

Tuesday, September 6, 2022, 7:00 P.M.

Tracy City Hall Chambers, 333 Civic Center Plaza, Tracy

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

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

**THE CITY OF TRACY REMAINS UNDER A LOCAL EMERGENCY FOR COVID-19 AND IS NOW CONDUCTING TELECONFERENCE MEETINGS PURSUANT TO STATE LAW. TELECONFERENCED LOCATIONS MAY INCLUDE VARIOUS LOCATIONS INCLUDING TRACY CITY HALL. IN ACCORDANCE WITH THE CALIFORNIA DEPARTMENT OF PUBLIC HEALTH GUIDELINES, UNIVERSAL MASKING IS RECOMMENDED FOR ALL PERSONS REGARDLESS OF VACCINATION STATUS AND SOCIAL DISTANCING PROTOCOLS WILL BE IN PLACE FOR TRACY CITY HALL.**

**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: 2553 811 2064** and **Event Password: TracyCC**
  - ***If you would like to participate in the public comment anonymously***, you may submit your comment in WebEx by typing "Anonymous" when prompted to provide a First and Last Name and inserting [Anonymous@example.com](mailto:Anonymous@example.com) when prompted to provide an email address.
  - **Join by phone by dialing +1-408-418-9388, enter 25538112064#8722922#** Press \*3 to raise the hand icon to speak on an item.
- *Protocols for commenting via WebEx:*
  - *If you wish to comment on the "Consent Calendar", "Items from the Audience/Public Comment" or "Regular Agenda" portions of the agenda:*
    - *Listen for the Mayor to open that portion of the agenda for discussion, then raise your hand to speak by clicking on the Hand icon on the Participants panel to the right of your screen.*
    - *If you no longer wish to comment, you may lower your hand by clicking on the Hand icon again.*

- *Comments for the “Consent Calendar” “Items from the Agenda/Public Comment” or “Regular Agenda” portions of the agenda will be accepted until the public comment for that item is closed.*

*Comments received on Webex outside of the comment periods outlined above will not be included in the record.*

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

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

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

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

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

Full copies of the agenda are available on the City's website: [www.cityoftracy.org](http://www.cityoftracy.org)

CALL TO ORDER  
PLEDGE OF ALLEGIANCE  
INVOCATION  
ROLL CALL  
PRESENTATIONS

1. Employee of the Month
2. Certificate of Recognition – Transportation Advisory Commission
3. Proclamation – Tracy Connects Day

1. CONSENT CALENDAR

- 1.A. ADOPTION OF AUGUST 16, 2022 CLOSED SESSION AND REGULAR MEETING MINUTES
- 1.B. ADOPT A RESOLUTION MAKING FINDINGS AND RE-AUTHORIZING REMOTE TELECONFERENCE MEETINGS OF THE CITY COUNCIL AND ALL LEGISLATIVE BODIES OF THE CITY OF TRACY FOR THE PERIOD FROM SEPTEMBER 7, 2022 THROUGH OCTOBER 6, 2022 PURSUANT TO THE BROWN ACT
- 1.C. ADOPT A RESOLUTION AUTHORIZING THE ACCEPTANCE OF \$255,000 FROM THE UNITED STATES DEPARTMENT OF JUSTICE BYRNE DISCRETIONARY COMMUNITY PROJECTS GRANT FOR FUNDING THE POLICE DEPARTMENT'S LICENSE PLATE READER PROGRAM, APPROVING THE APPROPRIATION TO THE POLICE DEPARTMENT'S OPERATIONAL BUDGET FOR FISCAL YEAR 22/23, AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE AWARD ACCEPTANCE
- 1.D. STAFF RECOMMENDS THAT THE CITY COUNCIL ADOPT A RESOLUTION APPROVING AMENDMENT NO. 1 TO THE MASTER PROFESSIONAL SERVICES AGREEMENT WITH HDR ENGINEERING, INC. FOR ON-CALL PUBLIC OUTREACH SERVICES WITH A NOT-TO-EXCEED AMOUNT OF \$200,000 PER YEAR AND EXTENDING THE AGREEMENT FROM ONE YEAR TO THREE YEARS
- 1.E. ADOPT A RESOLUTION AUTHORIZING SUBMISSION OF THE BETTER CITIES FOR PETS GRANT APPLICATION FOR THE PROJECTED AMOUNT OF \$20,000 TO PROVIDE LOW COST ALTERATIONS FOR CERTAIN DOG BREEDS AND TO SENIOR CITIZEN OWNERS OF FELINES, AND AUTHORIZING THE CITY MANAGER TO ACCEPT AND EXECUTE THE GRANT AGREEMENT, IF AWARDED
- 1.F. ADOPT A RESOLUTION APPROVING A TWO-YEAR MASTER SERVICES AGREEMENT WITH FLOCK GROUP, INC. FOR THE INSTALLATION, OPERATION, AND MAINTENANCE OF AUTOMATED LICENSE PLATE READER TECHNOLOGY FOR A NOT TO EXCEED AMOUNT OF \$255,000 AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT AND ANY AMENDMENTS
- 1.G. STAFF RECOMMENDS THAT THE CITY COUNCIL ADOPT A LIST OF PROPOSED PROJECTS FOR FISCAL YEAR 2022-2023 FUNDED BY SENATE BILL 1 (SB 1): THE ROAD REPAIR AND ACCOUNTABILITY ACT OF 2017

- 1.H. WAIVE SECOND READING OF FULL TEXT AND ADOPT TWO ORDINANCES 1) RESCINDING ORDINANCE 1253 APPROVING SECOND AMENDMENT TO AMENDED AND RESTATED DEVELOPMENT AGREEMENT BY AND BETWEEN THE CITY OF TRACY AND SURLAND COMMUNITIES, LLC. AND 2) RESCINDING SECOND AMENDMENT TO AMENDED AND RESTATED DEVELOPMENT AGREEMENT BY AND BETWEEN THE CITY OF TRACY AND SURLAND COMMUNITIES, LLC
- 1.I. ADOPT A RESOLUTION APPROVING A PROFESSIONAL SERVICES AGREEMENT WITH TRINE INTEGRATED SERVICES, INC. FOR SECURITY SERVICES FOR A TOTAL AMOUNT NOT TO EXCEED \$280,000 (\$45,000 MONTHLY) FOR A TERM OF SIX MONTHS AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT AND ANY EXTENSIONS OR AMENDMENTS FOR UP TO ONE YEAR
2. ITEMS FROM THE AUDIENCE
3. REGULAR AGENDA
  - 3.A. ADOPT A RESOLUTION: (1) APPROVING ANNEXATION OF PROPERTY INTO IMPROVEMENT AREA NO. 2 OF THE CITY OF TRACY COMMUNITY FACILITIES DISTRICT NO. 2016-1 (TRACY HILLS) (CFD); (2) CONFIRMING THE MAXIMUM AGGREGATE PRINCIPAL AMOUNT OF BONDS AND OTHER DEBT AND THE ANNUAL APPROPRIATIONS LIMIT FOR IMPROVEMENT AREA NO. 2 AS \$50,000,000; (3) CONFIRMING THE RATE AND METHOD OF APPORTIONMENT OF THE SPECIAL TAX FOR IMPROVEMENT AREA NO. 2; AND (4) APPROVING, CONFIRMING, ORDERING AND DIRECTING RELATED IMPLEMENTATION ACTIONS
  - 3.B. STAFF RECOMMENDS THAT THE CITY COUNCIL INTRODUCE AN ORDINANCE AMENDING SECTION 3.08.580 REGARDING SPECIAL SPEED ZONES OF THE TRACY MUNICIPAL CODE TO UPDATE SPEED LIMITS AS REQUIRED BY THE CALIFORNIA VEHICLE CODE
  - 3.C. STAFF RECOMMENDS THAT THE CITY COUNCIL ADOPT THE FOLLOWING RESOLUTIONS TO FURTHER COMPLY WITH THE JUDGMENT AND PEREMPTORY WRIT OF MANDATE IN *MITRACOS V. CITY OF TRACY, ET AL.*, SAN JOAQUIN COUNTY SUPERIOR COURT CASE NO. STK-CV-UWM-2018-5531: (1) A RESOLUTION RESCINDING RESOLUTION NO. 2020-154 APPROVING FINAL AQUATIC CENTER CONCEPTUAL PLAN WITH A NOT-TO-EXCEED AMOUNT OF \$65 MILLION INCLUDING CONTINGENCY AND SOFT COSTS; (2) A RESOLUTION RESCINDING RESOLUTION NO. 2019-78 APPROVING THE AGREEMENT FOR DEFERRAL OF CERTAIN IMPACT FEES FOR ELLIS GARDENS PHASE 1- 3 (TRACT 3877, TRACT 3906, AND TRACT 3907); AND (3) A RESOLUTION RESCINDING RESOLUTION NO. 2021-116 APPROVING THE AGREEMENT FOR DEFERRAL OF CERTAIN IMPACT FEES FOR ELLIS TOWN AND COUNTRY (TRACT 4007)
  - 3.D. STAFF RECOMMENDS THAT CITY COUNCIL INTRODUCE AN ORDINANCE EFFECTUATING AN OMNIBUS AMENDMENT OF THE TRACY MUNICIPAL CODE TO (A) UPDATE CHAPTER 4.16, "REGULATIONS PERTAINING TO THE USE OF PARK AND RECREATION AREAS AND FACILITIES" AND CHAPTER 5.12, "CAMP CARS AND TRAILERS," AND (B) ADD PROVISIONS PROHIBITING CERTAIN ACTS, CAMPING, AND STORAGE OF PERSONAL PROPERTY IN PARKS AND PUBLIC AREAS

- 3.E. ADOPT AN URGENCY ORDINANCE MAKING FINDINGS AND ESTABLISHING A TEMPORARY MORATORIUM PURSUANT TO GOVERNMENT CODE 65858 ON THE PROCESSING OF CONDITIONAL USE PERMITS FOR CANNABIS ESTABLISHMENTS UNDER CHAPTER 10.08 OF THE TRACY MUNICIPAL CODE, TO TAKE EFFECT IMMEDIATELY UPON ADOPTION
- 3.F. ADOPT A RESOLUTION DECLARING 200 ACRES OF CITY-OWNED LAND LOCATED AT 15580 AND 15178 WEST SCHULTE ROAD (APNs 209-230-029 AND 209-230-030) AS EXEMPT SURPLUS PROPERTY UNDER GOVERNMENT CODE SECTION 54221(F)(1)(D)
- 3.G. ADOPT A RESOLUTION APPROVING THE PROPERTY TRANSFER OPTION AND SALE AGREEMENT WITH JOINT ESCROW INSTRUCTIONS GRANTING TRI-VALLEY – SAN JOAQUIN VALLEY REGIONAL RAIL AUTHORITY A TEN YEAR OPTION TO PURCHASE, FOR INDEPENDENT CONSIDERATION OF \$100 FOR APPROXIMATELY 200 ACRES OF CITY-OWNED EXEMPT SURPLUS LAND LOCATED AT 15580 AND 15178 WEST SCHULTE ROAD (APNs 209-230-029 AND 209-230-030)
4. ITEMS FROM THE AUDIENCE
5. STAFF ITEMS
6. COUNCIL ITEMS
7. ADJOURNMENT

TRACY CITY COUNCIL - SPECIAL MEETING MINUTES

**August 16, 2022, 6:00 p.m.**

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

1. Mayor Young called the meeting to order at 6:02 p.m.
2. Roll call found Council Member Davis, Mayor Pro Tem Vargas and Mayor Young present. Council Members Arriola and Bedolla were absent from roll call.
3. ITEMS FROM THE AUDIENCE – There was no public comment.
4. Request to Conduct Closed Session
  - A. Conference with Legal Counsel – Anticipated Litigation (Gov. Code § 54956.9)
    - i. Significant exposure to litigation pursuant to § 54956.9, subd. (e)(3). (Three cases).
  - B. Conference with Legal Counsel – Existing Litigation (Gov. Code Section 54956.9(d)(1))
    - i. Case Title: *MARY MITRACOS, v. CITY OF TRACY, and SURLAND COMMUNITIES, LLC*, CASE NO. C093383; COURT OF APPEAL, STATE OF CALIFORNIA THIRD APPELLATE DISTRICT
    - ii. Case Title: *City of Tracy v. Ronnoco Properties of Tracy II, L.P.*, et al., San Joaquin Superior Court Case No. STK-CV-UED-2020-0010706.

There was no public comment.

Council Member Davis recused herself from participating in Agenda Item 4.B.

Council Member Bedolla arrived at 6:05 p.m.

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

Council Member Arriola joined the closed session at 6:05 p.m.

5. Reconvened to Open Session – Time: 7:07 p.m.
6. Report of Final Action – City Attorney Bijal Patel reported on the following final actions:

City Council unanimously approved the settlement for the eminent domain Case Title – City of Tracy v. Ronnoco Properties of Tracy II, L.P et al. San Joaquin Superior Court Case No. STK-CV-UED-2020-0010706 for City’s appraised value of the subject property

of \$1,036,000 plus statutory costs of \$465.75 and interest of \$2,301.32 as of August 16, 2022 accruing at a rate of \$18.59 each day until the payment is transmitted.

The City Council with respect to Government Torte Claim by the Estate of Felipe De Jesus Barrera Lugo his claim to accept a leave to present a late claim for damages, the City Council unanimously rejected the leave for the late claim and the claim itself.

In addition, the City Council, with respect to the claim by Erika Guadalupe Ramos with respect to her application for leave to present a late claim, the City Council unanimously rejected the leave for the late claim as well as rejecting the late claim.

With respect to a claim for minor Felipe De Jesus Barrera Ramos and his application to present a late claim, the City Council accepted the leave for presenting a late claim and rejected the late claim.

7. Council Items and Comments – None

8. Adjournment – Time: 7:10 p.m.

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

ATTEST:

\_\_\_\_\_  
Mayor

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

**August 16, 2022, 7:00 p.m.**

City Hall, 333 Civic Center Plaza, Tracy

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Mayor Young called the meeting to order at 7:18 p.m.

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

Mayor Young led the Pledge of Allegiance.

Pastor Timothy Heinrich, Crossroads Baptist Church offered the invocation.

Michael Rogers, City Manager presented the Employee of the Month Award for August to Steve Abercrombie, Police Department.

1. CONSENT CALENDAR – Following the removal of Consent Items 1.C by Robert Tanner, 1.N by Council Member Davis, and 1.O by the 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 MAY 21, 2022 SPECIAL MEETING MINUTES, JULY 5, 2022, SPECIAL AND REGULAR MEETING MINUTES, JULY 12, 2022, SPECIAL MEETING MINUTES, AND AUGUST 2, 2022, SPECIAL MEETING MINUTES – **Minutes were adopted.**
  - 1.B ADOPT A RESOLUTION APPROVING AMENDMENT NO. 2 TO THE PROFESSIONAL SERVICES AGREEMENT BETWEEN THE CITY OF TRACY AND HF&H CONSULTANTS, LLC TO PERFORM A SOLID WASTE RATE STUDY, INCREASING THE NOT TO EXCEED AMOUNT BY \$64,000 FOR A TOTAL NOT TO EXCEED AMOUNT OF \$211,720 – **Resolution 2022-108** approved Amendment No. 2 to Professional Services Agreement with HF&F Consultants, LLC.
  - 1.D WAIVE SECOND READING OF FULL TEXT AND ADOPT AN ORDINANCE APPROVING A REZONE OF THE PROPERTY LOCATED AT 205 W. 9th STREET, ASSESSOR'S PARCEL NUMBER 235-052-08, FROM MEDIUM DENSITY RESIDENTIAL ZONE TO CENTRAL BUSINESS DISTRICT ZONE. APPLICATION NUMBER R22-0001 – **Ordinance 1329** was adopted.
  - 1.E ADOPT A RESOLUTION MAKING FINDINGS AND RE-AUTHORIZING REMOTE TELECONFERENCE MEETINGS OF THE CITY COUNCIL AND ALL LEGISLATIVE BODIES OF THE CITY OF TRACY FOR THE PERIOD FROM AUGUST 17, 2022 THROUGH SEPTEMBER 16, 2022 PURSUANT TO THE BROWN ACT – **Resolution 2022-109** adopted the findings and re-authorized remote teleconference meetings.



- 1.F ADOPT A RESOLUTION APPROVING A COMMUNITY SERVICE AGREEMENT WITH SAN JOAQUIN COUNTY TO RECEIVE A FUNDING ALLOCATION IN THE AMOUNT OF \$213,000 AND APPROPRIATION TO THE POLICE DEPARTMENT'S OPERATIONAL BUDGET TO SUPPORT THE HOMELESS OUTREACH "FAMILIAR FACES" PROGRAM – **Resolution 2022-110** approved a Community Service Agreement with San Joaquin County to receive funding allocation to support the Homeless Outreach "Familiar Faces" Program.
- 1.G ADOPT A RESOLUTION AUTHORIZING THE ACCEPTANCE OF \$13,777 FROM THE 2022 EDWARD BYRNE MEMORIAL JUSTICE ASSISTANCE GRANT (JAG) PROGRAM FOR FUNDING EQUIPMENT, TECHNOLOGY, AND OTHER MATERIAL DIRECTLY RELATED TO BASIC LAW ENFORCEMENT FUNCTIONS, APPROVING THE APPROPRIATION TO THE POLICE DEPARTMENT BUDGET FOR FISCAL YEAR 22/23, AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE AWARD ACCEPTANCE – **Resolution 2022-111** authorized the acceptance of the 2022 Edward Byrne Memorial Justice Assistance Grant.
- 1.H REJECT ALL BIDS FOR THE FIRE TRAINING TOWER APPARATUS AT NEI RESERVOIR, CIP 71109, AND AUTHORIZE STAFF TO RE-ADVERTISE THE PROJECT AFTER THE COMPLETION OF CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) REVIEW PROCESS FOR THE PROJECT SITE – **Resolution 2022-112** rejected all bids for the Fire Training Tower Apparatus at NEI Reservoir and authorized readvertising the project.
- 1.I ADOPT A RESOLUTION DECLARING "GENE BIRK PARK" AS THE NAME OF THE NEW TRACY HILLS 1B NEIGHBORHOOD PARK – **Resolution 2022-113** approved the naming of the Gene Birk Park.
- 1.J AUTHORIZE APPLYING FOR AND ACCEPTING AN UP-TO-AMOUNT OF \$5,000,000 TO THE UNITED STATES BUREAU OF RECLAMATION WATER AND ENERGY EFFICIENCY GRANT TO INSTALL A CITY-WIDE ADVANCED METERING INFRASTRUCTURE AND METER CONVERSION PROJECT AND APPROPRIATING FUNDS FROM THE WATER ENTERPRISE FUND IN THE AMOUNT OF \$2,500,000 FOR COST SHARE OBLIGATION – **Resolution 2022-114** authorized applying for and accepting an up-to-amount of \$5,000,000 to the United States Bureau of Reclamation Water and Energy Efficiency Grant and appropriated funds for cost share obligation.
- 1.K ADOPT A RESOLUTION APPROVING A MASTER SERVICES AGREEMENT WITH AXON ENTERPRISE, INC. FOR A TOTAL NOT TO EXCEED AMOUNT OF \$75,000 AND A TERM OF FIVE YEARS FOR THE PURCHASE, INSTALLATION, AND MAINTENANCE OF CAMERA AND AUDIO EQUIPMENT AND CLOUD BASED EVIDENCE SYSTEM FOR THE POLICE DEPARTMENT'S INTERVIEW ROOMS AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT – **Resolution 2022-115** approved a Master Services Agreement with Axon Enterprise, Inc.
- 1.L ADOPT A RESOLUTION APPROVING THE SUBMISSION OF A CLAIM TO THE SAN JOAQUIN COUNCIL OF GOVERNMENTS FOR STATE OF GOOD REPAIR PROGRAM FUNDS IN THE AMOUNT OF \$17,528 FOR THE FISCAL

YEAR 2017-2018 PROJECT AND \$43,844 FOR THE FISCAL YEAR 2018-2019 PROJECT, AND AUTHORIZING THE CITY MANAGER OR DESIGNEE TO EXECUTE THE CLAIM – **Resolution 2022-116** approved the submission of a claim to the San Joaquin Council of Governments for State of Good Repair Program Funds.

- 1.M ADOPT A RESOLUTION APPROVING AMENDMENT NO. 2 TO THE MASTER PROFESSIONAL SERVICES AGREEMENT (MPSA) FOR PROFESSIONAL LAND DEVELOPMENT SERVICES WITH SNG AND ASSOCIATES, INC. FOR A NOT-TO-EXCEED AMOUNT OF \$500,000 AND EXTENDING THE TERM TO OCTOBER 31, 2022 – **Resolution 2022-117** approved Amendment No. 2 to the Master Professional Services Agreement with SNG and Associates, Inc.
- 1.P RECOMMENDING THE ADOPTION OF A RESOLUTION 1) GRANTING AN EASEMENT FOR PUBLIC UTILITY PURPOSES TO PACIFIC GAS & ELECTRIC COMPANY ON CITY OWNED PROPERTY LOCATED AT 9251 WEST ARBOR AVENUE, AND 2) AUTHORIZING THE CITY MANAGER TO NEGOTIATE AND EXECUTE THE GRANT DEED FOR SUCH EASEMENT **Resolution 2022-119** adopted granting an easement for public utility purposes to PG&E and the City Manager to negotiate and execute the Grant Deed.
- 1.C RECEIVE AN INFORMATIONAL REPORT REGARDING THE POLICE DEPARTMENT'S RESPONSE TO FIREWORKS COMPLAINTS AND OFFICIAL CITY EVENTS DURING THE JULY 4TH WEEKEND

Robert Tanner pulled the item to request that a staff report be provided. Captain Luis Mejia provided the staff report.

Luis Lenny with TNT Fireworks shared that the City's use of drones is cutting edge technology and fines for illegal use are low, shared that City has been a model for Safe and Sane Fireworks and thanked Council for support of Non-Profits and thanked Police and Fire for all their efforts.

Mayor Young commended Police for progress made.

- 1.N RECEIVE AN INFORMATIONAL UPDATE REGARDING THE IMPLEMENTATION OF THE FISCAL YEAR 2021-2023 MULTI-YEAR AND SHORT-TERM CITY COUNCIL STRATEGIC PRIORITIES AND WORK PLAN

Council Member Davis pulled the item to request a staff report. The staff report was provided by Vanessa Carrera, Assistant to the City Manager, Sara Cowell, Interim Finance Director, Captain Alex Neicu, and Richard Joaquin, Parks, Planning and Development Manager.

Karen Moore thanked Council Member Davis for asking for the report and stated it seems the City is heavy on the warehouses and regarding elements to the general plan and environmental justice. Tracy Alliance building that is being built close to Banta, the community should be aware that Banta is a California Disadvantaged Community that should have Environmental Justice Protection. This should be updated and enforceable within the General Plan.

- 1.0 ADOPT A RESOLUTION AUTHORIZING 1) AMENDMENTS TO THE CITY'S CLASSIFICATION AND COMPENSATION PLANS AND MASTER SALARY SCHEDULE RELATING TO THE DIRECTOR OF HOUSING AND MOBILITY, ASSISTANT CITY ENGINEER, MARKETING COORDINATOR, SENIOR PROPERTY AND EVIDENCE TECHNICIAN, POLICE CAPTAIN, POLICE LIEUTENANT, 2) REALLOCATION OF A VACANT PROPERTY AND EVIDENCE TECHNICIAN TO A SENIOR PROPERTY AND EVIDENCE TECHNICIAN, EFFECTIVE FISCAL YEAR 2022-23, AND 3) CLERICAL AMENDMENTS TO THE MASTER SALARY SCHEDULE FOR THE ASSISTANT DIRECTOR OF OPERATIONS, ASSISTANT DIRECTOR OF UTILITIES, DIRECTOR OF PUBLIC WORKS AND DIRECTOR OF UTILITIES PREVIOUSLY APPROVED BY RESOLUTION 2022-076

Michael Rogers, City Manager pulled the item. Staff Report was provided by Kimberly Murdaugh, Director of Human Resources. Ms. Murdaugh clarified that there was a correction to the Master Salary Schedule. The positions of Director of Public Works and Director of Utilities have been converted to Assistant Director for Public Works and Assistant Director for Utilities, this action also corrects the salaries listed for those positions.

There was no public comment.

There was no Council comment.

**ACTION:** Motion was made by Mayor Pro Tem Vargas and seconded by Council Member Davis to adopt **Resolution 2022-118** authorizing 1) Amendments to the City's Classification and Compensation Plans and Master Salary Schedule relating to the Director of Housing and Mobility, Assistant City Engineer, Marketing Coordinator, Senior Property and Evidence Technician, Police Captain, Police Lieutenant, 2) Reallocation of a Vacant Property and Evidence Technician to a Senior Property and Evidence Technician, effective Fiscal Year 2022-23, and 3) Clerical Amendments to the Master Salary Schedule for the Assistant Director of Operations, Assistant Director of Utilities, Director of Public Works and Director of Utilities previously approved by Resolution 2022-076. Roll call found all in favor; passed and so ordered.

2. ITEMS FROM THE AUDIENCE – Wes Huffman, representing the American Legion and VFW, stated the replacement flag poles from the City were aluminum, come in four separate pieces and hoped to have those replaced with wooden poles that secure in two pieces, and requested that the appropriate staff member contact him or the American Legion.

Dale Cose shared the following concerns: Demolition at 714 Central Ave also known as The Great Plate and a light safety problem that took place due to demolition, called for the San Joaquin County Sheriff's Office, District Attorney or Grand Jury to conduct an investigation of Tracy Police and City staff, shared information regarding Regional Housing Numbers Allocation, shared concerns regarding impact fees, asked Council to look into issues with Amazon, and shared his opinion regarding current Council not taking the taxpayers and voters into account.

Mayor Young called for a recess at 8:15 p.m.

The meeting resumed at 8:17 p.m.

Alex Heredia, Field Representative of the Carpenters Union, shared the following: over 500 members of Union live in Tracy and travel to the Bay Area for job opportunities, member belief that there should be responsible contractors that pay area standard wages, benefits and fair share of taxes and there are some youth that have a passion for hands on physical labor and should be mentored to the benefits of what a great field construction can be and came to the City looking for a partnership on how to put the citizens of Tracy back to work in Tracy.

Fatima Ureno, Representative from Josh Harder's Office, thanked Council for the work that they are doing, shared that their office assists with issues with Federal Agencies such as USCIS, Social Security, IRS, and Veterans Affairs. If anyone is applying for a federal grant there is assistance available and encouraged everyone in attendance to subscribe to Representative Harder's newsletter: [harder.house.gov](http://harder.house.gov) or call at 209-579-5458.

Robert Tanner expressed his concerns regarding accessibility of handicap ramps for the citizens that require the use of motorized mobility scooters, requested that Council take more care for the citizens in the handicap area, and provided the City Clerk a copy of an article that was in the Tracy Press eight years ago for the record.

Andrea Brown shared her disappointment with ongoing issues at Pescadero Park and the lack of action from the Mayor when it comes to protecting the children that live near the park. Expressed that there are other locations where the homeless population can be moved to, where there are no schools, daycare centers, residential apartments, senior residential housing, or tax paying homeowners. Children that live near the school are exposed to aggressive individuals, individuals who are naked, drug use and dogs running around off their leashes.

Amber Tang representing Tracy Skates stated there is currently no safe access to the skate park. Bill Schwartz Park has an outdoor event arena but it's badly cracked and is poorly maintained, and the current meeting place is Henry Barbosa Park, but the space is too small. Events are family friendly, and asked Council to repave Bill Schwartz Park and the trails around the City.

Damian Grey thanked Council for selecting Pescadero Park for the Multi-Gen Rec Center but not optimistic about homeless encampment relocation. Neighbors in the Pescadero area have met with Police and City staff and feel that community has been told what they want to hear. The City should not be putting the homeless before the tax paying citizens and requested the City find a better place suited for this encampment and Council should have compassion for everyone not just the homeless.

Jennifer Owens expressed frustration over the following: speeders, red light runners and recent multiple accidents, overall disregard for the law, homeless shelter construction delay, the security of the children, elderly and neighbors that are tax paying law-abiding residents, should come first. The population in Pescadero Park has gotten bigger despite receiving assistance and outreach, the handouts need to stop and please move them to another location.

William Muetzenberg shared concerns from a post on the Next-Door app regarding road work and road paint on Lammers Road between 11th St and Byron. People are doing donuts on the streets, requested a report from the Police Department regarding this item, and requested how the City can look at staying cooler and reducing the Heat Island Effect when looking into a future sustainability plan.

Alice English stated that there was a complaint that there was a conflict of interest, that defamation against her is taking place, and questioned the City Attorney about Tracy Connect.

Dan Evans shared that the Emergency Housing Shelter has been discussed for two (2) years and that the facility was set to open in January 2022, March 2022, Summer 2022 then Fall 2022 now it's getting pushed again. Residents have been asking for interim solutions but now close to elections it's being discussed. Incumbents that have been up here for years are not doing what is needed to find a solution.

Bernal Shull expressed frustration about: the special meeting held on August 2nd during National Night Out and that it was held during commuting hours, and requested the City Manager to look into repeated Brown Act violations and grandstanding by the Mayor and Mayor Pro Tem. Mayor Pro Tem Vargas disagreed with the comments.

### 3. REGULAR AGENDA

- 3.A STAFF RECOMMENDS THAT THE CITY COUNCIL INTRODUCE THE FOLLOWING TWO ORDINANCES TO COMPLY WITH THE JUDGMENT AND PEREMPTORY WRIT OF MANDATE IN MITRACOS V. CITY OF TRACY, ET AL., SAN JOAQUIN COUNTY SUPERIOR COURT CASE NO. STK-CV-UWM-2018-5531: (1) AN ORDINANCE RESCINDING ORDINANCE 1253 APPROVING SECOND AMENDMENT TO AMENDED AND RESTATED DEVELOPMENT AGREEMENT BY AND BETWEEN THE CITY OF TRACY AND SURLAND COMMUNITIES, LLC, AND (2) AN ORDINANCE RESCINDING SECOND AMENDMENT TO AMENDED AND RESTATED DEVELOPMENT AGREEMENT BY AND BETWEEN THE CITY OF TRACY AND SURLAND COMMUNITIES, LLC.

Council Member Davis recused herself from this item due to proximity of real property.

Bijal Patel, City Attorney provided the staff report.

Council questions and comments followed.

There was no public comment.

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

**ACTION:** Motion was made by Mayor Pro Tem Vargas and seconded by Council Member Bedolla to waive the reading of the full text and introduce an **Ordinance** rescinding Ordinance 1253 approving Second Amendment to Amended and Restated Development Agreement by and between the City of Tracy and Surland

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

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

**ACTION:** Motion was made by Mayor Pro Tem Vargas and seconded by Council Member Bedolla to waive the reading of the full text and introduce an **Ordinance** rescinding Second Amendment to Amended and Restated Development Agreement by and between the City of Tracy and Surland Communities, LLC. Roll call found Council Members Arriola, Mayor Pro Tem Vargas and Mayor Young in favor; passed and so ordered. Council Member Davis abstained.

3.B 1) REJECT ALL BIDS FOR THE TEMPORARY EMERGENCY HOUSING PROJECT ON ARBOR AVENUE, SITE IMPROVEMENTS CONSTRUCTION PACKAGE 2, CIP 71112, AND 2) AUTHORIZE STAFF TO RE-ADVERTISE THE PROJECT, WITH MODIFICATIONS AS DEEMED NECESSARY BY THE CITY MANAGER

Lauren Gonzales, Management Analyst, and Robert Armijo, City Engineer/Assistant Development Services Director and Matt Evans, Consultant from KPA, provided the staff report.

Karen Moore shared the project is being used politically, Council has faced things that no other Council has seen such as pandemic, supply chain issues, labor shortages and all these things are out of their hands and an election is not going to change that no matter who is going to be voted in.

Dan Evans shared that he is a project manager and expressed that this is a spectacular failure on the City's part and that a root cause analysis needs to be done immediately in order to be successful moving forward.

Alice English shared Dan Evan sentiments and that Council not only failed the residents of Tracy but the unsheltered population as well, asked why the security company bid is taking so long to be presented to Council, requested Council stand for all the community, the unsheltered and the residents that are around that area, and there are not enough Police to protect the area and the rest of the City.

Robert Tanner asked about the funding and clarification on what has been spent, asked about September 2023 timeline for the shelter, Council has failed the City, homeless people and the handicap crosswalks that need to be fixed. City Engineer Robert Armijo and Assistant City Manager, Midori Lichtwardt provided clarification.

Bernal Schull expressed her frustration about the homeless situation, asked about the bid and how it got to this situation, asked how the Boise Act is applied, expressed that maybe the funds that are set aside for the shelter should be used to build a mental hospital rather than a tent and for the homeless folks to be moved out of Pescadero Park and that it is a safety issue, how many people need to get hurt before the City takes action.

Dotty Nygard reminded everyone that in the past the City passed over a \$3-million grant and that these are still human beings that may be suffering from mental health issues, addiction issues or other health issues. It is important that we come together with solutions rather than finger pointing and blame.

Council questions and comments followed.

**ACTION:** Motion was made by Mayor Pro Tem Vargas and seconded by Council Member Bedolla to adopt **Resolution 2022-120** 1) rejecting all bids for the Temporary Emergency Housing Project on Arbor Avenue, site improvements construction package 2, CIP 71112, and 2) authorizing staff to re-advertise the project, with modifications as deemed necessary by the City Manager. Roll call found all in favor; passed and so ordered.

3.C ADOPT A RESOLUTION AWARDING A SERVICE CONTRACT TO INNER CITY ACTION AS THE CITY'S OPERATOR FOR THE FUTURE TEMPORARY EMERGENCY HOUSING FACILITY, PURSUANT TO A COMPLETED REQUEST FOR PROPOSALS PROCESS, WITH AN INITIAL TERM OF TWO (2) YEARS, AND AN OPTION TO EXTEND, ADMINISTRATIVELY, FOR AN ADDITIONAL TWO (2) YEARS, AT A NOT-TO-EXCEED ANNUAL COST OF \$1.2 MILLION – ITEM PULLED

3.D ADOPT A RESOLUTION: (1) REAFFIRMING THE DECLARATION MADE BY RESOLUTION 2020-052 OF A SHELTER CRISIS IN THE CITY OF TRACY; (2) MAKING FINDINGS THAT A SIGNIFICANT NUMBER OF PERSONS ARE WITHOUT SHELTER, AND SUCH SITUATION HAS RESULTED IN A THREAT TO THE HEALTH AND SAFETY OF THOSE PERSONS; (3) DIRECTING THE CITY MANAGER TO TAKE IMMEDIATE AND EMERGENCY ACTIONS NECESSARY TO IMPLEMENT INTERIM HOUSING SOLUTIONS FOR TRACY'S UNSHELTERED UNTIL THE COMPLETION AND OPENING OF THE TEMPORARY EMERGENCY HOUSING FACILITY PLANNED AT 370 WEST ARBOR AVENUE, INCLUDING NEGOTIATING WITH POTENTIAL SERVICE PROVIDERS AND IDENTIFYING POTENTIAL SITES FOR SUCH INTERIM HOUSING SOLUTIONS; AND (4) WAIVING THE REQUIREMENT TO CONDUCT REQUEST FOR PROPOSAL PROCESSES PURSUANT TO SECTION 2.20.140(b)(6) OF THE TRACY MUNICIPAL CODE

Karin Schnaider, Assistant City Manager, provided the staff report and responded to questions.

Karen Moore supported approving this resolution.

Robert Tanner supported all four (4) items and asked if the City Manager can sign off on contracts regardless of cost or will this be coming back to Council and for clarification on the homeless counts because they seem low and the Aquatic Center as well as the Multi-Generational Use Gym. City Manager, Michael Rogers clarified that approvals will not take place without

transparency and knowledge of policy makers. Virginia Carney, Homeless Services Manager provided information on the current homeless counts.

Alice English shared that Mr. Sandhu wanted to do tiny homes and her frustration at the crime that is taking place at Pescadero Park, asked why the security contract has been delayed and why is the upcoming ordinance going to be enforced after 30 days. Lieutenant Miguel Contreras responded.

William Muetzenberg requested action be taken now to remove the homeless folks out of the parks and reclaim those spaces for the community, complimented the work the TCCC and Community Action Services are doing with the homeless folks, and asked Council to take steps to allow opportunity to move this process along without further bureaucracy.

Mr. Landerfield shared his perspective on the situation as a caregiver of a resident at Pescadero Park, asked the City to open the bathrooms, provide water and power, explained some of the steps that he has taken to assist some park residents, and spoke to the use and availability of meth, fentanyl, and heroin beyond tobacco and alcohol use and fires that have been caused due to such activity.

Bubba Paris stated that he is encouraged by what City Manager, Michael Rogers shared.

Barbara Pombo shared that she was the founding member of TCCC and currently sits on the board for TCCC, also assists with laundry services that are provided to individuals that are staying in Pescadero Park.

Council questions and comments followed.

**ACTION:** Motion was made by Mayor Pro Tem Vargas and seconded by Council Member Davis to adopt **Resolution 2022-121** (1) Reaffirming the declaration made by Resolution 2020-052 of a shelter crisis in the City of Tracy; (2) Making findings that a significant number of persons are without shelter, and such situation has resulted in a threat to the health and safety of those persons; (3) Directing the City Manager to take immediate and emergency actions necessary to implement interim housing solutions for Tracy's Unsheltered until the completion and opening of the Temporary Emergency Housing Facility planned at 370 West Arbor Road, including negotiating with potential service providers and identifying potential sites for such interim housing solutions; and (4) waiving the requirement to conduct Request for Proposal processes pursuant to section 2.20.140(b)(6) of the Tracy Municipal Code. Roll call found all in favor; passed and so ordered.

3.E ADOPT A RESOLUTION (1) AWARDED A PUBLIC WORKS CONTRACT TO TRACY GRADING AND PAVING, INC. FOR THE EL PESCADERO PARK SOUND WALL EXTENSION PROJECT CIP 71116, WITH A NOT TO EXCEED AMOUNT OF \$543,080; (2) AUTHORIZING THE CITY MANAGER TO APPROVE CHANGE ORDERS UP TO \$44,840; AND (3) AUTHORIZING A BUDGET AUGMENTATION IN THE AMOUNT OF



\$372,000 FROM GENERAL FUND-CAPITAL RESERVES TO CIP 71116 –  
ITEM PULLED

3.F ADOPT A RESOLUTION DESIGNATING A VOTING DELEGATE AND UP  
TO TWO ALTERNATE VOTING DELEGATES FOR THE LEAGUE OF  
CALIFORNIA CITIES 2022 ANNUAL CONFERENCE BUSINESS MEETING  
AND DETERMINE CITY COUNCIL'S POSITION ON THE RESOLUTIONS  
TO BE CONSIDERED AT THE ANNUAL CONFERENCE BUSINESS  
MEETING

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

There was no public comment.

Council questions and comments followed.

**ACTION:** Motion was made by Mayor Pro Tem Vargas and seconded by Council Member Bedolla to adopt **Resolution 2022-122** designating Council Member Bedolla as voting delegate and Council Member Arriola and Council Member Davis as the two alternate voting delegates for the League of California Cities 2022 Annual Conference Business Meeting and determine City Council's position on the resolutions to be considered at the Annual Conference Business Meeting. Roll call found all in favor; passed and so ordered.

3.G APPROVE BY MOTION OUT-OF-STATE TRAVEL FOR CITY COUNCIL  
MEMBERS TO MIAMI, FLORIDA FOR 2022 RAIL VOLUTION  
CONFERENCE PURSUANT TO CITY COUNCIL TRAVEL POLICY

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

William Muetzenberg expressed his excitement about the Rail Volution Conference as a supporter of Valley Link and is looking forward to hearing from the Council what they learn.

Robert Tanner asked if the entire Council will be attending and shared that it would be unwise for the City to send Mayor Pro Tem Vargas since she will be terming out unless Valley Link is willing to carry that cost and supported other Council Members attending.

Alice English shared that Mayor Pro Tem Vargas should not be selected to go to this conference and shared that the need for some one that is transparent and a good representative of Tracy and expressed frustrations over the Valley Link project.

Dotty Nygard shared her excitement for hearing what takes place at Rail Volution and has been following their organization, hopes that Council can bring back information that will benefit the City and that everyone on the dais is part of the council and representatives of the City until elections.

Council questions and comments followed.

**ACTION:** Motion was made by Mayor Pro Tem Vargas and seconded by Council Member Bedolla to approve Out-of-State travel for Council Members Bedolla, Davis and Mayor Pro Tem Vargas to Miami Florida for 2022 Rail Volution Conference pursuant to City Council Travel Policy. Roll call found Council Members Bedolla, Davis, Mayor Pro Tem Vargas and Mayor Young all in favor; passed and so ordered. Council Member Arriola was absent from roll call.

3.H APPOINT RENU MILES TO THE SAN JOAQUIN COUNTY MOSQUITO ABATEMENT DISTRICT BOARD TO SERVE THE REMAINDER OF THE VACATED TERM BEGINNING AUGUST 17, 2022 AND ENDING JUNE 30, 2024

Necy Lopez, Deputy City Clerk provided the staff report.

Council Subcommittee Members Davis and Mayor Young announced their recommendations for appointment to the San Joaquin County Mosquito Abatement District Board.

There was no public comment.

There was no Council comment.

**ACTION:** Motion was made by Council Member Davis and seconded by Council Member Bedolla to appoint Renu Miles to the San Joaquin County Mosquito Abatement District Board to serve the remainder of the vacated term beginning August 17, 2022 and ending June 30, 2024. Roll call found Council Members Arriola, Bedolla, Davis, Mayor Young in favor; passed and so ordered. Mayor Pro Tem Vargas absent from roll call.

4. ITEMS FROM THE AUDIENCE – Dotty Nygard requested an update for the need of an environmental committee to address sustainability action plan, asked about educational information to the public for the food waste program, announced California Clean Air Coalition will be hosting an event in October and Tracy Tree Foundation event on October 8<sup>th</sup> to plant trees in Tracy and will be starting a community garden at the Housing Authority on West Street.

Alice English continued speaking on the earlier topic from “Items From The Audience” about an incident regarding donations solicited by Mayor Young, thanked Council Members Bedolla and Davis for their conduct on the August 2<sup>nd</sup> meeting, and urged Council Members to stop the grandstanding and stick to the agenda and follow the Brown Act.

William Muetzenberg echoed sentiments from Ms. Nygard regarding the formation of an environmental committee, expressed the importance of housing and building smart housing that provides more accessibility to bungalow, apartment, or condominium type homes rather than single family homes. This will encourage community building and encourage smart growth and development.

5. STAFF ITEMS – City Manager, Michael Rogers shared that the City was awarded a 2023 Cities for Workforce Health Program Grant that will be awarded at League of California Cities Annual Conference and Expo during their September 8<sup>th</sup> general session. Mr. Rogers provided information about nearby cooling stations. For further information on cooling stations community members are encouraged to call 211. Encouraged community members to visit [atthegrand.org](http://atthegrand.org) to see what programing will be available this season.
6. COUNCIL ITEMS – Council Member Arriola stated he testified before the State Legislature regarding Monkey Pox. Based on this San Joaquin County now has received an additional 750 vaccine doses up from 10 doses. Council Member Arriola testified against Anthony Waiters child torture case and thanked community and police for having their voices heard. Reminded community about the Homeless Advisory Committee Meeting on Monday, August 22<sup>nd</sup> at 7:00 p.m.

Mayor Pro Tem Vargas shared Valley Link information and there will be a meeting held here at the City in September. Mayor Pro Tem Vargas announced she will be traveling in September to attend the Latino Caucus of the California League of Cities Conference.

Council Member Bedolla requested staff to analyze Senate Bill 1338 by Umberg and Eggman and supported by Assembly Member Carlos Villapudua and implement those tools for housing and mental health assistance as soon as possible. Council Member Arriola seconded the request.

Council Member Davis requested clarification regarding security delays in getting this implemented at Pescadero Park and what can be done for that to happen sooner rather than later. Assistant City Manager Midori Lichtwardt clarified that there was an RFP that went out and now there is a contract that is in the process of being finalized.

Council Member Davis asked about the food waste program education. Ms. Lichtwardt responded that a memo can be provided since there is not an update at this time.

Council Member Davis shared information on cooling centers, asked individuals to check on their elderly neighbors and on pets during this heatwave and shared ADA concerns regarding the sidewalks and asked how the City is addressing these issues and how can citizens report these issues. City Manager Michael Rogers responded community members can report any issues such as these on an app called Go Request.

Council Member Davis asked for clarification regarding Lammers Area Road being repaved and not repainted. Mr. Rogers clarified that this issue has been corrected.

Council Member Davis requested an update to the General Plan and asked what is happening with that. Mr. Rogers clarified that this is currently in process.

Council Member Davis asked about damaged seating area in front of City Hall and when is that expected to be fixed. Mr. Rogers clarified the incident that caused the damage, and that Public Works is currently awaiting more information from the vendor for the completion of repairs.

Council Member Davis complimented staff on parking lot work done at Legacy Fields.

Mayor Young stated that she provided copies by email of her Council Report to staff and fellow Council Members. Wished everyone a safe and happy Labor Day.

7. ADJOURNMENT – Time: 11:50 p.m.

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

The above agenda was posted at the Tracy City Hall on August 19, 2022. The above are action minutes. A recording is available at the office of the City Clerk.

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Mayor

ATTEST:

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City Clerk

AGENDA ITEM 1.B

REQUEST

**ADOPT A RESOLUTION MAKING FINDINGS AND RE-AUTHORIZING REMOTE TELECONFERENCE MEETINGS OF THE CITY COUNCIL AND ALL LEGISLATIVE BODIES OF THE CITY OF TRACY FOR THE PERIOD FROM SEPTEMBER 7, 2022 THROUGH OCTOBER 6, 2022 PURSUANT TO THE BROWN ACT**

EXECUTIVE SUMMARY

AB 361 allows legislative bodies to use abbreviated teleconferencing procedures during a declared state of emergency upon the making of required findings. These abbreviated procedures allow a body to conduct remote teleconference meetings without compliance with paragraph (3) of subdivision (b) of section 54953 of the Ralph M. Brown Act (Cal. Gov. Code section 54950 – 54963).

On March 17, 2020, the City Council of the City of Tracy ratified the declaration of an emergency by the City Manager due to COVID-19 in accordance with Chapter 3.26 of the Tracy Municipal Code. The City Council subsequently adopted resolutions with requisite findings authorizing remote teleconference meetings of the City Council and all legislative bodies of the City of Tracy, including Boards and Commissions, pursuant to AB 361.

While the City has allowed in-person attendance at City Council meetings, the City is experiencing an increase in rates of COVID-19 cases within the County of San Joaquin and amongst the City staff pool. Due to this increase, the City reinstated social distancing protocols at in-person attendance at City Hall and encouraged the use of teleconferencing for City Council meetings.

On August 16, 2022, City Council adopted Resolution 2022-109, which made findings and authorized remote teleconference meetings of the City Council and all legislative bodies of the City of Tracy, including Boards and Commissions, for the period of August 17, 2022 through September 16, 2022. In order to maintain compliance with Section 54953(e) of the Ralph M. Brown Act (Gov. Code section 54950 – 54963) which allows the continued use of teleconferencing, Council must make the required findings and re-authorize remote teleconferencing meetings of the legislative bodies for the City of Tracy.

This item requests that the City Council approve this proposed action for continued compliance with the Brown Act.

DISCUSSION

On June 11, 2021, Governor Newsom issued Executive Order N-08-21, which among other things rescinded his prior Executive Order N-29-20 and set a date of October 1, 2021, for public agencies to transition back to public meetings held in full compliance with the Brown Act.

As the Delta variant has surged in California, the Legislature took action to extend the COVID-19 exceptions to the Brown Act's teleconference requirements, subject to some additional safeguards. On September 16, 2021, Governor Newsom signed Assembly Bill 361, to allow a local agency to use teleconferencing if certain circumstances exist without complying with the Brown Act's traditional agenda posting, physical access, and quorum requirements for teleconferencing provisions (Attachment A).

The goal of AB 361 is "to improve and enhance public access to local agency meetings during the COVID-19 pandemic and future applicable emergencies, by allowing broader access through teleconferencing options" consistent with Executive Order N-29-20. The bill contains an urgency clause, which made the bill effective upon signing with a sunset date of January 1, 2024.

The new Section 54953(e)(1) of the Brown Act, as amended by AB 361, allows legislative bodies to continue to meet via teleconference without complying with the Brown Act's teleconferencing requirements, but only during a state of emergency proclaimed by the Governor, in which, 1) state or local health officials have imposed or recommended measures to promote social distancing, or 2) the legislative body has determined by majority vote that meeting in person would present an imminent risk to the health or safety of the attendees.

A local agency that holds a meeting under these circumstances would be required by AB 361 to follow the steps listed below, in addition to giving notice of the meeting and posting agendas as required under the Brown Act. These additional requirements are intended to protect the public's right to participate in the meetings of local agency legislative bodies.

Pursuant to AB 361 local agencies are required to do all of the following in addition to meeting notice requirements under the Brown Act:

- Allow the public to access the meeting and require that the agenda provide an opportunity for the public to directly address the legislative body pursuant to the Brown Act's other teleconferencing provisions.
- In each instance when the local agency provides notice of the teleconferenced meeting or posts its agenda, give notice for how the public can access the meeting and provide public comment.
- Identify and include in the agenda an opportunity for all persons to attend via a call-in or an internet-based service option; the legislative body needs not provide a physical location for the public to attend or provide comments.
- Conduct teleconference meetings in a manner that protects the statutory and constitutional rights of the public.
- Stop the meeting until public access is restored in the event of a service disruption that either prevents the local agency from broadcasting the meeting to the public using the call-in or internet-based service option or is within the local agency's control and prevents the public from submitting public comments (any actions taken during such a service disruption can be challenged under

- the Brown Act's existing challenge provisions).
- Not require comments be submitted in advance (though the legislative body may provide that as an option) and provide the opportunity to comment in real-time.
  - Provide adequate time for public comment, either by establishing a timed public comment period or by allowing a reasonable amount of time to comment.
  - If the legislative body uses a third-party website or platform to host the teleconference, and the third-party service requires users to register to participate, the legislative body must provide adequate time during the comment period for users to register and may not close the registration comment period until the comment period has elapsed.

While the City has allowed in-person attendance at City Council meetings, the City is experiencing an increase in rates of COVID-19 cases within the County of San Joaquin and amongst the City staff pool. The San Joaquin County Public Health Services provided an update to the City Council of this situation at the June 7, 2022 meeting. In addition, the Human Resources Department of the City of Tracy has documented an increase in COVID-19 positive test rates amongst City staff in recent weeks. To minimize the exposure to COVID-19 from this recent surge, the City is reinstating social distancing protocols at in-person attendance at City Hall and encouraging the use of teleconferencing for City Council meetings.

Given these changed circumstances created by the increasing rates of COVID-19, the recommendation is that City Council make the following finds by majority vote every 30 days to continue using the bill's exemption to the Brown Act teleconferencing rules.

If Council approves the proposed resolution, staff will present a staff report to Council every thirty days to verify that the circumstances continue to exist.

#### STRATEGIC PLAN

This agenda item relates to the City Council's Strategic Priorities in the area of Public Safety (Goal #1 Support COVID-19 Public Health Recovery).

#### FISCAL IMPACT

There is no fiscal impact related to this agenda item.

#### RECOMMENDATION

Staff recommends that Council adopt a resolution making findings and re-authorizing remote teleconference meetings of all legislative bodies of the City of Tracy for the period of September 7, 2022, to October 6, 2022, pursuant to the Brown Act.

Agenda Item 1.B  
September 6, 2022  
Page 4

Prepared by: Bijal Patel, City Attorney

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

Approved by: Michael Rogers, City Manager

ATTACHMENTS

A – Assembly Bill 361



**Assembly Bill No. 361**

**CHAPTER 165**

An act to add and repeal Section 89305.6 of the Education Code, and to amend, repeal, and add Section 54953 of, and to add and repeal Section 11133 of, the Government Code, relating to open meetings, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 16, 2021. Filed with Secretary of State September 16, 2021.]

**LEGISLATIVE COUNSEL'S DIGEST**

AB 361, Robert Rivas. Open meetings: state and local agencies: teleconferences.

(1) Existing law, the Ralph M. Brown Act requires, with specified exceptions, that all meetings of a legislative body of a local agency, as those terms are defined, be open and public and that all persons be permitted to attend and participate. The act contains specified provisions regarding the timelines for posting an agenda and providing for the ability of the public to directly address the legislative body on any item of interest to the public. The act generally requires all regular and special meetings of the legislative body be held within the boundaries of the territory over which the local agency exercises jurisdiction, subject to certain exceptions. The act allows for meetings to occur via teleconferencing subject to certain requirements, particularly that the legislative body notice each teleconference location of each member that will be participating in the public meeting, that each teleconference location be accessible to the public, that members of the public be allowed to address the legislative body at each teleconference location, that the legislative body post an agenda at each teleconference location, and that at least a quorum of the legislative body participate from locations within the boundaries of the local agency's jurisdiction. The act provides an exemption to the jurisdictional requirement for health authorities, as defined. The act authorizes the district attorney or any interested person, subject to certain provisions, to commence an action by mandamus or injunction for the purpose of obtaining a judicial determination that specified actions taken by a legislative body are null and void.

Existing law, the California Emergency Services Act, authorizes the Governor, or the Director of Emergency Services when the governor is inaccessible, to proclaim a state of emergency under specified circumstances.

Executive Order No. N-29-20 suspends the Ralph M. Brown Act's requirements for teleconferencing during the COVID-19 pandemic provided that notice and accessibility requirements are met, the public members are allowed to observe and address the legislative body at the meeting, and that a legislative body of a local agency has a procedure for receiving and swiftly

resolving requests for reasonable accommodation for individuals with disabilities, as specified.

This bill, until January 1, 2024, would authorize a local agency to use teleconferencing without complying with the teleconferencing requirements imposed by the Ralph M. Brown Act when a legislative body of a local agency holds a meeting during a declared state of emergency, as that term is defined, when state or local health officials have imposed or recommended measures to promote social distancing, during a proclaimed state of emergency held for the purpose of determining, by majority vote, whether meeting in person would present imminent risks to the health or safety of attendees, and during a proclaimed state of emergency when the legislative body has determined that meeting in person would present imminent risks to the health or safety of attendees, as provided.

This bill would require legislative bodies that hold teleconferenced meetings under these abbreviated teleconferencing procedures to give notice of the meeting and post agendas, as described, to allow members of the public to access the meeting and address the legislative body, to give notice of the means by which members of the public may access the meeting and offer public comment, including an opportunity for all persons to attend via a call-in option or an internet-based service option, and to conduct the meeting in a manner that protects the statutory and constitutional rights of the parties and the public appearing before the legislative body. The bill would require the legislative body to take no further action on agenda items when there is a disruption which prevents the public agency from broadcasting the meeting, or in the event of a disruption within the local agency's control which prevents members of the public from offering public comments, until public access is restored. The bill would specify that actions taken during the disruption are subject to challenge proceedings, as specified.

This bill would prohibit the legislative body from requiring public comments to be submitted in advance of the meeting and would specify that the legislative body must provide an opportunity for the public to address the legislative body and offer comment in real time. The bill would prohibit the legislative body from closing the public comment period and the opportunity to register to provide public comment, until the public comment period has elapsed or until a reasonable amount of time has elapsed, as specified. When there is a continuing state of emergency, or when state or local officials have imposed or recommended measures to promote social distancing, the bill would require a legislative body to make specified findings not later than 30 days after the first teleconferenced meeting pursuant to these provisions, and to make those findings every 30 days thereafter, in order to continue to meet under these abbreviated teleconferencing procedures.

Existing law prohibits a legislative body from requiring, as a condition to attend a meeting, a person to register the person's name, or to provide other information, or to fulfill any condition precedent to the person's attendance.

This bill would exclude from that prohibition, a registration requirement imposed by a third-party internet website or other online platform not under the control of the legislative body.

(2) Existing law, the Bagley-Keene Open Meeting Act, requires, with specified exceptions, that all meetings of a state body be open and public and all persons be permitted to attend any meeting of a state body. The act requires at least one member of the state body to be physically present at the location specified in the notice of the meeting.

The Governor's Executive Order No. N-29-20 suspends the requirements of the Bagley-Keene Open Meeting Act for teleconferencing during the COVID-19 pandemic, provided that notice and accessibility requirements are met, the public members are allowed to observe and address the state body at the meeting, and that a state body has a procedure for receiving and swiftly resolving requests for reasonable accommodation for individuals with disabilities, as specified.

This bill, until January 31, 2022, would authorize, subject to specified notice and accessibility requirements, a state body to hold public meetings through teleconferencing and to make public meetings accessible telephonically, or otherwise electronically, to all members of the public seeking to observe and to address the state body. With respect to a state body holding a public meeting pursuant to these provisions, the bill would suspend certain requirements of existing law, including the requirements that each teleconference location be accessible to the public and that members of the public be able to address the state body at each teleconference location. Under the bill, a state body that holds a meeting through teleconferencing and allows members of the public to observe and address the meeting telephonically or otherwise electronically would satisfy any requirement that the state body allow members of the public to attend the meeting and offer public comment. The bill would require that each state body that holds a meeting through teleconferencing provide notice of the meeting, and post the agenda, as provided. The bill would urge state bodies utilizing these teleconferencing procedures in the bill to use sound discretion and to make reasonable efforts to adhere as closely as reasonably possible to existing law, as provided.

(3) Existing law establishes the various campuses of the California State University under the administration of the Trustees of the California State University, and authorizes the establishment of student body organizations in connection with the operations of California State University campuses.

The Gloria Romero Open Meetings Act of 2000 generally requires a legislative body, as defined, of a student body organization to conduct its business in a meeting that is open and public. The act authorizes the legislative body to use teleconferencing, as defined, for the benefit of the public and the legislative body in connection with any meeting or proceeding authorized by law.

This bill, until January 31, 2022, would authorize, subject to specified notice and accessibility requirements, a legislative body, as defined for purposes of the act, to hold public meetings through teleconferencing and

to make public meetings accessible telephonically, or otherwise electronically, to all members of the public seeking to observe and to address the legislative body. With respect to a legislative body holding a public meeting pursuant to these provisions, the bill would suspend certain requirements of existing law, including the requirements that each teleconference location be accessible to the public and that members of the public be able to address the legislative body at each teleconference location. Under the bill, a legislative body that holds a meeting through teleconferencing and allows members of the public to observe and address the meeting telephonically or otherwise electronically would satisfy any requirement that the legislative body allow members of the public to attend the meeting and offer public comment. The bill would require that each legislative body that holds a meeting through teleconferencing provide notice of the meeting, and post the agenda, as provided. The bill would urge legislative bodies utilizing these teleconferencing procedures in the bill to use sound discretion and to make reasonable efforts to adhere as closely as reasonably possible to existing law, as provided.

(4) This bill would declare the Legislature's intent, consistent with the Governor's Executive Order No. N-29-20, to improve and enhance public access to state and local agency meetings during the COVID-19 pandemic and future emergencies by allowing broader access through teleconferencing options.

(5) This bill would incorporate additional changes to Section 54953 of the Government Code proposed by AB 339 to be operative only if this bill and AB 339 are enacted and this bill is enacted last.

(6) The California Constitution requires local agencies, for the purpose of ensuring public access to the meetings of public bodies and the writings of public officials and agencies, to comply with a statutory enactment that amends or enacts laws relating to public records or open meetings and contains findings demonstrating that the enactment furthers the constitutional requirements relating to this purpose.

This bill would make legislative findings to that effect.

(7) Existing constitutional provisions require that a statute that limits the right of access to the meetings of public bodies or the writings of public officials and agencies be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest.

This bill would make legislative findings to that effect.

(8) This bill would declare that it is to take effect immediately as an urgency statute.

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

SECTION 1. Section 89305.6 is added to the Education Code, to read:  
89305.6. (a) Notwithstanding any other provision of this article, and subject to the notice and accessibility requirements in subdivisions (d) and (e), a legislative body may hold public meetings through teleconferencing

and make public meetings accessible telephonically, or otherwise electronically, to all members of the public seeking to observe and to address the legislative body.

(b) (1) For a legislative body holding a public meeting through teleconferencing pursuant to this section, all requirements in this article requiring the physical presence of members, the clerk or other personnel of the legislative body, or the public, as a condition of participation in or quorum for a public meeting, are hereby suspended.

(2) For a legislative body holding a public meeting through teleconferencing pursuant to this section, all of the following requirements in this article are suspended:

(A) Each teleconference location from which a member will be participating in a public meeting or proceeding be identified in the notice and agenda of the public meeting or proceeding.

(B) Each teleconference location be accessible to the public.

(C) Members of the public may address the legislative body at each teleconference conference location.

(D) Post agendas at all teleconference locations.

(E) At least one member of the legislative body be physically present at the location specified in the notice of the meeting.

(c) A legislative body that holds a meeting through teleconferencing and allows members of the public to observe and address the meeting telephonically or otherwise electronically, consistent with the notice and accessibility requirements in subdivisions (d) and (e), shall have satisfied any requirement that the legislative body allow members of the public to attend the meeting and offer public comment. A legislative body need not make available any physical location from which members of the public may observe the meeting and offer public comment.

(d) If a legislative body holds a meeting through teleconferencing pursuant to this section and allows members of the public to observe and address the meeting telephonically or otherwise electronically, the legislative body shall also do both of the following:

(1) Implement a procedure for receiving and swiftly resolving requests for reasonable modification or accommodation from individuals with disabilities, consistent with the federal Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12101 et seq.), and resolving any doubt whatsoever in favor of accessibility.

(2) Advertise that procedure each time notice is given of the means by which members of the public may observe the meeting and offer public comment, pursuant to paragraph (2) of subdivision (e).

(e) Except to the extent this section provides otherwise, each legislative body that holds a meeting through teleconferencing pursuant to this section shall do both of the following:

(1) Give advance notice of the time of, and post the agenda for, each public meeting according to the timeframes otherwise prescribed by this article, and using the means otherwise prescribed by this article, as applicable.

(2) In each instance in which notice of the time of the meeting is otherwise given or the agenda for the meeting is otherwise posted, also give notice of the means by which members of the public may observe the meeting and offer public comment. As to any instance in which there is a change in the means of public observation and comment, or any instance prior to the effective date of this section in which the time of the meeting has been noticed or the agenda for the meeting has been posted without also including notice of the means of public observation and comment, a legislative body may satisfy this requirement by advertising the means of public observation and comment using the most rapid means of communication available at the time. Advertising the means of public observation and comment using the most rapid means of communication available at the time shall include, but need not be limited to, posting such means on the legislative body's internet website.

(f) All legislative bodies utilizing the teleconferencing procedures in this section are urged to use sound discretion and to make reasonable efforts to adhere as closely as reasonably possible to the otherwise applicable provisions of this article, in order to maximize transparency and provide the public access to legislative body meetings.

(g) This section shall remain in effect only until January 31, 2022, and as of that date is repealed.

SEC. 2. Section 11133 is added to the Government Code, to read:

11133. (a) Notwithstanding any other provision of this article, and subject to the notice and accessibility requirements in subdivisions (d) and (e), a state body may hold public meetings through teleconferencing and make public meetings accessible telephonically, or otherwise electronically, to all members of the public seeking to observe and to address the state body.

(b) (1) For a state body holding a public meeting through teleconferencing pursuant to this section, all requirements in this article requiring the physical presence of members, the clerk or other personnel of the state body, or the public, as a condition of participation in or quorum for a public meeting, are hereby suspended.

(2) For a state body holding a public meeting through teleconferencing pursuant to this section, all of the following requirements in this article are suspended:

(A) Each teleconference location from which a member will be participating in a public meeting or proceeding be identified in the notice and agenda of the public meeting or proceeding.

(B) Each teleconference location be accessible to the public.

(C) Members of the public may address the state body at each teleconference conference location.

(D) Post agendas at all teleconference locations.

(E) At least one member of the state body be physically present at the location specified in the notice of the meeting.

(c) A state body that holds a meeting through teleconferencing and allows members of the public to observe and address the meeting telephonically

or otherwise electronically, consistent with the notice and accessibility requirements in subdivisions (d) and (e), shall have satisfied any requirement that the state body allow members of the public to attend the meeting and offer public comment. A state body need not make available any physical location from which members of the public may observe the meeting and offer public comment.

(d) If a state body holds a meeting through teleconferencing pursuant to this section and allows members of the public to observe and address the meeting telephonically or otherwise electronically, the state body shall also do both of the following:

(1) Implement a procedure for receiving and swiftly resolving requests for reasonable modification or accommodation from individuals with disabilities, consistent with the federal Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12101 et seq.), and resolving any doubt whatsoever in favor of accessibility.

(2) Advertise that procedure each time notice is given of the means by which members of the public may observe the meeting and offer public comment, pursuant to paragraph (2) of subdivision (e).

(e) Except to the extent this section provides otherwise, each state body that holds a meeting through teleconferencing pursuant to this section shall do both of the following:

(1) Give advance notice of the time of, and post the agenda for, each public meeting according to the timeframes otherwise prescribed by this article, and using the means otherwise prescribed by this article, as applicable.

(2) In each instance in which notice of the time of the meeting is otherwise given or the agenda for the meeting is otherwise posted, also give notice of the means by which members of the public may observe the meeting and offer public comment. As to any instance in which there is a change in the means of public observation and comment, or any instance prior to the effective date of this section in which the time of the meeting has been noticed or the agenda for the meeting has been posted without also including notice of the means of public observation and comment, a state body may satisfy this requirement by advertising the means of public observation and comment using the most rapid means of communication available at the time. Advertising the means of public observation and comment using the most rapid means of communication available at the time shall include, but need not be limited to, posting such means on the state body's internet website.

(f) All state bodies utilizing the teleconferencing procedures in this section are urged to use sound discretion and to make reasonable efforts to adhere as closely as reasonably possible to the otherwise applicable provisions of this article, in order to maximize transparency and provide the public access to state body meetings.

(g) This section shall remain in effect only until January 31, 2022, and as of that date is repealed.

SEC. 3. Section 54953 of the Government Code is amended to read:

54953. (a) All meetings of the legislative body of a local agency shall be open and public, and all persons shall be permitted to attend any meeting of the legislative body of a local agency, except as otherwise provided in this chapter.

(b) (1) Notwithstanding any other provision of law, the legislative body of a local agency may use teleconferencing for the benefit of the public and the legislative body of a local agency in connection with any meeting or proceeding authorized by law. The teleconferenced meeting or proceeding shall comply with all otherwise applicable requirements of this chapter and all otherwise applicable provisions of law relating to a specific type of meeting or proceeding.

(2) Teleconferencing, as authorized by this section, may be used for all purposes in connection with any meeting within the subject matter jurisdiction of the legislative body. All votes taken during a teleconferenced meeting shall be by rollcall.

(3) If the legislative body of a local agency elects to use teleconferencing, it shall post agendas at all teleconference locations and conduct teleconference meetings in a manner that protects the statutory and constitutional rights of the parties or the public appearing before the legislative body of a local agency. Each teleconference location shall be identified in the notice and agenda of the meeting or proceeding, and each teleconference location shall be accessible to the public. During the teleconference, at least a quorum of the members of the legislative body shall participate from locations within the boundaries of the territory over which the local agency exercises jurisdiction, except as provided in subdivisions (d) and (e). The agenda shall provide an opportunity for members of the public to address the legislative body directly pursuant to Section 54954.3 at each teleconference location.

(4) For the purposes of this section, “teleconference” means a meeting of a legislative body, the members of which are in different locations, connected by electronic means, through either audio or video, or both. Nothing in this section shall prohibit a local agency from providing the public with additional teleconference locations.

(c) (1) No legislative body shall take action by secret ballot, whether preliminary or final.

(2) The legislative body of a local agency shall publicly report any action taken and the vote or abstention on that action of each member present for the action.

(3) Prior to taking final action, the legislative body shall orally report a summary of a recommendation for a final action on the salaries, salary schedules, or compensation paid in the form of fringe benefits of a local agency executive, as defined in subdivision (d) of Section 3511.1, during the open meeting in which the final action is to be taken. This paragraph shall not affect the public’s right under the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1) to inspect or copy records created or received in the process of developing the recommendation.



(d) (1) Notwithstanding the provisions relating to a quorum in paragraph (3) of subdivision (b), if a health authority conducts a teleconference meeting, members who are outside the jurisdiction of the authority may be counted toward the establishment of a quorum when participating in the teleconference if at least 50 percent of the number of members that would establish a quorum are present within the boundaries of the territory over which the authority exercises jurisdiction, and the health authority provides a teleconference number, and associated access codes, if any, that allows any person to call in to participate in the meeting and the number and access codes are identified in the notice and agenda of the meeting.

(2) Nothing in this subdivision shall be construed as discouraging health authority members from regularly meeting at a common physical site within the jurisdiction of the authority or from using teleconference locations within or near the jurisdiction of the authority. A teleconference meeting for which a quorum is established pursuant to this subdivision shall be subject to all other requirements of this section.

(3) For purposes of this subdivision, a health authority means any entity created pursuant to Sections 14018.7, 14087.31, 14087.35, 14087.36, 14087.38, and 14087.9605 of the Welfare and Institutions Code, any joint powers authority created pursuant to Article 1 (commencing with Section 6500) of Chapter 5 of Division 7 for the purpose of contracting pursuant to Section 14087.3 of the Welfare and Institutions Code, and any advisory committee to a county-sponsored health plan licensed pursuant to Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code if the advisory committee has 12 or more members.

(e) (1) A local agency may use teleconferencing without complying with the requirements of paragraph (3) of subdivision (b) if the legislative body complies with the requirements of paragraph (2) of this subdivision in any of the following circumstances:

(A) The legislative body holds a meeting during a proclaimed state of emergency, and state or local officials have imposed or recommended measures to promote social distancing.

(B) The legislative body holds a meeting during a proclaimed state of emergency for the purpose of determining, by majority vote, whether as a result of the emergency, meeting in person would present imminent risks to the health or safety of attendees.

(C) The legislative body holds a meeting during a proclaimed state of emergency and has determined, by majority vote, pursuant to subparagraph (B), that, as a result of the emergency, meeting in person would present imminent risks to the health or safety of attendees.

(2) A legislative body that holds a meeting pursuant to this subdivision shall do all of the following:

(A) The legislative body shall give notice of the meeting and post agendas as otherwise required by this chapter.

(B) The legislative body shall allow members of the public to access the meeting and the agenda shall provide an opportunity for members of the public to address the legislative body directly pursuant to Section 54954.3.

In each instance in which notice of the time of the teleconferenced meeting is otherwise given or the agenda for the meeting is otherwise posted, the legislative body shall also give notice of the means by which members of the public may access the meeting and offer public comment. The agenda shall identify and include an opportunity for all persons to attend via a call-in option or an internet-based service option. This subparagraph shall not be construed to require the legislative body to provide a physical location from which the public may attend or comment.

(C) The legislative body shall conduct teleconference meetings in a manner that protects the statutory and constitutional rights of the parties and the public appearing before the legislative body of a local agency.

(D) In the event of a disruption which prevents the public agency from broadcasting the meeting to members of the public using the call-in option or internet-based service option, or in the event of a disruption within the local agency's control which prevents members of the public from offering public comments using the call-in option or internet-based service option, the body shall take no further action on items appearing on the meeting agenda until public access to the meeting via the call-in option or internet-based service option is restored. Actions taken on agenda items during a disruption which prevents the public agency from broadcasting the meeting may be challenged pursuant to Section 54960.1.

(E) The legislative body shall not require public comments to be submitted in advance of the meeting and must provide an opportunity for the public to address the legislative body and offer comment in real time. This subparagraph shall not be construed to require the legislative body to provide a physical location from which the public may attend or comment.

(F) Notwithstanding Section 54953.3, an individual desiring to provide public comment through the use of an internet website, or other online platform, not under the control of the local legislative body, that requires registration to log in to a teleconference may be required to register as required by the third-party internet website or online platform to participate.

(G) (i) A legislative body that provides a timed public comment period for each agenda item shall not close the public comment period for the agenda item, or the opportunity to register, pursuant to subparagraph (F), to provide public comment until that timed public comment period has elapsed.

(ii) A legislative body that does not provide a timed public comment period, but takes public comment separately on each agenda item, shall allow a reasonable amount of time per agenda item to allow public members the opportunity to provide public comment, including time for members of the public to register pursuant to subparagraph (F), or otherwise be recognized for the purpose of providing public comment.

(iii) A legislative body that provides a timed general public comment period that does not correspond to a specific agenda item shall not close the public comment period or the opportunity to register, pursuant to subparagraph (F), until the timed general public comment period has elapsed.

(3) If a state of emergency remains active, or state or local officials have imposed or recommended measures to promote social distancing, in order to continue to teleconference without compliance with paragraph (3) of subdivision (b), the legislative body shall, not later than 30 days after teleconferencing for the first time pursuant to subparagraph (A), (B), or (C) of paragraph (1), and every 30 days thereafter, make the following findings by majority vote:

(A) The legislative body has reconsidered the circumstances of the state of emergency.

(B) Any of the following circumstances exist:

(i) The state of emergency continues to directly impact the ability of the members to meet safely in person.

(ii) State or local officials continue to impose or recommend measures to promote social distancing.

(4) For the purposes of this subdivision, "state of emergency" means a state of emergency proclaimed pursuant to Section 8625 of the California Emergency Services Act (Article 1 (commencing with Section 8550) of Chapter 7 of Division 1 of Title 2).

(f) This section shall remain in effect only until January 1, 2024, and as of that date is repealed.

SEC. 3.1. Section 54953 of the Government Code is amended to read:

54953. (a) All meetings of the legislative body of a local agency shall be open and public, and all persons shall be permitted to attend any meeting of the legislative body of a local agency in person, except as otherwise provided in this chapter. Local agencies shall conduct meetings subject to this chapter consistent with applicable state and federal civil rights laws, including, but not limited to, any applicable language access and other nondiscrimination obligations.

(b) (1) Notwithstanding any other provision of law, the legislative body of a local agency may use teleconferencing for the benefit of the public and the legislative body of a local agency in connection with any meeting or proceeding authorized by law. The teleconferenced meeting or proceeding shall comply with all otherwise applicable requirements of this chapter and all otherwise applicable provisions of law relating to a specific type of meeting or proceeding.

(2) Teleconferencing, as authorized by this section, may be used for all purposes in connection with any meeting within the subject matter jurisdiction of the legislative body. All votes taken during a teleconferenced meeting shall be by rollcall.

(3) If the legislative body of a local agency elects to use teleconferencing, it shall post agendas at all teleconference locations and conduct teleconference meetings in a manner that protects the statutory and constitutional rights of the parties or the public appearing before the legislative body of a local agency. Each teleconference location shall be identified in the notice and agenda of the meeting or proceeding, and each teleconference location shall be accessible to the public. During the teleconference, at least a quorum of the members of the legislative body

shall participate from locations within the boundaries of the territory over which the local agency exercises jurisdiction, except as provided in subdivisions (d) and (e). The agenda shall provide an opportunity for members of the public to address the legislative body directly pursuant to Section 54954.3 at each teleconference location.

(4) For the purposes of this section, “teleconference” means a meeting of a legislative body, the members of which are in different locations, connected by electronic means, through either audio or video, or both. Nothing in this section shall prohibit a local agency from providing the public with additional teleconference locations.

(c) (1) No legislative body shall take action by secret ballot, whether preliminary or final.

(2) The legislative body of a local agency shall publicly report any action taken and the vote or abstention on that action of each member present for the action.

(3) Prior to taking final action, the legislative body shall orally report a summary of a recommendation for a final action on the salaries, salary schedules, or compensation paid in the form of fringe benefits of a local agency executive, as defined in subdivision (d) of Section 3511.1, during the open meeting in which the final action is to be taken. This paragraph shall not affect the public’s right under the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1) to inspect or copy records created or received in the process of developing the recommendation.

(d) (1) Notwithstanding the provisions relating to a quorum in paragraph (3) of subdivision (b), if a health authority conducts a teleconference meeting, members who are outside the jurisdiction of the authority may be counted toward the establishment of a quorum when participating in the teleconference if at least 50 percent of the number of members that would establish a quorum are present within the boundaries of the territory over which the authority exercises jurisdiction, and the health authority provides a teleconference number, and associated access codes, if any, that allows any person to call in to participate in the meeting and the number and access codes are identified in the notice and agenda of the meeting.

(2) Nothing in this subdivision shall be construed as discouraging health authority members from regularly meeting at a common physical site within the jurisdiction of the authority or from using teleconference locations within or near the jurisdiction of the authority. A teleconference meeting for which a quorum is established pursuant to this subdivision shall be subject to all other requirements of this section.

(3) For purposes of this subdivision, a health authority means any entity created pursuant to Sections 14018.7, 14087.31, 14087.35, 14087.36, 14087.38, and 14087.9605 of the Welfare and Institutions Code, any joint powers authority created pursuant to Article 1 (commencing with Section 6500) of Chapter 5 of Division 7 for the purpose of contracting pursuant to Section 14087.3 of the Welfare and Institutions Code, and any advisory committee to a county-sponsored health plan licensed pursuant to Chapter

2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code if the advisory committee has 12 or more members.

(e) (1) A local agency may use teleconferencing without complying with the requirements of paragraph (3) of subdivision (b) if the legislative body complies with the requirements of paragraph (2) of this subdivision in any of the following circumstances:

(A) The legislative body holds a meeting during a proclaimed state of emergency, and state or local officials have imposed or recommended measures to promote social distancing.

(B) The legislative body holds a meeting during a proclaimed state of emergency for the purpose of determining, by majority vote, whether as a result of the emergency, meeting in person would present imminent risks to the health or safety of attendees.

(C) The legislative body holds a meeting during a proclaimed state of emergency and has determined, by majority vote, pursuant to subparagraph (B), that, as a result of the emergency, meeting in person would present imminent risks to the health or safety of attendees.

(2) A legislative body that holds a meeting pursuant to this subdivision shall do all of the following:

(A) The legislative body shall give notice of the meeting and post agendas as otherwise required by this chapter.

(B) The legislative body shall allow members of the public to access the meeting and the agenda shall provide an opportunity for members of the public to address the legislative body directly pursuant to Section 54954.3. In each instance in which notice of the time of the teleconferenced meeting is otherwise given or the agenda for the meeting is otherwise posted, the legislative body shall also give notice of the means by which members of the public may access the meeting and offer public comment. The agenda shall identify and include an opportunity for all persons to attend via a call-in option or an internet-based service option. This subparagraph shall not be construed to require the legislative body to provide a physical location from which the public may attend or comment.

(C) The legislative body shall conduct teleconference meetings in a manner that protects the statutory and constitutional rights of the parties and the public appearing before the legislative body of a local agency.

(D) In the event of a disruption which prevents the public agency from broadcasting the meeting to members of the public using the call-in option or internet-based service option, or in the event of a disruption within the local agency's control which prevents members of the public from offering public comments using the call-in option or internet-based service option, the body shall take no further action on items appearing on the meeting agenda until public access to the meeting via the call-in option or internet-based service option is restored. Actions taken on agenda items during a disruption which prevents the public agency from broadcasting the meeting may be challenged pursuant to Section 54960.1.

(E) The legislative body shall not require public comments to be submitted in advance of the meeting and must provide an opportunity for

the public to address the legislative body and offer comment in real time. This subparagraph shall not be construed to require the legislative body to provide a physical location from which the public may attend or comment.

(F) Notwithstanding Section 54953.3, an individual desiring to provide public comment through the use of an internet website, or other online platform, not under the control of the local legislative body, that requires registration to log in to a teleconference may be required to register as required by the third-party internet website or online platform to participate.

(G) (i) A legislative body that provides a timed public comment period for each agenda item shall not close the public comment period for the agenda item, or the opportunity to register, pursuant to subparagraph (F), to provide public comment until that timed public comment period has elapsed.

(ii) A legislative body that does not provide a timed public comment period, but takes public comment separately on each agenda item, shall allow a reasonable amount of time per agenda item to allow public members the opportunity to provide public comment, including time for members of the public to register pursuant to subparagraph (F), or otherwise be recognized for the purpose of providing public comment.

(iii) A legislative body that provides a timed general public comment period that does not correspond to a specific agenda item shall not close the public comment period or the opportunity to register, pursuant to subparagraph (F), until the timed general public comment period has elapsed.

(3) If a state of emergency remains active, or state or local officials have imposed or recommended measures to promote social distancing, in order to continue to teleconference without compliance with paragraph (3) of subdivision (b), the legislative body shall, not later than 30 days after teleconferencing for the first time pursuant to subparagraph (A), (B), or (C) of paragraph (1), and every 30 days thereafter, make the following findings by majority vote:

(A) The legislative body has reconsidered the circumstances of the state of emergency.

(B) Any of the following circumstances exist:

(i) The state of emergency continues to directly impact the ability of the members to meet safely in person.

(ii) State or local officials continue to impose or recommend measures to promote social distancing.

(4) For the purposes of this subdivision, “state of emergency” means a state of emergency proclaimed pursuant to Section 8625 of the California Emergency Services Act (Article 1 (commencing with Section 8550) of Chapter 7 of Division 1 of Title 2).

(f) This section shall remain in effect only until January 1, 2024, and as of that date is repealed.

SEC. 4. Section 54953 is added to the Government Code, to read:

54953. (a) All meetings of the legislative body of a local agency shall be open and public, and all persons shall be permitted to attend any meeting

of the legislative body of a local agency, except as otherwise provided in this chapter.

(b) (1) Notwithstanding any other provision of law, the legislative body of a local agency may use teleconferencing for the benefit of the public and the legislative body of a local agency in connection with any meeting or proceeding authorized by law. The teleconferenced meeting or proceeding shall comply with all requirements of this chapter and all otherwise applicable provisions of law relating to a specific type of meeting or proceeding.

(2) Teleconferencing, as authorized by this section, may be used for all purposes in connection with any meeting within the subject matter jurisdiction of the legislative body. All votes taken during a teleconferenced meeting shall be by rollcall.

(3) If the legislative body of a local agency elects to use teleconferencing, it shall post agendas at all teleconference locations and conduct teleconference meetings in a manner that protects the statutory and constitutional rights of the parties or the public appearing before the legislative body of a local agency. Each teleconference location shall be identified in the notice and agenda of the meeting or proceeding, and each teleconference location shall be accessible to the public. During the teleconference, at least a quorum of the members of the legislative body shall participate from locations within the boundaries of the territory over which the local agency exercises jurisdiction, except as provided in subdivision (d). The agenda shall provide an opportunity for members of the public to address the legislative body directly pursuant to Section 54954.3 at each teleconference location.

(4) For the purposes of this section, "teleconference" means a meeting of a legislative body, the members of which are in different locations, connected by electronic means, through either audio or video, or both. Nothing in this section shall prohibit a local agency from providing the public with additional teleconference locations

(c) (1) No legislative body shall take action by secret ballot, whether preliminary or final.

(2) The legislative body of a local agency shall publicly report any action taken and the vote or abstention on that action of each member present for the action.

(3) Prior to taking final action, the legislative body shall orally report a summary of a recommendation for a final action on the salaries, salary schedules, or compensation paid in the form of fringe benefits of a local agency executive, as defined in subdivision (d) of Section 3511.1, during the open meeting in which the final action is to be taken. This paragraph shall not affect the public's right under the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1) to inspect or copy records created or received in the process of developing the recommendation.

(d) (1) Notwithstanding the provisions relating to a quorum in paragraph (3) of subdivision (b), if a health authority conducts a teleconference meeting,

members who are outside the jurisdiction of the authority may be counted toward the establishment of a quorum when participating in the teleconference if at least 50 percent of the number of members that would establish a quorum are present within the boundaries of the territory over which the authority exercises jurisdiction, and the health authority provides a teleconference number, and associated access codes, if any, that allows any person to call in to participate in the meeting and the number and access codes are identified in the notice and agenda of the meeting.

(2) Nothing in this subdivision shall be construed as discouraging health authority members from regularly meeting at a common physical site within the jurisdiction of the authority or from using teleconference locations within or near the jurisdiction of the authority. A teleconference meeting for which a quorum is established pursuant to this subdivision shall be subject to all other requirements of this section.

(3) For purposes of this subdivision, a health authority means any entity created pursuant to Sections 14018.7, 14087.31, 14087.35, 14087.36, 14087.38, and 14087.9605 of the Welfare and Institutions Code, any joint powers authority created pursuant to Article 1 (commencing with Section 6500) of Chapter 5 of Division 7 for the purpose of contracting pursuant to Section 14087.3 of the Welfare and Institutions Code, and any advisory committee to a county-sponsored health plan licensed pursuant to Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code if the advisory committee has 12 or more members.

(e) This section shall become operative January 1, 2024.

SEC. 4.1. Section 54953 is added to the Government Code, to read:

54953. (a) All meetings of the legislative body of a local agency shall be open and public, and all persons shall be permitted to attend any meeting of the legislative body of a local agency, in person except as otherwise provided in this chapter. Local agencies shall conduct meetings subject to this chapter consistent with applicable state and federal civil rights laws, including, but not limited to, any applicable language access and other nondiscrimination obligations.

(b) (1) Notwithstanding any other provision of law, the legislative body of a local agency may use teleconferencing for the benefit of the public and the legislative body of a local agency in connection with any meeting or proceeding authorized by law. The teleconferenced meeting or proceeding shall comply with all requirements of this chapter and all otherwise applicable provisions of law relating to a specific type of meeting or proceeding.

(2) Teleconferencing, as authorized by this section, may be used for all purposes in connection with any meeting within the subject matter jurisdiction of the legislative body. All votes taken during a teleconferenced meeting shall be by rollcall.

(3) If the legislative body of a local agency elects to use teleconferencing, it shall post agendas at all teleconference locations and conduct teleconference meetings in a manner that protects the statutory and constitutional rights of the parties or the public appearing before the



legislative body of a local agency. Each teleconference location shall be identified in the notice and agenda of the meeting or proceeding, and each teleconference location shall be accessible to the public. During the teleconference, at least a quorum of the members of the legislative body shall participate from locations within the boundaries of the territory over which the local agency exercises jurisdiction, except as provided in subdivision (d). The agenda shall provide an opportunity for members of the public to address the legislative body directly pursuant to Section 54954.3 at each teleconference location.

(4) For the purposes of this section, "teleconference" means a meeting of a legislative body, the members of which are in different locations, connected by electronic means, through either audio or video, or both. Nothing in this section shall prohibit a local agency from providing the public with additional teleconference locations.

(c) (1) No legislative body shall take action by secret ballot, whether preliminary or final.

(2) The legislative body of a local agency shall publicly report any action taken and the vote or abstention on that action of each member present for the action.

(3) Prior to taking final action, the legislative body shall orally report a summary of a recommendation for a final action on the salaries, salary schedules, or compensation paid in the form of fringe benefits of a local agency executive, as defined in subdivision (d) of Section 3511.1, during the open meeting in which the final action is to be taken. This paragraph shall not affect the public's right under the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1) to inspect or copy records created or received in the process of developing the recommendation.

(d) (1) Notwithstanding the provisions relating to a quorum in paragraph (3) of subdivision (b), if a health authority conducts a teleconference meeting, members who are outside the jurisdiction of the authority may be counted toward the establishment of a quorum when participating in the teleconference if at least 50 percent of the number of members that would establish a quorum are present within the boundaries of the territory over which the authority exercises jurisdiction, and the health authority provides a teleconference number, and associated access codes, if any, that allows any person to call in to participate in the meeting and the number and access codes are identified in the notice and agenda of the meeting.

(2) Nothing in this subdivision shall be construed as discouraging health authority members from regularly meeting at a common physical site within the jurisdiction of the authority or from using teleconference locations within or near the jurisdiction of the authority. A teleconference meeting for which a quorum is established pursuant to this subdivision shall be subject to all other requirements of this section.

(3) For purposes of this subdivision, a health authority means any entity created pursuant to Sections 14018.7, 14087.31, 14087.35, 14087.36, 14087.38, and 14087.9605 of the Welfare and Institutions Code, any joint

powers authority created pursuant to Article 1 (commencing with Section 6500) of Chapter 5 of Division 7 for the purpose of contracting pursuant to Section 14087.3 of the Welfare and Institutions Code, and any advisory committee to a county-sponsored health plan licensed pursuant to Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code if the advisory committee has 12 or more members.

(e) This section shall become operative January 1, 2024.

SEC. 5. Sections 3.1 and 4.1 of this bill incorporate amendments to Section 54953 of the Government Code proposed by both this bill and Assembly Bill 339. Those sections of this bill shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2022, but this bill becomes operative first, (2) each bill amends Section 54953 of the Government Code, and (3) this bill is enacted after Assembly Bill 339, in which case Section 54953 of the Government Code, as amended by Sections 3 and 4 of this bill, shall remain operative only until the operative date of Assembly Bill 339, at which time Sections 3.1 and 4.1 of this bill shall become operative.

SEC. 6. It is the intent of the Legislature in enacting this act to improve and enhance public access to state and local agency meetings during the COVID-19 pandemic and future applicable emergencies, by allowing broader access through teleconferencing options consistent with the Governor's Executive Order No. N-29-20 dated March 17, 2020, permitting expanded use of teleconferencing during the COVID-19 pandemic.

SEC. 7. The Legislature finds and declares that Sections 3 and 4 of this act, which amend, repeal, and add Section 54953 of the Government Code, further, within the meaning of paragraph (7) of subdivision (b) of Section 3 of Article I of the California Constitution, the purposes of that constitutional section as it relates to the right of public access to the meetings of local public bodies or the writings of local public officials and local agencies. Pursuant to paragraph (7) of subdivision (b) of Section 3 of Article I of the California Constitution, the Legislature makes the following findings:

This act is necessary to ensure minimum standards for public participation and notice requirements allowing for greater public participation in teleconference meetings during applicable emergencies.

SEC. 8. (a) The Legislature finds and declares that during the COVID-19 public health emergency, certain requirements of the Bagley-Keene Open Meeting Act (Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government Code) were suspended by Executive Order N-29-20. Audio and video teleconference were widely used to conduct public meetings in lieu of physical location meetings, and public meetings conducted by teleconference during the COVID-19 public health emergency have been productive, have increased public participation by all members of the public regardless of their location in the state and ability to travel to physical meeting locations, have protected the health and safety of civil servants and the public, and have reduced travel costs incurred by members of state bodies and reduced work hours spent traveling to and from meetings.

(b) The Legislature finds and declares that Section 1 of this act, which adds and repeals Section 89305.6 of the Education Code, Section 2 of this act, which adds and repeals Section 11133 of the Government Code, and Sections 3 and 4 of this act, which amend, repeal, and add Section 54953 of the Government Code, all increase and potentially limit the public's right of access to the meetings of public bodies or the writings of public officials and agencies within the meaning of Section 3 of Article I of the California Constitution. Pursuant to that constitutional provision, the Legislature makes the following findings to demonstrate the interest protected by this limitation and the need for protecting that interest:

(1) By removing the requirement that public meetings be conducted at a primary physical location with a quorum of members present, this act protects the health and safety of civil servants and the public and does not preference the experience of members of the public who might be able to attend a meeting in a physical location over members of the public who cannot travel or attend that meeting in a physical location.

(2) By removing the requirement for agendas to be placed at the location of each public official participating in a public meeting remotely, including from the member's private home or hotel room, this act protects the personal, private information of public officials and their families while preserving the public's right to access information concerning the conduct of the people's business.

SEC. 9. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the California Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to ensure that state and local agencies can continue holding public meetings while providing essential services like water, power, and fire protection to their constituents during public health, wildfire, or other states of emergencies, it is necessary that this act take effect immediately.

**TRACY CITY COUNCIL**

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

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**MAKING FINDINGS AND RE-AUTHORIZING REMOTE TELECONFERENCE MEETINGS OF THE CITY COUNCIL AND ALL LEGISLATIVE BODIES OF THE CITY OF TRACY FOR THE PERIOD OF SEPTEMBER 7, 2022, TO OCTOBER 6, 2022, PURSUANT TO THE BROWN ACT**

**WHEREAS**, The City of Tracy is committed to preserving and nurturing public access and participation in meetings of the City Council; and

**WHEREAS**, All meetings of the City of Tracy's legislative bodies are open and public, as required by the Ralph M. Brown Act (Cal. Gov. Code section 54950 – 54963), so that any member of the public may attend, participate, and watch the City's legislative bodies conduct their business; and

**WHEREAS**, AB 361 allows legislative bodies to use abbreviated teleconferencing procedures during a declared state of emergency upon the making of required findings, so as to allow a body to conduct remote teleconference meetings without compliance with paragraph (3) of subdivision (b) of section 54953 of Brown Act; and

**WHEREAS**, On March 17, 2020, the City Council of the City of Tracy ratified the declaration of an emergency by the City Manager due to COVID-19 in accordance with Chapter 3.26 of the Tracy Municipal Code; and

**WHEREAS**, While the City has allowed in-person attendance at City Council meetings, the City is experiencing an increase in rates of COVID-19 cases within the County of San Joaquin and amongst the City staff pool; and

**WHEREAS**, The San Joaquin County Public Health Services provided an update of the increasing rates at the June 7, 2022, City Council meeting; and

**WHEREAS**, the Human Resources Department of the City of Tracy has documented an increase in COVID-19 positive test rates amongst City staff in recent weeks; and

**WHEREAS**, To minimize the exposure to COVID-19 from this recent surge, the City reinstated social distancing protocols at in-person attendance at City Hall and encouraged the use of teleconferencing for City Council meetings; and now therefore be it

**RESOLVED:**

Section 1. Recitals. The Recitals set forth above are true and correct and are incorporated into this Resolution as findings of this City Council by this reference.

Section 2. Findings. The City Council hereby finds the following:

- A. That due to COVID-19, including the recent surge being experienced in the City of Tracy, holding City Council and other legislative body meetings exclusively in person will present imminent risk to the health and safety of attendees.
- B. That COVID-19 has caused, and will continue to cause, conditions of peril to the safety of persons within the City that are likely to be beyond the control of services, personnel, equipment, and facilities of the City, and desires to affirm a local emergency exists and re-ratify the proclamation of a state of emergency by the Governor of the State of California.

Section 3. Remote Teleconference Meetings. The City Council, including Council subcommittees, and all Boards and Commissions of the City of Tracy are hereby authorized and directed to take all actions necessary to carry out the intent and purpose of this Resolution including, continuing to conduct open and public meetings in accordance with Government Code section 54953(e) and other applicable provisions of the Brown Act for the period of September 7, 2022 through October 6, 2022.

\*\*\*\*\*

The foregoing Resolution 2022-\_\_\_\_\_ was adopted by the Tracy City Council on September 6, 2022 by the following vote:

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

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

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

AGENDA ITEM 1.C

REQUEST

**ADOPT A RESOLUTION AUTHORIZING THE ACCEPTANCE OF \$255,000 FROM THE UNITED STATES DEPARTMENT OF JUSTICE BYRNE DISCRETIONARY COMMUNITY PROJECTS GRANT FOR FUNDING THE POLICE DEPARTMENT'S LICENSE PLATE READER PROGRAM, APPROVING THE APPROPRIATION TO THE POLICE DEPARTMENT'S OPERATIONAL BUDGET FOR FISCAL YEAR 22/23, AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE AWARD ACCEPTANCE**

EXECUTIVE SUMMARY

The City of Tracy has been awarded \$255,000 from the federal Byrne Discretionary Community Projects Grant for implementing a more robust License Plate Reader (LPR) program. This report recommends that the City Council accept the grant and authorize an appropriation of \$255,000 to the Tracy Police Department budget for fiscal year 2022/2023.

DISCUSSION

The Tracy Police Department learned of an opportunity for federal funding through U.S. Representative Josh Harder's Office and through the Federal Appropriations Committee in March 2021, and requested assistance for implementing a more robust License Plate Reader (LPR) program to aid in identifying leads, solving criminal cases, and reducing crime.

Tracy Police Department's proposal included the request to procure a contract with a vendor who provides LPR technology and support. Through this contract, the Department will enter into a lease/licensing option for cameras, necessary accessories, installation, and implementation services. This allows the agency to easily upgrade equipment when technology advances and equipment becomes outdated. This also keeps costs down by not having to purchase total equipment replacements every few years. Tracy Police Department would also gain access to a network of over 500,000,000 license plate reads per month through Northern California Regional Intelligence Center.

Through the limited program currently in place, the Tracy Police Department has already seen the tremendous value gained through license plate reader technology. In 2020 and 2021, the Police Department was able to identify and apprehend several suspects involved in crime related to mail theft, robbery, attempted murder, and auto theft. According to Tracy Police Department Delta Ratt Auto Task Force, approximately 90% of task force arrests in the City of Tracy for stolen vehicles come from LPR data scans.

Tracy Police Department was informed they were successful in receiving the award on July 28, 2022. The Byrne Discretionary Community Project Grant will greatly assist the Tracy Police Department's transition from program concept to actual implementation of a

more robust License Plate Reader (LPR) program to aid in identifying leads, solving criminal cases, and reducing crime by serving as a deterrent. Funding would have a significant contribution on the Department's goals to build partnerships, address crime, improve our capacity to effectively plan, manage, and allocate response and investigative resources, and provide more effective and responsive law enforcement response and crime solving strategies. Lastly, it would help us achieve the City of Tracy's Strategic priorities in the areas of public safety, governance, and quality of life.

### STRATEGIC PLAN

This agenda item relates to Council's strategic priority for Public Safety Goal # 4 – Strengthening community safety through crime reduction prevention activities.

### FISCAL IMPACT

The grant award of \$255,000 will fund the entire Tracy Police Department's License Plate Reader Program. There will be no negative impact to the City as there is no City match required. Upon acceptance, the \$255,000 will be appropriated to the Police Department's Operational Budget for fiscal year 22/23.

### RECOMMENDATION

Staff recommends that City Council adopt a resolution authorizing the acceptance of \$255,000 from the United States Department of Justice Byrne Discretionary Community Projects Grant for funding the Police Department's License Plate Reader Program, approving the appropriation to the Police Department's operational budget for fiscal year 22/23, and authorizing the City Manager to execute the award acceptance.

Prepared by: Beth Lyons-McCarthy, Support Operations Manager

Reviewed by: Sekou Millington, Chief of Police  
Sara Cowell, Interim Director of Finance  
Midori Lichtwardt, Assistant City Manager

Approved by: Michael Rogers, City Manager

CITY ATTORNEY'S OFFICE

TRACY CITY COUNCIL

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

**APPROVING THE ACCEPTANCE OF \$255,000 FROM THE UNITED STATES DEPARTMENT OF JUSTICE BYRNE DISCRETIONARY COMMUNITY PROJECTS GRANT FOR FUNDING THE POLICE DEPARTMENT'S LICENSE PLATE READER PROGRAM, APPROVING THE APPROPRIATION TO THE POLICE DEPARTMENT'S OPERATIONAL BUDGET FOR FISCAL YEAR 22/23, AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE AWARD ACCEPTANCE**

**WHEREAS**, the City of Tracy has been awarded \$255,000 from the federal Byrne Discretionary Community Projects Grant for implementing a more robust License Plate Reader program; and

**WHEREAS**, the funding will be a significant contribution to the Tracy Police Department's goals to build partnerships, address crime, improve capacity to effectively plan, manage, and allocate response and investigative resources, and provide more effective and responsive law enforcement response and crime solving strategies; and

**WHEREAS**, the grant award of \$255,000 will fund the entire Tracy Police Department's License Plate Reader Program; and

**WHEREAS**, the City of Tracy is committed to working with the community toward keeping the City safe through the use of technology, and the placement of additional License Plate Readers at all main entry/exit points of the City, major commercial areas, and "hot" intersections that have high traffic volume will assist with reducing crime and expedite the apprehension of criminals; now, therefore, be it

**RESOLVED:** That the City Council hereby approves the acceptance of \$255,000 from the United States Department of Justice Byrne Discretionary Community Projects for funding the Police Department's License Plate Reader program, and approves the appropriation to the Police Department's budget for fiscal year 22/23; and be it

**FURTHER RESOLVED:** That the City Council hereby authorizes the City Manager to execute the award acceptance.

\* \* \* \* \*



The foregoing Resolution 2022-\_\_\_\_\_ was adopted by the Tracy City Council on September 6, 2022 , by the following vote:

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

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

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

AGENDA ITEM 1.D

REQUEST

**STAFF RECOMMENDS THAT THE CITY COUNCIL ADOPT A RESOLUTION APPROVING AMENDMENT NO. 1 TO THE MASTER PROFESSIONAL SERVICES AGREEMENT WITH HDR ENGINEERING, INC. FOR ON-CALL PUBLIC OUTREACH SERVICES WITH A NOT-TO-EXCEED AMOUNT OF \$200,000 PER YEAR AND EXTENDING THE AGREEMENT FROM ONE YEAR TO THREE YEARS**

EXECUTIVE SUMMARY

The proposed amendment will amend the Master Professional Services Agreement (Agreement) to increase the amount to \$200,000 per year and extend the Agreement for two years to allow for additional work to increase communications with the public.

DISCUSSION

On December 9, 2020, staff issued a Request for Proposals (RFP) for on-call public outreach services and received five responses. A panel of reviewers determined that HDR Engineering, Inc. (HDR) was the best candidate to serve the Engineering Division's needs. An Agreement (Attachment A) with HDR for on-call public outreach services was approved by the City Manager on September 21, 2021. HDR has been assisting staff with the preparation of materials related to public outreach for the City's Master Plan updates, construction projects, and assisted with some preliminary updates to the Master Plan page on the City's website.

The proposed amendment will allow staff to continue using HDR's assistance for public outreach related to Engineering projects. The Engineering Division would like to provide outreach to the public on Capital Improvement Projects (CIPs), with additional attention to high-profile CIPs, such as Corral Hollow Corridor and Bessie Avenue. In addition, staff would like to provide more information to the public regarding Engineering Infrastructure Planning, and Land Development Administration. The City's Public Information Officer has been consulted and included in discussions with HDR on how to make important information easily understandable and readily available to the public.

Staff is working with HDR to create two micro-sites, linked to the City's website, dedicated to Corral Hollow Corridor and Bessie Avenue. These sites will allow the public to access information on the planned improvements, budget, timeline, current project status, before and after photos, and a Frequently Asked Questions (FAQs) page. Staff also plans to utilize HDR for public outreach services such as social media graphics, town hall meetings, and community focus groups to increase awareness and gather input on these important projects.

The Engineering Division would also like to create an interactive map of the City's CIP projects. This will allow the public to view all active CIP projects and get more information on each project. Staff also anticipates a timeline, a "coming soon" section, a search option, and a FAQs page. In addition, staff plans to repackage the current webpage to make it more user-friendly, including a traffic modeling section, an

interactive map, and a page featuring backbone infrastructure projects.

The last item staff plans to work on with HDR is a tool for land developers. Staff will develop a feature where the land developers can find the status of their Land Development Projects and agreements. Allowing land developers to access this information on the City website will reduce the time staff spends looking up the information and facilitate greater transparency. HDR will also assist staff to create a FAQs section and comment/survey section for residents and land developers.

HDR has the knowledge and expertise in Public Outreach to assist the Engineering Division in executing the above items in the most effective way for the public. Staff have been satisfied with the work provided by HDR to date and would like to amend the agreement to allow for more public outreach assistance. The proposed amendment will increase the funds available to \$200,000 per year and extend the Agreement for two years. Without the amendment, staff will not have enough funding available on the current agreement to complete the items discussed above and will not be able to move forward with making this important information available to the public while creating more transparency in the Engineering Division.

The public has expressed interest in accessing the information described above. The execution of the proposed amendment will result in additional public outreach.

The Engineering Division has consulted with the Public Information Officer to create micro-sites for Corral Hollow Corridor and Bessie Avenue. The Public Information Officer will continue to be included in the team working with HDR.

#### FISCAL IMPACT

The cost for this amendment will be a not-to-exceed amount of \$200,000 per year. The funding for these services will be through a combination of engineering fees, budgeted CIP projects, and program management fees.

#### CEQA DETERMINATION

Not applicable.

#### STRATEGIC PLAN

This agenda item supports the City of Tracy's 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

Staff recommends that the City Council adopt a resolution approving Amendment No. 1 to the Master Professional Services Agreement with HDR Engineering, Inc. for on-call public outreach services with a not-to-exceed amount of \$200,000 per year and extending the Agreement from one year to three years.

Prepared by: Veronica Child, Management Analyst I

Reviewed by: Robert Armijo, PE, City Engineer / Assistant Development Services Director  
Kris Balaji, PMP, PE, Development Services Director  
Sara Cowell, Interim Finance Director  
Midori Lichtwardt, Assistant City Manager

Approved by: Michael Rogers, City Manager

ATTACHMENTS

Attachment A – MPSA with HDR Engineering, Inc.

Attachment B – Amendment No. 1 to the MPSA with HDR Engineering, Inc.

**CITY OF TRACY  
MASTER PROFESSIONAL SERVICES AGREEMENT  
WITH HDR ENGINEERING, INC.  
On Call Public Outreach for Engineering**

This Master Professional Services Agreement (**Agreement**) is entered into between the City of Tracy, a municipal corporation (**City**), and HDR Engineering, Inc., a Nebraska Corporation (**Consultant**). City and Consultant are referred to individually as “Party” and collectively as “Parties.”

**Recitals**

**A.** City desires to retain Consultant to on call public outreach services; and

**B.** On December 9, 2020, the City issued a Request for Proposals (RFP) for the On Call Public Outreach Services for Engineering (**Project**). On January 5, 2021, Consultant submitted its proposal for the Project to the City. City evaluated all proposals and has determined that Consultant possesses the skills, experience and certification required to provide the services.

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

**D.** This Agreement is being executed pursuant to Urgency Ordinance No. 1285.

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

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

**1.1 Non-Exclusive Agreement.** The City reserves the right to contract with other consultants providing the same or similar scope of services described above during the term of this Agreement. The City further reserves the right to, assign work, at its sole discretion, to consultants other than Consultant based on City's budget, experience, and skills of consultants based on the City's specific needs.

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

**2.1 Term.** The term of this Agreement shall begin on the date of execution of this agreement and end after one year, unless terminated for any reason, including a lack of appropriated funds to compensate services provided under this Agreement, in accordance with Section 6. Any such

termination of this Agreement due to failure of the City of Tracy Council to appropriate funds for payment for services under this Agreement shall not be a breach of the Agreement.

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

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

**3.1 Not to Exceed Amount.** Consultant’s total compensation under this Agreement shall not exceed \$100,000. Consultant’s billing rates under this agreement may be annually increased in January of each year by the lesser of 3% or the annual increase in the Cost of Living Index – All items, for the Sacramento Metropolitan Region. No work shall be performed by Consultant in excess of the total compensation amount provided in this section without the City’s prior written approval.

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

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

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

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

**4. Indemnification.**

**4.1 Indemnity for Professional Liability:** When the law establishes a professional standard of care for Consultant’s Services, to the fullest extent permitted by law, Consultant shall indemnify, protect, defend, and hold harmless City and any and all of its officials, employees and agents from and against any and all losses, liabilities, damages, costs, and expenses, including legal counsel’s fees and costs arising out of the negligence of Consultant (and its Subconsultants). Consultant shall not be obligated to defend or indemnify City for the City’s own negligence or for the negligence of others.

**4.2 Indemnity for Other Than Professional Liability:** Other than in the performance of professional services and to the full extent permitted by law, Consultant shall indemnify, defend, and hold harmless City, and any and all of its employees, officials and agents from and against any liability (including liability for claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses, expenses or costs of any kind, whether actual, alleged or threatened, including legal counsel’s fees and costs, court costs, interest, defense costs, and expert witness fees), where the same arise out of, are a consequence of, or are in any way attributable to, in whole or in part, the performance of this Agreement by Consultant or by any individual or entity for which Consultant is legally liable, including, but not limited to, officers, agents, employees, or subcontractors of Consultant.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**6. Termination.** The City may terminate this Agreement by giving ten days’ written notice to Consultant, provided that City will not terminate this Agreement for cause without providing Consultant written notice of the breach and a reasonable opportunity to cure. Upon termination, Consultant shall give the City all original documents, including preliminary drafts and supporting documents, prepared by Consultant for this Agreement. The City shall pay Consultant for all services satisfactorily performed in accordance with this Agreement, up to the date notice is given.

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

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

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

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

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

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

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

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

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

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

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

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

To City:

City of Tracy  
333 Civic Center Drive  
Tracy, CA 95376  
ATTN: Robert Armijo  
City Engineer

With a copy to:

To Consultant:

Neil Salvador  
100 Pringle Ave, Suite 400  
Walnut Creek, CA 94596  
925-974-2544  
neil.salvador@hdrinc.com



City Attorney  
333 Civic Center Plaza  
Tracy, CA 95376

**13. Miscellaneous.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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


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

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

**[SIGNATURES ON FOLLOWING PAGE]**

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

**City of Tracy**

  
By: ~~Jenny D. Haruyama~~ **Bob Adams**  
Title: ~~City Manager~~ **Interim City Manager**  
Date: 9-21-21

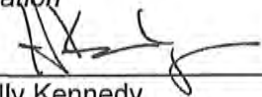
Attest:   
Adrienne Richardson, City Clerk

Approved as to form:

  
Leticia M. Ramirez, City Attorney

**Consultant**

HDR Engineering, Inc., a Nebraska Corporation

  
By: Holly Kennedy  
Title: Senior Vice President  
Date: 9-3-2021

Federal Employer Tax ID No. \_\_\_\_\_

\_\_\_\_\_  
By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

Exhibits:

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

**EXHIBIT A - Scope of Work**

Consultant will perform various on call public outreach services for multiple types of projects to support the objectives of the Engineering division. Tasks/strategies include but are not limited to the following:

- Plans for public outreach
- Creative support
- Logistical support
- Researching Demographics Information
- Preparing written content for various media, including, but not limited to brochures, posters, press releases, speeches, newsletter articles, ads, video scripts, feature stories, and social media/online content.
- Community Meetings and Special Events
- Graphic Design, Marketing and Printing Support
- Media Relations
- Social Media and New Media
- Assist with creating updates on the City website to inform the public
- Web design

**Process.** A task order will be requested by the City for each on call project. Consultant will submit a project specific scope and cost estimate per each task order, once approved, the City Engineer or his designee, will provide a notice to proceed.

**Project Personnel.** Consultant shall assign the following personnel to perform the tasks set forth in this agreement. Additional staff may be assigned subject to approval by the City.

<b>Position</b>	<b>Name</b>
Advisor & QA/QC	Pallari, Kim
Advisor & QA/QC	Diamant, Melissa
Project Manager	Galvan, Heleana
Project Manager (Creative)	Dobrowski, Adrienne
Graphic Designer I	Kammerer, Kolton
Graphic Designer II	Sugnet, Susan
Communications Coordinator I	Terun, Tammy
Project Administration	Salvador, Neil
Project Administration	McDaniel, Kitty

**EXHIBIT B – Compensation**

The cumulative total of all notices to proceed under this agreement shall not exceed one hundred thousand dollars (\$100,000).

**Staff & Hourly Rate**

<b>Position</b>	<b>Name</b>	<b>Hourly Rate</b>
Advisor & QA/QC	Pallari, Kim	\$297
Advisor & QA/QC	Diamant, Melissa	\$290
Project Manager	Galvan, Heleana	\$180
Project Manager (Creative)	Dobrowski, Adrienne	\$175
Graphic Designer I	Kammerer, Kolton	\$110
Graphic Designer II	Sugnet, Susan	\$120
Communications Coordinator I	Terun, Tammy	\$104
Project Administration	Salvador, Neil	\$112
Project Administration	McDaniel, Kitty	\$111

CERTIFICATE

The undersigned hereby certifies that she is the Assistant Secretary of HDR Engineering, Inc., a Nebraska corporation (the "Corporation"), and that, as such, has custody of the minute books of the Corporation, and that, by Consent and Agreement of the Board of Directors dated May 18, 2016, the following resolution was unanimously adopted:

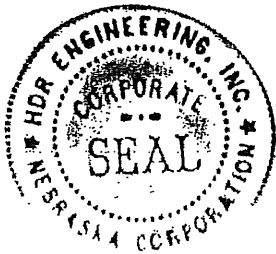
**"RESOLVED**, that effective immediately, and until June 20, 2017, or until termination of said individual from the Corporation, or until rescission by the Corporation's Board of Directors, whichever occurs first, the following individuals are hereby granted the nondelegable authority to execute or approve on behalf of the Corporation, contracts for engineering services and architectural services incidental to engineering services to be rendered by the Corporation, . . . , or releases of claim or lien in connection with such services, such contracts or releases so executed or approved shall be binding upon the Corporation:

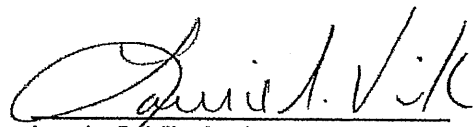
. . . Holly L. Kennedy - Vice President . . .  
. . . Graham D. Sharpe - Vice President . . ."

The undersigned further certifies that the foregoing resolution has been spread in full upon the minute books of the Corporation and is in full force and effect.

DATED June 16, 2016.

(CORPORATE SEAL)



  
Laurie S. Vik, Assistant Secretary

**CITY OF TRACY**  
**AMENDMENT NO. 1 TO**  
Master Professional Services Agreement with HDR Engineering, Inc.  
On Call Public Outreach for Engineering

This Amendment No. 1 (**Amendment**) to the Master Professional Services Agreement is entered into between the City of Tracy, a municipal corporation (**City**), HDR Engineering, Inc., a Nebraska Corporation (**Consultant**). City and Consultant are referred to individually as “**Party**” and collectively as “**Parties.**”

**Recitals**

- A.** The City and Consultant entered into a Master Professional Services Agreement (**Agreement**) for on call public outreach services which was approved by the City Manager on September 21, 2021.
- B.** The parties now seek to amend the agreement to increase compensation in order to perform additional tasks for the Engineering Department.
- C.** This Amendment is being executed pursuant to Resolution No. \_\_\_\_ approved by Tracy City Council on \_\_\_\_\_, 2022.

**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 2.1. is hereby amended and replaced in its entirety to read as follows:

The term of this Agreement shall begin on the date of execution of this agreement and end after three years, unless terminated for any reason, including a lack of appropriated funds to compensate services provided under this Agreement, in accordance with Section 6. Any such termination of this Agreement due to failure of the City of Tracy Council to appropriate funds for payment for services under this Agreement shall not be a breach of the Agreement.

- B.** Section 2.1.1 is removed in its entirety.

- C.** Section 3.1 is hereby amended and replaced in its entirety to read as follows:

**Not to Exceed Amount.** Consultant’s total compensation under this Agreement shall not exceed \$200,000 per year. Consultant’s billing rates under this agreement may be annually increased in January of each year by the lesser of 3% or the annual increase in the Cost-of-Living Index – All items, for the Sacramento Metropolitan Region. The Cost-of-Living increase shall be included in the not to exceed amount of \$200,000. Additionally, no work shall be performed by Consultant in excess of the

total compensation amount provided in this section without the City’s prior written approval.

**3. 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

*HDR Engineering, Inc., a Nebraska Corporation*

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

By:  \_\_\_\_\_  
Vikrant Sanghai  
Title: Vice President  
Date: 8/3/22

Attest:

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

Approved as to form

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



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

**TRACY CITY COUNCIL**

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

---

**APPROVING AMENDMENT NO. 1 TO MASTER PROFESSIONAL SERVICES AGREEMENT WITH HDR ENGINEERING, INC. FOR ON-CALL PUBLIC OUTREACH WITH A NOT-TO-EXCEED AMOUNT OF \$200,000 PER YEAR AND EXTENDING THE AGREEMENT FROM ONE YEAR TO THREE YEARS**

**WHEREAS**, the City of Tracy's Engineering Division required assistance with public outreach on certain Capital Improvement Projects (CIP); and

**WHEREAS**, on December 9, 2020, the City issued a Request for Proposals for on-call public outreach services and received five responses; and

**WHEREAS**, a panel of evaluators identified HDR Engineering, Inc. (HDR) as the best candidate to provide these services to the Engineering Division; and

**WHEREAS**, a Master Professional Services Agreement (Agreement) with HDR was approved by the City Manager on September 21, 2021 pursuant to Urgency Ordinance No. 1285; and

**WHEREAS**, HDR has been assisting the City with various public outreach projects to date under the Agreement; and

**WHEREAS**, the City is in need of additional public outreach, including two microsites, CIP project information, Land Development information, and an overall Engineering website revamp with the assistance of HDR; now, therefore, be it

**RESOLVED:** That the City Council of the City of Tracy approves Amendment No. 1 to the Master Professional Services Agreement with HDR Engineering, Inc. for on-call public outreach with a not-to-exceed amount of \$200,000 per year and extending the Agreement from one year to three years.

\* \* \* \* \*

The foregoing Resolution 2022-\_\_\_\_\_ was adopted by the Tracy City Council on the 6<sup>th</sup> of September, 2022 by the following vote:

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

---

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

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

AGENDA ITEM 1.E

REQUEST

**ADOPT A RESOLUTION AUTHORIZING SUBMISSION OF THE BETTER CITIES FOR PETS GRANT APPLICATION FOR THE PROJECTED AMOUNT OF \$20,000 TO PROVIDE LOW COST ALTERATIONS FOR CERTAIN DOG BREEDS AND TO SENIOR CITIZEN OWNERS OF FELINES, AND AUTHORIZING THE CITY MANAGER TO ACCEPT AND EXECUTE THE GRANT AGREEMENT, IF AWARDED**

EXECUTIVE SUMMARY

The City of Tracy Animal Services Unit has identified an opportunity to apply for a \$20,000 grant from the Better Cities for Pets organization for funding 188 alterations. Staff recommends that the City of Tracy accept the grant, if awarded, and authorize an appropriation of \$20,000 to the Animal Services budget for FY 22/23.

DISCUSSION

Per Food and Agricultural Code 30503(a)(1) all animal shelters are required to alter (spay/neuter) any canine or feline that is adopted from the shelter. Due to the high cost of spaying and neutering the animals, an adoption fee can be a financial barrier for those wanting to adopt from an animal shelter. From January 2020 to January 2022, Tracy Animal Services impounded 1,725 canines and felines. Of the canines, only 16% of those pets were already altered upon intake. Of the felines, only .07% of those pets were already altered upon intake. This shows a dire need to encourage and support our community in spaying and neutering.

The three main breeds that are filling the central valley shelters, including the Tracy Animal Shelter, are Pit Bulls, Siberian Huskies, German Shepherds and mixes of these breeds. Of the 982 dogs that were impounded by Tracy Animal Services, 445 (45%) were those three breeds out of 74 different recorded breeds brought into the shelter.

The City of Tracy Animal Services Unit identified an opportunity to apply for a grant through the Better Cities for Pets organization to help provide a low-cost spaying and neutering voucher for German Shepherds, Pit Bulls, Huskies, and mixes of these breeds. Eligibility for the program will also include senior citizens that own felines and need their pet altered. The grant award has the potential award up to \$20,000 to provide funding for spay/neuter services.

The average price for a spay/neuter at local veterinary clinics is over \$300. The grant provides for the funding of 188 total pets (94 dogs and 94 cats) for a low-cost spay/neuter voucher to pets that are owned by Tracy residents. By providing alterations, this will reduce unwanted litters and potential inundation of the three most impounded breeds by Tracy Animal Services.

Alterations have shown to make positive impacts for the overall health of a pet, lessens negative behavioral traits pets may exhibit, and helps lessen the issue of overpopulation for animal shelters across the nation. By providing this service at a low cost for our community members, we are creating relationships within our community, providing support, and addressing the main breeds currently entering the Central Valley shelters.

If awarded, this grant funding would provide the community with a valuable resource to facilitate spaying or neutering of family pets. Additionally, it is believed that assisting these pet owners is helpful to the community at large by reducing the number of unplanned puppies and kittens as well as reduces the upward trend of certain breeds entering the shelter system.

Below is a list of the grant goals and requirements:

**Goals:**

- Potentially prevent 1120 unwanted puppies/kittens.
- Encourage overall health and support to pet owners in the community.
- Provide a means to increase pet retention, as altered pets are less likely to roam.
- Prevent the shelter from the inundation of three specific breeds.

**Grant requirements:**

- Issue a press release announcing the grant being awarded.
- Report requested data and tracking to Better Cities for Pets.
- Provide a low cost spay/neuter voucher program for Tracy residents that own a Pit Bull, German Shepherd, or Siberian Husky.
- Provide a low cost spay/neuter for senior citizens who own cats.

**STRATEGIC PLAN**

This agenda item relates to Council's Strategic Priorities for Public Safety.

**FISCAL IMPACT**

If awarded the Tracy Animal Shelter will receive up to \$20,000 from the 2022 Better Cities for Pets grant. The \$20,000 shall be appropriated to the Police Department's Animal Services Operating Budget for FY 22/23. No City match is required.

**RECOMMENDATION**

Staff recommends the City Council adopt a resolution authorizing the submission of the Better Cities for Pets grant application for the projected amount of \$20,000 to provide low cost alterations for certain dog breeds and to senior citizen owners of felines and authorizing the City Manager to accept and execute the grant agreement, if awarded.

Agenda Item 1.E  
September 6, 2022  
Page 3

Prepared By: Brittany Pasquale, Animal Services Supervisor

Reviewed By: Beth Lyons-McCarthy, Support Operations Manager  
Sekou Millington, Chief of Police  
Sara Cowell, Interim Director of Finance  
Midori Lichtwardt, Assistant City Manager

Approved By: Michael Rogers, City Manager

CITY ATTORNEY'S OFFICE

TRACY CITY COUNCIL

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

**AUTHORIZING SUBMISSION OF THE BETTER CITIES FOR PETS GRANT APPLICATION FOR THE PROJECTED AMOUNT OF \$20,000 TO PROVIDE LOW COST ALTERATIONS FOR CERTAIN DOG BREEDS AND TO SENIOR CITIZEN OWNERS OF FELINES, AND AUTHORIZING THE CITY MANAGER TO ACCEPT AND EXECUTE THE GRANT AGREEMENT, IF AWARDED**

**WHEREAS**, the City of Tracy Animal Shelter has identified an opportunity to apply for a \$20,000 grant from the Better Cities for Pets organization for funding 188 alterations for senior citizens that own cats and any Tracy resident that owns a Pit Bull, Siberian Husky, German Shepherd, or mixes of these breeds; and

**WHEREAS**, the grant provides for the funding of 188 spay/neuter costs to pet owners within the City of Tracy; and

**WHEREAS**, by providing alterations, this will reduce unwanted litters, reduce negative behavioral issues, and potentially reduce the overcrowding of the Tracy Animal Shelter; and

**WHEREAS**, the grant award will be appropriated to the Police Department's Animal Services Operational Budget for fiscal year 22/23: now, therefore, be it

**RESOLVED:** That the City Council hereby authorizes the submission of the Better Cities for Pets grant application, for a potential award of \$20,000; and be it

**FURTHER RESOLVED:** That the City Council hereby authorizes the City Manager to accept and execute the grant agreement, if awarded.

\* \* \* \* \*

The foregoing Resolution 2022-\_\_\_\_\_ was adopted by the Tracy City Council on September 6, 2022, by the following vote:

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

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

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

AGENDA ITEM 1.F

REQUEST

**ADOPT A RESOLUTION APPROVING A TWO-YEAR MASTER SERVICES AGREEMENT WITH FLOCK GROUP, INC. FOR THE INSTALLATION, OPERATION, AND MAINTENANCE OF AUTOMATED LICENSE PLATE READER TECHNOLOGY FOR A NOT TO EXCEED AMOUNT OF \$255,000 AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT AND ANY AMENDMENTS**

EXECUTIVE SUMMARY

Cameras and Automated License Plate Reader (ALPR) technology have been used by police agencies to help solve crimes, especially those where an automobile has been used. ALPR technology has continued to evolve and has become less cost prohibitive. Traditional ALPR systems included expensive fixed camera locations or mobile devices mounted in patrol cars. The Tracy Police Department currently uses mobile ALPRs and is now looking to expand this beneficial tool to fixed locations in high crime areas.

DISCUSSION

The City of Tracy already operates three technology programs that enhance traffic monitoring and safety in strategic locations in our jurisdiction: the mobile License Plate Reader (LPR) program (Police Department), the parks camera program (Parks & Recreation) and the traffic camera infrastructure (Engineering). In an attempt to increase efficiency and effectiveness, as well as introduce additional technology, staff has worked with Flock Safety to develop a plan to install ALPR cameras at fifteen strategic intersections in our jurisdiction.

As Flock Safety is the sole manufacturer and developer of the Flock Safety Camera, the City Manager has reviewed the sole source certification and has approved the exception to the procurement of services requirements, as prescribed in the Tracy Municipal Code section 2.20.240 (b)(2).

To ensure transparency and to remain consistent with the Police Department's commitment to open communication, aggregate capture data (without specific identifying information) will be made available to the public through a dedicated web page hosted on Tracy Police Department's website. The information will include, among others, number of captured license plate, positive "hits" identifying wanted vehicles and the status of cameras.

The Flock Safety Automated License Plate Reader (ALPR) System is a deployment of cameras throughout an area to provide greater coverage and more detailed information for law enforcement. Flock's cameras capture date, time, location, license plate (state, partial, paper, and no plate), vehicle details (type and color), as well as objects (bicycle, animals, and people). The system alerts police of wanted vehicles which are identified by the system. Flock Safety is already present in our community through private contracts and deployment of cameras in neighborhoods supported by Homeowners' Associations, such as Ellis Town and Hidden Lake.

Flock Safety provides a desirable approach to deploying ALPR cameras throughout the community. Unlike other fixed or mobile ALPR devices, the Flock system provides the ability to cover more area of the City with system maintenance provided by the vendor rather than City staff. The Flock program is an all-inclusive model for deploying the ALPR cameras. Flock Safety is the sole manufacturer and developer of the Flock Safety camera.

The key benefits of Flock are that they charge an annual flat rate lease per camera of \$2,500, which is wireless, free of infrastructure setup, and has the option for solar or direct power. They also include a warranty, Criminal Justice Information Services (CJIS) compliant cloud-based hosting, unlimited user licenses, ongoing software enhancements, camera setup, mounting, shipping, handling, and a cellular connection. The Flock lease program prevents the City from being burdened with maintaining costly equipment at the end of the agreement, which could require replacement.

The outcome of the project would be increased investigative capabilities for the Police Department, directly contributing to the level of safety and quality of life in the community. In addition, new information related to flow of traffic would provide crucial metrics for the Traffic Enforcement Unit in the Police Department, allowing staff to be more responsive to changing traffic conditions or concerns coming from the community.

The partnership with Flock Safety gives the Tracy Police Department access to their network of over 500,000,000 license plate reads per month through NCRIC. In 2020, the Tracy Police Department utilized ALPR cameras to identify a homicide suspect's vehicle which later led to the identity of the involved suspects and their arrest for murder. Separately, the presence of ALPR cameras at one of the chosen locations would have provided crucial evidence in a currently unresolved fatal hit-and-run investigation.

Finally, the Flock ALPR system will fully integrate with the AXON Fleet 3 in-car cameras, a project and purchase already approved by the City Council. This will represent a multiplier of resources, combining Flock's fixed cameras with the mobile in-car cameras present in every patrol vehicle.

The length of the proposed agreement is two years. Prior to the conclusion of the agreement, an analysis of the effectiveness of the program will be performed and, if supported by the finding, a renewal of the agreement would be requested.

#### FISCAL IMPACT

Tracy Police Department has received a \$255,000 grant from the Department of Justice designated specifically for this project. This grant will fund the entire project and cause no fiscal impact to the existing City of Tracy budget. If the program continues to yield positive results, a renewal after two years will incur additional costs which will be addressed in the respective annual budget.



STRATEGIC PLAN

This agenda item relates to the Council's Strategic Plan in the area of Public Safety, specifically Goal #1 (Support efforts to enhance citywide traffic conditions) and Goal #3.1 (Leverage technology to enhance public safety awareness, response and performance).

RECOMMENDATION

Staff recommends that City Council approve by resolution a Master Services Agreement with Flock Group Inc., for the installation, operation, and maintenance of automated license plate reader technology for an amount not to exceed \$255,000 and authorize the City Manager to execute the agreement.

Prepared by: Alex Neicu, Police Captain

Reviewed by: Sekou Millington, Chief of Police  
Sara Cowell, Interim Director of Finance  
Midori Lichtwardt, Assistant City Manager

Approved by: Michael Rogers, City Manager

ATTACHMENTS:

Attachment A: City Manager's sole source exemption approval  
Attachment B: Flock Safety services agreement

# Memorandum

Date: January 17, 2022  
 To: Michael Rogers, City Manager  
 From: Alex Neicu, Police Department  
 Subject: Request Approval of Sole Source Provider

The Police Department has developed a project to implement automated license plate readers (ALPR) at strategic intersections in our jurisdiction, significantly increasing investigative abilities for the department.

The purpose of this memorandum is to request the approval of the purchase of the system from Flock Safety as the Sole Source Vendor.

As described in the attached Sole Source Statement by Flock Safety, their system provides a unique leased solution that bundles technology, installation, maintenance and cellular services in a solar-powered camera. Also significantly, it is the only system that currently interacts with the AXON Fleet 3 in-car cameras currently being installed in all Tracy PD patrol vehicles.

Tracy Municipal Code allows an exception to the RFP procedures *“When the services can be obtained from only one source which has been reviewed and approved in writing by the City Manager.”* [ TMC 2.20.140 (b)(2) ]

Staff recommends that approval is granted, consistent to the provisions of the Tracy Municipal Code, to dispense with formal requests for proposals.

DocuSigned by:  
  
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 Reviewed and Approved by:  
 Sekou Millington, Chief of Police

1/19/2022 | 9:12 AM PST  
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DocuSigned by:  
  
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 Approved/Concur by  
 Michael Rogers, City Manager

1/19/2022 | 9:15 AM PST  
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# flock safety

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## **Sole Source Letter for Flock Safety ALPR Cameras and Solution**

Flock Safety is the sole manufacturer and developer of the Flock Safety ALPR Camera. Flock Safety is also the sole provider of the comprehensive monitoring, processing, and machine vision services which integrate with the Flock Safety ALPR Camera.

**The Flock Safety ALPR camera and devices are the only Law Enforcement Grade ALPR System to offer the following combination of proprietary features:**

1. Patented Vehicle Fingerprint Technology:
  - Patented proprietary machine vision to analyze vehicle license plate, state recognition, vehicle color, vehicle type, vehicle make and objects (roof rack, bumper stickers, etc.) based on image analytics (not car registration data)
  - Machine vision to capture and identify characteristics of vehicles with a paper license plate and vehicles with the absence of a license plate
  - Ability to 'Save Search' based on description of vehicles using our patented Vehicle Fingerprint Technology without the need for a license plate, and set up alerts based on vehicle description
  - Only LPR provider with "Visual Search" which can transform digital images from any source into an investigative lead by finding matching vehicles based on the vehicle attributes in the uploaded photo
  
2. Integrated Cloud-Software & Hardware Platform:
  - Ability to capture two (2+) lanes of traffic simultaneously with a single camera from a vertical mass
  - Best in class ability to capture and process up to 30,000 vehicles per day with a single camera powered exclusively by solar power
  - Wireless deployment of solar powered license plate reading cameras with integrated cellular communication weighing less than 5lbs and able to be powered solely by a solar panel of 60W or less
  - Web based footage retrieval tool with filtering capabilities such as vehicle color, vehicle type, vehicle manufacturer, partial or full license plate, state of license plate, and object detection
  - Utilizes motion capture to start and stop recording without the need for a reflective plate
  - Motion detection allows for unique cases such as bicycle capture, ATV, motorcycle, etc.
  - On device machine processing to limit LTE bandwidth consumption
  - Cloud storage of footage

# flock safety

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- Covert industrial design for minimizing visual pollution
3. Transparency & Ethical Product Design:
- One-of-a-kind “Transparency Portal” public-facing dashboard that details the policies in place by the purchaser, as well as automatically updated metrics from the Flock system
  - Built-in integration with NCMEC to receive AMBER Alerts to find missing children
  - Privacy controls to enable certain vehicles to “opt-out” of being captured
4. Integrated Audio & Gunshot Detection:
- Natively integrated audio detection capabilities utilizing machine learning to recognize audio signatures typical of crimes in progress (e.g., gunshots, screeching tires, glass breaking, gunshots, sawing metal)
5. Partnerships:
- Flock Safety is the only LPR provider to officially partner with AXON to be natively and directly integrated into Evidence.com
  - Flock Safety is the only LPR provider to be fully integrated into a dynamic network of Axon’s Fleet 3 mobile ALPR cameras for patrol cars and Flock Safety’s Falcon cameras
  - Access to additional cameras purchased by our HOA and private business partners, means an ever-increasing amount of cameras and data at no additional cost
6. Warranty & Service:
- Lifetime maintenance and support included in subscription price
  - Flock Safety is the only fully integrated ALPR one-stop solution from production of the camera to delivery and installation
  - Performance monitoring software to predict potential failures, obstructions, tilts, and other critical or minor issues

Thank you,



Garrett Langley CEO, Flock Safety

**FLOCK GROUP INC.**  
**SERVICES AGREEMENT**  
**ORDER FORM**

This Order Form together with the Terms (as defined herein) describe the relationship between Flock Group Inc. (“**Flock**”) and the customer identified below (“**Agency**”) (each of Flock and Customer, a “**Party**”). This order form (“**Order Form**”) hereby incorporates and includes the “GOVERNMENT AGENCY AGREEMENT” attached (the “**Terms**”) which describe and set forth the general legal terms governing the relationship (collectively, the “**Agreement**”). The Terms contain, among other things, warranty disclaimers, liability limitations and use limitations.

The Agreement will become effective when this Order Form is executed by both Parties (the “**Effective Date**”).

<b>Agency:</b> Tracy Police Department  <b>Legal Entity Name:</b>	<b>Contact Name:</b> Alex Neicu
<b>Address:</b> 1000 Civic Center Plaza Tracy, California 95376	<b>Phone:</b> 209-831-6650 <b>E-Mail:</b> alex.neicu@tracypd.com
<b>Expected Payment Method:</b>	<b>Billing Contact:</b> Tracy Police Department 1000 Civic Center Tracy, CA 95376

<b>Initial Term:</b> 24 months <b>Renewal Term:</b> 24 months	<b>Billing Term:</b> Annual payment due Net 30 per terms and conditions
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<b>Name</b>	<b>Price</b>	<b>QTY</b>	<b>Subtotal</b>
Flock Safety Advanced Search 25-49 Falcons	\$3,500.00	1.00 x 2 yrs	\$7,000.00
Flock Falcon Camera	\$2,500.00	46.00 x 2 yrs	\$230,000.00
Implementation Fee	\$350.00	46.00	\$16,100.00

**(Includes one-time fees)**

Initial Term Total: \$253,100.00

Special terms:

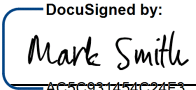
- Agency shall pay the amount of \$253,100.00 on or before the 30th day following receipt of initial invoice after the Effective Date.

I have reviewed and agree to the Customer Implementation Guide on Schedule B at the end of this agreement.

**By executing this Order Form, Agency represents and warrants that it has read and agrees all of the terms and conditions contained in the Terms attached.** The Parties have executed this Agreement as of the dates set forth below.

**FLOCK GROUP, INC.**

**Agency: Tracy Police Department/City of Tracy**

By:   
AC5C931454C24F3...

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

Name: Mark Smith

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

Title: General Counsel

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

Date: 8/8/2022

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

**FLOCK GROUP, INC.**

By:   
BEB7BDF876394B0...

Name: James LaCamp

Title: Chief Financial Officer

Date: 8/8/2022

# flock safety

## GOVERNMENT AGENCY AGREEMENT

This Government Agency Agreement (this “**Agreement**”) is entered into by and between Flock Group, Inc. with a place of business at 1170 Howell Mill Rd NW Suite 210, Atlanta, GA 30318 (“**Flock**”) and the police department or government agency identified in the signature block of the order form (“**Agency**”) (each a “**Party**,” and together, the “**Parties**”).

## RECITALS

**WHEREAS**, Flock offers a software and hardware solution for automatic license plate detection through Flock’s technology platform (the “**Flock Service**”), and upon detection, the Flock Services are capable of capturing audio, image, and recordings data of suspected vehicles (“**Footage**”) and can provide notifications to Agency upon the instructions of Non-Agency End User (“**Notifications**”);



**WHEREAS**, Agency desires access to the Flock Service on existing cameras, provided by Agency, or Flock provided Hardware (as defined below) in order to create, view, search and archive Footage and receive Notifications, including those from non-Agency users of the Flock Service (where there is an investigative or bona fide lawful purpose) such as schools, neighborhood homeowners associations, businesses, and individual users;

**WHEREAS**, Flock deletes all Footage on a rolling thirty (30) day basis, Agency is responsible for extracting, downloading and archiving Footage from the Flock System on its own storage devices for auditing for prosecutorial/administrative purposes; and

**WHEREAS**, Flock desires to provide Agency the Flock Service and any access thereto, subject to the terms and conditions of this Agreement, solely for the awareness, prevention, and prosecution of crime, bona fide investigations by police departments, and archiving for evidence gathering (“Purpose”).

## **AGREEMENT**

**NOW, THEREFORE**, Flock and Agency agree as follows and further agree to incorporate the Recitals into this Agreement.

### **1. DEFINITIONS**

Certain capitalized terms, not otherwise defined herein, have the meanings set forth or cross-referenced in this Section 1.

1.1 "**Agency Data**" will mean the data, media and content provided by Agency through the Services. For the avoidance of doubt, the Agency Data will include the Footage.

1.2. "**Agency Hardware**" shall mean the third-party camera owned or provided by Agency and any other physical elements that interact with the Embedded Software and the Web Interface to provide the Services. The term "**Agency Hardware**" excludes the Embedded Software

1.3 "**Authorized End User(s)**" shall mean any individual employees, agents, or contractors of Agency accessing or using the Services through the Web Interface, under the rights granted to Agency pursuant to this Agreement.

1.4 "**Documentation**" will mean text and/or graphical documentation, whether in electronic or printed format, that describe the features, functions and operation of the Services which are provided by Flock to Agency in accordance with the terms of this Agreement.

1.5 "**Embedded Software**" will mean the software and/or firmware embedded or preinstalled on the Agency Hardware.

1.6 “**Flock IP**” will mean the Services, the Documentation, the Embedded Software, the Installation Services, and any and all intellectual property therein or otherwise provided to Agency and/or its Authorized End Users in connection with the foregoing.

1.7 “**Footage**” means still images captured by the Agency Hardware in the course of and provided via the Services.

1.8 “**Hardware**” or “**Flock Hardware**” shall mean the Flock cameras or device, pole, clamps, solar panel, installation components, and any other physical elements that interact with the Embedded Software and the Web Interface to provide the Flock Services. The term “**Hardware**” excludes the Embedded Software.

1.9 “**Implementation Fee(s)**” means the monetary fees associated with the Installation Services, as defined in Section 1.10 below.

1.10 “**Installation Services**” means the services provided by Flock including any applicable installation of Embedded Software on Agency Hardware.

1.11 “**Non-Agency End User(s)**” shall mean any individual, entity, or derivative therefrom, authorized to use the Services through the Web Interface, under the rights granted to pursuant to the terms (or to those materially similar) of this Agreement.

1.12 “**Services**” or “**Flock Services**” means the provision, via the Web Interface, of Flock’s software application for automatic license plate detection, searching image records, and sharing Footage.

1.13 “**Support Services**” shall mean Monitoring Services, as defined in Section 2.9 below.

1.14 “**Unit(s)**” shall mean the Agency Hardware together with the Embedded Software.

1.15 “**Usage Fee**” means the subscription fees to be paid by the Agency for ongoing access to Services.

1.16 “**Web Interface**” means the website(s) or application(s) through which Agency and its Authorized End Users can access the Services in accordance with the terms of this Agreement.

## 2. SERVICES AND SUPPORT

2.1 **Provision of Access.** Subject to the terms of this Agreement, Flock hereby grants to Agency a non-exclusive, non-transferable right to access the features and functions of the Services via the Web Interface during the Service Term (as defined in Section 6.1 below), solely for the Authorized End Users. The Footage will be available for Agency’s designated administrator, listed on the order form, and any Authorized End Users to access via the Web Interface for thirty (30) days. Authorized End Users will be required to sign up for an account and select a password and username (“**User ID**”). Flock will also provide Agency with the Documentation to be used in accessing and

using the Services. Agency shall be responsible for all acts and omissions of Authorized End Users, and any act or omission by an Authorized End User which, if undertaken by Agency, would constitute a breach of this Agreement, shall be deemed a breach of this Agreement by Agency. Agency shall undertake reasonable efforts to make all Authorized End Users aware of the provisions of this Agreement as applicable to such Authorized End User's use of the Services, and shall cause Authorized End Users to comply with such provisions. Flock may use the services of one or more third parties to deliver any part of the Services, including without limitation using a third party to host the Web Interface which makes the Services available to Agency and Authorized End Users. Warranties provided by said third party service providers are the agency's sole and exclusive remedy and flock's sole and exclusive liability with regard to such third-party services, including without limitation hosting the web interface. Agency agrees to comply with any acceptable use policies and other terms of any third-party service provider that are provided or otherwise made available to Agency from time to time.

**2.2 Embedded Software License.** Subject to all terms of this Agreement, Flock grants Agency a limited, non-exclusive, non-transferable, non-sublicensable (except to the Authorized End Users), revocable right to use the Embedded Software as installed on the Hardware or Agency Hardware; in each case, solely as necessary for Agency to use the Services.

**2.3 Documentation License.** Subject to the terms of this Agreement, Flock hereby grants to Agency a non-exclusive, non-transferable right and license to use the Documentation during the Service Term to Agency's in connection with its use of the Services as contemplated herein, and under Section 2.4 below.

**2.4 Usage Restrictions.**

**a. Flock IP.** The purpose for usage of the Unit, Documentation, Services, support, and Flock IP are solely to facilitate gathering evidence that could be used in a lawful criminal investigation by the appropriate government agency and not for tracking activities that the system is not designed to capture ("**Permitted Purpose**"). Agency will not, and will not permit any Authorized End Users to, (i) copy or duplicate any of the Flock IP; (ii) decompile, disassemble, reverse engineer or otherwise attempt to obtain or perceive the source code from which any software component of any of the Flock IP is compiled or interpreted, or apply any other process or procedure to derive the source code of any software included in the Flock IP, or attempt to do any of the foregoing, and Agency acknowledges that nothing in this Agreement will be construed to grant Agency any right to obtain or use such source code; (iii) modify, alter, tamper with or repair any of the Flock IP, or create any derivative product from any of the foregoing, or attempt to do any of the foregoing, except with the prior written consent of Flock; (iv) interfere or attempt to interfere in any manner with the functionality or proper working of any of the Flock IP; (v) remove, obscure, or alter any notice of any intellectual property or proprietary right appearing on or contained within any of the Services or Flock IP; (vi) use the Services, support, Unit, Documentation or the Flock IP for anything other than the Permitted Purpose; or (vii) assign, sublicense, sell, resell, lease, rent or otherwise transfer or convey, or pledge as security or otherwise encumber, Agency's rights under Sections 2.1, 2.2, or 2.3.

**b. Flock Hardware.** Agency understands that all Flock Hardware is owned exclusively by Flock, and that title to any Flock Hardware does not pass to Agency upon execution of this Agreement. Agency is not permitted to remove, reposition, re-install, tamper with, alter, adjust or otherwise take possession or control of Flock Hardware. Notwithstanding the notice and cure period set for in Section 6.3, Agency agrees and understands that in the event Agency is found to engage in any of the restricted actions of this Section 2.4(b), all warranties herein shall be null and void, and this Agreement shall be subject to immediate termination (without opportunity to cure) for material breach by Agency.

**2.5 Retained Rights; Ownership.** As between the Parties, subject to the rights granted in this Agreement, Flock and its licensors retain all right, title and interest in and to the Flock IP and its components, and Agency acknowledges that it neither owns nor acquires any additional rights in and to the foregoing not expressly granted by this Agreement. Agency further acknowledges that Flock retains the right to use the foregoing for any purpose in Flock's sole discretion. There are no implied rights.

**2.6 Suspension.** Notwithstanding anything to the contrary in this Agreement, Flock may temporarily suspend Agency's and any Authorized End User's access to any portion or all of the Flock IP or Flock Hardware if (i) Flock reasonably determines that (a) there is a threat or attack on any of the Flock IP; (b) Agency's or any Authorized End User's use of the Flock IP disrupts or poses a security risk to the Flock IP or any other Agency or vendor of Flock; (c) Agency or any Authorized End User is/are using the Flock IP for fraudulent or illegal activities; (d) Flock's provision of the Services to Agency or any Authorized End User is prohibited by applicable law; (e) any vendor of Flock has suspended or terminated Flock's access to or use of any third party services or products required to enable Agency to access the Flock IP; or (f) Agency has violated any term of this provision, including, but not limited to, utilizing the Services for anything other than the Permitted Purpose (each such suspension, in accordance with this Section 2.6, a "***Service Suspension***"). Flock will make commercially reasonable efforts, circumstances permitting, to provide written notice of any Service Suspension to Agency (including notices sent to Flock's registered email address) and to provide updates regarding resumption of access to the Flock IP following any Service Suspension. Flock will use commercially reasonable efforts to resume providing access to the Service as soon as reasonably possible after the event giving rise to the Service Suspension is cured. Flock will have no liability for any damage, liabilities, losses (including any loss of data or profits) or any other consequences that Agency or any Authorized End User may incur as a result of a Service Suspension. To the extent that the Service Suspension is not caused by Agency's direct actions or by the actions of parties associated with the Agency, the expiration of the Term will be tolled by the duration of any suspension (for any continuous suspension lasting at least one full day) prorated for the proportion of cameras on the Agency's account that have been impacted.

## **2.7 Installation Services.**

**2.7.1 Designated Locations.** For installation of Flock Hardware, prior to performing the physical installation of the Units, Flock shall advise Agency on the location and positioning of the Units for optimal license plate image

capture, as conditions and location allow. Flock may consider input from Agency regarding location, position and angle of the Units (each Unit location so designated by Agency, a “**Designated Location**”). Flock shall have final discretion on location of Units. Flock shall have no liability to Agency resulting from any poor performance, functionality or Footage resulting from or otherwise relating to the Designated Locations or delay in installation due to Agency’s delay in confirming Designated Locations, in ordering and/or having the Designated Location ready for installation including having all electrical work preinstalled and permits ready, if necessary. The deployment plan will confirm the Designated Location. After installation, any subsequent changes to the deployment plan (“**Reinstalls**”) will incur a charge for Flock’s then-current list price for Reinstalls, as listed in the then-current Reinstall Policy (available at <https://www.flocksafety.com/reinstall-fee-schedule>) and any equipment charges. These changes include but are not limited to camera re-positioning, adjusting of camera mounting, re-angling, removing foliage, camera replacement, changes to heights of poles, regardless of whether the need for Reinstalls related to vandalism, weather, theft, lack of criminal activity in view, and the like. Flock Safety shall have full discretion on decision to reinstall Flock Hardware.

**2.7.2 Agency Installation Obligations.** Agency agrees to allow Flock and its agents reasonable access in and near the Designated Locations at all reasonable times upon reasonable notice for the purpose of performing the installation work. Although the Units are designed to utilize solar power, certain Designated Locations may require a reliable source of 120V AC power, as described in the deployment plan. In the event adequate solar exposure is not available Agency is solely responsible for providing a reliable source of 120V AC power to the Units, if necessary. Additionally, Agency is solely responsible for (i) any permits or associated costs, and managing the permitting process of installation of cameras or AC power; (ii) any federal, state or local taxes including property, license, privilege, sales, use, excise, gross receipts or other similar taxes which may now or hereafter become applicable to, measured by or imposed upon or with respect to the installation of the Hardware, its use (excluding tax exempt entities), or (iii) any other supplementary cost for services performed in connection with installation of the Hardware, including but not limited to contractor licensing, engineered drawings, rental of specialized equipment or vehicles, third-party personnel (i.e. Traffic Control Officers, Electricians, State DOT-approved poles, etc., if necessary), such costs to be approved by the Agency (“**Agency Installation Obligations**”). In the event that a Designated Location for a Unit requires permits, Flock will provide the Agency with a temporary alternate location for installation pending the permitting process. Once the required permits are obtained, Flock will relocate the Units from the temporary alternate location to the permitted location at no additional cost. Flock will provide options to supply power at each Designated Location. If Agency refuses alternative power supply options, Agency agrees and understands that Agency will not be subject to any reimbursement, tolling, or credit for any suspension period of Flock Services due to low solar. Flock will make all reasonable efforts within their control to minimize suspension of Flock Services. Any fees payable to Flock exclude the foregoing. Without being obligated or taking any responsibility for the foregoing, Flock may pay and invoice related costs to Agency if Agency did not address them prior to the execution of this Agreement or a third party requires Flock to pay. Agency represents and warrants that

it has all necessary right title and authority and hereby authorizes Flock to install the Hardware at the Designated Locations and to make any necessary inspections or tests in connection with such installation. Flock is not responsible for installation of Agency Hardware.

*2.7.3 Flock's Obligations.* Installation of any Flock Hardware shall be installed in a workmanlike manner in accordance with Flock's standard installation procedures, and the installation will be completed within a reasonable time from the time that the Designated Locations are confirmed. Following the initial installation of the Hardware and any subsequent Reinstalls or maintenance operations, Flock's obligation to perform installation work shall cease; however, for the sole purpose of validating installation, Flock will continue to monitor the performance of the Units for the length of the Term and will receive access to the Footage for a period of three (3) business days after the initial installation in order to monitor performance and provide any necessary maintenance solely as a measure of quality control. Agency understands and agrees that the Flock Services will not function without the Hardware. Labor may be provided by Flock or a third party. Flock is not obligated to install, reinstall, or provide physical maintenance to Agency Hardware.

*2.7.4 Security Interest.* Flock Hardware shall remain the personal property of Flock and will be removed upon the natural expiration of this Agreement at no additional cost to Agency. Agency shall not perform any acts which would interfere with the retention of title of the Hardware by Flock. Should Agency default on any payment of the Flock Services, Flock may remove Hardware at Flock's discretion. Such removal, if made by Flock, shall not be deemed a waiver of Flock's rights to any damages Flock may sustain as a result of Agency's default and Flock shall have the right to enforce any other legal remedy or right.

**2.8 Hazardous Conditions.** Unless otherwise stated in the Agreement, Flock's price for its services under this Agreement does not contemplate work in any areas that contain hazardous materials, or other hazardous conditions, including, without limit, asbestos, lead, toxic or flammable substances. In the event any such hazardous materials are discovered in the designated locations in which Flock is to perform services under this Agreement, Flock shall have the right to cease work immediately in the area affected until such materials are removed or rendered harmless.

**2.9 Support Services.** Subject to the payment of fees, Flock shall monitor the performance and functionality of Flock Services and may, from time to time, advise Agency on changes to the Flock Services, Installation Services, or the Designated Locations which may improve the performance or functionality of the Services or may improve the quality of the Footage. The work, its timing, and the fees payable relating to such work shall be agreed by the Parties prior to any alterations to or changes of the Services or the Designated Locations ("**Monitoring Services**"). Subject to the terms hereof, Flock will provide Agency with reasonable technical and on-site support and

maintenance services (“*On-Site Services*”) in-person or by email at [support@flocksafety.com](mailto:support@flocksafety.com). Flock will use commercially reasonable efforts to respond to requests for support.

**2.10 Special Terms.** From time to time, Flock may offer certain “Special Terms” related to guarantees, service and support which are indicated in the proposal and on the order form and will become part of this Agreement, upon Agency’s consent. To the extent that any terms of this agreement are inconsistent or conflict with the Special Terms, the Special Terms shall control.

**2.10 Changes to Platform.** Flock may, in its sole discretion, make any changes to any system or platform that it deems necessary or useful to (i) maintain or enhance (a) the quality or delivery of Flock’s products or services to its Agency s, (b) the competitive strength of, or market for, Flock’s products or services, (c) such platform or system’s cost efficiency or performance, or (ii) to comply with applicable law.

### **3. RESTRICTIONS AND RESPONSIBILITIES**

**3.1 Agency Obligations.** Flock will assist Agency end-users in the creation of a User ID. Agency agrees to provide Flock with accurate, complete, and updated registration information. Agency may not select as its User ID a name that Agency does not have the right to use, or another person’s name with the intent to impersonate that person. Agency may not transfer its account to anyone else without prior written permission of Flock. Agency will not share its account or password with anyone, and must protect the security of its account and password. Agency is responsible for any activity associated with its account. Agency shall be responsible for obtaining and maintaining any equipment and ancillary services needed to connect to, access or otherwise use the Services. Agency will, at its own expense, provide assistance to Flock, including, but not limited to, by means of access to, and use of, Agency facilities, as well as by means of assistance from Agency personnel, to the limited extent any of the foregoing may be reasonably necessary to enable Flock to perform its obligations hereunder, including, without limitation, any obligations with respect to Support Services or any Installation Services.

**3.2 Agency Representations and Warranties.** Agency represents, covenants, and warrants that Agency will use the Services only in compliance with this Agreement and all applicable laws and regulations, including but not limited to any laws relating to the recording or sharing of video, photo, or audio content. Although Flock has no obligation to monitor Agency ’s use of the Services, Flock may do so and may prohibit any use of the Services it believes may be (or alleged to be) in violation of the foregoing.

### **4. CONFIDENTIALITY; AGENCY DATA**

**4.1 Confidentiality.** To the extent allowable by applicable FOIA and state-specific Public Records Acts, each Party (the “*Receiving Party*”) understands that the other Party (the “*Disclosing Party*”) has disclosed or may disclose

business, technical or financial information relating to the Disclosing Party's business (hereinafter referred to as "**Proprietary Information**" of the Disclosing Party). Proprietary Information of Flock includes non-public information regarding features, functionality and performance of the Services. Proprietary Information of Agency includes non-public data provided by Agency to Flock or collected by Flock via the Unit, including the Footage, to enable the provision of the Services, which includes but is not limited to geolocation information and environmental data collected by sensors built into the Units ("**Agency Data**"). The Receiving Party agrees: (i) to take the same security precautions to protect against disclosure or unauthorized use of such Proprietary Information that the party takes with its own proprietary information, but in no event will a party apply less than reasonable precautions to protect such Proprietary Information, and (ii) not to use (except in performance of the Services or as otherwise permitted herein) or divulge to any third person any such Proprietary Information. Flock's use of the Proprietary Information may include processing the Proprietary Information to send Agency alerts, such as when a car exits Agency's neighborhood, or to analyze the data collected to identify motion or other events. The Disclosing Party agrees that the foregoing shall not apply with respect to any information that the Receiving Party can document (a) is or becomes generally available to the public, or (b) was in its possession or known by it prior to receipt from the Disclosing Party, or (c) was rightfully disclosed to it without restriction by a third party, or (d) was independently developed without use of any Proprietary Information of the Disclosing Party. Nothing in this Agreement will prevent the Receiving Party from disclosing the Proprietary Information pursuant to any judicial or governmental order, provided that the Receiving Party gives the Disclosing Party reasonable prior notice of such disclosure to contest such order. For clarity, Flock may access, use, preserve and/or disclose the Footage to law enforcement authorities, government officials, and/or third parties, if legally required to do so or if Flock has a good faith belief that such access, use, preservation or disclosure is reasonably necessary to: (a) comply with a legal process or request; (b) enforce this Agreement, including investigation of any potential violation thereof; (c) detect, prevent or otherwise address security, fraud or technical issues; or (d) protect the rights, property or safety of Flock, its users, a third party, or the public as required or permitted by law, including respond to an emergency situation. Agency hereby expressly grants Flock a non-exclusive, worldwide, perpetual, royalty-free right and license (during and after the term hereof) to disclose the Agency Data (inclusive of any Footage) to enable law enforcement monitoring against law enforcement hotlists as well as provide Footage search access to law enforcement for investigative purposes only. Flock may store deleted Footage in order to comply with certain legal obligations but such retained Footage will not be retrievable without a valid court order.

**4.2 Agency Data..** As between Flock and Agency, all right, title and interest in the Agency Data, belong to and are retained solely by Agency. Agency hereby grants to Flock a limited, non-exclusive, royalty-free, worldwide license to use the Agency Data and perform all acts with respect to the Agency Data as may be necessary for Flock to provide the Flock Services to Agency, including without limitation the Support Services set forth in Section 2.9 above, and a non-exclusive, perpetual, irrevocable, worldwide, royalty-free, fully paid license to use, reproduce, modify and distribute the Agency Data as a part of the Aggregated Data (as defined in Section 4.4 below).As between Agency and Non-Agency End Users that have prescribed access of Footage to Agency, each of Agency and



Non-Agency End Users will share all right, title and interest in the Non-Agency End User Data. This Agreement does not by itself make any Non-Agency End User Data the sole property or the Proprietary Information of Agency. Flock will automatically delete Footage older than thirty (30) days. Agency has a thirty (30) day window to view, save and/or transmit Footage to the relevant government agency prior to its deletion.

**4.3 Feedback.** If Agency provides any suggestions, ideas, enhancement requests, feedback, recommendations or other information relating to the subject matter hereunder, Agency hereby assigns (and will cause its agents and representatives to assign) to Flock all right, title and interest (including intellectual property rights) with respect to or resulting from any of the foregoing.

**4.4 Aggregated Data.** Notwithstanding anything in this Agreement to the contrary, Flock shall have the right to collect and analyze data that does not refer to or identify Agency or any individuals or de-identifies such data and other information relating to the provision, use and performance of various aspects of the Services and related systems and technologies (including, without limitation, information concerning Agency Data and data derived therefrom). For the sake of clarity, Aggregated Data is compiled anonymous data which has been stripped of any personal identifying information. Agency acknowledges that Flock will be compiling anonymized and/or aggregated data based on Agency Data input into the Services (the “*Aggregated Data*”). Agency hereby grants Flock a non-exclusive, worldwide, perpetual, royalty-free right and license (during and after the Service Term hereof) to (i) use and distribute such Aggregated Data to improve and enhance the Services and for other development, diagnostic and corrective purposes, other Flock offerings, and crime prevention efforts, and (ii) disclose the Agency Data (both inclusive of any Footage) to enable law enforcement monitoring against law enforcement hotlists as well as provide Footage search access to law enforcement for investigative purposes only. No rights or licenses are granted except as expressly set forth herein. Flock shall not sell Agency Data or Aggregated Data.

## 5. PAYMENT OF FEES

**5.1a Wing Fees.** For Wing products, the Agency will pay Flock the first Usage Fee and the Implementation Fee (as described on the Order Form attached hereto, together the “*Initial Fees*”) as set forth on the Order Form on or before the 30th day following the Effective Date of this Agreement. Flock shall have no liability resulting from any delay by the Agency in installing the Embedded Software on the Agency Hardware. If applicable, Agency shall pay the ongoing Usage Fees set forth on the Order Form with such Usage Fees due and payable thirty (30) days in advance of each payment period. All payments will be made by either ACH, check, or credit card.

**5.1b Falcon Fees.** For Falcon products during the Initial Term, Agency will pay Flock fifty percent (50%) of the first Usage Fee, the Implementation Fee and any fee for Hardware (as described on the Order Form attached hereto, together the “*Initial Fees*”) as set forth on the Order Form on or before the 30th day following receipt of initial invoice after Effective Date. Upon commencement of installation, Flock will issue an invoice for twenty-five percent (25%) of the Initial Fees, and Agency shall pay on or before 30<sup>th</sup> day following receipt of invoice. Upon

completion of installation, Flock will issue an invoice for the remaining balance and Agency shall pay on or before 30<sup>th</sup> day following receipt of final invoice. Flock is not obligated to commence the Installation Services unless and until the first payment has been made and shall have no liability resulting from any delay related thereto. For a Renewal Term, as defined below, Agency shall pay the entire invoice on or before the 30<sup>th</sup> day following receipt of invoice.

**5.2 Changes to Fees.** Flock reserves the right to change the fees or applicable charges and to institute new charges and fees at the end of the Initial Term or any Renewal Term, upon sixty (60) days' notice prior to the end of such Initial Term or Renewal Term (as applicable) to Agency (which may be sent by email). If Agency believes that Flock has billed Agency incorrectly, Agency must contact Flock no later than sixty (60) days after the closing date on the first billing statement in which the error or problem appeared, in order to receive an adjustment or credit. Inquiries should be directed to Flock's Agency support department. Agency acknowledges and agrees that a failure to contact Flock within this sixty (60) day period will serve as a waiver of any claim Agency may have had as a result of such billing error.

**5.3 Invoicing, Late Fees; Taxes.** Flock may choose to bill through an invoice, in which case, full payment for invoices issued in any given month must be received by Flock thirty (30) days after the mailing date of the invoice. If Agency is a non-tax exempt entity, Agency shall be responsible for all taxes associated with Services other than U.S. taxes based on Flock's net income.

## 6. TERM AND TERMINATION

**6.1a Wing Term.** Subject to earlier termination as provided below, the initial term of this Agreement shall be for the period of time set forth on the Order Form (the "**Initial Term**"). The Term shall commence upon execution of this Agreement. *Following the Initial Term, unless otherwise indicated on the Order Form, this Agreement will automatically renew for successive renewal terms of the greater of one year or the length set forth on the Order Form (each, a "**Renewal Term**", and together with the Initial Term, the "**Service Term**") unless either party gives the other party notice of non-renewal at least thirty (30) days prior to the end of the then-current term.*

**6.1b Falcon Term.** Subject to earlier termination as provided below, the initial term of this Agreement shall be for the period of time set forth on the Order Form (the "**Initial Term**"). The Term shall commence upon first installation and validation of a Unit. *Following the Initial Term, unless otherwise indicated on the Order Form, this Agreement will automatically renew for successive renewal terms for the length set forth on the Order Form (each, a "**Renewal Term**", and together with the Initial Term, the "**Service Term**") unless either party gives the other party notice of non-renewal at least thirty (30) days prior to the end of the then-current term.*

**6.2 Termination for Convenience.** At any time during the agreed upon Term, an Agency not fully satisfied with the service may self-elect to terminate this Agreement for convenience. Termination for convenience will result in a one-time fee of \$500 per Flock Hardware. Upon termination for convenience, a refund will be provided for Falcon Cameras, prorated for any fees for the remaining Term length set forth previously. Agency will remain liable to pay the full outstanding fees for any Wing product on the effective date of termination of that Order Form. Flock will invoice, and Agency will pay, any unbilled fees and any unpaid fees covering the remainder of the term of that Order Form had it not been terminated. Termination for convenience of the Agreement by the Agency will be effective immediately. Flock will provide advanced written notice and remove all Flock Hardware at Flock's own convenience, within a commercially reasonable period of time upon termination.

**6.3 Termination.** Notwithstanding the termination provisions in Section 2.4(b), in the event of any material breach of this Agreement, the non-breaching party may terminate this Agreement prior to the end of the Service Term by giving thirty (30) days prior written notice to the breaching party; provided, however, that this Agreement will not terminate if the breaching party has cured the breach prior to the expiration of such thirty (30) day period. Either party may terminate this Agreement, without notice, (i) upon the institution by or against the other party of insolvency, receivership or bankruptcy proceedings, (ii) upon the other party's making an assignment for the benefit of creditors, or (iii) upon the other party's dissolution or ceasing to do business. Upon termination for Flock's material breach, Flock will refund to Agency a pro-rata portion of the pre-paid fees for Services not received due to such termination.

**6.5 No-Fee Term.** For the Term of this Agreement, Flock will provide Agency with complimentary access to 'hot-list' alerts, which may include 'hot tags', stolen vehicles, Amber Alerts, etc. ("**No-Fee Term**"). In the event a Non-Agency End User grants Agency access to Footage and/or Notifications from a Non-Agency End User Unit, Agency will have access to Non-Agency End User Footage and/or Notifications until deletion, subject to the thirty (30) day retention policy. Non-Agency End Users and Flock may, in their sole discretion, leave access open. The No-Fee Term will survive the Term of this Agreement. Flock, in its sole discretion, can determine not to provide additional No-Fee Terms or can impose a price per No-Fee Term upon thirty (30) days' notice. Agency may terminate any No-Fee Term or access to future No-Fee Terms upon thirty (30) days' notice.

**6.6 Survival.** The following Sections will survive termination: 2.4, 2.5, 3, 4, 5 (with respect to any accrued rights to payment), 5.4, 6.5, 7.4, 8.1, 8.2, 8.3, 8.4, 9.1 and 10.5.

## **7. REMEDY; WARRANTY AND DISCLAIMER**

**7.1 Remedy.** Upon a malfunction or failure of Flock Hardware or Embedded Software (a "**Defect**"), Agency must notify Flock's technical support as described in Section 2.9 above. If Flock is unable to correct the Defect, Flock shall, or shall instruct one of its contractors to repair or replace the Flock Hardware or Embedded Software suffering from the Defect. Flock reserves the right in their sole discretion to refuse or delay replacement or its choice of

remedy for a Defect until after it has inspected and tested the affected Unit provided that such inspection and test shall occur within seventy-two (72) hours after Agency notifies the Flock of a known Defect. In the event of a Defect, Flock will repair or replace the defective Unit at no additional cost. In the event that a Unit is lost, stolen, or damaged, Agency may request that Flock replace the Unit at a fee according to the then-current Reinstall Policy (<https://www.flocksafety.com/reinstall-fee-schedule>). Agency shall not be required to replace subsequently lost, damaged or stolen Units, however, Agency understands and agrees that functionality, including Footage, will be materially affected due to such subsequently lost, damaged or stolen Units and that Flock will have no liability to Agency regarding such affected functionality nor shall the Usage Fee or Implementation Fees owed be impacted. Flock is under no obligation to replace or repair Hardware.

**7.2 Exclusions.** Flock will not provide the remedy described in Section 7.1 if Agency is found to have misused the Flock Hardware, Agency Hardware or Embedded Software in any manner.

**7.3 Warranty.** Flock shall use reasonable efforts consistent with prevailing industry standards to maintain the Services in a manner which minimizes errors and interruptions in the Services and shall perform the Installation Services in a professional and workmanlike manner. Upon completion of any installation or repair, Flock shall clean and leave the area in good condition. Services may be temporarily unavailable for scheduled maintenance or for unscheduled emergency maintenance, either by Flock or by third-party providers, or because of other causes beyond Flock's reasonable control, but Flock shall use reasonable efforts to provide advance notice in writing or by e-mail of any scheduled service disruption.

**7.4 Disclaimer.** THE REMEDY DESCRIBED IN SECTION 7.1 ABOVE IS AGENCY 'S SOLE REMEDY, AND FLOCK'S SOLE LIABILITY, WITH RESPECT TO DEFECTIVE EMBEDDED SOFTWARE. THE FLOCK DOES NOT WARRANT THAT THE SERVICES WILL BE UNINTERRUPTED OR ERROR FREE; NOR DOES IT MAKE ANY WARRANTY AS TO THE RESULTS THAT MAY BE OBTAINED FROM USE OF THE SERVICES. EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION, THE SERVICES ARE PROVIDED "AS IS" AND FLOCK DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. THIS DISCLAIMER OF SECTION 7.4 ONLY APPLIES TO THE EXTENT ALLOWED BY THE GOVERNING LAW OF THE STATE MENTIONED IN SECTION 10.6, OR IF NO STATE IS MENTIONED IN SECTION 10.6, BY THE LAW OF THE STATE OF CALIFORNIA.

**7.5 Insurance.** Flock will maintain commercial general liability policies with policy limits reasonably commensurate with the magnitude of Flock's business risk. Certificates of Insurance can be provided upon request.

**7.6 Force Majeure.** Flock is not responsible nor liable for any delays or failures in performance from any cause beyond its control, including, but not limited to acts of God, changes to law or regulations, embargoes, war, terrorist acts, acts or omissions of third-party technology providers, riots, fires, earthquakes, floods, power blackouts, strikes,

weather conditions or acts of hackers, internet service providers or any other third party or acts or omissions of Agency or any Authorized End User.

## **8. LIMITATION OF LIABILITY; NO FEE TERM; INDEMNITY**

**8.1 Limitation of Liability.** NOTWITHSTANDING ANYTHING TO THE CONTRARY, FLOCK AND ITS SUPPLIERS (INCLUDING BUT NOT LIMITED TO ALL HARDWARE AND TECHNOLOGY SUPPLIERS), OFFICERS, AFFILIATES, REPRESENTATIVES, CONTRACTORS AND EMPLOYEES SHALL NOT BE RESPONSIBLE OR LIABLE WITH RESPECT TO ANY SUBJECT MATTER OF THIS AGREEMENT OR TERMS AND CONDITIONS RELATED THERETO UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY, PRODUCT LIABILITY, OR OTHER THEORY: (A) FOR ERROR OR INTERRUPTION OF USE OR FOR LOSS OR INACCURACY, INCOMPLETENESS OR CORRUPTION OF DATA OR FOOTAGE OR COST OF PROCUREMENT OF SUBSTITUTE GOODS, SERVICES OR TECHNOLOGY OR LOSS OF BUSINESS; (B) FOR ANY INDIRECT, EXEMPLARY, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES; (C) FOR ANY MATTER BEYOND FLOCK'S ACTUAL KNOWLEDGE OR REASONABLE CONTROL INCLUDING REPEAT CRIMINAL ACTIVITY OR INABILITY TO CAPTURE FOOTAGE OR IDENTIFY AND/OR CORRELATE A LICENSE PLATE WITH THE FBI DATABASE; (D) FOR ANY PUBLIC DISCLOSURE OF PROPRIETARY INFORMATION MADE IN GOOD FAITH; (E) FOR CRIME PREVENTION; OR (F) FOR ANY AMOUNTS THAT, TOGETHER WITH AMOUNTS ASSOCIATED WITH ALL OTHER CLAIMS, EXCEED THE FEES PAID AND/OR PAYABLE BY AGENCY TO FLOCK FOR THE SERVICES UNDER THIS AGREEMENT IN THE TWELVE (12) MONTHS PRIOR TO THE ACT OR OMISSION THAT GAVE RISE TO THE LIABILITY, IN EACH CASE, WHETHER OR NOT FLOCK HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN THE EVENT OF AN EMERGENCY, AGENCY SHOULD CONTACT 911 AND SHOULD NOT RELY ON THE SERVICES. THIS LIMITATION OF LIABILITY OF SECTION 8 ONLY APPLIES TO THE EXTENT ALLOWED BY THE GOVERNING LAW OF THE STATE MENTIONED IN SECTION 10.6, OR IF NO STATE IS MENTIONED IN SECTION 10.6, BY THE LAW OF THE STATE OF CALIFORNIA.

**8.2 Additional No-Fee Term Requirements.** IN NO EVENT SHALL FLOCK'S AGGREGATE LIABILITY, IF ANY, ARISING OUT OF OR IN ANY WAY RELATED TO THE COMPLIMENTARY NO-FEE TERM AS DESCRIBED IN SECTION 6.5 EXCEED \$100, WITHOUT REGARD TO WHETHER SUCH CLAIM IS BASED IN CONTRACT, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY OR OTHERWISE. Parties acknowledge and agree that the essential purpose of this Section 8.2 is to allocate the risks under the No-Fee Term described in Section 6.5 and limit potential liability given the aforementioned complimentary service, which would have been substantially higher if Flock were to assume any further liability other than as set forth herein. Flock has relied on these limitations in determining whether to provide the complimentary No-Fee Term. The limitations set forth in this Section 8.2 shall not apply to claims or damages resulting from Flock's other obligations under this Agreement.

8.3 **Responsibility.** Each Party to this Agreement shall assume the responsibility and liability for the acts and omissions of its own employees, deputies, officers, or agents, in connection with the performance of their official duties under this Agreement. Each Party to this Agreement shall be liable (if at all) only for the torts of its own officers, agents, or employees that occur within the scope of their official duties. Agency will not pursue any claims or actions against Flock's suppliers.

8.4 **Indemnity.** Agency hereby agrees to indemnify and hold harmless Flock against any damages, losses, liabilities, settlements and expenses in connection with any claim or action that arises from an alleged violation of Section 3.2, a breach of this Agreement, Agency's Installation Obligations, Agency's sharing of any data in connection with the Flock system, Flock employees or agent or Non-Agency End Users, or otherwise from Agency's use of the Services, Flock Hardware, Agency Hardware and any Embedded Software, including any claim that such actions violate any applicable law or third party right. Although Flock has no obligation to monitor Agency's use of the Services, Flock may do so and may prohibit any use of the Services it believes may be (or alleged to be) in violation of Section 3.2 or this Agreement.

## 9. RECORD RETENTION

9.1 **Data Preservation.** The Agency agrees to store Agency Data in compliance with all applicable local, state and federal laws, regulations, policies and ordinances and their associated record retention schedules. As part of Agency's consideration for paid access and no-fee access to the Flock System, to the extent that Flock is required by local, state or federal law to preserve the Agency Data, Flock will notify Agency of the requirement and applicable retention period, and Agency agrees to preserve and securely store this data on Flock's behalf so that should Flock be legally compelled by judicial or government order, Flock may retrieve the data from Agency upon demand.

## 10. MISCELLANEOUS

10.1 **Severability.** If any provision of this Agreement is found to be unenforceable or invalid, that provision will be limited or eliminated to the minimum extent necessary so that this Agreement will otherwise remain in full force and effect and enforceable.

10.2 **Assignment.** This Agreement is not assignable, transferable or sublicensable by Agency except with Flock's prior written consent. Flock may transfer and assign any of its rights and obligations, in whole or in part, under this Agreement without consent.

10.3 **Entire Agreement.** This Agreement, together with the Order Form(s), the then-current Reinstall Policy (<https://www.flocksafety.com/reinstall-fee-schedule>), and Deployment Plan(s), are the complete and exclusive statement of the mutual understanding of the parties and supersedes and cancels all previous written and oral agreements, communications and other understandings relating to the subject matter of this Agreement, and that all waivers and modifications must be in a writing signed by both parties, except as otherwise provided herein. None of Agency's purchase orders, authorizations or similar documents will alter the terms of this Agreement, and any such conflicting terms are expressly rejected.

10.4 **Relationship.** No agency, partnership, joint venture, or employment is created as a result of this Agreement and Agency does not have any authority of any kind to bind Flock in any respect whatsoever.

10.5 **Governing Law; Venue.** This Agreement shall be governed by the laws of the State in which the Agency is located. The parties hereto agree that venue would be proper in the chosen courts of the State of which the Agency is located. The parties agree that the United Nations Convention for the International Sale of Goods is excluded in its entirety from this Agreement.

10.6 **Publicity.** Upon prior consent from Agency, Flock has the right to reference and use Agency's name and trademarks and disclose the nature of the Services provided hereunder in each case in business and development and marketing efforts, including without limitation on Flock's website.

10.7 **Export.** Agency may not remove or export from the United States or allow the export or re-export of the Flock IP or anything related thereto, or any direct product thereof in violation of any restrictions, laws or regulations of the United States Department of Commerce, the United States Department of Treasury Office of Foreign Assets Control, or any other United States or foreign agency or authority. As defined in FAR section 2.101, the Services, the Hardware, the Embedded Software and Documentation are "commercial items" and according to DFAR section 252.2277014(a)(1) and (5) are deemed to be "commercial computer software" and "commercial computer software documentation." Consistent with DFAR section 227.7202 and FAR section 12.212, any use, modification, reproduction, release, performance, display, or disclosure of such commercial software or commercial software

documentation by the U.S. Government will be governed solely by the terms of this Agreement and will be prohibited except to the extent expressly permitted by the terms of this Agreement.

10.8 **Headings.** The headings are merely for organization and should not be construed as adding meaning to the Agreement or interpreting the associated Sections.

10.09 **Authority.** Each of the below signers of this Agreement represent that they understand this Agreement and have the authority to sign on behalf of and bind the organizations and individuals they are representing.

10.10 **Notices.** All notices under this Agreement will be in writing and will be deemed to have been duly given when received, if personally delivered; when receipt is electronically confirmed, if transmitted by facsimile or e-mail; the day after it is sent, if sent for next day delivery by recognized overnight delivery service; and upon receipt, if sent by certified or registered mail, return receipt requested.



# flock safety

Let's defeat crime together.™



## CUSTOMER IMPLEMENTATION GUIDE

### LAW ENFORCEMENT

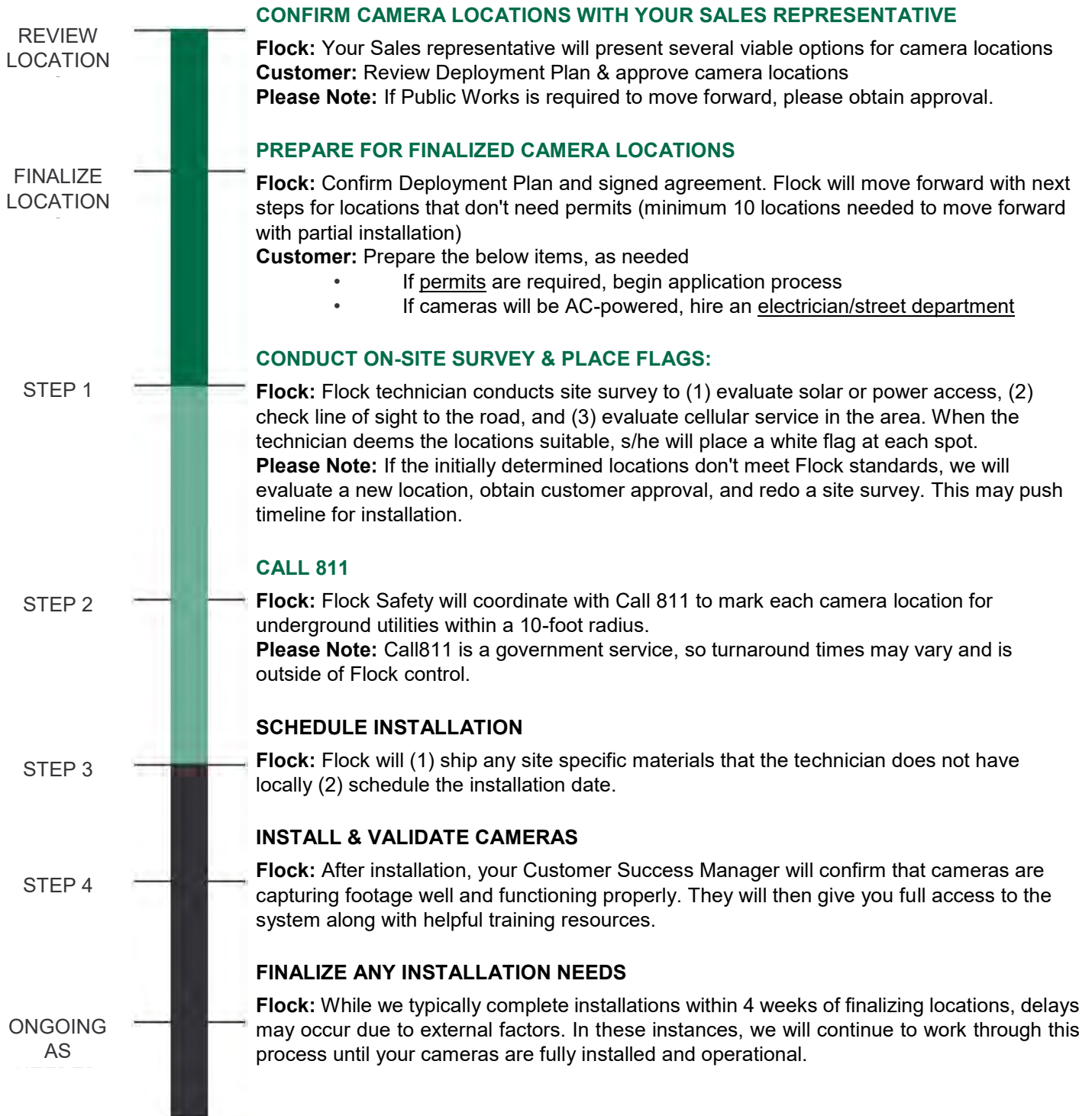
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  - Traffic Control & Installation Methods
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# IMPLEMENTATION TIMELINE


This timeline provides general guidance and understanding of your installation process. While we typically complete installations 6-8 weeks after locations have been finalized, delays can occur as noted in the timeline below:



# IMPLEMENTATION TEAM

FLOCK TEAM	HOW WILL THEY SUPPORT YOU
 <p data-bbox="293 835 553 905"><b>Customer Success Manager</b></p>	<p data-bbox="716 506 1333 569">Your <b>Customer Success Manager</b> is your <b>strategic partner</b> for your lifetime as a Flock customer.</p> <p data-bbox="716 600 1349 751">They will be your guide through the installation process. After install, they will help you understand how best to leverage the Flock Safety tool to solve crime. You should reach out to them when you want to discuss:</p> <ul data-bbox="813 758 1325 947" style="list-style-type: none"> <li>• Training</li> <li>• Benefits of features</li> <li>• Best practices for getting relevant data</li> <li>• Opportunities to expand the security network in your area</li> <li>• Feedback on your partnership with Flock</li> </ul>
 <p data-bbox="277 1318 578 1346"><b>Flock Safety Support</b></p>	<p data-bbox="716 1010 1365 1129">The Flock Safety Support team is committed to answering all your day-to-day questions as quickly as possible. To <b>get in touch with support</b>, simply email <a href="mailto:support@flocksafety.com">support@flocksafety.com</a>. Support can help you:</p> <ul data-bbox="813 1136 1227 1346" style="list-style-type: none"> <li>• Request camera maintenance</li> <li>• Troubleshoot online platform</li> <li>• Contract / Billing questions</li> <li>• Update account information</li> <li>• Camera Sharing questions</li> <li>• Quick “How to” questions in your Flock Account</li> </ul>
 <p data-bbox="253 1734 602 1803"><b>Product Implementation Specialist</b></p>	<p data-bbox="716 1419 1292 1482">Your <b>Product Implementation Specialist</b> is your <b>technical product expert</b>.</p> <p data-bbox="716 1488 1308 1608">They will help translate your goal for using Flock Safety cameras into a technical plan that can be executed and enable you to solve crime. Your specialist will work with you to:</p> <ul data-bbox="797 1614 1373 1860" style="list-style-type: none"> <li>• Review the cameras in your deployment</li> <li>• Ensure that the deployment plan is set up for success from a technological standpoint in addition to meeting your goals for the product</li> <li>• If any of your locations require permits, a member of the Product Implementation team will assist you in packaging your application(s).</li> </ul>

## IMPLEMENTATION TEAM

 <p><b>Field Operations Team</b></p>	<p>The Field Operations team is responsible for the physical installation and maintenance of cameras and associated equipment provided by Flock. This includes a large team of technicians, schedulers, and many others involved in ensuring the delivery of your product.</p> <p>They take the technical plan you finalized with Product Implementation and work closely with other teams at Flock to make sure that your cameras are installed quickly and safely, and in a way that maximizes the opportunity to solve crime at a specific location.</p> <p><b>*Note*</b>: For <b>all Installation questions or concerns</b>, please always direct them to your <b>Customer Success Manager</b> and not to the technician.</p>
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**Please Note:** On some occasions, third parties outside of Flock Safety may be (or need to be) involved in your implementation.

OUTSIDE PARTY	WHEN THEY MAY BE INVOLVED
<p><b>Electrician/Street Department</b></p>	<p>If your Flock cameras need to be AC powered, you (customer) are responsible for providing an electrician to ensure power connectivity</p>
<p><b>Public Works (LE)</b></p>	<p>To weigh in on use of public Right of Ways or property</p>
<p><b>Department of Transportation (DOT), City, or County Agencies</b></p>	<p>If installation in your area requires permitting</p>

# THINGS TO CONSIDER WHEN PICKING LOCATIONS

## Falcon Cameras

- Use Cases

- Flock LPRs are designed to capture images of rear license plates, aimed in the direction of traffic.
- Flock LPRs are not designed to capture pedestrians, sidewalks, dumpsters, gates, other areas of non-vehicle traffic, intersections

- Placement

- They capture vehicles driving away from an intersection.
- They cannot point into the middle of an intersection.
- They should be placed after the intersection, to prevent stop and go motion activation, or "stop and go" traffic.

- Mounting

- They can be mounted on existing utility, light, or traffic signal poles, or 12 foot Flock poles. **\*\*NOTE\*\*** Permitting (or permission from pole owner) may be required in order to use existing infrastructure or install in specific areas, depending on local regulations & policies.
- They should be mounted one per pole\*. If using AC power, they can be mounted 2 per pole.

\*Cameras need sufficient power. Since a solar panel is required per camera, it can prevent sufficient solar power if 2 cameras and 2 solar panels were on a single pole (by blocking visibility). Therefore if relying on solar power, only one camera can be installed per pole.

- They can be powered with solar panels or direct wire-in AC Power (no outlets). **\*\*NOTE\*\*** Flock does not provide Electrical services. The agency or community must work with an electrician to wire the cameras once installed. Electrician services should be completed within 2 days of installation to prevent the camera from dying.

- They will require adequate cellular service using AT&T or T-Mobile to be able to process & send images

- Any Flock equipment mounted over 14 feet or on a horizontal beam will require a bucket truck. If mounting in this way:

- Flock will request use of a bucket truck through the customer or Public Works
- If a bucket truck is not available through the customer, Flock will have to procure one.

**\*\*Note\*\*** This will lead to delays on install & any subsequent maintenance visits based on bucket truck availability

- Flock will likely require traffic control assistance provided by customer to install or provide maintenance with a bucket truck



# THINGS TO CONSIDER WHEN Solar Panels

- Solar panels need unobstructed southern-facing views



## CUSTOMER RESPONSIBILITIES: AC-POWERED CAMS

In the event your Flock cameras need to be AC-powered, the customer is responsible for acquiring an electrician and ensuring they connect the camera to power. See steps 2 and 6 below.

**flock safety™**  
Let's defeat crime together.™



### Don't Let Access to Solar Limit Your Power Needs

The Flock Safety license plate reading camera system can leverage AC power to help your community solve crime no matter the location.



Easy to Use Install Power Kit

Work with Local Electricians

Efficient Quote & Installation Process

#### How to Get Started with a Powered Install

- 1. Create a Deployment Plan**  
Work with Flock to select the best location(s) for your cameras and power sources.
- 2. Acquire an Electrical Quote**  
Contact an electrician to receive a quote to run 120volt AC power to the camera.
- 3. Sign Flock Safety Agreement**  
Sign the Flock Safety purchase order to begin the installation of the cameras.
- 4. Conduct Site Survey**  
Flock will mark camera locations, locate underground utilities and mark if present.
- 5. Install Camera**  
Flock will install the camera and AC power kit at the specified camera location.
- 6. Connect Camera to Power**  
Notify the electrician that the camera is ready for the power connection installation.

flock safety™ | [www.flocksafety.com](http://www.flocksafety.com) | 866-901-1781

Visit [flocksafety.com/power-install](http://flocksafety.com/power-install) for the full plan, FAQs & to get started!





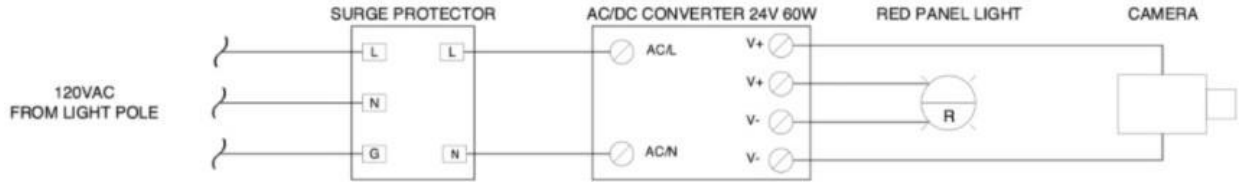
# ELECTRICIAN HANDOUT

## Electrician Installation Steps

1. Run AC cable and conduit to the box according to NEC Article 300 and any applicable local codes. The gland accepts ½" conduit
2. Open the box using hinges
3. Connect AC Mains per wiring diagram below:
  - a. Connect AC Neutral wire to the Surge Protector white Neutral wire using the open position on the lever nut.
  - b. Connect AC Line wire to the Surge Protector black Line wire using the open position on the lever nut.
  - c. Connect AC Ground wire to the Surge Protector green ground wire using the open position on the lever nut.
4. Verify that both the RED LED is lit on the front of the box
5. Close box and zip tie the box shut with the provided zip tie
6. While still on site, call Flock who will remotely verify that power is working correctly:
  - Southeast Region** - (678) 562-8766
  - West-Region** - (804) 607-9213
  - Central & NE Region** - (470) 868-4027



# ELECTRICIAN HANDOUT



## FAQS ABOUT AC-POWERED FLOCK CAMERAS

### What voltage is supported?

The AC kit is designed to work with 120VAC infrastructure by default. A 240VAC version is available on request.

### How much power does this consume?

Peak current draw is 1.5 A at 120VAC. Average power draw is roughly 30W in high traffic conditions, but may be lower when less vehicles are present.

### Who is responsible for contracting to install?

The customer is responsible for contracting an electrician. We can help answer questions, but the customer is responsible for identifying and contracting an electrician.

### Who is responsible for maintenance?

Flock will handle all maintenance related to the camera and power equipment installed by Flock. However, any problems with the electrical supply are the responsibility of the customer. The AC junction box has two lights to indicate the presence of power and make it easy for quick diagnosis if there is a problem related to the AC power source.

In the event the camera indicates to Flock that there is a power supply problem, Flock will notify the customer and request that the customer verify the lights on the AC junction box. If the AC Source light is illuminated, Flock will send a technician to investigate. If the AC source light is not illuminated the customer should check any GFCI's or breakers in the supply circuit or call the electrician who installed the power supply.



### How much does it cost?

Work required to bring AC power to each location will be different, so exact pricing is not possible. The primary driver of cost is the distance from AC power source to the intended camera location.

## What information do I need to provide my electrician?

The Flock deployment plan and these work instructions should be sufficient to secure a quote. It will be helpful if you know the location of existing power infrastructure before creating the deployment plan.

## Can you plug into my existing power outlet?

The Flock AC power adapter does not use a standard outlet plug, but must be directly wired into the power mains. While using outlet plugs may be convenient, they can easily be unplugged presenting a tampering risk to this critical safety infrastructure. If an outlet is close to the camera, the electrician can route power directly to the camera with a direct wire-in connection.

## How long does this process typically take?

The installation process typically takes 6-8 weeks. In order to accelerate the process, be sure to have the electrician perform his work shortly after the Flock technician finishes installing the camera.

## What kind of electrician should I look for?

Any licensed electrician should be able to perform this work, though we have found that those who advertise working with landscape lighting are most suited for this work.

## What happens if the electrician damages the equipment?

The customer is responsible for contracting the electrician. Any liability associated with this work would be assumed by the customer. If any future work is required at this site due to the electrical infrastructure or the work performed by the electrician would be the responsibility of the customer.

## When should the electrician perform his work?

Once Flock installs the camera, you will receive an email alert letting you know that this has been completed. After this, you will need to schedule the electrician to route power to the pole.

## What if my electrician has questions about Flock's AC Kit?

You should share the [AC-Power Kit Details](#) packet with the electrician if they have questions.

## What if the AC power is on a timer?

Sometimes the AC power will be on a timer (like used for exterior lighting). Flock requires that the AC power provided to the camera be constant. The source that the electrician uses must not be on a timing circuit.



## INSTALLATION SERVICE BRIEF

Below outlines the statement of work for your Flock Camera Installation:

WHAT IS COVERED BY FLOCK	WHAT IS <i>NOT</i> COVERED BY FLOCK	SPECIAL NOTE
Flock Cameras & Online Platform	Traffic Control and any associated costs	
Mounting Poles	Electrician & ongoing electrical cost	
AC Power Kit (as needed)	Engineering Drawings	
Solar Panels (as needed)	Relocation Fees	<i>exc. changes during initial installation</i>
Site Surveys and Call 811 Scheduling	Contractor licensing fees	
Installation Labor Costs	Permit application processing fees	
Customer Support / Training	Specialist mounting equipment	<i>Including, but not limited to, *MASH poles or adapters</i>
Cellular Data Coverage	Bucket trucks	
Maintenance Fees (review Fees Sheet for more details)	Loss, theft, damage to Flock equipment	
Data storage for 30 days	Camera downtime due to power outage	<i>Only applicable for AC-powered cameras</i>

\*MASH poles: Manual for Assessing Safety Hardware (MASH) presents uniform guidelines for crash testing permanent and temporary highway safety features and recommends evaluation criteria to assess test results



## PERMITTING:

# PRE-INSTALL QUESTIONNAIRE

### 1. Timeline

- In Flock Safety's experience, in-depth permitting requirements can **add 2+ months to the installation timeline**. Law enforcement agencies and city governments can work with their local Public Works or Department of Transportation offices directly to help expedite the process. When Flock Safety customers manage the permitting processes, results tend to come more quickly.
- Is your agency able to own the permitting process with Flock Safety's assistance?

### 2. Right of Way

- Will any of the Flock Safety cameras be installed on city, state or power company owned poles or in city, county, or state Right of Way (RoW)?
  - What is the RoW buffer?
  - Will additional permits or written permission be required from third-party entities (such as DOT, power company, public works, etc)?
- Will any cameras be installed on city-owned traffic signal poles (vertical mass)?
  - If yes, please provide heights/photos to determine if a bucket truck is needed for the installation.  
Note: If height is greater than 15 feet tall, a bucket truck is **required**.

### 3. AC Power vs. Solar

- If AC powered, is there a 120V power source available, and is there access to an electrician who can connect the existing wire to the Flock Safety powered installation kit?
- If solar powered, consider the size of the solar panel and potential to impact



## flock safety

visibility of DOT signs/signals:

- Single Panel: 21.25" x 14" x 2" (Length x Width x Depth)
- Double Panel: 21.25" x 28" x 2" (LxWxD)



## 4. Traffic Control & Installation Methods

- **If a bucket truck is required**, this typically necessitates a full lane to be blocked in the direction of travel. **Can you provide a patrol car escort, or will full traffic control be required?**
  - Note: If traffic control is required, you may incur additional costs due to city/state requirements; Fees will be determined by quotes received.
- **If full traffic control required (cones, arrowboard)**
  - Will standard plans suffice, or are custom plans needed? Custom plans can double the cost, while standard plans can be pulled from the Manual of Uniform Traffic Control Devices ([MUTCD](#)).
  - Will a non-sealed copy of the traffic plan suffice? Or does the traffic plan need to be sealed and/or submitted by a professional engineer?
  - Are there state-specific special versions/variances that must be followed?
- **If a bucket truck is *not* required**, the shoulder or should suffice and enable Flock Safety to proceed without traffic control systems in place.
  - Note: In some states (i.e. California), sidewalks may require signage. If signage is mandatory, Will your Public Works department be able to assist?

## 5. Paperwork & Required Forms

- Flock Safety will need copies of paperwork to complete prior to proceeding (ex. business license applications, encroachment permit applications). We can save critical time by gathering these documents upfront. We appreciate your assistance in procuring these.

## 6. Contacts

- If Flock Safety will need to interface directly with the departments, please share





## flock safety

the contact information of the following departments:

- Permitting
- Public Works
- Traffic Department



## FEE SCHEDULING

## \*Fee Schedule

After a deployment plan with Designated Locations and equipment has been agreed upon by both Flock and the Customer, any subsequent changes to the deployment plan (“Reinstalls”) driven by a Customer’s request will incur a fee per the table below.

All fees are per reinstall or required visit (in the case that a reinstall is attempted but not completed) and include labor and materials. If you have any questions, please email [support@flocksafety.com](mailto:support@flocksafety.com).

\*Below fee schedule is subject to change;

REINSTALL OR JOB TYPE	REINSTALL FEE
Camera or pole relocation	\$150
Camera replacement as result of vandalism, theft, or third party damage	\$500
Pole replacement as a result of vandalism, theft, or third party damage	\$150
Pole upgrade	\$300
Angle Adjustment - Customer request	\$125
Installation of additional Flock Safety sign (including cost of sign)	\$100
Convert camera to use of electrical outlet (excluding cost of electrical work)	\$150
Other site visit/technician visit that does not result in a reinstall being required	\$150

## HELP CENTER

Our Help Center is filled with tons of resources to help you navigate through the online platform. Below you will find some common questions and their relevant help article:

How do I search camera footage? How do I add a user?

How do I add a vehicle to my own Hot List?

How do I enable browser notifications for Hot List alerts? How do I get text alerts for Hot List?

How do I request camera access from other nearby agencies?

How do I use the National Lookup to search for a plate?

*(National Lookup - network of law enforcement agencies that have opted to allow their Flock cameras to be used for searches)*

How do I reset my / another user's password?

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## CUSTOMER SUPPORT

You can reach our customer support team anytime by emailing [support@flocksafety.com](mailto:support@flocksafety.com).

They can help answer any "How-To" questions you may have.





flock safety

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

**TRACY CITY COUNCIL**

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

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**APPROVING A TWO-YEAR MASTER SERVICES AGREEMENT WITH FLOCK GROUP, INC. FOR THE INSTALLATION, OPERATION, AND MAINTENANCE OF AUTOMATED LICENSE PLATE READER TECHNOLOGY FOR A NOT TO EXCEED AMOUNT OF \$255,000 AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT, INCLUDING ANY AMENDMENTS**

**WHEREAS**, the City of Tracy already operates a License Plate Reader program through the Police Department, park cameras through the Parks and Recreation Department, and traffic monitoring cameras through the Engineering Department; and

**WHEREAS**, the expansion of the three programs will provide increased efficiencies and public safety specific to investigations outcomes and monitoring of traffic conditions; and

**WHEREAS**, the Master Services Agreement with Flock Group, Inc. will provide services that include the installation, operation, and maintenance of camera and sensor technology at strategic locations in the City of Tracy compatible with the existing systems; and

**WHEREAS**, the agreement has been deemed by the City Manager to qualify for the sole source exemption, as described in the Tracy Municipal Code; and

**WHEREAS**, the implementation of the program directly addresses two public safety strategic priorities identified by the City Council; now, therefore, be it

**RESOLVED:** That the City Council of the City of Tracy hereby authorizes a Master Services Agreement with Flock Group Inc., for the installation, operation, and maintenance of automated license plate reader technology, for an amount not to exceed \$255,000; and be it

**FURTHER RESOLVED:** That the City Council hereby authorizes the City Manager to execute the Master Services Agreement and any amendments to the Agreement.

\* \* \* \* \*

The foregoing Resolution 2022-\_\_\_\_\_ was adopted by the Tracy City Council on 6th day of September 2022, by the following vote:

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

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

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

AGENDA ITEM 1.G

REQUEST

**STAFF RECOMMENDS THAT THE CITY COUNCIL ADOPT A LIST OF PROPOSED PROJECTS FOR FISCAL YEAR 2022-2023 FUNDED BY SENATE BILL 1 (SB 1): THE ROAD REPAIR AND ACCOUNTABILITY ACT OF 2017**

EXECUTIVE SUMMARY

City staff is requesting that the City Council adopt a list of proposed projects for Fiscal Year 2022-2023 funded by Senate Bill 1 (SB 1): The Road Repair and Accountability Act of 2017. Once adopted, the list will be submitted to the California Transportation Commission (CTC) for anticipated funding of \$2,183,433. This amount is based on revenues that the City anticipates receiving from the Road Maintenance and Rehabilitation Account (RMRA) as part of SB 1.

DISCUSSION

The Road Repair and Accountability Act of 2017 (Act) is a significant investment in California's transportation system. The Act was passed by the California Legislature and signed into law by the Governor in April of 2017 to address the significant multi-modal transportation funding shortfalls statewide. SB 1 includes accountability and transparency provisions that will ensure the residents are aware of the projects proposed for funding and which projects have been completed each fiscal year.

The Act increased per gallon fuel excise taxes, diesel fuel sales taxes and vehicle registration fees. A portion of this new revenue is allocated to the Road Maintenance and Rehabilitation Account (RMRA). Pursuant to Streets and Highways Code Section 2030(b), RMRA local streets and roads allocations must be used for projects "that include, but are not limited to," the following:

1. Road maintenance and rehabilitation
2. Safety projects
3. Railroad grade separations
4. Traffic control devices
5. Complete street components

Attachment A shows the RMRA Projections for the City for FY 21-22 & FY 22-23 from the website [CaliforniaCityFinance.com](http://CaliforniaCityFinance.com), the California Local Government Finance Almanac. According to the projections, City will receive \$2,183,433 for FY 22-23 from the RMRA.

In order to receive said funds from the CTC, the City of Tracy must adopt, by resolution, a list of projects proposed to receive fiscal year funding from the RMRA, which must include a description and the location of each proposed project, an estimated project start date, an estimated project completion date, and the estimated useful life of the improvement. The resolution is then submitted to CTC before the deadline of September 30<sup>th</sup>, 2022. This is the sixth year in which City of Tracy is receiving SB 1



funding. The funding will enable the City of Tracy to continue essential road maintenance and rehabilitation projects, safety improvements, repairing and replacing aging bridges, and increasing access and mobility options for the traveling public that would not have been possible without the funding.

Pursuant to California Streets and Highway Code (SHC) Section 2034(a)(1), the project list shall not limit the flexibility of an eligible city or county to fund projects in accordance with local needs and priorities, so long as the projects are consistent with SHC Section 2030(b). After submittal of the project list to the CTC, in the event a city or county elects to make changes to the project list pursuant to the statutory provision noted above, formal notification of the CTC is not required. However, standard reporting forms will provide an opportunity for jurisdictions to annually communicate such changes to the CTC as part of the Annual Expenditure Reporting process.

The project locations were selected based on the City’s Pavement Management System, coordination with the Operations Division of Operations and Utilities Department, Engineering staff’s visual inspection, planned transportation projects, public comment review, and available funds.

This Proposed Project List for FY 2022-2033 (Attachment C) includes newly proposed projects as well as previously proposed and adopted projects that may utilize fiscal year 2022-2023 RMRA revenues in their delivery. Attachment A includes preliminary RMRA projections for FY 2021-22 and FY 2022-23. Attachment B shows the list of RMRA payments by the State Controller’s Office to the City of Tracy for FY 2020-21.

FISCAL IMPACT

The approved Capital Improvement Projects (CIP) for this effort are CIP 73178, CIP 73183, CIP 73184, CIP 73186, and CIP 73187. A city can carryover unexpended SB 1 RMRA funds to subsequent fiscal years. The expected funding is summarized in the following table:

Project	Funding Sources				Total
	F242 – Transportation Sales Tax	F245 – Gas Tax	Regional Surface Transportation Program (RSTP)	SB 1 RMRA	
CIP 73186 Pavement Rehabilitation FY 22-23	\$540,000	\$135,000	\$641,698	\$1,300,000	\$2,616,698
CIP 73187 Slurry Seal FY 22-23	\$0	\$0	\$0	\$600,000	\$600,000

CIP 73184 Slurry Seal FY 21-22	\$0	\$0	\$0	\$600,000	\$600,000
CIP 73183 Pavement Rehabilitation FY 21-22	\$540,000	\$135,000	\$0	\$1,213,747	\$1,888,747
CIP 73178 Pavement Rehabilitation FY 20-21	\$140,000	\$135,000	\$1,284,163	\$1,652,699	\$3,211,862

Development Services Department coordinated with Operations and Utilities Department in creating the proposed list in collaboration with the recommendations from the Pavement Management System.

**STRATEGIC PLAN**

This agenda item supports the City of Tracy’s Quality of Life Strategic Priority and specifically implements the following goal:

Goal 1: Advance green and roadway infrastructure projects that improve connectivity, including bike lanes.

**RECOMMENDATION**

Staff recommends that the City Council by resolution, adopt the proposed list of projects for Fiscal Year 2022-2023 funded by SB 1: The Road Repair and Accountability Act of 2017.

Prepared by: Anju Pillai, PE, Senior Civil Engineer

Reviewed by: Robert Armijo, PE, City Engineer / Assistant Development Services Director  
 Kris Balaji, PMP, PE, Development Services Director  
 Sara Cowell, Interim Finance Director  
 Midori Lichtwardt, Assistant City Manager

Approved by: Michael Rogers, City Manager

**ATTACHMENTS**

- Attachment A – CaliforniaCityFinance.com RMRA Projections for FY 21-22 and FY 22-23
- Attachment B – State Controller’s Office RMRA City FY 2020-21 Payments
- Attachment C – Proposed Project List for FY 2022-2023 to be funded by SB 1
- Attachment D – SB 1 FY 2022-23 Location Map

# Local Streets and Roads - Projected Revenues

Estimated May 2022

	2021-22			2022-23		
	Hwy Users Tax Account	Road Mntnc Rehab Acct	TOTAL	Hwy Users Tax Account	Road Mntnc Rehab Acct	TOTAL
<b>SAN DIEGO COUNTY</b>						
CARLSBAD	2,888,673	2,288,475	5,177,148	3,199,669	2,557,668	5,757,337
CHULA VISTA	6,843,585	5,437,786	12,281,372	7,582,562	6,077,433	13,659,995
CORONADO	624,306	489,333	1,113,639	690,805	546,893	1,237,698
DEL MAR	111,747	84,366	196,112	123,212	94,290	217,501
EL CAJON	2,583,672	2,045,602	4,629,274	2,861,662	2,286,226	5,147,888
ENCINITAS	1,562,162	1,234,161	2,796,324	1,729,881	1,379,335	3,109,216
ESCONDIDO	3,789,071	3,005,465	6,794,536	4,197,503	3,358,998	7,556,501
IMPERIAL BEACH	701,867	550,299	1,252,166	776,651	615,031	1,391,682
LA MESA	1,494,708	1,180,447	2,675,155	1,655,127	1,319,303	2,974,429
LEMON GROVE	666,311	521,986	1,188,297	737,247	583,387	1,320,634
NATIONAL CITY	1,573,608	1,243,275	2,816,883	1,742,565	1,389,522	3,132,087
OCEANSIDE	4,412,758	3,502,110	7,914,867	4,888,683	3,914,062	8,802,745
POWAY	1,228,416	969,592	2,198,008	1,360,180	1,083,645	2,443,825
SAN DIEGO	35,133,867	27,957,476	63,091,343	38,933,193	31,246,111	70,179,304
SAN MARCOS	2,408,467	1,908,077	4,316,544	2,667,768	2,132,523	4,800,292
SANTEE	1,425,586	1,125,405	2,550,991	1,578,525	1,257,786	2,836,311
SOLANA BEACH	351,841	273,961	625,801	389,071	306,187	695,258
VISTA	2,584,294	2,046,097	4,630,391	2,862,351	2,286,779	5,149,131
County of San Diego	68,129,468	49,192,637	117,322,105	75,885,090	54,137,820	130,022,910
Total Cities & County: San Diego	138,514,407	105,056,549	243,570,955	138,514,407	105,056,549	243,570,955
<b>SAN FRANCISCO COUNTY</b>						
SAN FRANCISCO - City Allocation	20,566,664	17,336,982	37,903,646	22,816,550	19,376,330	42,192,880
SAN FRANCISCO - County Allocation	11,332,248	9,449,129	20,781,377	12,647,599	10,399,021	23,046,620
Total San Francisco	31,898,912	26,786,111	58,685,023	31,898,912	26,786,111	58,685,023
<b>SAN JOAQUIN COUNTY</b>						
ESCALON	191,133	148,621	339,754	211,131	166,103	377,234
LATHROP	711,246	564,743	1,275,989	787,236	631,174	1,418,410
LODI	1,701,818	1,362,196	3,064,014	1,885,112	1,522,431	3,407,543
MANTECA	2,158,117	1,730,092	3,888,209	2,390,914	1,933,603	4,324,517
RIPON	409,167	322,801	731,968	452,602	360,772	813,374
STOCKTON	7,900,152	6,357,666	14,257,818	8,755,626	7,105,518	15,861,144
TRACY	2,435,366	1,953,628	4,388,993	2,698,242	2,183,433	4,881,674
County of San Joaquin	18,724,886	15,108,705	33,833,591	20,885,944	16,627,536	37,513,480
Total Cities & County: San Joaquin	34,231,884	27,548,452	61,780,336	34,231,884	27,548,452	61,780,336

# ATTACHMENT B

State Controller's Office

Year to Date

Road Maintenance and Rehabilitation Account (RMRA) - Cities

Fiscal Year: 2020-2021

City	9/22/2020	10/22/2020	11/20/2020	12/22/2020	1/22/2021	2/22/2021	3/22/2021	4/22/2021	5/21/2021	6/22/2021	7/22/2021	8/20/2021	Year to Date
Tracy City	\$144,724.72	\$162,459.64	\$153,532.10	\$134,022.45	\$165,341.53	\$131,293.43	\$128,532.80	\$150,800.78	\$145,882.30	\$137,751.76	\$173,360.31	\$150,719.01	\$1,778,420.83

ATTACHMENT C

Proposed Project List for FY 2022-2023 to be Funded by SB 1

Newly Proposed Projects:

Project Title	Project Description	Approximate Project Location	Estimated Project Useful Life	Estimated Project Start Date	Estimated Project Completion Date
<p><b>Slurry Seal FY 22-23 CIP 73187</b></p>	<p><b>Slurry seal and paving rehab/repair of about 7.37 lane miles of streets.</b></p>	<p><b>Subdivisions of:  Harvest Glen (Units 1 and 2);  Victoria Greens (Units 1, 2, and 3).</b></p>	<p><b>5-10 years</b></p>	<p><b>September 2022</b></p>	<p><b>April 2023</b></p>
<p><b>Pavement Rehabilitation FY 22-23 CIP 73186</b></p>	<p><b>Paving rehab/repair of about 4.06 lane miles of streets.</b></p>	<p><b>Clover Road (Holly Dr to Cabrillo Dr)  Grant Line Road (from ±135' East of Walmart Dwy to Naglee Rd);  Mae Avenue (Lowell Ave to Whittier Ave)  Wall Street (Beverly PL to Carlton Way)  12<sup>th</sup> Street (Parker Ave to Adam St)  Walnut Street (11<sup>th</sup> St to Highland Ave)  Tracy Blvd. (from 11<sup>TH</sup> St to 6<sup>th</sup> St);</b></p>	<p><b>10-15 years</b></p>	<p><b>September 2022</b></p>	<p><b>April 2023</b></p>

Previously Proposed Projects that May Utilize Fiscal Year 2022-2023 Road Maintenance and Rehabilitation Account Revenues in Their Delivery:

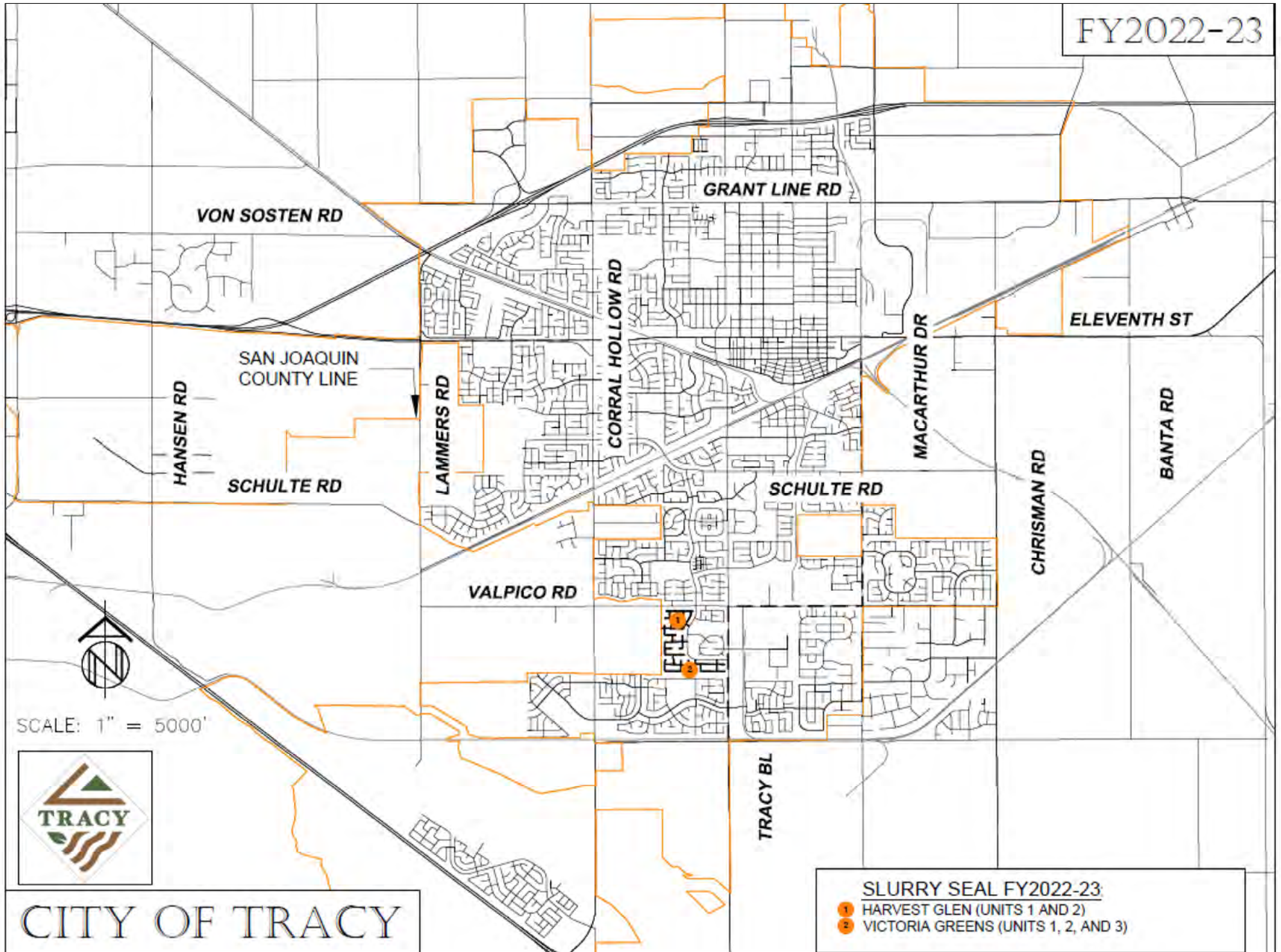
ATTACHMENT C

Project Title	Project Description	Approximate Project Location	Estimated Project Useful Life	Estimated Project Start Date	Estimated Project Completion Date
<p><b>Slurry Seal FY 21-22 CIP 73184</b></p>	<p><b>Slurry seal and paving rehab/repair of about 16.91 lane miles of streets.</b></p>	<p><b>Subdivisions of:</b></p> <p><b>Sienna Park (Unit 1);</b></p> <p><b>Hearthstone (Units 2 and 3);</b></p> <p><b>Parkside Estates (Units 1, 2, and 3);</b></p> <p><b>Ironwood;</b></p> <p><b>Muirfield (Unit 3);</b></p>	<p><b>5-10 years</b></p>	<p><b>July 2021</b></p>	<p><b>January 2023</b></p>
<p><b>Pavement Rehabilitation FY 21-22 CIP 73183</b></p>	<p><b>Paving rehab/repair of about 2.59 lane miles of streets.</b></p>	<p><b>Clover Road (from West City Limits to ± 184' West of Tracy Boulevard);</b></p> <p><b>Grant Line Road (from ±75' East of Lammers Rd. to ± 135' East of Walmart Dwy);</b></p> <p><b>Valpico Road (from Raleys Dwy to ± 2100' East of Dwy);</b></p> <p><b>Spot patching only of:</b></p> <p><b>Tracy Boulevard (from Lowell Avenue to 12<sup>th</sup> Street).</b></p>	<p><b>10-15 years</b></p>	<p><b>July 2021</b></p>	<p><b>January 2023</b></p>

ATTACHMENT C

<p><b>Pavement Rehabilitation FY 20-21 CIP 73178</b></p>	<p><b>Paving rehab/repair of about 8.09 lane miles of streets.</b></p> <p><b>Paving rehab/repair of about 0.43 lane miles of bicycle lanes.</b></p>	<p><b>Lowell Avenue (from Orchard Parkway to Tracy Boulevard);</b></p> <p><b>Lincoln Boulevard (from Lowell Avenue to 11<sup>th</sup> Street);</b></p>	<p><b>10-15 years</b></p>	<p><b>August 2021</b></p>	<p><b>June 2023</b></p>
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FY2022-23

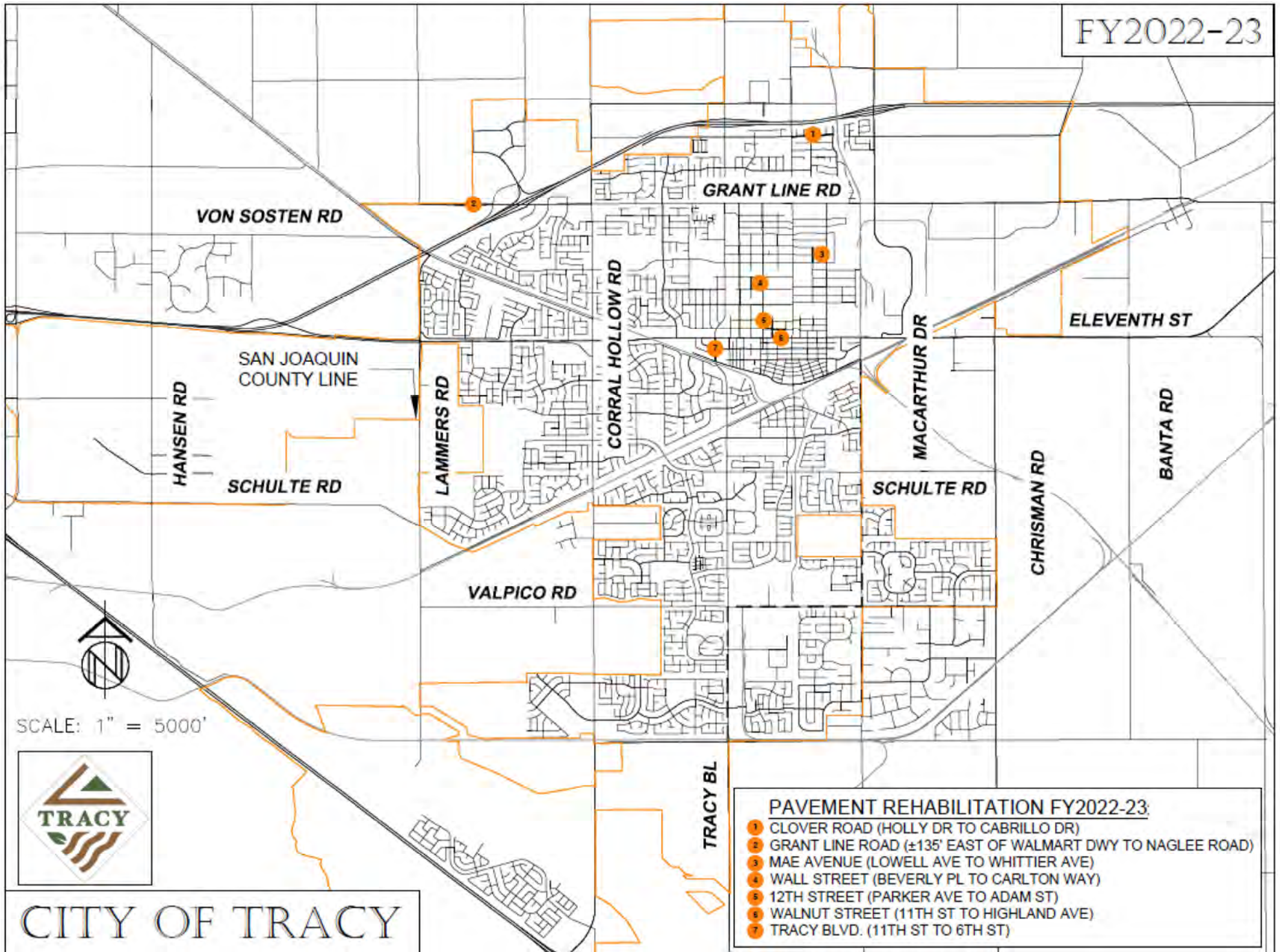


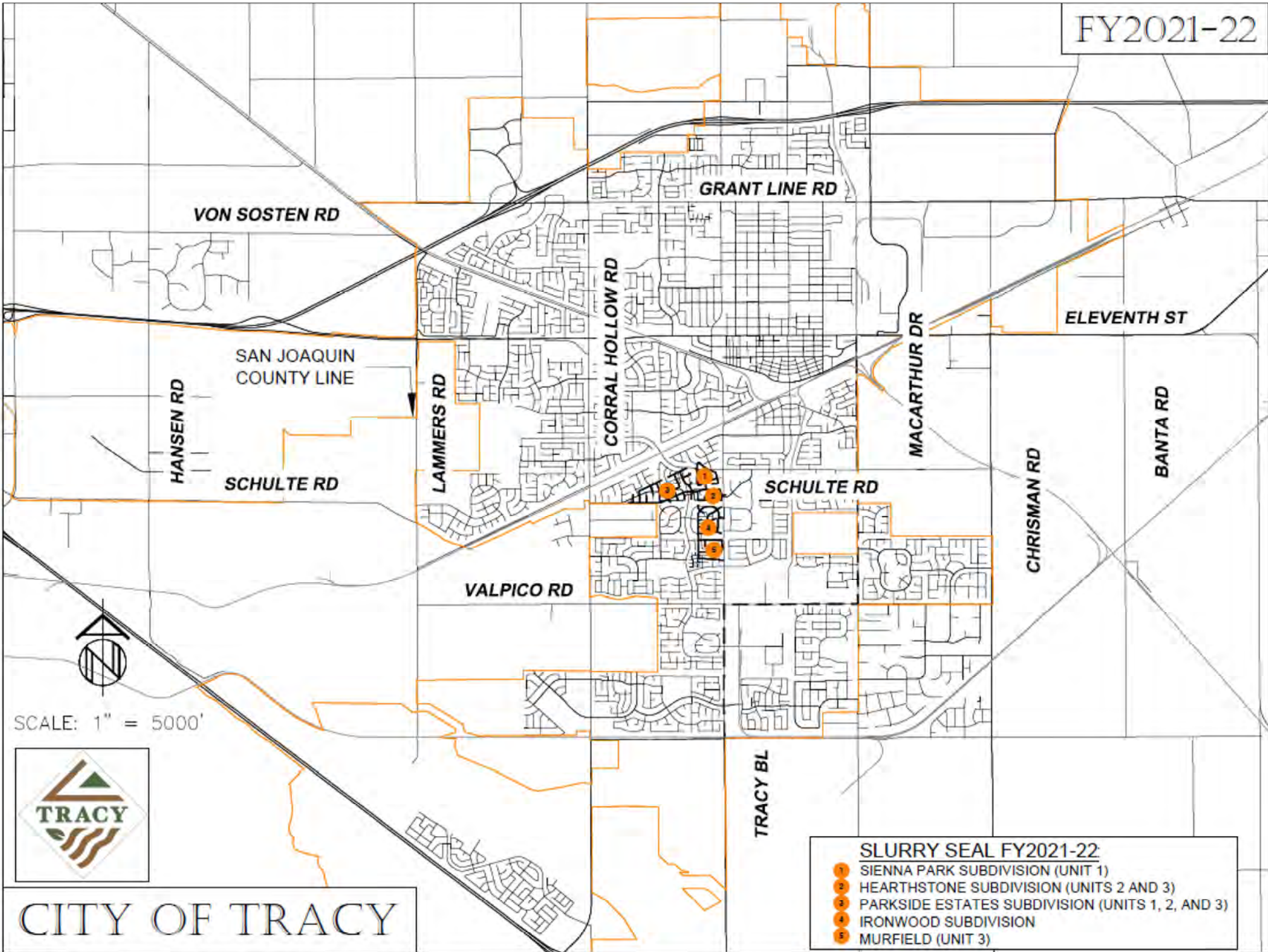
CITY OF TRACY

**SLURRY SEAL FY2022-23**

- 1 HARVEST GLEN (UNITS 1 AND 2)
- 2 VICTORIA GREENS (UNITS 1, 2, AND 3)







VON SOSTEN RD

GRANT LINE RD

ELEVENTH ST

SAN JOAQUIN COUNTY LINE

HANSEN RD

SCHULTE RD

LAMMERS RD

CORRAL HOLLOW RD

MACARTHUR DR

BANTA RD

CHRISMAN RD

SCHULTE RD

VALPICO RD

TRACY BL



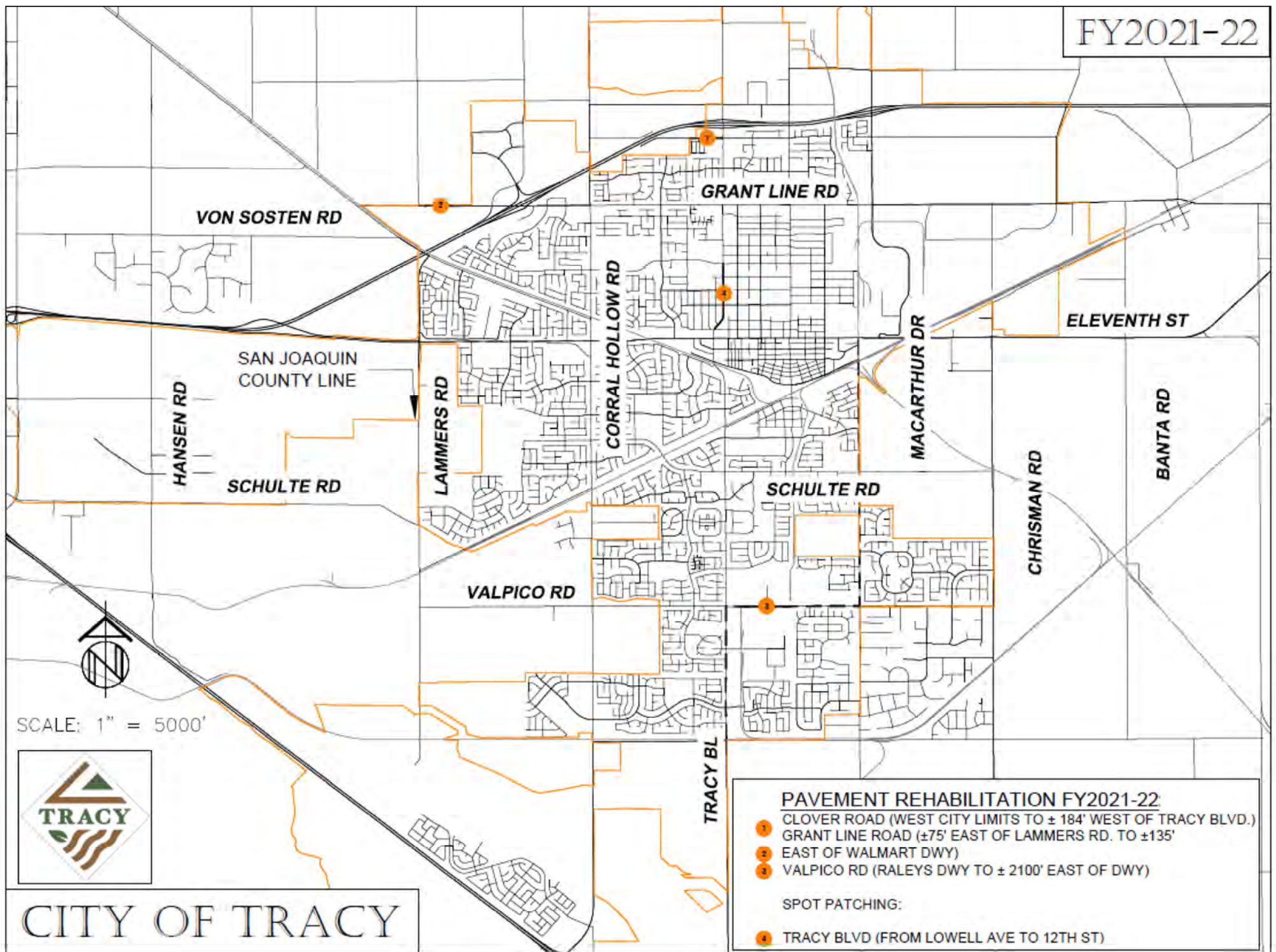
SCALE: 1" = 5000'



CITY OF TRACY

**SLURRY SEAL FY2021-22**

- 1 SIENNA PARK SUBDIVISION (UNIT 1)
- 2 HEARTHSTONE SUBDIVISION (UNITS 2 AND 3)
- 3 PARKSIDE ESTATES SUBDIVISION (UNITS 1, 2, AND 3)
- 4 IRONWOOD SUBDIVISION
- 5 MURFIELD (UNIT 3)



SCALE: 1" = 5000'



CITY OF TRACY

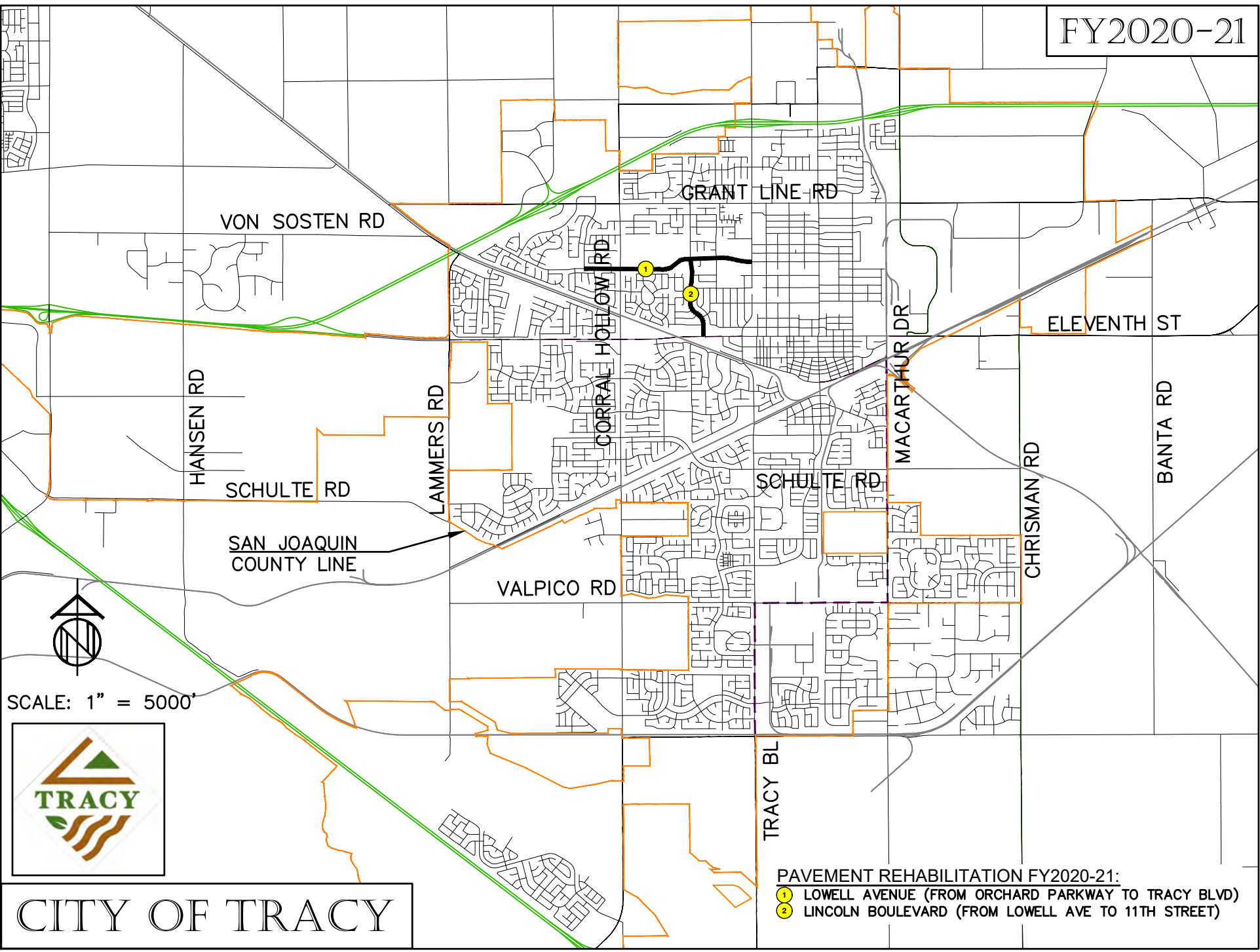
**PAVEMENT REHABILITATION FY2021-22**

- 1** CLOVER ROAD (WEST CITY LIMITS TO ± 184' WEST OF TRACY BLVD.)
- 2** GRANT LINE ROAD (± 75' EAST OF LAMMERS RD. TO ± 135' EAST OF WALMART DWY)
- 3** VALPICO RD (RALEYS DWY TO ± 2100' EAST OF DWY)

**SPOT PATCHING:**

- 4** TRACY BLVD (FROM LOWELL AVE TO 12TH ST)

FY2020-21



SCALE: 1" = 5000'



CITY OF TRACY

PAVEMENT REHABILITATION FY2020-21:

- ① LOWELL AVENUE (FROM ORCHARD PARKWAY TO TRACY BLVD)
- ② LINCOLN BOULEVARD (FROM LOWELL AVE TO 11TH STREET)

**TRACY CITY COUNCIL**

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

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**ADOPTING A LIST OF PROPOSED PROJECTS FOR FISCAL YEAR 2022-2023  
FUNDED BY SB1: THE ROAD REPAIR AND ACCOUNTABILITY ACT OF 2017**

**WHEREAS**, Senate Bill 1 (SB 1), the Road Repair and Accountability Act of 2017 (Chapter 5, Statutes of 2017), was passed by the Legislature and Signed into law by the Governor in April 2017 to address the significant multi-modal transportation funding shortfalls statewide; and

**WHEREAS**, SB 1 includes accountability and transparency provisions that will ensure the residents of Tracy are aware of the projects proposed for funding in our community and which projects have been completed each fiscal year; and

**WHEREAS**, The City of Tracy must adopt by resolution a list of projects proposed to receive fiscal year funding from the Road Maintenance and Rehabilitation Account (RMRA), created by SB 1, which must include a description and the location of each proposed project, a proposed schedule for the project's completion, and the estimated useful life of the improvement; and

**WHEREAS**, The City of Tracy will receive an estimated \$2,183,433 in RMRA funding in Fiscal Year 2022-23 from SB 1; and

**WHEREAS**, This is the sixth year in which the City of Tracy is receiving SB 1 funding and will enable the City of Tracy to continue essential road maintenance and rehabilitation projects, safety improvements, repairing and replacing aging bridges, and increasing access and mobility options for the traveling public that would not have otherwise been possible without SB 1; and

**WHEREAS**, The City of Tracy has undergone a robust public process to ensure public input into our community's transportation priorities/the project list; and

**WHEREAS**, The City of Tracy used a Pavement Management System coupled with planned transportation projects and staff's review to develop the SB 1 project list to ensure revenues are being used on the most high-priority and cost-effective projects that also meet the community's priorities for transportation investment; and

**WHEREAS**, The funding from SB 1 will help the City of Tracy maintain and rehabilitate 95 streets/roads throughout the City this year; and

**WHEREAS,** The 2021 California Statewide Local Streets and Roads Needs Assessment found that the City of Tracy’s streets and roads are in a “low risk” condition and this revenue will help us increase the overall quality of our road system and over the next decade will bring our streets and roads into a “good” condition; and

**WHEREAS,** The SB 1 project list and overall investment in our local streets and roads infrastructure with a focus on basic maintenance and safety, investing in complete streets infrastructure, and using cutting-edge technology, materials and practices, will have significant positive co-benefits statewide; now therefore, be it

**RESOLVED:** That the City Council of the City of Tracy hereby declares the following:

1. The foregoing recitals are true and correct.
2. The following list of newly proposed projects will be funded in-part or solely with Fiscal Year 2022-23 Road Maintenance and Rehabilitation Account revenues:

Project Title	Project Description	Approximate Project Location	Estimated Project Useful Life	Estimated Project Start Date	Estimated Project Completion Date
Slurry Seal FY 22-23 CIP 73187	Slurry seal and paving rehab/repair of about 7.37 lane miles of streets.	Subdivisions of:  Harvest Glen (Units 1 and 2);  Victoria Greens (Units 1, 2, and 3).	5-10 years	September 2022	April 2023
Pavement Rehabilitation FY 22-23 CIP 73186	Paving rehab/repair of about 4.06 lane miles of streets.	Clover Road (Holly Dr to Cabrillo Dr)  Grant Line Road (from ±135' East of Walmart Dwy to Naglee Rd);  Mae Avenue (Lowell Ave to Whittier Ave)  Wall Street (Beverly PL to Carlton Way)  12 <sup>th</sup> Street (Parker Ave to Adam St)  Walnut Street (11 <sup>th</sup> St to Highland Ave)	10-15 years	September 2022	April 2023

		Tracy Blvd. (from 11 <sup>TH</sup> St to 6 <sup>th</sup> St);			
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3. The following previously proposed and adopted projects may also utilize Fiscal Year 2022-23 Road Maintenance and Rehabilitation Account revenues in their delivery. With the relisting of these projects in the adopted fiscal year resolution, the City of Tracy is reaffirming to the public and the State our intent to fund these projects with Road Maintenance and Rehabilitation Account revenues:

Project Title	Project Description	Approximate Project Location	Estimated Project Useful Life	Estimated Project Start Date	Estimated Project Completion Date
Slurry Seal FY 21-22 CIP 73184	Slurry seal and paving rehab/repair of about 16.91 lane miles of streets.	Subdivisions of:  Sienna Park (Unit 1);  Hearthstone (Units 2 and 3);  Parkside Estates (Units 1, 2, and 3);  Ironwood;  Muirfield (Unit 3);	5-10 years	July 2021	January 2023
Pavement Rehabilitation FY 21-22 CIP 73183	Paving rehab/repair of about 2.59 lane miles of streets.	Clover Road (from West City Limits to ± 184' West of Tracy Boulevard);  Grant Line Road (from ±75' East of Lammers Rd. to ± 135' East of Walmart Dwy);  Valpico Road (from Raleys Dwy to ± 2100' East of Dwy);	10-15 years	July 2021	January 2023

		Spot patching only of:  Tracy Boulevard (from Lowell Avenue to 12 <sup>th</sup> Street).			
Pavement Rehabilitation FY 20-21 CIP 73178	Paving rehab/repair of about 8.09 lane miles of streets.  Paving rehab/repair of about 0.43 lane miles of bicycle lanes.	Lowell Avenue (from Orchard Parkway to Tracy Boulevard);  Lincoln Boulevard (from Lowell Avenue to 11 <sup>th</sup> Street);	10-15 years	August 2021	June 2023

\*\*\*\*\*

The foregoing Resolution 2022-\_\_\_\_\_ was adopted by the Tracy City Council on 6<sup>th</sup> of September 2022 by the following vote:

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

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

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



September 6, 2022

## AGENDA ITEM 1.H

### REQUEST

**WAIVE SECOND READING OF FULL TEXT AND ADOPT TWO ORDINANCES  
1) RESCINDING ORDINANCE 1253 APPROVING SECOND AMENDMENT TO  
AMENDED AND RESTATED DEVELOPMENT AGREEMENT BY AND  
BETWEEN THE CITY OF TRACY AND SURLAND COMMUNITIES, LLC. AND  
2) RESCINDING SECOND AMENDMENT TO AMENDED AND RESTATED  
DEVELOPMENT AGREEMENT BY AND BETWEEN THE CITY OF TRACY  
AND SURLAND COMMUNITIES, LLC.**

### EXECUTIVE SUMMARY

The proposed Ordinances were introduced at the regular Council meeting held on August 16, 2022. Ordinances are before Council for adoption.

### DISCUSSION

The City of Tracy (City) and Surland Communities, LLC (Surland) have been parties with one another in a longstanding development agreement, dating as far back as 2009, with respect to Surland's development of real property located in the Ellis Specific Plan area. The original development agreement was invalidated during a court proceeding, and in 2013, the City Council adopted an ordinance approving an Amended and Restated Development Agreement with Surland Communities, LLC (2013 Development Agreement), and subsequently, the City entered into the 2013 Development Agreement.

In 2018, the City Council adopted Ordinance 1253 (Ordinance 1253), an Ordinance of the City of Tracy Approving the Second Amendment to the Amended and Restated Development Agreement by and between the City of Tracy and Surland Communities, LLC, and subsequently the City entered into the Second Amendment to the Development Agreement (2018 Second Amendment to Development Agreement).

Mary Mitracos filed a lawsuit against the City and Surland challenging the legality of Ordinance 1253 and the 2018 Second Amendment to Development Agreement.

In 2020, the San Joaquin County Superior Court entered Judgment (Judgment) in Ms. Mitracos' favor and issued a Peremptory Writ of Mandate (Writ) ordering the City (i) to rescind and set aside Ordinance 1253 and the 2018 Second Amendment to Development Agreement, (ii) not to take any action to implement the Second Amendment, and (iii) to rescind any actions that were taken to implement Ordinance 1253 and the Second Amendment. The City and Surland appealed. In May 2022, the Court of Appeal denied the appeal and affirmed the Superior Court, and in July 2022 remitted the case back to the Superior Court.

The City has a duty to comply with the Judgment and Writ, and to inform the Superior Court of actions it has taken to comply. Accordingly, we recommend that the proposed Ordinances will accomplish the first two of the foregoing requisite actions needed to be taken.

The proposed Ordinances were introduced at the regular Council meeting held on August 16, 2022, to 1) Rescinding Ordinance 1253 approving Second Amendment to Amended and Restated Development Agreement by and between the City of Tracy and Surland Communities, LLC, and 2) Rescinding the Second Amendment to Amended and Restated Development Agreement by and between the City of Tracy and Surland Communities, LLC. The proposed ordinances are before Council for adoption.

### STRATEGIC PLAN

This agenda item is not applicable, as this is a court proceeding.

### FISCAL IMPACT

Surland is responsible to cover all City costs and expenses associated with this lawsuit pursuant to a hold harmless and indemnity provision of the Development Agreement.

### RECOMMENDATION

Staff recommends that Council waive the full reading of the text and adopt two Ordinances, 1) Rescinding Ordinance 1253 approving Second Amendment to Amended and Restated Development Agreement by and between the City of Tracy and Surland Communities, LLC and 2) Rescinding second amendment to Amended and Restated Development Agreement by and between the City of Tracy and Surland Communities, LLC.

Prepared by: Necy Lopez, Deputy City Clerk

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

Approved by: Michael Rogers, City Manager

### ATTACHMENTS:

- Attachment A: 1<sup>st</sup> Ordinance with Notice and Digest (Ordinance to be numbered after adoption)
- Attachment B: 2<sup>nd</sup> Ordinance with Notice and Digest (Ordinance to be numbered after adoption)

APPROVED AS TO FORM AND LEGALITY

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CITY ATTORNEY'S OFFICE

## TRACY CITY COUNCIL

ORDINANCE NO. \_\_\_\_\_

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**RESCINDING ORDINANCE 1253 APPROVING SECOND AMENDMENT TO AMENDED AND RESTATED DEVELOPMENT AGREEMENT BY AND BETWEEN THE CITY OF TRACY AND SURLAND COMMUNITIES, LLC**

**WHEREAS**, on March 19, 2013, the City Council adopted Ordinance 1182 (Ordinance 1182), an Ordinance of the City of Tracy Approving an Amended and Restated Development Agreement with Surland Communities, LLC, with respect to the development of real property in the Ellis Specific Plan area; and

**WHEREAS**, pursuant to Ordinance 1182, the City of Tracy (City) and Surland Communities, LLC (Surland) executed and entered into the Amended and Restated Development Agreement By and Between the City of Tracy and Surland Communities, LLC, dated April 18, 2013 ("2013 Development Agreement"); and

**WHEREAS**, on June 3, 2014, the City Council adopted Ordinance 1194 (Ordinance 1194), an Ordinance of the City of Tracy Approving First Amendment to Amended and Restated Development Agreement with the Surland Communities, LLC; and

**WHEREAS**, pursuant to Ordinance 1194, the City and Surland executed and entered into the First Amendment to Amended and Restated Development Agreement By and Between the City of Tracy and Surland Communities, LLC, dated July 3, 2014; and

**WHEREAS**, on April 3, 2018, the City Council adopted Ordinance 1253 (Ordinance 1253), an Ordinance of the City of Tracy Approving the Second Amendment to the Amended and Restated Development Agreement By and Between the City of Tracy and Surland Communities, LLC; and

**WHEREAS**, pursuant to Ordinance 1253, the City and Surland executed and entered into the Second Amendment to Amended and Restated Development Agreement By and Between the City of Tracy and Surland Communities, LLC, dated May 3, 2018 (2018 Second Amendment to Development Agreement or 2018 DA); and

**WHEREAS**, on May 11, 2018, Mary Mitracos, as Petitioner and Plaintiff, filed a lawsuit against the City, as Respondent and Defendant, and Surland, as Real Party in Interest, challenging the legality of Ordinance 1253 and the 2018 Second Amendment to the Development Agreement, *Mitracos v. City of Tracy, et al.*, San Joaquin County Superior Court Case No. STK-CV-UWM-2018-5531; and

**WHEREAS**, on September 30, 2020, the San Joaquin County Superior Court entered Judgment (Judgment) for Plaintiff Mitracos and against the City and Surland, and issued a

Peremptory Writ of Mandate (Writ), each of which was served on the City on October 8, 2020; and

**WHEREAS**, the Judgment served on October 8, 2020 includes the following rulings:

IT IS SO ORDERED, DECREED AND ADJUDGED that:

1. Judgment granting a Peremptory Writ of Mandate is entered in favor of Petitioner Mitracos in this proceeding. Judgment is entered because the Court finds that Respondent committed a prejudicial abuse of discretion in taking the following actions:

(a) Adopting, approving and entering into the Second Amendment to Amended and Restated Development Agreement by and between The City of Tracy and Surland Communities, LLC" ("2018 DA").

(b) Adopting Ordinance 1253[.]

2. The court finds the 2018 DA does not comply with Government Code Sections 65865(b) and 65865.2 and is therefore void ab initio.

3. A Preemptory Writ of Mandate direct[ed] to Respondents shall issue under seal of this Court, ordering Respondents to vacate and set aside, within (30) days from service of the Writ of Mandate, all approvals and adoptions of the 2008 DA and Ordinance 1253, as described in paragraph 2 above in their entirety and all other actions taken by Respondents to approve or implement the Development Agreement. Respondent City is ordered to:

(a) Set aside, rescind, and vacate the "Second Amendment to Amended and Restated Development Agreement by and between The City of Tracy and Surland Communities, LLC" ("2018 DA").

(b) Set aside, rescind, and vacate Ordinance 1253.

(c) Set aside, rescind, and vacate any actions taken pursuant to the "Second Amendment to Amended and Restated Development Agreement by and Between the City of Tracy and Surland Communities, LLC" ("2018 DA") and Ordinance 1253.

4. Respondent City shall file a return to the Peremptory Writ of Mandate within 10 days of completion of the actions mandated by this judgment. This Court shall retain jurisdiction over Respondents' proceedings by way of the return to the Peremptory Writ of Mandate until the Court has determined that Respondent has complied with the directives of this Court.

5. Petitioner shall be awarded its costs of suit. Petitioner is the successful party pursuant to Code of Civil Procedure § 1021.5. The Court reserves jurisdiction to determine entitlement to attorneys' fees and litigation expenses, pursuant to any properly and timely filed motion which Petitioner Mitracos may make.

6. Injunctive relief is granted consistent with this ruling. Respondents, Real Parties in Interest, and their respective agents, employees, and persons acting in concert with them are permanently enjoined from any and all actions to further implement the 2018 Development Agreement as described in paragraph 1(a) above.

and

**WHEREAS**, the Writ served on October 8, 2022 includes the following commands:

YOU ARE HEREBY COMMANDED to comply with the following:

1. Within thirty (30) days from service of this Writ, set aside, rescind, and vacate the "Second Amendment to Amended and Restated Development Agreement by and between the City of Tracy and Surland Communities, LLC" ("2018 DA");
2. Within thirty (30) days from service of this Writ, set aside, rescind, and vacate Ordinance 1253;
3. Within thirty (30) days from service of this Writ, set aside, rescind, and vacate any actions taken pursuant to the "Second Amendment to Amended and Restated Development Agreement By and Between The City of Tracy and Surland Communities, LLC" ("2018 DA") and Ordinance 1253.
4. Respondent City shall file a return to the Peremptory Writ of Mandate within 10 days of completion of the actions mandated by this Writ. This Court shall retain jurisdiction over Respondent's proceedings by way of the return to the Peremptory Writ of Mandate until the Court has determined that Respondents have complied with the directives of this Court.

and

**WHEREAS**, on November 6, 2020 (which was within 30 days of service of the Judgment and Writ), the Superior Court extended the compliance deadline to November 12, 2020, and then on November 12, 2020, extended the compliance deadline to January 22, 2021; and

**WHEREAS**, on October 23, 2020, the City and Surland filed a joint motion for new trial, or in the alternative, to set aside and vacate the judgment and enter a new judgment, which was denied by operation of law on or about December 22, 2020; and

**WHEREAS**, on January 15, 2021, the City and Surland appealed to the California Court of Appeal, Third District, which stayed any obligation to comply with the Judgment and Writ unless and until the Judgment was affirmed by a final decision on appeal; and

**WHEREAS**, on May 16, 2022, the Third District Court of Appeal issued an unpublished opinion denying the appeal and affirming the Judgment, which decision became final 30 days thereafter; and

**WHEREAS**, on July 18, 2022, the Court of Appeal issued a Remittitur, returning the lawsuit to the Superior Court; and

**WHEREAS**, Surland is responsible to cover all City costs and expenses associated with the Mitracos lawsuit pursuant to a hold harmless and indemnity provision of the 2013 Development Agreement; and

**WHEREAS**, the City is obligated to comply with the Judgment and Writ, and is doing so; and

**WHEREAS**, the City is adopting this subject Ordinance as well as a companion Ordinance in compliance with the Judgment and Writ; and

**WHEREAS**, the City has not taken any action to implement the 2018 Second Amendment to Development Agreement since well before the Court of Appeal issued its May 16, 2022 opinion denying the appeal and affirming the Judgment; and

**WHEREAS**, the City understands that it may not take any action to implement the 2018 Second Amendment; and

**WHEREAS**, City staff is evaluating what additional actions need to be taken to set aside, rescind and vacate any actions previously taken to implement Ordinance 1253 and the Second Amendment.

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

**SECTION 1. Incorporation of Recitals/Findings.** The City Council finds and determines the foregoing recitals are true and correct and are hereby incorporated herein as findings and determinations of the City.

**SECTION 2. Rescission of Ordinance 1253.** The City Council hereby sets aside, rescinds, and vacates Ordinance 1253.

**SECTION 3. CEQA Determination.** The City Council finds and determines that the adoption of this Ordinance is not a project within the meaning of the California Environmental Quality Act ("CEQA"), including as the term "project" is defined by section 15378 of the CEQA Guidelines, including without limitation because the adoption of this Ordinance is a ministerial action not subject to and exempt from CEQA (see section 15268 of the CEQA Guidelines), and that even if it were a project under CEQA, it is subject to the CEQA exemption contained in CEQA Guidelines section 15061(b)(3) because it can be seen with certainty to have no possibility of a significant effect on the environment.

**SECTION 4. Severability.** If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the Chapter. The City Council hereby declares that it would have passed this Ordinance and each section, subsection, clause or phrase thereof irrespective of the fact that one or more other sections, subsections, clauses or phrases may be declared invalid or unconstitutional

**SECTION 5. Effective Date.** This Ordinance shall become effective upon the thirtieth (30<sup>th</sup>) day after final adoption.

**SECTION 6. Publication.** The City Clerk is directed to publish this Ordinance in a manner required by law.

**SECTION 7. Codification.** This Ordinance shall not be codified in the Tracy Municipal Code.

\*\*\*\*\*

The foregoing Ordinance \_\_\_\_\_ was introduced at a regular meeting of the Tracy City Council on the 16th day of August 2022, and finally adopted on the 6th day of September, 2022, by the following vote:

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

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

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

Date of Attestation: \_\_\_\_\_

## NOTICE AND DIGEST

### **ORDINANCE RESCINDING ORDINANCE 1253 APPROVING SECOND AMENDMENT TO AMENDED AND RESTATED DEVELOPMENT AGREEMENT BY AND BETWEEN THE CITY OF TRACY AND SURLAND COMMUNITIES, LLC**

This Ordinance (Ordinance) sets aside, rescinds, and vacates Ordinance 1253, adopted by the City Council of the City of Tracy (City) on April 3, 2018, which approved the Second Amendment to Amended and Restated Development Agreement By and Between the City of Tracy (City) and Surland Communities, LLC (Surland), dated May 3, 2018 (2018 Second Amendment). This Ordinance is necessary to comply with the Peremptory Writ of Mandate served on October 8, 2022 and Judgment served on October 8, 2020 by the San Joaquin County Superior Court, in the lawsuit filed by Mary Mitracos, as Petitioner and Plaintiff, against the City, as Respondent and Defendant, and Surland, as Real Party in Interest, challenging, among other things, the legality of Ordinance 1253 (*Mitracos v. City of Tracy, et al.*, San Joaquin County Superior Court Case No. STK-CV-UWM-2018-5531). On May 16, 2022, the Third District Court of Appeal issued an unpublished opinion denying the City's appeal and affirming the Judgment of the San Joaquin County Superior Court.



APPROVED AS TO FORM AND LEGALITY

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CITY ATTORNEY'S OFFICE

## TRACY CITY COUNCIL

ORDINANCE NO. \_\_\_\_\_

---

**RESCINDING SECOND AMENDMENT TO AMENDED AND RESTATED DEVELOPMENT AGREEMENT BY AND BETWEEN THE CITY OF TRACY AND SURLAND COMMUNITIES, LLC**

**WHEREAS**, on March 19, 2013, the City Council adopted Ordinance 1182 (Ordinance 1182), an Ordinance of the City of Tracy Approving an Amended and Restated Development Agreement with Surland Communities, LLC, with respect to the development of real property in the Ellis Specific Plan area; and

**WHEREAS**, pursuant to Ordinance 1182, the City of Tracy (City) and Surland Communities, LLC (Surland) executed and entered into the Amended and Restated Development Agreement By and Between the City of Tracy and Surland Communities, LLC, dated April 18, 2013 (2013 Development Agreement); and

**WHEREAS**, on June 3, 2014, the City Council adopted Ordinance 1194 (Ordinance 1194), an Ordinance of the City of Tracy Approving First Amendment to Amended and Restated Development Agreement with the Surland Communities, LLC; and

**WHEREAS**, pursuant to Ordinance 1194, the City and Surland executed and entered into the First Amendment to Amended and Restated Development Agreement By and Between the City of Tracy and Surland Communities, LLC, dated July 3, 2014; and

**WHEREAS**, on April 3, 2018, the City Council adopted Ordinance 1253 (Ordinance 1253), an Ordinance of the City of Tracy Approving the Second Amendment to the Amended and Restated Development Agreement By and Between the City of Tracy and Surland Communities, LLC; and

**WHEREAS**, pursuant to Ordinance 1253, the City and Surland executed and entered into the Second Amendment to Amended and Restated Development Agreement By and Between the City of Tracy and Surland Communities, LLC, dated May 3, 2018 (2018 Second Amendment to Development Agreement or 2018 DA); and

**WHEREAS**, on May 11, 2018, Mary Mitracos, as Petitioner and Plaintiff, filed a lawsuit against the City, as Respondent and Defendant, and Surland, as Real Party in Interest, challenging the legality of Ordinance 1253 and the 2018 Second Amendment to Development Agreement, *Mitracos v. City of Tracy, et al.*, San Joaquin County Superior Court Case No. STK-CV-UWM-2018-5531; and

**WHEREAS**, on September 30, 2020, the San Joaquin County Superior Court entered Judgment (Judgment) for Plaintiff Mitracos and against the City and Surland, and issued a

Peremptory Writ of Mandate (Writ), each of which was served on the City on October 8, 2020; and

**WHEREAS**, the Judgment served on October 8, 2020 includes the following rulings:

IT IS SO ORDERED, DECREED AND ADJUDGED that:

1. Judgment granting a Peremptory Writ of Mandate is entered in favor of Petitioner Mitracos in this proceeding. Judgment is entered because the Court finds that Respondent committed a prejudicial abuse of discretion in taking the following actions:

(a) Adopting, approving and entering into the Second Amendment to Amended and Restated Development Agreement by and between The City of Tracy and Surland Communities, LLC" ("2018 DA").

(b) Adopting Ordinance 1253[.]

2. The court finds the 2018 DA does not comply with Government Code Sections 65865(b) and 65865.2 and is therefore void ab initio.

3. A Preemptory Writ of Mandate direct[ed] to Respondents shall issue under seal of this Court, ordering Respondents to vacate and set aside, within (30) days from service of the Writ of Mandate, all approvals and adoptions of the 2008 DA and Ordinance 1253, as described in paragraph 2 above in their entirety and all other actions taken by Respondents to approve or implement the Development Agreement. Respondent City is ordered to:

(a) Set aside, rescind, and vacate the "Second Amendment to Amended and Restated Development Agreement by and between The City of Tracy and Surland Communities, LLC" ("2018 DA").

(b) Set aside, rescind, and vacate Ordinance 1253.

(c) Set aside, rescind, and vacate any actions taken pursuant to the "Second Amendment to Amended and Restated Development Agreement by and Between the City of Tracy and Surland Communities, LLC" ("2018 DA") and Ordinance 1253.

4. Respondent City shall file a return to the Peremptory Writ of Mandate within 10 days of completion of the actions mandated by this judgment. This Court shall retain jurisdiction over Respondents' proceedings by way of the return to the Peremptory Writ of Mandate until the Court has determined that Respondent has complied with the directives of this Court.

5. Petitioner shall be awarded its costs of suit. Petitioner is the successful party pursuant to Code of Civil Procedure § 1021.5. The Court reserves jurisdiction to determine entitlement to attorneys' fees and litigation expenses, pursuant to any properly and timely filed motion which Petitioner Mitracos may make.

6. Injunctive relief is granted consistent with this ruling. Respondents, Real Parties in Interest, and their respective agents, employees, and persons acting in concert with them are permanently enjoined from any and all actions to further implement the 2018 Development Agreement as described in paragraph 1(a) above.

and

**WHEREAS**, the Peremptory Writ of Mandate served on October 8, 2022 includes the following commands:

YOU ARE HEREBY COMMANDED to comply with the following:

1. Within thirty (30) days from service of this Writ, set aside, rescind, and vacate the "Second Amendment to Amended and Restated Development Agreement by and between the City of Tracy and Surland Communities, LLC" ("2018 DA");
2. Within thirty (30) days from service of this Writ, set aside, rescind, and vacate Ordinance 1253;
3. Within thirty (30) days from service of this Writ, set aside, rescind, and vacate any actions taken pursuant to the "Second Amendment to Amended and Restated Development Agreement By and Between The City of Tracy and Surland Communities, LLC" ("2018 DA") and Ordinance 1253.
4. Respondent City shall file a return to the Peremptory Writ of Mandate within 10 days of completion of the actions mandated by this Writ. This Court shall retain jurisdiction over Respondent's proceedings by way of the return to the Peremptory Writ of Mandate until the Court has determined that Respondents have complied with the directives of this Court.

and

**WHEREAS**, on November 6, 2020 (which was within 30 days of service of the Judgment and Writ), the Superior Court extended the compliance deadline to November 12, 2020, and then on November 12, 2020, extended the compliance deadline to January 22, 2021; and

**WHEREAS**, on October 23, 2020, the City and Surland filed a joint motion for new trial, or in the alternative, to set aside and vacate the judgment and enter a new judgment, which was denied by operation of law on or about December 22, 2020; and

**WHEREAS**, on January 15, 2021, the City and Surland appealed to the California Court of Appeal, Third District, which stayed any obligation to comply with the Judgment and Writ unless and until the Judgment was affirmed by a final decision on appeal; and

**WHEREAS**, on May 16, 2022, the Third District Court of Appeal issued an unpublished opinion denying the appeal and affirming the Judgment, which decision became final 30 days thereafter; and

**WHEREAS**, on July 18, 2022, the Court of Appeal issued a Remittitur, returning the lawsuit to the Superior Court; and

**WHEREAS**, Surland is responsible to cover all City costs and expenses associated with the Mitracos lawsuit pursuant to a hold harmless and indemnity provision of the 2013 Development Agreement; and

**WHEREAS**, the City is obligated to comply with the Judgment and Writ, and is doing so; and

**WHEREAS**, the City is adopting this subject Ordinance as well as a companion Ordinance in compliance with the Judgment and Writ; and

**WHEREAS**, the City has not taken any action to implement the 2018 Second Amendment to Development Agreement since well before the Court of Appeal issued its May 16, 2022 opinion denying the appeal and affirming the Judgment; and

**WHEREAS**, the City understands that it may not take any action to implement the 2018 Second Amendment; and

**WHEREAS**, City staff is evaluating what additional actions need to be taken to rescind actions previously taken to implement Ordinance 1253 and the Second Amendment.

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

**SECTION 1. Incorporation of Recitals/Findings.** The City Council finds and determines that the foregoing recitals are true and correct and are hereby incorporated herein as findings and determinations of the City.

**SECTION 2. Rescission of 2018 Second Amendment to Development Agreement.** The City Council hereby (i) sets aside, rescinds, and vacates the Second Amendment to Amended and Restated Development Agreement By and Between the City of Tracy and Surland Communities, LLC, dated May 3, 2018; (ii) reiterates and directs that the City Manager ensure that City staff not take any further action to implement the 2018 Second Amendment to Development Agreement; and (iii ) reiterates and directs the City Manager to ensure that City staff take any and all actions necessary to set aside, rescind, and vacate any actions previously taken pursuant to the 2018 Second Amendment to Development Agreement; provided that the City Manager shall return to the City Council with any such actions the City Attorney determines that further City Council approval is needed to properly effectuate.

**SECTION 3. CEQA Determination.** The City Council finds and determines that the adoption of this Ordinance is not a project within the meaning of the California Environmental Quality Act ("CEQA"), including as the term "project" is defined by section 15378 of the CEQA Guidelines, including without limitation because the adoption of this Ordinance is a ministerial action not subject to and exempt from CEQA (see section 15268 of the CEQA Guidelines), and that even if it were a project under CEQA, it is subject to the CEQA exemption contained in CEQA Guidelines section 15061(b)(3) because it can be seen with certainty to have no possibility of a significant effect on the environment.

**SECTION 4. Severability.** If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the Chapter. The City Council hereby declares that it would have passed this Ordinance and each section, subsection, clause or phrase thereof irrespective of the fact that one or more other sections, subsections, clauses or phrases may be declared invalid or unconstitutional

**SECTION 5. Effective Date.** This Ordinance shall become effective upon the thirtieth (30<sup>th</sup>) day after final adoption.

**SECTION 6. Publication.** The City Clerk is directed to publish this Ordinance in a manner required by law.

**SECTION 7. Codification.** This Ordinance shall not be codified in the Tracy Municipal Code.

\* \* \* \* \*

The foregoing Ordinance \_\_\_\_\_ was introduced at a regular meeting of the Tracy City Council on the 16th day of August, 2022, and finally adopted on the 6th day of September, 2022, by the following vote:

AYES:                    COUNCIL MEMBER:  
NOES:                    COUNCIL MEMBER:  
ABSENT:                COUNCIL MEMBER:  
ABSTENTION:        COUNCIL MEMBER:

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

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

Date of Attestation: \_\_\_\_\_

## NOTICE AND DIGEST

### **ORDINANCE RESCINDING SECOND AMENDMENT TO AMENDED AND RESTATED DEVELOPMENT AGREEMENT BY AND BETWEEN THE CITY OF TRACY AND SURLAND COMMUNITIES, LLC**

This Ordinance (Ordinance) sets aside, rescinds, and vacates the Second Amendment to Amended and Restated Development Agreement By and Between the City of Tracy (City) and Surland Communities, LLC (Surland), dated May 3, 2018 (2018 Second Amendment). This Ordinance further directs the City Manager to ensure that City staff not take any further action to implement the 2018 Second Amendment. This Ordinance is necessary to comply with the Peremptory Writ of Mandate served on October 8, 2022 and Judgment served on October 8, 2020 by the San Joaquin County Superior Court, in the lawsuit filed by Mary Mitracos, as Petitioner and Plaintiff, against the City, as Respondent and Defendant, and Surland, as Real Party in Interest, challenging, among other things, the legality of the 2018 Second Amendment (*Mitracos v. City of Tracy, et al.*, San Joaquin County Superior Court Case No. STK-CV-UWM-2018-5531). On May 16, 2022, the Third District Court of Appeal issued an unpublished opinion denying the City's appeal and affirming the Judgment of the San Joaquin County Superior Court.

AGENDA ITEM 1.1

REQUEST

**ADOPT A RESOLUTION APPROVING A PROFESSIONAL SERVICES AGREEMENT WITH TRINE INTEGRATED SERVICES, INC. FOR SECURITY SERVICES FOR A TOTAL AMOUNT NOT TO EXCEED \$280,000 (\$45,000 MONTHLY) FOR A TERM OF SIX MONTHS AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT AND ANY EXTENSIONS OR AMENDMENTS FOR UP TO ONE YEAR**

EXECUTIVE SUMMARY

This Professional Services Agreement will provide city-wide routine security services by trained uniformed security officers on foot or by patrol vehicle for various locations, including but not limited to, El Pescadero Park (250 W. Kavanagh Ave.), the City of Tracy Temporary Emergency Housing Facility (370 W. Arbor Rd.), and various City parks, facilities, buildings, and infrastructures.

DISCUSSION

On July 19, 2022, the Tracy Police Department published a Request for Proposals on the City of Tracy website for security services to assist in patrol and security of El Pescadero Park, the City of Tracy's Temporary Emergency Housing Facility, and various other parks, facilities, and infrastructure. Staff conducted research to identify potential vendors and informed them of the publication. Nine companies providing security services responded with proposals. On July 29, 2022, the City received and reviewed all proposals.

Trine Integrated Services, Inc. submitted a proposal demonstrating the competence and professional qualifications necessary for the satisfactory performance of the required services. Their qualifications included the application of Tracy Municipal Code section 2.20.230 for being a local vendor, and they were the most responsive to the City's needs.

Under the Professional Services Agreement, Trine Integrated Services, Inc. will perform city-wide routine security services by trained uniformed security officers on foot or by patrol vehicle for various locations, including but not limited to, El Pescadero Park (250 W. Kavanagh Ave.), the City of Tracy Temporary Emergency Housing Facility (370 W. Arbor Rd.), and various parks, facilities, buildings, and infrastructures. Trine Integrated Services, Inc. will provide all aspects of the City's desired scope of work as set forth in the Professional Services Agreement attached for reference (Attachment A). The Agreement compensates security guards at an hourly wage of \$30.00, and a weekly \$350 vehicle allowance.

FISCAL IMPACT

The six-month Agreement is not to exceed \$280,000 (\$45,000 monthly). The funding is provided through the Police Department's operating budget in the General Fund.

STRATEGIC PLAN

This agenda item related to Council's strategic priority for Public Safety Goal # 4 – Strengthening community safety through crime reduction prevention activities.

RECOMMENDATION

Staff recommends that the City Council adopt a resolution approving a Professional Services Agreement with Trine Integrated Services, Inc. for security services in a total amount not to exceed \$280,000 (\$45,000 monthly) for a term of six months, and authorizing the City Manager to execute the agreement and any extensions or amendments for up to one year.

Prepared by: Miguel Contreras, Police Lieutenant  
Beth Lyons-McCarthy, Support Operations Manager

Reviewed by: Sekou Millington, Chief of Police  
Sara Cowell, Interim Director of Finance  
Midori Lichtwardt, Assistant City Manager

Approved by: Michael Rogers, City Manager

ATTACHMENT A- Vendor signed Master Professional Services Agreement with Trine Integrated Services, Inc.



**CITY OF TRACY**  
**MASTER PROFESSIONAL SERVICES AGREEMENT WITH**  
*Trine Integrated Services, Inc., Security Services*

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

**Recitals**

- A.** City desires to retain Consultant to perform city wide routine security services by trained uniformed security officers on foot or by patrol vehicle for various locations including but not limited to El Pescadero Park (250 W. Kavanagh Ave.), City of Tracy Temporary Emergency Housing Facility (370 W. Arbor Rd.), and Various City of Tracy parks, facilities, buildings, and City infrastructures; and
- B.** On July 29, 2022, the City obtained formal requests for proposals from nine prospective Consultants to provide security services. Trine Integrated Services, Inc. submitted its proposal to perform the services described by this Agreement.
- C.** After negotiations between the City and Consultant, the Parties have reached an agreement for the performance of services in accordance with the terms set forth in this Agreement.
- D.** This Agreement is being executed pursuant to Resolution No. \_\_\_\_\_ approved by Tracy City Council on September 6, 2022.

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

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

**1.1 Non-Exclusive Agreement.** The City reserves the right to contract with other consultants providing the same or similar scope of services described above during the term of this Agreement. The City further reserves the right to, assign work, at its sole discretion, to consultants other than Consultant based on City's budget, experience, and skills of consultants based on the City's specific needs.

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

**2.1 Term.** The term of this Agreement shall begin on September 15, 2022 and end on March 14, 2023 unless terminated for any reason, including a lack of appropriated funds to compensate services provided under this Agreement, in accordance with Section 6. Any such termination of this Agreement due

to failure of the City of Tracy Council to appropriate funds for payment for services under this Agreement shall not be a breach of the Agreement.

**2.1.1 Option to Extend.** After the original six-month term, this Agreement may be extended on a month to month basis for a total of a year extension by the City Manager following a written determination that Consultant has satisfactorily met all the requirements of this Agreement.

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

**3.1 Not to Exceed Amount.** Consultant's total compensation under this Agreement shall not exceed \$280,000 (\$45,000 monthly). Consultant's billing rates shall cover all costs and expenses for Consultant's performance of this Agreement. No work shall be performed by Consultant in excess of the total compensation amount provided in this section without the City's prior written approval.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**6. Termination.** The City may terminate this Agreement by giving 30 days’ written notice to Consultant. Upon termination, Consultant shall give the City all original documents, including preliminary drafts and supporting documents, prepared by Consultant for this Agreement. The City shall pay Consultant for all services satisfactorily performed in accordance with this Agreement, up to the date notice is given.

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

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

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

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

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

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

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

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

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

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

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

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

To City:

Tracy Police Department  
Attn: Accounts Payable  
1000 Civic Center  
Tracy, CA 95376

With a copy to:

City Attorney  
333 Civic Center Plaza  
Tracy, CA 95376

To Consultant:

Trine Integrated Services, Inc.  
241 E. 10<sup>th</sup> Street, Suite A  
Tracy, CA 95376

**13. Miscellaneous.**

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

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

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

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

**13.5 Jurisdiction and Venue.** The interpretation, validity, and enforcement of the Agreement shall be governed by and construed under the laws of the State of California. Any suit, claim, or legal

proceeding of any kind related to this Agreement shall be filed and heard in a court of competent jurisdiction in the County of San Joaquin.

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

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

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

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

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

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

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

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

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

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

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

**[SIGNATURES ON FOLLOWING PAGE]**

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

**City of Tracy**

\_\_\_\_\_  
By: Michael Rogers  
Title: City Manager  
Date: \_\_\_\_\_

Attest:

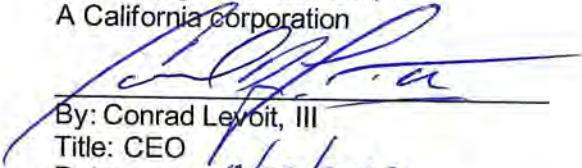
\_\_\_\_\_  
Adrienne Richardson, City Clerk

Approved as to form:


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

**Consultant**

Trine Integrated Services, Inc  
A California corporation

  
\_\_\_\_\_  
By: Conrad Levbit, III  
Title: CEO  
Date: 08/23/2022

Federal Employer Tax ID No. 46-3831159

  
\_\_\_\_\_  
By: Susan Adami  
Title: Chief Financial Officer  
Date: 8/23/2022

Exhibits:

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

## EXHIBIT A - Scope of Work

CONSULTANT shall provide security guard services, city wide, with an emphasis at the following locations, but not limited to the following locations:

1. El Pescadero Park (250 W. Kavanagh Ave.)
2. City of Tracy Temporary Emergency Housing Facility (370 W. Arbor Rd.)
3. Various City of Tracy parks, facilities, buildings, and City infrastructures

### **CONSULTANT shall provide:**

1. Routine security services by provision of security rounds by trained uniformed security officers on foot or by patrol vehicle.
2. Hour of services will be established with the successful proposer per the individual department needs for the current sites noted above.
3. Securing access to facilities.
4. Trained expert response (a professional response when dealing with a variety of people to include but not limited to unsheltered persons, individuals suffering from mental health and/or substance abuse).
5. Responding to staff requests for assistance in dealing with a variety of people to include but not limited to unsheltered persons, irate individuals, individuals suffering from mental health and/or substance abuse.
6. Other security related services.
7. Patrolling City facilities to include park areas, parking lots, public infrastructure, City events and interior public spaces of the facilities/locations.
8. Educate unsheltered individuals regarding available resources and location of the City of Tracy's Temporary Housing Shelter.
9. Assisting visitors and serve as concerned public relations representatives.
10. Visually monitor and report all personnel, contractors, vendors and citizens for unusual behavior. Observe, report and detail all possible suspects committing crimes, vandalism or disturbing the peace within the immediate area of assignment until arrival of sworn peace officers.
11. Report any violations of the Tracy Municipal Code, State of California codes to include vehicle, penal, health and safety and welfare and institutions codes.
12. Work alongside City of Tracy departments to include but not limited to Police, Code Enforcement, Homeless Services, Public Works and non-profit partners.
13. Maintain visibility to general public.
14. Report unmarked or unattended containers.
15. Ensure that only authorized personnel are permitted access to restricted areas.
16. Monitoring a bank of security cameras, where required.
17. Locking/unlocking doors and gates at designated times.
18. Guards shall be familiar with the building electronic door locking systems and alarms. Please provide what your protocol would be in training new guards.
19. Checking other safety equipment and report safety hazards found on rounds.
20. Provide legibly written daily reports on activities, as well as specific written reports on incidents.
21. Always be professional, but courteous, polite, helpful and shall refrain from any inappropriate language or actions. Substance abuse or illegal activity will not be tolerated under any

- circumstances. The security guard services shall be provided to the complete satisfaction of the CITY, in its sole discretion.
22. Guards should have good communication and conflict resolution skills.
  23. Communicate effectively in English, both verbally and in writing.
  24. Cooperate with law enforcement when circumstances require. Guards must understand that this is an "observe and report" position.
  25. Act reasonably and expeditiously in determining what constitutes an emergency situation.
  26. Be diligent and dependable.
  27. Prior to extending an offer of employment, Consultant shall perform successful pre-employment criminal background check and drug screening before applicants are assigned to the City.
  28. Shifts to be staggered among security staff to prevent, if at all possible, incurring overtime charges.
  29. When two (2) security guards are required on duty, one (1) security guard must remain inside the building while the other patrols the exterior perimeter. If both security guards are in the building temporarily, they shall patrol different parts of the building. During times of breaks or mealtimes, the guard left on duty shall be posted within the facility. Breaks shall be staggered so that at least one guard remains on duty at all times.
  30. Confirm daily that security radios are functioning properly and sufficiently.
  31. Maintain a full understanding of the radio call signs and codes, where required
  32. Shall wear a pressed and professional company security standard class "A" uniform with badge and name plate (no tie required). No security guard shall carry firearms, batons, tear gas, non-lethal chemical agents, or any weapons without prior written consent of the City. City approval would require proof of proper training/requirements to carry firearms and such weapons.
  33. Comply with all applicable laws, ordinances, rules and regulations relating to security and health, and obtain all required licenses and permits necessary for services performed.
  34. Serve as a deterrent to people intent on committing criminal acts.
  35. As required at specific locations, provide after-hours escorting services to employees and/or clients.
  36. As required at specific locations, comply with the Health Insurance Portability and Accountability Act of 1996 (HIPAA) Privacy Rule and Security Standards.
  37. As required at specific locations, attend internal Meetings/Security Task Force Meetings during regularly scheduled shifts.
  38. Testify in court as necessary.
  39. Assisting with evacuating of City facilities, parks or during evacuation alarms.
  40. Assist with Traffic Control functions as needed.
  41. Provide security company's policy, training manual and sample of daily activity report.

**Service Hours and Frequency:** Services shall be provided by the CONSULTANT at the designated locations every day during the contract period, providing 24-hour coverage (7 days a week). The CITY shall have the right to determine the hours and locations when and where security guard services shall be furnished by CONSULTANT. CITY further has the authority to add to, delete from, or revise the work schedule/locations at any time.

**Supervising, Training and Scheduling:** CONSULTANT shall train, schedule, provide, and supervise personnel in accordance with the professional services contract and the rules and regulations of the City of Tracy and the State of California. CONSULTANT shall provide supervisor personnel to ensure that security guard activities are taking place at the required places and times



EXHIBIT B – Compensation

Unarmed security guards, 24 hours, 7 days a week - \$30.00 per hour

Vehicle charge - \$350.00 per week

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

**TRACY CITY COUNCIL**

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

**APPROVING A PROFESSIONAL SERVICES AGREEMENT WITH TRINE INTEGRATED SERVICES, INC. FOR SECURITY SERVICES FOR A TOTAL AMOUNT NOT TO EXCEED \$280,000 (\$45,000 MONTHLY) FOR A TERM OF SIX MONTHS AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT AND ANY EXTENSIONS OR AMENDMENTS FOR UP TO ONE YEAR**

**WHEREAS**, the City of Tracy is in need of routine security services for various location throughout the City to address ongoing public safety issues; and

**WHEREAS**, the City issued a Request for Proposals and selected Trine Integrated Services, Inc., a local vendor, who demonstrated the competence and professional qualifications necessary for the satisfactory performance of the required services; and

**WHEREAS**, the City and Trine Integrated Services, Inc. reached an agreement to provide these services, the Professional Services Agreement; and

**WHEREAS**, under the Professional Services Agreement, Trine Integrated Services, Inc. will provide security services by trained uniformed security officers on foot or by patrol vehicle for various locations throughout the City, including but not limited to, El Pescadero Park (250 W. Kavanagh Ave.), the City of Tracy Temporary Emergency Housing Facility (370 W. Arbor Rd.), and various parks, facilities, buildings, and infrastructures; and

**WHEREAS**, funding will be provided through the Police Department's operating budget in the General Fund; now, therefore, be it

**RESOLVED:** That the City Council hereby approves the Professional Services Agreement with Trine Integrated Services, Inc. for security services for a total not to exceed amount of \$280,000 (\$45,000 monthly) for a six-month term; and be it

**FURTHER RESOLVED:** That the City Council authorizes the City Manager to execute the Agreement and any amendments or extensions needed to the Agreement for up to one year.

\* \* \* \* \*

The foregoing Resolution 2022-\_\_\_\_\_ was adopted by the Tracy City Council on September 6, 2022, by the following vote:

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

---

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

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

AGENDA ITEM 3.A

REQUEST

**ADOPT A RESOLUTION: (1) APPROVING ANNEXATION OF PROPERTY INTO IMPROVEMENT AREA NO. 2 OF THE CITY OF TRACY COMMUNITY FACILITIES DISTRICT NO. 2016-1 (TRACY HILLS) (CFD); (2) CONFIRMING THE MAXIMUM AGGREGATE PRINCIPAL AMOUNT OF BONDS AND OTHER DEBT AND THE ANNUAL APPROPRIATIONS LIMIT FOR IMPROVEMENT AREA NO. 2 AS \$50,000,000; (3) CONFIRMING THE RATE AND METHOD OF APPORTIONMENT OF THE SPECIAL TAX FOR IMPROVEMENT AREA NO. 2; AND (4) APPROVING, CONFIRMING, ORDERING AND DIRECTING RELATED IMPLEMENTATION ACTIONS**

EXECUTIVE SUMMARY

This agenda item requests that the City Council adopt the proposed Resolution approving and confirming various actions related to the annexation of additional property into Improvement Area No. 2 of the City of Community Facilities District No. 2016-1 (CFD). This proposed annexation is consistent with the original formation documents for the CFD.

The purpose of the CFD is to provide special tax financing for public infrastructure for the Tracy Hills (Project) and certain ongoing public services Phase 1B of the Project will include approximately 432 residential units as well as public parks and open space. The developer of Phase 1B is Lennar Homes of California, LLC (Lennar), although some of the land is currently owned by AG Essential Housing CA 1, L.P. in a land banking arrangement (AG Essential).

Lennar and AG Essential have executed Unanimous Approvals to annex the following parcels to the CFD as Improvement Area No. 2 of the CFD:

Ownership of Tracy Phase 1B as of August 11, 2022				
Owner	Title Report Identifier	Village	Tract Map References	APNs
AG Essentials	Tract 1	9A	[Tract Map 4083] Lots 1-25, 38-40, 42-59, 63-69, Parcels A, B, D, E, and F	251-340-01 to 25, 43-45, 47-64, 68-78, and 80 (See Note 1); 251-060-17 and 18
	Tract 2	9B	[Tract 4084] Lots 72, 73, 86-111, 114-133, Parcels G, H, I, L N, O , P, Q, and R	251-350-03 and 04, 17-42, 46-76; 251-050-32 to 41
	Tract 3	10C	[Tract 4085] Lots 1-6, 13-60, Parcels A-G	251-060-21 (Portion)
	Tract 4	11A	[Tract 4086] All (Lots 1-45, Parcels A-E)	251-050-43 (Portion)
	Tract 5	N/A	Parcel 3	251-050-42 and 43 (Portion); and 251-060-26
Lennar	Tract 1 (16 Lots)	9A	[Tract Map 4083] Lots 26-37, 41, 60-62	251-340-26 to 42, 46, and 65-67
	Tract 2 (16 Lots)	9B	[Tract 4084] Lots 70, 71, 74-85, 112-113	251-350-01 and 02, 05-16, 43-45
	Tract 3	10C	[Tract 4085] Lots 7-12, 61 and 62	251-060-21 (Portion)

Note 1: Lot 251-340-79 is owned by the City.

The Unanimous Approvals are attached as Attachment B.

## DISCUSSION

### ***CFD FORMATION; RESOLUTION OF FORMATION; RESOLUTION OF NECESSITY; CHANGE PROCEEDINGS;***

On July 19, 2016, pursuant to the Mello-Roos Act Community Facilities Act of 1982 (Mello-Roos Act), Council adopted Resolution No. 2016-157 (Resolution of Formation), establishing the CFD, an Improvement Area No. 1 within the CFD (Improvement Area No. 1) and a Future Annexation Area for the CFD.

Also on July 19, 2016, the City Council adopted the Resolution of Necessity, declaring the necessity for the City to issue special tax bonds or other forms of debt obligations for the CFD in the maximum principal amount of \$285,000,000. The Resolution of Necessity allocated \$70,000,000 of the aggregate \$285,000,000 limit to Improvement Area No. 1 (Improvement Area No. 1 Indebtedness Limit) and \$215,000,000 to the Future Annexation Area (Non-Improvement Area No. 1 Indebtedness Limit). Under the Resolution of Necessity, debt limits for improvement areas created with properties in the Future Annexation Area will be identified and approved in a Unanimous Approval as part of the future annexation process.

Subsequently, the City Council undertook change proceedings for the CFD, including a landowner vote, which culminated in the adoption by the City Council on August 21, 2018, of the Resolution of Change, to (i) increase the Improvement Area No. 1 Indebtedness Limit to \$80,000,000, (ii) increase the Non-Improvement Area No. 1 Indebtedness Limit to \$305,000,000, (iii) increase the Improvement Area No. 1 Appropriations Limit to \$80,000,000, (iv) amend the boundaries of the CFD, Improvement Area No. 1 and the Future Annexation Area, and (v) amend the Improvement Area No. 1 Rate and Method (Amended Improvement Area No. 1 Rate and Method).

### ***ANNEXATION PROCEDURE UNDER THE MELLO-ROOS ACT AND THE CFD RESOLUTION OF FORMATION***

Annexation from the Future Annexation Area by Unanimous Approval. The Mello-Roos Act allows for annexation of property from the Future Annexation Area into the CFD by Unanimous Approval of the property owner. The Resolution of Formation established a process for annexation of property from the Future Annexation Area into the CFD without further Council action as long as certain conditions were met.

Designation of a New Improvement Area and Related Matters. The Mello-Roos Act allows Council to designate a parcel or parcels as an improvement area within the Community Facilities District as long as the designation of a parcel or parcels as an improvement area is specified and approved by the Unanimous Approval. No additional hearings or procedures are required. Accordingly, in the Resolution of Formation, Council provided that property within the Future Annexation Area may be annexed into the CFD as its own improvement area (Future Improvement Area) or to an existing improvement area.

In the Resolution of Formation and the Resolution of Necessity, Council further provided that, in connection with an annexation of property into a Future Improvement Area, the following would be identified and approved in the Unanimous Approval and then implemented and completed without the need for Council approval as long as certain conditions are met:

- A. the maximum amount of bonded indebtedness and other debt for such improvement area;
- B. the rate and method of apportionment of special tax for such improvement area; and
- C. the appropriations limit for such improvement area.

***UNANIMOUS APPROVAL FROM THE PROPERTY OWNER***

The two property owners of the Annexation Property -- AG Essential and Lennar -- have executed Unanimous Approvals to annex the Annexation Property as Improvement Area No. 2.

The City Council is being asked to approve the annexation of the Annexation Property as Improvement Area No. 2 and related matters because the rate and method of apportionment for Improvement Area No. 2 in the form attached as Exhibit A to the Resolution (Improvement Area No. 2 Rate and Method) establishes a maximum special tax amount for the initial fiscal year in which the special tax may be levied for one or more categories of special tax that is greater than 120% of the maximum amount of the same category of special tax for the same fiscal year calculated pursuant to the Amended Improvement Area No. 1 Rate and Method.

Under the Mello-Roos Act, a Unanimous Approval constitutes the vote of the Property Owner for purposes of the California Constitution. Accordingly, the Unanimous Approval declares the Property Owner's vote for the following matters:

A. Improvement Area No. 2 Maximum Bonded Indebtedness Limit

The Unanimous Approval approves a maximum principal amount of bonded indebtedness and other debt for Improvement Area No. 2 of \$50,000,000.

In the Resolution of Necessity, Council provided that the maximum indebtedness of a Future Improvement Area will be subtracted from the Non-Improvement Area No. 1 Indebtedness Limit. As a result of subtracting \$50,000,000 from the remaining Non-Improvement Area No. 1 Indebtedness Limit (\$305,000,000), the remaining Non-Improvement Area No. 1 Indebtedness Limit that will be available for Future Improvement Areas will be \$255,000,000.

B. Improvement Area No. 2 Rate and Method

The Unanimous Approval approves the levy of special taxes on the taxable property in Improvement Area No. 2 in accordance with the rate and method of apportionment for Improvement Area No. 2.

In Ordinance 1260 adopted by Council on September 4, 2018, Council previously authorized and levied special taxes on any parcels in the Future Annexation Area that are annexed into a Future Improvement Area at the rate and in accordance with the formula set forth in a Unanimous Approval.

C. Improvement Area No. 2 Appropriations Limit

The Unanimous Approval approves an annual appropriations limit for Improvement Area No. 2 of \$50,000,000.

In addition to the foregoing, the City will need to take various implementing actions to effectuate the annexation of Improvement Area No. 2 into the CFD. A summary of the requisite actions by Council are as follows:

1. **Annexation into Improvement Area No. 2.** Approve the annexation of the Annexation to the CFD as “Improvement Area No. 2 of the City of Tracy Community Facilities District No. 2016-1 (Tracy Hills).”
2. **Improvement Area No. 2 Indebtedness Limit.** Approve that the maximum aggregate principal amount of bonds and other debt for Improvement Area No. 2 is \$50,000,000 and that, as a result of subtracting \$50,000,000 from the remaining Non-Improvement Area No. 1 Indebtedness Limit of \$305,000,000, the remaining Non-Improvement Area No. 1 Indebtedness Limit is \$255,000,000.
3. **Improvement Area No. 2 Rate and Method.** Confirm that the rate and method of apportionment of the Special Tax for Improvement Area No. 2 are shown in Exhibit A to the Resolution.
4. **Improvement Area No. 2 Appropriations Limit.** Confirm that the annual appropriations limit of Improvement Area No. 2 is \$50,000,000.
5. **Notice of Annexation.** Direct the City Clerk to record notice of the annexation pursuant to Section 3117.5 of the Streets & Highways Code. A form of the notice is attached as Attachment C.
6. **Annexation Map.** Direct the City Clerk to record a map of the Annexation Property in the real property records of the County of San Joaquin. A form of the map is attached as Attachment D.

STRATEGIC PLAN

This action to approve the annexation of property into the CFD is related to Council’s Governance strategic plan, Goal 2: “Ensure continued fiscal sustainability through financial and budgetary stewardship.”

FISCAL IMPACT

There is no cost to the General Fund associated with this request.

RECOMMENDATION

Adopt a Resolution: (1) Approving Annexation of property into Improvement Area No. 2 of the City of Tracy Community Facilities District No. 2016-1 (Tracy Hills) (CFD); (2) Confirming the maximum aggregate principal amount of bonds and other debt and the annual appropriations limit for Improvement Area No. 2 as \$50,000,000; (3) Confirming the Rate and Method of Apportionment of the Special Tax for Improvement Area No. 2; and (4) Approving, confirming, ordering and directing related implementation actions.

Prepared by: Guadalupe Peña, Senior Accountant

Reviewed by: Karin Schnaider, Assistant City Manager

Approved by: Michael Rogers, City Manager

ATTACHMENTS

Attachment A – Resolution Approving Annexation of Property and Confirming, Ordering and Directing Other Related Matters

Attachment B – Unanimous Approvals

Attachment C – Notice of Special Tax Lien

Attachment D – Boundary Map



APPROVED AS TO FORM AND LEGALITY

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CITY ATTORNEY'S OFFICE

**TRACY CITY COUNCIL  
RESOLUTION NO. \_\_\_\_\_**

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**RESOLUTION: (1) APPROVING ANNEXATION OF PROPERTY INTO IMPROVEMENT AREA NO. 2 OF THE CITY OF TRACY COMMUNITY FACILITIES DISTRICT NO. 2016-1 (TRACY HILLS) (CFD); (2) CONFIRMING THE MAXIMUM AGGREGATE PRINCIPAL AMOUNT OF BONDS AND OTHER DEBT AND THE ANNUAL APPROPRIATIONS LIMIT FOR IMPROVEMENT AREA NO. 2 AS \$50,000,000; (3) CONFIRMING THE RATE AND METHOD OF APPORTIONMENT OF THE SPECIAL TAX FOR IMPROVEMENT AREA NO. 2; AND (4) APPROVING, CONFIRMING, ORDERING AND DIRECTING RELATED IMPLEMENTATION ACTIONS**

**WHEREAS**, on July 19, 2016, pursuant to the Mello-Roos Community Facilities Act of 1982, Chapter 2.5 of Part 1 of Division 2 of Title 5, commencing with Section 53311, of the California Government Code (the Mello-Roos Act), the City Council of the City of Tracy (the "City") adopted its Resolution No. 2016-157 entitled "Resolution of Formation of Community Facilities District" (the Resolution of Formation) which resolution (i) established the "City of Tracy Community Facilities District No. 2016-1 (Tracy Hills)" (the CFD), "Improvement Area No. 1 of the City of Tracy Community Facilities District No. 2016-1 (Tracy Hills)" ("Improvement Area No. 1") and the "City of Tracy Community Facilities District No. 2016-1 (Tracy Hills) (Future Annexation Area)" (the Future Annexation Area), (ii) authorized the levy of a special tax on property within Improvement Area No. 1 and (iii) preliminarily established an appropriations limit for Improvement Area No. 1; and

**WHEREAS**, the boundaries of the CFD, Improvement Area No. 1 and the Future Annexation Area are set forth in the boundary map that was recorded on June 15, 2016 in Book 6 of Maps of Assessment and Community Facilities Districts at Page 84 as Document No. 2016-069400 in the office of the County Recorder for the County of San Joaquin, State of California; and

**WHEREAS**, in the Resolution of Formation, the City Council resolved that parcels within the Future Annexation Area shall be annexed to the CFD only with the unanimous approval (each, a Unanimous Approval) of the owner or owners of each parcel or parcels at the time that parcel or those parcels are annexed, without any requirement for further public hearings or additional proceedings; and

**WHEREAS**, Section 53329.6 of the Mello-Roos Act provides that a Unanimous Approval constitutes the vote of the qualified elector in favor of the matters addressed in the Unanimous

Approval for purposes of the California Constitution, including, but not limited to, Articles XIII A and XIII C; and

**WHEREAS**, Section 53350(b) of the Mello-Roos Act provides that, (i) in connection with the annexation by Unanimous Approval to a community facilities district of a parcel that was included in territory proposed for annexation in the future to the community facilities district, the local agency may designate a parcel or parcels as an improvement area within the community facilities district, (ii) the designation of a parcel or parcels as an improvement area shall be specified and approved by the Unanimous Approval of the owner or owners of each parcel or parcels at the time that the parcel or parcels are annexed to the community facilities district, (iii) no additional hearings or procedures are required and (iv) after the designation of a parcel or parcels as an improvement area, all proceedings for approval of the appropriations limit, the rate and method of apportionment and manner of collection of special taxes, and the authorization to incur bonded indebtedness for the parcel or parcels shall apply only to the improvement area; and

**WHEREAS**, in the Resolution of Formation, this City Council provided that property within the Future Annexation Area may be annexed into the CFD as its own improvement area (a Future Improvement Area) or to an existing improvement area; and

**WHEREAS**, in the Resolution of Formation, this City Council further provided that the designation of any territory annexing to the CFD as a Future Improvement Area, the maximum amount of bonded indebtedness and other debt for such Future Improvement Area, the rate and method of apportionment of special tax for such Future Improvement Area and the appropriations limit for such Future Improvement Area shall be identified and approved in the Unanimous Approval executed by property owners in connection with their annexation to the CFD, and that the annexation and related matters described in the Unanimous Approval shall be implemented and completed without the need for Council approval as long as the following conditions are met:

(i) The rate and method of apportionment of special tax for the Future Improvement Area is prepared by a special tax consultant retained by the City and paid for by the developer of the Future Improvement Area or the applicable property owners submitting the Unanimous Approval.

(ii) The rate and method of apportionment of special tax for the Future Improvement Area complies with the local goals and policies established by the City concerning the use of the Mello-Roos Act.

(iii) The rate and method of apportionment of special tax for the Future Improvement Area does not establish a maximum special tax amount for the initial fiscal year in which the special tax may be levied for any category of special tax that is greater than 120% of the maximum amount of the same category of special tax for the same fiscal year calculated pursuant to the Improvement Area No. 1 Rate and Method.

(iv) The rate and method of apportionment of special tax for the Future Improvement Area does not introduce a special tax that was not included in the Improvement Area No. 1 Rate and Method (e.g., a special tax that is levied and must be paid in a single fiscal year or over a shorter time period than 30 years).

(v) The rate and method of apportionment of special tax for the Future Improvement Area gives the City the discretion to convert Facilities Special Taxes to Services Special Taxes subject to a similar “Trigger Event” as the Improvement Area No. 1 Rate and Method (modified, as applicable, to represent the timing of the new rate and method of apportionment of special tax for the Future Improvement Area).

(vi) The rate and method of apportionment of special tax for the Future Improvement Area is not inconsistent with the terms of the development agreement with the City that is applicable to the annexing territory, whether or not it is still operative.

(vii) The rate and method of apportionment of special tax for the Future Improvement Area includes a mechanism that protects against revenue loss as a result of land use changes; and

**WHEREAS**, on July 19, 2016, the City Council adopted its Resolution No. 2016-158 (the Resolution of Necessity), which set forth the necessity for the City to issue special tax bonds or other forms of debt obligations for the CFD in the maximum principal amount of \$285,000,000. The Resolution of Necessity preliminarily allocated \$70,000,000 of the aggregate \$285,000,000 limit to Improvement Area No. 1 (the Improvement Area No. 1 Indebtedness Limit) and \$215,000,000 to the Future Annexation Area (the Non-Improvement Area No. 1 Indebtedness Limit), with the actual limit for an improvement area created from annexation of all or part of the Future Annexation Area to be identified and approved in a Unanimous Approval so long as the overall bonded indebtedness limit for CFD No. 2016-1 did not exceed \$285,000,000; and

**WHEREAS**, subsequently, the City Council undertook change proceedings, including a landowner vote, which culminated in the adoption by the City Council on August 21, 2018, of Resolution No. 2018-169, entitled “Resolution of Change,” to (i) increase the Improvement Area No. 1 Indebtedness Limit to \$80,000,000, (ii) increase the Non-Improvement Area No. 1 Indebtedness Limit to \$305,000,000, (iii) increase the Improvement Area No. 1 Appropriations Limit to \$80,000,000, (iv) amend the boundaries of the CFD, Improvement Area No. 1 and the Future Annexation Area by removing San Joaquin County Assessor’s Parcel Number 253-360-15 from Improvement Area No. 1 (the Transferred Parcel) and adding it to the Future Annexation Area, and (v) amend the Improvement Area No. 1 Rate and Method (the Amended Improvement Area No. 1 Rate and Method); and

**WHEREAS**, a map of the amended boundaries of the CFD, Improvement Area No. 1 and the Future Annexation Area was recorded on August 27, 2018 in the records of the San Joaquin County Recorder in Book 6 of Maps of Assessment and Community Facilities Districts at Page 134 as Document No. 2018-095098; and

**WHEREAS**, Section 53340 of the Mello-Roos Act provides that (i) after a community facilities district has been created and authorized to levy specified special taxes, the legislative body may, by ordinance, levy the special taxes at the rate and apportion them in the manner specified in the resolution of formation for the community facilities district and (ii) after creation of a community facilities district that includes a future annexation area, the legislative body may, by ordinance, provide for the levy of special taxes on parcels that will be annexed to the community facilities district at the rate or rates to be approved unanimously by the owner or owners of each parcel or parcels to be annexed to the community facilities district and for apportionment and collection of the special taxes in the manner specified in the resolution of formation; and

**WHEREAS**, in Ordinance 1224 adopted by this City Council on August 16, 2016 (the Special Tax Ordinance), the City Council authorized and levied special taxes within Improvement Area No. 1 at the rate and in accordance with the Improvement Area No. 1 Rate and Method set forth in the Resolution of Formation and on any parcels in the Future Annexation Area that are annexed into a Future Improvement Area pursuant to the Mello-Roos Act at the rate and in accordance with the formula approved by the qualified electors in the Future Improvement Areas; and

**WHEREAS**, in Ordinance 1260 adopted by this City Council after completion of the change proceedings on September 4, 2018 (the Special Tax Ordinance), the City Council authorized and levied special taxes within Improvement Area No. 1 at the rate and in accordance with the formula set forth in the Amended Improvement Area No. 1 Rate and Method and on any parcels in the Future Annexation Area that are annexed into a Future Improvement Area pursuant to the Mello-Roos Act at the rate and in accordance with the formula approved by the qualified electors in the Future Improvement Areas; and

**WHEREAS**, this City Council has been provided with a separate Unanimous Approval executed by each of AG Essential Housing CA 1, L.P. and Lennar Homes of California, LLC, who are the two owners of certain property in the Future Annexation Area, as such property is shown in the map attached hereto as Exhibit B and hereby incorporated herein (collectively, the Annexation Property), and the Unanimous Approvals identify, specify and approve the annexation of the Annexation Property to the CFD as "Improvement Area No. 2 of the City of Tracy Community Facilities District No. 2016-1 (Tracy Hills)" (Improvement Area No. 2) and other related matters; and

**WHEREAS**, the Resolution of Formation requires City Council approval of the annexation of the property as Improvement Area No. 2, as proposed, because the rate and method of apportionment for Improvement Area No. 2 in the form attached hereto as Exhibit A and hereby incorporated herein (the Improvement Area No. 2 Rate and Method) establishes a maximum special tax amount for the initial fiscal year in which the special tax may be levied for one or more categories of special tax that is greater than 120% of the maximum amount of the same category of special tax for the same fiscal year calculated pursuant to the Amended Improvement Area No. 1 Rate and Method; and

**WHEREAS**, the City Council wishes to approve the annexation of the Annexation Property to the CFD as Improvement Area No. 2, and the City Council wishes to direct the City Clerk to record a map showing the boundaries of the Annexation Property and Improvement Area No. 2 in accordance with Streets & Highways Code Section 3110.5; and

**WHEREAS**, Section 53339.8 of the Mello-Roos Act provides that upon a determination by the legislative body that the area proposed to be annexed is added to the existing community facilities district, the clerk of the legislative body shall record notice of the annexation pursuant to Section 3117.5 of the California Streets and Highways Code; and

**WHEREAS**, the City Council wishes to direct the City Clerk to record a notice of special tax lien for Improvement Area No. 2 pursuant to Section 3117.5 of the Streets & Highways Code; now, therefore, be it

**RESOLVED:** That

1. Recitals Correct. The City Council hereby finds the foregoing recitals are true and correct and adopts them as findings herein
2. Unanimous Approvals. The City Council hereby confirms it has received the Unanimous Approvals specifying and approving the annexation of the Annexation Property as Improvement Area No. 2 and approving other related matters.
3. Annexation Property.

In furtherance of the Resolution of Formation and the Resolution of Change, and in conformance with the Mello-Roos Act, the City Council hereby approves the annexation of the Annexation Property to the CFD as a Future Improvement Area and designates such Future Improvement Area as "Improvement Area No. 2 of the City of Tracy Community Facilities District No. 2016-1 (Tracy Hills)".

4. Maximum Principal Amount of Bonded Indebtedness and Other Debt. The City Council hereby approves the maximum aggregate principal amount of bonds and other debt for Improvement Area No. 2 of \$50,000,000, as specified and approved by a vote of the qualified electors in Improvement Area No. 2 pursuant to the Unanimous Approvals. The City Council hereby confirms that, as a result of subtracting such amount from the remaining Non-Improvement Area No. 1 Indebtedness Limit, the Non-Improvement Area No. 1 Indebtedness Limit shall be \$255,00,000.

5. Improvement Area No. 2 Rate and Method. The City Council hereby approves the rate and method of apportionment of the Special Tax among the parcels of real property within Improvement Area No. 2, as specified and approved by a vote of the qualified electors in Improvement Area No. 2 pursuant to the Unanimous Approvals, and the Improvement Area No. 2 Rate and Method is set forth in the attached Exhibit A.

6. Improvement Area No. 2 Appropriations. Limit. The City Council approves the \$50,000,000 annual appropriations limit of Improvement Area No. 2, as defined by subdivision (h) of Section 8 of Article XIII B of the California Constitution, as specified and approved by a vote of the qualified electors in Improvement Area No. 2 pursuant to the Unanimous Approvals.

7. Clerk Actions. The City Council hereby directs the City Clerk to record notice of the annexation pursuant to Section 3117.5 of the California Streets and Highways Code and further directs the City Clerk to record a map prepared by the owners of the Annexation Property showing the Annexation Property designated as Improvement Area No. 2 in conformance with Section 3110.5 of the California Streets and Highways Code, which map is set forth in Exhibit B attached hereto and hereby incorporated herein

8. Effective Date. This Resolution shall take effect upon its adoption.

\* \* \* \* \*

The foregoing Resolution \_\_\_\_\_ was passed and adopted by the Tracy City Council the \_\_ day of \_\_\_\_\_ 2022, by the following vote:

AYES: COUNCIL MEMBERS:  
NOES: COUNCIL MEMBERS:  
ABSTAIN: COUNCIL MEMBERS:  
ABSENTION: COUNCIL MEMBERS:

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

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

**EXHIBIT A**

**IMPROVEMENT AREA NO. 2 RATE AND METHOD**

**IMPROVEMENT AREA NO. 2 OF THE  
CITY OF TRACY  
COMMUNITY FACILITIES DISTRICT NO. 2016-1  
(TRACY HILLS)**

**RATE AND METHOD OF APPORTIONMENT OF SPECIAL TAXES**

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Special Taxes applicable to each Assessor's Parcel in Improvement Area No. 2 of the City of Tracy Community Facilities District No. 2016-1 (Tracy Hills) shall be levied and collected according to the tax liability determined by the City through the application of the appropriate amount or rate for Taxable Property, as described below. All of the property in Improvement Area No. 2, unless exempted by law or by the provisions of Section G below, shall be taxed for the purposes, to the extent, and in the manner herein provided.

**A. DEFINITIONS**

The terms hereinafter set forth have the following meanings:

**“Accessory Unit”** means a second residential unit of limited size (e.g., granny cottage, second unit) that shares a Parcel with a single-family detached unit.

**“Acre”** or **“Acreage”** means the land area of an Assessor's Parcel as shown on an Assessor's Parcel Map, or if the land area is not shown on an Assessor's Parcel Map, the land area shown on the applicable Final Map or other parcel map recorded at the County Recorder's Office.

**“Act”** means the Mello-Roos Community Facilities Act of 1982, as amended, being Chapter 2.5, (commencing with Section 53311), Division 2 of Title 5 of the Government Code of the State of California.

**“Administrative Expenses”** means any or all of the following: the fees and expenses of any fiscal agent or trustee (including any fees or expenses of its counsel) employed in connection with any Bonds, and the expenses of the City in carrying out its duties with respect to the CFD and the Bonds, including, but not limited to, the levy and collection of Special Taxes, the fees and expenses of its legal counsel, charges levied by the County in connection with the levy and collection of Special Taxes, costs related to property owner inquiries regarding the Special Taxes, costs associated with appeals or requests for interpretation associated with the Special Taxes and this RMA, costs of the dissemination agent, whether for the City or another party that has undertaken to provide continuing disclosure, amounts needed to pay rebate to the federal government with respect to the Bonds, costs associated with complying with any continuing disclosure requirements with respect to the Bonds and the Special Taxes, costs associated with foreclosure and collection of delinquent Special Taxes and all other costs and expenses of the City and County in any way related to the establishment or administration of the CFD.

“**Administrator**” means the person or firm designated by the City to administer the Special Taxes according to this RMA.

“**Assessor’s Parcel**” or “**Parcel**” means a lot or parcel shown on an Assessor’s Parcel Map with an assigned Assessor’s parcel number.

“**Assessor’s Parcel Map**” means an official map of the County Assessor designating Parcels by Assessor’s Parcel number.

“**Authorized Facilities**” means the public facilities authorized to be financed, in whole or in part, by the CFD.

“**Authorized Services**” means the public services authorized to be funded, in whole or in part, by the CFD.

“**Bonds**” means bonds or other debt (as defined in the Act), whether in one or more series, issued or assumed by Improvement Area No. 2 to fund Authorized Facilities.

“**Capitalized Interest**” means funds in any capitalized interest account available to pay interest on Bonds.

“**CFD**” means the City of Tracy Community Facilities District No. 2016-1 (Tracy Hills).

“**City**” means the City of Tracy.

“**City Council**” means the City Council of the City of Tracy.

“**County**” means the County of San Joaquin.

“**Developed Property**” means, in any Fiscal Year, all Parcels of Taxable Property, excluding Taxable HOA Property, Taxable Welfare Exemption Property, and Taxable Public Property, for which a building permit was issued prior to June 30 of the preceding Fiscal Year.

“**Development Class**” means, individually, Developed Property, Undeveloped Property, Taxable HOA Property, Taxable Welfare Exemption Property, and Taxable Public Property.

“**Escalation Factor**” means, in any Fiscal Year, the lesser of (i) the percentage increase from the prior Fiscal Year, if any, in the Index, or (ii) four percent (4%). The Index used shall be as determined by the Bureau of Labor Statistics from April to April beginning with the period from April 2022 to April 2023.



**“Expected Land Uses”** means the number of Residential Units and acres of Other Property expected within Improvement Area No. 2 at the time of the IA No. 2 Lien Date, as identified in Attachment 1 and as amended from time to time as set forth in this RMA.

**“Expected Maximum Facilities Special Tax Revenues”** means the amount of annual revenue that would be available in Improvement Area No. 2 if the Maximum Facilities Special Tax was levied on the Expected Land Uses. The Expected Maximum Facilities Special Tax Revenues as of the IA No. 2 Lien Date are shown in Attachment 1 of this RMA and may be reduced due to prepayments in future Fiscal Years and/or pursuant to Section D below.

**“Facilities Special Tax”** means a special tax levied in any Fiscal Year to pay the Facilities Special Tax Requirement.

**“Facilities Special Tax Requirement”** means the amount necessary in any Fiscal Year (i) to pay principal and interest on Bonds which are due in the calendar year which begins in such Fiscal Year, (ii) to create or replenish reserve funds to the extent such replenishment has not been included in a computation of Facilities Special Tax Requirement in a previous Fiscal Year, (iii) to cure any delinquencies in the payment of principal or interest on Bonds which have occurred in the prior Fiscal Year, (iv) to pay Administrative Expenses, and (v) to pay the costs of Authorized Facilities to be funded directly from Facilities Special Tax proceeds to the extent that paying directly for such costs does not increase the Facilities Special Tax levied on Undeveloped Property. The amounts referred to in clauses (i) and (ii) of the preceding sentence may be reduced in any Fiscal Year by (i) interest earnings on or surplus balances in funds and accounts for Bonds to the extent that such earnings or balances are available to apply against debt service pursuant to the Indenture, (ii) proceeds from the collection of penalties associated with delinquent Facilities Special Taxes, and (iii) any other revenues available to pay debt service on the Bonds as determined by the Administrator.

**“Final Bond Sale”** means, at any point in time, the last series of Bonds issued for Improvement Area No. 2, which issuance uses up virtually all of the remaining capacity available from the Maximum Facilities Special Tax revenues that can be generated within Improvement Area No. 2, as determined by the City. If additional Bonds are expected to be issued after outstanding Bonds retire, the “Final Bond Sale” may not be the last series of Bonds ever issued for Improvement Area No. 2, but instead the last sale of Bonds that can be issued before some or all of the outstanding Bonds retire.

**“Final Map”** means a final map, or portion thereof, recorded by the County pursuant to the Subdivision Map Act (California Government Code Section 66410 et seq.) that creates lots that do not need to be further subdivided prior to issuance of a building permit for a residential structure. The term “Final Map” shall not include any Assessor’s Parcel map or subdivision map, or portion thereof, that does not create lots that are in their final configuration, including Assessor’s Parcels that are designated as remainder parcels.

**“First Bond Sale”** means issuance of the first series of Bonds secured, in whole or in part, by Facilities Special Taxes levied and collected from Parcels in Improvement Area No. 2.

**“Fiscal Year”** means the period starting July 1 and ending on the following June 30.

**“Homeowners Association”** or **“HOA”** means the homeowners association that provides services to, and collects dues, fees, or charges from, property within Improvement Area No. 2.

**“HOA Property”** means any property within the boundaries of Improvement Area No. 2 that is owned in fee or by easement by the Homeowners Association, not including any such property that is located directly under a residential structure.

**“IA No. 2 Lien Date”** means the date that the Notice of Special Tax Lien affecting the Parcels in Improvement Area No. 2 was recorded in the official records of the County.

**“Improvement Area No. 2”** means Improvement Area No. 2 of the City of Tracy Community Facilities District No. 2016-1 (Tracy Hills).

**“Improvement Fund”** means the account (regardless of its name) identified in the Indenture to hold funds which are available to acquire or construct Authorized Facilities.

**“Indenture”** means the bond indenture, fiscal agent agreement, trust agreement, resolution or other instrument pursuant to which Bonds are issued, as modified, amended, and/or supplemented from time to time, and any instrument replacing or supplementing the same.

**“Index”** means the Consumer Price Index of the San Francisco-Oakland-Hayward area for all urban consumers.

**“Land Use Change”** means a proposed or approved change to the Expected Land Uses within Improvement Area No. 2 after the IA No. 2 Lien Date.

**“Maximum Facilities Special Tax”** means the greatest amount of Facilities Special Tax that can be levied on an Assessor’s Parcel in any Fiscal Year as determined in accordance with Sections C and D below.

**“Maximum Services Special Tax”** means the greatest amount of Services Special Tax that can be levied on an Assessor’s Parcel in any Fiscal Year as determined in accordance with Section C.2 below.

**“Maximum Special Taxes”** means, collectively, the Maximum Facilities Special Tax and Maximum Services Special Tax.

**“Other Property”** means, in any Fiscal Year, all Parcels of Developed Property within Improvement Area No. 2 that are not Single Family Residential Property.

**“Proportionately”** means, for each Development Class, that the ratio of the actual Special Tax levied in any Fiscal Year to the Maximum Special Tax authorized to be levied in that Fiscal Year is equal for all Parcels assigned to the Development Class.

**“Public Property”** means any property within the boundaries of Improvement Area No. 2 that is owned by the federal government, State of California or other local governments or public agencies.

**“Recycled Water Facilities Cost”** means the total cost, as determined by the City, of funding the design, engineering, construction, and/or acquisition of recycled water facilities that will serve development within the CFD. If, in the future, the City determines that there is a preferred alternative to the recycled water facilities that were expected at the time of the IA No. 2 Lien Date, the cost of such facilities shall qualify as Recycled Water Facilities Costs for purposes of this RMA.

**“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 after the Trigger Event to pay for: (i) Authorized Services, (ii) Administrative Expenses, and (iii) amounts needed to cure any delinquencies in the payment of Services Special Taxes which have occurred in the prior Fiscal Year. In any Fiscal Year, the Services Special Tax Requirement shall be reduced by surplus amounts available (as determined by the City) from the levy of the Services

Special Tax in prior Fiscal Years, including revenues from the collection of delinquent Services Special Taxes and associated penalties and interest.

**“Single Family Residential Property”** means, in any Fiscal Year, all Parcels of Developed Property for which a building permit was issued for construction of one or more Residential Units.

**“Special Taxes”** means, collectively, the Facilities Special Tax and the Services Special Tax.

**“Taxable HOA Property”** means, in any Fiscal Year after the First Bond Sale, any Parcel of HOA Property that satisfies all three of the following conditions: (i) the Parcel had not been HOA Property on the date of the First Bond Sale; (ii) based on reference to Attachments 1 and 2 (as may be updated pursuant to Section D below), the Parcel was not anticipated to be HOA Property based on the Expected Land Uses, as determined by the Administrator; and (iii) if the Parcel were to be exempt from the Facilities Special Tax because it has become HOA Property, the Expected Maximum Facilities Special Tax Revenues would be reduced to a point at which Required Coverage could not be maintained.

**“Taxable Property”** means all Parcels within the boundaries of Improvement Area No. 2 which are not exempt from the Special Taxes pursuant to law or Section G below.

**“Taxable Public Property”** means, in any Fiscal Year after the First Bond Sale, any Parcel of Public Property that satisfies all three of the following conditions: (i) the Parcel had not been Public Property on the date of the First Bond Sale, (ii) based on reference to Attachments 1 and 2 (as may be updated pursuant to Section D.1 below), the Parcel was not anticipated to be Public Property based on the Expected Land Uses, as determined by the Administrator, and (iii) if the Parcel were to be exempt from the Facilities Special Tax because it has become Public Property, the Expected Maximum Facilities Special Tax Revenues would be reduced to a point at which Required Coverage could not be maintained.

**“Taxable Welfare Exemption Property”** means in any Fiscal Year after the First Bond Sale, any Parcel of Welfare Exemption Property that satisfies all three of the following conditions: (i) the Parcel had not been Welfare Exemption Property on the date of issuance of the First Bond Sale; (ii) based on reference to Attachments 1 and 2 (as may be updated pursuant to Section D herein), the Parcel was not anticipated to be Welfare Exemption Property based on the Expected Land Uses, as determined by the Administrator; and (iii) if the Parcel were to be exempt from the Facilities Special Tax because it has become Welfare Exemption Property, the Expected Maximum Facilities Special Tax Revenues would be reduced to a point at which Required Coverage could not be maintained.

**“Tentative Map”** means any tentative map or vesting tentative map for Phase 1B of the Tracy Hills project, approved by the City Council and as may be amended from time to time.

**“Trigger Event”** means, in any Fiscal Year, that, on or before June 30 of the prior Fiscal Year, the Administrator made a finding that (i) all Bonds secured by the levy and collection of Facilities

Special Taxes in the CFD have been fully repaid, (ii) all Administrative Expenses from prior Fiscal Years have been paid or reimbursed to the City, (iii) the Recycled Water Facilities Costs have been fully funded, and (iv) there are no other Authorized Facilities that the City intends to fund with Facilities Special Taxes. In the first Fiscal Year in which the Administrator determines that the Trigger Event occurred in the prior Fiscal Year, and in each Fiscal Year thereafter, the Facilities Special Tax shall cease to be levied, and the Maximum Services Special Tax for each Parcel shall be adjusted pursuant to Section C.2 below.

**“Undeveloped Property”** means, in any Fiscal Year, all Parcels of Taxable Property that are not Developed Property, Taxable HOA Property, Taxable Welfare Exemption Property, or Taxable Public Property.

**“Village”** means a specific geographic area within Improvement Area No. 2 that (i) is identified by an assigned number on the Tentative Map, (ii) is expected to have single family lots that are all of a similar size, and (iii) is assigned Expected Maximum Facilities Special Tax Revenues in Attachment 1 based on the Expected Land Uses for that Village.

**“Welfare Exemption Property”** means, in any Fiscal Year, any Parcels in Improvement Area No. 2 that have received a welfare exemption under subdivision (g) of Section 214 of the Revenue and Taxation Code and for which such welfare exemption is still in place.

## **B. DATA FOR ADMINISTRATION OF SPECIAL TAX**

Each Fiscal Year, the Administrator shall (i) categorize each Parcel of Taxable Property as Developed Property, Undeveloped Property, Taxable Public Property, Taxable HOA Property, or Taxable Welfare Exemption Property; (ii) for Single Family Residential Property, determine within which Village each Parcel of Developed Property is located and the number of Residential Units on the Parcel; and (iii) determine the Facilities Special Tax Requirement and Services Special Tax Requirement for the Fiscal Year. In addition, the Administrator shall, *on an ongoing basis*, monitor Final Maps and condominium plans to determine if there are any proposed changes to the Expected Land Uses that would reduce the Expected Maximum Facilities Special Tax Revenues for a Village. If the Expected Maximum Facilities Special Tax Revenues will be reduced pursuant to a proposed Land Use Change, the Administrator shall apply the steps set forth in Section D.1 below.

In any Fiscal Year, if it is determined that: (i) a parcel map for property in Improvement Area No. 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 shall calculate the Special Taxes for the property affected by recordation of the parcel map by determining the Special Taxes that apply separately to the property within each Development Class, then applying the sum of the

individual Special Taxes to the Parcel that was subdivided by recordation of the parcel map.

**C. MAXIMUM SPECIAL TAX**

*1. Facilities Special Tax*

Table 1 below identifies the Maximum Facilities Special Tax, before and after the Trigger Event, for Taxable Property in Improvement Area No. 2, subject to potential adjustments that may occur pursuant to Section D below.

**TABLE 1  
IMPROVEMENT AREA NO. 2  
MAXIMUM FACILITIES SPECIAL TAX**

Land Use	Maximum Facilities Special Tax Prior to Trigger Event Fiscal Year 2022-23*	Maximum Facilities Special Tax After Trigger Event
<u>Single Family Residential Property</u>		
Village 9A	\$4,795 per Residential Unit	\$0 per Residential Unit
Village 9B	\$5,844 per Residential Unit	\$0 per Residential Unit
Village 10A	\$5,017 per Residential Unit	\$0 per Residential Unit
Village 10B	\$5,017 per Residential Unit	\$0 per Residential Unit
Village 10C	\$5,017 per Residential Unit	\$0 per Residential Unit
Village 11A	\$4,315 per Residential Unit	\$0 per Residential Unit
Village 11B	\$4,315 per Residential Unit	\$0 per Residential Unit
Other Property	\$47,285 per Acre	\$0 per Acre
Taxable Public Property		
Taxable HOA Property	\$47,285 per Acre	\$0 per Acre
Taxable Welfare Exemption Property		
Undeveloped Property	\$47,285 per Acre	\$0 per Acre

\* On July 1, 2023 and on each July 1 thereafter, all figures shown in Table 1 above shall be increased by an amount equal to 2.0% of the amount in effect for the prior Fiscal Year.

2. *Services Special Tax*

Table 2 below identifies the Maximum Services Special Tax, before and after the Trigger Event, for Taxable Property in Improvement Area No. 2.

**TABLE 2  
IMPROVEMENT AREA NO. 2  
MAXIMUM SERVICES SPECIAL TAX**

Type of Property	Maximum Services Special Tax Prior to Trigger Event	Maximum Services Special Tax After Trigger Event Fiscal Year 2022-23*
<u>Single Family Residential Property</u>		
Village 9A	\$0 per Residential Unit	\$959 per Residential Unit
Village 9B	\$0 per Residential Unit	\$1,169 per Residential Unit
Village 10A	\$0 per Residential Unit	\$1,004 per Residential Unit
Village 10B	\$0 per Residential Unit	\$1,004 per Residential Unit
Village 10C	\$0 per Residential Unit	\$1,004 per Residential Unit
Village 11A	\$0 per Residential Unit	\$863 per Residential Unit
Village 11B	\$0 per Residential Unit	\$863 per Residential Unit
Other Property	\$0 per Acre	\$9,460 per Acre
Taxable Public Property Taxable HOA Property	\$0 per Acre	\$9,460 per Acre
Undeveloped Property	\$0 per Acre	\$9,460 per Acre

\* Beginning July 1, 2023 and each July 1 thereafter until the Transition Event, the Services Special Taxes in Table 2 shall be increased by 2.0% of the amount in effect in the prior Fiscal Year. On July 1 of the Fiscal Year after the Transition Event and each July 1 thereafter, the Services Special Taxes and the Maximum Services Special Tax assigned to each Parcel shall be adjusted by the Escalation Factor.

Once Special Taxes have been levied on a Parcel of Developed Property, the Maximum Special Taxes applicable to that Parcel shall not be reduced in future Fiscal Years regardless of changes in land use on the Parcel, except (i) in the event of a partial prepayment pursuant to Section H, and (ii) pursuant to Section D. Notwithstanding the foregoing: (i) if Bonds have yet to be issued for Improvement Area No. 2, the Parcels can be assigned to the appropriate special tax category based on the Land Use Change, and the Administrator shall recalculate the Expected Maximum Facilities Special Tax Revenues based on the corresponding change in revenues, and (ii) the actual Special Taxes levied on a Parcel of Developed Property in any Fiscal Year may be less than the Maximum Special Taxes if lower Special Taxes are calculated pursuant to Step 1 in Sections E.1 and E.2 below.

**D. CHANGES TO MAXIMUM SPECIAL TAXES**

The Expected Maximum Facilities Special Tax Revenues were calculated based on the Expected Land Uses at the IA No. 2 Lien Date. The Administrator shall review Final Maps, Tentative Map revisions, and other changes to land uses proposed within Improvement Area No. 2 and compare the revised land uses to the Expected Land Uses to evaluate the impact on the Expected Maximum Facilities Special Tax Revenues.

*1. Changes in Expected Land Uses*

If, prior to the First Bond Sale, a Land Use Change is proposed that will result in a reduction in the Expected Maximum Facilities Special Tax Revenues, no action will be needed pursuant to this Section D.1. Upon approval of the Land Use Change, the Administrator shall update Attachment 1 to show the reduced Expected Maximum Facilities Special Tax Revenues.

If, prior to the Final Bond Sale, a Land Use Change is proposed that will result in a reduction in the Expected Maximum Facilities Special Tax Revenues, no action will be needed pursuant to this Section D.1 as long as the reduction does not reduce debt service coverage on outstanding Bonds below the Required Coverage. Upon approval of the Land Use Change, the Administrator shall update Attachment 1 to show the reduced Expected Maximum Facilities Special Tax Revenues, which amount shall be used to size the Final Bond Sale.

If a Land Use Change is proposed after the Final Bond Sale, the following steps shall be applied:

- Step 1:** By reference to Attachment 1 (which will be updated by the Administrator each time a Land Use Change has been processed according to this Section D.1 and or pursuant to Section D.2), the Administrator shall identify the Expected Maximum Facilities Special Tax Revenues for Improvement Area No. 2.
- Step 2:** The Administrator shall calculate the Expected Maximum Facilities Special Tax Revenues that could be collected from property in Improvement Area No. 2 if the Land Use Change is approved.
- Step 3:** If the amount calculated in Step 2 is higher than that determined in Step 1, no further action is needed. If the revenues calculated in Step 2 are less than those calculated in Step 1, and if the landowner requesting the Land Use Change does not prepay the portion of the Expected Maximum Facilities Special Tax Revenues in an amount that corresponds to the lost revenue, then the Maximum Facilities Special Tax for each Parcel of Taxable Property in the area affected by the Land Use Change shall be increased proportionately until the aggregate Expected Maximum Facilities Special Tax Revenues that can be generated from the area affected by the Land Use Change is the same as it was prior to the Land Use Change.



If multiple Land Use Changes are proposed simultaneously by a single land owner (which may include approval of multiple Final Maps at one time), the Administrator may consider the combined effect of all the Land Use Changes to determine if there is a reduction in Expected Maximum Facilities Special Tax Revenues. If there is a reduction, the Administrator shall increase the Maximum Facilities Special Tax proportionately in all of the Final Maps being proposed by the landowner until the aggregate amount that can be levied within the Final Maps is equal to the amount that could have been levied prior to the proposed Land Use Changes. If Land Use Changes are proposed simultaneously by multiple landowners, the Administrator shall consider the proposed Land Use Changes individually.

2. *Transfer of Expected Maximum Facilities Special Tax Revenues from One Village to Another*

The Expected Maximum Facilities Special Tax Revenues were determined for each Village based on the Expected Land Uses within that Village. If the expected number of Residential Units is transferred from one Village to another, the City may, in its sole discretion, allow for a corresponding transfer of Expected Maximum Facilities Special Tax Revenues between the Villages. Such a transfer shall only be allowed if (i) all adjustments are agreed to in writing by the affected property owners and the City, and (ii) there is no reduction in the total Expected Maximum Facilities Special Tax Revenues as a result of the transfer.

3. *Conversion of a Parcel of Public Property to Private Use*

If, in any Fiscal Year, a Parcel of Public Property is converted to private use, such Parcel shall be subject to the levy of Special Taxes. The Maximum Special Taxes for each such Parcel shall be determined based on the average Maximum Special Taxes for Parcels with similar land use designations, as determined by the Administrator.

**E. METHOD OF LEVY OF THE SPECIAL TAXES**

1. *Facilities Special Tax*

Each Fiscal Year, the Administrator shall determine the Facilities Special Tax Requirement and levy the Facilities Special Tax on all Parcels of Taxable Property as follows:

- Step 1:** In the first twenty (20) Fiscal Years in which a Facilities Special Tax is levied within Improvement Area No. 2, the Maximum Facilities Special Tax shall be levied on all Parcels of Developed Property. In the first fourteen (14) Fiscal Years in which Facilities Special Taxes are collected, and in the 16<sup>th</sup>, 17<sup>th</sup>, 18<sup>th</sup>, 19<sup>th</sup> and 20<sup>th</sup> Fiscal Years in which Facilities Special Taxes are collected, Facilities Special Tax proceeds that are determined by the Administrator to be Remainder Taxes shall be deposited into the Improvement Fund to pay any

costs associated with the acquisition of Authorized Facilities that were not paid with Bond proceeds or Facilities Special Taxes levied in prior Fiscal Years. Any Remainder Taxes collected in the 15<sup>th</sup> year in which Facilities Special Taxes are levied shall be available to pay for Authorized Facilities or Authorized Services as determined in the sole discretion of the City.

Beginning in the 21<sup>st</sup> Fiscal Year in which a Facilities Special Tax is levied within Improvement Area No. 2 and continuing until the Trigger Event, the Facilities Special Tax shall be levied Proportionately on each Parcel of Developed Property up to 100% of the Maximum Facilities Special Tax for each Parcel of Developed Property until the amount levied is equal to the Facilities Special Tax Requirement, the calculation of which will include funding for Recycled Water Facilities Costs and/or other Authorized Facilities designated for funding, as determined in the sole discretion of the City. After the Trigger Event, the Facilities Special Tax shall no longer be levied.

- Step 2:** If additional revenue is needed after Step 1 and after applying Capitalized Interest to the Facilities Special Tax Requirement, the Facilities Special Tax shall be levied Proportionately on each Parcel of Undeveloped Property up to 100% of the Maximum Facilities Special Tax for each Parcel of Undeveloped Property.
- Step 3:** If additional revenue is needed after Step 2, the Facilities Special Tax shall be levied Proportionately on each Parcel of Taxable Welfare Exemption Property, up to 100% of the Maximum Facilities Special Tax for each Parcel of Taxable Welfare Exemption Property.
- Step 4:** If additional revenue is needed after Step 3, the Facilities Special Tax shall be levied Proportionately on each Parcel of Taxable HOA Property, up to 100% of the Maximum Facilities Special Tax for each Parcel of Taxable HOA Property.
- Step 5:** If additional revenue is needed after Step 4, the Facilities Special Tax shall be levied Proportionately on each Parcel of Taxable Public Property, up to 100% of the Maximum Facilities Special Tax for each Parcel of Taxable Public Property.

## 2. *Services Special Tax*

Each Fiscal Year after the Trigger Event, the Administrator shall determine the Services Special Tax Requirement and levy the Services Special Tax on all Parcels of Taxable Property as follows:

- Step 1:** The Services Special Tax shall be levied Proportionately on each Parcel of Developed Property up to 100% of the Maximum Services Special Tax for each

Parcel of Developed Property until the amount levied is equal to the Services Special Tax Requirement.

- Step 2:** If additional revenue is needed after Step 1, the Services Special Tax shall be levied Proportionately on each Parcel of Undeveloped Property, up to 100% of the Maximum Services Special Tax for each Parcel of Undeveloped Property.
- Step 3:** If additional revenue is needed after Step 2, the Services Special Tax shall be levied Proportionately on each Parcel of Taxable HOA Property, up to 100% of the Maximum Services Special Tax for each Parcel of Taxable HOA Property.
- Step 4:** If additional revenue is needed after Step 3, the Services Special Tax shall be levied Proportionately on each Parcel of Taxable Public Property, up to 100% of the Maximum Services Special Tax for each Parcel of Taxable Public Property.

**F. MANNER OF COLLECTION OF SPECIAL TAXES**

The Special Taxes for Improvement Area No. 2 shall be collected in the same manner and at the same time as ordinary ad valorem property taxes, provided, however, that partial prepayments are permitted as set forth in Section H below and provided further that the City may directly bill the Special Taxes, may collect Special Taxes at a different time or in a different manner, and may collect delinquent Special Taxes through foreclosure or other available methods.

The Facilities Special Tax shall be levied and collected until principal and interest on Bonds have been repaid, costs of constructing or acquiring Authorized Facilities from Facilities Special Tax proceeds have been paid, and all Administrative Expenses have been paid or reimbursed. However, in no event shall Facilities Special Taxes be levied for more than eighty (80) Fiscal Years. Under no circumstances may the Facilities Special Tax on a Parcel in residential use be increased in any Fiscal Year as a consequence of delinquency or default in payment of the Facilities Special Tax levied on another Parcel or Parcels by more than ten percent (10%) above the amount that would have been levied in that Fiscal Year had there never been any such delinquencies or defaults. After the Trigger Event, the Services Special Tax may be levied and collected in perpetuity.

**G. EXEMPTIONS**

Any Parcel that becomes HOA Property, Public Property, or Welfare Exemption Property prior to the First Bond Sale shall be exempt from both the Services Special Tax and the Facilities Special Tax; the Administrator shall reduce the Expected Maximum Facilities Special Tax Revenues to reflect any such exemption, and the First Bond Sale shall be sized based on the reduced Expected Maximum Facilities Special Tax Revenues. Any Parcel that becomes HOA Property, Public Property, or Welfare Exemption Property after the First Bond Sale shall be exempt from both the

Services Special Tax and the Facilities Special Tax provided such Parcel is not Taxable HOA Property, Taxable Public Property or Taxable Welfare Exemption Property.

In addition, no Special Taxes shall be levied on (i) Parcels that are designated as permanent open space or common space on which no structure is permitted to be constructed, (ii) Parcels owned by a public utility for an unmanned facility, and (iii) Parcels subject to an easement that precludes any use on the Parcel other than that permitted by the easement. Notwithstanding the foregoing, if a Facilities Special Tax has been levied on a Parcel in any Fiscal Year, and the entire Parcel subsequently meets the criteria in (i), (ii) or (iii) above, the Parcel shall remain subject to the Facilities Special Tax levy, unless the First Bond Sale has not occurred, in which case such property shall be categorized as Public Property, and the Administrator shall recalculate the Expected Maximum Facilities Special Tax Revenues based on the corresponding loss in revenues.

#### **H. PARTIAL PREPAYMENT OF FACILITIES SPECIAL TAX**

The following definitions apply to this Section H:

**“Outstanding Bonds”** means all Previously Issued Bonds which remain outstanding, with the following exception: if a Facilities Special Tax has been levied against, or already paid by, an Assessor’s Parcel making a prepayment, and a portion of the Facilities Special Tax will be used to pay a portion of the next principal payment on the Bonds that remain outstanding (as determined by the Administrator), that next principal payment shall be subtracted from the total Bond principal that remains outstanding, and the difference shall be used as the amount of Outstanding Bonds for purposes of this prepayment formula.

**“Previously Issued Bonds”** means all Bonds that have been issued prior to the date of prepayment.

**“Public Facilities Requirements”** means: (i) \$28,730,000 in Fiscal Year 2022-23 dollars, which amount shall, on July 1, 2023 and on each July 1 thereafter, be increased by an amount equal to 2.0% of the amount in effect for the prior Fiscal Year, or (ii) such other number as shall be determined by the City to be an appropriate estimate of the net construction proceeds that will be generated from all Bonds that have been or are expected to be issued on behalf of Improvement Area No. 2.

**“Remaining Facilities Costs”** means the Public Facilities Requirements (as defined above), minus public facility costs funded by Previously Issued Bonds (as defined above), Remainder Taxes, or prepayments.

A property owner may prepay up to 80% of the Facilities Special Tax obligation applicable to a Parcel in Improvement Area No. 2, 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:** Take the amount computed pursuant to Step 8 and subtract the amount computed pursuant to Step 9 (*the “Defeasance Requirement”*).
- Step 11.** Determine the costs of computing the prepayment amount, redeeming Bonds, and recording any notices to evidence the prepayment and redemption (*the “Administrative Fees and Expenses”*).
- Step 12.** If and to the extent so provided in the Indenture, a reserve fund credit shall be calculated as a reduction in the applicable reserve fund for the Outstanding Bonds to be redeemed pursuant to the prepayment (*the “Reserve Fund Credit”*).
- Step 13.** The Facilities Special Tax prepayment is equal to the sum of the amounts computed pursuant to Steps 4, 6, 7, 10, and 11, less the amount computed pursuant to Step 12 (*the “Prepayment Amount”*).
- Step 14.** From the Prepayment Amount, the amounts computed pursuant to Steps 4, 7, and 10 shall be deposited into the appropriate fund as established under the Indenture and be used to retire Outstanding Bonds or make debt service payments. The amount computed pursuant to Step 6 shall be deposited into the Improvement Fund. The amount computed pursuant to Step 11 shall be retained in the account or fund that is established to pay Administrative Expenses.

Once a partial prepayment of a Facilities Special Tax has been received, an Amendment to Special Tax Lien shall be recorded against the Parcel to reflect the reduced Facilities Special Tax lien for the Parcel, which shall be equal to the portion of the Maximum Facilities Special Tax that was not prepaid. However, an Amendment to Special Tax Lien shall not be recorded until all Facilities Special Taxes levied on the Parcel in the current or prior Fiscal Years have been collected. The

prepayment of a portion of the Facilities Special Tax shall not affect the perpetual obligation to pay the Services Special Tax.

Notwithstanding the foregoing, if at any point in time the Administrator determines that the Maximum Facilities Special Tax revenue that could be collected from Taxable Property that remains subject to the Facilities Special Tax after the proposed prepayment would be less than the Required Coverage on Bonds that will remain outstanding after defeasance or redemption of Bonds from proceeds of the estimated prepayment, the amount of the prepayment shall be increased until the amount of Bonds defeased or redeemed is sufficient to reduce remaining annual debt service to a point at which Required Coverage is maintained.

#### **I. INTERPRETATION OF SPECIAL TAX FORMULA**

The City may interpret, clarify, and revise this RMA to correct any inconsistency, vagueness, or ambiguity, by resolution and/or ordinance, that does not create a material adverse effect on the levy and collection of the Special Taxes and any security for any Bonds.

**ATTACHMENT 1**

**Improvement Area No. 2 of the  
 City of Tracy  
 Community Facilities District No. 2016-1  
 (Tracy Hills)**

**Expected Land Uses and Expected Maximum Facilities Special Tax Revenues**

<b>Village</b>	<b>Expected Land Uses</b>	<b>Maximum Facilities Special Tax per Unit FY 2022-23 /1</b>	<b>Expected Maximum Facilities Special Tax Revenues FY 2022-23 /1</b>
Village 9A	69 Residential Units	\$4,795 per Residential Unit	\$330,855
Village 9B	64 Residential Units	\$5,844 per Residential Unit	\$374,016
Village 10A	47 Residential Units	\$5,017 per Residential Unit	\$235,799
Village 10B	41 Residential Units	\$5,017 per Residential Unit	\$205,697
Village 10C	62 Residential Units	\$5,017 per Residential Unit	\$311,054
Village 11A	45 Residential Units	\$4,315 per Residential Unit	\$194,175
Village 11B	104 Residential Units	\$4,315 per Residential Unit	\$448,760
N/A	0 Acres of Other Property	\$47,285 per Acre	\$0
<b>Total</b>	<b>432 Residential Units and 0 Acres of Other Property</b>	<b>N/A</b>	<b>\$2,100,356</b>

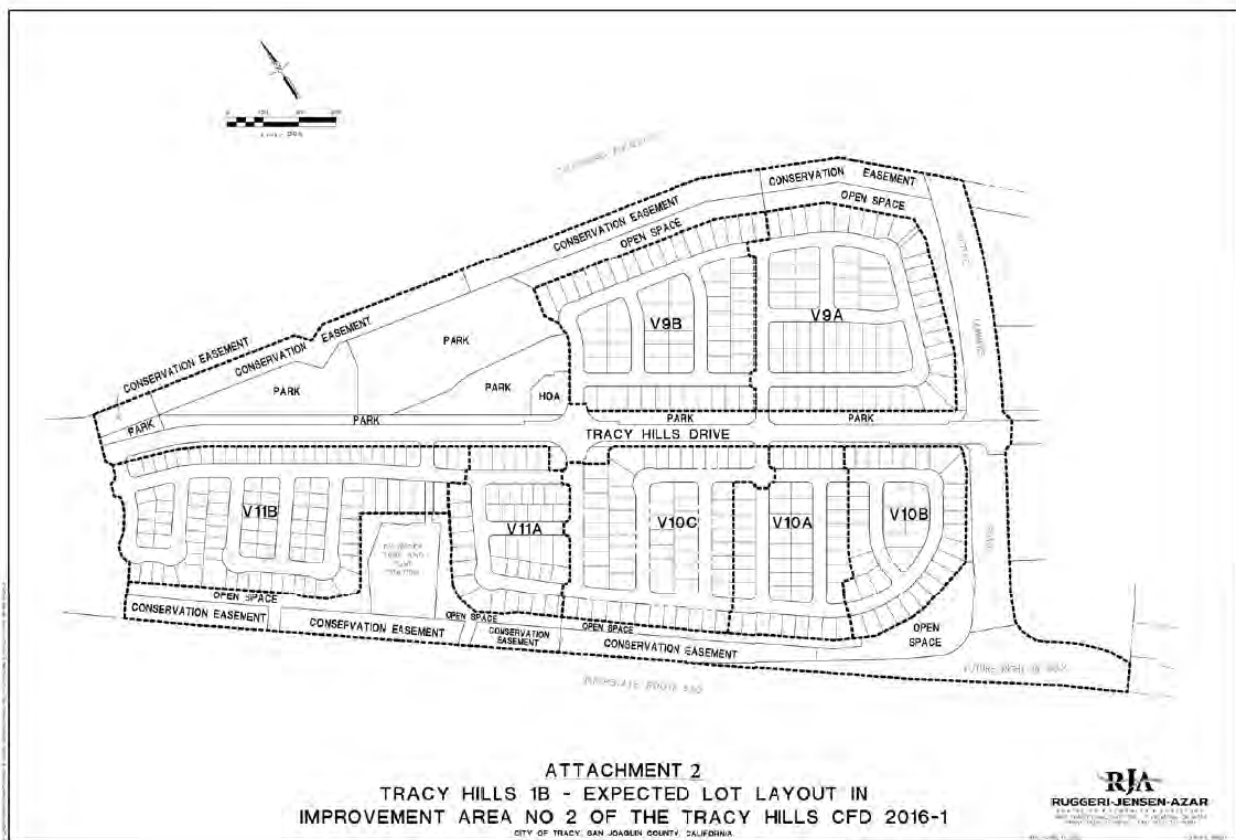
1. On July 1, 2023 and each July 1 thereafter, the Maximum Facilities Special Tax per Residential Unit and the Expected Maximum Facilities Special Tax Revenues shall be increased by two percent (2%) of the amount in effect in the prior Fiscal Year.



## ATTACHMENT 2

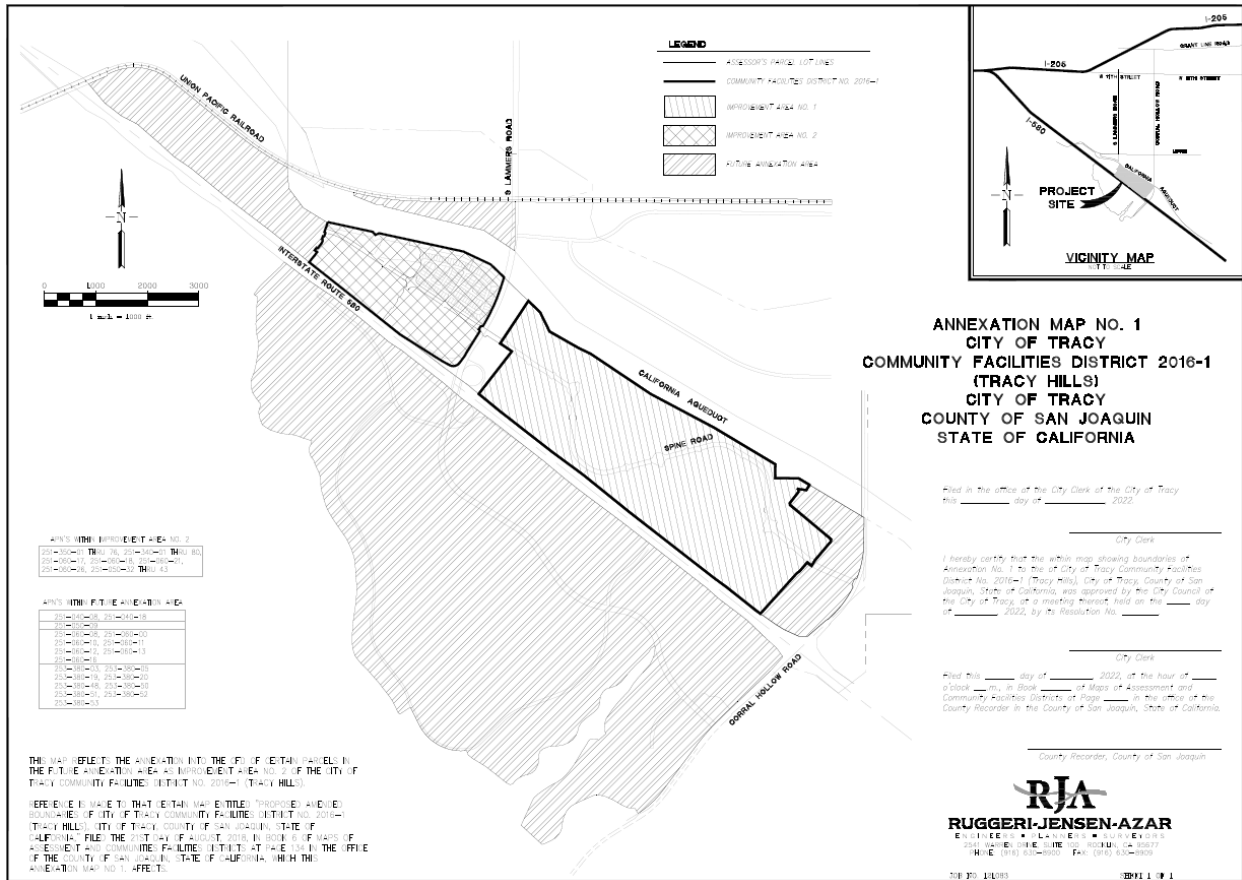
### Improvement Area No. 2 of the City of Tracy Community Facilities District No. 2016-1 (Tracy Hills)

#### Expected Lot Layout



### EXHIBIT B

## MAP OF ANNEXATION PROPERTY



**City of Tracy  
Community Facilities District No. 2016-1 (Tracy Hills)**

**Request and Unanimous Approval for Annexation  
and Landowner-Voter Ballot**

Recitals

- A. The undersigned is an authorized representative of Lennar Homes of California, LLC, a California limited liability company (the "**Landowner**").
- B. The Landowner owns the real property identified in Exhibit A, attached hereto and by this reference incorporated herein (the "**Property**").
- C. Pursuant to the Mello-Roos Community Facilities Act of 1982 (the "**Mello-Roos Act**"), on July 19, 2016, the City Council (the "**City Council**") of the City of Tracy adopted its Resolution No. 2016-157 (the "**Resolution of Formation**"), which, among other things:
  - 1. established the City of Tracy Community Facilities District No. 2016-1 (Tracy Hills) ("**CFD**") and a future annexation area for the CFD ("**Future Annexation Area**") and designated Improvement Area No. 1 of the City of Tracy Community Facilities District No. 2016-1 (Tracy Hills) ("**Improvement Area No. 1**"), with the initial boundaries of the CFD, the Future Annexation Area and Improvement Area No. 1 shown on a boundary map (the "**Boundary Map**") that was recorded on June 15, 2016 in the records of the San Joaquin County Recorder in Book 6 of Maps of Assessment and Community Facilities Districts at Page 84 as Document No. 2016-069400;
  - 2. authorized the CFD and every improvement area annexed thereto to finance the costs and expenses of certain public facilities and fees (together, the "**Facilities**") and certain public services (the "**Services**"); and
  - 3. approved the form of the rate and method of apportionment for Improvement Area No. 1 (the "**Original Improvement Area No. 1 RMA**").
- D. The Resolution of Formation further provided that property in the Future Annexation Area may be annexed into the CFD as its own improvement area or to an existing improvement area, and that the designation as an improvement area of any territory annexing to the CFD, the maximum amount of bonded indebtedness and other debt for such improvement area, the rate and method of apportionment of special tax for such improvement area and the appropriations limit for such improvement area shall be identified and approved in a unanimous approval (a "**Unanimous Approval**") executed by property owners in connection with an annexation to the CFD, without the need for Council approval as long as certain conditions were met.
- E. Pursuant to the Mello-Roos Act, on July 19, 2016, the City Council adopted its Resolution No. 2016-158 (the "**Resolution of Necessity**"), which set forth the necessity for the City to issue special tax bonds or other forms of debt obligations for the CFD in the maximum principal amount of \$285,000,000. The Resolution of Necessity preliminarily allocated

\$70,000,000 of the aggregate \$285,000,000 limit to Improvement Area No. 1 (the "**Improvement Area No. 1 Indebtedness Limit**") and \$215,000,000 to the Future Annexation Area (the "**Non-Improvement Area No. 1 Indebtedness Limit**"), with the actual limit for an improvement area created from annexation of all or part of the Future Annexation Area to be identified and approved in a Unanimous Approval so long as the overall bonded indebtedness limit for the CFD did not exceed \$285,000,000.

- F. Subsequently, the City Council undertook change proceedings, including a landowner vote, which culminated in the adoption by the City Council on August 21, 2018, of Resolution No. 2018-169, entitled "**Resolution of Change**," to (i) increase the Improvement Area No. 1 Indebtedness Limit to \$80,000,000, (ii) increase the Non-Improvement Area No. 1 Indebtedness Limit to \$305,000,000, (iii) increase the Improvement Area No. 1 Appropriations Limit to \$80,000,000, (iv) amend the boundaries of the CFD, Improvement Area No. 1 and the Future Annexation Area by removing San Joaquin County Assessor's Parcel Number 253-360-15 from Improvement Area No. 1 (the "**Transferred Parcel**") and adding it to the Future Annexation Area, and (v) amend the Improvement Area No. 1 Rate and Method (as amended, the "**Improvement Area No. 1 RMA**"). A map of the amended boundaries of the CFD, Improvement Area No. 1 and the Future Annexation Area was recorded on August 27, 2018 in the records of the San Joaquin County Recorder in Book 6 of Maps of Assessment and Community Facilities Districts at Page 134 as Document No. 2018-095098.
- G. The Landowner has sole ownership of the Property. The Property is part of the Future Annexation Area. By this instrument, the Landowner identifies, specifies and approves the annexation of the Property to the CFD as "Improvement Area No. 2 of the City of Tracy Community Facilities District No. 2016-1 (Tracy Hills)" ("**Improvement Area No. 2**") and the other matters included herein, without a public hearing, as authorized by the Mello-Roos Act and the Resolution of Formation.
- H. The Landowner hereby acknowledges that the Resolution of Formation requires City Council approval of the annexation of the property as Improvement Area No. 2, as proposed, because the Improvement Area No. 2 RMA (as defined below) establishes a maximum special tax amount for the initial fiscal year in which the special tax may be levied for one or more categories of special tax that is greater than 120% of the maximum amount of the same category of special tax for the same fiscal year calculated pursuant to the Improvement Area No. 1 RMA.
- I. The Landowner hereby represents and warrants that, to the best of its knowledge without inquiry, there are no persons resident on the property that are registered voters.

Approval and Vote

- 1. The Landowner, as the sole owner of the Property, hereby identifies, specifies and provides its unanimous approval of the annexation of the Property to the CFD as Improvement Area No. 2 and related matters, as prescribed and authorized by Section 53339.7 and Section 53350(b) of the Mello-Roos Act, the Resolution of Formation and the Resolution of Necessity.
- 2. The Landowner, as the sole qualified elector with respect to the annexation of the Property, hereby votes in favor of (a) the levy of special taxes on the taxable property being annexed to Improvement Area No. 2 in accordance with the rate and method of

apportionment for Improvement Area No. 2 in the form attached hereto as Exhibit B (the "Improvement Area No. 2 RMA") and by this reference incorporated herein for the purpose of financing the Facilities and the Services, (b) the issuance of bonds and other debt of Improvement Area No. 2 in a principal amount not to exceed \$50,000,000, which bonds and other debt shall be secured solely by and be payable solely from the proceeds of the special taxes levied upon the taxable property within Improvement Area No. 2, and (c) an initial appropriations limit for Improvement Area No. 2 of \$50,000,000. The Improvement Area No. 2 RMA describes the maximum special tax rate applicable to the Property.

3. The Landowner hereby requests that an annexation map showing the land (including the Property) to be annexed as Improvement Area No. 2 be as shown on the map attached hereto as Exhibit C.
4. The Landowner hereby acknowledges the following:
  - a. As soon as practicable following receipt of this Unanimous Approval by the City, the City Council will consider whether to approve the proposed annexation and, if directed by the City Council, the City Clerk will record (i) a Notice of Special Tax Lien for Improvement Area No. 2, listing the name of the Landowner and the assessor's parcel number(s) of the Property, which will result in the establishment of a lien to secure payment of the special tax on the Property and (ii) the proposed annexation map.
  - b. The City will levy a special tax upon the taxable property within Improvement Area No. 2 at the time and in accordance with the Resolution of Formation, the Resolution of Change and the Improvement Area No. 2 RMA.
  - c. This Unanimous Approval constitutes the Landowner's approval and unanimous vote as described herein and as contemplated by Section 53339.3 et seq. of the Mello-Roos Act and Articles XIII A and XIII C of the California Constitution. The Landowner hereby waives all other rights with respect to the annexation of the Property, the levy of the special taxes on the Property and the other matters covered in this Unanimous Approval, including any right the Landowner may otherwise have to protest or challenge the validity of the proceedings to form or change the CFD and to authorize the annexation of any property (including the Property) to the CFD, and any necessity, requirement or right for further public hearings or any election pertaining to the annexation of the Property to the CFD as Improvement Area No. 2 or the levy of special taxes on the Property.
  - d. The specific purpose of the bonds and other debt is to finance the acquisition and construction of the Facilities described in the Resolution of Formation and pay related costs. Any proceeds received from the sale of any bonds and other debt will be applied only for such purpose. The proceeds of any bonds and other debt will be deposited into special accounts to be created therefor as part of the issuance of the bonds and other debt. The City will cause a report to be prepared annually under Section 53411 of the Government Code.
  - e. The Expected Land Uses (as defined in the Improvement Area No. 2 RMA) of the Property shall be as specified in the Improvement Area No. 2 RMA.

5. The Landowner warrants to the City that the presentation of this Unanimous Approval, any votes, consents or waivers contained herein, and other actions mandated by the City for the annexation of the Property to the CFD as Improvement Area No. 2 shall not constitute or be construed as events of default or delinquencies under any existing or proposed financing documents entered into or to be entered into by the Landowner for the Property, including any "due-on-encumbrance" clauses under any existing security instruments secured by the Property.
6. The Landowner agrees to cooperate with the City and its attorneys and consultants and to provide to any subsequent purchaser with notice of the special tax that may be levied by the City Council on the Property pursuant to the Improvement Area No. 2 RMA, to the extent required by applicable law.
7. The Landowner further agrees to execute such additional or supplemental agreements as may be required by the City to provide for any of the actions and conditions described in this Unanimous Approval.

Dated: August 12, 2022

LENNAR HOMES OF CALIFORNIA, LLC,  
a California limited liability company

By: 

Name: BRIDGET KOWALE

Title: VP

Exhibit A - Identification of the Property

Exhibit B - Improvement Area No. 2 RMA

Exhibit C - Proposed Annexation Map

EXHIBIT A

IDENTIFICATION OF THE PROPERTY

Property Owned as of August 11, 2022

Lot Count

<b>Village</b>	<b>Tract Map References</b>	<b>APNs</b>
9A	[Tract Map 4083] Lots 26-37, 41, 60-62	251-340-26 to 251-340-42, inclusive; 251-340-46; and 251-340-65 to 251-340-67, inclusive.
9B	[Tract 4084] Lots 70, 71, 74-85, 112-113	251-350-01; 251-350-02; 251-350-05 to 251-350-16, inclusive; and 251-350-43 to 251-350-45, inclusive.
10C	[Tract 4085] Lots 7-12, 61 and 62	251-060-21 (Portion)

**EXHIBIT B**  
**IMPROVEMENT AREA NO. 2 RMA**

[attached]



**IMPROVEMENT AREA NO. 2 OF THE  
CITY OF TRACY  
COMMUNITY FACILITIES DISTRICT NO. 2016-1  
(TRACY HILLS)**

**RATE AND METHOD OF APPORTIONMENT OF SPECIAL TAXES**

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Special Taxes applicable to each Assessor's Parcel in Improvement Area No. 2 of the City of Tracy Community Facilities District No. 2016-1 (Tracy Hills) shall be levied and collected according to the tax liability determined by the City through the application of the appropriate amount or rate for Taxable Property, as described below. All of the property in Improvement Area No. 2, unless exempted by law or by the provisions of Section G below, shall be taxed for the purposes, to the extent, and in the manner herein provided.

**A. DEFINITIONS**

The terms hereinafter set forth have the following meanings:

**"Accessory Unit"** means a second residential unit of limited size (e.g., granny cottage, second unit) that shares a Parcel with a single-family detached unit.

**"Acre"** or **"Acreage"** means the land area of an Assessor's Parcel as shown on an Assessor's Parcel Map, or if the land area is not shown on an Assessor's Parcel Map, the land area shown on the applicable Final Map or other parcel map recorded at the County Recorder's Office.

**"Act"** means the Mello-Roos Community Facilities Act of 1982, as amended, being Chapter 2.5, (commencing with Section 53311), Division 2 of Title 5 of the Government Code of the State of California.

**"Administrative Expenses"** means any or all of the following: the fees and expenses of any fiscal agent or trustee (including any fees or expenses of its counsel) employed in connection with any Bonds, and the expenses of the City in carrying out its duties with respect to the CFD and the Bonds, including, but not limited to, the levy and collection of Special Taxes, the fees and expenses of its legal counsel, charges levied by the County in connection with the levy and collection of Special Taxes, costs related to property owner inquiries regarding the Special Taxes, costs associated with appeals or requests for interpretation associated with the Special Taxes and this RMA, costs of the dissemination agent, whether for the City or another party that has undertaken to provide continuing disclosure, amounts needed to pay rebate to the federal government with respect to the Bonds, costs associated with complying with any continuing disclosure requirements with respect to the Bonds and the Special Taxes, costs associated with foreclosure and collection of delinquent Special Taxes and all other costs and expenses of the City and County in any way related to the establishment or administration of the CFD.

**"Administrator"** means the person or firm designated by the City to administer the Special Taxes according to this RMA.

**"Assessor's Parcel"** or **"Parcel"** means a lot or parcel shown on an Assessor's Parcel Map with an assigned Assessor's parcel number.

**“Assessor’s Parcel Map”** means an official map of the County Assessor designating Parcels by Assessor’s Parcel number.

**“Authorized Facilities”** means the public facilities authorized to be financed, in whole or in part, by the CFD.

**“Authorized Services”** means the public services authorized to be funded, in whole or in part, by the CFD.

**“Bonds”** means bonds or other debt (as defined in the Act), whether in one or more series, issued or assumed by Improvement Area No. 2 to fund Authorized Facilities.

**“Capitalized Interest”** means funds in any capitalized interest account available to pay interest on Bonds.

**“CFD”** means the City of Tracy Community Facilities District No. 2016-1 (Tracy Hills).

**“City”** means the City of Tracy.

**“City Council”** means the City Council of the City of Tracy.

**“Connty”** means the County of San Joaquin.

**“Developed Property”** means, in any Fiscal Year, all Parcels of Taxable Property, excluding Taxable HOA Property, Taxable Welfare Exemption Property, and Taxable Public Property, for which a building permit was issued prior to June 30 of the preceding Fiscal Year.

**“Development Class”** means, individually, Developed Property, Undeveloped Property, Taxable HOA Property, Taxable Welfare Exemption Property, and Taxable Public Property.

**“Escalation Factor”** means, in any Fiscal Year, the lesser of (i) the percentage increase from the prior Fiscal Year, if any, in the Index, or (ii) four percent (4%). The Index used shall be as determined by the Bureau of Labor Statistics from April to April beginning with the period from April 2022 to April 2023.

**“Expected Land Uses”** means the number of Residential Units and acres of Other Property expected within Improvement Area No. 2 at the time of the IA No. 2 Lien Date, as identified in Attachment 1 and as amended from time to time as set forth in this RMA.

**“Expected Maximum Facilities Special Tax Revenues”** means the amount of annual revenue that would be available in Improvement Area No. 2 if the Maximum Facilities Special Tax was levied on the Expected Land Uses. The Expected Maximum Facilities Special Tax Revenues as of the IA No. 2 Lien Date are shown in Attachment 1 of this RMA and may be reduced due to prepayments in future Fiscal Years and/or pursuant to Section D below.

**“Facilities Special Tax”** means a special tax levied in any Fiscal Year to pay the Facilities Special Tax Requirement.

**“Facilities Special Tax Requirement”** means the amount necessary in any Fiscal Year (i) to pay principal and interest on Bonds which are due in the calendar year which begins in such Fiscal Year, (ii) to create or replenish reserve funds to the extent such replenishment has not been included in a computation of Facilities Special Tax Requirement in a previous Fiscal Year, (iii) to cure any delinquencies in the payment of principal or interest on Bonds which have occurred in the prior Fiscal Year, (iv) to pay Administrative Expenses, and (v) to pay the costs of Authorized Facilities to be funded directly from Facilities Special Tax proceeds to the extent that paying directly for such costs does not increase the Facilities Special Tax levied on Undeveloped Property. The amounts referred to in clauses (i) and (ii) of the preceding sentence may be reduced in any Fiscal Year by (i) interest earnings on or surplus balances in funds and accounts for Bonds to the extent that such earnings or balances are available to apply against debt service pursuant to the Indenture, (ii) proceeds from the collection of penalties associated with delinquent Facilities Special Taxes, and (iii) any other revenues available to pay debt service on the Bonds as determined by the Administrator.

**“Final Bond Sale”** means, at any point in time, the last series of Bonds issued for Improvement Area No. 2, which issuance uses up virtually all of the remaining capacity available from the Maximum Facilities Special Tax revenues that can be generated within Improvement Area No. 2, as determined by the City. If additional Bonds are expected to be issued after outstanding Bonds retire, the “Final Bond Sale” may not be the last series of Bonds ever issued for Improvement Area No. 2, but instead the last sale of Bonds that can be issued before some or all of the outstanding Bonds retire.

**“Final Map”** means a final map, or portion thereof, recorded by the County pursuant to the Subdivision Map Act (California Government Code Section 66410 et seq.) that creates lots that do not need to be further subdivided prior to issuance of a building permit for a residential structure. The term “Final Map” shall not include any Assessor’s Parcel map or subdivision map, or portion thereof, that does not create lots that are in their final configuration, including Assessor’s Parcels that are designated as remainder parcels.

**“First Bond Sale”** means issuance of the first series of Bonds secured, in whole or in part, by Facilities Special Taxes levied and collected from Parcels in Improvement Area No. 2.

**“Fiscal Year”** means the period starting July 1 and ending on the following June 30.

**“Homeowners Association”** or **“HOA”** means the homeowners association that provides services to, and collects dues, fees, or charges from, property within Improvement Area No. 2.

**“HOA Property”** means any property within the boundaries of Improvement Area No. 2 that is owned in fee or by easement by the Homeowners Association, not including any such property that is located directly under a residential structure.

**“IA No. 2 Lien Date”** means the date that the Notice of Special Tax Lien affecting the Parcels in Improvement Area No. 2 was recorded in the official records of the County.

**“Improvement Area No. 2”** means Improvement Area No. 2 of the City of Tracy Community Facilities District No. 2016-1 (Tracy Hills).

**“Improvement Fund”** means the account (regardless of its name) identified in the Indenture to hold funds which are available to acquire or construct Authorized Facilities.

**“Indenture”** means the bond indenture, fiscal agent agreement, trust agreement, resolution or other instrument pursuant to which Bonds are issued, as modified, amended, and/or supplemented from time to time, and any instrument replacing or supplementing the same.

**“Index”** means the Consumer Price Index of the San Francisco-Oakland-Hayward area for all urban consumers.

**“Land Use Change”** means a proposed or approved change to the Expected Land Uses within Improvement Area No. 2 after the IA No. 2 Lien Date.

**“Maximum Facilities Special Tax”** means the greatest amount of Facilities Special Tax that can be levied on an Assessor’s Parcel in any Fiscal Year as determined in accordance with Sections C and D below.

**“Maximum Services Special Tax”** means the greatest amount of Services Special Tax that can be levied on an Assessor’s Parcel in any Fiscal Year as determined in accordance with Section C.2 below.

**“Maximum Special Taxes”** means, collectively, the Maximum Facilities Special Tax and Maximum Services Special Tax.

**“Other Property”** means, in any Fiscal Year, all Parcels of Developed Property within Improvement Area No. 2 that are not Single Family Residential Property.

**“Proportionately”** means, for each Development Class, that the ratio of the actual Special Tax levied in any Fiscal Year to the Maximum Special Tax authorized to be levied in that Fiscal Year is equal for all Parcels assigned to the Development Class.

**“Public Property”** means any property within the boundaries of Improvement Area No. 2 that is owned by the federal government, State of California or other local governments or public agencies.

**“Recycled Water Facilities Cost”** means the total cost, as determined by the City, of funding the design, engineering, construction, and/or acquisition of recycled water facilities that will serve development within the CFD. If, in the future, the City determines that there is a preferred alternative to the recycled water facilities that were expected at the time of the IA No. 2 Lien Date, the cost of such facilities shall qualify as Recycled Water Facilities Costs for purposes of this RMA.

**“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 after the Trigger Event to pay for: (i) Authorized Services, (ii) Administrative Expenses, and (iii) amounts needed to cure any delinquencies in the payment of Services Special Taxes which have occurred in the prior Fiscal Year. In any Fiscal Year, the Services Special Tax Requirement shall be reduced by surplus amounts available (as determined by the City) from the levy of the Services Special Tax in prior Fiscal Years, including revenues from the collection of delinquent Services Special Taxes and associated penalties and interest.

**“Single Family Residential Property”** means, in any Fiscal Year, all Parcels of Developed Property for which a building permit was issued for construction of one or more Residential Units.

**“Special Taxes”** means, collectively, the Facilities Special Tax and the Services Special Tax.

**“Taxable HOA Property”** means, in any Fiscal Year after the First Bond Sale, any Parcel of HOA Property that satisfies all three of the following conditions: (i) the Parcel had not been HOA Property on the date of the First Bond Sale; (ii) based on reference to Attachments 1 and 2 (as may be updated pursuant to Section D below), the Parcel was not anticipated to be HOA Property based on the Expected Land Uses, as determined by the Administrator; and (iii) if the Parcel were to be exempt from the Facilities Special Tax because it has become HOA Property, the Expected Maximum Facilities Special Tax Revenues would be reduced to a point at which Required Coverage could not be maintained.

**“Taxable Property”** means all Parcels within the boundaries of Improvement Area No. 2 which are not exempt from the Special Taxes pursuant to law or Section G below.

**“Taxable Public Property”** means, in any Fiscal Year after the First Bond Sale, any Parcel of Public Property that satisfies all three of the following conditions: (i) the Parcel had not been Public Property on the date of the First Bond Sale, (ii) based on reference to Attachments 1 and 2 (as may be updated pursuant to Section D.1 below), the Parcel was not anticipated to be Public Property based on the Expected Land Uses, as determined by the Administrator, and (iii) if the Parcel were to be exempt from the Facilities Special Tax because it has become Public Property, the Expected Maximum Facilities Special Tax Revenues would be reduced to a point at which Required Coverage could not be maintained.

**“Taxable Welfare Exemption Property”** means in any Fiscal Year after the First Bond Sale, any Parcel of Welfare Exemption Property that satisfies all three of the following conditions: (i) the Parcel had not been Welfare Exemption Property on the date of issuance of the First Bond Sale; (ii) based on reference to Attachments 1 and 2 (as may be updated pursuant to Section D herein), the Parcel was not anticipated to be Welfare Exemption Property based on the Expected Land Uses, as determined by the Administrator; and (iii) if the Parcel were to be exempt from the Facilities Special Tax because it has become Welfare Exemption Property, the Expected Maximum Facilities Special Tax Revenues would be reduced to a point at which Required Coverage could not be maintained.

**“Tentative Map”** means any tentative map or vesting tentative map for Phase 1B of the Tracy Hills project, approved by the City Council and as may be amended from time to time.

**“Trigger Event”** means, in any Fiscal Year, that, on or before June 30 of the prior Fiscal Year, the Administrator made a finding that (i) all Bonds secured by the levy and collection of Facilities Special Taxes in the CFD have been fully repaid, (ii) all Administrative Expenses from prior Fiscal Years have been paid or reimbursed to the City, (iii) the Recycled Water Facilities Costs have been fully funded, and (iv) there are no other Authorized Facilities that the City intends to fund with Facilities Special Taxes. In the first Fiscal Year in which the Administrator determines that the Trigger Event occurred in the prior Fiscal Year, and in each Fiscal Year thereafter, the Facilities Special Tax shall cease to be levied, and the Maximum Services Special Tax for each Parcel shall be adjusted pursuant to Section C.2 below.

**“Undeveloped Property”** means, in any Fiscal Year, all Parcels of Taxable Property that are not Developed Property, Taxable HOA Property, Taxable Welfare Exemption Property, or Taxable Public Property.

**“Village”** means a specific geographic area within Improvement Area No. 2 that (i) is identified by an assigned number on the Tentative Map, (ii) is expected to have single family lots that are all of a similar size, and (iii) is assigned Expected Maximum Facilities Special Tax Revenues in Attachment 1 based on the Expected Land Uses for that Village.

**“Welfare Exemption Property”** means, in any Fiscal Year, any Parcels in Improvement Area No. 2 that have received a welfare exemption under subdivision (g) of Section 214 of the Revenue and Taxation Code and for which such welfare exemption is still in place.

## **B. DATA FOR ADMINISTRATION OF SPECIAL TAX**

Each Fiscal Year, the Administrator shall (i) categorize each Parcel of Taxable Property as Developed Property, Undeveloped Property, Taxable Public Property, Taxable HOA Property, or Taxable Welfare Exemption Property; (ii) for Single Family Residential Property, determine within which Village each Parcel of Developed Property is located and the number of Residential Units on the Parcel; and (iii) determine the Facilities Special Tax Requirement and Services Special Tax Requirement for the Fiscal Year. In addition, the Administrator shall, *on an ongoing basis*, monitor Final Maps and condominium plans to determine if there are any proposed changes to the Expected Land Uses that would reduce the Expected Maximum Facilities Special Tax Revenues for a Village. If the Expected Maximum Facilities Special Tax Revenues will be reduced pursuant to a proposed Land Use Change, the Administrator shall apply the steps set forth in Section D.1 below.

In any Fiscal Year, if it is determined that: (i) a parcel map for property in Improvement Area No. 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 shall calculate the Special Taxes for the property affected by recordation of the parcel map by determining the Special Taxes that apply separately to the property within each Development Class, then applying the sum of the individual Special Taxes to the Parcel that was subdivided by recordation of the parcel map.

**C. MAXIMUM SPECIAL TAX**

*1. Facilities Special Tax*

Table 1 below identifies the Maximum Facilities Special Tax, before and after the Trigger Event, for Taxable Property in Improvement Area No. 2, subject to potential adjustments that may occur pursuant to Section D below.

**TABLE 1  
IMPROVEMENT AREA NO. 2  
MAXIMUM FACILITIES SPECIAL TAX**

Land Use	Maximum Facilities Special Tax Prior to Trigger Event Fiscal Year 2022-23*	Maximum Facilities Special Tax After Trigger Event
<u>Single Family Residential Property</u>		
Village 9A	\$4,795 per Residential Unit	\$0 per Residential Unit
Village 9B	\$5,844 per Residential Unit	\$0 per Residential Unit
Village 10A	\$5,017 per Residential Unit	\$0 per Residential Unit
Village 10B	\$5,017 per Residential Unit	\$0 per Residential Unit
Village 10C	\$5,017 per Residential Unit	\$0 per Residential Unit
Village 11A	\$4,315 per Residential Unit	\$0 per Residential Unit
Village 11B	\$4,315 per Residential Unit	\$0 per Residential Unit
Other Property	\$47,285 per Acre	\$0 per Acre
Taxable Public Property		
Taxable HOA Property	\$47,285 per Acre	\$0 per Acre
Taxable Welfare Exemption Property		
Undeveloped Property	\$47,285 per Acre	\$0 per Acre

\* On July 1, 2023 and on each July 1 thereafter, all figures shown in Table 1 above shall be increased by an amount equal to 2.0% of the amount in effect for the prior Fiscal Year.

*2. Services Special Tax*

Table 2 below identifies the Maximum Services Special Tax, before and after the Trigger Event, for Taxable Property in Improvement Area No. 2.

**TABLE 2  
IMPROVEMENT AREA NO. 2  
MAXIMUM SERVICES SPECIAL TAX**

Type of Property	Maximum Services Special Tax Prior to Trigger Event	Maximum Services Special Tax After Trigger Event Fiscal Year 2022-23*
<u>Single Family Residential Property</u>		
Village 9A	\$0 per Residential Unit	\$959 per Residential Unit
Village 9B	\$0 per Residential Unit	\$1,169 per Residential Unit
Village 10A	\$0 per Residential Unit	\$1,004 per Residential Unit
Village 10B	\$0 per Residential Unit	\$1,004 per Residential Unit
Village 10C	\$0 per Residential Unit	\$1,004 per Residential Unit
Village 11A	\$0 per Residential Unit	\$863 per Residential Unit
Village 11B	\$0 per Residential Unit	\$863 per Residential Unit
Other Property	\$0 per Acre	\$9,460 per Acre
Taxable Public Property Taxable HOA Property	\$0 per Acre	\$9,460 per Acre
Undeveloped Property	\$0 per Acre	\$9,460 per Acre

\* Beginning July 1, 2023 and each July 1 thereafter until the Transition Event, the Services Special Taxes in Table 2 shall be increased by 2.0% of the amount in effect in the prior Fiscal Year. On July 1 of the Fiscal Year after the Transition Event and each July 1 thereafter, the Services Special Taxes and the Maximum Services Special Tax assigned to each Parcel shall be adjusted by the Escalation Factor.

Once Special Taxes have been levied on a Parcel of Developed Property, the Maximum Special Taxes applicable to that Parcel shall not be reduced in future Fiscal Years regardless of changes in land use on the Parcel, except (i) in the event of a partial prepayment pursuant to Section H, and (ii) pursuant to Section D. Notwithstanding the foregoing: (i) if Bonds have yet to be issued for Improvement Area No. 2, the Parcels can be assigned to the appropriate special tax category based on the Land Use Change, and the Administrator shall recalculate the Expected Maximum Facilities Special Tax Revenues based on the corresponding change in revenues, and (ii) the actual Special Taxes levied on a Parcel of Developed Property in any Fiscal Year may be less than the Maximum Special Taxes if lower Special Taxes are calculated pursuant to Step 1 in Sections E.1 and E.2 below.

**D. CHANGES TO MAXIMUM SPECIAL TAXES**

The Expected Maximum Facilities Special Tax Revenues were calculated based on the Expected Land Uses at the IA No. 2 Lien Date. The Administrator shall review Final Maps, Tentative Map revisions, and other changes to land uses proposed within Improvement Area No. 2 and compare the revised land uses to the Expected Land Uses to evaluate the impact on the Expected Maximum Facilities Special Tax Revenues.

*1. Changes in Expected Land Uses*

If, prior to the First Bond Sale, a Land Use Change is proposed that will result in a reduction in the Expected Maximum Facilities Special Tax Revenues, no action will be needed pursuant to this



Section D.1. Upon approval of the Land Use Change, the Administrator shall update Attachment 1 to show the reduced Expected Maximum Facilities Special Tax Revenues.

If, prior to the Final Bond Sale, a Land Use Change is proposed that will result in a reduction in the Expected Maximum Facilities Special Tax Revenues, no action will be needed pursuant to this Section D.1 as long as the reduction does not reduce debt service coverage on outstanding Bonds below the Required Coverage. Upon approval of the Land Use Change, the Administrator shall update Attachment 1 to show the reduced Expected Maximum Facilities Special Tax Revenues, which amount shall be used to size the Final Bond Sale.

If a Land Use Change is proposed after the Final Bond Sale, the following steps shall be applied:

- Step 1:** By reference to Attachment 1 (which will be updated by the Administrator each time a Land Use Change has been processed according to this Section D.1 and or pursuant to Section D.2), the Administrator shall identify the Expected Maximum Facilities Special Tax Revenues for Improvement Area No. 2.
- Step 2:** The Administrator shall calculate the Expected Maximum Facilities Special Tax Revenues that could be collected from property in Improvement Area No. 2 if the Land Use Change is approved.
- Step 3:** If the amount calculated in Step 2 is higher than that determined in Step 1, no further action is needed. If the revenues calculated in Step 2 are less than those calculated in Step 1, and if the landowner requesting the Land Use Change does not prepay the portion of the Expected Maximum Facilities Special Tax Revenues in an amount that corresponds to the lost revenue, then the Maximum Facilities Special Tax for each Parcel of Taxable Property in the area affected by the Land Use Change shall be increased proportionately until the aggregate Expected Maximum Facilities Special Tax Revenues that can be generated from the area affected by the Land Use Change is the same as it was prior to the Land Use Change.

If multiple Land Use Changes are proposed simultaneously by a single land owner (which may include approval of multiple Final Maps at one time), the Administrator may consider the combined effect of all the Land Use Changes to determine if there is a reduction in Expected Maximum Facilities Special Tax Revenues. If there is a reduction, the Administrator shall increase the Maximum Facilities Special Tax proportionately in all of the Final Maps being proposed by the landowner until the aggregate amount that can be levied within the Final Maps is equal to the amount that could have been levied prior to the proposed Land Use Changes. If Land Use Changes are proposed simultaneously by multiple landowners, the Administrator shall consider the proposed Land Use Changes individually.

2. *Transfer of Expected Maximum Facilities Special Tax Revenues from One Village to Another*

The Expected Maximum Facilities Special Tax Revenues were determined for each Village based on the Expected Land Uses within that Village. If the expected number of Residential Units is transferred from one Village to another, the City may, in its sole discretion, allow for a corresponding transfer of Expected Maximum Facilities Special Tax Revenues between the

Villages. Such a transfer shall only be allowed if (i) all adjustments are agreed to in writing by the affected property owners and the City, and (ii) there is no reduction in the total Expected Maximum Facilities Special Tax Revenues as a result of the transfer.

3. *Conversion of a Parcel of Public Property to Private Use*

If, in any Fiscal Year, a Parcel of Public Property is converted to private use, such Parcel shall be subject to the levy of Special Taxes. The Maximum Special Taxes for each such Parcel shall be determined based on the average Maximum Special Taxes for Parcels with similar land use designations, as determined by the Administrator.

**E. METHOD OF LEVY OF THE SPECIAL TAXES**

1. *Facilities Special Tax*

Each Fiscal Year, the Administrator shall determine the Facilities Special Tax Requirement and levy the Facilities Special Tax on all Parcels of Taxable Property as follows:

**Step 1:** In the first twenty (20) Fiscal Years in which a Facilities Special Tax is levied within Improvement Area No. 2, the Maximum Facilities Special Tax shall be levied on all Parcels of Developed Property. In the first fourteen (14) Fiscal Years in which Facilities Special Taxes are collected, and in the 16<sup>th</sup>, 17<sup>th</sup>, 18<sup>th</sup>, 19<sup>th</sup> and 20<sup>th</sup> Fiscal Years in which Facilities Special Taxes are collected, Facilities Special Tax proceeds that are determined by the Administrator to be Remainder Taxes shall be deposited into the Improvement Fund to pay any costs associated with the acquisition of Authorized Facilities that were not paid with Bond proceeds or Facilities Special Taxes levied in prior Fiscal Years. Any Remainder Taxes collected in the 15<sup>th</sup> year in which Facilities Special Taxes are levied shall be available to pay for Authorized Facilities or Authorized Services as determined in the sole discretion of the City.

Beginning in the 21<sup>st</sup> Fiscal Year in which a Facilities Special Tax is levied within Improvement Area No. 2 and continuing until the Trigger Event, the Facilities Special Tax shall be levied Proportionately on each Parcel of Developed Property up to 100% of the Maximum Facilities Special Tax for each Parcel of Developed Property until the amount levied is equal to the Facilities Special Tax Requirement, the calculation of which will include funding for Recycled Water Facilities Costs and/or other Authorized Facilities designated for funding, as determined in the sole discretion of the City. After the Trigger Event, the Facilities Special Tax shall no longer be levied.

**Step 2:** If additional revenue is needed after Step 1 and after applying Capitalized Interest to the Facilities Special Tax Requirement, the Facilities Special Tax shall be levied Proportionately on each Parcel of Undeveloped Property up to 100% of the Maximum Facilities Special Tax for each Parcel of Undeveloped Property.

- Step 3:** If additional revenue is needed after Step 2, the Facilities Special Tax shall be levied Proportionately on each Parcel of Taxable Welfare Exemption Property, up to 100% of the Maximum Facilities Special Tax for each Parcel of Taxable Welfare Exemption Property.
- Step 4:** If additional revenue is needed after Step 3, the Facilities Special Tax shall be levied Proportionately on each Parcel of Taxable HOA Property, up to 100% of the Maximum Facilities Special Tax for each Parcel of Taxable HOA Property.
- Step 5:** If additional revenue is needed after Step 4, the Facilities Special Tax shall be levied Proportionately on each Parcel of Taxable Public Property, up to 100% of the Maximum Facilities Special Tax for each Parcel of Taxable Public Property.

2. *Services Special Tax*

Each Fiscal Year after the Trigger Event, the Administrator shall determine the Services Special Tax Requirement and levy the Services Special Tax on all Parcels of Taxable Property as follows:

- Step 1:** The Services Special Tax shall be levied Proportionately on each Parcel of Developed Property up to 100% of the Maximum Services Special Tax for each Parcel of Developed Property until the amount levied is equal to the Services Special Tax Requirement.
- Step 2:** If additional revenue is needed after Step 1, the Services Special Tax shall be levied Proportionately on each Parcel of Undeveloped Property, up to 100% of the Maximum Services Special Tax for each Parcel of Undeveloped Property.
- Step 3:** If additional revenue is needed after Step 2, the Services Special Tax shall be levied Proportionately on each Parcel of Taxable HOA Property, up to 100% of the Maximum Services Special Tax for each Parcel of Taxable HOA Property.
- Step 4:** If additional revenue is needed after Step 3, the Services Special Tax shall be levied Proportionately on each Parcel of Taxable Public Property, up to 100% of the Maximum Services Special Tax for each Parcel of Taxable Public Property.

**F. MANNER OF COLLECTION OF SPECIAL TAXES**

The Special Taxes for Improvement Area No. 2 shall be collected in the same manner and at the same time as ordinary ad valorem property taxes, provided, however, that partial prepayments are permitted as set forth in Section H below and provided further that the City may directly bill the Special Taxes, may collect Special Taxes at a different time or in a different manner, and may collect delinquent Special Taxes through foreclosure or other available methods.

The Facilities Special Tax shall be levied and collected until principal and interest on Bonds have been repaid, costs of constructing or acquiring Authorized Facilities from Facilities Special Tax proceeds have been paid, and all Administrative Expenses have been paid or reimbursed. However,

in no event shall Facilities Special Taxes be levied for more than eighty (80) Fiscal Years. Under no circumstances may the Facilities Special Tax on a Parcel in residential use be increased in any Fiscal Year as a consequence of delinquency or default in payment of the Facilities Special Tax levied on another Parcel or Parcels by more than ten percent (10%) above the amount that would have been levied in that Fiscal Year had there never been any such delinquencies or defaults. After the Trigger Event, the Services Special Tax may be levied and collected in perpetuity.

**G. EXEMPTIONS**

Any Parcel that becomes HOA Property, Public Property, or Welfare Exemption Property prior to the First Bond Sale shall be exempt from both the Services Special Tax and the Facilities Special Tax; the Administrator shall reduce the Expected Maximum Facilities Special Tax Revenues to reflect any such exemption, and the First Bond Sale shall be sized based on the reduced Expected Maximum Facilities Special Tax Revenues. Any Parcel that becomes HOA Property, Public Property, or Welfare Exemption Property after the First Bond Sale shall be exempt from both the Services Special Tax and the Facilities Special Tax provided such Parcel is not Taxable HOA Property, Taxable Public Property or Taxable Welfare Exemption Property.

In addition, no Special Taxes shall be levied on (i) Parcels that are designated as permanent open space or common space on which no structure is permitted to be constructed, (ii) Parcels owned by a public utility for an unmanned facility, and (iii) Parcels subject to an easement that precludes any use on the Parcel other than that permitted by the easement. Notwithstanding the foregoing, if a Facilities Special Tax has been levied on a Parcel in any Fiscal Year, and the entire Parcel subsequently meets the criteria in (i), (ii) or (iii) above, the Parcel shall remain subject to the Facilities Special Tax levy, unless the First Bond Sale has not occurred, in which case such property shall be categorized as Public Property, and the Administrator shall recalculate the Expected Maximum Facilities Special Tax Revenues based on the corresponding loss in revenues.

**H. PARTIAL PREPAYMENT OF FACILITIES SPECIAL TAX**

The following definitions apply to this Section H:

**“Outstanding Bonds”** means all Previously Issued Bonds which remain outstanding, with the following exception: if a Facilities Special Tax has been levied against, or already paid by, an Assessor’s Parcel making a prepayment, and a portion of the Facilities Special Tax will be used to pay a portion of the next principal payment on the Bonds that remain outstanding (as determined by the Administrator), that next principal payment shall be subtracted from the total Bond principal that remains outstanding, and the difference shall be used as the amount of Outstanding Bonds for purposes of this prepayment formula.

**“Previously Issued Bonds”** means all Bonds that have been issued prior to the date of prepayment.

**“Public Facilities Requirements”** means: (i) \$28,730,000 in Fiscal Year 2022-23 dollars, which amount shall, on July 1, 2023 and on each July 1 thereafter, be increased by an amount equal to 2.0% of the amount in effect for the prior Fiscal Year, or (ii) such other number as shall be determined by the City to be an appropriate estimate of the net

construction proceeds that will be generated from all Bonds that have been or are expected to be issued on behalf of Improvement Area No. 2.

**“Remaining Facilities Costs”** means the Public Facilities Requirements (as defined above), minus public facility costs funded by Previously Issued Bonds (as defined above), Remainder Taxes, or prepayments.

A property owner may prepay up to 80% of the Facilities Special Tax obligation applicable to a Parcel in Improvement Area No. 2, 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
<u>less</u>	<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:** Take the amount computed pursuant to Step 8 and subtract the amount computed pursuant to Step 9 (*the "Defeasance Requirement"*).
- Step 11.** Determine the costs of computing the prepayment amount, redeeming Bonds, and recording any notices to evidence the prepayment and redemption (*the "Administrative Fees and Expenses"*).
- Step 12.** If and to the extent so provided in the Indenture, a reserve fund credit shall be calculated as a reduction in the applicable reserve fund for the Outstanding Bonds to be redeemed pursuant to the prepayment (*the "Reserve Fund Credit"*).
- Step 13.** The Facilities Special Tax prepayment is equal to the sum of the amounts computed pursuant to Steps 4, 6, 7, 10, and 11, less the amount computed pursuant to Step 12 (*the "Prepayment Amount"*).
- Step 14.** From the Prepayment Amount, the amounts computed pursuant to Steps 4, 7, and 10 shall be deposited into the appropriate fund as established under the Indenture and be used to retire Outstanding Bonds or make debt service payments. The amount computed pursuant to Step 6 shall be deposited into the Improvement Fund. The amount computed pursuant to Step 11 shall be retained in the account or fund that is established to pay Administrative Expenses.

Once a partial prepayment of a Facilities Special Tax has been received, an Amendment to Special Tax Lien shall be recorded against the Parcel to reflect the reduced Facilities Special Tax lien for the Parcel, which shall be equal to the portion of the Maximum Facilities Special Tax that was not prepaid. However, an Amendment to Special Tax Lien shall not be recorded until all Facilities Special Taxes levied on the Parcel in the current or prior Fiscal Years have been collected. The

prepayment of a portion of the Facilities Special Tax shall not affect the perpetual obligation to pay the Services Special Tax.

Notwithstanding the foregoing, if at any point in time the Administrator determines that the Maximum Facilities Special Tax revenue that could be collected from Taxable Property that remains subject to the Facilities Special Tax after the proposed prepayment would be less than the Required Coverage on Bonds that will remain outstanding after defeasance or redemption of Bonds from proceeds of the estimated prepayment, the amount of the prepayment shall be increased until the amount of Bonds defeased or redeemed is sufficient to reduce remaining annual debt service to a point at which Required Coverage is maintained.

**I. INTERPRETATION OF SPECIAL TAX FORMULA**

The City may interpret, clarify, and revise this RMA to correct any inconsistency, vagueness, or ambiguity, by resolution and/or ordinance, that does not create a material adverse effect on the levy and collection of the Special Taxes and any security for any Bonds.

**ATTACHMENT 1**

**Improvement Area No. 2 of the  
City of Tracy  
Community Facilities District No. 2016-1  
(Tracy Hills)**

**Expected Land Uses and Expected Maximum Facilities Special Tax Revenues**

<b>Village</b>	<b>Expected Land Uses</b>	<b>Maximum Facilities Special Tax per Unit FY 2022-23 /1</b>	<b>Expected Maximum Facilities Special Tax Revenues FY 2022-23 /1</b>
Village 9A	69 Residential Units	\$4,795 per Residential Unit	\$330,855
Village 9B	64 Residential Units	\$5,844 per Residential Unit	\$374,016
Village 10A	47 Residential Units	\$5,017 per Residential Unit	\$235,799
Village 10B	41 Residential Units	\$5,017 per Residential Unit	\$205,697
Village 10C	62 Residential Units	\$5,017 per Residential Unit	\$311,054
Village 11A	45 Residential Units	\$4,315 per Residential Unit	\$194,175
Village 11B	104 Residential Units	\$4,315 per Residential Unit	\$448,760
N/A	0 Acres of Other Property	\$47,285 per Acre	\$0
<b>Total</b>	<b>432 Residential Units and 0 Acres of Other Property</b>	<b>N/A</b>	<b>\$2,100,356</b>

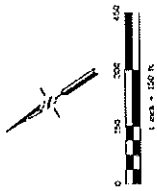
1. On July 1, 2023 and each July 1 thereafter, the Maximum Facilities Special Tax per Residential Unit and the Expected Maximum Facilities Special Tax Revenues shall be increased by two percent (2%) of the amount in effect in the prior Fiscal Year.



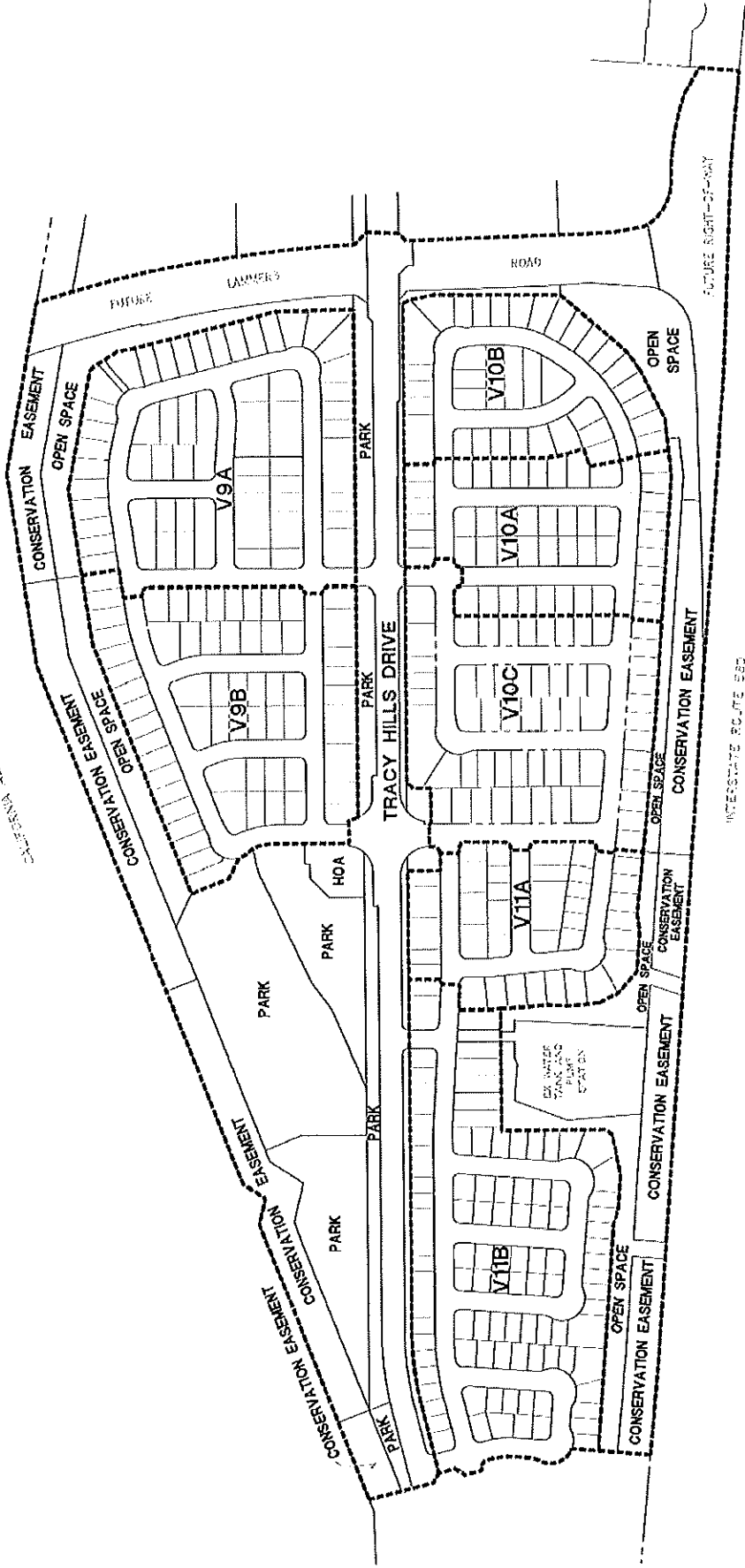
**ATTACHMENT 2**

**Improvement Area No. 2 of the  
City of Tracy  
Community Facilities District No. 2016-1  
(Tracy Hills)**

**Expected Lot Layout**



EXISTING EASEMENTS



**ATTACHMENT 2**

**TRACY HILLS 1B - EXPECTED LOT LAYOUT IN IMPROVEMENT AREA NO 2 OF THE TRACY HILLS CFD 2016-1**

CITY OF TRACY, SAN JOAQUIN COUNTY, CALIFORNIA

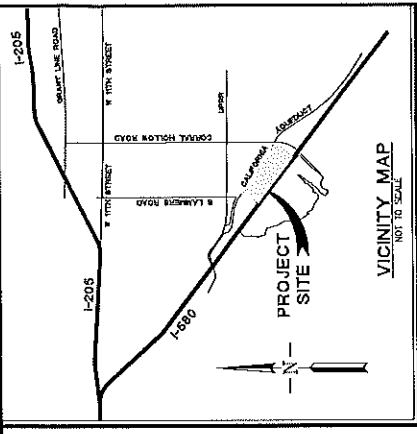
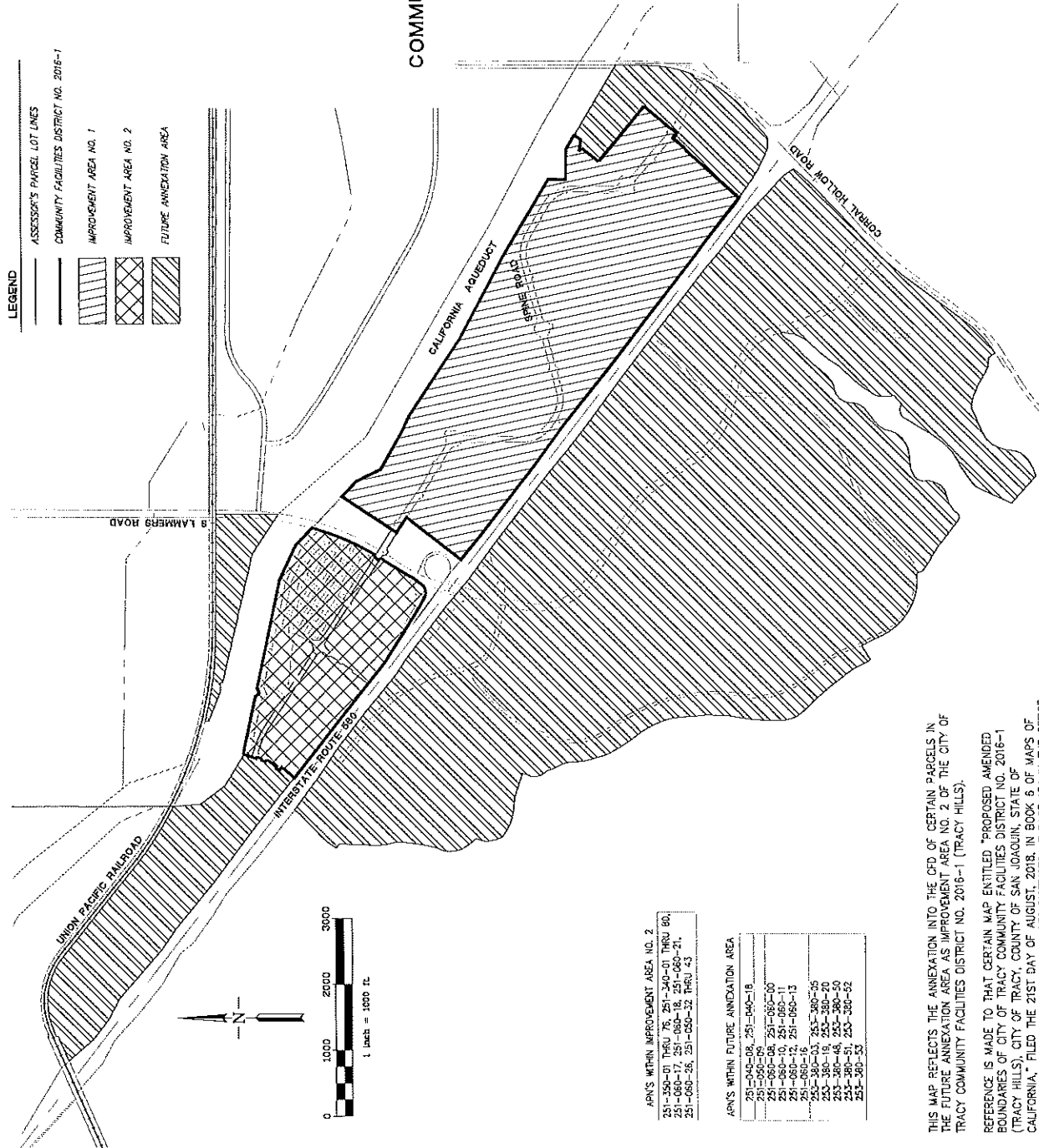
**RJA**  
**RUGGERI-JENSEN-AZAR**  
 ENGINEERS, ARCHITECTS & PLANNERS  
 1000 G STREET, SUITE 100  
 TRACY, CA 95376  
 TEL: 209.845.1100  
 FAX: 209.845.1101  
 WWW.RJA-CA.COM

DATE: 08/11/2016

**EXHIBIT C**  
**PROPOSED ANNEXATION MAP**

[attached]

- LEGEND**
- ASSESSOR'S PARCEL LOT LINES
  - COMMUNITY FACILITIES DISTRICT NO. 2016-1
  - IMPROVEMENT AREA NO. 1
  - IMPROVEMENT AREA NO. 2
  - FUTURE ANNEXATION AREA



**ANNEXATION MAP NO. 1  
CITY OF TRACY  
COMMUNITY FACILITIES DISTRICT 2016-1  
(TRACY HILLS)  
CITY OF TRACY  
COUNTY OF SAN JOAQUIN  
STATE OF CALIFORNIA**

I hereby certify that the within map showing boundaries of Annexation No. 1 to the City of Tracy Community Facilities District No. 2016-1 (Tracy Hills), City of Tracy, County of San Joaquin, State of California, was approved by the City Council of the City of Tracy at a meeting thereof, held on the \_\_\_\_\_ day of \_\_\_\_\_, 2022, by its Resolution No. \_\_\_\_\_.

City Clerk

City Clerk

Filed this \_\_\_\_\_ day of \_\_\_\_\_, 2022, 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) 830-8900 FAX: (916) 830-8909

JOB NO. 121083 SHEET 1 OF 1

- APNs WITHIN IMPROVEMENT AREA NO. 2
- 251-350-01 THRU 76, 251-340-01 THRU 80,
  - 251-080-17, 251-080-18, 251-080-21,
  - 251-080-26, 251-080-32 THRU 43

- APNs WITHIN FUTURE ANNEXATION AREA
- 251-045-08, 251-040-18
  - 251-050-09
  - 251-060-08, 251-060-10
  - 251-060-10, 251-060-11
  - 251-060-12, 251-060-13
  - 251-060-16
  - 251-380-03, 251-380-05
  - 251-380-16, 251-380-20
  - 251-380-48, 251-380-50
  - 251-380-51, 251-380-52

THIS MAP REFLECTS THE ANNEXATION INTO THE CFD OF CERTAIN PARCELS IN THE FUTURE ANNEXATION AREA AS IMPROVEMENT AREA NO. 2 OF THE CITY OF TRACY COMMUNITY FACILITIES DISTRICT NO. 2016-1 (TRACY HILLS).

REFERENCE IS MADE TO THAT CERTAIN MAP ENTITLED "PROPOSED AMENDED BOUNDARIES OF CITY OF TRACY COMMUNITY FACILITIES DISTRICT NO. 2016-1 (TRACY HILLS), CITY OF TRACY, COUNTY OF SAN JOAQUIN, STATE OF CALIFORNIA," FILED THE 21ST DAY OF AUGUST, 2018, IN BOOK 6 OF MAPS OF ASSESSMENT AND COMMUNITIES FACILITIES DISTRICTS AT PAGE 134 IN THE OFFICE OF THE COUNTY OF SAN JOAQUIN, STATE OF CALIFORNIA, WHICH THIS ANNEXATION MAP NO. 1, AFFECTS.

**City of Tracy**  
**Community Facilities District No. 2016-1 (Tracy Hills)**

**Request and Unanimous Approval for Annexation**  
**and Landowner-Voter Ballot**

Recitals

- A. The undersigned is an authorized representative of AG Essential Housing CA 1, L.P., a Delaware limited partnership (the "**Landowner**").
- B. The Landowner owns the real property identified in Exhibit A, attached hereto and by this reference incorporated herein (the "**Property**").
- C. Pursuant to the Mello-Roos Community Facilities Act of 1982 (the "**Mello-Roos Act**"), on July 19, 2016, the City Council (the "**City Council**") of the City of Tracy adopted its Resolution No. 2016-157 (the "**Resolution of Formation**"), which, among other things:
  - 1. established the City of Tracy Community Facilities District No. 2016-1 (Tracy Hills) ("**CFD**") and a future annexation area for the CFD ("**Future Annexation Area**") and designated Improvement Area No. 1 of the City of Tracy Community Facilities District No. 2016-1 (Tracy Hills) ("**Improvement Area No. 1**"), with the initial boundaries of the CFD, the Future Annexation Area and Improvement Area No. 1 shown on a boundary map (the "**Boundary Map**") that was recorded on June 15, 2016 in the records of the San Joaquin County Recorder in Book 6 of Maps of Assessment and Community Facilities Districts at Page 84 as Document No. 2016-069400;
  - 2. authorized the CFD and every improvement area annexed thereto to finance the costs and expenses of certain public facilities and fees (together, the "**Facilities**") and certain public services (the "**Services**"); and
  - 3. approved the form of the rate and method of apportionment for Improvement Area No. 1 (the "**Original Improvement Area No. 1 RMA**").
- D. The Resolution of Formation further provided that property in the Future Annexation Area may be annexed into the CFD as its own improvement area or to an existing improvement area, and that the designation as an improvement area of any territory annexing to the CFD, the maximum amount of bonded indebtedness and other debt for such improvement area, the rate and method of apportionment of special tax for such improvement area and the appropriations limit for such improvement area shall be identified and approved in a unanimous approval (a "**Unanimous Approval**") executed by property owners in connection with an annexation to the CFD, without the need for Council approval as long as certain conditions were met.
- E. Pursuant to the Mello-Roos Act, on July 19, 2016, the City Council adopted its Resolution No. 2016-158 (the "**Resolution of Necessity**"), which set forth the necessity for the City to issue special tax bonds or other forms of debt obligations for the CFD in the maximum

principal amount of \$285,000,000. The Resolution of Necessity preliminarily allocated \$70,000,000 of the aggregate \$285,000,000 limit to Improvement Area No. 1 (the "**Improvement Area No. 1 Indebtedness Limit**") and \$215,000,000 to the Future Annexation Area (the "**Non-Improvement Area No. 1 Indebtedness Limit**"), with the actual limit for an improvement area created from annexation of all or part of the Future Annexation Area to be identified and approved in a Unanimous Approval so long as the overall bonded indebtedness limit for the CFD did not exceed \$285,000,000.

- F. Subsequently, the City Council undertook change proceedings, including a landowner vote, which culminated in the adoption by the City Council on August 21, 2018, of Resolution No. 2018-169, entitled "**Resolution of Change**," to (i) increase the Improvement Area No. 1 Indebtedness Limit to \$80,000,000, (ii) increase the Non-Improvement Area No. 1 Indebtedness Limit to \$305,000,000, (iii) increase the Improvement Area No. 1 Appropriations Limit to \$80,000,000, (iv) amend the boundaries of the CFD, Improvement Area No. 1 and the Future Annexation Area by removing San Joaquin County Assessor's Parcel Number 253-360-15 from Improvement Area No. 1 (the "**Transferred Parcel**") and adding it to the Future Annexation Area, and (v) amend the Improvement Area No. 1 Rate and Method (as amended, the "**Improvement Area No. 1 RMA**"). A map of the amended boundaries of the CFD, Improvement Area No. 1 and the Future Annexation Area was recorded on August 27, 2018 in the records of the San Joaquin County Recorder in Book 6 of Maps of Assessment and Community Facilities Districts at Page 134 as Document No. 2018-095098.
- G. The Landowner has sole ownership of the Property. The Property is part of the Future Annexation Area. By this instrument, the Landowner identifies, specifies and approves the annexation of the Property to the CFD as "Improvement Area No. 2 of the City of Tracy Community Facilities District No. 2016-1 (Tracy Hills)" ("**Improvement Area No. 2**") and the other matters included herein, without a public hearing, as authorized by the Mello-Roos Act and the Resolution of Formation.
- H. The Landowner hereby acknowledges that the Resolution of Formation requires City Council approval of the annexation of the property as Improvement Area No. 2, as proposed, because the Improvement Area No. 2 RMA (as defined below) establishes a maximum special tax amount for the initial fiscal year in which the special tax may be levied for one or more categories of special tax that is greater than 120% of the maximum amount of the same category of special tax for the same fiscal year calculated pursuant to the Improvement Area No. 1 RMA.
- I. The Landowner hereby represents and warrants that, to the best of its knowledge without inquiry, there are no persons resident on the property that are registered voters.

#### Approval and Vote

- 1. The Landowner, as the sole owner of the Property, hereby identifies, specifies and provides its unanimous approval of the annexation of the Property to the CFD as Improvement Area No. 2 and related matters, as prescribed and authorized by Section 53339.7 and Section 53350(b) of the Mello-Roos Act, the Resolution of Formation and the Resolution of Necessity.
- 2. The Landowner, as the sole qualified elector with respect to the annexation of the Property, hereby votes in favor of (a) the levy of special taxes on the taxable property

being annexed to Improvement Area No. 2 in accordance with the rate and method of apportionment for Improvement Area No. 2 in the form attached hereto as Exhibit B (the "**Improvement Area No. 2 RMA**") and by this reference incorporated herein for the purpose of financing the Facilities and the Services, (b) the issuance of bonds and other debt of Improvement Area No. 2 in a principal amount not to exceed \$50,000,000, which bonds and other debt shall be secured solely by and be payable solely from the proceeds of the special taxes levied upon the taxable property within Improvement Area No. 2, and (c) an initial appropriations limit for Improvement Area No. 2 of \$50,000,000. The Improvement Area No. 2 RMA describes the maximum special tax rate applicable to the Property.

3. The Landowner hereby requests that an annexation map showing the land (including the Property) to be annexed as Improvement Area No. 2 be as shown on the map attached hereto as Exhibit C.
4. The Landowner hereby acknowledges the following:
  - a. As soon as practicable following receipt of this Unanimous Approval by the City, the City Council will consider whether to approve the proposed annexation and, if directed by the City Council, the City Clerk will record (i) a Notice of Special Tax Lien for Improvement Area No. 2, listing the name of the Landowner and the assessor's parcel number(s) of the Property, which will result in the establishment of a lien to secure payment of the special tax on the Property and (ii) the proposed annexation map.
  - b. The City will levy a special tax upon the taxable property within Improvement Area No. 2 at the time and in accordance with the Resolution of Formation, the Resolution of Change and the Improvement Area No. 2 RMA.
  - c. This Unanimous Approval constitutes the Landowner's approval and unanimous vote as described herein and as contemplated by Section 53339.3 et seq. of the Mello-Roos Act and Articles XIII A and XIII C of the California Constitution. The Landowner hereby waives all other rights with respect to the annexation of the Property, the levy of the special taxes on the Property and the other matters covered in this Unanimous Approval, including any right the Landowner may otherwise have to protest or challenge the validity of the proceedings to form or change the CFD and to authorize the annexation of any property (including the Property) to the CFD, and any necessity, requirement or right for further public hearings or any election pertaining to the annexation of the Property to the CFD as Improvement Area No. 2 or the levy of special taxes on the Property.
  - d. The specific purpose of the bonds and other debt is to finance the acquisition and construction of the Facilities described in the Resolution of Formation and pay related costs. Any proceeds received from the sale of any bonds and other debt will be applied only for such purpose. The proceeds of any bonds and other debt will be deposited into special accounts to be created therefor as part of the issuance of the bonds and other debt. The City will cause a report to be prepared annually under Section 53411 of the Government Code.
  - e. The Expected Land Uses (as defined in the Improvement Area No. 2 RMA) of the Property shall be as specified in the Improvement Area No. 2 RMA.

5. The Landowner warrants to the City that the presentation of this Unanimous Approval, any votes, consents or waivers contained herein, and other actions mandated by the City for the annexation of the Property to the CFD as Improvement Area No. 2 shall not constitute or be construed as events of default or delinquencies under any existing or proposed financing documents entered into or to be entered into by the Landowner for the Property, including any "due-on-encumbrance" clauses under any existing security instruments secured by the Property.
6. The Landowner agrees to cooperate with the City and its attorneys and consultants and to provide to any subsequent purchaser with notice of the special tax that may be levied by the City Council on the Property pursuant to the Improvement Area No. 2 RMA, to the extent required by applicable law.
7. The Landowner further agrees to execute such additional or supplemental agreements as may be required by the City to provide for any of the actions and conditions described in this Unanimous Approval.

Dated: August 12, 2022

AG ESSENTIAL HOUSING CA 1, L.P.,  
a Delaware limited partnership

By: AGWIP Asset Management, LLC,  
an Arizona limited liability company,  
its Authorized Agent


By:   
Steven S. Benson, its Manager

Exhibit A - Identification of the Property

Exhibit B - Improvement Area No. 2 RMA

Exhibit C - Proposed Annexation Map



**EXHIBIT A**

**IDENTIFICATION OF THE PROPERTY**

Property Owned as of August 11, 2022

Lot Count

<b>Village</b>	<b>Tract Map References</b>	<b>APNs</b>
9A	[Tract Map 4083] Lots 1-25, 38-40, 42-59, 63-69, Parcels A, B, D, E, and F	251-340-01 to 251-340-25, inclusive; 251-340-43 to 251-340-45, inclusive; 251-340-47 to 251-340-64, inclusive; 251-340-68 to 251-340-78, inclusive; 251-340-80; 251-060-17; and 251-060-18
9B	[Tract 4084] Lots 72, 73, 86-111, 114-133, Parcels G, H, I, L N, O , P, Q, and R	251-350-03; 251-350-04; 251-350-17 to 251-350-42, inclusive; 251-350-46 to 251-350-76, inclusive; and 251-050-32 to 251-050-41, inclusive.
10C	[Tract 4085] Lots 1-6, 13-60, Parcels A-G	251-060-21 (Portion)
11A	[Tract 4086] All (Lots 1-45, Parcels A-E)	251-050-43 (Portion)
N/A	Parcel 3	251-050-42; 251-050-43 (Portion); and 251-060-26

**EXHIBIT B**  
**IMPROVEMENT AREA NO. 2 RMA**

[attached]

**IMPROVEMENT AREA NO. 2 OF THE  
CITY OF TRACY  
COMMUNITY FACILITIES DISTRICT NO. 2016-1  
(TRACY HILLS)**

**RATE AND METHOD OF APPORTIONMENT OF SPECIAL TAXES**

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Special Taxes applicable to each Assessor's Parcel in Improvement Area No. 2 of the City of Tracy Community Facilities District No. 2016-1 (Tracy Hills) shall be levied and collected according to the tax liability determined by the City through the application of the appropriate amount or rate for Taxable Property, as described below. All of the property in Improvement Area No. 2, unless exempted by law or by the provisions of Section G below, shall be taxed for the purposes, to the extent, and in the manner herein provided.

**A. DEFINITIONS**

The terms hereinafter set forth have the following meanings:

**"Accessory Unit"** means a second residential unit of limited size (e.g., granny cottage, second unit) that shares a Parcel with a single-family detached unit.

**"Acre" or "Acreage"** means the land area of an Assessor's Parcel as shown on an Assessor's Parcel Map, or if the land area is not shown on an Assessor's Parcel Map, the land area shown on the applicable Final Map or other parcel map recorded at the County Recorder's Office.

**"Act"** means the Mello-Roos Community Facilities Act of 1982, as amended, being Chapter 2.5, (commencing with Section 53311), Division 2 of Title 5 of the Government Code of the State of California.

**"Administrative Expenses"** means any or all of the following: the fees and expenses of any fiscal agent or trustee (including any fees or expenses of its counsel) employed in connection with any Bonds, and the expenses of the City in carrying out its duties with respect to the CFD and the Bonds, including, but not limited to, the levy and collection of Special Taxes, the fees and expenses of its legal counsel, charges levied by the County in connection with the levy and collection of Special Taxes, costs related to property owner inquiries regarding the Special Taxes, costs associated with appeals or requests for interpretation associated with the Special Taxes and this RMA, costs of the dissemination agent, whether for the City or another party that has undertaken to provide continuing disclosure, amounts needed to pay rebate to the federal government with respect to the Bonds, costs associated with complying with any continuing disclosure requirements with respect to the Bonds and the Special Taxes, costs associated with foreclosure and collection of delinquent Special Taxes and all other costs and expenses of the City and County in any way related to the establishment or administration of the CFD.

**"Administrator"** means the person or firm designated by the City to administer the Special Taxes according to this RMA.

**"Assessor's Parcel" or "Parcel"** means a lot or parcel shown on an Assessor's Parcel Map with an assigned Assessor's parcel number.

**“Assessor’s Parcel Map”** means an official map of the County Assessor designating Parcels by Assessor’s Parcel number.

**“Authorized Facilities”** means the public facilities authorized to be financed, in whole or in part, by the CFD.

**“Authorized Services”** means the public services authorized to be funded, in whole or in part, by the CFD.

**“Bonds”** means bonds or other debt (as defined in the Act), whether in one or more series, issued or assumed by Improvement Area No. 2 to fund Authorized Facilities.

**“Capitalized Interest”** means funds in any capitalized interest account available to pay interest on Bonds.

**“CFD”** means the City of Tracy Community Facilities District No. 2016-1 (Tracy Hills).

**“City”** means the City of Tracy.

**“City Council”** means the City Council of the City of Tracy.

**“County”** means the County of San Joaquin.

**“Developed Property”** means, in any Fiscal Year, all Parcels of Taxable Property, excluding Taxable HOA Property, Taxable Welfare Exemption Property, and Taxable Public Property, for which a building permit was issued prior to June 30 of the preceding Fiscal Year.

**“Development Class”** means, individually, Developed Property, Undeveloped Property, Taxable HOA Property, Taxable Welfare Exemption Property, and Taxable Public Property.

**“Escalation Factor”** means, in any Fiscal Year, the lesser of (i) the percentage increase from the prior Fiscal Year, if any, in the Index, or (ii) four percent (4%). The Index used shall be as determined by the Bureau of Labor Statistics from April to April beginning with the period from April 2022 to April 2023.

**“Expected Land Uses”** means the number of Residential Units and acres of Other Property expected within Improvement Area No. 2 at the time of the IA No. 2 Lien Date, as identified in Attachment 1 and as amended from time to time as set forth in this RMA.

**“Expected Maximum Facilities Special Tax Revenues”** means the amount of annual revenue that would be available in Improvement Area No. 2 if the Maximum Facilities Special Tax was levied on the Expected Land Uses. The Expected Maximum Facilities Special Tax Revenues as of the IA No. 2 Lien Date are shown in Attachment 1 of this RMA and may be reduced due to prepayments in future Fiscal Years and/or pursuant to Section D below.

**“Facilities Special Tax”** means a special tax levied in any Fiscal Year to pay the Facilities Special Tax Requirement.

**“Facilities Special Tax Requirement”** means the amount necessary in any Fiscal Year (i) to pay principal and interest on Bonds which are due in the calendar year which begins in such Fiscal Year, (ii) to create or replenish reserve funds to the extent such replenishment has not been included in a computation of Facilities Special Tax Requirement in a previous Fiscal Year, (iii) to cure any delinquencies in the payment of principal or interest on Bonds which have occurred in the prior Fiscal Year, (iv) to pay Administrative Expenses, and (v) to pay the costs of Authorized Facilities to be funded directly from Facilities Special Tax proceeds to the extent that paying directly for such costs does not increase the Facilities Special Tax levied on Undeveloped Property. The amounts referred to in clauses (i) and (ii) of the preceding sentence may be reduced in any Fiscal Year by (i) interest earnings on or surplus balances in funds and accounts for Bonds to the extent that such earnings or balances are available to apply against debt service pursuant to the Indenture, (ii) proceeds from the collection of penalties associated with delinquent Facilities Special Taxes, and (iii) any other revenues available to pay debt service on the Bonds as determined by the Administrator.

**“Final Bond Sale”** means, at any point in time, the last series of Bonds issued for Improvement Area No. 2, which issuance uses up virtually all of the remaining capacity available from the Maximum Facilities Special Tax revenues that can be generated within Improvement Area No. 2, as determined by the City. If additional Bonds are expected to be issued after outstanding Bonds retire, the “Final Bond Sale” may not be the last series of Bonds ever issued for Improvement Area No. 2, but instead the last sale of Bonds that can be issued before some or all of the outstanding Bonds retire.

**“Final Map”** means a final map, or portion thereof, recorded by the County pursuant to the Subdivision Map Act (California Government Code Section 66410 et seq.) that creates lots that do not need to be further subdivided prior to issuance of a building permit for a residential structure. The term “Final Map” shall not include any Assessor’s Parcel map or subdivision map, or portion thereof, that does not create lots that are in their final configuration, including Assessor’s Parcels that are designated as remainder parcels.

**“First Bond Sale”** means issuance of the first series of Bonds secured, in whole or in part, by Facilities Special Taxes levied and collected from Parcels in Improvement Area No. 2.

**“Fiscal Year”** means the period starting July 1 and ending on the following June 30.

**“Homeowners Association”** or **“HOA”** means the homeowners association that provides services to, and collects dues, fees, or charges from, property within Improvement Area No. 2.

**“HOA Property”** means any property within the boundaries of Improvement Area No. 2 that is owned in fee or by easement by the Homeowners Association, not including any such property that is located directly under a residential structure.

**“IA No. 2 Lien Date”** means the date that the Notice of Special Tax Lien affecting the Parcels in Improvement Area No. 2 was recorded in the official records of the County.

**“Improvement Area No. 2”** means Improvement Area No. 2 of the City of Tracy Community Facilities District No. 2016-1 (Tracy Hills).

**“Improvement Fund”** means the account (regardless of its name) identified in the Indenture to hold funds which are available to acquire or construct Authorized Facilities.

**“Indenture”** means the bond indenture, fiscal agent agreement, trust agreement, resolution or other instrument pursuant to which Bonds are issued, as modified, amended, and/or supplemented from time to time, and any instrument replacing or supplementing the same.

**“Index”** means the Consumer Price Index of the San Francisco-Oakland-Hayward area for all urban consumers.

**“Land Use Change”** means a proposed or approved change to the Expected Land Uses within Improvement Area No. 2 after the IA No. 2 Lien Date.

**“Maximum Facilities Special Tax”** means the greatest amount of Facilities Special Tax that can be levied on an Assessor’s Parcel in any Fiscal Year as determined in accordance with Sections C and D below.

**“Maximum Services Special Tax”** means the greatest amount of Services Special Tax that can be levied on an Assessor’s Parcel in any Fiscal Year as determined in accordance with Section C.2 below.

**“Maximum Special Taxes”** means, collectively, the Maximum Facilities Special Tax and Maximum Services Special Tax.

**“Other Property”** means, in any Fiscal Year, all Parcels of Developed Property within Improvement Area No. 2 that are not Single Family Residential Property.

**“Proportionately”** means, for each Development Class, that the ratio of the actual Special Tax levied in any Fiscal Year to the Maximum Special Tax authorized to be levied in that Fiscal Year is equal for all Parcels assigned to the Development Class.

**“Public Property”** means any property within the boundaries of Improvement Area No. 2 that is owned by the federal government, State of California or other local governments or public agencies.

**“Recycled Water Facilities Cost”** means the total cost, as determined by the City, of funding the design, engineering, construction, and/or acquisition of recycled water facilities that will serve development within the CFD. If, in the future, the City determines that there is a preferred alternative to the recycled water facilities that were expected at the time of the IA No. 2 Lien Date, the cost of such facilities shall qualify as Recycled Water Facilities Costs for purposes of this RMA.

**“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 after the Trigger Event to pay for: (i) Authorized Services, (ii) Administrative Expenses, and (iii) amounts needed to cure any delinquencies in the payment of Services Special Taxes which have occurred in the prior Fiscal Year. In any Fiscal Year, the Services Special Tax Requirement shall be reduced by surplus amounts available (as determined by the City) from the levy of the Services Special Tax in prior Fiscal Years, including revenues from the collection of delinquent Services Special Taxes and associated penalties and interest.

**“Single Family Residential Property”** means, in any Fiscal Year, all Parcels of Developed Property for which a building permit was issued for construction of one or more Residential Units.

**“Special Taxes”** means, collectively, the Facilities Special Tax and the Services Special Tax.

**“Taxable HOA Property”** means, in any Fiscal Year after the First Bond Sale, any Parcel of HOA Property that satisfies all three of the following conditions: (i) the Parcel had not been HOA Property on the date of the First Bond Sale; (ii) based on reference to Attachments I and 2 (as may be updated pursuant to Section D below), the Parcel was not anticipated to be HOA Property based on the Expected Land Uses, as determined by the Administrator; and (iii) if the Parcel were to be exempt from the Facilities Special Tax because it has become HOA Property, the Expected Maximum Facilities Special Tax Revenues would be reduced to a point at which Required Coverage could not be maintained.

**“Taxable Property”** means all Parcels within the boundaries of Improvement Area No. 2 which are not exempt from the Special Taxes pursuant to law or Section G below.

**“Taxable Public Property”** means, in any Fiscal Year after the First Bond Sale, any Parcel of Public Property that satisfies all three of the following conditions: (i) the Parcel had not been Public Property on the date of the First Bond Sale, (ii) based on reference to Attachments 1 and 2 (as may be updated pursuant to Section D.1 below), the Parcel was not anticipated to be Public Property based on the Expected Land Uses, as determined by the Administrator, and (iii) if the Parcel were to be exempt from the Facilities Special Tax because it has become Public Property, the Expected Maximum Facilities Special Tax Revenues would be reduced to a point at which Required Coverage could not be maintained.

**“Taxable Welfare Exemption Property”** means in any Fiscal Year after the First Bond Sale, any Parcel of Welfare Exemption Property that satisfies all three of the following conditions: (i) the Parcel had not been Welfare Exemption Property on the date of issuance of the First Bond Sale; (ii) based on reference to Attachments 1 and 2 (as may be updated pursuant to Section D herein), the Parcel was not anticipated to be Welfare Exemption Property based on the Expected Land Uses, as determined by the Administrator; and (iii) if the Parcel were to be exempt from the Facilities Special Tax because it has become Welfare Exemption Property, the Expected Maximum Facilities Special Tax Revenues would be reduced to a point at which Required Coverage could not be maintained.

**“Tentative Map”** means any tentative map or vesting tentative map for Phase 1B of the Tracy Hills project, approved by the City Council and as may be amended from time to time.

**“Trigger Event”** means, in any Fiscal Year, that, on or before June 30 of the prior Fiscal Year, the Administrator made a finding that (i) all Bonds secured by the levy and collection of Facilities Special Taxes in the CFD have been fully repaid, (ii) all Administrative Expenses from prior Fiscal Years have been paid or reimbursed to the City, (iii) the Recycled Water Facilities Costs have been fully funded, and (iv) there are no other Authorized Facilities that the City intends to fund with Facilities Special Taxes. In the first Fiscal Year in which the Administrator determines that the Trigger Event occurred in the prior Fiscal Year, and in each Fiscal Year thereafter, the Facilities Special Tax shall cease to be levied, and the Maximum Services Special Tax for each Parcel shall be adjusted pursuant to Section C.2 below.

**“Undeveloped Property”** means, in any Fiscal Year, all Parcels of Taxable Property that are not Developed Property, Taxable HOA Property, Taxable Welfare Exemption Property, or Taxable Public Property.

**“Village”** means a specific geographic area within Improvement Area No. 2 that (i) is identified by an assigned number on the Tentative Map, (ii) is expected to have single family lots that are all of a similar size, and (iii) is assigned Expected Maximum Facilities Special Tax Revenues in Attachment 1 based on the Expected Land Uses for that Village.

**“Welfare Exemption Property”** means, in any Fiscal Year, any Parcels in Improvement Area No. 2 that have received a welfare exemption under subdivision (g) of Section 214 of the Revenue and Taxation Code and for which such welfare exemption is still in place.

## **B. DATA FOR ADMINISTRATION OF SPECIAL TAX**

Each Fiscal Year, the Administrator shall (i) categorize each Parcel of Taxable Property as Developed Property, Undeveloped Property, Taxable Public Property, Taxable HOA Property, or Taxable Welfare Exemption Property; (ii) for Single Family Residential Property, determine within which Village each Parcel of Developed Property is located and the number of Residential Units on the Parcel; and (iii) determine the Facilities Special Tax Requirement and Services Special Tax Requirement for the Fiscal Year. In addition, the Administrator shall, *on an ongoing basis*, monitor Final Maps and condominium plans to determine if there are any proposed changes to the Expected Land Uses that would reduce the Expected Maximum Facilities Special Tax Revenues for a Village. If the Expected Maximum Facilities Special Tax Revenues will be reduced pursuant to a proposed Land Use Change, the Administrator shall apply the steps set forth in Section D.1 below.



In any Fiscal Year, if it is determined that: (i) a parcel map for property in Improvement Area No. 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 shall calculate the Special Taxes for the property affected by recordation of the parcel map by determining the Special Taxes that apply separately to the property within each Development Class, then applying the sum of the individual Special Taxes to the Parcel that was subdivided by recordation of the parcel map.

**C. MAXIMUM SPECIAL TAX**

*1. Facilities Special Tax*

Table 1 below identifies the Maximum Facilities Special Tax, before and after the Trigger Event, for Taxable Property in Improvement Area No. 2, subject to potential adjustments that may occur pursuant to Section D below.

**TABLE 1  
IMPROVEMENT AREA NO. 2  
MAXIMUM FACILITIES SPECIAL TAX**

Land Use	Maximum Facilities Special Tax Prior to Trigger Event Fiscal Year 2022-23*	Maximum Facilities Special Tax After Trigger Event
<u>Single Family Residential Property</u>		
Village 9A	\$4,795 per Residential Unit	\$0 per Residential Unit
Village 9B	\$5,844 per Residential Unit	\$0 per Residential Unit
Village 10A	\$5,017 per Residential Unit	\$0 per Residential Unit
Village 10B	\$5,017 per Residential Unit	\$0 per Residential Unit
Village 10C	\$5,017 per Residential Unit	\$0 per Residential Unit
Village 11A	\$4,315 per Residential Unit	\$0 per Residential Unit
Village 11B	\$4,315 per Residential Unit	\$0 per Residential Unit
Other Property	\$47,285 per Acre	\$0 per Acre
Taxable Public Property		
Taxable HOA Property	\$47,285 per Acre	\$0 per Acre
Taxable Welfare Exemption Property		
Undeveloped Property	\$47,285 per Acre	\$0 per Acre

\* On July 1, 2023 and on each July 1 thereafter, all figures shown in Table 1 above shall be increased by an amount equal to 2.0% of the amount in effect for the prior Fiscal Year.

*2. Services Special Tax*

Table 2 below identifies the Maximum Services Special Tax, before and after the Trigger Event, for Taxable Property in Improvement Area No. 2.

**TABLE 2  
IMPROVEMENT AREA NO. 2  
MAXIMUM SERVICES SPECIAL TAX**

Type of Property	Maximum Services Special Tax Prior to Trigger Event	Maximum Services Special Tax After Trigger Event Fiscal Year 2022-23*
<u>Single Family Residential Property</u>		
Village 9A	\$0 per Residential Unit	\$959 per Residential Unit
Village 9B	\$0 per Residential Unit	\$1,169 per Residential Unit
Village 10A	\$0 per Residential Unit	\$1,004 per Residential Unit
Village 10B	\$0 per Residential Unit	\$1,004 per Residential Unit
Village 10C	\$0 per Residential Unit	\$1,004 per Residential Unit
Village 11A	\$0 per Residential Unit	\$863 per Residential Unit
Village 11B	\$0 per Residential Unit	\$863 per Residential Unit
Other Property	\$0 per Acre	\$9,460 per Acre
Taxable Public Property Taxable HOA Property	\$0 per Acre	\$9,460 per Acre
Undeveloped Property	\$0 per Acre	\$9,460 per Acre

\* Beginning July 1, 2023 and each July 1 thereafter until the Transition Event, the Services Special Taxes in Table 2 shall be increased by 2.0% of the amount in effect in the prior Fiscal Year. On July 1 of the Fiscal Year after the Transition Event and each July 1 thereafter, the Services Special Taxes and the Maximum Services Special Tax assigned to each Parcel shall be adjusted by the Escalation Factor.

Once Special Taxes have been levied on a Parcel of Developed Property, the Maximum Special Taxes applicable to that Parcel shall not be reduced in future Fiscal Years regardless of changes in land use on the Parcel, except (i) in the event of a partial prepayment pursuant to Section H, and (ii) pursuant to Section D. Notwithstanding the foregoing: (i) if Bonds have yet to be issued for Improvement Area No. 2, the Parcels can be assigned to the appropriate special tax category based on the Land Use Change, and the Administrator shall recalculate the Expected Maximum Facilities Special Tax Revenues based on the corresponding change in revenues, and (ii) the actual Special Taxes levied on a Parcel of Developed Property in any Fiscal Year may be less than the Maximum Special Taxes if lower Special Taxes are calculated pursuant to Step 1 in Sections E.1 and E.2 below.

**D. CHANGES TO MAXIMUM SPECIAL TAXES**

The Expected Maximum Facilities Special Tax Revenues were calculated based on the Expected Land Uses at the IA No. 2 Lien Date. The Administrator shall review Final Maps, Tentative Map revisions, and other changes to land uses proposed within Improvement Area No. 2 and compare the revised land uses to the Expected Land Uses to evaluate the impact on the Expected Maximum Facilities Special Tax Revenues.

*1. Changes in Expected Land Uses*

If, prior to the First Bond Sale, a Land Use Change is proposed that will result in a reduction in the Expected Maximum Facilities Special Tax Revenues, no action will be needed pursuant to this

Section D.1. Upon approval of the Land Use Change, the Administrator shall update Attachment 1 to show the reduced Expected Maximum Facilities Special Tax Revenues.

If, prior to the Final Bond Sale, a Land Use Change is proposed that will result in a reduction in the Expected Maximum Facilities Special Tax Revenues, no action will be needed pursuant to this Section D.1 as long as the reduction does not reduce debt service coverage on outstanding Bonds below the Required Coverage. Upon approval of the Land Use Change, the Administrator shall update Attachment 1 to show the reduced Expected Maximum Facilities Special Tax Revenues, which amount shall be used to size the Final Bond Sale.

If a Land Use Change is proposed after the Final Bond Sale, the following steps shall be applied:

- Step 1:** By reference to Attachment 1 (which will be updated by the Administrator each time a Land Use Change has been processed according to this Section D.1 and or pursuant to Section D.2), the Administrator shall identify the Expected Maximum Facilities Special Tax Revenues for Improvement Area No. 2.
- Step 2:** The Administrator shall calculate the Expected Maximum Facilities Special Tax Revenues that could be collected from property in Improvement Area No. 2 if the Land Use Change is approved.
- Step 3:** If the amount calculated in Step 2 is higher than that determined in Step 1, no further action is needed. If the revenues calculated in Step 2 are less than those calculated in Step 1, and if the landowner requesting the Land Use Change does not prepay the portion of the Expected Maximum Facilities Special Tax Revenues in an amount that corresponds to the lost revenue, then the Maximum Facilities Special Tax for each Parcel of Taxable Property in the area affected by the Land Use Change shall be increased proportionately until the aggregate Expected Maximum Facilities Special Tax Revenues that can be generated from the area affected by the Land Use Change is the same as it was prior to the Land Use Change.

If multiple Land Use Changes are proposed simultaneously by a single land owner (which may include approval of multiple Final Maps at one time), the Administrator may consider the combined effect of all the Land Use Changes to determine if there is a reduction in Expected Maximum Facilities Special Tax Revenues. If there is a reduction, the Administrator shall increase the Maximum Facilities Special Tax proportionately in all of the Final Maps being proposed by the landowner until the aggregate amount that can be levied within the Final Maps is equal to the amount that could have been levied prior to the proposed Land Use Changes. If Land Use Changes are proposed simultaneously by multiple landowners, the Administrator shall consider the proposed Land Use Changes individually.

2. *Transfer of Expected Maximum Facilities Special Tax Revenues from One Village to Another*

The Expected Maximum Facilities Special Tax Revenues were determined for each Village based on the Expected Land Uses within that Village. If the expected number of Residential Units is transferred from one Village to another, the City may, in its sole discretion, allow for a corresponding transfer of Expected Maximum Facilities Special Tax Revenues between the

Villages. Such a transfer shall only be allowed if (i) all adjustments are agreed to in writing by the affected property owners and the City, and (ii) there is no reduction in the total Expected Maximum Facilities Special Tax Revenues as a result of the transfer.

3. *Conversion of a Parcel of Public Property to Private Use*

If, in any Fiscal Year, a Parcel of Public Property is converted to private use, such Parcel shall be subject to the levy of Special Taxes. The Maximum Special Taxes for each such Parcel shall be determined based on the average Maximum Special Taxes for Parcels with similar land use designations, as determined by the Administrator.

**E. METHOD OF LEVY OF THE SPECIAL TAXES**

1. *Facilities Special Tax*

Each Fiscal Year, the Administrator shall determine the Facilities Special Tax Requirement and levy the Facilities Special Tax on all Parcels of Taxable Property as follows:

**Step 1:** In the first twenty (20) Fiscal Years in which a Facilities Special Tax is levied within Improvement Area No. 2, the Maximum Facilities Special Tax shall be levied on all Parcels of Developed Property. In the first fourteen (14) Fiscal Years in which Facilities Special Taxes are collected, and in the 16<sup>th</sup>, 17<sup>th</sup>, 18<sup>th</sup>, 19<sup>th</sup> and 20<sup>th</sup> Fiscal Years in which Facilities Special Taxes are collected, Facilities Special Tax proceeds that are determined by the Administrator to be Remainder Taxes shall be deposited into the Improvement Fund to pay any costs associated with the acquisition of Authorized Facilities that were not paid with Bond proceeds or Facilities Special Taxes levied in prior Fiscal Years. Any Remainder Taxes collected in the 15<sup>th</sup> year in which Facilities Special Taxes are levied shall be available to pay for Authorized Facilities or Authorized Services as determined in the sole discretion of the City.

Beginning in the 21<sup>st</sup> Fiscal Year in which a Facilities Special Tax is levied within Improvement Area No. 2 and continuing until the Trigger Event, the Facilities Special Tax shall be levied Proportionately on each Parcel of Developed Property up to 100% of the Maximum Facilities Special Tax for each Parcel of Developed Property until the amount levied is equal to the Facilities Special Tax Requirement, the calculation of which will include funding for Recycled Water Facilities Costs and/or other Authorized Facilities designated for funding, as determined in the sole discretion of the City. After the Trigger Event, the Facilities Special Tax shall no longer be levied.

**Step 2:** If additional revenue is needed after Step 1 and after applying Capitalized Interest to the Facilities Special Tax Requirement, the Facilities Special Tax shall be levied Proportionately on each Parcel of Undeveloped Property up to 100% of the Maximum Facilities Special Tax for each Parcel of Undeveloped Property.

- Step 3:** If additional revenue is needed after Step 2, the Facilities Special Tax shall be levied Proportionately on each Parcel of Taxable Welfare Exemption Property, up to 100% of the Maximum Facilities Special Tax for each Parcel of Taxable Welfare Exemption Property.
- Step 4:** If additional revenue is needed after Step 3, the Facilities Special Tax shall be levied Proportionately on each Parcel of Taxable HOA Property, up to 100% of the Maximum Facilities Special Tax for each Parcel of Taxable HOA Property.
- Step 5:** If additional revenue is needed after Step 4, the Facilities Special Tax shall be levied Proportionately on each Parcel of Taxable Public Property, up to 100% of the Maximum Facilities Special Tax for each Parcel of Taxable Public Property.

2. *Services Special Tax*

Each Fiscal Year after the Trigger Event, the Administrator shall determine the Services Special Tax Requirement and levy the Services Special Tax on all Parcels of Taxable Property as follows:

- Step 1:** The Services Special Tax shall be levied Proportionately on each Parcel of Developed Property up to 100% of the Maximum Services Special Tax for each Parcel of Developed Property until the amount levied is equal to the Services Special Tax Requirement.
- Step 2:** If additional revenue is needed after Step 1, the Services Special Tax shall be levied Proportionately on each Parcel of Undeveloped Property, up to 100% of the Maximum Services Special Tax for each Parcel of Undeveloped Property.
- Step 3:** If additional revenue is needed after Step 2, the Services Special Tax shall be levied Proportionately on each Parcel of Taxable HOA Property, up to 100% of the Maximum Services Special Tax for each Parcel of Taxable HOA Property.
- Step 4:** If additional revenue is needed after Step 3, the Services Special Tax shall be levied Proportionately on each Parcel of Taxable Public Property, up to 100% of the Maximum Services Special Tax for each Parcel of Taxable Public Property.

**F. MANNER OF COLLECTION OF SPECIAL TAXES**

The Special Taxes for Improvement Area No. 2 shall be collected in the same manner and at the same time as ordinary ad valorem property taxes, provided, however, that partial prepayments are permitted as set forth in Section H below and provided further that the City may directly bill the Special Taxes, may collect Special Taxes at a different time or in a different manner, and may collect delinquent Special Taxes through foreclosure or other available methods.

The Facilities Special Tax shall be levied and collected until principal and interest on Bonds have been repaid, costs of constructing or acquiring Authorized Facilities from Facilities Special Tax proceeds have been paid, and all Administrative Expenses have been paid or reimbursed. However,

in no event shall Facilities Special Taxes be levied for more than eighty (80) Fiscal Years. Under no circumstances may the Facilities Special Tax on a Parcel in residential use be increased in any Fiscal Year as a consequence of delinquency or default in payment of the Facilities Special Tax levied on another Parcel or Parcels by more than ten percent (10%) above the amount that would have been levied in that Fiscal Year had there never been any such delinquencies or defaults. After the Trigger Event, the Services Special Tax may be levied and collected in perpetuity.

#### **G. EXEMPTIONS**

Any Parcel that becomes HOA Property, Public Property, or Welfare Exemption Property prior to the First Bond Sale shall be exempt from both the Services Special Tax and the Facilities Special Tax; the Administrator shall reduce the Expected Maximum Facilities Special Tax Revenues to reflect any such exemption, and the First Bond Sale shall be sized based on the reduced Expected Maximum Facilities Special Tax Revenues. Any Parcel that becomes HOA Property, Public Property, or Welfare Exemption Property after the First Bond Sale shall be exempt from both the Services Special Tax and the Facilities Special Tax provided such Parcel is not Taxable HOA Property, Taxable Public Property or Taxable Welfare Exemption Property.

In addition, no Special Taxes shall be levied on (i) Parcels that are designated as permanent open space or common space on which no structure is permitted to be constructed, (ii) Parcels owned by a public utility for an unmanned facility, and (iii) Parcels subject to an easement that precludes any use on the Parcel other than that permitted by the easement. Notwithstanding the foregoing, if a Facilities Special Tax has been levied on a Parcel in any Fiscal Year, and the entire Parcel subsequently meets the criteria in (i), (ii) or (iii) above, the Parcel shall remain subject to the Facilities Special Tax levy, unless the First Bond Sale has not occurred, in which case such property shall be categorized as Public Property, and the Administrator shall recalculate the Expected Maximum Facilities Special Tax Revenues based on the corresponding loss in revenues.

#### **H. PARTIAL PREPAYMENT OF FACILITIES SPECIAL TAX**

The following definitions apply to this Section H:

**“Outstanding Bonds”** means all Previously Issued Bonds which remain outstanding, with the following exception: if a Facilities Special Tax has been levied against, or already paid by, an Assessor’s Parcel making a prepayment, and a portion of the Facilities Special Tax will be used to pay a portion of the next principal payment on the Bonds that remain outstanding (as determined by the Administrator), that next principal payment shall be subtracted from the total Bond principal that remains outstanding, and the difference shall be used as the amount of Outstanding Bonds for purposes of this prepayment formula.

**“Previously Issued Bonds”** means all Bonds that have been issued prior to the date of prepayment.

**“Public Facilities Requirements”** means: (i) \$28,730,000 in Fiscal Year 2022-23 dollars, which amount shall, on July 1, 2023 and on each July 1 thereafter, be increased by an amount equal to 2.0% of the amount in effect for the prior Fiscal Year, or (ii) such other number as shall be determined by the City to be an appropriate estimate of the net

construction proceeds that will be generated from all Bonds that have been or are expected to be issued on behalf of Improvement Area No. 2.

**“Remaining Facilities Costs”** means the Public Facilities Requirements (as defined above), minus public facility costs funded by Previously Issued Bonds (as defined above), Remainder Taxes, or prepayments.

A property owner may prepay up to 80% of the Facilities Special Tax obligation applicable to a Parcel in Improvement Area No. 2, 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
<u>less</u>	<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:** Take the amount computed pursuant to Step 8 and subtract the amount computed pursuant to Step 9 (*the "Defeasance Requirement"*).
- Step 11.** Determine the costs of computing the prepayment amount, redeeming Bonds, and recording any notices to evidence the prepayment and redemption (*the "Administrative Fees and Expenses"*).
- Step 12.** If and to the extent so provided in the Indenture, a reserve fund credit shall be calculated as a reduction in the applicable reserve fund for the Outstanding Bonds to be redeemed pursuant to the prepayment (*the "Reserve Fund Credit"*).
- Step 13.** The Facilities Special Tax prepayment is equal to the sum of the amounts computed pursuant to Steps 4, 6, 7, 10, and 11, less the amount computed pursuant to Step 12 (*the "Prepayment Amount"*).
- Step 14.** From the Prepayment Amount, the amounts computed pursuant to Steps 4, 7, and 10 shall be deposited into the appropriate fund as established under the Indenture and be used to retire Outstanding Bonds or make debt service payments. The amount computed pursuant to Step 6 shall be deposited into the Improvement Fund. The amount computed pursuant to Step 11 shall be retained in the account or fund that is established to pay Administrative Expenses.

Once a partial prepayment of a Facilities Special Tax has been received, an Amendment to Special Tax Lien shall be recorded against the Parcel to reflect the reduced Facilities Special Tax lien for the Parcel, which shall be equal to the portion of the Maximum Facilities Special Tax that was not prepaid. However, an Amendment to Special Tax Lien shall not be recorded until all Facilities Special Taxes levied on the Parcel in the current or prior Fiscal Years have been collected. The



prepayment of a portion of the Facilities Special Tax shall not affect the perpetual obligation to pay the Services Special Tax.

Notwithstanding the foregoing, if at any point in time the Administrator determines that the Maximum Facilities Special Tax revenue that could be collected from Taxable Property that remains subject to the Facilities Special Tax after the proposed prepayment would be less than the Required Coverage on Bonds that will remain outstanding after defeasance or redemption of Bonds from proceeds of the estimated prepayment, the amount of the prepayment shall be increased until the amount of Bonds defeased or redeemed is sufficient to reduce remaining annual debt service to a point at which Required Coverage is maintained.

**I. INTERPRETATION OF SPECIAL TAX FORMULA**

The City may interpret, clarify, and revise this RMA to correct any inconsistency, vagueness, or ambiguity, by resolution and/or ordinance, that does not create a material adverse effect on the levy and collection of the Special Taxes and any security for any Bonds.

**ATTACHMENT 1**

**Improvement Area No. 2 of the  
City of Tracy  
Community Facilities District No. 2016-1  
(Tracy Hills)**

**Expected Land Uses and Expected Maximum Facilities Special Tax Revenues**

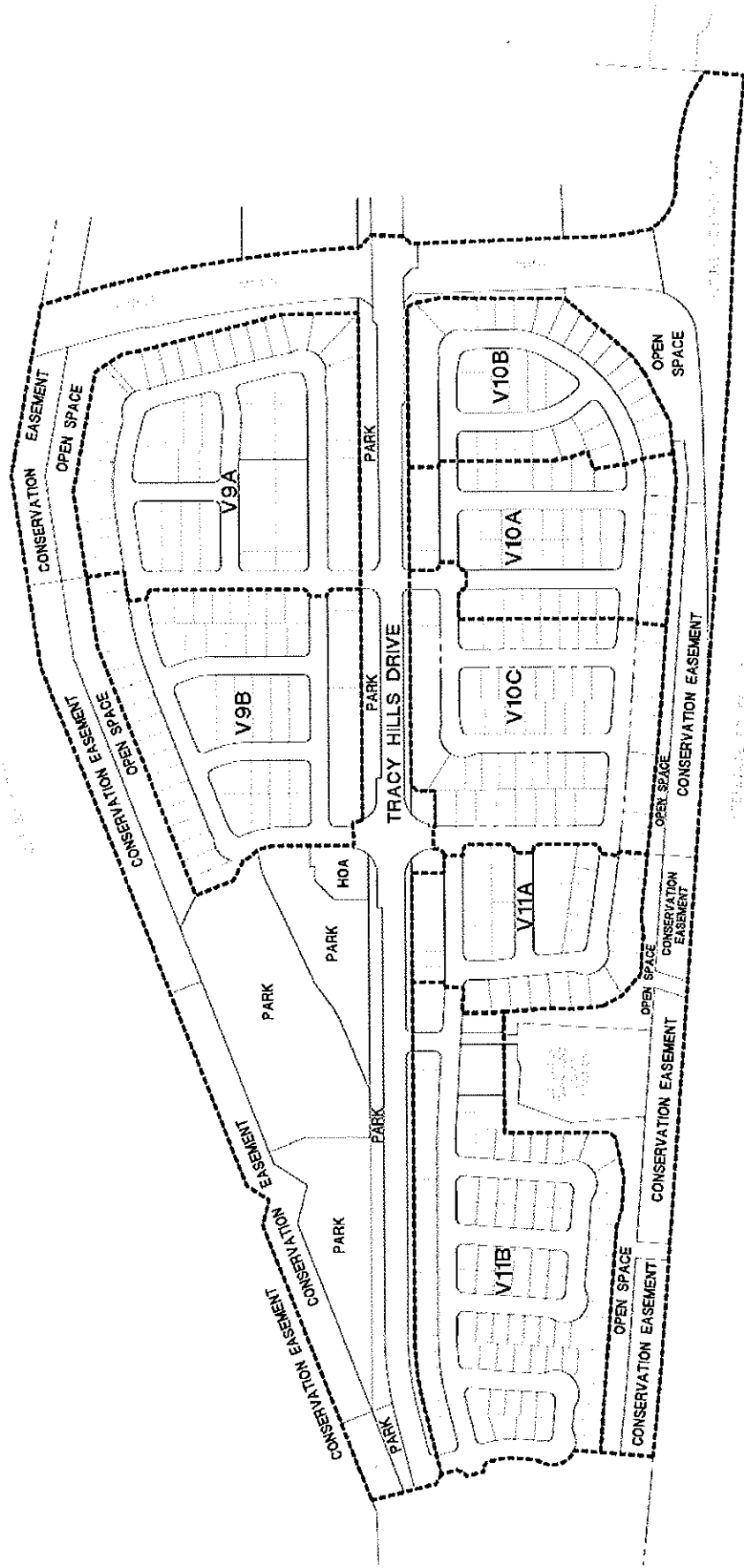
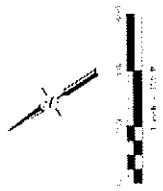
<b>Village</b>	<b>Expected Land Uses</b>	<b>Maximum Facilities Special Tax per Unit FY 2022-23 /1</b>	<b>Expected Maximum Facilities Special Tax Revenues FY 2022-23 /1</b>
Village 9A	69 Residential Units	\$4,795 per Residential Unit	\$330,855
Village 9B	64 Residential Units	\$5,844 per Residential Unit	\$374,016
Village 10A	47 Residential Units	\$5,017 per Residential Unit	\$235,799
Village 10B	41 Residential Units	\$5,017 per Residential Unit	\$205,697
Village 10C	62 Residential Units	\$5,017 per Residential Unit	\$311,054
Village 11A	45 Residential Units	\$4,315 per Residential Unit	\$194,175
Village 11B	104 Residential Units	\$4,315 per Residential Unit	\$448,760
N/A	0 Acres of Other Property	\$47,285 per Acre	\$0
<b>Total</b>	<b>432 Residential Units and 0 Acres of Other Property</b>	<b>N/A</b>	<b>\$2,100,356</b>

1. On July 1, 2023 and each July 1 thereafter, the Maximum Facilities Special Tax per Residential Unit and the Expected Maximum Facilities Special Tax Revenues shall be increased by two percent (2%) of the amount in effect in the prior Fiscal Year.

**ATTACHMENT 2**

**Improvement Area No. 2 of the  
City of Tracy  
Community Facilities District No. 2016-1  
(Tracy Hills)**

**Expected Lot Layout**

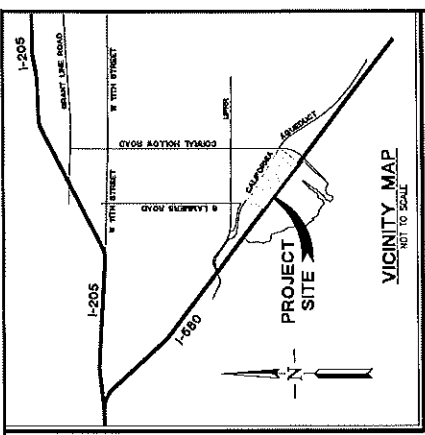
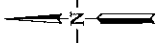
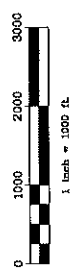
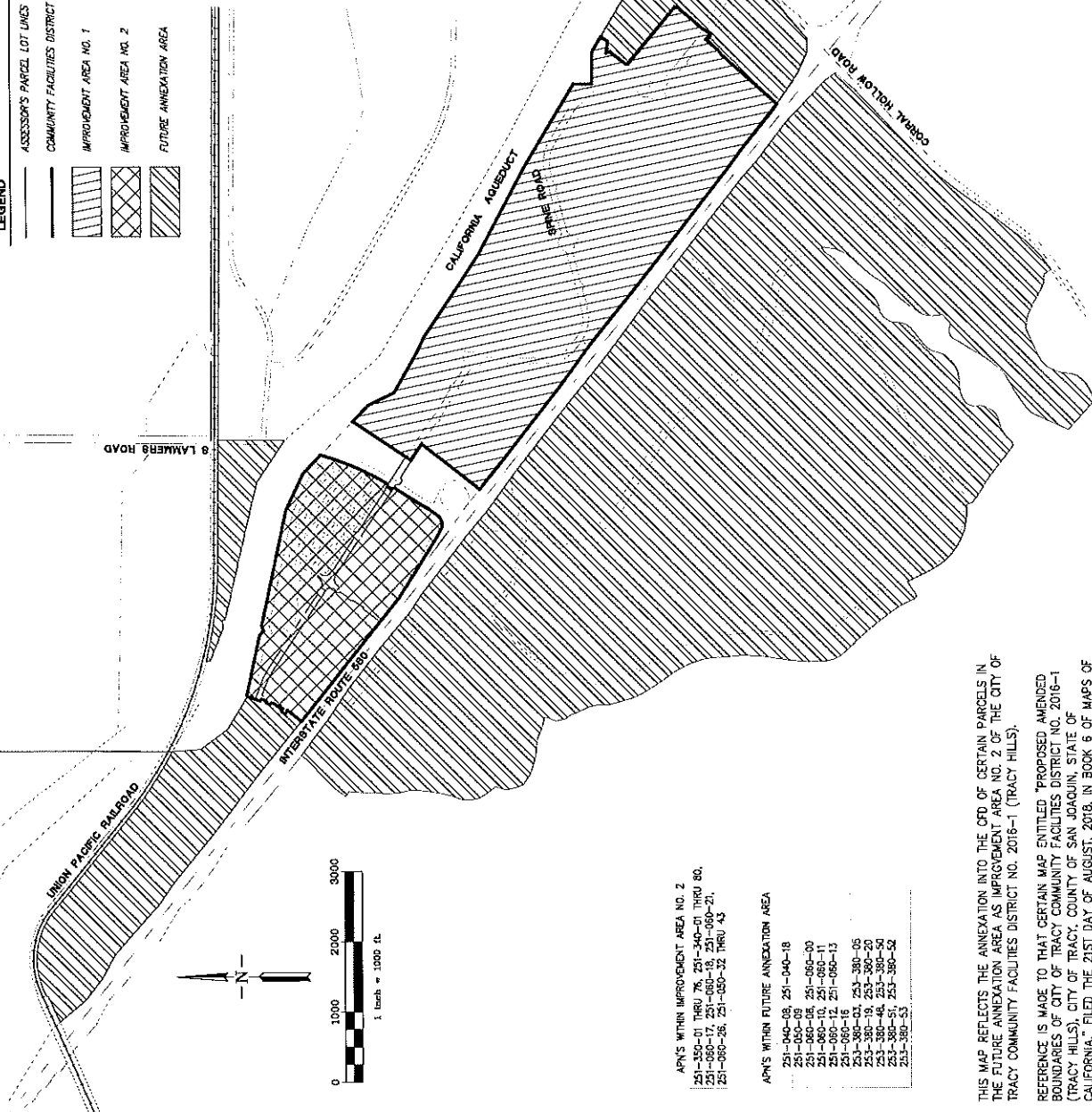


**ATTACHMENT 2**  
**TRACY HILLS 1B - EXPECTED LOT LAYOUT IN**  
**IMPROVEMENT AREA NO 2 OF THE TRACY HILLS CFD 2016-1**  
CITY OF TRACY, SAN JOAQUIN COUNTY, CALIFORNIA

**EXHIBIT C**  
**PROPOSED ANNEXATION MAP**

[attached]

- LEGEND**
- ASSESSOR'S PARCEL LOT LINES
  - COMMUNITY FACILITIES DISTRICT NO. 2016-1
  - IMPROVEMENT AREA NO. 1
  - IMPROVEMENT AREA NO. 2
  - FUTURE ANNEXATION AREA



**ANNEXATION MAP NO. 1  
CITY OF TRACY  
COMMUNITY FACILITIES DISTRICT 2016-1  
(TRACY HILLS)  
CITY OF TRACY  
COUNTY OF SAN JOAQUIN  
STATE OF CALIFORNIA**

Filed in the office of the City Clerk of the City of Tracy  
this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

City Clerk

I hereby certify that the within map showing boundaries of  
Annexation No. 1 to the City of Tracy Community Facilities  
District No. 2016-1 (Tracy Hills), City of Tracy, County of San  
Joaquin, State of California, was approved by the City Council of  
the City of Tracy, at a meeting thereof, held on the \_\_\_\_\_ day  
of \_\_\_\_\_, 2022, by its Resolution No. \_\_\_\_\_

City Clerk

Filed this \_\_\_\_\_ day of \_\_\_\_\_, 2022, 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



**RUGGERI-JENSEN-AZAR**  
ENGINEERS • PLANNERS • SURVEYORS  
2541 WARREN DRIVE, SUITE 100, ROCKY HILL, CA 95231  
PHONE: (916) 939-9980 FAX: (916) 939-9989

JOB NO. 121088 SHEET 1 OF 1

- APNs WITHIN IMPROVEMENT AREA NO. 2
- 251-350-01 THRU 76, 251-340-01 THRU 80,
  - 251-060-17, 251-060-18, 251-060-21,
  - 251-060-26, 251-060-32 THRU 43

- APNs WITHIN FUTURE ANNEXATION AREA
- 251-040-08, 251-040-18
  - 251-010-09
  - 251-060-06, 251-060-00
  - 251-060-10, 251-060-11
  - 251-060-12, 251-060-13
  - 251-380-01, 251-380-05
  - 251-380-19, 251-380-20
  - 251-380-48, 251-380-50
  - 251-380-51, 251-380-52
  - 251-380-53

THIS MAP REFLECTS THE ANNEXATION INTO THE CFD OF CERTAIN PARCELS IN  
THE FUTURE ANNEXATION AREA AS IMPROVEMENT AREA NO. 2 OF THE CITY OF  
TRACY COMMUNITY FACILITIES DISTRICT NO. 2016-1 (TRACY HILLS).

REFERENCE IS MADE TO THAT CERTAIN MAP ENTITLED "PROPOSED AMENDED  
BOUNDARIES OF CITY OF TRACY COMMUNITY FACILITIES DISTRICT NO. 2016-1  
(TRACY HILLS), CITY OF TRACY, COUNTY OF SAN JOAQUIN, STATE OF  
CALIFORNIA," FILED THE FIRST DAY OF AUGUST 2016, IN BOOK 6 OF MAPS OF  
ASSESSMENT AND COMMUNITY FACILITIES DISTRICTS, AT PAGE 134 IN THE OFFICE  
OF THE COUNTY OF SAN JOAQUIN, STATE OF CALIFORNIA, WHICH THIS  
ANNEXATION MAP NO. 1, AFFECTS.

**RECORDING REQUESTED BY AND  
AFTER RECORDATION RETURN TO:**

City Clerk  
City of Tracy  
333 Civic Center Plaza  
Tracy, CA 95376

**NOTICE OF SPECIAL TAX LIEN**

**IMPROVEMENT AREA NO. 2 OF THE  
CITY OF TRACY  
COMMUNITY FACILITIES DISTRICT 2016-1  
(TRACY HILLS)**

Pursuant to the requirements of Sections 3114.5 and 3117.5 of the California Streets and Highways Code and Section 53328.3 of the California Government Code, the undersigned City Clerk of the City of Tracy, County of San Joaquin, State of California, hereby gives notice that a lien to secure payment of a special tax is hereby imposed by the City Council of the City of Tracy, County of San Joaquin, on the property described in Exhibit C (the "Property"). The special tax secured by this lien is authorized to be levied for the purpose of paying principal and interest on bonds and other debt, the proceeds of which are being used to finance the acquisition and construction of all or a portion of the public facilities described in Exhibit A attached hereto and hereby made a part hereof, to pay the cost of the public facilities and the public services described in Exhibit A, and to pay the cost of administering Improvement Area No. 2 (defined below).

The City Council of the City of Tracy previously formed the "City of Tracy Community Facilities District 2016-1 (Tracy Hills)" (the "CFD"), including an improvement area within the CFD designated "Improvement Area No. 1 of the City of Tracy Community Facilities District 2016-1 (Tracy Hills)" ("Improvement Area No. 1"), and the territory designated the "City of Tracy Community Facilities District 2016-1 (Tracy Hills) (Future Annexation Area)" (the "Future Annexation Area"); the boundaries of the CFD, Improvement Area No. 1 and the Future Annexation Area were set forth in the boundary map that was recorded on June 15, 2016 in the records of the San Joaquin County Recorder in Book 6 of Maps of Assessment and Community Facilities Districts at Page 84 as Document No. 2016-069400 (the "Original Boundary Map").

Subsequent to formation of the CFD, Improvement Area No. 1 and the Future Annexation Area, the City Council undertook change proceedings, and the boundaries of the CFD, Improvement Area No. 1 and the Future Annexation Area were amended, as set forth in the boundary map recorded on August 27, 2018 as Document No. 2018-095098 in Book 6 Page 134 of the Book of Maps of Assessment and Community Facilities Districts in the office of the County Recorder for the County of San Joaquin, State of California (the "Amended Boundary Map").

An Amended and Restated Notice of Special Tax Lien was recorded for the territory included in Improvement Area No. 1 on August 27, 2018 as Document No. 2018-095091 in the office of the Recorder for the County of San Joaquin, State of California.

The Property was included in the Future Annexation Area. The Property has been annexed into the CFD and the owners of the Property have identified, specified and approved the designation of the Property as "Improvement Area No. 2 of the City of Tracy Community Facilities District 2016-1 (Tracy Hills)" ("Improvement Area No. 2"), pursuant to separate Unanimous

Approvals of the owners of the Property dated August 12, 2022. The City Council of the City of Tracy approved the annexation of the Property to the CFD and designated the Property as Improvement Area No. 2 pursuant to Resolution No. 2022-\_\_\_\_\_ adopted on August 16, 2022.

The special tax is authorized to be levied within Improvement Area No. 2 which has now been officially formed and the lien of the special tax is a continuing lien which shall secure each annual levy of the special tax and which shall continue in force and effect until the special tax obligation is prepaid, permanently satisfied, and canceled in accordance with law or until the special tax ceases to be levied and a notice of cessation of special tax is recorded in accordance with Section 53330.5 of the Government Code.

The rate, method of apportionment, and manner of collection of the authorized special tax within Improvement Area No. 2 is as set forth in Exhibit B attached hereto and hereby made a part hereof. Conditions under which the obligation to pay the special tax may be prepaid and permanently satisfied and the lien of the special tax canceled are as set forth in said Exhibit B and hereby incorporated herein by this reference.

Notice is further given that upon the recording of this notice in the office of the County Recorder of the County of San Joaquin the obligation to pay the special tax levy shall become a lien upon all nonexempt real property within Improvement Area No. 2 in accordance with Section 3115.5 of the Streets and Highways Code of California.

The name(s) of the owner(s) and the assessor's tax parcel numbers of the Property and not exempt from the special tax are as set forth in Exhibit C attached hereto and hereby made a part hereof.

Reference is made to the Annexation Map No. 1 (the "Annexation Map"), which shows the boundaries of Improvement Area No. 2, which was recorded on \_\_\_\_\_, 2022 at \_\_\_\_\_ .m. in Book \_\_\_\_\_ of Maps of Assessment and Community Facilities Districts at Page \_\_\_\_\_, as Document No. \_\_\_\_\_ in the office of the County Recorder for the County of San Joaquin, State of California, which Annexation Map is now the final boundary map of Improvement Area No. 2.

For further information concerning the current and estimated future tax liability of owners or purchasers of real property subject to this special tax lien, interested persons should contact the Finance Director, City of Tracy, 333 Civic Center Plaza, Tracy, California, 95376; Telephone: (209) 831-6800.

Dated: As of August 16, 2022

By: \_\_\_\_\_  
City Clerk,  
City of Tracy



## **EXHIBIT A**

### **NOTICE OF SPECIAL TAX LIEN**

#### **IMPROVEMENT AREA NO. 2 OF THE CITY OF TRACY COMMUNITY FACILITIES DISTRICT 2016-1 (TRACY HILLS)**

#### **DESCRIPTION OF FACILITIES AND SERVICES TO BE FINANCED BY THE CFD AND EACH IMPROVEMENT AREA THEREIN**

##### **FACILITIES**

The CFD (and each Improvement Area therein, as originally designated and as designated in the future in conjunction with the annexation of the Future Annexation Area) shall be authorized to finance all or a portion of the costs of the acquisition, construction and improvement of facilities permitted under the Mello-Roos Act and that are required as conditions of development of the property within the CFD and the Future Annexation Area, including, but not limited to, the following:

- Roadway Improvements (and all curb and gutter, sidewalks, lighting, signalization, landscaping, monumentation, and dry and wet utilities) - including, but not limited to:
  - Spine Road north of I-580.
  - Spine Road south of I-580.
  - Emergency Vehicle Access roads.
  - Corral Hollow Road.
  - Lammers Road.
  - Linne Road.
  - Tracy Boulevard.
  - In-tract streets and roads.
  - All streets within the City of Tracy impacted by the development of the Project Property.
  - I-580/Corral Hollow Road Interchange
  - I-580/Lammers Road Interchange
- Wastewater Treatment Facilities - including, but not limited to, a wastewater treatment facility and/or expansion, pump stations, force main and gravity lines.
- Water Facilities - including, but not limited to, a water treatment facility, pump stations, new water transmission lines, additional storage reservoirs or tanks with booster pumps, production wells, backup generators at existing wells, and pressure reducing valves.
- Reclaimed Water Facilities - including, but not limited to, reclaimed water treatment facilities, pump stations, new reclaimed water transmission lines, and additional storage reservoirs or tanks with booster bumps.
- Drainage Improvements - including, but not limited to, pipes, culverts, retention basins, drop inlets, and filtration areas.

- Landscaping - including, but not limited to, entryways, streets, buffers, and slopes.
- Open Space Improvements
- Parks and Park Equipment - including, but not limited to, construction of parks, park equipment and structures.
- Public Safety Improvements - including, but not limited to:
  - Constructing and equipping two firehouses.
  - Police facilities and equipment.
- Soundwalls - including, but not limited to, the soundwall along I-580.
- Improvements Financed by City Master Plan and Public Benefit Payments - including, but not limited to:
  - Public Benefit payments.
  - Transportation Master Plan Fee.
  - Wastewater Mater Plan Fee.
  - Wastewater Conveyance Master Plan Fee.
  - Water Treatment Master Plan Fee.
  - Water Conveyance Mater Plan Fee.
  - Water Treatment Master Plan Fee.
  - Recycled Water Master Plan Fee.
  - Public Safety Master Plan Fee.
  - Public Facilities Master Plan Fee.
  - Parks Master Plan Fee.

Any facility authorized to be financed by the CFD and its Improvement Areas may be financed through the construction and acquisition of the facility or through the payment of fees for such facility.

The facilities constructed or acquired may be located within or outside the CFD.

The facilities to be financed shall include all hard and soft costs associated with the facilities, including the costs of the acquisition of land and rights-of-way, the costs of design, engineering and planning, the costs of any environmental or traffic studies, surveys or other reports, costs related to landscaping and irrigation, soils testing, permits, plan check, and inspection fees, insurance, legal and related overhead costs, coordination and supervision and any other costs or appurtenances related to any of the foregoing as further defined in one or more acquisition agreements with the developer of the Property in the CFD.

## SERVICES

Special taxes collected in the CFD (and each Improvement Area therein, as originally designated and as designated in the future in conjunction with the annexation of the Future Annexation Area) may finance, in whole or in part, the following services (“services” shall have the meaning given that term in the Mello-Roos Community Facilities Act of 1982):

- Maintenance and operation of the Facilities

#### OTHER

The CFD (and each Improvement Area therein, as originally designated and as designated in the future in conjunction with the annexation of the Future Annexation Area) may also finance any of the following:

1. Bond related expenses, including underwriters discount, reserve fund, capitalized interest, letter of credit fees and expenses, bond and disclosure counsel fees and expenses, bond remarketing costs, and all other incidental expenses.
2. Administrative fees of the City and the bond trustee or fiscal agent related to the CFD (and each Improvement Area therein, as originally designated and as designated in the future in conjunction with the annexation of the Future Annexation Area) and the Bonds.
3. Reimbursement of costs related to the formation of the CFD (and each Improvement Area therein, as originally designated and as designated in the future in conjunction with the annexation of the Future Annexation Area) advanced by the City, the landowner(s) in the CFD (and each Improvement Area therein, as originally designated and as designated in the future in conjunction with the annexation of the Future Annexation Area), or any party related to any of the foregoing, as well as reimbursement of any costs advanced by the City, the landowner(s) in the CFD (and each Improvement Area therein, as originally designated and as designated in the future in conjunction with the annexation of the Future Annexation Area) or any party related to any of the foregoing, for facilities, fees or other purposes or costs of the CFD (and each Improvement Area therein, as originally designated and as designated in the future in conjunction with the annexation of the Future Annexation Area).

**EXHIBIT B**

**NOTICE OF SPECIAL TAX LIEN**

**IMPROVEMENT AREA NO. 2 OF THE  
CITY OF TRACY  
COMMUNITY FACILITIES DISTRICT 2016-1  
(TRACY HILLS)**

**RATE AND METHOD OF APPORTIONMENT OF SPECIAL TAX**

**IMPROVEMENT AREA NO. 2 OF THE  
CITY OF TRACY  
COMMUNITY FACILITIES DISTRICT NO. 2016-1  
(TRACY HILLS)**

**RATE AND METHOD OF APPORTIONMENT OF SPECIAL TAXES**

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Special Taxes applicable to each Assessor's Parcel in Improvement Area No. 2 of the City of Tracy Community Facilities District No. 2016-1 (Tracy Hills) shall be levied and collected according to the tax liability determined by the City through the application of the appropriate amount or rate for Taxable Property, as described below. All of the property in Improvement Area No. 2, unless exempted by law or by the provisions of Section G below, shall be taxed for the purposes, to the extent, and in the manner herein provided.

**A. DEFINITIONS**

The terms hereinafter set forth have the following meanings:

**"Accessory Unit"** means a second residential unit of limited size (e.g., granny cottage, second unit) that shares a Parcel with a single-family detached unit.

**"Acre" or "Acreage"** means the land area of an Assessor's Parcel as shown on an Assessor's Parcel Map, or if the land area is not shown on an Assessor's Parcel Map, the land area shown on the applicable Final Map or other parcel map recorded at the County Recorder's Office.

**"Act"** means the Mello-Roos Community Facilities Act of 1982, as amended, being Chapter 2.5, (commencing with Section 53311), Division 2 of Title 5 of the Government Code of the State of California.

**"Administrative Expenses"** means any or all of the following: the fees and expenses of any fiscal agent or trustee (including any fees or expenses of its counsel) employed in connection with any Bonds, and the expenses of the City in carrying out its duties with respect to the CFD and the Bonds, including, but not limited to, the levy and collection of Special Taxes, the fees and expenses of its legal counsel, charges levied by the County in connection with the levy and collection of Special Taxes, costs related to property owner inquiries regarding the Special Taxes, costs associated with appeals or requests for interpretation associated with the Special Taxes and this RMA, costs of the dissemination agent, whether for the City or another party that has undertaken to provide continuing disclosure, amounts needed to pay rebate to the federal government with respect to the Bonds, costs associated with complying with any continuing disclosure requirements with respect to the Bonds and the Special Taxes, costs associated with foreclosure and collection of delinquent Special Taxes and all other costs and expenses of the City and County in any way related to the establishment or administration of the CFD.

**"Administrator"** means the person or firm designated by the City to administer the Special Taxes according to this RMA.

**"Assessor's Parcel" or "Parcel"** means a lot or parcel shown on an Assessor's Parcel Map with an assigned Assessor's parcel number.

**“Assessor’s Parcel Map”** means an official map of the County Assessor designating Parcels by Assessor’s Parcel number.

**“Authorized Facilities”** means the public facilities authorized to be financed, in whole or in part, by the CFD.

**“Authorized Services”** means the public services authorized to be funded, in whole or in part, by the CFD.

**“Bonds”** means bonds or other debt (as defined in the Act), whether in one or more series, issued or assumed by Improvement Area No. 2 to fund Authorized Facilities.

**“Capitalized Interest”** means funds in any capitalized interest account available to pay interest on Bonds.

**“CFD”** means the City of Tracy Community Facilities District No. 2016-1 (Tracy Hills).

**“City”** means the City of Tracy.

**“City Council”** means the City Council of the City of Tracy.

**“County”** means the County of San Joaquin.

**“Developed Property”** means, in any Fiscal Year, all Parcels of Taxable Property, excluding Taxable HOA Property, Taxable Welfare Exemption Property, and Taxable Public Property, for which a building permit was issued prior to June 30 of the preceding Fiscal Year.

**“Development Class”** means, individually, Developed Property, Undeveloped Property, Taxable HOA Property, Taxable Welfare Exemption Property, and Taxable Public Property.

**“Escalation Factor”** means, in any Fiscal Year, the lesser of (i) the percentage increase from the prior Fiscal Year, if any, in the Index, or (ii) four percent (4%). The Index used shall be as determined by the Bureau of Labor Statistics from April to April beginning with the period from April 2022 to April 2023.

**“Expected Land Uses”** means the number of Residential Units and acres of Other Property expected within Improvement Area No. 2 at the time of the IA No. 2 Lien Date, as identified in Attachment 1 and as amended from time to time as set forth in this RMA.

**“Expected Maximum Facilities Special Tax Revenues”** means the amount of annual revenue that would be available in Improvement Area No. 2 if the Maximum Facilities Special Tax was levied on the Expected Land Uses. The Expected Maximum Facilities Special Tax Revenues as of the IA No. 2 Lien Date are shown in Attachment 1 of this RMA and may be reduced due to prepayments in future Fiscal Years and/or pursuant to Section D below.

**“Facilities Special Tax”** means a special tax levied in any Fiscal Year to pay the Facilities Special Tax Requirement.

**“Facilities Special Tax Requirement”** means the amount necessary in any Fiscal Year (i) to pay principal and interest on Bonds which are due in the calendar year which begins in such Fiscal Year, (ii) to create or replenish reserve funds to the extent such replenishment has not been included in a computation of Facilities Special Tax Requirement in a previous Fiscal Year, (iii) to cure any delinquencies in the payment of principal or interest on Bonds which have occurred in the prior Fiscal Year, (iv) to pay Administrative Expenses, and (v) to pay the costs of Authorized Facilities to be funded directly from Facilities Special Tax proceeds to the extent that paying directly for such costs does not increase the Facilities Special Tax levied on Undeveloped Property. The amounts referred to in clauses (i) and (ii) of the preceding sentence may be reduced in any Fiscal Year by (i) interest earnings on or surplus balances in funds and accounts for Bonds to the extent that such earnings or balances are available to apply against debt service pursuant to the Indenture, (ii) proceeds from the collection of penalties associated with delinquent Facilities Special Taxes, and (iii) any other revenues available to pay debt service on the Bonds as determined by the Administrator.

**“Final Bond Sale”** means, at any point in time, the last series of Bonds issued for Improvement Area No. 2, which issuance uses up virtually all of the remaining capacity available from the Maximum Facilities Special Tax revenues that can be generated within Improvement Area No. 2, as determined by the City. If additional Bonds are expected to be issued after outstanding Bonds retire, the “Final Bond Sale” may not be the last series of Bonds ever issued for Improvement Area No. 2, but instead the last sale of Bonds that can be issued before some or all of the outstanding Bonds retire.

**“Final Map”** means a final map, or portion thereof, recorded by the County pursuant to the Subdivision Map Act (California Government Code Section 66410 et seq.) that creates lots that do not need to be further subdivided prior to issuance of a building permit for a residential structure. The term “Final Map” shall not include any Assessor’s Parcel map or subdivision map, or portion thereof, that does not create lots that are in their final configuration, including Assessor’s Parcels that are designated as remainder parcels.

**“First Bond Sale”** means issuance of the first series of Bonds secured, in whole or in part, by Facilities Special Taxes levied and collected from Parcels in Improvement Area No. 2.

**“Fiscal Year”** means the period starting July 1 and ending on the following June 30.

**“Homeowners Association”** or **“HOA”** means the homeowners association that provides services to, and collects dues, fees, or charges from, property within Improvement Area No. 2.

**“HOA Property”** means any property within the boundaries of Improvement Area No. 2 that is owned in fee or by easement by the Homeowners Association, not including any such property that is located directly under a residential structure.

**“IA No. 2 Lien Date”** means the date that the Notice of Special Tax Lien affecting the Parcels in Improvement Area No. 2 was recorded in the official records of the County.

**“Improvement Area No. 2”** means Improvement Area No. 2 of the City of Tracy Community Facilities District No. 2016-1 (Tracy Hills).

**“Improvement Fund”** means the account (regardless of its name) identified in the Indenture to hold funds which are available to acquire or construct Authorized Facilities.

**“Indenture”** means the bond indenture, fiscal agent agreement, trust agreement, resolution or other instrument pursuant to which Bonds are issued, as modified, amended, and/or supplemented from time to time, and any instrument replacing or supplementing the same.

**“Index”** means the Consumer Price Index of the San Francisco-Oakland-Hayward area for all urban consumers.

**“Land Use Change”** means a proposed or approved change to the Expected Land Uses within Improvement Area No. 2 after the IA No. 2 Lien Date.

**“Maximum Facilities Special Tax”** means the greatest amount of Facilities Special Tax that can be levied on an Assessor’s Parcel in any Fiscal Year as determined in accordance with Sections C and D below.

**“Maximum Services Special Tax”** means the greatest amount of Services Special Tax that can be levied on an Assessor’s Parcel in any Fiscal Year as determined in accordance with Section C.2 below.

**“Maximum Special Taxes”** means, collectively, the Maximum Facilities Special Tax and Maximum Services Special Tax.

**“Other Property”** means, in any Fiscal Year, all Parcels of Developed Property within Improvement Area No. 2 that are not Single Family Residential Property.

**“Proportionately”** means, for each Development Class, that the ratio of the actual Special Tax levied in any Fiscal Year to the Maximum Special Tax authorized to be levied in that Fiscal Year is equal for all Parcels assigned to the Development Class.

**“Public Property”** means any property within the boundaries of Improvement Area No. 2 that is owned by the federal government, State of California or other local governments or public agencies.

**“Recycled Water Facilities Cost”** means the total cost, as determined by the City, of funding the design, engineering, construction, and/or acquisition of recycled water facilities that will serve development within the CFD. If, in the future, the City determines that there is a preferred alternative to the recycled water facilities that were expected at the time of the IA No. 2 Lien Date, the cost of such facilities shall qualify as Recycled Water Facilities Costs for purposes of this RMA.

**“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 after the Trigger Event to pay for: (i) Authorized Services, (ii) Administrative Expenses, and (iii) amounts needed to cure any delinquencies in the payment of Services Special Taxes which have occurred in the prior Fiscal Year. In any Fiscal Year, the Services Special Tax Requirement shall be reduced by surplus amounts available (as determined by the City) from the levy of the Services Special Tax in prior Fiscal Years, including revenues from the collection of delinquent Services Special Taxes and associated penalties and interest.

**“Single Family Residential Property”** means, in any Fiscal Year, all Parcels of Developed Property for which a building permit was issued for construction of one or more Residential Units.

**“Special Taxes”** means, collectively, the Facilities Special Tax and the Services Special Tax.

**“Taxable HOA Property”** means, in any Fiscal Year after the First Bond Sale, any Parcel of HOA Property that satisfies all three of the following conditions: (i) the Parcel had not been HOA Property on the date of the First Bond Sale; (ii) based on reference to Attachments I and 2 (as may be updated pursuant to Section D below), the Parcel was not anticipated to be HOA Property based on the Expected Land Uses, as determined by the Administrator; and (iii) if the Parcel were to be exempt from the Facilities Special Tax because it has become HOA Property, the Expected Maximum Facilities Special Tax Revenues would be reduced to a point at which Required Coverage could not be maintained.

**“Taxable Property”** means all Parcels within the boundaries of Improvement Area No. 2 which are not exempt from the Special Taxes pursuant to law or Section G below.

**“Taxable Public Property”** means, in any Fiscal Year after the First Bond Sale, any Parcel of Public Property that satisfies all three of the following conditions: (i) the Parcel had not been Public Property on the date of the First Bond Sale, (ii) based on reference to Attachments 1 and 2 (as may be updated pursuant to Section D.1 below), the Parcel was not anticipated to be Public Property based on the Expected Land Uses, as determined by the Administrator, and (iii) if the Parcel were to be exempt from the Facilities Special Tax because it has become Public Property, the Expected Maximum Facilities Special Tax Revenues would be reduced to a point at which Required Coverage could not be maintained.

**“Taxable Welfare Exemption Property”** means in any Fiscal Year after the First Bond Sale, any Parcel of Welfare Exemption Property that satisfies all three of the following conditions: (i) the Parcel had not been Welfare Exemption Property on the date of issuance of the First Bond Sale; (ii) based on reference to Attachments 1 and 2 (as may be updated pursuant to Section D herein), the Parcel was not anticipated to be Welfare Exemption Property based on the Expected Land Uses, as determined by the Administrator; and (iii) if the Parcel were to be exempt from the Facilities Special Tax because it has become Welfare Exemption Property, the Expected Maximum Facilities Special Tax Revenues would be reduced to a point at which Required Coverage could not be maintained.

**“Tentative Map”** means any tentative map or vesting tentative map for Phase 1B of the Tracy Hills project, approved by the City Council and as may be amended from time to time.

**“Trigger Event”** means, in any Fiscal Year, that, on or before June 30 of the prior Fiscal Year, the Administrator made a finding that (i) all Bonds secured by the levy and collection of Facilities Special Taxes in the CFD have been fully repaid, (ii) all Administrative Expenses from prior Fiscal Years have been paid or reimbursed to the City, (iii) the Recycled Water Facilities Costs have been fully funded, and (iv) there are no other Authorized Facilities that the City intends to fund with Facilities Special Taxes. In the first Fiscal Year in which the Administrator determines that the Trigger Event occurred in the prior Fiscal Year, and in each Fiscal Year thereafter, the Facilities Special Tax shall cease to be levied, and the Maximum Services Special Tax for each Parcel shall be adjusted pursuant to Section C.2 below.

**“Undeveloped Property”** means, in any Fiscal Year, all Parcels of Taxable Property that are not Developed Property, Taxable HOA Property, Taxable Welfare Exemption Property, or Taxable Public Property.

**“Village”** means a specific geographic area within Improvement Area No. 2 that (i) is identified by an assigned number on the Tentative Map, (ii) is expected to have single family lots that are all of a similar size, and (iii) is assigned Expected Maximum Facilities Special Tax Revenues in Attachment 1 based on the Expected Land Uses for that Village.

**“Welfare Exemption Property”** means, in any Fiscal Year, any Parcels in Improvement Area No. 2 that have received a welfare exemption under subdivision (g) of Section 214 of the Revenue and Taxation Code and for which such welfare exemption is still in place.

**B. DATA FOR ADMINISTRATION OF SPECIAL TAX**

Each Fiscal Year, the Administrator shall (i) categorize each Parcel of Taxable Property as Developed Property, Undeveloped Property, Taxable Public Property, Taxable HOA Property, or Taxable Welfare Exemption Property; (ii) for Single Family Residential Property, determine within which Village each Parcel of Developed Property is located and the number of Residential Units on the Parcel; and (iii) determine the Facilities Special Tax Requirement and Services Special Tax Requirement for the Fiscal Year. In addition, the Administrator shall, *on an ongoing basis*, monitor Final Maps and condominium plans to determine if there are any proposed changes to the Expected Land Uses that would reduce the Expected Maximum Facilities Special Tax Revenues for a Village. If the Expected Maximum Facilities Special Tax Revenues will be reduced pursuant to a proposed Land Use Change, the Administrator shall apply the steps set forth in Section D.1 below.

In any Fiscal Year, if it is determined that: (i) a parcel map for property in Improvement Area No. 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 shall calculate the Special Taxes for the property affected by recordation of the parcel map by determining the Special Taxes that apply separately to the property within each Development Class, then applying the sum of the individual Special Taxes to the Parcel that was subdivided by recordation of the parcel map.

**C. MAXIMUM SPECIAL TAX**

*1. Facilities Special Tax*

Table 1 below identifies the Maximum Facilities Special Tax, before and after the Trigger Event, for Taxable Property in Improvement Area No. 2, subject to potential adjustments that may occur pursuant to Section D below.

**TABLE 1  
IMPROVEMENT AREA NO. 2  
MAXIMUM FACILITIES SPECIAL TAX**

Land Use	Maximum Facilities Special Tax Prior to Trigger Event Fiscal Year 2022-23*	Maximum Facilities Special Tax After Trigger Event
<u>Single Family Residential Property</u>		
Village 9A	\$4,795 per Residential Unit	\$0 per Residential Unit
Village 9B	\$5,844 per Residential Unit	\$0 per Residential Unit
Village 10A	\$5,017 per Residential Unit	\$0 per Residential Unit
Village 10B	\$5,017 per Residential Unit	\$0 per Residential Unit
Village 10C	\$5,017 per Residential Unit	\$0 per Residential Unit
Village 11A	\$4,315 per Residential Unit	\$0 per Residential Unit
Village 11B	\$4,315 per Residential Unit	\$0 per Residential Unit
Other Property	\$47,285 per Acre	\$0 per Acre
Taxable Public Property		
Taxable HOA Property	\$47,285 per Acre	\$0 per Acre
Taxable Welfare Exemption Property		
Undeveloped Property	\$47,285 per Acre	\$0 per Acre

\* On July 1, 2023 and on each July 1 thereafter, all figures shown in Table 1 above shall be increased by an amount equal to 2.0% of the amount in effect for the prior Fiscal Year.

*2. Services Special Tax*

Table 2 below identifies the Maximum Services Special Tax, before and after the Trigger Event, for Taxable Property in Improvement Area No. 2.

**TABLE 2  
IMPROVEMENT AREA NO. 2  
MAXIMUM SERVICES SPECIAL TAX**

Type of Property	Maximum Services Special Tax Prior to Trigger Event	Maximum Services Special Tax After Trigger Event Fiscal Year 2022-23*
<u>Single Family Residential Property</u>		
Village 9A	\$0 per Residential Unit	\$959 per Residential Unit
Village 9B	\$0 per Residential Unit	\$1,169 per Residential Unit
Village 10A	\$0 per Residential Unit	\$1,004 per Residential Unit
Village 10B	\$0 per Residential Unit	\$1,004 per Residential Unit
Village 10C	\$0 per Residential Unit	\$1,004 per Residential Unit
Village 11A	\$0 per Residential Unit	\$863 per Residential Unit
Village 11B	\$0 per Residential Unit	\$863 per Residential Unit
Other Property	\$0 per Acre	\$9,460 per Acre
Taxable Public Property Taxable HOA Property	\$0 per Acre	\$9,460 per Acre
Undeveloped Property	\$0 per Acre	\$9,460 per Acre

\* Beginning July 1, 2023 and each July 1 thereafter until the Transition Event, the Services Special Taxes in Table 2 shall be increased by 2.0% of the amount in effect in the prior Fiscal Year. On July 1 of the Fiscal Year after the Transition Event and each July 1 thereafter, the Services Special Taxes and the Maximum Services Special Tax assigned to each Parcel shall be adjusted by the Escalation Factor.

Once Special Taxes have been levied on a Parcel of Developed Property, the Maximum Special Taxes applicable to that Parcel shall not be reduced in future Fiscal Years regardless of changes in land use on the Parcel, except (i) in the event of a partial prepayment pursuant to Section H, and (ii) pursuant to Section D. Notwithstanding the foregoing: (i) if Bonds have yet to be issued for Improvement Area No. 2, the Parcels can be assigned to the appropriate special tax category based on the Land Use Change, and the Administrator shall recalculate the Expected Maximum Facilities Special Tax Revenues based on the corresponding change in revenues, and (ii) the actual Special Taxes levied on a Parcel of Developed Property in any Fiscal Year may be less than the Maximum Special Taxes if lower Special Taxes are calculated pursuant to Step 1 in Sections E.1 and E.2 below.

**D. CHANGES TO MAXIMUM SPECIAL TAXES**

The Expected Maximum Facilities Special Tax Revenues were calculated based on the Expected Land Uses at the IA No. 2 Lien Date. The Administrator shall review Final Maps, Tentative Map revisions, and other changes to land uses proposed within Improvement Area No. 2 and compare the revised land uses to the Expected Land Uses to evaluate the impact on the Expected Maximum Facilities Special Tax Revenues.

*1. Changes in Expected Land Uses*

If, prior to the First Bond Sale, a Land Use Change is proposed that will result in a reduction in the Expected Maximum Facilities Special Tax Revenues, no action will be needed pursuant to this

Section D.1. Upon approval of the Land Use Change, the Administrator shall update Attachment 1 to show the reduced Expected Maximum Facilities Special Tax Revenues.

If, prior to the Final Bond Sale, a Land Use Change is proposed that will result in a reduction in the Expected Maximum Facilities Special Tax Revenues, no action will be needed pursuant to this Section D.1 as long as the reduction does not reduce debt service coverage on outstanding Bonds below the Required Coverage. Upon approval of the Land Use Change, the Administrator shall update Attachment 1 to show the reduced Expected Maximum Facilities Special Tax Revenues, which amount shall be used to size the Final Bond Sale.

If a Land Use Change is proposed after the Final Bond Sale, the following steps shall be applied:

- Step 1:** By reference to Attachment 1 (which will be updated by the Administrator each time a Land Use Change has been processed according to this Section D.1 and or pursuant to Section D.2), the Administrator shall identify the Expected Maximum Facilities Special Tax Revenues for Improvement Area No. 2.
- Step 2:** The Administrator shall calculate the Expected Maximum Facilities Special Tax Revenues that could be collected from property in Improvement Area No. 2 if the Land Use Change is approved.
- Step 3:** If the amount calculated in Step 2 is higher than that determined in Step 1, no further action is needed. If the revenues calculated in Step 2 are less than those calculated in Step 1, and if the landowner requesting the Land Use Change does not prepay the portion of the Expected Maximum Facilities Special Tax Revenues in an amount that corresponds to the lost revenue, then the Maximum Facilities Special Tax for each Parcel of Taxable Property in the area affected by the Land Use Change shall be increased proportionately until the aggregate Expected Maximum Facilities Special Tax Revenues that can be generated from the area affected by the Land Use Change is the same as it was prior to the Land Use Change.

If multiple Land Use Changes are proposed simultaneously by a single land owner (which may include approval of multiple Final Maps at one time), the Administrator may consider the combined effect of all the Land Use Changes to determine if there is a reduction in Expected Maximum Facilities Special Tax Revenues. If there is a reduction, the Administrator shall increase the Maximum Facilities Special Tax proportionately in all of the Final Maps being proposed by the landowner until the aggregate amount that can be levied within the Final Maps is equal to the amount that could have been levied prior to the proposed Land Use Changes. If Land Use Changes are proposed simultaneously by multiple landowners, the Administrator shall consider the proposed Land Use Changes individually.

2. *Transfer of Expected Maximum Facilities Special Tax Revenues from One Village to Another*

The Expected Maximum Facilities Special Tax Revenues were determined for each Village based on the Expected Land Uses within that Village. If the expected number of Residential Units is transferred from one Village to another, the City may, in its sole discretion, allow for a corresponding transfer of Expected Maximum Facilities Special Tax Revenues between the

Villages. Such a transfer shall only be allowed if (i) all adjustments are agreed to in writing by the affected property owners and the City, and (ii) there is no reduction in the total Expected Maximum Facilities Special Tax Revenues as a result of the transfer.

3. *Conversion of a Parcel of Public Property to Private Use*

If, in any Fiscal Year, a Parcel of Public Property is converted to private use, such Parcel shall be subject to the levy of Special Taxes. The Maximum Special Taxes for each such Parcel shall be determined based on the average Maximum Special Taxes for Parcels with similar land use designations, as determined by the Administrator.

**E. METHOD OF LEVY OF THE SPECIAL TAXES**

1. *Facilities Special Tax*

Each Fiscal Year, the Administrator shall determine the Facilities Special Tax Requirement and levy the Facilities Special Tax on all Parcels of Taxable Property as follows:

**Step 1:** In the first twenty (20) Fiscal Years in which a Facilities Special Tax is levied within Improvement Area No. 2, the Maximum Facilities Special Tax shall be levied on all Parcels of Developed Property. In the first fourteen (14) Fiscal Years in which Facilities Special Taxes are collected, and in the 16<sup>th</sup>, 17<sup>th</sup>, 18<sup>th</sup>, 19<sup>th</sup> and 20<sup>th</sup> Fiscal Years in which Facilities Special Taxes are collected, Facilities Special Tax proceeds that are determined by the Administrator to be Remainder Taxes shall be deposited into the Improvement Fund to pay any costs associated with the acquisition of Authorized Facilities that were not paid with Bond proceeds or Facilities Special Taxes levied in prior Fiscal Years. Any Remainder Taxes collected in the 15<sup>th</sup> year in which Facilities Special Taxes are levied shall be available to pay for Authorized Facilities or Authorized Services as determined in the sole discretion of the City.

Beginning in the 21<sup>st</sup> Fiscal Year in which a Facilities Special Tax is levied within Improvement Area No. 2 and continuing until the Trigger Event, the Facilities Special Tax shall be levied Proportionately on each Parcel of Developed Property up to 100% of the Maximum Facilities Special Tax for each Parcel of Developed Property until the amount levied is equal to the Facilities Special Tax Requirement, the calculation of which will include funding for Recycled Water Facilities Costs and/or other Authorized Facilities designated for funding, as determined in the sole discretion of the City. After the Trigger Event, the Facilities Special Tax shall no longer be levied.

**Step 2:** If additional revenue is needed after Step 1 and after applying Capitalized Interest to the Facilities Special Tax Requirement, the Facilities Special Tax shall be levied Proportionately on each Parcel of Undeveloped Property up to 100% of the Maximum Facilities Special Tax for each Parcel of Undeveloped Property.

- Step 3:** If additional revenue is needed after Step 2, the Facilities Special Tax shall be levied Proportionately on each Parcel of Taxable Welfare Exemption Property, up to 100% of the Maximum Facilities Special Tax for each Parcel of Taxable Welfare Exemption Property.
- Step 4:** If additional revenue is needed after Step 3, the Facilities Special Tax shall be levied Proportionately on each Parcel of Taxable HOA Property, up to 100% of the Maximum Facilities Special Tax for each Parcel of Taxable HOA Property.
- Step 5:** If additional revenue is needed after Step 4, the Facilities Special Tax shall be levied Proportionately on each Parcel of Taxable Public Property, up to 100% of the Maximum Facilities Special Tax for each Parcel of Taxable Public Property.

2. *Services Special Tax*

Each Fiscal Year after the Trigger Event, the Administrator shall determine the Services Special Tax Requirement and levy the Services Special Tax on all Parcels of Taxable Property as follows:

- Step 1:** The Services Special Tax shall be levied Proportionately on each Parcel of Developed Property up to 100% of the Maximum Services Special Tax for each Parcel of Developed Property until the amount levied is equal to the Services Special Tax Requirement.
- Step 2:** If additional revenue is needed after Step 1, the Services Special Tax shall be levied Proportionately on each Parcel of Undeveloped Property, up to 100% of the Maximum Services Special Tax for each Parcel of Undeveloped Property.
- Step 3:** If additional revenue is needed after Step 2, the Services Special Tax shall be levied Proportionately on each Parcel of Taxable HOA Property, up to 100% of the Maximum Services Special Tax for each Parcel of Taxable HOA Property.
- Step 4:** If additional revenue is needed after Step 3, the Services Special Tax shall be levied Proportionately on each Parcel of Taxable Public Property, up to 100% of the Maximum Services Special Tax for each Parcel of Taxable Public Property.

**F. MANNER OF COLLECTION OF SPECIAL TAXES**

The Special Taxes for Improvement Area No. 2 shall be collected in the same manner and at the same time as ordinary ad valorem property taxes, provided, however, that partial prepayments are permitted as set forth in Section H below and provided further that the City may directly bill the Special Taxes, may collect Special Taxes at a different time or in a different manner, and may collect delinquent Special Taxes through foreclosure or other available methods.

The Facilities Special Tax shall be levied and collected until principal and interest on Bonds have been repaid, costs of constructing or acquiring Authorized Facilities from Facilities Special Tax proceeds have been paid, and all Administrative Expenses have been paid or reimbursed. However,

in no event shall Facilities Special Taxes be levied for more than eighty (80) Fiscal Years. Under no circumstances may the Facilities Special Tax on a Parcel in residential use be increased in any Fiscal Year as a consequence of delinquency or default in payment of the Facilities Special Tax levied on another Parcel or Parcels by more than ten percent (10%) above the amount that would have been levied in that Fiscal Year had there never been any such delinquencies or defaults. After the Trigger Event, the Services Special Tax may be levied and collected in perpetuity.

#### **G. EXEMPTIONS**

Any Parcel that becomes HOA Property, Public Property, or Welfare Exemption Property prior to the First Bond Sale shall be exempt from both the Services Special Tax and the Facilities Special Tax; the Administrator shall reduce the Expected Maximum Facilities Special Tax Revenues to reflect any such exemption, and the First Bond Sale shall be sized based on the reduced Expected Maximum Facilities Special Tax Revenues. Any Parcel that becomes HOA Property, Public Property, or Welfare Exemption Property after the First Bond Sale shall be exempt from both the Services Special Tax and the Facilities Special Tax provided such Parcel is not Taxable HOA Property, Taxable Public Property or Taxable Welfare Exemption Property.

In addition, no Special Taxes shall be levied on (i) Parcels that are designated as permanent open space or common space on which no structure is permitted to be constructed, (ii) Parcels owned by a public utility for an unmanned facility, and (iii) Parcels subject to an easement that precludes any use on the Parcel other than that permitted by the easement. Notwithstanding the foregoing, if a Facilities Special Tax has been levied on a Parcel in any Fiscal Year, and the entire Parcel subsequently meets the criteria in (i), (ii) or (iii) above, the Parcel shall remain subject to the Facilities Special Tax levy, unless the First Bond Sale has not occurred, in which case such property shall be categorized as Public Property, and the Administrator shall recalculate the Expected Maximum Facilities Special Tax Revenues based on the corresponding loss in revenues.

#### **H. PARTIAL PREPAYMENT OF FACILITIES SPECIAL TAX**

The following definitions apply to this Section H:

**“Outstanding Bonds”** means all Previously Issued Bonds which remain outstanding, with the following exception: if a Facilities Special Tax has been levied against, or already paid by, an Assessor’s Parcel making a prepayment, and a portion of the Facilities Special Tax will be used to pay a portion of the next principal payment on the Bonds that remain outstanding (as determined by the Administrator), that next principal payment shall be subtracted from the total Bond principal that remains outstanding, and the difference shall be used as the amount of Outstanding Bonds for purposes of this prepayment formula.

**“Previously Issued Bonds”** means all Bonds that have been issued prior to the date of prepayment.

**“Public Facilities Requirements”** means: (i) \$28,730,000 in Fiscal Year 2022-23 dollars, which amount shall, on July 1, 2023 and on each July 1 thereafter, be increased by an amount equal to 2.0% of the amount in effect for the prior Fiscal Year, or (ii) such other number as shall be determined by the City to be an appropriate estimate of the net



construction proceeds that will be generated from all Bonds that have been or are expected to be issued on behalf of Improvement Area No. 2.

**“Remaining Facilities Costs”** means the Public Facilities Requirements (as defined above), minus public facility costs funded by Previously Issued Bonds (as defined above), Remainder Taxes, or prepayments.

A property owner may prepay up to 80% of the Facilities Special Tax obligation applicable to a Parcel in Improvement Area No. 2, 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
<u>less</u>	<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:** Take the amount computed pursuant to Step 8 and subtract the amount computed pursuant to Step 9 (*the "Defeasance Requirement"*).
- Step 11.** Determine the costs of computing the prepayment amount, redeeming Bonds, and recording any notices to evidence the prepayment and redemption (*the "Administrative Fees and Expenses"*).
- Step 12.** If and to the extent so provided in the Indenture, a reserve fund credit shall be calculated as a reduction in the applicable reserve fund for the Outstanding Bonds to be redeemed pursuant to the prepayment (*the "Reserve Fund Credit"*).
- Step 13.** The Facilities Special Tax prepayment is equal to the sum of the amounts computed pursuant to Steps 4, 6, 7, 10, and 11, less the amount computed pursuant to Step 12 (*the "Prepayment Amount"*).
- Step 14.** From the Prepayment Amount, the amounts computed pursuant to Steps 4, 7, and 10 shall be deposited into the appropriate fund as established under the Indenture and be used to retire Outstanding Bonds or make debt service payments. The amount computed pursuant to Step 6 shall be deposited into the Improvement Fund. The amount computed pursuant to Step 11 shall be retained in the account or fund that is established to pay Administrative Expenses.

Once a partial prepayment of a Facilities Special Tax has been received, an Amendment to Special Tax Lien shall be recorded against the Parcel to reflect the reduced Facilities Special Tax lien for the Parcel, which shall be equal to the portion of the Maximum Facilities Special Tax that was not prepaid. However, an Amendment to Special Tax Lien shall not be recorded until all Facilities Special Taxes levied on the Parcel in the current or prior Fiscal Years have been collected. The

prepayment of a portion of the Facilities Special Tax shall not affect the perpetual obligation to pay the Services Special Tax.

Notwithstanding the foregoing, if at any point in time the Administrator determines that the Maximum Facilities Special Tax revenue that could be collected from Taxable Property that remains subject to the Facilities Special Tax after the proposed prepayment would be less than the Required Coverage on Bonds that will remain outstanding after defeasance or redemption of Bonds from proceeds of the estimated prepayment, the amount of the prepayment shall be increased until the amount of Bonds defeased or redeemed is sufficient to reduce remaining annual debt service to a point at which Required Coverage is maintained.

**I. INTERPRETATION OF SPECIAL TAX FORMULA**

The City may interpret, clarify, and revise this RMA to correct any inconsistency, vagueness, or ambiguity, by resolution and/or ordinance, that does not create a material adverse effect on the levy and collection of the Special Taxes and any security for any Bonds.

**ATTACHMENT 1**

**Improvement Area No. 2 of the  
City of Tracy  
Community Facilities District No. 2016-1  
(Tracy Hills)**

**Expected Land Uses and Expected Maximum Facilities Special Tax Revenues**

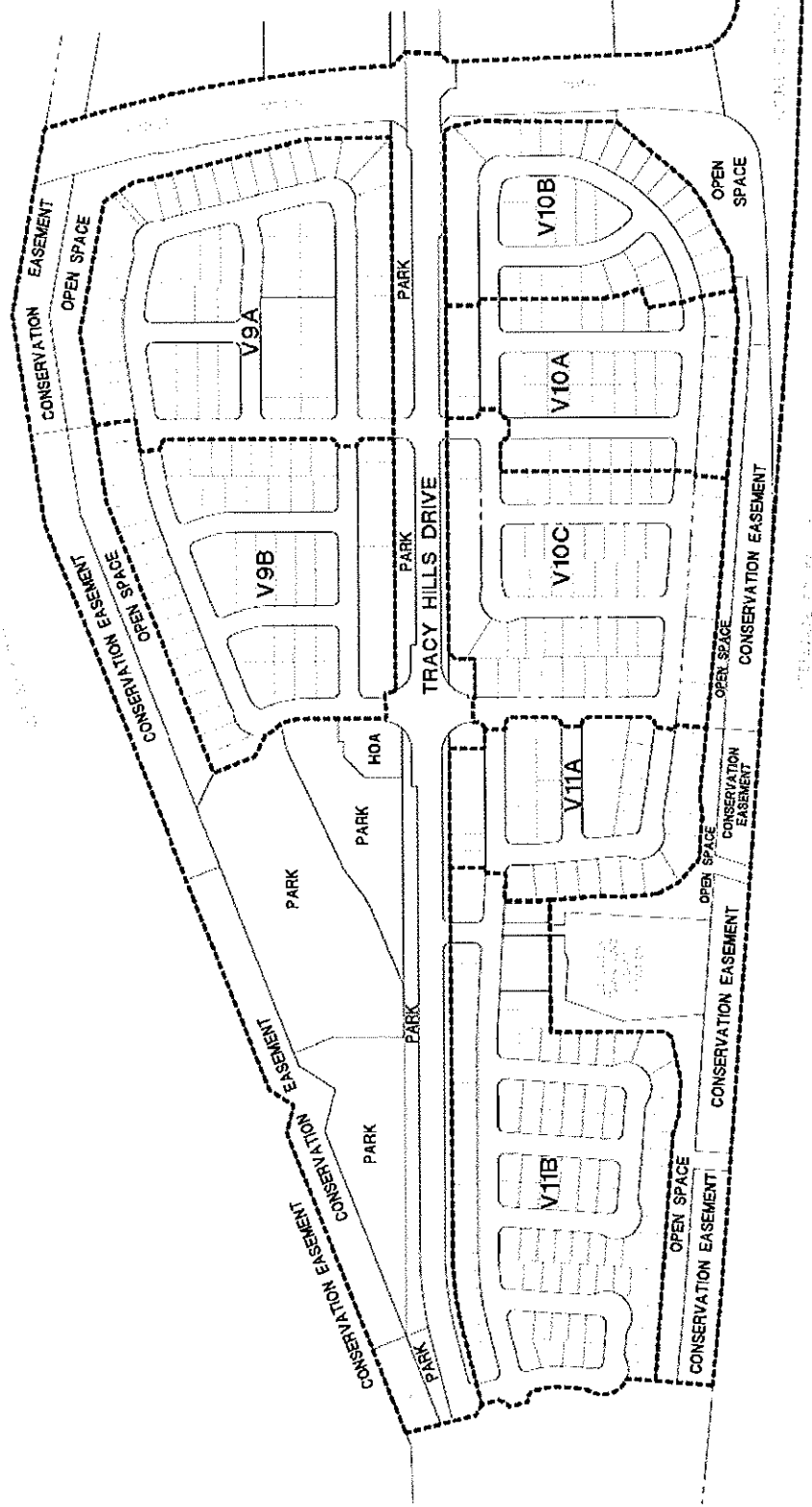
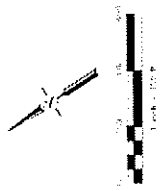
<b>Village</b>	<b>Expected Land Uses</b>	<b>Maximum Facilities Special Tax per Unit FY 2022-23 /1</b>	<b>Expected Maximum Facilities Special Tax Revenues FY 2022-23 /1</b>
Village 9A	69 Residential Units	\$4,795 per Residential Unit	\$330,855
Village 9B	64 Residential Units	\$5,844 per Residential Unit	\$374,016
Village 10A	47 Residential Units	\$5,017 per Residential Unit	\$235,799
Village 10B	41 Residential Units	\$5,017 per Residential Unit	\$205,697
Village 10C	62 Residential Units	\$5,017 per Residential Unit	\$311,054
Village 11A	45 Residential Units	\$4,315 per Residential Unit	\$194,175
Village 11B	104 Residential Units	\$4,315 per Residential Unit	\$448,760
N/A	0 Acres of Other Property	\$47,285 per Acre	\$0
<b>Total</b>	<b>432 Residential Units and 0 Acres of Other Property</b>	<b>N/A</b>	<b>\$2,100,356</b>

1. On July 1, 2023 and each July 1 thereafter, the Maximum Facilities Special Tax per Residential Unit and the Expected Maximum Facilities Special Tax Revenues shall be increased by two percent (2%) of the amount in effect in the prior Fiscal Year.

**ATTACHMENT 2**

**Improvement Area No. 2 of the  
City of Tracy  
Community Facilities District No. 2016-1  
(Tracy Hills)**

**Expected Lot Layout**

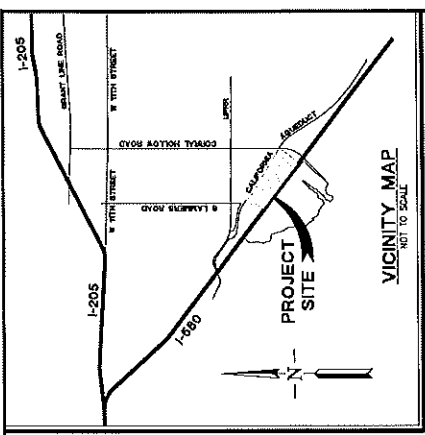
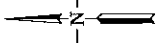
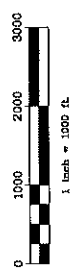
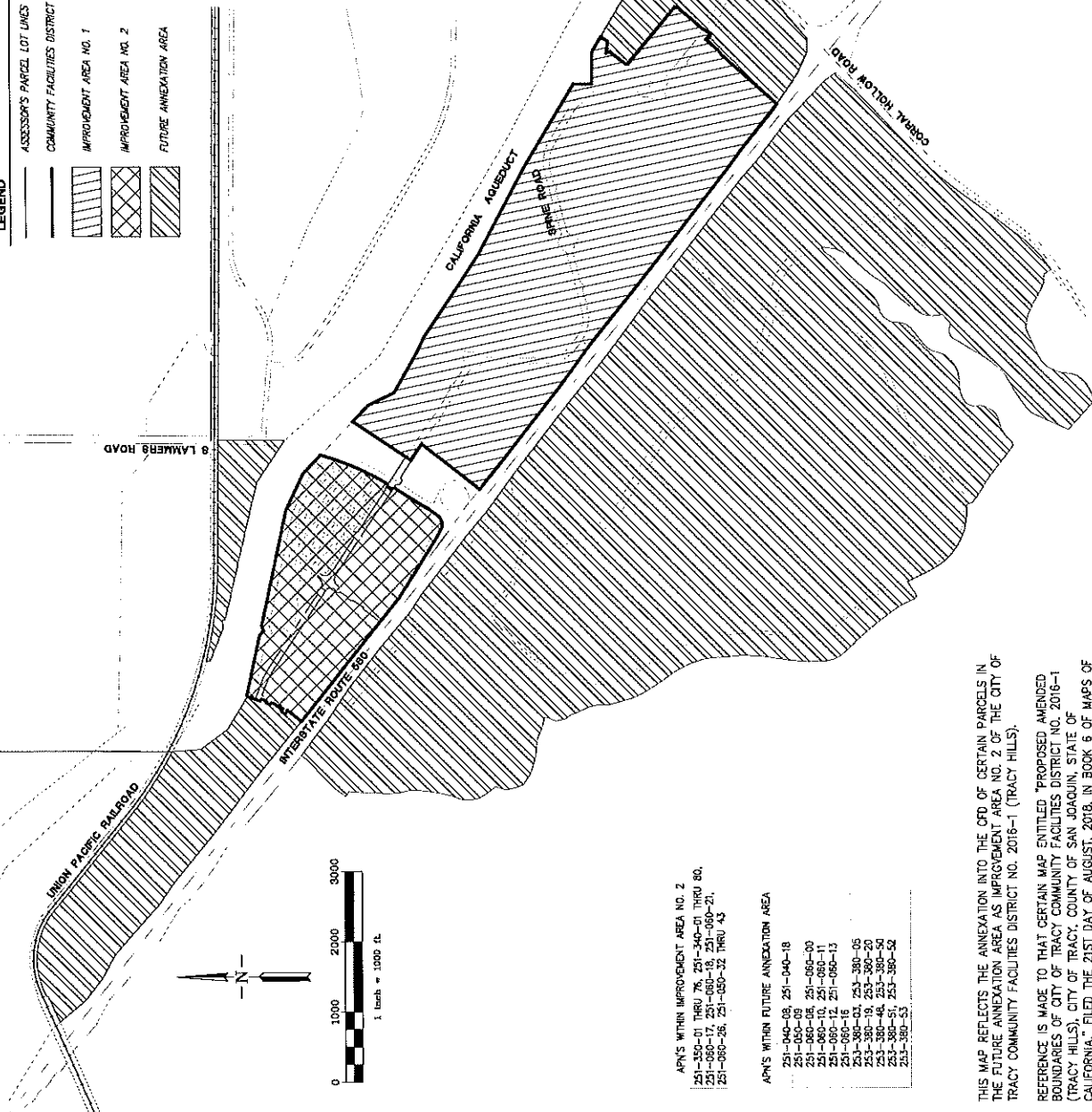


**ATTACHMENT 2**  
**TRACY HILLS 1B - EXPECTED LOT LAYOUT IN**  
**IMPROVEMENT AREA NO 2 OF THE TRACY HILLS CFD 2016-1**  
CITY OF TRACY, SAN JOAQUIN COUNTY, CALIFORNIA

**EXHIBIT C**  
**PROPOSED ANNEXATION MAP**

[attached]

- LEGEND**
- ASSESSOR'S PARCEL LOT LINES
  - COMMUNITY FACILITIES DISTRICT NO. 2016-1
  - IMPROVEMENT AREA NO. 1
  - IMPROVEMENT AREA NO. 2
  - FUTURE ANNEXATION AREA



**ANNEXATION MAP NO. 1  
CITY OF TRACY  
COMMUNITY FACILITIES DISTRICT 2016-1  
(TRACY HILLS)  
CITY OF TRACY  
COUNTY OF SAN JOAQUIN  
STATE OF CALIFORNIA**

Filed in the office of the City Clerk of the City of Tracy  
this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

City Clerk

I hereby certify that the within map showing boundaries of  
Annexation No. 1 to the City of Tracy Community Facilities  
District No. 2016-1 (Tracy Hills), City of Tracy, County of San  
Joaquin, State of California, was approved by the City Council of  
the City of Tracy, at a meeting thereof, held on the \_\_\_\_\_ day  
of \_\_\_\_\_, 2022, by its Resolution No. \_\_\_\_\_

City Clerk

Filed this \_\_\_\_\_ day of \_\_\_\_\_, 2022, 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



**RUGGERI-JENSEN-AZAR**  
ENGINEERS • PLANNERS • SURVEYORS  
2541 WARREN DRIVE, SUITE 100, ROCKY HILL, CA 95231  
PHONE: (916) 939-9980 FAX: (916) 639-9989

JOB NO. 121088 SHEET 1 OF 1

- APNs WITHIN IMPROVEMENT AREA NO. 2
- 251-350-01 THRU 76, 251-340-01 THRU 80,
  - 251-060-17, 251-060-18, 251-060-21,
  - 251-060-26, 251-060-32 THRU 43

- APNs WITHIN FUTURE ANNEXATION AREA
- 251-040-08, 251-040-18
  - 251-010-09
  - 251-060-06, 251-060-09
  - 251-060-10, 251-060-11
  - 251-060-12, 251-060-13
  - 251-380-01, 251-380-05
  - 251-380-19, 251-380-20
  - 251-380-48, 251-380-50
  - 251-380-51, 251-380-52
  - 251-380-53

THIS MAP REFLECTS THE ANNEXATION INTO THE CFD OF CERTAIN PARCELS IN  
THE FUTURE ANNEXATION AREA AS IMPROVEMENT AREA NO. 2 OF THE CITY OF  
TRACY COMMUNITY FACILITIES DISTRICT NO. 2016-1 (TRACY HILLS).

REFERENCE IS MADE TO THAT CERTAIN MAP ENTITLED "PROPOSED AMENDED  
BOUNDARIES OF CITY OF TRACY COMMUNITY FACILITIES DISTRICT NO. 2016-1  
(TRACY HILLS), CITY OF TRACY, COUNTY OF SAN JOAQUIN, STATE OF  
CALIFORNIA," FILED THE FIRST DAY OF AUGUST 2016, IN BOOK 6 OF MAPS OF  
ASSESSMENT AND COMMUNITY FACILITIES DISTRICTS, AT PAGE 134 IN THE OFFICE  
OF THE COUNTY OF SAN JOAQUIN, STATE OF CALIFORNIA, WHICH THIS  
ANNEXATION MAP NO. 1, AFFECTS.



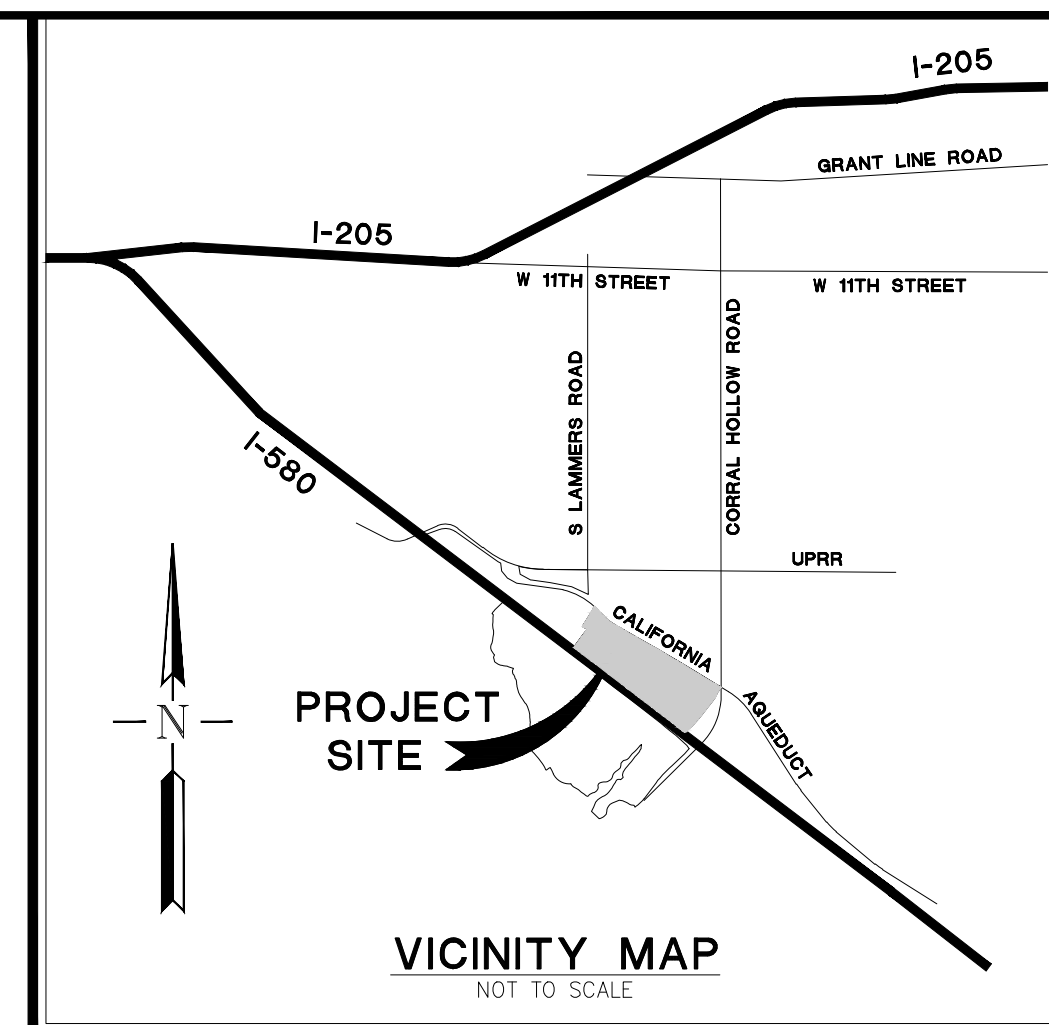
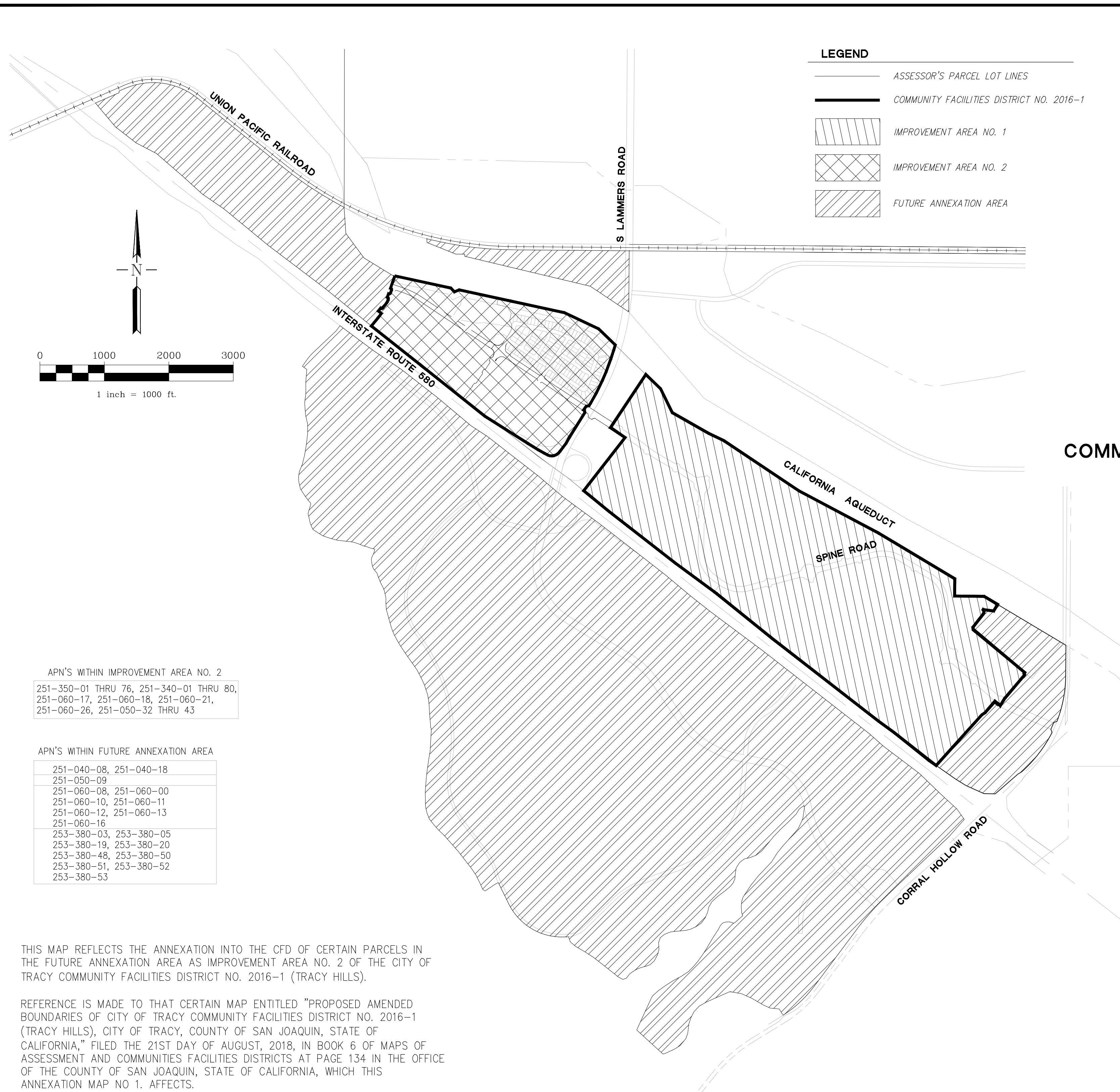
**EXHIBIT C**

**NOTICE OF SPECIAL TAX LIEN**

**IMPROVEMENT AREA NO. 2 OF THE  
CITY OF TRACY  
COMMUNITY FACILITIES DISTRICT 2016-1  
(TRACY HILLS)**

**ASSESSOR'S PARCEL NUMBERS AND OWNERS OF LAND  
WITHIN IMPROVEMENT AREA NO. 2**

<b>Owner</b>	<b>APN</b>
AG Essential Housing CA 1, L.P., a Delaware limited partnership	251-340-01 to 251-340-25, inclusive 251-340-43 to 251-340-45, inclusive 251-340-47 to 251-340-64, inclusive 251-340-68 to 251-340-78, inclusive 251-340-80 251-060-17 251-060-18 251-350-03 251-350-04 251-350-17 to 251-350-42, inclusive 251-350-46 to 251-350-76, inclusive 251-050-32 to 251-050-41, inclusive 251-060-21 (Portion) 251-050-43 251-050-42 251-060-26
Lennar Homes of California, LLC, a California limited liability company	251-340-26 to 251-340-42, inclusive 251-340-46 251-340-65 to 251-340-67, inclusive 251-350-01 251-350-02 251-350-05 to 251-350-16, inclusive 251-350-43 to 251-350-45, inclusive 251-060-21 (Portion)



APN'S WITHIN IMPROVEMENT AREA NO. 2  
 251-350-01 THRU 76, 251-340-01 THRU 80,  
 251-060-17, 251-060-18, 251-060-21,  
 251-060-26, 251-050-32 THRU 43

APN'S WITHIN FUTURE ANNEXATION AREA

251-040-08, 251-040-18
251-050-09
251-060-08, 251-060-00
251-060-10, 251-060-11
251-060-12, 251-060-13
251-060-16
253-380-03, 253-380-05
253-380-19, 253-380-20
253-380-48, 253-380-50
253-380-51, 253-380-52
253-380-53

THIS MAP REFLECTS THE ANNEXATION INTO THE CFD OF CERTAIN PARCELS IN THE FUTURE ANNEXATION AREA AS IMPROVEMENT AREA NO. 2 OF THE CITY OF TRACY COMMUNITY FACILITIES DISTRICT NO. 2016-1 (TRACY HILLS).

REFERENCE IS MADE TO THAT CERTAIN MAP ENTITLED "PROPOSED AMENDED BOUNDARIES OF CITY OF TRACY COMMUNITY FACILITIES DISTRICT NO. 2016-1 (TRACY HILLS), CITY OF TRACY, COUNTY OF SAN JOAQUIN, STATE OF CALIFORNIA," FILED THE 21ST DAY OF AUGUST, 2018, IN BOOK 6 OF MAPS OF ASSESSMENT AND COMMUNITIES FACILITIES DISTRICTS AT PAGE 134 IN THE OFFICE OF THE COUNTY OF SAN JOAQUIN, STATE OF CALIFORNIA, WHICH THIS ANNEXATION MAP NO 1. AFFECTS.

**ANNEXATION MAP NO. 1  
 CITY OF TRACY  
 COMMUNITY FACILITIES DISTRICT 2016-1  
 (TRACY HILLS)  
 CITY OF TRACY  
 COUNTY OF SAN JOAQUIN  
 STATE OF CALIFORNIA**

Filed in the office of the City Clerk of the City of Tracy  
 this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

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

I hereby certify that the within map showing boundaries of Annexation No. 1 to the of City of Tracy Community Facilities District No. 2016-1 (Tracy Hills), City of Tracy, County of San Joaquin, State of California, was approved by the City Council of the City of Tracy, at a meeting thereof, held on the \_\_\_\_ day of \_\_\_\_\_, 2022, by its Resolution No. \_\_\_\_\_.

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

Filed this \_\_\_\_\_ day of \_\_\_\_\_, 2022, 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

AGENDA ITEM 3.B

REQUEST

**STAFF RECOMMENDS THAT THE CITY COUNCIL INTRODUCE AN ORDINANCE AMENDING SECTION 3.08.580 REGARDING SPECIAL SPEED ZONES OF THE TRACY MUNICIPAL CODE TO UPDATE SPEED LIMITS AS REQUIRED BY THE CALIFORNIA VEHICLE CODE**

EXECUTIVE SUMMARY

The proposed ordinance will amend Section 3.08.580, Article 12 of the Tracy Municipal Code to establish speed limits on street segments in accordance with the requirements of the California Vehicle Code (CVC).

DISCUSSION

Section 3.08.580, Article 12, of the Tracy Municipal Code (TMC) establishes speed zones on various streets in the City. The speed limit on streets is established based on engineering and traffic surveys in accordance with the requirements of the California Vehicle Code section 40803 (CVC), and the applicable traffic engineering standards. To allow Law Enforcement to enforce posted traffic speed on streets with use of radar equipment, it is necessary to establish speed limits in accordance with the requirements of the CVC. The CVC requires completion of engineering and traffic surveys to establish posted speeds once every five years. In December of 2021, staff completed engineering and traffic surveys to update speed limits on 21 segments of 16 arterial and collector streets in accordance with the CVC and California Manual of Uniform Traffic Control Devices (CAMUTCD) and recommends introducing an ordinance to amend special speed zones outlined in Section 3.08.580 of the Tracy Municipal Code.

The use of radar equipment is one of the most effective tools for enforcing speed limits and traffic safety on City streets. To allow law enforcement to fully utilize the equipment, it is necessary to establish speed limits in accordance with the requirements of the CVC. In order to legally use radar equipment for speed enforcement, engineering and traffic surveys are needed to establish posted speeds once every five years. Subsection (c) of California Vehicle Code Section 40803 provides that evidence of conducting a speed zone survey within the last five years to establish the prima facie speed for a local street or road shall constitute a prima facie case that such local street or road is not a speed trap for the purposes of radar enforcement.

An engineering and traffic survey was completed on a total of 21 segments of the 16 arterial and collector streets by the Engineering Division. This survey will update the posted speeds and provide the basis for the proposed amendments of the Municipal Code, thus, resulting in continuation of special speed zones with updated speed limits on the street segments listed in Attachment A. Attachment B provides a map where the speed surveys were conducted.

This update to the City's traffic code will establish radar enforceable speed limit zones for arterial and collector streets for the following:

- Balboa Drive
- Beechnut Avenue
- Beverly Place
- Chester Drive
- Clover Road
- Corral Hollow Road
- Cypress Drive
- Eaton Avenue
- Henley Parkway
- Lankershire Drive
- Lowell Avenue
- Middlefield Drive
- Portola Way
- Richard Drive
- Tenth Street
- Third Street

The results of the speed survey recommend that existing speed limits remain unchanged.

The recommendations are based upon the 85<sup>th</sup> percentile speed of surveyed moving vehicles on those streets with consideration given to the existing road site conditions such as street alignment, classification, collisions, etc. The CVC allows further adjustment of the surveyed speed based upon the above conditions. The research indicates that posting speeds lower than the closest 85<sup>th</sup> percentile speed does not lower the speed of motorists.

A copy of the proposed Ordinance Amendment is provided as Attachment C. Attachment D provides an update of the TMC section 3.08.580 special speed zone table.

A copy of all engineering and traffic surveys certified as correct by the City Engineer will be maintained in the Engineering Division files with a duplicate copy on file with the Police Department.

It is observed that some of the surveyed segments were sub-part of longer segments of the roadway in the Tracy Municipal Code for radar enforcement. To differentiate the speed limits on the surveyed segments, it is necessary to add the sub-parts separately and delete the larger segments. This will avoid confusion in establishing the speed limit signs for the various roadway segments and assist in better speed enforcement.

Therefore, the following four roadway segments are recommended to be added to the ordinance for radar enforcement:

<b>Street</b>	<b>Segment</b>	<b>Previously Established</b>	<b>Newly Established</b>	<b>Change</b>
Clover Road	West City limits to Tracy Boulevard	25	25	No Change
Clover Road	Holly Drive to Tracy Boulevard	25	25	No Change
Eaton Avenue	Richard Drive to Tracy Boulevard	25	25	No Change
Eaton Avenue	Tracy Boulevard to East Street	25	25	No Change

The following five roadway segments are recommended to be removed from the ordinance for radar enforcement to avoid duplication of road segments:

<b>Street</b>	<b>Segment</b>	<b>Previously Established</b>	<b>Newly Established</b>	<b>Change</b>
Balboa Drive	Portola Way to Kavanagh Avenue			Delete
Clover Road	West City limits to Holly Drive			Delete
Eaton Avenue	Richard Drive to East Street			Delete
Portola Way	Balboa Drive to Entrada Way			Delete
Tenth Street	Tracy Boulevard to MacArthur Drive			Delete

**FISCAL IMPACT**

There will be no fiscal impact to the General Fund. Enforcement of speed limits is a budgeted item and is the Police Department's responsibility. The current speed survey does not require any signing or striping changes and hence there will be no impact to the existing traffic signing and signage operation budget.

**COORDINATION**

The results of the Engineering and Traffic Survey as shown in Attachments A & B, the updated Special Speed Zone Table in the TMC as shown in Attachment D, and the Speed Zone Report in Attachment E were coordinated with the Police Department and the Operations and Utilities Department. This assists the Police Department for speed enforcement and assists the Operations and Utilities Department to determine any speed limit sign updates in the field.

### CEQA DETERMINATION

The proposed item is categorically exempt from California Environmental Quality Act (CEQA) pursuant to CEQA guidelines Section 15301, which pertains to existing highways and streets. In accordance with CEQA Guidelines, no further environmental assessment is required.

### STRATEGIC PLAN

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

### RECOMMENDATION

Staff recommends that the City Council introduce an ordinance amending Section 3.08.580, regarding special speed zones of the Tracy Municipal Code to update speed limits as required by the California Vehicle Code.

Prepared by: Anju Pillai, PE, Senior Civil Engineer

Reviewed by: Robert Armijo, PE, City Engineer / Assistant Development Services Director  
Randall Bradley, Fire Chief, South San Joaquin County Fire Authority  
Kris Balaji, PMP, PE, Development Services Director  
Sara Cowell, Interim Finance Director  
Midori Lichtwardt, Assistant City Manager

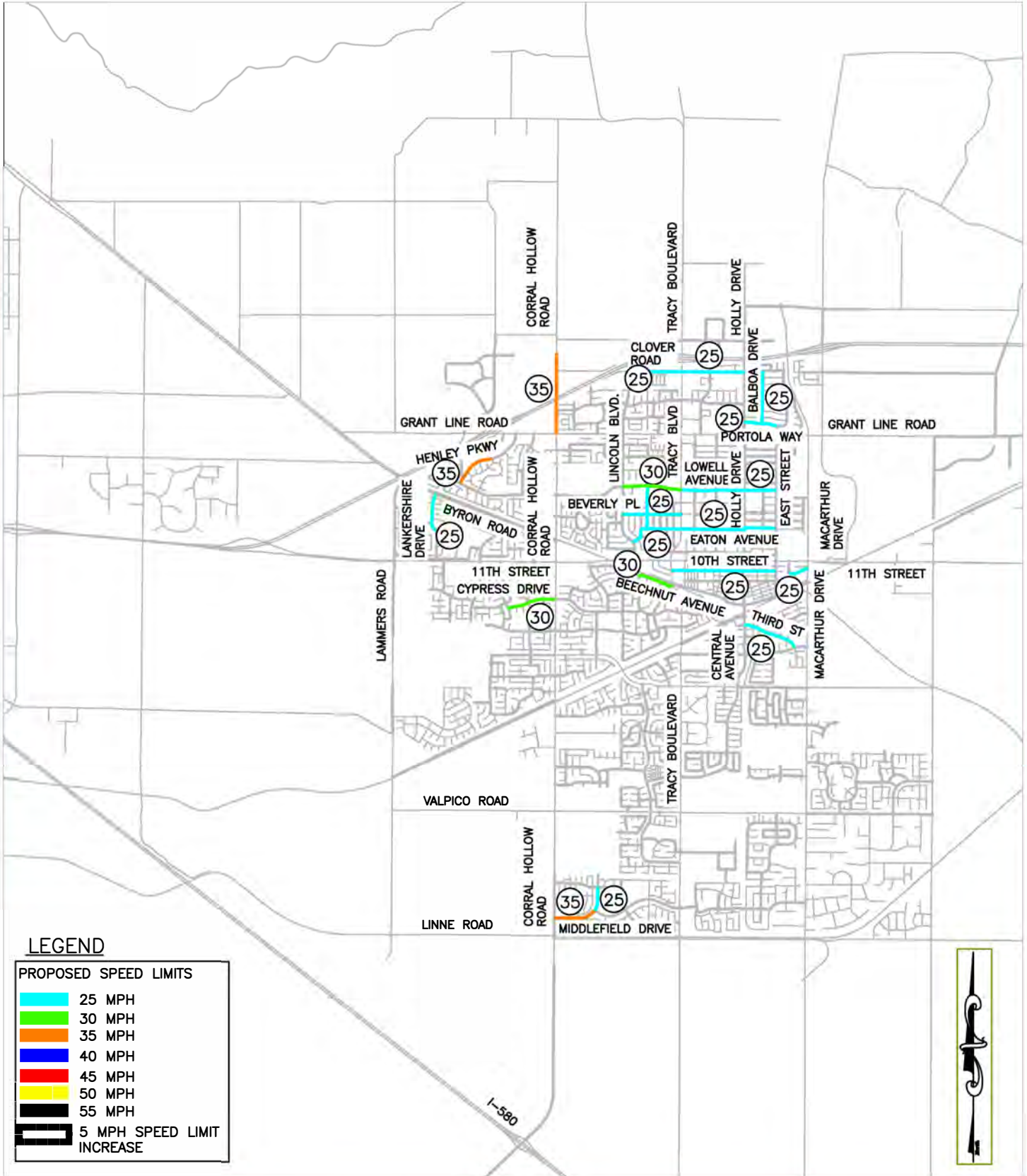
Approved by: Michael Rogers, City Manager

### ATTACHMENTS

Attachment A - Speed Survey Locations  
Attachment B - Speed Survey Map  
Attachment C - Ordinance  
Attachment D - TMC Section Special Speed Zone Table 2021  
Attachment E - Speed Zone Report December 2021

ATTACHMENT A

ATTACHMENT A - CITY OF TRACY SPEED SURVEY LOCATIONS 2021						
SR. NO.	SEGMENT	FROM	TO	PREVIOUSLY ESTABLISHED SPEED LIMIT	85TH PERCENTILE SPEED	PROPOSED SPEED
1	BALBOA DRIVE	PORTOLA WAY	CLOVER ROAD	25	32	25
2	BEECHNUT AVENUE	SEQUOIA BLVD.	TRACY BLVD.	30	36	30
3	BEVERLY PLACE	LINCOLN BLVD.	TRACY BLVD.	25	31	25
4	CHESTER DRIVE	EATON AVENUE	LOWELL AVENUE	25	30	25
5	CLOVER ROAD	WEST CITY LIMITS	TRACY BLVD.	25	30	25
6	CLOVER ROAD	TRACY BLVD	HOLLY DRIVE.	25	32	25
7	CORRAL HOLLOW ROAD	NORTH CITY LIMITS	GRANT LINE ROAD	35	41	35
8	CYPRESS DRIVE	CORRAL HOLLOW ROAD	SUMMER LANE	30	34	30
9	EATON AVENUE	RICHARD DRIVE	TRACY BLVD.	25	32	25
10	EATON AVENUE	TRACY BLVD.	EAST STREET	25	32	25
11	HENLEY PARKWAY	BRIDLE CREEK DRIVE	LOWELL AVENUE	35	38	35
12	LANKERSHIRE DRIVE	MONTGOMERY LANE	BYRON ROAD	25	32	25
13	LOWELL AVENUE	TRACY BLVD.	EAST STREET	25	29	25
14	LOWELL AVENUE	LINCOLN BLVD.	TRACY BLVD.	30	37	30
15	MIDDLEFIELD DRIVE	CORRAL HOLLOW ROAD	WHISPERING WIND DRIVE	35	40	35
16	MIDDLEFIELD DRIVE	WHISPERING WIND DRIVE	PEONY DRIVE	25	31	25
17	PORTOLA WAY	HOLLY DRIVE	ENTRADA WAY	25	31	25
18	RICHARD DRIVE	LINCOLN BLVD.	EATON AVENUE	25	26	25
19	TENTH STREET	CIVIC CENTER DRIVE	MACARTHUR DRIVE	25	28	25
20	TENTH STREET	TRACY BLVD.	EAST STREET	25	31	25
21	THIRD STREET	CENTRAL AVENUE	MT DIABLO AVENUE	25	32	25



**LEGEND**

PROPOSED SPEED LIMITS	
	25 MPH
	30 MPH
	35 MPH
	40 MPH
	45 MPH
	50 MPH
	55 MPH
	5 MPH SPEED LIMIT INCREASE



TRAFFIC SPEED SURVEY  
UPDATE 2021  
ATTACHMENT B

DESIGNED BY  
ET  
DRAWN BY  
ET  
CHECKED BY  
AP  
SCALE  
NTS

PERMIT/REVISION		
NO.	DATE	DESCRIPTION

SHEET  
1  
OF 1 SHEET

CITY OF TRACY  
APPROVED FOR CONSTRUCTION SUBJECT TO THE DATA SHOWN.  
CITY OF TRACY AND THE UNDERSIGNED ARE NOT RESPONSIBLE FOR  
ERRORS AND/OR OMISSION THAT MAY BE PRESENT ON THESE PLANS.  
DESIGNED BY: ET DATE: 06/23/21



APPROVED AS TO FORM AND LEGALITY

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

**TRACY CITY COUNCIL**

**ORDINANCE NO. \_\_\_\_\_**

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**AMENDING SECTION 3.08.580 REGARDING SPECIAL SPEED ZONES OF THE TRACY MUNICIPAL CODE TO UPDATE SPEED LIMITS AS REQUIRED BY THE CALIFORNIA VEHICLE CODE**

**WHEREAS**, The use of radar equipment is one of the most effective tools for enforcing speed limits and traffic safety on City streets; and

**WHEREAS**, Subsection (c) of California Vehicle Code Section 40803 provides that evidence of conducting a speed zone survey within the last five years to establish the prima facie speed for a local street or road shall constitute a prima facie case that such local street or road is not a speed trap for the purposes of radar enforcement; and

**WHEREAS**, City staff completed an Engineering & Traffic survey in December 2021 of 21 segments of 16 arterial and collector streets; and

**WHEREAS**, The survey shows prima facie speed limits for all surveyed street segments remain unchanged; and

**WHEREAS**, It is observed that the some of the surveyed segments were sub-part of longer segments of the roadway in the Tracy Municipal Code for radar enforcement; and

**WHEREAS**, In order to differentiate the speed limits on the surveyed segments, it is necessary to add the sub-parts separately and delete the larger segments; and

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

**SECTION 1. Incorporation of Recitals/Findings.** The City Council finds and determines the foregoing recitals are true and correct and are hereby incorporated herein as findings and determinations of the City.

**SECTION 2. Amended Sections.** Section 3.08.580 of Chapter 3.08 of Title 3 of the Tracy Municipal Code is hereby amended to add the four street portions described below and their established Declared Prima Facie Speed Limit (Miles per Hour) (with additions underlined, and deletions in ~~striketrough~~):

Name of Street and Portion Affected	Declared Prima Facie Speed Limit (Miles per Hour)
- <b><u>Clover Road</u></b> <u>West City limits to Tracy Boulevard</u>	<u>25</u>
- <b><u>Clover Road</u></b> <u>Tracy Boulevard to Holly Drive</u>	<u>25</u>
- <b><u>Eaton Avenue</u></b> <u>Richard Drive to Tracy Boulevard</u>	<u>25</u>
- <b><u>Eaton Avenue</u></b> <u>Tracy Boulevard to East Street</u>	<u>25</u>

**SECTION 3. Amended Sections.** Section 3.08.580 of Chapter 3.08 of Title 3 of the Tracy Municipal Code is hereby amended to delete the five street portions described below to avoid duplication of street segments:

Name of Street and Portion Affected	Declared Prima Facie Speed Limit (Miles per Hour)
<del>— <b>Balboa Drive</b> Portola Way to Kavanagh Avenue</del>	<del>25</del>
<del>— <b>Clover Road</b> West City limits to Holly Drive</del>	<del>25</del>
<del>— <b>Eaton Avenue</b> Richard Drive to East Street</del>	<del>25</del>
<del>— <b>Portola Way</b> Balboa Drive to Entrada Way</del>	<del>25</del>
<del>— <b>Tenth Street</b> Tracy Boulevard to MacArthur Drive</del>	<del>25</del>

**SECTION 4. Remaining Sections.** Except as herein added or changed, the remaining sections of the Tracy Municipal Code, including the Declared Prima Facie Speed Limit (Miles per Hour) for the portions of streets not set forth above, shall remain in full force.

**SECTION 5. Constitutionality.** 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 6. CEQA Determination.** The City Council finds that this Ordinance is exempt from CEQA Guidelines in accordance with CEQA Guidelines section 15301, which pertains to existing highways and streets.

**SECTION 7. Severability.** If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the Chapter. The City Council hereby declares that it would have passed this Ordinance and each section, subsection, clause or phrase thereof irrespective of the fact that one or more other sections, subsections, clauses or phrases may be declared invalid or unconstitutional.

**SECTION 8. Effective Date.** This ordinance shall become effective upon the thirtieth (30<sup>th</sup>) day after final adoption.

**SECTION 9. Publication.** The City Clerk is directed to publish this ordinance in a manner required by law.

**SECTION 10. Codification.** This Ordinance shall be codified in the Tracy Municipal Code.

\* \* \* \* \*

The foregoing Ordinance \_\_\_\_\_ was introduced at a regular meeting of the Tracy City Council on the 6<sup>th</sup> day of September 2022, and finally adopted on the 20<sup>th</sup> day of September 2022, by the following vote:

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

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

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

Date of Attestation: \_\_\_\_\_

## NOTICE AND DIGEST

### **ORDINANCE AMENDING SECTION 3.08.580 REGARDING SPECIAL SPEED ZONES OF THE TRACY MUNICIPAL CODE TO UPDATE SPEED LIMITS AS REQUIRED BY THE CALIFORNIA VEHICLE CODE**

This Ordinance (Ordinance) amends Section 3.08.580 regarding special speed zones of the Tracy Municipal Code to update speed limits as required by the California Vehicle Code section 40803. Based on a Speed Zone Report, this Ordinance does not change any of the posted speed limits in the Special Speed Zones of the Tracy Municipal Code. This Ordinance only breaks up Special Speed Zones to differentiate the speed limits on the surveyed segments, which is necessary to add sub-parts separately and delete the larger segments of Tracy Streets.

**Attachment D**

**3.08.580 Special speed zone Table**

<b>Name of Street or Portion Affected</b>	<b>Declared Prima Facie Speed Limit (Miles per Hour)</b>
- Arbor Road	
Holly Drive to MacArthur Drive	40
- Balboa Drive	
Portola Way to Clover Road	25
<del>Portola Way to Kavanagh Avenue</del>	<del>25</del>
- Barcelona Drive	
Cypress Drive to Schulte Road	25
- Beechnut Avenue	
Sequoia Boulevard to Tracy Boulevard	30
- Beverly Place	
Lincoln Boulevard to Tracy Boulevard	25
- Brichetto Road	
Chrisman Road to east City limits	50
- Brookview Drive	
Regis Drive to Reids Way	30
Reids Way to Glenbrook Drive	25
- Buthmann Avenue	
Grant Line Road to Kavanagh Avenue	25
Kavanagh Avenue to Clover Road	25
- Byron Road	
Corral Hollow Road to Lammers Road	45
- Central Avenue	
Sycamore Parkway to Tracy Boulevard	35
Tracy Boulevard to Schulte Road	30
Schulte Road to Mount Diablo Avenue	30
Mount Diablo Avenue to Fourth Street	25
Fourth Street to Eleventh Street	25
Mount Diablo Avenue to Eleventh Street	25

- Chester Drive	
Eaton Avenue to Lowell Avenue	25
- Chrisman Road	
Valpico Road to north City limits	50
Grant Line Road to Paradise Avenue	40
Paradise Avenue to RR Tracks (south of Paradise Ave)	40
- Clover Road	
<del>West City Limits to Holly Drive</del>	<del>25</del>
<u>West City limits to Tracy Boulevard</u>	<u>25</u>
<u>Tracy Boulevard to Holly Drive</u>	<u>25</u>
- Corral Hollow Road	
Parkside Drive to Schulte Road	40
Eleventh Street to Lowell Avenue	40
Lowell Avenue to Grant Line Road	40
North City limits to Grant Line Road	35
Parkside Drive to Valpico Road (City limits)	40
Schulte Rd to Eleventh St	45
Valpico Road to Linne Road (City limits)	45
I-580 to south City Limits	55
1100' south of Linne Road to I-580	50
- Crossroads Drive	
Eleventh Street to Gaines Lane	25
Greystone Drive to Eleventh Street	30
- Cypress Drive	
Corral Hollow Road to Summer Lane	30
Hickory Avenue to Corral Hollow Road	25
- Dominique Drive	
Eastlake Circle to Elissagary Drive	30
- Dove Drive/Way	
Sycamore Parkway to Starflower Drive	25
- East Lake Circle	
Crater Place to Lakeview Drive (East side)	25

Crater Place to Lakeview Drive (West side)	25
- East Street	
Grant Line Road to Eleventh Street	30
Eleventh Street to Sixth Street	25
- Eaton Avenue	
<del>Richard Drive to East Street</del>	<del>25</del>
<u>Richard Drive to Tracy Boulevard</u>	<u>25</u>
<u>Tracy Boulevard to East Street</u>	<u>25</u>
- Eleventh Street	
East Street to Beginning of Bridge	35
Beginning of Bridge to East City Limits	45
Corral Hollow Road to Lincoln Boulevard	35
Lammers Road to Corral Hollow Road	45
Lincoln Boulevard to Tracy Boulevard	30
Tracy Boulevard to East Street	30
West City limits to Lammers Road	55
- Entrada Way	
Grant Line Road to Portola Way	25
- Fabian Road	
Lammers Road to Mamie Anderson Lane	35
- Fourth Street	
Tracy Boulevard to Central Avenue	35
- Glenbriar Drive	
Valpico Road to Glenbriar Circle	30
- Glenbrook Drive	
Brookview Drive to MacArthur Drive	25
- Grant Line Road	
Corral Hollow Road to Tracy Boulevard	40
MacArthur Drive to Skylark Avenue	45
Skylark Avenue to Chrisman Road	45
Chrisman Road to east City Limits	45
Tracy Boulevard to MacArthur Drive	40

West City limits/Byron Road to I-205	40
I-205 to Corral Hollow Road	40
- Hansen Road	
Schulte Road to I-205 (City Limits)	50
- Henley Parkway	
Bridle Creek Drive to Lowell Avenue	35
- Holly Drive	
Clover Road to the north City limits	35
Grant Line Road to Clover Road	30
Eleventh Street to Grant Line Road	25
- International Parkway	
Berkeley Road to Schulte Road	45
I-205 (City Limits) to Berkeley Road	45
- Jackson Avenue	
Crossroads Drive to Jefferson Parkway	25
- Jefferson Parkway	
Eleventh Street to Jackson Avenue	30
- Joe Pombo Parkway	
Lowell Avenue to Bridle Creek Drive	35
Bridle Creek Drive to Grant Line Road	35
- Kavanagh Avenue	
Corral Hollow Road to Tracy Boulevard	25
Tracy Boulevard to Balboa Drive	25
- Lammers Road	
Eleventh Street to Byron Road	40
Eleventh Street to City limits south of Jaguar Run	45
Redbridge Drive to Schulte Road (City limits)	45
- Lankershire Drive	
Montgomery Lane to Byron Road	25
- Larch Road	
Tracy Boulevard to Holly Drive	35
- Lauriana Lane	



Schulte Road to Cypress Avenue	30
- Lincoln Boulevard	
Eleventh Street to Grant Line Road	30
- Linne Road	
West City limits to East City limits	50
- Lowell Avenue	
Blandford Lane to Orchard Parkway	30
Orchard Parkway to Corral Hollow Road	30
Corral Hollow Road to Lincoln Boulevard	30
Lincoln Boulevard to Tracy Boulevard	30
Tracy Boulevard to East Street	25
- MacArthur Drive	
Eleventh Street to I-205 Interchange	40
Fair Oaks Drive to Valpico Road	45
Schulte Road to SPRR Tracks	40
South City limits to Fair Oaks Drive	40
SPRR Tracks to Eleventh Street	35
Valpico to Schulte Road	40
I-205 Interchange to north City limits	40
- Middlefield Drive	
Corral Hollow Road to Whispering Wind Drive	35
Whispering Wind Drive to Peony Drive	25
- Mt. Diablo Avenue	
Tracy Boulevard to Central Avenue	25
Central Avenue to MacArthur Drive	25
- Naglee Road	
Grant Line Road to north City limits	35
- Orchard Parkway	
Lowell Avenue to Grant Line Road	35
- Paradise Avenue	
Grant Line Road to north City limits	45
- Paradise Road	

Grant Line Road to Chrisman Road	40
- Parker Avenue	
Eleventh Street to Grant Line Road	25
- Parkside Drive	
Winter Lane to Corral Hollow Road	30
- Pescadero Avenue	
MacArthur Drive to 2,500' east of MacArthur Drive	35
2,500' east of MacArthur Drive to east City limits	45
- Portola Way	
<del>Balboa Drive to Entrada Way</del>	25
Holly Drive to Entrada Way	25
- Presidio Place	
Jackson Avenue to Compton Place	25
- Richard Drive	
Lincoln Boulevard to Eaton Avenue	25
- Schulte Road	
Barcelona Drive to Mabel Josephine Drive	40
Corral Hollow Road to Barcelona Drive	35
Corral Hollow Road to Tracy Boulevard	40
International Parkway to Hansen Road	45
Hansen Road to east City limit	50
Tracy Boulevard to MacArthur Drive	40
- Sequoia Boulevard	
Alden Glen Drive to Beechnut Avenue	30
- Sixth Street	
Tracy Boulevard to Central Avenue	30
Central Avenue to MacArthur Drive	30
- Starflower Drive	
Corral Hollow Road to Dove Drive/Way	25
- Summer Lane	
Eleventh Street to Brittany Place	25
- Sycamore Parkway	

Tracy Boulevard to Valpico Road	30
Valpico Road to Schulte Road	35
- Tennis Lane	
Corral Hollow Road to Jill Drive	25
Tracy Boulevard to Corral Hollow Road	25
- Tenth Street	
Civic Center Drive to MacArthur Drive	25
Tracy Boulevard to East Street	25
<del>Tracy Boulevard to MacArthur Drive</del>	<del>25</del>
- Third Street	
Central Avenue to Mt. Diablo Avenue	25
- Tracy Boulevard	
Grant Line Road to Larch Road	35
Larch Road to the north City limits	40
Linne Road to Valpico Road	45
Lowell Avenue to Grant Line Road	35
Schulte Road to Sixth Street	40
Sixth Street to Lowell Avenue	35
South City limits to Linne Road	45
Valpico to Schulte Road	45
- Valpico Road	
Fairoaks Drive to east City limits	45
MacArthur Drive to Fairoaks Drive	40
Tracy Boulevard to MacArthur Drive	40
West City limits to Tracy Boulevard	40
-Western Pacific Way	
West City Limits to Corral Hollow Road	50
- Whispering Wind Drive	
St. Regis Drive to Tracy Boulevard	30
Tracy Boulevard to Middlefield Drive	30

The declared prima facie or maximum speed limit shall be effective when appropriate signs giving notice thereof are erected upon the street and shall not thereafter be revised

except on the basis of an engineering and traffic survey. The provisions of this section shall not apply in respect to the twenty-five (25) mile per hour prima facie speed limit which is applicable when passing a school building or the grounds thereof

City of Tracy

# **Engineering & Traffic Survey Report December 2021**



**Engineering Division  
Development Services Department**

# I. Index

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**December**  
**2021**

**Engineering & Traffic Survey Report**

**II. INTRODUCTION**

This report presents the results of Traffic and Engineering Surveys conducted in the year 2021. The surveys were conducted to establish safe and reasonable speed limits. The findings of this report will enable the City to justify radar enforcement of speed limits in these roadways, as indicated in Section 40802 of the California Vehicle Code. Segments of the following City streets were investigated:

- Balboa Drive – Portola Way to Clover Road
- Beechnut Avenue – Sequoia Boulevard to Tracy Boulevard
- Beverly Place – Lincoln Boulevard to Tracy Boulevard
- Chester Drive – Eaton Avenue to Lowell Avenue
- Clover Road – West City Limits to Tracy Boulevard
- Clover Road – Holly Drive to Tracy Boulevard
- Corral Hollow Road – North City Limits to Grant Line Road
- Cypress Drive – Corral Hollow Road to Summer Lane
- Eaton Avenue – Richard Drive to Tracy Boulevard
- Eaton Avenue – Tracy Boulevard to East Street
- Henley Parkway – Bridle Creek Drive to Lowell Avenue
- Lankershire Drive – Montgomery Lane to Byron Road
- Lowell Avenue – Tracy Blvd. to East Street
- Lowell Avenue – Lincoln Boulevard to Tracy Boulevard
- Middlefield Drive – Corral Hollow Road to Whispering Wind Drive
- Middlefield Drive – Whispering Wind Drive to Peony Drive
- Portola Way – Holly Drive to Entrada Way
- Richard Drive – Lincoln Boulevard to Eaton Avenue
- Tenth Street – Civic Center Drive to MacArthur Drive
- Tenth Street – Tracy Boulevard to East Street
- Third Street – Central Avenue to Mt. Diablo Avenue

### **III. STUDY PROCEDURES**

Section 22352, of the California Vehicle Code (CVC) requires a 25 mph prima facie speed limit on streets in residential or business district, 15 mph at railroad grade crossings, highway intersections with sight restrictions and in any alley. However, upon the basis of an Engineering and Traffic survey, a local authority may declare speed limits of 30, 35, 40, 45, 50, 55, 60, or a maximum of 65 mph in order to facilitate the orderly movement of traffic. Section 22356 of CVC currently sets the maximum speed limit at 65 mph. Also, except as provided in Section 22356, it is also required to comply with Section 22349 (b) which states that “Notwithstanding any other provisions of law, no person may drive a vehicle upon a two lane, undivided highway at a speed greater than 55 miles per hour unless that highway, or portion thereof, has been posted for higher speed by local agency on the bases of an engineering and traffic survey”. Prima facie speed limits can be posted without the need for engineering and traffic surveys. The required elements in such Engineering and Traffic Survey are outlined in Section 627 of the CVC. This report adopts the aforementioned guidelines in formulating the recommendations in this report.

The principal elements in this study of the selected streets are highlighted below:

#### **Radar Check**

Each street was divided into segments to account for its differing roadway characteristics. Variations in roadway segments include street width, and other significant geometric factors and constraints. One speed check was made in each section from an inconspicuously parked, unmarked vehicle. Every effort was made to ensure that the presence of the vehicle does not affect the driving behavior of other motorists. A minimum of 100 samples were taken for each section of roadway. All field data was coded onto forms for subsequent computer analysis.

#### **Data Analysis**

For each survey section, computer analysis and calculations were performed on the field data to obtain several key parameters. The computer analysis printouts are included in the appendix of this report. A list of these parameters and a brief discussion of each follow:

**50<sup>th</sup> Percentile Speed.** The 50<sup>th</sup> percentile speed is the speed above and below which 50 percent of the observed vehicles are travelling. This is also known as the median or middle speed.

**85<sup>th</sup> Percentile Speed.** The 85<sup>th</sup> percentile speed, or the critical speed, is the speed at or below which 85 percent of the observed vehicles are traveling. Traffic engineers generally consider that at least 85 percent of all motorists will drive at speeds that are reasonable and prudent for the prevailing conditions,



without the benefit of posted speed limits, signs, or enforcement. Therefore, the 85<sup>th</sup> percentile speed is a good preliminary indicator of the appropriate speed limit that can be imposed, after taking into consideration all other secondary factors such as historical collision occurrence, traffic volumes, road features, and other special constraints.

**Pace Speed.** The pace speed is the ten-mile-per-hour increment that contains the greatest number of observed vehicles. In general, the 85<sup>th</sup> percentile speed and the recommended speed limit should lie within the upper range of the pace. This parameter is also a good indicator of a reasonable and appropriate speed limit.

**Range of Speeds.** The range of speeds is simply the speeds of the fastest and slowest vehicles observed. A large range of speeds, say in excess of 30 mph, indicates unfavorable road conditions that lead to inconsistent traffic stream and great likelihood of traffic collisions.

**Average speed.** The average speed is a simple arithmetic mean of all speeds observed in a single sample.

## **Collision Review**

After the computer analysis, a good initial estimate of the appropriate speed limit for each of the street sections was determined. However, as a first check, it was necessary to validate these estimates by carefully reviewing the historical collision occurrences within the last two years. The location and severity of collision occurrences, as well as their frequency were considered before a final speed limit was recommended for each road section.

## **Field Check**

After performing the radar checks, data analyses, and collision review, a final field check was made. While performing a field check, the speed surveyor is fully cognizant of the before mentioned parameters and particularly cognizant of the 85<sup>th</sup> percentile speeds and the pace speed. The speed surveyor evaluated the appropriateness of these values and noted the significance of other factors such as roadside development, driveways, parked vehicles, emergency shoulder areas, schools and playgrounds, pedestrians, roadway alignment, control, and numerous other intangible factors. These elements were given serious consideration in the determination of a reasonable and safe speed limit.

Reasonable limits are speeds at which motorists would drive without the effects of enforcement of signs.

#### **IV. TRAFFIC AND ENGINEERING STUDIES**

The following sections present the findings of the Engineering and Traffic surveys. The 85<sup>th</sup> percentile speed and the recommended speed limits for the surveyed roadways are included.

## V. ENGINEERING & TRAFFIC SURVEY RECOMMENDATIONS

- Balboa Drive

Portola Way to Clover Road

This segment of Balboa Drive is a two-lane Northbound and Southbound residential collector road. The segment is approximately 0.41 miles in length and 38 feet in width. There are driveways that front the roadway and permitted on street parking. The previously established speed limit in this section is 25 mph.

There were 6 reported collisions on this roadway from January 2019 to December 2021.

10 mph pace speed	23 mph. - 32 mph.
85 <sup>th</sup> percentile speed	32 mph.
50 <sup>th</sup> percentile speed	28 mph.

The 85<sup>th</sup> percentile speed indicates a speed of 32 mph. The presence of residential area, intersections in this segment justifies the downgrading of the 85<sup>th</sup> percentile speed by 5 mph. Therefore, it is recommended that the posted speed limit remains at 25 mph.

The recommended speed limit for this section therefore is 25 mph.

- **Beechnut Avenue**

*Sequoia Boulevard to Tracy Boulevard*

This segment of Beechnut Avenue is a two-lane Eastbound and Westbound residential collector. The segment is approximately 0.28 miles in length and 36 feet in width. There are driveways that front the roadway and intermediate intersections. The previously established speed limit in this section is 30 mph.

There were 8 reported collisions on this roadway from January 2019 to December 2021.

10 mph pace speed	28 mph. - 37 mph.
85 <sup>th</sup> percentile speed	36 mph.
50 <sup>th</sup> percentile speed	33 mph.

The 85<sup>th</sup> percentile speed indicates a speed of 36 mph. The presence of driveways, residential area, and intersections in this segment justifies the downgrading of the 85<sup>th</sup> percentile speed by 5 mph. Therefore, it is recommended that the posted speed limit remains at 30 mph.

The recommended speed limit for this section therefore is 30 mph.

- **Beverly Place**

*Lincoln Boulevard to Tracy Boulevard*

This segment of Beverly Place is a two-lane Eastbound and Westbound residential collector. The segment is approximately 0.45 miles in length and 38 feet in width. There are driveways that front the roadway and permitted on street parking. The previously established speed limit in this section is 25 mph.

There were 3 reported collisions on this roadway from January 2019 to December 2021.

10 mph pace speed	23 mph. - 32 mph.
85 <sup>th</sup> percentile speed	31 mph.
50 <sup>th</sup> percentile speed	28 mph.

The 85<sup>th</sup> percentile speed indicates a speed of 31 mph. The presence driveways, residential area, intersections, curve, and collisions in this segment justifies the downgrading of the 85<sup>th</sup> percentile speed by 5 mph. Therefore, it is recommended that the posted speed limit remains at 25 mph.

The recommended speed limit for this section therefore is 25 mph.

- **Chester Drive**

Eaton Avenue to Lowell Avenue

This segment of Chester Drive is a two-lane Northbound and Southbound residential collector. The segment is approximately 0.33 miles in length and 38 feet in width. There are driveways that front the roadway, schools, parks, and permitted on street parking. The previously established speed limit in this section is 25 mph.

There were 3 reported collisions on this roadway from January 2019 to December 2021.

10 mph pace speed	20 mph. - 29 mph.
85 <sup>th</sup> percentile speed	30 mph.
50 <sup>th</sup> percentile speed	25 mph.

The 85<sup>th</sup> percentile speed indicates a speed of 30 mph. The presence of residential driveways, intersections, collisions, parking, school, and parks in this segment justifies the downgrading of the 85<sup>th</sup> percentile speed by 5 mph. Therefore, it is recommended that the posted speed limit remains at 25 mph.

The recommended speed limit for this section therefore is 25 mph.

- **Clover Road**

West City Limits to Tracy Boulevard

This segment of Clover Road is a two-lane Eastbound and Westbound residential/commercial collector. The segment is approximately 0.24 miles in length and 37 feet in width. There are driveways and intersections that front the roadway. The previously established speed limit in this section is 25 mph.

There were 32 reported collisions on this roadway from January 2019 to December 2021.

10 mph pace speed	21 mph. - 30 mph.
85 <sup>th</sup> percentile speed	30 mph.
50 <sup>th</sup> percentile speed	26 mph.

The 85<sup>th</sup> percentile speed indicates a speed of 30 mph. The presence of residential and commercial driveways, collisions, and intersections in this segment justifies the downgrading of the 85<sup>th</sup> percentile speed by 5 mph. Therefore, it is recommended that the posted speed limit remains at 25 mph.

The recommended speed limit for this section therefore is 25 mph.

Tracy Boulevard to Holly Drive

This segment of Clover Road is a two-lane Eastbound and Westbound residential/commercial collector. The segment is approximately 0.49 miles in length and 36 feet in width. There is on street parking and driveways that front the roadway. The previously established speed limit in this section is 25 mph.

There were 42 reported collisions on this roadway from January 2019 to December 2021.

10 mph pace speed	23 mph. - 32 mph.
85 <sup>th</sup> percentile speed	32 mph.
50 <sup>th</sup> percentile speed	28 mph.

The 85<sup>th</sup> percentile speed indicates a speed of 32 mph. The presence of residential and commercial driveways, collisions, and intersections in this segment justifies the downgrading of the 85<sup>th</sup> percentile speed by 5 mph. Therefore, it is recommended that the posted speed limit remains at 25 mph.

The recommended speed limit for this section therefore is 25 mph.

- **Corral Hollow Road**

North City Limits to Grant Line Road

This segment of Corral Hollow Road is a four-lane Northbound and Southbound major arterial. The segment is approximately 0.25 miles in length and 72 feet in width. There are bike lanes, lane mergers, lane drops in this segment. The previously established speed limit in this section is 35 mph.

There were 41 reported collisions on this roadway from January 2019 to December 2021.

10 mph pace speed	32 mph. - 41 mph.
85 <sup>th</sup> percentile speed	41 mph.
50 <sup>th</sup> percentile speed	37 mph.

The 85<sup>th</sup> percentile speed indicates a speed of 41 mph. The presence of residential driveways, bike lane, intersections, lane merging, and collisions in this segment justifies the downgrading of the 85<sup>th</sup> percentile speed by 5 mph. Therefore, it is recommended that the posted speed limit remains at 35 mph.

The recommended speed limit for this section therefore is 35 mph.



- **Cypress Drive**

Corral Hollow Road to Summer Lane

This segment of Cypress Drive is a two-lane Eastbound and Westbound residential collector. The segment is approximately 0.37 miles in length and 40 feet in width. There are bike lanes, residential area, and parks. The previously established speed limit in this section is 30 mph.

There were 9 reported collisions on this roadway from January 2019 to December 2021.

10 mph pace speed	26 mph. - 35 mph.
85 <sup>th</sup> percentile speed	34 mph.
50 <sup>th</sup> percentile speed	30 mph.

The 85<sup>th</sup> percentile speed indicates a speed of 34 mph. The presence of bike lanes, parks, residential driveways, curves in this segment justifies the downgrading of the 85<sup>th</sup> percentile speed by 5 mph. Therefore, it is recommended that the posted speed limit remains at 30 mph.

The recommended speed limit for this section therefore is 30 mph.

- **Eaton Avenue**

Richard Drive to Tracy Boulevard

This segment of Eaton Avenue is a two-lane Eastbound and Westbound residential collector. The segment is approximately 0.30 miles in length and 37 feet in width. There are residential driveways that front the roadway and permitted on street parking. The previously established speed limit in this section is 25 mph

There were 12 reported collisions on this roadway from January 2019 to December 2021.

10 mph pace speed	23 mph. - 32 mph.
85 <sup>th</sup> percentile speed	32 mph.
50 <sup>th</sup> percentile speed	28 mph.

The 85<sup>th</sup> percentile speed indicates a speed of 32 mph. The Presence of residential driveways, intersections, curve, collisions, parking in this segment justifies downgrading of the 85<sup>th</sup> percentile speed by 5 mph. Therefore, it is recommended that the posted speed limit remains at 25 mph.

The recommended speed limit for this section therefore is 25 mph.

Tracy Boulevard to East Street

This segment of Tracy Boulevard is a two-lane Eastbound and Westbound collector roadway. The segment is approximately 0.71 miles in length and 38 feet in width. There are residential driveways that front the roadway, schools, parks, library, hospital and permitted on street parking. The previously established speed limit in this section is 25 mph.

There were 28 reported collisions on this roadway from January 2019 to December 2021.

10 mph pace speed	24 mph. – 33 mph.
85 <sup>th</sup> percentile speed	32 mph.
50 <sup>th</sup> percentile speed	29 mph.

The 85<sup>th</sup> percentile speed indicates a speed of 32 mph. The Presence of residential driveways, intersections, schools, collisions, parking, library in this segment justifies downgrading of the 85<sup>th</sup> percentile speed by 5 mph. Therefore, it is recommended that the posted speed limit remains at 25 mph.

The recommended speed limit for this section therefore is 25 mph.

- **Henley Parkway**

*Bridle Creek Drive to Lowell Avenue*

This segment of Henley Parkway is a two-lane Northbound and Southbound major collector. The segment is approximately 0.35 miles in length and 36 feet in width. There are bike lanes and a curve on the roadway. The previously established speed limit in this section is 35 mph.

There were 2 reported collisions on this roadway from January 2019 to December 2021.

10 mph pace speed	30 mph. - 39 mph.
85 <sup>th</sup> percentile speed	38 mph.
50 <sup>th</sup> percentile speed	34 mph.

The 85<sup>th</sup> percentile speed indicates a speed of 38 mph. The presence of intersections, bike lane, curve, park, collisions in this segment justifies downgrading of the 85<sup>th</sup> percentile speed by 5 mph. Therefore, it is recommended that the posted speed limit remains at 35 mph.

The recommended speed limit for this section therefore is 35 mph.

- **Lankershire Drive**

*Montgomery Lane to Byron Road*

This segment of Lankershire Drive is a two-lane Northbound and Southbound residential collector. The segment is approximately 0.30 miles in length and 44 feet in width. There are driveways, intersections, parks, on street parking and curves present in the segment. The previously established speed limit in this section is 25 mph.

There were 7 reported collisions on this roadway from January 2019 to December 2021.

10 mph pace speed	23 mph. - 32 mph.
85 <sup>th</sup> percentile speed	32 mph.
50 <sup>th</sup> percentile speed	27 mph.

The 85<sup>th</sup> percentile speed indicates a speed of 32 mph. The presence of residential driveways, intersections, curve, collisions, and park in this segment justifies downgrading of the 85<sup>th</sup> percentile speed by 5 mph. Therefore, it is recommended that the posted speed limit remains at 25 mph.

The recommended speed limit for this section therefore is 25 mph.

- **Lowell Avenue**

Tracy Boulevard to East Street

This segment of Lowell Avenue is a two-lane Eastbound and Westbound residential collector. The segment is approximately 0.70 miles in length and 36 feet in width. There are driveways, on street parking, and speed humps present in the segment. The previously established speed limit in this section is 25 mph.

There were 33 reported collisions on this roadway from January 2019 to December 2021.

10 mph pace speed	21 mph. - 30 mph.
85 <sup>th</sup> percentile speed	29 mph.
50 <sup>th</sup> percentile speed	24 mph.

The 85<sup>th</sup> percentile speed indicates a speed of 29 mph. The presence of intersections, residential driveways, parking in this segment justifies the downgrading of the 85<sup>th</sup> percentile speed by 5 mph. Therefore, it is recommended that the posted speed limit remains at 25 mph.

The recommended speed limit for this section therefore is 25 mph.

Lincoln Boulevard to Tracy Boulevard

This segment of Lowell Avenue is a four-lane Eastbound and Westbound minor arterial. The segment is approximately 0.46 miles in length and 62 feet in width. There are driveways, on street parking, school, and park present in the segment. The previously established speed limit in this section is 30 mph.

There were 25 reported collisions on this roadway from January 2019 to December 2021.

10 mph pace speed	299 mph. - 38 mph.
85 <sup>th</sup> percentile speed	37 mph.
50 <sup>th</sup> percentile speed	34 mph.

The 85<sup>th</sup> percentile speed indicates a speed of 37 mph. The presence of residential driveways, intersections, school, collisions, parking, and park in this segment justifies the downgrading of the 85<sup>th</sup> percentile speed by 5 mph. Therefore, it is recommended that the posted speed limit remains at 30 mph.

The recommended speed limit for this section therefore is 30 mph.

- **Middlefield Drive**

Corral Hollow Road to Whispering Wind Drive

This segment of Middlefield Drive is a two-lane Eastbound and Westbound major collector roadway. The segment is approximately 0.33 miles in length and 48 feet in width. There are bike lanes along the segment. The previously established speed limit in this section is 35 mph.

There were 7 reported collisions on this roadway from January 2019 to December 2021.

10 mph pace speed	31 mph. - 40 mph.
85 <sup>th</sup> percentile speed	40 mph.
50 <sup>th</sup> percentile speed	36 mph.

The 85<sup>th</sup> percentile speed indicates a speed of 40 mph. The presence of bike lanes, intersections, collisions, and curve in this segment justifies the downgrading of the 85<sup>th</sup> percentile speed by 5 mph. Therefore, it is recommended that the posted speed limit remains at 35 mph.

The recommended speed limit for this section therefore is 35 mph.

Whispering Wind Drive to Peony Drive

This segment of Middlefield Drive is a two-lane Eastbound and Westbound residential collector roadway. The segment is approximately 0.19 miles in length and 48 feet in width. There are residential driveways and on street parking along the segment. The previously established speed limit in this section is 25 mph.

There were 4 reported collisions on this roadway from January 2019 to December 2021.

10 mph pace speed	22 mph. - 31 mph.
85 <sup>th</sup> percentile speed	31 mph.
50 <sup>th</sup> percentile speed	26 mph.

The 85<sup>th</sup> percentile speed indicates a speed of 31 mph. The presence of driveways, residential area, intersections in this segment justifies the downgrading of the 85<sup>th</sup> percentile speed by 5 mph. Therefore, it is recommended that the posted speed limit remains at 25 mph.

The recommended speed limit for this section therefore is 25 mph.

- **Portola Way**

Holly Drive to Entrada Way

This segment of Portola Way is a two-lane Northbound and Southbound residential collector. The segment is approximately 0.26 miles in length and 38 feet in width. There are intersections and on street parking along the segment. The previously established speed limit in this section is 25 mph.

There were 10 reported collisions on this roadway from January 2019 to December 2021.

10 mph pace speed	23 mph. - 32 mph.
85 <sup>th</sup> percentile speed	31 mph.
50 <sup>th</sup> percentile speed	28 mph.

The 85<sup>th</sup> percentile speed indicates a speed of 31 mph. The presence of residential driveways, intersections, justifies the downgrading of the 85<sup>th</sup> percentile speed by 5 mph. Therefore, it is recommended that the posted speed limit remains at 25 mph.

The recommended speed limit for this section therefore is 25 mph.

- **Richard Drive**

Lincoln Boulevard to Eaton Avenue

This segment of Richard Drive is a two-lane Eastbound and Westbound residential collector. The segment is approximately 0.14 miles in length and 36 feet in width. There are driveways and on street parking along the segment. The previously established speed limit in this section is 25 mph.

There was 1 reported collision on this roadway from January 2019 to December 2021.

10 mph pace speed	18 mph. - 30 mph.
85 <sup>th</sup> percentile speed	26 mph.
50 <sup>th</sup> percentile speed	22 mph.

The 85<sup>th</sup> percentile speed indicates a speed of 26 mph. It is recommended that the posted speed limit remains at 25 mph.

The recommended speed limit for this section therefore is 25 mph.



- **Tenth Street**

Civic Center Drive to MacArthur Drive

This segment of Tenth Street is a two-lane Eastbound and Westbound collector roadway. The segment is approximately 0.15 miles in length and 40 feet in width. There are industrial businesses and driveways along the segment. The previously established speed limit in this section is 25 mph.

There were 2 reported collisions on this roadway from January 2019 to December 2021.

10 mph pace speed	19 mph. - 28 mph.
85 <sup>th</sup> percentile speed	28 mph.
50 <sup>th</sup> percentile speed	24 mph.

The 85<sup>th</sup> percentile speed indicates a speed of 28 mph. The presence of driveways in this segment justifies the downgrading of the 85<sup>th</sup> percentile speed by 5 mph. Therefore, it is recommended that the posted speed limit remains at 25 mph.

The recommended speed limit for this section therefore is 25 mph.

Tracy Boulevard to East Street

This segment of Tenth Street is a two-lane Eastbound and Westbound residential collector. The segment is approximately 0.83 miles in length and 32-56 feet in width. There are driveways and parking permitted along the segment. The previously established speed limit in this section is 25 mph.

There were 28 reported collisions on this roadway from January 2019 to December 2021.

10 mph pace speed	22 mph. - 31 mph.
85 <sup>th</sup> percentile speed	31 mph.
50 <sup>th</sup> percentile speed	27 mph.

The 85<sup>th</sup> percentile speed indicates a speed of 31 mph. The presence of residential driveways, intersections, school, collisions, parking, downtown in this segment justifies the downgrading of the 85<sup>th</sup> percentile speed by 5 mph. Therefore, it is recommended that the posted speed limit remains at 25 mph.

The recommended speed limit for this section therefore is 25 mph.

- **Third Street**

Central Avenue to Mt. Diablo Avenue

This segment of Third Street is a two-lane Northbound and Southbound residential collector. The segment is approximately 0.45 miles in length and 36 feet in width. There are residential driveways, on street parking, and driveways on the roadway. The previously established speed limit in this section is 25 mph.

There were 4 reported collisions on this roadway from January 2019 to December 2021.

10 mph pace speed	25 mph. - 34 mph.
85 <sup>th</sup> percentile speed	32 mph.
50 <sup>th</sup> percentile speed	30 mph.

The 85<sup>th</sup> percentile speed indicates a speed of 32 mph. The presence of residential driveways, intersections, curve, collisions, and park in this segment justifies the downgrading of the 85<sup>th</sup> percentile speed by 5 mph. Therefore, it is recommended that the posted speed limit remains at 25 mph.

The recommended speed limit for this section therefore is 25 mph.

**VI. SPEED SURVEY DATA SHEETS**

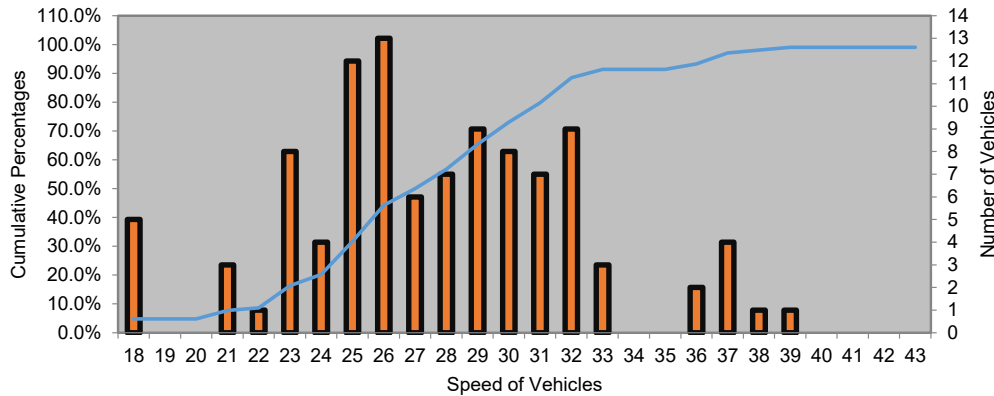
## VEHICLE SPEED SURVEY REPORT

Location:	Balboa Drive between Portola Way and Clover Road		
Date:	8/31/2021	Recorder:	ET
Begin Time:	10:00 AM	Direction:	NB/SB
End Time:	12:40 PM	Land use:	Residential
Day:	Tuesday	Type:	Collector
Weather:	Sunny and Clear	Posted Limit:	25

### SUMMARY STATISTICS

Total Observed (vehicles)	104		50th Percentile (mph)	28
Speed Range (mph)	18	50	85th Percentile (mph)	32
10 Mph Pace (mph)	23	32	Average Speed (mph)	27.91


### GRAPH OF CUMULATIVE PERCENTAGE OF VEHICLES VS SPEED



### ANALYSIS INFORMATION

Number of Accidents	Total 6 Collisions
Date Period	1/1/2019 - 12/31/2021
Street layout	Two Lane Residential Collector (0.41 Mi, 38')
Volume (if known)	
Parking Considerations	Parking permitted in this segment
Other Considerations	Residential Area, Intersections

### RECOMMENDATIONS & NOTES

	<p>85th percentile indicates speed of 32 MPH                  Presence of residential area, intersections                  in this segment justifies downgrading speed limit by 5 mph.</p> <p style="text-align: center;"><b>Recommended speed limit = 25 MPH</b></p>
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DATA COLLECTED	
Speed	Samples
18	5
19	0
20	0
21	3
22	1
23	8
24	4
25	12
26	13
27	6
28	7
29	9
30	8
31	7
32	9
33	3
34	0
35	0
36	2
37	4
38	1
39	1
40	0
41	0
42	0
43	0
44	0
45	0
46	0
47	0
48	0
49	0
50	1
51	0
52	0
53	0
54	0
55	0
56	0
57	0
58	0
59	0
60	0
61	0
62	0
63	0
<b>Total</b>	<b>104</b>

## VEHICLE SPEED SURVEY REPORT

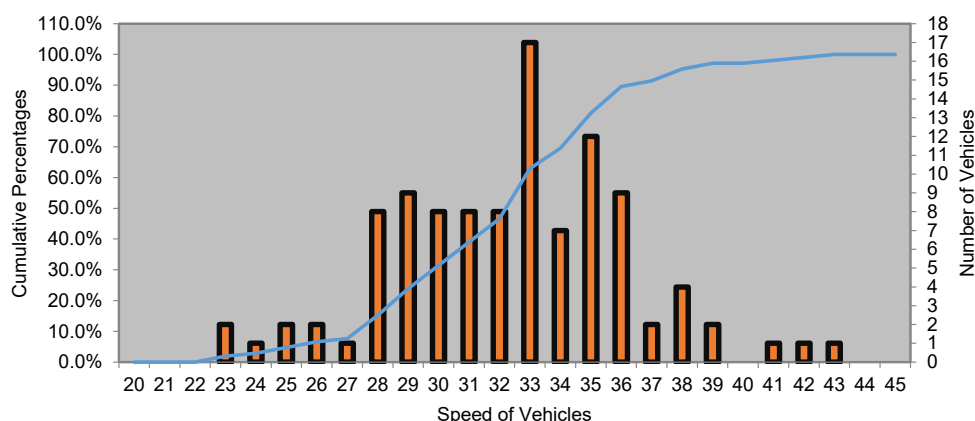
Location:	Beechnut Avenue between Tracy Blvd and Sequoia Blvd		
Date:	7/8/2021	Recorder:	ET
Begin Time:	2:40 PM	Direction:	EB/WB
End Time:	4:00 PM	Land use:	Residential
Day:	Thursday	Type:	Collector
Weather:	Sunny and Clear	Posted Limit:	30

DATA COLLECTED	
Speed	Samples
20	0
21	0
22	0
23	2
24	1
25	2
26	2
27	1
28	8
29	9
30	8
31	8
32	8
33	17
34	7
35	12
36	9
37	2
38	4
39	2
40	0
41	1
42	1
43	1
44	0
45	0
46	0
47	0
48	0
49	0
50	0
51	0
52	0
53	0
54	0
55	0
56	0
57	0
58	0
59	0
60	0
61	0
62	0
63	0
64	0
65	0
<b>Total</b>	<b>105</b>

### SUMMARY STATISTICS

Total Observed (vehicles)	105		50th Percentile (mph)	33
Speed Range (mph)	23	43	85th Percentile (mph)	36
10 Mph Pace (mph)	28	37	Average Speed (mph)	32.39

### GRAPH OF CUMULATIVE PERCENTAGE OF VEHICLES VS SPEED



### ANALYSIS INFORMATION

Number of Accidents	Total 8 Collisions
Date Period	1/1/2019 - 12/31/2021
Street layout	Two Lane Residential Collector (0.28 Mi, 36')
Volume (if known)	
Parking Considerations	Parking permitted in this segment
Other Considerations	Residential Driveways, Intermediate intersecitons

### RECOMMENDATIONS & NOTES

	<p>85th percentile indicates speed of 36 MPH                  Presence of driveways, residential area, intersections in this segment justifies downgrading speed limit by 5 mph.</p> <p style="text-align: center;"><b>Recommended speed limit = 30 MPH</b></p>
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## VEHICLE SPEED SURVEY REPORT

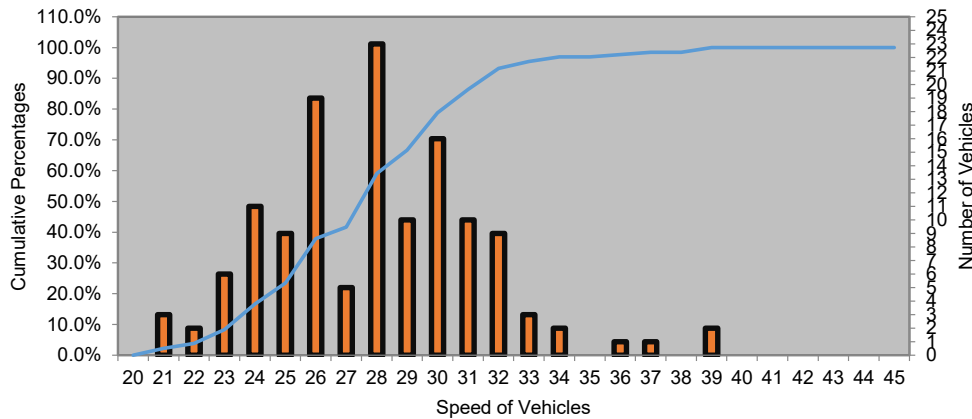
Location:	Beverly Place between Tracy Blvd. and Lincoln Blvd.		
Date:	1/11/2022	Recorder:	ET
Begin Time:	1:30 PM	Direction:	EB/WB
End Time:	3:00 PM	Land use:	Residential
Day:	Tuesday	Type:	Residential Collector
Weather:	Sunny and Clear	Posted Limit:	25

DATA COLLECTED	
Speed	Samples
20	0
21	3
22	2
23	6
24	11
25	9
26	19
27	5
28	23
29	10
30	16
31	10
32	9
33	3
34	2
35	0
36	1
37	1
38	0
39	2
40	0
41	0
42	0
43	0
44	0
45	0
46	0
47	0
48	0
49	0
50	0
51	0
52	0
53	0
54	0
55	0
56	0
57	0
58	0
59	0
60	0
61	0
62	0
63	0
64	0
65	0
<b>Total</b>	<b>132</b>

### SUMMARY STATISTICS

Total Observed (vehicles)	132		50th Percentile (mph)	28
Speed Range (mph)	21	39	85th Percentile (mph)	31
10 Mph Pace (mph)	23	32	Average Speed (mph)	27.98

### GRAPH OF CUMULATIVE PERCENTAGE OF VEHICLES VS SPEED



### ANALYSIS INFORMATION

Number of Accidents	Total 3 Collisions
Date Period	1/1/2019 - 12/31/2021
Street layout	Two Lane residential collector roadway (0.45 Mi, 38')
Volume (if known)	
Parking Considerations	Parking permitted in this segment
Other Considerations	Residential driveways, intermediate intersections,

### RECOMMENDATIONS & NOTES

	<p>85th percentile indicates speed of 31 MPH                  Presence of driveways, residential area, intersections curve and collisions in this segment justifies downgrading speed limit by 5 mph.</p> <p style="text-align: center;"><b>Recommended speed limit = 25 MPH</b></p>
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## VEHICLE SPEED SURVEY REPORT

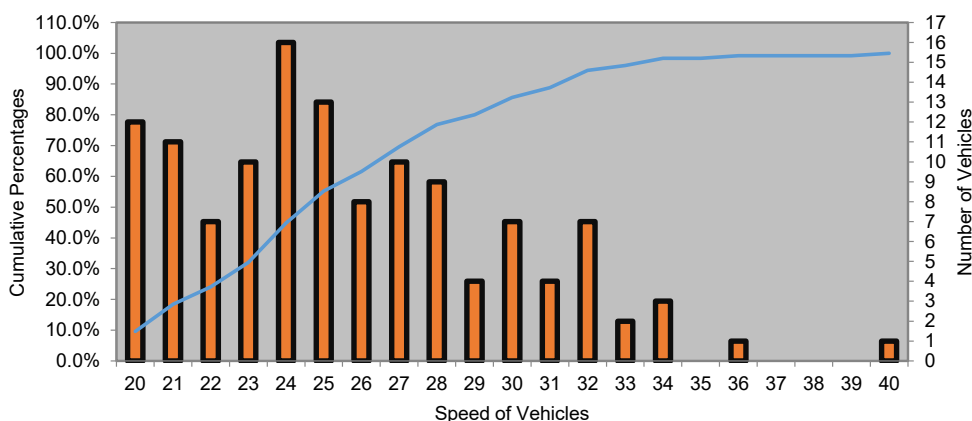
Location:	Chester Drive between Eaton Avenue and Lowell Avenue		
Date:	10/13/2021	Recorder:	ET
Begin Time:	2:50 PM	Direction:	NB/SB
End Time:	5:00 PM	Land use:	Residential
Day:	Wednesday	Type:	Residential Collector
Weather:	Sunny and Clear	Posted Limit:	25

DATA COLLECTED	
Speed	Samples
20	12
21	11
22	7
23	10
24	16
25	13
26	8
27	10
28	9
29	4
30	7
31	4
32	7
33	2
34	3
35	0
36	1
37	0
38	0
39	0
40	1
41	0
42	0
43	0
44	0
45	0
46	0
47	0
48	0
49	0
50	0
51	0
52	0
53	0
54	0
55	0
56	0
57	0
58	0
59	0
60	0
61	0
62	0
63	0
64	0
65	0
<b>Total</b>	<b>125</b>

### SUMMARY STATISTICS

Total Observed (vehicles)	125		50th Percentile (mph)	25
Speed Range (mph)	20	40	85th Percentile (mph)	30
10 Mph Pace (mph)	20	29	Average Speed (mph)	25.70

### GRAPH OF CUMULATIVE PERCENTAGE OF VEHICLES VS SPEED



### ANALYSIS INFORMATION

Number of Accidents	Total 3 Collisions
Date Period	1/1/2019 - 12/31/2021
Street layout	Two Lane residential collector (0.33 Mi, 38')
Volume (if known)	
Parking Considerations	Parking permitted on both sides
Other Considerations	Schools in vicinity, residential driveways

### RECOMMENDATIONS & NOTES

	<p>85th percentile indicates speed of 30 MPH                  Presence of residential driveways, intersections, collisions parking, school and park in this segment justifies downgrading speed limit by 5 mph.</p> <p style="text-align: center;"><b>Recommended speed limit = 25 MPH</b></p>
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## VEHICLE SPEED SURVEY REPORT

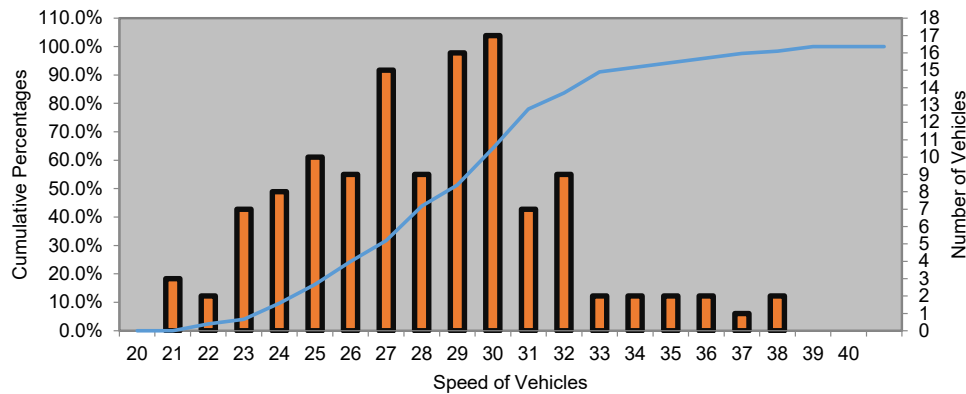
Location:	Clover Road between Holly Drive and Tracy Blvd.		
Date:	7/14/2021	Recorder:	ET
Begin Time:	10:00 AM	Direction:	EB/WB
End Time:	11:25 AM	Land use:	Residential/Commercial
Day:	Tuesday	Type:	Collector
Weather:	Sunny and Clear	Posted Limit:	25

DATA COLLECTED	
Speed	Samples
19	0
20	0
21	3
22	2
23	7
24	8
25	10
26	9
27	15
28	9
29	16
30	17
31	7
32	9
33	2
34	2
35	2
36	2
37	1
38	2
39	0
40	0
41	0
42	0
43	0
44	0
45	0
46	0
47	0
48	0
49	0
50	0
51	0
52	0
53	0
54	0
55	0
56	0
57	0
58	0
59	0
60	0
61	0
62	0
63	0
64	0
<b>Total</b>	<b>123</b>

### SUMMARY STATISTICS

Total Observed (vehicles)	123		50th Percentile (mph)	28
Speed Range (mph)	21	38	85th Percentile (mph)	32
10 Mph Pace (mph)	23	32	Average Speed (mph)	28.20

### GRAPH OF CUMULATIVE PERCENTAGE OF VEHICLES VS SPEED



### ANALYSIS INFORMATION

Number of Accidents	Total 42 Collisions
Date Period	1/1/2019 - 12/31/2021
Street layout	2-Lanes Collector, resid. and comm. dwy(0.49 Mi, 36')
Volume (if known)	
Parking Considerations	On street parking along major portion permitted
Other Considerations	Residential Area

### RECOMMENDATIONS & NOTES

	<p>85th percentile indicates speed of 32 MPH                  Presence of residential and commercial driveways, collisions, and intersections in this segment justifies downgrading speed limit by 5 mph.</p> <p style="text-align: center;"><b>Recommended speed limit = 25 MPH</b></p>
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## VEHICLE SPEED SURVEY REPORT

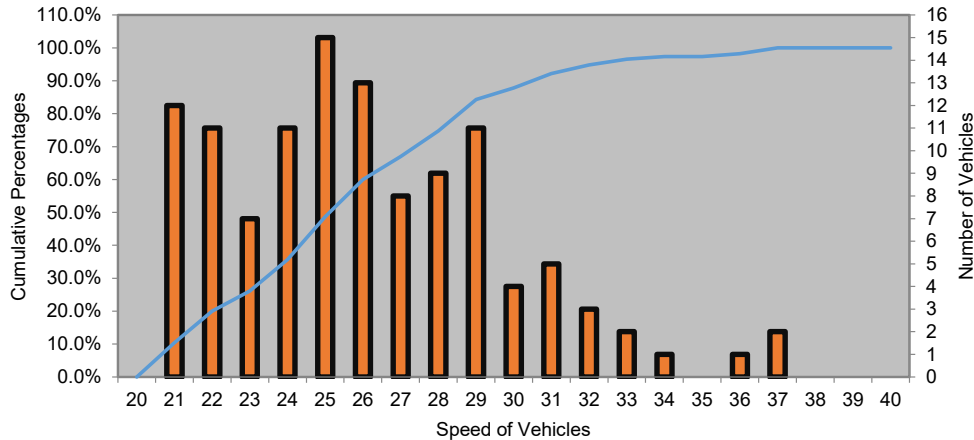
Location:	Clover Road between West City Limits and Tracy Blvd.		
Date:	7/20/2021	Recorder:	ET
Begin Time:	2:15 PM	Direction:	EB/WB
End Time:	4:40 PM	Land use:	Residential/Commerical
Day:	Tuesday	Type:	Collector
Weather:	Sunny and Clear	Posted Limit:	25

DATA COLLECTED	
Speed	Samples
20	0
21	12
22	11
23	7
24	11
25	15
26	13
27	8
28	9
29	11
30	4
31	5
32	3
33	2
34	1
35	0
36	1
37	2
38	0
39	0
40	0
41	0
42	0
43	0
44	0
45	0
46	0
47	0
48	0
49	0
50	0
51	0
52	0
53	0
54	0
55	0
56	0
57	0
58	0
59	0
60	0
61	0
62	0
63	0
64	0
65	0
<b>Total</b>	<b>115</b>

### SUMMARY STATISTICS

Total Observed (vehicles)	115		50th Percentile (mph)	26
Speed Range (mph)	21	37	85th Percentile (mph)	30
10 Mph Pace (mph)	21	30	Average Speed (mph)	26.09

### GRAPH OF CUMULATIVE PERCENTAGE OF VEHICLES VS SPEED



Number of Accidents	Total 32 Collisions
Date Period	1/1/2019 - 12/31/2021
Street layout	2-Lanes Collector, resid. and comm. dwy(0.24 Mi, 37')
Volume (if known)	
Parking Considerations	No Parking permitted in major portion of the segment
Other Considerations	Residential driveways, Commercial driveways

### RECOMMENDATIONS & NOTES

	<p>85th percentile indicates speed of 30 MPH                  Presence of residential and commercial driveways, collisions, and intersections in this segment justifies downgrading speed limit by 5 mph.</p> <p style="text-align: center;"><b>Recommended speed limit = 25 MPH</b></p>
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## VEHICLE SPEED SURVEY REPORT

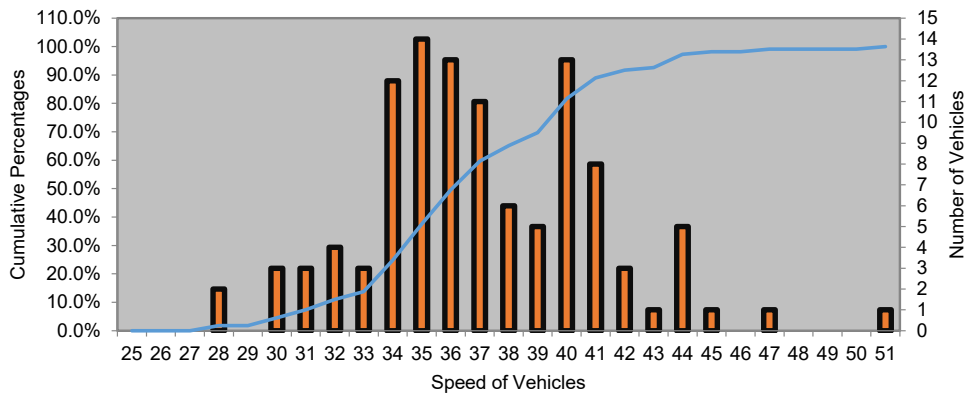
Location:	Corral Hollow Road between Grant Line Road and North City Limits		
Date:	7/8/2021	Recorder:	ET
Begin Time:	10:45 AM	Direction:	NB/SB
End Time:	11:45 AM	Land use:	Residential
Day:	Thursday	Type:	Major Arterial
Weather:	Sunny and Clear	Posted Limit:	35

DATA COLLECTED	
Speed	Samples
20	0
21	0
22	0
23	0
24	0
25	0
26	0
27	0
28	2
29	0
30	3
31	3
32	4
33	3
34	12
35	14
36	13
37	11
38	6
39	5
40	13
41	8
42	3
43	1
44	5
45	1
46	0
47	1
48	0
49	0
50	0
51	1
52	0
53	0
54	0
55	0
56	0
57	0
58	0
59	0
60	0
61	0
62	0
63	0
64	0
65	0
<b>Total</b>	<b>109</b>

### SUMMARY STATISTICS

Total Observed (vehicles)	109		50th Percentile (mph)	37
Speed Range (mph)	28	51	85th Percentile (mph)	41
10 Mph Pace (mph)	32	41	Average Speed (mph)	37.08

### GRAPH OF CUMULATIVE PERCENTAGE OF VEHICLES VS SPEED



### ANALYSIS INFORMATION

Number of Accidents	Total 41 Collisions
Date Period	1/1/2019 - 12/31/2021
Street layout	4-lane major arterial rd w/wide med. island(0.25 Mi, 72')
Volume (if known)	
Parking Considerations	No Parking permitted in this segment
Other Considerations	Bike Lane, Lane Merge, Lane drop, intersecitons, Mall entry

### RECOMMENDATIONS & NOTES

	<p>85th percentile indicates speed of 41 MPH                  Presence of residential driveways, bike lane, intersections lane merging, and collisions this segment justifies downgrading speed limit by 5 mph.</p> <p style="text-align: center;"><b>Recommended speed limit = 35 MPH</b></p>
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## VEHICLE SPEED SURVEY REPORT

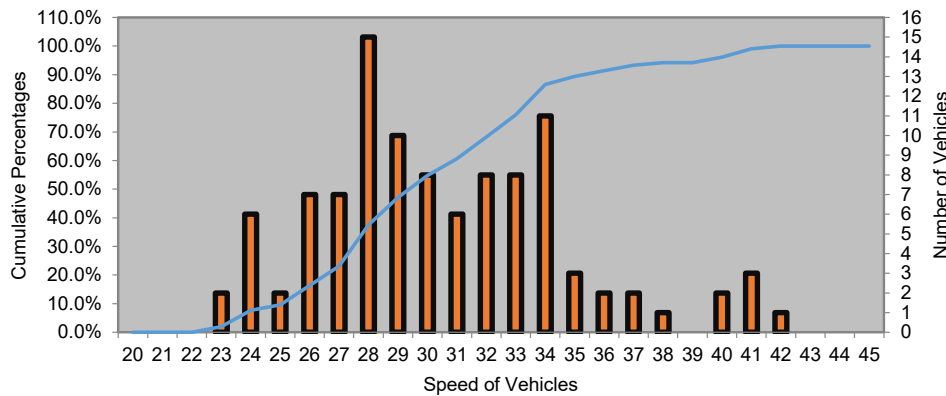
Location:	Cypress Drive between Corral Hollow Road and Summer Lane		
Date:	7/8/2021	Recorder:	ET
Begin Time:	4:20 PM	Direction:	EB/WB
End Time:	5:40 PM	Land use:	Residential
Day:	Thursday	Type:	Collector
Weather:	Sunny and Clear	Posted Limit:	30

DATA COLLECTED	
Speed	Samples
20	0
21	0
22	0
23	2
24	6
25	2
26	7
27	7
28	15
29	10
30	8
31	6
32	8
33	8
34	11
35	3
36	2
37	2
38	1
39	0
40	2
41	3
42	1
43	0
44	0
45	0
46	0
47	0
48	0
49	0
50	0
51	0
52	0
53	0
54	0
55	0
56	0
57	0
58	0
59	0
60	0
61	0
62	0
63	0
64	0
65	0
<b>Total</b>	<b>104</b>

### SUMMARY STATISTICS

Total Observed (vehicles)	104		50th Percentile (mph)	30
Speed Range (mph)	23	42	85th Percentile (mph)	34
10 Mph Pace (mph)	26	35	Average Speed (mph)	30.53

### GRAPH OF CUMULATIVE PERCENTAGE OF VEHICLES VS SPEED



### ANALYSIS INFORMATION

Number of Accidents	Total 9 Collisions
Date Period	1/1/2019 - 12/31/2021
Street layout	2 lane collector with wide median island (0.37 Mi, 40')
Volume (if known)	
Parking Considerations	No Parking permitted in this segment
Other Considerations	Bike Lane, Park, Residential Area, Intersections, Curve

### RECOMMENDATIONS & NOTES

	<p>85th percentile indicates speed of 34 MPH                  Presence of bikelane, residential driveways, intersections curve, collisions, and park in this segment justifies downgrading speed limit by 5 mph.</p> <p style="text-align: center;"><b>Recommended speed limit = 30 MPH</b></p>
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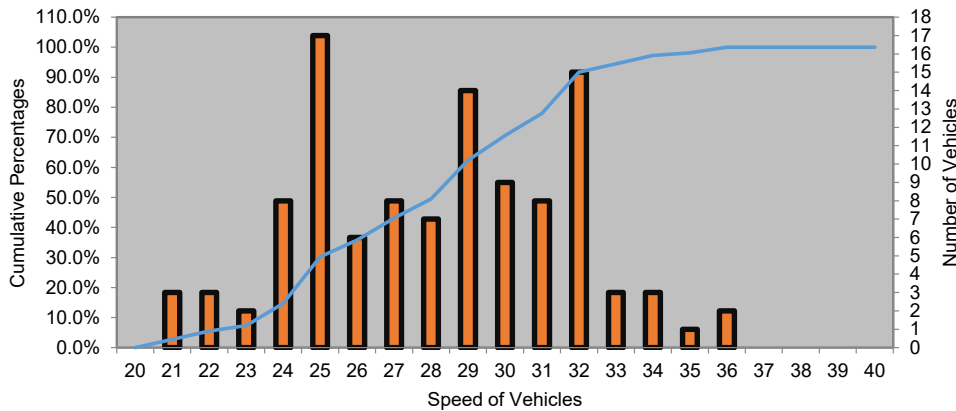
## VEHICLE SPEED SURVEY REPORT

Location:	Eaton Avenue between Tracy Blvd. and East Street		
Date:	7/29/2021	Recorder:	ET
Begin Time:	9:25 AM	Direction:	EB/WB
End Time:	11:45 AM	Land use:	Residential/Commercial
Day:	Thursday	Type:	Collector
Weather:	Sunny and Clear	Posted Limit:	25

### SUMMARY STATISTICS

Total Observed (vehicles)	109		50th Percentile (mph)	29
Speed Range (mph)	21	36	85th Percentile (mph)	32
10 Mph Pace (mph)	24	33	Average Speed (mph)	28.18


### GRAPH OF CUMULATIVE PERCENTAGE OF VEHICLES VS SPEED



### ANALYSIS INFORMATION

Number of Accidents	Total 28 Collisions
Date Period	1/1/2019 - 12/31/2021
Street layout	Two Lane collector roadway (0.71 Mi, 38')
Volume (if known)	
Parking Considerations	Parking permitted in this segment
Other Considerations	Schools, Library, Hospital, Intermed. intersections, park

### RECOMMENDATIONS & NOTES

	<p>85th percentile indicates speed of 32 MPH                  Presence of residential driveways, intersections, schools collisions, parking, library in this segment justifies downgrading speed limit by 5 mph.</p> <p style="text-align: center;"><b>Recommended speed limit = 25 MPH</b></p>
---	---

DATA COLLECTED	
Speed	Samples
20	0
21	3
22	3
23	2
24	8
25	17
26	6
27	8
28	7
29	14
30	9
31	8
32	15
33	3
34	3
35	1
36	2
37	0
38	0
39	0
40	0
41	0
42	0
43	0
44	0
45	0
46	0
47	0
48	0
49	0
50	0
51	0
52	0
53	0
54	0
55	0
56	0
57	0
58	0
59	0
60	0
61	0
62	0
63	0
64	0
65	0
<b>Total</b>	<b>109</b>

## VEHICLE SPEED SURVEY REPORT

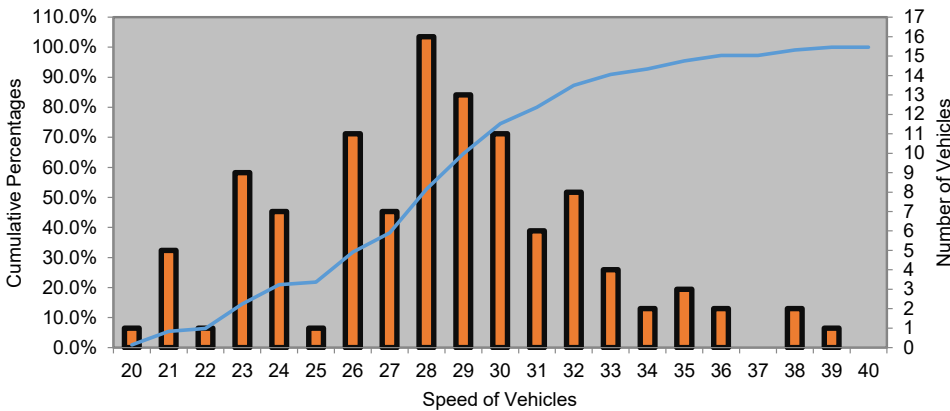
Location:	Eaton Avenue between Tracy Blvd. and Richard Avenue		
Date:	10/20/2021	Recorder:	ET
Begin Time:	1:30 PM	Direction:	EB/WB
End Time:	3:05 PM	Land use:	Residential/Commercial
Day:	Wednesday	Type:	Residential Collector
Weather:	Sunny and Clear	Posted Limit:	25

DATA COLLECTED	
Speed	Samples
20	1
21	5
22	1
23	9
24	7
25	1
26	11
27	7
28	16
29	13
30	11
31	6
32	8
33	4
34	2
35	3
36	2
37	0
38	2
39	1
40	0
41	0
42	0
43	0
44	0
45	0
46	0
47	0
48	0
49	0
50	0
51	0
52	0
53	0
54	0
55	0
56	0
57	0
58	0
59	0
60	0
61	0
62	0
63	0
64	0
65	0
<b>Total</b>	<b>110</b>

### SUMMARY STATISTICS

Total Observed (vehicles)	110		50th Percentile (mph)	28
Speed Range (mph)	20	39	85th Percentile (mph)	32
10 Mph Pace (mph)	23	32	Average Speed (mph)	28.28

### GRAPH OF CUMULATIVE PERCENTAGE OF VEHICLES VS SPEED



### ANALYSIS INFORMATION

Number of Accidents	Total 12 Collisions
Date Period	1/1/2019 - 12/31/2021
Street layout	Two lane with residential driveways (0.30 Mi, 37')
Volume (if known)	
Parking Considerations	On Street Parking allowed
Other Considerations	Residential area , interemdiate intersections

### RECOMMENDATIONS & NOTES

	<p>85th percentile indicates speed of 32 MPH                  Presence of residential driveways, intersections                  curve, collisions, and hospital in this segment justifies                  downgrading speed limit by 5 mph.</p> <p style="text-align: center;"><b>Recommended speed limit = 25 MPH</b></p>
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## VEHICLE SPEED SURVEY REPORT

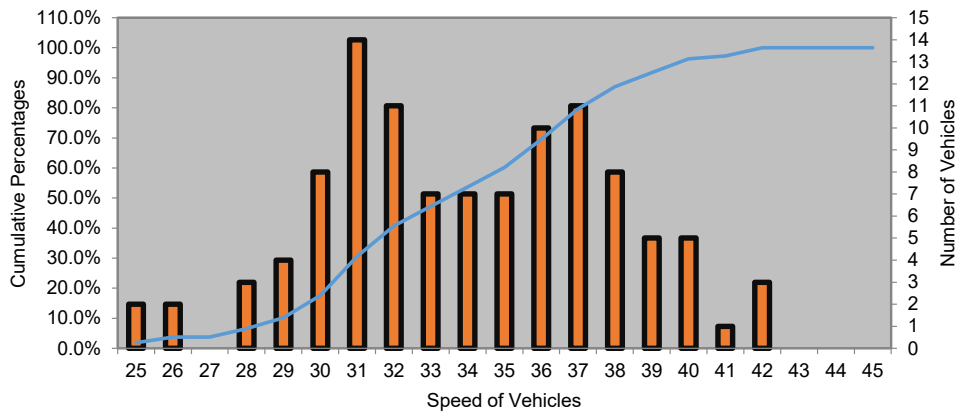
Location:	Henley Parkway Between Lowell Avenue and Bridle Creek Drive		
Date:	7/13/2021	Recorder:	ET
Begin Time:	10:10 AM	Direction:	NB/SB
End Time:	11:30 AM	Land use:	Residential/Commercial
Day:	Tuesday	Type:	Major Collector
Weather:	Sunny and Clear	Posted Limit:	35

DATA COLLECTED	
Speed	Samples
20	0
21	0
22	0
23	0
24	0
25	2
26	2
27	0
28	3
29	4
30	8
31	14
32	11
33	7
34	7
35	7
36	10
37	11
38	8
39	5
40	5
41	1
42	3
43	0
44	0
45	0
46	0
47	0
48	0
49	0
50	0
51	0
52	0
53	0
54	0
55	0
56	0
57	0
58	0
59	0
60	0
61	0
62	0
63	0
64	0
65	0
<b>Total</b>	<b>108</b>

### SUMMARY STATISTICS

Total Observed (vehicles)	108		50th Percentile (mph)	34
Speed Range (mph)	25	42	85th Percentile (mph)	38
10 Mph Pace (mph)	30	39	Average Speed (mph)	34.03


### GRAPH OF CUMULATIVE PERCENTAGE OF VEHICLES VS SPEED



### ANALYSIS INFORMATION

Number of Accidents	Total 2 Collisions
Date Period	1/1/2019 - 12/31/2021
Street layout	Two Lane, Curve, Bike Lane (0.35 Mi, 36')
Volume (if known)	
Parking Considerations	No on street parking
Other Considerations	Residential Subdivisions

### RECOMMENDATIONS & NOTES

	<p>85th percentile indicates speed of 38 MPH                  Presence of intersections, bike lane, curve, park collisions in this segment justifies downgrading speed limit by 5 mph.</p> <p style="text-align: center;"><b>Recommended speed limit = 35 MPH</b></p>
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## VEHICLE SPEED SURVEY REPORT

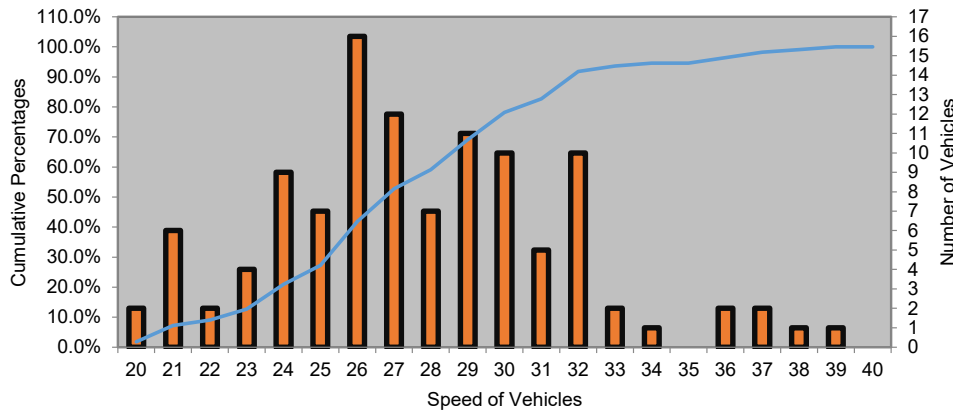
Location:	Lankershire Drive between Montgomery Lane and Byron Road		
Date:	11/16/2021	Recorder:	ET
Begin Time:	10:00 AM	Direction:	NB/SB
End Time:	11:00 AM	Land use:	Residential
Day:	Tuesday	Type:	Collector
Weather:	Sunny and Clear	Posted Limit:	25

DATA COLLECTED	
Speed	Samples
20	2
21	6
22	2
23	4
24	9
25	7
26	16
27	12
28	7
29	11
30	10
31	5
32	10
33	2
34	1
35	0
36	2
37	2
38	1
39	1
40	0
41	0
42	0
43	0
44	0
45	0
46	0
47	0
48	0
49	0
50	0
51	0
52	0
53	0
54	0
55	0
56	0
57	0
58	0
59	0
60	0
61	0
62	0
63	0
64	0
65	0
<b>Total</b>	<b>110</b>

### SUMMARY STATISTICS

Total Observed (vehicles)	110		50th Percentile (mph)	27
Speed Range (mph)	20	39	85th Percentile (mph)	32
10 Mph Pace (mph)	23	32	Average Speed (mph)	27.69

### GRAPH OF CUMULATIVE PERCENTAGE OF VEHICLES VS SPEED



### ANALYSIS INFORMATION

Number of Accidents	Total 7 Collisions
Date Period	1/1/2019 - 12/31/2021
Street layout	Two Lane residential collector (0.30 Mi, 44')
Volume (if known)	
Parking Considerations	Parking permitted in this segment
Other Considerations	Residential Area, Driveways, Intersections, Park, Curve

### RECOMMENDATIONS & NOTES

	<p>85th percentile indicates speed of 32 MPH                  Presence of residential driveways, intersections                  curve, collisions, and park in this segment justifies                  downgrading speed limit by 5 mph.</p> <p style="text-align: center;"><b>Recommended speed limit = 25 MPH</b></p>
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## VEHICLE SPEED SURVEY REPORT

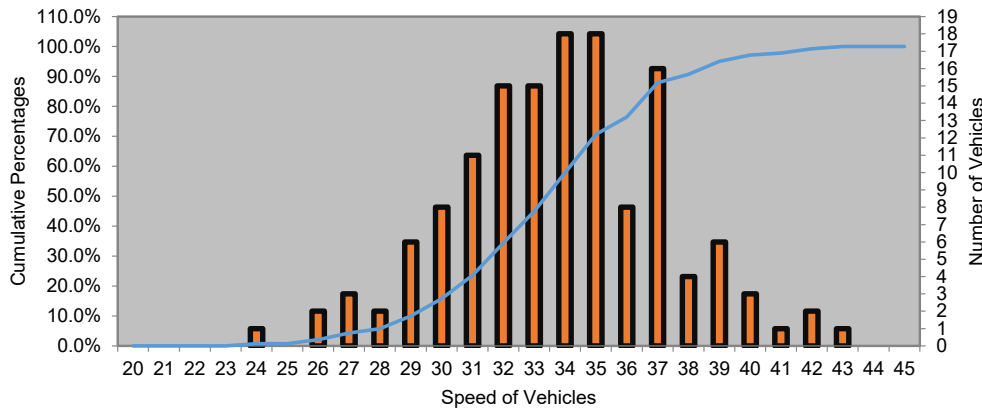
Location:	Lowell Avenue between Lincoln Blvd. and Tracy Blvd.		
Date:	8/3/2021	Recorder:	ET
Begin Time:	9:20 AM	Direction:	EB/WB
End Time:	10:40 AM	Land use:	Residential
Day:	Tuesday	Type:	Minor Arterial
Weather:	Sunny and Clear	Posted Limit:	30

DATA COLLECTED	
Speed	Samples
20	0
21	0
22	0
23	0
24	1
25	0
26	2
27	3
28	2
29	6
30	8
31	11
32	15
33	15
34	18
35	18
36	8
37	16
38	4
39	6
40	3
41	1
42	2
43	1
44	0
45	0
46	0
47	0
48	0
49	0
50	0
51	0
52	0
53	0
54	0
55	0
56	0
57	0
58	0
59	0
60	0
61	0
62	0
63	0
64	0
65	0
<b>Total</b>	<b>140</b>

### SUMMARY STATISTICS

Total Observed (vehicles)	140		50th Percentile (mph)	34
Speed Range (mph)	24	43	85th Percentile (mph)	37
10 Mph Pace (mph)	29	38	Average Speed (mph)	33.85

### GRAPH OF CUMULATIVE PERCENTAGE OF VEHICLES VS SPEED



### ANALYSIS INFORMATION

Number of Accidents	Total 25 Collisions
Date Period	1/1/2019 - 12/31/2021
Street layout	Four Lane Road, Residential Driveways (0.46 Mi, 62')
Volume (if known)	
Parking Considerations	Parking permitted
Other Considerations	Schools and Park frontage, No median left turn lane

### RECOMMENDATIONS & NOTES

	<p>85th percentile indicates speed of 37 MPH                  Presence of residential driveways, intersections, school collisions, parking, and park in this segment justifies downgrading speed limit by 5 mph.</p> <p style="text-align: center;"><b>Recommended speed limit= 30 MPH</b></p>
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## VEHICLE SPEED SURVEY REPORT

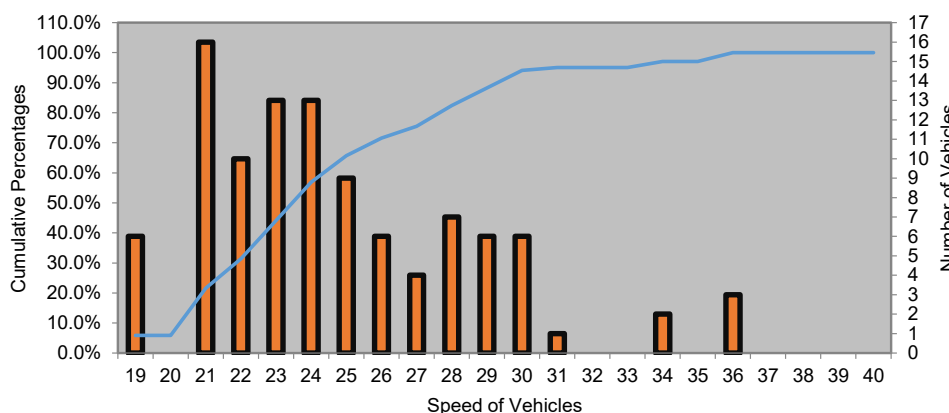
Location:	Lowell Avenue between Tracy Blvd. and East Street		
Date:	10/6/2021	Recorder:	ET
Begin Time:	2:00 PM	Direction:	EB/WB
End Time:	3:30 PM	Land use:	Residential
Day:	Wednesday	Type:	Collector
Weather:	Sunny and Clear	Posted Limit:	25

DATA COLLECTED	
Speed	Samples
19	6
20	0
21	16
22	10
23	13
24	13
25	9
26	6
27	4
28	7
29	6
30	6
31	1
32	0
33	0
34	2
35	0
36	3
37	0
38	0
39	0
40	0
41	0
42	0
43	0
44	0
45	0
46	0
47	0
48	0
49	0
50	0
51	0
52	0
53	0
54	0
55	0
56	0
57	0
58	0
59	0
60	0
61	0
62	0
63	0
64	0
<b>Total</b>	<b>102</b>

### SUMMARY STATISTICS

Total Observed (vehicles)	102		50th Percentile (mph)	24
Speed Range (mph)	19	36	85th Percentile (mph)	29
10 Mph Pace (mph)	21	30	Average Speed (mph)	24.77


### GRAPH OF CUMULATIVE PERCENTAGE OF VEHICLES VS SPEED



### ANALYSIS INFORMATION

Number of Accidents	Total 33 Collisions
Date Period	1/1/2019 - 12/31/2021
Street layout	2 Lane, Residential collector, Res. Dwys (0.70 Mi, 36')
Volume (if known)	
Parking Considerations	Parking on both sides of the Roadway
Other Considerations	Speed Humps, Residential Area

### RECOMMENDATIONS & NOTES

	<p>85th percentile indicates speed of 29 MPH                  Presence of intersections, residential driveways, parking in this segment justifies downgrading speed limit by 5 mph.</p> <p style="text-align: center;"><b>Recommended speed limit = 25 MPH</b></p>
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## VEHICLE SPEED SURVEY REPORT

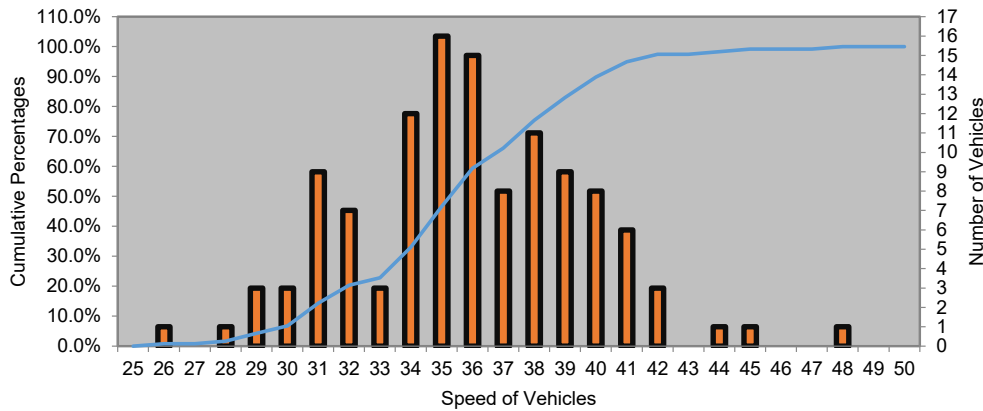
Location:	Middlefield Drive between Corral Hollow Rd. and Whispering Wind Dr.		
Date:	8/11/2021	Recorder:	ET
Begin Time:	1:50 PM	Direction:	EB/WB
End Time:	3:00 PM	Land use:	Residential
Day:	Wednesday	Type:	Major Collector
Weather:	Sunny and Clear	Posted Limit:	35

DATA COLLECTED	
Speed	Samples
20	0
21	0
22	0
23	0
24	0
25	0
26	1
27	0
28	1
29	3
30	3
31	9
32	7
33	3
34	12
35	16
36	15
37	8
38	11
39	9
40	8
41	6
42	3
43	0
44	1
45	1
46	0
47	0
48	1
49	0
50	0
51	0
52	0
53	0
54	0
55	0
56	0
57	0
58	0
59	0
60	0
61	0
62	0
63	0
64	0
65	0
<b>Total</b>	<b>118</b>

### SUMMARY STATISTICS

Total Observed (vehicles)	118		50th Percentile (mph)	36
Speed Range (mph)	26	48	85th Percentile (mph)	40
10 Mph Pace (mph)	31	40	Average Speed (mph)	35.89

### GRAPH OF CUMULATIVE PERCENTAGE OF VEHICLES VS SPEED



### ANALYSIS INFORMATION

Number of Accidents	Total 7 Collisions
Date Period	1/1/2019 - 12/31/2021
Street layout	Two Lane Major Collector Roadway, Curve (0.33 Mi, 48')
Volume (if known)	
Parking Considerations	No Parking permitted in the segment
Other Considerations	Bike Lane, Residential Subdivisions

### RECOMMENDATIONS & NOTES

	<p>85th percentile indicates speed of 40 MPH                  Presence of bike lanes, intersections, collisions, and curve justifies downgrading speed limit by 5 mph.</p> <p style="text-align: center;"><b>Recommended speed limit= 35 MPH</b></p>
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## VEHICLE SPEED SURVEY REPORT

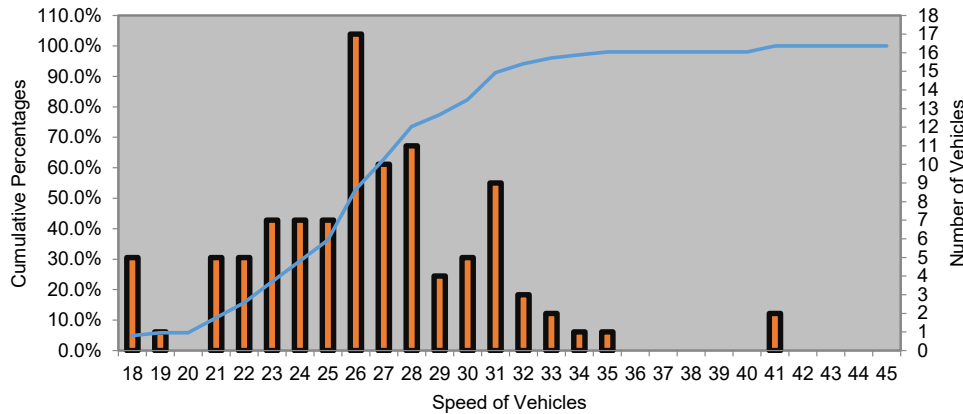
Location:	Middlefield Drive between Whispering Wind Drive and Peony Drive		
Date:	9/1/2021	Recorder:	ET
Begin Time:	3:10 PM	Direction:	NB/SB
End Time:	5:30 PM	Land use:	Residential
Day:	Friday	Type:	Collector
Weather:	Sunny and Clear	Posted Limit:	25

DATA COLLECTED	
Speed	Samples
18	5
19	1
20	0
21	5
22	5
23	7
24	7
25	7
26	17
27	10
28	11
29	4
30	5
31	9
32	3
33	2
34	1
35	1
36	0
37	0
38	0
39	0
40	0
41	2
42	0
43	0
44	0
45	0
46	0
47	0
48	0
49	0
50	0
51	0
52	0
53	0
54	0
55	0
56	0
57	0
58	0
59	0
60	0
61	0
62	0
63	0
<b>Total</b>	<b>102</b>

### SUMMARY STATISTICS

Total Observed (vehicles)	102		50th Percentile (mph)	26
Speed Range (mph)	18	41	85th Percentile (mph)	31
10 Mph Pace (mph)	22	31	Average Speed (mph)	26.53

### GRAPH OF CUMULATIVE PERCENTAGE OF VEHICLES VS SPEED



### ANALYSIS INFORMATION

Number of Accidents	Total 4 Collisions
Date Period	1/1/2019 - 12/31/2021
Street layout	Two Lane residential collector, curve (0.19 Mi, 48')
Volume (if known)	
Parking Considerations	Parking permitted in this segment
Other Considerations	Residential Driveways,

### RECOMMENDATIONS & NOTES

	<p>85th percentile indicates speed of 31 MPH                  Presence of driveways, residential area, intersections in this segment justifies downgrading speed limit by 5 mph.</p> <p style="text-align: center;"><b>Recommended speed limit = 25 MPH</b></p>
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## VEHICLE SPEED SURVEY REPORT

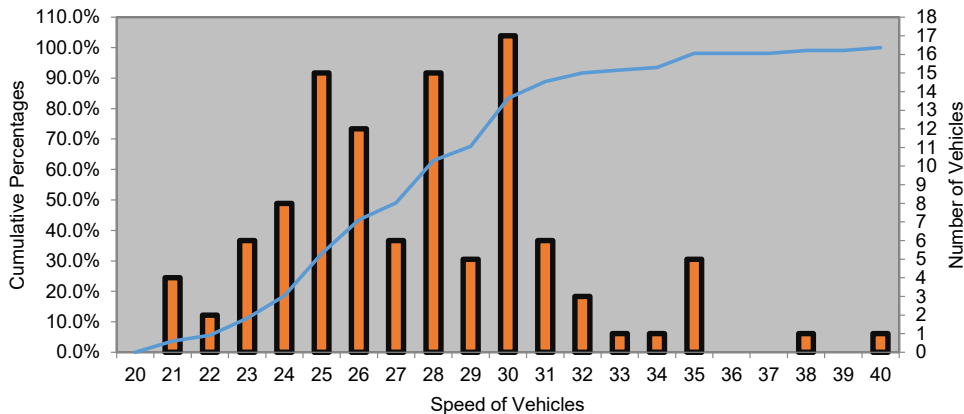
Location:	Portola Way between Holly Drive and Entrada Way		
Date:	7/7/2021	Recorder:	ET
Begin Time:	3:05 PM	Direction:	NB/SB
End Time:	5:05 PM	Land use:	Residential
Day:	Wednesday	Type:	Collector
Weather:	Sunny and Clear	Posted Limit:	25

DATA COLLECTED	
Speed	Samples
20	0
21	4
22	2
23	6
24	8
25	15
26	12
27	6
28	15
29	5
30	17
31	6
32	3
33	1
34	1
35	5
36	0
37	0
38	1
39	0
40	1
41	0
42	0
43	0
44	0
45	0
46	0
47	0
48	0
49	0
50	0
51	0
52	0
53	0
54	0
55	0
56	0
57	0
58	0
59	0
60	0
61	0
62	0
63	0
64	0
65	0
<b>Total</b>	<b>108</b>

### SUMMARY STATISTICS

Total Observed (vehicles)	108		50th Percentile (mph)	28
Speed Range (mph)	21	40	85th Percentile (mph)	31
10 Mph Pace (mph)	23	32	Average Speed (mph)	27.63

### GRAPH OF CUMULATIVE PERCENTAGE OF VEHICLES VS SPEED



### ANALYSIS INFORMATION

Number of Accidents	Total 10 Collisions
Date Period	1/1/2019 - 12/31/2021
Street layout	Two Lane residential collector (0.26 Mi, 38')
Volume (if known)	
Parking Considerations	Parking permitted in this segment
Other Considerations	Residential Area, intersections,

### RECOMMENDATIONS & NOTES

	<p>85th percentile indicates speed of 31 MPH                  Presence of residential driveways, intersections, justifies downgrading speed limit by 5 mph.</p> <p style="text-align: center;"><b>Recommended speed limit = 25 MPH</b></p>
--	--

## VEHICLE SPEED SURVEY REPORT

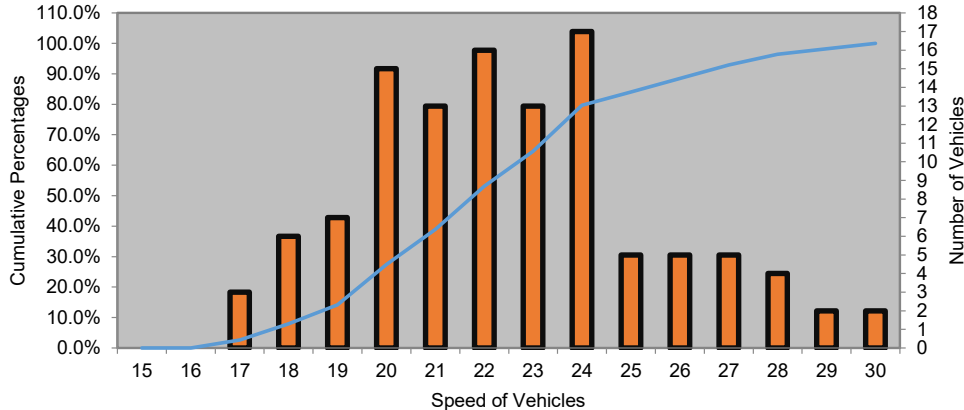
Location:	Richard Drive between Lincoln Blvd. and Eaton Avenue		
Date:	12/8/2021	Recorder:	ET
Begin Time:	3:15 PM	Direction:	EB/WB
End Time:	5:30 PM	Land use:	Residential
Day:	Wednesday	Type:	Collector
Weather:	Sunny and Clear	Posted Limit:	25

DATA COLLECTED	
Speed	Samples
15	0
16	0
17	3
18	6
19	7
20	15
21	13
22	16
23	13
24	17
25	5
26	5
27	5
28	4
29	2
30	2
31	0
32	0
33	0
34	0
35	0
36	0
37	0
38	0
39	0
40	0
41	0
42	0
43	0
44	0
45	0
46	0
47	0
48	0
49	0
50	0
51	0
52	0
53	0
54	0
55	0
56	0
57	0
58	0
59	0
60	0
<b>Total</b>	<b>113</b>

### SUMMARY STATISTICS

Total Observed (vehicles)	113		50th Percentile (mph)	22
Speed Range (mph)	17	30	85th Percentile (mph)	26
10 Mph Pace (mph)	18	27	Average Speed (mph)	22.51

### GRAPH OF CUMULATIVE PERCENTAGE OF VEHICLES VS SPEED



### ANALYSIS INFORMATION

Number of Accidents	Total 1 Collision
Date Period	1/1/2019 - 12/31/2021
Street layout	Two Lane residential collector (0.14 Mi, 36')
Volume (if known)	
Parking Considerations	Parking permitted in this segment
Other Considerations	Residential Area, Driveways

### RECOMMENDATIONS & NOTES

	<p>85th percentile indicates speed of 26 MPH</p> <p style="text-align: center;"><b>Recommended speed limit = 25 MPH</b></p>
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## VEHICLE SPEED SURVEY REPORT

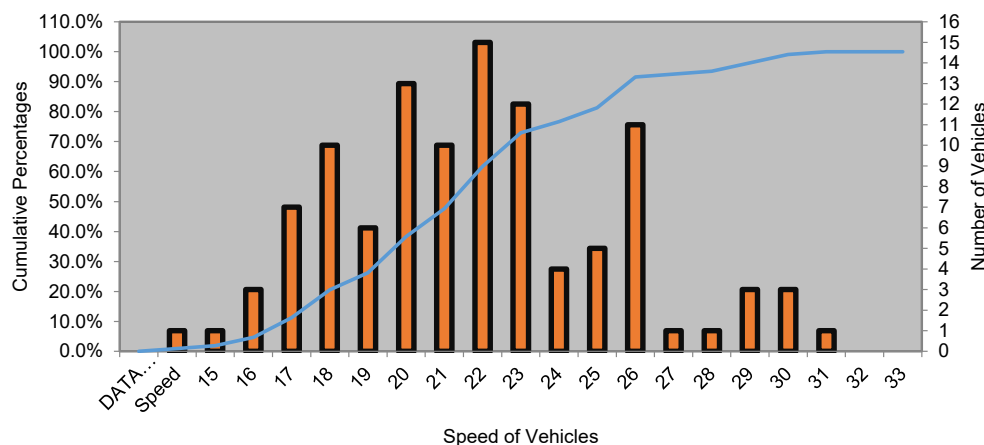
Location:	Tenth Street between Civic Center Drive and MacArthur Drive		
Date:	10/27/2021	Recorder:	ET
Begin Time:	10:00 AM	Direction:	EB/WB
End Time:	12:00 PM	Land use:	Industrial/Commercial
Day:	Wednesday	Type:	Collector
Weather:	Sunny and Clear	Posted Limit:	25

DATA COLLECTED	
Speed	Samples
15	0
16	1
17	1
18	3
19	7
20	10
21	6
22	13
23	10
24	15
25	12
26	4
27	5
28	11
29	1
30	1
31	3
32	3
33	1
34	0
35	0
36	0
37	0
38	0
39	0
40	0
41	0
42	0
43	0
44	0
45	0
46	0
47	0
48	0
49	0
50	0
51	0
52	0
53	0
54	0
55	0
56	0
57	0
58	0
59	0
60	0
Total	107

### SUMMARY STATISTICS

Total Observed (vehicles)	107		50th Percentile (mph)	24
Speed Range (mph)	16	33	85th Percentile (mph)	28
10 Mph Pace (mph)	19	28	Average Speed (mph)	23.83

### GRAPH OF CUMULATIVE PERCENTAGE OF VEHICLES VS SPEED



### ANALYSIS INFORMATION

Number of Accidents	Total 2 Collisions
Date Period	1/1/2019 - 12/31/2021
Street layout	Two Lane collector roadway (0.15 Mi, 40')
Volume (if known)	
Parking Considerations	No Parking permitted in this segment
Other Considerations	Industrial, Trucks, Pedestrians

### RECOMMENDATIONS & NOTES

	<p>85th percentile indicates speed of 28 MPH                  Presence of driveways in this segment justifies downgrading speed limit by 5 mph.</p> <p style="text-align: center;"><b>Recommended speed limit= 25 MPH</b></p>
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## VEHICLE SPEED SURVEY REPORT

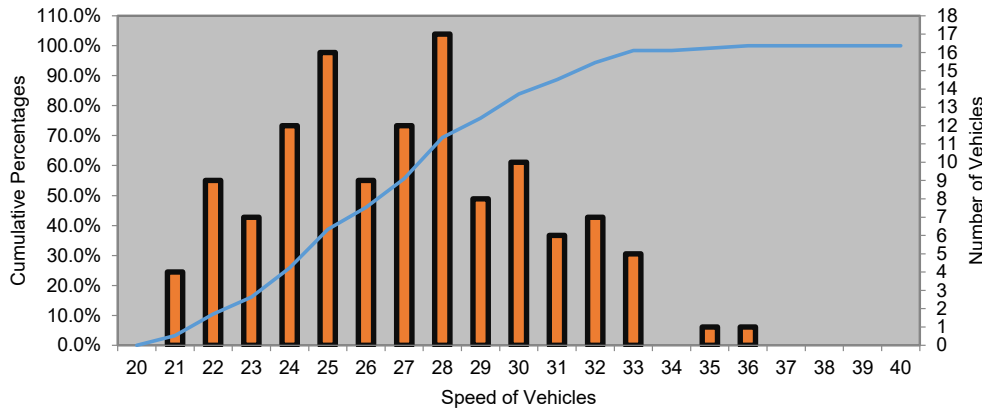
Location:	Tenth Street between Tracy Blvd. and East Street		
Date:	10/27/2021	Recorder:	ET
Begin Time:	1:45 PM	Direction:	EB/WB
End Time:	3:10 PM	Land use:	Downtown Business/Resident
Day:	Thursday	Type:	Collector
Weather:	Sunny and Clear	Posted Limit:	25

DATA COLLECTED	
Speed	Samples
20	0
21	4
22	9
23	7
24	12
25	16
26	9
27	12
28	17
29	8
30	10
31	6
32	7
33	5
34	0
35	1
36	1
37	0
38	0
39	0
40	0
41	0
42	0
43	0
44	0
45	0
46	0
47	0
48	0
49	0
50	0
51	0
52	0
53	0
54	0
55	0
56	0
57	0
58	0
59	0
60	0
61	0
62	0
63	0
64	0
65	0
<b>Total</b>	<b>124</b>

### SUMMARY STATISTICS

Total Observed (vehicles)	124		50th Percentile (mph)	27
Speed Range (mph)	21	36	85th Percentile (mph)	31
10 Mph Pace (mph)	22	31	Average Speed (mph)	26.96

### GRAPH OF CUMULATIVE PERCENTAGE OF VEHICLES VS SPEED



### ANALYSIS INFORMATION

Number of Accidents	Total 28 Collisions
Date Period	1/1/2019 - 12/31/2021
Street layout	Two Lane residential collector (0.83 Mi, 32-56')
Volume (if known)	
Parking Considerations	Parking permitted in this segment
Other Considerations	Angled parking, residential area, interections, Downtown

### RECOMMENDATIONS & NOTES

	<p>85th percentile indicates speed of 31 MPH                  Presence of residential driveways, intersections, school collisions, parking, downtown in this segment justifies downgrading speed limit by 5 mph.</p> <p style="text-align: center;"><b>Recommended speed limit= 25 MPH</b></p>
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## VEHICLE SPEED SURVEY REPORT

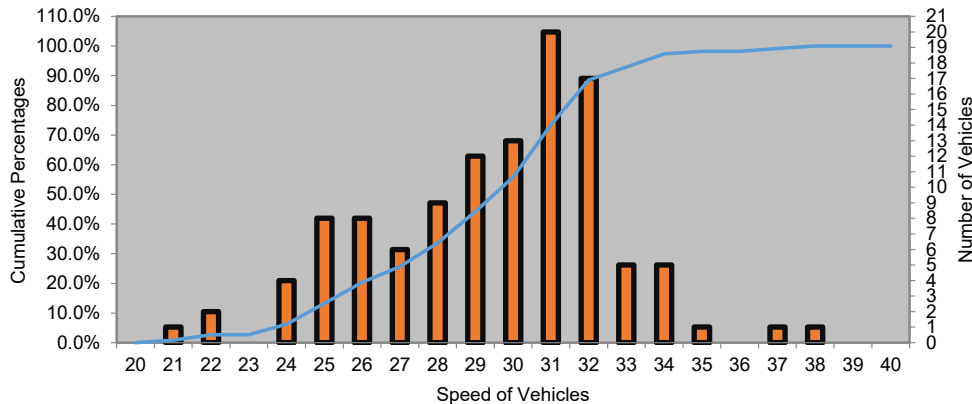
Location:	Third Street between Mt. Diablo and Central Avenue		
Date:	7/27/2021	Recorder:	ET
Begin Time:	9:25 PM	Direction:	North/South
End Time:	11:25 PM	Land use:	Residential
Day:	Tuesday	Type:	Collector
Weather:	Sunny and Clear	Posted Limit:	25

DATA COLLECTED	
Speed	Samples
20	0
21	1
22	2
23	0
24	4
25	8
26	8
27	6
28	9
29	12
30	13
31	20
32	17
33	5
34	5
35	1
36	0
37	1
38	1
39	0
40	0
41	0
42	0
43	0
44	0
45	0
46	0
47	0
48	0
49	0
50	0
51	0
52	0
53	0
54	0
55	0
56	0
57	0
58	0
59	0
60	0
61	0
62	0
63	0
64	0
65	0
<b>Total</b>	<b>113</b>

### SUMMARY STATISTICS

Total Observed (vehicles)	113		50th Percentile (mph)	30
Speed Range (mph)	21	38	85th Percentile (mph)	32
10 Mph Pace (mph)	25	34	Average Speed (mph)	29.47

### GRAPH OF CUMULATIVE PERCENTAGE OF VEHICLES VS SPEED



### ANALYSIS INFORMATION

Number of Accidents	Total 4 Collisions
Date Period	1/1/2019 - 12/31/2021
Street layout	Two Lane residential collector (0.45 Mi, 36')
Volume (if known)	
Parking Considerations	Parking Permitted in the area
Other Considerations	Residential Area, Park, Driveways, intersections

### RECOMMENDATIONS & NOTES

	<p>85th percentile indicates speed of 32 MPH                  Presence of residential driveways, intersections curve, collisions, and park in this segment justifies downgrading speed limit by 5 mph.</p> <p style="text-align: center;"><b>Recommended speed limit = 25 MPH</b></p>
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AGENDA ITEM 3.C

RECOMMENDATION

**STAFF RECOMMENDS THAT THE CITY COUNCIL ADOPT THE FOLLOWING RESOLUTIONS TO FURTHER COMPLY WITH THE JUDGMENT AND PEREMPTORY WRIT OF MANDATE IN *MITRACOS V. CITY OF TRACY, ET AL.*, SAN JOAQUIN COUNTY SUPERIOR COURT CASE NO. STK-CV-UWM-2018-5531:**

**(1) A RESOLUTION RESCINDING RESOLUTION NO. 2020-154 APPROVING FINAL AQUATIC CENTER CONCEPTUAL PLAN WITH A NOT-TO-EXCEED AMOUNT OF \$65 MILLION INCLUDING CONTINGENCY AND SOFT COSTS;**

**(2) A RESOLUTION RESCINDING RESOLUTION NO. 2019-78 APPROVING THE AGREEMENT FOR DEFERRAL OF CERTAIN IMPACT FEES FOR ELLIS GARDENS PHASE 1- 3 (TRACT 3877, TRACT 3906, AND TRACT 3907); AND**

**(3) A RESOLUTION RESCINDING RESOLUTION NO. 2021-116 APPROVING THE AGREEMENT FOR DEFERRAL OF CERTAIN IMPACT FEES FOR ELLIS TOWN AND COUNTRY (TRACT 4007)**

EXECUTIVE SUMMARY

This agenda item is to request the City Council to take certain actions with respect to the unwinding of the Second Amendment, to further comply with the Judgment and Peremptory Writ of Mandate (**Writ**) in *Mitracos v. City of Tracy, et al.*, San Joaquin County Superior Court Case No. STK-CV-UWM-2018-5531. Specifically, the actions requested in this agenda item are that the City Council adopt three Resolutions that would, together, rescind the Conceptual Plans for the Aquatic Center as designed by Surland Communities, LLC (**Surland**) pursuant to the Second Amendment and two fee deferral agreements authorized by the Second Amendment.

On August 16, 2022, the City Council introduced Ordinances to rescind Ordinance 1253 and the 2018 Second Amendment to the Development Agreement. The adoption of these two Ordinances is on the consent calendar for this same September 6, 2022 meeting. The City remains obligated to take additional actions to further comply with the Judgment and Writ, including to rescind and unwind actions previously taken to implement the invalidated Second Amendment. The City must also inform the Superior Court of actions it has taken to comply with the Judgment and Writ. As such, City staff and the City Attorney are conferring with Surland to attempt to align on an orderly path forward to accomplish the required unwinding actions, without either party suffering any unintended or unlawful consequences.

City staff and the City Attorney are continuing to evaluate additional actions that may need to be taken to rescind and unwind the Second Amendment and will return to Council at future meetings, for consideration and approval of these actions as needed.

## BACKGROUND

The City of Tracy (**City**) and Surland have been parties with one another in a longstanding development agreement, dating as far back as 2009, with respect to Surland's development of real property located in the Ellis Specific Plan area. The original development agreement was invalidated during a court proceeding, and in 2013, the City Council adopted an ordinance approving an Amended and Restated Development Agreement with Surland Communities, LLC (**2013 Development Agreement**), and subsequently, the City entered into the 2013 Development Agreement with Surland.

In 2018, the City Council adopted Ordinance 1253 (**Ordinance 1253**), an Ordinance of the City of Tracy Approving the Second Amendment to the Amended and Restated Development Agreement By and Between the City of Tracy and Surland Communities, LLC, and subsequently the City entered into the Second Amendment to the 2013 Development Agreement (**2018 Second Amendment to Development Agreement**).

The 2018 Second Amendment to Development Agreement provided a process by which Surland could ask the City Council to exercise its legislative discretion to approve a further amendment to the 2013 Development Agreement to add additional property, which properties could be eligible for Residential Growth Allotments (**RGAs**) under the 2013 Development Agreement.

In addition, the 2018 Second Amendment to the Development Agreement revised the City's and Surland's respective responsibilities, rights, and obligations with respect to the development of a public swim center (**Aquatic Center**), providing, among other things, that Surland would facilitate design and construction services for the Aquatic Center, in lieu of making certain monetary payments to the City, and dedicate land for the Aquatic Center, and the City would provide fee deferrals and credits to Surland and its assignees.

Mary Mitracos filed a lawsuit against the City and Surland challenging the legality of Ordinance 1253 and the 2018 Second Amendment to Development Agreement.

In 2020, the San Joaquin County Superior Court entered Judgment (**Judgment**) in Ms. Mitracos' favor and issued a Peremptory Writ of Mandate (**Writ**) ordering the City (i) to rescind and set aside Ordinance 1253 and the 2018 Second Amendment to Development Agreement, (ii) not to take any action to implement the Second Amendment, and (iii) to rescind any actions that were taken to implement Ordinance 1253 and the Second Amendment. The City and Surland appealed. In May 2022, the Court of Appeal denied the appeal and affirmed the Superior Court, and in July 2022 remitted the case back to the Superior Court.

As noted above, on August 16, 2022, the City Council introduced two Ordinances to rescind, respectively, Ordinance 1253 and the 2018 Second Amendment to the Development Agreement. The adoption of these two Ordinances is on the consent calendar for this same September 6, 2022 Council meeting. The City remains obligated to take additional actions to further comply with the Judgment and Writ, including rescinding and unwinding actions previously taken to implement the invalidated Second

Amendment. The City must also inform the Superior Court of actions it has taken to comply with the Judgment and Writ. As such, City staff and the City Attorney are conferring with Surland to attempt to align on an orderly path forward to accomplish the required unwinding actions, without either party suffering any unintended or unlawful consequences.

City staff now recommends that the City Council adopt the recommended Resolutions. City staff and the City Attorney continue to evaluate additional actions that may need to be taken to fully unwind the 2018 Second Amendment to Development Agreement and Ordinance 1253. Staff will return to the City Council for additional approval, as may be necessary to fully “unwind” the 2018 Second Amendment to Development Agreement. Staff will return to the City Council for approval, as needed, to implement any such additional actions.

### ANALYSIS

The City is obligated to comply with the Judgment and Writ—which are final and not subject to further appeal—and to return to the Superior Court to inform the Court as to the actions taken to comply and ask the Court to discharge the Writ.

In addition to obligating the City to set aside, rescind, and vacate Ordinance 1253 and the 2018 Second Amendment to Development Agreement, and not to take any action to implement the Second Amendment, the Judgment and Writ obligate the City to rescind (“unwind”) any actions that were taken to implement Ordinance 1253 and the Second Amendment.

The City has already acted to set aside, rescind, and vacate Ordinance 1253 and the 2018 Second Amendment to Development Agreement, and has not taken and will not take any action to implement the Second Amendment.

The City must also take necessary recession actions, including the rescission actions now proposed, in particular to rescind the City’s approval of the Conceptual Plan for Surland to design and construct the Swim Center, and the two fee deferral agreements.

### FISCAL IMPACT

Surland is responsible to cover all City costs and expenses associated with this lawsuit pursuant to a hold harmless and indemnity provision of the Development Agreement.

As to the rescission of the Conceptual Plan for the Aquatic Center, any new plans for the Aquatic Center would have to be funded by the City.

As to the rescission of the Fee Deferral Agreements, the City will receive immediately fees that previously were deferred for two major projects within the Ellis Specific Plan.

### PUBLIC OUTREACH/ INTEREST

Not applicable, as this is a court proceeding.

COORDINATION

Multiple departments of the City are working together to identify the requisite actions that need to be taken to fully unwind the 2018 Second Amendment to Development Agreement.

CEQA DETERMINATION

Adoption of the proposed resolutions is not a project within the meaning of the California Environmental Quality Act (“CEQA”), including as the term “project” is defined by section 15378 of the CEQA Guidelines, including without limitation because the adoption of the resolutions is a ministerial action not subject to and exempt from CEQA (see section 15268 of the CEQA Guidelines), and that even if it were a project under CEQA, it is subject to the CEQA exemption contained in CEQA Guidelines section 15061(b)(3) because it can be seen with certainty to have no possibility of a significant effect on the environment.

STRATEGIC PLAN

Not applicable, as this is a court proceeding.

ACTION REQUESTED OF THE CITY COUNCIL

**Staff recommends that the City Council adopt the following Resolutions to further comply with the Judgment and Peremptory Writ of Mandate in *Mitracos v. City of Tracy, et al.*, San Joaquin County Superior Court Case No. STK-CV-UWM-2018-5531:**

- 1. A Resolution Rescinding Resolution No. 2020-154 Approving Final Aquatic Center Conceptual Plan with a Not-to-Exceed Amount of \$65 Million Including Contingency and Soft Costs;**
- 2. A Resolution Rescinding Resolution No. 2019-78 Approving the Agreement for Deferral of Certain Impact Fees for Ellis Gardens Phase 1- 3 (Tract 3877, Tract 3906, and Tract 3907); and**
- 3. A Resolution Rescinding Resolution No. 2021-116 Approving the Agreement for Deferral of Certain Impact Fees for Ellis Town and Country (Tract 4007).**

Respectfully submitted,

Bijal M. Patel  
City Attorney

TRACY CITY COUNCIL

RESOLUTION NO. 2022-\_\_\_\_

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**RESOLUTION RESCINDING RESOLUTION NO. 2020-154 APPROVING FINAL  
AQUATIC CENTER CONCEPTUAL PLAN WITH A NOT-TO-EXCEED AMOUNT  
OF \$65 MILLION INCLUDING CONTINGENCY AND SOFT COSTS**

**WHEREAS**, on March 19, 2013, the City Council adopted Ordinance 1182 (Ordinance 1182), an Ordinance of the City of Tracy Approving an Amended and Restated Development Agreement with Surland Communities, LLC, with respect to the development of real property in the Ellis Specific Plan area; and

**WHEREAS**, pursuant to Ordinance 1182, the City of Tracy (City) and Surland Communities, LLC (Surland) executed and entered into the Amended and Restated Development Agreement By and Between the City of Tracy and Surland Communities, LLC, dated April 18, 2013 ("2013 Development Agreement"); and

**WHEREAS**, the 2013 Development Agreement provided that, among other things: Surland would pay the City \$10 Million—by an initial first installment of \$2 Million followed by a second installment of \$8 Million—to fund the design and construction of the Aquatic Center and offer to dedicate 16 acres of land for the Aquatic Center; and

**WHEREAS**, Surland has paid the first installment of \$2 Million and provided an Irrevocable Land Dedication Offer, which the City recorded; and

**WHEREAS**, on June 3, 2014, the City Council adopted Ordinance 1194 (Ordinance 1194), an Ordinance of the City of Tracy Approving First Amendment to Amended and Restated Development Agreement with the Surland Communities, LLC; and

**WHEREAS**, pursuant to Ordinance 1194, the City and Surland executed and entered into the First Amendment to Amended and Restated Development Agreement By and Between the City of Tracy and Surland Communities, LLC, dated July 3, 2014; and

**WHEREAS**, on April 3, 2018, the City Council adopted Ordinance 1253 (Ordinance 1253), an Ordinance of the City of Tracy Approving the Second Amendment to the Amended and Restated Development Agreement By and Between the City of Tracy and Surland Communities, LLC, which became effective 30 days later, on May 3, 2018; and

**WHEREAS**, pursuant to Ordinance 1253, the City and Surland executed and entered into the Second Amendment to Amended and Restated Development Agreement By and Between the City of Tracy and Surland Communities, LLC, dated May 3, 2018 (2018 Second Amendment to Development Agreement or 2018 DA); and

**WHEREAS**, the Second Amendment to the 2013 Development Agreement revised the City's and Surland's respective responsibilities, rights, and obligations with respect to the Aquatic Center, including by providing that in lieu of paying the City \$8 Million of the \$10 Million owed under the 2013 Development Agreement, Surland would facilitate design and construction services for the Aquatic Center; and

**WHEREAS**, as to design and construction, the 2018 Second Amendment to the Development Agreement added a new section 1.01(j) which provided, among other things, that Surland would "retain and compensate consultants to design the Swim Center with input from the community and City staff and with direction from the City Council," and that before Surland prepared construction improvement plans the City Council would approve a final conceptual plan; and

**WHEREAS**, on May 11, 2018, Mary Mitracos, as Petitioner and Plaintiff, filed a lawsuit against the City, as Respondent and Defendant, and Surland, as Real Party in Interest, challenging the legality of Ordinance 1253 and the 2018 Second Amendment to the Development Agreement, *Mitracos v. City of Tracy, et al.*, San Joaquin County Superior Court Case No. STK-CV-UWM-2018-5531; and

**WHEREAS**, on September 30, 2020, the San Joaquin County Superior Court entered Judgment (Judgment) for Plaintiff Mitracos and against the City and Surland, and issued a Peremptory Writ of Mandate (Writ), each of which was served on the City on October 8, 2020; and

**WHEREAS**, the Judgment served on October 8, 2020 includes the following rulings (the Judgment refers to the 2018 Second Amendment to the Development Agreement as the "2018 DA"):

IT IS SO ORDERED, DECREED AND ADJUDGED that:

1. Judgment granting a Peremptory Writ of Mandate is entered in favor of Petitioner Mitracos in this proceeding. Judgment is entered because the Court finds that Respondent committed a prejudicial abuse of discretion in taking the following actions:
  - (a) Adopting, approving and entering into the Second Amendment to Amended and Restated Development Agreement by and between the City of Tracy and Surland Communities, LLC" ("2018 DA").
  - (b) Adopting Ordinance 1253[.]
2. The Court finds the 2018 DA does not comply with Government Code Sections 65865(b) and 65865.2 and is therefore void ab initio.
3. A Preemptory Writ of Mandate direct[ed] to Respondents shall issue under seal of this Court, ordering Respondents to vacate and set aside, within (30) days from service of the Writ of Mandate, all approvals and adoptions of the 2008 DA and Ordinance 1253, as described in paragraph 2 above in their entirety and all other actions taken by Respondents to approve or implement the Development Agreement. Respondent City is

ordered to:

- (a) Set aside, rescind, and vacate the "Second Amendment to Amended and Restated Development Agreement by and between The City of Tracy and Surland Communities, LLC" ("2018 DA").
- (b) Set aside, rescind, and vacate Ordinance 1253.
- (c) Set aside, rescind, and vacate any actions taken pursuant to the "Second Amendment to Amended and Restated Development Agreement by and Between the City of Tracy and Surland Communities, LLC" ("2018 DA") and Ordinance 1253.

4. Respondent City shall file a return to the Peremptory Writ of Mandate within 10 days of completion of the actions mandated by this judgment. This Court shall retain jurisdiction over Respondents' proceedings by way of the return to the Peremptory Writ of Mandate until the Court has determined that Respondent has complied with the directives of this Court.

5. Petitioner shall be awarded its costs of suit. Petitioner is the successful party pursuant to Code of Civil Procedure § 1021.5. The Court reserves jurisdiction to determine entitlement to attorneys' fees and litigation expenses, pursuant to any properly and timely filed motion which Petitioner Mitracos may make.

6. Injunctive relief is granted consistent with this ruling. Respondents, Real Parties in Interest, and their respective agents, employees, and persons acting in concert with them are permanently enjoined from any and all actions to further implement the 2018 Development Agreement as described in paragraph 1(a) above.

and

**WHEREAS**, the Writ served on October 8, 2022 includes the following commands:

YOU ARE HEREBY COMMANDED to comply with the following:

1. Within thirty (30) days from service of this Writ, set aside, rescind, and vacate the "Second Amendment to Amended and Restated Development Agreement by and between the City of Tracy and Surland Communities, LLC" ("2018 DA");
2. Within thirty (30) days from service of this Writ, set aside, rescind, and vacate Ordinance 1253;
3. Within thirty (30) days from service of this Writ, set aside, rescind, and vacate any actions taken pursuant to the "Second Amendment to Amended and Restated Development Agreement By and Between The City of Tracy and Surland Communities, LLC" ("2018 DA") and Ordinance 1253.
4. Respondent City shall file a return to the Peremptory Writ of Mandate within 10 days of completion of the actions mandated by this Writ. This Court shall retain jurisdiction over Respondent's proceedings by way of the return to the Peremptory Writ of Mandate until the Court has determined that Respondents have

and complied with the directives of this Court.

**WHEREAS**, on November 6, 2020 (which was within 30 days of service of the Judgment and Writ), the Superior Court extended the compliance deadline to November 12, 2020, and then on November 12, 2020, extended the compliance deadline to January 22, 2021; and

**WHEREAS**, on October 23, 2020, the City and Surland filed a joint motion for a new trial, or in the alternative, to set aside and vacate the judgment and enter a new judgment, which was denied by operation of law on or about December 22, 2020; and

**WHEREAS**, on January 15, 2021, the City and Surland appealed to the California Court of Appeal, Third District, which stayed any obligation to comply with the Judgment and Writ unless and until the Judgment was affirmed by a final decision on appeal; and

**WHEREAS**, on May 16, 2022, the Third District Court of Appeal issued an unpublished opinion denying the appeal and affirming the Judgment, which decision became final 30 days thereafter; and

**WHEREAS**, on July 18, 2022, the Court of Appeal issued a Remittitur, returning the lawsuit to the Superior Court; and

**WHEREAS**, Surland is responsible to cover all City costs and expenses associated with the Mitracos lawsuit pursuant to a hold harmless and indemnity provision of the 2013 Development Agreement; and

**WHEREAS**, the City is obligated to comply with the Judgment and Writ, and is doing so; and

**WHEREAS**, on August 16 and September 6, 2022, the City Council introduced and adopted, respectively, Ordinances rescinding Ordinance 1253 and the 2018 Second Amendment to Development Agreement; and

**WHEREAS**, the City has not taken any action to implement the 2018 Second Amendment to Development Agreement since well before the Court of Appeal issued its May 16, 2022 opinion denying the appeal and affirming the Judgment; and

**WHEREAS**, the City understands that it may not take any action to implement the 2018 Second Amendment; and

**WHEREAS**, the City remains obligated to rescind and unwind actions previously taken to implement Ordinance 1253 and the Second Amendment; and

**WHEREAS**, on August 18, 2020, the City Council adopted, pursuant to the Second Amendment, Resolution 2020-154 Approving Final Aquatic Center Conceptual Plan with a Not-to-Exceed Amount of \$65 Million Including Contingency and Soft Costs; and

**WHEREAS**, City staff is evaluating what additional actions need to be taken to set aside, rescind and vacate any actions previously taken to implement Ordinance 1253 and the Second Amendment; now, therefore, be it



**RESOLVED:** the City Council hereby rescinds, in its entirety, Resolution 2020-154 Approving Final Aquatic Center Conceptual Plan with a Not-to-Exceed Amount of \$65 Million Including Contingency and Soft Costs; and be it

**FURTHER RESOLVED:** City staff shall further evaluate additional actions that may need to be taken to fully unwind the 2018 Second Amendment to Development Agreement and Ordinance 1253; and be it

**FURTHER RESOLVED:** City staff shall pursue development of the Aquatic Center, as originally intended under the 2013 Development Agreement, as modified by the First Amendment and the Tolling Agreements; and be it

**FURTHER RESOLVED:** the City Council finds and determines that the adoption of this Resolution is not a project within the meaning of the California Environmental Quality Act (“CEQA”), including as the term “project” is defined by section 15378 of the CEQA Guidelines, including without limitation because the adoption of this Resolution is a ministerial action not subject to and exempt from CEQA (see section 15268 of the CEQA Guidelines), and that even if it were a project under CEQA, it is subject to the CEQA exemption contained in CEQA Guidelines section 15061(b)(3) because it can be seen with certainty to have no possibility of a significant effect on the environment.

\*\*\*\*\*

The foregoing Resolution 2022-\_\_\_\_\_ was adopted by the Tracy City Council on \_\_\_\_\_, by the following vote:

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

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

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

TRACY CITY COUNCIL

RESOLUTION NO. NO. 2022-\_\_\_\_

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**RESOLUTION RESCINDING RESOLUTION NO. 2019-78 APPROVING THE AGREEMENT FOR DEFERRAL OF CERTAIN IMPACT FEES FOR ELLIS GARDENS PHASE 1- 3 (TRACT 3877, TRACT 3906, AND TRACT 3907)**

**WHEREAS**, on March 19, 2013, the City Council adopted Ordinance 1182 (Ordinance 1182), an Ordinance of the City of Tracy Approving an Amended and Restated Development Agreement with Surland Communities, LLC, with respect to the development of real property in the Ellis Specific Plan area; and

**WHEREAS**, pursuant to Ordinance 1182, the City of Tracy (City) and Surland Communities, LLC (Surland) executed and entered into the Amended and Restated Development Agreement By and Between the City of Tracy and Surland Communities, LLC, dated April 18, 2013 ("2013 Development Agreement"); and

**WHEREAS**, on June 3, 2014, the City Council adopted Ordinance 1194 (Ordinance 1194), an Ordinance of the City of Tracy Approving First Amendment to Amended and Restated Development Agreement with the Surland Communities, LLC; and

**WHEREAS**, pursuant to Ordinance 1194, the City and Surland executed and entered into the First Amendment to Amended and Restated Development Agreement By and Between the City of Tracy and Surland Communities, LLC, dated July 3, 2014; and

**WHEREAS**, on April 3, 2018, the City Council adopted Ordinance 1253 (Ordinance 1253), an Ordinance of the City of Tracy Approving the Second Amendment to the Amended and Restated Development Agreement By and Between the City of Tracy and Surland Communities, LLC; and

**WHEREAS**, pursuant to Ordinance 1253, the City and Surland executed and entered into the Second Amendment to Amended and Restated Development Agreement By and Between the City of Tracy and Surland Communities, LLC, dated May 3, 2018 (2018 Second Amendment to Development Agreement or 2018 DA); and

**WHEREAS**, on May 11, 2018, Mary Mitracos, as Petitioner and Plaintiff, filed a lawsuit against the City, as Respondent and Defendant, and Surland, as Real Party in Interest, challenging the legality of Ordinance 1253 and the 2018 Second Amendment to the Development Agreement, *Mitracos v. City of Tracy, et al.*, San Joaquin County Superior Court Case No. STK-CV-UWM-2018-5531; and

**WHEREAS**, on September 30, 2020, the San Joaquin County Superior Court entered Judgment (Judgment) for Plaintiff Mitracos and against the City and Surland, and issued a Peremptory Writ of Mandate (Writ), each of which was served on the City on October 8, 2020; and

**WHEREAS**, the Judgment served on October 8, 2020 includes the following rulings (the Judgment refers to the 2018 Second Amendment to the Development Agreement as the "2018 DA"):

IT IS SO ORDERED, DECREED AND ADJUDGED that:

1. Judgment granting a Peremptory Writ of Mandate is entered in favor of Petitioner Mitracos in this proceeding. Judgment is entered because the Court finds that Respondent committed a prejudicial abuse of discretion in taking the following actions:

(a) Adopting, approving and entering into the Second Amendment to Amended and Restated Development Agreement by and between The City of Tracy and Surland Communities, LLC ("2018 DA").

(b) Adopting Ordinance 1253[.]

2. The court finds the 2018 DA does not comply with Government Code Sections 65865(b) and 65865.2 and is therefore void ab initio.

3. A Preemptory Writ of Mandate direct[ed] to Respondents shall issue under seal of this Court, ordering Respondents to vacate and set aside, within (30) days from service of the Writ of Mandate, all approvals and adoptions of the 2008 DA and Ordinance 1253, as described in paragraph 2 above in their entirety and all other actions taken by Respondents to approve or implement the Development Agreement. Respondent City is ordered to:

(a) Set aside, rescind, and vacate the "Second Amendment to Amended and Restated Development Agreement by and between The City of Tracy and Surland Communities, LLC" ("2018 DA").

(b) Set aside, rescind, and vacate Ordinance 1253.

(c) Set aside, rescind, and vacate any actions taken pursuant to the "Second Amendment to Amended and Restated Development Agreement by and Between the City of Tracy and Surland Communities, LLC" ("2018 DA") and Ordinance 1253.

4. Respondent City shall file a return to the Peremptory Writ of Mandate within 10 days of completion of the actions mandated by this judgment. This Court shall retain jurisdiction over Respondents' proceedings by way of the return to the Peremptory Writ of Mandate until the Court has determined that Respondent has complied with the directives of this Court.

5. Petitioner shall be awarded its costs of suit. Petitioner is the successful party pursuant to Code of Civil Procedure § 1021.5. The Court reserves jurisdiction to determine entitlement to attorneys' fees and litigation expenses, pursuant to any properly and timely filed motion which Petitioner Mitracos may make.

6. Injunctive relief is granted consistent with this ruling. Respondents, Real Parties in Interest, and their respective agents, employees, and persons acting in concert with them are permanently enjoined from any and all actions to further implement the 2018 Development Agreement as described in paragraph 1(a) above.

and

**WHEREAS**, the Writ served on October 8, 2022 includes the following commands:

YOU ARE HEREBY COMMANDED to comply with the following:

1. Within thirty (30) days from service of this Writ, set aside, rescind, and vacate the "Second Amendment to Amended and Restated Development Agreement by and between the City of Tracy and Surland Communities, LLC" ("2018 DA");

2. Within thirty (30) days from service of this Writ, set aside, rescind, and vacate Ordinance 1253;

3. Within thirty (30) days from service of this Writ, set aside, rescind, and vacate any actions taken pursuant to the "Second Amendment to Amended and Restated Development Agreement By and Between The City of Tracy and Surland Communities, LLC" ("2018 DA") and Ordinance 1253.

4. Respondent City shall file a return to the Peremptory Writ of Mandate within 10 days of completion of the actions mandated by this Writ. This Court shall retain jurisdiction over Respondent's proceedings by way of the return to the Peremptory Writ of Mandate until the Court has determined that Respondents have complied with the directives of this Court.

and

**WHEREAS**, on November 6, 2020 (which was within 30 days of service of the Judgment and Writ), the Superior Court extended the compliance deadline to November 12, 2020, and then on November 12, 2020, extended the compliance deadline to January 22, 2021; and

**WHEREAS**, on October 23, 2020, the City and Surland filed a joint motion for a new trial, or in the alternative, to set aside and vacate the judgment and enter a new judgment, which was denied by operation of law on or about December 22, 2020; and

**WHEREAS**, on January 15, 2021, the City and Surland appealed to the California Court of Appeal, Third District, which stayed any obligation to comply with the Judgment and Writ unless and until the Judgment was affirmed by a final decision on appeal; and

**WHEREAS**, on May 16, 2022, the Third District Court of Appeal issued an unpublished opinion denying the appeal and affirming the Judgment, which decision became final 30 days thereafter; and

**WHEREAS**, on July 18, 2022, the Court of Appeal issued a Remittitur, returning the lawsuit to the Superior Court; and

**WHEREAS**, Surland is responsible to cover all City costs and expenses associated with the Mitracos lawsuit pursuant to a hold harmless and indemnity provision of the 2013 Development Agreement; and

**WHEREAS**, the City is obligated to comply with the Judgment and Writ, and is doing so; and

**WHEREAS**, on August 16 and September 6, 2022, the City Council introduced and adopted, respectively, Ordinances rescinding Ordinance 1253 and the 2018 Second Amendment to Development Agreement; and

**WHEREAS**, the City has not taken any action to implement the 2018 Second Amendment to Development Agreement since well before the Court of Appeal issued its May 16, 2022 opinion denying the appeal and affirming the Judgment; and

**WHEREAS**, the City understands that it may not take any action to implement the 2018 Second Amendment; and

**WHEREAS**, the City remains obligated to rescind and unwind actions previously taken to implement Ordinance 1253 and the Second Amendment; and

**WHEREAS**, the 2018 Second Amendment to the Development Agreement revised responsibilities, rights, and obligations with respect to payment of City fees, including impact fees. It added a new section 1.07(g)(iii) that provided, among other things:

“all development impact fees and other fees and contributions identified in the EFIP [Ellis Specific Plan Finance and Implementation Plan], or agreed upon by the City and [Surland] in other finance plans such as the City Master Plans, or any other Fee Programs, or other impact fee, agreed to by the City and [Surland] and attributable to a structure shall be due and payable through close of escrow for a home builder to a home buyer for a residential structure, and upon a final inspection approval for a commercial structure for the noticed Project. The process for such payment is attached hereto and incorporated herein by this reference as Exhibit C” (a form of agreement for deferral of fees); and

**WHEREAS**, on April 16, 2019, under the authority of the 2018 Second Amendment to the Development Agreement, the City Council adopted Resolution No. 2019-78 Approving the Agreement for Deferral of Certain Impact Fees for Ellis Gardens Phase 1- 3 (Tract 3877, Tract 3906, and Tract 3907), and authorized the City Clerk to file the Agreement with the Office of the San Joaquin County Recorder; and

**WHEREAS**, City staff is evaluating what additional actions need to be taken to set aside, rescind and vacate any actions previously taken to implement Ordinance 1253 and the Second Amendment; now, therefore, be it

**RESOLVED:** the City Council hereby rescinds, in its entirety, Resolution No. 2019-78 Approving the Agreement for Deferral of Certain Impact Fees for Ellis Gardens Phase 1- 3 (Tract 3877, Tract 3906, and Tract 3907); and be it

**FURTHER RESOLVED:** the City Clerk shall record this Resolution or other notice with the San Joaquin County Recorder; and be it

**FURTHER RESOLVED:** City staff shall further evaluate additional actions that may need to be taken to fully unwind the 2018 Second Amendment to Development Agreement and Ordinance 1253, including to provide notice to the parties and the public to the Agreement entered into pursuant to Resolution No. 2019-78, and to ensure that all fees that were subject thereto are timely and fully paid, including as originally intended under the 2013 Development Agreement, as modified by the First Amendment and the Tolling Agreements; and be it

**FURTHER RESOLVED:** the City Council finds and determines that the adoption of this Resolution is not a project within the meaning of the California Environmental Quality Act (“CEQA”), including as the term “project” is defined by section 15378 of the CEQA Guidelines, including without limitation because the adoption of this Resolution is a ministerial action not subject to and exempt from CEQA (see section 15268 of the CEQA Guidelines), and that even if it were a project under CEQA, it is subject to the CEQA exemption contained in CEQA Guidelines section 15061(b)(3) because it can be seen with certainty to have no possibility of a significant effect on the environment.

\* \* \* \* \*

The foregoing Resolution 2022-\_\_\_\_\_ was adopted by the Tracy City Council on \_\_\_\_\_, by the following vote:

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

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

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

**TRACY CITY COUNCIL**

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

---

**RESOLUTION RESCINDING RESOLUTION NO. 2021-116 APPROVING THE AGREEMENT FOR DEFERRAL OF CERTAIN IMPACT FEES FOR ELLIS TOWN AND COUNTRY (TRACT 4007)**

**WHEREAS**, on March 19, 2013, the City Council adopted Ordinance 1182 (Ordinance 1182), an Ordinance of the City of Tracy Approving an Amended and Restated Development Agreement with Surland Communities, LLC, with respect to the development of real property in the Ellis Specific Plan area; and

**WHEREAS**, pursuant to Ordinance 1182, the City of Tracy (City) and Surland Communities, LLC (Surland) executed and entered into the Amended and Restated Development Agreement By and Between the City of Tracy and Surland Communities, LLC, dated April 18, 2013 ("2013 Development Agreement"); and

**WHEREAS**, on June 3, 2014, the City Council adopted Ordinance 1194 (Ordinance 1194), an Ordinance of the City of Tracy Approving First Amendment to Amended and Restated Development Agreement with the Surland Communities, LLC; and

**WHEREAS**, pursuant to Ordinance 1194, the City and Surland executed and entered into the First Amendment to Amended and Restated Development Agreement By and Between the City of Tracy and Surland Communities, LLC, dated July 3, 2014; and

**WHEREAS**, on April 3, 2018, the City Council adopted Ordinance 1253 (Ordinance 1253), an Ordinance of the City of Tracy Approving the Second Amendment to the Amended and Restated Development Agreement By and Between the City of Tracy and Surland Communities, LLC; and

**WHEREAS**, pursuant to Ordinance 1253, the City and Surland executed and entered into the Second Amendment to Amended and Restated Development Agreement By and Between the City of Tracy and Surland Communities, LLC, dated May 3, 2018 (2018 Second Amendment to Development Agreement or 2018 DA); and

**WHEREAS**, on May 11, 2018, Mary Mitracos, as Petitioner and Plaintiff, filed a lawsuit against the City, as Respondent and Defendant, and Surland, as Real Party in Interest, challenging the legality of Ordinance 1253 and the 2018 Second Amendment to the Development Agreement, *Mitracos v. City of Tracy, et al.*, San Joaquin County Superior Court Case No. STK-CV-UWM-2018-5531; and

**WHEREAS**, on September 30, 2020, the San Joaquin County Superior Court entered Judgment (Judgment) for Plaintiff Mitracos and against the City and Surland, and issued a Peremptory Writ of Mandate (Writ), each of which was served on the City on October 8, 2020; and

**WHEREAS**, the Judgment served on October 8, 2020 includes the following rulings (the Judgment refers to the 2018 Second Amendment to the Development Agreement as the "2018 DA"):

IT IS SO ORDERED, DECREED AND ADJUDGED that:

1. Judgment granting a Peremptory Writ of Mandate is entered in favor of Petitioner Mitracos in this proceeding. Judgment is entered because the Court finds that Respondent committed a prejudicial abuse of discretion in taking the following actions:

(a) Adopting, approving and entering into the Second Amendment to Amended and Restated Development Agreement by and between The City of Tracy and Surland Communities, LLC" ("2018 DA").

(b) Adopting Ordinance 1253[.]

2. The court finds the 2018 DA does not comply with Government Code Sections 65865(b) and 65865.2 and is therefore void ab initio.

3. A Preemptory Writ of Mandate direct[ed] to Respondents shall issue under seal of this Court, ordering Respondents to vacate and set aside, within (30) days from service of the Writ of Mandate, all approvals and adoptions of the 2008 DA and Ordinance 1253, as described in paragraph 2 above in their entirety and all other actions taken by Respondents to approve or implement the Development Agreement. Respondent City is ordered to:

(a) Set aside, rescind, and vacate the "Second Amendment to Amended and Restated Development Agreement by and between The City of Tracy and Surland Communities, LLC" ("2018 DA").

(b) Set aside, rescind, and vacate Ordinance 1253.

(c) Set aside, rescind, and vacate any actions taken pursuant to the "Second Amendment to Amended and Restated Development Agreement by and Between the City of Tracy and Surland Communities, LLC" ("2018 DA") and Ordinance 1253.

4. Respondent City shall file a return to the Peremptory Writ of Mandate within 10 days of completion of the actions mandated by this judgment. This Court shall retain jurisdiction over Respondents' proceedings by way of the return to the Peremptory Writ of Mandate until the Court has determined that Respondent has complied with the directives of this Court.



5. Petitioner shall be awarded its costs of suit. Petitioner is the successful party pursuant to Code of Civil Procedure § 1021.5. The Court reserves jurisdiction to determine entitlement to attorneys' fees and litigation expenses, pursuant to any properly and timely filed motion which Petitioner Mitracos may make.

6. Injunctive relief is granted consistent with this ruling. Respondents, Real Parties in Interest, and their respective agents, employees, and persons acting in concert with them are permanently enjoined from any and all actions to further implement the 2018 Development Agreement as described in paragraph 1(a) above.

and

**WHEREAS**, the Writ served on October 8, 2022 includes the following commands:

YOU ARE HEREBY COMMANDED to comply with the following:

1. Within thirty (30) days from service of this Writ, set aside, rescind, and vacate the "Second Amendment to Amended and Restated Development Agreement by and between the City of Tracy and Surland Communities, LLC" ("2018 DA");

2. Within thirty (30) days from service of this Writ, set aside, rescind, and vacate Ordinance 1253;

3. Within thirty (30) days from service of this Writ, set aside, rescind, and vacate any actions taken pursuant to the "Second Amendment to Amended and Restated Development Agreement By and Between The City of Tracy and Surland Communities, LLC" ("2018 DA") and Ordinance 1253.

4. Respondent City shall file a return to the Peremptory Writ of Mandate within 10 days of completion of the actions mandated by this Writ. This Court shall retain jurisdiction over Respondent's proceedings by way of the return to the Peremptory Writ of Mandate until the Court has determined that Respondents have complied with the directives of this Court.

and

**WHEREAS**, on November 6, 2020 (which was within 30 days of service of the Judgment and Writ), the Superior Court extended the compliance deadline to November 12, 2020, and then on November 12, 2020, extended the compliance deadline to January 22, 2021; and

**WHEREAS**, on October 23, 2020, the City and Surland filed a joint motion for a new trial, or in the alternative, to set aside and vacate the judgment and enter a new judgment, which was denied by operation of law on or about December 22, 2020; and

**WHEREAS**, on January 15, 2021, the City and Surland appealed to the California Court of Appeal, Third District, which stayed any obligation to comply with the Judgment and Writ unless and until the Judgment was affirmed by a final decision on appeal; and

**WHEREAS**, on May 16, 2022, the Third District Court of Appeal issued an unpublished opinion denying the appeal and affirming the Judgment, which decision became final 30 days thereafter; and

**WHEREAS**, on July 18, 2022, the Court of Appeal issued a Remittitur, returning the lawsuit to the Superior Court; and

**WHEREAS**, Surland is responsible to cover all City costs and expenses associated with the Mitracos lawsuit pursuant to a hold harmless and indemnity provision of the 2013 Development Agreement; and

**WHEREAS**, the City is obligated to comply with the Judgment and Writ, and is doing so; and

**WHEREAS**, on August 16 and September 6, 2022, the City Council introduced and adopted, respectively, Ordinances rescinding Ordinance 1253 and the 2018 Second Amendment to Development Agreement; and

**WHEREAS**, the City has not taken any action to implement the 2018 Second Amendment to Development Agreement since well before the Court of Appeal issued its May 16, 2022 opinion denying the appeal and affirming the Judgment; and

**WHEREAS**, the City understands that it may not take any action to implement the 2018 Second Amendment; and

**WHEREAS**, the City remains obligated to rescind and unwind actions previously taken to implement Ordinance 1253 and the Second Amendment; and

**WHEREAS**, the 2018 Second Amendment to the Development Agreement revised responsibilities, rights, and obligations with respect to payment of City fees, including impact fees. It added a new section 1.07(g)(iii) that provided, among other things:

“all development impact fees and other fees and contributions identified in the EFIP [Ellis Specific Plan Finance and Implementation Plan], or agreed upon by the City and [Surland] in other finance plans such as the City Master Plans, or any other Fee Programs, or other impact fee, agreed to by the City and [Surland] and attributable to a structure shall be due and payable through close of escrow for a home builder to a home buyer for a residential structure, and upon a final inspection approval for a commercial structure for the noticed Project. The process for such payment is attached hereto and incorporated herein by this reference as Exhibit C” (a form of agreement for deferral of fees); and

**WHEREAS**, on August 17, 2021, under the authority of the 2018 Second Amendment to the Development Agreement, the City Council adopted Resolution No. 2021-116 Approving the Agreement for Deferral of Certain Impact Fees for Ellis Town and Country (Tract 4007), and authorized the City Clerk to file the Agreement with the Office of the San Joaquin County Recorder; and

**WHEREAS**, City staff is evaluating what additional actions need to be taken to set aside, rescind and vacate any actions previously taken to implement Ordinance 1253 and the Second Amendment; now, therefore, be it

**RESOLVED:** the City Council hereby rescinds, in its entirety, Resolution No. 2021-116 Approving the Agreement for Deferral of Certain Impact Fees for Ellis Town and Country (Tract 4007); and be it

**FURTHER RESOLVED:** the City Clerk shall record this Resolution or other notice with the San Joaquin County Recorder; and be it

**FURTHER RESOLVED:** City staff shall further evaluate additional actions that may need to be taken to fully unwind the 2018 Second Amendment to Development Agreement and Ordinance 1253, including to provide notice to the parties and the public to the Agreement entered into pursuant to Resolution No. 2021-116, and to ensure that all fees that were subject thereto are timely and fully paid, including as originally intended under the 2013 Development Agreement, as modified by the First Amendment and the Tolling Agreements; and be it

**FURTHER RESOLVED:** the City Council finds and determines that the adoption of this Resolution is not a project within the meaning of the California Environmental Quality Act (“CEQA”), including as the term “project” is defined by section 15378 of the CEQA Guidelines, including without limitation because the adoption of this Resolution is a ministerial action not subject to and exempt from CEQA (see section 15268 of the CEQA Guidelines), and that even if it were a project under CEQA, it is subject to the CEQA exemption contained in CEQA Guidelines section 15061(b)(3) because it can be seen with certainty to have no possibility of a significant effect on the environment.

\* \* \* \* \*

The foregoing Resolution 2022-\_\_\_\_\_ was adopted by the Tracy City Council on \_\_\_\_\_, by the following vote:

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

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

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

AGENDA ITEM 3.D

RECOMMENDATION

**STAFF RECOMMENDS THAT CITY COUNCIL INTRODUCE AN ORDINANCE EFFECTUATING AN OMNIBUS AMENDMENT OF THE TRACY MUNICIPAL CODE TO (A) UPDATE CHAPTER 4.16, “REGULATIONS PERTAINING TO THE USE OF PARK AND RECREATION AREAS AND FACILITIES” AND CHAPTER 5.12, “CAMP CARS AND TRAILERS,” AND (B) ADD PROVISIONS PROHIBITING CERTAIN ACTS, CAMPING, AND STORAGE OF PERSONAL PROPERTY IN PARKS AND PUBLIC AREAS**

EXECUTIVE SUMMARY

The proposed amendments to the Tracy Municipal Code will update Chapter 4.16, “Regulations Pertaining to the Use of Park and Recreation Areas and Facilities” and Chapter 5.12, “Camp Cars and Trailers” to current language and practices. The amendments will also expand the City of Tracy’s enforcement tools for unlawful acts in parks and public areas, camping, and storage of personal property. Lastly, the amendments will increase penalties for certain violations to misdemeanors.

BACKGROUND AND LEGISLATIVE HISTORY

At the regular City Council meeting on May 17, 2022, City staff provided an informational report to City Council previewing proposed amendments to the Tracy Municipal Code to update and expand Chapter 4.16, Regulations Pertaining to the Use of Park and Recreation Areas and Facilities, and Chapter 5.12, Camps Cars and Trailers. On August 4, 2022, the proposed amendments were presented at the Parks and Community Services Commission meeting for input and discussion. During that time, the Parks and Community Services Commission provided feedback on the proposed amendments. On August 22, 2022, the Homeless Advisory Committee also reviewed and commented on the proposed amendments. Upon conclusion of its discussion, the Homeless Advisory Committee voted to forward the draft amendments for City Council consideration.

The objective of these amendments is to clarify prohibited acts regularly encountered by the City and establish related enforcement authority currently not provided for in the Tracy Municipal Code.

ANALYSIS

Certain acts, camping, and unlimited storage of personal property in parks and public areas create unsafe and unsanitary conditions throughout the City of Tracy. As a result, these conditions interfere with the use of parks and public areas for their intended purposes and impact the health and safety of the public. Furthermore, these conditions cause blight throughout the community and damage to public property.

Throughout the last several years, the City has experienced an increase in illegal activity, camping, and storage of personal property throughout parks and public areas. Due to these activities, the City continues to devote significant time and resources to address ongoing health and safety issues and calls for service at parks and public areas. However, the current Tracy Municipal Code provides limited enforcement opportunities. The proposed amendments will allow the City to combat specific activities within parks and public areas currently unavailable and will increase penalties for certain activities to misdemeanors. These changes will increase enforcement

opportunities, and an increase in potential penalties will provide a deterrent mechanism not currently available under the Tracy Municipal Code.

The proposed amendments will update Chapter 4.16 and Chapter 5.12 of the Tracy Municipal Code to provide the City with additional enforcement tools to address these conditions that impact the health and safety of parks and public areas.

#### Amendments to Chapter 4.16, Regulations Pertaining to Use of Park and Recreation Areas and Facilities

The proposed amendments to Chapter 4.16 expand application to all public areas, update existing regulations that currently apply to parks to also include public areas, and prohibit additional acts in parks and public areas. In addition, certain acts will be subject to a misdemeanor. A summary of the amendments to Chapter 4.16 are as follows:

- Prohibits open fires in parks and public areas.
- Prohibits storage and disposal of wastewater and sewage water in parks and public areas.
- Prohibits storage and dumping of personal items in parks and public areas.
- Restricts unpermitted electrical and gas connections in parks and public areas.

#### Amendments to Chapter 5.12, Camp Cars and Trailers

The proposed amendments will more clearly define and prohibit camping in parks and public areas. The amendments will also prohibit camping within certain distances of certain areas and restrict storage of personal property in parks and public areas. Violations of certain sections will be subject to a misdemeanor. The City's ability to enforce the proposed amendments prohibiting camping will be subject to the satisfaction of relevant constitutional and state laws. The following is a summary of the amendments to Chapter 5.12:

- Prohibits any person to enter or remain in a City park between the hours of 10:00 p.m. and 6:00 a.m.
- Prohibits camping within certain distances to specific locations, including, driveways, building entrances/exits, public or private property fencing, fire hydrants or other fire department connections, and restricts camping within 1,000 feet of schools, day care centers, recreational facilities or sports fields, shelters, and areas that obstruct or interfere with City activities. A violation of this section shall be charged as a misdemeanor offense.
- Prohibits storage of personal property in parks or public areas and allows the City to immediately remove personal property in certain circumstances (such as when the property is evidence of a crime or immediate threat to health and safety of the public).
- Provides the procedure for the City's removal and storage of personal property.

These amendments will provide additional enforcement mechanisms that do not exist within the City's existing code and will improve the City's ability to address the health, safety, and general welfare of the community and reduce the degradation and destruction of City parks and public areas. The entirety of the proposed amendments is attached to this report as Exhibit A.

#### FISCAL IMPACT

This item has no direct fiscal impact to the General Fund. However, there are undetermined costs and staff time associated with the enforcement of the proposed amendments. Each call for service related to the proposed amendments will be absorbed within existing operations and budgets.

#### PUBLIC OUTREACH/INTEREST

The proposed ordinance was presented to the City's Parks and Community Services Commission and Homeless Advisory Committee meetings for public input.

#### COORDINATION

Preparation of this item involved coordination between the Police Department, Code Enforcement Division, Parks and Recreation Department, Public Works Department, City Manager's Office, and City Attorney's Office.

#### CEQA DETERMINATION

The proposed amendments are exempt under Sections 15307 and 15308 of the Guidelines for the Implementation of the California Environmental Quality Act and under Section 15061(b)(3) of the California Code of Regulations.

#### STRATEGIC PLAN

This item relates to the City Council's strategic plan in the area of Public Safety.

#### ACTION REQUESTED OF THE CITY COUNCIL

Staff requests that the City Council introduce an ordinance effectuating an omnibus amendment of the Tracy Municipal Code to (a) update Chapter 4.16, "Regulations Pertaining to the Use of Park and Recreation Areas and Facilities" and Chapter 5.12, "Camp Cars and Trailers," and (b) add provisions prohibiting certain acts, camping, and storage of personal property in parks and public areas.

Prepared by: Ana Contreras, Community Preservation Manager

Reviewed by: Karin Schnaider, Assistant City Manager

Approved by: Michael Rogers, City Manager

#### ATTACHMENTS:

Exhibit "A" – Draft Ordinance Amending Chapter 4.16 and Chapter 5.12

## EXHIBIT A

### OMNIBUS AMENDMENT OF THE TRACY MUNICIPAL CODE TO (A) UPDATE CHAPTER 4.16, "REGULATIONS PERTAINING TO THE USE OF PARK AND RECREATION AREAS AND FACILITIES" AND CHAPTER 5.12, "CAMP CARS AND TRAILERS," AND (B) ADD PROVISIONS TO PROHIBIT CERTAIN ACTS, CAMPING, AND STORAGE OF PERSONAL PROPERTY IN PARKS AND PUBLIC AREAS

#### Chapter 4.16 REGULATIONS PERTAINING TO THE USE OF PARKS AND RECREATION AREAS PUBLIC AREAS AND FACILITIES

##### Sections:

##### **4.16.010 Name of chapter.**

This chapter shall be known as the "Tracy Parks and Public Areas Ordinance".

(Prior code § 4-4.01)

##### **4.16.020 Purpose.**

The purpose of this chapter is to regulate the use of City parks and other public areas, and establishes the standards for issuance of park permits so that all persons may enjoy and make use of such parks and public areas and to protect the rights of those in the surrounding areas.

(Prior code § 4-4.02)

##### **4.16.030 Definitions as used in this chapter.**

"*Amplified sound*" means music or speech projected or transmitted by electronic equipment, including but not limited to amplifier, loudspeakers or any similar device.

"*City Manager*" means and refers to the City Manager or his their designee.

"*Director*" means and refers to the Director of the ~~Department of~~ Parks and Recreation Department or his their designee.

"*Exclusive use*" means the right to use a park or public area, or area thereof, for any activity at a specified time, to the exclusion of all others.

"*Facility permit*" means written permission by the Director for a specified use of a park or public area or area thereof, including a community building, community ground, barbecue pit area, City pool, athletic facility or any other ~~park~~ public facility.

"*Parade*" means an organized march or procession of persons, animals or vehicles or combination thereof whose march route crosses park or public property.

"*Park*" means all City parks, community buildings and grounds, athletic facilities, open space areas and other grounds and facilities owned or operated by the City for park, recreation or open space purposes.

"Parks and Recreation Department" means the Parks and Recreation Department of the City of Tracy.

"Permit application fee" means the nonrefundable fee to be paid by an applicant for a facility permit. The fee shall be set by the City Council and shall cover the full cost (or portion thereof) of processing and investigating the application, and administering the park facility permit program.

"Permittee" means the person or group which has been granted a facility permit.

"Public," "Public Property," "Public Area" or "Public Areas" means all real property that is owned or controlled by the City of Tracy and shall include, but not be limited to, any street, median strip, sidewalk, parking lot, building, or structure.

"Publicize" means to inform the public of a planned activity by means of newspaper articles, notices, radio or television notices, announcements at public places, leafletting, posting signs or written notices in places used by the public, social media, or by any other means calculated to notify the public of any activity.

(Prior code § 4-4.03)

#### **4.16.040 Certain park and public areas restricted to specific users.**

The Director may designate in writing and/or by posting at the site, certain parks, park facilities, public areas, or areas thereof, which are available for exclusive use only upon obtaining a facility permit pursuant to Section 4.16.050.

(Prior code § 4-4.04)

#### **4.16.050 Facility permit required.**

A facility permit must be obtained from the Parks and Recreation Department prior to sponsoring or conducting any of the following activities in a park or public area:

- (a) For the exclusive use of any park ~~area or~~ facility, or public area which has been designated by the Director pursuant to Section 4.16.040 as requiring a facility permit;
- (b) For any organized activity in which fifty (50) or more persons are expected to participate or attend, or which is publicized prior to the date of the activity, or which requires special City services. Such activity includes, but is not limited to the following: A picnic, rally, group meeting, festival, fair, parade, play, musical event, art show or other show or exhibition;
- (c) Any activity involving the erection or placement on park or public property of stages, booths, platforms, sculptures and other art works, or other similar structures;
- (d) For the sale or barter of any goods, wares, merchandise, food or beverages (see Section 4.16.140);
- (e) For any activity involving the use of amplified sound (see Section 4.16.150); or
- (f) A permit is required to possess or consume any alcoholic beverage in ~~designated~~ City parks or public areas and may only occur in designated parks and public areas.

(Prior code § 4-4.05)

#### **4.16.060 Facility permit applications.**

- (a) Any person applying for a facility permit shall file an application on a form provided by the ~~Director~~ Parks and Recreation Department, not less than twenty (20) days, nor more than one year (365 days) prior to the proposed use of the park or public area. The Director may waive the application deadline for good cause if sufficient time remains to process the application, and for the City to prepare for the requested use. Good



cause can be demonstrated by the applicant, and shall be determined by the Director, showing that the circumstances which gave rise to the permit application did not reasonably allow the participants to file within the time prescribed and the proposed activity is for the purpose of exercising the right of free speech.

- (b) All applications for the facility permit must be signed or cosigned by a person twenty-one (21) years of age or older who shall agree to be responsible for the requested use of the park or public area.

(Prior code § 4-4.06)

#### **4.16.070 Facility permit application.**

The application for a park facility permit shall be completed on a form provided by the Parks and Recreation Department and shall provide the following information:

- (a) The name, address, and telephone numbers of the permit applicant, organization sponsoring the activity (if any) and person who shall be in charge of the activity;
- (b) Park, public area, or facility or area thereof requested;
- (c) Any additional ~~park~~ equipment or personnel requested;
- (d) The type of activity planned;
- (e) The starting and finishing time of the activity;
- (f) The number of persons expected to attend the activity;
- (g) The type of equipment or structures (if any) which shall be erected or placed on park or public property;
- (h) Whether the activity will involve amplified sound and the nature thereof;
- (i) Type and amount of insurance coverage for the event; and
- (j) Any supplemental information the Director shall find reasonably necessary to determine whether to approve the permit application pursuant to Section 4.16.160.

(Prior code § 4-4.07)

#### **4.16.080 Action or permit application.**

The Director shall approve, conditionally approve or deny a facility permit application for any of the grounds specified in section 4.16.090. Such action shall be taken no later than seven (7) days after receipt of a completed application. Notice of the Director's decision shall be mailed or emailed to the applicant's address or email address. If the application is denied the Director shall state the grounds for denial in writing and inform the applicant of ~~his/her~~ their right of appeal. If a change in the time or location of the proposed activity would allow approval of the application, the Director shall propose an alternative location or time for the activity.

(Prior code § 4-4.08)

#### **4.16.090 Grounds for permit denial.**

The Director may deny a facility permit application if they determines from a consideration of the application or other pertinent information, that any of the following conditions exist:

- (a) Information contained in the application or supplemental information requested from the applicant, is found to be false in any material detail;

- (b) The applicant failed to complete the application form after having been notified of the additional information or documents required;
- (c) The proposed activity would conflict with a previously planned City-sponsored activity;
- (d) The applicant refuses in writing to comply with all terms and conditions of the permit;
- (e) A prior application for a permit to use the same location at a conflicting time has been received and such application has been or will be approved;
- (f) The nature or size of the activity would be reasonably likely to injure persons or damage park or public property, or property adjacent to the park or public property; provided, that the Director shall not consider the content of expression which is proposed or anticipated at the activity;
- (g) The proposed activity is prohibited by law;
- (h) The proposed activity is inconsistent with the purpose for which the facility, ~~or~~ park, or public area has been established or designated pursuant to section 4.16.040;
- (i) The sole purpose of the activity is advertising or sale of any product, goods, wares or merchandise and is designed to be held for private profit and not for First Amendment expression; or
- (j) That the proposed activity would require the assignment of so great a number of City police officers to properly police the park or public area activity, or areas contiguous thereto, as to prevent normal police protection to the rest of the City. Nothing herein authorizes denial of a permit because of the need to protect participants from the conduct of others, if reasonable permit conditions can be imposed to allow for adequate protection of event participants with the number of police officers available to police the event. The determination as to whether a park permit shall be denied for this ground shall be made by the Chief of Police after conferring with the Director.

(Prior code § 4-4.09)

#### **4.16.100 Park Facility permit conditions.**

The Director may impose reasonable conditions on approval of a ~~park facility~~ permit application respecting the time, place, and manner of use of the park or public area. Such conditions may be imposed to ensure the safety of persons, public and private property, the control of noise, and to ensure that other activities ~~at the park~~ will not be unduly disturbed by the proposed activity of the applicant. Such conditions, however, shall not unreasonably restrict the right of free speech. Permit conditions may include, but are not limited to the following:

- (a) Alteration of the time or location of the proposed activity;
- (b) Requirements for the use of security personnel or monitors;
- (c) Requirements that the applicant obtain any legally required permit or license;
- (d) Requirements for notifying the activity participants of park and public area rules and the terms and conditions of the permit;
- (e) Inspection and approval by City personnel of stages, booths or other structures erected or placed in the park or public area in connection with the activity; and
- (f) Restrictions on the use of alcohol.

(Prior code § 4-4.10)

#### **4.16.110 Fees and deposits.**

Upon the granting of a permit under this chapter, any fees or deposits which are adopted by the City for the use of City personnel, buildings, equipment, parks, public areas and facilities, shall be contained in the permit and the fees and deposits shall be paid by the applicant prior to the receipt of the permit.

(Prior code § 4-4.11)

#### **4.16.120 Indemnification.**

Prior to the issuance of the facility permit, the permit applicant and authorized officer of the sponsoring organization (if any) must sign an agreement to reimburse the City for all costs incurred by it in repairing damage occurring in connection with the permitted activity and caused by the permittee/sponsoring organization, its officers, employees or agents, or any other person who was or reasonably should have been under the permittee's or sponsoring organization's control. The agreement shall also provide that the permittee/sponsoring organization shall indemnify the City against, and indemnify and hold the City harmless from, any loss, damage, liability or expense which may arise in any way in connection with the permitted activity caused by the actions of the permittee/sponsoring organizations, its officers, employees or agents, or any person who was or reasonably should have been under the permittee's or sponsoring organization's control.

(Prior code § 4-4.12)

#### **4.16.130 Insurance.**

- (a) The applicant/sponsor of any activity which requires a facility permit pursuant to section 4.16.050 must possess or obtain liability insurance to protect against loss from liability imposed by law for damages on account of bodily injury and property damage arising from the activity.

Such insurance shall name on the policy or by endorsement as additional insured the City, its officers, employees and agents. Insurance coverage must be maintained for the duration of the activity.

- (b) Coverage shall be a comprehensive general liability insurance policy in an amount prescribed by City resolution. The insurance coverage afforded by the policy shall provide at a minimum the equivalent of insurance coverage provided by Insurance Services Office (ISO) comprehensive general liability insurance coverage. If food or non-alcoholic beverages will be sold or distributed at the activity the comprehensive general liability coverage must include products liability coverage. If alcoholic beverages will be sold or distributed at the activity, the policy must also include coverage for liquor liability, along with the required Alcoholic Beverage Control permit as required by the permit process.
- (c) A copy of the policy or certificate of insurance along with all necessary endorsements must be filed with the Director no less than twenty (20) days prior to the event, unless the Director for good cause waives the filing deadline.

(Prior code § 4-4.13)

#### **4.16.140 Sale of goods and merchandise.**

No person, other than a concessionaire with a current and valid contract with the City for the provision of concession services, shall sell or offer for sale any goods, wares, merchandise or beverages without the prior written approval of the Director. The Director shall determine whether to approve, conditionally approve or deny an application for a vendor permit within seven (7) days after receiving a completed application on a form prescribed by the Director. Written permission shall not be granted by the Director excepting for sales by non-profit organizations in connection with an organized activity whose primary purpose is First Amendment

expression and not private profit. The ~~Park~~ Director may impose reasonable conditions of the issuance of a permit as authorized by section 4.16.160 of this chapter. This section shall not apply to the solicitation of donations for distribution of material by individuals for the primary purpose of First Amendment expression and not private profit.

(Ord. 1096 § 1, 2006; prior code § 4-4.14)

#### **4.16.150 Amplified sound.**

The use of amplified sound in a park or public area is forbidden unless a facility permit has first been obtained pursuant to section 4.16.050. The Director, upon granting a permit for use of any amplified sound system, may impose reasonable conditions concerning the location of the sound system, and the maximum decibel level for the sound system to minimize the amount of amplified sound audible in adjacent park and public areas and neighborhoods.

(Prior code § 4-4.15)

#### **4.16.160 Appeal procedure.**

- (a) The applicant shall have the right to appeal to the Parks and ~~Recreation~~ Community Services Commission a permit denial, permit condition, the Director's refusal to waive the filing deadline, or the Director's decision pertaining to fees or insurance coverage required under this chapter. Notice of appeal shall be made on a form prescribed by the Parks and Recreation Director and shall be filed with the Parks and Recreation Director stating the grounds for appeal. Regular meetings of the Parks and ~~Recreation~~ Community Services Commission are scheduled in accordance with section 2.04.020 of this Code (~~usually the first Thursday of each month~~). The appeal must be filed no later than noon on Thursday a week preceding the Parks and ~~Recreation~~ Community Services Commission meeting to be placed on the next regular meeting's agenda. The decision of the Parks and ~~Recreation~~ Community Services Commission may be appealed to the City Council, ~~whiche~~ has final authority.
- (b) If there is insufficient time for a timely appeal to be heard by the Parks and ~~Recreation~~ Community Services Commission prior to the date on which the event is scheduled, the applicant may, at ~~his or her~~ their option, request the ~~Parks and Recreation~~ Director to schedule the appeal to be heard before the City Manager under section 1.12.010. The City Manager shall attempt to hold a hearing no later than three (3) business days after the filing of the appeal, and shall render ~~his~~ their decision no later than two (2) business days after hearing the appeal. If the appeal is heard before the City Manager, the City Manager's decision is final.

(Ord. 1111 § 4 Exh. A (part), 2007: prior code § 4-4.16)

#### **4.16.170 Duties of permittee/sponsor.**

- (a) Each permittee/sponsor of an activity shall comply with all terms and conditions of the permit issued under this chapter.
- (b) Each permittee/sponsor of an activity shall ensure that the person in charge of the activity shall carry the permit issued under this chapter on his person during the duration of the activity.
- (c) Each permittee/sponsor of an activity shall ensure that the park or public area or building used for the permitted activity is cleaned and restored to the same condition as existed prior to the activity.

(Prior code § 4-4.17)

#### **4.16.180 Unlawful acts in parks and public areas.**

No person, other than authorized City personnel, shall do any of the following unless written permission has been obtained from the Director:

- (a) Play or engage in any game or contest in any park or public area except in such places suited, ~~specially~~ specifically provided or designated for that purpose;
- (b) Play upon any tennis courts wearing shoes other than those having vulcanized soles and heels, commonly known as tennis shoes. In-line skating, skateboards, or other wheeled items and dogs are prohibited on tennis courts, basketball courts or similar multi-use courts;
- (c) Use any tennis courts for tennis tournaments, team practices or other special events of any kind without the prior written permission of the Director;
- (d) Cut, break, injure, deface or disturb any plant, rock, building, cage, pen, monument, fence, bench or other structure, apparatus or property; or pluck, pull up, cut, take or remove any shrub, bush, plant or flower; or make or write upon any building, monument, fence, bench or other structure;
- (e) Cut or remove any wood, turf, grass, soil, rock, sand or gravel, or any found object, whether above or below the ground;

- (f) Lead or let loose any farm animals of any kind. Dogs are permitted subject to regulations and section 5.08.130 of this Code. Owners are responsible for picking up after their animals while on/in parks, parkways, trails or other public areas;
- (g) Post, place or erect any bills, notice, paper or advertising device of any kind on park or public equipment;
- (h) Tear down, deface or destroy any sign posted pursuant to this chapter;
- (i) Willfully tamper with or damage any water or gas pipes, hydrant, stopcock, sewer, basin or other construction in any park or public area;
- (j) Carry any firearms, air gun, slingshot or archery equipment;
- (k) Make or kindle any open fire, such as camp fires, bonfires, burning of garbage, or portable outdoor fireplaces in any public area, except in picnic stoves permanent charcoal grills provided for that purpose by the City. Users of permanent charcoal grills must extinguish charcoal in the grill after use. The City will remove leftover charcoal and ashes as needed; ~~(or camp, except in places designated as such by official action of the City;~~
- (l) Ride or drive any horse or other animal or any motorized vehicle, cycle, go cart or scooter elsewhere than on the roads or drives provided for such purpose, or drive a motor vehicle in an erratic or hazardous manner on any park roads, public areas, paths or parking areas;
- (m) Enter, remain or stay in the swimming pools in the public parks or the enclosures surrounding the pools at any time when the pools are not open to the public with a lifeguard on duty;
- (n) Play or engage in model aircraft flying or boats, driving of golf balls, archery, hardball or any similar games of a hazardous nature except at such places as are especially set apart for such purposes;
- (o) Throw or place on or in any park or public area any paper, rubbish, garbage or refuse matter of any kind, unless in ~~or adjacent to~~ a receptacle designed for the purpose; but no person shall deposit household rubbish and garbage in any City park, public area, rubbish receptacles or in garbage receptacles;
- (p) Urinate or defecate in a park, public area, or recreation facility except in proper fixtures in a restroom facility designed for the purpose;
- (q) To sell refreshments, food stuffs or novelties in any park or on any street immediately adjacent thereto without the prior written permission of the Director or the City Council;
- (r) Use or possess any glass beverage container within the boundaries of any park or public area;
- (s) Alcoholic beverages are prohibited in mini and neighborhood parks adjacent to joint use areas of elementary schools. It shall be unlawful and a misdemeanor to consume any alcoholic beverage, in any park without first obtaining the permission of the City Council or a permit from the Parks and Recreation Department. It shall be unlawful to possess any can, bottle or other receptacle containing any alcoholic beverage as defined by the Alcoholic Beverage Control Act of the State of California that has been opened, or a seal broken or the contents of which have been partially removed in any park without first obtaining the permission of the City Council or a permit from the Parks and Recreation Department. Signs will be posted and shall read "ALCOHOL CONSUMPTION OR POSSESSION PROHIBITED IN CITY PARK WITHOUT A PERMIT BY T.M.C. 4.16.180(s)";
- (t) No person shall go upon any surface in a park with any skateboard, roller skate, rollerblade, in-line skate, coaster, or any similar device, when appropriate signs giving reasonable notice thereof are posted at the park;
- (u) A person shall be permitted to use a skateboard in a park only if: (1) the City Council has adopted a resolution which identifies the park at which skateboarding is permitted; and (2) signs are posted at the park affording reasonable notice that: (i) any person riding a skateboard in the park is undertaking

a "hazardous recreational activity" pursuant to California Health and Safety Code section 115800; and (ii) the person must wear a helmet, elbow pads, and knee pads; and (iii) that any person failing to do so will be subject to citation pursuant to this section;

(v) Under no circumstances may persons store or dispose of waste water (i.e. from baths, sinks, washing machines, and/or other kitchen appliances) or sewage water onto parks or public areas not intended for such disposal;

(w) Parks and public areas shall not be used for storage or a dumping location for any personal items, including without limitation, car parts, bicycle parts, bicycles, furniture, appliances, generators, propane tanks, or combustible materials; and

(x) Under no circumstances may persons create unpermitted electrical or gas connections.

The following subsections under this section shall be a misdemeanor: subsections (d), (e), (h), (i), (j), (k), (l), (o), (p), (v), (w).

(Ord. 1074 § 2, 2005; Ord. 990 § 1, 1999; prior code § 4-4.18; Ord. No. 1229, § 1, 1-3-2017)

#### **4.16.190 Park closing hours.**

It is unlawful and a misdemeanor for any person to enter or remain in a City park, whose closing times have been posted pursuant to section 4.16.200, between ~~dusk and dawn~~ 10:00 pm and 6:00 am, or such other time as is posted by the City Manager or ~~his or her~~ their designee. The City Manager is authorized to designate those parks which shall be closed between the hours of ~~dusk and dawn~~ 10:00 pm and 6:00 am, or such other time as determined by the City Manager, to allow for optimal park use, to prevent potential destruction of public property, to prevent potential nuisance to the residents of adjoining areas, or to prevent hazards to persons using park property. This section shall not apply to the following:

- (a) Any Peace Officer or City employee acting within the course and scope of ~~his~~ their employment;
- (b) Any City-sponsored functions or programs; or
- (c) Any person who has received a facility permit or other written authorization from the Director for use of the park after closing hours.

(Ord. 1109 § 1, 2007; prior code § 4-4.19)

(Ord. No. 1204, § 1, 12-15-2015)

#### **4.16.200 Posting of signs.**

- (a) The signs posting closing hours shall be not less than one square foot in area and upon which, in lettering not less than one-half inch in height, appear the time the park is closed with words such as "ENTERING OR REMAINING IN THIS PARK BETWEEN ~~DUSK AND DAWN~~ 10:00 PM AND 6:00 AM FORBIDDEN BY LAW TMC 4.16.190" or such other times as the City Manager may designate pursuant to section 4.16.190 of this Code. Any area to remain open shall be posted on a separate sign located within such area.
- (b) Each park shall be posted in the following manner:
  - (1) If the park does not contain any lineal dimension exceeding 350 feet, by posting signs at each corner of the area and at intervals not exceeding 150 feet, and, if such property has a definite entrance or entrances, at each such entrance;

- (2) If the park has lineal dimensions exceeding 350 feet, by posting signs at each corner of the area and at intervals not exceeding 300 feet, and if such property has a definite entrance or entrances, at each such entrance.
- (c) For alcoholic restriction, each park shall be posted as follows: "ALCOHOL CONSUMPTION OR POSSESSION PROHIBITED IN CITY PARK WITHOUT A PERMIT BY TMC 4.16.180(s)".
- (Ord. 1109 § 2, 2007: prior code § 4-4.20)

## **Chapter 5.12 CAMP CARS AND TRAILERS, TENT SPACES, AND STORAGE OF PERSONAL PROPERTY IN PARKS AND PUBLIC AREAS**

### **Sections:**

#### **5.12.010 Definitions.**

For the purpose of this chapter, certain words and phrases are defined as follows and certain provisions shall be construed as herein set forth, unless it shall be apparent from their context that they have a different meaning:

- (a) "Camp car and/or trailer" is any unit used for living or sleeping purposes and which is equipped with wheels or similar devices used for the purpose of transporting it from place to place, whether by motive power or other means, and said unit, so equipped, shall be capable of being safely operated as a vehicle over the public thoroughfares of the States. Any such vehicle that is incapable of such safe operation, as aforesaid, is hereby declared to be a dwelling as defined in the State Housing Act and shall be subject to the provisions thereof relating to dwelling;
- (b) "Campground" is defined to mean any place, area or tract of land upon which is located any camp car and/or trailer;
- (c) "Personal Property" means any tangible property used by any person, and includes, without limitation, sleeping bags, tents, clothes, toiletries, furniture, storage containers, and bicycles;
- (d) "Public Area" or "Public Areas" means all property that is owned, managed, or maintained by the City and shall include, but not be limited to, any park, street, parking lot, median strip, sidewalk, building, or structure;
- (e) "Tent" means a collapsible shelter made of any material, including fabric or plastic, used for living habitation and/or storage of personal property; and
- ~~(e)(f) "Tent space" is defined as any place, area or tract of land upon which is located any tent. used for living or sleeping purposes.~~

(Prior code § 5-3.01)

#### **5.12.020 Building Inspector.**

It shall be the duty of the Building Inspector to enforce all the provisions of this chapter and for the purpose of securing enforcement thereof, the Building Inspector or any of his duly authorized representatives or agents, shall have the right and are hereby empowered to enter upon the premises of any campground or tent space now operating or which may hereafter be operated within the City to inspect the same and all accommodations connected therewith.

(Prior code § 5-3.02)



### **5.12.030 Permit to locate a campground or tent space required.**

No campground or tent space hereafter established shall be located within the City until the location thereof is approved by the Council.

Upon completion of any such campground or tent space, and prior to the use thereof, the owner or tenter of such campground or tent space shall make application to the Building Inspector for a permit to occupy or use such campground or tent space. The application to occupy shall be in writing upon a form provided by the Building Inspector and shall contain such information as may be required by said Building Inspector with respect to the operation of the campground or tent space. It shall be filed with the City Clerk not less than five (5) days, nor more than fifteen (15) days before the campground or tent space is made ready for use, and it shall be accompanied by an inspection fee of Five (\$5.00) Dollars.

The Building Inspector shall thereupon make an inspection of the campground or tent space referred to in said application, and if it is found to be in conformity with the requirements of this and all other laws of the City and the laws of the State, said Building Inspector shall issue to the owner or operator thereof a written permit to occupy, which permit shall at all times be posted at a conspicuous place in said campground or tent space. The permit to occupy shall expire one calendar year from date of issue, and may be renewed upon written application, accompanied by an inspection fee of Five (\$5.00) Dollars, to the City Clerk.

It shall be unlawful for any person to operate or maintain any campground or tent space within the confines of the City, as herein set forth without first applying for and receiving from the Building Inspector a permit to occupy and without complying with all of the provisions of this chapter and the laws of the State.

(Prior code § 5-3.03)

### **5.12.040 Money to city treasurer.**

All moneys received by the City Clerk under provisions of this chapter shall be paid into the City Treasury and placed in the General Fund.

(Prior code § 5-3.04)

### **5.12.050 Revocation or suspension of permit.**

Whenever it is found that any campground or tent space is not being conducted in conformity with the provisions of this chapter or the laws of the State, the permit to operate same shall be subject to revocation or suspension by the Council in the following manner, to wit:

Upon instruction of the Council a notice shall be served by the Building Inspector on the person holding said permit, specifying wherein ~~he~~ they ~~has~~ have failed to comply with this chapter, and ordering ~~him~~ them to appear before the Council, at a day and hour therein specified, not less than five (5) days after the service of said notice on such permit holder, requiring him to show cause at said time and place why said permit should not be revoked or suspended.

The notice shall be sent by registered mail, postage prepaid, return receipt requested, to the person owning or operating the campground or tent space as such person's name and address appears on the last equalized assessment roll or as known to the Building Inspector. A copy of said notice shall also be posted conspicuously on the campground or tent space alleged to be in violation of this or any other law of the City or of the State. The Building Inspector upon giving notice as aforesaid, shall file an affidavit thereof with the City Clerk certifying to the time and the manner in which such notice was given. There shall also be filed therewith any receipt cards which may have been returned in acknowledgement of the receipt of such notices by registered mail. The failure of any owner or operator to receive notice shall not affect in any manner, the validity of any proceedings taken hereunder. At the time and place mentioned in said notice, the person holding said permit shall have the right to appear in person or by counsel, and to introduce such evidence as ~~he~~ they may desire, and the Council shall

confront said permit holder with any charges that said Council may have against ~~him~~ them, and after said hearing, the Council may at its discretion, revoke or suspend the permit.

(Prior code § 5-3.05)

#### **5.12.060 Responsibility of owner or operator.**

Every person owning or operating a campground or tent space shall maintain such campground or tent space, and all permanent equipment in connection therewith, in a clean and sanitary condition and shall maintain said equipment in a state of good repair.

(Prior code § 5-3.07)

#### **5.12.070 Ground area for camp cars and/or trailers and tents.**

No camp car and/or trailer or tent used for living or sleeping purposes in any campground or tent space now existing, or that may hereafter be established, shall be located within ten (10') feet of any other camp car and/or trailer, tent, or structure, nor shall any camp car and/or trailer or tent be located within eight (8') feet of any lot line. Camp cars and/or trailers and tents, as aforesaid, shall be arranged in rows abutting or facing on a driveway or clear unoccupied space of not less than fifteen (15') feet in width, which space shall have unobstructed access to a public street or alley.

(Prior code § 5-3.08)

#### **5.12.080 Drainage of premises.**

Every campground or tent space hereafter established shall be located on a well drained area and the premises of every such ground or tent space or any existing campground or tent space shall be maintained in a sanitary condition and shall be properly graded so as to prevent the accumulation of storm or casual waters.

(Prior code § 5-3.09)

#### **5.12.090 Water supply.**

An adequate supply of pure water for drinking and domestic purposes shall be supplied to meet the requirements of said campground or tent space. Said water supply shall be obtained from faucets only conveniently located in said campground and no dipping vessels or common cups shall be permitted.

(Prior code § 5-3.10)

### **5.12.100 Removal of wheels or similar devices.**

It shall be unlawful for any person owning or operating a camp car and/or trailer located in a campground to remove or cause to have removed the wheels, or any similar transporting devices from said camp car and/or trailer or to otherwise permanently fix it to the ground in a manner that would prevent the ready removal of said camp car and/or trailer, or to alter it in any way so as to make it incapable of being safely operated over the public thoroughfares of the State without first obtaining a permit so to do from the Building Inspector. Any alteration to any camp car and/or trailer, as above set forth, shall be construed as removing it from the requirements of this chapter and converting it into a dwelling and it shall thereupon be subject to the requirements of the Building Code of the City and the State Housing Act of California.

(Prior code § 5-3.11)

### **5.12.110 Dogs not allowed at large.**

Dogs shall not, at any time, be permitted to run at large in any campground or tent space.

(Prior code § 5-3.12)

### **5.12.120 Water closets.**

There shall be provided in every existing campground or tent space and every campground or tent space which may hereafter be established, one water closet for each sex, one of such water closets shall be distinctly marked "For Men" and one of such water closets shall be distinctly marked "For Women" and there shall be provided an additional water closet for each sex for every ten (10) tents, camp cars and/or trailers or fractional part thereof in excess of ten (10) tents, camp cars and/or trailers.

(Prior code § 5-3.13)

### **5.12.130 Baths.**

There shall be provided in every existing campground or tent space and every campground or tent space which may hereafter be established, a stationery bathtub or shower bath equipped with hot and cold running water for each sex. Such bathtubs or shower baths shall be installed in a separate compartment from any water closet unit and there shall be provided additional bathtubs or shower baths for each sex, for every twenty (20) tents, camp cars and/or trailers or fractional part thereof in excess of twenty (20) tents, camp cars and/or trailers in said campground and/or tent space.

The Building Inspector may exempt any campground or tent space existing September 1, 1942, from fully complying with the provisions of sections 5.12.120 and 5.12.130 when, in his discretion, such deviation will not be detrimental to the health of persons occupying said campground or tent space or to the proper sanitation of the premises. The floors of every water closet, bathtub or shower bath compartment hereafter installed shall be constructed of cement or some other nonabsorbent material; the walls shall be a smooth waterproof material, and the interiors of all water closets, bathtub or shower compartments shall be maintained in a sanitary condition at all times.

(Prior code § 5-3.14)

### **5.12.140 Garbage receptacles.**

There shall be provided in every campground or tent space heretofore or hereafter established, such number of metal receptacles with close fitting metal covers, or other receptacles satisfactory to the Building Inspector for garbage, refuse, ashes and rubbish as may be deemed necessary by the Building Inspector and such receptacles shall at all times be maintained in a clean and sanitary condition.

(Prior code § 5-3.15)

### **5.12.150 Slop sinks.**

There shall be provided in every campground or tent space heretofore or hereafter established one or more slop sinks properly connected with the City sewer system or a cesspool or septic tank, such sinks to be conveniently located at no greater distance than one hundred (100') feet from any camp car and/or trailer, or tent.

(Prior code § 5-3.16)

### **5.12.160 Refuse and sewage disposal.**

It shall be unlawful to deposit any waste water, drainage or material from plumbing fixtures, including any such fixtures within any camp car and/or trailer on the surface of any campground or tent space. All such fixtures, when in use, must be connected to the City sewer system, or, in lieu thereof, they may be connected to a cesspool or septic tank constructed in a manner satisfactory to the Building Inspector.

(Prior code § 5-3.17)

### **5.12.170 Lighting.**

Every campground or tent space heretofore or hereafter established shall be provided with means of lighting the same at night and all public water closets and bath units shall be provided with sufficient lighting facilities which shall be kept lighted during the time from one-half hour after sunset until one-half hour before sunrise.

(Prior code § 5-3.18)

### **5.12.180 Facilities now available not to be construed with any hereafter required.**

Any water faucets, toilets, garbage receptacles, or other equipment required by the provisions of this chapter in campgrounds or tent spaces or which may hereafter be required by any rules and regulations of the Building Inspector pertaining to campgrounds or tent spaces shall not be construed to mean water faucets, toilets, garbage receptacles or other equipment now or hereafter located in or adjacent to campgrounds or tent spaces and which may already or hereafter be required under provisions of other laws or regulations.

(Prior code § 5-3.19)

### **5.12.190 Fire protection.**

Every campground shall be equipped with at least one fire extinguisher for each ten thousand (10,000) square feet of campground area and such additional extinguishers as may be required by the Chief of the Fire Department. Location and type of extinguishers shall be approved by the said Fire Chief.

(Prior code § 5-3.20)

### **5.12.200 Use of camp cars and/or trailers or tents.**

- (a) It shall be unlawful to occupy any camp car and/or trailer or erect and/or occupy a tent for living or sleeping purposes in any public area, the City for a period longer than twenty-four (24) hours unless the same is located upon a campground or tent space licensed under the provisions of this chapter. ~~provided, however, that temporary permits therefor, limited to seventy-two (72) hours including the first twenty-four (24) hour period, may be granted by the Building Inspector. No permits shall be issued for any camp car and/or trailer or tent occupancy which will constitute a nuisance or a health menace.~~
- ~~(b) It shall be unlawful to occupy a camp car and/or trailer or tent for living or sleeping purposes on in any public area public streets, alleys, or ways in the City at any time.~~
- (b) Without limiting the application of subsection (a) above, it shall be unlawful to occupy a camp car and/or trailer or erect and/or occupy a tent as follows:

- (1) Within twenty (20) feet of any driveway;
- (2) Within five (5) feet of any building entrance or exit;
- (3) Within ten (10) feet of any fence located on public or private property;
- (4) Within two (2) feet of any fire hydrant, fire plug, or other fire department connection;
- (5) Within (1,000) feet of any public building, park playground, homeless shelter facility, school, day care center, recreational facility, or sports field; and
- (6) In an area that obstructs or interferes with an activity for which the City has issued a permit.

(c) Any person who violates the provisions of this section is subject to criminal prosecution of a misdemeanor.

(Prior code § 5-3.21)

### **5.12.210 Unlawful Storage of Personal Property.**

- (a) No person shall store any personal property in a public area that constitutes an immediate threat to the health or safety of the public or is evidence of a crime or contraband, which may include, but is not limited to:
  - (1) Personal property that obstructs or interferes with the flow of pedestrian, bicycle, or vehicle traffic, on any portion of any street, sidewalk, or other public right of way; and
  - (2) Attachment of any personal property to any public area or public property, including but not limited to, a building, bus shelter, the ground, a bench, a fence, pole, trash can, mailbox, sign, tree, or plant, without the City's prior written consent.
- (b) The City may remove personal property that is in violation of this Chapter without prior notice. Any person that obstructs or interferes with the City's removal of property under this Chapter will be subject to a misdemeanor.

### **5.12.220 Property Storage and Disposal.**

- (a) The City shall store impounded personal property for a period of time reasonably determined by the Director of the Public Works Department. If the personal property is not claimed within such designated time frame, it may be discarded. The City shall not be required to undertake any search for, or return of, any impounded personal property stored for longer than the period of time reasonably determined by the Director of the Public Works Department.
- (b) The City shall maintain a record of the date any impounded personal property was discarded.

**TRACY CITY COUNCIL**

**ORDINANCE NO. \_\_\_\_\_**

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**OMNIBUS AMENDMENT OF THE TRACY MUNICIPAL CODE TO (A) UPDATE CHAPTER 4.16, "REGULATIONS PERTAINING TO THE USE OF PARK AND RECREATION AREAS AND FACILITIES" AND CHAPTER 5.12, "CAMP CARS AND TRAILERS," AND (B) ADD PROVISIONS PROHIBITING CERTAIN ACTS, CAMPING, AND STORAGE OF PERSONAL PROPERTY IN PARKS AND PUBLIC AREAS**

**WHEREAS**, certain unlawful acts, camping, and unlimited storage of personal property in parks and public areas create unsafe and unsanitary conditions throughout the City of Tracy; and

**WHEREAS**, these conditions interfere with the use of parks and public areas for their intended purpose and impact the health and safety of the public; and

**WHEREAS**, these conditions cause blight throughout the community and damage to public property; and

**WHEREAS**, throughout the last several years, the City has experienced an increase in illegal activity, camping, and storage of personal property throughout parks and public areas, and the Tracy Municipal Code provides limited enforcement opportunities to address these growing issues; and

**WHEREAS**, in order to protect the health and safety of the community and the conditions of parks and public areas, amendments to the Tracy Municipal Code are necessary to provide the City with additional enforcement tools; and

**WHEREAS**, the proposed amendments will allow the City to address specific activities within parks and public areas that are currently not prohibited under the Tracy Municipal Code, and will increase penalties for certain activities to misdemeanors; and

**WHEREAS**, these changes will increase enforcement opportunities and deter illegal activities in parks and public areas; and

**WHEREAS**, such additional enforcement tools are specifically amendments to Chapter 4.16, "Regulations Pertaining to the Use of Park and Recreation Areas and Facilities" and Chapter 5.12, "Camp Cars and Trailers" of the Tracy Municipal Code, as more specifically described in **Exhibit A** attached hereto and incorporated herein (**Amendments**); and

**WHEREAS**, the City’s Parks and Community Services Commission considered and provided input on the Amendments to Chapter 4.16 on August 4, 2022; and

**WHEREAS**, the City’s Homeless Advisory Committee considered and provided input on the entirety of the Amendments on August 22, 2022; and

**WHEREAS**, the Amendments are necessary to expand the City’s enforcement tools to address unlawful acts, camping, and storage of personal property in parks and public areas in order to protect the health and safety of the community and conditions of parks and public areas in the City; and

**WHEREAS**, as supported by substantial evidence in the record and for the reasons set forth in this Ordinance, and, each as a separate and independent basis, that the actions authorized by this Ordinance are exempt from additional review and analysis under the California Environmental Quality Act (“CEQA”) and the CEQA Guidelines (Cal. Code Regs., title 14, section 15000 et seq.) under CEQA Guidelines Section 15307 (Protection of Natural Resources), Section 15308 (Protection of the Environment), and/or Section 15061(b)(3) (Common Sense Exemption), and/or Section 15321 (Enforcement Actions); and

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

**SECTION 1. Incorporation of Recitals/Findings.** The City Council finds and determines the foregoing recitals are true and correct and are hereby incorporated herein as findings and determinations of the City.

**SECTION 2. Full Text.** The City Council hereby approves the Amendments to Chapter 4.16, “Regulations Pertaining to the Use of Park and Recreation Areas and Facilities” and Chapter 5.12, “Camp Cars and Trailers” of the Tracy Municipal Code, which are specifically described on **Exhibit A**.

**SECTION 3. CEQA Determination.** That the City Council hereby finds and determines, after independent review and consideration, as supported by substantial evidence in the record and for the reasons set forth in this Ordinance, and, each as a separate and independent basis, that the actions authorized by this Ordinance are exempt from additional review and analysis under the California Environmental Quality Act (“CEQA”) and the CEQA Guidelines (Cal. Code Regs., title 14, section 15000 et seq.) under CEQA Guidelines Section 15307 (Protection of Natural Resources), Section 15308 (Protection of the Environment), and/or Section 15061(b)(3) (Common Sense Exemption), and/or Section 15321 (Enforcement Actions). Each of the foregoing provides a separate and independent basis for CEQA compliance and, when viewed collectively, provides an overall basis for CEQA compliance.

**SECTION 4. Severability.** If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the Chapter. The City Council hereby declares that it would have passed this Ordinance and each section, subsection, clause or phrase thereof irrespective of the fact that one or more other sections, subsections, clauses or phrases may be declared invalid or unconstitutional.

**SECTION 5. Effective Date.** This ordinance shall become effective upon the thirtieth (30<sup>th</sup>) day after final adoption.

**SECTION 6. Publication.** The City Clerk is directed to publish this ordinance in a manner required by law.

**SECTION 7. Codification.** This ordinance shall be codified in the Tracy Municipal Code.

The foregoing Ordinance \_\_\_\_\_ was introduced at a regular meeting of the Tracy City Council on the 6th day of September 2022, and finally adopted on the \_\_\_ day of \_\_\_\_\_, 202\_, by the following vote:

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

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

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

Date of Attestation: \_\_\_\_\_



**NOTICE AND DIGEST**

**OMNIBUS AMENDMENT OF THE TRACY MUNICIPAL CODE TO (A) UPDATE CHAPTER 4.16, "REGULATIONS PERTAINING TO THE USE OF PARK AND RECREATION AREAS AND FACILITIES" AND CHAPTER 5.12, "CAMP CARS AND TRAILERS," AND (B) ADD PROVISIONS PROHIBITING CERTAIN ACTS, CAMPING, AND STORAGE OF PERSONAL PROPERTY IN PARKS AND PUBLIC AREAS**

This Ordinance (Ordinance) amends Chapter 4.16, "Regulations Pertaining to the Use of Park and Recreation Areas and Facilities" and Chapter 5.12, "Camp Cars and Trailers" and adds provisions prohibiting certain acts, camping, and storage of personal property in parks and public areas. The Ordinance will provide the City of Tracy with additional enforcement tools to protect the health and safety of the community and conditions in parks and public areas. Lastly, the Ordinance will increase the penalties for violations of certain sections to misdemeanors.

September 6, 2022

AGENDA ITEM 3.E

**ADOPT AN URGENCY ORDINANCE MAKING FINDINGS AND ESTABLISHING A TEMPORARY MORATORIUM PURSUANT TO GOVERNMENT CODE 65858 ON THE PROCESSING OF CONDITIONAL USE PERMITS FOR CANNABIS ESTABLISHMENTS UNDER CHAPTER 10.08 OF THE TRACY MUNICIPAL CODE, TO TAKE EFFECT IMMEDIATELY UPON ADOPTION**

This item is for the City Council to pass an urgency ordinance to establish a temporary moratorium pursuant to Government Code 65858 on the processing of conditional use permits for cannabis establishments under the Tracy Municipal Code. On December 3, 2019, the City Council adopted Ordinance 1277 establishing local regulations on commercial cannabis activity in the City of Tracy, which regulations are codified in Chapters 6.36 and 10.08.3196 of the Tracy Municipal Code (Code). The Code requires applicants to obtain both Cannabis Business Permits under Chapter 6.36 and Cannabis Conditional Use Permits under Chapter 10.08, in order to establish a retail site in the City

A total of seventeen retail Cannabis Business Permits have been granted under Chapter 6.36 of the Code. Of these, twelve are for retail storefronts and the City has received a total of eleven Cannabis Conditional Use Permits to be processed under Chapter 10.08 of the Code. Six of the eleven Conditional Use Permits are proposing locations within the Downtown area of the City.

The Downtown area in Tracy is much smaller than other cities. The City has long tried to promote economic development in this area, so the City can have a vibrant Downtown area that attracts residents of all ages. In fact, young children frequent the Downtown area for various classes and food establishments. The Code, as adopted in 2019, does not regulate the maximum number of Cannabis establishments that may exist within any particular zone, the proximity of each establishment to each other or the distance from such establishments from other uses, other than youth centers.

At the Planning Commission meeting of August 24, 2022, and various City Council Meetings in the past, many residents also have expressed their concerns about the potential concentration of cannabis establishments in the Downtown area. We urge our colleagues on the Council to consider this urgency ordinance, as additional Cannabis Conditional Use Permits located in the Downtown Area are scheduled to be heard by the Planning Commission on September 14, 2022.

Absent the adoption of this interim urgency ordinance, it is likely that the establishment and operation of cannabis locations within the City, without appropriate controls in place to regulate the number of such establishments and their relative proximity to each other and other uses will result in harmful effects to the businesses, property owners and residents of the downtown zoning district as well as the overall City. We agree with all of the residents of the City who have expressed these concerns and, again, urge our colleagues to adopt this ordinance, so that the staff can analyze potential regulations or amendments to the Code that could mitigate these issues.

Council Member Bedolla  
Council Member Davis

APPROVED AS TO FORM AND LEGALITY

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

**TRACY CITY COUNCIL**

**URGENCY ORDINANCE NO. \_\_\_\_\_**

**INTRODUCED BY COUNCIL MEMBERS BEDOLLA AND DAVIS**

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AN URGENCY ORDINANCE MAKING FINDINGS AND ESTABLISHING A TEMPORARY MORATORIUM PURSUANT TO GOVERNMENT CODE 65858 ON THE PROCESSING OF CONDITIONAL USE PERMITS FOR CANNABIS ESTABLISHMENTS UNDER CHAPTER 10.08 OF THE TRACY MUNICIPAL CODE, TO TAKE EFFECT IMMEDIATELY UPON ADOPTION

**WHEREAS**, the City of Tracy (City) has an interest in planning and regulating the use of property within the City. Implicit in any plan or regulation is the City's interest in maintaining the quality of urban life and the character of the City's neighborhoods; and

**WHEREAS**, without stable, well-planned neighborhoods, sections of the City can quickly deteriorate, with tragic consequences to social, environmental, and economic values; and

**WHEREAS**, in June 2017, the State Legislature adopted Senate Bill 94 creating a new statewide comprehensive regulatory system for medical and adult use commercial cannabis activity, and

**WHEREAS**, on December 3, 2019, the City Council adopted Ordinance 1277 establishing local regulations on commercial cannabis activity in the City of Tracy, which regulations are codified in Chapters 6.36 and 10.08.3196 of the Tracy Municipal Code (TMC); and

**WHEREAS**, TMC Section 6.36.040 establishes the number of each type of cannabis business that shall be permitted to operate in the City at any one given time (Cannabis Business Permits); and

**WHEREAS**, the total number of Cannabis Business Permits issued under TMC Section 6.36.040 is seventeen (17) retailers, of which twelve (12) are retail storefront dispensaries, and five (5) are non-storefront cannabis businesses; and

**WHEREAS**, in addition to the Cannabis Business Permits, applicants must also obtain a Conditional Use Permit under Chapter 10.08 of the TMC (Cannabis CUPs), and;

**WHEREAS**, TMC Section 10.08.3196(c) outlines specific zones where cannabis use is allowed within the City, which, generally, are all commercial and industrial zones in the City, with the further restriction that in any permitted zone a cannabis operation may not exist within 600 radius feet of schools, day care centers, or youth centers, as such activities are defined in the TMC; and

**WHEREAS**, as of August 31, 2022, two (2) Cannabis CUPs have been issued, one of which is located in the Central Business District (CBD) zone of the City;

**WHEREAS**, the CBD zone is a very small geographic area of the City, generally consisting of the area between A Street and East Street and 11<sup>th</sup> Street to 6<sup>th</sup> Street, and is commonly referred to as the “downtown” (Downtown Area); and

**WHEREAS**, nine (9) other applicants await further processing of their Cannabis CUP applications; and

**WHEREAS**, five (5) of the nine (9) remaining Cannabis CUP applications being processed are proposing sites within the Downtown Area of the City and are located either half a block or a full block apart of each other; and

**WHEREAS**, the TMC currently does not regulate the maximum number of Cannabis establishments that may exist within any particular zone, the proximity of each establishment to each other or the distance from such establishments from other uses, other than youth centers; and

**WHEREAS**, on August 24, 2022, during the hearing for a Cannabis CUP, the Planning Commissioners heard various residents of the City express concerns about the potential concentration of the cannabis establishments in the Downtown Area; and

**WHEREAS**, at various City Council Meetings, many residents also have expressed their concerns about the potential concentration of cannabis establishments in the Downtown Area; and

**WHEREAS**, the Downtown Area is frequented by not only adult residents of the City but also young children who walk down the streets to attend dance classes or frequent retail and coffee shops in the area; and

**WHEREAS**, the Downtown Area is a key area of economic development for the City, which seeks to encourage a vibrant and healthy Downtown Area that offers a variety of activities and establishments for all ages in the City to enjoy; and

**WHEREAS**, the concentration of cannabis establishments in the Downtown Area poses a threat to the economic, public health, safety and welfare of the City; and

**WHEREAS**, absent the adoption of this interim urgency ordinance, it is likely that the establishment and operation of cannabis locations within the City, without appropriate controls in place to regulate the number of such establishments and their relative proximity to each other and other uses will result in harmful effects to the businesses, property owners and residents of the downtown zoning district as well as the overall City; and

**WHEREAS**, Article XI, Section 7 of the California Constitution provides that a city may make and enforce within its limits all local police, sanitary and other ordinances and regulations not in conflict with general laws; and

**WHEREAS**, Government Code Section 65858(a) provides that the legislative body of a city may, to protect the public safety, health and welfare, adopt as an urgency measure an interim ordinance prohibiting any uses that may be in conflict with a contemplated general plan,

specific plan, or zoning proposal the City Council is considering or studying or intends to study within a reasonable time; that adoption of such urgency measures requires a four-fifths vote of the legislative body; that such measures shall be of no effect 45 days from the date of adoption, and may be extended a maximum of two times for a total duration of two years; and

**WHEREAS**, under the City Council's Rules of Procedure (Rule 4.3.1), any item that a Council Member seeks to add to an agenda must be requested at a Council meeting and have a second vote, for such item to be included in a subsequent meeting; an exception is provided under Rule 4.3.1.1, when two Council Members request the City Manager to add to a future meeting a time sensitive matter; and

**WHEREAS**, the Planning Commission is scheduled to hear three (3) Cannabis CUPs at its September 14, 2022 meeting; and

**WHEREAS**, Council Members Bedolla and Davis, each separately, requested the City Manager to schedule this Urgency Ordinance on the September 6<sup>th</sup> Council meeting, prior to the scheduled Planning Commission meeting of September 14<sup>th</sup>; and

**WHEREAS**, the City desires to address community concerns regarding the establishment of cannabis establishments within the City and intends to (1) study the potential impacts that the unregulated number, location and proximity of cannabis establishments within certain districts of the City may have on the public health, safety and welfare, (2) determine what local regulations, including but not limited to amendments to existing zoning regulations, may be appropriate to limit the negative impacts of such unregulated standards for cannabis establishments, and (3) determine appropriate controls for the protection of public health, safety and welfare; and

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

**SECTION 1. Incorporation of Recitals/Findings.** The City Council finds and determines the foregoing recitals are true and correct and are hereby incorporated herein as findings and determinations of the City.

**SECTION 2. Moratorium.** The City Council hereby imposes a temporary moratorium for 45 days on the intake, processing and approval of any Cannabis CUP applications, and staff is directed to take all necessary actions to implement the purpose of this moratorium, including suspending any further intakes of new Cannabis CUP applications, removing from the Tracy Planning Commission agenda any scheduled Cannabis CUP applications, or processing any Cannabis CUP applications that have been recently submitted; and

**SECTION 3. Analysis of Amendments/Regulations.** The City Council directs to the City Manager to (1) study the potential impacts that the unregulated number, location and proximity of cannabis establishments within the Downtown Area and other districts of the City may have on the public health, safety and welfare, (2) determine what local regulations, including but not limited to amendments to existing zoning regulations, may be appropriate to limit the negative impacts of such unregulated standards for cannabis establishments, and (3) determine appropriate controls for the protection of public health, safety and welfare, and to return with such information to the City Council prior to the expiration of this moratorium.

**SECTION 4. Effect of Ordinance.** For the term of this Ordinance, as set forth in Section 2 hereof, the provisions of this Ordinance shall govern, and to the extent there is any conflict between the provisions of this Ordinance and the provisions of any other City code, ordinance, resolution or policy, all such conflicting provisions shall be suspended; and

**SECTION 5. CEQA Determination.** The City Council finds and determines the adoption this Ordinance is not a project within the meaning of the California Environmental Quality Act (**CEQA**), including as the term "project" is defined by section 15378 of the CEQA Guidelines, and that even if it were a project under CEQA, it is subject to the CEQA exemptions contained in CEQA Guidelines Sections 15061(b)(3), 15183, and/or 15308, each of which provides a separate and independent basis for a CEQA exemption and when viewed collectively provides an overall basis for a CEQA exemption; and

**SECTION 6. Severability.** If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the Chapter. The City Council hereby declares that it would have passed this Ordinance and each section, subsection, clause or phrase thereof irrespective of the fact that one or more other sections, subsections, clauses or phrases may be declared invalid or unconstitutional; and

**SECTION 7. Effective Date.** In accordance with Government Code Section 65858, this Ordinance shall be in full force and become effective immediately as an interim urgency ordinance, in order to protect the public health, safety and welfare, for a period of 45 days from the date of its adoption. This 45-day period may be extended by the City Council in accordance with the provisions of California Government Code Section 65858; and

**SECTION 8. Publication.** The City Clerk is directed to certify to the passage and adoption of this Ordinance causing it to be posted, as required by law, and it shall thereafter be in full force and effect; and

**SECTION 9. Codification.** This Ordinance shall not be codified in the Tracy Municipal Code.

\*\*\*\*\*

The foregoing Ordinance \_\_\_\_\_ was introduced at a regular meeting of the Tracy City Council on the \_\_\_ day of \_\_\_\_\_ 2022, and finally adopted on the \_\_\_ day of \_\_\_\_\_, 2022, by the following vote:

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

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

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

Date of Attestation: \_\_\_\_\_

AGENDA ITEM 3.F

REQUEST

**ADOPT A RESOLUTION DECLARING 200 ACRES OF CITY-OWNED LAND LOCATED AT 15580 AND 15178 WEST SCHULTE ROAD (APNs 209-230-029 AND 209-230-030) AS EXEMPT SURPLUS PROPERTY UNDER GOVERNMENT CODE SECTION 54221(F)(1)(D)**

EXECUTIVE SUMMARY

This item for consideration by the City Council of a Resolution declaring real property (the Property) located at 15580 and 15178 West Schulte Road (APNs 209-230-029 and 209-230-030) as “exempt surplus” property under Government Code Section 54221. The Surplus Lands Act (SLA) of California (Government Code Section 54221 et seq.) requires that a legislative body must declare city-owned property to be “surplus land” or “exempt surplus land” before the city can take any action (sale or lease) to dispose of the property. The City of Tracy had determined that the Property is no longer needed for any City public purpose, except for the siting of an antennae, which use shall remain in place on the property upon any future disposition.

The California Legislature adopted Assembly Bill (AB) 758 in 2017 to establish the Tri-Valley-San Joaquin Valley Regional Rail Authority, known as Valley Link, “to plan and help deliver a cost-effective connection from the San Joaquin Valley to the Bay Area Rapid Transit District’s rapid transit system and the Altamont Corridor Express in the Tri-Valley, to address regional economic and transportation challenges” (Project). On September 15, 2020, the City Council adopted Resolution 2020-168, approving a term sheet for an option agreement for Valley Link to acquire the Property for an Operations and Maintenance Facility (O&M Facility). Valley Link and the City are ready to enter into such an option agreement. Pursuant to Section 54221(f)(1)(D) of the SLA, a property that is transferred to another public agency for its use is “exempt surplus land”.

Should the Council adopt the recommended resolution, staff will file a notice of exemption specifically regarding the declaration of the property as exempt surplus land and provide a copy of the adopted resolution to California Department of Housing and Community Development (HCD), as required under the SLA.

BACKGROUND & ANALYSIS

The California Legislature adopted Assembly Bill (AB) 758 in 2017 to establish the Tri-Valley-San Joaquin Valley Regional Rail Authority, known as Valley Link, “to plan and help deliver a cost-effective connection from the San Joaquin Valley to the Bay Area Rapid Transit District’s rapid transit system and the Altamont Corridor Express in the Tri-Valley, to address regional economic and transportation challenges.” A board of directors representing the following fifteen entities governs Valley Link: Bay Area Rapid Transit District (BART); the San Joaquin Regional Rail Commission; the Livermore

Amador Valley Transit Authority; the Mountain House Community Services District; the counties of Alameda and San Joaquin; and the cities of Dublin, Lathrop, Livermore, Manteca, Pleasanton, Stockton, Danville, San Ramon and Tracy.

The Project Feasibility Report prepared by Valley Link identified a need for an Operation and Maintenance (O&M) Facility to serve Valley Link trains, tracks, and associated equipment. The O&M Facility is projected to create about 400 jobs.

In September 2020, Valley Link approached the City about the Property, commonly referred to as the "Old Antenna Farm," as a potential site for the O&M Facility. The City acquired the Property in 2006 from the United States Department of Energy, of which 150.18 acres were deed restricted for educational or recreational purposes. In 2020, the City acquired 300 acres in north Tracy from the Wastewater Fund to transfer the deed restriction of educational and recreational uses from the Property to a portion of the property now serving as Legacy Fields and the future Nature Park. During the 2020 deed restriction conveyance, the City determined that the Property is no longer needed for any City public purpose. The only current use of the Property by the City is an antennae, which use would either remain in place on the Property upon conveyance to Valley Link or be relocated to a new location by Valley Link, at its cost.

On May 12, 2021, pursuant to the California Environmental Quality Act, the Board of Directors of Valley Link certified a Final Environmental Impact Report (FEIR) for the Project, which included the O&M Facility, and also adopted appropriate Findings of Fact, a Statement of Overriding Considerations, and a Mitigation Monitoring and Reporting Program.

Concurrently with this agenda, the City Council is considering an option agreement with Valley Link (pursuant to Resolution 2020-168) that will allow Valley Link to acquire the Property at nominal cost as satisfaction of the City's full contribution toward the Valley Link Project. This land conveyance would also be used to demonstrate a local match to grant funding being sought by Valley Link for the Project.

As noted above, pursuant to Government Code Section 54221(b)(1), the City must declare property to be "surplus land" before the City can take any action (sale or lease) to dispose of the Property. Surplus real property is defined as "land owned in fee simple by any local agency for which the local agency's governing body takes formal action in a regular public meeting declaring that the land is surplus and is not necessary for the agency's use;" Pursuant to Section 54221(f)(1)(D) of the SLA, property that is transferred to another public agency for its use is "exempt surplus land". As a result, the California Department of Housing and Community Development (HCD) adopted guidelines to increase compliance with the SLA that clarify and strengthen reporting and enforcement provisions of the Act. This includes submitting a resolution from the City declaring the Property as "exempt surplus land."

### FISCAL IMPACT

The value of the Property will be determined prior to the exercise of the Option by Valley Link and as indicated above the value will constitute the City's full contribution to the Valley Link Project.



STRATEGIC PLAN

This agenda item supports the City of Tracy's Economic Development Strategic Priority:  
Goal #2, Continue to Support Valley Link.

RECOMMENDATION

Staff recommends that the City Council adopt a Resolution declaring 200 acres of City-Owned land located at 15580 and 15178 West Schulte Road (APNs 209-230-029 and 209-230-030) as exempt surplus property under Government Code Section 54221.

Prepared by: Karin Schnaider, Assistant City Manager

Reviewed by: Sara Cowell, Interim Finance Director

Approved by: Michael Rogers, City Manager

APPROVED AS TO FORM AND LEGALITY

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

**TRACY CITY COUNCIL**

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

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**RESOLUTION DECLARING 200 ACRES OF CITY-OWNED LAND LOCATED AT 15580 AND 15178 WEST SCHULTE ROAD (APNs 209-230-029 AND 209-230-030) AS EXEMPT SURPLUS PROPERTY UNDER GOVERNMENT CODE SECTION 54221(F)(1)(D)**

**WHEREAS**, The City of Tracy (**City**) is the owner of two parcels totaling approximately 200 acres located on 15580 and 15178 West Schulte Road (APNs 209-230-029 and 209-230-030) (**Property**); and

**WHEREAS**, In 2006, the City acquired the Property from the United States Department of Energy, of which 150.18 acres were deed restricted for educational or recreational purposes; and

**WHEREAS**, In 2020, the City acquired 300 acres of recreation land in North Tracy from the Wastewater Fund to transfer the deed restriction of educational and recreational use from the Property to Legacy Fields and the future Nature Park; and

**WHEREAS**, The Property has not been utilized by the City for any public purpose other than for the siting of public safety antennae; and

**WHEREAS**, The California Legislature adopted Assembly Bill (AB) 758 in 2017 to establish a regional rail authority known as the Tri -Valley -San Joaquin Valley Regional Rail Authority (**Valley Link Authority**); and

**WHEREAS**, The City appoints a member to the Board of Directors governing the Valley Link Authority; and

**WHEREAS**, To address regional economic and transportation challenges, the Valley Link Authority is planning and intends to deliver transit connectivity between the San Francisco Bay Area Rapid Transit District's system and the Altamont Corridor Express commuter service through a new 42-mile, 7-station passenger rail project known as "Valley Link" (the "**Project**"); and

**WHEREAS**, The *Valley Link Feasibility Report* prepared by Valley Link Authority identified the City of Tracy as a location for a future Valley Link rail station and a proposed operations and maintenance facility on the Property; and

**WHEREAS**, On September 15, 2020, the City Council adopted Resolution 2020-168, approving a term sheet for an option agreement to convey the Property to the Valley Link Authority, which desires to use the Property for an Operations and Maintenance Facility (**O & M Facility**); and

**WHEREAS**, On May 12, 2021, pursuant to the California Environmental Quality Act, the Board of Directors of Valley Link certified a Final Environmental Impact Report (FEIR) for the Project, which included the O & M Facility, and also adopted appropriate Findings of Fact, a Statement of Overriding Considerations, and a Mitigation Monitoring and Reporting Program; and

**WHEREAS**, Valley Link Authority is actively pursuing federal funding for the Project and desires to enter into the option agreement with the City; and

**WHEREAS**, Pursuant to Government Code Section 54221(b)(1), the City must declare the Property as either surplus or exempt surplus prior to beginning the disposition process; and

**WHEREAS**, Pursuant Section 54221(f)(1)(D), property that is transferred to another public agency for its use is "exempt surplus land"; and

**WHEREAS**, The Valley Link Authority intends to use the Property as the O&M Facility for the Project; and

**WHEREAS**, The Property is not (i) within a coastal zone, (ii) adjacent to a historical unit of the State Parks System, (iii) listed on, or determined by the State Office of Historic Preservation to be eligible for, the National Register of Historic Places or (iv) within the Lake Tahoe region as defined in Government Code section 66905.5, and therefore no notice of the availability of the Property for open space purposes is required pursuant to GC 54211(f)(2); now, therefore, be it

**RESOLVED**: That the City Council of the City of Tracy hereby adopts the Recitals as findings; and be it further

**RESOLVED**: That the City Council hereby finds that the Property is no longer needed for any City public purpose, except for the siting of the antennae, which use shall remain in place on the Property upon any future disposition or be relocated to a different site by Valley Link Authority at its sole cost; and be it further

**RESOLVED**: That the City Council hereby finds that the Property is considered exempt surplus land pursuant to Government Code Section 54221(f)(1)(D), as long as such Property is conveyed to the Valley Link Authority for its intended use as an O & M Facility for the Project; and be it further

**RESOLVED**: That the City Council hereby finds that this action is not a "project" under CEQA and further discretionary actions will be needed before any foreseeable environmental impacts may occur; and be it further

**RESOLVED**: That the City Council directs the City Manager to transmit a copy of this Resolution to the California Department of Housing and Community Development no later than thirty (30) days prior to the disposition of the Property.

\* \* \* \* \*

The foregoing Resolution 2022-\_\_\_\_\_ was adopted by the Tracy City Council on \_\_\_\_\_, by the following vote:

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

---

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

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

September 6, 2022

## AGENDA ITEM 3.G

### REQUEST

**ADOPT A RESOLUTION APPROVING THE PROPERTY TRANSFER OPTION AND SALE AGREEMENT WITH JOINT ESCROW INSTRUCTIONS GRANTING TRI-VALLEY – SAN JOAQUIN VALLEY REGIONAL RAIL AUTHORITY A TEN YEAR OPTION TO PURCHASE, FOR INDEPENDENT CONSIDERATION OF \$100 FOR APPROXIMATELY 200 ACRES OF CITY-OWNED EXEMPT SURPLUS LAND LOCATED AT 15580 AND 15178 WEST SCHULTE ROAD (APNs 209-230-029 AND 209-230-030)**

### EXECUTIVE SUMMARY

With this item, staff recommends that the City Council adopt a resolution approving an option agreement to transfer real property located at 15580 and 15178 West Schulte Road (APNs 209-230-029 and 209-230-030), formerly known as the “Old Antenna Farm” (**Property**). This item is an effectuation of the intent expressed by the City Council on September 15, 2020, through Resolution 2020-168, in which the City Council approved a term sheet for an option contract to convey the Property to the Tri-Valley – San Joaquin Valley Regional Rail Authority (**Authority**). The Authority desires to use the Property for an Operations and Maintenance Facility (**O&M Facility**) for the Authority’s future 42-mile, 7-station passenger rail project known as “Valley Link” that will provide transit connectivity in the Tri-Valley between the San Francisco Bay Area Rapid Transit District’s system and the Altamont Corridor Express commuter (**Project**).

Concurrent with this item, the Council will be taking an action to declare the Property exempt surplus land pursuant to the California Surplus Land Act. Such a declaration is based on the City’s determination that the Property is no longer needed for any City public purpose, except for the siting of a City antennae facility. This facility will either remain in place if the Property is conveyed to the Authority for the Project or be relocated by the Authority to a new location, at its cost. The option agreement will provide the Authority ten (10) years to exercise its option to purchase and close escrow on the Property. If the Authority uses less than the full portion of the Property for either the O & M Facility or a grant match, then such portion of the Property will revert back to the City. If the Authority fails to consummate the transaction within ten (10) years or fails to complete the O & M Facility within ten (10) years after closing, then the entire Property will revert back to the City.

### BACKGROUND

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

directors representing the following fifteen entities governs Valley Link: Bay Area Rapid Transit District (BART); the San Joaquin Regional Rail Commission; the Livermore Amador Valley Transit Authority; the Mountain House Community Services District; the counties of Alameda and San Joaquin; and the cities of Dublin, Lathrop, Livermore, Manteca, Pleasanton, Stockton, Danville, San Ramon and Tracy. To address regional economic and transportation challenges, Valley Link is planning and intends to deliver transit connectivity in the Tri-Valley between the San Francisco Bay Area Rapid Transit District's system and the Altamont Corridor Express commuter service through a new 42-mile, 7-station passenger rail project known as "Valley Link".

The Project Feasibility Report prepared by the Authority identified a need for an Operations and Maintenance Facility (O&M Facility) to serve Valley Link trains, tracks, and associated equipment. The O&M Facility is projected to create about 400 jobs. In September 2020, the Authority approached the City about two City-owned parcels totaling approximately 200 acres (APNs 209-230- 029 and 209-230-030), commonly referred to as the "Old Antenna Farm" as a potential site for the O&M Facility. The Authority is seeking federal funding and must demonstrate local match, which the City's Property will satisfy.

The City acquired the Property in 2006 from the United States Department of Energy, of which 150.18 acres were deed restricted for educational or recreational purposes. In 2020, the City acquired 300 acres in north Tracy from the Wastewater Fund to transfer the deed restriction of educational and recreational uses from the Property to the current Legacy Fields site and the future Nature Park. At that time, the City determined that the Property is no longer needed for any City public purpose, except for the siting of an antennae, which use shall remain in place on the property upon any future disposition.

On May 12, 2021, pursuant to the California Environmental Quality Act, the Board of Directors of the Authority certified a Final Environmental Impact Report (FEIR) for the Project, which included the O&M Facility, and also adopted appropriate Findings of Fact, a Statement of Overriding Considerations, and a Mitigation Monitoring and Reporting Program.

Pursuant to the California Surplus Land Act (SLA) Government Code Section 54221(b)(1), the City must declare the Property to be "surplus land" before the City can take any action (sale or lease) to dispose of the property. Surplus real property is defined as "land owned in fee simple by any local agency for which the local agency's governing body takes formal action in a regular public meeting declaring that the land is surplus and is not necessary for the agency's use." Pursuant Section 54221(f)(1)(D), property that is transferred to another public agency for its use is "exempt surplus land". Concurrently with this agenda item, the Council is considering a Resolution declaring the Property to be exempt surplus land in accordance with the SLA.

The California Department of Housing and Community Development (HCD) adopted guidelines to increase compliance with the SLA that clarify and strengthen reporting and enforcement provisions of the Act. This includes submitting the Resolution adopted by the Council declaring the Property as "exempt surplus land" and a requirement that no disposition occur until thirty (30) days after such Resolution has been sent to HCD.

## ANALYSIS

On September 15, 2020, the City Council approved Resolution 220-168, which approved the option agreement term sheet with the Authority and authorized the City Manager to execute the term sheet.

An option agreement provides a party with the option to lease or purchase a property. In this case, the parties have discussed entering into an option agreement through which the Authority will be granted an exclusive option to “purchase” the Property.

The following are key provisions of the option agreement:

- City will grant an exclusive option to the Authority to purchase the Property.
- There is no cost to the Authority for the purchase value of the Property, except that the Authority must pay \$100 of Independent Consideration for the Option and all closing costs, as well as the cost to relocate the existing antenna facility to a suitable site if the Authority does not wish to keep it at the Property. The value of the Property will be considered an in-kind contribution by the City to the Authority to be leveraged for additional grant funding, and the consummation of the conveyance will constitute the City’s full contribution to the Project.
- The Authority will have a term of ten years to exercise the Option.
- If the Property is not used by the Authority within 10 years of the purchase date, the Property will revert to the City; and if less than the entire Property is used for the O&M Facility, then such portion that is not either used for a grant match or constitute surplus land under the SLA will revert to the City.

The Authority Board will be considering the proposed agreement at its meeting on September 14, 2022. As noted above, the HCD Guidelines require that any disposition occur only after 30 days of sending a declaration of exempt surplus to HCD. As the option agreement is binding on the parties, the City and the Authority may execute the contract in early October 2022, subject to approvals by the Authority Board and the Council.

## FISCAL IMPACT

The book value of the Property is approximately \$1.2 million per the acreage swap at Legacy Fields. The market value will be determined prior to the exercise of the Option by the Authority, to serve as the true value of the City’s contribution to the Project.

## STRATEGIC PLAN

This agenda item supports the City of Tracy’s Economic Development Strategic Priority: Goal #2, Continue to Support Valley Link.

## RECOMMENDATION

Staff recommends that the City Council adopt a Resolution approving the Property Transfer Option and Sale Agreement with joint escrow instructions granting Tri-Valley – San Joaquin Valley Regional Rail Authority a ten-year (10) option to purchase, for independent consideration of \$100 for approximately 200 acres of City-Owned exempt surplus land located at 15580 and 15178 West Schulte Road (APNs 209-230-029 and 209-230-030).

Prepared by: Karin Schnaider, Assistant City Manager

Reviewed by: Sara Cowell, Interim Finance Director  
Midori Lichtwardt, Assistant City Manager

Approved by: Michael Rogers, City Manager

ATTACHMENTS:

Attachment A: Property Transfer Option and Sale Agreement with Joint Escrow Instructions



**PROPERTY TRANSFER OPTION AND SALE AGREEMENT WITH JOINT ESCROW INSTRUCTIONS**

THIS PROPERTY TRANSFER OPTION AND SALE AGREEMENT WITH JOINT ESCROW INSTRUCTIONS (this “**Agreement**”) is entered into as of October \_\_\_\_, 2022 (“**Effective Date**”) by and between the City of Tracy (“**Seller**”) and the Tri-Valley—San Joaquin Valley Regional Rail Authority (“**Buyer**”). Seller and Buyer are hereinafter collectively referred to as the “**Parties.**”

**RECITALS**

**WHEREAS**, Seller owns approximately 200 acres of real property located in the City of Tracy, County of San Joaquin, State of California, commonly referred to as 15580 and 15178 W. Schulte Road (APNs 209-230-29 and 209-230-30) and more particularly described in Exhibit A attached hereto and incorporated herein (the “**Property**”); and

**WHEREAS**, The California Legislature adopted Assembly Bill (AB) 758 in 2017 to establish a regional rail authority known as the Tri -Valley -San Joaquin Valley Regional Rail Authority, also known as Buyer, hereunder; and

**WHEREAS**, Seller appoints a member to the Board of Directors governing Buyer; and

**WHEREAS**, To address regional economic and transportation challenges, Buyer is planning and intends to deliver transit connectivity between the San Francisco Bay Area Rapid Transit District's system and the Altamont Corridor Express commuter service through a new 42-mile, 7-station passenger rail project known as “Valley Link” (the “**Project**”); and

**WHEREAS**, The *Valley Link Feasibility Report* prepared by Buyer identified the City of Tracy as a location for a future Valley Link rail station and a proposed operations and maintenance facility (**O & M Facility**) on the Property; and

**WHEREAS**, the City Council of Tracy, pursuant to Resolution 2020-168, approved a term sheet for Buyer to acquire an option to acquire the Property, at nominal cost, as Seller’s full contribution towards the Valley Link Project; and

**WHEREAS**, Buyer is seeking federal funding and must demonstrate local match, which Seller’s Property will help satisfy; and

**WHEREAS**, Pursuant to the authority granted in Resolution 2022-\_\_\_\_, the City has declared the Property "exempt surplus property" pursuant to the term of the Surplus Land Act, as a transfer to another agency for that agency's use pursuant to California Government Code Section 54221(F)(1)(D).

**WHEREAS**, Pursuant to the authority granted in Resolution 2022-\_\_\_\_, the City is willing to enter into this Agreement, as full satisfaction of Seller’s contribution to the Project, on the terms and conditions set forth herein.

**NOW, THEREFORE**, in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Grant of Purchase Option. Seller hereby grants to Buyer the exclusive and irrevocable option ("**Option**") to purchase the Property, for the Option Term, in accordance with this Agreement. The Option shall be exercised as hereinafter set forth.
2. Option Payment. Notwithstanding anything in this Agreement to the contrary, Buyer shall deliver to Seller, within 30 days after the execution of this Agreement, One Hundred Dollars (\$100) (the "**Independent Consideration**"), which amount has been bargained for and agreed to as consideration for Seller's execution and delivery of this Agreement. The Independent Consideration is in addition to and independent of all other consideration provided for in this Agreement and is non-refundable in all events.
3. Term of Option. The term of the Option will commence as of the Effective Date and will expire ten years after the Effective Date (the "**Offer Expiration Date**"). Buyer may exercise the Option to purchase the Property at any time during the Option Period pursuant to Section 5. After the Option Expiration Date, the Option will expire and become null and void, unless the Parties mutually agree to an extension of the term of the Option.
4. Compensation. Other than the Independent Consideration, Buyer shall pay no cash compensation for the Property. Transfer of the Property will constitute Seller's full contribution to the Project.
5. Exercise of Option. The Option must be exercised by Buyer in Buyer's sole discretion, if at all, by giving notice of its exercise of the Option ("**Exercise Notice**"). The date the notice is provided to Seller is the "**Exercise Notice Date**."
6. Memorandum of Option. Buyer and Seller shall execute and record in the Official Records of the County of San Joaquin a Memorandum of Option Agreement within 10 days after the Effective Date of this Agreement, in the form attached hereto as Exhibit B. If the Option becomes null or void, Buyer shall record a Quitclaim Deed and take any further actions necessary to remove any cloud on title due to the recordation of the Memorandum of Option.
7. Escrow; Escrow Instructions. No later than five (5) business days following the Exercise Notice Date the Parties shall open an escrow to consummate the purchase and sale of the Property pursuant to this Agreement at the office of [REDACTED] ("**Title Company**" or "**Escrow Agent**") or such other title company as may be mutually agreed upon by the Parties. Upon the opening of escrow, the Parties shall deposit with the Escrow Agent an executed copy of this Agreement, which shall serve as the joint escrow instructions of Buyer and Seller for this transaction, together with such additional instructions as may be executed by the Parties and delivered to the Escrow Agent.
8. Due Diligence. Buyer shall have a ninety (90) day due diligence period starting as of the date of the Exercise Notice Date ("**Due Diligence Period**") to evaluate the legal, physical, and other conditions of the Property and determine if they are acceptable to Buyer.

a. Feasibility Studies. During the Due Diligence Period Buyer may, at no expense to Seller, undertake an inspection and review of the Property, including without limitation (i) a review of the physical condition of the Property, including but not limited to, inspection and examination of soils, environmental factors, Hazardous Materials (as defined in Section 20(a)(vii)), and archeological information relating to the Property; (ii) a review and investigation of the effect of any zoning, maps, permits, reports, engineering data, regulations, ordinances, and laws affecting the Property, and (iii) an evaluation of the Property to determine its feasibility for Buyer's intended use. All of the foregoing is hereinafter collectively referred to as "**Feasibility Studies.**" Buyer may consult with or retain civil engineers, contractors, soils and geologic engineers, architects and other specialists in its investigation, and may consult with or retain other consultants to determine if the Property is suitable for Buyer's intended use. Notwithstanding anything to the contrary stated herein, Buyer acknowledges and agrees that it perform a Phase II environmental report only upon completion of a Phase I report and advanced written approval by Seller that a Phase II investigation is necessary and of Buyer's proposed sampling plan for such Phase II investigation.

b. Other matters. During the Due Diligence Period, Buyer shall have the right to perform due diligence regarding the investigation, assessment, and monitoring of the environmental condition of the Property, and Buyer may inspect, examine, survey and review any other matters concerning the Property, including without limitation, any and all studies or reports provided by Seller, all contracts, leases, rental agreements and other obligations relating to the Property, and the Property's conformity with all applicable laws and regulations. All of the foregoing is hereinafter collectively referred to as "**Due Diligence Materials.**" Notwithstanding the foregoing, Buyer acknowledges and agrees that the foregoing shall not grant Buyer approval rights with respect to Seller's use of the Property prior to Closing.

c. Property Condition. Buyer acknowledges and agrees that if Buyer purchases the Property, then it shall acquire the Property subject to any and all deficiencies, defects and other matters referred to or otherwise set forth in (i) the Feasibility Studies, (ii) the Due Diligence Materials, (iii) any and all documents, studies or reports provided by Seller, (iv) all contracts and other obligations relating to the Property delivered to or otherwise made available to Buyer. Seller makes no representations or warranties with respect to the adequacy or accuracy of any report, study or other information prepared by a third party for or on behalf of Seller and provided to Buyer. Except for any breach of the representations made by Seller herein as specified in Section 20, Seller shall have no liability with respect to any matters disclosed to Buyer or contained in the Feasibility Studies, Due Diligence Materials or other materials developed for or provided to Buyer. Notwithstanding the foregoing, Buyer acknowledges that the City has an antennae and related equipment on the Property, which Buyer agrees to keep in its existing location or relocate to a suitable replacement site, at Buyer's sole cost.

d. Disapproval of Property Condition. Should Buyer fail to approve the condition of the Property or its feasibility for Buyer's intended use in writing within five (5) business days following the end of the Due Diligence Period, Buyer shall have the right, exercisable by giving written notice to Seller, to cancel the escrow and terminate this Agreement. The exercise of this right by Buyer shall not constitute a waiver by Buyer of any other rights Buyer may have at law or in equity.

9. Seller Documents. Seller agrees to make available to Buyer within five (5) business days following the Exercise Notice Date, any and all information, studies, reports, investigations, contracts and other obligations concerning or relating to the Property which are in Seller's possession or which are reasonably available to Seller, including without limitation surveys, studies, reports and investigations concerning the Property's physical, environmental or geological condition, habitability, or the presence or absence of Hazardous Materials in, on or under the Property and its compliance with Environmental Laws (as defined in Section 20(a)(vii)).

10. Right of Entry. During the Due Diligence Period, Buyer and Buyer's agents and employees shall have the right, upon reasonable written notice to Seller, to enter upon the Property for the purpose of inspecting, examining, surveying and reviewing the Property (the "**Due Diligence Inspections**"). Buyer's inspection, examination, survey and review of the Property shall be at Buyer's sole expense. In addition to the terms set forth in Section 8a, Buyer shall obtain Seller's advance consent in writing to any proposed physical testing of the Property by Buyer or Buyer's contractors or agents, which consent shall not be unreasonably conditioned, withheld or delayed. Buyer shall repair, restore and return the Property to its original condition after such physical testing, at Buyer's sole expense. Buyer agrees to indemnify Seller and hold Seller harmless from and against all liability, loss, cost, damage and expense (including, without limitation, reasonable attorney's fees and costs of litigation) resulting from entry upon the Property by Buyer or its employees, consultants, contractors or agents (other than mere discovery of pre-existing conditions), except to the extent that such liability, loss, cost, damage and expense arises as a result of the gross negligence or other wrongful conduct of Seller or its employees (while acting in the capacity of staff to Seller), consultants, contractors or agents.

11. Title Condition.

a. Buyer shall have the right to approve any and all matters of and exceptions to title of the Property, including any surveys, the legal description, or other title matters, as disclosed by the following documents and instruments, which documents (collectively, "**Title Documents**") shall be delivered to Buyer no later than three (3) days from Exercise Notice Date: (A) a preliminary title report issued by Escrow Holder with respect to the Real Property ("**Preliminary Report**") and (B) copies of all documents, whether recorded or unrecorded, referred to in such Preliminary Report; provided, however, Seller shall not be obligated to provide separate copies of documents referenced in the Preliminary Report if such documents are accessible via hyperlinks incorporated into such Report, are not in Seller's actual possession; provided, however, in the event that Buyer requires additional information or is not satisfied with results, it shall be Buyer's responsibility (at its sole cost and expense) to perform UCC lien searches or procure professional services for such services. Seller shall provide such documents within five (5) business days of the Exercise Notice Date.

b. The Real Property shall be conveyed to Buyer by Seller by grant deed, in the recordable form customarily used by Escrow Holder in the County ("**Grant Deed**"). Such Grant Deed shall convey fee simple title to the Real Property to Buyer, subject only to (a) a lien to secure payment of current real estate taxes, not delinquent; (b) the lien of current supplemental taxes, not delinquent; and (c) any liens, encumbrances, restrictions and charges against fee simple title which are expressly approved by Buyer or are Disapproved Exceptions in accordance with this Section 11 (collectively "**Permitted Exceptions**").

c. **Title Objections.** Within fifteen (15) days after receipt of the specified Title Documents, Buyer shall give Seller written notice (“**Buyer’s Title Notice**”) of Buyer's approval or disapproval of the legal description and every item or exception disclosed by the Title Documents, which approval or disapproval may be exercised by Buyer in its sole and absolute discretion. Buyer’s failure to provide Buyer’s Title Notice to Seller within the specified time period shall be deemed Buyer's approval of all liens, encumbrances, restrictions and claims against the Property reflected in the Title Documents. If Buyer so disapproves of any matter of title shown in the Title Documents, then within twenty (20) days of Buyer's receipt of such Title Documents, Seller may give Buyer written notice (“**Seller’s Title Notice**”) of those disapproved exceptions that Seller is willing to eliminate or cure. Seller’s failure to deliver Seller’s Title Notice by the time set forth herein, shall be deemed Seller's refusal to remove the disapproved title matters (“**Disapproved Exceptions**”). If Seller is unable or unwilling to remove, or is deemed to refuse to remove, any of the title matters objected to by Buyer, Buyer may elect to either (1) purchase the Property subject to the Disapproved Exceptions, or (2) terminate this Agreement, provided such election is made before expiration of the Due Diligence Period. If no election is made, it shall be deemed to have been made so as to purchase the Real Property subject to the Disapproved Exceptions. Regardless of the foregoing, Seller must remove any Monetary Liens (if any) prior to Closing. If this Agreement is terminated pursuant to this Section 11(c), (x) any further obligations of the parties under this Agreement shall cease (except those obligations that are expressly intended to survive the termination of this Agreement); (y) all Deposits shall immediately be returned to Buyer, net of any escrow or title costs charged by the Title Company; and (z) Buyer shall return to Seller all Due Diligence Materials within five (5) business days from such termination date.

12. **Title Policy.** Title Company will issue a title commitment for an ALTA Extended Coverage Owner’s Title Insurance Policy (“**Title Policy**”) in the amount of \$ [REDACTED] for the benefit and protection of Buyer, showing title to the Property vested in Buyer, subject only to the Permitted Exceptions (as defined below), including such endorsements as may reasonably be requested by Buyer. Buyer shall be responsible for all costs for issuance of the Title Policy as well as any fees for the title search, title commitment, or costs associated with extended coverage or other endorsements or lenders' title policies. Notwithstanding the foregoing, Buyer may, in its sole discretion, elect not to obtain such Title Policy.

13. **Conveyance of Title.** At the close of escrow, Seller shall convey by Grant Deed to Buyer fee simple title to the Property, free and clear of all recorded and unrecorded liens, encumbrances, easements, and leases, except the Permitted Exceptions and a right of reversion to Buyer as follows: a) in the event that Buyer fails to use the Property as an O & M Facility within ten (10) years of Closing Date, then the entire Property shall revert back to Seller or, alternatively, (b) in the event only a portion of the Property is used as an O & M Facility, then such portion of the Property that is not used either to satisfy a grant match requirement and/or constitutes non-exempt surplus land under the Surplus Land Act (as currently adopted) shall revert back to Seller, either reversion to occur ten (10) years from the Closing Date. The Grant Deed shall contain a reversionary interest to Seller in the event the Property is not used for the Project within ten (10) years of the Close of Escrow. The specific wording of the reversionary interest shall be subject to review by federal grant-making agencies to ensure that it will not interfere with the use of the Property as a local match for potential federal aid for the Project.

14. Closing Documents.

a. Seller. No later than three (3) business days prior to the Closing Date, Seller shall deposit into escrow all of the following:

i. A Grant Deed, substantially in the form attached hereto as Exhibit C, duly executed, and acknowledged, sufficient to convey to Buyer good and marketable fee simple title to all of the Property, subject only to the Permitted Exceptions and a right of reversion to Seller reflecting the terms set forth in Section 13, the specific language for which terms the Parties shall negotiate and finalize for the Grant Deed before Closing; and

ii. Such additional duly executed instruments and documents as the Escrow Agent may reasonably require to consummate the transaction contemplated hereby.

b. Buyer. No later than three (3) business days prior to the Closing Date, Buyer shall deposit into escrow all of the following:

i. Duly executed and acknowledged Certificate of Acceptance as required by Government Code Section 27281; and

ii. Such additional duly executed instruments and documents as the Escrow Agent may reasonably require to consummate the transaction contemplated hereby.

15. Close of Escrow. As used in this Agreement, the “**Close of Escrow**” or “**Closing**” or “**Close**” shall mean the date the Grant Deed (“**Grant Deed**”) conveying fee title to the Property to Buyer is recorded in the Office of the Recorder of the County of San Joaquin, California (the “**Official Records**”) as provided for herein.

i. The Closing must occur within sixty (60) days after the Due Diligence Period ends, provided all conditions to close have been met at least five (5) business days prior to Closing. The Parties shall execute such additional escrow instructions as may be customarily and reasonably requested by Escrow Holder to enable the Closing to proceed. At least one (1) Business Day prior to the scheduled Closing Date, Seller and Buyer shall each deposit with the Escrow Holder executed estimated closing statements consistent with this Agreement, in the form reasonably required by the Escrow Holder.

ii. The Escrow Agent shall close escrow by: (a) causing the Grant Deed to be recorded in the Official Records; (b) issuing the Title Policy and delivering same to Buyer (unless Buyer has waived this requirement); and (d) delivering to Buyer a conformed copy of the Grant Deed, indicating recording information thereon. Possession of the Property shall be delivered to Buyer at the close of escrow.

16. Closing Costs. Buyer shall pay all costs of title insurance and title reports, escrow fees (including the costs of preparing documents and instruments), recording fees, conveyance fees and transfer taxes (if any).

17. Prorations. At the close of escrow, the Escrow Agent shall make the following prorations: property taxes (if any are applicable to the Property) shall be prorated as of the close of escrow

based upon the most recent tax bill available, including any property taxes which may be assessed after the close of escrow but which pertain to the period prior to the transfer of title to the Property to Buyer, regardless of when or to whom notice thereof is delivered.

18. Buyer's Conditions to Closing. The close of escrow and Buyer's obligation to purchase the Property are conditioned upon: (i) the performance by Seller of each obligation to be performed by Seller under this Agreement within the applicable time period, or the waiver by Buyer of such obligations; (ii) Seller's representations and warranties contained in this Agreement being true and correct as of the Close of Escrow; (iii) the commitment by Title Company to issue and deliver the Title Policy, subject only to the Permitted Exceptions; and (iv) Buyer's approval of the condition of the Property pursuant to Section 8.

Should any condition to closing fail to occur, excepting any such conditions that have been waived by Buyer, Buyer shall have the right, exercisable by giving written notice to Seller, to cancel the escrow and terminate this Agreement, in which case Buyer shall recover any and all amounts paid by Buyer, as applicable, to Seller or deposited with the Escrow Agent by or on behalf of Buyer, net of any closing or escrow costs. The exercise of this right by Buyer shall not constitute a waiver by Buyer of any other rights Buyer may have at law or in equity.

19. Seller's Conditions to Closing. The Close of Escrow and Seller's obligation to sell the Property pursuant to this Agreement are conditioned upon: (i) the performance by Buyer of each obligation to be performed by Buyer under this Agreement within the applicable time period, or waiver by Seller of such obligation; and (ii) Buyer's representations and warranties contained in this Agreement being true and correct as of the Close of Escrow.

20. Seller's Representations and Warranties.

a. Seller hereby represents and warrants that to Seller's actual knowledge, except as disclosed in writing to Buyer, as of the Close of Escrow:

i. That Seller owns fee title to the Property. Seller has not previously sold, transferred, or conveyed the Property that would affect or impair Seller's ability to perform under this Agreement, and Seller has not entered into any executory contracts for the sale of the Property (other than this Agreement), nor do there exist any rights of first refusal or options to purchase the Property.

ii. Except for any Permitted Exceptions and any agreements that have been disclosed to Buyer in writing, there are no leases, licenses, contracts or other agreements relating to the Property which will be in force after the Closing Date.

iii. There is no pending (nor has Seller received notice of any threatened) action, litigation, condemnation or other proceeding against the Property or against Seller with respect to the Property.

iv. Seller has not received written notice from any governmental authority having jurisdiction over the Property to the effect that the Property is not in compliance with applicable laws and ordinances (including any laws concerning the use, generation, handling, disposal or storage of Hazardous Materials (as defined below)).

v. Seller has not received written notice of any action, suit or proceeding pending, and Seller has no actual knowledge of any threatened against or affecting all or any portion of the Property, or relating to or arising out of the ownership, management, development, proposed development or operation of the Property, or which would affect Seller's ability to perform its obligations under this Agreement in any court or arbitration or other quasi-judicial proceeding or before or by any governmental or quasi-government authority.

vi. Seller has not received any notice from any insurer of defects or conditions relating to the Property that must be corrected.

vii. There has been no release of any Hazardous Material at, under or upon the Property, in an amount which would, as of the date hereof, give rise to an Environmental Compliance Cost (as defined below). The term "**Hazardous Material**" shall mean asbestos, petroleum products, and any other hazardous waste or substance which has, as of the date hereof, been determined to be hazardous or a pollutant by the U.S. Environmental Protection Agency, the U.S. Department of Transportation, or any State or Federal instrumentality authorized to regulate substances in the environment which has jurisdiction over the Property (each being referred to herein as an "**Environmental Agency**") which substance causes the Property (or any part thereof) to be in material violation of any applicable Environmental Law, and shall include, but not be limited to: (A) a "hazardous substance" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §9601 (14), Section 311 of the Federal Water Pollution Control Act, 33 U.S.C. §1321; (B) a "hazardous waste" pursuant to Section 1004 or Section 3001 of the Resource Conservation and Recovery Act, 42 U.S.C. §§6903, 6921; (C) a toxic pollutant under Section 307(a)(1) of the Federal Water Pollution Control Act, 33 U.S.C. §1317(a)(1); (D) a "hazardous air pollutant" under Section 112 of the Clean Air Act, 42 U.S.C. §7412; (E) a "hazardous material" under the Hazardous Materials Transportation Uniform Safety Act of 1990, 49 U.S.C. App. §1802(4); (E) a "hazardous material" pursuant to the California Health & Safety Code; or (F) toxic or hazardous pursuant to regulations promulgated under the aforementioned laws (all of the foregoing laws, rules and regulations as any may be amended from time to time being collectively referred to herein as "**Environmental Laws**"); provided, however, that the term "**Hazardous Material**" shall not include (x) motor oil and gasoline contained in or discharged from vehicles not used primarily for the transport of motor oil or gasoline, or (y) materials which are stored, used, held, or disposed of in compliance with all applicable Environmental Laws. The term "**Environmental Compliance Cost**" means any out-of-pocket cost, fee or expense reasonably incurred directly to satisfy any requirement imposed by an Environmental Agency to bring the Property into compliance with applicable Environmental Laws directly relating to the existence on the Property of any Hazardous Material but excepting therefrom any costs resulting actions or omissions of Buyer caused by Buyer or its agents, either from its Feasibility Studies or otherwise.

b. Seller further represents and warrants that this Agreement and all other documents delivered or to be delivered in connection herewith prior to or at the close of escrow shall at the time of their delivery: (a) have been duly authorized, executed, and delivered by Seller; (b) be the binding obligations of Seller; (c) collectively be sufficient to transfer all of Seller's right, title and interest in and to the Property; and (d) not be in violation of the provisions of any agreement to which Seller is a party or which affects the Property. Seller further represents and warrants that the persons who have executed this Agreement on behalf of Seller are authorized to do, that Seller



has the legal right to enter into this Agreement and to perform all of its terms and conditions, and that this Agreement is enforceable against Seller in accordance with its terms.

c. Seller shall notify Buyer of any facts that would cause any of the representations contained in this Agreement to be untrue as of the close of escrow. If Buyer reasonably believes that any such fact materially and adversely affects the Property, Buyer shall have the option to terminate this Agreement by delivering written notice thereof to Seller. In the event Buyer elects to terminate this Agreement, all funds and documents deposited into escrow by or on behalf of Buyer shall be returned to Buyer, and all rights and obligations hereunder shall terminate.

21. Seller's Covenants. Seller covenants that from the Notice Exercise Date and through the Close of Escrow, Seller: (i) shall not permit any liens, encumbrances, or easements to be placed on the Property other than Permitted Exceptions; and (ii) shall not enter into any agreement regarding the sale, lease, rental, management, repair, improvement, or any other matter affecting the Property that would be binding on Buyer or the Property after the Close of Escrow without the prior written consent of Buyer, which may be given or withheld in Buyer's reasonable discretion. (.

22. Buyer's Representations, Warranties and Covenants. Buyer represents, warrants and covenants that this Agreement and all other documents delivered in connection herewith, prior to or at the Close of Escrow shall at the time of their delivery: (i) have been duly authorized, executed, and delivered by Buyer; (ii) be the binding obligations of Buyer; and (iii) not be in violation of the provisions of any agreement to which Buyer is a party. Buyer further represents and warrants that the persons who have executed this Agreement on behalf of Buyer have been duly authorized to do, that Buyer has the legal right to enter into this Agreement and to perform all of its terms and conditions, and that Agreement is enforceable against Buyer in accordance with its terms.

23. Buyer's Post-Closing Obligations. If the Property is not used for the Project within ten (10) years of the Close of Escrow, Buyer's interest in the Property shall terminate and the Property will revert to Seller pursuant to Seller's Power of Termination, as detailed in the Grant Deed. Buyer shall remain obligated under this Section after the transfer of the Property, and the restrictions on use and conditions for continued ownership by Buyer contained in this Section 23 shall be contained in the Grant Deed and survive closing.

24. Condemnation. If prior to Close of Escrow, any portion of the Property is taken by eminent domain (or an action of eminent domain has been commenced against all or any portion of the Property) (excluding for purposes of this Section, the exercise of any eminent domain powers by Buyer), upon Seller's receipt of notice thereof Seller shall promptly notify Buyer of such fact, and Buyer shall have the option to terminate this Agreement upon notice to Seller given not later than twenty (20) days after Buyer's receipt of Seller's notice. If Buyer elects to terminate this Agreement, all funds and documents deposited into escrow by or on behalf of Buyer shall be returned to Buyer, net of any escrow or title costs, and all rights and obligations hereunder shall terminate.

25. Notices. Except as otherwise specified in this Agreement, all notices to be sent pursuant to this Agreement shall be made in writing and sent to the Parties at their respective addresses specified below or to such other address as a Party may designate by written notice delivered to the other parties in accordance with this Section. All such notices shall be sent by:

- a. personal delivery, in which case notice is effective upon delivery;
- b. certified or registered mail, return receipt requested, in which case notice shall be deemed delivered on receipt if delivery is confirmed by a return receipt;
- c. nationally recognized overnight courier, with charges prepaid or charged to the sender's account, in which case notice is effective on delivery if delivery is confirmed by the delivery service; or

**To Seller:** City of Tracy  
City Attorney  
333 Civic Center Plaza  
Tracy, CA 95376

**To Buyer:** Tri-Valley – San Joaquin Valley Regional Rail Authority  
2600 Kitty Hawk Road, Suite 103  
Livermore, CA 94551  
Attn. Executive Director

**With a copy to:** Michael N. Conneran  
Hanson Bridgett LLP  
1676 N. California Blvd., Suite 620  
Walnut Creek, CA 94596

26. No Brokers. Buyer hereby represents and warrants to Seller that Buyer has retained no broker or other party on behalf of Buyer to whom a commission or finder's fee is due with respect to the transactions contemplated hereby. Buyer shall defend, indemnify and hold Seller harmless from and against all claims, expenses, costs, or arising in connection with a breach of this warranty and representation by Buyer. Seller hereby represents and warrants to the Buyer that Seller has retained no broker or other party on behalf of Seller to whom a commission or finder's fee is due with respect to the transactions contemplated hereby. Seller shall defend, indemnify and hold Buyer harmless from and against all claims, expenses, costs, or arising in connection with a breach of this warranty and representation by Buyer. The terms of this Paragraph shall survive the expiration or earlier termination of this Agreement.

27. Expenses. Except as otherwise provided herein, each party will bear their own expenses associated with this Agreement, the acquisition and other transactions contemplated herein, including, without limitation, legal, accounting, due diligence and other fees and disbursements of consultants and advisors.

28. Attorneys' Fees. If either Party fails to perform any of its obligations under this Agreement, or if any dispute arises between the Parties concerning the meaning or interpretation of any provision hereof, then the prevailing party in any proceeding in connection with such dispute shall be entitled to the costs and expenses it incurs on account thereof and in enforcing or establishing its rights hereunder, including, without limitation, court costs and reasonable attorneys' fees and disbursements.

29. Survival. The representations and warranties in this Agreement and all indemnification obligations shall survive the Closing. The obligation to perform those provisions of this Agreement that are not to be performed until after Close of Escrow shall survive the Close of Escrow until such time as all obligations described in this Agreement have been fully performed (and all payments and costs described herein shall have been fully paid) by the responsible party.

30. General Provisions.

a. Entire Agreement. This Agreement, together with Exhibits A through C constitutes the entire agreement of the Parties with respect to the subject matter hereof and supersedes all prior negotiations and agreements with respect thereto.

b. No Merger. The obligations stated herein that are intended to operate after the Closing shall not merge with the transfer of title to the Property but shall remain in effect until fulfilled as provided herein.

c. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California without regard to principles of conflicts of laws.

d. Interpretation; Captions. The section headings used herein are solely for convenience and shall not be used to interpret this Agreement. The Parties acknowledge that this Agreement is the product of negotiation and compromise on the part of both Parties, and the Parties agree, that since both Parties have participated in the negotiation and drafting of this Agreement, this Agreement shall not be construed as if prepared by one of the Parties, but rather according to its fair meaning as a whole, as if both Parties had prepared it.

e. Exhibits. Exhibits A through C attached hereto are incorporated herein by this reference and made a part of this Agreement.

f. No Third-Party Beneficiaries. Nothing contained in this Agreement is intended by the Parties, nor shall any provision of this Agreement be deemed or construed by the Parties or by any third person, to be for the benefit of any third party, nor shall any third party have any right to enforce any provision of this Agreement or be entitled to damages for any breach by Buyer or Seller of any of the provisions of this Agreement, except as expressly provided herein with respect to Buyer.

g. Amendments. This Agreement may be modified or amended only by an instrument in writing executed by both Buyer and Seller.

h. Assignment Prohibited. This Agreement and the rights conferred hereunder may not be assigned by operation of law or otherwise absent the express written consent of the Parties, except as otherwise expressly provided herein.

i. Escrow Cancellation Charges. If the escrow fails to close by reason of a default by Buyer, or Seller hereunder, such defaulting party shall pay all escrow or other Title Company charges. If the escrow fails to close for any reason other than default by Buyer or Seller, then Buyer and Seller shall each pay one-half of such charges.

j. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be an original, and all of which taken together shall constitute one agreement. This Agreement may be executed and transmitted by facsimile, or may be executed, scanned and transmitted by e-mail, and when so transmitted shall be a binding obligation on the party that signed and transmitted the document and shall be deemed to be in full compliance with the provisions of California Civil Code §1624.

k. Further Assurances. Seller and Buyer each agree to undertake such other actions as may reasonably be necessary to carry out the intent of this Agreement, including without limitation, the execution of any additional documents which may be required to effectuate the transactions contemplated hereby.

l. Severability. If any term, provision, or condition of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement shall continue in full force and effect unless the rights and obligations of the Parties have been materially altered or abridged thereby.

m. Non-Liability of Officials, Employees and Agents. No member, official, employee or agent of Buyer or Seller shall be personally liable in the event of any default or breach hereunder by either Party.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

**CITY OF TRACY**

**TRI-VALLEY – SAN JOAQUIN  
VALLEY REGIONAL RAIL  
AUTHORITY**

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

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

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

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

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

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

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

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

APPROVED AS TO FORM:

APPROVED AS TO FORM:

\_\_\_\_\_

\_\_\_\_\_

**EXHIBIT A**

DESCRIPTION OF PROPERTY

**EXHIBIT B**

MEMORANDUM OF OPTION

**EXHIBIT C**

DRAFT FORM OF GRANT DEED

RECORDING REQUESTED BY )  
AND WHEN RECORDED )  
MAIL TO: )  
)  
)  
)  
)  
)  
)

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(SPACE ABOVE THIS LINE RESERVED FOR RECORDER’S USE)

EXEMPT FROM RECORDING FEES PER  
GOVERNMENT CODE §§6103, 27383  
EXEMPT FROM DOCUMENTARY TRANSFER TAX  
PER REV. AND TAXATION CODE §11922

APN: \_\_\_\_\_

**GRANT DEED**

For valuable consideration, receipt of which is hereby acknowledged, the City of Tracy, a municipal corporation of the State of California (“**Grantor**”) hereby grants to the Tri-Valley – San Joaquin Valley Regional Rail Authority, a \_\_\_\_\_, as “**Grantee**”, all that real property located in the County of San Joaquin and more particularly described in Exhibit A attached hereto and incorporated herein by reference (“**Property**”), subject to a right of reversion *to Seller reflecting the terms set forth in Section 13, the specific language for which terms the Parties shall negotiate and finalize for the Grant Deed before Closing.*

IN WITNESS WHEREOF, Grantor has executed this Grant Deed as of \_\_\_\_\_, 20\_\_.

**GRANTOR**

**CITY OF TRACY**

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

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

APPROVED AS TO FORM:

\_\_\_\_\_



TRACY CITY COUNCIL

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

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**ADOPT A RESOLUTION APPROVING THE PROPERTY TRANSFER OPTION AND SALE AGREEMENT WITH JOINT ESCROW INSTRUCTIONS GRANTING TRI-VALLEY – SAN JOAQUIN VALLEY REGIONAL RAIL AUTHORITY A TEN YEAR OPTION TO PURCHASE, FOR INDEPENDENT CONSIDERATION OF \$100 FOR APPROXIMATELY 200 ACRES OF CITY-OWNED EXEMPT SURPLUS LAND LOCATED AT 15580 AND 15178 WEST SCHULTE ROAD (APNs 209-230-029 AND 209-230-030)**

**WHEREAS**, The City of Tracy (**City**) is the owner of two parcels totaling approximately 200 acres located on 15580 and 15178 West Schulte Road (APNs 209-230-029 and 209-230-030) (**Property**); and

**WHEREAS**, In 2006, the City acquired the Property from the United States Department of Energy, of which 150.18 acres were deed restricted for educational or recreational purposes; and

**WHEREAS**, In 2020, the City acquired 300 acres of recreation land in North Tracy from the Wastewater Fund to transfer the deed restriction of educational and recreational use from the Property to the new Legacy Fields and the future Nature Park; and

**WHEREAS**, The Property has not been utilized by the City for any public purpose other than for the siting of public safety antennae; and

**WHEREAS**, The California Legislature adopted Assembly Bill (AB) 758 in 2017 to establish a regional rail authority known as the Tri-Valley -- San Joaquin Valley Regional Rail Authority (**Authority**); and

**WHEREAS**, The City appoints a member to the Board of Directors governing the Authority; and

**WHEREAS**, To address regional economic and transportation challenges, the Valley Link Authority is planning and intends to deliver transit connectivity between the San Francisco Bay Area Rapid Transit District's system and the Altamont Corridor Express commuter service through a new 42-mile, 7-station passenger rail project known as "Valley Link" (the "**Project**"); and

**WHEREAS**, The *Valley Link Feasibility Report* prepared by the Authority identified the City of Tracy as a location for a future Valley Link rail station and a proposed operations and maintenance facility on the Property; and

**WHEREAS**, On September 15, 2020, the City Council adopted Resolution 2020-168, approving a term sheet for an option contract to convey the Property to the Authority, which desires to use the Property for an Operations and Maintenance Facility (**O&M Facility**); and

**WHEREAS**, Pursuant to Government Code Section 54221(b)(1) of the California Surplus Land Act (SLA), the City must declare the Property as either surplus or exempt surplus prior to beginning the disposition process; and

**WHEREAS**, The California Housing and Community Development (HCD) Guidelines for the Surplus Land Act requires a city to transmit any declaration of exempt surplus to HCD and to wait for 30 days prior to disposition of any such property declared surplus; and

**WHEREAS**, Pursuant to Government Code Section 54221(f)(1)(D), property that is transferred to another public agency for its use is "exempt surplus land"; and

**WHEREAS**, The Authority intends to use the Property as the O&M Facility for the Project; and

**WHEREAS**, The Authority is seeking federal funding and must demonstrate local match, which the City's Property will satisfy; and

**WHEREAS**, On September 6, 2022, pursuant to Resolution 2022-\_\_\_\_, the City Council declared the Property as exempt surplus land in accordance with the SLA Government Code Section 54221(f)(1)(D); and

**WHEREAS**, In accordance with HCD Guidelines for the SLA, the City of Tracy transmitted Resolution 2022-\_\_\_\_ to HCD; and

**WHEREAS**, As effectuation of the Council's intent reflected in Resolution 2022-168, staff has negotiated an option agreement with the following key provisions:

- There is no cost to the Authority for the purchase value of the Property, except that the Authority must pay \$100 of Independent Consideration for the option and all closing costs, as well as the cost to relocate the existing antenna facility to a suitable site if the Authority does not wish to keep it at the Property.
- The value of the Property will be considered an in-kind contribution by the City to the Authority to be leveraged for additional grant funding, and the consummation of the conveyance will constitute the City's full contribution to the Project.
- The Authority will have a term of ten years to exercise the option.
- If the Property is not used by the Authority within ten (10) years of the purchase date, the Property will revert to the City, and if less than the entire Property is used for the O&M Facility, then such portion that either is not used for a grant match or constitute surplus land under the SLA will revert back to the City.

**WHEREAS**, the specific terms and conditions of the proposed option agreement are set forth in the form of agreement attached hereto as Exhibit A and referred to as the "Property Transfer Option and Sale Agreement with Joint Escrow Instructions" (**Agreement**); and

**WHEREAS**, the Board of Directors of Valley Link Authority will consider this same form of agreement for approval at its September 14, 2022 meeting; and

**WHEREAS**, On May 12, 2021, pursuant to the California Environmental Quality Act (**CEQA**), the Board of Directors of Valley Link Authority certified a Final Environmental Impact Report (FEIR) for the Project, which included the O&M Facility, and also adopted appropriate Findings of Fact, a Statement of Overriding Considerations, and a Mitigation Monitoring and Reporting Program; now, therefore, be it

**RESOLVED:** That the City Council of the City of Tracy hereby adopts the recitals as findings; and be it further

**RESOLVED:** That the City Council approves the Agreement and finds that consummation of such Agreement, on the terms and conditions set forth therein, shall constitute full satisfaction of the City’s contribution to the Project; and be it further

**RESOLVED:** That the City Council authorizes the execution of the Agreement upon satisfaction of the California SLA and the HCD Guidelines; and be it further

**RESOLVED:** That the City Council hereby finds and determines, after independent review and consideration, as supported by substantial evidence in the record and for the reasons set forth in this Resolution, and, each as a separate and independent basis, that the actions authorized by this Resolution were fully analyzed by the FEIR for the Project, which included the O&M Facility certified by the Board of Directors of Valley Link Authority on May 12, 2021, and their adopted Findings of Fact, Statement of Overriding Considerations, and Mitigation Monitoring and Reporting Program, and are exempt from additional review and analysis under CEQA and the CEQA Guidelines (Cal. Code Regs., title 14, section 15000 et seq.). Each of the foregoing provides a separate and independent basis for CEQA compliance and, when viewed collectively, provides an overall basis for CEQA compliance.

\* \* \* \* \*

The foregoing Resolution 2022-\_\_\_\_\_ was adopted by the Tracy City Council on \_\_\_\_\_, by the following vote:

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

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

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