maximum Special Tax for the landowner's Parcel(s). For additional information, see APPENDIX B.

**Table 1**  
**Improvement Area No. 2 of the City of Tracy**  
**Community Facilities District No. 2016-2 (ECFD)**  
**Fiscal Year 2021-22 Maximum Facilities Special Tax Rates**

<b>Square Footage Category</b>	<b>Target Facilities Special Tax Prior to Trigger Event (Fiscal Year 2021-22)<sup>(1)</sup></b>	<b>Target Facilities Special Tax After Trigger Event (Fiscal Year 2021-22)</b>
Residential Units > 4,000 Square Feet	\$3,232.76 per Residential Unit	\$0 per Residential Unit
Residential Units 2,000 - 4,000 Square Feet	\$3,135.59 per Residential Unit	\$0 per Residential Unit
Residential Units < 2,000 Square Feet	\$2,043.65 per Residential Unit	\$0 per Residential Unit
Other Property	\$33,144.50 per Acre	\$0 per Acre
Undeveloped Property	\$33,144.50 per Acre	\$0 per Acre
Taxable Owners Association Property	\$33,144.50 per Acre	\$0 per Acre
Taxable Public Property	\$33,144.50 per Acre	\$0 per Acre

(1) On each July 1, the target facilities special taxes shown in this table shall be increased by an amount equal to 2.0% of the amount in effect for the prior fiscal year.

Source: Goodwin Consulting Group, Inc.

**Method of Special Tax Levy.** Under the Rate and Method, the Administrator will determine the Facilities Special Tax Requirement and levy the Special Tax as follows:

**Step 1:** In the first 15 Fiscal Years in which a Special Tax is levied within Improvement Area No. 2, the Maximum Special Tax shall be levied on each Parcel of Single Family Detached Residential Property and Other Property, prior to applying any Capitalized Interest that is available in the District accounts. Any Special Tax proceeds collected that are determined by the Administrator to be Remainder Taxes shall be deposited into the Improvement Fund to pay costs associated with the acquisition of Authorized Facilities eligible to be financed by the Remainder Taxes under the Acquisition Agreement and that were not paid with Bond proceeds or Facilities Special Taxes levied in prior Fiscal Years.

Beginning in the 16th Fiscal Year in which a Special Tax is levied within Improvement Area No. 2 and continuing until the Trigger Event, the Special Tax shall be levied Proportionately on each Parcel of Single Family Detached Residential Property and Other Property up to 100% of the Maximum Special Tax for each Parcel for such Fiscal Year until the amount levied on Single Family Detached Residential Property and Other Property is equal to the Facilities Special Tax Requirement prior to applying any Capitalized Interest that is available in the District accounts.

**Step 2:** If additional revenue is needed after Step 1 and after applying Capitalized Interest to the Facilities Special Tax Requirement, the Special Tax shall be levied Proportionately on each Parcel of Undeveloped Property up to 100% of the Maximum Special Tax for Undeveloped Property for such Fiscal Year.

**Step 3:** If additional revenue is needed after Step 2, the Special Tax shall be levied Proportionately on each Parcel of Taxable Owners Association Property and Taxable Public Property, up to 100% of the Maximum Special Tax for each Parcel of Owners Association Property and Taxable Public Property, as applicable, for such Fiscal Year.

**Exemptions.** No Special Tax will be levied on the following:

- (i) Public Property, except Taxable Public Property, and
- (ii) Owners Association Property, except Taxable Owners Association Property.

**Partial Prepayment of Special Tax.** A property owner may prepay up to 80% of the Special Tax obligation applicable to a Parcel in Improvement Area No. 2, subject to certain conditions. The Prepayment Amount is calculated based on the Bond Redemption Amount plus Redemption Premium and other costs, all as specified in “APPENDIX B – Rate and Method of Apportionment of Special Tax – Section I.”

### **Covenant to Foreclose**

**Sale of Property for Nonpayment of Taxes.** The Fiscal Agent Agreement provides that the Special Taxes are to be collected in the same manner as ordinary *ad valorem* property taxes are collected and, except as provided in the special covenant for foreclosure described below and in the Act, is to be subject to the same penalties and the same procedure, sale and lien priority in case of delinquency as is provided for *ad valorem* property taxes. Under these procedures, if taxes are unpaid for a period of five years or more, the property is subject to sale by the County.

**Foreclosure Under the Act.** Under Section 53356.1 of the Act, if any delinquency occurs in the payment of the Special Tax, the City may order the institution of a Superior Court action to foreclose the lien therefor within specified time limits. In such an action, the real property subject to the unpaid amount may be sold at judicial foreclosure sale.

While judicial foreclosure is not mandatory under the Act, the City will agree in the Fiscal Agent Agreement that on or about June 30 of each Fiscal Year, the Finance Director will compare the amount of Special Taxes previously levied in Improvement Area No. 2 of the District to the amount of Special Tax Revenues received by the City, and if delinquencies have occurred, proceed as follows:

**Individual Delinquencies.** If the Finance Director determines that any single parcel subject to the Special Tax in Improvement Area No. 2 is delinquent in the payment of Special Taxes in the aggregate amount of \$5,000 or more, then the Finance Director will send or cause to be sent a notice of delinquency (and a demand for immediate payment thereof) to the property owner within 45 days of such determination, and (if the delinquency remains uncured) foreclosure proceedings will be commenced by the City within 90 days of such determination.

Notwithstanding the foregoing, the Finance Director may defer any such actions with respect to a delinquent parcel if (1) Improvement Area No. 2 is then participating in the “Teeter Plan” (as defined and described below), or an equivalent procedure and (2) the amount in the 2021 Reserve Fund is at least equal to the 2021 Reserve Requirement. For additional details on the Teeter Plan, see “– *Special Tax Delinquencies; Teeter Plan*” below.

**Aggregate Delinquencies.** If the Finance Director determines that (i) the total amount of delinquent Special Tax for the prior Fiscal Year for the entire Improvement Area No. 2 (including the total of delinquencies described in the above two paragraphs), exceeds 5% of the total Special Tax due and payable for the prior Fiscal Year, determined by reference to the latest available

secured property tax roll of the County, the Finance Director shall notify or cause to be notified property owners who are then delinquent in the payment of Special Taxes (and demand immediate payment of the delinquency) within 45 days of such determination, and shall commence foreclosure proceedings within 90 days of such determination against each parcel of land in Improvement Area No. 2 with a Special Tax delinquency.

*Individual Owner Delinquencies.* As to any owner of more than one parcel within Improvement Area No. 2, if the Finance Director determines that the aggregate amount of delinquent Special Taxes for all preceding taxyears on all parcels owned by such owner (whether such parcels are owned solely by such owner or jointly by such owner and one or more others) exceeds \$10,000, then the Finance Director shall send or cause to be sent a notice of delinquency (and a demand for immediate payment thereof) to the property owner within 45 days of such determination, and (if the delinquency remains uncured) shall commence foreclosure proceedings within 90 days of such determination, regardless of when such delinquencies occurred.

**Sufficiency of Foreclosure Sale Proceeds; Foreclosure Limitations and Delays.** No assurances can be given that the real property subject to a judicial foreclosure sale will be sold or, if sold, that the proceeds of sale will be sufficient to pay any delinquent Special Tax installment. The Act does not require the City to purchase or otherwise acquire any lot or parcel of property foreclosed upon if there is no other purchaser at such sale.

Section 53356.6 of the Act requires that property sold pursuant to foreclosure under the Act be sold for not less than the amount of judgment in the foreclosure action, plus post-judgment interest and authorized costs, unless the consent of the owners of 75% of the outstanding Bonds is obtained. However, under Section 53356.5 of the Act, the City, as judgment creditor, is entitled to purchase any property sold at foreclosure using a "credit bid," where the City could submit a bid crediting all or part of the amount required to satisfy the judgment for the delinquent amount of the Special Taxes. If the City becomes the purchaser under a credit bid, the City must pay the amount of its credit bid into the redemption fund established for the Bonds, but this payment may be made up to 24 months after the date of the foreclosure sale.

Foreclosure by court action is subject to normal litigation delays, the nature and extent of which are largely dependent on the nature of the defense, if any, put forth by the debtor and the Superior Court calendar. In addition, the ability of the City to foreclose the lien of delinquent unpaid Special Taxes may be limited in certain instances and may require prior consent of the property owner if the property is owned by or in receivership of the Federal Deposit Insurance Corporation (the "FDIC"). See "BOND OWNERS' RISKS – Bankruptcy Delays."

**Special Tax Delinquencies; Teeter Plan.** In 1949, the California Legislature enacted an alternative method for the distribution of property taxes to local agencies. This method, known as the "Teeter Plan," is found in Sections 4701-4717 of the California Revenue and Taxation Code. Upon adoption and implementation of this method by a county board of supervisors, local agencies for which the county collects property taxes and certain other public agencies and taxing areas located in the county receive annually the full amount of their shares of property taxes and other levies collected on the secured roll, including delinquent property taxes which have yet to be collected. While the county bears the risk of loss on unpaid delinquent taxes, it retains the penalties associated with delinquent taxes when they are paid. In turn, the Teeter Plan provides participating local agencies with stable cash flow and the elimination of collection risk.

Once adopted, a county's Teeter Plan will remain in effect in perpetuity unless the board of supervisors orders its discontinuance or unless, prior to the commencement of a fiscal year, a petition for discontinuance is received and joined in by resolutions of the governing bodies of not less than two-thirds of the participating districts in the county. An electing county may, however, decide to discontinue the

Teeter Plan with respect to any levying agency in the county if the board of supervisors, by action taken not later than July 15 of a fiscal year, elects to discontinue the procedure with respect to such levying agency and the rate of secured tax delinquencies in that agency in any year exceeds 3% of the total of all taxes and assessments levied on the secured roll by that agency.

The Board of Supervisors of San Joaquin County adopted the Teeter Plan in Fiscal Year 1994-95. The County has elected to apply its Teeter Plan to the collection of the Special Taxes in Improvement Area No. 2. To the extent that the County's Teeter Plan continues in existence and is carried out as adopted, and to the extent the County does not discontinue the Teeter Plan with respect to the District, the County's Teeter Plan may help protect owners of the 2021 Bonds from the risk of delinquencies in the payment of Special Tax. *There can be no assurance that the County will not modify or eliminate its Teeter Plan, or choose to remove the Improvement Area No. 2 from its Teeter Plan, while the 2021 Bonds are outstanding.*

### **Special Tax Fund**

**Deposits.** Under the Fiscal Agent Agreement, the Special Tax Fund is established as a separate fund to be held by the Fiscal Agent, to the credit of which the Fiscal Agent will deposit amounts received from or on behalf of the City consisting of Special Tax Revenues and amounts transferred from the Administrative Expense Fund and the Bond Fund. The City will promptly remit any Special Tax Revenues received by it to the Fiscal Agent for deposit by the Fiscal Agent to the Special Tax Fund.

Notwithstanding the foregoing,

(i) Special Tax Revenues in an amount not to exceed the amount included in the Special Tax levy for such Fiscal Year for Administrative Expenses will be separately identified by the Finance Director and shall be deposited by the Fiscal Agent in the Administrative Expense Fund;

(ii) any Special Tax Revenues constituting the collection of delinquencies in payment of Special Taxes shall be separately identified by the Finance Director and will be disposed of by the Fiscal Agent first, for transfer to the Bond Fund to pay any past due debt service on the Bonds; second, for transfer to the 2021 Reserve Fund to the extent needed to increase the amount then on deposit in the 2021 Reserve Fund up to the then 2021 Reserve Requirement; and third, to be held in the Special Tax Fund for use as described in "–Disbursements" below; and

(iii) any proceeds of Special Tax Prepayments will be separately identified by the Finance Director and will be deposited by the Fiscal Agent as follows (as directed in writing by the Finance Director): (a) that portion of any Special Tax Prepayment constituting a prepayment of construction costs (which otherwise could have been included in the proceeds of Parity Bonds) will be deposited by the Fiscal Agent to the Bond Proceeds Account of the Improvement Fund and (b) the remaining Special Tax Prepayment will be deposited by the Fiscal Agent in the Special Tax Prepayments Account established pursuant to the Fiscal Agent Agreement.

**Disbursements.** At least 7 Business Days prior to each Interest Payment Date, the Fiscal Agent will withdraw from the Special Tax Fund and transfer the following amounts in the following order of priority:

(i) to the Bond Fund an amount, taking into account any amounts then on deposit in the Bond Fund and any expected transfers from the Improvement

Fund, the 2021 Reserve Fund, and the Special Tax Prepayments Account to the Bond Fund such that the amount in the Bond Fund equals the principal (including any sinking payment), premium, if any, and interest due on the Bonds on such Interest Payment Date and any past due principal or interest on the Bonds not theretofore paid from a transfer described in the Fiscal Agent Agreement,

(ii) without preference or priority to the 2021 Reserve Fund an amount, taking into account amounts then on deposit in the 2021 Reserve Fund, such that the amount in the 2021 Reserve Fund is equal to the 2021 Reserve Requirement, and

(iii) (A) on each October 1, beginning on October 1, 2022 and continuing through the Remainder Taxes Period, all of the moneys remaining in the Special Tax Fund will be transferred to the Remainder Taxes Account and (B) on each subsequent October 1 after the end of the Remainder Tax Period, all or a portion of the moneys remaining in the Special Tax Fund will be transferred to the Remainder Taxes Account as directed by the Finance Director.

Within 15 days after the end of each Bond Year after the Remainder Taxes Account is closed pursuant to the Fiscal Agent Agreement, and after the foregoing transfers have been made, the Fiscal Agent will transfer all amounts remaining on deposit in the Special Tax Fund to the Administrative Expense Fund, to be used as set forth in the Fiscal Agent Agreement.

## **Bond Fund**

**Deposits.** The Fiscal Agent will hold the moneys in the Bond Fund for the benefit of the City and the Owners of the Bonds, and will disburse those funds for the payment of the principal of, and interest and any premium on, the Bonds as described below.

There is also created in the Bond Fund a separate account to be held by the Fiscal Agent, designated the "Special Tax Prepayments Account," to the credit of which deposits will be made as provided in the Fiscal Agent Agreement.

**Disbursements.** At least 10 Business Days before each Interest Payment Date, the Fiscal Agent will notify the Finance Director in writing as to the principal and premium, if any, and interest due on the Bonds on the next Interest Payment Date (whether as a result of scheduled principal of and interest on the Bonds, optional redemption of the Bonds or a mandatory sinking fund redemption). On each Interest Payment Date, the Fiscal Agent will withdraw from the Bond Fund and pay to the Owners of the Bonds the principal of, and interest and any premium, due and payable on such Interest Payment Date on the Bonds.

At least 5 Business Days prior to each Interest Payment Date, the Fiscal Agent will determine if the amounts then on deposit in the Bond Fund are sufficient to pay the Debt Service due on the Bonds on the next Interest Payment Date. In the event that amounts in the Bond Fund are insufficient for such purpose, the Fiscal Agent promptly will notify the Finance Director by telephone (and confirm in writing) of the amount of the insufficiency.

In the event that amounts in the Bond Fund are insufficient for the purpose set forth in the preceding paragraph with respect to any Interest Payment Date, the Fiscal Agent will withdraw from the 2021 Reserve Fund, in accordance with the provisions of the Fiscal Agent Agreement, to the extent of any funds or Permitted Investments therein, amounts to cover the amount of such Bond Fund insufficiency related to the 2021 Bonds and any Parity Bonds. Amounts so withdrawn from the 2021 Reserve Fund will be deposited in the Bond Fund.

If, after the foregoing transfers, there are insufficient funds in the Bond Fund to make the payments provided for in the second sentence of the first paragraph under “Bond Fund – Disbursements” above, the Fiscal Agent will apply the available funds first to the payment of interest on the Bonds, then to the payment of principal due on the Bonds other than by reason of sinking payments, if any, and then to payment of principal due on the bonds by reason of sinking payments.

**Disbursements from the Special Tax Prepayments Account.** Moneys in the Special Tax Prepayments Account will be transferred by the Fiscal Agent to the Bond Fund on the next date for which notice of redemption of Bonds can timely be given under the Fiscal Agent Agreement, and notice to the Fiscal Agent can timely be given under the Fiscal Agent Agreement, and will be used (together with any amounts transferred pursuant to the Fiscal Agent Agreement) to redeem Bonds on the redemption date selected in accordance the Fiscal Agent Agreement.

## **2021 Reserve Fund**

**General.** In order to further secure the payment of principal of and interest on the 2021 Bonds and any Parity Bonds, certain proceeds of the 2021 Bonds will be deposited into the 2021 Reserve Fund in an amount equal to the “**2021 Reserve Requirement**” for the 2021 Bonds (as defined below). See “FINANCING PLAN.”

**2021 Reserve Requirement.** The “**2021 Reserve Requirement**” is defined in the Fiscal Agent Agreement to mean the amount as of any date of calculation equal to the least of (a) Maximum Annual Debt Service on the 2021 Bonds and Parity Bonds, if any, (b) 125% of average Annual Debt Service on the 2021 Bonds and Parity Bonds, if any and (c) 10% of the outstanding principal of the 2021 Bonds and Parity Bonds, if any; provided, however:

(A) that with respect to the calculation of clause (c) above, the issue price of the 2021 Bonds or any Parity Bonds excluding accrued interest shall be used rather than the outstanding principal amount, if (i) the net original issue discount or premium of the 2021 Bonds or any Parity Bonds was less than 98% or more than 102% of the original principal amount of the 2021 Bonds or any Parity Bonds and (ii) using the issue price would produce a lower result than using the outstanding principal amount;

(B) that in no event shall the amount calculated hereunder exceed the amount on deposit in the 2021 Reserve Fund on the date of issuance of the 2021 Bonds (if they are the only Bonds covered by the 2021 Reserve Fund) or the most recently issued series of Parity Bonds except in connection with any increase associated with the issuance of Parity Bonds; and

(C) that in no event shall the amount required to be deposited into the 2021 Reserve Fund in connection with the issuance of a series of Parity Bonds exceed the maximum amount under the Tax Code that can be financed with tax-exempt bonds and invested an unrestricted yield.

**Disbursements.** Except as otherwise provided in the Fiscal Agent Agreement, all amounts deposited in the 2021 Reserve Fund will be used and withdrawn by the Fiscal Agent solely for the purpose of making transfers to the Bond Fund in the event of any deficiency at any time in the Bond Fund of the amount then required for payment of the principal of, and interest and any premium on, the 2021 Bonds and any Parity Bonds or, in accordance with the provisions of the Fiscal Agent Agreement, for the purpose of redeeming 2021 Bonds and any Parity Bonds from the Bond Fund. Whenever a transfer is made from the 2021 Reserve Fund to the Bond Fund due to a deficiency in the Bond Fund for payment of the principal of, and interest and any premium on, the 2021 Bonds and any Parity Bonds, the Fiscal Agent will provide written notice thereof to the Finance Director, specifying the amount withdrawn.

**Qualified Reserve Fund Credit Instruments.** The City has the right at any time to direct the Fiscal Agent to release funds from the 2021 Reserve Fund, in whole or in part, by tendering to the Fiscal Agent: (i) a Qualified Reserve Account Credit Instrument (as defined in the Fiscal Agent Agreement), and (ii) an opinion of Bond Counsel stating that neither the release of such funds nor the acceptance of such Qualified Reserve Account Credit Instrument will cause interest on the 2021 Bonds or any Parity Bonds the interest on which is excluded from gross income of the owners thereof for federal income tax purposes to become includable in gross income for purposes of federal income taxation.

The City will have no obligation to replace a Qualified Reserve Account Credit Instrument or to fund the 2021 Reserve Fund with cash if, at any time that the 2021 Bonds are Outstanding, the Qualified Reserve Account Credit Instrument (or its provider) is downgraded or the provider becomes insolvent, if there is an unscheduled termination of the Qualified Reserve Account or if for any reason insufficient amounts are available to be drawn upon under the Qualified Reserve Account Credit Instrument; provided, however, that the City will reimburse the provider, in accordance with the terms of the Qualified Reserve Account Credit Instrument, for any draws made thereon.

The City and the Fiscal Agent will comply with the terms of the Qualified Reserve Account Credit Instrument as will be required to receive payments thereunder in the event and to the extent required under the Fiscal Agent Agreement.

See APPENDIX C for a complete description of the timing, purpose and manner of disbursements from the 2021 Reserve Fund.

### **Investment of Moneys in Funds**

Moneys in any fund or account created or established by the Fiscal Agent Agreement and held by the Fiscal Agent will be invested by the Fiscal Agent in Permitted Investments, which in any event by their terms mature prior to the date on which such moneys are required to be paid out under the Fiscal Agent Agreement. See APPENDIX C for a definition of “Permitted Investments.”

### **Issuance of Future Parity Bonds for Refunding Only**

In addition to the 2021 Bonds, the City may issue one or more additional series of Refunding Bonds payable from the Special Tax Revenues on a parity with the 2021 Bonds (collectively, “**Parity Bonds**”), in such principal amount as may be determined by the City, under a Supplemental Agreement entered into by the City and the Fiscal Agent. Any such Parity Bonds will constitute Bonds under the Fiscal Agent Agreement and will be secured by a lien on the Special Tax Revenues and funds pledged for the payment of the Bonds under the Fiscal Agent Agreement on a parity with all other Bonds Outstanding thereunder. “**Refunding Bonds**” means bonds issued by the City for the District with respect to Improvement Area No. 2, the net proceeds of which are used to refund all or a portion of the then-Outstanding Bonds; provided that the principal and interest on the Refunding Bonds to their final maturity date is less than the principal and interest on the Bonds being refunded to their final maturity date, and the final maturity of the Refunding Bonds is not later than the final maturity of the Bonds being refunded.

See APPENDIX C for additional details regarding the conditions for issuing Parity Bonds.

### **Subordinate Bonds**

Nothing in the Fiscal Agent Agreement prohibits the City from issuing any other bonds or otherwise incurring debt secured by a pledge of the Special Tax Revenues subordinate to the pledge thereof under the Fiscal Agent Agreement.

## THE DISTRICT AND IMPROVEMENT AREA NO. 2

### Formation and Background

**Formation Proceedings.** The District, Improvement Area No. 2 and the Future Annexation Area were established by the City Council under the Act on February 7, 2017, following a noticed public hearing. On the same date, an election was held in which the qualified electors within Improvement Area No. 2 approved a ballot proposition authorizing the District to incur bonded indebtedness for Improvement Area No. 2 of up to \$16,000,000 to finance the acquisition and construction of the authorized facilities, to levy the Special Taxes within Improvement Area No. 2, and to establish an appropriations limit for Improvement Area No. 2. The District is authorized to finance the construction of authorized facilities. See “FINANCING PLAN – Authorized Facilities.”

**Improvement Areas; Annexation Proceedings.** In addition to Improvement Area No. 2, the District includes an Improvement Area No. 1, which consists of approximately 123.69 net acres (including approximately 46.08 acres that has been subdivided into 299 single-family residential lots and approximately 74.70 acres encompassing four larger parcels expected to be developed as commercial and other uses), an Improvement Area No. 3 consisting of approximately 73.65 acres, and a Future Annexation Area consisting of approximately 41.80 acres. The property in the Future Annexation Area is currently expected to be annexed into a new improvement area, in which case such future improvement area will be separately authorized to issue special tax bonds secured only by special taxes levied within the applicable improvement area.

The 2021 Bonds are secured only by the Special Taxes levied within Improvement Area No. 2. If and to the extent the Future Annexation Area is annexed as additional improvement areas, there will be no cross-collateralization between or among improvement areas. The City does not have any current plans to annex any parcels within the Future Annexation Area into Improvement Area No. 2.

### Description and Location

**General.** The District is located in the southwestern part of the City, at the Northwest intersection of Corral Hollow and Linne Roads. The land was formerly part of the County, and was annexed to the City in 2013. Improvement Area No. 2 encompasses approximately 55.1 acres. See APPENDIX A for demographic and other information regarding the City and the County.

**Boundary Map.** The map showing the boundaries of Improvement Area No. 2 is set forth on the following page.

[Insert CFD Boundary Map]

## Authorized Facilities

**General.** Under the Resolution of Formation adopted by the City Council, as the legislative body of the District, on February 7, 2017, the District (and each improvement area therein) is authorized to finance all or a portion of the costs of acquisition, construction and improvement of facilities permitted under the Act and that are required as conditions of development of property in the District, the Future Annexation Area and any other property annexed to the District (collectively, the “**Facilities**”). The Facilities include but not limited to the following:

- Public Buildings and Facilities (excluding Aquatic or Swim Center);
- Wastewater Treatment Plant Improvements and Facilities;
- Wastewater Collection Pipeline Improvements and Facilities;
- Drainage Improvements and Facilities;
- Water Improvements and Facilities;
- Roadway Improvements and Facilities including street lights traffic signals landscaped parkways landscaped medians curb gutter sidewalk pavement;
- Public Parks and Facilities (excluding Aquatic or Swim Center), including trails and bike paths; and
- Ancillary Improvements and Facilities, such as publicly-owned masonry walls and fences.

Any Facility authorized to be financed by the District and each Improvement Area as originally designated and as designated in the future in conjunction with subsequent annexations of all or any part of the Future Annexation Area or any other property may be financed through the construction and acquisition of the Facility or through the payment of fees for such Facility. The Facilities authorized to be financed may be located within or outside the boundaries of the District or any Improvement Area as originally designated and as designated in the future in conjunction with subsequent annexations of all or any part of the Future Annexation Area or any other property.

The Facilities to be financed shall include all hard and soft costs associated with the Facilities, including the costs of the acquisition of land and rights-of-way, the costs of design engineering and planning, the costs of any environmental or traffic studies, surveys, or other reports, costs related to landscaping and irrigation, soils testing, permits, plan check, and inspection fees, insurance, legal, and related overhead costs, coordination and supervision, and any other costs or appurtenances related to any of the foregoing, as further defined in one or more acquisition agreements with the developer of the property in the District and each Improvement Area therein, in each case as originally designated and as designated in the future in conjunction with subsequent annexations of all or any part of the Future Annexation Area or any other property.

**Status of Construction of Facilities.** All infrastructure improvements for Improvement Area No. 2 have been completed by Woodside Homes with the exception of final punch list items. For additional details, see “OWNERSHIP AND DEVELOPMENT OF IMPROVEMENT AREA NO. 2 – Status of Infrastructure for Improvement Area No. 2.”

## Value of Property in Improvement Area No. 2

**Appraisal.** The City ordered preparation of an appraisal report dated July 22, 2021 (the “**Appraisal**”), of the estimated value of the taxable land within Improvement Area No. 2 as of a July 1, 2021 date of value. The Appraisal was prepared by Integra Realty Resources, San Francisco, California (the “**Appraiser**”). The Appraisal is set forth in APPENDIX H hereto. The description herein of the Appraisal is intended for limited purposes only; the Appraisal should be read in its entirety. The conclusions reached in the Appraisal are subject to certain assumptions, conditions and qualifications which are set forth in the Appraisal.

**Parcels Appraised.** The properties appraised represent various parcels within the Ellis Development. As of the date of value of the Appraisal, of the 222 assessor’s parcels representing the taxable parcels within Improvement Area No. 2 of the District, 137 have completed single-family homes. Of the 137 completed homes, 57 of the assessor’s parcels do not have a complete assessed value for both land and improvements on the 2020-21 tax roll. As such, a “not-less than” estimate of market value for each of the applicable floor plans determined appraised and assigned to each respective assessor’s parcel, based on its floor plan. The remaining 85 parcels consist of 20 finished lots and 65 homes under construction with a building permit issued. This accounts for the entirety of Improvement Area No. 2 that is currently taxable.

**Value Estimate.** The Appraisal provides a market value of the appraised properties, as well as a cumulative, or aggregate, value of properties as of the July 1, 2021 date of value. The aggregate value is not the market value of the appraised properties in bulk.

The appraised valuation excludes the value of all portions of the property in Improvement Area No. 2 designated for public and quasi-public purposes, assumes the proceeds of the 2021 Bonds have been used to reimburse the completion of certain improvements associated with Improvement Area No. 2, and accounts for the impact of the lien of the Special Tax. The following estimate represents the hypothetical market value of the property to be subject to the Special Tax. The value estimate for the property as of the July 1, 2021 date of value, using the methodologies described in the Appraisal and subject to the limiting conditions and special assumptions set forth in the Appraisal, is \$122,135,950.

The Appraiser’s conclusion of value, by appraisal premise, is as follows:

<b>Appraisal Premise</b>	<b>Value</b>
Aggregate Value of Appraised Properties	\$68,849,000
Aggregate Value of Existing Homes based on Assessed Value	53,286,950
<b>Total Aggregate Value of Appraised and Assessed Properties in Improvement Area No. 2</b>	<b>\$122,135,950</b>

**Value Method.** Appraisers usually consider three approaches to estimating the market value of real property. These are the cost approach, sales comparison approach, and the income capitalization approach. Reconciliation of the various indications into a conclusion of value is based on an evaluation of the quantity and quality of available data in each approach and the applicability of each approach to the property type. The methodology employed in the Appraisal is the sales comparison approach.

**Hypothetical Condition.** The market value estimated in the Appraisal is based on a hypothetical condition that proceeds of the 2021 Bonds are available to reimburse the completion of certain improvements associated with Improvement Area No. 2.

**Assumptions and Limiting Conditions.** In addition to the hypothetical condition described above, the market value of the appraised parcels is subject to a number of other assumptions and conditions which affect the estimates as to value, including, among others, the following.

- The value estimate assumes that the transfer would reflect a cash transaction or terms considered to be equivalent to cash. The estimate is also premised on an assumed sale after reasonable

exposure in a competitive market under all conditions requisite to a fair sale, with buyer and seller each acting prudently, knowledgeably, for their own self-interest, and assuming that neither is under undue stress. Additionally, the estimate assumes that the appraised properties within the boundaries of the District are not marketed concurrently, which would suggest a market under duress.

- The valuation analysis did not include review of a current title report of all properties to determine any possible conditions of title affecting the properties appraised. The Appraiser accepts no responsibility for matters pertaining to title.

- The Appraiser has also assumed that there is no hazardous material on or in the property that would cause a loss in value. Should future conditions and events involving hazardous material reduce the level of permitted development or delay the completion of any projected development, the value of the undeveloped land would likely be reduced from that estimated by the Appraiser. See “BOND OWNERS’ RISKS – Property Values” and “– Hazardous Substances” below.

See “APPENDIX H – Appraisal Report” hereto for a description of certain assumptions made by the Appraiser. Accordingly, because the Appraiser arrived at an estimate of current market value based upon certain assumptions which may or may not be fulfilled, no assurance can be given that should the parcels become delinquent due to unpaid Special Taxes, and be foreclosed upon and offered for sale for the amount of the delinquency, that any bid would be received for such property or, if a bid is received, that such bid would be sufficient to pay such delinquent Special Taxes.

***Limitations of Appraisal Valuation.*** Property values may not be evenly distributed throughout Improvement Area No. 2; thus, certain parcels may have a greater value than others. This disparity is significant because in the event of nonpayment of the Special Tax, the only remedy is to foreclose against the delinquent parcel. No assurance can be given that the foregoing valuation can or will be maintained during the period of time that the 2021 Bonds are outstanding in that the City has no control over the market value of the property within Improvement Area No. 2 or the amount of additional indebtedness that may be issued in the future by other public agencies, the payment of which, through the levy of a tax or an assessment, may be on a parity with the Special Taxes. See “BOND OWNERS’ RISKS – Other Possible Claims Upon the Value of Taxable Property” below.

For a description of certain risks that might affect the assumptions made in the Appraisal, see “BOND OWNERS’ RISKS” herein. *Neither the City nor the Underwriter makes any representation as to the accuracy or completeness of the Appraisal. See APPENDIX H for the Appraisal Report.*

## Value-to-Lien Ratios

The tables below show the approximate value-to-lien ratio for the parcels in Improvement Area No. 2, based on the appraised and assessed values set forth in the Appraisal, the proposed principal amount of the 2021 Bonds, and the outstanding principal amount of overlapping general obligation bonds. The table below is based on the proposed par amount of the 2021 Bonds only. When including the general obligation bond indebtedness shown on the overlapping debt statement, the value-to-lien ratio is 9.2\*.

*No assurance can be given that the amounts shown in these tables will conform to those ultimately realized in the event of a foreclosure action following delinquency in the payment of the Special Taxes.*

**Table 2**  
**Improvement Area No. 2 of the**  
**City of Tracy Community Facilities District No. 2016-2 (ECFD)**  
**Expected Land Uses & Estimated Values**  
**(Development Status as of June 30, 2021)<sup>(1)</sup>**

<u>Special Tax Category</u>	<u>Taxable Parcels</u>	<u>Actual FY 2021-22 Special Tax Levy<sup>(2)</sup></u>	<u>Max Special Tax at Buildout (FY 2021-22 \$)<sup>(3)</sup></u>	<u>% of Max Tax at Buildout</u>	<u>Assessed / Appraised Value</u>	<u>Allocated 2021 Bond Debt<sup>(4)</sup></u>	<u>Estimated Value-to-Lien*</u>
<u>Developed Property</u> <sup>(5)</sup>							
Individual Homeowners	117	\$366,865	\$366,865	52.7%	\$80,386,950	\$6,880,338	11.7
Woodside Owned Homes							
Completed Homes	20	62,712	62,712	9.0	14,825,000	1,176,126	12.6
Homes Under Construction	64	200,678	200,678	28.8	20,930,000	3,763,604	5.6
Subtotal	201	\$630,256	\$630,256	90.5%	\$116,141,950	\$11,820,068	9.8
<u>Undeveloped Property</u> <sup>(5)</sup>							
Woodside Owned Lots	21	\$0	\$65,848	9.5%	\$5,994,000	\$1,234,932	4.9
<b>Total</b>	<b>222</b>	<b>\$630,256</b>	<b>\$696,103</b>	<b>100.0%</b>	<b>\$122,135,950</b>	<b>\$13,055,000</b>	<b>9.4</b>

\* Preliminary; subject to change.

(1) Under the Rate and Method, "Developed Property" includes Taxable Property for which a building permit for new construction was issued prior to June 30 of the prior Fiscal Year.

(2) Special Taxes were only levied against parcels of Developed Property in Fiscal Year 2021-22.

(3) Based on the expected residential units on all parcels at buildout, per Attachment 2 of the Rate and Method.

(4) Allocated based on the maximum facilities special tax at buildout. Does not take into account overlapping general obligation bond indebtedness. See "– Direct and Overlapping Governmental Obligations" below.

Does not reflect any amounts for PACE liens. Property owners in Improvement Area No. 2 may elect to have PACE assessment liens placed on their property.

(5) Ownership information based on the Appraisal Report.

Source: Integra Realty Resources; Goodwin Consulting Group, Inc.

**Table 3  
Improvement Area No. 2 of the  
City of Tracy Community Facilities District No. 2016-2 (ECFD)  
Summary Value-to-Lien Ratios**

<b>Value to Lien</b>	<b>Taxable Parcels</b>	<b>Actual FY 2021-22 Special Tax Levy</b>	<b>Maximum Special Tax at Buildout (FY 2021-22 \$)</b>	<b>% of Max Tax at Buildout</b>	<b>Assessed / Appraised Value</b>	<b>Allocated 2021 Bond Debt**<sup>(1)</sup></b>	<b>Average Value-to- Lien Ratio*</b>
Greater than 10:1	129	\$404,492	\$404,492	58.1%	\$90,649,771	\$7,586,014	11.9
5:1 to 10:1	73	219,492	228,899	32.9	25,946,179	4,292,860	6.0
3:1 to 5:1	20	6,271	62,271	9.0	5,540,000	1,176,126	4.7
Less than 3:1	0	0	0	0.0	0	0	0.0
<b>Total</b>	<b>222</b>	<b>\$630,256</b>	<b>\$696,103</b>	<b>100.0%</b>	<b>\$122,135,950</b>	<b>\$13,055,000</b>	<b>9.4</b>

\*Preliminary; subject to change.

(1) Allocated based on the maximum Facilities Special Tax at buildout. Does not take into account overlapping general obligation bond indebtedness. See "Direct and Overlapping Governmental Obligations" below. Does not reflect any amounts for PACE liens. Property owners in Improvement Area No. 2 may elect to have PACE assessment liens placed on their property.

Source: *Integra Realty Resources; Goodwin Consulting Group, Inc.*

### **Direct and Overlapping Governmental Obligations**

**Overlapping Debt Statement.** Contained within the boundaries of Improvement Area No. 2 are certain overlapping local agencies providing public services. Many of these local agencies have outstanding debt. The direct and overlapping debt affecting Improvement Area No. 2 as of August 1, 2021 is shown in the table below, a direct and overlapping debt report (the "**Debt Report**") prepared by California Municipal Statistics, Inc. The Debt Report is included for general information purposes only. Neither the City nor the Underwriter has reviewed the Debt Report for completeness or accuracy and neither makes any representation in connection therewith.

The Debt Report generally includes long term obligations sold in the public credit markets by public agencies whose boundaries overlap the boundaries of Improvement Area No. 2 in whole or in part. These long-term obligations are not payable from revenues of Improvement Area No. 2 (except as indicated) nor are they necessarily obligations secured by land within Improvement Area No. 2. In many cases long term obligations issued by a public agency are payable only from the general fund or other revenues of such public agency.

The contents of the Debt Report are as follows: (1) the first column indicates the public agencies that have outstanding debt as of the date of the Debt Report and whose territory overlaps Improvement Area No. 2; (2) the second column shows the percentage of the assessed valuation of the overlapping public agency identified in column 1 which is represented by property located within Improvement Area No. 2; and (3) the third column is an apportionment of the dollar amount of each public agency's outstanding debt (which amount is not shown in the table) to property in Improvement Area No. 2, as determined by multiplying the total outstanding debt of each agency by the percentage of the public agency's assessed valuation represented in column 2.

**Table 4**  
**Improvement Area No. 2 of the**  
**City of Tracy Community Facilities District No. 2016-2 (ECFD)**  
**Direct and Overlapping Governmental Obligations**  
**As of August 1, 2021**

2020-21 Assessed Valuation: \$10,094,570 (Land & Improvements)

<u>DIRECT AND OVERLAPPING TAX AND ASSESSMENT DEBT:</u>	<u>% Applicable</u>	<u>Debt 8/1/21</u>
San Joaquin Delta Community College District General Obligation Bonds	0.011%	\$20,564
Tracy Unified School District General Obligation Bonds	0.047	14,834
Jefferson School District General Obligation Bonds	0.352	111,279
<b>City of Tracy Community Facilities District No. 2016-2, I.A. No. 2</b>	<b>100.000</b>	<u>..<sup>(1)</sup></u>
TOTAL DIRECT AND OVERLAPPING TAX AND ASSESSMENT DEBT		<u>\$146,677</u>

<u>OVERLAPPING GENERAL FUND DEBT:</u>		
San Joaquin County General Fund Obligations	0.012%	\$7,777
City of Tracy General Fund Obligations	0.079	<u>13,912</u>
TOTAL OVERLAPPING GENERAL FUND DEBT		\$21,689

COMBINED TOTAL DEBT \$168,366<sup>(2)</sup>

Ratios to 2021-22 Assessed Valuation:

<b>Direct Debt</b> .....	<b>0.00%</b>
Total Direct and Overlapping Tax and Assessment Debt .....	1.45%
Combined Total Debt .....	1.67%

(1) Excludes the 2021 Bonds.

(2) Excludes tax and revenue anticipation notes, enterprise revenue, mortgage revenue and non-bonded capital lease obligations.

Source: California Municipal Statistics, Inc.

## Estimated Tax Burden on Single-Family Homes

The following table sets forth the estimated total tax burden on a developed single-family detached unit in Improvement Area No. 2, based on special tax rates for Fiscal Year 2021-22.

**Table 5**  
**Improvement Area No. 2 of the**  
**City of Tracy Community Facilities District No. 2016-2 (ECFD)**  
**Fiscal Year 2021-22 Illustrative Tax Bill**

**Assumptions**

Average Assessed Value <sup>(1)</sup>	\$666,087
Homeowner's Exemption	(\$7,000)
<b>Net Expected Assessed Value</b>	<b>\$659,087</b>

**Ad Valorem Tax Rate<sup>(2)</sup>**

County General	1.000000	\$6,591
Jefferson Elem 2010 Meas J 2011A Bond	0.013000	86
Jefferson Elem 2010 Meas J 2013B Bond	0.009100	60
Jefferson Elem 2010 Meas J 2014C Bond	0.004000	26
SJ Delta College 2004 Meas 2015R Bond	0.012600	83
SJ Delta College 2004 Meas 2018D Bond	0.003400	22
SJ Delta College 2004 Meas 2020R Bond	0.002300	15
Tracy-Lammersville USD 2006 2014R Bond	0.007600	50
Tracy-Lammersville USD 2006 2015R Bond	0.006300	42
<b>Total Ad Valorem Taxes</b>	<b>1.058300</b>	<b>\$6,975</b>

**Direct Charges<sup>(3)</sup>**

Tracy Rural Fire	\$130
SJC Mosq & VCTR Contr	9
Water Zone 2	3
CSA No 53 Haz Was	4
SJC Mosquito Abate	2
IA 1 CFD No. 2016-2 Facilities Special Tax	3,136
IA 1 CFD No. 2016-2 Services Special Tax	1,346
<b>Total Direct Charges</b>	<b>\$4,630</b>

**Total Taxes and Direct Charges** **\$11,605**

**Percentage of Net Expected Assessed Value** **1.74%**

(1) Based on the average assessed value for homes owned by individual homeowners.

(2) Based on the Fiscal Year 2021-22 ad valorem tax rates for the tax rate area within the District. Ad valorem tax rates are subject to change in future years.

(3) Based on the Fiscal Year 2021-22 charges identified on the San Joaquin County-issued property tax bills. Charges subject to change in future years. Does not reflect any amounts for PACE liens. Property owners in Improvement Area No. 2 may elect to have PACE assessment liens placed on their property.

Source: San Joaquin County Tax Collector's Office; Goodwin Consulting Group, Inc.

## Special Tax Collection and Delinquency Rates

The table below presents the collections and delinquencies of the Special Taxes for Fiscal Year 2020-21, which was the fiscal first year in which the Special Tax was levied.

**Table 6**  
**Improvement Area No. 2 of the**  
**City of Tracy Community Facilities District No. 2016-2 (ECFD)**  
**Special Tax Levies, Collections, and Delinquencies <sup>(1)</sup>**

Fiscal Year	Amount Levied	Parcels Levied	Delinquencies at Fiscal Year End			Delinquencies as of / /2021		
			Parcels Delinquent	Amount Delinquent	Percent Delinquent	Parcels Delinquent	Amount Delinquent	Percent Delinquent
2020-21								

(1) Delinquent amount does not include penalties, interest, or fees.

Source: San Joaquin County Tax Collector's Office; Goodwin Consulting Group, Inc.

## Potential Consequences of Special Tax Delinquencies

**General.** Delinquencies in the payment of property taxes (including the Special Taxes) with respect to property in Improvement Area No. 2 could result in draws on the 2021 Reserve Fund established for the 2021 Bonds, and perhaps, ultimately, a default in the payment on the 2021 Bonds. See "BOND OWNERS' RISKS."

The Board of Supervisors of San Joaquin County adopted the Teeter Plan in Fiscal Year 1994-95. The County has elected to apply its Teeter Plan to the collection of the Special Taxes in Improvement Area No. 2. To the extent that the County's Teeter Plan continues in existence and is carried out as adopted, and to the extent the County does not discontinue the Teeter Plan with respect to Improvement Area No. 2, the County's Teeter Plan may help protect owners of the 2021 Bonds from the risk of delinquencies in the payment of Special Tax. *There can be no assurance that the County will not modify or eliminate its Teeter Plan, or choose to remove Improvement Area No. 2 from its Teeter Plan, while the 2021 Bonds are outstanding.* See "SECURITY FOR THE 2021 BONDS – Covenant to Foreclose – Special Tax Delinquencies; Teeter Plan" for additional information.

**Special Tax Enforcement and Collection Procedures.** The City could receive additional funds for the payment of debt service through foreclosures sales of delinquent property, but no assurance can be given as to the amount of foreclosure sale proceeds or when foreclosure sale proceeds would be received. The City has covenanted in the Fiscal Agent Agreement to take certain enforcement actions and commence and pursue foreclosure proceedings against delinquent parcels under the terms and conditions described herein. See "SECURITY FOR THE 2021 BONDS — Covenant to Foreclose."

Foreclosure actions would include, among other steps, formal City Council action to authorize commencement of foreclosure proceedings, mailing multiple demand letters to the record owners of the delinquent parcels advising them of the consequences of failing to pay the applicable Special Taxes and contacting secured lenders to obtain payment. If these efforts were unsuccessful, they would be followed (as needed) by the filing of an action to foreclose in superior court against each parcel that remained delinquent.

**Limitations on Increases in Special Tax Levy.** If owners are delinquent in the payment of Special Taxes, the City may not increase Special Tax levies to make up for delinquencies for prior Fiscal Years above the Maximum Special Tax rates specified for each category of property within Improvement Area No. 2. See "SECURITY FOR THE 2021 BONDS – Rate and Method." In addition, Section 53321(d) of the Act provides that the special tax levied against any parcel for which an occupancy permit for private

residential use has been issued may not be increased as a consequence of delinquency or default by the owner of any other parcel within a community facilities district by more than 10% above the amount that would have been levied in such Fiscal Year had there never been any such delinquencies or defaults. In cases of significant delinquency, these factors may result in defaults in the payment of principal of and interest on the 2021 Bonds. See "BOND OWNERS' RISKS."

## OWNERSHIP AND DEVELOPMENT OF IMPROVEMENT AREA NO. 2

*The information regarding the development and ownership of the Property contained under this caption, "OWNERSHIP AND DEVELOPMENT OF IMPROVEMENT AREA NO. 2," has been provided by representatives of Surland Communities LLC, a California limited liability company (the "Developer"), and Woodside 05N, LP ("Woodside Homes"), and has not been independently confirmed or verified by the Underwriter, the City, or the District. The Underwriter, the City, and the District make no representation as to the accuracy or adequacy of the information contained under this caption. There may be material adverse changes in this information after the date of this Official Statement. Neither the Bonds nor the Special Taxes securing the Bonds are personal obligations of the Developer or Woodside, or any affiliate thereof, or any other property owner and, in the event that any property owner defaults in the payment of its Special Taxes, the District may proceed with judicial foreclosure but has no direct recourse to the assets of any property owner or any affiliate thereof. See "BOND OWNERS' RISKS" herein.*

### **The Ellis Project**

**General.** The Property in Improvement Area No. 2 is part of a larger residential community referred to as the "Ellis Development" being developed by the Developer, which includes the Property within Improvement Area No. 2, property within Improvement Area No. 1, Improvement Area No. 3, and the Future Annexation Area, and possibly future additional property that may annex into the District. The Ellis Development plan is ultimately expected to contain approximately 2,250 single-family residential dwelling units plus other uses.

**Improvement Area No. 1.** The property in Improvement Area No. 1 consists of approximately 150.75 acres, including approximately 55.01 acres within Final Tract Map No. 3764 (Ellis Phase 1A) (Lots 1-168) and Final Tract Map No. 3872 (Ellis Phase 1B) (Lots 169-299), which has been subdivided into 299 single-family residential lots, and approximately 74.70 acres encompassing four larger parcels expected to be developed as commercial and other uses. As of August 1, 2021, the property in Improvement Area No. 1 was owned by individual homeowners, CalAtlantic Group, Inc., Woodside Homes, and three additional limited liability companies that are affiliated with the Developer. Of the 299 residential lots, 289 have been conveyed to individual homeowners as of August 1, 2021. Of the remaining 10 lots, 7 are owned by Woodside Homes, who has constructed a model home complex on these 7 lots to serve its project in Improvement Area No. 2, and 3 lots are owned by Greystone Land Investment Partners LLC, an affiliate of the Developer.

**Improvement Area No. 2.** See the discussion under "THE DISTRICT AND IMPROVEMENT AREA NO. 2" above for a discussion of Improvement Area No. 2.

**Improvement Area No. 3.** Improvement Area No. 3 consists of approximately 73.65 acres, which is intended to be subdivided into 308 single-family residential lots. As of August 1, 2021, the property in Improvement Area No. 3 was owned by Landsea Homes of California, LLC, a Delaware limited liability company.

**Future Annexation Area.** There is approximately 41.80 acres of Future Annexation Area. The property in the Future Annexation Area is intended to be annexed to a new improvement area (Improvement Area No. 4) at some point in the future and will be developed as approximately 126 homes and a K-8 school.

**Information on Improvement Area No. 1, Improvement Area No. 3, and the Future Annexation Area and any other land in the Ellis Development that is outside Improvement Area No. 2 is provided for informational purposes; only the taxable property in Improvement Area No. 2 is security for the 2021 Bonds.**

**Surland Communities LLC.** The Developer is a California limited liability company with its primary development executive team having both regional and national development experience in residential, commercial, and municipal projects.

Examples of some of the Developer's projects in the City include the following:

- Redbridge, which is a residential neighborhood in the City, with parks, pools, and a community General Store, and consisted of 438 single family homes master planned by the Developer and development completed in approximately 2009.
- Laurel Brook, is a residential neighborhood in the City constructed and sold by the Developer consisting of 106 single family homes completed in 1999.
- Bridle Creek, is a residential neighborhood in the City consisting of 169 single family homes constructed and sold by the Developer and completed in 1998.
- Spring Meadows, which is a residential neighborhood consisting of 51 single family homes completed in 1993.
- The Developer has also provided pro bono municipal work in the City, including the architectural design of the Tracy City Hall and the Tracy Transit Station, and serving as an architectural advisor on the Tracy Grand Theatre.

**Development Plan of the Developer.** For each phase of the Ellis Development, the Developer will either construct infrastructure improvements necessary to serve that phase, or contract with merchant builders to construct the improvements. For Improvement Area No. 2, all of the infrastructure improvements necessary for the build-out of Improvement Area No. 2 is the responsibility of Woodside Homes. See “– Status of Infrastructure for Improvement Area No. 2” below.

**Acquisition Agreement.** The City and the Developer entered into a Master Acquisition Agreement, dated as of February 1, 2017 (the “**Acquisition Agreement**”) related to the financing of Facilities. The Acquisition Agreement sets forth the terms upon which the City will acquire Facilities constructed by the Developer or merchant builders. Among other things, the Acquisition Agreement provides that through the 15th fiscal year in which the special tax is first levied in an improvement area (including Improvement Area No. 2), the Special Tax will be levied on Developed Property (as defined in the Rate and Method) in the amount of the Maximum Facilities Special Tax (as defined in the Rate and Method) and any Remainder Taxes will be used to finance the acquisition costs of Facilities, including components thereof and development fees.

**City's Growth Management Ordinance.** On June 16, 1987, the City Council of the City adopted by ordinance a Residential Growth Management Plan (referred to as the “**Growth Management Ordinance**”). The Growth Management Ordinance has been amended to-date. The Growth Management Ordinance requires an annual reservation of a certain number of building permits for the Ellis Project which will not limit the development in Improvement Area No. 2.

*Notwithstanding the belief of the Developer that it will have sufficient funds to complete its planned development, no assurance can be given that sources of financing available to the Developer will be sufficient to complete such development as currently anticipated. While the Developer has made internal financing available in the past for similar activities, there can be no assurance whatsoever of its willingness or ability to do so in the future. Neither the Developer nor any of its affiliates has any legal obligation of any kind to make any such funds available or to obtain loans or lines of credit. If and to the extent that internal financing, loan proceeds, lines of credit, or bond proceeds are inadequate to pay the*

costs to complete the Developer's planned development, there could be a shortfall in the funds required to complete such proposed development and portions of such development might not be completed.

## Property Ownership in Improvement Area No. 2

**Current Property Ownership.** As of August 1, 2021, the Property was owned by individual homeowners and Woodside Homes as follows:

<u>Owner</u>	<u># of Lots/Acres</u>
Individual Homeowners	163 Residential Lots
Woodside Homes	59 Residential Lots

Improvement Area No. 2 consists of approximately 55.1 acres comprising 51 lots in Final Tract Map No. 3877, 99 lots in Final Tract Map No. 3906, and 72 lots in Final Tract Map No. 3907. On September 7, 2018, all of the property in Improvement Area No. 2 was sold to Woodside Homes. All required off-site improvements for Improvement Area No. 2 for occupancy are complete. Woodside Homes has completed all site improvements, and the paving of streets was completed in October 2019. Woodside Homes held a grand opening featuring 9 model homes (all located in Improvement Area No. 1) in February of 2020. As of August 1, 2021, Woodside Homes has pulled 205 building permits, with the remaining 17 to be pulled by October 2021. As of August 1, 2021, Woodside Homes had closed escrow on 163 residential lots to homebuyers and the remaining 59 homes were under construction.

Woodside Homes has constructed or is constructing homes on the 222 residential lots within Final Tract Map Nos. 3877, 3906, and 3907 in three neighborhoods known as Berkshire at Ellis ("**Berkshire**"), Zephyr at Ellis ("**Zephyr**"), and Stanford at Ellis ("**Stanford**"). As of August 1, 2021, Woodside Homes had closed escrow on 163 homes to individual homeowners, with the first home closings occurring in April 2020 and the final home closings expected to occur by January 2022. See "– The Merchant Builder – Woodside Homes Development Plan" below.

## Environmental Matters

**Flood Hazard Map Information.** According to the Federal Emergency Management Agency's flood insurance rate maps (Map Panel Number 06077C-0730F, dated October 16, 2009), the developable portions of the property in Improvement Area No. 2 are located within Flood Zone X, described as areas of minimal flooding (outside of the 100- and 500-year floodplains). Property in Improvement Area No. 2 is not subject to the Central Valley Flood Protection Plan.

**Seismic Conditions.** According to the Seismic Safety Commission, Improvement Area No. 2 is located within Zone 3, which is considered to be the lowest risk zone in California. There are only two zones in California: Zone 4, which is assigned to areas near major faults; and Zone 3, which is assigned to all other areas of more moderate seismic activity. In addition, Improvement Area No. 2 is not located within a Fault-Rupture Hazard Zone (formerly referred to as an Alquist-Priolo Special Study Zone), as defined by Special Publication 42 of the California Department of Conservation, Division of Mines and Geology.

**Wetlands.** No wetland mitigation was required for development within Improvement Area No. 2.

**Environmental Status.** According to the Environmental Impact Report approved in January 22, 2013 by the City, impacts of the development of land in Improvement Area No. 2 have been analyzed and addressed and no further actions are necessary in order to complete the final construction of the planned units, and continued development of the tracts in Improvement Area No. 2 will not result in any other direct or indirect adverse impacts.

**Fire Hazard Zone.** The property in Improvement Area No. 2 is not located within an area mapped by the California Department of Forestry and Fire Protection as a fire hazard severity zone.

**Utilities.** All public utilities are available to each of the parcels within Improvement Area No. 2. Public utilities are provided by the following entities:

<u>Utility</u>	<u>Provider</u>
Electricity	Pacific Gas & Electric
Natural Gas	Pacific Gas & Electric
Sewer/Water	City of Tracy
Data/Phone	Comcast/ATT

### **The Merchant Builder**

**Woodside Homes.** As previously defined in this Official Statement, “Woodside Homes” is Woodside 05N, LP, a California limited partnership. The development of the Berkshire, Zephyr and Stanford neighborhoods in Improvement Area No. 2 was completed or is currently being completed by Woodside Homes.

Woodside Homes is wholly owned by Woodside Group, LLC, a Nevada limited liability company (“Woodside Group”), directly or through its wholly owned subsidiaries. Woodside Homes is owned 99% directly by Woodside Group, as a limited partner. The remaining 1% interest is owned by WDS GP, Inc., a California corporation, as its general partner, which is wholly owned by Woodside Homes of California, Inc., a California corporation, which in turn is wholly owned by Woodside Group. The parent of Woodside Group is Woodside Homes Company, LLC, a Delaware limited liability company (“Woodside Homes Company”). Since February 28, 2017, the ultimate parent of Woodside Homes Company has been Sekisui House, Ltd, one of Japan’s largest homebuilders, which was founded in 1960 and is headquartered in Osaka, Japan.

Woodside Group’s subsidiaries engage in the design, construction, and sale of single-family homes under the brand name of “Woodside Homes.” Woodside Homes is one of America’s top 30 homebuilders having built more than 40,000 homes across the United States, with current operations in Arizona, California, Nevada, Texas, and Utah.

**Woodside Homes Development Plan.** Woodside Homes is nearly finished with its planned development within Improvement Area No. 2, which includes the construction and sale to individual homebuyers of the 222 planned residential homes within Improvement Area No. 2 in three neighborhoods known as Berkshire, Zephyr and Stanford, and the construction of street, water, wastewater, and storm improvements for Improvement Area No. 2. As of August 1, 2021, 205 of the 222 building permits had been issued, 163 of the homes had closed escrow to individual homebuyers, and the remaining 59 homes were under construction. Completion of the project and conveyance of the final homes to homebuyers is expected to occur by January 2022.

**Table 7  
Summary of Development  
Berkshire, Zephyr, and Stanford at Ellis**

<b>Neighborhood</b>	<b>Plan</b>	<b>Minimum Square Footage<sup>(1)</sup></b>	<b>No. of Lots</b>	<b>Base Home Price<sup>(2)</sup></b>
<b>Berkshire</b>				
	1	—	24	\$763,890
	2	—	24	\$743,879
	3	—	24	\$766,727
	4	—	<u>23</u>	\$814,990
Berkshire Total			95	
<b>Zephyr</b>				
	1	—	14	\$574,913
	2	—	20	\$587,516
	3	—	22	\$629,704
	4	—	<u>20</u>	\$622,464
Ovation Total			76	
<b>Stanford</b>				
	1	—	13	\$589,759
	2	—	18	\$613,657
	3	—	<u>20</u>	\$630,140
Stanford Total			51	
Grand Total			222	

(1) Square footage shown excludes room options which may be offered.

(2) Base home prices shown exclude the builder's estimate of lot premiums, the sales of options and extras and any incentives or price reductions. Based on base home sale price as of August 1, 2021.

Source: Woodside Homes.

*No assurance can be given that the remaining home construction and sales will be carried out according to the plans outlined herein. No representation is made as to the ability or willingness of Woodside Homes to complete its property development in Improvement Area No. 2 as currently planned and as described in this Official Statement.*

### **Status of Infrastructure for Improvement Area No. 2**

All infrastructure improvements for Improvement Area No. 2 have been completed by Woodside Homes.

### **The Financing Plan in Improvement Area No. 2**

**Woodside Homes Financing Plan.** Through August 1, 2021, Woodside Homes had spent approximately \$40 million in site improvement costs, direct and indirect construction costs, permit and impact fees, and other development, marketing and sales costs (exclusive of internal financing repayment, corporate overhead and other carry costs) related to its development within Improvement Area No. 2. As of such date, Woodside Homes estimated it would spend approximately \$1.5 million in additional direct and indirect construction costs, permit and impact fees, and other development, marketing and sales costs (exclusive of internal financing repayment, corporate overhead and other carry

costs) between August 1, 2021 and full buildout of the 222 homes proposed to be constructed by Woodside Homes in Improvement Area No. 2, which is expected to occur by January 2022.

Through August 1, 2021, Woodside Homes had financed its land acquisition costs and various site development costs related to its property within Improvement Area No. 2 through internally generated funds, including cash generated from its homebuilding operations and advances from affiliates of its parent Woodside Homes Company. Woodside Homes expects to use the same sources of funding to complete its development activities within Improvement Area No. 2 (including the payment of property taxes and the Special Taxes). Woodside Homes Company has a \$330 million unsecured term loan. Woodside Homes Company also has an unsecured revolving credit facility with borrowing capacity as of August 1, 2021, of \$\_\_\_\_\_ million, which is not subject to a borrowing base.

*Although Woodside Homes expects to have sufficient funds available to complete its development activities in Improvement Area No. 2 in accordance with the development timing described in this Official Statement, there can be no assurance that amounts necessary to finance the remaining development and home construction costs will be available from Woodside Homes or any other source when needed. Neither Woodside Homes nor any of its related entities are under any legal obligation of any kind to expend funds for the development of and construction of homes on Woodside Homes' property in Improvement Area No. 2. Any contributions by Woodside Homes to fund the costs of such development and home construction are entirely voluntary.*

*If and to the extent that internal funding, including but not limited to home sales revenues, is inadequate to pay the costs to complete the planned development by Woodside Homes within Improvement Area No. 2 and other financing by Woodside Homes is not put into place, there could be a shortfall in the funds required to complete the planned development by Woodside Homes within Improvement Area No. 2.*

## BOND OWNERS' RISKS

*The purchase of the 2021 Bonds described in this Official Statement involves a degree of risk that may not be appropriate for some investors. The following includes a discussion of some of the risks which should be considered before making an investment decision. This discussion does not purport to be comprehensive or definitive and does not purport to be a complete statement of all factors which may be considered as risks in evaluating the credit quality of the 2021 Bonds.*

### **Limited Obligation of the City to Pay Debt Service**

The City has no obligation to pay principal of and interest on the 2021 Bonds if Special Tax collections are delinquent or insufficient, other than from amounts, if any, on deposit in the 2021 Reserve Fund or funds derived from the tax sale or foreclosure and sale of parcels for Special Tax delinquencies. The City is not obligated to advance funds to pay debt service on the 2021 Bonds.

### **Levy and Collection of the Special Tax**

**General.** The principal source of payment of principal of and interest on the 2021 Bonds is the proceeds of the annual levy and collection of the Special Tax against property within Improvement Area No. 2.

**Limitation on Maximum Special Tax Rate.** The annual levy of the Special Tax is subject to the maximum annual Special Tax rate authorized in the Rate and Method. The levy cannot be made at a higher rate even if the failure to do so means that the estimated proceeds of the levy and collection of the Special Tax, together with other available funds, will not be sufficient to pay debt service on the 2021 Bonds.

**No Relationship Between Property Value and Special Tax Levy.** Because the Special Tax formula set forth in the Rate and Method is not based on property value, the levy of the Special Tax will rarely, if ever, result in a uniform relationship between the value of particular parcels of Taxable Property and the amount of the levy of the Special Tax against those parcels. Thus, there will rarely, if ever, be a uniform relationship between the value of the parcels of Taxable Property and their proportionate share of debt service on the 2021 Bonds, and certainly not a direct relationship.

**Factors that Could Lead to Special Tax Deficiencies.** The following are some of the factors that might cause the levy of the Special Tax on any particular parcel of Taxable Property to vary from the Special Tax that might otherwise be expected:

*Transfers to Governmental Entities.* The number of parcels of Taxable Property could be reduced through the acquisition of Taxable Property by a governmental entity and failure of the government to pay the Special Tax based upon a claim of exemption or, in the case of the federal government or an agency thereof, immunity from taxation, thereby resulting in an increased tax burden on the remaining taxed parcels. See “– Exempt Properties” below.

*Property Tax Delinquencies.* Failure of the owners of Taxable Property to pay property taxes (and, consequently, the Special Tax), or delays in the collection of or inability to collect the Special Tax by tax sale or foreclosure and sale of the delinquent parcels, could result in a deficiency in the collection of Special Tax revenues. See “– Property Tax Delinquencies” below.

**Delays Following Special Tax Delinquencies and Foreclosure Sales.** The Fiscal Agent Agreement generally provides that the Special Tax is to be collected in the same manner as ordinary *ad valorem* property taxes are collected and, except as provided in the special covenant for foreclosure described in “SECURITY FOR THE 2021 BONDS – Covenant to Foreclose” and in the Act, is subject to

the same penalties and the same procedure, sale and lien priority in case of delinquency as is provided for ordinary *ad valorem* property taxes. Under these procedures, if taxes are unpaid for a period of five years or more, the property is deeded to the State and then is subject to sale by the County.

If sales or foreclosures of property are necessary, there could be a delay in payments to owners of the 2021 Bonds pending such sales or the prosecution of foreclosure proceedings and receipt by the City of the proceeds of sale if the 2021 Reserve Fund is depleted. See "SECURITY FOR THE 2021 BONDS – Covenant to Foreclose."

The ability of the City to collect interest and penalties specified by State law and to foreclose against properties having delinquent Special Tax installments may be limited in certain respects with regard to properties in which a federal governmental agency has or obtains an interest. See "– FDIC/Federal Government Interests in Properties" below.

Other laws generally affecting creditors' rights or relating to judicial foreclosure may affect the ability to enforce payment of Special Taxes or the timing of enforcement of Special Taxes. For example, the Soldiers and Sailors Civil Relief Act of 1940 affords protections such as a stay in enforcement of the foreclosure covenant, a six-month period after termination of such military service to redeem property sold to enforce the collection of a tax or assessment, and a limitation on the interest rate on the delinquent tax or assessment to persons in military service if the court concludes the ability to pay such taxes or assessments is materially affected by reason of such service.

### **Concentration of Ownership**

All of the taxable property within Improvement Area No. 2 is currently owned by Woodside Homes and individual homeowners. See "THE DISTRICT AND IMPROVEMENT AREA NO. 2 – Value-to-Lien Ratios" and "OWNERSHIP AND DEVELOPMENT OF IMPROVEMENT AREA NO. 2 – The Merchant Builder." The property owned by Woodside Homes is estimated to be responsible for approximately 42% of the Fiscal Year 2021-22 Special Tax levy.

The owners of property in Improvement Area No. 2 are not personally obligated to pay the Special Tax attributable to their property. Rather, the Special Tax is an obligation only against the parcel of property, secured by the amount which could be realized in a foreclosure proceeding against the property, and not by any promise of the owner to pay. If the value of the property is not sufficient, taking into account other obligations also constituting a lien against the property, the City, Fiscal Agent and owners of the 2021 Bonds have no recourse against the owner, such as filing a lawsuit to collect money.

Failure of Woodside Homes or any future merchant builder or future owner of significant property subject to the Special Taxes in Improvement Area No. 2 to pay installments of Special Taxes when due could cause the depletion of the 2021 Reserve Funds prior to reimbursement from the resale of foreclosed property or payment of the delinquent Special Tax and, consequently, result in the delinquency rate reaching a level that would cause an insufficiency in collection of the Special Tax for the City to pay debt service with respect to the 2021 Bonds.

### **Potential Early Redemption of Bonds from Prepayments**

Property owners within Improvement Area No. 2, including Woodside Homes, and individual homeowners, are permitted to prepay up to 80% of the Facilities Special Tax obligation applicable to their parcel, subject to certain notice and other provisions of the Rate and Method. Such prepayments will result in a redemption of the 2021 Bonds on the interest payment date for which timely notice may be given under the Fiscal Agent Agreement following the receipt of the prepayment. The resulting redemption of 2021 Bonds that were purchased at a price greater than par could reduce the otherwise expected yield on such 2021 Bonds.

## Property Tax Delinquencies

**General.** Delinquencies in the payment of property taxes and, consequently, the Special Taxes, can occur because the owners of delinquent parcels may not have received property tax bills from the County in a timely manner, including situations in which the County initially sent property tax bills to the property developer or merchant builder at a time when the parcels in question had already been sold to individual homeowners. Delinquencies can also reflect economic difficulties and duress by the property owner.

Numerous future delinquencies by the owners of Taxable Property in Improvement Area No. 2 in the payment of property taxes (and, consequently, the Special Taxes, which are collected on the ordinary property tax bills) when due could result in a deficiency in Special Tax revenues necessary to pay debt service on the 2021 Bonds, which could in turn result in the depletion of the 2021 Reserve Fund, prior to reimbursement from the resale of foreclosed property or payment of the delinquent Special Tax. In that event, there could be a delay or failure in payments of the principal of and interest on the 2021 Bonds. See “SECURITY FOR THE 2021 BONDS – 2021 Reserve Fund,” and “THE DISTRICT AND IMPROVEMENT AREA NO. 2 – Potential Consequences of Special Tax Delinquencies.”

**Measures to Mitigate Consequences of Continuing Delinquencies.** The City intends to take certain actions designed to mitigate the impact of future delinquencies, including: enforcing the lien of the Special Taxes through collection procedures that will include foreclosure actions under certain circumstances (see “SECURITY FOR THE 2021 BONDS – Covenant to Foreclose”); and increasing the levy of Special Taxes against non-delinquent property owners in Improvement Area No. 2 to the extent permitted under the Rate and Method and the Act, and to the extent the Special Taxes are not already being levied at the maximum Special Tax rate. See “THE DISTRICT AND IMPROVEMENT AREA NO. 2 – Potential Consequences of Special Tax Delinquencies.”

**Limitations on Increases in Special Tax Levy.** If property owners are delinquent in the payment of the Special Tax, the City may not increase Special Tax levies to make up for delinquencies for prior fiscal years above the maximum annual Special Tax rates specified in the Rate and Method.

In addition, the City's ability to increase Special Tax levies on residential property to make up for delinquencies for prior Fiscal Years is limited by Section 53321(d) of the Act, which provides that the special tax levied against any parcel for which an occupancy permit for private residential use has been issued may not be increased as a consequence of delinquency or default by the owner of any other parcel by more than 10% above the amount that would have been levied in such Fiscal Year had there never been any such delinquencies or defaults.

In cases of significant delinquency, these factors may result in defaults in the payment of principal of and interest on the 2021 Bonds.

## Risks Related to Homeowners with High Loan to Value Ratios

Any future decline in home values in Improvement Area No. 2 could result in property owner unwillingness or inability to pay mortgage payments, as well as *ad valorem* property taxes and Special Taxes, when due. Under such circumstances, bankruptcies are likely to increase. Bankruptcy by homeowners with delinquent Special Taxes would delay the commencement and completion of foreclosure proceedings to collect delinquent Special Taxes.

It is possible that laws could be enacted in the future to assist homeowners in default in the payment of mortgages and property taxes. It is further possible that federal laws could be enacted that would adversely impact the ability of the City to foreclose on parcels with delinquent Special Taxes. No

assurance can be given that any such laws will be enacted, or if enacted will be effective in assisting affected homeowners.

### **Payment of Special Tax is Not a Personal Obligation of the Property Owners**

An owner of Taxable Property is not personally obligated to pay the Special Taxes. Rather, the Special Taxes are an obligation running only against the parcels of Taxable Property. If, after a default in the payment of the Special Tax and a foreclosure sale by the City, the resulting proceeds are insufficient, taking into account other obligations also constituting a lien against the affected parcels of Taxable Property, the City has no recourse against the owner.

### **Appraised Values**

The Appraisal summarized in APPENDIX H estimates the market value of the property that is currently Taxable Property within Improvement Area No. 2. This market value is merely the opinion of the Appraiser as of the date of value set forth in the Appraisal, and is subject to the assumptions and limiting conditions stated in the Appraisal. The City has not sought an updated opinion of value by the Appraiser subsequent to the date of value of the Appraisal, or an opinion of the value of the Taxable Property by any other appraiser. A different opinion of value might be rendered by a different appraiser.

The opinion of value assumes a sale by a willing seller to a willing buyer, each having similar information and neither being forced by other circumstances to sell or to buy. Consequently, the opinion is of limited use in predicting the selling price at a foreclosure sale, because the sale is forced and the buyer may not have the benefit of full information.

In addition, the opinion of value is made as of the date of value set forth in the Appraisal, based upon facts and circumstances existing as of the date of value. Differing facts and circumstances may lead to differing opinions of value. The appraised value is not evidence of future value because future facts and circumstances may differ significantly from the facts and circumstances at the time the Appraisal was prepared.

No assurance can be given that any of the Taxable Property in Improvement Area No. 2 could be sold for the estimated market value contained in the Appraisal if that property should become delinquent in the payment of Special Taxes and be foreclosed upon.

### **Property Values**

The value of Taxable Property within Improvement Area No. 2 is a critical factor in determining the investment quality of the 2021 Bonds. If a property owner defaults in the payment of the Special Tax, the City's only remedy is to foreclose on the delinquent property in an attempt to obtain funds with which to pay the delinquent Special Tax. Land values could be adversely affected by economic and other factors beyond the City's control, such as a general economic downturn, relocation of employers out of the area, shortages of water, electricity, natural gas or other utilities, destruction of property caused by earthquake, flood, landslides, wildfires, or other natural disasters, environmental pollution or contamination, or unfavorable economic conditions.

The following is a discussion of specific risk factors that could affect the value of property in Improvement Area No. 2.

**Natural Disasters.** The value of the Taxable Property in the future can be adversely affected by a variety of natural occurrences, particularly those that may affect infrastructure and other public improvements and private improvements on the Taxable Property and the continued habitability and enjoyment of such private improvements.

The areas in and surrounding the District, like those in much of California, may be subject to unpredictable seismic activity, including earthquakes and landslides. Other natural disasters could include, without limitation, floods, landslides, wildfires, droughts or tornadoes. One or more natural disasters could occur and could result in damage to improvements of varying seriousness. The damage may entail significant repair or replacement costs and that repair or replacement may never occur either because of the cost, or because repair or replacement will not facilitate habitability or other use, or because other considerations preclude such repair or replacement. Under any of these circumstances there could be significant delinquencies in the payment of Special Taxes, and the value of the Taxable Property may well depreciate or disappear. See "OWNERSHIP AND DEVELOPMENT OF IMPROVEMENT AREA NO. 2 – Environmental Matters" for additional details on certain environmental matters.

Drought. With respect to droughts specifically, California has a history of suffering drought conditions periodically. On January 17, 2014, with California facing water shortfalls in the then-driest year in recorded state history, the governor proclaimed a State of Emergency and directed State officials to take all necessary actions to prepare for these drought conditions. In the State of Emergency declaration, Governor Brown directed state officials to assist farmers and communities that are economically impacted by dry conditions and to ensure the State can respond if Californians face drinking water shortages. The Governor also directed state agencies to use less water and hire more firefighters and initiated a greatly expanded water conservation public awareness. Although that drought is now officially over, on May 10, 2021, the governor again proclaimed a State of Emergency for 41 of the State's 68 counties (including San Joaquin County, where the District is located), citing above-average temperatures and dry conditions for April and May 2021. On July 8, 2021, the governor extended the State of Emergency to 50 of the State's 68 counties and asked all Californians to voluntarily reduce water usage by 15%. No assurance can be given that drought conditions will not continue in 2021 and future years or, subside only to return in the future, potentially impacting the development of property in Improvement Area No. 2, the value of Taxable Property within improvement Area No. 2, or economic activity within Improvement Area No. 2.

Wildfire. In recent years, drought conditions in the State (see "– Drought above") have led to increased risk of wildfire. In particular, certain electrical operators in the State have seen their distribution/transmission lines cause billions of dollars in property damage and the loss of lives. Although the land in Improvement Area No. 2 is not in a high-risk area (or a special fire hazard severity zone) for wildfires, landslides, floods, or tornadoes, natural disasters such as these are unpredictable and may occur anywhere throughout the State, with devastating consequences, including resulting in significant delinquencies in the payment of Special Taxes, and reduction in the value of the parcels. No assurance can be given that wildfires will not erupt in the developments being undertaken in Improvement Area No. 2 and negatively impact development of property in the Improvement Area No. 2 in the future.

**Legal Requirements.** Other events that may affect the value of Taxable Property include changes in the law or application of the law. Such changes may include, without limitation, local growth control initiatives, local utility connection moratoriums and local application of statewide tax and governmental spending limitation measures.

**Hazardous Substances.** One of the most serious risks in terms of the potential reduction in the value of Taxable Property is a claim with regard to a hazardous substance. In general, the owners and operators of Taxable Property may be required by law to remedy conditions of the parcel relating to releases or threatened releases of hazardous substances. The federal Comprehensive Environmental Response, Compensation and Liability Act of 1980, sometimes referred to as "CERCLA" or the "Superfund Act," is the most well-known and widely applicable of these laws, but California laws with regard to hazardous substances are also stringent and similar. Under many of these laws, the owner or operator is obligated to remedy a hazardous substance condition of property whether or not the owner

or operator has anything to do with creating or handling the hazardous substance. The effect, therefore, should any of the Taxable Property be affected by a hazardous substance, is to reduce the marketability and value of the parcel by the costs of remedying the condition, because the purchaser, upon becoming owner, will become obligated to remedy the condition just as is the seller.

The property values set forth in this Official Statement do not take into account the possible reduction in marketability and value of any of the Taxable Property by reason of the possible liability of the owner or operator for the remedy of a hazardous substance condition of the parcel. Although the City is not aware that the owner or operator of any of the Taxable Property has such a current liability with respect to any of the Taxable Property, it is possible that such liabilities do currently exist and that the City is not aware of them.

Further, it is possible that liabilities may arise in the future with respect to any of the Taxable Property resulting from the existence, currently, on the parcel of a substance presently classified as hazardous but that has not been released or the release of which is not presently threatened, or may arise in the future resulting from the existence, currently on the parcel of a substance not presently classified as hazardous but that may in the future be so classified. Further, such liabilities may arise not simply from the existence of a hazardous substance but from the method of handling it. All of these possibilities could significantly affect the value of Taxable Property that is realizable upon a delinquency.

### **Other Possible Claims Upon the Value of Taxable Property**

While the Special Taxes are secured by the Taxable Property, the security only extends to the value of such Taxable Property that is not subject to priority and parity liens and similar claims.

The tables in the sections entitled “THE DISTRICT AND IMPROVEMENT AREA NO. 2 – Direct and Overlapping Governmental Obligations” and “– Estimated Tax Burden on Single Family Homes,” show the presently outstanding amount of governmental obligations, the tax or assessment for which is or may become an obligation of one or more of the parcels of Taxable Property. The tables do not specifically identify which of the governmental obligations are secured by liens on one or more of the parcels of Taxable Property.

In addition, other governmental obligations may be authorized and undertaken or issued in the future, the tax, assessment or charge for which may become an obligation of one or more of the parcels of Taxable Property and may be secured by a lien on a parity with the lien of the Special Tax securing the 2021 Bonds. Property owners can also voluntarily add Property Assessed Clean Energy (PACE) assessment liens on their property to finance energy efficiency improvements.

In general, as long as the Special Tax is collected on the County tax roll, the Special Tax and all other taxes, assessments and charges also collected on the tax roll are on a parity, that is, are of equal priority. Questions of priority become significant when collection of one or more of the taxes, assessments or charges is sought by some other procedure, such as foreclosure and sale. In the event of proceedings to foreclose for delinquency of Special Taxes securing the 2021 Bonds, the Special Tax will be subordinate only to existing prior governmental liens, if any. Otherwise, in the event of such foreclosure proceedings, the Special Taxes will generally be on a parity with the other taxes, assessments and charges, and will share the proceeds of such foreclosure proceedings on a pro-rata basis. Although the Special Taxes will generally have priority over non-governmental liens on a parcel of Taxable Property, regardless of whether the non-governmental liens were in existence at the time of the levy of the Special Tax or not, this result may not apply in the case of bankruptcy. See “– Bankruptcy Delays” below.

## Exempt Properties

Certain properties are exempt from the Special Tax in accordance with the Rate and Method and the Act, which provides that properties or entities of the state, federal or local government are exempt from the Special Tax; provided, however, that property within Improvement Area No. 2 acquired by a public entity through a negotiated transaction or by gift or devise, which is not otherwise exempt from the Special Tax, will continue to be subject to the Special Tax. See “SECURITY FOR THE 2021 BONDS – Rate and Method.”

In addition, although the Act provides that if property subject to the Special Tax is acquired by a public entity through eminent domain proceedings, the obligation to pay the Special Tax with respect to that property is to be treated as if it were a special assessment, the constitutionality and operation of these provisions of the Act have not been tested, meaning that such property could become exempt from the Special Tax. The Act further provides that no other properties or entities are exempt from the Special Tax unless the properties or entities are expressly exempted in a resolution of consideration to levy a new special tax or to alter the rate or method of apportionment of an existing special tax.

## FDIC/Federal Government Interests in Properties

**General.** The ability of the City to foreclose the lien of delinquent unpaid Special Tax installments may be limited with regard to properties in which the FDIC, the Federal National Mortgage Association, the Drug Enforcement Agency, the Internal Revenue Service, or other federal agency has or obtains an interest.

Federal courts have held that, based on the supremacy clause of the United States Constitution, in the absence of Congressional intent to the contrary, a state or local agency cannot foreclose to collect delinquent taxes or assessments if foreclosure would impair the federal government interest.

The supremacy clause of the United States Constitution reads as follows: “This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the contrary notwithstanding.”

This means that, unless Congress has otherwise provided, if a federal governmental entity owns a parcel that is subject to Special Taxes but does not pay taxes and assessments levied on the parcel (including Special Taxes), the applicable state and local governments cannot foreclose on the parcel to collect the delinquent taxes and assessments.

Moreover, unless Congress has otherwise provided, if the federal government has a mortgage interest in the parcel and the City wishes to foreclose on the parcel as a result of delinquent Special Taxes, the property cannot be sold at a foreclosure sale unless it can be sold for an amount sufficient to pay delinquent taxes and assessments on a parity with the Special Taxes and preserve the federal government’s mortgage interest. In *Rust v. Johnson* (9th Circuit; 1979) 597 F.2d 174, the United States Court of Appeal, Ninth Circuit held that the Federal National Mortgage Association (“**FNMA**”) is a federal instrumentality for purposes of this doctrine, and not a private entity, and that, as a result, an exercise of state power over a mortgage interest held by FNMA constitutes an exercise of state power over property of the United States.

The City has not undertaken to determine whether any federal governmental entity currently has, or is likely to acquire, any interest (including a mortgage interest) in any of the parcels subject to the Special Taxes, and therefore expresses no view concerning the likelihood that the risks described above will materialize while the 2021 Bonds are outstanding.

**FDIC.** In the event that any financial institution making any loan which is secured by real property within Improvement Area No. 2 is taken over by the FDIC, and prior thereto or thereafter the loan or loans go into default, resulting in ownership of the property by the FDIC, then the ability of the City to collect interest and penalties specified by State law and to foreclose the lien of delinquent unpaid Special Taxes may be limited.

The FDIC's policy statement regarding the payment of state and local real property taxes (the "**Policy Statement**") provides that property owned by the FDIC is subject to state and local real property taxes only if those taxes are assessed according to the property's value, and that the FDIC is immune from real property taxes assessed on any basis other than property value. According to the Policy Statement, the FDIC will pay its property tax obligations when they become due and payable and will pay claims for delinquent property taxes as promptly as is consistent with sound business practice and the orderly administration of the institution's affairs, unless abandonment of the FDIC's interest in the property is appropriate. The FDIC will pay claims for interest on delinquent property taxes owed at the rate provided under state law, to the extent the interest payment obligation is secured by a valid lien. The FDIC will not pay any amounts in the nature of fines or penalties and will not pay nor recognize liens for such amounts. If any property taxes (including interest) on FDIC-owned property are secured by a valid lien (in effect before the property became owned by the FDIC), the FDIC will pay those claims. The Policy Statement further provides that no property of the FDIC is subject to levy, attachment, garnishment, foreclosure or sale without the FDIC's consent. In addition, the FDIC will not permit a lien or security interest held by the FDIC to be eliminated by foreclosure without the FDIC's consent.

The Policy Statement states that the FDIC generally will not pay non-ad valorem taxes, including special assessments, on property in which it has a fee interest unless the amount of tax is fixed at the time that the FDIC acquires its fee interest in the property, nor will it recognize the validity of any lien to the extent it purports to secure the payment of any such amounts. Special taxes imposed under the Act and a special tax formula which determines the special tax due each year are specifically identified in the Policy Statement as being imposed each year and therefore covered by the FDIC's federal immunity. The Ninth Circuit has issued a ruling on August 28, 2001 in which it determined that the FDIC, as a federal agency, is exempt from Mello-Roos special taxes.

The City is unable to predict what effect the application of the Policy Statement would have in the event of a delinquency in the payment of Special Taxes on a parcel within Improvement Area No. 2 in which the FDIC has or obtains an interest, although prohibiting the lien of the Special Taxes to be foreclosed out at a judicial foreclosure sale could reduce or eliminate the number of persons willing to purchase a parcel at a foreclosure sale. Such an outcome could cause a draw on the 2021 Reserve Fund and perhaps, ultimately, if enough property were to become owned by the FDIC, a default in payment on the 2021 Bonds.

### **Depletion of 2021 Reserve Fund**

The 2021 Reserve Fund is to be maintained at an amount equal to the Reserve Requirement for the 2021 Bonds. See "SECURITY FOR THE 2021 BONDS – 2021 Reserve Fund." The 2021 Reserve Fund will be used to pay principal of and interest on the 2021 Bonds (and any Parity Bonds the principal of and interest on which is payable from amounts in the 2021 Reserve Fund) if insufficient funds are available from the proceeds of the levy and collection of the Special Tax against property within Improvement Area No. 2. If the 2021 Reserve Fund is depleted, it can be replenished from the proceeds of the levy and collection of the Special Taxes that exceed the amounts to be paid to the owners of the 2021 Bonds (and any Parity Bonds the principal of and interest on which is payable from amounts in the 2021 Reserve Fund) under the Fiscal Agent Agreement. However, because the Special Tax levy is limited to the maximum annual Special Tax rates, it is possible that no replenishment would be possible if the Special Tax proceeds, together with other available funds, remain insufficient to pay all such

amounts. Thus, it is possible that the 2021 Reserve Fund will be depleted and not be replenished by the levy and collection of the Special Taxes.

### **Bankruptcy Delays**

The payment of the Special Tax and the ability of the City to foreclose the lien of a delinquent unpaid Special Tax, as discussed in "SECURITY FOR THE 2021 BONDS," may be limited by bankruptcy, insolvency or other laws generally affecting creditors' rights or by the laws of the State of California relating to judicial foreclosure. The various legal opinions to be delivered concurrently with the delivery of the 2021 Bonds (including Bond Counsel's approving legal opinion) will be qualified as to the enforceability of the various legal instruments by bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting creditors' rights, by the application of equitable principles and by the exercise of judicial discretion in appropriate cases.

Although bankruptcy proceedings would not cause the Special Taxes to become extinguished, bankruptcy of a property owner or any other person claiming an interest in the property could result in a delay in superior court foreclosure proceedings and could result in the possibility of Special Tax installments not being paid in part or in full. Such a delay would increase the likelihood of a delay or default in payment of the principal of and interest on the 2021 Bonds.

In addition, the amount of any lien on property securing the payment of delinquent Special Taxes could be reduced if the value of the property were determined by the bankruptcy court to have become less than the amount of the lien, and the amount of the delinquent Special Taxes in excess of the reduced lien could then be treated as an unsecured claim by the court. Any such stay of the enforcement of the lien for the Special Tax, or any such delay or non-payment, would increase the likelihood of a delay or default in payment of the principal of and interest on the 2021 Bonds and the possibility of delinquent Special Taxes not being paid in full.

The chances are increased that the 2021 Reserve Fund established for the 2021 Bonds could be fully depleted during any such delay in obtaining payment of delinquent Special Taxes. As a result, sufficient moneys would not be available in the 2021 Reserve Fund to make up shortfalls resulting from delinquent payments of the Special Tax and thereby to pay principal of and interest on the 2021 Bonds on a timely basis.

### **Cyber Security**

The City, like many other public and private entities, relies on computer and other digital networks and systems to conduct its operations. As a recipient and provider of personal, private or other sensitive electronic information, the City is potentially subject to multiple cyber threats, including without limitation hacking, viruses, ransomware, malware and other attacks. No assurance can be given that the City's efforts to manage cyber threats and attacks will be successful in all cases, or that any such attack will not materially impact the operations or finances of the City or the District, or the administration of the 2021 Bonds. The City is also reliant on other entities and service providers in connection with the administration of the 2021 Bonds, including without limitation the County tax collector for the levy and collection of Special Taxes, the Fiscal Agent, and the Dissemination Agent. No assurance can be given that the City, the District and these other entities will not be affected by cyber threats and attacks in a manner that may affect the Bond owners.

### **Disclosure to Future Purchasers**

The City has recorded a notice of the Special Tax lien in the Office of the County Recorder. While title companies normally refer to such notices in title reports, there can be no guarantee that such reference will be made or, if made, that a prospective purchaser or lender will consider such special tax

obligation in the purchase of a parcel of land or a home in Improvement Area No. 2 or the lending of money secured by property in Improvement Area No. 2. The Act requires the subdivider of a subdivision (or its agent or representative) to notify a prospective purchaser or long-term lessor of any lot, parcel, or unit subject to a Mello-Roos special tax of the existence and maximum amount of such special tax using a statutorily prescribed form. California Civil Code Section 1102.6b requires that in the case of transfers other than those covered by the above requirement, the seller must at least make a good faith effort to notify the prospective purchaser of the special tax lien in a format prescribed by statute. Failure by an owner of the property to comply with these requirements, or failure by a purchaser or lessor to consider or understand the nature and existence of the Special Tax, could adversely affect the willingness and ability of the purchaser or lessor to pay the Special Tax when due.

### **No Acceleration Provisions**

The 2021 Bonds do not contain a provision allowing for their acceleration in the event of a payment default or other default under the terms of the 2021 Bonds or the Fiscal Agent Agreement. Under the Fiscal Agent Agreement, a Bondholder is given the right for the equal benefit and protection of all Bondowners similarly situated to pursue certain remedies. See “APPENDIX C – Summary of Certain Provisions of the Fiscal Agent Agreement.” So long as the 2021 Bonds are in book-entry form, DTC will be the sole Bondholder and will be entitled to exercise all rights and remedies of Bond holders.

### **Loss of Tax Exemption**

As discussed under the caption “LEGAL MATTERS – Tax Exemption,” interest on the 2021 Bonds might become includable in gross income for purposes of federal income taxation retroactive to the date the 2021 Bonds were issued as a result of future acts or omissions of the City in violation of its covenants in the Fiscal Agent Agreement. The Fiscal Agent Agreement does not contain a special redemption feature triggered by the occurrence of an event of taxability. As a result, if interest on the 2021 Bonds were to become includable in gross income for purposes of federal income taxation, the 2021 Bonds would continue to remain outstanding until maturity unless earlier redeemed pursuant to optional or mandatory redemption or redemption upon prepayment of the Special Taxes. See “THE 2021 BONDS – Redemption.”

### **IRS Audit of Tax-Exempt Bond Issues**

The Internal Revenue Service (the “IRS”) has initiated an expanded program for the auditing of tax-exempt bond issues, including both random and targeted audits. It is possible that the 2021 Bonds will be selected for audit by the IRS. It is also possible that the market value of such 2021 Bonds might be affected as a result of such an audit of such 2021 Bonds (or by an audit of similar bonds or securities).

### **Impact of Legislative Proposals, Clarifications of the Tax Code and Court Decisions on Tax Exemption**

Future legislative proposals, if enacted into law, clarification of the Tax Code (defined herein) or court decisions may cause interest on the 2021 Bonds to be subject, directly or indirectly, to federal income taxation or to be subject to or exempted from state income taxation, or otherwise prevent Bondowners from realizing the full current benefit of the tax status of such interest.

### **Voter Initiatives**

Under the California Constitution, the power of initiative is reserved to the voters for the purpose of enacting statutes and constitutional amendments. Since 1978, the voters have exercised this power through the adoption of Proposition 13 and similar measures, including Proposition 218, which was

approved in the general election held on November 5, 1996, and Proposition 26, which was approved on November 2, 2010.

Any such initiative may affect the collection of fees, taxes and other types of revenue by local agencies such as the City. Subject to overriding federal constitutional principles, such collection may be materially and adversely affected by voter-approved initiatives, possibly to the extent of creating cash-flow problems in the payment of outstanding obligations such as the 2021 Bonds.

Proposition 218—Voter Approval for Local Government Taxes—Limitation on Fees, Assessments, and Charges—Initiative Constitutional Amendment, added Articles XIII C and XIII D to the California Constitution, imposing certain vote requirements and other limitations on the imposition of new or increased taxes, assessments and property-related fees and charges.

On November 2, 2010, California voters approved Proposition 26, entitled the “Supermajority Vote to Pass New Taxes and Fees Act”. Section 1 of Proposition 26 declares that Proposition 26 is intended to limit the ability of the State Legislature and local government to circumvent existing restrictions on increasing taxes by defining the new or expanded taxes as “fees.” Proposition 26 amended Articles XIII A and XIII C of the State Constitution. The amendments to Article XIII A limit the ability of the State Legislature to impose higher taxes (as defined in Proposition 26) without a two-thirds vote of the Legislature. Article XIII C requires that all new local taxes be submitted to the electorate before they become effective. Taxes for general governmental purposes require a majority vote and taxes for specific purposes (“special taxes”) require a two-thirds vote.

The Special Taxes and the 2021 Bonds were each authorized by not less than a two-thirds vote of the landowners within Improvement Area No. 2 who constituted the qualified electors at the time of such voted authorization. The City believes, therefore, that issuance of the 2021 Bonds does not require the conduct of further proceedings under the Act, Proposition 218 or Proposition 26.

Like their antecedents, Proposition 218 and Proposition 26 are likely to undergo both judicial and legislative scrutiny before the impact on the City and its obligations can be determined. Certain provisions of Proposition 218 and Proposition 26 may be examined by the courts for their constitutionality under both State and federal constitutional law, the outcome of which cannot be predicted.

For example, in August 2014, in *City of San Diego v. Melvin Shapiro*, an Appellate Court invalidated an election held by the City of San Diego to authorize the levying of special taxes on hotels city-wide pursuant to a city charter ordinance creating a convention center facilities district which specifically defined the electorate to consist solely of (1) the owners of real property in the city on which a hotel is located, and (2) the lessees of real property owned by a governmental entity on which a hotel is located. The court held that such landowners and lessees are neither “qualified electors” of the city for purposes of Article XIII A, Section 4 of the California Constitution, nor a proper “electorate” under Article XIII C, Section 2(d) of the California Constitution. The court specifically noted that the decision did not require the Court to consider the distinct question of whether landowner voting to impose special taxes under Section 53326(b) of the Act (which was the nature of the voter approval through which the District and Improvement Area No. 2 were formed) violates the California Constitution in districts that lack sufficient registered voters to conduct an election among registered voters. Accordingly, this case should have no effect on the levy of the Special Taxes by the City.

The City cannot predict the ultimate outcome or effect of any such judicial scrutiny, legislative actions, or future initiatives. These initiatives, and any future initiatives, may affect the collection of fees, taxes and other types of revenue by local agencies such as the City. Subject to overriding federal constitutional principles, such collection may be materially and adversely affected by voter-approved initiatives, possibly to the extent of creating cash-flow problems in the payment of outstanding obligations such as the 2021 Bonds.

## COVID-19 Pandemic

The spread of the COVID-19 coronavirus pandemic, and responses intended to slow its spread, may result in negative impacts to the homebuilding operations and sales of homes within Improvement Area No. 2. In addition, no assurance can be given that the property tax payment dates will not be deferred in the future, which may cause a delay in the receipt of Special Taxes.

In March, 2020, several counties throughout the State announced shelter-in-place (“**Shelter-in-Place**”) emergency orders. On March 19, 2020, California’s Governor announced a similar Shelter-in-Place emergency executive order (N 33-20) effective for the entire State. On March 19, 2020, the Governor issued Executive Order N-33-20, a mandatory Statewide shelter-in-place order applicable to all non-essential services. On May 4, 2020, the Governor announced that the State would soon begin Phase 2 of lifting Shelter-in-Place restrictions, which allowed for many retail stores to re-open and other forms of manufacturing and construction to resume, provided individual counties adhere to certain attestation processes concerning the local spread of COVID-19. On August 28, 2020, the State released further guidance (referred to as the “**Blueprint for a Safer Economy**”) regarding re-opening certain types of businesses based on a county-by-county approach where each county is assigned a tier based on COVID-19 case rates within each county. Beginning on June 15, 2021, the State has moved beyond the Blueprint for a Safer Economy and indoor and outdoor activities and businesses may return to usual operations with limited exceptions for events characterized by large crowds greater than 5,000 (indoors) and 10,000 (outdoors) attendees. In addition to the general public health recommendations including those relating to face coverings, verification of fully vaccinated status or pre-entry negative test results are strongly recommended for all attendees. Further actions to alternately loosen and tighten restrictions to slow the spread of COVID-19 are possible, depending upon the fall or rise of cases in particular counties. [Notwithstanding the Shelter-in-Place, Woodside Homes has not experienced any significant delays in development or construction activities with respect to the land in Improvement Area No. 2 and housing sales in the regional area have been robust since the start of the pandemic] [**Woodside Homes to confirm**].

The COVID-19 outbreak is ongoing, and its duration and severity and economic effects are uncertain in many respects. Uncertain too are the additional actions that may be taken by federal, State and local governmental authorities to contain or mitigate the effects of the outbreak. Such actions may affect the ability of Woodside Homes to complete its planned developments in the time periods and within the cost estimates described in this Official Statement. Negative impacts on the collection of Special Taxes could occur because Special Tax payments are deferred, or some taxpayers may be unable to make their property and special tax payments.

## Secondary Market for Bonds

There can be no guarantee that there will be a secondary market for the 2021 Bonds or, if a secondary market exists, that any 2021 Bonds can be sold for any particular price. Prices of bond issues for which a market is being made will depend upon then-prevailing circumstances. Such prices could be substantially different from the original purchase price.

No assurance can be given that the market price for the 2021 Bonds will not be affected by the introduction or enactment of any future legislation (including without limitation amendments to the Internal Revenue Code), or changes in interpretation of the Internal Revenue Code, or any action of the Internal Revenue Service, including but not limited to the publication of proposed or final regulations, the issuance of rulings, the selection of the 2021 Bonds for audit examination, or the course or result of any Internal Revenue Service audit or examination of the 2021 Bonds or obligations that present similar tax issues as the 2021 Bonds.

## LEGAL MATTERS

### Legal Opinions

The legal opinion of Jones Hall, A Professional Law Corporation, San Francisco, California, Bond Counsel, approving the validity of the 2021 Bonds will be made available to purchasers at the time of original delivery and is attached in substantially final form as APPENDIX G.

Jones Hall, A Professional Law Corporation, San Francisco, California, has served as Disclosure Counsel to the District. Stradling Yocca Carlson & Rauth, P.C., Newport Beach, California, is serving as counsel to the Underwriter.

### Tax Exemption

**Federal Tax Status.** In the opinion of Jones Hall, A Professional Law Corporation, San Francisco, California, Bond Counsel, subject, however to the qualifications set forth below, under existing law, the interest on the 2021 Bonds is excluded from gross income for federal income tax purposes and such interest is not an item of tax preference for purposes of the federal alternative minimum tax.

The opinions set forth in the preceding paragraph are subject to the condition that the City comply with all requirements of the Internal Revenue Code of 1986, as amended (the "**Tax Code**") that must be satisfied subsequent to the issuance of the 2021 Bonds in order that the interest thereon be, and continue to be, excludable from gross income for federal income tax purposes. The City has made certain representations and covenants in order to comply with each such requirement. Inaccuracy of those representations, or failure to comply with certain of those covenants, may cause the inclusion of such interest in gross income for federal income tax purposes, which may be retroactive to the date of issuance of the 2021 Bonds.

**Tax Treatment of Original Issue Discount and Premium.** If the initial offering price to the public at which a 2021 Bond is sold is less than the amount payable at maturity thereof, then such difference constitutes "original issue discount" for purposes of federal income taxes and State of California personal income taxes. If the initial offering price to the public at which a 2021 Bond is sold is greater than the amount payable at maturity thereof, then such difference constitutes "bond premium" for purposes of federal income taxes and State of California personal income taxes.

Under the Tax Code, original issue discount is treated as interest excluded from federal gross income and exempt from State of California personal income taxes to the extent properly allocable to each owner thereof subject to the limitations described in the first paragraph of this section. The original issue discount accrues over the term to maturity of the 2021 Bond on the basis of a constant interest rate compounded on each interest or principal payment date (with straight-line interpolations between compounding dates). The amount of original issue discount accruing during each period is added to the adjusted basis of such 2021 Bonds to determine taxable gain upon disposition (including sale, redemption, or payment on maturity) of such 2021 Bond. The Tax Code contains certain provisions relating to the accrual of original issue discount in the case of purchasers of the 2021 Bonds who purchase the 2021 Bonds after the initial offering of a substantial amount of such maturity. Owners of such 2021 Bonds should consult their own tax advisors with respect to the tax consequences of ownership of 2021 Bonds with original issue discount, including the treatment of purchasers who do not purchase in the original offering to the public at the first price at which a substantial amount of such 2021 Bonds is sold to the public.

Under the Tax Code, bond premium is amortized on an annual basis over the term of the 2021 Bond (said term being the shorter of the 2021 Bond's maturity date or its call date). The amount of bond

premium amortized each year reduces the adjusted basis of the owner of the 2021 Bond for purposes of determining taxable gain or loss upon disposition. The amount of bond premium on a 2021 Bond is amortized each year over the term to maturity of the 2021 Bond on the basis of a constant interest rate compounded on each interest or principal payment date (with straight-line interpolations between compounding dates). Amortized bond premium is not deductible for federal income tax purposes. Owners of premium 2021 Bonds, including purchasers who do not purchase in the original offering, should consult their own tax advisors with respect to State of California personal income tax and federal income tax consequences of owning such 2021 Bonds.

**California Tax Status.** In the further opinion of Bond Counsel, interest on the 2021 Bonds is exempt from California personal income taxes.

**Other Tax Considerations.** Current and future legislative proposals, if enacted into law, clarification of the Tax Code or court decisions may cause interest on the 2021 Bonds to be subject, directly or indirectly, to federal income taxation or to be subject to or exempted from state income taxation, or otherwise prevent beneficial owners from realizing the full current benefit of the tax status of such interest. The introduction or enactment of any such legislative proposals, clarification of the Tax Code or court decisions may also affect the market price for, or marketability of, the 2021 Bonds. It cannot be predicted whether or in what form any such proposal might be enacted or whether, if enacted, such legislation would apply to bonds issued prior to enactment.

The opinions expressed by Bond Counsel are based upon existing legislation and regulations as interpreted by relevant judicial and regulatory authorities as of the date of such opinion, and Bond Counsel has expressed no opinion with respect to any proposed legislation or as to the tax treatment of interest on the 2021 Bonds, or as to the consequences of owning or receiving interest on the 2021 Bonds, as of any future date. Prospective purchasers of the 2021 Bonds should consult their own tax advisors regarding any pending or proposed federal or state tax legislation, regulations or litigation, as to which Bond Counsel expresses no opinion.

Owners of the 2021 Bonds should also be aware that the ownership or disposition of, or the accrual or receipt of interest on, the 2021 Bonds may have federal or state tax consequences other than as described above. Other than as expressly described above, Bond Counsel expresses no opinion regarding other federal or state tax consequences arising with respect to the 2021 Bonds, the ownership, sale or disposition of the 2021 Bonds, or the amount, accrual or receipt of interest on the 2021 Bonds.

## **Litigation**

The City is a defendant in a lawsuit related to a development agreement previously entered into by the City and the Developer entitled “Second Amendment to Amended and Restated Development Agreement By and Between the City of Tracy and Surland Communities LLC” (the “**Second Amendment**”), which amends a development agreement for the Ellis Specific Plan executed by the City and the Developer in 2013. The plaintiff is a third party, not the Developer or any of its affiliates, and the Developer joined the lawsuit as a real party in interest. The lawsuit claims, among other things, that the Second Amendment is void and beyond the powers of the City because it purports to grant a right to residential growth allotments (“**RGAs**”) outside the Ellis Specific Plan. On September 30, 2020, the trial court ruled in favor of the plaintiff. The City and the Developer timely appealed the trial court’s decision and that appeal is pending. The City believes that, even if the trial court’s decision is upheld, the lawsuit will not adversely impact Improvement Area No. 2 or the 2021 Bonds because Improvement Area No. 2 is substantially built-out (with approximately 92% of building permits having been pulled) and the challenged provisions of the Second Amendment do not relate to the issuance of RGAs or building permits for properties within the Ellis Specific Plan.

At the time of delivery of the 2021 Bonds, the City will certify that there is no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, public board or body, pending with respect to which the City has been served with process or threatened, which:

- in any way questions the powers of the City Council, City or District, or
- in any way questions the validity of any proceeding taken by the City Council in connection with the issuance of the 2021 Bonds, or
- wherein an unfavorable decision, ruling or finding could materially adversely affect the transactions contemplated by the purchase contract with respect to the 2021 Bonds, or
- which, in any way, could adversely affect the validity or enforceability of the resolutions of the City Council adopted in connection with the formation of the District and Improvement Area No. 2 or the issuance of the 2021 Bonds, the Fiscal Agent Agreement, the Continuing Disclosure Certificate or the purchase contract with respect to the 2021 Bonds, or
- to the knowledge of the City, which in any way questions the exclusion from gross income of the recipients thereof of the interest on the 2021 Bonds for federal income tax purposes, or
- in any other way questions the status of the 2021 Bonds under State tax laws or regulations.

## CONTINUING DISCLOSURE

***City Continuing Disclosure.*** The City will covenant for the benefit of owners of the 2021 Bonds to provide certain financial information and operating data relating to Improvement Area No. 2 and the 2021 Bonds by not later than seven months after the end of the City's fiscal year (currently January 31 based on the City's fiscal year end of June 30) (the "**Annual Report**") and to provide notices of the occurrence of certain listed events.

These covenants have been made in order to assist the Underwriter in complying with Securities Exchange Commission Rule 15c2-12(b)(5) (the "**Rule**"). The specific nature of the information to be contained in the Annual Report or the notices of listed events is set forth in APPENDIX E.

The City, on its own behalf and on behalf of related entities, has entered into a number of prior continuing disclosure undertakings under the Rule in connection with the issuance of long-term obligations, and has provided annual financial information and event notices in accordance with those undertakings. During the past five years, the City or its related entities have failed to comply with prior undertakings as follows:

- The audited financial statements for Fiscal Years 2015-16, 2016-17, 2017-18, 2018-19, 2019-20 were filed up to approximately 15 months late; and
- Certain operating and financial data for Fiscal Years 2016-17, 2017-18, and 2018-19 were filed up to approximately 3 months late.
- Certain information was omitted from the operating and financial data for filed Fiscal Years 2016-17 and 2017-18 because it was unavailable at the time the filing was due, but that information was subsequently filed when it became available.

The City has engaged Goodwin Consulting Group to serve as its dissemination agent and assist the City in complying with its continuing disclosure undertakings. To further ensure such compliance, the City has adopted policies and procedures related thereto.

**Woodside Homes Continuing Disclosure.** Woodside Homes will covenant in a continuing disclosure certificate, the form of which is set forth in APPENDIX F (the “**Property Owner Continuing Disclosure Certificate**”), for the benefit of holders and beneficial owners of the 2021 Bonds, to provide certain information relating to itself and the status of its property within Improvement Area No. 2 on a semi-annual basis, beginning on March 31, 2022, and to provide notices of the occurrence of certain enumerated events. Woodside Homes is not an obligated person as defined under the Rule.

The obligations of Woodside Homes under its Property Owner Continuing Disclosure Certificate will terminate when Woodside Homes owns less than 45 residential lots (or property that will be subdivided into less than 45 residential lots) in Improvement Area No. 2.

Woodside Homes represents that, to the actual knowledge of Woodside Homes, Woodside Homes has not failed in any material respect to comply with any previous undertaking by it to provide periodic continuing disclosure reports or notices of material events with respect to community facilities districts or assessment districts in California within the past five years.

## **NO RATING**

The City has not obtained a credit rating on the 2021 Bonds. Nothing should be assumed from any credit rating that the City may obtain for other purposes. Prospective purchasers of the 2021 Bonds are required to make independent determinations as to the credit quality of the 2021 Bonds and their appropriateness as an investment.

## **UNDERWRITING**

The 2021 Bonds are being purchased by Piper Sandler & Co. (the “**Underwriter**”), at a purchase price of \$\_\_\_\_\_ (which represents the aggregate principal amount of the 2021 Bonds (\$\_\_\_\_\_), plus an original issue premium/less an original issue discount of \$\_\_\_\_\_, less an Underwriter's discount of \$\_\_\_\_\_).

The purchase agreement relating to the 2021 Bonds provides that the Underwriter will purchase all of the 2021 Bonds, if any are purchased, the obligation to make such purchase being subject to certain terms and conditions set forth in such purchase agreement.

The Underwriter may offer and sell the 2021 Bonds to certain dealers and others at prices lower than the offering prices stated on the inside cover page hereof. The offering prices may be changed from time to time by the Underwriter.

## **MUNICIPAL ADVISOR**

The City has retained CSG Advisors Incorporated, San Francisco, California, as Municipal Advisor for the sale of the 2021 Bonds. The Municipal Advisor is not obligated to undertake, and has not undertaken to make, an independent verification or to assume any responsibility for the accuracy, completeness or fairness of the information contained in this Official Statement.

CSG Advisors Incorporated, is an independent advisory firm and is not engaged in the business of underwriting, trading or distributing municipal or other public securities.

### **PROFESSIONAL FEES**

In connection with the issuance of the 2021 Bonds, fees or compensation payable to certain professionals are contingent upon the issuance and delivery of the 2021 Bonds. Those professionals include:

- the Underwriter;
- Jones Hall, A Professional Law Corporation, as Bond Counsel and Disclosure Counsel;
- Stradling Yocca Carlson & Rauth, A Professional Corporation, as Underwriter’s Counsel;
- A portion of the fees of CSG Advisors Incorporated, as municipal advisor;
- A portion of the fees of Goodwin Consulting Group, Inc., as special tax consultant; and
- U.S. Bank National Association, as Fiscal Agent.

### **EXECUTION**

The execution and delivery of the Official Statement has been duly authorized by the City Council, acting as the legislative body of the District.

CITY OF TRACY

By: \_\_\_\_\_  
Finance Director

**APPENDIX A**

**GENERAL INFORMATION ABOUT THE CITY OF TRACY  
AND SAN JOAQUIN COUNTY**

*The following information concerning the City of Tracy (the "**City**") and San Joaquin County (the "**County**") are included only for the purpose of supplying general information regarding the community. The 2021 Bonds are not a debt of the City, the County, the State of California (the "**State**") or any of its political subdivisions, and neither the City, the County, the State nor any of its political subdivisions is liable therefor.*

**Population**

Population figures for the City, the County and the State for the last five years are shown in the following table.

**CITY OF TRACY, SAN JOAQUIN COUNTY AND THE STATE OF CALIFORNIA  
Population Estimates  
Calendar Years 2017 through 2021 as of January 1**

<b><u>Calendar Year</u></b>	<b><u>City of Tracy</u></b>	<b><u>San Joaquin County</u></b>	<b><u>State of California</u></b>
2017	90,488	744,843	39,352,398
2018	92,395	752,958	39,519,535
2019	94,326	764,373	39,605,361
2020	95,861	773,505	39,648,938
2021	98,601	783,534	39,466,855

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*Source: State Department of Finance estimates.*

## Employment and Industry

The City is included in the Stockton Metropolitan Statistical Area (“**MSA**”), which includes all of San Joaquin County. The unemployment rate in the County was 9.0% in April 2021, down from a revised 9.1% in March 2021, and below the year-ago estimate of 17.9%. This compares with an unadjusted unemployment rate of 8.1% for the State and 5.7% for the nation during the same period.

Set forth below is data from calendar years 2016 to 2020 reflecting the County’s civilian labor force, employment and unemployment. These figures are county-wide statistics and may not necessarily accurately reflect employment trends in the City.

**STOCKTON-LODI MSA  
(San Joaquin County)  
Annual Average Labor Force and Employment by Industry  
Calendar Years 2016 through 2020  
(March 2020 Benchmark)**

	<u>2016</u>	<u>2017</u>	<u>2018</u>	<u>2019</u>	<u>2020</u>
Civilian Labor Force <sup>(1)</sup>	318,200	323,300	324,500	327,100	331,800
Employment	292,400	300,700	304,600	307,900	294,500
Unemployment	25,900	22,600	19,900	19,200	37,400
Unemployment Rate	8.1%	7.0%	6.1%	5.9%	11.3%
<u>Wage and Salary Employment: <sup>(2)</sup></u>					
Agriculture	16,700	16,400	15,600	15,400	14,300
Mining and Logging	100	100	100	100	100
Construction	11,100	11,700	12,800	13,100	12,900
Manufacturing	19,800	20,300	20,600	20,600	20,500
Wholesale Trade	10,700	11,100	11,700	11,600	10,500
Retail Trade	26,500	26,800	26,700	26,200	24,600
Transportation, Warehousing and Utilities	23,000	26,200	28,400	31,300	38,300
Information	2,000	1,800	1,800	1,600	1,200
Finance and Insurance	4,800	4,900	4,800	4,700	4,600
Professional and Business Services	19,600	19,200	19,600	20,200	21,100
Educational and Health Services	36,400	38,200	38,800	39,100	37,100
Leisure and Hospitality	20,400	21,500	22,000	22,600	18,400
Other Services	7,500	7,600	7,600	7,800	6,700
Federal Government	3,000	3,100	3,100	3,200	3,300
State Government	6,400	6,600	6,700	6,800	6,800
Local Government	31,400	32,800	33,700	34,900	33,100
Total, All Industries <sup>(3)</sup>	242,000	251,100	256,900	262,400	256,600

(1) Labor force data is by place of residence; includes self-employed individuals, unpaid family workers, household domestic workers, and workers on strike.

(2) Industry employment is by place of work; excludes self-employed individuals, unpaid family workers, household domestic workers, and workers on strike.

(3) Totals may not add due to rounding.

Source: State of California Employment Development Department.

## Largest Employers

The following table lists the major employers within the County, listed in alphabetical order without regard to the number of employees, as of June 2021.

### SAN JOAQUIN COUNTY Major Employers As of June 2021

<u>Employer Name</u>	<u>Location</u>	<u>Industry</u>
A Sambado & Sons Inc	Linden	Nuts-Edible
Amazon Fulfillment Ctr	Stockton	Mail Order Fulfillment Service
Blue Shield of California	Lodi	Insurance
Dameron Hospital Assn	Stockton	Hospitals
Deuel Vocational Instn Fire	Tracy	City Govt-Correctional Institutions
Foster Care Svc	Stockton	Government Offices-County
Leprino Foods Co	Tracy	Cheese Processors (mfrs)
Lodi Health Home Health Agency	Lodi	Home Health Service
Lodi Memorial Hospital	Lodi	Hospitals
Morada Produce	Stockton	Fruits & Vegetables-Growers & Shippers
NA Chaderjian Youth	Stockton	State Govt-Correctional Institutions
Pacific Coast Producers	Lodi	Canning (mfrs)
Prima Frutta Packing Inc	Linden	Fruit & Produce Packers
Safeway Distribution Ctr	Tracy	Distribution Centers (whls)
San Joaquin County CA Pubc	Stockton	Government Offices-County
San Joaquin County Human Svc	Stockton	Government Offices-County
San Joaquin County Sch	Stockton	School Districts
San Joaquin General Hospital	French Camp	Hospitals
San Joaquin Sheriff's Office	French Camp	Government Offices-County
Sjgov	Stockton	Government Offices-County
St Joseph's Cancer Ctr	Stockton	Cancer Treatment Centers
St Joseph's Regional Health	Stockton	Hospitals
Stockton Police Dept	Stockton	Police Departments
Stockton Unified School Dist	Stockton	School Districts
Walmart Supercenter	Stockton	Department Stores

*Source: State of California Employment Development Department, extracted from The America's Labor Market Information System (ALMIS) Employer Database, 2021 1st Edition.*

The following table lists the twenty principal employers within the City, by number of employees, as of June 30, 2020.

**CITY OF TRACY  
Principal Employers  
As of June 30, 2020**

<u>Employer Name</u>	<u>Number of Employees</u>
Amazon.com	3,950
Amazon.com	901
FedEx Ground Package System, Inc	596
The Home Depot #5641	484
Walmart #2025	370
Leprino Foods	344
Restoration Hardware #903	279
DHL Supply Chain	250
Costco Wholesale #658	245
DHL Supply Chain	231
DHL Supply Chain	229
Randstad Inhouse Services LLC	217
Select Staffing	212
Pacific Medical Inc	211
Randstad Inhouse Services LP	208
YRC	201
BMD Services	200
International Paper	191
Randstad Inhouse Services LP	185
Olive Garden #1582	182

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*Source: City of Tracy Comprehensive Financial Report for fiscal year ended June 30, 2020.*

## Commercial Activity

Summaries of historic taxable sales within the City and the County during the past five years in which data is available are shown in the following tables.

Total taxable sales during calendar year 2020 in the City were \$2,815,806,636, a 4.52% increase over the total taxable sales of \$2,694,119,637 reported during calendar year 2019.

**CITY OF TRACY**  
**Taxable Retail Sales**  
**Number of Permits and Valuation of Taxable Transactions**  
**(Dollars in Thousands)**

	<u>Retail Stores</u>		<u>Total All Outlets</u>	
	Number of Permits	Taxable Transactions	Number of Permits	Taxable Transactions
2016	1,088	\$1,280,961	1,715	\$1,536,172
2017	1,150	1,371,679	1,803	2,042,411
2018	1,192	1,489,764	1,921	2,319,543
2019	1,224	1,472,148	2,000	2,692,497
2020	1,395	1,459,813	2,284	2,815,807

*Source: State Department of Tax and Fee Administration.*

Total taxable sales during calendar year 2020 in the County were \$15,609,880,345, a 8.52% increase over the total taxable sales of \$14,383,854,291 reported during calendar year 2019.

**SAN JOAQUIN COUNTY**  
**Taxable Retail Sales**  
**Number of Permits and Valuation of Taxable Transactions**  
**(Dollars in Thousands)**

	<u>Retail Stores</u>		<u>Total All Outlets</u>	
	Number of Permits	Taxable Transactions	Number of Permits	Taxable Transactions
2016	9,480	\$7,380,226	14,682	\$10,922,271
2017	9,506	7,994,473	14,758	12,153,268
2018	9,660	8,855,169	15,437	13,457,721
2019	9,978	9,058,063	16,144	14,383,854
2020	11,188	10,122,979	18,358	15,609,880

*Source: State Department of Tax and Fee Administration.*

## Effective Buying Income

“Effective Buying Income” is defined as personal income less personal tax and nontax payments, a number often referred to as “disposable” or “after-tax” income. Personal income is the aggregate of wages and salaries, other labor-related income (such as employer contributions to private pension funds), proprietor’s income, rental income (which includes imputed rental income of owner-occupants of non-farm dwellings), dividends paid by corporations, interest income from all sources, and transfer payments (such as pensions and welfare assistance). Deducted from this total are personal taxes (federal, state and local), nontax payments (fines, fees, penalties, etc.) and personal contributions to social insurance. According to U.S. government definitions, the resultant figure is commonly known as “disposable personal income.”

The following table summarizes the median household effective buying income for the City, the County, the State and the United States for the period 2017 through 2021.

### CITY OF TRACY AND SAN JOAQUIN COUNTY Median Household Effective Buying Income 2017 through 2021

	2017	2018	2019	2020	2021
City of Tracy	\$65,371	\$68,295	\$73,172	\$76,142	\$78,492
San Joaquin County	48,149	49,883	55,534	58,141	59,914
California	55,681	59,646	62,637	65,870	67,956
United States	48,043	50,735	52,841	55,303	56,790

*Source: The Nielsen Company (US), Inc for years 2017 and 2018; Claritas, LLC for 2019 through 2021.*

## Building Activity

The tables below summarize building activity in the City and the County for the past five available years.

### CITY OF TRACY Building Permit Activity For Calendar Years 2015 through 2019 (Dollars in Thousands)

	<u>2015</u>	<u>2016</u>	<u>2017</u>	<u>2018</u>	<u>2019</u>
<u>Permit Valuation</u>					
New Single-family	\$62,319.4	\$87,820.2	\$98,767.2	\$214,928.9	\$223,795.2
New Multi-family	0.0	34,038.7	9,686.4	84,832.3	0.0
Res. Alterations/Additions	<u>5,381.8</u>	<u>2,281.9</u>	<u>2,982.3</u>	<u>6,058.5</u>	<u>9,178.8</u>
Total Residential	\$67,701.2	\$124,140.8	\$111,435.9	\$305,819.7	\$232,974.0
New Commercial	\$113,546.0	\$92,124.7	\$184,438.3	\$331,633.7	\$189,205.1
New Industrial	49,162.0	57,441.7	38,978.1	74,814.4	13,881.6
New Other	12,340.6	11,375.8	4,769.2	8,265.5	7,006.5
Com. Alterations/Additions	<u>127,941.0</u>	<u>138,604.1</u>	<u>93,059.7</u>	<u>60,479.7</u>	<u>60,676.8</u>
Total Nonresidential	\$302,989.6	\$299,546.3	\$321,245.3	\$475,193.3	270,770.0
<u>New Dwelling Units</u>					
Single Family	183	216	236	534	551
Multiple Family	<u>0</u>	<u>432</u>	<u>65</u>	<u>507</u>	<u>0</u>
TOTAL	183	648	301	1,041	551

Source: Construction Industry Research Board, Building Permit Summary.

### SAN JOAQUIN COUNTY Building Permit Activity For Calendar Years 2015 through 2019 (Dollars in Thousands)

	<u>2015</u>	<u>2016</u>	<u>2017</u>	<u>2018</u>	<u>2019</u>
<u>Permit Valuation</u>					
New Single-family	\$455,877.1	\$467,494.7	\$652,308.1	\$883,071.1	\$843,700.9
New Multi-family	48,792.9	66,794.5	62,635.8	99,601.4	57,271.1
Res. Alterations/Additions	<u>42,764.8</u>	<u>99,049.9</u>	<u>86,516.1</u>	<u>95,073.4</u>	<u>98,681.9</u>
Total Residential	\$547,434.8	\$633,339.1	\$801,460.0	\$1,077,745.9	\$999,654.0
New Commercial	\$177,272.0	\$205,510.1	\$357,856.9	\$498,359.0	\$380,383.3
New Industrial	85,322.6	61,687.0	179,728.4	240,073.7	120,003.8
New Other	44,373.1	42,074.7	27,794.7	31,904.4	61,991.7
Com. Alterations/Additions	<u>193,659.3</u>	<u>298,721.9</u>	<u>269,172.8</u>	<u>249,142.4</u>	<u>363,840.9</u>
Total Nonresidential	\$500,627.0	\$607,993.7	\$834,552.8	\$1,019,479.5	\$926,219.7
<u>New Dwelling Units</u>					
Single Family	1,698	1,754	2,078	2,765	2,564
Multiple Family	<u>387</u>	<u>550</u>	<u>516</u>	<u>293</u>	<u>461</u>
TOTAL	1,233	2,085	2,304	2,594	3,025

Source: Construction Industry Research Board, Building Permit Summary.

**APPENDIX B**

**RATE AND METHOD OF APPORTIONMENT FOR  
IMPROVEMENT AREA NO. 2 OF THE CITY OF TRACY  
COMMUNITY FACILITIES DISTRICT NO. 2016-2 (ECFD)**

**APPENDIX C**

**SUMMARY OF CERTAIN PROVISIONS OF THE FISCAL AGENT AGREEMENT**

## APPENDIX D

### DTC AND THE BOOK-ENTRY ONLY SYSTEM

*The following description of the Depository Trust Company (“DTC”), the procedures and record keeping with respect to beneficial ownership interests in the Bonds, payment of principal, interest and other payments on the 2021 Bonds (herein, the “Securities”) to DTC Participants or Beneficial Owners, confirmation and transfer of beneficial ownership interest in the Securities and other related transactions by and between DTC, the DTC Participants and the Beneficial Owners is based solely on information provided by DTC. Accordingly, no representations can be made concerning these matters and neither the DTC Participants nor the Beneficial Owners should rely on the foregoing information with respect to such matters, but should instead confirm the same with DTC or the DTC Participants, as the case may be.*

*Neither the issuer of the Securities (the “Issuer”) nor the trustee, fiscal agent or paying agent appointed with respect to the Securities (the “Agent”) takes any responsibility for the information contained in this Appendix.*

*No assurances can be given that DTC, DTC Participants or Indirect Participants will distribute to the Beneficial Owners (a) payments of interest, principal or premium, if any, with respect to the Securities, (b) certificates representing ownership interest in or other confirmation or ownership interest in the Securities, or (c) redemption or other notices sent to DTC or Cede & Co., its nominee, as the registered owner of the Securities, or that they will so do on a timely basis, or that DTC, DTC Participants or DTC Indirect Participants will act in the manner described in this Appendix. The current “Rules” applicable to DTC are on file with the Securities and Exchange Commission and the current “Procedures” of DTC to be followed in dealing with DTC Participants are on file with DTC.*

1. The Depository Trust Company (“DTC”), New York, NY, will act as securities depository for the securities (the “Securities”). The Securities will be issued as fully-registered securities registered in the name of Cede & Co. (DTC’s partnership nominee) or such other name as may be requested by an authorized representative of DTC. One fully-registered Security certificate will be issued for each issue of the Securities, each in the aggregate principal amount of such issue, and will be deposited with DTC. If, however, the aggregate principal amount of any issue exceeds \$500 million, one certificate will be issued with respect to each \$500 million of principal amount, and an additional certificate will be issued with respect to any remaining principal amount of such issue.

2. DTC, the world’s largest securities depository, is a limited-purpose trust company organized under the New York Banking Law, a “banking organization” within the meaning of the New York Banking Law, a member of the Federal Reserve System, a “clearing corporation” within the meaning of the New York Uniform Commercial Code, and a “clearing agency” registered pursuant to the provisions of Section 17A of the Securities Exchange Act of 1934. DTC holds and provides asset servicing for over 3.5 million issues of U.S. and non-U.S. equity issues, corporate and municipal debt issues, and money market instruments (from over 100 countries) that DTC’s participants (“Direct Participants”) deposit with DTC. DTC also facilitates the post-trade settlement among Direct Participants of sales and other securities transactions in deposited securities, through electronic computerized book-entry transfers and pledges between Direct Participants’ accounts. This eliminates the need for physical movement of securities certificates. Direct Participants include both U.S. and non-U.S. securities brokers and dealers, banks, trust companies, clearing corporations, and certain other organizations. DTC is a wholly-owned subsidiary of The Depository Trust & Clearing Corporation (“DTCC”). DTCC is the holding company for DTC, National Securities Clearing Corporation and Fixed Income Clearing Corporation, all of which are registered clearing agencies. DTCC is owned by the users of its regulated subsidiaries. Access to the

DTC system is also available to others such as both U.S. and non-U.S. securities brokers and dealers, banks, trust companies, and clearing corporations that clear through or maintain a custodial relationship with a Direct Participant, either directly or indirectly (“Indirect Participants”). DTC has a Standard & Poor’s rating of AA+. The DTC Rules applicable to its Participants are on file with the Securities and Exchange Commission. More information about DTC can be found at [www.dtcc.com](http://www.dtcc.com). *The information contained on this Internet site is not incorporated herein by reference.*

3. Purchases of Securities under the DTC system must be made by or through Direct Participants, which will receive a credit for the Securities on DTC’s records. The ownership interest of each actual purchaser of each Security (“Beneficial Owner”) is in turn to be recorded on the Direct and Indirect Participants’ records. Beneficial Owners will not receive written confirmation from DTC of their purchase. Beneficial Owners are, however, expected to receive written confirmations providing details of the transaction, as well as periodic statements of their holdings, from the Direct or Indirect Participant through which the Beneficial Owner entered into the transaction. Transfers of ownership interests in the Securities are to be accomplished by entries made on the books of Direct and Indirect Participants acting on behalf of Beneficial Owners. Beneficial Owners will not receive certificates representing their ownership interests in Securities, except in the event that use of the book-entry system for the Securities is discontinued.

4. To facilitate subsequent transfers, all Securities deposited by Direct Participants with DTC are registered in the name of DTC’s partnership nominee, Cede & Co., or such other name as may be requested by an authorized representative of DTC. The deposit of Securities with DTC and their registration in the name of Cede & Co. or such other DTC nominee do not effect any change in beneficial ownership. DTC has no knowledge of the actual Beneficial Owners of the Securities; DTC’s records reflect only the identity of the Direct Participants to whose accounts such Securities are credited, which may or may not be the Beneficial Owners. The Direct and Indirect Participants will remain responsible for keeping account of their holdings on behalf of their customers.

5. Conveyance of notices and other communications by DTC to Direct Participants, by Direct Participants to Indirect Participants, and by Direct Participants and Indirect Participants to Beneficial Owners will be governed by arrangements among them, subject to any statutory or regulatory requirements as may be in effect from time to time. Beneficial Owners of Securities may wish to take certain steps to augment the transmission to them of notices of significant events with respect to the Securities, such as redemptions, tenders, defaults, and proposed amendments to the Security documents. For example, Beneficial Owners of Securities may wish to ascertain that the nominee holding the Securities for their benefit has agreed to obtain and transmit notices to Beneficial Owners. In the alternative, Beneficial Owners may wish to provide their names and addresses to the registrar and request that copies of notices be provided directly to them.

6. Redemption notices shall be sent to DTC. If less than all of the Securities within an issue are being redeemed, DTC’s practice is to determine by lot the amount of the interest of each Direct Participant in such issue to be redeemed.

7. Neither DTC nor Cede & Co. (nor any other DTC nominee) will consent or vote with respect to Securities unless authorized by a Direct Participant in accordance with DTC’s MMI Procedures. Under its usual procedures, DTC mails an Omnibus Proxy to Issuer as soon as possible after the record date. The Omnibus Proxy assigns Cede & Co.’s consenting or voting rights to those Direct Participants to whose accounts Securities are credited on the record date (identified in a listing attached to the Omnibus Proxy).

8. Redemption proceeds, distributions, and dividend payments on the Securities will be made to Cede & Co., or such other nominee as may be requested by an authorized representative of DTC. DTC's practice is to credit Direct Participants' accounts upon DTC's receipt of funds and corresponding detail information from Issuer or Agent, on payable date in accordance with their respective holdings shown on DTC's records. Payments by Participants to Beneficial Owners will be governed by standing instructions and customary practices, as is the case with securities held for the accounts of customers in bearer form or registered in "street name," and will be the responsibility of such Participant and not of DTC, Agent, or Issuer, subject to any statutory or regulatory requirements as may be in effect from time to time. Payment of redemption proceeds, distributions, and dividend payments to Cede & Co. (or such other nominee as may be requested by an authorized representative of DTC) is the responsibility of Issuer or Agent, disbursement of such payments to Direct Participants will be the responsibility of DTC, and disbursement of such payments to the Beneficial Owners will be the responsibility of Direct and Indirect Participants.

9. DTC may discontinue providing its services as depository with respect to the Securities at any time by giving reasonable notice to Issuer or Agent. Under such circumstances, in the event that a successor depository is not obtained, Security certificates are required to be printed and delivered.

10. Issuer may decide to discontinue use of the system of book-entry-only transfers through DTC (or a successor securities depository). In that event, Security certificates will be printed and delivered to DTC.

11. The information in this section concerning DTC and DTC's book-entry system has been obtained from sources that Issuer believes to be reliable, but Issuer takes no responsibility for the accuracy thereof.

**APPENDIX E**

**FORM OF CONTINUING DISCLOSURE CERTIFICATE**

**CONTINUING DISCLOSURE CERTIFICATE**

**§ \_\_\_\_\_  
IMPROVEMENT AREA NO. 2 OF THE CITY OF TRACY  
COMMUNITY FACILITIES DISTRICT NO. 2016-2 (ECFD)  
SPECIAL TAX BONDS, SERIES 2021**

This Continuing Disclosure Certificate (this “Disclosure Certificate”) is executed and delivered by the City of Tracy (the “City”) in connection with the issuance of the bonds captioned above (the “2021 Bonds”). The 2021 Bonds are being issued pursuant to a Fiscal Agent Agreement dated as of \_\_\_\_\_ 1, 2021 (the “Fiscal Agent Agreement”), by and between the City and U.S. Bank National Association, as fiscal agent (the “Fiscal Agent”). The City hereby covenants and agrees as follows:

Section 1. Purpose of the Disclosure Certificate. This Disclosure Certificate is being executed and delivered by the City for the benefit of the holders and beneficial owners of the 2021 Bonds and in order to assist the Participating Underwriter in complying with S.E.C. Rule 15c2-12(b)(5).

Section 2. Definitions. In addition to the definitions set forth above and in the Fiscal Agent Agreement, which apply to any capitalized term used in this Disclosure Certificate unless otherwise defined in this Section, the following capitalized terms shall have the following meanings:

“*Annual Report*” means any Annual Report provided by the City pursuant to, and as described in, Sections 3 and 4 of this Disclosure Certificate.

“*Annual Report Date*” means the date that is seven months after the end of the City’s fiscal year (currently January 31 based on the City’s fiscal year end of June 30).

“*Community Facilities District*” means Improvement Area No. 2 of the City of Tracy Community Facilities District No. 2016-2 (ECFD).

“*Dissemination Agent*” means Goodwin Consulting Group, Inc., or any successor Dissemination Agent designated in writing by the District and which has filed with the District a written acceptance of such designation.

“*Listed Events*” means any of the events listed in Section 5(a) of this Disclosure Certificate.

“*MSRB*” means the Municipal Securities Rulemaking Board, which has been designated by the Securities and Exchange Commission as the sole repository of disclosure information for purposes of the Rule.

“*Official Statement*” means the final official statement dated \_\_\_\_\_, 2021, executed by the District in connection with the issuance of the 2021 Bonds.

“*Participating Underwriter*” means Piper Sandler & Co., the original underwriter of the 2021 Bonds required to comply with the Rule in connection with offering of the 2021 Bonds.

“Rule” means Rule 15c2-12(b)(5) adopted by the Securities and Exchange Commission under the Securities Exchange Act of 1934, as it may be amended from time to time.

Section 3. Provision of Annual Reports.

(a) The City shall, or shall cause the Dissemination Agent to, not later than the Annual Report Date, commencing January 31, 2022, with the report for the 2020-21 fiscal year, provide to the MSRB, in an electronic format as prescribed by the MSRB, an Annual Report that is consistent with the requirements of Section 4 of this Disclosure Certificate; provided, however, that the audited financial statements of the City shall be filed by March 31 of each year, or such later date that the audited financial statements become available. Not later than 15 Business Days prior to the Annual Report Date, the City shall provide the Annual Report to the Dissemination Agent (if other than the City). If by the Annual Report Date the Dissemination Agent (if other than the City) has not received a copy of the Annual Report, the Dissemination Agent shall contact the City to determine if the City is in compliance with the previous sentence. The Annual Report may be submitted as a single document or as separate documents comprising a package, and may include by reference other information as provided in Section 4 of this Disclosure Certificate; provided that the audited financial statements of the City may be submitted separately from the balance of the Annual Report, and later than the Annual Report Date, if not available by that date. If the City's fiscal year changes, it shall give notice of such change in the same manner as for a Listed Event under Section 5(c).

(b) If the City does not provide, or cause the Dissemination Agent to provide, an Annual Report by the Annual Report Date as required in subsection (a) above, the Dissemination Agent shall provide a notice to the MSRB, in a timely manner, in an electronic format as prescribed by the MSRB.

(c) The Dissemination Agent shall:

(i) determine each year prior to the Annual Report Date the then-applicable rules and electronic format prescribed by the MSRB for the filing of annual continuing disclosure reports; and

(ii) if the Dissemination Agent is other than the City, file a report with the City and the Participating Underwriter certifying that the Annual Report has been provided pursuant to this Disclosure Certificate, and stating the date it was provided.

Section 4. Content of Annual Reports. The City's Annual Report shall contain or incorporate by reference the following documents and information:

(a) The City's audited financial statements for the most recently completed fiscal year, prepared in accordance with Generally Accepted Accounting Principles as promulgated to apply to governmental entities from time to time by the Governmental Accounting Standards Board, together with the following statement:

THE CITY'S ANNUAL FINANCIAL STATEMENT IS PROVIDED SOLELY TO COMPLY WITH THE SECURITIES EXCHANGE COMMISSION STAFF'S INTERPRETATION OF RULE 15c2-12. NO FUNDS OR ASSETS OF THE CITY, OTHER THAN SPECIAL TAX REVENUES, ARE REQUIRED TO BE USED TO PAY DEBT SERVICE ON THE 2021 BONDS, AND THE CITY IS NOT OBLIGATED TO ADVANCE AVAILABLE FUNDS TO COVER ANY DELINQUENCIES. INVESTORS SHOULD NOT RELY ON THE FINANCIAL CONDITION OF THE CITY IN EVALUATING WHETHER TO BUY, HOLD OR SELL THE 2021 BONDS.

If the City's audited financial statements are not available by the time the Annual Report is required to be filed, the audited financial statements shall be filed in the same manner as the Annual Report when they become available.

- (b) To the extent not included in the audited financial statements, the following information:
  - (i) Total assessed value (per the San Joaquin County Assessor's records) of all parcels currently subject to the Special Tax within Improvement Area No. 2, showing the total secured assessed valuation for all property subject to the Special Tax.
  - (ii) Tables showing the owners of property in Improvement Area No. 2 and value-to-lien ratios based on the San Joaquin County Assessor's last equalized tax roll available to the City, substantially the form of the Table 2 in the Official Statement.
  - (iii) The amount of prepayments of the Special Tax for the prior Fiscal Year.
  - (iv) A table showing a history of special tax collections and delinquencies within Improvement Area No. 2.
  - (v) Any change to the County's Teeter Plan affecting Improvement Area No. 2.
  - (vi) The principal amount of the 2021 Bonds outstanding and the balance in the Reserve Fund (along with a statement of the 2021 Reserve Requirement) as of the September 30 next preceding the Annual Report Date, including the issuance date and principal amount of any additional bonds or obligations issued under the Fiscal Agent Agreement on a parity with the 2021 Bonds.
  - (vii) Any changes to the Rate and Method of Apportionment of Special Tax for Improvement Area No. 2.

(c) In addition to any of the information expressly required to be provided under paragraph (b) above, the City shall provide such further information, if any, as may be necessary to make the specifically required statements, in the light of the circumstances under which they are made, not misleading.

(d) Any or all of the items listed above may be included by specific reference to other documents, including official statements of debt issues of the City or related public entities, which are available to the public on the MSRB's Internet web site or filed with the Securities and Exchange Commission. The District shall clearly identify each such other document so included by reference.

#### Section 5. Reporting of Listed Events.

(a) The City shall give, or cause to be given, notice of the occurrence of any of the following Listed Events with respect to the 2021 Bonds:

- (1) Principal and interest payment delinquencies.
- (2) Non-payment related defaults, if material.
- (3) Unscheduled draws on debt service reserves reflecting financial difficulties.

- (4) Unscheduled draws on credit enhancements reflecting financial difficulties.
- (5) Substitution of credit or liquidity providers, or their failure to perform.
- (6) Adverse tax opinions, the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB) or other material notices or determinations with respect to the tax status of the 2021 Bonds, or other material events affecting the tax status of the 2021 Bonds.
- (7) Modifications to rights of security holders, if material.
- (8) Bond calls, if material, and tender offers.
- (9) Defeasances.
- (10) Release, substitution, or sale of property securing repayment of the securities, if material.
- (11) Rating changes.
- (12) Bankruptcy, insolvency, receivership or similar event of the City.
- (13) The consummation of a merger, consolidation, or acquisition involving the City, or the sale of all or substantially all of the assets of the City (other than in the ordinary course of business), the entry into a definitive agreement to undertake such an action, or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material.
- (14) Appointment of a successor or additional Fiscal Agent or the change of name of the Fiscal Agent, if material.
- (15) Incurrence of a financial obligation of the obligated person, if material, or agreement to covenants, events of default, remedies, priority rights, or other similar terms of a financial obligation of the obligated person, any of which affect security holders, if material.
- (16) Default, event of acceleration, termination event, modification of terms, or other similar events under the terms of a financial obligation of the obligated person, any of which reflect financial difficulties.

(b) Upon the occurrence of a Listed Event, the City shall, or shall cause the Dissemination Agent (if not the City) to, file a notice of such occurrence with the MSRB, in an electronic format as prescribed by the MSRB, in a timely manner not in excess of 10 Business Days after the occurrence of the Listed Event. Notwithstanding the foregoing, notice of Listed Events described in subsection (a)(8) above need not be given under this subsection any earlier than the notice (if any) of the underlying event is given to holders of affected Bonds under the Fiscal Agent Agreement.

(c) The City acknowledges that the events described in subparagraphs (a)(2), (a)(7), (a)(8) (if the event is a bond call), (a)(10), (a)(13), (a)(14), and (a)(15) of this Section 5 contain the qualifier "if material" and that subparagraph (a)(6) also contains the qualifier "material" with respect to certain notices,

determinations or other events affecting the tax status of the 2021 Bonds. The City shall cause a notice to be filed as set forth in paragraph (b) above with respect to any such event only to the extent that it determines the event's occurrence is material for purposes of U.S. federal securities law. Upon occurrence of any of these Listed Events, the City will as soon as possible determine if such event would be material under applicable federal securities law. If such event is determined to be material, the City will cause a notice to be filed as set forth in paragraph (b) above.

(d) For purposes of this Disclosure Certificate, any event described in paragraph (a)(12) above is considered to occur when any of the following occur: the appointment of a receiver, fiscal agent, or similar officer for the City in a proceeding under the United States Bankruptcy Code or in any other proceeding under state or federal law in which a court or governmental authority has assumed jurisdiction over substantially all of the assets or business of the City, or if such jurisdiction has been assumed by leaving the existing governing body and officials or officers in possession but subject to the supervision and orders of a court or governmental authority, or the entry of an order confirming a plan of reorganization, arrangement, or liquidation by a court or governmental authority having supervision or jurisdiction over substantially all of the assets or business of the City.

(e) For purposes of Section 5(a)(15) and (16), "financial obligation" means a (i) debt obligation; (ii) derivative instrument entered into in connection with, or pledged as security or a source of payment for, an existing or planned debt obligation; or (iii) guarantee of (i) or (ii). The term financial obligation shall not include municipal securities as to which a final official statement has been provided to the Municipal Securities Rulemaking Board consistent with the Rule.

Section 6. Identifying Information for Filings with the MSRB. All documents provided to the MSRB under the Disclosure Certificate shall be accompanied by identifying information as prescribed by the MSRB.

Section 7. Termination of Reporting Obligation. The City's obligations under this Disclosure Certificate shall terminate upon the legal defeasance, prior redemption or payment in full of all of the 2021 Bonds. If such termination occurs prior to the final maturity of the 2021 Bonds, the City shall give notice of such termination in the same manner as for a Listed Event under Section 5(c).

Section 8. Dissemination Agent. The City may, from time to time, appoint or engage a Dissemination Agent to assist it in carrying out its obligations under this Disclosure Certificate, and may discharge any such Agent, with or without appointing a successor Dissemination Agent. The initial Dissemination Agent will be Goodwin Consulting Group, Inc.

Section 9. Amendment; Waiver. Notwithstanding any other provision of this Disclosure Certificate, the City may amend this Disclosure Certificate, and any provision of this Disclosure Certificate may be waived, provided that the following conditions are satisfied:

(a) if the amendment or waiver relates to the provisions of Sections 3(a), 4 or 5(a), it may only be made in connection with a change in circumstances that arises from a change in legal requirements, change in law, or change in the identity, nature, or status of an obligated person with respect to the 2021 Bonds, or type of business conducted;

(b) the undertakings herein, as proposed to be amended or waived, would, in the opinion of nationally recognized bond counsel, have complied with the requirements of the Rule at the time of the primary offering of the 2021 Bonds, after taking into account any amendments or interpretations of the Rule, as well as any change in circumstances; and

(c) the proposed amendment or waiver either (i) is approved by holders of the 2021 Bonds in the manner provided in the Fiscal Agent Agreement for amendments to the Fiscal Agent Agreement with the consent of holders, or (ii) does not, in the opinion of the Fiscal Agent or nationally recognized bond counsel, materially impair the interests of the holders or beneficial owners of the 2021 Bonds.

If the annual financial information or operating data to be provided in the Annual Report is amended pursuant to the provisions hereof, the first annual financial information filed pursuant hereto containing the amended operating data or financial information shall explain, in narrative form, the reasons for the amendment and the impact of the change in the type of operating data or financial information being provided.

If an amendment is made to the undertaking specifying the accounting principles to be followed in preparing financial statements, the annual financial information for the year in which the change is made shall present a comparison between the financial statements or information prepared on the basis of the new accounting principles and those prepared on the basis of the former accounting principles. The comparison shall include a qualitative discussion of the differences in the accounting principles and the impact of the change in the accounting principles on the presentation of the financial information, in order to provide information to investors to enable them to evaluate the ability of the City to meet its obligations. To the extent reasonably feasible, the comparison shall be quantitative. A notice of the change in the accounting principles shall be filed in the same manner as for a Listed Event under Section 5(c).

Section 10. Additional Information. Nothing in this Disclosure Certificate shall be deemed to prevent the City from disseminating any other information, using the means of dissemination set forth in this Disclosure Certificate or any other means of communication, or including any other information in any Annual Report or notice of occurrence of a Listed Event, in addition to that which is required by this Disclosure Certificate. If the City chooses to include any information in any Annual Report or notice of occurrence of a Listed Event in addition to that which is specifically required by this Disclosure Certificate, the City shall have no obligation under this Disclosure Certificate to update such information or include it in any future Annual Report or notice of occurrence of a Listed Event.

Section 11. Default. In the event of a failure of the City to comply with any provision of this Disclosure Certificate, the Participating Underwriter or any holder or beneficial owner of the 2021 Bonds may take such actions as may be necessary and appropriate, including seeking mandate or specific performance by court order, to cause the City to comply with its obligations under this Disclosure Certificate. A default under this Disclosure Certificate shall not be deemed an Event of Default under the Fiscal Agent Agreement, and the sole remedy under this Disclosure Certificate in the event of any failure of the City to comply with this Disclosure Certificate shall be an action to compel performance.

Section 12. Duties, Immunities and Liabilities of Dissemination Agent. The Dissemination Agent shall have only such duties as are specifically set forth in this Disclosure Certificate, and the City agrees to indemnify and save the Dissemination Agent, its officers, directors, employees and agents, harmless against any loss, expense and liabilities which it may incur arising out of or in the exercise or performance of its powers and duties hereunder, including the costs and expenses (including attorneys' fees) of defending against any claim of liability, but excluding liabilities due to the Dissemination Agent's negligence or willful misconduct. The Dissemination Agent shall have no duty or obligation to review any information provided to it hereunder and shall not be deemed to be acting in any fiduciary capacity for the City, the Property Owner, the Fiscal Agent, the 2021 Bond owners or any other party. The obligations of the City under this Section shall survive resignation or removal of the Dissemination Agent and payment of the 2021 Bonds.

Section 13. Beneficiaries. This Disclosure Certificate shall inure solely to the benefit of the City, the Fiscal Agent, the Dissemination Agent, the Participating Underwriter and holders and beneficial owners from time to time of the 2021 Bonds, and shall create no rights in any other person or entity.

Section 14. Counterparts. This Disclosure Certificate may be executed in several counterparts, each of which shall be regarded as an original, and all of which shall constitute one and the same instrument.

Date: \_\_\_\_\_, 2021

CITY OF TRACY

By: \_\_\_\_\_  
Karin Schnaider,  
Finance Director

AGREED AND ACCEPTED:  
Goodwin Consulting Group, Inc.,  
as Dissemination Agent

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

APPENDIX F

FORM OF PROPERTY OWNER CONTINUING DISCLOSURE CERTIFICATE

CONTINUING DISCLOSURE CERTIFICATE  
(Woodside Homes)

\$ \_\_\_\_\_  
IMPROVEMENT AREA NO. 2 OF THE CITY OF TRACY  
COMMUNITY FACILITIES DISTRICT NO. 2016-2 (ECFD)  
SPECIAL TAX BONDS, SERIES 2021

Dated: \_\_\_\_\_, 2021

This Continuing Disclosure Certificate (Woodside Homes) (this "Disclosure Certificate") is executed and delivered by Woodside 05N, LP, a California limited partnership (the "Property Owner"), in connection with the issuance by the City of Tracy (the "City") of the bonds captioned above (the "2021 Bonds"). The 2021 Bonds are being issued under a Fiscal Agent Agreement dated as of \_\_\_\_\_ 1, 2021 (the "Fiscal Agent Agreement"), by and between the City and U.S. Bank National Association, as fiscal agent (the "Fiscal Agent"). The Property Owner covenants and agrees as follows:

Section 1. Purpose of the Disclosure Certificate. This Disclosure Certificate is being executed and delivered by the Property Owner for the benefit of the holders and beneficial owners of the 2021 Bonds.

Section 2. Definitions. In addition to the definitions set forth above and in the Fiscal Agent Agreement, which apply to any capitalized term used in this Disclosure Certificate unless otherwise defined in this Section, the following capitalized terms shall have the following meanings:

"*Affiliate*" means any person presently directly (or indirectly through one or more intermediaries) under managerial control of the Property Owner, and about whom information could be material to potential investors in their investment decision regarding the 2021 Bonds (including without limitation information relevant to the proposed development of the Property or to the Property Owner's ability to pay the Special Taxes levied on the Property prior to delinquency).

"*Assumption Agreement*" means an undertaking of a Major Owner, for the benefit of the holders and beneficial owners of the 2021 Bonds, containing terms substantially similar to this Disclosure Certificate (as modified for such Major Owner's development and financing plans with respect to the District), whereby such Major Owner agrees to provide semi-annual reports and notices of significant events, setting forth the information described in sections 4 and 5 hereof, respectively, with respect to the portion of the property in Improvement Area No. 2 owned by such Major Owner and agrees to indemnify the Dissemination Agent (if any) pursuant to a provision substantially in the form of Section 12 hereof.

"*Dissemination Agent*" means Goodwin Consulting Group, Inc., or any successor Dissemination Agent designated in writing by the Property Owner, with the written consent of the City, and which has filed with the Property Owner and the City a written acceptance of such designation, and which is experienced in providing dissemination agent services such as those required under this Disclosure Certificate.

“*District*” means the City of Tracy Community Facilities District No. 2016-2 (ECFD).

“*Improvement Area No. 2*” means Improvement Area No. 2 of the District.

“*Listed Events*” means any of the events listed in Section 5(a) of this Disclosure Certificate.

“*Major Owner*” means, as of any Report Date, a Person that, together with the Person’s Affiliates, owns 45 or more residential lots (or property intended to be subdivided into 45 or more residential lots) in Improvement Area No. 2.

“*MSRB*” means the Municipal Securities Rulemaking Board, which has been designated by the Securities and Exchange Commission as the sole repository of disclosure information.

“*Official Statement*” means the final Official Statement dated \_\_\_\_\_, 2021, executed by the City in connection with the issuance of the 2021 Bonds.

“*Participating Underwriter*” means Piper Sandler & Co., the original underwriter of the 2021 Bonds.

“*Person*” means an individual, a corporation, a partnership, a limited liability company, an association, a joint stock company, a trust, any unincorporated organization or a government or political subdivision thereof.

“*Property*” means (i) the property owned by the Property Owner in Improvement Area No. 2 as of the Report Date, and (ii) the property in Improvement Area No. 2 that the Property Owner sold to a Major Owner who has not assumed the undertakings of this Disclosure Certificate under Section 7(b) that is owned by such Major Owner.

“*Report Date*” means (a) September 30 of each year, and (b) March 31 of each year.

“*Semi-Annual Report*” means any Semi-Annual Report provided by the Property Owner pursuant to, and as described in, Sections 3 and 4 of this Disclosure Certificate.

“*Special Taxes*” means the special taxes for facilities levied by the City on the Property.

### Section 3. Provision of Semi-Annual Reports.

(a) The Property Owner shall, or upon written direction of the Property Owner the Dissemination Agent shall, not later than the Report Date, commencing March 31, 2022, provide to the MSRB, in an electronic format as prescribed by the MSRB, a Semi-Annual Report which is consistent with the requirements of Section 4 of this Disclosure Certificate with a copy to the Participating Underwriter and the City. Not later than 15 calendar days prior to the Report Date, the Property Owner shall provide the Semi-Annual Report to the Dissemination Agent (if different from the Property Owner). The Property Owner shall provide a written certification with (or included as a part of) each Semi-Annual Report furnished to the Dissemination Agent (if different from the Property Owner), Participating Underwriter and the City to the effect that such Semi-Annual Report constitutes the Semi-Annual Report required to be furnished by it under this Disclosure Certificate. The Dissemination Agent, the Participating Underwriter and the City may conclusively rely upon such certification of the Property Owner and shall have no duty or obligation to review the Semi-Annual Report. The Semi-Annual Report may be submitted as a single document or as separate documents comprising a package, and may incorporate by reference other information as provided in Section 4 of this Disclosure Certificate.

(b) If the Dissemination Agent does not receive a Semi-Annual Report by 15 calendar days prior to the Report Date, the Dissemination Agent shall send a reminder notice to the Property Owner that the Semi-Annual Report has not been provided as required under Section 3(a) above. The reminder notice shall instruct the Property Owner to determine whether its obligations under this Disclosure Certificate have terminated (pursuant to Section 7 below) and, if so, to provide the Dissemination Agent with a notice of such termination in the same manner as for a Listed Event (pursuant to Section 5 below). If the Property Owner does not provide, or cause the Dissemination Agent to provide, a Semi-Annual Report to the MSRB by the Report Date as required in subsection (a) above, the Dissemination Agent shall provide a notice to the MSRB, in an electronic format as prescribed by the MSRB.

(c) The Dissemination Agent shall:

(i) determine prior to each Report Date the then-applicable rules and electronic format prescribed by the MSRB for the filing of continuing disclosure reports; and;

(ii) to the extent the Semi-Annual Report has been furnished to it, file a report with the Property Owner (if the Dissemination Agent is other than the Property Owner), the City and the Participating Underwriter certifying that the Semi-Annual Report has been provided pursuant to this Disclosure Certificate, and stating the date it was provided.

Section 4. Content of Semi-Annual Reports. The Property Owner's Semi-Annual Report shall contain or incorporate by reference the information set forth in Exhibit A, any or all of which may be included by specific reference to other documents, including official statements of debt issues of the Property Owner or related public entities, which are available to the public on the MSRB's Internet web site or filed with the Securities and Exchange Commission. The Property Owner shall clearly identify each such other document so included by reference.

In addition to any of the information expressly required to be provided in Exhibit A, each Semi-Annual Report shall include such further information, if any, as may be necessary to make the specifically required statements, in the light of the circumstances under which they are made, not misleading.

Section 5. Reporting of Significant Events.

(a) So long as the Property Owner's obligations under this Disclosure Certificate have not been terminated pursuant to Section 7 herein, the Property Owner shall give, or cause to be given, notice of the occurrence of any of the following Listed Events with respect to itself or the Property, if material:

(i) bankruptcy or insolvency proceedings commenced by or against the Property Owner and, if known, any bankruptcy or insolvency proceedings commenced by or against any Affiliate of the Property Owner;

(ii) failure to pay any taxes, special taxes (including the Special Taxes) or assessments due with respect to the Property prior to the delinquency date, to the extent such failure is not promptly cured by the Property Owner upon discovery thereof;

(iii) filing of a lawsuit against the Property Owner or, if known, an Affiliate of the Property Owner, seeking damages which, if successful, could have a material and adverse impact on the Property Owner's ability to pay Special Taxes prior to delinquency or to sell or develop the Property;

- (iv) material damage to or destruction of any of the improvements on the Property; and
- (v) any payment default or other material default by the Property Owner that continues to exist beyond any applicable notice and cure periods on any loan with respect to the construction of improvements on the Property.

(b) Whenever the Property Owner obtains knowledge of the occurrence of a Listed Event, the Property Owner shall as soon as possible determine if such event would be material under applicable Federal securities law.

(c) If the Property Owner determines that knowledge of the occurrence of a Listed Event would be material under applicable Federal securities law, the Property Owner shall, or shall cause the Dissemination Agent to, promptly file a notice of such occurrence with the MSRB, in an electronic format as prescribed by the MSRB, with a copy to the City and the Participating Underwriter.

Section 6. Identifying Information for Filings with the MSRB. All documents provided to the MSRB under the Disclosure Certificate shall be accompanied by identifying information as prescribed by the MSRB.

Section 7. Duration of Reporting Obligation.

(a) All of the Property Owner's obligations hereunder shall commence on the date hereof and shall terminate (except as provided in Section 12) on the earliest to occur of the following:

- (i) upon the legal defeasance, prior redemption or payment in full of all the 2021 Bonds, or
- (ii) when the Property owned by the Property Owner is fewer than 45 residential lots (or property that will be subdivided into fewer than 45 residential lots), or
- (iii) the date on which the Property Owner prepays in full all of the Special Taxes attributable to the Property.

The Property Owner shall give notice of the termination of its obligations under this Disclosure Certificate in the same manner as for a Listed Event under Section 5.

(b) If a portion of the Property is conveyed to a person or entity that, upon such conveyance, will be a Major Owner, the obligations of the Property Owner hereunder with respect to the property conveyed to such Major Owner may be assumed by such Major Owner and the Property Owner's obligations hereunder with respect to the property conveyed will be terminated. In order to effect such assumption, such Major Owner shall enter into an Assumption Agreement in form and substance equivalent to this Disclosure Certificate or as otherwise satisfactory to the City and the Participating Underwriter. However, a Major Owner shall not be required to enter into an Assumption Agreement if such Major Owner is already a party to a continuing disclosure certificate in form and substance similar to this Disclosure Certificate with respect to the 2021 Bonds, and under which the property conveyed to such Major Owner will become subject to future Semi-Annual Reports.

Section 8. Dissemination Agent. The Property Owner may, from time to time, with the written consent of the City, appoint or engage a Dissemination Agent to assist the Property Owner in carrying out its obligations under this Disclosure Certificate, and may discharge any such Dissemination Agent, with the written consent of the City, with or without appointing a successor Dissemination Agent. The Dissemination Agent may resign by providing 30 days' written notice to the City and the Property Owner.

Section 9. Amendment; Waiver. Notwithstanding any other provision of this Disclosure Certificate, the Property Owner may amend this Disclosure Certificate, and any provision of this Disclosure Certificate may be waived, provided that the following conditions are satisfied (provided, however, that the Dissemination Agent shall not be obligated under any such amendment that modifies or increases its duties or obligations hereunder without its written consent thereto):

(a) if the amendment or waiver relates to the provisions of sections 3(a), 4 or 5(a), it may only be made in connection with a change in circumstances that arises from a change in legal requirements, or change in law;

(b) the proposed amendment or waiver either (i) is approved by holders of the 2021 Bonds in the manner provided in the Fiscal Agent Agreement with the consent of holders, or (ii) does not, in the opinion of nationally recognized bond counsel, materially impair the interests of the holders or beneficial owners of the 2021 Bonds.

Section 10. Additional Information. Nothing in this Disclosure Certificate shall be deemed to prevent the Property Owner from disseminating any other information, using the means of dissemination set forth in this Disclosure Certificate or any other means of communication, or including any other information in any Semi-Annual Report or notice of occurrence of a Listed Event, in addition to that which is required by this Disclosure Certificate. If the Property Owner chooses to include any information in any Semi-Annual Report or notice of occurrence of a Listed Event in addition to that which is specifically required by this Disclosure Certificate, the Property Owner shall have no obligation under this Disclosure Certificate to update such information or include it in any future Semi-Annual Report or notice of occurrence of a Listed Event.

Section 11. Default. In the event of a failure of the Property Owner to comply with any provision of this Disclosure Certificate, the Fiscal Agent shall (upon written direction and only to the extent indemnified to its satisfaction from any liability, cost or expense, including fees and expenses of its attorneys), and the Participating Underwriter and any holder or beneficial owner of the 2021 Bonds may, take such actions as may be necessary and appropriate, including seeking mandate or specific performance by court order, to cause the Property Owner to comply with its obligations under this Disclosure Certificate. A default under this Disclosure Certificate shall not be deemed an Event of Default under the Fiscal Agent Agreement, and the sole remedy under this Disclosure Certificate in the event of any failure of the Property Owner to comply with this Disclosure Certificate shall be an action to compel performance.

Section 12. Duties, Immunities and Liabilities of Dissemination Agent. The Dissemination Agent shall have only such duties as are specifically set forth in this Disclosure Certificate, and the Property Owner agrees to indemnify and save the Dissemination Agent, its officers, directors, employees and agents, harmless against any loss, expense and liabilities which it may incur arising out of or in the exercise or performance of its powers and duties hereunder, including the reasonable costs and expenses (including attorneys' fees) of defending against any claim of liability, but excluding (i) losses, expenses and liabilities due to the Dissemination Agent's, and its officers, directors, employees, and agents' negligence or willful misconduct, or failure to perform its duties hereunder, and (ii) losses, expenses and liabilities due to the failure of the City to pay the fees and expenses of the Dissemination

Agent. The Dissemination Agent shall be paid compensation for its services provided hereunder from the Administrative Expense Fund established under the Fiscal Agent Agreement in accordance with the Dissemination Agent's schedule of fees as amended from time to time, which schedule, as amended, shall be reasonably acceptable, and all reasonable expenses, reasonable legal fees and advances made or incurred by the Dissemination Agent in the performance of its duties hereunder. The Dissemination Agent shall have no duty or obligation to review any information provided to it hereunder and shall not be deemed to be acting in any fiduciary capacity for the City, the Property Owner, the Fiscal Agent, the 2021 Bond owners, or any other party. The obligations of the Property Owner under this Section shall survive resignation or removal of the Dissemination Agent and payment of the 2021 Bonds, but shall be assumed by a Major Owner from and after the date of such assumption when property is sold to a Major Owner and such Major Owner enters into an assumption agreement.

Section 13. Notices. Any notice or communications to be among any of the parties to this Disclosure Certificate may be given by electronic, overnight, or regular mail as follows:

- To the Issuer: City of Tracy  
333 Civic Plaza  
Tracy, CA 95376  
Email: [financedept@cityoftracy.org](mailto:financedept@cityoftracy.org)
  
- To the Dissemination Agent: Goodwin Consulting Group, Inc.  
333 University Avenue, Suite 160  
Sacramento, California 95825  
Email: [victor@goodwinconsultinggroup.net](mailto:victor@goodwinconsultinggroup.net)
  
- To the Participating Underwriter: Piper Sandler & Co.  
3626 Fair Oaks Boulevard  
Sacramento, California 95864  
Email: [dennis.j.mcguire@pjc.com](mailto:dennis.j.mcguire@pjc.com)
  
- To the Property Owner: Woodside 05N, LP  
\_\_\_\_\_, California \_\_\_\_\_  
Attn: \_\_\_\_\_  
Email: \_\_\_\_\_

Any person may, by written notice to the other persons listed above, designate a different address or telephone number(s) to which subsequent notices or communications should be sent.

Section 14. Beneficiaries. This Disclosure Certificate shall inure solely to the benefit of the City, the Property Owner (its successors and assigns), the Fiscal Agent, the Dissemination Agent, the Participating Underwriter and holders and beneficial owners from time to time of the 2021 Bonds, and shall create no rights in any other person or entity. All obligations of the Property Owner hereunder shall be assumed by any legal successor to the obligations of the Property Owner as a result of a sale, merger, consolidation or other reorganization.

Section 15. Counterparts. This Disclosure Certificate may be executed in several counterparts, each of which shall be regarded as an original, and all of which shall constitute one and the same instrument.

WOODSIDE 05N, LP,  
A California limited partnership

By: \_\_\_\_\_, a \_\_\_\_\_, its  
\_\_\_\_\_

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

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

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

AGREED AND ACCEPTED:  
Goodwin Consulting Group, Inc.,  
as Dissemination Agent

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

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

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

**EXHIBIT A**

**SEMI-ANNUAL REPORT**

**[MARCH 31, \_\_\_\_ / SEPTEMBER 30, \_\_\_\_]**

**\$ \_\_\_\_\_  
IMPROVEMENT AREA NO. 2 OF THE CITY OF TRACY  
COMMUNITY FACILITIES DISTRICT NO. 2016-2 (ECFD)  
SPECIAL TAX BONDS, SERIES 2021**

This Semi-Annual Report is hereby submitted under Section 4 of the Continuing Disclosure Certificate (Woodside Homes) (the "Disclosure Certificate") dated as of \_\_\_\_\_, 2021, executed by the undersigned (the "Property Owner") in connection with the issuance by the City of Tracy (the "City") of the bonds captioned above (the "2021 Bonds") for Improvement Area No. 2 ("Improvement Area No. 2") of the City of Tracy Community Facilities District No. 2016-2 (ECFD) (the "District").

Capitalized terms used in this Semi-Annual Report but not otherwise defined have the meanings given to them in the Disclosure Certificate.

**I. Property Ownership and Development**

The information in this section is provided as of \_\_\_\_\_ (this date must be not more than 60 days before the date of this Semi-Annual Report).

A. Description of the Property currently owned by the Property Owner in Improvement Area No. 2 of the District (the "Property"), in substance and form similar to such information in the Official Statement for the 2021 Bonds:

\_\_\_\_\_  
\_\_\_\_\_

B. Updated information regarding land development and home construction activities with respect to the Property described in the Official Statement for the 2021 Bonds or the Semi-Annual Report last filed in accordance with the Disclosure Certificate:

\_\_\_\_\_  
\_\_\_\_\_

C. Status of building permits and any material changes to the description of land use or development entitlements for the Property described in the Official Statement for the 2021 Bonds or the Semi-Annual Report last filed in accordance with the Disclosure Certificate:

\_\_\_\_\_  
\_\_\_\_\_

D. Status of any land purchase contracts with regard to the Property, whether acquisition of land in Improvement Area No. 2 by the Property Owner or sales of land to other property owners (other than individual homeowners).

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**II. Legal and Financial Status of Property Owner**

Unless such information has previously been included or incorporated by reference in a Semi-Annual Report, describe any material change in the legal structure of the Property Owner or the financial condition and financing plan of the Property Owner that would materially and adversely interfere with its ability to complete the development plan with respect to the Property described in the Official Statement. To the extent that the ownership of the Property Owner has changed, describe all material terms of the new ownership structure.

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**III. Change in Development or Financing Plans**

Unless such information has previously been included or incorporated by reference in a Semi-Annual Report, describe any development plans or financing plans relating to the Property *that are materially different from* the proposed development and financing plan for the Property described in the Official Statement or in a previous Semi-Annual Report.

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**IV. Official Statement Updates**

Unless such information has previously been included or incorporated by reference in a Semi-Annual Report, describe any other significant changes in the information relating to the Property Owner or the Property contained in the Official Statement under the heading "OWNERSHIP AND DEVELOPMENT OF IMPROVEMENT AREA NO. 2" that would materially and adversely interfere with the Property Owner's ability to develop and sell the Property as described in the Official Statement.

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**V. Status of Tax Payments**

Describe status of payment of taxes, special taxes (including the Special Taxes) or assessments due with respect to the Property owned by the Property Owner and its Affiliates.

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**VI. Other Material Information**

In addition to any of the information expressly required above, provide such further information, if any, with respect to the Property and the Property Owner as may be necessary to make the specifically required statements, in the light of the circumstances under which they are made, not misleading.

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**Certification**

On behalf of the Property Owner, the undersigned Authorized Representative, based on actual knowledge after reasonable inquiry of employees of Property Owner and its affiliates, hereby certifies that this Semi-Annual Report constitutes the Semi-Annual Report required to be furnished by the Property Owner under the Disclosure Certificate.

ANY OTHER STATEMENTS REGARDING THE PROPERTY OWNER, THE DEVELOPMENT OF THE PROPERTY, THE PROPERTY OWNER'S FINANCING PLAN OR FINANCIAL CONDITION, OR THE 2021 BONDS, OTHER THAN STATEMENTS MADE BY THE PROPERTY OWNER IN AN OFFICIAL RELEASE, OR FILED WITH THE MUNICIPAL SECURITIES RULEMAKING BOARD, ARE NOT AUTHORIZED BY THE PROPERTY OWNER. THE PROPERTY OWNER IS NOT RESPONSIBLE FOR THE ACCURACY, COMPLETENESS OR FAIRNESS OF ANY SUCH UNAUTHORIZED STATEMENTS.

THE PROPERTY OWNER HAS NO OBLIGATION TO UPDATE THIS SEMI-ANNUAL REPORT OTHER THAN AS EXPRESSLY PROVIDED IN THE DISCLOSURE CERTIFICATE.

Dated: \_\_\_\_\_

WOODSIDE 05N, LP,  
A California limited partnership

By: \_\_\_\_\_, a \_\_\_\_\_, its  
\_\_\_\_\_

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

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

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

**APPENDIX G**

**[INSERT FORM OF OPINION OF BOND COUNSEL]**

**APPENDIX H**  
**APPRAISAL REPORT**

Jones Hall draft 8-23-21

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## **FISCAL AGENT AGREEMENT**

by and between the

**CITY OF TRACY**

and

**U.S. BANK NATIONAL ASSOCIATION  
as Fiscal Agent**

Dated as of \_\_\_\_\_ 1, 2021

Relating to:

\$ \_\_\_\_\_  
Improvement Area No. 2 of the  
City of Tracy  
Community Facilities District No. 2016-2 (ECFD)  
Special Tax Bonds, Series 2021

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EXHIBIT A:	FORM OF 2021 BOND
EXHIBIT B:	OFFICER'S CERTIFICATE REQUESTING DISBURSEMENT FROM IMPROVEMENT FUND
EXHIBIT C:	OFFICER'S CERTIFICATE REQUESTING DISBURSEMENT FROM COSTS OF ISSUANCE FUND
EXHIBIT D:	OFFICER'S CERTIFICATE REQUESTING DISBURSEMENT FROM ADMINISTRATIVE EXPENSE FUND

## **FISCAL AGENT AGREEMENT**

**THIS FISCAL AGENT AGREEMENT** (the "Agreement") is made and entered into as of \_\_\_\_\_ 1, 2021, by and between the CITY OF TRACY, a municipal corporation and general law city organized and existing under the laws of the State of California (the "City") for and on behalf of the "City of Tracy Community Facilities District No. 2016-2 (ECFD)" (the "CFD") with respect to its "Improvement Area No. 2 of the City of Tracy Community Facilities District No. 2016-2 (ECFD)" ("Improvement Area No. 2"), and U.S. BANK NATIONAL ASSOCIATION, a national banking association duly organized and existing under the laws of the United States of America with a corporate trust office located in San Francisco, California, as fiscal agent (the "Fiscal Agent").

### **WITNESSETH:**

**WHEREAS**, the City Council of the City has formed the CFD, including Improvement Area No. 2, under the provisions of the Mello-Roos Community Facilities Act of 1982, as amended (section 53311 *et seq.* of the California Government Code) (the "Act"); and

**WHEREAS**, the City Council, as the legislative body with respect to the CFD, is authorized under the Act to levy special taxes within Improvement Area No. 2 to pay for the costs of facilities and to authorize the issuance of bonds secured by said special taxes under the Act; and

**WHEREAS**, on \_\_\_\_\_, 2021, the City Council adopted Resolution No. \_\_\_\_\_ (the "Resolution") authorizing the issuance of special tax bonds (the "2021 Bonds") on behalf of the CFD with respect to Improvement Area No. 2; and

**WHEREAS**, it is in the public interest and for the benefit of the City, the CFD, Improvement Area No. 2 and the persons responsible for the payment of special taxes that the City enter into this Agreement to provide for the issuance of the Bonds (as defined below) hereunder to finance the acquisition and construction of facilities for the City and to provide for the disbursement of proceeds of the Bonds, the disposition of the special taxes securing the Bonds and the administration and payment of the Bonds; and

**WHEREAS**, the City has determined that all things necessary to cause the 2021 Bonds, when authenticated by the Fiscal Agent and issued as provided in the Act, the Resolution and this Agreement, to be legal, valid, binding and limited obligations in accordance with their terms, and all things necessary to cause the creation, authorization, execution and delivery of this Agreement and the creation, authorization, execution and issuance of the Bonds, subject to the terms hereof, have in all respects been duly authorized.

**NOW, THEREFORE**, in consideration of the covenants and provisions herein set forth and for other valuable consideration the receipt and sufficiency of which is hereby acknowledged, the parties hereto do hereby agree as follows:

## ARTICLE I

### AUTHORITY AND DEFINITIONS

**Section 1.01. Authority for this Agreement.** This Agreement is entered into pursuant to the Act (as herein defined) and the Resolution.

**Section 1.02. Agreement for Benefit of Owners of the Bonds.** The provisions, covenants and agreements herein set forth to be performed by or on behalf of the City shall be for the equal benefit, protection and security of the Owners of the Bonds. All of the Bonds, without regard to the time or times of their issuance or maturity, shall be of equal rank without preference, priority or distinction of any of the Bonds over any other thereof, except as expressly provided in or permitted by this Agreement.

**Section 1.03. Definitions.** Unless the context otherwise requires, the terms defined in this Section 1.03 shall, for all purposes of this Agreement, of any Supplemental Agreement, and of any certificate, opinion or other document herein mentioned, have the meanings herein specified. All references herein to "Articles," "Sections" and other subdivisions are to the corresponding Articles, Sections or subdivisions of this Agreement, and the words "herein," "hereof," "hereunder" and other words of similar import refer to this Agreement as a whole and not to any particular Article, Section or subdivision hereof.

"Acquisition Agreement" means that certain Master Acquisition Agreement, dated as of February 1, 2017, by and between the City and the Developer.

"Act" means the Mello-Roos Community Facilities Act of 1982, as amended, being sections 53311 *et seq.* of the California Government Code.

"Administrative Expenses" means costs directly related to the administration of the CFD consisting of: the actual costs of computing the Special Taxes and preparing the annual Special Tax collection schedules (whether by a City employee or consultant or both) and the actual costs of collecting the Special Taxes (whether by the County or otherwise); the actual costs of remitting the Special Taxes to the Fiscal Agent; actual costs of the Fiscal Agent (including its legal counsel) in the discharge of its duties under this Agreement; the actual costs of the City or its designee of complying with the disclosure provisions of the Act and this Agreement, including those related to public inquiries regarding the Special Tax and disclosures to Owners of the Bonds and the Original Purchaser; costs of the dissemination agent, whether for the City or another party that has undertaken to provide continuing disclosure; the actual costs of the City or its designee related to an appeal of the Special Tax; any amounts required to be rebated to the federal government; an allocable share of the salaries of the City staff directly related to the foregoing and a proportionate amount of City general administrative overhead related thereto. Administrative Expenses shall also include amounts advanced by the City for any administrative purpose of the CFD, including costs related to prepayments of Special Taxes, recordings related to such prepayments and satisfaction of Special Taxes, amounts advanced to ensure maintenance of tax exemption, and the costs of prosecuting foreclosure of delinquent Special Taxes, which amounts advanced are subject to reimbursement from other sources, including proceeds of foreclosure.

“Administrative Expense Fund” means the fund designated the “Improvement Area No. 2 of the City of Tracy Community Facilities District No. 2016-2 (ECFD) Administrative Expense Fund” established and administered under Section 4.06.

“Agreement” means this Fiscal Agent Agreement, as it may be amended or supplemented from time to time by any Supplemental Agreement adopted pursuant to the provisions hereof.

“Annual Debt Service” means, for each Bond Year, the sum of (i) the interest due on the Outstanding Bonds in such Bond Year, assuming that the Outstanding Bonds are retired as scheduled, and (ii) the principal amount of the Outstanding Bonds due in such Bond Year (including any mandatory sinking payment due in such Bond Year).

“Auditor” means the auditor/controller of the County, or such other official at the County who is responsible for preparing property tax bills.

“Authorized Officer” means the Mayor, City Manager, Assistant City Manager, Finance Director, City Clerk or any other officer or employee authorized by the City Council of the City or by an Authorized Officer to undertake the action referenced in this Agreement as required to be undertaken by an Authorized Officer.

“Bond” or “Bonds” means the 2021 Bonds and, if the context requires, any Parity Bonds, at any time Outstanding under this Agreement or any Supplemental Agreement.

“Bond Counsel” means Jones Hall, A Professional Law Corporation or any other attorney or firm of attorneys acceptable to the City and nationally recognized for expertise in rendering opinions as to the legality and tax-exempt status of securities issued by public entities.

“Bond Fund” means the fund designated the “Improvement Area No. 2 of the City of Tracy, Community Facilities District No. 2016-2 (ECFD) Special Tax Bonds, Bond Fund” established and administered under Section 4.04.

“Bond Proceeds Account” means the account of that name within the Improvement Fund to be established and administered by the Fiscal Agent under Section 4.07.

“Bond Year” means the one-year period beginning on September 2nd in each year and ending on September 1 in the following year, except that the first Bond Year shall begin on the Closing Date and shall end on September 1, 2022.

“Business Day” means any day other than (i) a Saturday or a Sunday or (ii) a day on which banking institutions in the state in which the Fiscal Agent has its principal corporate trust office are authorized or obligated by law or executive order to be closed.

“CDIAC” means the California Debt and Investment Advisory Commission of the Office of the State Treasurer, or any successor agency, board or commission.

“CFD” means the "City of Tracy Community Facilities District No. 2016-2 (ECFD)" formed under the Resolution of Formation.

“City” means the City of Tracy, and any successor thereto.

“City Attorney” means any attorney or firm of attorneys employed by the City in the capacity of general counsel.

“City Council” means the City Council of the City, in its capacity as the legislative body of the CFD.

“Closing Date” means the date upon which there is a physical delivery of the 2021 Bonds in exchange for the amount representing the purchase price of the 2021 Bonds by the Original Purchaser.

“Continuing Disclosure Certificate” means that certain Continuing Disclosure Certificate executed by the City and dated the date of issuance and delivery of the 2021 Bonds, as originally executed and as it may be amended from time to time in accordance with the terms thereof.

“Costs of Issuance” means items of expense payable or reimbursable directly or indirectly by the City and related to the authorization, sale, delivery and issuance of the Bonds, which items of expense shall include, but not be limited to, printing costs, costs of reproducing and binding documents, closing costs, appraisal costs, filing and recording fees, fees and expenses of counsel to the City, initial fees and charges of the Fiscal Agent including its first annual administration fees and its legal fees and charges, including the allocated costs of in-house attorneys, expenses incurred by the City in connection with the issuance of the Bonds, Bond (underwriter’s) discount, legal fees and charges, including bond counsel, and counsel to any financial consultant, financial consultant’s fees, charges for execution, authentication, transportation and safekeeping of the Bonds and other costs, charges and fees in connection with the foregoing.

“Costs of Issuance Fund” means the fund designated the “Improvement Area No. 2 of the City of Tracy, Community Facilities District No. 2016-2 (ECFD) Special Tax Bonds, Costs of Issuance Fund” established and administered under Section 4.02.

“County” means the County of San Joaquin, California.

“Dated Date” means \_\_\_\_\_, 2021, the dated date of the 2021 Bonds, which is the Closing Date.

“Debt Service” means the scheduled amount of interest and amortization of principal payable on the 2021 Bonds under Sections 2.02 and 2.03 and the scheduled amount of interest and amortization of principal payable on any Parity Bonds during the period of computation, in each case excluding amounts scheduled during such period which relate to principal which has been retired before the beginning of such period.

“Depository” means (a) initially, DTC, and (b) any other Securities Depository acting as Depository for book-entry under Section 2.10.

“Developer” means Surland Communities, LLC, a California limited liability company, and its successors and assigns.

“DTC” means The Depository Trust Company, New York, New York, and its successors and assigns.

“Fair Market Value” means with respect to the Bonds the price at which a willing buyer would purchase the investment from a willing seller in a bona fide, arm’s length transaction (determined as of the date the contract to purchase or sell the investment becomes binding) if the investment is traded on an established securities market (within the meaning of section 1273 of the Tax Code) and, otherwise, the term “Fair Market Value” means the acquisition price in a bona fide arm’s length transaction (as referenced above) if (i) the investment is a certificate of deposit that is acquired in accordance with applicable regulations under the Tax Code, (ii) the investment is an agreement with specifically negotiated withdrawal or reinvestment provisions and a specifically negotiated interest rate (for example, a guaranteed investment contract, a forward supply contract or other investment agreement) that is acquired in accordance with applicable regulations under the Tax Code, (iii) the investment is a United States Treasury Security—State and Local Government Series that is acquired in accordance with applicable regulations of the United States Bureau of Public Debt, or (iv) any commingled investment fund in which the City and related parties do not own more than a 10% beneficial interest if the return paid by such fund is without regard to the source of the investment.

“Federal Securities” means: (a) any direct general obligations of the United States of America (including obligations issued or held in book entry form on the books of the Department of the Treasury of the United States of America), the payment of principal of and interest on which are unconditionally and fully guaranteed by the United States of America; and (b) any obligations the principal of and interest on which are unconditionally guaranteed by the United States of America.

“Finance Director” means the official of the City, or such official's designee, who acts in the capacity as the chief financial officer of the City, including the controller or other financial officer.

“Fiscal Agent” means U.S. Bank National Association, the Fiscal Agent appointed by the City and acting as an independent fiscal agent with the duties and powers herein provided, its successors and assigns, and any other corporation or association which may at any time be substituted in its place, as provided in Section 7.01.

“Fiscal Year” means the twelve-month period extending from July 1 in a calendar year to June 30 of the succeeding year, both dates inclusive.

“Improvement Area No. 2” means “Improvement Area No. 2 of the City of Tracy Community Facilities District No. 2016-2 (ECFD)” formed under the Act and in accordance with the Resolution of Formation.

“Improvement Fund” means the fund designated “Improvement Area No. 2 of the City of Tracy, Community Facilities District No. 2016-2 (ECFD), Special Tax Bonds, Improvement Fund,” established under Section 4.07.

“Independent Financial Consultant” means any consultant or firm of such consultants appointed by the City or the Treasurer, and who, or each of whom:

(i) is judged by the Treasurer to have experience in matters relating to the issuance and/or administration of bonds under the Act;

(ii) is in fact independent and not under the domination of the City;

(iii) does not have any substantial interest, direct or indirect, with or in the City, or any owner of real property in Improvement Area No. 2, or any real property in Improvement Area No. 2; and

(iv) is not connected with the City as an officer or employee of the City, but who may be regularly retained to make reports to the City.

“Interest Payment Date” means each September 1 and March 1 of every calendar year, commencing with March 1, 2022.

“Maximum Annual Debt Service” means the largest Annual Debt Service for any Bond Year after the calculation is made through the final maturity date of any Outstanding Bonds.

“Moody’s” means Moody’s Investors Service, Inc., and its successors.

“MSRB” means the Municipal Securities Rulemaking Board, through its EMMA system, and, in accordance with then current guidelines of the Securities and Exchange Commission, such other addresses and/or such services providing information with respect to called bonds as the City may designate in an Officer’s Certificate delivered to the Fiscal Agent.

“Officer’s Certificate” means a written certificate of the City signed by an Authorized Officer of the City.

“Ordinance” means any ordinance of the City Council of the City levying the Special Taxes, including but not limited to Ordinance No. 1230 introduced by the City Council on February 7, 2017, and adopted by the City Council on February 21, 2017.

“Original Purchaser” means Piper Sandler & Co., the first purchaser of the 2021 Bonds from the City.

“Outstanding.” when used as of any particular time with reference to Bonds, means (subject to the provisions of Section 8.04) all Bonds except (i) Bonds theretofore canceled by the Fiscal Agent or surrendered to the Fiscal Agent for cancellation; (ii) Bonds paid or deemed to have been paid within the meaning of Section 9.03; and (iii) Bonds in lieu of or in substitution for which other Bonds shall have been authorized, executed, issued and delivered by the City under this Agreement or any Supplemental Agreement.

“Owner” or “Bondowner” means any person who shall be the registered owner of any Outstanding Bond.

“Parity Bonds” means additional bonds issued and payable on a parity with the Bonds under Section 3.06.

“Participating Underwriter” shall have the meaning ascribed thereto in the Continuing Disclosure Certificate.

“Permitted Investments” means the following, but only to the extent that the same are acquired at Fair Market Value:

- (a) Federal Securities.

(b) any of the following direct or indirect obligations of the following agencies of the United States of America: (i) direct obligations of the Export-Import Bank; (ii) certificates of beneficial ownership issued by the Farmers Home Administration; (iii) participation certificates issued by the General Services Administration; (iv) mortgage-backed bonds or pass-through obligations issued and guaranteed by the Government National Mortgage Association, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation or the Federal Housing Administration; (v) project notes issued by the United States Department of Housing and Urban Development; and (vi) public housing notes and bonds guaranteed by the United States of America;

(c) interest-bearing demand or time deposits (including certificates of deposit), including those placed by a third party pursuant to a separate agreement between the City and the Fiscal Agent, banking deposit products, trust funds, trust accounts, overnight bank deposits, interest bearing deposits, interest bearing money market accounts or deposit accounts in federal or state chartered savings and loan associations or in federal or State of California banks (including the Fiscal Agent, its parent, if any, and affiliates), provided that (i) the unsecured short-term obligations of such commercial bank or savings and loan association shall be rated in the highest short-term rating category by any Rating Agency, or (ii) such demand or time deposits shall be fully insured by the Federal Deposit Insurance Corporation;

(d) commercial paper rated at the time of purchase in the highest short-term rating category by any Rating Agency, issued by corporations which are organized and operating within the United States of America, and which matures not more than 180 days following the date of investment therein;

(e) bankers acceptances, consisting of bills of exchange or time drafts drawn on and accepted by a commercial bank, including its parent (if any), affiliates and subsidiaries, whose short-term obligations are rated in the highest short-term rating category by any Rating Agency, or whose long-term obligations are rated A or better by any Rating Agency, which mature not more than 270 days following the date of investment therein;

(f) obligations the interest on which is excludable from gross income pursuant to Section 103 of the Tax Code and which are either (a) rated A or better by any Rating Agency, or (b) fully secured as to the payment of principal and interest by Federal Securities;

(g) obligations issued by any corporation organized and operating within the United States of America having assets in excess of \$500,000,000, which obligations are rated A or better by any Rating Agency;

(h) money market mutual funds (including money market funds for which the Fiscal Agent, its affiliates or subsidiaries provide investment advisory, transfer agency, custodial or other management services for which it receives and retains a fee for such services to the fund) which invest in Federal Securities or which are rated in the highest short-term rating category by any Rating Agency including those funds for which the Fiscal Agent or an affiliate receives and

retains a fee for services provided to the fund, whether as a custodian, transfer agent, investment advisor or otherwise; and

(i) any investment agreement representing general unsecured obligations of a financial institution rated A or better by any Rating Agency, by the terms of which the Fiscal Agent is permitted to withdraw all amounts invested therein in the event any such rating falls below A.

(j) the Local Agency Investment Fund established pursuant to Section 16429.1 of the Government Code of the State of California, *provided, however*, that the Fiscal Agent shall be permitted to make investments and withdrawals in its own name and the Fiscal Agent may restrict investments in the such fund if necessary to keep moneys available for the purposes of this Fiscal Agent Agreement.

(k) the California Asset Management Program.

“Principal Office” means such corporate trust office of the Fiscal Agent as may be designated from time to time by written notice from the Fiscal Agent to the City, initially being at the address set forth in Section 9.06, or such other office designated by the Fiscal Agent from time to time.

“Proceeds” when used with reference to the Bonds, means the face amount of the Bonds, plus any accrued interest and premium, less any original issue and/or underwriter’s discount.

“Project” means those items described as the “Facilities” in the Resolution of Formation.

“Qualified Reserve Account Credit Instrument” means an irrevocable standby or direct-pay letter of credit, insurance policy, or surety bond issued by a commercial bank or insurance company and deposited with the Fiscal Agent, provided that all of the following requirements are met at the time of acceptance thereof by the Fiscal Agent: (a) in the case of a commercial bank, the long-term credit rating of such bank at the time of delivery of the irrevocable standby or direct-pay letter of credit is at least “A” from S&P or “A” from Moody’s and, in the case of an insurance company, the claims paying ability of such insurance company at the time of delivery of the insurance policy or surety bond is at least “A” from S&P, or “A” from Moody’s or, if not rated by S&P or Moody’s but is rated by A.M. Best & Company, is rated at the time of delivery in the highest rating category by A.M. Best & Company; (b) such letter of credit, insurance policy or surety bond has a term of at least 12 months; (c) such letter of credit or surety bond has a stated amount at least equal to the portion of the 2021 Reserve Requirement with respect to which funds are proposed to be released; and (d) the Fiscal Agent is authorized pursuant to the terms of such letter of credit, insurance policy or surety bond to draw thereunder an amount equal to any deficiencies which may exist from time to time in the Bond Fund for the purpose of making payments with respect to the 2021 Bonds and any Parity Bonds.

“Rate and Method” means the Rate and Method of Apportionment of the Special Taxes for Improvement Area No. 2.

“Record Date” means the fifteenth day of the calendar month next preceding the applicable Interest Payment Date, whether or not such day is a Business Day.

“Refunding Bonds” means bonds issued by the City for the CFD with respect to Improvement Area No. 2, the net proceeds of which are used to refund all or a portion of the then-Outstanding Bonds; provided that the principal and interest on the Refunding Bonds to their final maturity date is less than the principal and interest on the Bonds being refunded to their final maturity date, and the final maturity of the Refunding Bonds is not later than the final maturity of the Bonds being refunded.

“Regulations” means temporary and permanent regulations promulgated under the Tax Code.

“Remainder Taxes” means the Special Taxes available for disbursement pursuant to Section 4.05(B)(iii).

“Remainder Taxes Account” means the account of that name within the Improvement Fund to be established and administered by the Fiscal Agent under Section 4.07.

“Remainder Taxes Period” means the period through and including the date that is the earlier of (i) the end of the 15th Fiscal Year during which Special Taxes have been levied on the property in Improvement Area No. 2 or (ii) the date the City has fully satisfied its reimbursement obligations under the Acquisition Agreement.

“Resolution” or “Resolution of Issuance” has the meaning given that term in the recitals hereof.

“Resolution of Formation” means (i) Resolution No. 2017-021, entitled “Resolution of Formation of Community Facilities District,” adopted by the City Council on February 7, 2017, forming the CFD and (ii) to the extent applicable with respect to Improvement Area No. 2, Resolution No. 2019-074, entitled “Confirming Annexation of Property and Confirming, Ordering and Directing Other Related Matters,” adopted by the City Council on April 16, 2019.

“Resolution of Necessity” means (i) Resolution No. 2017-022 adopted by the City Council on February 7, 2017.

“S&P” means S&P Global, a division of McGraw-Hill, and its successors and assigns.

“Securities Depositories” means DTC and, in accordance with then current guidelines of the Securities and Exchange Commission, such other securities depositories as the City may designate in an Officer’s Certificate delivered to the Fiscal Agent.

“Special Tax Fund” means the special fund designated “Improvement Area No. 2 of the City of Tracy, Community Facilities District No. 2016-2 (ECFD), Special Tax Fund” established and administered under Section 4.05.

“Special Tax Prepayments” means the proceeds of any Special Tax prepayments received by the City, as calculated pursuant to the Rate and Method, less any administrative fees or penalties collected as part of any such prepayment.

“Special Tax Prepayments Account” means the account by that name established within the Bond Fund under Section 4.04(A).

“Special Tax Revenues” means the proceeds of the Special Taxes received by the City, including any scheduled payments thereof and any Special Tax Prepayments, interest thereon and proceeds of the redemption or sale of property sold as a result of foreclosure of the lien of the Special Taxes to the amount of said lien and interest thereon, but shall not include any interest in excess of the interest due on the Bonds or any penalties collected in connection with any such foreclosure.

“Special Taxes” means the Facilities Special Tax levied by the City Council within Improvement Area No. 2 under the Act, the Rate and Method, the Ordinance and this Agreement.

“State” means the State of California.

“Supplemental Agreement” means an agreement the execution of which is authorized by a resolution which has been duly adopted by the City under the Act and which agreement is amendatory of or supplemental to this Agreement, but only if and to the extent that such agreement is specifically authorized hereunder.

“Tax Code” means the Internal Revenue Code of 1986 as in effect on the date of issuance of the Bonds or (except as otherwise referenced herein) as it may be amended to apply to obligations issued on the date of issuance of the Bonds, together with applicable temporary and final regulations promulgated, and applicable official public guidance published, under the Tax Code.

“Tax Consultant” means an independent financial or tax consultant retained by the City for the purpose of computing the Special Taxes.

“Term Bonds” means the (i) 2021 Bonds maturing on September 1, \_\_\_\_\_, and September 1, \_\_\_\_\_ and (ii) Parity Bonds identified as term bonds in a Supplemental Agreement.

“2021 Bonds” means the Bonds so designated and authorized to be issued under Section 2.01 hereof.

“2021 Reserve Fund” means the fund designated the “Improvement Area No. 2 of the City of Tracy, Community Facilities District No. 2016-2 (ECFD), Special Tax Bonds, Reserve Fund” established and administered under Section 4.03.

“2021 Reserve Requirement” means the amount as of any date of calculation equal to the least of (a) Maximum Annual Debt Service on the 2021 Bonds and Parity Bonds, if any, (b) 125% of average Annual Debt Service on the 2021 Bonds and Parity Bonds, if any and (c) 10% of the outstanding principal of the 2021 Bonds and Parity Bonds, if any; provided, however:

(A) that with respect to the calculation of clause (c), the issue price of the 2021 Bonds or any Parity Bonds excluding accrued interest shall be used rather than the outstanding principal amount, if (i) the net original issue discount or premium of the 2021 Bonds or any Parity Bonds was less than 98% or more than 102% of the original principal amount of the 2021 Bonds or any Parity Bonds and (ii) using the issue price would produce a lower result than using the outstanding principal amount;

(B) that in no event shall the amount calculated hereunder exceed the amount on deposit in the 2021 Reserve Fund on the date of issuance of the 2021 Bonds (if they are the only Bonds covered by the 2021 Reserve Fund) or the most recently issued series of Parity Bonds except in connection with any increase associated with the issuance of Parity Bonds; and

(C) that in no event shall the amount required to be deposited into the 2021 Reserve Fund in connection with the issuance of a series of Parity Bonds exceed the maximum amount under the Tax Code that can be financed with tax-exempt bonds and invested an unrestricted yield.

**ARTICLE II**  
**THE BONDS**

**Section 2.01. Principal Amount; Designation.** Subject to the provisions of Section 2 of the Resolution of Necessity, Bonds in the aggregate principal amount of \$16,000,000 are hereby authorized to be issued by the City for the CFD with respect to Improvement Area No. 2 under and subject to the terms of the Act, the Resolution, this Agreement and other applicable laws of the State of California.

The 2021 Bonds shall be designated as the "Improvement Area No. 2 of the City of Tracy Community Facilities District No. 2016-2 (ECFD) Special Tax Bonds, Series 2021," and shall be in the initial principal amount of \$\_\_\_\_\_.

**Section 2.02. Terms of the 2021 Bonds.**

**(A) Form; Denominations.** The 2021 Bonds shall be issued as fully registered Bonds without coupons. The 2021 Bonds shall be lettered and numbered in a customary manner as determined by the City. The 2021 Bonds shall be issued in the denominations of \$5,000 or any integral multiple of \$5,000 in excess thereof.

**(B) Date of 2021 Bonds.** The 2021 Bonds shall be dated the Closing Date.

**(C) CUSIP Identification Numbers.** "CUSIP" identification numbers may, at the election of the Original Purchaser of the Bonds, be imprinted on the Bonds, but such numbers shall not constitute a part of the contract evidenced by the Bonds and any error or omission with respect thereto shall not constitute cause for refusal of any purchaser to accept delivery of and pay for the Bonds. In addition, failure on the part of the City or the Fiscal Agent to use such CUSIP numbers in any notice to Owners shall not constitute an event of default or any violation of the City's contract with such Owners and shall not impair the effectiveness of any such notice.

**(D) Maturities; Interest Rates.** The 2021 Bonds shall mature and become payable on each September 1, and shall bear interest at the rates per annum indicated in the below table.

<u>Maturity</u> <u>(September 1)</u>	<u>Principal</u> <u>Amount</u>	<u>Interest</u> <u>Rate</u>
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\* Term Bond

**(E) Interest.** The 2021 Bonds shall bear interest at the rates set forth above payable on the Interest Payment Dates in each year. Interest on all Bonds shall be calculated on the basis of a 360-day year composed of twelve 30-day months. Each Bond shall bear interest from the Interest Payment Date next preceding the date of authentication thereof unless

(i) it is authenticated on an Interest Payment Date, in which event it shall bear interest from such date of authentication, or

(ii) it is authenticated prior to an Interest Payment Date and after the close of business on the Record Date preceding such Interest Payment Date, in which event it shall bear interest from such Interest Payment Date, or

(iii) it is authenticated on or before the Record Date preceding the first Interest Payment Date, in which event it shall bear interest from the Dated Date;

provided, however, that if at the time of authentication of a Bond, interest is in default thereon, such Bond shall bear interest from the Interest Payment Date to which interest has previously been paid or made available for payment thereon.

**(F) Method of Payment.** Interest on the Bonds (including the final interest payment upon maturity or earlier redemption), is payable on the applicable Interest Payment Date by check of the Fiscal Agent mailed by first class mail to the registered Owner thereof at such registered Owner's address as it appears on the registration books maintained by the Fiscal Agent at the close of business on the Record Date preceding the Interest Payment Date, or by wire transfer to an account located in the United States made on such Interest Payment Date upon written instructions of any Owner of \$1,000,000 or more in aggregate principal amount of Bonds delivered to the Fiscal Agent prior to the applicable Record Date, which shall continue in effect until revoked in writing, or until such Bonds are transferred to a new Owner.

The principal of the Bonds and any premium on the Bonds are payable in lawful money of the United States of America upon surrender of the Bonds at the Principal Office of the Fiscal Agent. All Bonds paid by the Fiscal Agent pursuant to this Section shall be canceled by the Fiscal Agent. The Fiscal Agent shall destroy the canceled Bonds and, upon request of the City, issue a certificate of destruction of such Bonds to the City.

**Section 2.03. Redemption.**

**(A) Redemption Provisions.**

(i) **Optional Redemption.** The 2021 Bonds maturing on or after September 1, \_\_\_\_, are subject to optional redemption as directed by the City, from sources of funds other than prepayments of Special Taxes, prior to their stated maturity on any date on or after September 1, \_\_\_\_, as a whole or in part, at a redemption price (expressed as a percentage of the principal amount of the 2021 Bonds to be redeemed), as set forth below, together with accrued interest thereon to the date fixed for redemption:

<u>Redemption Dates</u>	<u>Redemption Price</u>
September 1, ____ through August 31, ____	103%
September 1, ____ through August 31, ____	102
September 1, ____ through August 31, ____	101
September 1, ____ and any date thereafter	100

(ii) **Mandatory Sinking Fund Redemption.** The Term Bond maturing on September 1, \_\_\_\_, is subject to mandatory redemption in part by lot, from sinking fund payments made by the City from the Bond Fund, at a redemption price equal to the principal amount thereof to be redeemed, without premium, in the aggregate respective principal amounts all as set forth in the following table:

Sinking Fund  
Redemption Date  
(September 1)

Sinking Fund  
Payments

The Term Bond maturing on September 1, \_\_\_\_, is subject to mandatory redemption in part by lot, from sinking fund payments made by the City from the Bond Fund, at a redemption price equal to the principal amount thereof to be redeemed, without premium, in the aggregate respective principal amounts all as set forth in the following table:

Sinking Fund  
Redemption Date  
(September 1)

Sinking Fund  
Payments

Provided, however, if some but not all of the Term Bonds of a given maturity have been redeemed under subsection (i) above or subsection (iii) below, the total amount of all future Sinking Fund Payments relating to such maturity shall be reduced by the aggregate principal amount of Term Bonds of such maturity so redeemed, to be allocated among such Sinking Fund Payments on a pro rata basis in integral multiples of \$5,000 as determined by the City, notice of which shall be given by the City to the Fiscal Agent and the notice shall include a revised sinking fund schedule.

(iii) **Redemption from Special Tax Prepayments.** Special Tax Prepayments and any corresponding transfers from the 2021 Reserve Fund pursuant to Section 4.03(F) shall be used to redeem 2021 Bonds on the next Interest Payment Date for which notice of redemption can timely be given under Section 2.03(D), among maturities so as to maintain substantially the same debt service profile for the Bonds as in effect prior to such redemption and by lot within a maturity, at a redemption price (expressed as a percentage of the principal amount of the 2021 Bonds to be redeemed), as set forth below, together with accrued interest to the date fixed for redemption:

<u>Redemption Dates</u>	<u>Redemption Price</u>
Any Interest Payment Date on or before March 1, ____	103%
September 1, ____ and March 1, ____	102
September 1, ____ and March 1, ____	101
September 1, ____ and any Interest Payment Date thereafter	100

**(B) Notice to Fiscal Agent.** The City shall give the Fiscal Agent written notice of its intention to redeem Bonds under subsection (A)(i) and (A)(iii) not less than 45 days prior to the applicable redemption date or such lesser number of days as shall be acceptable to the Fiscal Agent.

**(C) Purchase of Bonds in Lieu of Redemption.** In lieu of redemption under Section 2.03(A), moneys in the Bond Fund may be used and withdrawn by the Fiscal Agent for purchase of Outstanding 2021 Bonds, upon the filing with the Fiscal Agent of an Officer's Certificate requesting such purchase, at public or private sale as and when, and at such prices (including brokerage and other charges) as such Officer's Certificate may provide, but in no event may 2021 Bonds be purchased at a price in excess of the principal amount thereof, plus interest accrued to the date of purchase and any premium which would otherwise be due if such 2021 Bonds were to be redeemed in accordance with this Agreement.

**(D) Redemption Procedure by Fiscal Agent.**

(i) **Notices.** The Fiscal Agent shall cause notice of any redemption to be mailed by first class mail, postage prepaid, or posted, at least thirty (30) days but not more than sixty (60) days prior to the date fixed for redemption, to the Securities Depositories and to the respective registered Owners of any Bonds designated for redemption, at their addresses appearing on the Bond registration books in the Principal Office of the Fiscal Agent; but such mailing shall not be a condition precedent to such redemption and failure to mail or to receive any such notice, or any defect therein, shall not affect the validity of the proceedings for the redemption of such Bonds. In addition, the Fiscal Agent shall file each notice of redemption with the MSRB through its EMMA system.

(ii) **Contents of Notices.** Such notice shall state the redemption date and the redemption price and, if less than all of the then Outstanding Bonds are to be called for redemption shall state as to any Bond called in part the principal amount thereof to be redeemed, and shall require that such Bonds be then surrendered at the Principal Office of the Fiscal Agent for redemption at the said redemption price, and shall state that further interest on such Bonds will not accrue from and after the redemption date. The cost of mailing any such redemption notice and any expenses incurred by the Fiscal Agent in connection therewith shall be paid by the City.

The City has the right to rescind any notice of the optional redemption of Bonds by written notice to the Fiscal Agent on or prior to the date fixed for redemption. Any notice of redemption shall be cancelled and annulled if for any reason funds will not be or are not available on the date fixed for redemption for the payment in full of the Bonds then called for redemption, and such cancellation shall not constitute a default under this Agreement. The City and the Fiscal Agent have no liability to the Owners or any other party related to or arising from such rescission of redemption. The Fiscal Agent shall mail notice of such rescission of redemption in the same manner as the original notice of redemption was sent under this Section.

(iii) **Selection of Bonds for Redemption.** Whenever provision is made in this Agreement for the redemption of less than all of the Bonds of any maturity or any given portion thereof, the Fiscal Agent shall select the Bonds to be redeemed, from all Bonds or such given portion thereof not previously called for redemption as directed by the City or, in the absence of direction by the City, on a pro rata basis among maturities,

and, within a maturity, by lot in any manner which the Fiscal Agent in its sole discretion deems appropriate.

(iv) **New Bonds.** Upon surrender of Bonds redeemed in part only, the City shall execute and the Fiscal Agent shall authenticate and deliver to the registered Owner, at the expense of the City, a new Bond or Bonds, of the same series and maturity, of authorized denominations in aggregate principal amount equal to the unredeemed portion of the Bond or Bonds of such registered Owner.

(E) **Effect of Redemption.** From and after the date fixed for redemption, if funds available for the payment of the principal of, and interest and any premium on, the Bonds so called for redemption shall have been deposited in the Bond Fund, such Bonds so called shall cease to be entitled to any benefit under this Agreement other than the right to receive payment of the redemption price, and no interest shall accrue thereon on or after the redemption date specified in the notice of redemption. All Bonds redeemed and purchased by the Fiscal Agent under this Section 2.03 shall be canceled by the Fiscal Agent. The Fiscal Agent shall destroy the canceled Bonds in accordance with the Fiscal Agent's retention policy then in effect.

**Section 2.04. Form of Bonds.** The 2021 Bonds, the Fiscal Agent's certificate of authentication and the assignment, to appear thereon, shall be substantially in the forms, respectively, set forth in Exhibit A attached hereto and by this reference incorporated herein, with necessary or appropriate variations, omissions and insertions, as permitted or required by this Agreement, the Resolution and the Act.

#### **Section 2.05. Execution and Authentication of Bonds.**

(A) **Execution.** The Bonds shall be executed on behalf of the City by the manual or facsimile signatures of its Mayor and its City Clerk who are in office on the date of execution of this Agreement or at any time thereafter. If any officer whose signature appears on any Bond ceases to be such officer before delivery of the Bonds to the Owner, such signature shall nevertheless be as effective as if the officer had remained in office until the delivery of the Bonds to the Owner. Any Bond may be signed and attested on behalf of the City by such persons as at the actual date of the execution of such Bond shall be the proper officers of the City although at the nominal date of such Bond any such person shall not have been such officer of the City.

(B) **Authentication.** Only such Bonds as shall bear thereon a certificate of authentication in substantially the form set forth in Exhibit A, executed and dated by the Fiscal Agent, shall be valid or obligatory for any purpose or entitled to the benefits of this Agreement, and such certificate of authentication of the Fiscal Agent shall be conclusive evidence that the Bonds registered hereunder have been duly authenticated, registered and delivered hereunder and are entitled to the benefits of this Agreement.

**Section 2.06. Transfer or Exchange of Bonds.** Any Bond may, in accordance with its terms, be transferred, upon the books required to be kept under the provisions of Section 2.07 by the person in whose name it is registered, in person or by such person's duly authorized attorney, upon surrender of such Bond for cancellation, accompanied by delivery of a duly written instrument of transfer in a form acceptable to the Fiscal Agent. Bonds may be exchanged at the Principal Office of the Fiscal Agent solely for a like aggregate principal amount of Bonds of authorized denominations and of the same maturity. The cost for any services rendered or any expenses incurred by the Fiscal Agent in connection with any such transfer or

exchange shall be paid by the City. The Fiscal Agent shall collect from the Owner requesting such transfer or exchange any tax or other governmental charge required to be paid with respect to such transfer or exchange. Whenever any Bond or Bonds shall be surrendered for transfer or exchange, the City shall execute and the Fiscal Agent shall authenticate and deliver a new Bond or Bonds, for a like aggregate principal amount. No transfers or exchanges of Bonds shall be required to be made (i) fifteen days prior to the date established by the Fiscal Agent for selection of Bonds for redemption or (ii) with respect to a Bond after such Bond has been selected for redemption; or (iii) between a Record Date and the succeeding Interest Payment Date.

**Section 2.07. Bond Register.** The Fiscal Agent will keep, or cause to be kept, at its Principal Office sufficient books for the registration and transfer of the Bonds which books shall show the series number, date, amount, rate of interest and last known owner of each Bond and shall at all times be open to inspection by the City during regular business hours upon reasonable notice; and, upon presentation for such purpose, the Fiscal Agent shall, under such reasonable regulations as it may prescribe, register or transfer or cause to be registered or transferred, on said books, the ownership of the Bonds as hereinbefore provided. The City and the Fiscal Agent will treat the Owner of any Bond whose name appears on the Bond register as the absolute Owner of such Bond for any and all purposes, and the City and the Fiscal Agent shall not be affected by any notice to the contrary. The City and the Fiscal Agent may rely on the address of the Owner as it appears in the Bond register for any and all purposes.

**Section 2.08. Temporary Bonds.** The Bonds may be initially issued in temporary form exchangeable for definitive Bonds when ready for delivery. The temporary Bonds may be printed, lithographed or typewritten, shall be of such authorized denominations as may be determined by the City, and may contain such reference to any of the provisions of this Agreement as may be appropriate. Every temporary Bond shall be executed by the City upon the same conditions and in substantially the same manner as the definitive Bonds. If the City issues temporary Bonds, it will execute and furnish definitive Bonds without delay and thereupon the temporary Bonds shall be surrendered, for cancellation, in exchange for the definitive Bonds at the Principal Office of the Fiscal Agent or at such other location as the Fiscal Agent shall designate, and the Fiscal Agent shall authenticate and deliver in exchange for such temporary Bonds an equal aggregate principal amount of definitive Bonds of authorized denominations. Until so exchanged, the temporary Bonds shall be entitled to the same benefits under this Agreement as definitive Bonds authenticated and delivered hereunder.

**Section 2.09. Bonds Mutilated, Lost, Destroyed or Stolen.**

**(A) Mutilated.** If any Bond shall become mutilated, at the expense of the Owner of such Bond, the City shall execute and the Fiscal Agent shall authenticate and deliver a replacement Bond of like tenor and principal amount in exchange and substitution for the Bond so mutilated, but only upon surrender to the Fiscal Agent of the Bond so mutilated. Every mutilated Bond so surrendered to the Fiscal Agent shall be canceled by it and destroyed by the Fiscal Agent, in accordance with the Fiscal Agent's retention policy then in effect.

**(B) Destroyed or Stolen.** If any Bond shall be lost, destroyed or stolen, the City shall execute and the Fiscal Agent shall authenticate and deliver a replacement Bond of like tenor and principal amount in lieu of and in substitution for the Bond so lost, destroyed or stolen, at the expense of the Owner, but only following provision by the Owner to the Fiscal Agent of indemnity for the City and the Fiscal Agent satisfactory to the Fiscal Agent and the City. The City may require payment of a sum not exceeding the actual cost of preparing each

replacement Bond delivered under this Section and the City and the Fiscal Agent may require payment of the expenses which may be incurred by the City and the Fiscal Agent for the preparation, execution, authentication and delivery thereof. Any Bond delivered under the provisions of this Section in lieu of any Bond alleged to be lost, destroyed or stolen shall constitute an original additional contractual obligation on the part of the City whether or not the Bond so alleged to be lost, destroyed or stolen is at any time enforceable by anyone, and shall be equally and proportionately entitled to the benefits of this Agreement with all other Bonds issued under this Agreement.

**(C) Additional Stock.** If the Fiscal Agent has an insufficient stock of unauthenticated printed Bonds for such purpose, it shall communicate with the Finance Director with respect to the printing of an additional stock of Bonds, in such quantities and as otherwise approved in writing by the Finance Director.

**Section 2.10. Book-Entry Only System.** DTC shall act as the initial Depository for the Bonds. One Bond for each maturity of the Bonds shall be initially executed, authenticated, and delivered as set forth herein with a separate fully registered certificate (in print or typewritten form). Upon initial execution, authentication, and delivery, the ownership of the Bonds shall be registered in the Bond register kept by the Fiscal Agent for the Bonds in the name of Cede & Co., as nominee of DTC or such nominee as DTC shall appoint in writing.

The Authorized Officers of the City and the Fiscal Agent are hereby authorized to take any and all actions as may be necessary and not inconsistent with this Agreement to qualify the Bonds for the Depository's book-entry system, including the execution of the Depository's required representation letter.

With respect to Bonds registered in the Bond register in the name of Cede & Co., as nominee of DTC, neither the City nor the Agent shall have any responsibility or obligation to any broker-dealer, bank, or other financial institution for which DTC holds Bonds as Depository from time to time (the "DTC Participants") or to any person for which a DTC Participant acquires an interest in the Bonds (the "Beneficial Owners"). Without limiting the immediately preceding sentence, neither the City nor the Fiscal Agent shall have any responsibility or obligation with respect to (i) the accuracy of the records of DTC, Cede & Co., or any DTC Participant with respect to any ownership interest in the Bonds, (ii) the delivery to any DTC Participant, any Beneficial Owner, or any other person, other than DTC, of any notice with respect to the Bonds, including any Bonds to be redeemed in the event the City elects to redeem the Bonds, in part, (iii) the selection by the Depository of the beneficial interests in the Bonds to be redeemed in the event the City elects to redeem the Bonds in part, (iv) the payments to any DTC Participant, any Beneficial Owner, or any person, other than DTC, of any amount with respect to the principal of or interest or premium on the Bonds, or (v) any consent given or other action taken by the Depository as Owner of the Bonds.

Except as set forth above, the City and the Fiscal Agent may treat as and deem DTC to be the absolute Owner of each Bond, for which DTC is acting as Depository for the purpose of payment of the principal of and premium and interest on such Bonds, for the purpose of giving notices of redemption and other matters with respect to such Bonds, for the purpose of registering transfers with respect to such Bonds, and for all purposes whatsoever. The Fiscal Agent on behalf of the City shall pay all principal of and premium and interest on the Bonds only to or upon the order of the Owners as shown on the Bond register, and all such payments shall be valid and effective to fully satisfy and discharge all obligations with respect to the principal of and premium and interest on the Bonds to the extent of the sums or sums so paid.

No person other than an Owner, as shown on the Bond register, shall receive a physical Bond. Upon delivery by DTC to the City and the Fiscal Agent of written notice to the effect the DTC has determined to substitute a new nominee in place of Cede & Co., and subject to the transfer provisions in Section 2.06 hereof, references to "Cede & Co." in this Section 2.10 shall refer to such new nominee of DTC.

DTC may determine to discontinue providing its services with respect to the Bonds at any time by giving written notice to the City and to the Fiscal Agent during any time that the Bonds are Outstanding, and discharging its responsibilities with respect thereto under applicable law. The City may terminate the services of DTC with respect to the Bonds if it determines that DTC is unable to discharge its responsibilities with respect to the Bonds or that continuation of the system of book-entry transfer through DTC is not in the best interest of the Beneficial Owners, and the City shall mail notice of such termination to the Fiscal Agent.

Upon termination of the services of DTC as provided in the previous paragraph, and if no substitute Depository willing to undertake the functions hereunder can be found which is willing to undertake such functions upon reasonable or customary terms, or if the City determines that it is in the best interest of the Beneficial Owners of the Bonds that they be able to obtain certified Bonds, the Bonds shall no longer be restricted to being registered in the Bond register of the Fiscal Agent in the name of Cede & Co., as nominee of DTC, but may be registered in whatever name or names the Owners shall designate at that time, in accordance with Section 2.06.

To the extent that the Beneficial Owners are designated as the transferee by the Owners, in accordance with Section 2.06, the Bonds will be delivered to such Beneficial Owners.

## ARTICLE III

### ISSUANCE OF BONDS

**Section 3.01. Issuance and Delivery of 2021 Bonds.** At any time after the execution of this Agreement, the City may issue the 2021 Bonds for the CFD with respect to Improvement Area No. 2 in the aggregate principal amount set forth in Section 2.01 and deliver the 2021 Bonds to the Fiscal Agent for authentication and delivery to the Original Purchaser. The Authorized Officers of the City are hereby authorized and directed to execute and deliver any and all documents and instruments necessary to cause the issuance of the 2021 Bonds in accordance with the provisions of the Act, the Resolution and this Agreement, to authorize the payment of Costs of Issuance and costs of the Project by the Fiscal Agent from the proceeds of the 2021 Bonds and to do and cause to be done any and all acts and things necessary or convenient for the timely delivery of the 2021 Bonds to the Original Purchaser. The Fiscal Agent is hereby authorized and directed to authenticate the 2021 Bonds and deliver them to the Original Purchaser, upon receipt of the purchase price for the 2021 Bonds.

**Section 3.02. Pledge of Special Tax Revenues.** The Bonds shall be secured by a first pledge (which pledge shall be effected in the manner and to the extent herein provided) of all of the Special Tax Revenues and all moneys deposited in the Bond Fund (including the Special Tax Prepayments Account), and, until disbursed as provided herein, in the Special Tax Fund. The Special Tax Revenues and all moneys deposited into such funds (except as otherwise provided herein) are hereby dedicated to the payment of the principal of, and interest and any premium on, the Bonds as provided herein and in the Act until all of the Bonds have been paid and retired or until moneys or Federal Securities have been set aside irrevocably for that purpose under Section 9.03.

The 2021 Bonds and all Parity Bonds shall be secured by a first pledge (which pledge shall be effected in the manner and to the extent herein provided) of all moneys deposited in the 2021 Reserve Fund. The moneys in the 2021 Reserve Fund (except as otherwise provided herein) are hereby dedicated to the payment of the principal of, and interest and any premium on, the 2021 Bonds and all Parity Bonds as provided herein and in the Act until all of the 2021 Bonds and all Parity Bonds have been paid and retired or until moneys or Federal Securities have been set aside irrevocably for that purpose under Section 9.03.

Amounts in the Improvement Fund (and the accounts therein), the Administrative Expense Fund and the Costs of Issuance Fund are not pledged to the repayment of the Bonds. The Project is not pledged to the repayment of the Bonds, nor are the proceeds of any condemnation or insurance award received by the City with respect to the Project.

**Section 3.03. Limited Obligation.** All obligations of the City under this Agreement and the Bonds shall not be general obligations of the City, but shall be limited obligations, payable solely from the Special Tax Revenues and the funds pledged therefor hereunder. Neither the faith and credit nor the taxing power of the City (except to the limited extent set forth herein) or of the State of California or any political subdivision thereof is pledged to the payment of the Bonds.

**Section 3.04. No Acceleration.** The principal of the Bonds shall not be subject to acceleration hereunder. Nothing in this Section shall in any way prohibit the redemption of

Bonds under Section 2.03, or the defeasance of the Bonds and discharge of this Agreement under Section 9.03.

**Section 3.05. Validity of Bonds.** The validity of the authorization and issuance of the Bonds shall not be dependent upon the completion of the acquisition of the Project or upon the performance by any person of his obligation with respect to the Project.

**Section 3.06. Parity Bonds.** In addition to the 2021 Bonds, the City may issue Refunding Bonds as Parity Bonds in such principal amount as shall be determined by the City, under a Supplemental Agreement entered into by the City and the Fiscal Agent. Any such Parity Bonds shall constitute Bonds hereunder and shall be secured by a lien on the Special Tax Revenues and funds pledged for the payment of the Bonds hereunder on a parity with all other Bonds Outstanding hereunder. The City may issue such Parity Bonds subject to the following specific conditions precedent:

**(A) Compliance.** Following issuance of the Parity Bonds, the City shall be in compliance with all covenants set forth in this Agreement and all Supplemental Agreements, and issuance of the Parity Bonds shall not cause the City to exceed the bonded indebtedness limit of Improvement Area No. 2.

**(B) Same Payment Dates.** The Supplemental Agreement providing for the issuance of such Parity Bonds shall provide that interest thereon shall be payable on the Interest Payment Dates, and principal thereof shall be payable on September 1 (provided that there shall be no requirement that any Parity Bonds pay interest on a current basis).

**(C) Debt Service Reserve Fund.** The Supplemental Agreement providing for issuance of the Parity Bonds shall provide for a deposit to the 2021 Reserve Fund in an amount necessary such that the amount deposited therein shall equal the 2021 Reserve Requirement following issuance of the Parity Bonds.

**(D) Certificates.** The City shall deliver to the Fiscal Agent an Officer's Certificate certifying that the conditions precedent to the issuance of such Parity Bonds set forth in subsections (A), (B), and (C) of this Section 3.06 have been satisfied.

Nothing in this Section 3.06 shall prohibit the City from issuing any other bonds or otherwise incurring debt secured by a pledge of the Special Tax Revenues subordinate to the pledge thereof under Section 3.02 of this Agreement.

## ARTICLE IV

### PROCEEDS, FUNDS AND ACCOUNTS

**Section 4.01. Application of 2021 Bond Proceeds.** The Proceeds of the 2021 Bonds received from the Original Purchaser in the amount of \$\_\_\_\_\_ (which is equal to the initial principal amount of the 2021 Bonds, *plus* a net original issue premium of \$\_\_\_\_\_, *less* an underwriter's discount in the amount of \$\_\_\_\_\_) shall be paid to the Fiscal Agent, which shall deposit the Proceeds on the Closing Date as follows:

- (i) \$\_\_\_\_\_ into the Costs of Issuance Fund;
- (ii) \$\_\_\_\_\_ into the 2021 Reserve Fund equaling the initial 2021 Reserve Requirement; and
- (iii) \$\_\_\_\_\_ into the Bond Proceeds Account of the Improvement Fund.

The Fiscal Agent may, in its discretion, establish a temporary fund or account to facilitate the foregoing deposits.

#### **Section 4.02. Costs of Issuance Fund.**

**(A) Establishment of Costs of Issuance Fund.** The Costs of Issuance Fund is hereby established as a separate fund to be held by the Fiscal Agent, to the credit of which a deposit shall be made as required by Section 4.01. Moneys in the Costs of Issuance Fund shall be held by the Fiscal Agent for the benefit of the City and shall be disbursed as provided in subsection (B) of this Section for the payment or reimbursement of Costs of Issuance.

**(B) Disbursement.** Amounts in the Costs of Issuance Fund shall be disbursed from time to time to pay Costs of Issuance, as set forth in a requisition substantially in the form of Exhibit C hereto, executed by the Finance Director, containing respective amounts to be paid to the designated payees and delivered to the Fiscal Agent. Each such requisition shall be sufficient evidence to the Fiscal Agent of the facts stated therein and the Fiscal Agent shall have no duty to confirm the accuracy of such facts.

**(C) Investment.** Moneys in the Costs of Issuance Fund shall be invested and deposited by the Fiscal Agent under Section 6.01. Interest earnings and profits resulting from such investment shall be retained by the Fiscal Agent in the Costs of Issuance Fund to be used for the purposes of such fund.

**(D) Closing of Fund.** The Fiscal Agent shall maintain the Costs of Issuance Fund for a period of 90 days from the Closing Date and then the Fiscal Agent shall transfer any moneys remaining therein, including any investment earnings thereon, to the Bond Proceeds Account of the Improvement Fund and used for the purposes thereof.

### **Section 4.03. 2021 Reserve Fund.**

**(A) Establishment of Fund.** The 2021 Reserve Fund is hereby established as a separate fund to be held by the Fiscal Agent to the credit of which a deposit shall be made as required by Section 4.01, which deposit, as of the Closing Date, is equal to the initial 2021 Reserve Requirement with respect to the 2021 Bonds, and deposits shall be made as provided in Sections 3.06(C) and 4.05(A) and (B). Moneys in the 2021 Reserve Fund shall be held by the Fiscal Agent for the benefit of the Owners of the 2021 Bonds and any Parity Bonds as a reserve for the payment of the principal of, and interest and any premium on, the 2021 Bonds and any Parity Bonds and shall be subject to a lien in favor of the Owners of the 2021 Bonds and any Parity Bonds.

**(B) Use of Reserve Fund.** Except as otherwise provided in this Section, all amounts deposited in the 2021 Reserve Fund shall be used and withdrawn by the Fiscal Agent solely for the purpose of making transfers to the Bond Fund in the event of any deficiency at any time in the Bond Fund of the amount then required for payment of the principal of, and interest and any premium on, the 2021 Bonds and any Parity Bonds or, in accordance with the provisions of this Section, for the purpose of redeeming 2021 Bonds and any Parity Bonds from the Bond Fund. Whenever a transfer is made from the 2021 Reserve Fund to the Bond Fund due to a deficiency in the Bond Fund for payment of the principal of, and interest and any premium on, the 2021 Bonds and any Parity Bonds, the Fiscal Agent shall provide written notice thereof to the Finance Director, specifying the amount withdrawn.

**(C) Transfer of Excess of Reserve Requirement.** Whenever, on or before any Interest Payment Date, or on any other date at the request of the Finance Director, the amount in the 2021 Reserve Fund exceeds the 2021 Reserve Requirement, the Fiscal Agent shall transfer an amount equal to the excess from the 2021 Reserve Fund to the Bond Fund, to be used to pay interest on the 2021 Bonds and any Parity Bonds on the next Interest Payment Date.

**(D) Transfer for Rebate Purposes.** Amounts in the 2021 Reserve Fund shall be withdrawn for purposes of making payment to the federal government to comply with Section 5.11, upon receipt by the Fiscal Agent of an Officer's Certificate specifying the amount to be withdrawn and to the effect that such amount is needed for rebate purposes; *provided, however*, that no amounts in the 2021 Reserve Fund shall be used for rebate unless the amount in the 2021 Reserve Fund following such withdrawal equals the 2021 Reserve Requirement.

**(E) Transfer When Balance Exceeds Outstanding Bonds.** Whenever the balance in the 2021 Reserve Fund exceeds the amount required to redeem or pay the Outstanding 2021 Bonds and all Outstanding Parity Bonds, including interest accrued to the date of payment or redemption and premium, if any, due upon redemption, the Fiscal Agent shall, upon the written request of the Finance Director, transfer any cash or Permitted Investments in the 2021 Reserve Fund to the Bond Fund to be applied, on the redemption date to the payment and redemption, in accordance with Section 4.04 or 2.03 and the provisions of the Supplemental Agreement related to the Parity Bonds, as applicable, of all of the Outstanding 2021 Bonds and Outstanding Parity Bonds.

In the event that the amount so transferred from the 2021 Reserve Fund to the Bond Fund exceeds the amount required to pay and redeem the Outstanding 2021 Bonds and Outstanding Parity Bonds, the balance in the 2021 Reserve Fund shall be transferred to the Finance Director to be used by the City for any lawful purpose.

Notwithstanding the provisions of the first paragraph of this Section 4.03(E), no amounts shall be transferred from the 2021 Reserve Fund under this Section 4.03(E) until after: (i) the calculation of any amounts due to the federal government under Section 5.11 and withdrawal of any such amount under Section 4.03(D) for purposes of making such payment to the federal government; and (ii) payment of any fees and expenses due to the Fiscal Agent.

**(F) Transfer Upon Special Tax Prepayment.** Whenever Special Taxes are prepaid and 2021 Bonds or any Parity Bonds are to be redeemed with the proceeds of such prepayment pursuant to Section 2.03(A)(iii) or a Supplemental Agreement related to any Parity Bonds, any resulting reduction in the 2021 Reserve Requirement shall be transferred on the Business Day prior to the redemption date by the Fiscal Agent to the Bond Fund to be applied to the redemption of the 2021 Bonds pursuant to Section 2.03(A)(iii) or a Supplemental Agreement related to any Parity Bonds. The Finance Director shall deliver to the Fiscal Agent an Officer's Certificate specifying any amount to be so transferred, and the Fiscal Agent may rely on any such Officer's Certificate.

**(G) Investment.** Moneys in the 2021 Reserve Fund shall be invested by the Fiscal Agent under Section 6.01.

**(H) Qualified Reserve Account Credit Instruments.** The City shall have the right at any time to direct the Fiscal Agent to release funds from the 2021 Reserve Fund, in whole or in part, by tendering to the Fiscal Agent: (i) a Qualified Reserve Account Credit Instrument, and (ii) an opinion of Bond Counsel stating that neither the release of such funds nor the acceptance of such Qualified Reserve Account Credit Instrument will cause interest on the 2021 Bonds or any Parity Bonds the interest on which is excluded from gross income of the owners thereof for federal income tax purposes to become includable in gross income for purposes of federal income taxation. Upon tender of such items to the Fiscal Agent, and upon delivery by the City to the Fiscal Agent of a written calculation of the amount permitted to be released from the 2021 Reserve Fund (upon which calculation the Fiscal Agent may conclusively rely), the Fiscal Agent shall transfer such funds from the 2021 Reserve Fund to the Bond Proceeds Account of the Improvement Fund to be used for the purposes thereof. The Fiscal Agent shall comply with all documentation relating to a Qualified Reserve Account Credit Instrument as shall be required to maintain such Qualified Reserve Account Credit Instrument in full force and effect and as shall be required to receive payments thereunder in the event and to the extent required to make any payment when and as required under this Section. Upon the scheduled expiration of any Qualified Reserve Account Credit Instrument, the City shall either (i) replace such Qualified Reserve Account Credit Instrument with a new Qualified Reserve Account Credit Instrument, or (ii) deposit or cause to be deposited with the Fiscal Agent an amount of funds equal to the 2021 Reserve Requirement, to be derived from the first available Special Tax

Revenues. If the 2021 Reserve Requirement is being maintained partially in cash and partially with a Qualified Reserve Account Credit Instrument, the cash shall be first used to meet any deficiency which may exist from time to time in the Bond Fund with respect to the 2021 Bonds and any Parity Bonds. If the 2021 Reserve Requirement is being maintained with two or more Qualified Reserve Account Credit Instruments, any draw to meet a deficiency which may exist from time to time in the Bond Fund with respect to the 2021 Bonds and any Parity Bonds shall be pro-rata with respect to each such instrument.

In the event that a Qualified Reserve Account Credit Instrument is available to be drawn upon for only one or more particular series of Bonds, a separate subaccount in the 2021 Reserve Fund may be established for such series, and the calculation of the 2021 Reserve Requirement with respect to any Parity Bonds shall exclude the debt service on such issue of Parity Bonds.

The City will have no obligation to replace a Qualified Reserve Account Credit Instrument or to fund the 2021 Reserve Fund with cash if, at any time that the 2021 Bonds are Outstanding, the Qualified Reserve Account Credit Instrument (or its provider) is downgraded or the provider becomes insolvent, if there is an unscheduled termination of the Qualified Reserve Account or if for any reason insufficient amounts are available to be drawn upon under the Qualified Reserve Account Credit Instrument; provided, however, that the City shall reimburse the provider, in accordance with the terms of the Qualified Reserve Account Credit Instrument, for any draws made thereon.

The City and the Fiscal Agent shall comply with the terms of the Qualified Reserve Account Credit Instrument as shall be required to receive payments thereunder in the event and to the extent required under this Section.

#### **Section 4.04. Bond Fund.**

**(A) Establishment of Bond Fund.** The Bond Fund is hereby established as a separate fund to be held by the Fiscal Agent to the credit of which deposits shall be made as required by Section 4.07, Section 4.05 and Section 4.03 and as otherwise set forth in this Agreement. Moneys in the Bond Fund shall be held by the Fiscal Agent for the benefit of the City and the Owners of the Bonds, and shall be disbursed for the payment of the principal of, and interest and any premium on, the Bonds as provided below.

There is also hereby created in the Bond Fund a separate account to be held by the Fiscal Agent, designated the "Special Tax Prepayments Account," to the credit of which deposits shall be made as provided in clause (iii) of the second paragraph of Section 4.05(A).

**(B) Disbursements.** At least 10 Business Days before each Interest Payment Date, the Fiscal Agent shall notify the Finance Director in writing as to the principal and premium, if any, and interest due on the Bonds on the next Interest Payment Date (whether as a result of scheduled principal of and interest on the Bonds, optional redemption of the Bonds or a mandatory sinking fund redemption). On each Interest Payment Date, the Fiscal Agent shall withdraw from the Bond Fund and pay to the Owners of the Bonds the principal of, and

interest and any premium, due and payable on such Interest Payment Date on the Bonds.

At least 5 Business Days prior to each Interest Payment Date, the Fiscal Agent shall determine if the amounts then on deposit in the Bond Fund are sufficient to pay the Debt Service due on the Bonds on the next Interest Payment Date. In the event that amounts in the Bond Fund are insufficient for such purpose, the Fiscal Agent promptly shall notify the Finance Director by telephone (and confirm in writing) of the amount of the insufficiency.

In the event that amounts in the Bond Fund are insufficient for the purpose set forth in the preceding paragraph with respect to any Interest Payment Date, the Fiscal Agent shall withdraw from the 2021 Reserve Fund, in accordance with the provisions of Section 4.03, to the extent of any funds or Permitted Investments therein, amounts to cover the amount of such Bond Fund insufficiency related to the 2021 Bonds and any Parity Bonds. Amounts so withdrawn from the 2021 Reserve Fund shall be deposited in the Bond Fund.

If, after the foregoing transfers, there are insufficient funds in the Bond Fund to make the payments provided for in the second sentence of the first paragraph of this Section 4.04(B), the Fiscal Agent shall apply the available funds first to the payment of interest on the Bonds, then to the payment of principal due on the Bonds other than by reason of sinking payments, if any, and then to payment of principal due on the Bonds by reason of sinking payments.

**(C) Disbursements from the Special Tax Prepayments Account.** Moneys in the Special Tax Prepayments Account shall be transferred by the Fiscal Agent to the Bond Fund on the next date for which notice of redemption of Bonds can timely be given under Section 2.03(A)(iii), and notice to the Fiscal Agent can timely be given under Section 2.03(B), and shall be used (together with any amounts transferred pursuant to Section 4.03(F)) to redeem Bonds on the redemption date selected in accordance with Section 2.03.

**(D) Investment.** Moneys in the Bond Fund and the Special Tax Prepayments Account shall be invested under Section 6.01. Interest earnings and profits resulting from such investment shall be retained in the Bond Fund.

**(E) Deficiency.** If at any time it appears to the Fiscal Agent that there is a danger of deficiency in the Bond Fund and that the Fiscal Agent may be unable to pay Debt Service on the Bonds in a timely manner, the Fiscal Agent shall report to the Finance Director such fact. The City covenants to increase the levy of the Special Taxes in the next Fiscal Year (subject to the maximum amount authorized by the Resolution of Formation) in accordance with the procedures set forth in the Act for the purpose of curing Bond Fund deficiencies.

**(F) Excess.** Any excess moneys remaining in the Bond Fund following the payment of Debt Service on the Bonds on any September 1, shall be transferred to the Special Tax Fund.

#### **Section 4.05. Special Tax Fund.**

**(A) Establishment of Special Tax Fund.** The Special Tax Fund is hereby established as a separate fund to be held by the Fiscal Agent, to the credit of which the Fiscal Agent shall deposit amounts received from or on behalf of the City consisting of Special Tax Revenues and amounts transferred from the Administrative Expense Fund and the Bond Fund. The City shall promptly remit any Special Tax Revenues received by it to the Fiscal Agent for deposit by the Fiscal Agent to the Special Tax Fund.

Notwithstanding the foregoing,

(i) Special Tax Revenues in an amount not to exceed the amount included in the Special Tax levy for such Fiscal Year for Administrative Expenses shall be separately identified by the Finance Director and shall be deposited by the Fiscal Agent in the Administrative Expense Fund;

(ii) any Special Tax Revenues constituting the collection of delinquencies in payment of Special Taxes shall be separately identified by the Finance Director and shall be disposed of by the Fiscal Agent first, for transfer to the Bond Fund to pay any past due Debt Service on the Bonds; second, for transfer to the 2021 Reserve Fund to the extent needed to increase the amount then on deposit in the 2021 Reserve Fund up to the then 2021 Reserve Requirement; and third, to be held in the Special Tax Fund for use as described in Section 4.05(B) below; and

(iii) any proceeds of Special Tax Prepayments shall be separately identified by the Finance Director and shall be deposited by the Fiscal Agent as follows (as directed in writing by the Finance Director): (a) that portion of any Special Tax Prepayment constituting a prepayment of construction costs (which otherwise could have been included in the proceeds of Parity Bonds) shall be deposited by the Fiscal Agent to the Bond Proceeds Account of the Improvement Fund and (b) the remaining Special Tax Prepayment shall be deposited by the Fiscal Agent in the Special Tax Prepayments Account established pursuant to Section 4.04(A).

**(B) Disbursements.** At least 7 Business Days prior to each Interest Payment Date, the Fiscal Agent shall withdraw from the Special Tax Fund and transfer the following amounts in the following order of priority:

(i) to the Bond Fund an amount, taking into account any amounts then on deposit in the Bond Fund and any expected transfers from the Improvement Fund, the 2021 Reserve Fund, and the Special Tax Prepayments Account to the Bond Fund such that the amount in the Bond Fund equals the principal (including any sinking payment), premium, if any, and interest due on the Bonds on such Interest Payment Date and any past due principal or interest on the Bonds not theretofore paid from a transfer described in subparagraph (ii) of the second paragraph of Section 4.05(A),

(ii) without preference or priority (a) to the 2021 Reserve Fund an amount, taking into account amounts then on deposit in the 2021 Reserve Fund, such that the amount in the 2021 Reserve Fund is equal to the 2021 Reserve Requirement, and

(iii) (A) on each October 1, beginning on October 1, 2022 and continuing through the Remainder Taxes Period, all of the moneys remaining in the Special Tax Fund shall be transferred to the Remainder Taxes Account and (B) on each subsequent October 1 after the end of the Remainder Tax Period, all or a portion of the moneys remaining in the Special Tax Fund shall be transferred to the Remainder Taxes Account as directed by the Finance Director.

Within 15 days after the end of each Bond Year after the Remainder Taxes Account is closed pursuant to Section 4.07, and after the foregoing transfers have been made, the Fiscal Agent shall transfer all amounts remaining on deposit in the Special Tax Fund to the Administrative Expense Fund, to be used as set forth in Section 4.06 below.

**(C) Investment.** Moneys in the Special Tax Fund shall be invested and deposited by the Fiscal Agent under Section 6.01. Interest earnings and profits resulting from such investment and deposit shall be retained in the Special Tax Fund to be used for the purposes thereof.

#### **Section 4.06. Administrative Expense Fund.**

**(A) Establishment of Administrative Expense Fund.** The Administrative Expense Fund is hereby established as a separate fund to be held by the Fiscal Agent, to the credit of which deposits shall be made as required by Section 4.05(A). Moneys in the Administrative Expense Fund shall be held by the Fiscal Agent for the benefit of the City, and shall be disbursed as provided below.

**(B) Disbursement.** Amounts in the Administrative Expense Fund shall be withdrawn by the Fiscal Agent and paid to the City or its order upon receipt by the Fiscal Agent of an Officer's Certificate, in substantially the form of Exhibit D hereto, stating the amount to be withdrawn, that such amount is to be used to pay an Administrative Expense or a Cost of Issuance and the nature of such Administrative Expense or such Cost of Issuance.

Annually, on the last day of each Fiscal Year, the Fiscal Agent shall withdraw from the Administrative Expense Fund and transfer to the Special Tax Fund any amount in excess of that which is needed to pay any Administrative Expenses incurred but not yet paid, and which are not otherwise encumbered, as identified by the Finance Director in an Officer's Certificate.

**(C) Investment.** Moneys in the Administrative Expense Fund shall be invested by the Fiscal Agent under Section 6.01. Interest earnings and profits resulting from such investment shall be retained by the Fiscal Agent in the Administrative Expense Fund to be used for the purposes of such fund.

**(D) Order of Expenditure.** Proceeds of the 2021 Bonds deposited into the Administrative Expense Fund (if any) shall be spent before any other moneys in the Administrative Expense Fund.

**Section 4.07. Improvement Fund.**

**(A) Establishment of Improvement Fund.** The Improvement Fund is hereby established as a separate fund to be held by the Fiscal Agent and to the credit of which fund deposits shall be made as required by Sections 4.01, 4.02(D) and 4.05(A). The Remainder Taxes Account and the Bond Proceeds Account are hereby established as separate accounts within the Improvement Fund to be held by the Fiscal Agent.

Moneys in the Improvement Fund shall be disbursed, except as otherwise provided in subsections (B) and (D) of this Section, for the payment or reimbursement of costs of the Project.

**(B) Procedure for Disbursement.** Disbursements from the Improvement Fund shall be made by the Fiscal Agent upon receipt of an Officer's Certificate substantially in the form of Exhibit B attached hereto which shall:

(i) set forth the amount required to be disbursed, the purpose for which the disbursement is to be made (which shall be for payment of a Project cost or to reimburse expenditures of the City or any other party for Project costs previously paid), and the person to which the disbursement is to be paid; and

(ii) certify that no portion of the amount then being requested to be disbursed was set forth in any Officers Certificate previously filed requesting disbursement.

Each such requisition shall be sufficient evidence to the Fiscal Agent of the facts stated therein and the Fiscal Agent shall have no duty to confirm the accuracy of such facts.

Disbursements for the payment or reimbursement of costs of the Project shall be made from the Bond Proceeds Account and the Remainder Taxes Account in the following order:

First: payments or reimbursements shall be made from the Bond Proceeds Account so long as there are moneys available therein and such costs can be paid from Bond proceeds without violating the covenants set forth in Sections 5.09-5.14 and

Second: payments or reimbursements shall be made from the Remainder Taxes Account (1) even if Bond proceeds remain in the Bond Proceeds Account, if such payment or reimbursement would violate the covenants set forth in Sections 5.09-5.14 and (2) when no Bond proceeds remain in the Bond Proceeds Account.

At the direction of the Finance Director, and so long as such amounts have not been previously approved for payment of a Project cost, the Fiscal Agent shall transfer amounts from the Remainder Taxes Account to the Bond Fund to pay Debt Service on the Bonds, Administrative Expense Fund to pay Administrative Expenses and 2021 Reserve Fund to increase the amount therein to the 2021 Reserve Requirement.

**(C) Investment.** Moneys in the Improvement Fund shall be invested in accordance with Section 6.01. Interest earnings and profits from such investment shall be retained in the Improvement Fund to be used for the purpose of such fund.

**(D) Closing of Fund.** When the City believes that the Project has been completed, it shall provide a written notice to the Developer that the City believes the Project has been completed and that the Improvement Fund, Bond Proceeds Account and Remainder Taxes Account should be closed. The Developer shall have 30 days after receipt of such notice to dispute the City's finding or to concur that the Project is complete. If the Developer concurs that the Project is complete, or fails to respond to the notice by the end of the 30-day period, the City may file an Officer's Certificate directing the Fiscal Agent to close the Improvement Fund, Bond Proceeds Account and Remainder Taxes Account.

Upon the filing of an Officer's Certificate stating that the Project has been completed and that all costs of the Project have been paid or are not required to be paid from the Improvement Fund, Bond Proceeds Account and Remainder Taxes Account, the Fiscal Agent shall transfer the amount, if any, remaining in the Improvement Fund, Bond Proceeds Account and Remainder Taxes Account to the Bond Fund for application to Debt Service payments due on the next succeeding Interest Payment Date and the Improvement Fund, Bond Proceeds Account and Remainder Taxes Account shall be closed. Moneys transferred from the Improvement Fund to the Bond Fund shall be used to pay Debt Service on the Bonds in the manner specified by the City in an Officer's Certificate.

**ARTICLE V**  
**COVENANTS**

**Section 5.01. Collection of Special Tax Revenues.** The City shall comply with all requirements of the Act so as to assure the timely collection of Special Tax Revenues, including without limitation, the enforcement of delinquent Special Taxes.

**(A) Processing.** On or within five (5) Business Days of each June 1, the Fiscal Agent shall provide the Finance Director with a notice stating (i) the amount then on deposit in the Bond Fund, the 2021 Reserve Fund, and (ii) if the amount in the 2021 Reserve Fund is less than the 2021 Reserve Requirement, informing the City that replenishment of the 2021 Reserve Fund is necessary. The receipt of or failure to receive such notice by the Finance Director shall in no way affect the obligations of the Finance Director under the following two paragraphs and the Fiscal Agent shall not be liable for failure to provide such notices to the Finance Director. Upon receipt of such notice, the Finance Director shall communicate with the Auditor to ascertain the relevant parcels on which the Special Taxes are to be levied, taking into account any parcel splits or combinations during the preceding and then current year.

**(B) Levy.** The Finance Director shall effect the levy of the Special Taxes each Fiscal Year in accordance with the Ordinance by each August 1 that the Bonds are outstanding, or otherwise such that the computation of the levy is complete before the final date on which Auditor will accept the transmission of the Special Tax amounts for the parcels within Improvement Area No. 2 for inclusion on the next real property tax roll. Upon the completion of the computation of the amounts of the levy, the Finance Director shall prepare or cause to be prepared, and shall transmit to the Auditor, such data as the Auditor requires to include the levy of the Special Taxes on the next real property tax roll.

**(C) Computation.** The Finance Director shall fix and levy the amount of Special Taxes within Improvement Area No. 2 required to pay the following amounts, taking into account the balances in the applicable funds established under this Agreement: (i) the principal of and interest on any outstanding Bonds of the CFD with respect to Improvement Area No. 2 becoming due and payable during the ensuing calendar year, (ii) any necessary replenishment or expenditure of the 2021 Reserve Fund, to the extent such replenishment has not been included in the computation of the Special Taxes in a previous Fiscal Year, (iii) the Administrative Expenses, including amounts necessary to discharge any rebate obligation, during such year, (iv) an amount to cure delinquencies in the payment of principal or interest on Bonds that occurred in the previous Fiscal Year, and (v) any Project costs to be paid from Special Taxes to the extent that paying for such costs does not increase the Special Taxes levied on Undeveloped Property (as defined in the Rate and Method). During the Remainder Taxes Period, the Finance Director shall fix and levy the Special Taxes at the Maximum Special Tax rate on Developed Property before considering any Capitalized Interest (as those terms are defined in the Rate and

Method). The Special Taxes so levied shall not exceed the authorized amounts as provided in the proceedings under the Resolution of Formation.

**(D) Collection.** Except as set forth in the Ordinance, Special Taxes shall be payable and be collected in the same manner and at the same time and in the same installment as the general taxes on real property are payable, and have the same priority, become delinquent at the same time and in the same proportionate amounts and bear the same proportionate penalties and interest after delinquency as do the ad valorem taxes on real property.

**Section 5.02. Covenant to Foreclose.** Under the Act, the City hereby covenants with and for the benefit of the Owners of the Bonds that it will order, and cause to be commenced as hereinafter provided, and thereafter diligently prosecute to judgment (unless such delinquency is theretofore brought current), an action in the superior court to foreclose the lien of any Special Tax or installment thereof not paid when due as provided in the following two paragraphs. The Finance Director shall notify the City Attorney of any such delinquency of which the Finance Director is aware, and the City Attorney shall commence, or cause to be commenced, such proceedings.

On or about June 30 of each Fiscal Year, the Finance Director shall compare the amount of Special Taxes theretofore levied in Improvement Area No. 2 to the amount of Special Tax Revenues theretofore received by the City, and:

**(A) Individual Delinquencies.** If the Finance Director determines that any single parcel subject to the Special Tax in Improvement Area No. 2 is delinquent in the payment of Special Taxes in the aggregate amount of \$5,000 or more, then the Finance Director shall send or cause to be sent a notice of delinquency (and a demand for immediate payment thereof) to the property owner within 45 days of such determination, and (if the delinquency remains uncured) foreclosure proceedings shall be commenced by the City within 90 days of such determination. Notwithstanding the foregoing, the Finance Director may defer any such actions with respect to a delinquent parcel if (1) Improvement Area No. 2 is then participating in the Alternative Method of Distribution of Tax Levies and Collections described in Revenue & Taxation Code Section 4701 et seq., or an equivalent procedure and (2) the amount in the 2021 Reserve Fund is at least equal to the 2021 Reserve Requirement.

**(B) Aggregate Delinquencies.** If the Finance Director determines that (i) the total amount of delinquent Special Tax for the prior Fiscal Year for the entire Improvement Area No. 2 (including the total of delinquencies under subsection (A) above), exceeds 5% of the total Special Tax due and payable for the prior Fiscal Year, determined by reference to the latest available secured property tax roll of the County, the Finance Director shall notify or cause to be notified property owners who are then delinquent in the payment of Special Taxes (and demand immediate payment of the delinquency) within 45 days of such determination, and shall commence foreclosure proceedings within 90 days of such determination against each parcel of land in Improvement Area No. 2 with a Special Tax delinquency.

**(C) Individual Owner Delinquencies.** As to any owner of more than one parcel within Improvement Area No. 2, if the Finance Director determines

that the aggregate amount of delinquent Special Taxes for all preceding tax years on all parcels owned by such owner (whether such parcels are owned solely by such owner or jointly by such owner and one or more others) exceeds \$10,000, then the Finance Director shall send or cause to be sent a notice of delinquency (and a demand for immediate payment thereof) to the property owner within 45 days of such determination, and (if the delinquency remains uncured) shall commence foreclosure proceedings within 90 days of such determination, regardless of when such delinquencies occurred.

The Finance Director and the City Attorney, as applicable, are hereby authorized to employ counsel to conduct any such foreclosure proceedings. The fees and expenses of any such counsel (including a charge for City staff time) in conducting foreclosure proceedings shall be an Administrative Expense hereunder.

**Section 5.03. Punctual Payment.** The City will punctually pay or cause to be paid the principal of, and interest and any premium on, the Bonds when and as due in strict conformity with the terms of this Agreement and any Supplemental Agreement, and it will faithfully observe and perform all of the conditions covenants and requirements of this Agreement and all Supplemental Agreements and of the Bonds.

**Section 5.04. Extension of Time for Payment.** In order to prevent any accumulation of claims for interest after maturity, the City shall not, directly or indirectly, extend or consent to the extension of the time for the payment of any claim for interest on any of the Bonds and shall not, directly or indirectly, be a party to the approval of any such arrangement by purchasing or funding said claims for interest or in any other manner. In case any such claim for interest shall be extended or funded, whether or not with the consent of the City, such claim for interest so extended or funded shall not be entitled, in case of default hereunder, to the benefits of this Agreement, except subject to the prior payment in full of the principal of all of the Bonds then Outstanding and of all claims for interest which shall not have been so extended or funded.

**Section 5.05. Against Encumbrances.** The City will not encumber, pledge or place any charge or lien upon any of the Special Tax Revenues or other amounts pledged to the Bonds superior to or on a parity with the pledge and lien herein created for the benefit of the Bonds, or their Owners, except as permitted by this Agreement.

**Section 5.06. Books and Records.**

**(A) City.** The City will keep, or cause to be kept, proper books of record and accounts, separate from all other records and accounts of the City, in which complete and correct entries shall be made of all transactions relating to the Special Tax Revenues. Such books of record and accounts shall at all times during business hours be subject to the inspection of the Fiscal Agent (who shall have no duty to inspect) and the Owners of not less than 10% of the principal amount of the Bonds then Outstanding, or their representatives duly authorized in writing.

**(B) Fiscal Agent.** The Fiscal Agent will keep, or cause to be kept, proper books of record and accounts, separate from all other records and accounts of the Fiscal Agent, in which complete and correct entries shall be made of all transactions made by it relating to the expenditure of amounts disbursed from the funds, and, if any, accounts in such funds held by the Fiscal

Agent hereunder. Such books of record and accounts shall at all times during business hours be subject to the inspection of the City and the Owners of not less than 10% of the principal amount of the Bonds then Outstanding, or their representatives duly authorized in writing upon reasonable prior notice.

**Section 5.07. Protection of Security and Rights of Owners.** The City will preserve and protect the security of the Bonds and the rights of the Owners, and will warrant and defend their rights against all claims and demands of all persons. From and after the delivery of any of the Bonds by the City, the Bonds shall be incontestable by the City.

**Section 5.08. Further Assurances.** The City will adopt, make, execute and deliver any and all such further resolutions, instruments and assurances as may be reasonably necessary or proper to carry out the intention or to facilitate the performance of this Agreement, and for the better assuring and confirming unto the Owners of the rights and benefits provided in this Agreement.

**Section 5.09. Private Activity Bond Limitations.** The City shall assure that the proceeds of the 2021 Bonds are not so used as to cause the 2021 Bonds to satisfy the private business tests of section 141(b) of the Tax Code or the private loan financing test of section 141(c) of the Code.

**Section 5.10. Federal Guarantee Prohibition.** The City shall not take any action or permit or suffer any action to be taken if the result of the same would be to cause the 2021 Bonds to be “federally guaranteed” within the meaning of Section 149(b) of the Tax Code.

**Section 5.11. Rebate Requirement.** The City shall take any and all actions necessary to assure compliance with section 148(f) of the Tax Code, relating to the rebate of excess investment earnings, if any, to the federal government, to the extent that such section is applicable to the 2021 Bonds. The Finance Director shall take note of any investment of monies hereunder in excess of the yield on the 2021 Bonds, and shall take such actions as are necessary to ensure compliance with this Section 5.11, such as increasing the portion of the Special Tax levy for Administrative Expenses as appropriate to have funds available in the Administrative Expense Fund to satisfy any rebate liability under this Section. If necessary to satisfy its obligations under this Section 5.11, the City may use:

- (A) Amounts in the 2021 Reserve Fund if the amount on deposit in the 2021 Reserve Fund, following the proposed transfer, is at least equal to the 2021 Reserve Requirement;
- (B) Amounts on deposit in the Administrative Expense Fund; and
- (C) Any other funds available to the City, including amounts advanced by the City, in its sole discretion, to be repaid as soon as practicable from amounts described in the preceding clauses (A) and (B).

**Section 5.12. No Arbitrage.** The City shall not take, or permit or suffer to be taken by the Fiscal Agent or otherwise, any action with respect to the proceeds of the 2021 Bonds which, if such action had been reasonably expected to have been taken, or had been deliberately and intentionally taken, on the date of issuance of the 2021 Bonds would have caused the 2021 Bonds to be “arbitrage bonds” within the meaning of section 148 of the Tax Code.

**Section 5.13. Yield of the 2021 Bonds.** In determining the yield of the 2021 Bonds to comply with Sections 5.11 and 5.12, the City will take into account redemption (including premium, if any) in advance of maturity based on the reasonable expectations of the City, as of the Closing Date, regarding prepayments of Special Taxes and use of prepayments for redemption of the 2021 Bonds, without regard to whether or not prepayments are received or 2021 Bonds redeemed.

**Section 5.14. Maintenance of Tax-Exemption.** The City shall take all actions necessary to assure the exclusion of interest on the 2021 Bonds from the gross income of the Owners of the 2021 Bonds to the same extent as such interest is permitted to be excluded from gross income under the Tax Code as in effect on the date of issuance of the 2021 Bonds.

**Section 5.15. Continuing Disclosure.** The City hereby covenants and agrees that it will comply with and carry out all of the provisions of the Continuing Disclosure Certificate. Notwithstanding any other provision of this Agreement, failure of the City to comply with the Continuing Disclosure Certificate shall not be considered an event of default for the purposes of this Agreement. However, any Owner or Beneficial Owner of the 2021 Bonds may take such actions as may be necessary and appropriate to compel performance, including seeking mandate or specific performance by court order.

One or more owners of the real property in Improvement Area No. 2 as of the Closing Date may also have executed a continuing disclosure agreement for the benefit of the holders and Beneficial Owners of the 2021 Bonds. Any Participating Underwriter or Holder or Beneficial Owner may take such actions as may be necessary and appropriate directly against any such landowner to compel performance by it of its obligations thereunder, including seeking mandate or specific performance by court order; however the City shall have no obligation whatsoever to enforce any obligations under any such agreement.

**Section 5.16. Limits on Special Tax Waivers and Bond Tenders.** The City covenants not to exercise its rights under the Act to waive delinquency and redemption penalties related to the Special Taxes or to declare a Special Tax penalties amnesty program if to do so would materially and adversely affect the interests of the Owners of the Bonds and further covenants not to permit the tender of Bonds in payment of any Special Taxes except upon receipt of a certificate of an Independent Financial Consultant that to accept such tender will not result in the City having insufficient Special Tax Revenues to pay the principal of and interest on the Bonds and any Parity Bonds remaining Outstanding following such tender.

**Section 5.17. City Bid at Foreclosure Sale.** The City will not bid at a foreclosure sale of property in respect of delinquent Special Taxes, unless it expressly agrees to take the property subject to the lien for Special Taxes imposed by the City and that the Special Taxes levied on the property are payable while the City owns the property.

**Section 5.18. Amendment of Rate and Method.**

**(A) General.** The City shall not initiate proceedings under the Act to modify the Rate and Method if such modification would adversely affect the security for the Bonds. If an initiative is adopted that purports to modify the Rate and Method in a manner that would adversely affect the security for the Bonds, the City shall, to the extent permitted by law, commence and pursue reasonable legal actions to prevent the modification of the Rate and Method in a manner that would adversely affect the security for the Bonds.

**(B) Exception.** Notwithstanding clause (A) of this section, the City may initiate proceedings to reduce the maximum Special Tax rates under the Rate and Method, if, in connection therewith: (i) the City receives a certificate from one or more Independent Financial Consultants which, when taken together, certify that, on the basis of the parcels of land and improvements existing in the CFD as of the July 1 preceding the reduction, the maximum amount of the Special Tax which may be levied on then-existing Taxable Property (as such term is defined in the Rate and Method) in each Bond Year for any Bonds and Parity Bonds Outstanding will equal at least the sum of the estimated Administrative Expenses and 110% of the Debt Service in each Bond Year on all Bonds and Parity Bonds to remain Outstanding after the reduction is approved; (ii) the reduction does not adversely affect the financing of the Project and (iii) the City is not delinquent in the payment of the principal of or interest on the Bonds or any Parity Bonds. For purposes of estimating Administrative Expenses for the foregoing calculation, the Independent Financial Consultants will compute the Administrative Expenses for the current Fiscal Year and escalate such amounts by 2% in each subsequent Fiscal Year.

## ARTICLE VI

### INVESTMENTS; LIABILITY OF THE CITY

#### Section 6.01. Deposit and Investment of Moneys in Funds.

(A) **General.** Moneys in any fund or account created or established by this Agreement and held by the Fiscal Agent shall be invested by the Fiscal Agent in Permitted Investments, which in any event by their terms mature prior to the date on which such moneys are required to be paid out hereunder, as directed pursuant to an Officer's Certificate filed with the Fiscal Agent at least two Business Days in advance of the making of such investments. In the absence of any such Officer's Certificate, the Fiscal Agent shall hold such funds uninvested. The Finance Director shall make note of any investment of funds hereunder in excess of the yield on the Bonds so that appropriate actions can be taken to assure compliance with Section 5.11.

(B) **Moneys in Funds.** Moneys in any fund or account created or established by this Agreement and held by the Finance Director shall be invested by the Finance Director in any Permitted Investment or in any other lawful investment for City funds, which in any event by its terms matures prior to the date on which such moneys are required to be paid out hereunder. Obligations purchased as an investment of moneys in any fund shall be deemed to be part of such fund or account, subject, however, to the requirements of this Agreement for transfer of interest earnings and profits resulting from investment of amounts in funds and accounts. Whenever in this Agreement any moneys are required to be transferred by the City to the Fiscal Agent, such transfer may be accomplished by transferring a like amount of Permitted Investments.

(C) **Actions of Officials.** The Fiscal Agent and its affiliates or the Finance Director may act as sponsor, advisor, depository, principal or agent in the acquisition or disposition of any investment. Neither the Fiscal Agent nor the Finance Director shall incur any liability for losses arising from any investments made pursuant to this Section. The Fiscal Agent shall not be required to determine the legality of any investments.

(D) **Valuation of Investments.** Except as otherwise provided in the next sentence, all investments of amounts deposited in any fund or account created by or pursuant to this Agreement, or otherwise containing gross proceeds of the Bonds (within the meaning of section 148 of the Tax Code) shall be acquired, disposed of, and valued (as of the date that valuation is required by this Agreement or the Tax Code) at Fair Market Value. Investments in funds or accounts (or portions thereof) that are subject to a yield restriction under the applicable provisions of the Tax Code and (unless valuation is undertaken at least annually) investments in the subaccounts within the 2021 Reserve Fund shall be valued at their present value (within the meaning of section 148 of the Tax Code). The Fiscal Agent shall not be liable for verification of the application of such sections of the Tax Code or for any determination of Fair Market Value or present value and may conclusively rely upon an Officer's Certificate as to such valuations.

(E) **Commingled Money.** Investments in any and all funds and accounts may be commingled in a separate fund or funds for purposes of making, holding and disposing of investments, notwithstanding provisions herein for transfer to or holding in or to the credit of particular funds or accounts of amounts received or held by the Fiscal Agent or the Finance

Director hereunder, provided that the Fiscal Agent or the Finance Director, as applicable, shall at all times account for such investments strictly in accordance with the funds and accounts to which they are credited and otherwise as provided in this Agreement.

**(F) Confirmations Waiver.** The City acknowledges that to the extent regulations of the Comptroller of the Currency or other applicable regulatory entity grant the City the right to receive brokerage confirmations of security transactions as they occur, the City specifically waives receipt of such confirmations to the extent permitted by law. The Fiscal Agent will furnish the City periodic cash transaction statements which include detail for all investment transactions made by the Fiscal Agent hereunder.

**(G) Sale of Investments.** The Fiscal Agent or the Finance Director, as applicable, shall sell at Fair Market Value, or present for redemption, any investment security whenever it shall be necessary to provide moneys to meet any required payment, transfer, withdrawal or disbursement from the fund or account to which such investment security is credited and neither the Fiscal Agent nor the Finance Director shall be liable or responsible for any loss resulting from the acquisition or disposition of such investment security in accordance herewith.

#### **Section 6.02. Liability of City.**

**(A) General.** The City shall not incur any responsibility or liability in respect of the Bonds or this Agreement other than in connection with the duties or obligations explicitly herein or in the Bonds assigned to or imposed upon it. The City shall not be liable in connection with the performance of its duties hereunder, except for its own negligence or willful default. The City shall not be bound to ascertain or inquire as to the performance or observance of any of the terms, conditions, covenants or agreements of the Fiscal Agent herein or of any of the documents executed by the Fiscal Agent in connection with the Bonds, or as to the existence of a default or event of default thereunder.

**(B) Reliance.** In the absence of bad faith, the City, including the Finance Director, may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon certificates or opinions furnished to the City by the Fiscal Agent or an Independent Financial Consultant and conforming to the requirements of this Agreement. The City, including the Finance Director, shall not be liable for any error of judgment made in good faith unless it shall be proved that it was negligent in ascertaining the pertinent facts. The City may rely and shall be protected in acting or refraining from acting upon any notice, resolution, request, consent, order, certificate, report, warrant, bond or other paper or document believed by it to be genuine and to have been signed or presented by the proper party or proper parties. The City may consult with counsel, who may be the City Attorney, with regard to legal questions, and the opinion of such counsel shall be full and complete authorization and protection in respect of any action taken or suffered by it hereunder in good faith and in accordance therewith.

**(C) No General Liability.** No provision of this Agreement shall require the City to expend or risk its own general funds or otherwise incur any financial liability (other than with respect to the Special Tax Revenues) in the performance of any of its obligations hereunder, or in the exercise of any of its rights or powers, if it shall have reasonable grounds for believing that repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to it.

**(D) Owner of Bonds.** The City shall not be bound to recognize any person as the Owner of a Bond unless and until such Bond is submitted for inspection, if required, and his title thereto satisfactorily established, if disputed.

**Section 6.03. Employment of Agents by City.** In order to perform its duties and obligations hereunder, the City may employ such persons or entities as it deems necessary or advisable. The City shall not be liable for any of the acts or omissions of such persons or entities employed by it in good faith hereunder, and shall be entitled to rely, and shall be fully protected in doing so, upon the opinions, calculations, determinations and directions of such persons or entities.

## ARTICLE VII

### THE FISCAL AGENT

#### Section 7.01. The Fiscal Agent.

(A) **Appointment.** The Fiscal Agent is hereby appointed as the fiscal, authentication, paying and transfer agent hereunder for the Bonds. The Fiscal Agent undertakes to perform such duties, and only such duties, as are specifically set forth in this Agreement, and no implied duties, covenants or obligations shall be read into this Agreement against the Fiscal Agent.

(B) **Merger.** Any company into which the Fiscal Agent may be merged or converted or with which it may be consolidated or any company resulting from any merger, conversion or consolidation to which it shall be a party or any company to which the Fiscal Agent may sell or transfer all or substantially all of its corporate trust business, provided such company shall be eligible under the following paragraph of this Section 7.01 shall be the successor to such Fiscal Agent without the execution or filing of any paper or any further act, anything herein to the contrary notwithstanding. The Fiscal Agent shall give the Finance Director written notice of any such succession hereunder.

(C) **Removal.** Upon 30 days written notice, the City may remove the Fiscal Agent initially appointed, and any successor thereto, and may appoint a successor or successors thereto, but any such successor shall be a bank, national banking association or trust company having a combined capital (exclusive of borrowed capital) and surplus of at least \$50,000,000, and subject to supervision or examination by federal or state authority. If such bank, national banking association or trust company publishes a report of condition at least annually, pursuant to law or to the requirements of any supervising or examining authority above referred to, then for the purposes of this Section 7.01, combined capital and surplus of such bank, national banking association or trust company shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published.

(D) **Resignation.** The Fiscal Agent may at any time resign by giving written notice to the City by certified mail return receipt requested, and by giving to the Owners notice by mail of such resignation. Upon receiving notice of such resignation, the City shall promptly appoint a successor Fiscal Agent by an instrument in writing. Any resignation or removal of the Fiscal Agent shall become effective upon acceptance of appointment by the successor Fiscal Agent.

(E) **No Successor.** If no appointment of a successor Fiscal Agent shall be made pursuant to the foregoing provisions of this Section 7.01 within 45 days after the Fiscal Agent shall have given to the City written notice or after a vacancy in the office of the Fiscal Agent shall have occurred by reason of its inability to act, the Fiscal Agent, at the expense of the City, or any Owner may apply to any court of competent jurisdiction to appoint a successor Fiscal Agent. Said court may thereupon, after such notice, if any, as such court may deem proper, appoint a successor Fiscal Agent.

(F) **Court Order.** If, by reason of the judgment of any court, the Fiscal Agent is rendered unable to perform its duties hereunder, all such duties and all of the rights and powers of the Fiscal Agent hereunder shall be assumed by and vest in the Finance Director of the City in trust for the benefit of the Owners. The City covenants for the direct benefit of the Owners

that its Finance Director in such case shall be vested with all of the rights and powers of the Fiscal Agent hereunder, and shall assume all of the responsibilities and perform all of the duties of the Fiscal Agent hereunder, in trust for the benefit of the Owners of the Bonds.

### **Section 7.02. Liability of Fiscal Agent.**

**(A) General.** The recitals of facts, covenants and agreements herein and in the Bonds contained shall be taken as statements, covenants and agreements of the City, and the Fiscal Agent assumes no responsibility for the correctness of the same, nor makes any representations as to the validity or sufficiency of this Agreement or of the Bonds, nor shall the Fiscal Agent incur any responsibility in respect thereof, other than in connection with the duties or obligations herein or in the Bonds assigned to or imposed upon it. The Fiscal Agent shall not be liable in connection with the performance of its duties hereunder, except for its own negligence or willful misconduct. The Fiscal Agent assumes no responsibility or liability for any information, statement or recital in any offering memorandum or other disclosure material prepared or distributed with respect to the issuance of the Bonds. All indemnifications and releases from liability granted to the Fiscal Agent hereunder shall extend to the directors, officers and employees of the Fiscal Agent.

The Fiscal Agent shall not be considered in breach of or in default in its obligations hereunder or progress in respect thereto in the event of enforced delay (“unavoidable delay”) in the performance of such obligations due to unforeseeable causes beyond its control and without its fault or negligence, including, but not limited to, Acts of God or of the public enemy or terrorists, acts of a government, acts of the other party, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, earthquakes, explosion, mob violence, riot, inability to procure or general sabotage or rationing of labor, equipment, facilities, sources of energy, material or supplies in the open market, litigation or arbitration involving a party or others relating to zoning or other governmental action or inaction pertaining to the project, malicious mischief, condemnation, and unusually severe weather or delays of suppliers or subcontractors due to such causes or any similar event and/or occurrences beyond the control of the Fiscal Agent.

**(B) Reliance.** The Fiscal Agent may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon certificates, documents, written instructions or opinions furnished to the Fiscal Agent and conforming to the requirements of this Agreement; but in the case of any such certificates, documents, written instructions or opinions by which any provision hereof are specifically required to be furnished to the Fiscal Agent, the Fiscal Agent shall be under a duty to examine the same to determine whether or not they conform to the requirements of this Agreement. Except as provided above in this paragraph, the Fiscal Agent shall be protected and shall incur no liability in acting or proceeding, or in not acting or not proceeding, in accordance with the terms of this Agreement, upon any resolution, order, notice, request, consent or waiver, certificate, statement, affidavit, facsimile transmission, electronic mail, or other paper or document which it shall reasonably believe to be genuine and to have been adopted or signed by the proper person or to have been prepared and furnished pursuant to any provision of this Agreement, and the Fiscal Agent shall not be under any duty to make any investigation or inquiry as to any statements contained or matters referred to in any such instrument.

**(C) No Duty to Inquire.** The Fiscal Agent shall not be bound to ascertain or inquire as to the performance or observance of any of the terms, conditions, covenants or agreements

of the City or the CFD herein or of any of the documents executed by the City or the CFD in connection with the Bonds, or as to the existence of a default or event of default thereunder.

**(D) Errors in Judgment.** The Fiscal Agent shall not be liable for any error of judgment made in good faith by a responsible officer of the Fiscal Agent unless it shall be proved that the Fiscal Agent was negligent in ascertaining the pertinent facts.

**(E) No Expenditures.** No provision of this Agreement shall require the Fiscal Agent to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers.

**(F) No Action.** The Fiscal Agent shall be under no obligation to exercise any of the rights or powers vested in it by this Agreement at the request or direction of any of the Owners under this Agreement unless such Owners shall have offered to the Fiscal Agent reasonable security or indemnity satisfactory to the Fiscal Agent against the costs, expenses and liabilities which might be incurred by it in compliance with such request or direction.

**(G) Owner of Bonds.** The Fiscal Agent may become the owner of the Bonds with the same rights it would have if it were not the Fiscal Agent.

**Section 7.03. Information; Books and Accounts.** The Fiscal Agent shall provide to the City such information relating to the Bonds and the funds and accounts maintained by the Fiscal Agent hereunder as the City shall reasonably request, including but not limited to monthly statements reporting funds held and transactions by the Fiscal Agent, including the value of any investments held by the Fiscal Agent. The Fiscal Agent will keep, or cause to be kept, proper books of record and accounts, separate from all other records and accounts of the Fiscal Agent, in which complete and correct entries shall be made of all transactions relating to the expenditure of amounts disbursed from the Bond Fund, the Special Tax Fund, the 2021 Reserve Fund, the Improvement Fund and the Cost of Issuance Fund. Such books of record and accounts shall, upon reasonable notice, during business hours be subject to the inspection of the City and the Owners of not less than 10% of the principal amount of the Bonds then Outstanding, or their representatives duly authorized in writing.

**Section 7.04. Notice to Fiscal Agent.** The Fiscal Agent may rely and shall be protected in acting or refraining from acting upon any notice, resolution, request, consent, order, certificate, facsimile transmission, electronic mail, written instructions, report, warrant, bond or other paper or document believed by it to be genuine and to have been signed or presented by the proper party or proper parties. The Fiscal Agent may consult with counsel, who may be the City Attorney, with regard to legal questions, and the opinion of such counsel shall be full and complete authorization and protection in respect of any action taken, suffered or omitted by it hereunder in accordance therewith.

The Fiscal Agent shall not be bound to recognize any person as the Owner of a Bond unless and until such Bond is submitted for inspection, if required, and his title thereto satisfactorily established, if disputed.

Whenever in the administration of its duties under this Agreement the Fiscal Agent shall deem it necessary or desirable that a matter be proved or established prior to taking or suffering any action hereunder, such matter (unless other evidence in respect thereof be herein specifically prescribed) may, in the absence of willful misconduct on the part of the Fiscal Agent,

be deemed to be conclusively proved and established by an Officer's Certificate of the City, and such certificate shall be full warrant to the Fiscal Agent for any action taken or suffered under the provisions of this Agreement or any Supplemental Agreement upon the faith thereof, but in its discretion the Fiscal Agent may, in lieu thereof, accept other evidence of such matter or may require such additional evidence as to it may seem reasonable.

The Fiscal Agent shall have the right to accept and act upon instructions, including funds transfer instructions ("Instructions") given pursuant to this Agreement and delivered using Electronic Means ("Electronic Means" shall mean the following communications methods: e-mail, facsimile transmission, secure electronic transmission containing applicable authorization codes, passwords and/or authentication keys issued by the Fiscal Agent, or another method or system specified by the Fiscal Agent as available for use in connection with its services hereunder); provided, however, that the City shall provide to the Fiscal Agent an incumbency certificate listing officers with the authority to provide such Instructions ("Authorized Officers") and containing specimen signatures of such Authorized Officers, which incumbency certificate shall be amended by the City whenever a person is to be added or deleted from the listing. If the City elects to give the Fiscal Agent Instructions using Electronic Means and the Fiscal Agent in its discretion elects to act upon such Instructions, the Fiscal Agent's understanding of such Instructions shall be deemed controlling. The City understands and agrees that the Fiscal Agent cannot determine the identity of the actual sender of such Instructions and that the Fiscal Agent shall conclusively presume that directions that purport to have been sent by an Authorized Officer listed on the incumbency certificate provided to the Fiscal Agent have been sent by such Authorized Officer. The City shall be responsible for ensuring that only Authorized Officers transmit such Instructions to the Fiscal Agent and that the City and all Authorized Officers are solely responsible to safeguard the use and confidentiality of applicable user and authorization codes, passwords and/or authentication keys upon receipt by the City. The Fiscal Agent shall not be liable for any losses, costs or expenses arising directly or indirectly from the Fiscal Agent's reliance upon and compliance with such Instructions notwithstanding such directions conflict or are inconsistent with a subsequent written instruction. The City agrees: (i) to assume all risks arising out of the use of Electronic Means to submit Instructions to the Fiscal Agent, including without limitation the risk of the Fiscal Agent acting on unauthorized Instructions, and the risk of interception and misuse by third parties; (ii) that it is fully informed of the protections and risks associated with the various methods of transmitting Instructions to the Fiscal Agent and that there may be more secure methods of transmitting Instructions than the method(s) selected by the City; (iii) that the security procedures (if any) to be followed in connection with its transmission of Instructions provide to it a commercially reasonable degree of protection in light of its particular needs and circumstances; and (iv) to notify the Fiscal Agent immediately upon learning of any compromise or unauthorized use of the security procedures.

The Fiscal Agent shall not be concerned with or accountable to anyone for the subsequent use or application of any moneys which shall be released or withdrawn in accordance with the provisions hereof.

The Fiscal Agent may execute any of the duties or powers hereof and perform the duties required of it hereunder either directly or by or through attorneys or agents, and shall be entitled to rely on advice of counsel concerning all matters of its duty hereunder.

The permissive right of the Fiscal Agent to do things enumerated in this Agreement shall not be construed as a duty and it shall not be answerable for such actions other than as a result of its negligence or willful misconduct.

**Section 7.05. Compensation, Indemnification.** The City shall pay to the Fiscal Agent from time to time reasonable compensation for all services rendered as Fiscal Agent under this Agreement, and also all reasonable expenses, charges, counsel fees and other disbursements, including those of its attorneys (including the allocated costs of in-house attorneys), agents and employees, incurred in and about the performance of their powers and duties under this Agreement, but the Fiscal Agent shall not have a lien therefor on any funds at any time held by it under this Agreement. The City further agrees, to the extent permitted by applicable law, to indemnify and save the Fiscal Agent, its officers, employees, directors and agents harmless against any liabilities, costs, claims or expenses, including fees and expenses of its attorneys, which it may incur in the exercise and performance of its powers and duties hereunder which are not due to its negligence or willful misconduct. The obligations of the City under this Section shall survive resignation or removal of the Fiscal Agent under this Agreement, and payment of the Bonds and discharge of this Agreement, but any monetary obligation of the City arising under this Section shall be limited solely to amounts on deposit in the Administrative Expense Fund.

## ARTICLE VIII

### MODIFICATION OR AMENDMENT

#### Section 8.01. Amendments Permitted.

**(A) With Consent.** This Agreement and the rights and obligations of the City and of the Owners of the Bonds may be modified or amended at any time by a Supplemental Agreement pursuant to the affirmative vote at a meeting of Owners, or with the written consent without a meeting, of the Owners of at least 60% in aggregate principal amount of the Bonds then Outstanding, exclusive of Bonds disqualified as provided in Section 8.04. No such modification or amendment shall (i) extend the maturity of any Bond or reduce the interest rate thereon, or otherwise alter or impair the obligation of the City to pay the principal of, and the interest and any premium on, any Bond, without the express consent of the Owner of such Bond, or (ii) permit the creation by the City of any pledge or lien upon the Special Taxes superior to or on a parity with the pledge and lien created for the benefit of the Bonds (except as otherwise permitted by the Act, the laws of the State of California or this Agreement), or reduce the percentage of Bonds required for the amendment hereof.

**(B) Without Consent.** This Agreement and the rights and obligations of the City and of the Owners may also be modified or amended at any time by a Supplemental Agreement, without the consent of any Owners, only to the extent permitted by law and only for any one or more of the following purposes:

(i) to add to the covenants and agreements of the City herein, other covenants and agreements thereafter to be observed, or to limit or surrender any right or power herein reserved to or conferred upon the City;

(ii) to make modifications not adversely affecting any Outstanding Bonds in any material respect;

(iii) to make such provisions for the purpose of curing any ambiguity, or of curing, correcting or supplementing any defective provision contained in this Agreement, or in regard to questions arising under this Agreement, as the City and the Fiscal Agent may deem necessary or desirable and not inconsistent with this Agreement, and which shall not adversely affect the rights of the Owners of the Bonds;

(iv) to make such additions, deletions or modifications as may be necessary or desirable to assure exclusion from gross income for federal income tax purposes of interest on the Bonds;

(v) in connection with the issuance of any Parity Bonds under and pursuant to Section 3.06.

**(C) Fiscal Agent's Consent.** Any amendment of this Agreement may not modify any of the rights or obligations of the Fiscal Agent without its written consent. The Fiscal Agent shall be furnished an opinion of counsel that any such Supplemental Agreement entered into by the City and the Fiscal Agent complies with the provisions of this Section 8.01 and the Fiscal Agent may conclusively rely on such opinion and shall be absolutely protected in so relying.

**Section 8.02. Owners' Meetings.** The City may at any time call a meeting of the Owners. In such event the City is authorized to fix the time and place of said meeting and to provide for the giving of notice thereof and to fix and adopt rules and regulations for the conduct of said meeting.

**Section 8.03. Procedure for Amendment with Written Consent of Owners.** The City and the Fiscal Agent may at any time adopt a Supplemental Agreement amending the provisions of the Bonds or of this Agreement or any Supplemental Agreement, to the extent that such amendment is permitted by Section 8.01(A), to take effect when and as provided in this Section 8.03. A copy of such Supplemental Agreement, together with a request to Owners for their consent thereto, shall be mailed by first class mail, by the Fiscal Agent, at the expense of the City, to each Owner of Bonds Outstanding, but failure to mail copies of such Supplemental Agreement and request shall not affect the validity of the Supplemental Agreement when assented to as in this Section 8.03 provided.

Such Supplemental Agreement shall not become effective unless there shall be filed with the Fiscal Agent the written consents of the Owners of at least 60% in aggregate principal amount of the Bonds then Outstanding (exclusive of Bonds disqualified as provided in Section 8.04) and a notice shall have been mailed as hereinafter in this Section 8.03 provided. Each such consent shall be effective only if accompanied by proof of ownership of the Bonds for which such consent is given, which proof shall be such as is permitted by Section 9.04. Any such consent shall be binding upon the Owner of the Bonds giving such consent and on any subsequent Owner (whether or not such subsequent Owner has notice thereof) unless such consent is revoked in writing by the Owner giving such consent or a subsequent Owner by filing such revocation with the Fiscal Agent prior to the date when the notice hereinafter in this Section 8.03 provided for has been mailed.

After the Owners of the required percentage of Bonds shall have filed their consents to the Supplemental Agreement, the City shall mail a notice to the Owners in the manner hereinbefore provided in this Section 8.03 for the mailing of the Supplemental Agreement, stating in substance that the Supplemental Agreement has been consented to by the Owners of the required percentage of Bonds and will be effective as provided in this Section 8.03 (but failure to mail copies of said notice shall not affect the validity of the Supplemental Agreement or consents thereto). Proof of the mailing of such notice shall be filed with the Fiscal Agent. A record, consisting of the papers required by this Section 8.03 to be filed with the Fiscal Agent, shall be proof of the matters therein stated until the contrary is proved. The Supplemental Agreement shall become effective upon the filing with the Fiscal Agent of the proof of mailing of such notice, and the Supplemental Agreement shall be deemed conclusively binding (except as otherwise hereinabove specifically provided in this Article) upon the City and the Owners of all Bonds at the expiration of 60 days after such filing, except in the event of a final decree of a court of competent jurisdiction setting aside such consent in a legal action or equitable proceeding for such purpose commenced within such 60-day period.

**Section 8.04. Disqualified Bonds.** Bonds owned or held for the account of the City, excepting any pension or retirement fund, shall not be deemed Outstanding for the purpose of any vote, consent or other action or any calculation of Outstanding Bonds provided for in this Article VIII, and shall not be entitled to vote upon, consent to, or take any other action provided for in this Article VIII. Upon request of the Fiscal Agent, the City shall specify in a certificate to the Fiscal Agent those Bonds disqualified pursuant to this Section and the Fiscal Agent may conclusively rely on such certificate.

**Section 8.05. Effect of Supplemental Agreement.** From and after the time any Supplemental Agreement becomes effective under this Article VIII, this Agreement shall be deemed to be modified and amended in accordance therewith, the respective rights, duties and obligations under this Agreement of the City, the Fiscal Agent and all Owners of Bonds Outstanding shall thereafter be determined, exercised and enforced hereunder subject in all respects to such modifications and amendments, and all the terms and conditions of any such Supplemental Agreement shall be deemed to be part of the terms and conditions of this Agreement for any and all purposes.

**Section 8.06. Endorsement or Replacement of Bonds Issued After Amendments.** The City may determine that Bonds issued and delivered after the effective date of any action taken as provided in this Article VIII shall bear a notation, by endorsement or otherwise, in form approved by the City, as to such action. In that case, upon demand of the Owner of any Bond Outstanding at such effective date and upon presentation of his Bond for that purpose at the Principal Office of the Fiscal Agent or at such other office as the City may select and designate for that purpose, a suitable notation shall be made on such Bond. The City may determine that new Bonds, so modified as in the opinion of the City is necessary to conform to such Owners' action, shall be prepared, executed and delivered. In that case, upon demand of the Owner of any Bonds then Outstanding, such new Bonds shall be exchanged at the Principal Office of the Fiscal Agent without cost to any Owner, for Bonds then Outstanding, upon surrender of such Bonds.

**Section 8.07. Amendatory Endorsement of Bonds.** The provisions of this Article VIII shall not prevent any Owner from accepting any amendment as to the particular Bonds held by him, provided that due notation thereof is made on such Bonds.

**ARTICLE IX**  
**MISCELLANEOUS**

**Section 9.01. Benefits of Agreement Limited to Parties.** Nothing in this Agreement, expressed or implied, is intended to give to any person other than the City, the Fiscal Agent and the Owners, any right, remedy, claim under or by reason of this Agreement. Any covenants, stipulations, promises or agreements in this Agreement contained by and on behalf of the City shall be for the sole and exclusive benefit of the Owners and the Fiscal Agent.

**Section 9.02. Successor and Predecessor.** Whenever in this Agreement or any Supplemental Agreement either the City or the Fiscal Agent is named or referred to, such reference shall be deemed to include the successors or assigns thereof, and all the covenants and agreements in this Agreement contained by or on behalf of the City or the Fiscal Agent shall bind and inure to the benefit of the respective successors and assigns thereof whether so expressed or not.

**Section 9.03. Discharge of Agreement.** The City may pay and discharge the entire indebtedness on all Bonds Outstanding in any one or more of the following ways:

(A) by paying or causing to be paid the principal of, and interest and any premium on, all Bonds Outstanding, as and when the same become due and payable;

(B) by depositing with the Fiscal Agent, in trust, at or before maturity, money which, together with the amounts then on deposit in the funds and accounts provided for in the Bond Fund and the 2021 Reserve Fund hereof, is fully sufficient to pay all Bonds Outstanding, including all principal, interest and redemption premiums; or

(C) by irrevocably depositing with the Fiscal Agent, in trust, cash and/or Federal Securities in such amount as the City shall determine, as confirmed by an independent certified public accountant, will, together with the interest to accrue thereon and moneys then on deposit in the fund and accounts provided for in the Bond Fund and the 2021 Reserve Fund (to the extent invested in Federal Securities), be fully sufficient to pay and discharge the indebtedness on all Bonds (including all principal, interest and redemption premiums) at or before their respective maturity dates.

If the City shall have taken any of the actions specified in (A), (B) or (C) above, and if such Bonds are to be redeemed prior to the maturity thereof and notice of such redemption shall have been given as in this Agreement provided or provision satisfactory to the Fiscal Agent shall have been made for the giving of such notice, then, at the election of the City, and notwithstanding that any Bonds shall not have been surrendered for payment, the pledge of the Special Taxes and other funds provided for in this Agreement and all other obligations of the City under this Agreement with respect to such Bonds Outstanding shall cease and terminate. Notice of such election shall be filed with the Fiscal Agent.

Notwithstanding the foregoing, the following obligations and pledges of the City shall continue in any event: (i) the obligation of the City to pay or cause to be paid to the Owners of the Bonds not so surrendered and paid all sums due thereon, (ii) the obligation of the City to pay amounts owing to the Fiscal Agent pursuant to Section 7.05, and (iii) the obligation of the City to assure that no action is taken or failed to be taken if such action or failure adversely affects the exclusion of interest on the Bonds from gross income for federal income tax purposes.

Upon compliance by the City with the foregoing with respect to all Bonds Outstanding, any funds held by the Fiscal Agent after payment of all fees and expenses of the Fiscal Agent, which are not required for the purposes of the preceding paragraph, shall be paid over to the City and any Special Taxes thereafter received by the City shall not be remitted to the Fiscal Agent but shall be retained by the City to be used for any purpose permitted under the Act and the Resolution of Formation.

**Section 9.04. Execution of Documents and Proof of Ownership by Owners.** Any request, declaration, consent or other instrument which this Agreement may require or permit to be executed by Owners may be in one or more instruments of similar tenor, and shall be executed by Owners in person or by their attorneys appointed in writing.

Except as otherwise herein expressly provided, the fact and date of the execution by any Owner or his attorney of such request, declaration, consent or other instrument, or of such writing appointing such attorney, may be proved by the certificate of any notary public or other officer authorized to take acknowledgments of deeds to be recorded in the state in which he purports to act, that the person signing such request, declaration or other instrument or writing acknowledged to him the execution thereof, or by an affidavit of a witness of such execution, duly sworn to before such notary public or other officer.

Except as otherwise herein expressly provided, the ownership of registered Bonds and the amount, maturity, number and date of holding the same shall be proved by the registration books maintained by the Fiscal Agent under Section 2.07.

Any request, declaration, consent or other instrument or writing of the Owner of any Bond shall bind all future Owners of such Bond in respect of anything done or suffered to be done by the City or the Fiscal Agent in good faith and in accordance therewith.

**Section 9.05. Waiver of Personal Liability.** No member, officer, agent or employee of the City shall be individually or personally liable for the payment of the principal of or interest or any premium on the Bonds; but nothing herein contained shall relieve any such member, officer, agent or employee from the performance of any official duty provided by law.

**Section 9.06. Notices to and Demands on City and Fiscal Agent.** Any notice or demand which by any provision of this Agreement is required or permitted to be given or served by the Fiscal Agent to or on the City may be given or served by facsimile transmission receipt of which has been confirmed or by being deposited postage prepaid in a post office letter box addressed (until another address is filed by the City with the Fiscal Agent) as follows:

City of Tracy  
333 Civic Center Plaza  
Tracy, CA 95376  
Fax: (209) 835-1113  
Attention: Finance Director

Any notice or demand which by any provision of this Agreement is required or permitted to be given or served by the City to or on the Fiscal Agent may be given or served by facsimile transmission receipt of which has been confirmed or by being deposited postage prepaid in a post office letter box addressed (until another address is filed by the Fiscal Agent with the City) as follows:

U.S. Bank National Association  
One California Street, Suite 1000  
San Francisco, CA 94111  
Attn: Global Corporate Trust Services

**Section 9.07. Partial Invalidity.** If any Section, paragraph, sentence, clause or phrase of this Agreement shall for any reason be held by a court of competent jurisdiction to be illegal or unenforceable, such holding shall not affect the validity of the remaining portions of this Agreement.

**Section 9.08. Unclaimed Moneys.** Anything contained herein to the contrary notwithstanding, any moneys held by the Fiscal Agent in trust for the payment and discharge of the principal of, and the interest and any premium on, the Bonds which remains unclaimed for two (2) years after the date when the payment of such principal, interest and premium have become payable, if such moneys were held by the Fiscal Agent at such date, shall be repaid by the Fiscal Agent to the City as its absolute property free from any trust, and the Fiscal Agent shall thereupon be released and discharged with respect thereto and the Owners of such Bonds shall look only to the City for the payment of the principal of, and interest and any premium on, such Bonds. Any right of any Owner to look to the City for such payment shall survive only so long as required under applicable law.

**Section 9.09. Applicable Law.** This Agreement shall be governed by and enforced in accordance with the laws of the State applicable to contracts made and performed in the State.

**Section 9.10. Conflict with Act.** In the event of a conflict between any provision of this Agreement with any provision of the Act as in effect on the Closing Date, the provision of the Act shall prevail over the conflicting provision of this Agreement.

**Section 9.11. Conclusive Evidence of Regularity.** Bonds issued under this Agreement shall constitute conclusive evidence of the regularity of all proceedings under the Act relative to their issuance and the levy of the Special Taxes.

**Section 9.12. Payment on Business Day.** In any case where the date of the maturity of interest or of principal (and premium, if any) of the Bonds, or the date fixed for redemption of any Bonds, or the date any action is to be taken under this Agreement, is other than a Business Day, the payment of interest or principal (and premium, if any) or the action shall be made on the next succeeding day which is a Business Day with the same force and effect as if made on the date required and no interest shall accrue for the period from and after such date.

**Section 9.13. State Reporting Requirements.** In addition to Section 5.15, the following requirements shall apply to the Bonds:

**(A) Annual Reporting.** Not later than October 30 of each calendar year, beginning with the October 30 first succeeding the date of the 2021 Bonds, and in each calendar year thereafter until the October 30 following the final maturity of the Bonds, the Finance Director shall cause the information required by California Government Code Section 53359.5(b) to be supplied to CDIAC. The annual reporting shall be made using such form or forms as may be prescribed by CDIAC.

**(B) Other Reporting.** If at any time the Fiscal Agent fails to pay principal and interest due on any scheduled payment date for the Bonds due to insufficiency of funds on deposit in the Bond Fund, or if funds are withdrawn from the 2021 Reserve Fund to pay principal and interest on the Bonds so as to reduce the amount in the 2021 Reserve Fund to less than the 2021 Reserve Requirement, the Fiscal Agent shall notify the Finance Director of such failure or withdrawal in writing. The Finance Director shall notify CDIAC and the Original Purchasers of such failure or withdrawal within 10 days of such failure or withdrawal.

**(C) Special Tax Reporting.** The Finance Director shall file a report with the City no later than January 1, 2022, and at least once a year thereafter, which annual report shall contain: (i) the amount of Special Taxes collected and expended with respect to the CFD, (ii) the amount of Bond proceeds collected and expended with respect to the CFD, and (iii) the status of the Project. It is acknowledged that the Special Tax Fund and the Special Tax Prepayments Account are the accounts into which Special Taxes collected on the City will be deposited for purposes of Section 50075.1(c) of the California Government Code, and the funds and accounts listed in Section 4.01 are the funds and accounts into which Bond proceeds will be deposited for purposes of Section 53410(c) of the California Government Code, and the annual report described in the preceding sentence is intended to satisfy the requirements of Sections 50075.1(d), 50075.3(d) and 53411 of the California Government Code.

**(D) Compliance with Section 53343.2.** The City shall comply with the provisions of California Government Code Section 53343.2, which require the City, within seven months after the last day of each fiscal year of the CFD, to display prominently on its Internet Web site all of the following information:

(a) A copy of an annual report for that fiscal year if requested pursuant to Section 53343.1.

(b) A copy of the report provided to the California Debt and Investment Advisory Commission pursuant to Section 53359.5.

(c) A copy of the report provided to the Controller's office pursuant to Section 12463.2.

**(E) Amendment.** The reporting requirements of this Section 9.13 shall be amended from time to time, without action by the City or the Fiscal Agent (i) with respect to subparagraphs (A) and (B) above, to reflect any amendments to Section 53359.5(b) or Section 53359.5(c) of the Act, (ii) with respect to subparagraph (C) above, to reflect any amendments to Section 50075.1, 50075.3, 53410 or 53411 of the California Government Code and (iii) with respect to subparagraph (D) above, to reflect any amendments to Section 53343.2. Notwithstanding the foregoing, any such amendment shall not, in itself, affect the City's obligations under the Continuing Disclosure Certificate. The City shall notify the Fiscal Agent in writing of any such amendments which affect the reporting obligations of the Fiscal Agent under this Agreement.

**(E) No Liability.** None of the City and its officers, agents and employees, the Finance Director or the Fiscal Agent shall be liable for any inadvertent error in reporting the information required by this Section 9.13.

The Finance Director shall provide copies of any such reports to any Bondowner upon the written request of a Bondowner and payment by the person requesting the information of the cost of the City to photocopy and pay any postage or other delivery cost to provide the same, as determined by the Finance Director. The term "Bondowner" for purposes of this Section 9.13 shall include any Beneficial Owner of the Bonds as described in Section 2.10.

**Section 9.14. Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original.

\* \* \* \* \*

**IN WITNESS WHEREOF**, the City and the Fiscal Agent have caused this Agreement to be executed as of the date first written above.

CITY OF TRACY,  
for and on behalf of  
CITY OF TRACY COMMUNITY FACILITIES  
DISTRICT NO. 2016-2 (ECFD)

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

U.S. BANK NATIONAL ASSOCIATION,  
*as Fiscal Agent*

By: \_\_\_\_\_  
Authorized Officer

**EXHIBIT A**  
**FORM OF 2021 BOND**

No. \_\_\_\_

\*\*\*\$\_\_\_\_\_\*\*\*

**UNITED STATES OF AMERICA**  
**STATE OF CALIFORNIA**  
**COUNTY OF SAN JOAQUIN**

**IMPROVEMENT AREA NO. 2 OF THE**  
**CITY OF TRACY**  
**Community Facilities District No. 2016-2**  
**(ECFD)**  
**Special Tax Bond, Series 2021**

**INTEREST RATE**

**MATURITY DATE**

**DATED DATE**

\_\_\_\_\_%

September 1, \_\_\_\_\_

\_\_\_\_\_, 2021

REGISTERED OWNER:

PRINCIPAL AMOUNT:

\*\*\*\*\*DOLLARS

The City of Tracy (the "City") for and on behalf of the "City of Tracy Community Facilities District No. 2016-2 (ECFD)" (the "CFD") with respect to its "Improvement Area No. 2 of the City of Tracy Community Facilities District No. 2016-2 (ECFD)" ("Improvement Area No. 2"), for value received, hereby promises to pay solely from the Special Tax Revenues (as defined in the Agreement, as hereinafter defined) to be collected in Improvement Area No. 2 or amounts in certain funds and accounts held under the Agreement (as hereinafter defined), to the registered owner named above, or registered assigns, on the maturity date set forth above, unless redeemed prior thereto as hereinafter provided, the principal amount set forth above, and to pay interest on such principal amount from the Dated Date set forth above, or from the most recent Interest Payment Date (as hereinafter defined) to which interest has been paid or duly provided for (unless this Bond is authenticated on or before an Interest Payment Date and after the close of business on the Record Date preceding such Interest Payment Date, in which event it shall bear interest from such Interest Payment Date, or unless this Bond is authenticated on or prior to February 15, 2022, in which event it shall bear interest from the Dated Date identified above, payable semiannually on each September 1 and March 1, commencing March 1, 2022 (each an "Interest Payment Date"), at the interest rate set forth above, until the principal amount hereof is paid or made available for payment provided, however, that if at the time of authentication of this Bond, interest is in default on this Bond, this Bond shall bear interest from the Interest Payment Date to which interest has previously been paid or made available for payment.

Principal of and interest on the Bonds (including the final interest payment upon maturity or earlier redemption), is payable on the applicable Interest Payment Date by check of the Fiscal Agent (defined below) mailed by first class mail to the registered Owner thereof at such registered Owner's address as it appears on the registration books maintained by the Fiscal Agent at the close of business on the Record Date preceding the Interest Payment Date, or by

wire transfer made on such Interest Payment Date upon written instructions of any Owner of \$1,000,000 or more in aggregate principal amount of Bonds delivered to the Fiscal Agent prior to the applicable Record Date. The principal of the Bonds and any premium on the Bonds are payable in lawful money of the United States of America upon surrender of the Bonds at the Principal Office of the Fiscal Agent or such other place as designated by the Fiscal Agent.

This Bond is one of a duly authorized issue of bonds in the aggregate principal amount of \$\_\_\_\_\_ approved by resolution of the City Council adopted on \_\_\_\_\_, 2021 (the "Resolution"), under the Mello-Roos Community Facilities Act of 1982, as amended, sections 53311, *et seq.*, of the California Government Code (the "Act") for the purpose of funding certain facilities for the City, and is one of the series of bonds designated "Improvement Area No. 2 of the City of Tracy Community Facilities District No. 2016-2 (ECFD) Special Tax Bonds, Series 2021" (the "Bonds"). The issuance of the Bonds and the terms and conditions thereof are provided for by a Fiscal Agent Agreement, dated as of \_\_\_\_\_ 1, 2021 (the "Agreement"), between the City and U.S. Bank National Association (the "Fiscal Agent") and this reference incorporates the Agreement herein, and by acceptance hereof the owner of this Bond assents to said terms and conditions. The Agreement is authorized under, this Bond is issued under and both are to be construed in accordance with, the laws of the State of California.

Pursuant to the Act, the Resolution and the Agreement, the principal of and interest on this Bond are payable solely from the annual special tax authorized under the Act to be collected within Improvement Area No. 2 (the "Special Tax") and certain funds held under the Agreement. Any tax for the payment hereof shall be limited to the Special Tax, except to the extent that provision for payment has been made by the City, as may be permitted by law. The Bonds do not constitute obligations of the City for which the City is obligated to levy or pledge, or has levied or pledged, general or special taxation other than described hereinabove. Neither the faith and credit nor the taxing power of the City (except to the limited extent set forth in the Agreement) or the State of California or any political subdivision thereof is pledged to the payment of the Bonds.

Optional Redemption. The Bonds maturing on or after September 1, \_\_\_\_\_, are subject to optional redemption as directed by the City, from sources of funds other than prepayments of Special Taxes, prior to their stated maturity on any date on or after September 1, \_\_\_\_\_, as a whole or in part, at a redemption price (expressed as a percentage of the principal amount of the 2021 Bonds to be redeemed), as set forth below, together with accrued interest thereon to the date fixed for redemption:

<u>Redemption Dates</u>	<u>Redemption Price</u>
September 1, _____ through August 31, _____	103%
September 1, _____ through August 31, _____	102
September 1, _____ through August 31, _____	101
September 1, _____ and any date thereafter	100

Mandatory Sinking Fund Redemption. The Term Bond maturing on September 1, \_\_\_\_\_, is subject to mandatory redemption in part by lot, from sinking fund payments made by the City from the Bond Fund, at a redemption price equal to the principal amount thereof to be redeemed, without premium, in the aggregate respective principal amounts all as set forth in the following table:

Sinking Fund  
Redemption Date  
(September 1)

Sinking Fund  
Payments

The Term Bond maturing on September 1, \_\_\_\_\_, is subject to mandatory redemption in part by lot, from sinking fund payments made by the City from the Bond Fund, at a redemption price equal to the principal amount thereof to be redeemed, without premium, in the aggregate respective principal amounts all as set forth in the following table:

Sinking Fund  
Redemption Date  
(September 1)

Sinking Fund  
Payments

Provided, however, if some but not all of the Term Bonds of a given maturity have been redeemed as a result of an optional redemption or a redemption from Special Tax Prepayments, the total amount of all future Sinking Fund Payments relating to such maturity shall be reduced by the aggregate principal amount of Term Bonds of such maturity so redeemed, to be allocated among such Sinking Fund Payments on a pro rata basis in integral multiples of \$5,000 as determined by the City, notice of which determination shall be given by the City to the Fiscal Agent.

Redemption From Special Tax Prepayments. Special Tax Prepayments and any corresponding transfers from the 2021 Reserve Fund shall be used to redeem Bonds on the next Interest Payment Date for which notice of redemption can timely be given under the Fiscal Agent Agreement, among maturities so as to maintain substantially the same Debt Service profile for the Bonds as in effect prior to such redemption and by lot within a maturity, at a redemption price (expressed as a percentage of the principal amount of the Bonds to be redeemed), as set forth below, together with accrued interest to the date fixed for redemption:

<u>Redemption Dates</u>	<u>Redemption Price</u>
Any Interest Payment Date on or before March 1, _____	103%
September 1, _____ and March 1, _____	102
September 1, _____ and March 1, _____	101
September 1, _____ and any Interest Payment Date thereafter	100

Notice of redemption with respect to the Bonds to be redeemed shall be given to the registered owners thereof, in the manner, to the extent and subject to the provisions of the Agreement.

This Bond shall be registered in the name of the owner hereof, as to both principal and interest. Each registration and transfer of registration of this Bond shall be entered by the Fiscal Agent in books kept by it for this purpose and authenticated by its manual signature upon the certificate of authentication endorsed hereon.

No transfer or exchange hereof shall be valid for any purpose unless made by the registered owner, by execution of the form of assignment endorsed hereon, and authenticated as herein provided, and the principal hereof, interest hereon and any redemption premium shall be payable only to the registered owner or to such owner's order. The Fiscal Agent shall require the registered owner requesting transfer or exchange to pay any tax or other governmental charge required to be paid with respect to such transfer or exchange. No transfer or exchange hereof shall be required to be made (i) fifteen days prior to the date established by the Fiscal Agent for selection of Bonds for redemption or (ii) with respect to a Bond after such Bond has been selected for redemption.

The Agreement and the rights and obligations of the City thereunder may be modified or amended as set forth therein. The principal of the Bonds is not subject to acceleration upon a default under the Agreement or any other document.

This Bond shall not become valid or obligatory for any purpose until the certificate of authentication and registration hereon endorsed shall have been dated and signed by the Fiscal Agent.

IT IS HEREBY CERTIFIED, RECITED AND DECLARED by the City that all acts, conditions and things required by law to exist, happen and be performed precedent to and in the issuance of this Bond have existed, happened and been performed in due time, form and manner as required by law, and that the amount of this Bond, together with all other indebtedness of the City, does not exceed any debt limit prescribed by the laws or Constitution of the State of California.

Unless this Bond is presented by an authorized representative of The Depository Trust Company, a New York corporation ("DTC"), to the Fiscal Agent for registration of transfer, exchange, or payment, and any Bond issued is registered in the name of Cede & Co. or in such other name as is requested by an authorized representative of DTC (and any payment is made to Cede & Co. or to such other entity as is requested by an authorized representative of DTC), ANY TRANSFER, PLEDGE, OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL inasmuch as the registered owner hereof, Cede & Co., has an interest herein.

IN WITNESS WHEREOF, City of Tracy has caused this Bond to be to be signed by the facsimile signature of its Mayor and countersigned by the facsimile signature of the Clerk.

[S E A L]

\_\_\_\_\_

Clerk

\_\_\_\_\_

Mayor

[FORM OF FISCAL AGENT'S CERTIFICATE OF AUTHENTICATION AND REGISTRATION]

This is one of the Bonds described in the Agreement which has been authenticated on \_\_\_\_\_, 2021

U.S. BANK NATIONAL ASSOCIATION,  
*as Fiscal Agent*

By: \_\_\_\_\_  
Authorized Signatory

FORM OF ASSIGNMENT

For value received, the undersigned do(es) hereby sell, assign and transfer unto

\_\_\_\_\_  
\_\_\_\_\_

(Name, Address and Tax Identification or Social Security Number of Assignee)

the within Bond and do(es) hereby irrevocably constitute and appoint \_\_\_\_\_  
\_\_\_\_\_, attorney, to transfer the same on the registration books of the Fiscal Agent, with  
full power of substitution in the premises.

Dated: \_\_\_\_\_

Signature Guaranteed:

\_\_\_\_\_  
NOTICE: Signature(s) must be guaranteed  
by an eligible guarantor.

NOTICE: Signature guarantee shall be  
made by a guarantor institution participating  
in the Securities Transfer Agents Medallion  
Program or in such other guarantee  
program acceptable to the Fiscal Agent

**EXHIBIT B**

**IMPROVEMENT AREA NO. 2 OF THE  
CITY OF TRACY  
Community Facilities District No. 2016-2  
(ECFD)  
Special Tax Bonds, Series 2021**

**OFFICER'S CERTIFICATE REQUESTING DISBURSEMENT FROM IMPROVEMENT  
FUND**

**REQUISITION NO. \_\_\_\_\_**

The undersigned hereby states and certifies that:

(i) I am the duly appointed, qualified and acting Finance Director of the City of Tracy, a general law city duly organized and existing under the laws of the State of California (the "City") and as such, am familiar with the facts herein certified and am authorized to certify the same;

(ii) I am an "Authorized Officer," as such term is defined in that certain Fiscal Agent Agreement, dated as of \_\_\_\_\_ 1, 2021 (the "Fiscal Agent Agreement"), by and between the City and U.S. Bank National Association, as fiscal agent (the "Fiscal Agent");

(iii) under Section 4.07(B) of the Fiscal Agent Agreement, the undersigned hereby requests and authorizes the Fiscal Agent to disburse from the Bond Proceeds Account established under the Fiscal Agent Agreement to each payee designated on Schedule A attached hereto and by this reference incorporated herein, the amount set forth opposite such payee, for payment or reimbursement of previous payment of a Project cost (as Project is defined in the Fiscal Agent Agreement) as described on attached Schedule A;

(iv) under Section 4.07(B) of the Fiscal Agent Agreement, the undersigned hereby requests and authorizes the Fiscal Agent to disburse from the Remainder Taxes Account established under the Fiscal Agent Agreement to each payee designated on Schedule A attached hereto and by this reference incorporated herein, the amount set forth opposite such payee, for payment or reimbursement of previous payment of a Project cost (as Project is defined in the Fiscal Agent Agreement) as described on attached Schedule A;

(v) under Section 4.07(B) of the Fiscal Agent Agreement, the undersigned hereby requests and authorizes the Fiscal Agent to transfer \$ \_\_\_\_\_ from the Remainder Taxes Account established under the Fiscal Agent Agreement to [the Bond Fund] [the Administrative Expense Fund] [the 2021 Reserve Fund];

(vi) the disbursements described on the attached Schedule A are properly chargeable to the Improvement Fund; and

(vii) no portion of the amount herein requested to be disbursed was set forth in any Officers Certificate previously filed requesting disbursement.

Dated: \_\_\_\_\_

CITY OF TRACY

By: \_\_\_\_\_  
Finance Director

**SCHEDULE A**

<u>Payee Name and Address</u>	<u>Purpose of Obligation</u>	<u>Amount</u>	<u>Account from which Amounts should be paid</u>

**EXHIBIT C**

**IMPROVEMENT AREA NO. 2 OF THE  
CITY OF TRACY  
Community Facilities District No. 2016-2 (ECFD)  
Special Tax Bonds, Series 2021**

**OFFICER'S CERTIFICATE REQUESTING DISBURSEMENT  
FROM COSTS OF ISSUANCE FUND**

**REQUISITION NO. \_\_\_\_\_**

The undersigned hereby states and certifies that:

(i) I am the duly appointed, qualified and acting Finance Director of the City of Tracy, a general law city duly organized and existing under the laws of the State of California (the "City") and as such, am familiar with the facts herein certified and am authorized to certify the same;

(ii) I am an "Authorized Officer," as such term is defined in that certain Fiscal Agent Agreement, dated as of \_\_\_\_\_ 1, 2021 (the "Fiscal Agent Agreement"), by and between the City and U.S. Bank National Association, as fiscal agent (the "Fiscal Agent");

(iii) under Section 4.02(B) of the Fiscal Agent Agreement, the undersigned hereby requests and authorizes the Fiscal Agent to disburse from the Costs of Issuance Fund established under the Fiscal Agent Agreement to each payee designated on Schedule A attached hereto and by this reference incorporated herein, the amount set forth opposite such payee, for payment or reimbursement of previous payment of Costs of Issuance (as that term is defined in the Fiscal Agent Agreement) as described on attached Schedule A; and

(iv) the disbursements described on the attached Schedule A constitute Costs of Issuance, and are properly chargeable to the Costs of Issuance Fund.

Dated: \_\_\_\_\_

CITY OF TRACY

By: \_\_\_\_\_  
Finance Director

## SCHEDULE A

Payee Name and Address

Purpose of Obligation

Amount

**EXHIBIT D**

**IMPROVEMENT AREA NO. 2 OF THE  
CITY OF TRACY  
Community Facilities District No. 2016-2 (ECFD)  
Special Tax Bonds, Series 2021**

**OFFICER'S CERTIFICATE REQUESTING DISBURSEMENT  
FROM ADMINISTRATIVE EXPENSE FUND**

**REQUISITION NO. \_\_\_\_\_**

The undersigned hereby states and certifies that:

(i) I am the duly appointed, qualified and acting Finance Director of the City of Tracy, a general law city duly organized and existing under the laws of the State of California (the "City") and as such, am familiar with the facts herein certified and am authorized to certify the same;

(ii) I am an "Authorized Officer," as such term is defined in that certain Fiscal Agent Agreement, dated as of \_\_\_\_\_ 1, 2021 (the "Fiscal Agent Agreement"), by and between the City and U.S. Bank National Association, as fiscal agent (the "Fiscal Agent");

(iii) under Section 4.06(B) of the Fiscal Agent Agreement, the undersigned hereby requests and authorizes the Fiscal Agent to disburse from the Administrative Expense Fund established under the Fiscal Agent Agreement to each payee designated on Schedule A attached hereto and by this reference incorporated herein, the amount set forth opposite such payee, for payment or reimbursement of previous payment of an Administrative Expense or Costs of Issuance (as those terms are defined in the Fiscal Agent Agreement) as described on attached Schedule A;

(iv) the disbursements described on the attached Schedule A constitute Administrative Expenses or Costs of Issuance, and are properly chargeable to the Administrative Expense Fund; and

(v) any proceeds of the 2018 Bonds in the Administrative Expense Fund shall be disbursed before any other moneys in the Administrative Expense Fund

Dated: \_\_\_\_\_

CITY OF TRACY

By: \_\_\_\_\_  
Finance Director

## SCHEDULE A

Payee Name and Address

Purpose of Obligation

Amount

\$ \_\_\_\_\_  
**IMPROVEMENT AREA NO. 2 OF THE CITY OF TRACY  
COMMUNITY FACILITIES DISTRICT NO. 2016-2 (ECFD)  
SPECIAL TAX BONDS, SERIES 2021**

**BOND PURCHASE AGREEMENT**

\_\_\_\_\_, 2021

City of Tracy  
333 Civic Center Plaza  
Tracy, California 95376

Ladies and Gentlemen:

Piper Sandler & Co., as underwriter (the “**Underwriter**”), acting not as a fiduciary or agent for you, but on behalf of itself, offers to enter into this Bond Purchase Agreement (this “**Purchase Agreement**”) with the City of Tracy (the “**City**”), which upon acceptance will be binding upon the Underwriter and the City. This offer is made subject to the City’s acceptance by the execution of this Purchase Agreement and its delivery to the Underwriter at or before 8:00 P.M., California time, on the date hereof, and, if not so accepted, will be subject to withdrawal by the Underwriter upon notice delivered to the City at any time prior to the acceptance hereof by the City. All capitalized terms used herein, which are not otherwise defined, shall have the meaning provided for such terms in the Fiscal Agent Agreement, dated as of \_\_\_\_\_ 1, 2021 (the “**Fiscal Agent Agreement**”), by and between the City and U.S. Bank National Association, as fiscal agent (the “**Fiscal Agent**”).

**1. Purchase, Sale and Delivery of the Bonds.**

A. Subject to the terms and conditions and in reliance upon the representations, warranties and agreements set forth herein, the Underwriter hereby agrees to purchase from the City and the City hereby agrees to sell to the Underwriter all (but not less than all) of the \$ \_\_\_\_\_ aggregate principal amount of the Improvement Area No. 2 of the City of Tracy Community Facilities District No. 2016-2 (ECFD) Special Tax Bonds, Series 2021 (the “**Bonds**”), dated the Closing Date (as hereinafter defined), bearing interest at the rates and maturing on the dates and in the principal amounts set forth in Exhibit A hereto. The purchase price for the Bonds shall be \$ \_\_\_\_\_ (being 100% of the aggregate principal amount thereof [plus/less] a [net] original issue [premium/discount] of \$ \_\_\_\_\_ and less an Underwriter’s discount of \$ \_\_\_\_\_).

The Bonds shall be substantially in the form described in, shall be issued and secured under the provisions of, and shall be payable from the Special Tax Revenues, as provided in the Fiscal Agent Agreement, the Preliminary Official Statement (as hereinafter defined), and the Mello-Roos Community Facilities Act of 1982, as amended, being Chapter 2.5 of Part 1 of Division 2 of Title 5 (commencing with Section 53311) of the Government Code of the State of California (the “**Act**”). The issuance of the Bonds has been duly authorized by the City pursuant to Resolution No. 2017-025, adopted on February 7, 2017 (the “**Original Resolution**”), Resolution No. 2019-\_\_, adopted on

April 16, 2019 (the “**Annexation Resolution**”), and Resolution No. 2021-\_\_\_, adopted on September 7, 2021 (the “**Supplemental Resolution**” and, together with the Original Resolution and the Annexation Resolution, the “**Approving Resolution**”).

The net proceeds of the Bonds will be used, as indicated in the Fiscal Agent Agreement, for the following purposes: (i) finance the acquisition and construction of certain public improvements and payment of impact fees to be used to finance public facilities, (ii) fund a debt service reserve fund for the Bonds, and (iii) pay the costs of issuing the Bonds.

Prior to the acceptance of this Purchase Agreement by the City, the City shall have caused to be delivered to the Underwriter (i) a Letter of Representations duly executed by Surland Communities, LLC, a California limited liability company (the “**Developer**”) in substantially the form set forth in Exhibit B hereto, with only such changes thereto as shall have been accepted by the Underwriter, and (ii) a Letter of Representations duly executed by Woodside 05N, LP (“**Woodside**”) in substantially the form set forth in Exhibit C hereto, with only such changes thereto as shall have been accepted by the Underwriter.

B. The City acknowledges that the Underwriter is entering into this Purchase Agreement in reliance on the representations and agreements made by the City herein, and the City shall take all action necessary to enforce its rights hereunder for the benefit of the Underwriter and shall immediately notify the Underwriter if it becomes aware that any representation or agreement made by the City herein is incorrect in any material respect.

The City acknowledges and agrees that: (i) the purchase and sale of the Bonds pursuant to this Purchase Agreement is an arm’s-length commercial transaction between the City and the Underwriter; (ii) in connection therewith and with the discussions, undertakings and procedures leading up to the consummation of such transaction, the Underwriter is and has been acting solely as principal and is not acting as a Municipal Advisor (as defined in Section 15B of the Securities Exchange Act of 1934, as amended); (iii) the Underwriter has not assumed an advisory or fiduciary responsibility in favor of the City with respect to the offering contemplated hereby or the discussions, undertakings and procedures leading thereto (irrespective of whether the Underwriter has provided other services or is currently providing other services to the City on other matters); and (iv) the City has consulted its own legal, financial and other advisors to the extent that the City has deemed appropriate.

C. Pursuant to the authorization of the City, the Underwriter has distributed copies of the Preliminary Official Statement dated \_\_\_\_, 2021, relating to the Bonds, which, together with the cover page, inside cover page and appendices thereto is herein called the “**Preliminary Official Statement**.” By its acceptance of this Purchase Agreement, the City hereby ratifies the use by the Underwriter of the Preliminary Official Statement and the preparation and distribution of the final Official Statement (together with any supplements thereto, the “**Official Statement**”) consisting of the Preliminary Official Statement with such changes as are noted thereon and as may be made thereto, with the approval of Jones Hall, A Professional Law Corporation, the City’s Bond Counsel (“**Bond Counsel**”) and Disclosure Counsel (“**Disclosure Counsel**”) and the Underwriter. The City agrees to execute the Official Statement and to provide a copy thereof to the Underwriter as set forth in Section 4.E.1 hereof. The City hereby authorizes and requires the Underwriter to use and promptly distribute, in connection with the offer and sale of the Bonds, the Preliminary Official Statement, the Official Statement and any supplement or amendment thereto. The City further authorizes the Underwriter to use and distribute, in connection with the offer and

sale of the Bonds, the Fiscal Agent Agreement, this Purchase Agreement and all information contained herein, and all other documents, certificates and statements furnished by or on behalf of the City to the Underwriter in connection with the transactions contemplated by this Purchase Agreement.

D. To assist the Underwriter in complying with Securities and Exchange Commission Rule 15c2-12(b)(5) (the “**Rule**”), the City will undertake pursuant to the Continuing Disclosure Certificate, in the form attached to the Official Statement as Appendix E (the “**Continuing Disclosure Certificate**”), to provide annual reports and notices of certain enumerated events. A description of this undertaking is set forth in the Preliminary Official Statement and will also be set forth in the Official Statement.

E. Except as the Underwriter and the City may otherwise agree, the City will deliver to the Underwriter, at the offices of Bond Counsel in San Francisco, California, or at such other location as may be mutually agreed upon by the Underwriter and the City, the documents hereinafter mentioned; and the City will deliver to the Underwriter through the facilities of The Depository Trust Company (“**DTC**”) in New York, New York, the Bonds, in definitive form (all Bonds bearing CUSIP numbers), duly executed by the City and authenticated by the Fiscal Agent in the manner provided for in the Fiscal Agent Agreement and the Act at 8:00 a.m. California time, on \_\_\_\_\_, 2021 (the “**Closing Date**”), and the Underwriter will accept such delivery and pay the purchase price of the Bonds as set forth in paragraph (A) of this Section by wire transfer, payable in federal or other immediately available funds (such delivery and payment being herein referred to as the “**Closing**”). The Bonds shall be in fully registered book-entry form (which may be typewritten) and shall be registered in the name of Cede & Co., as nominee of DTC.

## 2. **Public Offering and Establishment of Issue Price.**

A. The Underwriter agrees to make a bona fide public offering of all of the Bonds initially at the public offering prices (or yields) set forth in Exhibit A attached hereto and incorporated herein by reference. Subsequent to the initial public offering, the Underwriter reserves the right to change the public offering prices (or yields) as it deems necessary in connection with the marketing of the Bonds, provided that the Underwriter shall not change the interest rates set forth in Exhibit A. The Bonds may be offered and sold to certain dealers at prices lower than such initial offering prices

B. The Underwriter agrees to assist the City in establishing the issue price of the Bonds and shall execute and deliver to the City at Closing an “issue price” or similar certificate, together with the supporting pricing wires or equivalent communications, substantially in the form attached hereto as Exhibit F, with such modifications as may be appropriate or necessary, in the reasonable judgment of the Underwriter, the City and Bond Counsel, to accurately reflect, as applicable, the sales price or prices or the initial offering price or prices to the public of the Bonds. All actions to be taken by the City under this section to establish the issue price of the Bonds may be taken on behalf of the City by CSG Advisors Incorporated (the “**Municipal Advisor**”) and any notice or report to be provided to the City may be provided to the Municipal Advisor.

C. Except as otherwise set forth in Exhibit A, the City will treat the first price at which 10% of each maturity of the Bonds (the “**10% test**”) is sold to the public as the issue price of that maturity (if different interest rates apply within a maturity, each separate CUSIP number within that maturity will be subject to the 10% test). At or promptly after the execution of this Purchase

Agreement, the Underwriter shall report to the City the price or prices at which it has sold to the public each maturity of the Bonds. If at that time the 10% test has not been satisfied as to any maturity of the Bonds, the Underwriter agrees to promptly report to the City the prices at which it sells the unsold Bonds of that maturity to the public. That reporting obligation shall continue, whether or not the Closing Date has occurred, until the 10% test has been satisfied as to the Bonds of that maturity or until all Bonds of that maturity have been sold to the public.

D. The Underwriter confirms that it has offered the Bonds to the public on or before the date of this Purchase Agreement at the offering price or prices (the “**initial offering price**”), or at the corresponding yield or yields, set forth in Exhibit A, except as otherwise set forth therein. Exhibit A also sets forth, identified under the column “Hold the Offering Price Rule Used,” as of the date of this Purchase Agreement, the maturities, if any, of the Bonds for which the 10% test has not been satisfied and for which the City and the Underwriter agree that the restrictions set forth in the next sentence shall apply, which will allow the City to treat the initial offering price to the public of each such maturity as of the sale date as the issue price of that maturity (the “**hold-the-offering-price rule**”). So long as the hold-the-offering-price rule remains applicable to any maturity of the Bonds, the Underwriter will neither offer nor sell unsold Bonds of that maturity to any person at a price that is higher than the initial offering price to the public during the period starting on the sale date and ending on the earlier of the following:

1. the close of the fifth (5th) business day after the sale date; or
2. the date on which the Underwriter has sold at least 10% of that maturity of the Bonds to the public at a price that is no higher than the initial offering price to the public.

The Underwriter shall promptly advise the City when it has sold 10% of that maturity of the Bonds to the public at a price that is no higher than the initial offering price to the public, if that occurs prior to the close of the fifth (5th) business day after the sale date.

E. The Underwriter confirms that any selling group agreement and any retail distribution agreement relating to the initial sale of the Bonds to the public, together with the related pricing wires, contains or will contain language obligating each dealer who is a member of the selling group and each broker-dealer that is a party to such retail distribution agreement, as applicable, to: (1) report the prices at which it sells to the public the unsold Bonds of each maturity allotted to it until it is notified by the Underwriter that either the 10% test has been satisfied as to the Bonds of that maturity or all Bonds of that maturity have been sold to the public; and (2) comply with the hold-the-offering-price rule, if applicable, in each case if and for so long as directed by the Underwriter. The City acknowledges that, in making the representation set forth in this subsection, the Underwriter will rely on: (A) in the event that a selling group has been created in connection with the initial sale of the Bonds to the public, the agreement of each dealer who is a member of the selling group to comply with the hold-the-offering-price rule, if applicable, as set forth in a selling group agreement and the related pricing wires; and (B) in the event that a retail distribution agreement was employed in connection with the initial sale of the Bonds to the public, the agreement of each broker-dealer that is a party to such agreement to comply with the hold-the-offering-price rule, if applicable, as set forth in the retail distribution agreement and the related pricing wires. The City further acknowledges that the Underwriter shall not be liable for the failure of any dealer who is a member of a selling group, or of any broker-dealer that is a party to a retail distribution agreement, to comply

with its corresponding agreement regarding the hold-the-offering-price rule as applicable to the Bonds.

F. The Underwriter acknowledges that sales of any Bonds to any person that is a related party to the Underwriter shall not constitute sales to the public for purposes of this section. Further, for purposes of this section:

1. “**public**” means any person other than an underwriter or a related party;

2. “**underwriter**” means: (A) any person that agrees pursuant to a written contract with the City (or with the lead underwriter to form an underwriting syndicate) to participate in the initial sale of the Bonds to the public; and (B) any person that agrees pursuant to a written contract directly or indirectly with a person described in clause (A) to participate in the initial sale of the Bonds to the public (including a member of a selling group or a party to a retail distribution agreement participating in the initial sale of the Bonds to the public);

3. a purchaser of any of the Bonds is a “**related party**” to an underwriter if the underwriter and the purchaser are subject, directly or indirectly, to: (A) at least 50% common ownership of the voting power or the total value of their stock, if both entities are corporations (including direct ownership by one corporation of another); (ii) more than 50% common ownership of their capital interests or profits interests, if both entities are partnerships (including direct ownership by one partnership of another); or (iii) more than 50% common ownership of the value of the outstanding stock of the corporation or the capital interests or profit interests of the partnership, as applicable, if one entity is a corporation and the other entity is a partnership (including direct ownership of the applicable stock or interests by one entity of the other); and

4. “**sale date**” means the date of execution of this Purchase Agreement by all parties.

3. **Representations and Covenants of the City.** The City represents and covenants to the Underwriter that:

A. The City is duly organized and validly existing as a municipal corporation under the Constitution and laws of the State of California, and has duly authorized the formation of the City of Tracy Community Facilities District No. 2016-2 (ECFD) (the “**Community Facilities District**”) and Improvement Area No. 2 of the City of Tracy Community Facilities District No. 2016-2 (ECFD) (“**Improvement Area No. 2**”) pursuant to resolutions and an ordinance duly adopted by the City Council (collectively, the “**Community Facilities District Formation Resolution**” and, together with the Approving Resolution authorizing the issuance of the Bonds, the “**City Resolutions**”) and the Act. The City Council, as the legislative body of the City and the Community Facilities District, (i) has duly adopted the City Resolutions, (ii) has duly adopted Ordinance No. 1230 of the City on February 21, 2017, levying special taxes within the Community Facilities District (the “**Ordinance**”), and (iii) has caused to be recorded in the real property records of San Joaquin County a notice of special tax lien with respect to Improvement Area No. 2 (the “**Notice of Special Tax Lien**”) (the Community Facilities District Formation Resolution, the Ordinance, the rate and method of apportionment of special taxes for Improvement Area No. 2 approved by the City Council and the qualified electors in Improvement Area No. 2 (the “**Rate and Method**”) and the Notice of Special Tax Lien are collectively referred to herein as the “**Formation Documents**”). Each of the

Formation Documents remains in full force and effect as of the date hereof and has not been amended, except to the extent set forth therein. The Community Facilities District is duly organized and validly existing as a Community Facilities District under the laws of the State of California. The City has, and at the Closing Date will have, as the case may be, full legal right, power and authority: (i) to execute, deliver and perform its obligations under the Fiscal Agent Agreement and this Purchase Agreement, and to carry out all transactions contemplated by each of such agreements; (ii) to issue, sell and deliver its Bonds to the Underwriter; (iii) to enter into the Continuing Disclosure Certificate; and (iv) to carry out, give effect to and consummate the transactions contemplated by the Formation Documents, the Fiscal Agent Agreement, the Continuing Disclosure Certificate, this Purchase Agreement, the Bonds and the Official Statement.

This Purchase Agreement, the Fiscal Agent Agreement, the Bonds and the Continuing Disclosure Certificate are collectively referred to herein as the “**City Documents.**”

B. The City has complied, and will at the Closing Date be in compliance in all material respects, with the Formation Documents and the City Documents, and any immaterial noncompliance by the City, if any, will not impair the ability of the City to carry out, give effect to or consummate the transactions contemplated by the foregoing. From and after the date of issuance of the Bonds, the City will continue to comply with the covenants of the City contained in the City Documents.

C. Except as described in the Preliminary Official Statement, the City is not, in any respect material to the transactions referred to herein or contemplated hereby, in breach of or in default under, any law or administrative rule or regulation of the State of California, the United States of America, or of any department, division, agency or instrumentality of either thereof, or under any applicable court or administrative decree or order, or under any loan agreement, note, resolution, indenture, contract, agreement or other instrument to which the City is a party or is otherwise subject or bound, and the execution and delivery and the performance of its obligations under the City Documents and compliance with the provisions of each thereof, or the performance of the conditions precedent to be performed by the City pursuant to the City Documents, will not conflict with or constitute a breach of or default under any applicable law or administrative rule or regulation of the State, the United States of America, or of any department, division, agency or instrumentality of either thereof, or under any applicable court or administrative decree or order, or under any loan agreement, note, resolution, indenture, contract, agreement or other instrument to which the City is a party or is otherwise subject or bound, in any manner that would materially and adversely affect the performance by the City of its obligations under the City Documents or the performance of the conditions precedent to be performed by the City pursuant to the City Documents.

D. Except as may be required under the “blue sky” or other securities laws of any jurisdiction, all approvals, consents, authorizations, elections and orders of, or filings or registrations with, any governmental authority, board, agency or commission having jurisdiction which would constitute a condition precedent to, or the absence of which would materially adversely affect, the performance by the City of its obligations under the City Documents, have been or will be obtained at the Closing Date and are or will be in full force and effect at the Closing Date.

E. The City Documents conform as to form and tenor to the descriptions thereof contained in the Official Statement.

F. The Bonds are payable from the Special Tax Revenues generated by the levy of special taxes in Improvement Area No. 2 (the “**Special Taxes**”), as set forth in the Fiscal Agent Agreement. The levy of the Special Taxes has been duly and validly authorized pursuant to the Act and, subject to the maximum rate of Special Taxes in the Rate and Method and the application of the Special Tax Revenues as set forth in the Fiscal Agent Agreement, the levy of the Special Taxes within Improvement Area No. 2 will be fixed and levied in an amount which, together with other available funds, is required for the payment of the principal of, and interest on, the Bonds when due and payable, all as provided in the Fiscal Agent Agreement. The City has covenanted in the Fiscal Agent Agreement to cause the Special Taxes to be levied and collected at the same time and in the same manner as ordinary *ad valorem* property taxes.

G. The Fiscal Agent Agreement creates a valid pledge of, first lien upon and security interest in, the Special Tax Revenues, and in the moneys in the Special Tax Fund established pursuant to the Fiscal Agent Agreement, on the terms and conditions set forth in the Fiscal Agent Agreement.

H. Except as disclosed in the Preliminary Official Statement, or will be disclosed in the Official Statement, there are, to the best of the City’s knowledge, no entities with outstanding assessment liens against any of the properties within Improvement Area No. 2 or which are senior to or on a parity with the Special Taxes referred to in paragraph (G) hereof.

I. The information contained in the Preliminary Official Statement and in the Official Statement (other than statements therein pertaining to DTC and its book-entry system and under the caption “OWNERSHIP AND DEVELOPMENT OF IMPROVEMENT AREA NO. 2,” as to which no view is expressed) does not and shall not contain any untrue or misleading statement of a material fact or omit to state any material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading; and, upon delivery and up to and including 25 days after the End of the Underwriting Period (as defined in paragraph (J) below), the Official Statement will be amended and supplemented so as to contain no misstatement of any material fact or omission of any statement necessary to make the statements contained therein, in the light of the circumstances in which such statements were made, not misleading.

J. Up to and including 25 days after the End of the Underwriting Period, the City will advise the Underwriter promptly of any proposal to amend or supplement the Official Statement and will not effect or consent to any such amendment or supplement without the consent of the Underwriter, which consent will not be unreasonably withheld. The City will advise the Underwriter promptly of the institution of any proceedings known to it by any governmental agency prohibiting or otherwise materially affecting the use of the Official Statement in connection with the offering, sale or distribution of the Bonds. As used herein, the term “**End of the Underwriting Period**” means the later of such time as: (i) the Bonds are delivered to the Underwriter; or (ii) the Underwriter does not retain, directly or as a member of an underwriting syndicate, an unsold balance of the Bonds for sale to the public. Unless the Underwriter gives notice to the contrary, the End of the Underwriting Period shall be deemed to be the Closing Date. Any notice delivered pursuant to this provision shall be a written notice delivered to the City at or prior to the Closing Date, and shall specify a date (other than the Closing Date) to be deemed the “End of the Underwriting Period.”

K. At the time of acceptance hereof there is and as of the Closing there will be no action pending (notice of which has been served on the City) or to the best knowledge of the City threatened, in which any such action: (i) in any way questions the existence of the Community

Facilities District or the titles of the officers of the City to their respective offices; (ii) affects, contests or seeks to prohibit, restrain or enjoin the issuance or delivery of the Bonds or the payment or collection of Special Tax Revenues or any amounts pledged or to be pledged to pay the principal of and interest on the Bonds, or in any way contests or affects the validity of the City Documents or the consummation of the transactions on the part of the City contemplated thereby; (iii) contests the exemption of interest on the Bonds from federal or State income taxation or contests the powers of the City or the Community Facilities District which may result in any material adverse change relating to the financial condition of the Community Facilities District; or (iv) contests the completeness or accuracy of the Preliminary Official Statement or the Official Statement or any supplement or amendment thereto or asserts that the Preliminary Official Statement or the Official Statement contained any untrue statement of a material fact or omitted to state any material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading; and as of the time of acceptance hereof there is and, as of the Closing Date, there will be no basis for any action, suit, proceeding, inquiry or investigation of the nature described in clauses (i) through (iv) of this sentence.

L. Any certificate signed on behalf of the City by any officer or employee of the City authorized to do so shall be deemed a representation by the City to the Underwriter as to the statements made therein.

M. At or prior to the Closing, the City will have duly authorized, executed and delivered the Continuing Disclosure Certificate in substantially the form attached as Appendix G to the Official Statement. Except as disclosed in the Preliminary Official Statement, the City has not failed to comply in all respects with any previous undertakings with regard to the Rule to provide annual reports or notices of material events in the last five years.

N. The City will apply the proceeds of its Bonds in accordance with the Fiscal Agent Agreement.

O. Between the date of the Purchase Agreement and the date of Closing, the City will not offer or issue any bonds, notes or other obligations for borrowed money payable or secured by Special Taxes, except as previously disclosed to the Underwriter.

The execution and delivery of this Purchase Agreement by the City shall constitute a representation to the Underwriter that the representations contained in this Section 3 are true as of the date hereof.

**4. Conditions to the Obligations of the Underwriter.** The obligation of the Underwriter to accept delivery of and pay for the Bonds on the Closing Date shall be subject, at the option of the Underwriter, to the accuracy in all material respects of the representations on the part of the City contained herein, to the accuracy in all material respects of the statements of the officers and other officials of the City made in any certificates or other documents furnished pursuant to the provisions hereof, to the performance by the City of its obligations to be performed hereunder at or prior to the Closing Date and, to the following additional conditions:

A. At the Closing Date, the City Resolutions, the Formation Documents, and the City Documents shall be in full force and effect, and shall not have been amended, modified or supplemented, except as may have been agreed to in writing by the Underwriter, and there shall have been taken in connection therewith, with the issuance of the Bonds, and with the transactions

contemplated thereby, and by this Purchase Agreement, all such actions as, in the opinion of Bond Counsel, shall be necessary and appropriate.

B. At the Closing Date, except as was described in the Official Statement, the City shall not be, in any respect material to the transactions referred to herein or contemplated hereby, in breach of or in default under, any law or administrative rule or regulation of the State of California, the United States of America, or of any department, division, agency or instrumentality of either thereof, or under any applicable court or administrative decree or order, or under any loan agreement, note, resolution, indenture, contract, agreement or other instrument to which the City is a party or is otherwise subject or bound, and the execution and delivery and the performance by the City of its obligations under the City Documents, the City Resolutions and any other instruments contemplated by any of such documents, and compliance with the provisions of each thereof, will not conflict with or constitute a breach of or default under any applicable law or administrative rule or regulation of the State of California, the United States of America, or of any department, division, agency or instrumentality of either thereof, or under any applicable court or administrative decree or order, or under any loan agreement, note, resolution, indenture, contract, agreement or other instrument to which the City is a party or is otherwise subject or bound, in any manner that would materially and adversely affect the performance by the City of its obligations under the City Documents or the City Resolutions.

C. The information contained in the Official Statement is, as of the Closing Date and as of the date of any supplement or amendment thereto pursuant hereto, true and correct in all material respects and does not, as of the Closing Date or as of the date of any supplement or amendment thereto, contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading.

D. Between the date hereof and the Closing Date, the market price or marketability, at the initial offering prices set forth on the inside cover page of the Official Statement, of the Bonds shall not have been materially adversely affected, in the judgment of the Underwriter (evidenced by a written notice to the City terminating the obligation of the Underwriter to accept delivery of and pay for the Bonds), by reason of any of the following:

1. Legislation introduced in or enacted (or resolution passed) by the Congress of the United States of America or recommended to the Congress by the President of the United States, the Department of the Treasury, the Internal Revenue Service, or any member of Congress, or favorably reported for passage to either House of Congress by any committee of such House to which such legislation had been referred for consideration, or a decision rendered by a court established under Article III of the Constitution of the United States of America or by the Tax Court of the United States of America, or an order, ruling, regulation (final, temporary or proposed), press release or other form of notice issued or made by or on behalf of the Treasury Department of the United States of America or the Internal Revenue Service, with the purpose or effect, directly or indirectly, of imposing federal income taxation upon such interest as would be received by any owners of the Bonds beyond the extent to which such interest is subject to taxation as of the date hereof;

2. Legislation introduced in or enacted (or resolution passed) by the Congress or an order, decree or injunction issued by any court of competent jurisdiction, or an order, ruling, regulation (final, temporary or proposed), press release or other form of notice issued or made

by or on behalf of the Securities and Exchange Commission, or any other governmental agency having jurisdiction of the subject matter, to the effect that obligations of the general character of the Bonds, including any or all underlying arrangements, are not exempt from registration under or other requirements of the Securities Act of 1933, as amended, or that the Fiscal Agent Agreement are not exempt from qualification under or other requirements of the Fiscal Agent Agreement Act of 1939, as amended, or that the issuance, offering or sale of obligations of the general character of the Bonds, including any or all underlying arrangements, as contemplated hereby or by the Official Statement or otherwise is or would be in violation of the federal securities laws as amended and then in effect;

3. A general suspension of trading in securities on the New York Stock Exchange, or a general banking moratorium declared by Federal, State of New York or State of California officials authorized to do so;

4. The introduction, proposal or enactment of any amendment to the Federal or California Constitutions or any action by any Federal or California court, legislative body, regulatory body or other authority materially adversely affecting the tax status of the City, its property, income, securities (or interest thereon), or the validity or enforceability of Special Taxes as contemplated by the Official Statement;

5. Any event occurring, or information becoming known which, in the judgment of the Underwriter, makes untrue in any material respect any statement or information contained in the Preliminary Official Statement or in the Official Statement, or has the effect that the Preliminary Official Statement or the Official Statement contains any untrue statement of a material fact or omits to state a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading;

6. Any national securities exchange, the Comptroller of the Currency, or any other governmental authority, shall impose as to the Bonds or obligations of the general character of the Bonds, any material restrictions not now in force, or increase materially those now in force, with respect to the extension of credit by, or the charge to the net capital requirements of, the Underwriter;

7. There shall have occurred any material outbreak or escalation of hostilities or other calamity or crisis the effect of which on the financial markets of the United States is such as to make it impracticable, in the judgment of the Underwriter, following consultation with the City, to sell the Bonds;

8. The filing or threat of an Action described Section 3.K hereof; or

9. Any proceeding shall have been commenced or be threatened in writing by the Securities and Exchange Commission against the City.

E. At or prior to the Closing Date, the Underwriter shall have received a counterpart original or certified copy of the following documents, in each case satisfactory in form and substance to the Underwriter:

1. The Official Statement, executed on behalf of the City by its Finance Director or other authorized officer;

2. The City Documents, duly executed and delivered by all parties thereto;

3. The City Resolutions, together with a certificate dated as of the Closing Date of the City Clerk to the effect that the City Resolutions are true, correct and complete copies of the City Resolutions duly adopted by the City Council;

4. The Formation Documents, together with a certificate dated as of the Closing Date of the City Clerk to the effect that the Formation Documents are true, correct and complete copies of the Formation Documents duly adopted by the City Council;

5. An unqualified approving opinion for the Bonds, dated the Closing Date and addressed to the City, of Bond Counsel, in substantially the form included as Appendix F to the Official Statement;

6. A supplemental opinion or opinions, dated the Closing Date and addressed to the Underwriter, of Bond Counsel, in substantially the form attached hereto as Exhibit D;

7. A letter of Disclosure Counsel addressed to the Underwriter, to the effect that, no facts have come to attention of Disclosure Counsel that have caused such counsel to believe that the Preliminary Official Statement, as of its date, or the Official Statement, as of its date and as of the Closing Date (except for the following items, which are expressly excluded from the scope of this sentence: any financial, statistical and demographic data or forecasts, numbers, charts, estimates, projections, assumptions or expressions of opinion, the appraisal and information regarding DTC and its book-entry only system, that is contained or incorporated by reference in the Official Statement and the appendices to the Official Statement) contained or contains any untrue statement of a material fact or omitted or omits to state any material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading;

8. A certificate dated the Closing Date and signed by an authorized representative of the City or an authorized designee, on behalf of the City to the effect that: (i) the representations made by the City contained in this Purchase Agreement are true and correct in all material respects on and as of the Closing Date with the same effect as if made on the Closing Date, provided that any references as to the Preliminary Official Statement shall be deemed to be to the Official Statement; (ii) to the best knowledge of such officer, no event has occurred since the date of the Official Statement which should be disclosed in the Official Statement for the purpose for which it is to be used or which it is necessary to disclose therein in order to make the statements and information therein not misleading in any material respect; and (iii) the City has complied with all the agreements and satisfied all the conditions on its part to be satisfied under the City Documents prior to the Closing Date;

9. An opinion of the City Attorney of the City, dated the date of Closing and addressed to the Underwriter and the City, to the effect that:

a. The City is a municipal corporation, corporate and politic, duly organized and existing under the Constitution and laws of the State of California;

b. The City Resolutions and the Formation Documents have been duly adopted at a meeting of the City Council, which was called and held pursuant to law and with all public notice required by law and at which a quorum was present and acting throughout, and the City Resolutions and the Formation Documents are in full force and effect and have not been modified, amended, rescinded or repealed since the date of their adoption;

c. The City Documents and the Official Statement have been duly authorized, executed and delivered by the City and the City Documents constitute the legal, valid and binding obligations of the City enforceable against the City in accordance with their terms, subject to bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting creditors' rights, to the application of equitable principles where equitable remedies are sought and to the exercise of judicial discretion in appropriate cases;

d. To the best knowledge of such counsel, the execution and delivery of the City Documents and the Official Statement and compliance with the provisions thereof under the circumstances contemplated thereby: (a) do not in any material respect conflict with or constitute on the part of the City a breach of or default under any agreement or other instrument to which the City is a party or by which it is bound; and (b) do not and will not in any material respect or constitute on the part of the City a violation, breach of or default under any court order or consent decree to which the City is subject;

e. Except as may be stated in the Official Statement, there is no action, suit, proceeding or investigation before or by any court, public board or body pending (notice of which has been served on the City) or, to such counsel's knowledge, threatened wherein an unfavorable decision, ruling or finding would: (a) affect the creation, organization, existence or powers of the City or the Community Facilities District, or the titles of its members and officers to their respective offices; or (b) affect the validity of the City Documents, the City Resolutions or the Formation Documents, or restrain or enjoin the repayment of the Bonds or in any way contest or affect the validity of the City Documents, the City Resolutions or the Formation Documents, or contest the authority of the City to enter into or perform its obligations under any of the City Documents, the City Resolutions or the Formation Documents, or under which a determination adverse to the City would have a material adverse effect upon the financial condition or the revenues of the City or the Community Facilities District, questions the right of the City to use Special Tax Revenues for the repayment of the Bonds or affects in any manner the right or ability of the City to collect or pledge the Special Taxes levied within Improvement Area No. 2 for the repayment of the Bonds;

10. A transcript of all proceedings relating to the authorization, issuance, sale and delivery of the Bonds, including certified copies of the Fiscal Agent Agreement and all resolutions of the City relating thereto;

11. A certificate dated the Closing Date from Goodwin Consulting Group, Inc. addressed to the City and the Underwriter to the effect that: (i) the Special Taxes (after payment of estimated Administrative Expenses) if collected in the maximum amounts permitted pursuant to the Rate and Method as of the Closing Date would generate at least 110% of the annual debt service on the Bonds in each year, based on such assumptions and qualifications as shall be acceptable to the Underwriter; and (ii) the statements in the Official Statement provided by Goodwin Consulting Group, Inc. concerning the Special Taxes and the Rate and Method and all information supplied by it for use in the Official Statement as of the date of the Official Statement and as of the

Closing Date did not and do not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading;

12. Certified copies of the general resolution of the Fiscal Agent authorizing the execution and delivery of certain documents by certain officers of the Fiscal Agent, which resolution authorizes the execution of the Fiscal Agent Agreement and the authentication of the Bonds;

13. A certificate of the Fiscal Agent, addressed to the Underwriter and the City dated the Closing Date, to the effect that: (i) the Fiscal Agent is authorized to carry out corporate trust powers, and have full power and authority to perform its duties under the Fiscal Agent Agreement; (ii) the Fiscal Agent is duly authorized to execute and deliver the Fiscal Agent Agreement, to accept the obligations created by the Fiscal Agent Agreement and to authenticate the Bonds pursuant to the terms of the Fiscal Agent Agreement; (iii) no consent, approval, authorization or other action by any governmental or regulatory authority having jurisdiction over the Fiscal Agent that has not been obtained is or will be required for the authentication of the Bonds or the consummation by the Fiscal Agent of the other transactions contemplated to be performed by the Fiscal Agent in connection with the authentication of the Bonds and the acceptance and performance of the obligations created by the Fiscal Agent Agreement; and (iv) to the best of its knowledge, compliance with the terms of the Fiscal Agent Agreement will not conflict with, or result in a violation or breach of, or constitute a default under, any loan agreement, trust agreement, bond, note, resolution or any other agreement or instrument to which the Fiscal Agent is a party or by which it is bound, or any law or any rule, regulation, order or decree of any court or governmental agency or body having jurisdiction over the Fiscal Agent or any of its activities or properties;

14. An opinion of counsel to the Fiscal Agent, dated the Closing Date, addressed to the Underwriter and the City to the effect that the Fiscal Agent is a national banking association duly organized and validly existing under the laws of the United States having full power and being qualified to enter into, accept and agree to the provisions of the Fiscal Agent Agreement, and that the Fiscal Agent Agreement has been duly authorized, executed and delivered by the Fiscal Agent and, assuming due execution and delivery by the other parties thereto, constitutes the legal, valid and binding obligation of the Fiscal Agent enforceable in accordance with its terms, subject to bankruptcy, insolvency, reorganization, moratorium and other laws affecting the enforcement of creditors' rights in general and except as such enforceability may be limited by the application of equitable principles if equitable remedies are sought;

15. A certificate of the City dated the Closing Date, in a form acceptable to Bond Counsel and the Underwriter, that the Bonds are not arbitrage bonds within the meaning of Section 148 of the Internal Revenue Code of 1986, as amended;

16. An opinion of Stradling Yocca Carlson & Rauth, a Professional Corporation, counsel to the Underwriter (“**Underwriter’s Counsel**”), dated the date of Closing and addressed to the Underwriter in form and substance acceptable to the Underwriter;

17. A closing certificate of the Developer dated the Closing Date, substantially in the form attached as Appendix 1 to Exhibit B attached hereto;

18. A closing certificate of Woodside dated the Closing Date, substantially in the form attached as Appendix 1 to Exhibit C attached hereto;

19. A Continuing Disclosure Certificate (Woodside Homes) (the “**Woodside Continuing Disclosure Certificate**”) executed by Woodside in substantially the form set forth in Appendix F to the Preliminary Official Statement, with such additional changes as may be agreed to by the Underwriter;

20. A letter or letters from counsel to Woodside, in form and substance acceptable to the Underwriter, dated the Closing Date and addressed to the Underwriter, regarding: (i) negative assurance with respect to the Preliminary Official Statement and Official Statement; and (ii) the validity and enforceability of the Woodside Continuing Disclosure Certificate; and

21. Such additional legal opinions, certificates, instruments and other documents as the Underwriter may reasonably request to evidence the truth and accuracy, as of the date hereof and as of the Closing Date, of the material representations of the City contained herein, and of the statements and information contained in the Official Statement and the due performance or satisfaction by the City at or prior to the Closing of all agreements then to be performed and all conditions then to be satisfied by the City in connection with the transactions contemplated hereby and by the Fiscal Agent Agreement and the Official Statement.

If the City shall be unable to satisfy the conditions to the obligations of the Underwriter to purchase, accept delivery of and pay for the Bonds contained in this Purchase Agreement, or if the obligations of the Underwriter to purchase, accept delivery of and pay for the Bonds shall be terminated for any reason permitted by this Purchase Agreement, this Purchase Agreement shall terminate and neither the City nor the Underwriter shall be under any further obligation hereunder, except that the respective obligations of the Underwriter and the City set forth in Section 6 hereof shall continue in full force and effect.

5. **Conditions to the Obligations of the City.** The obligations of the City shall be subject to the satisfaction of the conditions contained in Section 4 of this Purchase Agreement.

6. **Expenses.** Whether or not the transactions contemplated by this Purchase Agreement are consummated, the Underwriter shall be under no obligation to pay, and the City shall pay only from the proceeds of the Bonds or any other legally available funds of the City or the Community Facilities District, but only as the City and such other party providing such services may agree, all expenses and costs of the City incident to the performance of its obligations in connection with the authorization, execution, sale and delivery of the Bonds to the Underwriter, including, without limitation, printing costs, initial fees of the Fiscal Agent, including fees and disbursements of their counsel, if any, fees and disbursements of Bond Counsel, Disclosure Counsel and other professional advisors employed by the City, costs of preparation, printing, signing, transportation, delivery and safekeeping of the Bonds and for expenses (included in the expense component of the spread) incurred by the Underwriter on behalf of the City’s employees which are incidental to implementing this Purchase Agreement, including, but not limited to, meals, transportation and lodging of those employees. The Underwriter shall pay all out-of-pocket expenses of the Underwriter, including, without limitation, advertising expenses, the California Debt and Investment Advisory Commission fee, CUSIP Services Bureau charges, regulatory fees imposed on new securities issuers and any and all other expenses incurred by the Underwriter in connection with the public offering and distribution of the Bonds, including fees of its counsel.

7. **Notices.** Any notice of other communication to be given to the City under this Purchase Agreement may be given by delivering the same in writing to the City of Tracy, 333 Civic Center Plaza, Tracy, California 95376, Attention: Finance Director; any notice or other communication to be given to the Underwriter under this Purchase Agreement may be given by delivering the same in writing to Piper Sandler & Co, 3626 Fair Oaks Blvd., Suite 100, Sacramento, California 9864, Attention: Dennis McGuire.

8. **Parties In Interest.** This Purchase Agreement is made solely for the benefit of the City and the Underwriter (including any successors or assignees of the Underwriter) and no other person shall acquire or have any right hereunder or by virtue hereof.

9. **Survival of Representations.** The representations of the City under this Purchase Agreement shall not be deemed to have been discharged, satisfied or otherwise rendered void by reason of the Closing and regardless of any investigations made by or on behalf of the Underwriter (or statements as to the results of such investigations) concerning such representations and statements of the City and regardless of delivery of and payment for the Bonds.

10. **Execution in Counterparts.** This Purchase Agreement may be executed by the parties hereto in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument.

11. **Effective.** This Purchase Agreement shall become effective and binding upon the respective parties hereto upon the execution of the acceptance hereof by the City and shall be valid and enforceable as of the time of such acceptance.

12. **No Prior Agreements.** This Purchase Agreement supersedes and replaces all prior negotiations, agreements and understanding among the parties hereto in relation to the sale of the Bonds by the City.

13. **Governing Law.** This Purchase Agreement shall be governed by the laws of the State of California.

*[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK.]*

14. **Effective Date.** This Purchase Agreement shall become effective and binding upon the respective parties hereto upon the execution of the acceptance hereof by the City and shall be valid and enforceable as of the time of such acceptance.

Very truly yours,

PIPER SANDLER & CO.

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

Its: Authorized Officer

Time of Execution: \_\_\_\_\_

CITY OF TRACY

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

Karin Schnaider, Finance Director

**EXHIBIT A**

\$ \_\_\_\_\_  
**IMPROVEMENT AREA NO. 2 OF THE CITY OF TRACY  
COMMUNITY FACILITIES DISTRICT NO. 2016-2 (ECFD)  
SPECIAL TAX BONDS, SERIES 2021**

**Schedule of Bond Maturities, Principal Amounts, Interest Rates, Yields  
and Initial Offering Prices**

<i>Maturity Date (September 1)</i>	<i>Principal Amount</i>	<i>Interest Rate</i>	<i>Yield</i>	<i>Initial Offering Price</i>	<i>10% Test Used</i>	<i>Hold the Price Offering Rule Used</i>
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<sup>C</sup> Priced to the optional redemption date of \_\_\_\_\_ 1, 20\_\_ at \_\_\_\_\_%.

<sup>T</sup> Term Bond.

**Optional Redemption.** The Bonds maturing on or after September 1, 20\_\_, are subject to optional redemption as directed by the City, from sources of funds other than prepayments of Special Taxes, prior to their stated maturity on any date on or after September 1, 20\_\_, as a whole or in part, at the redemption prices (expressed as a percentage of the principal amount of the Bonds to be redeemed) set forth below, together with accrued interest thereon to the date fixed for redemption:

<u>Redemption Dates</u>	<u>Redemption Price</u> %
September 1, 20__ through August 31, 20__	
September 1, 20__ through August 31, 20__	
September 1, 20__ through August 31, 20__	
September 1, 20__ and any date thereafter	

***Mandatory Sinking Fund Redemption.*** The Bonds maturing on September 1, 20\_\_, are subject to mandatory redemption in part by lot, from sinking fund payments made by the City from the Bond Fund, at a redemption price equal to the principal amount thereof to be redeemed, without premium, in the aggregate respective principal amounts all as set forth in the following table:

<u>Sinking Fund Redemption Date (September 1)</u>	<u>Sinking Fund Payments</u>
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(maturity)

***Redemption from Special Tax Prepayments.*** Special Tax Prepayments and any corresponding transfers from the Reserve Fund under the Fiscal Agent Agreement will be used to redeem Bonds on the next Interest Payment Date for which notice of redemption can timely be given under the Fiscal Agent Agreement, among maturities so as to maintain substantially the same debt service profile for the Bonds as in effect prior to such redemption and by lot within a maturity, at a redemption price (expressed as a percentage of the principal amount of the Bonds to be redeemed), as set forth below, together with accrued interest to the date fixed for redemption:

<u>Redemption Dates</u>	<u>Redemption Price</u> %
Any Interest Payment Date on or before March 1, 20__	
September 1, 20__ and March 1, 20__	
September 1, 20__ and March 1, 20__	
September 1, 20__ and any Interest Payment Date thereafter	

**EXHIBIT B**

**IMPROVEMENT AREA NO. 2 OF THE CITY OF TRACY  
COMMUNITY FACILITIES DISTRICT NO. 2016-2 (ECFD)  
SPECIAL TAX BONDS, SERIES 2021**

**LETTER OF REPRESENTATIONS OF SURLAND COMMUNITIES LLC.**

\_\_\_\_\_, 2021

City of Tracy  
333 Civic Center Plaza  
Tracy, California 95376

Piper Sandler & Co.  
3626 Fair Oaks Blvd., Suite 100  
Sacramento, California 95864

Ladies and Gentlemen:

Reference is made to the Improvement Area No. 2 of the City of Tracy Community Facilities District No. 2016-2 (ECFD) Special Tax Bonds, Series 2021 (the “**Bonds**”) and to the Bond Purchase Agreement, (the “**Purchase Agreement**”), by and between the City of Tracy (the “**City**”) and Piper Sandler & Co. (the “**Underwriter**”), to be entered into in connection therewith. This Letter of Representations of Surland Communities LLC (the “**Letter of Representations**”) is delivered pursuant to the Purchase Agreement. Capitalized terms that are used herein and not otherwise defined have the meanings ascribed to them in the Purchase Agreement.

The undersigned certifies that the undersigned is familiar with the facts herein and is authorized and qualified to certify the same as an authorized officer or representative of Surland Communities LLC, a California limited liability company (the “**Developer**”), and the undersigned, on behalf of the Developer, further certifies as follows:

1. The Developer is duly organized and validly existing under the laws of the State of California, and has all requisite right, power and authority: (i) to execute and deliver this Letter of Representations; (ii) to perform its obligations under the Master Acquisition Agreement, dated as of February 1, 2017 (the “**Acquisition Agreement**”), by and between the Developer and the City; and (iii) to develop the master-planned community known as the “**Ellis Development**,” including the portion thereof located in the City of Tracy Community Facilities District No. 2016-2 (ECFD) (the “**Community Facilities District**”) as described in the Preliminary Official Statement.

2. Except as set forth in the Preliminary Official Statement, no action, suit, proceeding, inquiry or investigation at law or in equity, before or by any court, regulatory agency, public board or body is pending against the Developer (with proper service of process to the Developer having been accomplished) or, to the Actual Knowledge of the Undersigned,<sup>1</sup> is pending against any current

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<sup>1</sup> “**Actual Knowledge of the Undersigned**” means the knowledge that the individual signing on behalf of the Developer currently has as of the date of this Letter of Representations or has obtained through: (i) interviews with such current officers and responsible employees of the Developer and its

Affiliate<sup>2</sup> (with proper service of process to such Affiliate having been accomplished) or to the Actual Knowledge of the Undersigned is overtly threatened in writing against the Developer or any such Affiliate: (a) to restrain or enjoin the collection of Special Taxes or other sums pledged or to be pledged to pay the principal of and interest on the Bonds (e.g., the 2021 Reserve Fund established under the Fiscal Agent Agreement); (b) to restrain or enjoin the performance by the Developer of its obligations under the Acquisition Agreement; (c) to restrain or enjoin the development of the property within Improvement Area No. 2 of the Community Facilities District as described in the Preliminary Official Statement; (d) in any way contesting or affecting the validity of the Special Taxes; or (e) which is reasonably likely to materially and adversely affect the Developer's or its Affiliates' ability to develop the remainder of the Ellis Development as described in the Preliminary Official Statement.

3. As of the date of the Preliminary Official Statement, to the Actual Knowledge of the Undersigned, the information that is contained therein solely with respect to the Developer, its Affiliates, the ownership and proposed development of the Property and the remainder of the Ellis Development by the Developer and its Affiliates as set forth under the captions of the Preliminary Official Statement entitled "OWNERSHIP AND DEVELOPMENT OF IMPROVEMENT AREA NO. 2 – The Ellis Project" (excluding therefrom in all cases information regarding Woodside its development, information regarding market value ratios and annual special tax ratios, and information which is identified as having been provided by a source other than the Developer), is true and correct in all material respects and did not contain any untrue statement of a material fact or omit

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Affiliates as the undersigned has determined are reasonably likely, in the ordinary course of their respective duties, to have knowledge of the matters that are set forth in this Letter of Representations; and/or (ii) review of documents that were reasonably available to the undersigned and which the undersigned has reasonably deemed necessary in order for the undersigned to obtain knowledge of the matters that are set forth in this Letter of Representations. The undersigned has not conducted any extraordinary inspection or inquiry other than such inspections or inquiries as are prudent and customary in connection with the ordinary course of the Developer's current business and operations.

<sup>2</sup> "Affiliate" means, with respect to the Developer, any other Person: (i) who directly, or indirectly through one or more intermediaries, is currently controlling, controlled by or under common control with the Developer; and (ii) for whom information, including financial information or operating data, concerning such Person is material to potential investors in their evaluation of the Improvement Area and investment decision regarding the Bonds (i.e., information relevant to: (a) the Developer's or its Affiliates' development plans with respect to the Property and ability to pay the Special Taxes on the Property prior to delinquency; or (b) such Person's assets or funds that would materially affect the Developer's or its Affiliates' ability to develop the Property as described in the Preliminary Official Statement or to pay the Special Taxes on the Property prior to delinquency. For purposes of this Letter of Representations, the term "Affiliate" shall include Ellis Village LLC, a California limited liability company, and Ellis Storage, LLC, a California limited liability company, each of which owns a portion of the Property. "Person" means an individual, a corporation, a partnership, a limited liability company, an association, a joint stock company, a trust, any unincorporated organization or a government or political subdivision thereof. For purposes hereof, the term "control" (including the terms "controlling," "controlled by" or "under common control with") means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

to state a material fact that is necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading.

4. If between the date hereof and the Closing Date any event relating to or affecting the Developer, its Affiliates, the ownership and proposed development of the Property and the remainder of the Ellis Development shall occur of which the Developer has actual knowledge which would cause the information under the captions of the Preliminary Official Statement that are described in Paragraph 3 (and subject to the limitations and exclusions contained in Paragraph 3) hereof to contain an untrue statement of a material fact or to omit to state a material fact that is necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading, the Developer shall notify the City and the Underwriter. If in the reasonable opinion of counsel to the City or the Underwriter such event requires the preparation and publication of a supplement or amendment to the Preliminary Official Statement, the Developer shall reasonably cooperate with the City in the preparation of an amendment or supplement to the Preliminary Official Statement in form and substance that is reasonably satisfactory to counsel to the City and to the Underwriter.

5. The Developer agrees to deliver a Closing Certificate dated the date of issuance of the Bonds at the time of issuance of the Bonds in substantially the form attached hereto as Appendix 1.

The undersigned has executed this Letter of Representations solely in the undersigned's capacity as an officer or authorized representative of the Developer and the undersigned will have no personal liability arising from or relating to this Letter of Representations.

SURLAND COMMUNITIES LLC,  
a California limited liability company

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

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

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

**APPENDIX 1 to EXHIBIT B**

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**IMPROVEMENT AREA NO. 2 OF THE CITY OF TRACY  
COMMUNITY FACILITIES DISTRICT NO. 2016-2 (ECFD)  
SPECIAL TAX BONDS, SERIES 2021**

**CLOSING CERTIFICATE OF SURLAND COMMUNITIES LLC**

\_\_\_\_\_, 2021

City of Tracy  
333 Civic Center Plaza  
Tracy, California 95376

Piper Sandler & Co.  
3626 Fair Oaks Blvd., Suite 100  
Sacramento, California 95864

Ladies and Gentlemen:

Reference is made to the Improvement Area No. 2 of the City of Tracy Community Facilities District No. 2016-2 (ECFD) Special Tax Bonds, Series 2021 (the “**Bonds**”) and to the Bond Purchase Agreement, dated \_\_\_\_\_, 2021 (the “**Purchase Agreement**”), by and between the City of Tracy and Piper Sandler & Co., entered into in connection therewith. This Closing Certificate of Surland Communities LLC (the “**Closing Certificate**”) is delivered by Surland Communities LLC, a California limited liability company (the “**Developer**”), pursuant to the Purchase Agreement. Capitalized terms that are used herein and not otherwise defined have the meanings ascribed to them in the Letter of Representations of Surland Communities LLC dated \_\_\_\_\_, 2021 (the “**Letter of Representations**”), delivered by the Developer.

The undersigned certifies that the undersigned is familiar with the facts herein certified and is authorized and qualified to certify the same as an authorized officer or representative of the Developer. The undersigned, on behalf of the Developer, further certifies as follows:

1. The Developer has received the final Official Statement relating to the Bonds (the “**Final Official Statement**”). To the Actual Knowledge of the Undersigned, each statement, representation and warranty that was made in the Letter of Representations is true and correct in all material respects on and as of the date hereof with the same effect as if made on the date hereof, except that all references therein to the Preliminary Official Statement shall be deemed to be references to the Final Official Statement.

2. To the Actual Knowledge of the Undersigned, no event has occurred since the date of the Preliminary Official Statement which affects the statements and information that are described in Paragraph 3 of the Letter of Representations (and subject to the limitations and exclusions contained in Paragraph 3 of the Letter of Representations) relating to the Developer, its Affiliates, and the remainder of the Ellis Development which should be disclosed in the Final Official Statement for the

purposes for which it is to be used in order to make such statements and information that are contained in the Final Official Statement not misleading in any material respect.

3. For the period through 25 days after the “**end of the underwriting period**” (as such term is defined in the Purchase Agreement to mean the date hereof), if any event that relates to or affects the Developer, its Affiliates, the remainder of the Ellis Development shall occur as a result of which it is necessary, in the opinion of the Underwriter or counsel to the City, to amend or supplement the Final Official Statement in order to make the information under the captions of the Final Official Statement that are described in Paragraph 3 of the Letter of Representations not misleading, in the light of the circumstances existing at the time it is delivered to a purchaser, the Developer shall reasonably cooperate with the City and the Underwriter in the preparation of an amendment or supplement to the information described in the captions of the Final Official Statement that are described in Paragraph 3 of the Letter of Representations. Such amendment or supplement shall be in form and substance satisfactory to the Underwriter and counsel to the Community Facilities District and shall amend or supplement the Final Official Statement so that it will not contain an untrue statement of a material fact or omit to state a material fact that is necessary in order to make the statements therein, in the light of the circumstances existing at the time the Final Official Statement is delivered to a purchaser, not misleading.

4. The undersigned has executed this Closing Certificate solely in the undersigned’s capacity as an officer or authorized representative of the Developer and the undersigned will have no personal liability arising from or relating to this Closing Certificate.

SURLAND COMMUNITIES LLC,  
a California limited liability company

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

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

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

**EXHIBIT C**

**IMPROVEMENT AREA NO. 2 OF THE CITY OF TRACY  
COMMUNITY FACILITIES DISTRICT NO. 2016-2 (ECFD)  
SPECIAL TAX BONDS, SERIES 2021**

**LETTER OF REPRESENTATIONS OF WOODSIDE 05N, LP**

\_\_\_\_\_, 2021

City of Tracy  
333 Civic Center Plaza  
Tracy, California 95376

Piper Sandler & Co.  
3626 Fair Oaks Blvd., Suite 100  
Sacramento, California 95864

Ladies and Gentlemen:

Reference is made to the Improvement Area No. 2 of the City of Tracy Community Facilities District No. 2016-2 (ECFD) Special Tax Bonds, Series 2021 (the “**Bonds**”) and to the Bond Purchase Agreement (the “**Purchase Agreement**”), by and between the City of Tracy (the “**City**”) and Piper Sandler & Co. (the “**Underwriter**”), to be entered into in connection therewith. This Letter of Representations of Woodside 05N, LP (the “**Letter of Representations**”) is delivered pursuant to the Purchase Agreement. Capitalized terms that are used herein and not otherwise defined have the meanings ascribed to them in the Purchase Agreement.

The undersigned certifies that the undersigned is familiar with the facts herein and is authorized and qualified to certify the same as an authorized officer or representative of Woodside 05N, LP, a California limited partnership (the “**Developer**”), and the undersigned, on behalf of the Developer, further certifies as follows:

1. The Developer is duly organized and validly existing under the laws of the State of Delaware, and has all requisite right, power and authority: (i) to execute and deliver this Letter of Representations and (ii) to complete the development on its property in Improvement Area No. 2 (the “**Improvement Area**”) of City of Tracy Community Facilities District No. 2016-2 (ECFD) (the “**Community Facilities District**”) as described in the Preliminary Official Statement.

2. The Developer agrees to execute at Closing a Continuing Disclosure Certificate (Woodside Homes) (the “**Developer Continuing Disclosure Certificate**”) in substantially the form set forth in Appendix F to the Preliminary Official Statement, with such additional changes as may be agreed to by the Underwriter.

3. As set forth in the Preliminary Official Statement, title to a certain portion of the property within the Improvement Area is held in the name of the Developer (the “**Property**”). The undersigned, on behalf of the Developer, makes the representations herein with respect to all such Property. Except as otherwise described in the Preliminary Official Statement, the Developer is, and

the Developer's current expectations are that the Developer shall remain, the party responsible for the development of the Property. The Developer has not entered into an agreement for development or management of the Property by any other entity, except for such subcontracts, consultant agreements and similar agreements for land development activities associated with the Developer's development plan as are entered into in the ordinary course of business.

4. Except as set forth in the Preliminary Official Statement, no action, suit, proceeding, inquiry or investigation at law or in equity, before or by any court, regulatory agency, public board or body is pending against the Developer (with proper service of process to the Developer having been accomplished) or, to the Actual Knowledge of the Undersigned<sup>1</sup>, is pending against any current Affiliate<sup>2</sup> (with proper service of process to such Affiliate having been accomplished) or to the Actual Knowledge of the Undersigned is threatened in writing against the Developer or any such Affiliate: (a) to restrain or enjoin the collection of Special Taxes or other sums pledged or to be pledged to pay the principal of and interest on the Bonds (e.g., the 2021 Reserve Fund established under the Fiscal Agent Agreement); (b) to restrain or enjoin the development of the Property as described in the Preliminary Official Statement; (c) in any way contesting or affecting the validity of the Special Taxes; or (d) which is reasonably likely to materially and adversely affect the Developer's ability to complete the development and sale of the Property as described in the Preliminary Official Statement or to pay the Special Taxes due with respect to the Property.

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<sup>1</sup> **“Actual Knowledge of the Undersigned”** means the knowledge that the individual signing on behalf of the Developer currently has as of the date of this Letter of Representations or has obtained through: (i) interviews with such current officers and responsible employees of the Developer and its Affiliates as the undersigned has determined are reasonably likely, in the ordinary course of their respective duties, to have knowledge of the matters that are set forth in this Letter of Representations; and/or (ii) review of documents that were reasonably available to the undersigned and which the undersigned has reasonably deemed necessary in order for the undersigned to obtain knowledge of the matters that are set forth in this Letter of Representations. The undersigned has not conducted any extraordinary inspection or inquiry other than such inspections or inquiries as are prudent and customary in connection with the ordinary course of the Developer's current business and operations.

<sup>2</sup> **“Affiliate”** means, with respect to the Developer, any other Person: (i) who directly, or indirectly through one or more intermediaries, is currently controlling, controlled by or under common control with the Developer; and (ii) for whom information, including financial information or operating data, concerning such Person is material to potential investors in their evaluation of the Improvement Area and investment decision regarding the Bonds (i.e., information relevant to: (a) the Developer's development plans with respect to the Property and ability to pay its Special Taxes on the Property prior to delinquency; or (b) such Person's assets or funds that would materially affect the Developer's ability to develop the Property as described in the Preliminary Official Statement or to pay its Special Taxes on the Property prior to delinquency). **“Person”** means an individual, a corporation, a partnership, a limited liability company, an association, a joint stock company, a trust, any unincorporated organization or a government or political subdivision thereof. For purposes hereof, the term **“control”** (including the terms “controlling,” “controlled by” or “under common control with”) means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

5. As of the date of the Preliminary Official Statement, to the Actual Knowledge of the Undersigned, the information that is contained therein solely with respect to the Developer, its Affiliates, the proposed development of the Property, ownership of the Property, the Developer's development plan, the Developer's financing plan, the Developer's lenders, if any, and contractual arrangements of the Developer or any Affiliates (including, if material to the Developer's development plan or the Developer's financing plan, other loans of such Affiliates) as set forth under the captions of the Preliminary Official Statement entitled "OWNERSHIP AND DEVELOPMENT OF IMPROVEMENT AREA NO. 2 – Property Ownership in Improvement Area No. 2," " – The Merchant Builder," " – Status of [In-tract] Infrastructure for Improvement Area No. 2," " – The Financing Plan in Improvement Area No. 2" and "CONTINUING DISCLOSURE—Woodside Homes Continuing Disclosure" (excluding therefrom in all cases (i) information about Surland Communities LLC or its property ownership or development in the Community Facilities District; (ii) information regarding market value and annual special tax rates and ratios; and (iii) information which is identified as having been provided by a source other than the Developer), is true and correct in all material respects and did not contain any untrue statement of a material fact or omit to state a material fact that is necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading.

6. If between the date hereof and the Closing Date any event relating to or affecting the Developer, its Affiliates, the proposed development of the Property, ownership of the Property, the Developer's development plan, the Developer's financing plan, the Developer's lenders, if any, and contractual arrangements of the Developer or any Affiliates (including, if material to the Developer's development plan or the Developer's financing plan, other loans of such Affiliates) shall occur of which the Developer has actual knowledge which would cause the information under the captions of the Preliminary Official Statement that are described in Paragraph 5 hereof to contain an untrue statement of a material fact or to omit to state a material fact that is necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading, the Developer shall notify the City and the Underwriter. If in the reasonable opinion of counsel to the City or the Underwriter such event requires the preparation and publication of a supplement or amendment to the Preliminary Official Statement, the Developer shall reasonably cooperate with the City in the preparation of an amendment or supplement to the Preliminary Official Statement in form and substance that is reasonably satisfactory to counsel to the City and to the Underwriter.

7. The Developer agrees to deliver a Closing Certificate dated the date of issuance of the Bonds at the time of issuance of the Bonds in substantially the form attached as Appendix 1.

The undersigned has executed this Letter of Representations solely in the undersigned's capacity as an authorized officer or representative of the Developer and the undersigned will have no personal liability arising from or relating to this Letter of Representations.

WOODSIDE 05N, LP,  
a California limited partnership

By: WDS GP, Inc., a California corporation  
Its: General Partner

By: \_\_\_\_\_  
Brian Cutting,  
Vice President

APPENDIX 1 to EXHIBIT C

**IMPROVEMENT AREA NO. 2 OF THE CITY OF TRACY  
COMMUNITY FACILITIES DISTRICT NO. 2016-2 (ECFD)  
SPECIAL TAX BONDS, SERIES 2021**

**CLOSING CERTIFICATE OF WOODSIDE 05N, LP**

\_\_\_\_\_, 2021

City of Tracy  
333 Civic Center Plaza  
Tracy, California 95376

Piper Sandler & Co.  
3626 Fair Oaks Blvd., Suite 100  
Sacramento, California 95864

Ladies and Gentlemen:

Reference is made to the Improvement Area No. 2 of the City of Tracy Community Facilities District No. 2016-2 (ECFD) Special Tax Bonds, Series 2021 (the “**Bonds**”) and to the Bond Purchase Agreement, dated \_\_\_\_\_, 2021 (the “**Purchase Agreement**”), by and between the City of Tracy and Piper Sandler & Co., entered into in connection therewith. This Closing Certificate of Woodside 05N, LP (the “**Closing Certificate**”) is delivered by Woodside 05N, LP, a California limited partnership (the “**Developer**”), pursuant to the Purchase Agreement. Capitalized terms that are used herein and not otherwise defined have the meanings ascribed to them in the Letter of Representations of Woodside 05N, LP, dated \_\_\_\_\_, 2021 (the “**Letter of Representations**”), delivered by the Developer.

The undersigned certifies that the undersigned is familiar with the facts herein certified and is authorized and qualified to certify the same as an authorized officer or representative of the Developer. The undersigned, on behalf of the Developer, further certifies as follows:

1. The Developer has received the final Official Statement relating to the Bonds dated \_\_\_\_\_, 2021 (the “**Final Official Statement**”). To the Actual Knowledge of the Undersigned, each statement, representation and warranty that was made in the Letter of Representations is true and correct in all material respects on and as of the date hereof with the same effect as if made on the date hereof, except that all references therein to the Preliminary Official Statement shall be deemed to be references to the Final Official Statement.

2. The Developer has duly authorized, executed and delivered the Developer Continuing Disclosure Certificate.

3. To the Actual Knowledge of the Undersigned, no event has occurred since the date of the Preliminary Official Statement which affects the statements and information that are described in Paragraph 5 of the Letter of Representations (and subject to the limitations and exclusions contained in Paragraph 5 of the Letter of Representations) relating to the Developer, its ownership of the

Property, the Developer's development plan, the Developer's financing plan and contractual arrangements of the Developer which should be disclosed in the Final Official Statement for the purposes for which it is to be used in order to make such statements and information that are contained in the Final Official Statement not misleading in any material respect.

4. For the period through 25 days after the "end of the underwriting period" (as such term is defined in the Purchase Agreement), if any event that relates to or affects the Developer, its ownership of the Property, the Developer's development plan, the Developer's financing plan and contractual arrangements of the Developer shall occur as a result of which it is necessary, in the opinion of the Underwriter or counsel to the City, to amend or supplement the Final Official Statement in order to make the information under the captions of the Final Official Statement that are described in Paragraph 5 of the Letter of Representations not misleading, in the light of the circumstances existing at the time it is delivered to a purchaser, the Developer shall reasonably cooperate with the City and the Underwriter in the preparation of an amendment or supplement to the information described in the captions of the Final Official Statement that are described in Paragraph 5 of the Letter of Representations. Such amendment or supplement shall be in form and substance satisfactory to the Underwriter and counsel to the Community Facilities District and shall amend or supplement the Final Official Statement so that it will not contain an untrue statement of a material fact or omit to state a material fact that is necessary in order to make the statements therein, in the light of the circumstances existing at the time the Final Official Statement is delivered to a purchaser, not misleading.

The undersigned has executed this Closing Certificate solely in the undersigned's capacity as an authorized officer or representative of the Developer and the undersigned will have no personal liability arising from or relating to this Closing Certificate.

WOODSIDE 05N, LP,  
a California limited partnership

By: WDS GP, Inc., a California corporation  
Its: General Partner

By: \_\_\_\_\_  
Brian Cutting,  
Vice President

**EXHIBIT D**

**SUPPLEMENTAL OPINION OF BOND COUNSEL**

[Date of Issuance]

Piper Sandler & Co.  
3626 Fair Oaks Blvd., Suite 100  
Sacramento, California 95864

\$ \_\_\_\_\_  
Improvement Area No. 2 of the City of Tracy  
Community Facilities District No. 2016-2 (ECFD)  
Special Tax Bonds, Series 2021

(Supplemental Opinion)

Ladies and Gentlemen:

We have acted as bond counsel in connection with the issuance by the City of Tracy (the “**City**”) of the above-referenced bonds (the “**Bonds**”) pursuant to the Mello-Roos Community Facilities Act of 1982, as amended, being sections 53311 et seq. of the California Government Code (the “**Law**”), Resolution No. 2017-025 of the City adopted on February 7, 2017, as supplemented by Resolution No. 2019-\_\_, adopted on April 16, 2019 (and Resolution No. 2021-\_\_, adopted on September 7, 2021 (together, the “**Resolution**”) and a Fiscal Agent Agreement (the “**Fiscal Agent Agreement**”), dated as of \_\_\_\_ 1, 2021, by and between the City, for and on behalf of the City of Tracy Community Facilities District No. 2016-2 (ECFD) (the “**District**”), and U.S. Bank National Association, as fiscal agent. Capitalized terms used herein but not defined have the meaning given them in the Bond Purchase Agreement, dated \_\_\_\_, 2021 (the “**Purchase Agreement**”), by and between Piper Sandler & Co., as underwriter (the “**Underwriter**”), and the City, acting for and on behalf of the District.

We have examined the Fiscal Agent Agreement, the Purchase Agreement, and the Continuing Disclosure Certificate, dated \_\_\_\_, 2021 (the “**Continuing Disclosure Certificate**”), executed and delivered by the City and agreed and accepted by Goodwin Consulting Group, Inc., as dissemination agent, (collectively, the “**City Documents**”), the Law and such certified proceedings and other papers as we deem necessary to render this opinion.

This letter is being delivered in our capacity as bond counsel to the City and not as counsel to the Underwriter.

As to questions of fact material to our opinion, we have relied upon representations of the City contained in the Resolution, the Fiscal Agent Agreement and the certified proceedings and certifications of public officials and others furnished to us without undertaking to verify the same by independent investigation.

Based upon the foregoing, we are of the opinion, under existing law, as follows:

(i) the City Documents have been duly authorized, executed and delivered by the City, and, assuming the City Documents constitute the valid and binding obligation of the other parties thereto, constitute the legally valid and binding obligations of the City enforceable in accordance with their terms, except as enforcement may be limited by bankruptcy, moratorium, insolvency or other laws affecting creditors' rights or remedies and general principles of equity (regardless of whether such enforceability is considered in equity or at law);

(ii) the Bonds are not subject to the registration requirements of the Securities Act of 1933, as amended, and the Fiscal Agent Agreement is exempt from qualification under the Trust Indenture Act of 1939, as amended; and

(iii) the information contained in the Official Statement on the cover and under the captions "INTRODUCTION," "THE 2021 BONDS," "SECURITY FOR THE 2021 BONDS," "LEGAL MATTERS" and Appendices C and G thereof (except that no opinion or belief is expressed as to any financial or statistical data contained therein), insofar as it purports to summarize certain provisions of the Act, the Bonds, the Fiscal Agent Agreement and the exclusion from gross income for federal income tax purposes and exemption from State personal income taxes of interest on the Bonds, presents a fair and accurate summary of such provisions.

The preceding paragraph is not an opinion but constitutes negative observations based on certain limited activities performed by specific lawyers in our firm in our role as special disclosure counsel to the City. The scope of the activities we performed for purposes of delivering this letter was inherently limited and does not purport to encompass all activities necessary for compliance with applicable securities laws. In addition, in performing those activities, we relied on third party representations, warranties, certifications and opinions, including and primarily, representations, warranties and certifications made by the City. The preceding paragraph is otherwise subject to the conditions set forth herein.

This opinion letter is solely for your benefit in connection with the transaction covered by the first paragraph of this letter and may not be relied upon, used, circulated, quoted or referred to, nor any copies hereof be delivered to, any other person without our prior written approval.

Very truly yours,

JONES HALL, a Professional Law Corporation

**EXHIBIT E**

\$ \_\_\_\_\_

**IMPROVEMENT AREA NO. 2 OF THE CITY OF TRACY  
COMMUNITY FACILITIES DISTRICT NO. 2016-2 (ECFD)  
SPECIAL TAX BONDS, SERIES 2021**

**CERTIFICATE OF APPRAISER**

\_\_\_\_\_, 2021

City of Tracy  
333 Civic Center Plaza  
Tracy, California 95376

Piper Sandler & Co.  
3626 Fair Oaks Blvd., Suite 100  
Sacramento, California 95864

The undersigned hereby states and certifies:

1. That he is an authorized principal of Integra Realty Resources (the “**Appraiser**”) and as such is familiar with the facts herein certified and is authorized and qualified to certify the same.

2. That the Appraiser has prepared an appraisal report, dated [July 22], 2021 (the “**Appraisal Report**”), on behalf of the City of Tracy (the “**City**”) in connection with the Preliminary Official Statement, dated \_\_\_\_\_, 2021 (the “**Preliminary Official Statement**”) and the Official Statement dated \_\_\_\_\_, 2021 (“**Official Statement**”), for the Improvement Area No. 2 of the City of Tracy Community Facilities District No. 2016-2 (ECFD) Special Tax Bonds, Series 2021 (the “**Bonds**”).

3. That the Appraiser hereby consents to the reproduction and use of the Appraisal Report appended to the Preliminary Official Statement and the Official Statement. The Appraiser also consents to the references to the Appraiser and the Appraisal Report made in the Preliminary Official Statement and the Official Statement.

4. In the opinion of the Appraiser the assumptions made in the Appraisal Report are reasonable. Since the date of value of the Appraisal Report, the Appraiser is not aware of any facts that would cause its opinion of value of the taxable property in the Improvement Area No. 2 of the City of Tracy Community Facilities District No. 2016-2 (ECFD) (the “**Improvement Area**”) to be lower than the value in the Appraisal.

5. Each of the parcels appraised by the Appraiser is encompassed within the Improvement Area as set forth in the boundary map of the Improvement Area.

6. That, as of the date of the Official Statement and as of the date hereof, the Appraisal Report appended to the Official Statement, to the best of my knowledge and belief, and subject to all

of the Assumptions and Limiting Conditions set forth in the Appraisal Report, does not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements contained therein, in the light of the circumstances under which they were made, not misleading, and no events or occurrences have been ascertained by us or have come to our attention that would substantially change the estimated values stated in the Appraisal Report. However, we have not performed any procedures since the date of the Appraisal Report to obtain knowledge of such events or occurrences nor are we obligated to do so in the future.

7. The City and the Underwriter, Piper Sandler & Co., are entitled to rely on this Certificate.

INTEGRA REALTY RESOURCES

By: \_\_\_\_\_  
Authorized Representative

**EXHIBIT F**

**EXHIBIT F**

\$ \_\_\_\_\_  
**IMPROVEMENT AREA NO. 2 OF THE CITY OF TRACY  
COMMUNITY FACILITIES DISTRICT NO. 2016-2 (ECFD)  
SPECIAL TAX BONDS, SERIES 2021**

**FORM OF ISSUE PRICE CERTIFICATE**

The undersigned, on behalf of Piper Sandler & Co. (the “PSC”), hereby certifies as set forth below with respect to the sale and issuance of the above-captioned bonds (the “Bonds”).

1. ***Sale of the General Rule Maturities.*** As of the date of this certificate, for each Maturity of the General Rule Maturities, the first price at which at least 10% of such Maturity was sold to the Public is the respective price listed in Schedule A.

2. ***Initial Offering Price of the Hold-the-Offering-Price Maturities.***

(a) PSC offered the Hold-the-Offering-Price Maturities to the Public for purchase at the respective initial offering prices listed in Schedule A (the “**Initial Offering Prices**”) on or before the Sale Date. A copy of the pricing wire or equivalent communication for the Bonds is attached to this certificate as Schedule B.

(b) As set forth in the Bond Purchase Agreement, dated \_\_\_\_\_, 2021, by and between PSC and the Issuer, PSC has agreed in writing that: (i) for each Maturity of the Hold-the-Offering-Price Maturities, it would neither offer nor sell any of the Bonds of such Maturity to any person at a price that is higher than the Initial Offering Price for such Maturity during the Holding Period for such Maturity (the “**hold-the-offering-price rule**”); and (ii) any selling group agreement shall contain the agreement of each dealer who is a member of the selling group, and any retail distribution agreement shall contain the agreement of each broker-dealer who is a party to the retail distribution agreement, to comply with the hold-the-offering-price rule. Pursuant to such agreement, no Underwriter (as defined below) has offered or sold any Maturity of the Hold-the-Offering-Price Maturities at a price that is higher than the respective Initial Offering Price for that Maturity of the Bonds during the Holding Period.

3. ***Reserve Fund.***

The establishment of the Reserve Fund in the amount of the Reserve Requirement (as such terms are defined in the Fiscal Agent Agreement dated as of \_\_\_\_\_ 1, 2021, by and between the City and U.S. Bank National Association, as fiscal agent, pursuant to which the Bonds are being issued) was vital to the marketing of the Bonds and reasonably required to assure payment of debt service on the Bonds.

4. ***Defined Terms.***

(a) ***General Rule Maturities*** means those Maturities of the Bonds listed in Schedule A hereto as the “**General Rule Maturities.**”

(b) *Hold-the-Offering-Price Maturities* means those Maturities of the Bonds listed in Schedule A hereto as the “**Hold-the-Offering-Price Maturities.**”

(c)  *Holding Period* means, with respect to a Hold-the-Offering-Price Maturity, the period starting on the Sale Date and ending on the earlier of (i) the close of the fifth business day after the \_\_\_\_\_, 2021 (the Sale Date), or (ii) the date on which the Underwriter has sold at least 10% of such Hold-the-Offering-Price Maturity to the Public at prices that are no higher than the Initial Offering Price for such Hold-the-Offering-Price Maturity.

(d)  *Issuer* means the City of Tracy.

(e)  *Maturity* means Bonds with the same credit and payment terms. Bonds with different maturity dates, or Bonds with the same maturity date but different stated interest rates, are treated as separate maturities.

(f)  *Public* means any person (including an individual, trust, estate, partnership, association, company, or corporation) other than an Underwriter or a related party to an Underwriter. The term “**related party**” for purposes of this certificate generally means any two or more persons who have greater than 50 percent common ownership, directly or indirectly.

(g)  *Sale Date* means the first day on which there is a binding contract in writing for the sale of a Maturity of the Bonds. The Sale Date of the Bonds is \_\_\_\_\_, 2021.

(h)  *Underwriter* means: (i) any person that agrees pursuant to a written contract with the Issuer (or with the lead underwriter to form an underwriting syndicate) to participate in the initial sale of the Bonds to the Public; and (ii) any person that agrees pursuant to a written contract directly or indirectly with a person described in clause (i) of this paragraph to participate in the initial sale of the Bonds to the Public (including a member of a selling group or a party to a retail distribution agreement participating in the initial sale of the Bonds to the Public).

The representations set forth in this certificate are limited to factual matters only. Nothing in this certificate represents PSC’s interpretation of any laws, including specifically Sections 103 and 148 of the Internal Revenue Code of 1986, as amended, and the Treasury Regulations thereunder. The undersigned understands that the foregoing information will be relied upon by the Issuer with respect to certain of the representations set forth in the Tax Certificate and with respect to compliance with the federal income tax rules affecting the Bonds, and by Jones Hall, a Professional Law Corporation, in connection with rendering its opinion that the interest on the Bonds is excluded from gross income for federal income tax purposes, the preparation of the Internal Revenue Service Form 8038-G, and other federal income tax advice that it may give to the Issuer from time to time relating to the Bonds.

PIPER SANDLER & CO.

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

Dated: \_\_\_\_\_, 2021

**SCHEDULE A**

**SALE PRICES OF THE GENERAL RULE MATURITIES [AND INITIAL OFFERING  
PRICES OF THE HOLD-THE-OFFERING-PRICE MATURITIES]**

*(Attached)*

**SCHEDULE B**

**PRICING WIRE OR EQUIVALENT COMMUNICATION**

*(Attached)*

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

**A RESOLUTION AUTHORIZING THE ISSUANCE AND SALE OF SPECIAL TAX BONDS FOR THE PURPOSE OF FINANCING AUTHORIZED FACILITIES, AND APPROVING AND AUTHORIZING RELATED DOCUMENTS AND ACTIONS**

**Improvement Area No. 2 of the  
City of Tracy  
Community Facilities District No. 2016-2  
(ECFD)**

RESOLVED, by this City Council (the "Council") of the City of Tracy (the "City"), County of San Joaquin, State of California, that:

WHEREAS, this Council previously conducted proceedings under and pursuant to the Mello-Roos Community Facilities Act of 1982, as amended, Chapter 2.5 of Part 1 of Division 2 of Title 5 (commencing with Section 53311) of the California Government Code (the "Act"), to establish (i) "City of Tracy Community Facilities District No. 2016-2 (ECFD)" (the "CFD"), (ii) an initial improvement area in the CFD designated "Improvement Area No. 1 of the City of Tracy Community Facilities District No. 2016-2 (ECFD)" ("Improvement Area No. 1"), and (iii) a future annexation area for the CFD (the "Future Annexation Area"); and

WHEREAS, pursuant to Resolution No. 2017-21, adopted by the Council on February 7, 2017 (the "Resolution of Formation"), the Council provided for, among other things, (i) the financing of certain public facilities (the "Facilities") by the CFD, (ii) the annexation of parcels in the Future Annexation Area to the CFD pursuant to a unanimous approval (a "Unanimous Approval") of the owner or owners of such parcels and (iii) in any such Unanimous Approval, the designation as a new improvement area (each, a "Future Improvement Area") of any territory annexing to the CFD and the identification and approval of the maximum amount of bonded indebtedness and other debt and the rate and method of apportionment of special tax for such Future Improvement Area; and

WHEREAS, pursuant to Resolution No. 2017-22, adopted by the Council on February 7, 2017, the Council declared the necessity to issue and sells bonds and incur other debt to finance the Facilities, including an amount not to exceed \$53,000,000 in those portions of the CFD that are not in Improvement Area No. 1, with such amount to be allocated to Future Improvement Areas as described in the Resolution of Formation; and

WHEREAS, pursuant to Resolution No. 2019-074, adopted by the Council on April 16, 2019 (the "Annexation Resolution"), the Council acknowledged receipt of a Unanimous Approval executed by the owner (the "Property Owner") of Assessor's Parcel Numbers 240-140-44, 240-140-45 and 240-140-46 (the "Annexation Property"), which Unanimous Approval (i) identified, specified and approved the annexation of the Annexation Property to the CFD as a separate improvement area and other related matters and (ii) confirmed that the Unanimous

Approval constituted the approval and unanimous vote of the Property Owner with respect to the matters addressed in the Unanimous Approval under the Act and Article XIII A of the California Constitution; and

WHEREAS, pursuant to the Annexation Resolution, the Council also, among other things, (i) confirmed that the Annexation Property had been added to the CFD as "Improvement Area No. 2 of the City of Tracy Community Facilities District No. 2016-2 (ECFD)" ("Improvement Area No. 2"), (ii) ratified and confirmed its direction to the City Clerk in the Resolution of Formation to record notice of the annexation pursuant to Section 3114.5 of the California Streets and Highways Code, (iii) approved and directed recordation of a consolidated boundary map of the CFD to reflect the annexation of the Annexation Property to the CFD, (iv) confirmed that the maximum aggregate principal amount of bonds and other debt for Improvement Area No. 2, as specified in the Unanimous Approval, is \$16,000,000 and (v) confirmed that the rate and method of apportionment of the special tax among the parcels of real property within Improvement Area No. 2, as specified in the Unanimous Approval (the "Improvement Area No. 2 Rate and Method"), was attached as Exhibit A to the Annexation Resolution; and

WHEREAS, the consolidated boundary map for the CFD was recorded in the real property records of San Joaquin County on May 24, 2019, in Book 6 of Maps of Assessment and Community Facilities Districts at page 153, as document number 2019-053803; and

WHEREAS, the Notice of Special Tax Lien for Improvement Area No. 2 was recorded in the real property records of San Joaquin County on May 24, 2019, as document number 2019-053802; and

WHEREAS, this Council now wishes to provide for an initial series of bonds to be issued by the City, for and on behalf of the CFD with respect to Improvement Area No. 2, to be designated "Improvement Area No. 2 of the City of Tracy Community Facilities District No. 2016-2 (ECFD) Special Tax Bonds, Series 2021 (the "Bonds"), pursuant to a Fiscal Agent Agreement (the "Fiscal Agent Agreement") by and between the City, for and on behalf of the CFD, and U.S. Bank National Association, as fiscal agent (the "Fiscal Agent"); and

WHEREAS, there have been submitted to this Council certain documents described below providing for the issuance of the Bonds for the CFD with respect to Improvement Area No. 2 and the use of the proceeds of those Bonds, and this Council with the aid of its staff, has reviewed the documents and found them to be in proper order; and

WHEREAS, there has also been submitted to this Council a form of preliminary Official Statement in connection with the marketing of the Bonds, and this Council, with the aid of its staff, has reviewed the preliminary Official Statement; and

WHEREAS, in accordance with Government Code Section 5852.1, the Council has obtained and disclosed the information set forth in Appendix A hereto; and

WHEREAS, all conditions, things and acts required to exist, to have happened and to have been performed precedent to and in the issuance of the Bonds and the levy of the special taxes as contemplated by this resolution and the documents referred to herein exist, have happened and have been performed in due time, form and manner as required by the laws of the State of California, including the Act;

NOW THEREFORE BE IT RESOLVED, as follows:

1. Recitals. The foregoing recitals are all true and correct.
2. Bonds Authorized. Pursuant to the Act, this Resolution and the Fiscal Agent Agreement, the Bonds are hereby authorized to be issued in the principal amount not to exceed \$16,000,000.

The Bonds shall be dated, bear interest at the rates, mature on the dates, be issued in the form, be subject to redemption, and otherwise be issued on the terms and conditions, all as set forth in the Fiscal Agent Agreement and in accordance with this Resolution; provided, however, that the true interest cost shall not exceed 5.00%. The Fiscal Agent, an Authorized Officer (as defined in Section 4 of this Resolution) and other responsible officers of the City are hereby authorized and directed to take such actions as are required to cause the delivery of the Bonds upon receipt of the purchase price thereof.

3. Findings. This Council hereby finds the following:
  - (a) The issuance of the Bonds is in compliance with the Act, the Fiscal Agent Agreement and the City's "Amended Local Goals and Policies for Community Facilities Districts (CFDs)" adopted by this Council on February 4, 2014, by Resolution No. 2014-019 ("Goals and Policies"), except that the provision requiring property owners to provide continuing disclosure as long as they own property that is responsible for at least 10% of the special taxes in Improvement Area No. 2 is hereby waived so that the threshold can be established for the Bonds at a level acceptable to the Underwriter (as defined in Section 8).
  - (b) The appraisal described in the Preliminary Official Statement (the "Appraisal") has been prepared consistent with the Goals and Policies and meets the requirements of Section 53345.8 of the Act.
  - (c) In furtherance of the issuance of the Bonds and pursuant to Section 53345.8 of the Act, this Council hereby finds and determines that the value of the real property in Improvement Area No. 2 subject to the special taxes levied pursuant to the Act to pay debt service on the Bonds is at least three times the aggregate principal amount of the Bonds and the principal amount of all other bonds outstanding that are secured by a special tax levied pursuant to the Act on property within Improvement Area No. 2 or a special assessment levied on property within the Improvement Area No. 2.

In making this finding, this Council has relied upon the value reported in the Appraisal (\$122,135,950), which includes two components:

Assessed Value of Completed Homes: The Appraisal reports that the assessed value of taxable parcels within the boundaries of Improvement Area No. 2 that are completed homes with full assessed value on the San Joaquin County 2020-21 assessor's tax roll ("Completed Homes") is \$53,286,950.

Appraised Value: The Appraisal estimates that the market value of taxable parcels within the boundaries of Improvement Area No. 2 that are not Completed Homes is \$68,849,000.

4. Authorities Granted. To the extent permitted by law, the Mayor, City Manager, Assistant City Manager, Finance Director, or such other official of the City as may be designated by such officer pursuant to Section 8 hereof (each, an "Authorized Officer") is hereby authorized and directed to execute and deliver the documents approved herein in substantially the form on file with the City Clerk, together with such additions or changes as are approved by such Authorized Officer, including such additions or changes as are necessary or advisable to permit the timely issuance, sale and delivery of the Bonds. The approval of such additions or changes shall be conclusively evidenced by the execution and delivery by an Authorized Officer of the documents herein specified.

5. Fiscal Agent Agreement. This Council hereby approves the Fiscal Agent Agreement, in substantially the form on file with the City Clerk. The terms and provisions of the Fiscal Agent Agreement, as executed, are incorporated herein by this reference as if fully set forth herein. An Authorized Officer is hereby authorized and directed to execute the Fiscal Agent Agreement on behalf of the City, with such changes, additions or deletions as may be approved by the Authorized Officer, and the City Clerk is hereby authorized and directed to attest thereto.

6. Official Statement. This Council hereby approves the Preliminary Official Statement prepared in connection with the Bonds in substantially the form on file with the City Clerk, together with any changes therein or additions thereto deemed advisable by an Authorized Officer. This Council hereby approves and authorizes the distribution by the underwriter of the Bonds of the Preliminary Official Statement to prospective purchasers of the Bonds, and authorizes and directs an Authorized Officer on behalf of the City to deem the Preliminary Official Statement "final" pursuant to Rule 15c2-12 under the Securities Exchange Act of 1934 (the "Rule") prior to its distribution to prospective purchasers of the Bonds. The execution of the final Official Statement, which shall include Bond pricing information, such other changes and additions thereto deemed advisable by an Authorized Officer, and such information permitted to be excluded from the Preliminary Official Statement pursuant to the Rule, shall be conclusive evidence of the approval of the Official Statement by the City.

7. Continuing Disclosure. This Council hereby approves the form of the Continuing Disclosure Certificate with respect to the Bonds in substantially the form thereof

attached to the Official Statement on file with the City Clerk. An Authorized Officer is hereby authorized and directed to complete and execute the Continuing Disclosure Certificate on behalf of the City (for and on behalf of the CFD) with such changes, additions or deletions as may be approved by the Authorized Officer.

8. Sale of the Bonds; Bond Purchase Agreement. The Bond Purchase Agreement, between the City, for and on behalf of the CFD with respect to Improvement Area No. 2, and Piper Sandler & Co. (the "Underwriter"), in substantially the form on file with the City Clerk and made a part hereof as though set forth in full herein, is hereby approved by the Council. An Authorized Officer is hereby authorized and directed to execute and deliver the Bond Purchase Agreement in such form, together with such changes, insertions and omissions that are approved by an Authorized Officer and that are in accordance with the provisions of this Resolution, such execution to be conclusive evidence of such approval; subject to the requirement that the Underwriter's discount on the purchase of the Bonds may not exceed 1.50% of the par amount of the Bonds and the interest rate may not exceed the rate specified in Section 2 hereof.

In addition, and pursuant to Section 53345.8 of the Act, this Council hereby finds and determines that an Authorized Officer may not execute and deliver the Bond Purchase Agreement unless the Appraisal concludes that the taxable property in Improvement Area No. 2 has a market value (subject to the various assumptions and conditions set forth in the Appraisal) at least three times the principal amount of the Bonds to be sold and the principal amount of all other bonds outstanding that are secured by a special tax levied pursuant to the Act on property within Improvement Area No. 2 or a special assessment levied on property within the Improvement Area No. 2.

The Council hereby approves the negotiated sale of the Bonds to the Underwriter pursuant to such Bond Purchase Agreement.

This Council hereby finds that sale of the Bonds to the Underwriter at a negotiated sale pursuant to the Bond Purchase Agreement will result in a lower overall cost than would be achieved by selling the Bonds at a public sale utilizing competitive bidding.

9. Actions Authorized. All actions heretofore taken by the officers and agents of the City with respect to the establishment of the CFD, the annexation of the Annexation Property to the CFD as Improvement Area No. 2, the approval of the Improvement Area No. 2 Rate and Method, the approval of bonded indebtedness and other debt for the CFD with respect to Improvement Area No. 2, and the sale and issuance of the Bonds are hereby approved, confirmed and ratified, and the appropriate officers of the City are hereby authorized and directed to do any and all things and take any and all actions and execute any and all certificates, agreements and other documents, which they, or any of them, may deem necessary or advisable in order to consummate the lawful issuance and delivery of the Bonds in accordance with this resolution, including but not limited to any actions required in connection with issuance of ratings or a municipal bond insurance policy with respect to the Bonds, and any certificate, agreement, and other document described in the documents herein approved.

All actions to be taken by an Authorized Officer, as defined herein, may be taken by such Authorized Officer or any designee, with the same force and effect as if taken by the Authorized Officer.

10. Effectiveness. This resolution shall take effect from and after its adoption. The provisions of any previous resolutions in any way inconsistent with the provisions hereof in and for the issuance of the Bonds as herein described are hereby repealed.

The foregoing Resolution \_\_\_\_\_ was adopted by the Tracy City Council the \_\_\_ day of \_\_\_\_\_, 2021, by the following vote:

AYES: COUNCILMEMBERS:

NOES: COUNCILMEMBERS:

ABSTAIN: COUNCILMEMBERS:

ABSENT: COUNCILMEMBERS:

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

ATTEST:

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

## APPENDIX A

### Government Code Section 5852.1 Disclosure

The good faith estimates set forth herein are provided with respect to the Bonds in accordance with California Government Code Section 5852.1. Such good faith estimates have been provided to the City by CSG Advisors Incorporated, the City's Municipal Advisor in consultation with Piper Sandler & Co., Underwriter of the Bonds.

*Principal Amount.* The Municipal Advisor has informed the City that, based on the CFD financing plan and current market conditions, its good faith estimate of the aggregate principal amount of the Bonds to be sold is **\$13,055,000** (the "Estimated Principal Amount"), which excludes approximately **\$1,621,000** of net premium estimated to be generated from current market pricing. Net premium is generated when, on a net aggregate basis for a single issuance, the prices paid for the bonds are higher than the face values of such bonds.

*True Interest Cost of the Bonds.* The Municipal Advisor has informed the City that, assuming that the Estimated Principal Amount of the Bonds is sold, and based on market interest rates prevailing at the time of preparation of such estimate plus one fifth of one percentage point, its good faith estimate of the true interest cost of the Bonds, which means the rate necessary to discount the amounts payable on the respective principal and interest payment dates to the purchase price received for the Bonds, is **3.23%**.

*Finance Charge of the Bonds.* The Municipal Advisor has informed the City that, assuming that the Estimated Principal Amount of the Bonds is sold, and based on market interest rates prevailing at the time of preparation of such estimate, its good faith estimate of the finance charge for the Bonds, which means the sum of all fees and charges paid to third parties (or costs associated with the Bonds), is **\$500,000**. Such fees and charges include fees for bond and disclosure counsel, municipal advisor, appraiser, market absorption consultant, special tax consultant, fiscal agent, city attorney and staff time related to bond issuance, printing, and underwriting.

*Amount of Proceeds to be Received.* The Municipal Advisor has informed the City that, assuming that the Estimated Principal Amount of the Bonds is sold plus net premium, and based on market interest rates prevailing at the time of preparation of such estimate, its good faith estimate of the amount of proceeds expected to be received on behalf of the CFD and Improvement Area No. 2 for sale of the Bonds, less the finance charge of the Bonds, as estimated above, and any reserves or capitalized interest paid or funded with proceeds of the Bonds, is **\$12,703,000**.

*Total Payment Amount.* The Municipal Advisor has informed the City that, assuming that the Estimated Principal Amount of the Bonds is sold, and based on market interest rates prevailing at the time of preparation of such estimate, its good faith estimate of the total payment amount, which means the sum total of all payments that the Improvement Area No. 2 property owners will make to pay debt service on the Bonds, plus the finance charge for the Bonds, as described

above, not paid with the proceeds of the Bonds (including the Bond proceeds deposited into a debt service reserve fund), calculated to the final maturity of the Bonds, is **\$23,990,000**.

The foregoing estimates constitute good faith estimates only. The actual principal amount of the Bonds issued and sold, the true interest cost thereof, the finance charges thereof, the amount of proceeds received therefrom and total payment amount with respect thereto may differ from such good faith estimates due to (a) the actual date of the sale of the Bonds being different than the date assumed for purposes of such estimates, (b) the actual principal amount of Bonds sold being different from the Estimated Principal Amount, (c) the actual amortization of the Bonds being different than the amortization assumed for purposes of such estimates, (d) the actual market interest rates at the time of sale of the Bonds being different than those estimated for purposes of such estimates, (e) other market conditions, or (f) alterations in the CFD financing plan, delays in the financing, or a combination of such factors. The actual date of sale of the Bonds and the actual principal amount of Bonds sold will be determined by the City based on the timing of the need for proceeds of the Bonds and other factors. The actual interest rates borne by the Bonds will depend on market interest rates at the time of sale thereof. The actual amortization of the Bonds will also depend, in part, on market interest rates at the time of sale thereof. Market interest rates are affected by economic and other factors beyond the control of the City.

AGENDA ITEM 3.D

REQUEST

**INTRODUCE AN ORDINANCE AMENDING ARTICLE 1 “CARD ROOMS” OF CHAPTER 4.04 OF THE TRACY MUNICIPAL CODE TO INCREASE THE NUMBER OF CARD ROOM TABLES ALLOWED AND PLAYER CAPACITY PER TABLE AND CHANGE OTHER OPERATIONAL REQUIREMENTS**

EXECUTIVE SUMMARY

Stars Casino is the only card room currently operating within the City of Tracy. The owner of Stars Casino initiated the proposed ordinance in response to the negative financial impact of COVID-19 on their operations.

The proposed ordinance will amend Article 1 “Card Rooms” of Chapter 4.04 of the Tracy Municipal Code to increase the number of card room tables allowed within the City, increase the number of tables allowed per card room, increase the player capacity per table, remove requirements regarding the arrangement of tables within a card room, expand operating hours, add language for police inspection and surveillance, and eliminate sign or advertisement restrictions on the exterior of card rooms.

DISCUSSION

Stars Casino (formerly Comstock Card Room) is the sole card room business in the City of Tracy. It is located at 775 W. Clover Road, and currently operates eight tables with seating capacity of nine players per table. It has been at the current location since 2013 and employs more than 50 employees. According to the owner, casino employees receive comprehensive health benefits.

Card rooms are regulated by the California Department of Justice Bureau of Gambling Control in accordance with the Gambling Control Act (Business and Professions Code section 19800 et seq.) and other State laws and regulations. State law allows local jurisdictions to adopt ordinances to regulate card rooms subject to certain limitations, as discussed below.

Since the onset of the COVID-19 pandemic, social distancing requirements and the State’s business closure regulations have substantially impacted Stars Casino’s ability to generate revenue. In September 2020, Stars Casino management reached out to the City to modify the City’s existing card room regulations in order to alleviate the financial hardship Stars Casino has experienced due to the pandemic. The owner requested to update various requirements in the ordinance to be consistent with State law. Stars Casino is also interested in remodeling and expanding their operations, which will be more viable after the ordinance update.

In order to help Stars Casino recover from the pandemic, and to update the current card room ordinance to align with current card room operations and practices, the Stars Casino owner requested the following changes to the current ordinance, and worked with staff to finalize these changes. They include:

1. Increase the number of tables from eight to nine within the City and per card room;
2. Increase the number of players per table from nine to ten;
3. Remove the table arrangement requirement;
4. Expand operating hours to 24 hours a day, seven days a week;
5. Add language for police inspection and surveillance; and
6. Eliminate the sign or advertisement restrictions on the exterior of card rooms.

Business and Professions Code section 19961 allows a local jurisdiction to amend a local card room ordinance without voter approval if the amendment expands gambling by a change that results in an increase of less than 25 percent. Section 19961 defines “expansion of gambling” as an increase in the number of gambling tables within a city, an increase in the number of gambling tables within a gambling establishment, or an increase in a gambling establishment’s hours of operation. Furthermore, Business and Professions Code section 19801, subsection (l) establishes that a local government may regulate the number of tables and hours of operation. Section 19961.05 establishes that a city may amend an ordinance to increase operating hours to 24 hours a day, 7 days a week.

The proposed ordinance will increase the number of tables from eight to nine, increase the number of players per table from nine to ten, and increase the hours of operation to 24 hours a day. The current ordinance states that card rooms shall remain closed between the hours of 6:00 am and 9:00 am, Tuesday through Thursday. Because these changes will result in an increase of less than 25 percent, voter approval is not necessary.

In addition, the current ordinance requires that card rooms be arranged so that the card tables and players are plainly visible from the primary entrance. The proposed ordinance will eliminate this requirement, and there is nothing in State law that requires card rooms to be arranged in this way.

Lastly, the proposed ordinance includes language to specifically allow police inspection of surveillance footage. Again, there is nothing in State law prohibiting this type of local regulation.

Pursuant to Business and Professions Code section 19961.1, the City Attorney’s Office sent a letter and the proposed changes to the Department of Justice Bureau of Gambling Control for review and comment (Attachment A). The Bureau determined that the proposed changes comply with State law (Attachment B).

Economic development staff supports the proposed ordinance due to the perceived economic impacts that could result from the expansion and improved operation of the card room. Operation of Stars Casino at the Clover Road location has no history of crime and Police Department staff does not foresee a problem with the proposed ordinance changes.

Because the proposed ordinance was initiated by the owner, Stars Casino will be reimbursing the City for staff time to draft and process the ordinance.

### FISCAL IMPACT

There is no fiscal impact associated with this proposed ordinance. Business owner will directly reimburse the City of Tracy for the staff costs associated with drafting and processing of the ordinance.

### STRATEGIC PLAN

This agenda item does not relate to the Council's Strategic Plans.

### RECOMMENDATION

Staff recommends that Council introduce and waive the full reading of the proposed ordinance Amending Article 1 "Card Rooms" of Chapter 4.04 of the Tracy Municipal Code to increase the number of card room tables allowed and player capacity per table and change other operational requirements.

Prepared by: Michael Nimon, Economic Development Manager

Reviewed by: Karin Schnaider, Finance Director  
Sekou Millington, Police Chief  
William Dean, Interim Development Services Director  
Midori Lichtwardt, Assistant City Manager

Approved by: Robert Adams, Interim City Manager

### ATTACHMENTS

- Attachment A – City Attorney's letter
- Attachment B – Department of Justice Bureau of Gambling Control letter
- Attachment C – Redline copy of proposed amendments to Article 1 "Card Rooms" of Chapter 4.04 of the Tracy Municipal Code
- Attachment D – Ordinance amending Article 1 "Card Rooms" of Chapter 4.04 of the Tracy Municipal Code



**Attachment A**

City of Tracy  
333 Civic Center Plaza  
Tracy, CA 95376

CITY ATTORNEY'S OFFICE

MAIN 209.831.6130  
FAX 209.831.6137  
www.cityoftracy.org

February 17, 2021

***Via Electronic Mail and U.S. Mail***

Department of Justice  
Bureau of Gambling Control  
2450 Del Paso Road, Suite 100  
Sacramento, CA 95834  
Email: GamblingControl@doj.ca.gov

RE: Amendments to City of Tracy's Card Room Ordinance

Dear Bureau of Gambling Control:

Stars Casino is a card room located within the City of Tracy. A co-owner of Stars Casino has requested that the City amend the City's card room ordinance to allow for one additional table and one additional player per table; increase the permitted hours of operation; and revise language regarding the arrangement of tables and police inspection of card rooms. In the interest of supporting a local business and employer, the City is considering accommodating their request. Pursuant to Business and Professions Code section 19961.1, enclosed is a copy of the current card room ordinance and a copy of the above proposed changes for the Bureau's review.

Business and Professions Code section 19961 permits an amendment to a local ordinance without voter approval if the amendment expands gambling by a change that results in an increase of less than 25 percent. Section 19961 defines "expansion of gambling" as an increase in the number of gambling tables within a city, an increase in the number of gambling tables within a gambling establishment, or an increase in a gambling establishment's hours of operation.

Stars Casino requests to increase the number of tables from eight to nine, increase the number of players per table from nine to ten, and increase the hours of operation to 24 hours a day. The current ordinance states that card rooms shall remain closed between the hours of 6:00 am and 9:00 am Tuesday through Thursday. Because the change in the amount of tables will result in an increase of less than 25 percent, voter approval is not necessary. Furthermore, Business and Professions Code section 19801, subsection (l) establishes that a local government may regulate the number of tables and hours of operation. Section 19961.05 establishes that a city may amend an ordinance to increase operating hours to 24 hours a day, 7 days a week.

In addition, the current ordinance requires that card rooms be arranged so that the card tables and players are plainly visible from the primary entrance. Stars Casino requests that this section be omitted. There is nothing in state law that requires card rooms to be arranged in this way.

Lastly, the amended ordinance includes language to specifically allow police inspection of surveillance footage. Again, there is nothing in state law prohibiting this type of local regulation.

The City looks forward to receiving a response from the Bureau. Please feel free to contact me with any questions or concerns.

Best Regards,



Riana Daniel  
Deputy City Attorney

Encls.

Chapter 4.04 - AMUSEMENTS

**Sections:**

Article 1. - Card Rooms<sup>111</sup>

Footnotes:

-- (1) --

**Editor's note**— Ord. No. 1134, § 1, adopted May 5, 2009, amended art. 1 in its entirety to read as herein set out. Former art. 1, §§ 4.04.010—4.04.130, pertained to similar subject matter and derived from Prior Code §§ 4-1.101—4-1.113; Ord. No. 967 C.S., effective Jan. 15, 1998; Ord. No. 1002, § 1, 1999; Ord. No. 1040, § 5 Exh. E (part), 2002; and Ord. No. 1111, § 4 Exh. A (part), 2007.

4.04.010 - Licenses required; authority.

It is unlawful for any person to engage in, carry on, maintain or conduct any card room in the City without: (a) first having secured a license from the City to do [so] under this article; and (b) complying with each regulation set forth in this article.

Each licensee and operator of a card room shall employ only those persons who have obtained a work permit as set forth in section 4.04.060.

This article is enacted under the authority of the Gambling Control Act, Business and Professions Code section 19800 and following.

(Ord. No. 1134, § 1, 5-5-2009)

4.04.020 - Definitions.

In this article:

*Card room* means any space, room, or enclosure furnished or equipped with a table used, or intended to be used, as a card table for the playing of cards and similar games and the use of which is available to the public, or any portion of the public. However, this section does not apply to a nonprofit charitable organization.

*Card room employees* means dealers, overseers, and others directly connected with the operation and supervision of the card tables, excluding waitresses, bartenders, culinary workers, and others not connected with such operation and supervision.

*Chief* means the Chief of Police of the City or his or her designee.

*Nonprofit charitable organization* means an organization as defined in Code subsection 4.24.020(b).

(Ord. No. 1134, § 1, 5-5-2009)

4.04.030 - Card room license: application, fee and investigation.

- (a) *Application*. An applicant for a card room license shall submit his/her application to the Chief. The application shall be under oath and shall include the following information for the applicant and for each person financially interested in the business. "Financially interested" includes sharing in the profits of the business on the basis of gross or net revenue.

1. The true names and addresses.
  2. The past criminal record, if any.
  3. Fingerprints.
- (b) *Fee.* At the time the application is submitted, the applicant shall pay to the City an application fee as established by resolution of the City Council. This fee is exclusive of any other fees charged by other agencies.
- (c) *Investigation.* The Chief shall investigate the applicant and those financially interested. The Chief of Police shall act as an investigation officer and submit his/her report to the Council stating his/her approval or disapproval for the issuance of such license.

(Ord. No. 1134, § 1, 5-5-2009)

#### 4.04.040 - Card room license; City Council consideration.

The Council shall consider the application and deny any application if the applicant or anyone financially interested:

- (a) Has previously been convicted of a felony or a misdemeanor crime involving moral turpitude; or
- (b) Has been convicted of a felony or misdemeanor involving crimes of:
  - (1) Force or violence;
  - (2) Fraud;
  - (3) Embezzlement;
  - (4) Theft; or
  - (5) Uniform Controlled Substance Act.

A maximum of ~~nineeight (98)~~ **nineeight (98)** gambling tables are allowed in the City. The Council shall deny the application if the approval would cause the total number of tables in the City to exceed ~~nineeight (98)~~ **nineeight (98)**.

(Ord. No. 1134, § 1, 5-5-2009)

#### 4.04.050 - Card room license; annual renewal.

Licenses shall be issued on an annual basis. The annual license fee, payable each fiscal year beginning July 1, shall be established by resolution of the City Council. The fees shall be payable to the City after the Council has approved the issuance of the license but prior to the issuance of the license. The operator of a card room shall pay the license fee set forth in this section regardless of the license fees he/she might pay for other businesses.

(Ord. No. 1134, § 1, 5-5-2009)

#### 4.04.060 - Card room licenses; suspension and revocation.

The Council shall have the right for cause to revoke or suspend (and take possession of) any card room license issued under this article. The Council may take such action based on any ground set forth in subsections 4.04.040(a) or (b), or on the failure of a licensee to comply with this article.

(Ord. No. 1134, § 1, 5-5-2009)

4.04.070 - Card room work permits.

- (a) *Application.* Card room employees shall obtain a work permit from the Chief. Applications for such work permits shall be submitted under oath and contain the name, address, and past criminal record, if any, of the applicant and such other information as may be deemed necessary by the Chief to determine whether the applicant is a proper person to be issued a card room work permit. The application shall be accompanied by the fingerprints of the applicant. The work permit shall be issued only to citizens of the United States who have resided in the State for at least one year immediately preceding the issuance of such work permit.
- (b) *Grounds for denial.* The Chief shall deny a work permit if the applicant has previously been convicted of a felony or a misdemeanor crime involving moral turpitude, or if the applicant has been convicted of a felony or misdemeanor involving:
  - (1) Force or violence;
  - (2) Fraud;
  - (3) Embezzlement;
  - (4) Theft; or
  - (5) Uniform Controlled Substance Act.
- (c) *Fee.* Each application for a work permit shall be accompanied by a nonrefundable fee as established by resolution of the City Council. The work permit shall be valid for a period of one year. Only one such work permit is required each year, even though the permit holder may change his/her place of employment within the City.
- (d) *Temporary permit.* A temporary card room work permit may be obtained from the Chief in accordance with the following:
  - (1) A completed "card room dealer work permit application" accompanied by the appropriate fees as established by resolution of the City Council;
  - (2) Presentation of California Driver's License or Picture Identification card;
  - (3) Completion by the Police Department of a local record check and check of the "state wanted person system"; and
  - (4) Fingerprints to be taken, submitted to and cleared the Department of Justice.

Upon review of the application, in accordance with the card room work permit provisions set forth in this chapter, the temporary permit may be issued for a period of ninety (90) days. If the fingerprint clearance is not completed within that time, a thirty-day extension may be granted. If the card room work permit is granted in accordance with this section, the one year term shall be from the date of the issuance of the temporary permit.
- (e) *Appeal.* The action of the Chief in denying a work permit on the basis of subsections (a) or (b) of this section is subject to an appeal to the City Manager. An appeal must be filed with the City Clerk within ten (10) days after the denial, after which time the decision of the Chief is final. On appeal, a decision of the City Manager is final.
- (f) An application for a work permit may be denied or revoked based upon the objection of the State Division of Gambling Control.

(Ord. No. 1134, § 1, 5-5-2009)

4.04.080 - Card room work permit; suspension or revocation.

The Chief may revoke or suspend a card room work permit and take possession of the permit based on: (a) any of the grounds for denial; or (b) the failure of a card holder to comply with this article.

The action of the Chief in this respect is subject to an appeal to the City Manager. The appeal shall be filed with the City Clerk within ten (10) days after the revocation or suspension, after which time the decision of the Chief is final. On appeal, a decision of the City Manager is final.

(Ord. No. 1134, § 1, 5-5-2009)

#### 4.04.090 - Assignment or transfer.

Each person must have his or her own work permit and the permit cannot be assigned or transferred to another person.

A card room license may only be assigned or transferred if the new operator and each person financially interested submits an application and is approved by the City Council under sections 4.04.030 and 4.04.040.

(Ord. No. 1134, § 1, 5-5-2009)

#### 4.04.100 - Card room regulations.

It is unlawful to operate a card room in violation of any of the following regulations and rules:

- (a) No more than one card room may be located at any one address.
- (b) The operator or his/her employees shall not extend credit to a player, nor shall they accept IOU's or other notes.
- (c) Any card games are permitted unless they are prohibited under State law.
- (d) No more than ~~nineeight~~ (98) tables are permitted in any card room.
- (e) No more than ~~nineeight~~ (98) tables are permitted in the entire City.
- (f) ~~No more than~~ ~~tennine~~ (109) players are permitted at any one card table.
- ~~(g) Card rooms shall be so arranged that the card tables and the players at the table are plainly visible from the primary entrance when the door is open. No wall, partition, screen or similar structure between the primary entrance door opening and any card table located in the card room is permitted if the structure interferes with the required visibility.~~
- (gh) No person under the age of twenty-one (21) years of age is permitted in any card room.
- ~~(hi) Card rooms may operate seven (7) days a week, 24 hours a day. However, card rooms shall be closed between 6:00 a.m. and 9:00 a.m. Tuesday through Thursday.~~
- (ij) Card rooms shall be open to police inspection during all hours of operation, which includes but is not limited to, police inspection of surveillance cameras, live or recorded.
- (jk) Only table stakes are permitted. Table limits and house collections shall be posted clearly for each table before the start of each game.
- (kl) Each card table shall have assigned to it a person holding a valid card room work permit, whose duty shall be to supervise and operate the game strictly in accordance with the provisions of this article and within the provisions of the Penal Code of the State.
- (lm) If more than two (2) tables are in operation in a card room, there shall be assigned to it a person holding a valid card room permit in addition to the person required by subsection (l) of this section, whose duty shall be to supervise the players and games strictly in accordance with the provision of this article. He/she shall not, however, participate in games. The licensee may act as table operator or supervisor without having a work permit.

~~(n) No sign or other advertising relative to card rooms shall be permitted upon the exterior of any premises occupied as a card room.~~

(me) Signs shall be posted in every card room, in letters plainly visible from all parts of the room, stating that no game shall be played other than those expressly permitted under California Penal Code section 330m. Such signs shall also contain such other information relating to the regulations contained in this article as the Chief may require.

(np) No person who is in a state of intoxication is permitted in any card room.

(oq) The licensee is responsible for the safety and security in and around the gambling establishment.

(Ord. No. 1134, § 1, 5-5-2009)

#### 4.04.110 - Nonprofit charitable organization.

A nonprofit charitable organization, as defined in subsection 4.24.020(b) of this Code, may be granted a permit without a fee by the Council when the organization complies with the State requirements for an organization fundraiser under Business and Professions Code section 19985 and following.

(Ord. No. 1134, § 1, 5-5-2009)

#### 4.04.120 - State law violations.

The Council hereby declares that it is not the intention of this article to permit the licensing of any card room for the playing of any game prohibited by the laws of the State, including, but not limited to those games enumerated in California Penal Code section 330, which section includes banking and percentage games.

(Ord. No. 1134, § 1, 5-5-2009)

#### 4.04.130 - Violations.

Any person violating a term, requirement, regulation or provision of this article is guilty of a misdemeanor punishable in accordance with section 1.04.030 of this Code.

(Ord. No. 1134, § 1, 5-5-2009)

#### Article 2. - Dances

#### 4.04.140 - Permit required.

It shall be unlawful for any person to open, conduct, or carry on, or so participate in the opening, conducting, and carrying on of a dance in a public dance hall or public ballroom or other public place in the City except by and after securing permit therefor from the City Manager as hereinafter provided; or for the holder of such permit, or for any officer, agent, or employee of the holder of any such permit to violate or permit the violation of all or any of the following conditions, rules, or regulations, or any part thereof, at or in connection with any dance under such permit, which conditions, rules and regulations are as follows, to-wit:

- (a) No dances shall be allowed at any time of day or night in any such dance hall, ballroom or other public place at any time when the same is not continually lighted throughout with bright electric lights, or other lights of equal brilliancy.

- (b) No immoral or obscene dances shall be permitted.
- (c) No dance shall be permitted between the hours of 2:00 a.m. and 9:00 a.m. next ensuing.
- (d) No permit issued under this article shall be transferable except by the written consent of the City Manager.

(Prior code § 4-1.201)

#### 4.04.150 - Approval of permit.

No permit shall be issued to any person unless the application for such permit shall contain the following facts:

- (a) Name, residence, and place of business of the applicants and all information that may be required concerning such applicants.
- (b) The particular place for which the permit is desired or at which any dance is to be held, and the name or names and addresses of the band, orchestra and leader thereof, and of any other entertainment with a description of the character thereof, to be presented at such dance.
- (c) The number and date of the dances to be held under the permit and all such other and further information as may be required by the City Manager concerning such persons and an agreement to comply with the foregoing conditions, rules and regulations.

(Prior code § 4-1.202)

#### 4.04.160 - Revocation of permit.

The City Manager is hereby authorized and empowered to revoke any dance permit issued by him upon failure of the holder thereof to comply with any provision of this article, or for violation of any of the terms and conditions of the permit as granted.

(Prior code § 4-1.203)

### Article 3. - Gambling and Gambling Devices

#### 4.04.170 - Gambling a misdemeanor.

Except as otherwise provided in Article 1 of this chapter, every person who, within the City, deals, plays, participates in, opens or carries on, or who either as owner or employee, whether for hire or not, conducts any game played with cards, dice, machine or other device, for money or representative of money, is guilty of a misdemeanor.

(Prior code § 4-1.301)

**ROB BONTA**  
*Attorney General*

*State of California*  
**DEPARTMENT OF JUSTICE**



BUREAU OF GAMBLING CONTROL  
2450 DEL PASO ROAD, SUITE 100  
SACRAMENTO, CA 95834

Telephone: (916) 559-6093  
E-Mail: [ileana.butu@doj.ca.gov](mailto:ileana.butu@doj.ca.gov)

April 30, 2021

Riana Daniel  
Deputy City Attorney, City of Tracy  
333 Civic Center Plaza  
Tracy, CA 95376  
[riana.daniel@cityoftracy.org](mailto:riana.daniel@cityoftracy.org)

**Via E-mail**

Re: Amendments to City of Tracy's Card Room Ordinance

Dear Ms. Daniel:

On or about February 18, 2021<sup>1</sup>, the Bureau of Gambling Control (Bureau) received your letter dated February 17 submitting proposed amendments to the City of Tracy's (City) Card Room ordinances set forth in Article 1 of Chapter 4.04 of Title 4 of the City's Municipal Code. The City's proposed amendments were submitted to the Bureau for review and comment in conformance with Business and Professions Code section 19961.1.<sup>2</sup>

Between February 18 and March 10, I requested additional information to aid in the Bureau's review. Specifically, I requested information regarding the ordinance(s) in effect on January 1, 1996 showing the number of approved gambling tables in the City and the number of approved gambling tables per establishment, as well as any later-enacted ordinance(s) on this issue; copies of ordinances reflecting the maximum number of tables per cardroom allowed in the City on July 1, 2007 and January 1, 2010, as well as any ordinance addressing the maximum number of tables in the City; and correspondence between the Bureau and the City regarding the adoption of Ordinance No. 1134. The information was provided as requested on February 23, February 24, March 9 and March 11.

The City proposes to amend its ordinances to allow one additional gambling table per card room, one additional gambling table in the City, one additional player per gambling table, increase the permitted hours of operation, and revise the language regarding police inspection of card rooms. In addition, the City proposes to delete provisions relating to the arrangement of

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<sup>1</sup> All years are 2021, unless otherwise indicated.

<sup>2</sup> Business and Professions Code section 19961.1 requires any amendment to a city or county ordinance relating to gambling establishments or the Gambling Control Act to be submitted for review and comment before the ordinance is adopted.

gambling tables in the card room and exterior advertising. The Bureau offers the following comments regarding the proposed amendments.

### **Authorized Number of Gambling Tables**

The City proposes to amend Sections<sup>3</sup> 4.04.040 and 4.04.100(d) and (e), which currently provide that a maximum of eight tables are allowed in any card room and in the City. (City of Tracy Ordinance No. 1134, section 1, Tracy Municipal Code sections 4.04.040, 4.04.100(d), (e).) The City proposes to amend these sections to increase the current limit of eight to nine for both card rooms and the City.

On March 1, 1994, effective March 31, 1994, the City adopted Ordinance No. 896, which allowed a maximum of four tables in any card room in the City, and did not specify a maximum number of tables in the City. (City of Tracy Ordinance No. 896, section 4-1.110(c).) It is the Bureau's understanding that Ordinance No. 896 was in effect on January 1, 1996.

On May 5, 2009, effective June 4, 2009, the City adopted Ordinance No. 1134, which allowed a maximum of eight tables in any card room and in the City.<sup>4,5</sup> (City of Tracy Ordinance No. 1134, section 1, Tracy Municipal Code sections 4.04.040, 4.04.100(d), (e).) It is the Bureau's understanding that Ordinance No. 1134 was in effect on January 1, 2010, and has not been amended since that time.

Notwithstanding Business and Professions Code sections 19961 and 19962 (Sections 19961 and 19962), which limit increasing the number of gambling tables per establishment and in the city to less than 25 percent of that authorized on January 1, 1996, Business and Professions Code section 19961.06, subdivision (a) (Section 19961.06(a)), authorizes a city to amend an ordinance one time to increase the number of gambling tables that may be operated in a gambling establishment in that jurisdiction by two above the number that was authorized on January 1, 2010.

It appears that the City's proposal to increase the number of gambling tables per card room and in the City from the eight to nine, respectively is not inconsistent with the Gambling Control Act.<sup>6,7,8</sup>

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<sup>3</sup> All section references are to the Tracy Municipal Code, unless otherwise indicated.

<sup>4</sup> On December 16, 1997, prior to the January 1, 1998 effective date of Senate Bill 8, which limited the expansion of gambling in California, the City adopted Ordinance No. 967, effective January 15, 1998, increasing the maximum number of tables allowed per card room from four to five. (Sen. Bill 8 (1997 Reg. Sess. § 3), City of Tracy Ordinance No. 967, section 1, Tracy Municipal Code, section 4.01.100(c).) Ordinance No. 1134 was the next ordinance adopted by the City relating to gambling. (City of Tracy Ordinance No. 1134, section 1.)

<sup>5</sup> It appears that the City utilized Business and Professions Code section 19965, subdivision (a), to increase the number of tables allowed per card room from five to eight.

<sup>6</sup> All references to the "Act" are to the Gambling Control Act, unless otherwise indicated.

<sup>7</sup> The City's proposed increase in the number of tables per establishment would result in an increase of 25 percent or more tables in the jurisdiction than that authorized on January 1, 1996; however, an increase in the number of tables per establishment pursuant to Section 19961.06(a) is permitted notwithstanding the limitations in Sections 19961 and 19962. Accordingly, the jurisdictional table limit increases to accommodate the per establishment table limit.

### **Number of Players per Gambling Table**

The City proposes to amend Section 4.04.100(f), which currently provides that, “[n]o more than nine players are permitted at any one card table.” (City of Tracy Ordinance No. 1134, section 1.) The City proposes to amend this section to increase the current limit of nine to 10.

Business and Professions Code section 19803, subdivision (b), provides that jurisdictions may impose more stringent local controls or conditions on gambling than imposed by the Act so long as they are not inconsistent with the Act.

Section 12392 (Section 12392), subdivision (a)(3)(J), of title 4 of the California Code of Regulations requires that a card room have general house rules addressing player seating. Section 12392, subdivision (b), provides that these rules must be in addition to, and not conflict with, the game rules approved by the Bureau for any controlled game or gaming activity.

Section 12371 (Section 12371), subdivision (a)(1), of title 4 of the California Code of Regulations requires that, in the event of a state of emergency or other order associated with a virus that includes “isolation, stay-at-home, telework, teleconferencing, or physical distancing order(s),” a card room have an emergency sanitation plan that addresses physical distancing. Section 12371, subdivision (a)(2)(H), requires that a card room “[i]mplement measures to ensure appropriate physical distancing between all persons within the gambling establishment.” Section 12371, subdivision (a)(3)(A)(1), prohibits the operation of a gaming table unless the “table is operating with no more than half of the number of players allowed in the Bureau-approved game rules, with remaining spaces for players distributed on the table to ensure maximum physical separation.”

It appears that the proposed amendment to increase the number of players allowed at a gambling table from nine to 10 is not inconsistent with the Act.<sup>9</sup>

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<sup>8</sup> The Bureau notes that at least one California court has found that Section 19961.06 only allows for an increase in gambling establishment table limits, and does not operate to allow a coinciding increase in the jurisdictional table limit. (See *Yang v. State of California (Gambling Control Commission)*, County of Sacramento Superior Court Case No. 34-2017-80002744.) That court held, in relevant part, that Business and Professions Code section 19961.06 provides only for increases in *gambling establishment table limits*, and that the *jurisdictional table limit* is subject to the limitations contained in Business and Professions Code section 19961, subdivision (a)(2). On January 9, 2020, and February 27, 2020, the Commission approved gambling establishment table increase requests in the manner that it had prior to the *Yang* decision. When discussing those table increase requests at the January 9, 2020 meeting, the Commission Chair appeared to reference the *Yang* decision, and indicated that table increase requests would be approved consistent with the Commission's past interpretation of the Gambling Control Act. This interpretation is reflected in this letter.

<sup>9</sup> Please note that a gambling establishment operating within the City must ensure that it is abiding by the emergency planning and preparedness sanitation plan required by Section 12371 unless and until the current state of emergency is rescinded notwithstanding any authorized increase in the number of persons permitted to play at a table. In particular, the gambling establishment should be reminded to review the approved emergency planning and preparedness sanitation plan to ensure that it remains compliant with Section 12371 if any changes to the number of patrons allowed at a table is implemented.

### **Hours of Operation**

The City proposes to amend Section 4.04.100(i), which currently provides that, “[c]ard rooms may operate seven (7) days a week. However, card rooms shall be closed between 6:00 a.m. and 9 a.m. Tuesday through Thursday.” (City of Tracy Ordinance No. 1134, section 1.) The City proposes to amend this section to increase the hours of operation to 24 hours a day, seven days a week.

Notwithstanding Business and Professions Code sections 19961 and 19962, Business and Professions Code section 19961.05 authorizes a jurisdiction to “amend its ordinance to increase the operating hours of a gambling establishment to up to 24 hours a day, seven days a week.”

As a jurisdiction may amend its ordinance to increase operating hours up to 24 hours a day, seven days a week, it appears that the City’s proposed increase in the hours of operation is not inconsistent with the Act.

### **Arrangement of Card Rooms**

The City proposes to delete Section 4.04.100(g), which currently provides that, “[c]ard rooms shall be so arranged that the card tables and the players at the table are plainly visible from the primary entrance when the door is open. No wall, partition, screen or similar structure between the primary entrance door opening and any card table located in the card room is permitted if the structure interferes with the required visibility.” (City of Tracy Ordinance No. 1134, section 1.)

Section 12371 (Section 12371), subdivisions (a)(1) and (a)(2), of title 4 of the California Code of Regulations requires that, in the event of a state of emergency or other order associated with a virus that includes “isolation, stay-at-home, telework, teleconferencing, or physical distancing order(s),” a card room have an emergency sanitation plan that addresses physical distancing. Section 12371, subdivision (a)(2)(H), requires that a card room “[i]mplement measures to ensure appropriate physical distancing between all persons within the gambling establishment ... [and] where appropriate physical distancing cannot be maintained, ensure that other protective measures are taken,” such as using non-permeable barriers to separate player spaces.” Section 12371, subdivision (a)(3)(A)(2) prohibits the operation of a gambling table unless the table includes a clear, non-permeable barrier between each player.

Section 12396, subdivision (a), of title 4 of the California Code of Regulations provides, in relevant part, that a card room must have a surveillance system, which “must record with reasonable coverage and clarity, at a minimum, the gambling operation, the payment of player drop fees, the collection of drop boxes, the drop count processes, cage and cashier activities, gambling equipment storage areas, except for furniture storage areas, and the interior of gambling establishment entrances and exits.”

It appears that the proposed amendment to remove the City’s requirements relating to the arrangement of a card room is not inconsistent with the Act.

### **Police Inspection of Card Rooms**

The City proposes to amend Section 4.04.100(j), which currently provides that, “[c]ard rooms shall be open to police inspection during all hours of operation. (City of Tracy Ordinance No. 1134, section 1.) The City proposes to amend this section to specify that police inspection includes, but is not limited to, inspection of surveillance cameras, live or recorded.

Business and Professions Code section 19803, subdivision (b), provides that jurisdictions may impose more stringent local controls or conditions on gambling than imposed by the Act and inspect gambling premises to enforce applicable state and local laws so long as they are not inconsistent with the Act.

Business and Professions Code section 19826 provides that the Bureau<sup>10</sup> shall perform all investigatory functions required by the Act, including investigating suspected violations of the Act or state laws relating to gambling and complaints lodged against licensees, or other persons associated with a gambling operation. Business and Professions Code section 19827 provides that the Bureau’s investigatory powers include visiting and investigating all areas of the premises where gambling is conducted, and all equipment and supplies in any gambling establishment.

Section 12396 (Section 12396) of title 4 of the California Code of Regulations requires all cardroom business licensees to install and maintain a surveillance system with video recording and closed circuit television (CCTV) capabilities on site in the gambling establishment in secure rooms or areas so that access is controlled. Section 12395 of title 4 of the CCR requires access to restricted areas, such as surveillance rooms, be limited to authorized personnel in the performance of their duties and be closely controlled. Section 12396 provides that at any time during the establishment’s hours of operation, licensees must provide immediate access to Bureau staff, upon demand, to the surveillance room and any area of the gambling establishment where surveillance equipment is installed, maintained, or where surveillance videos are stored. Business and Professions Code section 19827, subdivision (a)(1)(D), authorizes the Bureau to remove the original or copy of a surveillance video.

The City’s proposal to amend Section 4.04.100(j) to specify that police inspection of card rooms during all hours of operation includes, but is not limited to, the inspection of live or recorded surveillance cameras does not appear to be inconsistent with the Act.

### **Exterior Advertising**

The City proposes to delete Section 4.04.100(n), which currently provides that, “[n]o sign or other advertising relative to card rooms shall be permitted upon the exterior of any premises occupied as a card room.” (City of Tracy Ordinance No. 1134, section 1.)

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<sup>10</sup> Except as otherwise provided in the Gambling Control Act, any power or authority of the Department described in the Gambling Control Act may be exercised by the Attorney General or any other person as the Attorney General may delegate. (Bus. & Prof. Code, § 19810; Cal. Code Regs., tit. 4, § 12002, subd. (f).)

Riana Daniel, Deputy City Attorney

April 30, 2021

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Section 12396, subdivision (a)(9), requires cardroom business licensees to display a sign that is conspicuous to all patrons entering and exiting the cardroom stating that all public areas, entrances and exits of the cardroom are subject to surveillance and video recording<sup>11</sup>.

The City's proposal to delete Section 4.04.100(n) prohibiting signs or advertising relative to card rooms on the exterior of any card room premises does not appear to be inconsistent with the Act.

Please be advised that while the Bureau is required to provide comments on proposed amendments to ordinances relating to gambling establishments or the Act, the California Gambling Control Commission is vested with the sole authority to determine whether a gambling establishment's request for an increase in gaming tables is approved. (See Bus. & Prof. Code, § 19841, subd. (p); Cal. Code Regs., tit. 4, § 12359.)

If you have any questions, please contact Analyst Kenneth Larsen at (916) 559-6103 or [kenneth.larsen@doj.ca.gov](mailto:kenneth.larsen@doj.ca.gov). Thank you for your cooperation regarding this matter.

Sincerely,

ILEANA BUTU  
Deputy Attorney General III

For ROB BONTA  
Attorney General

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<sup>11</sup> Section 12396, subdivision (a)(9), states, "Cardroom business licensees must prominently display in a place and manner conspicuous to all patrons entering and exiting the gambling establishment, a sign containing the following statement printed in bold lettering of sufficient size to be visible and readable: 'All Public Areas, Entrances and Exits of This Establishment are Subject to Surveillance and Video Recording.' The lettering and background must be of contrasting colors, and the sign must comply in all respects with applicable signage requirements, if any, of the local jurisdiction."

## Attachment C

### Chapter 4.04 - AMUSEMENTS

#### Sections:

#### Article 1. - Card Rooms<sup>[1]</sup>

#### Footnotes:

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**Editor's note**— Ord. No. 1134, § 1, adopted May 5, 2009, amended art. 1 in its entirety to read as herein set out. Former art. 1, §§ 4.04.010—4.04.130, pertained to similar subject matter and derived from Prior Code §§ 4-1.101—4-1.113; Ord. No. 967 C.S., effective Jan. 15, 1998; Ord. No. 1002, § 1, 1999; Ord. No. 1040, § 5 Exh. E (part), 2002; and Ord. No. 1111, § 4 Exh. A (part), 2007.

#### 4.04.010 - Licenses required; authority.

It is unlawful for any person to engage in, carry on, maintain or conduct any card room in the City without: (a) first having secured a license from the City to do [so] under this article; and (b) complying with each regulation set forth in this article.

Each licensee and operator of a card room shall employ only those persons who have obtained a work permit as set forth in section 4.04.060.

This article is enacted under the authority of the Gambling Control Act, Business and Professions Code section 19800 and following.

(Ord. No. 1134, § 1, 5-5-2009)

#### 4.04.020 - Definitions.

In this article:

*Card room* means any space, room, or enclosure furnished or equipped with a table used, or intended to be used, as a card table for the playing of cards and similar games and the use of which is available to the public, or any portion of the public. However, this section does not apply to a nonprofit charitable organization.

*Card room employees* means dealers, overseers, and others directly connected with the operation and supervision of the card tables, excluding waitresses, bartenders, culinary workers, and others not connected with such operation and supervision.

*Chief* means the Chief of Police of the City or his or her designee.

*Nonprofit charitable organization* means an organization as defined in Code subsection 4.24.020(b).

(Ord. No. 1134, § 1, 5-5-2009)

#### 4.04.030 - Card room license: application, fee and investigation.

- (a) *Application*. An applicant for a card room license shall submit his/her application to the Chief. The application shall be under oath and shall include the following information for the applicant and for each person financially interested in the business. "Financially interested" includes sharing in the profits of the business on the basis of gross or net revenue.

1. The true names and addresses.
  2. The past criminal record, if any.
  3. Fingerprints.
- (b) *Fee.* At the time the application is submitted, the applicant shall pay to the City an application fee as established by resolution of the City Council. This fee is exclusive of any other fees charged by other agencies.
- (c) *Investigation.* The Chief shall investigate the applicant and those financially interested. The Chief of Police shall act as an investigation officer and submit his/her report to the Council stating his/her approval or disapproval for the issuance of such license.

(Ord. No. 1134, § 1, 5-5-2009)

4.04.040 - Card room license; City Council consideration.

The Council shall consider the application and deny any application if the applicant or anyone financially interested:

- (a) Has previously been convicted of a felony or a misdemeanor crime involving moral turpitude; or
- (b) Has been convicted of a felony or misdemeanor involving crimes of:
  - (1) Force or violence;
  - (2) Fraud;
  - (3) Embezzlement;
  - (4) Theft; or
  - (5) Uniform Controlled Substance Act.

A maximum of ~~nine~~ (9) gambling tables are allowed in the City. The Council shall deny the application if the approval would cause the total number of tables in the City to exceed ~~nine~~ (9).

(Ord. No. 1134, § 1, 5-5-2009)

4.04.050 - Card room license; annual renewal.

Licenses shall be issued on an annual basis. The annual license fee, payable each fiscal year beginning July 1, shall be established by resolution of the City Council. The fees shall be payable to the City after the Council has approved the issuance of the license but prior to the issuance of the license. The operator of a card room shall pay the license fee set forth in this section regardless of the license fees he/she might pay for other businesses.

(Ord. No. 1134, § 1, 5-5-2009)

4.04.060 - Card room licenses; suspension and revocation.

The Council shall have the right for cause to revoke or suspend (and take possession of) any card room license issued under this article. The Council may take such action based on any ground set forth in subsections 4.04.040(a) or (b), or on the failure of a licensee to comply with this article.

(Ord. No. 1134, § 1, 5-5-2009)

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4.04.070 - Card room work permits.

- (a) *Application.* Card room employees shall obtain a work permit from the Chief. Applications for such work permits shall be submitted under oath and contain the name, address, and past criminal record, if any, of the applicant and such other information as may be deemed necessary by the Chief to determine whether the applicant is a proper person to be issued a card room work permit. The application shall be accompanied by the fingerprints of the applicant. The work permit shall be issued only to citizens of the United States who have resided in the State for at least one year immediately preceding the issuance of such work permit.
- (b) *Grounds for denial.* The Chief shall deny a work permit if the applicant has previously been convicted of a felony or a misdemeanor crime involving moral turpitude, or if the applicant has been convicted of a felony or misdemeanor involving:
  - (1) Force or violence;
  - (2) Fraud;
  - (3) Embezzlement;
  - (4) Theft; or
  - (5) Uniform Controlled Substance Act.
- (c) *Fee.* Each application for a work permit shall be accompanied by a nonrefundable fee as established by resolution of the City Council. The work permit shall be valid for a period of one year. Only one such work permit is required each year, even though the permit holder may change his/her place of employment within the City.
- (d) *Temporary permit.* A temporary card room work permit may be obtained from the Chief in accordance with the following:
  - (1) A completed "card room dealer work permit application" accompanied by the appropriate fees as established by resolution of the City Council;
  - (2) Presentation of California Driver's License or Picture Identification card;
  - (3) Completion by the Police Department of a local record check and check of the "state wanted person system"; and
  - (4) Fingerprints to be taken, submitted to and cleared the Department of Justice.Upon review of the application, in accordance with the card room work permit provisions set forth in this chapter, the temporary permit may be issued for a period of ninety (90) days. If the fingerprint clearance is not completed within that time, a thirty-day extension may be granted. If the card room work permit is granted in accordance with this section, the one year term shall be from the date of the issuance of the temporary permit.
- (e) *Appeal.* The action of the Chief in denying a work permit on the basis of subsections (a) or (b) of this section is subject to an appeal to the City Manager. An appeal must be filed with the City Clerk within ten (10) days after the denial, after which time the decision of the Chief is final. On appeal, a decision of the City Manager is final.
- (f) An application for a work permit may be denied or revoked based upon the objection of the State Division of Gambling Control.

(Ord. No. 1134, § 1, 5-5-2009)

4.04.080 - Card room work permit; suspension or revocation.

The Chief may revoke or suspend a card room work permit and take possession of the permit based on: (a) any of the grounds for denial; or (b) the failure of a card holder to comply with this article.

The action of the Chief in this respect is subject to an appeal to the City Manager. The appeal shall be filed with the City Clerk within ten (10) days after the revocation or suspension, after which time the decision of the Chief is final. On appeal, a decision of the City Manager is final.

(Ord. No. 1134, § 1, 5-5-2009)

4.04.090 - Assignment or transfer.

Each person must have his or her own work permit and the permit cannot be assigned or transferred to another person.

A card room license may only be assigned or transferred if the new operator and each person financially interested submits an application and is approved by the City Council under sections 4.04.030 and 4.04.040.

(Ord. No. 1134, § 1, 5-5-2009)

4.04.100 - Card room regulations.

It is unlawful to operate a card room in violation of any of the following regulations and rules:

- (a) No more than one card room may be located at any one address.
- (b) The operator or his/her employees shall not extend credit to a player, nor shall they accept IOU's or other notes.
- (c) Any card games are permitted unless they are prohibited under State law.
- (d) No more than ~~nine (9)~~ tables are permitted in any card room.
- (e) No more than ~~nine (9)~~ tables are permitted in the entire City.
- (f) ~~No more than ten (10) players are permitted at any one card table.~~
- (g) ~~No person under the age of twenty-one (21) years of age is permitted in any card room.~~
- (h) ~~Card rooms may operate seven (7) days a week, 24 hours a day.~~
- (i) ~~Card rooms shall be open to police inspection during all hours of operation, which includes but is not limited to, police inspection of surveillance cameras, live or recorded.~~
- (j) ~~Only table stakes are permitted. Table limits and house collections shall be posted clearly for each table before the start of each game.~~
- (k) ~~Each card table shall have assigned to it a person holding a valid card room work permit, whose duty shall be to supervise and operate the game strictly in accordance with the provisions of this article and within the provisions of the Penal Code of the State.~~
- (l) ~~If more than two (2) tables are in operation in a card room, there shall be assigned to it a person holding a valid card room permit in addition to the person required by subsection (l) of this section, whose duty shall be to supervise the players and games strictly in accordance with the provision of this article. He/she shall not, however, participate in games. The licensee may act as table operator or supervisor without having a work permit.~~
- (m) ~~Signs shall be posted in every card room, in letters plainly visible from all parts of the room, stating that no game shall be played other than those expressly permitted under California Penal Code section 330m. Such signs shall also contain such other information relating to the regulations contained in this article as the Chief may require.~~
- (n) No person who is in a state of intoxication is permitted in any card room.

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(g) Card rooms shall be so arranged that the card tables and the players at the table are plainly visible from the primary entrance when the door is open. No wall, partition, screen or similar structure between the primary entrance door opening and any card table located in the card room is permitted if the structure interferes with the required visibility.

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(c) The licensee is responsible for the safety and security in and around the gambling establishment.

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(Ord. No. 1134, § 1, 5-5-2009)

#### 4.04.110 - Nonprofit charitable organization.

A nonprofit charitable organization, as defined in subsection 4.24.020(b) of this Code, may be granted a permit without a fee by the Council when the organization complies with the State requirements for an organization fundraiser under Business and Professions Code section 19985 and following.

(Ord. No. 1134, § 1, 5-5-2009)

#### 4.04.120 - State law violations.

The Council hereby declares that it is not the intention of this article to permit the licensing of any card room for the playing of any game prohibited by the laws of the State, including, but not limited to those games enumerated in California Penal Code section 330, which section includes banking and percentage games.

(Ord. No. 1134, § 1, 5-5-2009)

#### 4.04.130 - Violations.

Any person violating a term, requirement, regulation or provision of this article is guilty of a misdemeanor punishable in accordance with section 1.04.030 of this Code.

(Ord. No. 1134, § 1, 5-5-2009)

### Article 2. - Dances

#### 4.04.140 - Permit required.

It shall be unlawful for any person to open, conduct, or carry on, or so participate in the opening, conducting, and carrying on of a dance in a public dance hall or public ballroom or other public place in the City except by and after securing permit therefor from the City Manager as hereinafter provided; or for the holder of such permit, or for any officer, agent, or employee of the holder of any such permit to violate or permit the violation of all or any of the following conditions, rules, or regulations, or any part thereof, at or in connection with any dance under such permit, which conditions, rules and regulations are as follows, to-wit:

- (a) No dances shall be allowed at any time of day or night in any such dance hall, ballroom or other public place at any time when the same is not continually lighted throughout with bright electric lights, or other lights of equal brilliancy.
- (b) No immoral or obscene dances shall be permitted.
- (c) No dance shall be permitted between the hours of 2:00 a.m. and 9:00 a.m. next ensuing.
- (d) No permit issued under this article shall be transferable except by the written consent of the City Manager.

(Prior code § 4-1.201)

4.04.150 - Approval of permit.

No permit shall be issued to any person unless the application for such permit shall contain the following facts:

- (a) Name, residence, and place of business of the applicants and all information that may be required concerning such applicants.
- (b) The particular place for which the permit is desired or at which any dance is to be held, and the name or names and addresses of the band, orchestra and leader thereof, and of any other entertainment with a description of the character thereof, to be presented at such dance.
- (c) The number and date of the dances to be held under the permit and all such other and further information as may be required by the City Manager concerning such persons and an agreement to comply with the foregoing conditions, rules and regulations.

(Prior code § 4-1.202)

4.04.160 - Revocation of permit.

The City Manager is hereby authorized and empowered to revoke any dance permit issued by him upon failure of the holder thereof to comply with any provision of this article, or for violation of any of the terms and conditions of the permit as granted.

(Prior code § 4-1.203)

Article 3. - Gambling and Gambling Devices

4.04.170 - Gambling a misdemeanor.

Except as otherwise provided in Article 1 of this chapter, every person who, within the City, deals, plays, participates in, opens or carries on, or who either as owner or employee, whether for hire or not, conducts any game played with cards, dice, machine or other device, for money or representative of money, is guilty of a misdemeanor.

(Prior code § 4-1.301)

ORDINANCE \_\_\_\_\_

AN ORDINANCE OF THE CITY OF TRACY AMENDING ARTICLE 1 "CARD ROOMS" OF CHAPTER 4.04 OF THE TRACY MUNICIPAL CODE TO INCREASE THE NUMBER OF CARD ROOM TABLES ALLOWED AND PLAYER CAPACITY PER TABLE AND CHANGE OTHER OPERATIONAL REQUIREMENTS

WHEREAS, The State of California and the Tracy Municipal Code (TMC) regulate gambling, which includes the operation of card rooms, and

WHEREAS, State law allows local jurisdictions to amend local ordinances that would result in the expansion of gambling, which includes increasing the number of gambling tables, number of players per table, and hours of operation, without voter approval, when the expansion would result in an increase of less than 25%, and

WHEREAS, Amendments to local ordinances relating to the expansion of gambling require review and comment by the Department of Justice's Bureau of Gambling Control before the ordinance is adopted, and

WHEREAS, The Bureau of Gambling Control has reviewed and approved the proposed amendments relating to the expansion of gambling, and

WHEREAS, The City Council recognizes that the amendments to Article 1 "Card Rooms" of Chapter 4.04 of the TMC will provide additional opportunities for revenue for local card room businesses that provide employment opportunities to local residents, and

WHEREAS, The Council further recognizes that these amendments are especially important for local card room businesses who have experienced financial hardship due to the COVID-19 pandemic;

NOW THEREFORE, the City Council of the City of Tracy does ordain as follows:

SECTION 1: Amended Sections. Sections 4.04.040 and 4.04.100 of Chapter 4.04 of Article 1 (Card Rooms) of the Tracy Municipal Code are hereby amended to read as follows:

"4.04.040 - Card room license; City Council consideration.

The Council shall consider the application and deny any application if the applicant or anyone financially interested:

- (a) Has previously been convicted of a felony or a misdemeanor crime involving moral turpitude; or
- (b) Has been convicted of a felony or misdemeanor involving crimes of:
  - (1) Force or violence;
  - (2) Fraud;
  - (3) Embezzlement;

- (4) Theft; or
- (5) Uniform Controlled Substance Act.

A maximum of nine (9) gambling tables are allowed in the City. The Council shall deny the application if the approval would cause the total number of tables in the City to exceed nine (9).

#### 4.04.100 - Card room regulations.

It is unlawful to operate a card room in violation of any of the following regulations and rules:

- (a) No more than one card room may be located at any one address.
- (b) The operator or his/her employees shall not extend credit to a player, nor shall they accept IOU's or other notes.
- (c) Any card games are permitted unless they are prohibited under State law.
- (d) No more than nine (9) tables are permitted in any card room.
- (e) No more than nine (9) tables are permitted in the entire City.
- (f) No more than ten (10) players are permitted at any one card table.
- (g) No person under the age of twenty-one (21) years of age is permitted in any card room.
- (h) Card rooms may operate seven (7) days a week, 24 hours a day.
- (i) Card rooms shall be open to police inspection during all hours of operation, which includes but is not limited to, police inspection of surveillance cameras, live or recorded.
- (j) Only table stakes are permitted. Table limits and house collections shall be posted clearly for each table before the start of each game.
- (k) Each card table shall have assigned to it a person holding a valid card room work permit, whose duty shall be to supervise and operate the game strictly in accordance with the provisions of this article and within the provisions of the Penal Code of the State.
- (l) If more than two (2) tables are in operation in a card room, there shall be assigned to it a person holding a valid card room permit in addition to the person required by subsection (l) of this section, whose duty shall be to supervise the players and games strictly in accordance with the provision of this article. He/she shall not, however, participate in games. The licensee may act as table operator or supervisor without having a work permit.

(m) Signs shall be posted in every card room, in letters plainly visible from all parts of the room, stating that no game shall be played other than those expressly permitted under California Penal Code section 330m. Such signs shall also contain such other information relating to the regulations contained in this article as the Chief may require.

(n) No person who is in a state of intoxication is permitted in any card room.

(o) The licensee is responsible for the safety and security in and around the gambling establishment.”

SECTION 2: Title, chapter, and section headings contained herein shall not be deemed to govern, limit, modify, or in any manner affect the scope, meaning or intent of the provisions of any title, chapter, or section hereof.

SECTION 3: If any provision or the application of this Ordinance is for any reason held to be unconstitutional, invalid, or otherwise unenforceable, such decision shall not affect the validity of the remaining portions of this Ordinance or any part thereof. The City Council hereby declares that it would have adopted each subsection or provision of this Ordinance irrespective of the invalidity of any particular portion thereof and intends that the invalid portions should be severed and the balance of the Ordinance enforced.

SECTION 4: This Ordinance shall take effect thirty (30) days after its final passage and adoption.

SECTION 5: This Ordinance shall either (1) be published once in a newspaper of general circulation, within 15 days after its final adoption, or (2) be published in summary form and posted in the City Clerk’s office at least five days before the ordinance is adopted and within 15 days after adoption, with the names of the Council Members voting for and against the ordinance. (Gov’t. Code §36933.)

\* \* \* \* \*

The foregoing Ordinance \_\_\_\_\_ was introduced at a regular meeting of the Tracy City Council on the \_\_\_\_\_ day of \_\_\_\_\_, 2021, and finally adopted on the \_\_\_\_\_ day of \_\_\_\_\_, 2021, by the following vote:

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

\_\_\_\_\_  
MAYOR

ATTEST:

\_\_\_\_\_  
CITY CLERK

AGENDA ITEM 3.E

REQUEST

**RECEIVE REPORT REGARDING THE INSTALLATION OF CELL TOWERS IN PUBLIC PARKS AND PROVIDE STAFF DIRECTION ON THE ESTABLISHMENT OF POLICIES REGARDING CELL TOWERS IN CITY PARKS AND THE DISTRIBUTION OF LEASE REVENUES**

EXECUTIVE SUMMARY

Over the years, as cellular technology drove the placement of cellular infrastructure throughout the City, cell towers and antennas were placed at various sites in the community. Included in these sites are tower locations in City parks. Tracy Municipal Code (TMC) Section 10.25.130 (c) indicates the preferred locations for cell towers are on/at City-owned properties, including parks. On January 19, 2021, Mayor Pro Tem Vargas asked that staff present a report regarding cell towers in parks and provide Council the opportunity to give policy direction on this item. This request was seconded by Council Member Davis. This report requests that Council receive a report and provide policy direction regarding cell towers and the distribution of cell tower lease revenues.

DISCUSSION

As cellular technology evolved, the Federal Communications Commission (FCC) developed regulations regarding infrastructure development to support this critical developing communications technology. The Tracy Municipal Code (TMC) regarding this infrastructure was last updated on April 15, 1997 and includes direction regarding cell tower placement. Section 10.25.130 (c) of the TMC states:

*(c) Site preference of subsection (a) and (b) of this section notwithstanding, the City encourages locating telecommunications facilities on City-owned property. The City recognizes a potential public interest in locating telecommunication facilities on City property (light standards at City parks, water towers, in conjunction with City communication needs, etc.) The potential benefits include the following: (1) Greater public control over siting, design, maintenance, and removal of telecommunication facilities; (2) Co-locate current or future City emergency and other communication facilities; and (3) Public revenue through lease agreements with telecommunication service providers.*

Past requests to locate towers in City parks have been accommodated through several administrative and regulatory permit processes because of these provisions. Whereas many cellular service providers opt to locate towers on private property to close gaps in coverage, it is also common for these providers to analyze City parks as potential sites. When a private property best serves the need for the cellular service provider, the TMC establishes that Conditional Use Permits (CUPs) are required. The Development Services Department reviews the application and plan details per TMC and City Standards, and presents the project to the Planning Commission for consideration.

When City-owned property is desired by the provider, such as at a park site, the process involves additional steps, including a lease agreement with the City. Public Works Department staff prepare the leases – a process that includes site visits with the applicant, rate and special conditions negotiations, and review by the Parks & Recreation Department if the proposed site is a park or sports facility. Once the CUP has been issued by the Planning Commission, and the lease agreement reviews are completed and signed by the service provider, the lease agreement is then brought to Council for consideration.

The Federal Telecommunications Act is intended to ensure that the public has sufficient access to telecommunication services. Based on this Federal law, a local government shall not prohibit or have the effect of prohibiting the provision of personal wireless services. Further, no State or local government may dictate, or even consider, wireless entitlements based on “the environmental (health) effects of radio frequency emissions to the extent that such facilities comply with the Commission’s regulations concerning such emissions.” A zoning authority’s mere consideration of health effects, including potential effects on property values due to potential radio frequency emissions, may not serve as “substantial evidence” for purposes of denying a wireless facility. The City’s role in the siting and design of wireless communication facilities is generally limited to aesthetics.

While the City Council has the discretion, as a property owner, to adopt a policy that discourages (or prohibits) the placement of new telecommunications facilities on City-owned property, federal law restricts the Council’s authority to prohibit the placement of these facilities in the right-of-way. Wireless telecommunications providers are treated as telephone companies under their State franchise conferred in California Public Utilities Code Section 7901, and thus are entitled to use the Public Right-of-Way (PROW) to deploy their equipment. However, even with their right to occupy the PROW, under Section 7901, providers may not “unreasonably subject the public use to inconvenience or discomfort; to unreasonably trouble, annoy, molest, embarrass, inconvenience; to unreasonably hinder, impede, or obstruct the public use.” These limitations on Section 7901 have been interpreted broadly enough to include concerns related to the appearance of a facility,” and thus Section 7901 allows cities to condition a wireless permit on (i) aesthetic concerns, (ii) restricting the location of proposed facilities due to public safety reasons or other local concerns or even deny applications in appropriate circumstances, and (iii) to exercise reasonable control over the time, place and manner of “when, where, and how telecommunications service providers gain entry to the public rights-of-way,” including the need for encroachment permits. (See, Pub. Util. Code § 7901.)

As noted in the previous paragraph, Council has the discretion to adopt a policy that discourages or prohibits the placement of telecommunication facilities on City-owned property. Therefore, staff has prepared the following options for Council’s consideration regarding the placement of cell towers on City-owned facilities including parks:

1. Continue with the currently established TMC language, which includes encouraging tower location on City property including parks. This option requires no additional action by City Council and retains the benefits noted previously.
2. Modify the TMC to limit the placement of cell towers to only certain City Council – identified locations. This option requires an amendment to the TMC but provides Council the ability to select sites they determine to be most appropriate for the

placement of cell towers on public property. Depending upon final direction, this could reduce future lease revenues due to limiting the number of sites available for potential cell tower placement.

3. Direct staff to modify the existing TMC to specifically remove 'parks' from the current TMC regarding cell tower placement. This would prevent future cell towers from being constructed in City parks. This could result in reduced lease revenues due to limiting the number of sites available for potential cell tower placement. This option requires an amendment to the TMC.

If modification of the TMC is desired, staff will develop revised language based upon Council direction and present the proposed language to Council as a future consent item.

Lease Revenue Distribution

In addition to direction on policies regarding placement of cell towers in parks, staff requests Council direction on the distribution of lease revenues collected through cell tower agreements. To date, all revenues from cell tower leases accrue to the General Fund balance. There are two cell towers that were previously approved and are currently being installed - one within a Landscape Maintenance District (LMD) park – Don Cose Park in LMD zone 15, and a second at Ritter Family Ballpark – a General Fund park. Staff asks that Council consider a policy that directs that the revenues from towers placed on LMD property, and City-owned CFD property, be allocated to those specific special assessment districts and/or zones in the future. This would provide an additional funding source within these areas for ongoing maintenance and/or capital replacement projects. The table below summarizes key information regarding existing and approved towers:

<b>Service Provider</b>	<b>Tower/Antennae Address/location</b>	<b>General Fund (GF) Park Name or LMD Zone #</b>	<b>Monthly/Annual Lease amount &amp; current expiration date</b>	<b>Notes</b>
T-Mobile	400 E. 10 <sup>th</sup> St.	N/A	\$26,582/yr. (\$2,215/month) Exp. 10/31/21	Next to PD Annex
Verizon	NE corner of 6 <sup>th</sup> St. & Tracy Blvd.	N/A	\$21,333/yr. (\$1,778/month) Exp. 8/31/23	On 6 <sup>th</sup> St. water tower
Cingular (AT&T Wireless)	1000 Civic Center Dr.	N/A	\$7,934/yr. (\$661.16/month) Exp. 6/30/25	Next to PD Annex
Ubiquitel (Sprint)	400 E. 10 <sup>th</sup> St.	N/A	\$17,383/yr. (\$1,448/month) Exp. 2/5/26	Next to PD Annex
AT&T (Cingular Wireless)	NE corner of 6 <sup>th</sup> St. & Tracy Blvd.	N/A	\$21,464/yr. (\$1,789/month) Exp. 10/14/24	On 6 <sup>th</sup> St. water tower

ClearWire (Sprint)	NE corner of 6 <sup>th</sup> St. & Tracy Blvd.	N/A	\$21,624/yr. (\$1,802/month) Exp. 8/30/25	On 6 <sup>th</sup> St. water tower
AT&T (New Cingular Wireless)	955 Crossroads Dr.	GF – Tracy Sports Complex	\$27,960/yr. (\$2,230/month) Exp. 10/31/22	Behind center field - ballfield #4
T-Mobile West	2300 Tracy Blvd	GF – Ritter Family Ballpark	\$24,000/yr. (\$2,000/month) Exp. 5/31/26	Newly approved – to be constructed
Verizon Wireless		LMD Zone 15 – Don Cose Park	\$24,000/yr. (\$2,000/month) Exp. 5/31/26	Newly approved – to be constructed

**FISCAL IMPACT**

There is no fiscal impact related to this item at this time. Depending on Council direction, future revenues from lease revenues may be impacted.

**STRATEGIC PLAN**

This agenda item supports the City Council's 2021-2023 Governance Strategic Priority, which is to enhance fiscal stability, retain and attract new talent, improve the use of technology, and enhance transparency for the betterment of the Tracy community.

**RECOMMENDATION**

That the City Council receive the report and provide direction to staff regarding various policy items identified related to the placement of cell towers in City facilities including parks and the distribution of tower lease revenues to specific LMD zones where applicable.

Prepared by: Don Scholl, Director of Public Works

Reviewed by: William Dean, Interim Director of Development Services  
 Brian MacDonald, Director of Parks & Recreation  
 Karin Schnaider, Director of Finance  
 Midori Lichtwardt, Assistant City Manager

Approved by: Bob Adams, Interim City Manager

**ATTACHMENT:**

Attachment A – T.M.C. – RE: Cell Towers - 10.25.110 General requirements;  
 10.25.130 Telecommunication facilities—Site preference

September 7, 2021  
 Council Agenda Item - Cell Towers in Parks  
 T.M.C. – General Requirements; Site Preference

**10.25.110 General requirements.**

The following requirements shall be met for all telecommunications facilities in any zone within the City:

- (a) Any applicable General Plan goals, objectives, programs and policies, specific plan, PUD standards, conditional use permit or development review project conditions, design guidelines, and the permit requirements of any agencies which have jurisdiction over the project;
- (b) All the requirements of the Tracy Municipal Code, unless specifically modified by this chapter;
- (c) The Uniform Building Code, National Electrical Code, Uniform Plumbing Code, Uniform Mechanical Code, and Uniform Fire Code, where applicable;
- (d) Any applicable airport land use compatibility criteria/policies and Federal Aviation Administration regulations;
- (e) Any applicable easements or similar restrictions on the subject property;
- (f) Telecommunication facilities cannot be located in any yard setback area required by the City's zoning regulations in which it is located;
- (g) All telecommunication facilities shall comply at all times with all FCC rules, regulations, and standards;
- (h) All telecommunication facilities shall maintain in place a security program, when determined necessary by and subject to the review and approval of the Police Chief, that will prevent unauthorized access and vandalism;
- (i) Satellite dish and parabolic antennas shall be situated as close to the ground as possible to reduce visual impact without compromising their function;
- (j) Installation shall be in compliance with the manufacturer's structural specifications.

(§ 1, Ord. 955 C.S., eff. April 15, 1997)

**10.25.130 Telecommunication facilities—Site preference.**

- (a) Telecommunication facilities shall be located in the following order of preference for minor facilities:
  - (1) Completely within existing structures;
  - (2) Existing structures that allow facade-mounted antennas;
  - (3) Co-location on existing telecommunications facilities or light standards at a lower height;
  - (4) Existing structures that require modification of the structure architecturally or in height in order to mount antennas (including roof mounts);
  - (5) Co-location on existing telecommunication facilities or light standards at a higher height.
- (b) Telecommunication facilities shall be located in the following order of preference for major facilities:
  - (1) New telecommunications tower for co-location;
  - (2) New telecommunications tower for a single carrier.
- (c) Site preference of subsection (a) and (b) of this section notwithstanding, the City encourages locating telecommunications facilities on City-owned property. The City recognizes a potential public interest in locating telecommunication facilities on City property (light standards at City parks, water towers, in conjunction with City communication needs, etc.) The potential benefits include the following:
  - (1) Greater public control over siting, design, maintenance, and removal of telecommunication facilities;
  - (2) Co-locate current or future City emergency and other communication facilities; and
  - (3) Public revenue through lease agreements with telecommunication service providers.

(§ 1, Ord. 955 C.S., eff. April 15, 1997)

AGENDA ITEM 3.F

REQUEST

**INTRODUCE AN ORDINANCE AMENDING VARIOUS SECTIONS OF TITLE 1 OF THE TRACY MUNICIPAL CODE REGARDING CODE ENFORCEMENT, ADMINISTRATIVE CITATIONS AND PENALTIES, AND PUBLIC NUISANCE ABATEMENT**

EXECUTIVE SUMMARY

The proposed ordinance will amend and add sections to Title 1 of the Tracy Municipal Code (TMC) to provide the City of Tracy with additional remedies for violations of the TMC. State law specifically provides for the proposed amendments and additions. The proposed ordinance will update Title 1 to improve the effectiveness of enforcement and provide the City with more opportunities to recoup penalties as allowed by State law.

DISCUSSION

Currently, Title 1 of the TMC establishes a range of the administrative and criminal penalties for violating the TMC such as monetary penalties; criminal enforcement (infractions or misdemeanors), the denial, forfeiture, or revocation of permits; civil injunctions; and the abatement of public nuisances. The proposed ordinance will expand the remedies available to the City, as permitted by State law, for various code violations law. As described below, the changes will expand the City's opportunity to enforce and penalize TMC violations and will provide more ways for the City to recoup the costs spent on enforcement.

Title 1 allows the City to impose administrative citations and penalties for various TMC violations. Government Code section 53069.4 (a) (1) authorizes a legislative body of a local agency to make any violation of an ordinance enacted by the local agency subject to administrative fine or penalty. The proposed ordinance will add a provision that states that failing to comply with an order issued by any City commission, board, hearing officer, or other body appointed by City Council is a violation of the TMC and subject to the penalties contained therein. The proposed change will provide the City with a remedy in the event an individual fails to comply with an order issued by any City-appointed body.

Next, the proposed ordinance will allow the City to recover attorneys' fees when the City initiates nuisance abatement actions or proceedings. Government Code section 38773.5 provides that a City may, by ordinance, allow for the recovery of attorneys' fees in any action, administrative proceeding, or special proceeding to abate a nuisance. Most jurisdictions throughout California have similar provisions in their municipal codes. Furthermore, this provision will allow the City to more effectively abate nuisances and recoup the costs for initiating the necessary legal proceedings.

Government Code section 38773.7 states that a legislative body by ordinance may provide that upon entry of a second or subsequent civil or criminal judgment within a two-year period for abatement of a public nuisance, a court may order the responsible person to pay treble the costs of abatement. In California, treble damages allow a court to triple the amount of actual or compensatory damages awarded to a prevailing plaintiff.

This provision will assist the City in gaining compliance with continuing public nuisances, and will potentially deter individuals from ongoing non-compliance due to increased financial penalties.

Government Code section 36901 authorizes the City to impose fines, penalties, and forfeitures for violations of ordinances, which shall not exceed one thousand (\$1,000) dollars. The proposed ordinance will allow the City to impose a maximum civil penalty of one thousand dollars (\$1,000) for violations of the TMC, and will authorize the City Attorney to recover the civil penalties authorized as part of any appropriate civil action. This is another tool allowed by State law for the City to impose additional penalties that Title 1 does not currently allow.

Lastly, Title 1 currently contains provisions regarding violations pertaining to building, plumbing, electrical, or other structural or zoning issues. Government Code section 53069.4 (a) (1) (B) specifically allows a local agency to impose immediate administrative fines or penalties for these same violations that exist as a result of, or to facilitate, the illegal cultivation of cannabis. The proposed ordinance will allow the City to implement such fines or penalties. This new section will not apply to the lawful cultivation of cannabis pursuant to Health and Safety Code Section 11362.1. This new section will provide the City with an additional enforcement tool to address illegal cannabis cultivation throughout the City.

#### STRATEGIC PLAN

This agenda item relates to the Council's Strategic Priority in the area of Public Safety.

#### FISCAL IMPACT

There is no fiscal impact related to this agenda item.

#### RECOMMENDATION

Staff recommends that the City Council introduce and waive the full reading of the proposed ordinance amending various sections of Title 1 of the Tracy Municipal Code regarding code enforcement, administrative citations and penalties, and public nuisance abatement.

Prepared by: Riana Daniel, Deputy City Attorney and Leticia Ramirez, City Attorney

Reviewed by: Karin Schnaider, Finance Director  
Midori Lichtwardt, Assistant City Manager

Approved by: Bob Adams, Interim City Manager

#### ATTACHMENTS:

A – Redline copy of proposed amendments to Title 1 of the Tracy Municipal Code

B – Ordinance amending Title 1 of the Tracy Municipal Code

Chapter 1.04 - PENALTY PROVISIONS

1.04.010 - Enforcement of Code violation.

It is unlawful for a person to violate a provision, or to fail to comply with a requirement, of this Code. The City may enforce any such violation of the provisions of this Code by any one or more of the following methods, at the City's discretion.

- (a) Criminal penalties pursuant to this chapter.
- (b) Denial, forfeiture, or revocation of any permit granted by the City.
- (c) Administrative citation and penalties, to the extent authorized by this Code.
- (d) Any other remedy available to the City, including civil injunction or abatement of public nuisance, recovery of attorneys' fees, and recovery of treble damages.

(Ord. 996 § 1 (part), 1999)

1.04.020 - Each day a separate offense.

Each day during any portion of which a violation is committed, continued, or permitted is a new and separated offense. This section applies whether a provision of this Code is prosecuted by criminal, administrative, civil, or other procedures.

(Ord. 996 § 1 (part), 1999)

1.04.030 - Criminal penalties—Infraction and misdemeanor.

- (a) Infraction. A person who violates a provision of this Code, or who fails to comply with a requirement of this Code, is guilty of an infraction, unless the violation is specifically identified in this Code as a misdemeanor. An infraction is punishable by:
  - (1) A fine not exceeding one hundred and no/100ths (\$100.00) dollars for a first violation.
  - (2) A fine not exceeding two hundred and no/100ths (\$200.00) dollars for a second violation of the same Code provision within a twelve month period.
  - (3) A fine not exceeding five hundred and no/100ths (\$500.00) dollars for each additional violation of the same Code provision within a twelve (12) month period.
  - (4) An offense, which would otherwise be an infraction, is a misdemeanor if a person has been convicted of two or more violations of the same Code provision within a twelve (12) month period. For the purpose of this subsection, a bail forfeiture is considered a conviction of the offense charged.
  - (5) An infraction is not punishable by imprisonment. A person charged with an infraction is not entitled to a jury trial or to a public defense unless arrested and not released.
- (b) Misdemeanor. A person who violates a provision of this Code, or who fails to comply with a requirement of this Code, is guilty of a misdemeanor if the violation is specifically identified in this Code as a misdemeanor. A misdemeanor is punishable by a fine not exceeding One Thousand and no/100ths (\$1,000) dollars, or imprisonment not exceeding six months, or both.

(Ord. 996 § 1 (part), 1999)

#### 1.04.040 - Violation of permit.

A person who is issued or granted a permit (including a land use entitlement or variance) by the City shall comply with each and every provision and condition of the permit. A person who violates or fails to comply with any provision or condition of the permit is in violation of this section, and is subject to punishment in accordance with this chapter 1.04. In addition, the City may enforce the permit by any other lawful means, including instituting proceedings for revocation of the permit.

(Ord. 1040 § 5 Exh. E (part), 2002 : Ord. 996 § 1 (part), 1999)

#### 1.04.050 - Public nuisance.

Any condition which is in violation of this Code is a public nuisance.

(Ord. 996 § 1 (part), 1999)

#### 1.04.060 - Failure to comply with order

A person shall comply with any order issued by any City commission, board, hearing officer, or other body appointed by City Council and authorized to issue orders. Any person who fails to comply with such orders is subject to any penalties permitted under this chapter.

### Chapter 1.08 - RULES OF CONSTRUCTION

#### 1.08.010 - Construction—Provisions governing.

Unless the provisions of the context otherwise specify, these general provisions, rules of construction and definitions shall govern the construction of this Code. The provisions of this Code and all proceedings under it are to be construed with a view to effect its objects and to promote justice.

(Prior Code § 1-3.01)

#### 1.08.020 - Provisions construed as restatements and continuations.

The provisions of this Code insofar as they are substantially the same as existing ordinances relating to the same subject matter shall be construed as restatements and continuations, and not as new enactments.

(Prior Code § 1-3.02)

#### 1.08.030 - Tenure of officers preserved.

All persons who, at the time this Code takes effect, hold office under any of the ordinances repealed by this Code, which offices are continued by this Code, shall continue to hold them according to their former tenure.

(Prior Code § 1-3.03)

#### 1.08.040 - Headings—Effect of.

Title, chapter, article and section headings contained herein shall not be deemed to govern, limit, modify or in any manner affect the scope, meaning or intent of the provisions of any title, chapter, article or section hereof.

(Prior Code § 1-3.04)

1.08.050 - Meaning of section and subsection.

"Section" means a section of this Code, unless some other source is specifically mentioned. "Subsection" means a subsection of the section in which the term occurs unless some other section is expressly mentioned.

(Prior Code § 1-3.05)

1.08.060 - Reference to acts or omissions within this City.

This Code shall refer only to the omission or commission of acts within the territorial limits of the City and to that territory outside of the City over which the City has jurisdiction or control by virtue of the Constitution, or any law, or by reason of ownership or control of property.

(Prior Code § 1-3.06)

1.08.070 - Acts by deputy.

Whenever a power is granted to, or a duty is imposed upon a public officer, or employee, the power may be exercised, or the duty may be performed by a deputy of such officer or employee or by a person otherwise duly authorized pursuant to law or ordinance unless this Code expressly provides otherwise.

(Prior Code § 1-3.07)

1.08.075 - City departments.

From time to time, the City revises the titles of department heads and managers, and the duties of departments, to improve the efficiency and operation of the City. In this Code, when a department director, manager or other employee is referred to by title, it means that department director, manager, or employee currently designated by the City Manager to perform the function, regardless of title.

(Ord. No. 1177, § 1, 1-15-2013)

1.08.080 - Writing includes what.

Writing includes any form of recorded message capable of comprehension by ordinary visual means. Whenever any notice, report, Statement or record is required or authorized by this Code, it shall be made in writing in the English language unless it is expressly provided otherwise.

(Prior Code § 1-3.08)

1.08.090 - Reference applies to amendments.

Whenever a reference is made to any portion of this Code, or to any ordinances of this City, the reference applies to all amendments and additions now or hereafter made.

(Prior Code § 1-3.09)

1.08.100 - Notices, service of.

Whenever a notice is required to be given under this Code, unless different provisions herein are otherwise specifically made in said Code, such notice may be given either by personal delivery thereof to the person to be notified or by deposit in the United States mail, in a sealed envelope postage prepaid, addressed to such person to be notified, at his last known business or residence address as the same appears in the public records of the City or other records pertaining to the matter to which such notice is directed. Service by mail shall be deemed to have been completed at the time of deposit in the post office.

(Prior Code § 1-3.10)

1.08.110 - Proof of notice.

Proof of giving any notice may be made by the certificate of any officer or employee of the City, or by affidavit of any person over the age of eighteen (18) years, which shows service in conformity with this Code, or other provisions of law applicable to the subject matter concerned.

(Prior Code § 1-3.11)

1.08.120 - Statute of limitations.

When a limitation or period of time prescribed in any existing ordinance or statute for acquiring a right or barring a remedy, or for any other purpose, has begun to run before this Code goes into effect, the time which has already run shall be deemed a part of the time prescribed as such limitation.

(Prior Code § 1-3.12)

1.08.130 - Significance of certain words.

The following words shall be interpreted as follows, unless otherwise apparent from the context:

- (a) "Property" includes both real and personal property.
- (b) "Real property" includes lands, tenements and hereditaments.
- (c) "Personal property" includes money, goods, chattels, things in action and evidences of debt.
- (d) "Month" means a calendar month, unless otherwise expressed.
- (e) "Quarterly," when used to designate a period of time, means the first three (3) calendar months of any given year or any succeeding period of three (3) calendar months.
- (f) "Calendar year" means from January 1 through December 31 of any given year.
- (g) "Fiscal year" means from July 1 of any given year through June 30 of the following year.
- (h) "Tenses." The present tense includes the past and future tenses, and the future, the present.
- (i) "Gender." The masculine gender includes the feminine and the neuter.
- (j) "Number." The singular number includes the plural and the plural, the singular.
- (k) "Shall" is mandatory.
- (l) "May" is permissive.

- (m) "Oath" includes affirmation.
- (n) "Person" includes any person, firm, company, corporation, partnership, limited liability company, cooperative, joint venture, association, any public corporation, political subdivision, city (excepting, however, the City of Tracy), county district, the State of California, or the United States of America, or any department or agency thereof, unless this Code expressly provides otherwise. In the case of a property or business, the term "person" includes an owner, a manager, or both.
- (o) "State" is the State of California.
- (p) "County" is the County of San Joaquin.
- (q) "City" is the City of Tracy.
- (r) "Office." The use of the title of any officer, employee, office or ordinance shall mean such officer, employee, office or ordinance of this City, unless otherwise specified.
- (s) "Council" is the City Council of this City.
- (t) "Street" includes all streets, highways, avenues, boulevards, alleys, courts, places, squares, or other public ways in this City which have been or may hereafter be dedicated and open to public use, or such other public property so designated in any law of this State.
- (u) "Owner" applied to a building or land, shall include any part owner, joint owner, tenant, tenant in common, joint tenant, of the whole or a part of such building or land.
- (v) "Tenant" or "Occupant" applied to a building or land shall include any person who occupies the whole or part of such building or land, whether alone or with others.
- (w) "Days" means working days (including only days of the City administrative offices are open to the public) unless stated otherwise.

(Ord. 1111 § 1, 2007; prior code § 1-3.13)

(Ord. No. 1177, § 2, 1-15-2013)

1.08.140 - Federal, State or local law.

No provision of this Code is intended to nor shall be interpreted or applied to allow or authorize a use, structure, activity, or conduct that violates federal, State or local law.

(Ord. No. 1170, § 1, 6-19-2012)

Chapter 1.12 - APPEALS

1.12.010 - Right to appeal to City Manager.

- (a) Informal discussion with department head. A person aggrieved by an administrative action by an officer or employee under this Code should first attempt to discuss the matter with the department head of the department taking the action.
- (b) Appeal to City Manager. A person aggrieved by an administrative action who is unable to resolve the matter with the department head under subsection (a) above may appeal the action to the City Manager, unless the procedure for appeal is otherwise specifically provided in this Code or State law. (See chapter 10.08 for most land use appeals.) The City Manager may, in his or her discretion, refer the matter directly to the City Council to hear the appeal.
- (c) Waiver of rights. Without a timely appeal, a person or appellant waives his or her rights to challenge the decision by administrative process, judicial process or any other legal proceeding.

(d) Procedures.

- (1) The person appealing shall file a written notice of appeal with the City Manager within ten (10) working days of the action appealed from. As used in this section, the term "City Manager" means the manager or his or her designee. The appeal shall be filed on a form provided by the City Manager's office. The ten (10) working days for filing the appeal is measured from the date written notice of the decision is sent (or personally delivered) to the person. If there is no written notice of decision, the time for appeal is twenty (20) working days from the date of the decision.
  - (2) The appeal must be accompanied by the appeal fee in the amount established by City Council resolution.
  - (3) Upon receiving the notice of appeal, the City Manager shall set the matter for hearing and shall give the person appealing written notice of the time and place of hearing at least ten (10) working days before the hearing. The hearing shall be held within thirty (30) working days of the date the notice of appeal is filed. The parties may extend this time by agreement. The hearing is not limited by technical rules of evidence. The City Manager may affirm, modify or reverse the decision appealed. The City Manager shall render a written decision within ten (10) working days after the close of the hearing.
  - (4) The decision of the City Manager is final ten (10) working days after the written notice of the decision is given to the appellant, unless an appeal to the City Council is authorized under section 1.12.020 below.
- (e) First Amendment. If the appeal involves expressive conduct protected by the First Amendment under the State or Federal Constitution, the appeal process shall be expedited as much as reasonably possible. The appellant must state the expressive conduct protected in the written appeal.
- (f) Not a claim. The filing of an appeal under this or any section of this Code does not constitute the filing of a claim under chapter 1.24.

(Ord. 1111 § 4 Exh. A (part), 2007: prior code § 1-4.01)

1.12.020 - Appeal to City Council.

- (a) When applicable. A matter is appealable to the City Council only under the following circumstances:
- (1) If specifically authorized under this Code;
  - (2) If the City Manager refers an appeal to the Council under section 1.12.010(b); or
  - (3) If otherwise required by law.
- (b) Procedures.
- (1) If a matter is appealable to the City Council, the appellant may appeal the City Manager's decision by filing a written notice of appeal with the City Clerk within ten (10) working days of the City Manager's written determination. The appeal shall be filed on a form provided by the City Manager's office. The ten (10) working days for filing the appeal is measured from the date written notice of the decision is sent (or personally delivered) to the person. If there is no written notice of decision, the time for appeal is twenty (20) working days from the date of the decision.
  - (2) The appeal must be accompanied by the appeal fee in the amount established by City Council resolution.
  - (3) Upon receiving the notice of appeal, the City Clerk shall set the matter for hearing and shall give the person appealing written notice of the time and place of hearing at least ten (10) working days before the hearing. The hearing shall be held within thirty (30) working days of the date the notice of appeal is filed. The parties may extend this time by agreement. The hearing is not limited by technical rules of evidence. The Council may continue the hearing from time to time. The City Council may affirm, modify or reverse the decision appealed.

- (4) The City Council shall adopt a resolution reflecting its decision by the time of the next regular City Council meeting after the close of the hearing.
  - (5) The decision of the eCity eCouncil is final.
- (c) First Amendment. If the appeal involves expressive conduct protected by the First Amendment under the State or Federal Constitution, the appeal process shall be expedited as much as reasonably possible. The appellant must state the expressive conduct protected in the written appeal.

(Ord. 1111 § 4 Exh. A (part), 2007: prior code § 1-4.02)

#### 1.12.030 - Hearing Officer.

When an impartial Hearing Officer is required by law (including under this Code), the City Manager shall designate the Hearing Officer. The designated Hearing Officer shall be an impartial person, such as (1) a city employee from a department which has no involvement in the matter, or (2) someone selected randomly from a panel of law students and/or local attorneys willing to volunteer as a Hearing Officer, or (3) someone hired from an organization which provides Hearing Officers, in which case the cost may be shared equally by the City and the person requesting the hearing.

(Ord. 1111 § 4 Exh. A (part), 2007: prior code § 1-4.03)

### Chapter 1.16 - CODE ENFORCEMENT

#### 1.16.010 - Code enforcement—General.

It is unlawful for a person to violate a provision, or to fail to comply with a requirement, of this Code. The City may enforce the provisions of this Code by any one or more of the following methods, at the City's discretion:

- (a) Criminal penalties, under chapter 1.04;
- (b) Civil injunction and civil penalties, under section 1.16.060;
- (c) Regarding land use and development, by the granting or denial of permits, the forfeiture and revocation of permits, or the recording of a notice of violation (See Title 10, Planning and Zoning, and Title 12, Subdivisions);
- (d) Administrative citations and penalties, under chapter 1.28;
- (e) Public nuisance abatement, under chapter 1.32;
- (f) Building abatement, under any of the uniform building Codes adopted by the City in Title 9, Building Regulations;
- (g) Recovery of attorneys' fees, under section 1.16.090;
- (h) Recovery of treble damages, under section 1.16.100;
- (ig) Any other lawful authority.

For the purpose of enforcing this Code: (1) Any partner may be named or cited in enforcement against a partnership; (2) Any managing member may be named or cited in enforcement against a limited liability company; and (3) Any corporate officer may be named or cited in enforcement against a corporation.

(Ord. 1040 § 1 Exh. A (part), 2002)

(Ord. No. 1177, § 3, 1-15-2013)

1.16.020 - Criminal penalties—Infractions and misdemeanors.

A person who violates a provision of this Code is guilty of criminal violation (an infraction or a misdemeanor) as set forth in chapter 1.04.

(Ord. 1040 § 1 Exh. A (part), 2002)

1.16.030 - Prosecutorial discretion.

A violation may be prosecuted by the City Attorney or the District Attorney. In any case where a violation is made a misdemeanor, the prosecuting attorney has the discretion to charge the violation as an infraction.

(Ord. 1040 § 1 Exh. A (part), 2002)

1.16.040 - Imposition of penalty.

When the Code declares a certain crime to be punishable as an infraction or a misdemeanor, the punishment to be imposed in a particular case must be determined by the court authorized to pass sentence, within the limits prescribed for an infraction or a misdemeanor, as the case may be. At the court's request, the City shall provide to the court a recommended bail schedule to apply to those people who elect a bail forfeiture. The recommended bail for a violation may be approved by the City Council or City Attorney, or both.

(Ord. 1040 § 1 Exh. A (part), 2002)

1.16.050 - Citation procedure.

- (a) If a person is arrested for any violation of this Code and is not immediately taken before a magistrate, the citation procedures in Penal Code section 853.6 shall apply.
- (b) It shall be unlawful, and a misdemeanor, for a person who is criminally cited for an infraction or a misdemeanor under this Code to refuse to sign a written promise to appear.

(Ord. 1040 § 1 Exh. A (part), 2002)

1.16.060 - Civil remedies—Injunctions [and Civil Penalties](#).

- [\(a\) A violation of this Code may be enforced by any civil remedy, including by a civil injunction. The City Attorney is authorized to initiate any appropriate civil action.](#)
- [\(b\) As part of a civil action filed to enforce provisions of this Code, a court may assess a maximum civil penalty of one thousand dollars \(\\$1,000\) per violation of this Code for each day during which any person commits, continues, permits, or maintains a violation of any provision of this Code.](#)
- [\(c\) The City Attorney is authorized to initiate any appropriate civil action and recover the civil penalties authorized by this section.](#)

(Ord. 1040 § 1 Exh. A (part), 2002)

1.16.070 - Administrative citations and penalties.

A person who violates a provision of this Code or who fails to comply with a mandatory requirement of this Code is subject to an administrative citation and penalty. The administrative citation procedures and penalties are set forth in chapter 1.28.

(Ord. 1040 § 1 Exh. A (part), 2002)

1.16.080 - Public nuisance abatement.

Any condition caused or permitted to exist in violation of a provision of this Code is a public nuisance. The condition may be abated in accordance with the procedures set forth in chapter 1.32 or other specific abatement procedures in this Code, or in accordance with the procedures set forth in the uniform Codes adopted under Title 9 (Building Regulations) if the condition constitutes a violation of one of those Codes.

[1.16.090 - Recovery of attorneys' fees for nuisance abatement actions or proceedings.](#)

[In any action, administrative proceeding, or special proceeding initiated by the City to abate a nuisance, the prevailing party may recover attorneys' fees. Recovery of attorneys' fees by the prevailing party is limited to those individual actions or proceedings in which the City elects, at the initiation of that individual action or proceeding, to seek recovery of its own attorneys' fees. The award of attorneys' fees to the prevailing party shall in no circumstances exceed the amount of reasonable attorneys' fees incurred by the City in the action or proceeding.](#)

[1.16.100 - Recovery of treble damages upon second or subsequent judgment finding property owner responsible for nuisance conditions.](#)

[Upon entry of a second or subsequent civil or criminal judgment within a two \(2\) year period finding that a property owner is responsible for a condition which may be abated as a nuisance, the court may order the property owner to pay treble \(three \(3\) times\) the cost of abatement. This section shall not apply to conditions abated pursuant to Section 17980 of the California Health and Safety Code.](#)

(Ord. 1040 § 1 Exh. A (part), 2002)

Chapter 1.20 - JUDICIAL REVIEW TIME LIMITS

1.20.010 - Time limits for judicial review.

- (a) Ninety (90) days: Code of Civil Procedure section 1094.5. Judicial review of any decision of the City, or of any commission, board, officer or agent of the City, may be had under California Code of Civil Procedure section 1094.5 only if the petition for writ of mandate is filed within ninety (90) days following the date on which the decision becomes final. However, if the person challenging the decision files a request for a copy of the record of proceedings with the City Clerk within ten (10) days after the date on which the decision becomes final, then the time within which the writ of mandate may be filed is extended to the 30th day after the record is either delivered or mailed to the person or his attorney, if he has one. The procedures set forth in Code of Civil Procedure sections 1094.5 and 1094.6 apply.

A "decision," as used here, means a decision subject to review under section 1094.5, suspending, demoting or dismissing an officer or employee; revoking or denying an application for a permit, license or other entitlement; imposing a civil or administrative penalty, fine, charge or cost; or denying an application for any retirement benefit or allowance.

In making any final decision subject to review under Code of Civil Procedure section 1094.5, the City shall provide notice to the party that the time within which judicial review must be sought is governed by this section. The City may do so by including a copy of this section with the written notice of the final decision.

- (b) Twenty-one (21) days: First Amendment issues. A final decision by the City to issue, revoke, suspend or deny a permit or other entitlement for expressive conduct protected by the First Amendment to the United States Constitution is governed by California Code of Civil Procedure section 1094.8. Such a decision is entitled to priority and subject to expedited hearing and review procedures. An action to challenge the city's decision must be filed and served within twenty-one (21) calendar days from the date of the decision.
- (c) Thirty (30) days: most other decisions. Except as otherwise provided below, any legally permitted court action or proceeding to attack, review, set aside, void, annul or seek damages or compensation for any City decision or action must be commenced, and service of summons effected, within thirty (30) days from the date of the decision. Thereafter, all persons are barred from commencing or prosecuting any such action or proceeding, or asserting any defense of invalidity or unreasonableness of such decision or action. In this subsection, "decision" includes administrative, adjudicatory, legislative, discretionary, and executive decision, or other action taken or authorized by this Code. This subsection shall not expand the scope of judicial review and shall prevail over any conflicting provision and any other applicable law relating to the subject.

This subsection does not apply to decisions governed by: subsection a or b above; Government Code sections 65860 (zoning consistency with general plan) and 66499.37 (subdivisions); Public Resources Code section 21167 (environmental quality); or any other statute where a different time period is mandated.

(Ord. 1009 § 1, 1999: prior Code § 1-6.01)

1.20.020 - Additional time limits for commencement of court proceeding.

(Repealed by Ord. 1009 § 2, 1999: prior Code § 1-6.02)

#### Chapter 1.24 - CLAIMS PROCEDURES

1.24.010 - Purpose.

Pursuant to the authority contained in California Government Code section 935, claims procedures are established for those claims against the City for money or damages not now governed by State or local laws.

(Prior Code § 1-7.01)

1.24.015 - Form of claim.

All claims shall be made in writing and verified by the claimant or by his or her guardian, conservator, executor or administrator. No claim may be filed on behalf of a class of persons unless every member of that class has filed a claim as required by this section. In addition, all claims shall contain the information required by California Government Code section 910.

(Ord. 1029 § 1, 2001)

1.24.020 - Process.

Notwithstanding the exemption set forth in California Government Code section 905, all claims against the City for damages or money, when a procedure for processing such claims is not otherwise provided by state or local laws, shall be presented within the time limitations and in the manner prescribed by California Government Code sections 945 through 949. Any action brought against any

employee of the City shall conform to the requirements of sections 950 through 951 of the California Government Code.

(Ord. 1111 § 2, 2007: Ord. 1029, § 2, 2001: prior code § 1-7.02)

1.24.030 - Delegation of authority.

Pursuant to Government Code sections 910.8 et seq. the City Council, by resolution, shall establish the authority to allow, compromise, reject or settle claims.

(Ord. 1028 § 1, 2001)

#### Chapter 1.28 - ADMINISTRATIVE CITATIONS AND PENALTIES

1.28.010 - Applicability.

This chapter provides for administrative citations, which are in addition to all other legal remedies, criminal or civil, which the City may pursue to address a violation of this Code. Use of this chapter is at the sole discretion of the City. This chapter is authorized under Government Code sections 53069.4 and 36901.

The procedures in this chapter shall not be used to enforce a continuing violation regarding building, plumbing, electrical, or other similar structural or zoning issues, without first allowing the person in violation a reasonable time to correct the violation, consistent with the procedures set forth in section 1.28.030.

(Ord. 1040 § 2 Exh. B (part), 2002)

1.28.020 - Definitions.

In this chapter:

"Enforcement officer" means any City employee or agent of the City with the authority to enforce a provision of this Code.

"Hearing officer" means a person designated by the City Manager to conduct an administrative hearing. The designated hearing officer shall be an impartial person, such as (1) a City employee from a department which has no involvement in Code enforcement, or (2) someone selected randomly from a panel of law students and/or local attorneys willing to volunteer as a hearing officer, or (3) someone hired from an organization which provides hearing officers, in which case the cost will be shared equally by the City and the person cited.

(Ord. 1040 § 2 Exh. B (part), 2002)

1.28.030 - Continuing violations of building and zoning issues.

(a) If a violation pertains to building, plumbing, electrical, or other structural or zoning issues that do not create an immediate danger to health or safety, the City shall provide a reasonable period of time for a person responsible for a continuing violation to correct or otherwise remedy the violation before the imposition of an administrative citation or penalty under this chapter.

Before issuing an administrative citation, the enforcement officer shall give notice to the person responsible, in accordance with section 1.28.150. The notice shall be delivered personally or by

certified mail. The notice shall State: the date and location of the violation; the section(s) of the Code violated; a description of the violation(s); the actions required to correct the violation(s); the time period allowed for correcting the violation(s); a Statement that an administrative citation may be issued each day after the time for correction has passed, if correction is not completed; the amount of the fine if an administrative citation is issued; and either a copy of this chapter or an explanation of the consequences of noncompliance and a description of the hearing procedure and appeal process.

The enforcement officer shall allow at least fifteen (15) days from the date the first notice is sent for compliance with the notice. If the nature of the condition is such that compliance is very complicated or expensive, and the condition is not an immediate threat to health or safety, the enforcement officer may extend the compliance period to thirty (30), sixty (60) or ninety (90) days, depending upon the circumstances.

If the enforcement officer determines that all violations have been corrected within the time specified in the notice, no further action shall be taken.

(b) If a violation pertains to building, plumbing, electrical or other structural or zoning issues, and the violation exists as a result of, or to facilitate, the illegal cultivation of cannabis, the enforcement officer may issue an administrative citation or penalty as provided for in this chapter.

Prior to issuing an administrative citation under this subsection, the enforcement officer shall give notice to the person responsible, including the property owner of record, in accordance with section 1.28.150, if all of the following are true:

- (1) A tenant is in possession of the property that is subject to the administrative citation or penalty under this subsection;
- (2) The rental property owner or agent can provide evidence that the rental or lease agreement prohibits the cultivation of cannabis;
- (3) The rental property owner or agent did not know the tenant was illegally cultivating cannabis and no complaint, property inspection, or other information caused the rental property owner or agent to have actual notice of the illegal cannabis cultivation.

The notice required under this subsection shall state the information and allow for compliance with the notice in the manner provided in subsection (a) of this section.

This subsection (b) shall not apply to cannabis cultivation that is lawfully undertaken pursuant to Section 11362.1 of the Health and Safety Code.

(Ord. 1040 § 2 Exh. B (part), 2002)

## ORDINANCE \_\_\_\_\_

## AN ORDINANCE OF THE CITY OF TRACY AMENDING VARIOUS SECTIONS OF TITLE 1 OF THE TRACY MUNICIPAL CODE REGARDING CODE ENFORCEMENT, ADMINISTRATIVE CITATIONS AND PENALTIES, AND PUBLIC NUISANCE ABATEMENT

WHEREAS, Title 1 of the Tracy Municipal Code (TMC) provides for the enforcement of City of Tracy (City) ordinances and remedies available to the City for violations of said ordinances, and

WHEREAS, Chapter 1.16 of the TMC contains provisions establishing methods of enforcement, imposition of penalties, and remedies available to the City to enforce violations of the TMC, and

WHEREAS, Government Code section 53069.4 (a) (1) authorizes the City to adopt an ordinance that imposes administrative fines or penalties for violations of City ordinances, and

WHEREAS, Pursuant to its authority under the Government Code, the City desires to impose administrative citations for failing to comply with any order issued by any City commission, board, hearing officer, or other body appointed by City Council, and

WHEREAS, Government Code sections 38773.5 and 38773.7 authorize the City to adopt an ordinance allowing for the recovery of attorneys' fees in any action, administrative proceeding or special proceeding to abate a nuisance, and to provide that on entry of a second or subsequent civil or criminal judgment within a two-year period for abatement of a public nuisance, to ask a court of law to order a property owner to pay treble the costs of abatement, respectively, and

WHEREAS, Pursuant to its authority under the Government Code, the City desires to allow for the recovery of its attorneys' fees in the initiation of nuisance abatement actions or proceedings and to impose treble damages for repeat entries of judgment within a two-year period for abatement of public nuisances, and

WHEREAS, Section 1.16.060 of the TMC provides that the City may remedy a violation of the TMC by any civil remedy, including by a civil injunction and authorizes the City Attorney to initiate any appropriate action, and

WHEREAS, Government Code section 36901 authorizes the City to impose fines, penalties, and forfeitures for violations of ordinances and that a fine shall not exceed one thousand dollars (\$1,000), and

WHEREAS, Pursuant to its authority under the Government Code, and as part of any civil action filed to enforce provisions of the TMC, the City desires to impose a maximum civil penalty of one thousand dollars (\$1,000) for violations of the TMC, and to authorize the City Attorney to recover the civil penalties authorized as part of any appropriate civil action, and

WHEREAS, Section 1.28.030 of the TMC provides that, if a violation pertains to building, plumbing, electrical, or other structural or zoning issues that do not create an immediate danger to health or to safety, the City shall provide a reasonable period of time for a responsible party

to correct the continuing violation or otherwise remedy the violation before issuing an administrative citation or penalty under Chapter 1.28, and

WHEREAS, Government Code section 53069.4 (a) (1) (B), allows a local agency to provide for the immediate imposition of administrative fines or penalties for the violation of plumbing, electrical, or other similar structural, health and safety, or zoning requirements, if the violation exists as a result of, or to facilitate, the illegal cultivation of cannabis, and subparagraph (B) of subdivision (a)(1) does not apply to cannabis cultivation that is lawfully undertaken pursuant to Section 11362.1 of the Health and Safety Code, and

WHEREAS, Pursuant to its authority under the Government Code, the City desires to provide for the immediate imposition of an administrative fine for the violation of building, plumbing, electrical or other similar structural, health and safety, or zoning requirements, if the violation exists as a result of, or to facilitate, the illegal cultivation of cannabis;

NOW THEREFORE, the City Council of the City of Tracy, does ordain as follows:

SECTION 1: The City Council hereby amends Title 1 of the Tracy Municipal Code as shown in Exhibit "A" attached hereto.

SECTION 2: Except as herein added or changed, the remaining sections of the Tracy Municipal Code not set forth above, shall remain in full force.

SECTION 3: Title, chapter, and section headings contained herein shall not be deemed to govern, limit, modify, or in any manner affect the scope, meaning or intent of the provisions of any title, chapter, or section hereof.

SECTION 4: If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this Ordinance.

SECTION 5: This Ordinance shall take effect thirty (30) days after its final passage and adoption.

SECTION 6: This Ordinance shall either (1) be published once in a newspaper of general circulation, within 15 days after its final adoption, or (2) be published in summary form and posted in the City Clerk's office at least five days before the Ordinance is adopted and within 15 days after adoption, with the names of the Council Members voting for and against the Ordinance. (Govt. Code § 36933).

\* \* \* \* \*

Ordinance \_\_\_\_\_

Page 3

The foregoing Ordinance \_\_\_\_\_ was introduced at a regular meeting of the Tracy City Council on the 7<sup>th</sup> day of September, 2021, and finally adopted on the \_\_\_\_\_ day of \_\_\_\_\_, 2021, by the following vote:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

\_\_\_\_\_  
MAYOR

ATTEST:

\_\_\_\_\_  
CITY CLERK

## Chapter 1.04 - PENALTY PROVISIONS

## 1.04.010 - Enforcement of Code violation.

It is unlawful for a person to violate a provision, or to fail to comply with a requirement, of this Code. The City may enforce any such violation of the provisions of this Code by any one or more of the following methods, at the City's discretion.

- (a) Criminal penalties pursuant to this chapter.
- (b) Denial, forfeiture, or revocation of any permit granted by the City.
- (c) Administrative citation and penalties, to the extent authorized by this Code.
- (d) Any other remedy available to the City, including civil injunction or abatement of public nuisance, recovery of attorneys' fees, and recovery of treble damages.

(Ord. 996 § 1 (part), 1999)

## 1.04.020 - Each day a separate offense.

Each day during any portion of which a violation is committed, continued, or permitted is a new and separated offense. This section applies whether a provision of this Code is prosecuted by criminal, administrative, civil, or other procedures.

(Ord. 996 § 1 (part), 1999)

## 1.04.030 - Criminal penalties—Infraction and misdemeanor.

- (a) Infraction. A person who violates a provision of this Code, or who fails to comply with a requirement of this Code, is guilty of an infraction, unless the violation is specifically identified in this Code as a misdemeanor. An infraction is punishable by:
  - (1) A fine not exceeding one hundred and no/100ths (\$100.00) dollars for a first violation.
  - (2) A fine not exceeding two hundred and no/100ths (\$200.00) dollars for a second violation of the same Code provision within a twelve month period.
  - (3) A fine not exceeding five hundred and no/100ths (\$500.00) dollars for each additional violation of the same Code provision within a twelve (12) month period.
  - (4) An offense, which would otherwise be an infraction, is a misdemeanor if a person has been convicted of two or more violations of the same Code provision within a twelve (12) month period. For the purpose of this subsection, a bail forfeiture is considered a conviction of the offense charged.
  - (5) An infraction is not punishable by imprisonment. A person charged with an infraction is not entitled to a jury trial or to a public defense unless arrested and not released.
- (b) Misdemeanor. A person who violates a provision of this Code, or who fails to comply with a requirement of this Code, is guilty of a misdemeanor if the violation is specifically identified in this Code as a misdemeanor. A misdemeanor is punishable by a fine not exceeding One Thousand and no/100ths (\$1,000) dollars, or imprisonment not exceeding six months, or both.

(Ord. 996 § 1 (part), 1999)

#### 1.04.040 - Violation of permit.

A person who is issued or granted a permit (including a land use entitlement or variance) by the City shall comply with each and every provision and condition of the permit. A person who violates or fails to comply with any provision or condition of the permit is in violation of this section, and is subject to punishment in accordance with this chapter 1.04. In addition, the City may enforce the permit by any other lawful means, including instituting proceedings for revocation of the permit.

(Ord. 1040 § 5 Exh. E (part), 2002 : Ord. 996 § 1 (part), 1999)

#### 1.04.050 - Public nuisance.

Any condition which is in violation of this Code is a public nuisance.

(Ord. 996 § 1 (part), 1999)

#### 1.04.060 - Failure to comply with order

A person shall comply with any order issued by any City commission, board, hearing officer, or other body appointed by City Council and authorized to issue orders. Any person who fails to comply with such orders is subject to any penalties permitted under this chapter.

### Chapter 1.08 - RULES OF CONSTRUCTION

#### 1.08.010 - Construction—Provisions governing.

Unless the provisions of the context otherwise specify, these general provisions, rules of construction and definitions shall govern the construction of this Code. The provisions of this Code and all proceedings under it are to be construed with a view to effect its objects and to promote justice.

(Prior Code § 1-3.01)

#### 1.08.020 - Provisions construed as restatements and continuations.

The provisions of this Code insofar as they are substantially the same as existing ordinances relating to the same subject matter shall be construed as restatements and continuations, and not as new enactments.

(Prior Code § 1-3.02)

#### 1.08.030 - Tenure of officers preserved.

All persons who, at the time this Code takes effect, hold office under any of the ordinances repealed by this Code, which offices are continued by this Code, shall continue to hold them according to their former tenure.

(Prior Code § 1-3.03)

#### 1.08.040 - Headings—Effect of.

Title, chapter, article and section headings contained herein shall not be deemed to govern, limit, modify or in any manner affect the scope, meaning or intent of the provisions of any title, chapter, article or section hereof.

(Prior Code § 1-3.04)

1.08.050 - Meaning of section and subsection.

"Section" means a section of this Code, unless some other source is specifically mentioned.  
"Subsection" means a subsection of the section in which the term occurs unless some other section is expressly mentioned.

(Prior Code § 1-3.05)

1.08.060 - Reference to acts or omissions within this City.

This Code shall refer only to the omission or commission of acts within the territorial limits of the City and to that territory outside of the City over which the City has jurisdiction or control by virtue of the Constitution, or any law, or by reason of ownership or control of property.

(Prior Code § 1-3.06)

1.08.070 - Acts by deputy.

Whenever a power is granted to, or a duty is imposed upon a public officer, or employee, the power may be exercised, or the duty may be performed by a deputy of such officer or employee or by a person otherwise duly authorized pursuant to law or ordinance unless this Code expressly provides otherwise.

(Prior Code § 1-3.07)

1.08.075 - City departments.

From time to time, the City revises the titles of department heads and managers, and the duties of departments, to improve the efficiency and operation of the City. In this Code, when a department director, manager or other employee is referred to by title, it means that department director, manager, or employee currently designated by the City Manager to perform the function, regardless of title.

(Ord. No. 1177, § 1, 1-15-2013)

1.08.080 - Writing includes what.

Writing includes any form of recorded message capable of comprehension by ordinary visual means. Whenever any notice, report, Statement or record is required or authorized by this Code, it shall be made in writing in the English language unless it is expressly provided otherwise.

(Prior Code § 1-3.08)

1.08.090 - Reference applies to amendments.

Whenever a reference is made to any portion of this Code, or to any ordinances of this City, the reference applies to all amendments and additions now or hereafter made.

(Prior Code § 1-3.09)

1.08.100 - Notices, service of.

Whenever a notice is required to be given under this Code, unless different provisions herein are otherwise specifically made in said Code, such notice may be given either by personal delivery thereof to the person to be notified or by deposit in the United States mail, in a sealed envelope postage prepaid, addressed to such person to be notified, at his last known business or residence address as the same appears in the public records of the City or other records pertaining to the matter to which such notice is directed. Service by mail shall be deemed to have been completed at the time of deposit in the post office.

(Prior Code § 1-3.10)

1.08.110 - Proof of notice.

Proof of giving any notice may be made by the certificate of any officer or employee of the City, or by affidavit of any person over the age of eighteen (18) years, which shows service in conformity with this Code, or other provisions of law applicable to the subject matter concerned.

(Prior Code § 1-3.11)

1.08.120 - Statute of limitations.

When a limitation or period of time prescribed in any existing ordinance or statute for acquiring a right or barring a remedy, or for any other purpose, has begun to run before this Code goes into effect, the time which has already run shall be deemed a part of the time prescribed as such limitation.

(Prior Code § 1-3.12)

1.08.130 - Significance of certain words.

The following words shall be interpreted as follows, unless otherwise apparent from the context:

- (a) "Property" includes both real and personal property.
- (b) "Real property" includes lands, tenements and hereditaments.
- (c) "Personal property" includes money, goods, chattels, things in action and evidences of debt.
- (d) "Month" means a calendar month, unless otherwise expressed.
- (e) "Quarterly," when used to designate a period of time, means the first three (3) calendar months of any given year or any succeeding period of three (3) calendar months.
- (f) "Calendar year" means from January 1 through December 31 of any given year.
- (g) "Fiscal year" means from July 1 of any given year through June 30 of the following year.
- (h) "Tenses." The present tense includes the past and future tenses, and the future, the present.
- (i) "Gender." The masculine gender includes the feminine and the neuter.
- (j) "Number." The singular number includes the plural and the plural, the singular.
- (k) "Shall" is mandatory.
- (l) "May" is permissive.

- (m) "Oath" includes affirmation.
- (n) "Person" includes any person, firm, company, corporation, partnership, limited liability company, cooperative, joint venture, association, any public corporation, political subdivision, city (excepting, however, the City of Tracy), county district, the State of California, or the United States of America, or any department or agency thereof, unless this Code expressly provides otherwise. In the case of a property or business, the term "person" includes an owner, a manager, or both.
- (o) "State" is the State of California.
- (p) "County" is the County of San Joaquin.
- (q) "City" is the City of Tracy.
- (r) "Office." The use of the title of any officer, employee, office or ordinance shall mean such officer, employee, office or ordinance of this City, unless otherwise specified.
- (s) "Council" is the City Council of this City.
- (t) "Street" includes all streets, highways, avenues, boulevards, alleys, courts, places, squares, or other public ways in this City which have been or may hereafter be dedicated and open to public use, or such other public property so designated in any law of this State.
- (u) "Owner" applied to a building or land, shall include any part owner, joint owner, tenant, tenant in common, joint tenant, of the whole or a part of such building or land.
- (v) "Tenant" or "Occupant" applied to a building or land shall include any person who occupies the whole or part of such building or land, whether alone or with others.
- (w) "Days" means working days (including only days of the City administrative offices are open to the public) unless stated otherwise.

(Ord. 1111 § 1, 2007; prior code § 1-3.13)

(Ord. No. 1177, § 2, 1-15-2013)

1.08.140 - Federal, State or local law.

No provision of this Code is intended to nor shall be interpreted or applied to allow or authorize a use, structure, activity, or conduct that violates federal, State or local law.

(Ord. No. 1170, § 1, 6-19-2012)

## Chapter 1.12 - APPEALS

### 1.12.010 - Right to appeal to City Manager.

- (a) Informal discussion with department head. A person aggrieved by an administrative action by an officer or employee under this Code should first attempt to discuss the matter with the department head of the department taking the action.
- (b) Appeal to City Manager. A person aggrieved by an administrative action who is unable to resolve the matter with the department head under subsection (a) above may appeal the action to the City Manager, unless the procedure for appeal is otherwise specifically provided in this Code or State law. (See chapter 10.08 for most land use appeals.) The City Manager may, in his or her discretion, refer the matter directly to the City Council to hear the appeal.
- (c) Waiver of rights. Without a timely appeal, a person or appellant waives his or her rights to challenge the decision by administrative process, judicial process or any other legal proceeding.

(d) Procedures.

- (1) The person appealing shall file a written notice of appeal with the City Manager within ten (10) working days of the action appealed from. As used in this section, the term "City Manager" means the manager or his or her designee. The appeal shall be filed on a form provided by the City Manager's office. The ten (10) working days for filing the appeal is measured from the date written notice of the decision is sent (or personally delivered) to the person. If there is no written notice of decision, the time for appeal is twenty (20) working days from the date of the decision.
  - (2) The appeal must be accompanied by the appeal fee in the amount established by City Council resolution.
  - (3) Upon receiving the notice of appeal, the City Manager shall set the matter for hearing and shall give the person appealing written notice of the time and place of hearing at least ten (10) working days before the hearing. The hearing shall be held within thirty (30) working days of the date the notice of appeal is filed. The parties may extend this time by agreement. The hearing is not limited by technical rules of evidence. The City Manager may affirm, modify or reverse the decision appealed. The City Manager shall render a written decision within ten (10) working days after the close of the hearing.
  - (4) The decision of the City Manager is final ten (10) working days after the written notice of the decision is given to the appellant, unless an appeal to the City Council is authorized under section 1.12.020 below.
- (e) First Amendment. If the appeal involves expressive conduct protected by the First Amendment under the State or Federal Constitution, the appeal process shall be expedited as much as reasonably possible. The appellant must state the expressive conduct protected in the written appeal.
- (f) Not a claim. The filing of an appeal under this or any section of this Code does not constitute the filing of a claim under chapter 1.24.

(Ord. 1111 § 4 Exh. A (part), 2007: prior code § 1-4.01)

1.12.020 - Appeal to City Council.

- (a) When applicable. A matter is appealable to the City Council only under the following circumstances:
- (1) If specifically authorized under this Code;
  - (2) If the City Manager refers an appeal to the Council under section 1.12.010(b); or
  - (3) If otherwise required by law.
- (b) Procedures.
- (1) If a matter is appealable to the City Council, the appellant may appeal the City Manager's decision by filing a written notice of appeal with the City Clerk within ten (10) working days of the City Manager's written determination. The appeal shall be filed on a form provided by the City Manager's office. The ten (10) working days for filing the appeal is measured from the date written notice of the decision is sent (or personally delivered) to the person. If there is no written notice of decision, the time for appeal is twenty (20) working days from the date of the decision.
  - (2) The appeal must be accompanied by the appeal fee in the amount established by City Council resolution.
  - (3) Upon receiving the notice of appeal, the City Clerk shall set the matter for hearing and shall give the person appealing written notice of the time and place of hearing at least ten (10) working days before the hearing. The hearing shall be held within thirty (30) working days of the date the notice of appeal is filed. The parties may extend this time by agreement. The hearing is not limited by technical rules of evidence. The Council may continue the hearing from time to time. The City Council may affirm, modify or reverse the decision appealed.

- (4) The City Council shall adopt a resolution reflecting its decision by the time of the next regular City Council meeting after the close of the hearing.
- (5) The decision of the City Council is final.
- (c) First Amendment. If the appeal involves expressive conduct protected by the First Amendment under the State or Federal Constitution, the appeal process shall be expedited as much as reasonably possible. The appellant must state the expressive conduct protected in the written appeal.

(Ord. 1111 § 4 Exh. A (part), 2007: prior code § 1-4.02)

#### 1.12.030 - Hearing Officer.

When an impartial Hearing Officer is required by law (including under this Code), the City Manager shall designate the Hearing Officer. The designated Hearing Officer shall be an impartial person, such as (1) a city employee from a department which has no involvement in the matter, or (2) someone selected randomly from a panel of law students and/or local attorneys willing to volunteer as a Hearing Officer, or (3) someone hired from an organization which provides Hearing Officers, in which case the cost may be shared equally by the City and the person requesting the hearing.

(Ord. 1111 § 4 Exh. A (part), 2007: prior code § 1-4.03)

### Chapter 1.16 - CODE ENFORCEMENT

#### 1.16.010 - Code enforcement—General.

It is unlawful for a person to violate a provision, or to fail to comply with a requirement, of this Code. The City may enforce the provisions of this Code by any one or more of the following methods, at the City's discretion:

- (a) Criminal penalties, under chapter 1.04;
- (b) Civil injunction and civil penalties, under section 1.16.060;
- (c) Regarding land use and development, by the granting or denial of permits, the forfeiture and revocation of permits, or the recording of a notice of violation (See Title 10, Planning and Zoning, and Title 12, Subdivisions);
- (d) Administrative citations and penalties, under chapter 1.28;
- (e) Public nuisance abatement, under chapter 1.32;
- (f) Building abatement, under any of the uniform building Codes adopted by the City in Title 9, Building Regulations;
- (g) Recovery of attorneys' fees, under section 1.16.090;
- (h) Recovery of treble damages, under section 1.16.100;
- (i) Any other lawful authority.

For the purpose of enforcing this Code: (1) Any partner may be named or cited in enforcement against a partnership; (2) Any managing member may be named or cited in enforcement against a limited liability company; and (3) Any corporate officer may be named or cited in enforcement against a corporation.

(Ord. 1040 § 1 Exh. A (part), 2002)

(Ord. No. 1177, § 3, 1-15-2013)

1.16.020 - Criminal penalties—Infractions and misdemeanors.

A person who violates a provision of this Code is guilty of criminal violation (an infraction or a misdemeanor) as set forth in chapter 1.04.

(Ord. 1040 § 1 Exh. A (part), 2002)

1.16.030 - Prosecutorial discretion.

A violation may be prosecuted by the City Attorney or the District Attorney. In any case where a violation is made a misdemeanor, the prosecuting attorney has the discretion to charge the violation as an infraction.

(Ord. 1040 § 1 Exh. A (part), 2002)

1.16.040 - Imposition of penalty.

When the Code declares a certain crime to be punishable as an infraction or a misdemeanor, the punishment to be imposed in a particular case must be determined by the court authorized to pass sentence, within the limits prescribed for an infraction or a misdemeanor, as the case may be. At the court's request, the City shall provide to the court a recommended bail schedule to apply to those people who elect a bail forfeiture. The recommended bail for a violation may be approved by the City Council or City Attorney, or both.

(Ord. 1040 § 1 Exh. A (part), 2002)

1.16.050 - Citation procedure.

- (a) If a person is arrested for any violation of this Code and is not immediately taken before a magistrate, the citation procedures in Penal Code section 853.6 shall apply.
- (b) It shall be unlawful, and a misdemeanor, for a person who is criminally cited for an infraction or a misdemeanor under this Code to refuse to sign a written promise to appear.

(Ord. 1040 § 1 Exh. A (part), 2002)

1.16.060 - Civil remedies—Injunctions and Civil Penalties.

- (a) A violation of this Code may be enforced by any civil remedy, including by a civil injunction. The City Attorney is authorized to initiate any appropriate civil action.
- (b) As part of a civil action filed to enforce provisions of this Code, a court may assess a maximum civil penalty of one thousand dollars (\$1,000) per violation of this Code for each day during which any person commits, continues, permits, or maintains a violation of any provision of this Code.
- (c) The City Attorney is authorized to initiate any appropriate civil action and recover the civil penalties authorized by this section.

(Ord. 1040 § 1 Exh. A (part), 2002)

1.16.070 - Administrative citations and penalties.

A person who violates a provision of this Code or who fails to comply with a mandatory requirement of this Code is subject to an administrative citation and penalty. The administrative citation procedures and penalties are set forth in chapter 1.28.

(Ord. 1040 § 1 Exh. A (part), 2002)

1.16.080 - Public nuisance abatement.

Any condition caused or permitted to exist in violation of a provision of this Code is a public nuisance. The condition may be abated in accordance with the procedures set forth in chapter 1.32 or other specific abatement procedures in this Code, or in accordance with the procedures set forth in the uniform Codes adopted under Title 9 (Building Regulations) if the condition constitutes a violation of one of those Codes.

1.16.090 - Recovery of attorneys' fees for nuisance abatement actions or proceedings.

In any action, administrative proceeding, or special proceeding initiated by the City to abate a nuisance, the prevailing party may recover attorneys' fees. Recovery of attorneys' fees by the prevailing party is limited to those individual actions or proceedings in which the City elects, at the initiation of that individual action or proceeding, to seek recovery of its own attorneys' fees. The award of attorneys' fees to the prevailing party shall in no circumstances exceed the amount of reasonable attorneys' fees incurred by the City in the action or proceeding.

1.16.100 - Recovery of treble damages upon second or subsequent judgment finding property owner responsible for nuisance conditions.

Upon entry of a second or subsequent civil or criminal judgment within a two (2) year period finding that a property owner is responsible for a condition which may be abated as a nuisance, the court may order the property owner to pay treble (three (3) times) the cost of abatement. This section shall not apply to conditions abated pursuant to Section 17980 of the California Health and Safety Code

(Ord. 1040 § 1 Exh. A (part), 2002)

Chapter 1.20 - JUDICIAL REVIEW TIME LIMITS

1.20.010 - Time limits for judicial review.

- (a) Ninety (90) days: Code of Civil Procedure section 1094.5. Judicial review of any decision of the City, or of any commission, board, officer or agent of the City, may be had under California Code of Civil Procedure section 1094.5 only if the petition for writ of mandate is filed within ninety (90) days following the date on which the decision becomes final. However, if the person challenging the decision files a request for a copy of the record of proceedings with the City Clerk within ten (10) days after the date on which the decision becomes final, then the time within which the writ of mandate may be filed is extended to the 30th day after the record is either delivered or mailed to the person or his attorney, if he has one. The procedures set forth in Code of Civil Procedure sections 1094.5 and 1094.6 apply.

A "decision," as used here, means a decision subject to review under section 1094.5, suspending, demoting or dismissing an officer or employee; revoking or denying an application for a permit, license or other entitlement; imposing a civil or administrative penalty, fine, charge or cost; or denying an application for any retirement benefit or allowance.

In making any final decision subject to review under Code of Civil Procedure section 1094.5, the City shall provide notice to the party that the time within which judicial review must be sought is governed by this section. The City may do so by including a copy of this section with the written notice of the final decision.

- (b) Twenty-one (21) days: First Amendment issues. A final decision by the City to issue, revoke, suspend or deny a permit or other entitlement for expressive conduct protected by the First Amendment to the United States Constitution is governed by California Code of Civil Procedure section 1094.8. Such a decision is entitled to priority and subject to expedited hearing and review procedures. An action to challenge the city's decision must be filed and served within twenty-one (21) calendar days from the date of the decision.
- (c) Thirty (30) days: most other decisions. Except as otherwise provided below, any legally permitted court action or proceeding to attack, review, set aside, void, annul or seek damages or compensation for any City decision or action must be commenced, and service of summons effected, within thirty (30) days from the date of the decision. Thereafter, all persons are barred from commencing or prosecuting any such action or proceeding, or asserting any defense of invalidity or unreasonableness of such decision or action. In this subsection, "decision" includes administrative, adjudicatory, legislative, discretionary, and executive decision, or other action taken or authorized by this Code. This subsection shall not expand the scope of judicial review and shall prevail over any conflicting provision and any other applicable law relating to the subject.

This subsection does not apply to decisions governed by: subsection a or b above; Government Code sections 65860 (zoning consistency with general plan) and 66499.37 (subdivisions); Public Resources Code section 21167 (environmental quality); or any other statute where a different time period is mandated.

(Ord. 1009 § 1, 1999: prior Code § 1-6.01)

1.20.020 - Additional time limits for commencement of court proceeding.

(Repealed by Ord. 1009 § 2, 1999: prior Code § 1-6.02)

#### Chapter 1.24 - CLAIMS PROCEDURES

1.24.010 - Purpose.

Pursuant to the authority contained in California Government Code section 935, claims procedures are established for those claims against the City for money or damages not now governed by State or local laws.

(Prior Code § 1-7.01)

1.24.015 - Form of claim.

All claims shall be made in writing and verified by the claimant or by his or her guardian, conservator, executor or administrator. No claim may be filed on behalf of a class of persons unless every member of that class has filed a claim as required by this section. In addition, all claims shall contain the information required by California Government Code section 910.

(Ord. 1029 § 1, 2001)

1.24.020 - Process.

Notwithstanding the exemption set forth in California Government Code section 905, all claims against the City for damages or money, when a procedure for processing such claims is not otherwise provided by state or local laws, shall be presented within the time limitations and in the manner prescribed by California Government Code sections 945 through 949. Any action brought against any

employee of the City shall conform to the requirements of sections 950 through 951 of the California Government Code.

(Ord. 1111 § 2, 2007: Ord. 1029, § 2, 2001: prior code § 1-7.02)

1.24.030 - Delegation of authority.

Pursuant to Government Code sections 910.8 et seq. the City Council, by resolution, shall establish the authority to allow, compromise, reject or settle claims.

(Ord. 1028 § 1, 2001)

#### Chapter 1.28 - ADMINISTRATIVE CITATIONS AND PENALTIES

1.28.010 - Applicability.

This chapter provides for administrative citations, which are in addition to all other legal remedies, criminal or civil, which the City may pursue to address a violation of this Code. Use of this chapter is at the sole discretion of the City. This chapter is authorized under Government Code sections 53069.4 and 36901.

The procedures in this chapter shall not be used to enforce a continuing violation regarding building, plumbing, electrical, or other similar structural or zoning issues, without first allowing the person in violation a reasonable time to correct the violation, consistent with the procedures set forth in section 1.28.030.

(Ord. 1040 § 2 Exh. B (part), 2002)

1.28.020 - Definitions.

In this chapter:

"Enforcement officer" means any City employee or agent of the City with the authority to enforce a provision of this Code.

"Hearing officer" means a person designated by the City Manager to conduct an administrative hearing. The designated hearing officer shall be an impartial person, such as (1) a City employee from a department which has no involvement in Code enforcement, or (2) someone selected randomly from a panel of law students and/or local attorneys willing to volunteer as a hearing officer, or (3) someone hired from an organization which provides hearing officers, in which case the cost will be shared equally by the City and the person cited.

(Ord. 1040 § 2 Exh. B (part), 2002)

1.28.030 - Continuing violations of building and zoning issues.

- (a) If a violation pertains to building, plumbing, electrical, or other structural or zoning issues that do not create an immediate danger to health or safety, the City shall provide a reasonable period of time for a person responsible for a continuing violation to correct or otherwise remedy the violation before the imposition of an administrative citation or penalty under this chapter.

Before issuing an administrative citation, the enforcement officer shall give notice to the person responsible, in accordance with section 1.28.150. The notice shall be delivered personally or by certified mail. The notice shall State: the date and location of the violation; the section(s) of the Code

violated; a description of the violation(s); the actions required to correct the violation(s); the time period allowed for correcting the violation(s); a Statement that an administrative citation may be issued each day after the time for correction has passed, if correction is not completed; the amount of the fine if an administrative citation is issued; and either a copy of this chapter or an explanation of the consequences of noncompliance and a description of the hearing procedure and appeal process.

The enforcement officer shall allow at least fifteen (15) days from the date the first notice is sent for compliance with the notice. If the nature of the condition is such that compliance is very complicated or expensive, and the condition is not an immediate threat to health or safety, the enforcement officer may extend the compliance period to thirty (30), sixty (60) or ninety (90) days, depending upon the circumstances.

If the enforcement officer determines that all violations have been corrected within the time specified in the notice, no further action shall be taken.

- (b) If a violation pertains to building, plumbing, electrical or other structural or zoning issues, and the violation exists as a result of, or to facilitate, the illegal cultivation of cannabis, the enforcement officer may issue an administrative citation or penalty as provided for in this chapter.

Prior to issuing an administrative citation under this subsection, the enforcement officer shall give notice to the person responsible, including the property owner of record, in accordance with section 1.28.150, if all of the following are true:

- (1) A tenant is in possession of the property that is subject to the administrative citation or penalty under this subsection;
- (2) The rental property owner or agent can provide evidence that the rental or lease agreement prohibits the cultivation of cannabis;
- (3) The rental property owner or agent did not know the tenant was illegally cultivating cannabis and no complaint, property inspection, or other information caused the rental property owner or agent to have actual notice of the illegal cannabis cultivation.

The notice required under this subsection shall state the information and allow for compliance with the notice in the manner provided in subsection (a) of this section.

This subsection (b) shall not apply to cannabis cultivation that is lawfully undertaken pursuant to Section 11362.1 of the Health and Safety Code.

(Ord. 1040 § 2 Exh. B (part), 2002)

AGENDA ITEM 3.G

REQUEST

**AMEND THE COUNCIL POLICY REGARDING SELECTION PROCESS FOR  
COUNCIL APPOINTEE BODIES SUCH AS BOARDS AND COMMISSIONS**

EXECUTIVE SUMMARY

The City Council currently has a policy that establishes the selection process for appointee bodies (i.e. City advisory bodies such as boards, commissions, and committees) and residency requirements for individuals appointed to serve on those bodies.

On May 18, 2021, Mayor Young, seconded by Mayor Pro Tem Vargas requested staff bring back a revision to Section 2 (D)(2) of Exhibit A to Resolution 2020-009 – Adopting a Council Policy Establishing a Selection Process for Appointments to City Advisory Bodies to amend language relating to an eligibility list.

DISCUSSION

On January 21, 2020, the Tracy City Council adopted Resolution No. 2020-009 (Attachment A) 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. During the May 18, 2021 Council meeting Mayor Young, seconded by Mayor Pro Tem Vargas requested staff bring back a revision to Section 2 (D)(2) of Exhibit A to Resolution 2020-009 – Adopting a Council Policy Establishing a Selection Process for Appointments to City Advisory Bodies to amend language relating to an eligibility list. The proposed change to the policy would include the following:

“If the Council subcommittee determines there are multiple qualified candidates, the subcommittee *may* recommend the Council establish an eligibility list that *will* be used to fill vacancies that occur in the following twelve (12) months”.

Mayor Young also recommended that when an appointment is made from an established eligibility list to fill a vacancy on an advisory board, that the item be placed on the consent calendar for adoption by City Council.

In practice, should a vacancy occur during an unexpired term, staff will determine whether a 12 month eligibility list was established by the Council subcommittee during the last interview process, and if so, bring recommendation of appointment of the applicant from the eligibility list before Council to fill the remainder of the vacated term. If the appointee will fill an unexpired term with six months or less remaining, the appointment shall be deemed to be for the new term.

STRATEGIC PLAN

This item is not related to the Council's Strategic Plans.

FISCAL IMPACT

There is no fiscal impact as a result of this agenda item.

RECOMMENDATION

That the City Council consider amending the Council Policy establishing a selection process for appointments to City advisory bodies and repeal Resolution No. 2020-009.

Prepared by: Adrienne Richardson, City Clerk

Reviewed by: Midori Lichtwardt, Assistant City Manager

Approved by: Bob Adams, Interim City Manager

ATTACHMENTS

A –Resolution No. 2020-009

B – Proposed Council Policy Establishing a Selection Process for Appointments to City Advisory Bodies

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.

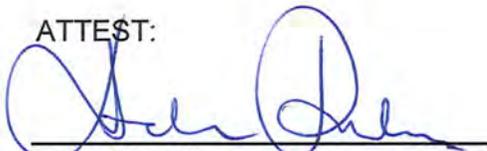
NOW, THEREFORE, the City Council of the City of Tracy hereby adopts the Council Policy Establishing a Selection Process for Appointments to City Advisory Bodies, attached as Exhibit A, and thereby repeals and supersedes Resolution No. 2004-089, and Resolution No. 2004-152.

\*\*\*\*\*

The foregoing Resolution 2020-009 was passed and adopted by the Tracy City Council on the 21<sup>st</sup> 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)**

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**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.

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

(Exhibit "A" to Resolution No. ~~2020~~2021-\_\_\_\_)

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**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~~may recommend the Council establish an eligibility list that ~~can~~will be used to fill vacancies that occur in the following twelve (12) months.
  3. At the Council subcommittee's discretion, the chair (or designee) of the board, committee or commission for which a member will be appointed, can participate in the interviews.
- E. 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.

RESOLUTION 2021-\_\_\_

ADOPTING A COUNCIL POLICY ESTABLISHING A SELECTION PROCESS FOR APPOINTMENTS TO CITY ADVISORY BODIES AND REPEALING RESOLUTION NO. 2020-009

WHEREAS, On January 21, 2021, the Tracy City Council adopted Resolution No. 2020-009 establishing a policy for the selection process and defining residency requirements for appointee bodies (“Policy”) in accordance with Government Code sections 54970 et seq. and repealing Resolution No. 2004-089 and Resolution No. 2004-152, and

WHEREAS, On May 18, 2021 Council requested staff bring back a revision to Section 2 (D)(2) of Exhibit A to Resolution 2020-009 - Adopting a Council Policy Establishing a Selection Process for Appointments to City Advisory Bodies to amend language relating to an eligibility list, and

WHEREAS, The current policy states that 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, and

WHEREAS, In practice, should a vacancy occur during an unexpired term, staff will determine whether a 12 month eligibility list was established by the Council subcommittee during the last interview process, and if so, bring recommendation of appointment of the applicant from the eligibility list before Council to fill the remainder of the vacated term. If the appointee will fill an unexpired term with six months or less remaining, the appointment shall be deemed to be for the new term, and

WHEREAS, Council wishes to amend the language of Section 2 (D)(2) to state that if the Council subcommittee determines there are multiple qualified candidates, the subcommittee *may* recommend the Council establish an eligibility list that *will* be used to fill vacancies that occur in the following twelve (12) months.

NOW, THEREFORE BE IT RESOLVED, the City Council of the City of Tracy hereby adopts the Council Policy Establishing a Selection Process for Appointments to City Advisory Bodies, attached as Exhibit A, and thereby repeals and supersedes Resolution No. 2020-009.

\* \* \* \* \*

The foregoing Resolution 2021-\_\_\_ was passed and adopted by the Tracy City Council on the 7th day of September, 2021, by the following vote:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

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MAYOR

ATTEST:

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CITY CLERK