

Tuesday, October 17, 2023, 7:00 P.M.

Tracy City Hall Chambers, 333 Civic Center Plaza, Tracy  
Web Site: [www.cityoftracy.org](http://www.cityoftracy.org)

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

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

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

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

**Remote Public Comment:**

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

- *Comments via:*
  - **Online by visiting** <https://cityoftracyevents.webex.com> and using the following **Event Number: 2553 401 3246** 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 25534013246#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)

Date Posted: October 12, 2023

CALL TO ORDER

ROLL CALL

PLEDGE OF ALLEGIANCE

INVOCATION

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

PRESENTATIONS

1. Proclamation – Arbor Day
2. Proclamation – Breast Cancer Awareness Month
3. Employee of the Month

ORDER OF BUSINESS

1. CONSENT CALENDAR

- 1.A. Adoption of October 3, 2023 Closed Session and Regular Meeting Minutes
- 1.B. City Council 1) declare certain vehicles, equipment and commodities as surplus pursuant to Tracy Municipal Code Section 2.20.310, and 2) approve the sale of such surplus property at public auction to the highest bidder.
- 1.C. Adopt a Resolution approving Amendment No. 1 to the Professional Services Agreement with Guidepost Solutions, LLC for the Security System Implementation for the City's Water Facilities Project, CIP 75169, to extend the term of the Agreement, amend the scope of work, and increase the total compensation by \$18,400 (for a total not-to-exceed amount of \$71,690).
- 1.D. Adopt a Resolution: (1) authorizing the submittal of an application, and upon award, execution by the Mayor of a grant agreement with the California Department of Transportation Division of Aeronautics, for the Airport Improvement Program Matching Grant 3-06-0259-025-2023; and (2) subject to and upon award, accepting such grant funds and appropriating the full grant amount to Capital Improvement Project 77593 - Slurry Seal Tee Hangar Taxilanes Project.
- 1.E. The Tracy Homelessness Advisory Committee recommends that the City Council adopt a resolution (1) making a determination that United Site Services of California, Inc. provides unique products and services that are not available from other sources, therefore compliance with the standard procurement process is not in the best interest of the City pursuant to Tracy Municipal Code Section 2.20.180(B)(2) and (2) approving the general services agreement with United Site Services of California, Inc., with a not-to-exceed amount of \$125,000, to provide temporary showers and restrooms to Phase IV-Custom Container occupants until permanent bathrooms are installed under Phase II-Site Improvements at the Temporary Emergency Housing Facility, CIP 71112, at 370 West Arbor Avenue.
- 1.F. Adopt the Resolution authorizing the award of a construction contract to Anderson Striping and Construction, Inc. in the not-to-exceed amount of \$269,354, and (2) authorizing a contingency for change orders in the amount of \$26,935.

2. ITEMS FROM THE AUDIENCE
3. REGULAR AGENDA
  - 3.A. Adopt a Resolution adopting the 2024 Development Fee for the San Joaquin County Multi-Species Habitat Conservation and Open Space Plan.
  - 3.B Adopt a Resolution 1) authorizing the issuance and sale of special tax bonds for the purpose of financing authorized facilities and 2) approving and authorizing related documents and actions for Improvement Area No. 2 of the City of Tracy Community Facilities District No. 2016-1.
  - 3.C. Adopt a Resolution: 1) rescinding Resolution 2022-184 that approved the Regular Meeting Calendar of the Tracy City Council for 2023 (Calendar); and 2) approving an amended Regular Meeting Calendar of the Tracy City Council for 2023.
4. ITEMS FROM THE AUDIENCE
5. STAFF ITEMS
6. COUNCIL ITEMS
7. ADJOURNMENT

TRACY CITY COUNCIL - SPECIAL MEETING MINUTES

October 3, 2023, 5:00 p.m.

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

1. Mayor Young called the meeting to order at 5:03 p.m.
2. There were no actions taken pursuant to AB 2449, if any
3. Roll Call found Council Members Arriola, Evans, Mayor Pro Tem Davis and Mayor Young present. Council Member Bedolla absent from roll call.
4. Items from the audience – There was no public comment.
5. Request to Conduct Closed Session
  - 5.A Conference regarding Labor Negotiations involving a Joint Powers Agency (JPA) pursuant to Gov. Code § 54956.96
    - Negotiators for South San Joaquin County Fire Authority (JPA):  
Randall Bradley, Fire Chief  
Christopher Boucher, Legal Counsel  
Marc Zafferano, Legal Counsel
    - Employee Organizations:  
Tracy Firefighters Association  
South County Fire Authority Association
  - 5.B CONFERENCE WITH LEGAL COUNSEL—EXISTING LITIGATION (Paragraph (1) of subdivision (d) of Section 54956.9)  
  
MARY MITRACOS, v. CITY OF TRACY, and SURLAND COMMUNITIES, LLC,  
CASE NO. C093383; COURT OF APPEAL, STATE OF CALIFORNIA THIRD  
APPELLATE DISTRICT
  - 5.C CONFERENCE WITH LEGAL COUNSEL—ANTICIPATED LITIGATION  
  
Initiation of litigation pursuant to paragraph (4) of subdivision (d) of Section 54956.9, and significant exposure to litigation pursuant to paragraph (2) of subdivision (d) of Section 54956.9.

Mayor Pro Tem Davis recused herself from item 5.B due to proximity of real property.

Council Member Bedolla arrived at 5:09 p.m.

**ACTION:** Motion was made by Mayor Pro Tem Davis and seconded by Council Member Evans to recess to closed session. Roll call found all in favor; passed and so ordered. Time: 5:09 p.m.

Mayor Pro Tem Davis left the closed session at 5:59 p.m.

Mayor Pro Tem Davis rejoined the closed session at 7:05 p.m.

6. Reconvene to Open Session – Time: 7:05 p.m.
7. Report of Final Action, if Any – None
8. Council Items and Comments – None
9. Adjournment – Time: 7:06 p.m.

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

The above agenda was posted at the Tracy City Hall on September 28, 2023. The above are action minutes. A recording is available at the office of the City Clerk.

ATTEST:

\_\_\_\_\_  
Mayor

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

October 3, 2023, 7:00 p.m.

City Hall, 333 Civic Center Plaza, Tracy

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

Mayor Young called the meeting to order at 7:15 p.m.

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

Mayor Young led the Pledge of Allegiance.

Pastor Tim Heinrich, Crossroads Baptist Church offered the invocation.

There were no actions taken pursuant to AB 2449.

Mayor Young presented proclamations for National Domestic Violence Awareness and Prevention Month to Jessica Alfaro from Chest of Hope and Elizabeth Sanchez from PREVAIL.

1. CONSENT CALENDAR – Following the removal of consent items 1.G by Mayor Young and 1.K by Mike Souza motion was made by Council Member Arriola and seconded by Mayor Pro Tem Davis to adopt the Consent Calendar. Roll call found all in favor; passed and so ordered.
  - 1.A. Approve September 19, 2023, Closed Session and Regular Meeting Minutes. – **Minutes were approved.**
  - 1.B. Adopt a resolution approving amendments to the City of Tracy Investment Policy. - **Resolution 2023-200** approved the amendment to the Investment Policy.
  - 1.C. Adopt a Resolution retroactively adopting an amended Operating and Capital Budget for the Fiscal Year ending June 30, 2023.– **Resolution 2023-201** adopted an amended Operating and Capital Budget.
  - 1.D. Waive the second reading and adopt an Ordinance amending Section 3.08.580 of the Tracy Municipal Code to update speed limits, as required by the California Vehicle Code.– **Ordinance 1341 was adopted.**
  - 1.E. Adopt a Resolution (1) accepting the Federal Aviation Administration’s Airport Infrastructure Grant, in the amount of \$220,100; (2) appropriating the full grant amount to Capital Improvement Project 77589 - Crack Seal and Slurry Seal, and Minor Pavement Patching Entrance Road and Parking Lot; and (3) appropriating an additional \$6,806 of General Funds to CIP 77589 to meet the grant’s requisite 10% match requirement. - **Resolution 2023-202** accepted the Federal Aviation Airport Infrastructure Grant, appropriated the full grant amount to CIP 77589, and appropriated General Funds to CIP 77589 to meet the grant’s requisite match requirement.

- 1.F. Amend Resolution 2023-006 to include a 10% contingency amount of \$108,688 on the previously awarded lowest bid construction cost of \$1,086,684 for the Ammonia Storage/Feed Systems at Park & Ride Well No. 6 and Ball Park Well No. 7, CIP 75162, consistent with Public Contract Code Section 10126.– **Resolution 2023-203** amended Resolution 2023-006 to include the 10% contingency amount on the previously awarded lowest bid construction cost.
- 1.H. The Tracy Homelessness Advisory Committee recommend that the City Council adopt a Resolution to (1) approve the Professional Services Agreement with Roebbelen Construction Management Services, Inc. for construction management services for Phase II Site Improvements at the Temporary Emergency Housing Facility, CIP 71112, located at 370 W. Arbor Avenue, with a total not-to-exceed amount of \$450,185.– **Resolution 2023-204** approved the agreement with Roebbelen Construction Management Services, Inc.
- 1.I. Adopt a Resolution: (1) accepting public improvements as complete for Tracy Hills Phase 1A School Site Street Modifications, constructed by Tracy Phase 1, LLC, a Delaware Limited Liability Company, (2) authorizing the City Engineer to release bonds in accordance with the Offsite Improvement Agreement and Tracy Municipal Code section 12.36.080, (3) authorizing the City Clerk to file the Notice of Completion with the San Joaquin County Recorder's Office, (4) accepting an Irrevocable Offer of Dedication of land from Jefferson Elementary School District, and (5) accepting a grant deed of land dedication from Tracy Hills Phase 1 Community Association.– **Resolution 2023-205** accepted the public improvements as complete for Tracy Hills Phase 1A School Site Street Modifications, constructed by Tracy Phase 1, LLC, authorized City Engineer to release bonds, authorized City Clerk to file Notice of Completion, accepted an Irrevocable Offer of Dedication of land from Jefferson Elementary School District, and accepted the grant deed of land dedication from Tracy Hills Phase 1 Community Association.
- 1.J. City Council, by resolution, (1) accept improvements for Tracy Hills Village 2, Tract 3888 as complete, (2) authorize the City Engineer to release the Subdivider furnished bonds in accordance with State law and pre-existing Agreements, and (3) authorize the City Clerk to file a Notice of Completion with the San Joaquin County Recorder's Office.– **Resolution 2023-206** accepted improvements from Tracy Hills Village 2, Tract 3888, authorized the City Engineer to release bonds, and authorized the City Clerk to file a Notice of Completion.
- 1.G. The Tracy Homelessness Advisory Committee recommend that the City Council adopt a resolution awarding a professional service agreement to The Salvation Army to serve as the City's shelter operator for the Temporary Emergency Housing Facility, with an initial term of one (1) year and a not-to-exceed annual cost of \$2.6 Million.

Mayor Young pulled the item and stated since committees have changed from adhoc it has narrowed down to a specific appointment or assignment.

The Council is not a part of the decision and are encouraged not to attend committee meetings so it would be good to have a brief report.

Virginia Carney, Homeless Services Manager provided the staff report and responded to questions.

Tracy Homelessness Advisory Committee members consisting of Council Member Bedolla and Mayor Pro Tem Davis provided comments supporting the item.

Brad Fieldhouse, City Net stated they support the motion, did not apply for the RFP and have worked with the Salvation Army. As an agency their primary focus is non congregate shelters and have learned it is not a model for shelter operations. As this project has developed, the commitment to have a flexible space and a sprung structure is the reason they did not apply. They do not do those shelters statewide.

Captain Oregel, Salvation Army stated they do volunteer and partner up with people from Tracy and will continue to establish that and always welcome volunteers.

Robert Tanner shared in Southern California the Salvation Army had the facilities for preschool and kindergarten for his son and he dealt with them for the first six years of his sons' life. They are the right group to run the facility.

Cynthia Camacho asked why the amount is over double. Is it going to be for hiring nonprofits to help with services. If it is just for shelter, she requested an explanation, it is a large jump.

Joanne Gregonis stated she serves the homeless in Tracy and asked when people are taken from the park where do they go. A man passed away behind Food Maxx last night who was homeless. He couldn't go to the shelter because the shelter was full. He was from Plascencia Field and was kicked out one week ago.

Dotty Nygard asked about the summary of the provisions for the clients at the shelter, there is no reference to workforce development and hoped the need for workforce development would be addressed.

Captain Gastro from Salvation Army talked about the job component and the various programs they have in the area. They have a program called Next Step where it is housing for those who have completed programs. Goal is to have a job already waiting for them. Believe workforce development is key, have a lot of resources for those interested in bettering their lives and partnerships are important.

Alice English shared support for the Salvation Army. Used to go to adhoc committee and Salvation Army was one of the models.

Council comments continued.

**ACTION:** Motion was made by Mayor Pro Tem Davis and seconded by Council Member Bedolla to adopt **Resolution 2023-207** awarding a Professional Services Agreement to the Salvation Army to serve as the City's Operator for the Temporary Emergency Housing Facility, with an initial term of one year and a not to exceed annual cost of \$2.6 million. Roll call found all in favor; passed and so ordered.

- 1.K. Adopt a Resolution: 1) approving the Offsite Improvement Agreement (OIA) between the City and Tracy Phase I, LLC for the Corral Hollow Road Widening Improvements required as part of the Conditions of Approval for the Final Map for Tract 4037 for the KT Project; and 2) directing the City Manager to terminate the Inspection Improvement Agreement dated August 30, 2021 for a subset of the work approved under the OIA.

Mike Souza pulled the item to share his concerns regarding changes in their relationship with the City and are working to better that relationship. Cannot get anything accomplished with the City right now. Spoke about language put into staff reports regarding conditions not met in the KT Project and problems with the Deferred Improvement Agreement. Shared concerns regarding lack of response when asking what it is they are not doing. Communication is lacking in the City.

Karin Schnaider, Assistant City Manager responded to Mr. Souza's comments and confirmed staff will be meeting with Tracy Hills on October 12, 2023.

Council questions followed.

Koosun Kim, City Engineer responded to questions.

Tim Silva stated roads have been discussed during the Transportation Commission meeting, have never seen a master plan of what the City wants to do with Corral Hollow and shared his concerns regarding Corral Hollow. This Council does not know what past Councils agreed with.

**ACTION:** Motion was made by Mayor Pro Tem Davis and seconded by Council Member Arriola to adopt **Resolution 2023-208** 1) Approving the Offsite Improvement Agreement (OIA) between the City and Tracy Phase I, LLC for the Corral Hollow Road widening improvements required as part of the conditions of approval for the Final Map for Tract 4037 for the KT Project; and 2) Directing the City Manager to terminate the Inspection Improvement Agreement dated August 30, 2021 that allowed a subset of the work now approved under the OIA. Roll call found all in favor; passed and so ordered.

2. ITEMS FROM THE AUDIENCE – Robert Tanner spoke about the City needing to have second thoughts regarding MGRC, as there is a stronger need for a Police substation for south Tracy. Found where the money was for the mall, as of last June it was \$1.7 million. If the mall closes, that is what they owe us. Mr. Tanner asked about the balance of the weed abatement account.

Wes Huffman requested for the fourth time for Council to agendaize changing election rules for the City of Tracy. Talked with friends who helped plant trees recently and stated they had to have insurance before bringing organizations here to do work for free and suggested the City review the policy for insurance for nonprofits.

Jenny Wood representing the trees on Bessie Ave presented Council with a petition that received support from 119 people that want to save the trees on Bessie. Was told that two arborists were in the process of deciding about the trees. Ms. Wood shared the benefits of trees and urged Council to save all Bessie trees.

Ajay spoke about Lammers Road in extension with the Corral Hollow Road discussion with Ellis and Tracy Hills residents and all the trouble they are facing. Supposed to extend to Tracy Hills and I-205 in the future, learn from mistakes that happened with Corral Hollow. Expand the road to Ellis and look to extend it to Tracy Hills and the freeway as soon as possible.

Karin Schnaider, Assistant City Manager responded to the previous speaker's comments.

Rosario Arulappan stated the Lammers Road exit on I-580 is a critical project. There is no school in Ellis and Tracy Hills so everyone goes for all the various Jefferson School District schools. People have trouble on Lammers Road, lot of trucks. This area needs an exit on I-580 and spoke about having another exit on the backside of Tracy Hills.

Dotty Nygard thanked those that participated in tree planting. Had over 90 volunteers. The trees were donated by community organizations and residents in memory of loved ones. Thanked Heirloom Carbon, Prologis, Tracy Tree Foundation, Sikhs of Tracy, Sunrise Rotary and Delta Disposal for purchasing trees, and thanked the Parks and Recreation Department for their support.

Alice English shared support for the State of the County event, bringing elected officials to Tracy and County Supervisor Robert Rickman. Heard a rumor from a lot of seniors that Mayor Young was supposed to speak at event, but that is incorrect. Was not the State of the City. No Mayors were supposed to speak.

Logan Sumez stated the decision to remove the security team from El Pescadero Park was a mistake. Within a week we have seen all kinds of negative activity increase. Shared he witnessed a lady getting into a fight and get beaten in front of two children today. The Police show up for a short time and leave. Looked into laws that Sacramento passed about protecting land and making it so we can take homeless encampments away from schools within 100 yards and referred to SB 31. Having homeless encampments near these schools is a massive problem.

Jeff Moss asked what the plan is since the removal of the security team from the skate park and keeping the skate park regulated as they witnessed someone being dragged in the field and beaten and the same truck drove through the park three times unloading stuff. Police go through very slow past the skate park and leave.

Sekou Millington, Police Chief responded to questions by the previous speaker and Council.

Cynthia Camacho stated there was a retail grant we did not get and asked if the City had applied.

Ms. Schnaider responded to the question regarding the grant and confirmed that the City did apply and did not get it.

### 3. REGULAR AGENDA

- 3.A Adopt a resolution, in accordance with Sections 4.2 and 4.3 of the Development Agreement between the City of Tracy and Tracy Hills Project Owner, LLC and Tracy Hills Phase 1, LLC, recorded on June 9, 2016 (Development Agreement): 1) Approving the Conceptual Design for 15-Acres of the Tracy Hills Community Park; 2) Approving a High-Level Concept for an additional 15-Acres of the Tracy Hills Community Park and delegating to the City Manager the authority to further advance a conceptual design that complies with the Development Agreement and City standards; and 3) Approving the Tracy Hills Open Space Improvements Proposal.

Richard Joaquin, Parks Planning and Development Manager and responded to questions.

John Palmer stated they are excited to embrace the development obligations to provide the 30-acres of parks which is the 15 acres of park to meet the Tracy Hills community park requirement and additional 15 acres they are gifting as part of the DA, in addition 150 acres of open space which is above and beyond the Quimby Act requirement. The presentation duplicates what was presented in 2021. If any assertion that they are not complying in the DA or circumventing process, they disagree and shared frustration with the amount of work that is in the queue to get to Council. Perplexed why looking back instead of forward and want to look forward to the design process.

Tim Silva stated he was told by Tracy Hills and staff that the potential of a disc golf course may be going to Tracy Hills even though one is being developed at Veterans Park. Hopefully we get a disc golf course as one of the amenities. Dr. Powers Park disc golf course is used frequently.

Council questions and comments followed.

Mike Souza responded to the Mayor's question stating they are going back and looking for a smoking gun on something they may not have done. Not a lot of communication from staff on that assertion and shared frustration with the amount of work in the queue trying to get to Council for approval to build infrastructure. Asked for the same approval they got from Council in 2021. Council is not here tonight to approve the design of the park, but here to approve that they are providing the 30 acres with the requirements and reserving 150 acres and spoke about their commitments.

Karin Schnaider, Assistant City Manager and Bijal Patel, City Attorney responded to questions.

**ACTION:** Motion was made by Council Member Bedolla and seconded by Mayor Pro Tem Davis to adopt **Resolution 2023-209** in accordance with Sections 4.2 and 4.3 of the Development Agreement between the City of Tracy and Tracy Hills Project Owner, LLC and Tracy Hills Phase 1, LLC, recorded on June 9, 2016 (Development Agreement): 1) Approving the Conceptual Design for 15-Acres of the Tracy Hills Community Park; 2) Approving a High-Level Concept for an additional 15-Acres of the Tracy Hills Community Park and delegating to the City Manager the authority to further advance a conceptual design that complies with the Development Agreement and City standards; and 3) Approving the Tracy Hills Open Space Improvements Proposal. Roll call found all in favor; passed and so ordered.

4. ITEMS FROM THE AUDIENCE – John Stanec, partner with Integral Communities owner of Tracy Hills stated he sent all a letter today asking for help in scheduling the meeting about getting clarifications on conditions they may or may not have met on the maps. When talked about two parks last week, two separate conditions, Corral Hollow Road and KT are separate conditions. Specifically, to our phase 2 development and administrative recordation of the seven Final Maps we need to have recorded to start building houses there. Put in \$85 million dollars of infrastructure in Phase 2 but can't build houses because they cannot get approval of Final Maps because told conditions that have not been met. Met with staff in June asking for the same clarification of what they have not done that the Final Maps cannot be recorded. Requested Council figure out with staff to have those seven Final Maps on the agenda for the October 17 meeting. The presentation done in 2021 is exactly the same as the one presented tonight.

Tim Silva stated there are a hodge podge of developments on Corral Hollow. Hear all the time they only build certain areas that front Corral Hollow. We need to get all the players involved and meet on how to develop Corral Hollow in the views we see and conceptual designs. Have not seen a master plan on how that thoroughfare is going to look from I-580 to I-205. Focus energy on how it can be done.

Joanne Gregonis stated there was a fire at Drainage Basin 4 in August and the homeless were kicked out due to a hazardous material situation and asked was the EPA involved and where was the waste taken to. A member of maintenance said they had not taken classes to deal with hazardous material and the days they were kicked out not one person had any protective equipment. What is being done about that.

Mayor Young went back to the request by Mr. Stanec to be able to have the meeting to make sure whatever conditions need to be met, request was for seven Final Maps and having a meeting with staff.

Ms. Schnaider confirmed the meeting is on October 12 and Final Maps are not ready and will discuss with Tracy Hills on October 12. Several agreements are still outstanding.

Mayor Young asked for an adjustment to meet this week.

Ms. Schnaider responded when we met ahead of time still more questions needed to be answered and they were not ready to present that information and this week the Interim City Manager is out at training, so the meeting is scheduled for next week.

Council Member Bedolla stated the meeting on the 12<sup>th</sup> only gives six workdays to prepare.

Ms. Schnaider responded that is correct and do not know we are going to resolve everything because there are outstanding agreements we have to agree upon.

Mayor Young stated it was already scheduled last week so should have already had things in place. Understand Ms. Lichtwardt is at a conference now but that is not going through next week. Think it is good to see what we can do that is not further hindering when our side cancelled the meeting last week. Perhaps becomes more of a priority for the beginning of the week.

Bijal Patel, City Attorney responded that is an administrative action so not sure if Council has purview to direct a meeting. We have heard it loudly and clearly. We are working long hours trying our best, complex work and trying to get coordination, there are a lot of details on these maps. It is scheduled for October 12 and we need a few more internal meetings and want to have a productive meeting on October 12.

Mayor Young stated there has to be something between June and now.

Ms. Schnaider responded she has been in communication with the developer and have communicated what she has been working on and research. When she has needed questions answered they have been forthcoming. Don't have all of the answers or questions ready today. Have more than one meeting between now and the 12<sup>th</sup> to get ready for the 12<sup>th</sup> and that is what we are here to do as good administrators of the City. Ms. Schnaider assured Council if she can move up anything or have questions, she feels she can reach out to the developer and have those conversations on or before and beyond the 12<sup>th</sup>. There are a lot of moving parts staff is working on.

5. STAFF ITEMS – Karin Schnaider, Assistant City Manager provided the following updates:
- Caltrans Traffic Advisory: Expect overnight (11:00 p.m. – 7:00 a.m.) I-205 lane and ramp closures from Mountain House Parkway to Hansen Road.
  - The Bessie Ave. project is under way. Click the “Construction Updates” shortcut on our homepage to learn more about the project and work to be done. In response about the trees, there are no trees planned for removal during the construction. Some trimming occurred already and will be ongoing health monitoring of the trees to determine the safety of the trees during the construction and project.
  - New, split-phase temporary traffic advisory signals have been activated at the Valpico and Corral Hollow Road intersection. Commended Engineering and Police Departments for going out daily to work on checking the timing during peak hours. Will continue until the permanent one is complete in Spring of 2024.
  - The results of the 2023 Retail Survey are in and available on our homepage: [CityOfTracy.org](http://CityOfTracy.org).
  - Classes started today for South County Fire's Community Emergency Response Team (CERT) program – send a message to [cert@sjcfire.org](mailto:cert@sjcfire.org) if you are interested in signing up for their next CERT session [also an old Council Follow-Up Item].

- Tracy Police Department invites the community to Coffee with a Cop at Raley's tomorrow from 10:00 -11:00 a.m.

6. COUNCIL ITEMS – Council Member Bedolla gave a shout out to the Grand Theatre for their combined Chamber mixer and their 100 years of Disney Show. Hoping we can market our shows better. Felt there was a lot of people that would have gone to the show and could have done better on marketing.

Council Member Bedolla stated this past Thursday he had the opportunity on behalf of the City to speak at the San Joaquin Council of Governments to advocate for Tracy's Valley Link station. We still have to get to the point to find out the City's preferred location for the station but between logistics and safety it is making more sense to be positioned on the north side of the City with a bus route that will make our cities TOD plan. One thing announced during COG's presentation is that the plans are further in the works for Tracy's hydrogen, solar and energy storage facility and we were there to support as a City.

Council Member Bedolla stated when we come up against holidays like Thanksgiving and Christmas, there is usually not an intent to have a controversial item during those days but if it happens to be an item where the public wishes there was more input and wanted to check with Council to see if there is any appetite to skip the second meetings in November and December because they are heavy holiday weeks. Looking for support to entertain the discussion. Mayor Pro Tem Davis supported the request.

Council Member Bedolla stated at the last board meeting for EBCE was proud to be part of the board that voted to give residents a 5% total discount from their PG&E bill. It is hard to see that prices are continually going up for PG&E, proportionally EBCE prices are going up but compared to PG&E it is a 5% decrease and while the agency is not changing their name, it is still going to be East Bay Community Energy Authority, the doing business as name that the residents will see is going to be AVA.

Council Member Bedolla noted he will be out of Tracy on Saturday, October 7, 2023.

Mayor Young confirmed the 2<sup>nd</sup> meeting in December is already cancelled.

Mayor Pro Tem Davis reported on her attendance at the League of California Cities as the voting delegate and there was nothing to vote on, continued education as required for ethics and harassment training and attended City Manager/City Council relationship session. Hoped for support to bring the ethics training to the City of Tracy as what was taught at LOCC was outstanding. Council Member Arriola seconded the request.

Mayor Pro Tem Davis spoke about a powerful presentation by Brandon during open session at LOCC and one thing he talked about was love first and lead second and think our Council could use more of that and intend to hold herself to that standard.

Mayor Pro Tem Davis stated the light worked for one day and is not working on Corral Hollow Road and Valpico and whether we are running some test with it.

Mayor Pro Tem Davis gave a shout out to The Grand and the Grand Foundation who did a fantastic job of the Gala and attended the Grand mixer also.

Mayor Pro Tem Davis congratulated Carina Diaz for expanding her business for Kids Place 2 Explore and Learn.

Bijal Patel, City Attorney asked for clarification whether Mayor Pro Tem Davis was requesting that particular vendor for ethics training as the City just had ethics training a few months ago.

Mayor Pro Tem Davis responded the lady was fantastic and can get her name, she was an attorney. It would be great to have that come here to City of Tracy.

Ms. Patel clarified that an attorney come to the City of Tracy and provided virtual and in person AB1234 training through the City Attorney's office and will also be providing Brown Act Training. Ms. Patel asked Mayor Pro Tem Davis if she was requesting that specific vendor or just to provide the training.

Mayor Pro Tem Davis responded she cannot compare as she did not know about the training at the City. Was phenomenal experience at LOCC and Council could benefit but don't want to step on toes if someone is doing a great job.

Council Member Arriola reported on the League of California Cities and attended a variety seminar and workshops including public service ethics, mobile crisis response teams, meeting decorum, issues related to hate crimes and hate speech, issues related to diversity, equity and inclusion services, public affective communication strategies. Attended networking events related to the Latino Caucus Young Professionals Meeting, and LGBTQ Caucus and re-elected to the LGBTQ Caucus board.

Council Member Arriola requested an update on the status of an agenda item regarding voluntary transition to District Elections for 2024. Had asked our former City Attorney back in September 2019 and February 2021 and requested from Ms. Patel and did get a memo in June 2023 and requested it as a Council item with a second on June 27, 2023. We are about a year away from elections and have not seen any progress and liked to know how we can get it on an agenda item sooner such that it will be effective by the next election.

Ms. Patel responded she did provide a comprehensive legal opinion with a third-party opinion on this issue.

Council Member Arriola responded one of the outcomes of Ms. Patel's memo was a voluntary transition and did request it with a second.

Ms. Patel responded that has always been an option but the question is what are the pros and cons of doing that so did specific analysis related to that. Council Member Arriola had made a motion and there was a second but putting all of that together in a package if there is not going to be a majority support from Council to move forward is a pretty significant step to take.

Council Member Arriola responded Council has never had it as an agenda item so does not know how we would know whether there would be a majority support for it.

Ms. Patel responded before we start the trigger, we will need to make sure there is a majority support to move down that path and stated she will go back to the motion made and legal opinion and see what we can move forward with.

Council Member Arriola stated we are asking for an agenda item where we would get the majority opinion, it sounds like you are asking for a majority opinion behind the scenes.

Ms. Patel responded she is not asking for a majority opinion behind the scenes and had not received comments back from anyone else as to if there was any interest moving forward on that voluntary path.

Council Member Arriola responded he did not understand what that feedback question would be because he has gone through the procedure via the Code of Conduct and got a second. Council Member Arriola asked Ms. Patel if it is not done quickly, we will not be able to do it by the 2024 election. That is why he asked for it in June and again in 2021 and 2019. Council Member Arriola confirmed he received Ms. Patel's memorandum, reviewed the possible outcome one of which is a voluntary transition and have asked for it as a policy item to be discussed.

Ms. Patel responded a policy item is different from asking for an action item to proceed with the implementation and confirmed she would go back to specific request and make sure we get something on the agenda.

Mayor Young stated she is doubly seconding that as it is time sensitive and was the will of the entire Council when we first brought this before. Mayor Young stated she is giving her feedback as the seconder of the request.

Ms. Patel responded she could have something back by the end of this year, was not here in 2019 or 2021 and did not know what the prior Council decided or discussed.

Council Member Arriola stated this appears to be something different than the Code of Conduct Protocols that we have implemented related to a second Council Member bringing something on to an agenda item.

Ms. Patel responded she was not here in August, is scrambling without any staff in the office, has been a thousand items between May and this month that she has handled by herself and can only take on so much. If it is believed that she is delaying it, she apologized and will get something on the agenda before the end of the year.

Council Member Arriola invited everyone to Tracy Pride this weekend at 10:00 a.m. at Lincoln Park.

Mayor Young asked for clarity of when the City Attorney was going to get something on the agenda as election is in March and is concerned that we are being consistent with the Code of Conduct.

Ms. Patel responded she is trying her best and we have three meetings left. There was no date specific so in terms of priorities as Council has been hearing from developers today, have had so many items on the agenda and try to fit as much as staff can. The City Manager has a huge list of priorities. Ms. Patel added she is trying to accommodate

everyone's need and has committed to bring something for Council's discussion before the end of the year.

Council Member Evans gave a shout out to Bruce Cleaver, President of Tracy War Memorial Association as he brought a proposal to Council Member Evans and Mayor Pro Tem Davis to fly the MIA POW flag at the war memorial and worked with Brian MacDonald and thanked him for his efforts. The POW MIA flag will be posted permanently at the War Memorial Monument and will be there on Veterans Day. The POW MIA flag is in recognition of our armed forces who have been prisoners of war or missing in action.

Council Member Evans stated there was an attempted kidnapping today at Poet School and gave a huge shout out to Tracy Police Department and any other law enforcement agencies.

Council Member Evans attended the Grand Theatre Gala, 100-year celebration of our Grand Theatre, was amazing event and gave shout out to the Grand Foundation and donors in Tracy, they raised over \$200,000 for our Grand Theatre. Gave shout out to Jay's Gourmet and The Press for the food.

Mayor Young reported she was notified by Kaiser that the labor strike will commence as of 6:00 a.m. on October 4, 2023, and scheduled to conclude on Saturday, October 7 at 6:00 a.m. Be patient as you may have longer call volume. Good news is the hospitals and emergency services are still open during the strike. Lab and radiology and optical may be temporarily closed for these days.

Mayor Young announced on October 4<sup>th</sup> there is a Quick Draw Art Contest reception at the Grand Theatre put on by the Grand Foundation and on October 7<sup>th</sup> the Blues, Brews and BBQ event will be Saturday from noon to 6:00 p.m. downtown.

Mayor Young provided a summary of events and meetings she has attended.

7. ADJOURNMENT – Time: 10:20 p.m.

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

The above agenda was posted at the Tracy City Hall on September 28, 2023. The above are action minutes. A recording is available at the office of the City Clerk.

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Mayor

ATTEST:

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City Clerk

Agenda Item 1.B

RECOMMENDATION

**Staff recommends that the City Council 1) declare certain vehicles, equipment and commodities as surplus pursuant to Tracy Municipal Code Section 2.20.310, and 2) approve the sale of such surplus property at public auction to the highest bidder.**

EXECUTIVE SUMMARY

The City periodically declares vehicles, equipment, and commodities that have been used beyond their economical and/or useful life as surplus for sale at public auction. The objective is to optimize our asset allocation while generating revenue that can be reinvested into critical municipal projects. This request seeks authorization to declare and approve the list of a range of vehicles, equipment, and commodities, pursuant to Tracy Municipal Code Section 2.20.310, and authorize the sale of these items at public auction to the highest bidder.

BACKGROUND AND LEGISLATIVE HISTORY

The Operations and Utilities Department is responsible for managing most of the City's vehicle and equipment fleet. This includes the responsibility of determining items that have been used beyond their economical and/or useful life and are no longer needed by the City. These items are removed from service and are declared as surplus property.

The disposal of surplus equipment and commodities or other property no longer needed by any department of the City is governed by Section 2.20.310 of the Tracy Municipal Code which identifies the method of disposition of surplus property. Disposition methods may include abandonment, destruction or donation to public bodies, charitable, civic or nonprofit organizations and may include City property which has no commercial value or for which the estimated cost of continued care, handling, maintenance or storage would exceed the estimated proceeds of sale. Further, permissible sales procedures include negotiated sales, acceptance of sealed bids or public auction. Staff proposes to dispose of the surplus property at a public auction, to the highest bidder. Items which are not sold at public auction will be reviewed for value, and if appropriate, sold for scrap value.

ANALYSIS

In our effort to streamline operations and allocate resources efficiently, staff harnessed the use of the City's Faster data system to aid in identifying units and assets for surplus and auction based on age, mileage, and condition. Staff focused on older assets that had surpassed their prime years, high-mileage items, and those with significant wear or repair needs were selected. This decision ensures cost-effectiveness and aligns with the City's commitment to responsible resource management while potentially generating revenue.

The following table lists the surplus vehicles, reason for surplus, and replacements purchased.

Agenda Item 1.B  
 October 17, 2023  
 Page 2

ASSET ID	YEAR, MODEL	AGE OF ASSET (yrs)	REASON FOR SURPLUS	NEW ASSET	NEW ASSET DESC.	VIN
2354	2012 Prius	11	Surpassed operational lifespan in Faster	2678	2022 Ford Explorer	1FMSK8DH4NGB83639
2353	2012 Prius	11	Surpassed operational lifespan in Faster	2679	2023 Ford Explorer	1FMSK8DHXPGA23073
2357	2012 Prius	11	Surpassed operational lifespan in Faster	2682	2022 Ford Escape	1FMCU9G64NUC01203
2660	2022 Escape	1	Unit in accident, totaled.	2687	2022 Ford Escape	1FMCU9H95NUB96196
2489	2016 BMW R1200RTP	7	Unit in accident, totaled.	5464	2019	WB10L0306N6F42534
2381	2013 Taurus	10	Frame damaged beyond repair		No Replacement	
2276	1980 Kubota	43	Surpassed operational lifespan in Faster		No Replacement	
2288	2008 Charger	15	Surpassed operational lifespan in Faster	2455	2017 Ford Explorer	1FM5K8AR3HGB55622
			Bad motor, Parts obsolete		2455 repurposed	to replace 2288

STRATEGIC PLAN

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

FISCAL IMPACT

The proceeds from this sale of surplus property will be deposited into the appropriate City funds from which the property was originally purchased. The estimated aggregate value of this surplus property is \$30,000.

ACTION REQUESTED OF THE CITY COUNCIL

Staff recommends that the City Council 1) declare certain vehicles, equipment and commodities as surplus pursuant to Tracy Municipal Code Section 2.20.310; and 2) approve the sale of such surplus property at public auction to the highest bidder.

Prepared by: Adrian Taylor, Fleet Supervisor

Reviewed by: James Thompson, Operations Superintendent  
 David Murphy, Assistant Director- Operations  
 Sara Cowell, Director of Finance  
 Karin Schnaider, Assistant City Manager

Approved by: Midori Lichtwardt, Interim City Manager

Attachment A: Proposed Surplus Vehicles and Equipment List

**ATTACHMENT A**  
**SURPLUS VEHICLES AND EQUIPMENT 03/16/2023**

<u>Miscellaneous Items</u>	<u>EQ. DESCRIPTION</u>	<u>VIN/SERIAL NUMBER</u>
	2357 2012 Prius	JTDKN3DU7C1504732
	2288 2008 Charger	2B3KA43G58H317562
	2660 2022 Ford Escape	1FMCU9F67NUA61438
	2353 2012 Prius	JTDKN3DU8C5391236
	2381 2013 Ford Taurus	1FAHP2M82DG213142
	2489 2016 BMW R1200RTP	WB10A130XHZ431495
	2354 2012 Prius	JTDKN3DU2C1498953
	2276 1980 Kubota L3750	L3750DT60242
2003 Turfco Spreader		E00651
Land Pride Rotary Cutter		826-3840
2181 2006 Mecoc35 concrete saw		8220
Target MC18 concrete saw		N/A
Target Porta cut IV		20171017
Sase VA30S		20172053
Coats 1000D wheel Balancer		20172004
Coats Rim Clamp 5060AX		20172005
300 Gal. Hydraulic holding tank w/electric motor		20172013
Honda EB5000 Generator		
Carrier A/C condensers (2 total)		
1 pallet bolt bins		
6 pallets fire hydrants		
Ex. Large Planters (2 total)		
19 5ft. round wooden tables		

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

TRACY CITY COUNCIL

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

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**1) DECLARING CERTAIN VEHICLES, EQUIPMENT AND COMMODITIES AS SURPLUS PURSUANT TO TRACY MUNICIPAL CODE SECTION 2.20.310, AND 2) APPROVING THE SALE OF SUCH SURPLUS PROPERTY AT PUBLIC AUCTION TO THE HIGHEST BIDDER**

**WHEREAS**, the City periodically declares equipment and commodities that have been used beyond their economical and/or useful life as surplus property; and

**WHEREAS**, the disposal of surplus equipment and commodities or other property no longer needed by a department in the City is governed by Section 2.20.310 of the Tracy Municipal Code which identifies the method of disposition of surplus property; and

**WHEREAS**, disposition methods may include abandonment, destruction or donation to public bodies, charitable, civic or nonprofit organizations and may include City property which has no commercial value or for which the estimated cost of continued care, handling, maintenance or storage would exceed the estimated proceeds of sale; and

**WHEREAS**, permissible sales procedures include negotiated sales, acceptance of sealed bids or public auction; and

**WHEREAS**, staff proposes the items listed on Attachment A, once declared surplus by the City Council, will be sold at public auction to the highest bidder, and items which are not sold at public auction will be reviewed for value, and if appropriate, sold for scrap value, and

**WHEREAS**, the proceeds from the sale of the surplus property will be deposited in the appropriate City fund from which the property was originally purchased, and

**NOW, THEREFORE**, be it resolved as follows:

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

**RESOLVED:** That the City Council of the City of Tracy hereby declares and approves the list of equipment and commodities, shown in Attachment A, as surplus; and be it further

**RESOLVED:** That the City Council hereby authorizes the sale of said items at public auction to the highest bidder and the remaining items to be sold for scrap value; and be it further

**RESOLVED:** That the City Council directs the City Manager to cause the proceeds from the sale of the surplus property to be deposited in the appropriate City funds from which the properties were originally purchased.

The foregoing Resolution 2023-\_\_\_\_\_ was adopted by the Tracy City Council on October 17, 2023, by the following vote:

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

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

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

Agenda Item 1.C

RECOMMENDATION

**Staff recommends that City Council adopt a Resolution approving Amendment No. 1 to the Professional Services Agreement with Guidepost Solutions, LLC for the Security System Implementation for the City's Water Facilities Project, CIP 75169, to extend the term of the Agreement, amend the scope of work, and increase the total compensation by \$18,400 (for a total not-to-exceed amount of \$71,690).**

EXECUTIVE SUMMARY

Staff recommends City Council adopt a Resolution approving Amendment No. 1 (Amendment) to the Professional Services Agreement (PSA) with Guidepost Solutions, LLC. (Consultant) for the Security System Implementation for the City's Water Facilities Project, CIP 75169, to extend the term of the PSA, amend the scope of work to include tasks listed in Exhibit A-1, and increase the total compensation by \$18,400 to a total not-to-exceed amount of \$71,690.

BACKGROUND AND LEGISLATIVE HISTORY

The City and Consultant entered into the PSA for the Security System Implementation for the City's Water Facilities Project, CIP 75169, on February 7 2023, pursuant to Resolution 2023-022. The PSA included a not-to-exceed amount of \$53,290.

ANALYSIS

The Security System design requires site surveys or record drawings at all water facilities for use in system design; however, many of the record drawings located were inaccurate or out of date, so additional site data collection and survey work is required. On Tuesday, July 11, 2023, Staff requested a proposal for the required additional work and on July 24, 2023, the Consultant provided a proposal for the additional scope and fees.

The City desires to amend the PSA via the Amendment to include the additional services and increase the total compensation by \$18,400 for a total not-to-exceed amount of \$71,690 and extend the term in order to complete the necessary data collection for the Security System design.

FISCAL IMPACT

The Security System Implementation for City's Water Facilities Project (CIP 75169) is an approved project in the adopted FY 2023-24 budget and is funded from the Water Capital fund. CIP 75169 has an available project budget of \$88,094. Sufficient funding exists for the contract amendment with Consultant.

PUBLIC OUTREACH/INTEREST

No public outreach is required for this water operations item.

CEQA DETERMINATION

The project is categorically exempt from CEQA pursuant to CEQA Guidelines Section 15301, which pertains to the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of an existing facility.

STRATEGIC PLAN

This agenda item supports the City of Tracy's Quality of Life Strategic Priority.

ACTION REQUESTED OF THE CITY COUNCIL

Staff recommends City Council adopt a Resolution approving Amendment No. 1 to the Professional Services Agreement with Guidepost Solutions, LLC for the Security System Implementation for the City's Water Facilities Project, CIP 75169, to extend the term of the Agreement, amend the scope of work to include tasks listed in Exhibit A-1, and increase the total compensation by \$18,400, for a total not-to-exceed amount of \$71,690.

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

Reviewed by: Sara Cowell, Finance Director  
Stephanie Reyna-Hiestand, Assistant Director of Utilities  
Karin Schnaider, Assistant City Manager  
Bijal M. Patel, City Attorney

Approved by: Midori Lichtwardt, Interim City Manager

ATTACHMENTS

Exhibit A – Amendment No. 1 with Guidepost Solutions, LLC  
Exhibit B – Original Agreement with Guidepost Solutions, LLC

**City of Tracy****AMENDMENT NO. 1 TO PROFESSIONAL SERVICES AGREEMENT WITH GUIDEPOST SOLUTIONS, LLC. FOR THE SECURITY SYSTEM IMPLEMENTATION FOR THE CITY'S WATER FACILITIES PROJECT, CIP 75169**

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

**Recitals**

- A. The City and Consultant entered into a Professional Services Agreement (Agreement) for the Security System Implementation for the City's Water Facilities Project, CIP 75169, which was approved by the City Council on February 7, 2023, under Resolution No. 2023-022
- B. The original scope of work addressed design of security, access systems and security controls at the City's water facilities throughout the water system and providing bid documents and installation supervision throughout the project.
- C. The Security System design requires site surveys or record drawings at all water facilities for use in system design, however many of the record drawings are inaccurate or out of date, so additional site data collection and survey work is required.
- D. The City and Consultant now seek to amend the Agreement to include the additional services not to exceed an amount of \$18,400. After negotiations between the City and Consultant, the parties have reached an agreement for performance of services in accordance with the terms set forth in this Amendment.
- D. The City and Consultant now seek to amend the Agreement to include the additional services in the amount of \$18,400 and to extend the term through December 31, 2023.

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

- 1. **Incorporation by Reference.** This Amendment incorporates by reference all terms set forth in the Agreement, unless specifically modified by this Amendment. The terms which are not specifically modified by this Amendment will remain in effect.
- 2. **Terms of Amendment.**
  - A. Section 2.1 is hereby amended to read as follows:  
"The term of this Agreement shall begin on February 8, 2023 and end on December 31, 2023, unless terminated in accordance with Section 6."
  - B. Section 3.1 is hereby amended to read as follows:  
"For services performed by Consultant under this Agreement, City shall pay Consultant on a time and expense basis, at the billing rates set forth in Exhibit "B-1", attached and incorporated by reference. Consultant's fee, for the scope of services set forth in Exhibit "A-1" is Not to Exceed \$18,400. Consultant's billing

rates shall cover all costs and expenses for Consultant’s performance of this Agreement. No work shall be performed by Consultant in excess of the Not to Exceed amount without the City’s prior written approval.

C. Exhibits.

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

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

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

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

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

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

<b>City of Tracy</b> _____ By: Nancy D. Young Title: Mayor Date: _____  Attest:  _____ Adrienne Richardson, City Clerk  Approved as to form:  _____ Bijal M. Patel, City Attorney	<b>Consultant Guidepost Solutions, LLC.</b>  _____ By: <u>Nicholas Heywood</u> Title: <u>Associate Vice President - Technology Design</u> Date: <u>9/13/23</u> Federal Employer Tax ID No. <u>80-0581535</u>  _____
EXHIBITS: A-1 Scope of Services B-1 Compensation	



guidepostsolutions.com

Guidepost Solutions LLC  
2121 N California Blvd  
Suite 800  
Walnut Creek, CA 94596  
T: 510.268.8373  
F: 510.268.1531

July 24, 2023

Lea Emmons  
Water Operations Superintendent  
City of Tracy  
6649 South Tracy Blvd.  
Tracy, CA 95377  
209-831-6302

**Project: Water District Main Plant and Remote Location Survey & Drafting Services**

Dear Mr. Emmons,

As requested, we are submitting this proposal for low voltage systems consulting services related to the City of Tracy Water Facilities – Security Design located in Tracy, CA. This proposal is based on your request for a proposal to update the current documentation to support the original security design project.

## SCOPE OF WORK

Guidepost Solutions LLC's Security and Technology Consulting practice ("Guidepost Solutions LLC") will provide survey and drafting services for the following locations:

1. Main Water Treatment Plant – 6649 S. Tracy Blvd.
2. Linne Tank & BPS – 238 Glenhaven Dr.
3. Well 8 – ASR – 645 6<sup>th</sup> St.
4. NEI Tank & BPS – Brichetto Rd. & N. Chrisman Rd.
5. Lincoln Well – 20 E. Eaton Ave.
6. Lewis Manor Well – 1050 W. 12<sup>th</sup> St.
7. Ballpark Well – 2300 Tracy Blvd.
8. Park n Ride Well – 2650 Naglee Rd.
9. Cordes Ranch Tank & BPS – 5926 Hood Wy.
10. Tracy Hills Tank & BPS – 5403 Tracy Hills Dr.

The project involves 3 days of onsite physical surveys of the locations listed above to create dimensionally accurate floorplans on which the security program can be designed.

## SCOPE OF SERVICES

Guidepost will create schematic diagrammatic buildings plans that will support the security electronics design project only. Schematic plans will detail:

- Building permitter
- Permitter openings
- Interior walls and doors graphically only
- Fence line

**Deliverables will be in PDF and DWG files.**

Assumptions and Exclusions:

- The schematic building and fence line drawings shall not suffice for dimensional representation of the built environment.
- The drawings shall be representative of the built environment only.

## COMPENSATION AND REIMBURSABLES

For all work described in our proposal, Guidepost Solutions LLC proposes a Lump Sum Fee of \$18,400 as shown in the accompanying table: "Fees by Task".

In addition to fees, Owner will reimburse Guidepost Solutions LLC for all ordinary and necessary costs and any expenses directly relating to the project and approved by Owner. Reimbursable expenses for this project are estimated as shown in the table below (or 'aforementioned table'). Reimbursable expenses include items such as copy and blueprint services, overnight delivery service, mileage, and special project insurance requirements, if required. The reimbursable expenses shall be billed at cost and shall not include ordinary overhead expenses, or any other expenses not directly related to the project. Reimbursable expenses will comply with Owner's terms and conditions.

## FEES BY TASK

<b>Survey &amp; Schematic Design</b>	
<b>Phase of Work</b>	<b>Fee by Phase</b>
<u>Project Design Services</u>	
Schematic Design Layout and Drafting	\$9,100
Site Survey	\$4,800
Project Management and QAQC	\$2,000
<b>Compensation</b>	<b>\$15,900</b>
<b>Estimated Travel Expenses</b>	<b>\$2,500</b>
<b><u>Total Compensation + Expenses</u></b>	<b><u>\$18,400</u></b>

This chart is intended as estimates only. In effort to accomplish the work most effectively for each project, we may reallocate resources between phases.

## PAYMENT TERMS

Guidepost Solutions LLC will submit a monthly invoice for completed work, including any reimbursable expenses. Invoices are payable 30 days after receipt of invoice. If payments are not received within 60 days, services may be suspended, and Guidepost Solutions LLC will not be held responsible for any damages due to delays from such suspension.

## ASSUMPTIONS & EXCLUSIONS

Guidepost Solutions LLC's services under this proposal are limited to those expressly specified. The following additional services may be desired or required, and, if performed at Owner's direction, will be charged at Guidepost Solutions LLC's standard rates as indicated in the attached Exhibit A, or at fees as mutually agreed.

- Changing or re-designing any project aspect or element previously submitted by Guidepost Solutions LLC in compliance with this proposal, or previously approved by Owner, including but not limited to project description, scope, requirements, goals, equipment, capabilities, facilities, contractors, plans, or designs.
- Producing site plans, floor plans, or any drawings not listed under construction documents.
- Design or specification of building management systems (BMS) or control systems or any other system not expressly required by this proposal.
- Preparation of maintenance and operation manuals or as-built drawings will be the systems contractor's responsibility.

- Training or establishing training programs (to be performed by the systems contractor).
- System permits and approvals including Professional Engineering stamp.
- This proposal does not include site utility coordination, site utility surveys, vault investigation, or discovery of existing underground site utilities, unless specifically mentioned within the scope of services.
- This proposal does not include structural engineering.
- This proposal does not include security, fire alarm, telecommunications, and audiovisual systems consulting and/or design services.
- Site plans, if required, are for information purposes only. Unless otherwise noted in the scope of work above, design services for site areas are not included in this proposal.
- This proposal assumes all system drawings will be produced using AutoCAD. If BIM is selected as the drawing deliverable method, the drawings will be considered supplemental services and will be billable.
- This proposal includes submission of full-size electronic PDF drawings to the Owner for all deliverables.
- If phases beyond the above scope of work are required, additional service fees will also be required.
- Services are limited to buildings defined in the scope of work above. The inclusion of additional structures, buildings, floors, and/or all site work not previously defined in the above scope of work will require additional fees.
- Reimbursable expenses will comply with Owner Standards.
- This Proposal and the prices quoted are valid for 30 days from the date of this Proposal.

## AUTHORIZATION

If approved, please return our signed proposal, or provide a contract/agreement including general terms, deliverables, rates, and budget for signature to [contractswest@guidepostsolutions.com](mailto:contractswest@guidepostsolutions.com) or Guidepost Contracts at 2121 North California Blvd., Suite 800, Walnut Creek, CA 94596.

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Date

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July 24, 2023

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Lea Emmons  
 Water Operations Superintendent  
 Authorized Representative of  
 City of Tracy

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Michael Johnson CPP  
 Sr. Consultant  
 Authorized Representative of  
 Guidepost Solutions LLC

## EXHIBIT A-1: GUIDEPOST SOLUTIONS LLC 2022 HOURLY RATES

<b>Design Services</b>	
Principal/Project Lead	\$225
Senior Consultant / Senior Project Manager / Professional Engineer	\$200
Consultant / Project Manager / Technology Designer	\$185
Associate	\$170
BIM / REVIT Coordinator	\$130
Subject Matter Expert - Advisory (Security / AV / Fire / TEL / GSOC)	\$225

<b>Physical Security Consulting Services</b>	
Principal / Project Lead	\$275
Senior Consultant / Project Manager	\$250
Consultant	\$200
Associate	\$175
Subject Matter Expert - Advisory (Risk / Operations / Technology / CPTED, Sub Contractors)	\$250

<b>Cyber Security Consulting Services</b>	
Principal / Project Lead	\$400
Senior Consultant / Project Manager	\$350
Consultant	\$300
Associate	\$250
Subject Matter Expert - Advisory (Risk / Operations / Technology)	\$350
Subject Matter Expert - Incident Response	\$450

<b>Risk &amp; Emergency Management Services</b>	
Principal / Project Lead	\$300
Senior Consultant / Project Manager	\$250
Consultant	\$225
Associate	\$200
Subject Matter Expert - Advisory (Risk / Operations / Technology)	\$250
Subject Matter Expert - Incident Response	\$350
Subject Matter Expert - Threat / Behavioral	\$900

**CITY OF TRACY  
PROFESSIONAL SERVICES AGREEMENT WITH GUIDEPOST SOLUTIONS, LLC  
FOR SECURITY SYSTEMS DESIGN AT CITY'S WATER FACILITIES**

This Professional Services Agreement (**Agreement**) is entered into between the City of Tracy, a municipal corporation (**City**), and Guidepost Solutions LLC, a Limited Liability Company (**Consultant**). City and Consultant are referred to individually as "Party" and collectively as "Parties."

**Recitals**

**A.** City desires to retain Consultant to provide design services for security services; and

**B.** On October 19, 2022, the City issued a Request for Proposals (RFP) for the Security Assessment at City's Water Facilities (**Project**). On November 9, 2022, Consultant submitted its proposal for the Project to the City. City has determined that Consultant possesses the skills, experience and certification required to provide the services.

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

**D.** This Agreement is being executed pursuant to Resolution No.2023-012 approved by Tracy City Council on February 7, 2023.

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

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

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

**2.1 Term.** The term of this Agreement shall begin on February 8, 2023 and end on June 9, 2023, unless terminated in accordance with Section 6.

**3. Compensation.** City shall pay Consultant 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 \$53,290. Consultant's billing rates shall cover all costs and expenses for Consultant's performance of this Agreement. No work shall be performed by Consultant in excess of the total compensation amount provided in this section without the City's prior written approval.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

To City:  
Director Operations & Utilities  
520 N. Tracy Blvd  
Tracy, CA 95376

To Consultant:  
Guidepost Solutions LLC  
2121 N California Blvd., Suite 800  
Walnut Creek, CA 94596

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

**13. Miscellaneous.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

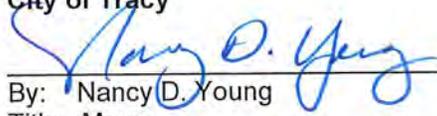
**13.13 Entire Agreement.** This Agreement and the attached Exhibits comprise the entire integrated understanding between the Parties concerning the services to be performed. This Agreement supersedes all prior negotiations, representations or agreements. All exhibits attached hereto are incorporated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

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

**[SIGNATURES ON FOLLOWING PAGE]**

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

**City of Tracy**

  
By: Nancy D. Young  
Title: Mayor  
Date: 3-2-2023

**Consultant**

Guidepost Solutions, LLC, a Limited Liability Company

  
By: Nicholas Heywood  
Title: Associate Vice President - Technology Design  
Date: 01/09/2023

Federal Employer Tax ID No. 80-0581535

Attest:

  
Adrianne Richardson, City Clerk

Approved as to form:

  
Bijal M. Patel, City Attorney

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

- Attend security system design coordination meetings with City staff to review the security requirements and to coordinate final security device locations, installation details and finish requirements.
- Document and coordinate the security system infrastructure requirements including security equipment layout and space requirement, IT network, 120 VAC power, electric door hardware and interfaces to other building systems such as required.
- Check applicable codes, regulations, and restrictions governing the design.
- Prepare security system design plans for the infrastructure improvements to be installed. The plans should include a security device symbols legend, block diagrams, rough-in details, equipment installation details and device location site/floor plans.
- Prepare security system specifications including general conditions, functional and technical system and device requirements and execution requirements.
- Evaluate Contractor bids for compliance with the construction documents and document the findings in a bid evaluation letter.
- Participate in meetings to review the bid evaluation letter.
- Review the Contractor's prefabrication submittals.
- Participate in progress/coordination meetings during the security system installation
- Conduct one system installation progress inspections per site and prepare field reports to document the results.
- Conduct final system acceptance testing and prepare a punch list to document results.
- Review the security contractor's O&M and as-built documentation for accuracy.

EXHIBIT B – Compensation

Compensation for completion of all items listed in Exhibit A shall be a not to exceed amount of \$53,290.

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

**TRACY CITY COUNCIL**

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

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**RESOLUTION APPROVING AMENDMENT NO. 1 TO THE PROFESSIONAL SERVICES AGREEMENT WITH GUIDEPOST SOLUTIONS, LLC. FOR THE SECURITY SYSTEM IMPLEMENTATION FOR THE CITY'S WATER FACILITIES PROJECT, CIP 75169, TO EXTEND THE TERM OF THE AGREEMENT, AMEND THE SCOPE OF WORK, AND INCREASE THE TOTAL COMPENSATION BY \$18,400 (FOR A TOTAL NOT-TO-EXCEED AMOUNT OF \$71,690)**

**WHEREAS**, On October 19, 2022, the City issued a Request for Proposals (RFP) for the Security System Design at the City's Water Facilities (Project); and

**WHEREAS**, On November 9, 2022, Consultant submitted its proposal for the Project to the City. The City determined that Consultant possesses the skills, experience and certification required to provide the services; and

**WHEREAS**, The City and Consultant entered into a Professional Services Agreement (Agreement) for the Project on February 7, 2023, pursuant to Resolution 2023-022, with a not-to-exceed amount of \$53,290; and

**WHEREAS**, The Project requires site surveys or record drawings at all water facilities for use in system design; however, many of the City record drawings are inaccurate or out of date, so additional site data collection and survey work is required; and

**WHEREAS**, On Tuesday, June 27, 2023, Staff requested a proposal for the required additional work and on July 24, 2023 the Consultant provided a proposal for the additional scope and fees; and

**WHEREAS**, City desires to amend the Agreement to extend the term through December 31, 2023, amend the scope of work, and increase the total compensation by \$18,400 (for a total not-to-exceed amount of \$71,690); therefore, be it resolved as follows:

**RESOLVED:** That the above recitals are true and correct and are hereby incorporated herein as findings and determinations of the City; and be it

**FURTHER RESOLVED:** That the City Council of the City of Tracy hereby approves Amendment No. 1 to Agreement with Consultant; and it be

**FURTHER RESOLVED:** The City, after review and approval by the City Attorney's office, may execute the Agreement and take any and all further actions to effectuate the purposes of this Resolution; and be it

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

\*\*\*\*\*

The foregoing Resolution 2023-\_\_\_\_\_ was adopted by the Tracy City Council on the 17th of October 2023, by the following vote:

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

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

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

Agenda Item 1.D

RECOMMENDATION

**Staff recommends that the City Council adopt a Resolution: (1) authorizing the submittal of an application, and upon award, execution by the Mayor of a grant agreement with the California Department of Transportation Division of Aeronautics, for the Airport Improvement Program Matching Grant 3-06-0259-025-2023; and (2) subject to and upon award, accepting such grant funds and appropriating the full grant amount to Capital Improvement Project 77593 - Slurry Seal Tee Hangar Taxilanes Project.**

EXECUTIVE SUMMARY

On September 5, 2023, the City Council approved the acceptance of a grant from the Federal Aviation Administration (FAA) in the amount of \$162,718 for CIP 77593 – Slurry Seal Tee Hangar Taxilanes (Project). This represents 90% of the total Project costs of \$180,798. The City is responsible for the remaining 10% of the total Project cost in the amount of \$18,080.

A State Airport Improvement Program (AIP) matching grant is available which will offset the City's required match amount. In order to finalize the State grant award process, the FAA requires that the City Council adopt a resolution authorizing the Mayor to submit the application and executing the grant agreement once awarded and accepting the allocation of State AIP Matching Grant funds.

Receiving this grant will result in \$8,136 from the State toward the Project, and reduce the amount paid by the City to \$9,944, or approximately 5.5% of the total Project costs.

BACKGROUND AND LEGISLATIVE HISTORY

Staff recently applied for, and was offered, a grant in the amount of \$162,718, through the FAA, to complete CIP 77593 – Slurry Seal Tee Hangar Taxilanes. This was accepted by the City Council at the September 5, 2023, regular City Council meeting. The FAA only pays for 90% of the total Project costs, and the City is required to provide a 10% match.

The State of California Department of Transportation Division of Aeronautics (Division of Aeronautics) provides matching grants of 5% of the FAA grant awards, not to exceed \$50,000. The application for the grant must be submitted and approved before any work can be completed on the new Project. The Project is ready to begin, and City staff have identified this grant and are requesting to utilize it to offset the General Fund's grant match prior to starting the Project.

To apply for the Division of Aeronautics matching grant and receive the grant funds, the Mayor needs to sign the grant application and return it to the Division of Aeronautics. Staff is requesting the City Council approve a resolution: 1) authorizing the Mayor to sign the application so that staff may timely submit it and execute the grant agreement once awarded by the Division of Aeronautics; 2) accepting the allocation of State AIP Matching Grant funds, and 3) appropriate the full grant amount to CIP 77593 - Slurry Seal Tee Hangar Taxilanes.

ANALYSIS

Applying for and accepting the Division of Aeronautics State Matching Grant will allow the City to complete the Project, CIP 77593 - Slurry Seal Tee Hangar Taxilanes and reduce the previous General Fund appropriation approved by the City Council.

The total estimated cost of this Project is as follows:

Construction Cost	\$98,798
Administration	\$4,000
Preliminary, Engineering Design, Preparation of Plans and Specs	\$31,000
Design Engineering through Bidding and Award	\$4,000
Engineering Design During Construction/ Final Closeout	\$13,000
Residential Engineering, Testing and Inspection	\$30,000
Total Project Cost	\$180,798
FAA Participation- Entitlement/Discretionary	\$162,718
State Matching Grant	\$8,136
Sponsor Local Match	\$9,944

FISCAL IMPACT

CIP 77593, Slurry Seal Tee Hangar Taxilanes Project, has an approved budget of \$176,418, based upon an estimated FAA grant amount the City anticipated to receive. If the City did not receive the FAA grant monies, then the City anticipated using General Fund monies to advance this necessary CIP.

The total estimated project cost is \$180,798. Of that amount, 90% of the project will be funded by an FAA Airport Improvement Program, in the amount of \$162,718. The remaining cost of \$18,080 will be paid from the General Fund and a State matching grant through CIP 77593. Assuming \$8,136 will come from the Division of Aeronautics grant, then the City's matching requirement from the General Fund will be only \$9,944. At the September 5, 2023, meeting, the City Council authorized the execution of the original FAA grant agreement and appropriated an additional \$39,418 of anticipated FAA grant funds to CIP 77593. Any appropriated but unused funds will be returned to the General Fund at the end of project completion.

COORDINATION

Engineering staff coordinated with the Mobility & Housing Department and the Airport Engineering consultant firm during the application phase of the project.

CEQA/NEPA DETERMINATION

On January 26, 2023, the FAA had determined the proposed project is Categorically Excluded pursuant to FAA Order 1050.1F as it relates to the National Environmental Policy Act of 1969, as amended (NEPA). No further federal environmental disclosure documentation for the project is necessary for NEPA purposes.

The Project is categorically exempt per CEQA Guidelines Section §15301 Existing Facilities, Class I category, which consists of the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of existing or former use, item (c) Existing highways and streets, sidewalks, gutters, bicycle and pedestrian trails, and similar facilities.

### STRATEGIC PLAN

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

### ACTION REQUESTED OF THE CITY COUNCIL

Staff recommends that the City Council adopt a Resolution: (1) authorizing the submittal of an application, and upon award, execution by the Mayor of a grant agreement with the California Department of Transportation Division of Aeronautics, for the Airport Improvement Program Matching Grant 3-06-0259-025-2023; (2) subject to and upon award, accepting such grant funds and appropriating the full grant amount to Capital Improvement Project 77593 - Slurry Seal Tee Hangar Taxilanes Project.

Prepared by: Ilene Macintire, Senior Civil Engineer  
Paula Jessup, Airport Manager

Reviewed by: Brian MacDonald, Interim Assistant City Manager  
Bijal Patel, City Attorney

Approved by: Midori Lichtwardt, Interim City Manager

#### Attachments:

Attachment A: Attachment A - Federal Aviation Administration Grant Agreement for AIP #3-06-0259-025-2023

Attachment B: Matching Grant Application



U.S. Department  
of Transportation  
Federal Aviation  
Administration

Airports Division  
Western-Pacific Region  
California

San Francisco Airports  
District Office:  
2999 Oak Road, Suite 200  
Walnut Creek, CA 94597

September 13, 2023

Ms. Paula Jessup  
Airport Manager  
City of Tracy  
333 Civic Center Plaza  
Tracy, CA 95376

Dear Ms. Jessup:

The Grant Offer for Airport Improvement Program (AIP) Project No. 3-06-0259-025-2023 at Tracy Municipal Airport is attached for execution. This letter outlines the steps you must take to properly enter into this agreement and provides other useful information. Please read the conditions, special conditions, and assurances that comprise the grant offer carefully.

**You may not make any modification to the text, terms or conditions of the grant offer.**

***Steps You Must Take to Enter Into Agreement.***

To properly enter into this agreement, you must do the following:

1. The governing body must give authority to execute the grant to the individual(s) signing the grant, i.e., the person signing the document must be the sponsor's authorized representative(s) (hereinafter "authorized representative").
2. The authorized representative must execute the grant by adding their electronic signature to the appropriate certificate at the end of the agreement.
3. Once the authorized representative has electronically signed the grant, the sponsor's attorney(s) will automatically receive an email notification.
4. On the **same day or after** the authorized representative has signed the grant, the sponsor's attorney(s) will add their electronic signature to the appropriate certificate at the end of the agreement.
5. If there are co-sponsors, the authorized representative(s) and sponsor's attorney(s) must follow the above procedures to fully execute the grant and finalize the process. Signatures must be obtained and finalized no later than **September 15, 2023**.
6. The fully executed grant will then be automatically sent to all parties as an email attachment.

**Payment.** Subject to the requirements in 2 CFR § 200.305 (Federal Payment), each payment request for reimbursement under this grant must be made electronically via the Delphi eInvoicing System. Please see the attached Grant Agreement for more information regarding the use of this System.

**Project Timing.** The terms and conditions of this agreement require you to complete the project without undue delay and no later than the Period of Performance end date (1,460 days from the grant execution

date). We will be monitoring your progress to ensure proper stewardship of these Federal funds. We expect you to submit payment requests for reimbursement of allowable incurred project expenses consistent with project progress. Your grant may be placed in "inactive" status if you do not make draws on a regular basis, which will affect your ability to receive future grant offers. Costs incurred after the Period of Performance ends are generally not allowable and will be rejected unless authorized by the FAA in advance.

**Reporting.** Until the grant is completed and closed, you are responsible for submitting formal reports as follows:

- For all grants, you must submit by December 31st of each year this grant is open:
  1. A signed/dated SF-270 (Request for Advance or Reimbursement for non-construction projects) or SF-271 or equivalent (Outlay Report and Request for Reimbursement for Construction Programs), and
  2. An SF-425 (Federal Financial Report).
- For non-construction projects, you must submit FAA Form 5100-140, Performance Report within 30 days of the end of the Federal fiscal year.
- For construction projects, you must submit FAA Form 5370-1, Construction Progress and Inspection Report, within 30 days of the end of each Federal fiscal quarter.

**Audit Requirements.** As a condition of receiving Federal assistance under this award, you must comply with audit requirements as established under 2 CFR Part 200. Subpart F requires non-Federal entities that expend \$750,000 or more in Federal awards to conduct a single or program specific audit for that year. Note that this includes Federal expenditures made under other Federal-assistance programs. Please take appropriate and necessary action to ensure your organization will comply with applicable audit requirements and standards.

**Closeout.** Once the project(s) is completed and all costs are determined, we ask that you work with your FAA contact indicated below to close the project without delay and submit the necessary final closeout documentation as required by your Region/Airports District Office.

**FAA Contact Information.** REGINALD DONES, (925) 546-6443, reginald.dones@faa.gov is the assigned program manager for this grant and is readily available to assist you and your designated representative with the requirements stated herein.

We sincerely value your cooperation in these efforts and look forward to working with you to complete this important project.

Sincerely,

*Laurie J. Suttmeier*  
Laurie J. Suttmeier (Sep 13, 2023 12:19 PDT)

Laurie J. Suttmeier  
Manager



U.S. Department  
of Transportation  
Federal Aviation  
Administration

**FEDERAL AVIATION ADMINISTRATION AIRPORT IMPROVEMENT PROGRAM**

**FY 2023 Airport Improvement Program (AIP)**

**GRANT AGREEMENT**

**Part I - Offer**

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Federal Award Offer Date	September 13, 2023
Airport/Planning Area	Tracy Municipal Airport
FY2023 AIP Grant Number	3-06-0259-025-2023
Unique Entity Identifier	EWFNJF9GM6U4
TO:	City of Tracy
	(herein called the "Sponsor")

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FROM: **The United States of America** (acting through the Federal Aviation Administration, herein called the "FAA")

**WHEREAS**, the Sponsor has submitted to the FAA a Project Application dated April 28, 2023, for a grant of Federal funds for a project at or associated with the Tracy Municipal Airport, which is included as part of this Grant Agreement; and

**WHEREAS**, the FAA has approved a project for the Tracy Municipal Airport (herein called the "Project") consisting of the following:

Seal Taxilane Pavement Surface/Pavement Joints

which is more fully described in the Project Application.

**NOW THEREFORE**, Pursuant to and for the purpose of carrying out the Title 49, United States Code (U.S.C.), Chapters 471 and 475; 49 U.S.C. §§ 40101 et seq., and 48103; FAA Reauthorization Act of 2018 (Public Law Number 115-254); the Department of Transportation Appropriations Act, 2021 (Public Law 116-260, Division L); the Consolidated Appropriations Act, 2022 (Public Law 117-103); Consolidated

Appropriations Act, 2023 (Public Law 117-328); and the representations contained in the Project Application; and in consideration of: (a) the Sponsor's adoption and ratification of the Grant Assurances attached hereto; (b) the Sponsor's acceptance of this Offer; and (c) the benefits to accrue to the United States and the public from the accomplishment of the Project and compliance with the Grant Assurance and conditions as herein provided;

**THE FEDERAL AVIATION ADMINISTRATION, FOR AND ON BEHALF OF THE UNITED STATES, HEREBY OFFERS AND AGREES to pay ninety (90) percent of the allowable costs incurred accomplishing the Project as the United States share of the Project.**

**Assistance Listings Number (Formerly CFDA Number): 20.106**

**This Offer is made on and SUBJECT TO THE FOLLOWING TERMS AND CONDITIONS:**

### **CONDITIONS**

1. **Maximum Obligation.** The maximum obligation of the United States payable under this Offer is \$162,718.

The following amounts represent a breakdown of the maximum obligation for the purpose of establishing allowable amounts for any future grant amendment, which may increase the foregoing maximum obligation of the United States under the provisions of 49 U.S.C. § 47108(b):  
 \$ 0 for planning;  
 \$ 162,718 airport development or noise program implementation; and,  
 \$ 0 for land acquisition.

2. **Grant Performance.** This Grant Agreement is subject to the following Federal award requirements:
  - a. **Period of Performance:**
    1. Shall start on the date the Sponsor formally accepts this Agreement and is the date signed by the last Sponsor signatory to the Agreement. The end date of the Period of Performance is 4 years (1,460 calendar days) from the date of acceptance. The Period of Performance end date shall not affect, relieve, or reduce Sponsor obligations and assurances that extend beyond the closeout of this Grant Agreement.
    2. Means the total estimated time interval between the start of an initial Federal award and the planned end date, which may include one or more funded portions or budget periods. (2 Code of Federal Regulations (CFR) § 200.1).
  - b. **Budget Period:**
    1. For this Grant is 4 years (1,460 calendar days) and follows the same start and end date as the Period of Performance provided in paragraph (2)(a)(1). Pursuant to 2 CFR § 200.403(h), the Sponsor may charge to the Grant only allowable costs incurred during the Budget Period.
    2. Means the time interval from the start date of a funded portion of an award to the end date of that funded portion during which the Sponsor is authorized to expend the funds awarded, including any funds carried forward or other revisions pursuant to 2 CFR § 200.308.

c. Close Out and Termination

1. Unless the FAA authorizes a written extension, the Sponsor must submit all Grant closeout documentation and liquidate (pay-off) all obligations incurred under this award no later than 120 calendar days after the end date of the period of performance. If the Sponsor does not submit all required closeout documentation within this time period, the FAA will proceed to close out the grant within one year of the Period of Performance end date with the information available at the end of 120 days. (2 CFR § 200.344).
2. The FAA may terminate this Grant, in whole or in part, in accordance with the conditions set forth in 2 CFR § 200.340, or other Federal regulatory or statutory authorities as applicable.
3. **Ineligible or Unallowable Costs.** The Sponsor must not include any costs in the project that the FAA has determined to be ineligible or unallowable.
4. **Indirect Costs - Sponsor.** The Sponsor may charge indirect costs under this award by applying the indirect cost rate identified in the project application as accepted by the FAA, to allowable costs for Sponsor direct salaries and wages.
5. **Determining the Final Federal Share of Costs.** The United States' share of allowable project costs will be made in accordance with 49 U.S.C. § 47109, the regulations, policies, and procedures of the Secretary of Transportation ("Secretary"), and any superseding legislation. Final determination of the United States' share will be based upon the final audit of the total amount of allowable project costs and settlement will be made for any upward or downward adjustments to the Federal share of costs.
6. **Completing the Project Without Delay and in Conformance with Requirements.** The Sponsor must carry out and complete the project without undue delays and in accordance with this Agreement, 49 U.S.C. Chapters 471 and 475, the regulations, and the Secretary's policies and procedures. Per 2 CFR § 200.308, the Sponsor agrees to report and request prior FAA approval for any disengagement from performing the project that exceeds three months or a 25 percent reduction in time devoted to the project. The report must include a reason for the project stoppage. The Sponsor also agrees to comply with the grant assurances, which are part of this Agreement.
7. **Amendments or Withdrawals before Grant Acceptance.** The FAA reserves the right to amend or withdraw this offer at any time prior to its acceptance by the Sponsor.
8. **Offer Expiration Date.** This offer will expire and the United States will not be obligated to pay any part of the costs of the project unless this offer has been accepted by the Sponsor on or before September 15, 2023, or such subsequent date as may be prescribed in writing by the FAA.
9. **Improper Use of Federal Funds.** The Sponsor must take all steps, including litigation if necessary, to recover Federal funds spent fraudulently, wastefully, or in violation of Federal antitrust statutes, or misused in any other manner for any project upon which Federal funds have been expended. For the purposes of this Grant Agreement, the term "Federal funds" means funds however used or dispersed by the Sponsor, that were originally paid pursuant to this or any other Federal grant agreement. The Sponsor must obtain the approval of the Secretary as to any determination of the amount of the Federal share of such funds. The Sponsor must return the recovered Federal share, including funds recovered by settlement,

order, or judgment, to the Secretary. The Sponsor must furnish to the Secretary, upon request, all documents and records pertaining to the determination of the amount of the Federal share or to any settlement, litigation, negotiation, or other efforts taken to recover such funds. All settlements or other final positions of the Sponsor, in court or otherwise, involving the recovery of such Federal share require advance approval by the Secretary.

10. **United States Not Liable for Damage or Injury.** The United States is not responsible or liable for damage to property or injury to persons which may arise from, or be incident to, compliance with this Grant Agreement.
11. **System for Award Management (SAM) Registration and Unique Entity Identifier (UEI).**
  - a. Requirement for System for Award Management (SAM): Unless the Sponsor is exempted from this requirement under 2 CFR § 25.110, the Sponsor must maintain the currency of its information in the SAM until the Sponsor submits the final financial report required under this Grant, or receives the final payment, whichever is later. This requires that the Sponsor review and update the information at least annually after the initial registration and more frequently if required by changes in information or another award term. Additional information about registration procedures may be found at the SAM website (currently at <http://www.sam.gov>).
  - b. Unique entity identifier (UEI) means a 12-character alpha-numeric value used to identify a specific commercial, nonprofit or governmental entity. A UEI may be obtained from SAM.gov at <https://sam.gov/content/entity-registration>.
12. **Electronic Grant Payment(s).** Unless otherwise directed by the FAA, the Sponsor must make each payment request under this Agreement electronically via the Delphi Invoicing System for Department of Transportation (DOT) Financial Assistance Awardees.
13. **Informal Letter Amendment of AIP Projects.** If, during the life of the project, the FAA determines that the maximum grant obligation of the United States exceeds the expected needs of the Sponsor by \$25,000 or five percent (5%), whichever is greater, the FAA can issue a letter amendment to the Sponsor unilaterally reducing the maximum obligation.  
  
The FAA can also issue a letter to the Sponsor increasing the maximum obligation if there is an overrun in the total actual eligible and allowable project costs to cover the amount of the overrun provided it will not exceed the statutory limitations for grant amendments. The FAA's authority to increase the maximum obligation does not apply to the "planning" component of Condition No. 1, Maximum Obligation.  
  
The FAA can also issue an informal letter amendment that modifies the grant description to correct administrative errors or to delete work items if the FAA finds it advantageous and in the best interests of the United States.  
  
An informal letter amendment has the same force and effect as a formal grant amendment.
14. **Air and Water Quality.** The Sponsor is required to comply with all applicable air and water quality standards for all projects in this grant. If the Sponsor fails to comply with this requirement, the FAA may suspend, cancel, or terminate this Grant Agreement.
15. **Financial Reporting and Payment Requirements.** The Sponsor will comply with all Federal financial reporting requirements and payment requirements, including submittal of timely and accurate reports.

16. **Buy American.** Unless otherwise approved in advance by the FAA, in accordance with 49 U.S.C. § 50101, the Sponsor will not acquire or permit any contractor or subcontractor to acquire any steel or manufactured products produced outside the United States to be used for any project for which funds are provided under this Grant. The Sponsor will include a provision implementing Buy American in every contract and subcontract awarded under this Grant.
17. **Build America, Buy America.** The Sponsor must comply with the requirements under the Build America, Buy America Act (Public Law 117-58).
18. **Maximum Obligation Increase.** In accordance with 49 U.S.C. § 47108(b)(3), as amended, the maximum obligation of the United States, as stated in Condition No. 1, Maximum Obligation, of this Grant Offer:
- a. May not be increased for a planning project;
  - b. May be increased by not more than 15 percent for development projects if funds are available;
  - c. May be increased by not more than the greater of the following for a land project, if funds are available:
    1. 15 percent; or
    2. 25 percent of the total increase in allowable project costs attributable to acquiring an interest in the land.

If the Sponsor requests an increase, any eligible increase in funding will be subject to the United States Government share as provided in 49 U.S.C. § 47110, or other superseding legislation if applicable, for the fiscal year appropriation with which the increase is funded. The FAA is not responsible for the same Federal share provided herein for any amount increased over the initial grant amount. The FAA may adjust the Federal share as applicable through an informal letter of amendment.

19. **Audits for Sponsors.**

PUBLIC SPONSORS. The Sponsor must provide for a Single Audit or program-specific audit in accordance with 2 CFR Part 200. The Sponsor must submit the audit reporting package to the Federal Audit Clearinghouse on the Federal Audit Clearinghouse's Internet Data Entry System at <http://harvester.census.gov/facweb/>. Upon request of the FAA, the Sponsor shall provide one copy of the completed audit to the FAA. Sponsors that expend less than \$750,000 in Federal awards and are exempt from Federal audit requirements must make records available for review or audit by the appropriate Federal agency officials, State, and Government Accountability Office. The FAA and other appropriate Federal agencies may request additional information to meet all Federal audit requirements.

20. **Suspension or Debarment.** When entering into a "covered transaction" as defined by 2 CFR § 180.200, the Sponsor must:
- a. Verify the non-Federal entity is eligible to participate in this Federal program by:
    1. Checking the excluded parties list system (EPLS) as maintained within the System for Award Management (SAM) to determine if the non-Federal entity is excluded or disqualified; or
    2. Collecting a certification statement from the non-Federal entity attesting they are not excluded or disqualified from participating; or

3. Adding a clause or condition to covered transactions attesting the individual or firm are not excluded or disqualified from participating.
- b. Require prime contractors to comply with 2 CFR § 180.330 when entering into lower-tier transactions with their contractors and sub-contractors.
- c. Immediately disclose in writing to the FAA whenever (1) the Sponsor learns they have entered into a covered transaction with an ineligible entity or (2) the Public Sponsor suspends or debar a contractor, person, or entity.

**21. Ban on Texting While Driving.**

- a. In accordance with Executive Order 13513, Federal Leadership on Reducing Text Messaging While Driving, October 1, 2009, and DOT Order 3902.10, Text Messaging While Driving, December 30, 2009, the Sponsor is encouraged to:
  1. Adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers including policies to ban text messaging while driving when performing any work for, or on behalf of, the Federal government, including work relating to a grant or subgrant.
  2. Conduct workplace safety initiatives in a manner commensurate with the size of the business, such as:
    - i. Establishment of new rules and programs or re-evaluation of existing programs to prohibit text messaging while driving; and
    - ii. Education, awareness, and other outreach to employees about the safety risks associated with texting while driving.
- b. The Sponsor must insert the substance of this clause on banning texting while driving in all subgrants, contracts, and subcontracts funded with this Grant.

**22. Trafficking in Persons.**

- a. *Posting of contact information.*
  1. The Sponsor must post the contact information of the national human trafficking hotline (including options to reach out to the hotline such as through phone, text, or TTY) in all public airport restrooms.
- b. *Provisions applicable to a recipient that is a private entity.*
  1. You as the recipient, your employees, subrecipients under this Grant, and subrecipients' employees may not:
    - i. Engage in severe forms of trafficking in persons during the period of time that the Grant and applicable conditions are in effect;
    - ii. Procure a commercial sex act during the period of time that the Grant and applicable conditions are in effect; or
    - iii. Use forced labor in the performance of the Grant or any subgrants under this Grant.
  2. We as the Federal awarding agency, may unilaterally terminate this Grant, without penalty, if you or a subrecipient that is a private entity –

- i. Is determined to have violated a prohibition in paragraph (a) of this Grant Condition; or
  - ii. Has an employee who is determined by the agency official authorized to terminate the Grant to have violated a prohibition in paragraph (a) of this Grant Condition through conduct that is either –
    - a) Associated with performance under this Grant; or
    - b) Imputed to you or the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR Part 180, “OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement),” as implemented by our agency at 2 CFR Part 1200.
- c. *Provision applicable to a recipient other than a private entity.* We as the Federal awarding agency may unilaterally terminate this Grant, without penalty, if a subrecipient that is a private entity –
- 1. Is determined to have violated an applicable prohibition in paragraph (a) of this Grant Condition; or
  - 2. Has an employee who is determined by the agency official authorized to terminate the Grant to have violated an applicable prohibition in paragraph (a) of this Grant Condition through conduct that is either –
    - i. Associated with performance under this Grant; or
    - ii. Imputed to the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR Part 180, “OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement),” as implemented by our agency at 2 CFR Part 1200.
- d. *Provisions applicable to any recipient.*
- 1. You must inform us immediately of any information you receive from any source alleging a violation of a prohibition in paragraph (a) of this Grant Condition.
  - 2. Our right to terminate unilaterally that is described in paragraph (a) or (b) of this Grant Condition:
    - i. Implements section 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), as amended [22 U.S.C. § 7104(g)], and
    - ii. Is in addition to all other remedies for noncompliance that are available to us under this Grant.
  - 3. You must include the requirements of paragraph (a) of this Grant Condition in any subgrant you make to a private entity.
- e. *Definitions.* For purposes of this Grant Condition:
- 1. “Employee” means either:

- i. An individual employed by you or a subrecipient who is engaged in the performance of the project or program under this Grant; or
    - ii. Another person engaged in the performance of the project or program under this Grant and not compensated by you including, but not limited to, a volunteer or individual whose services are contributed by a third party as an in-kind contribution toward cost sharing or matching requirements.
  - 2. "Force labor" means labor obtained by any of the following methods: the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.
  - 3. "Private entity":
    - i. Means any entity other than a State, local government, Indian tribe, or foreign public entity, as those terms are defined in 2 CFR § 175.25.
    - ii. Includes:
      - a) A nonprofit organization, including any nonprofit institute of higher education, hospital, or tribal organization other than one included in the definition of Indian tribe at 2 CFR § 175.25(b).
      - b) A for-profit organization.
  - 4. "Severe forms of trafficking in persons," "commercial sex act," and "coercion" have the meanings given at section 103 of the TVPA, as amended (22 U.S.C. § 7102).
23. **AIP Funded Work Included in a PFC Application.** Within 90 days of acceptance of this Grant Agreement, the Sponsor must submit to the FAA an amendment to any approved Passenger Facility Charge (PFC) application that contains an approved PFC project also covered under this Grant Agreement as described in the project application. The airport sponsor may not make any expenditure under this Grant Agreement until project work addressed under this Grant Agreement is removed from an approved PFC application by amendment.
24. **Exhibit "A" Property Map.** The Exhibit "A" Property Map dated 09/18/2014, is incorporated herein by reference or is submitted with the project application and made part of this Grant Agreement.
25. **Employee Protection from Reprisal.**
- a. Prohibition of Reprisals
    - 1. In accordance with 41 U.S.C. § 4712, an employee of a Sponsor, grantee, subgrantee, contractor, or subcontractor may not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing to a person or body described in sub-paragraph (a)(2) below, information that the employee reasonably believes is evidence of:
      - i. Gross mismanagement of a Federal grant;
      - ii. Gross waste of Federal funds;
      - iii. An abuse of authority relating to implementation or use of Federal funds;
      - iv. A substantial and specific danger to public health or safety; or

- v. A violation of law, rule, or regulation related to a Federal grant.
2. **Persons and bodies covered.** The persons and bodies to which a disclosure by an employee is covered are as follows:
    - i. A member of Congress or a representative of a committee of Congress;
    - ii. An Inspector General;
    - iii. The Government Accountability Office;
    - iv. A Federal employee responsible for contract or grant oversight or management at the relevant agency;
    - v. A court or grand jury;
    - vi. A management official or other employee of the Sponsor, contractor, or subcontractor who has the responsibility to investigate, discover, or address misconduct; or
    - vii. An authorized official of the Department of Justice or other law enforcement agency.
- b. **Investigation of Complaints.**
    1. **Submission of Complaint.** A person who believes that they have been subjected to a reprisal prohibited by paragraph (a) of this Condition may submit a complaint regarding the reprisal to the Office of Inspector General (OIG) for the U.S. Department of Transportation.
    2. **Time Limitation for Submittal of a Complaint.** A complaint may not be brought under this subsection more than three years after the date on which the alleged reprisal took place.
    3. **Required Actions of the Inspector General.** Actions, limitations, and exceptions of the Inspector General's office are established under 41 U.S.C. § 4712(b).
  - c. **Remedy and Enforcement Authority.**
    1. **Assumption of Rights to Civil Remedy.** Upon receipt of an explanation of a decision not to conduct or continue an investigation by the OIG, the person submitting a complaint assumes the right to a civil remedy under 41 U.S.C. § 4712(c)(2).
26. **Prohibited Telecommunications and Video Surveillance Services and Equipment.** The Sponsor agrees to comply with mandatory standards and policies relating to use and procurement of certain telecommunications and video surveillance services or equipment in compliance with the National Defense Authorization Act [Public Law 115-232 § 889(f)(1)] and 2 CFR § 200.216.
  27. **Critical Infrastructure Security and Resilience.** The Sponsor acknowledges that it has considered and addressed physical and cybersecurity and resilience in their project planning, design, and oversight, as determined by the DOT and the Department of Homeland Security (DHS). For airports that do not have specific DOT or DHS cybersecurity requirements, the FAA encourages the voluntary adoption of the cybersecurity requirements from the Transportation Security Administration and Federal Security Director identified for security risk Category X airports.

### SPECIAL CONDITIONS

28. **Pavement Maintenance Management Program.** The Sponsor agrees that it will implement an effective airport pavement maintenance management program as required by Airport Sponsor

Grant Assurance 11, Pavement Preventive Maintenance-Management, which is codified at 49 U.S.C. § 47105(e). The Sponsor agrees that it will use the program for the useful life of any pavement constructed, reconstructed, or repaired with Federal financial assistance at the airport. The Sponsor further agrees that the program will:

- a. Follow the current version of FAA Advisory Circular 150/5380-6, "Guidelines and Procedures for Maintenance of Airport Pavements," for specific guidelines and procedures for maintaining airport pavements, establishing an effective maintenance program, specific types of distress and its probable cause, inspection guidelines, and recommended methods of repair;
- b. Detail the procedures to be followed to assure that proper pavement maintenance, both preventive and repair, is performed;
- c. Include a Pavement Inventory, Inspection Schedule, Record Keeping, Information Retrieval, and Reference, meeting the following requirements:
  1. Pavement Inventory. The following must be depicted in an appropriate form and level of detail:
    - i. Location of all runways, taxiways, and aprons;
    - ii. Dimensions;
    - iii. Type of pavement; and,
    - iv. Year of construction or most recent major rehabilitation.
  2. Inspection Schedule.
    - i. Detailed Inspection. A detailed inspection must be performed at least once a year. If a history of recorded pavement deterioration is available, i.e., Pavement Condition Index (PCI) survey as set forth in the current version of Advisory Circular 150/5380-6, the frequency of inspections may be extended to three years.
    - ii. Drive-By Inspection. A drive-by inspection must be performed a minimum of once per month to detect unexpected changes in the pavement condition. For drive-by inspections, the date of inspection and any maintenance performed must be recorded.
  3. Record Keeping. Complete information on the findings of all detailed inspections and on the maintenance performed must be recorded and kept on file for a minimum of five years. The type of distress, location, and remedial action, scheduled or performed, must be documented. The minimum information is:
    - i. Inspection date;
    - ii. Location;
    - iii. Distress types; and
    - iv. Maintenance scheduled or performed.
  4. Information Retrieval System. The Sponsor must be able to retrieve the information and records produced by the pavement survey to provide a report to the FAA as may be required.

29. **Maintenance Project Life.** The Sponsor agrees that pavement maintenance is limited to those aircraft pavements that are in sufficiently sound condition that they do not warrant more extensive work, such as reconstruction or overlays in the immediate or near future. The Sponsor further agrees that AIP funding for the pavements maintained under this project will not be requested for more substantial type rehabilitation (more substantial than periodic maintenance) for a 5-year period following the completion of this project unless the FAA determines that the rehabilitation or reconstruction is required for safety reasons.
30. **Buy American Executive Orders.** The Sponsor agrees to abide by applicable Executive Orders in effect at the time this Grant Agreement is executed, including Executive Order 14005, Ensuring the Future Is Made in All of America by All of America's Workers.

The Sponsor's acceptance of this Offer and ratification and adoption of the Project Application incorporated herein shall be evidenced by execution of this instrument by the Sponsor, as hereinafter provided, and this Offer and Acceptance shall comprise a Grant Agreement, constituting the contractual obligations and rights of the United States and the Sponsor with respect to the accomplishment of the Project and compliance with the Grant Assurances, terms, and conditions as provided herein. Such Grant Agreement shall become effective upon the Sponsor's acceptance of this Offer.

**Please read the following information:** By signing this document, you are agreeing that you have reviewed the following consumer disclosure information and consent to transact business using electronic communications, to receive notices and disclosures electronically, and to utilize electronic signatures in lieu of using paper documents. You are not required to receive notices and disclosures or sign documents electronically. If you prefer not to do so, you may request to receive paper copies and withdraw your consent at any time.

I declare under penalty of perjury that the foregoing is true and correct.<sup>1</sup>

**UNITED STATES OF AMERICA  
FEDERAL AVIATION ADMINISTRATION**

*Laurie J. Suttmeier*  
Laurie J. Suttmeier (Sep 13, 2023 12:19 PDT)  
*(Signature)*

Laurie J. Suttmeier  
*(Typed Name)*

Manager, SFO-ADO  
*(Title of FAA Official)*

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<sup>1</sup> Knowingly and willfully providing false information to the Federal government is a violation of 18 U.S.C. § 1001 (False Statements) and could subject you to fines, imprisonment, or both.

**Part II - Acceptance**

The Sponsor does hereby ratify and adopt all assurances, statements, representations, warranties, covenants, and agreements contained in the Project Application and incorporated materials referred to in the foregoing Offer, and does hereby accept this Offer and by such acceptance agrees to comply with all of the Grant Assurances, terms, and conditions in this Offer and in the Project Application.

**Please read the following information:** By signing this document, you are agreeing that you have reviewed the following consumer disclosure information and consent to transact business using electronic communications, to receive notices and disclosures electronically, and to utilize electronic signatures in lieu of using paper documents. You are not required to receive notices and disclosures or sign documents electronically. If you prefer not to do so, you may request to receive paper copies and withdraw your consent at any time.

I declare under penalty of perjury that the foregoing is true and correct.<sup>2</sup>

Dated September 15, 2023

City of Tracy

*(Name of Sponsor)*

Nancy Young

Nancy Young (Sep 15, 2023 12:00 PDT)

*(Signature of Sponsor's Authorized Official)*

**By:** Nancy Young

*(Typed Name of Sponsor's Authorized Official)*

**Title:** Mayor

*(Title of Sponsor's Authorized Official)*

.....

<sup>2</sup> Knowingly and willfully providing false information to the Federal government is a violation of 18 U.S.C. § 1001 (False Statements) and could subject you to fines, imprisonment, or both.

**CERTIFICATE OF SPONSOR’S ATTORNEY**

I, Bijal M. Patel, acting as Attorney for the Sponsor do hereby certify:

That in my opinion the Sponsor is empowered to enter into the foregoing Grant Agreement under the laws of the State of California. Further, I have examined the foregoing Grant Agreement and the actions taken by said Sponsor and Sponsor’s official representative, who has been duly authorized to execute this Grant Agreement, which is in all respects due and proper and in accordance with the laws of the said State; and Title 49, United States Code (U.S.C.), Chapters 471 and 475; 49 U.S.C. §§ 40101 et seq., and 48103; FAA Reauthorization Act of 2018 (Public Law Number 115-254); the Department of Transportation Appropriations Act, 2021 (Public Law 116-260, Division L); the Consolidated Appropriations Act, 2022 (Public Law 117-103); Consolidated Appropriations Act, 2023 (Public Law 117-328); and the representations contained in the Project Application. In addition, for grants involving projects to be carried out on property not owned by the Sponsor, there are no legal impediments that will prevent full performance by the Sponsor. Further, it is my opinion that the said Grant Agreement constitutes a legal and binding obligation of the Sponsor in accordance with the terms thereof.

**Please read the following information:** By signing this document, you are agreeing that you have reviewed the following consumer disclosure information and consent to transact business using electronic communications, to receive notices and disclosures electronically, and to utilize electronic signatures in lieu of using paper documents. You are not required to receive notices and disclosures or sign documents electronically. If you prefer not to do so, you may request to receive paper copies and withdraw your consent at any time.

I declare under penalty of perjury that the foregoing is true and correct.<sup>3</sup>

Dated at September 15, 2023

  
By: Bijal M. Patel (Sep 15, 2023 12:37 PDT)  
*(Signature of Sponsor’s Attorney)*

<sup>3</sup> Knowingly and willfully providing false information to the Federal government is a violation of 18 U.S.C. § 1001 (False Statements) and could subject you to fines, imprisonment, or both.

## **ASSURANCES**

### **AIRPORT SPONSORS**

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#### **A. General.**

1. These assurances shall be complied with in the performance of grant agreements for airport development, airport planning, and noise compatibility program grants for airport sponsors.
2. These assurances are required to be submitted as part of the project application by sponsors requesting funds under the provisions of Title 49, U.S.C., subtitle VII, as amended. As used herein, the term "public agency sponsor" means a public agency with control of a public-use airport; the term "private sponsor" means a private owner of a public-use airport; and the term "sponsor" includes both public agency sponsors and private sponsors.
3. Upon acceptance of this grant offer by the sponsor, these assurances are incorporated in and become part of this Grant Agreement.

#### **B. Duration and Applicability.**

1. **Airport development or Noise Compatibility Program Projects Undertaken by a Public Agency Sponsor.**

The terms, conditions and assurances of this Grant Agreement shall remain in full force and effect throughout the useful life of the facilities developed or equipment acquired for an airport development or noise compatibility program project, or throughout the useful life of the project items installed within a facility under a noise compatibility program project, but in any event not to exceed twenty (20) years from the date of acceptance of a grant offer of Federal funds for the project. However, there shall be no limit on the duration of the assurances regarding Exclusive Rights and Airport Revenue so long as the airport is used as an airport. There shall be no limit on the duration of the terms, conditions, and assurances with respect to real property acquired with federal funds. Furthermore, the duration of the Civil Rights assurance shall be specified in the assurances.

2. **Airport Development or Noise Compatibility Projects Undertaken by a Private Sponsor.**

The preceding paragraph (1) also applies to a private sponsor except that the useful life of project items installed within a facility or the useful life of the facilities developed or equipment acquired under an airport development or noise compatibility program project shall be no less than ten (10) years from the date of acceptance of Federal aid for the project.

3. **Airport Planning Undertaken by a Sponsor.**

Unless otherwise specified in this Grant Agreement, only Assurances 1, 2, 3, 5, 6, 13, 18, 23, 25, 30, 32, 33, 34, and 37 in Section C apply to planning projects. The terms, conditions, and assurances of this Grant Agreement shall remain in full force and effect during the life of the project; there shall be no limit on the duration of the assurances regarding Exclusive Rights and Airport Revenue so long as the airport is used as an airport.

#### **C. Sponsor Certification.**

The sponsor hereby assures and certifies, with respect to this grant that:

## 1. General Federal Requirements

It will comply with all applicable Federal laws, regulations, executive orders, policies, guidelines, and requirements as they relate to the application, acceptance, and use of Federal funds for this Grant including but not limited to the following:

### FEDERAL LEGISLATION

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- a. 49, U.S.C., subtitle VII, as amended.
- b. Davis-Bacon Act, as amended — 40 U.S.C. §§ 3141-3144, 3146, and 3147, et seq.<sup>1</sup>
- c. Federal Fair Labor Standards Act - 29 U.S.C. § 201, et seq.
- d. Hatch Act – 5 U.S.C. § 1501, et seq.<sup>2</sup>
- e. Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 U.S.C. § 4601, et seq.<sup>1, 2</sup>
- f. National Historic Preservation Act of 1966 – Section 106 - 54 U.S.C. § 306108.1.<sup>1</sup>
- g. Archeological and Historic Preservation Act of 1974 - 54 U.S.C. § 312501, et seq.<sup>1</sup>
- h. Native Americans Grave Repatriation Act - 25 U.S.C. Section § 3001, et seq.
- i. Clean Air Act, P.L. 90-148, as amended - 42 U.S.C. § 7401, et seq.
- j. Coastal Zone Management Act, P.L. 92-583, as amended - 16 U.S.C. § 1451, et seq.
- k. Flood Disaster Protection Act of 1973 – Section 102(a) - 42 U.S.C. § 4012a.<sup>1</sup>
- l. 49 U.S.C. § 303, (formerly known as Section 4(f)).
- m. Rehabilitation Act of 1973 - 29 U.S.C. § 794.
- n. Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252) (prohibits discrimination on the basis of race, color, national origin).
- o. Americans with Disabilities Act of 1990, as amended, (42 U.S.C. § 12101 et seq.) (prohibits discrimination on the basis of disability).
- p. Age Discrimination Act of 1975 - 42 U.S.C. § 6101, et seq.
- q. American Indian Religious Freedom Act, P.L. 95-341, as amended.
- r. Architectural Barriers Act of 1968, as amended - 42 U.S.C. § 4151, et seq.<sup>1</sup>
- s. Powerplant and Industrial Fuel Use Act of 1978 – Section 403 - 42 U.S.C. § 8373.<sup>1</sup>
- t. Contract Work Hours and Safety Standards Act - 40 U.S.C. § 3701, et seq.<sup>1</sup>
- u. Copeland Anti-kickback Act - 18 U.S.C. § 874.<sup>1</sup>
- v. National Environmental Policy Act of 1969 - 42 U.S.C. § 4321, et seq.<sup>1</sup>
- w. Wild and Scenic Rivers Act, P.L. 90-542, as amended – 16 U.S.C. § 1271, et seq.
- x. Single Audit Act of 1984 - 31 U.S.C. § 7501, et seq.<sup>2</sup>
- y. Drug-Free Workplace Act of 1988 - 41 U.S.C. §§ 8101 through 8105.
- z. The Federal Funding Accountability and Transparency Act of 2006, as amended (P.L. 109-282, as amended by section 6202 of P.L. 110-252).

- aa. Civil Rights Restoration Act of 1987, P.L. 100-259.
- bb. Build America, Buy America Act, P.L. 117-58, Title IX.

#### **EXECUTIVE ORDERS**

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- a. Executive Order 11246 – Equal Employment Opportunity<sup>1</sup>
- b. Executive Order 11990 – Protection of Wetlands
- c. Executive Order 11998 – Flood Plain Management
- d. Executive Order 12372 – Intergovernmental Review of Federal Programs
- e. Executive Order 12699 – Seismic Safety of Federal and Federally Assisted New Building Construction<sup>1</sup>
- f. Executive Order 12898 – Environmental Justice
- g. Executive Order 13166 – Improving Access to Services for Persons with Limited English Proficiency
- h. Executive Order 13985 – Executive Order on Advancing Racial Equity and Support for Underserved Communities Through the Federal Government
- i. Executive Order 13988 – Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation
- j. Executive Order 14005 – Ensuring the Future is Made in all of America by All of America’s Workers
- k. Executive Order 14008 – Tackling the Climate Crisis at Home and Abroad

#### **FEDERAL REGULATIONS**

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- a. 2 CFR Part 180 – OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement).
- b. 2 CFR Part 200 – Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.<sup>4,5</sup>
- c. 2 CFR Part 1200 – Nonprocurement Suspension and Debarment.
- d. 14 CFR Part 13 – Investigative and Enforcement Procedures.
- e. 14 CFR Part 16 – Rules of Practice For Federally-Assisted Airport Enforcement Proceedings.
- f. 14 CFR Part 150 – Airport Noise Compatibility Planning.
- g. 28 CFR Part 35 – Nondiscrimination on the Basis of Disability in State and Local Government Services.
- h. 28 CFR § 50.3 – U.S. Department of Justice Guidelines for the Enforcement of Title VI of the Civil Rights Act of 1964.
- i. 29 CFR Part 1 – Procedures for Predetermination of Wage Rates.<sup>1</sup>
- j. 29 CFR Part 3 – Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States.<sup>1</sup>

- k. 29 CFR Part 5 – Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction (Also Labor Standards Provisions Applicable to Nonconstruction Contracts Subject to the Contract Work Hours and Safety Standards Act).<sup>1</sup>
- l. 41 CFR Part 60 – Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor (Federal and Federally-assisted contracting requirements).<sup>1</sup>
- m. 49 CFR Part 20 – New Restrictions on Lobbying.
- n. 49 CFR Part 21 – Nondiscrimination in Federally-Assisted Programs of the Department of Transportation - Effectuation of Title VI of the Civil Rights Act of 1964.
- o. 49 CFR Part 23 – Participation by Disadvantage Business Enterprise in Airport Concessions.
- p. 49 CFR Part 24 – Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally-Assisted Programs.<sup>1 2</sup>
- q. 49 CFR Part 26 – Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs.
- r. 49 CFR Part 27 – Nondiscrimination on the Basis of Disability in Programs or Activities Receiving Federal Financial Assistance.<sup>1</sup>
- s. 49 CFR Part 28 – Enforcement of Nondiscrimination on the Basis of Handicap in Programs or Activities Conducted by the Department of Transportation.
- t. 49 CFR Part 30 – Denial of Public Works Contracts to Suppliers of Goods and Services of Countries That Deny Procurement Market Access to U.S. Contractors.
- u. 49 CFR Part 32 – Governmentwide Requirements for Drug-Free Workplace (Financial Assistance).
- v. 49 CFR Part 37 – Transportation Services for Individuals with Disabilities (ADA).
- w. 49 CFR Part 38 – Americans with Disabilities Act (ADA) Accessibility Specifications for Transportation Vehicles.
- x. 49 CFR Part 41 – Seismic Safety.

#### ***FOOTNOTES TO ASSURANCE (C)(1)***

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- <sup>1</sup> These laws do not apply to airport planning sponsors.
- <sup>2</sup> These laws do not apply to private sponsors.
- <sup>3</sup> 2 CFR Part 200 contains requirements for State and Local Governments receiving Federal assistance. Any requirement levied upon State and Local Governments by this regulation shall apply where applicable to private sponsors receiving Federal assistance under Title 49, United States Code.
- <sup>4</sup> Cost principles established in 2 CFR part 200 subpart E must be used as guidelines for determining the eligibility of specific types of expenses.
- <sup>5</sup> Audit requirements established in 2 CFR part 200 subpart F are the guidelines for audits.

#### **SPECIFIC ASSURANCES**

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Specific assurances required to be included in grant agreements by any of the above laws, regulations or circulars are incorporated by reference in this grant agreement.

**2. Responsibility and Authority of the Sponsor.****a. Public Agency Sponsor:**

It has legal authority to apply for this Grant, and to finance and carry out the proposed project; that a resolution, motion or similar action has been duly adopted or passed as an official act of the applicant's governing body authorizing the filing of the application, including all understandings and assurances contained therein, and directing and authorizing the person identified as the official representative of the applicant to act in connection with the application and to provide such additional information as may be required.

**b. Private Sponsor:**

It has legal authority to apply for this Grant and to finance and carry out the proposed project and comply with all terms, conditions, and assurances of this Grant Agreement. It shall designate an official representative and shall in writing direct and authorize that person to file this application, including all understandings and assurances contained therein; to act in connection with this application; and to provide such additional information as may be required.

**3. Sponsor Fund Availability.**

It has sufficient funds available for that portion of the project costs which are not to be paid by the United States. It has sufficient funds available to assure operation and maintenance of items funded under this Grant Agreement which it will own or control.

**4. Good Title.**

- a. It, a public agency or the Federal government, holds good title, satisfactory to the Secretary, to the landing area of the airport or site thereof, or will give assurance satisfactory to the Secretary that good title will be acquired.
- b. For noise compatibility program projects to be carried out on the property of the sponsor, it holds good title satisfactory to the Secretary to that portion of the property upon which Federal funds will be expended or will give assurance to the Secretary that good title will be obtained.

**5. Preserving Rights and Powers.**

- a. It will not take or permit any action which would operate to deprive it of any of the rights and powers necessary to perform any or all of the terms, conditions, and assurances in this Grant Agreement without the written approval of the Secretary, and will act promptly to acquire, extinguish or modify any outstanding rights or claims of right of others which would interfere with such performance by the sponsor. This shall be done in a manner acceptable to the Secretary.
- b. Subject to the FAA Act of 2018, Public Law 115-254, Section 163, it will not sell, lease, encumber, or otherwise transfer or dispose of any part of its title or other interests in the property shown on Exhibit A to this application or, for a noise compatibility program project, that portion of the property upon which Federal funds have been expended, for the duration of the terms, conditions, and assurances in this Grant Agreement without approval by the Secretary. If the transferee is found by the Secretary to be eligible under Title 49, United States Code, to assume the obligations of this Grant Agreement and to have the power, authority, and financial resources to carry out all such obligations, the sponsor shall insert in the contract or

document transferring or disposing of the sponsor's interest, and make binding upon the transferee all of the terms, conditions, and assurances contained in this Grant Agreement.

- c. For all noise compatibility program projects which are to be carried out by another unit of local government or are on property owned by a unit of local government other than the sponsor, it will enter into an agreement with that government. Except as otherwise specified by the Secretary, that agreement shall obligate that government to the same terms, conditions, and assurances that would be applicable to it if it applied directly to the FAA for a grant to undertake the noise compatibility program project. That agreement and changes thereto must be satisfactory to the Secretary. It will take steps to enforce this agreement against the local government if there is substantial non-compliance with the terms of the agreement.
- d. For noise compatibility program projects to be carried out on privately owned property, it will enter into an agreement with the owner of that property which includes provisions specified by the Secretary. It will take steps to enforce this agreement against the property owner whenever there is substantial non-compliance with the terms of the agreement.
- e. If the sponsor is a private sponsor, it will take steps satisfactory to the Secretary to ensure that the airport will continue to function as a public-use airport in accordance with these assurances for the duration of these assurances.
- f. If an arrangement is made for management and operation of the airport by any agency or person other than the sponsor or an employee of the sponsor, the sponsor will reserve sufficient rights and authority to ensure that the airport will be operated and maintained in accordance with Title 49, United States Code, the regulations and the terms, conditions and assurances in this Grant Agreement and shall ensure that such arrangement also requires compliance therewith.
- g. Sponsors of commercial service airports will not permit or enter into any arrangement that results in permission for the owner or tenant of a property used as a residence, or zoned for residential use, to taxi an aircraft between that property and any location on airport. Sponsors of general aviation airports entering into any arrangement that results in permission for the owner of residential real property adjacent to or near the airport must comply with the requirements of Sec. 136 of Public Law 112-95 and the sponsor assurances.

#### **6. Consistency with Local Plans.**

The project is reasonably consistent with plans (existing at the time of submission of this application) of public agencies that are authorized by the State in which the project is located to plan for the development of the area surrounding the airport.

#### **7. Consideration of Local Interest.**

It has given fair consideration to the interest of communities in or near where the project may be located.

#### **8. Consultation with Users.**

In making a decision to undertake any airport development project under Title 49, United States Code, it has undertaken reasonable consultations with affected parties using the airport at which project is proposed.

**9. Public Hearings.**

In projects involving the location of an airport, an airport runway, or a major runway extension, it has afforded the opportunity for public hearings for the purpose of considering the economic, social, and environmental effects of the airport or runway location and its consistency with goals and objectives of such planning as has been carried out by the community and it shall, when requested by the Secretary, submit a copy of the transcript of such hearings to the Secretary. Further, for such projects, it has on its management board either voting representation from the communities where the project is located or has advised the communities that they have the right to petition the Secretary concerning a proposed project.

**10. Metropolitan Planning Organization.**

In projects involving the location of an airport, an airport runway, or a major runway extension at a medium or large hub airport, the sponsor has made available to and has provided upon request to the metropolitan planning organization in the area in which the airport is located, if any, a copy of the proposed amendment to the airport layout plan to depict the project and a copy of any airport master plan in which the project is described or depicted.

**11. Pavement Preventive Maintenance-Management.**

With respect to a project approved after January 1, 1995, for the replacement or reconstruction of pavement at the airport, it assures or certifies that it has implemented an effective airport pavement maintenance-management program and it assures that it will use such program for the useful life of any pavement constructed, reconstructed or repaired with Federal financial assistance at the airport. It will provide such reports on pavement condition and pavement management programs as the Secretary determines may be useful.

**12. Terminal Development Prerequisites.**

For projects which include terminal development at a public use airport, as defined in Title 49, it has, on the date of submittal of the project grant application, all the safety equipment required for certification of such airport under 49 U.S.C. § 44706, and all the security equipment required by rule or regulation, and has provided for access to the passenger enplaning and deplaning area of such airport to passengers enplaning and deplaning from aircraft other than air carrier aircraft.

**13. Accounting System, Audit, and Record Keeping Requirements.**

- a. It shall keep all project accounts and records which fully disclose the amount and disposition by the recipient of the proceeds of this Grant, the total cost of the project in connection with which this Grant is given or used, and the amount or nature of that portion of the cost of the project supplied by other sources, and such other financial records pertinent to the project. The accounts and records shall be kept in accordance with an accounting system that will facilitate an effective audit in accordance with the Single Audit Act of 1984.
- b. It shall make available to the Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, for the purpose of audit and examination, any books, documents, papers, and records of the recipient that are pertinent to this Grant. The Secretary may require that an appropriate audit be conducted by a recipient. In any case in which an independent audit is made of the accounts of a sponsor relating to the disposition of the proceeds of a Grant or relating to the project in connection with which this Grant was given or used, it shall file a certified copy of such audit with the Comptroller General of the United

States not later than six (6) months following the close of the fiscal year for which the audit was made.

**14. Minimum Wage Rates.**

It shall include, in all contracts in excess of \$2,000 for work on any projects funded under this Grant Agreement which involve labor, provisions establishing minimum rates of wages, to be predetermined by the Secretary of Labor under 40 U.S.C. §§ 3141-3144, 3146, and 3147, Public Building, Property, and Works), which contractors shall pay to skilled and unskilled labor, and such minimum rates shall be stated in the invitation for bids and shall be included in proposals or bids for the work.

**15. Veteran's Preference.**

It shall include in all contracts for work on any project funded under this Grant Agreement which involve labor, such provisions as are necessary to insure that, in the employment of labor (except in executive, administrative, and supervisory positions), preference shall be given to Vietnam era veterans, Persian Gulf veterans, Afghanistan-Iraq war veterans, disabled veterans, and small business concerns owned and controlled by disabled veterans as defined in 49 U.S.C. § 47112. However, this preference shall apply only where the individuals are available and qualified to perform the work to which the employment relates.

**16. Conformity to Plans and Specifications.**

It will execute the project subject to plans, specifications, and schedules approved by the Secretary. Such plans, specifications, and schedules shall be submitted to the Secretary prior to commencement of site preparation, construction, or other performance under this Grant Agreement, and, upon approval of the Secretary, shall be incorporated into this Grant Agreement. Any modification to the approved plans, specifications, and schedules shall also be subject to approval of the Secretary, and incorporated into this Grant Agreement.

**17. Construction Inspection and Approval.**

It will provide and maintain competent technical supervision at the construction site throughout the project to assure that the work conforms to the plans, specifications, and schedules approved by the Secretary for the project. It shall subject the construction work on any project contained in an approved project application to inspection and approval by the Secretary and such work shall be in accordance with regulations and procedures prescribed by the Secretary. Such regulations and procedures shall require such cost and progress reporting by the sponsor or sponsors of such project as the Secretary shall deem necessary.

**18. Planning Projects.**

In carrying out planning projects:

- a. It will execute the project in accordance with the approved program narrative contained in the project application or with the modifications similarly approved.
- b. It will furnish the Secretary with such periodic reports as required pertaining to the planning project and planning work activities.
- c. It will include in all published material prepared in connection with the planning project a notice that the material was prepared under a grant provided by the United States.

- d. It will make such material available for examination by the public, and agrees that no material prepared with funds under this project shall be subject to copyright in the United States or any other country.
- e. It will give the Secretary unrestricted authority to publish, disclose, distribute, and otherwise use any of the material prepared in connection with this grant.
- f. It will grant the Secretary the right to disapprove the sponsor's employment of specific consultants and their subcontractors to do all or any part of this project as well as the right to disapprove the proposed scope and cost of professional services.
- g. It will grant the Secretary the right to disapprove the use of the sponsor's employees to do all or any part of the project.
- h. It understands and agrees that the Secretary's approval of this project grant or the Secretary's approval of any planning material developed as part of this grant does not constitute or imply any assurance or commitment on the part of the Secretary to approve any pending or future application for a Federal airport grant.

#### **19. Operation and Maintenance.**

- a. The airport and all facilities which are necessary to serve the aeronautical users of the airport, other than facilities owned or controlled by the United States, shall be operated at all times in a safe and serviceable condition and in accordance with the minimum standards as may be required or prescribed by applicable Federal, State and local agencies for maintenance and operation. It will not cause or permit any activity or action thereon which would interfere with its use for airport purposes. It will suitably operate and maintain the airport and all facilities thereon or connected therewith, with due regard to climatic and flood conditions. Any proposal to temporarily close the airport for non-aeronautical purposes must first be approved by the Secretary. In furtherance of this assurance, the sponsor will have in effect arrangements for:
  - 1. Operating the airport's aeronautical facilities whenever required;
  - 2. Promptly marking and lighting hazards resulting from airport conditions, including temporary conditions; and
  - 3. Promptly notifying pilots of any condition affecting aeronautical use of the airport. Nothing contained herein shall be construed to require that the airport be operated for aeronautical use during temporary periods when snow, flood, or other climatic conditions interfere with such operation and maintenance. Further, nothing herein shall be construed as requiring the maintenance, repair, restoration, or replacement of any structure or facility which is substantially damaged or destroyed due to an act of God or other condition or circumstance beyond the control of the sponsor.
- b. It will suitably operate and maintain noise compatibility program items that it owns or controls upon which Federal funds have been expended.

#### **20. Hazard Removal and Mitigation.**

It will take appropriate action to assure that such terminal airspace as is required to protect instrument and visual operations to the airport (including established minimum flight altitudes) will be adequately cleared and protected by removing, lowering, relocating, marking, or lighting or otherwise mitigating existing airport hazards and by preventing the establishment or creation of future airport hazards.

**21. Compatible Land Use.**

It will take appropriate action, to the extent reasonable, including the adoption of zoning laws, to restrict the use of land adjacent to or in the immediate vicinity of the airport to activities and purposes compatible with normal airport operations, including landing and takeoff of aircraft. In addition, if the project is for noise compatibility program implementation, it will not cause or permit any change in land use, within its jurisdiction, that will reduce its compatibility, with respect to the airport, of the noise compatibility program measures upon which Federal funds have been expended.

**22. Economic Nondiscrimination.**

- a. It will make the airport available as an airport for public use on reasonable terms and without unjust discrimination to all types, kinds and classes of aeronautical activities, including commercial aeronautical activities offering services to the public at the airport.
- b. In any agreement, contract, lease, or other arrangement under which a right or privilege at the airport is granted to any person, firm, or corporation to conduct or to engage in any aeronautical activity for furnishing services to the public at the airport, the sponsor will insert and enforce provisions requiring the contractor to:
  1. Furnish said services on a reasonable, and not unjustly discriminatory, basis to all users thereof, and
  2. Charge reasonable, and not unjustly discriminatory, prices for each unit or service, provided that the contractor may be allowed to make reasonable and nondiscriminatory discounts, rebates, or other similar types of price reductions to volume purchasers.
- c. Each fixed-based operator at the airport shall be subject to the same rates, fees, rentals, and other charges as are uniformly applicable to all other fixed-based operators making the same or similar uses of such airport and utilizing the same or similar facilities.
- d. Each air carrier using such airport shall have the right to service itself or to use any fixed-based operator that is authorized or permitted by the airport to serve any air carrier at such airport.
- e. Each air carrier using such airport (whether as a tenant, non-tenant, or subtenant of another air carrier tenant) shall be subject to such nondiscriminatory and substantially comparable rules, regulations, conditions, rates, fees, rentals, and other charges with respect to facilities directly and substantially related to providing air transportation as are applicable to all such air carriers which make similar use of such airport and utilize similar facilities, subject to reasonable classifications such as tenants or non-tenants and signatory carriers and non-signatory carriers. Classification or status as tenant or signatory shall not be unreasonably withheld by any airport provided an air carrier assumes obligations substantially similar to those already imposed on air carriers in such classification or status.
- f. It will not exercise or grant any right or privilege which operates to prevent any person, firm, or corporation operating aircraft on the airport from performing any services on its own aircraft with its own employees (including, but not limited to maintenance, repair, and fueling) that it may choose to perform.
- g. In the event the sponsor itself exercises any of the rights and privileges referred to in this assurance, the services involved will be provided on the same conditions as would apply to the furnishing of such services by commercial aeronautical service providers authorized by the sponsor under these provisions.

- h. The sponsor may establish such reasonable, and not unjustly discriminatory, conditions to be met by all users of the airport as may be necessary for the safe and efficient operation of the airport.
- i. The sponsor may prohibit or limit any given type, kind or class of aeronautical use of the airport if such action is necessary for the safe operation of the airport or necessary to serve the civil aviation needs of the public.

### **23. Exclusive Rights.**

It will permit no exclusive right for the use of the airport by any person providing, or intending to provide, aeronautical services to the public. For purposes of this paragraph, the providing of the services at an airport by a single fixed-based operator shall not be construed as an exclusive right if both of the following apply:

- a. It would be unreasonably costly, burdensome, or impractical for more than one fixed-based operator to provide such services, and
- b. If allowing more than one fixed-based operator to provide such services would require the reduction of space leased pursuant to an existing agreement between such single fixed-based operator and such airport. It further agrees that it will not, either directly or indirectly, grant or permit any person, firm, or corporation, the exclusive right at the airport to conduct any aeronautical activities, including, but not limited to charter flights, pilot training, aircraft rental and sightseeing, aerial photography, crop dusting, aerial advertising and surveying, air carrier operations, aircraft sales and services, sale of aviation petroleum products whether or not conducted in conjunction with other aeronautical activity, repair and maintenance of aircraft, sale of aircraft parts, and any other activities which because of their direct relationship to the operation of aircraft can be regarded as an aeronautical activity, and that it will terminate any exclusive right to conduct an aeronautical activity now existing at such an airport before the grant of any assistance under Title 49, United States Code.

### **24. Fee and Rental Structure.**

It will maintain a fee and rental structure for the facilities and services at the airport which will make the airport as self-sustaining as possible under the circumstances existing at the particular airport, taking into account such factors as the volume of traffic and economy of collection. No part of the Federal share of an airport development, airport planning or noise compatibility project for which a Grant is made under Title 49, United States Code, the Airport and Airway Improvement Act of 1982, the Federal Airport Act or the Airport and Airway Development Act of 1970 shall be included in the rate basis in establishing fees, rates, and charges for users of that airport.

### **25. Airport Revenues.**

- a. All revenues generated by the airport and any local taxes on aviation fuel established after December 30, 1987, will be expended by it for the capital or operating costs of the airport; the local airport system; or other local facilities which are owned or operated by the owner or operator of the airport and which are directly and substantially related to the actual air transportation of passengers or property; or for noise mitigation purposes on or off the airport. The following exceptions apply to this paragraph:
  - 1. If covenants or assurances in debt obligations issued before September 3, 1982, by the owner or operator of the airport, or provisions enacted before September 3, 1982, in governing statutes controlling the owner or operator's financing, provide for the use of the

revenues from any of the airport owner or operator's facilities, including the airport, to support not only the airport but also the airport owner or operator's general debt obligations or other facilities, then this limitation on the use of all revenues generated by the airport (and, in the case of a public airport, local taxes on aviation fuel) shall not apply.

2. If the Secretary approves the sale of a privately owned airport to a public sponsor and provides funding for any portion of the public sponsor's acquisition of land, this limitation on the use of all revenues generated by the sale shall not apply to certain proceeds from the sale. This is conditioned on repayment to the Secretary by the private owner of an amount equal to the remaining unamortized portion (amortized over a 20-year period) of any airport improvement grant made to the private owner for any purpose other than land acquisition on or after October 1, 1996, plus an amount equal to the federal share of the current fair market value of any land acquired with an airport improvement grant made to that airport on or after October 1, 1996.
3. Certain revenue derived from or generated by mineral extraction, production, lease, or other means at a general aviation airport (as defined at 49 U.S.C. § 47102), if the FAA determines the airport sponsor meets the requirements set forth in Section 813 of Public Law 112-95
  - b. As part of the annual audit required under the Single Audit Act of 1984, the sponsor will direct that the audit will review, and the resulting audit report will provide an opinion concerning, the use of airport revenue and taxes in paragraph (a), and indicating whether funds paid or transferred to the owner or operator are paid or transferred in a manner consistent with Title 49, United States Code and any other applicable provision of law, including any regulation promulgated by the Secretary or Administrator.
  - c. Any civil penalties or other sanctions will be imposed for violation of this assurance in accordance with the provisions of 49 U.S.C. § 47107.

## 26. Reports and Inspections.

It will:

- a. submit to the Secretary such annual or special financial and operations reports as the Secretary may reasonably request and make such reports available to the public; make available to the public at reasonable times and places a report of the airport budget in a format prescribed by the Secretary;
- b. for airport development projects, make the airport and all airport records and documents affecting the airport, including deeds, leases, operation and use agreements, regulations and other instruments, available for inspection by any duly authorized agent of the Secretary upon reasonable request;
- c. for noise compatibility program projects, make records and documents relating to the project and continued compliance with the terms, conditions, and assurances of this Grant Agreement including deeds, leases, agreements, regulations, and other instruments, available for inspection by any duly authorized agent of the Secretary upon reasonable request; and
- d. in a format and time prescribed by the Secretary, provide to the Secretary and make available to the public following each of its fiscal years, an annual report listing in detail:
  1. all amounts paid by the airport to any other unit of government and the purposes for which each such payment was made; and

2. all services and property provided by the airport to other units of government and the amount of compensation received for provision of each such service and property.

**27. Use by Government Aircraft.**

It will make available all of the facilities of the airport developed with Federal financial assistance and all those usable for landing and takeoff of aircraft to the United States for use by Government aircraft in common with other aircraft at all times without charge, except, if the use by Government aircraft is substantial, charge may be made for a reasonable share, proportional to such use, for the cost of operating and maintaining the facilities used. Unless otherwise determined by the Secretary, or otherwise agreed to by the sponsor and the using agency, substantial use of an airport by Government aircraft will be considered to exist when operations of such aircraft are in excess of those which, in the opinion of the Secretary, would unduly interfere with use of the landing areas by other authorized aircraft, or during any calendar month that:

- a. Five (5) or more Government aircraft are regularly based at the airport or on land adjacent thereto; or
- b. The total number of movements (counting each landing as a movement) of Government aircraft is 300 or more, or the gross accumulative weight of Government aircraft using the airport (the total movement of Government aircraft multiplied by gross weights of such aircraft) is in excess of five million pounds.

**28. Land for Federal Facilities.**

It will furnish without cost to the Federal Government for use in connection with any air traffic control or air navigation activities, or weather-reporting and communication activities related to air traffic control, any areas of land or water, or estate therein as the Secretary considers necessary or desirable for construction, operation, and maintenance at Federal expense of space or facilities for such purposes. Such areas or any portion thereof will be made available as provided herein within four months after receipt of a written request from the Secretary.

**29. Airport Layout Plan.**

- a. Subject to the FAA Reauthorization Act of 2018, Public Law 115-254, Section 163, it will keep up to date at all times an airport layout plan of the airport showing:
  1. boundaries of the airport and all proposed additions thereto, together with the boundaries of all offsite areas owned or controlled by the sponsor for airport purposes and proposed additions thereto;
  2. the location and nature of all existing and proposed airport facilities and structures (such as runways, taxiways, aprons, terminal buildings, hangars and roads), including all proposed extensions and reductions of existing airport facilities;
  3. the location of all existing and proposed non-aviation areas and of all existing improvements thereon; and
  4. all proposed and existing access points used to taxi aircraft across the airport's property boundary.

Such airport layout plans and each amendment, revision, or modification thereof, shall be subject to the approval of the Secretary which approval shall be evidenced by the signature of a duly authorized representative of the Secretary on the face of the airport layout plan. The

sponsor will not make or permit any changes or alterations in the airport or any of its facilities which are not in conformity with the airport layout plan as approved by the Secretary and which might, in the opinion of the Secretary, adversely affect the safety, utility or efficiency of the airport.

- b. Subject to the FAA Reauthorization Act of 2018, Public Law 115-254, Section 163, if a change or alteration in the airport or the facilities is made which the Secretary determines adversely affects the safety, utility, or efficiency of any federally owned, leased, or funded property on or off the airport and which is not in conformity with the airport layout plan as approved by the Secretary, the owner or operator will, if requested, by the Secretary:
  1. eliminate such adverse effect in a manner approved by the Secretary; or
  2. bear all costs of relocating such property (or replacement thereof) to a site acceptable to the Secretary and all costs of restoring such property (or replacement thereof) to the level of safety, utility, efficiency, and cost of operation existing before the unapproved change in the airport or its facilities except in the case of a relocation or replacement of an existing airport facility due to a change in the Secretary's design standards beyond the control of the airport sponsor.

### 30. Civil Rights.

It will promptly take any measures necessary to ensure that no person in the United States shall, on the grounds of race, color, and national origin (including limited English proficiency) in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§ 2000d to 2000d-4); creed and sex (including sexual orientation and gender identity) per 49 U.S.C. § 47123 and related requirements; age per the Age Discrimination Act of 1975 and related requirements; or disability per the Americans with Disabilities Act of 1990 and related requirements, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination in any program and activity conducted with, or benefiting from, funds received from this Grant.

- a. Using the definitions of activity, facility, and program as found and defined in 49 CFR §§ 21.23(b) and 21.23(e), the sponsor will facilitate all programs, operate all facilities, or conduct all programs in compliance with all non-discrimination requirements imposed by or pursuant to these assurances.
- b. Applicability
  1. Programs and Activities. If the sponsor has received a grant (or other federal assistance) for any of the sponsor's program or activities, these requirements extend to all of the sponsor's programs and activities.
  2. Facilities. Where it receives a grant or other federal financial assistance to construct, expand, renovate, remodel, alter, or acquire a facility, or part of a facility, the assurance extends to the entire facility and facilities operated in connection therewith.
  3. Real Property. Where the sponsor receives a grant or other Federal financial assistance in the form of, or for the acquisition of real property or an interest in real property, the assurance will extend to rights to space on, over, or under such property.
- c. Duration.

The sponsor agrees that it is obligated to this assurance for the period during which Federal financial assistance is extended to the program, except where the Federal financial assistance is

- to provide, or is in the form of, personal property, or real property, or interest therein, or structures or improvements thereon, in which case the assurance obligates the sponsor, or any transferee for the longer of the following periods:
1. So long as the airport is used as an airport, or for another purpose involving the provision of similar services or benefits; or
  2. So long as the sponsor retains ownership or possession of the property.
- d. Required Solicitation Language. It will include the following notification in all solicitations for bids, Requests For Proposals for work, or material under this Grant Agreement and in all proposals for agreements, including airport concessions, regardless of funding source:
- “The **(City of Tracy)**, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§ 2000d to 2000d-4) and the Regulations, hereby notifies all bidders or offerors that it will affirmatively ensure that for any contract entered into pursuant to this advertisement, [select businesses, or disadvantaged business enterprises or airport concession disadvantaged business enterprises] will be afforded full and fair opportunity to submit bids in response to this invitation and no businesses will be discriminated against on the grounds of race, color, national origin (including limited English proficiency), creed, sex (including sexual orientation and gender identity), age, or disability in consideration for an award.”
- e. Required Contract Provisions.
1. It will insert the non-discrimination contract clauses requiring compliance with the acts and regulations relative to non-discrimination in Federally-assisted programs of the Department of Transportation (DOT), and incorporating the acts and regulations into the contracts by reference in every contract or agreement subject to the non-discrimination in Federally-assisted programs of the DOT acts and regulations.
  2. It will include a list of the pertinent non-discrimination authorities in every contract that is subject to the non-discrimination acts and regulations.
  3. It will insert non-discrimination contract clauses as a covenant running with the land, in any deed from the United States effecting or recording a transfer of real property, structures, use, or improvements thereon or interest therein to a sponsor.
  4. It will insert non-discrimination contract clauses prohibiting discrimination on the basis of race, color, national origin (including limited English proficiency), creed, sex (including sexual orientation and gender identity), age, or disability as a covenant running with the land, in any future deeds, leases, license, permits, or similar instruments entered into by the sponsor with other parties:
    - a. For the subsequent transfer of real property acquired or improved under the applicable activity, project, or program; and
    - b. For the construction or use of, or access to, space on, over, or under real property acquired or improved under the applicable activity, project, or program.
- f. It will provide for such methods of administration for the program as are found by the Secretary to give reasonable guarantee that it, other recipients, sub-recipients, sub-grantees, contractors, subcontractors, consultants, transferees, successors in interest, and other participants of Federal financial assistance under such program will comply with all requirements imposed or pursuant to the acts, the regulations, and this assurance.

- g. It agrees that the United States has a right to seek judicial enforcement with regard to any matter arising under the acts, the regulations, and this assurance.

### 31. Disposal of Land.

- a. For land purchased under a grant for airport noise compatibility purposes, including land serving as a noise buffer, it will dispose of the land, when the land is no longer needed for such purposes, at fair market value, at the earliest practicable time. That portion of the proceeds of such disposition which is proportionate to the United States' share of acquisition of such land will be, at the discretion of the Secretary, (1) reinvested in another project at the airport, or (2) transferred to another eligible airport as prescribed by the Secretary. The Secretary shall give preference to the following, in descending order:

1. Reinvestment in an approved noise compatibility project;
2. Reinvestment in an approved project that is eligible for grant funding under 49 U.S.C. § 47117(e);
3. Reinvestment in an approved airport development project that is eligible for grant funding under 49 U.S.C. §§ 47114, 47115, or 47117
4. Transfer to an eligible sponsor of another public airport to be reinvested in an approved noise compatibility project at that airport; or
5. Payment to the Secretary for deposit in the Airport and Airway Trust Fund.

If land acquired under a grant for noise compatibility purposes is leased at fair market value and consistent with noise buffering purposes, the lease will not be considered a disposal of the land. Revenues derived from such a lease may be used for an approved airport development project that would otherwise be eligible for grant funding or any permitted use of airport revenue.

- b. For land purchased under a grant for airport development purposes (other than noise compatibility), it will, when the land is no longer needed for airport purposes, dispose of such land at fair market value or make available to the Secretary an amount equal to the United States' proportionate share of the fair market value of the land. That portion of the proceeds of such disposition which is proportionate to the United States' share of the cost of acquisition of such land will, upon application to the Secretary, be reinvested or transferred to another eligible airport as prescribed by the Secretary. The Secretary shall give preference to the following, in descending order:

1. Reinvestment in an approved noise compatibility project;
2. Reinvestment in an approved project that is eligible for grant funding under 49 U.S.C. § 47117(e);
3. Reinvestment in an approved airport development project that is eligible for grant funding under 49 U.S.C. §§ 47114, 47115, or 47117
4. Transfer to an eligible sponsor of another public airport to be reinvested in an approved noise compatibility project at that airport; or
5. Payment to the Secretary for deposit in the Airport and Airway Trust Fund.

- c. Land shall be considered to be needed for airport purposes under this assurance if (1) it may be needed for aeronautical purposes (including runway protection zones) or serve as noise buffer

land, and (2) the revenue from interim uses of such land contributes to the financial self-sufficiency of the airport. Further, land purchased with a grant received by an airport operator or owner before December 31, 1987, will be considered to be needed for airport purposes if the Secretary or Federal agency making such grant before December 31, 1987, was notified by the operator or owner of the uses of such land, did not object to such use, and the land continues to be used for that purpose, such use having commenced no later than December 15, 1989.

- d. Disposition of such land under (a), (b), or (c) will be subject to the retention or reservation of any interest or right therein necessary to ensure that such land will only be used for purposes which are compatible with noise levels associated with operation of the airport.

### **32. Engineering and Design Services.**

If any phase of such project has received Federal funds under Chapter 471 subchapter 1 of Title 49 U.S.C., it will award each contract, or sub-contract for program management, construction management, planning studies, feasibility studies, architectural services, preliminary engineering, design, engineering, surveying, mapping or related services in the same manner as a contract for architectural and engineering services is negotiated under Chapter 11 of Title 40 U.S.C., or an equivalent qualifications-based requirement prescribed for or by the sponsor of the airport.

### **33. Foreign Market Restrictions.**

It will not allow funds provided under this Grant to be used to fund any project which uses any product or service of a foreign country during the period in which such foreign country is listed by the United States Trade Representative as denying fair and equitable market opportunities for products and suppliers of the United States in procurement and construction.

### **34. Policies, Standards, and Specifications.**

It will carry out any project funded under an Airport Improvement Program Grant in accordance with policies, standards, and specifications approved by the Secretary including, but not limited to, current FAA Advisory Circulars (<https://www.faa.gov/airports/aip/media/aip-pfc-checklist.pdf>) for AIP projects as of April 28, 2023.

### **35. Relocation and Real Property Acquisition.**

- a. It will be guided in acquiring real property, to the greatest extent practicable under State law, by the land acquisition policies in Subpart B of 49 CFR Part 24 and will pay or reimburse property owners for necessary expenses as specified in Subpart B.
- b. It will provide a relocation assistance program offering the services described in Subpart C of 49 CFR Part 24 and fair and reasonable relocation payments and assistance to displaced persons as required in Subpart D and E of 49 CFR Part 24.
- c. It will make available within a reasonable period of time prior to displacement, comparable replacement dwellings to displaced persons in accordance with Subpart E of 49 CFR Part 24.

### **36. Access By Intercity Buses.**

The airport owner or operator will permit, to the maximum extent practicable, intercity buses or other modes of transportation to have access to the airport; however, it has no obligation to fund special facilities for intercity buses or for other modes of transportation.

**37. Disadvantaged Business Enterprises.**

The sponsor shall not discriminate on the basis of race, color, national origin, or sex, in the award and performance of any DOT-assisted contract covered by 49 CFR Part 26, or in the award and performance of any concession activity contract covered by 49 CFR Part 23. In addition, the sponsor shall not discriminate on the basis of race, color, national origin or sex in the administration of its Disadvantaged Business Enterprise (DBE) and Airport Concessions Disadvantaged Business Enterprise (ACDBE) programs or the requirements of 49 CFR Parts 23 and 26. The sponsor shall take all necessary and reasonable steps under 49 CFR Parts 23 and 26 to ensure nondiscrimination in the award and administration of DOT-assisted contracts, and/or concession contracts. The sponsor's DBE and ACDBE programs, as required by 49 CFR Parts 26 and 23, and as approved by DOT, are incorporated by reference in this agreement. Implementation of these programs is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the sponsor of its failure to carry out its approved program, the Department may impose sanctions as provided for under Parts 26 and 23 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. § 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. §§ 3801-3809, 3812).

**38. Hangar Construction.**

If the airport owner or operator and a person who owns an aircraft agree that a hangar is to be constructed at the airport for the aircraft at the aircraft owner's expense, the airport owner or operator will grant to the aircraft owner for the hangar a long term lease that is subject to such terms and conditions on the hangar as the airport owner or operator may impose.

**39. Competitive Access.**

- a. If the airport owner or operator of a medium or large hub airport (as defined in 49 U.S.C. § 47102) has been unable to accommodate one or more requests by an air carrier for access to gates or other facilities at that airport in order to allow the air carrier to provide service to the airport or to expand service at the airport, the airport owner or operator shall transmit a report to the Secretary that:
  1. Describes the requests;
  2. Provides an explanation as to why the requests could not be accommodated; and
  3. Provides a time frame within which, if any, the airport will be able to accommodate the requests.
- b. Such report shall be due on either February 1 or August 1 of each year if the airport has been unable to accommodate the request(s) in the six month period prior to the applicable due date.



**STATE MATCHING GRANT FOR FAA AIRPORT IMPROVEMENT PROGRAM - APPLICATION**

DOA-0012 (REV 12/2021)

PLEASE PRINT OR TYPE AND COMPLETE ALL APPLICABLE ITEMS

**AIRPORT INFORMATION**

PUBLIC ENTITY City of Tracy	COUNTY San Joaquin	
AIRPORT NAME Tracy Municipal Airport	PERMIT NUMBER	
CONTACT NAME Brian MacDonald	TITLE Interim Assistant City Manager	
MAILING ADDRESS 333 Civic Center Plaza, Tracy, CA 95376	EMAIL brian.macdonald@cityoftracy.org	PHONE (209) 831-6233

**PROJECT INFORMATION**

Project must be in the Department's most recent Capital Improvement Plan and the project cannot commence prior to the State's award of a matching grant or the project becomes ineligible for a matching grant.  Check to acknowledge statement

DESCRIPTIVE TITLE OF APPLICANT'S PROJECT (as shown on page one of the executed federal grant and in the adopted Capital Improvement Plan): Seal taxilane pavement surface/pavement joints	FEDERAL GRANT NUMBER 3-06-0259-025-2023
	FEDERAL GRANT \$ 162,718
	APPLICANT FUNDS \$ 9,944
	STATE FUNDS* \$ 8,136
	TOTAL COST OF PROJECT \$ 180,798
*Maximum is 5% of the federal grant amount.	

**REQUIRED SUPPORTING DOCUMENTS**

Pursuant to Public Utilities Code Section 21681-21684 and Section 4067 of the CAAP Regulations, submit the following documents with this application:

- Local government approval (*resolution or minute order*) as described in Section 4067(a).
- FAA Grant Agreement with FAA and sponsor signatures.
- Verification of full compliance with the California Environmental Quality Act (CEQA) by submitting information to fulfill either 1. or 2. below:
  1. Copy of Notice of Exemption or provide the Categorical Exemption Class # 1  
(*CEQA Guidelines Sections 15300-15333*).
  2. Copy of Notice of Determination or provide the following information:
    - Environmental Impact Report (Title/Date) \_\_\_\_\_ State Clearinghouse (SCH) # \_\_\_\_\_ or
    - Negative Declaration (Title/Date) \_\_\_\_\_ State Clearinghouse (SCH) # \_\_\_\_\_ or
    - National Environmental Policy Act (NEPA) document (Title/Date) \_\_\_\_\_  
(NEPA documents-Environmental Impact Statement or Finding of No Significant Impact must comply with CEQA provisions).
- Airport Layout Plan (ALP) showing project location(s) and dimensions or project sketch if no ALP exists.
- Completed CAAP Certification (Form DOA-0007), if not submitted to the Division of Aeronautics earlier for this fiscal year.
- Additional documentation may be required if items in the FAA AIP grant are not eligible for CAAP funding.

**AUTHORIZATION**

AUTHORIZED OFFICIAL'S SIGNATURE	DATE	
PRINT NAME Nancy Young	TITLE Mayor	
MAILING ADDRESS 333 Civic Center Plaza, Tracy, CA 95376	EMAIL nancy.young@cityoftracy.org	PHONE (209) 362-0171

SEND COMPLETED FORM AND ALL REQUIRED DOCUMENTS TO:

[AeronauticsGL@dot.ca.gov](mailto:AeronauticsGL@dot.ca.gov)

**TRACY CITY COUNCIL**

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

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**(1) AUTHORIZING THE SUBMITTAL OF AN APPLICATION, AND UPON AWARD, EXECUTION BY THE MAYOR OF A GRANT AGREEMENT WITH THE CALIFORNIA DEPARTMENT OF TRANSPORTATION DIVISION OF AERONAUTICS, FOR THE AIRPORT IMPROVEMENT PROGRAM MATCHING GRANT 3-06-0259-025-2023; AND (2) SUBJECT TO AND UPON AWARD, ACCEPTING SUCH GRANT FUNDS AND APPROPRIATING THE FULL GRANT AMOUNT TO CAPITAL IMPROVEMENT PROJECT 77593 - SLURRY SEAL TEE HANGAR TAXILANES PROJECT**

**WHEREAS**, the Airport Pavement Maintenance Management Plan (PMMP), accepted by the City of Tracy in 2013, advised to perform crack repair, seal cracks, and seal coat the Tee Hangar Taxilanes in the North Hangar area in 2023; and

**WHEREAS**, a Capital Improvement Project (CIP) request form for the proposed work (CIP 77593) was submitted in Fiscal Year (FY) 2022-23 and approved by the City Council; and

**WHEREAS**, CIP 77593 - Slurry Seal Tee Hangar Taxilanes Project is an approved Federal Aviation Administration (FAA) project to meet those maintenance requirements; and

**WHEREAS**, to meet these maintenance needs, staff submitted grant applications to the FAA, and the City was awarded a grant in October 2023 from the FAA to complete the project; and

**WHEREAS**, the FAA will pay for 90% (\$162,718) of grant eligible project costs through the Airport Improvement Program (AIP), and the City's General Fund will need to supply the required 10% match of \$18,080 to fulfill the grant obligation; and

**WHEREAS**, on September 5, 2023, the City Council, per Resolution 2023-176, authorized the execution of the AIP grant agreement and appropriated the anticipated additional AIP funds to CIP 77593; and

**WHEREAS**, acceptance of this grant will reduce the required match amount from the General Fund to \$9,944, with the remaining \$8,136 coming from the State matching grant; and

**WHEREAS**, the CIP has an approved budget of \$176,418, based on anticipated FAA grant monies that the City expected to receive, and if the City did not receive the FAA grant monies, then the City anticipated using General Fund monies to advance this necessary CIP; and

**WHEREAS**, the California Department of Transportation Division of Aeronautics, pursuant to the Public Utilities Code section 21683.1, provides matching grants of 5% of FAA grants for airports, not to exceed \$50,000; and

**WHEREAS**, in order to finalize the Division of Aeronautics grant award process, a City Council resolution is required, authorizing the submittal of the application, and upon award, execution by the Mayor of the grant agreement, and subject to and upon award, accepting the funds and allocating them to CIP 77593 - Slurry Seal Tee Hangar Taxilanes.

**NOW, THEREFORE**, be it resolved as follows:

**RESOLVED:** That the above recitals are true and correct; and be it

**FURTHER RESOLVED:** That the City Council of the City of Tracy hereby authorizes the submittal of an application to the California Department of Transportation Division of Aeronautics by the Mayor, for Airport Improvement Program (AIP) Matching Grant 3-06-0259-025-2023, and upon award of such grant, execution by the Mayor of the grant agreement; and be it

**FURTHER RESOLVED:** That subject to and upon award of the funds, the City Council hereby accepts such grant funds and appropriates the full grant amount to Capital Improvement Project 77593 - Slurry Seal Tee Hangar Taxilanes Project; and be it

**FURTHER RESOLVED:** That the City Council hereby authorizes the City Manager to take such additional actions that may be necessary to consummate the intent of this Resolution, provided that such actions do not detrimentally impact the City

\* \* \* \* \*

The foregoing Resolution 2023-\_\_\_\_\_ was adopted by the Tracy City Council on October 17, 2023, by the following vote:

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

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

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

October 17, 2023

Agenda Item 1.E

RECOMMENDATION

**The Tracy Homelessness Advisory Committee recommends that the City Council adopt a resolution (1) making a determination that United Site Services of California, Inc. provides unique products and services that are not available from other sources, therefore compliance with the standard procurement process is not in the best interest of the City pursuant to Tracy Municipal Code Section 2.20.180(B)(2) and (2) approving the general services agreement with United Site Services of California, Inc., with a not-to-exceed amount of \$125,000, to provide temporary showers and restrooms to Phase IV-Custom Container occupants until permanent bathrooms are installed under Phase II-Site Improvements at the Temporary Emergency Housing Facility, CIP 71112, at 370 West Arbor Avenue.**

EXECUTIVE SUMMARY

The Tracy Homelessness Advisory Committee recommends that the City Council adopt a Resolution ratifying, pursuant to Tracy Municipal Code Section 2.20.180(B)(2), contracts for goods and general services executed by the City Manager to implement emergency interim housing solutions for the unsheltered with United Site Services of California, Inc. (Consultant).

On August 16, 2022, the City Council adopted Resolution No. 2022-121 (Resolution), which reaffirmed an emergency shelter crisis as the City of Tracy continues to experience an increasing number of unsheltered individuals. Due to the declaration of an emergency, the Resolution authorized the City Manager to take requisite actions needed to expeditiously provide interim housing solutions.

This agenda item is to approve a general services agreement for specialty services with the service provider, United Site Services of California, Inc., to provide the temporary showers and restrooms facilities to the Phase IV-Custom Containers occupants until the permanent bathrooms are installed in Phase II-Site Improvements.

The Tracy Homelessness Advisory Committee heard this item on September 26, 2023 and recommended that the City Council adopt the proposed Resolution.

BACKGROUND AND LEGISLATIVE HISTORY

On September 1, 2020, City Council authorized the creation of a Capital Improvement Project (CIP) for the Temporary Emergency Housing Project on Arbor Avenue, CIP 71112 (Project) to create a safe and dignified facility for residents experiencing homelessness.

On July 5, 2023, as part of the Phase IV interim shelter facility improvements, City Council authorized the purchase of eight (8) custom container dormitories from Linked Equipment under Resolution 2023-140.

Permanent restroom and shower facilities to serve the occupants of Phase IV will be included in the construction of the site improvements referred to as Phase II. Until construction is

complete, temporary restrooms and showers are required to serve the Phase IV custom containers.

ANALYSIS

Consultant is a sole source vendor that provides and maintains self-contained and fully functional bathroom facilities. These temporary facilities provide safe and sanitary facilities for showering and restroom use. Consultant will provide and maintain the temporary showers and restrooms to the Phase IV-Custom Containers until permanent facilities are available. Pursuant to Tracy Municipal Code Section 2.20.180(B)(2), the City may enter into a contract without formal bidding if a contract is for a unique product available from only one source. City Council must approve the contract by a resolution which includes findings as to why the product is unique and only one source exists.

Due to the imminent need to provide housing solutions, a general service agreement has been prepared with the following terms to provide temporary showers and restrooms to Phase IV-Custom Containers:

Vendor	Summary	Amount	Not to Exceed Amount
United Site Services of California, Inc.	Temporary Rental of Showers and Restrooms for Phase IV	\$125,000	\$125,000
	TOTAL	\$125,000	\$125,000

The above-mentioned agreement for goods and general services total is \$125,000 and the term of this Agreement shall begin on October 23, 2023 and end on May 31, 2024 as part of this request.

FISCAL IMPACT

The City secured a grant of \$1.2 Million dollars from Health Plan of San Joaquin for the costs of the custom containers and interim site expenses related to Phase III and Phase IV. In addition, the City has committed funding from American Rescue Plan Act (ARPA) for the operations costs at the Temporary Emergency Housing Facility. Per City Council's approval of the \$1.2 Million dollar grant from Health Plan of San Joaquin, below is a breakdown of the funding allocation. Funding for the contract with United Site Services of California, Inc. is covered by the grant funds from Health Plan of San Joaquin.

Health Plan of San Joaquin Grant

Modulars (Phase III first year)	\$120,000
Custom Containers (Phase IV)	\$716,320
Operating (Supplies, Fuel) (Phase III and IV first year)	\$363,680
Total Health Plan of San Joaquin Grant Funding	\$1,200,000

CEQA DETERMINATION

A Notice of Exemption was issued on October 16, 2020, for the Temporary Emergency Housing site at 500 Arbor Avenue in accordance with Government Code sections 65660-65662 for Low Barrier Navigation Centers and Section 15269(c) of the CEQA Guidelines (14 Cal. Code Regs. 15269(c) for (Emergency Projects). No environmental impacts beyond those already analyzed for the CIP exist; accordingly, no further CEQA analysis is needed.

STRATEGIC PLAN

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

ACTION REQUESTED OF THE CITY COUNCIL

The Tracy Homelessness Advisory Committee recommends that the City Council adopt a resolution (1) making a determination that United Site Services of California, Inc. provides unique products and services that are not available from other sources, therefore compliance with the standard procurement process is not in the best interest of the City pursuant to Tracy Municipal Code Section 2.20.180(B)(2) and (2) approving the general services agreement with United Site Services of California, Inc., with a not-to-exceed amount of \$125,000, to provide temporary showers and restrooms to Phase IV-Custom Container occupants until permanent bathrooms are installed under Phase II-Site Improvements at the Temporary Emergency Housing Facility, CIP 71112, at 370 West Arbor Avenue.

Prepared by: Virginia Carney, Homeless Services Manager

Reviewed by: Sara Cowell, Director of Finance  
Bijal Patel, City Attorney  
Brian MacDonald, Interim Assistant City Manager

Approved by: Midori Lichtwardt, Interim City Manager

ATTACHMENTS:

Attachment A- General Services Agreement-United Site Services of California, Inc.

**CITY OF TRACY**  
**GENERAL SERVICES AGREEMENT WITH**  
*United Site Services of California, Inc.*

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

**Recitals**

- A. City desires to enter into this Agreement with Contractor for Contractor to provide temporary shower and restrooms for Phase IV-Custom Containers occupants located at 370 W. Arbor Avenue, Tracy, CA 95304 (**Project** or **Services**) until permanent bathrooms are installed.
- B. After negotiations between the City and Contractor, the Parties have reached an agreement for the performance of services in accordance with the terms set forth in this Agreement.
- C. Pursuant to Resolution No. 2022-121, directed the City Manager to take immediate and emergency actions necessary to implement interim housing solutions for Tracy's unsheltered population until the completion and opening of the Temporary Emergency Housing Project on Arbor Road. Tracy Municipal Code Section 2.20.180(b)(2), the City may enter into a contract without formal bidding if a contract is for a unique product available from only one source so that competitive bidding would be meaningless. For this exception to apply, the City Council must approve the contract by a resolution which includes findings as to why the product is unique and only one source exists.
- D. United Site Services of California, Inc. is a sole source vendor that provides and maintains self contained and fully functional bathroom facilities. These temporary facilities provide safe and sanitary facilities for showering and restroom use to the Phase IV-Custom Containers occupants.
- E. This Agreement is being executed pursuant to Resolution No. \_\_\_\_\_.

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

1. **Scope of Work.** Upon request from and at the direction of the City, Contractor shall perform the Services and complete the Project, which include, but are not limited to, the services described in Exhibit "A" attached hereto and incorporated herein by this reference. The services shall be performed by, or under the direct supervision of, Contractor's Authorized Representative: United Site Services of California, Inc., nor shall Contractor use or replace any subcontractors or subcontractors, without City's prior written consent. The City may terminate this Agreement if Contractor makes any such change or replacement, or uses any unapproved subcontractor or subcontractor.
2. **Time of Performance.** Time is of the essence in the performance of services under this Agreement and the timing requirements set forth shall be strictly adhered to unless otherwise modified in writing in accordance with this Agreement. Any services for which times for performance are not specified in this Agreement shall be started and completed by Contractor in a reasonably prompt and timely manner based upon the circumstances and direction communicated to the Contractor. Contractor shall submit all requests for time extensions to the City in writing no later than ten days after

the start of the condition which purportedly caused the delay, and not later than the date on which performance is due. City may grant or deny such requests in its sole and absolute discretion.

**2.1 Term.** The term of this Agreement shall begin on October 23, 2023 and end on May 31, 2024, unless terminated in accordance with Section 6.

**3. Compensation.** City shall pay Contractor the fixed monthly amount, as set forth in Exhibit "B" attached hereto and incorporated herein by this reference, for the term of the Agreement. City shall also pay a one-time "delivery and pickup" charge.

**3.1 Not to Exceed Amount.** Contractor's total compensation under this Agreement shall not exceed \$125,000. It is understood and agreed that Contractor may not receive compensation up to this amount, and Contractor's total compensation under this Agreement will depend on the length of the term of this Agreement. Contractor's billing rates shall cover all costs and expenses for Contractor's performance of this Agreement. No work shall be performed by Contractor in excess of the total compensation amount provided in this section without the City's prior written approval. Notwithstanding anything contained herein to the contrary, the payment of any funds under this Agreement shall be subject to the City of Tracy's appropriation of funds for the Services. This Agreement shall terminate in the event that such funds are not appropriated.

**3.2 Invoices.** Contractor shall submit monthly invoices to the City that describe the services performed and dated time period reflecting services rendered. Reports reflecting greater detail of services are available upon request to the Contractor.

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

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

**3.3.1.** The acceptance by Contractor of the final payment made under this Agreement shall constitute a release of City from all claims and liabilities for compensation to Contractor for anything completed, finished or relating to Contractor's services. Contractor agrees that payment by City shall not constitute nor be deemed a release of the responsibility and liability of Contractor or its employees, subcontractors, agents and subcontractors for the accuracy and competency of the information provided and/or services performed hereunder, nor shall such payment be deemed to be an assumption of responsibility or liability by City for any defect or error in the Services performed by Contractor, its employees, subcontractors, agents and subcontractors.

**3.3.2.** Contractor agrees to maintain books, accounts, payroll records and other information relating to the performance of Contractor's obligations under the Agreement, which shall adequately and correctly reflect the expenses incurred by the Contractor in the performance of Contractor's work under the Agreement. Such books and records shall be open to inspection and audit by the City during regular business hours for three years after expiration or termination of this Agreement.

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

In the event there is a finding and/or determination that Contractor is not an independent contractor and/or is an employee of City, including but not limited to any such finding and/or determination made by the California Public Employees' Retirement System (CalPERS), the Department of Industrial Relations (DIR), or the Internal Revenue Service (IRS), Contractor shall, to the fullest extent permitted by law, indemnify, defend, and hold harmless the City from and against any all claims relating to or in connection with such a finding and/or determination.

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

Contractor and City mutually waive consequential damages for claims, disputes, or other matters in question, arising out of or relating to this Agreement. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination of this Agreement.

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

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

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

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

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

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

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

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

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

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

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

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

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

**6. Termination.** The City may terminate this Agreement in its sole and absolute discretion by giving ten (10) days' written notice to Contractor. Within five (5) days of such a termination, Contractor shall give the City all original documents relating to the Services in Contractor's possession or control, including, without limitation, preliminary drafts and supporting documents, and any other documents prepared by Contractor pursuant to this Agreement. The City shall pay Contractor for all services satisfactorily performed in accordance with this Agreement, up to the date notice is given.

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

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

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

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

**7.4** The mediation process shall provide for the selection within fifteen (15) days by both Parties of a disinterested third person to serve as the mediator, shall be commenced within thirty (30) days of selection of a mediator, 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 mediator in any alternative dispute resolution process.

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

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

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

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

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

**9. Ownership of Work.** All original documents prepared by Contractor for this Agreement, whether complete or in progress, are the property of the City, and shall be given to the City at the completion of

Contractor's services, or upon demand from the City. No such documents shall be revealed or made available by Contractor to any third party without the City's prior written consent.

**10. Independent Contractor Status.** Contractor is an independent contractor and is solely responsible for the acts of its employees or agents, including any negligent acts or omissions. Contractor is not City's employee and Contractor shall have no authority, express or implied, to act on behalf of the City as an agent, or to bind the City to any obligation, unless the City provides prior written authorization. Contractor is free to work for other entities while under contract with the City. Contractor, and its agents or employees, are not entitled to City benefits. Contractor shall be solely responsible for, and shall save the City harmless from, all matters relating to the payment of Contractor's employees, agents, and subcontractors, including compliance with social security requirements, federal and State income tax withholding and all other regulations governing employer-employee relations. The City reserves the right to contract with other firms and/or Contractors during the term of this Agreement to provide the City the same or similar services that Contractor is providing to the City under this Agreement. Nothing contained in this Agreement guarantees Contractor a certain amount of work, and the City may, in its sole and absolute discretion, allocate and/or delegate work to Contractor so as to satisfy the City's needs.

**11. Conflicts of Interest.** Contractor (including its employees, agents, and subcontractors) shall not maintain or acquire any direct or indirect interest that conflicts with the performance of this Agreement. s(including this Agreement) involving Contractor's conflicting interest.

**12. Rebates, Kickbacks, or Other Unlawful Consideration.** Contractor warrants that this Agreement was not obtained or secured through rebates, kickbacks, or other unlawful consideration either promised or paid to any City official or employee. For any 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; to deduct from the contract price the value of the rebate, kickback, or other unlawful consideration; or otherwise recover the full amount of such rebate, kickback, or other unlawful consideration.

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

To City:  
Brian MacDonald  
Interim Assistant City Manager  
City of Tracy  
333 Civic Center Plaza  
Tracy, CA 95376

To Contractor:  
United Site Services of California, Inc.  
118 Flanders Road, Ste. 1000  
Westborough, MA 01581

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

**14. Miscellaneous.**

**14.1 Standard of Care.** Unless otherwise specified in this Agreement, the standard of care applicable to Contractor's services will be the degree of skill and diligence ordinarily used by reputable

professionals performing in the same or similar time and locality, and under the same or similar circumstances.

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

**14.3 Waivers.** Waiver of a breach or default under this Agreement shall not constitute a continuing waiver or a waiver of a subsequent breach of the same or any other provision of this Agreement. No waiver shall be effective unless it is in writing and signed by the waiving party.

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

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

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

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

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

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

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

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

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

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

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

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

**14.14 Counterparts.** City and Contractor agree that this Agreement may be executed in two or more counterparts, each of which shall be deemed an original.

**14.15 Expenses for Enforcement.** Contractor and City agree that the prevailing party's reasonable costs, attorneys' fees and expenses, including investigation fees and expert witness fees, shall be paid by the non-prevailing party in any dispute involving the terms and conditions of this Agreement.

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

**[SIGNATURES ON FOLLOWING PAGE]**

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

**City of Tracy**

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

Attest:

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

Approved as to form:

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

**United Site Services of California, Inc.**

  
\_\_\_\_\_  
By: Jeff Dunlop  
Title: Vice President  
Date: 20 Sep 23

Federal Employer Tax ID No. 20-0968969

  
\_\_\_\_\_  
By: Sean McDowell  
Title: Director of Contracts  
Date: 20 Sep 23

Exhibits:

- A. Scope of Work
- B. Compensation

## EXHIBIT A - Scope of Work

### Installation and Service of Temporary Restrooms

#### Trailer Bundle Configuration:

- Restroom Trailer, Gold, Small (3-4 Stalls) Power Requirements: 1-3 20AMP 110V on separate breaker
- 2 Service per Week, Empty Waste Tank
- Restock Service

#### Trailer Bundle Configuration:

- Restroom Trailer, Gold, Small (1-2 Stalls)-ADA Compliant, Power Requirements: 1-3 20AMP 110V on separate breaker
- 2 Service per Week, Empty Waste Tank
- Restock Service

#### Trailer Bundle Configuration:

- Shower Trailer, Gold, Large (7-8 Stalls), Power Requirements: 2-4 20AMP 110V on separate breaker
- 2 Service per Week, Empty Waste Tank
- Restock Service
- Permit Fee

## EXHIBIT B – Compensation

Item	Unit	Unit Price	Qty	Charge Type	Total Charge	Tax
<b>Trailer Bundle Configuration</b>						
Delivery 09-18-23						
Restroom Trailer, Gold, Small (3-4 Stalls) Power Requirements: 1-4 20AMP 110V on separate breaker	EA	\$2375.00	1	Recurring	\$2375.00	Y
2 Service per Week, Empty Waste Tank	EA	\$1100.00	1	Recurring	\$1100.00	N
Restock Service	EA	\$100.00	1	Recurring	\$100.00	N
<b>Trailer Bundle Configuration</b>						
Delivery 09-18-23						
Restroom Trailer, Gold, Compact (1-2 Stalls) - ADA Compliant Power Requirements: 1-3 20AMP 110V on separate breaker	EA	\$2715.00	1	Recurring	\$2715.00	Y
2 Service per Week, Empty Waste Tank	EA	\$1000.00	1	Recurring	\$1000.00	N
Restock Service	EA	\$100.00	1	Recurring	\$100.00	N
<b>Trailer Bundle Configuration</b>						
Delivery 09-18-23						
Shower Trailer, Gold, Large (7-8 Stalls) Power Requirements: 2-4 20AMP 110V on separate breaker	EA	\$7000.00	1	Recurring	\$7000.00	Y
2 Service per Week, Empty Waste Tank	EA	\$1800.00	1	Recurring	\$1800.00	N
Restock Service	EA	\$100.00	1	Recurring	\$100.00	N
Permit Fee	EA	\$0.00	1	One-Time	\$0.00	N

### Other One-Time Charges

Item	Charge Type	Total Charge	Tax
Delivery and Pickup	One-Time	\$1485.00	Y

Subtotal Recurring	\$16,290.00
Tax Recurring	\$997.45
<b>Total Recurring</b>	<b>\$17,287.45</b>
Subtotal One-Time	\$1,485.00
Tax One-Time	\$122.58
<b>Total One-Time</b>	<b>\$1,607.58</b>
<b>Grand Total</b>	<b>\$18,895.03</b>

**TRACY CITY COUNCIL**

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

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**RESOLUTION (1) MAKING A DETERMINATION THAT UNITED SITE SERVICES OF CALIFORNIA, INC. PROVIDES UNIQUE PRODUCTS AND SERVICES THAT ARE NOT AVAILABLE FROM OTHER SOURCES, THEREFORE COMPLIANCE WITH THE STANDARD PROCUREMENT PROCESS IS NOT IN THE BEST INTEREST OF THE CITY PURSUANT TO TRACY MUNICIPAL CODE SECTION 2.20.180(B)(2) AND (2) APPROVING THE GENERAL SERVICES AGREEMENT WITH UNITED SITE SERVICES OF CALIFORNIA, INC., WITH A NOT-TO-EXCEED AMOUNT OF \$125,000, TO PROVIDE TEMPORARY SHOWERS AND RESTROOM TO PHASE IV-CUSTOM CONTAINER OCCUPANTS UNTIL PERMANENT BATHROOMS ARE INSTALLED UNDER PHASE II-SITE IMPROVEMENTS AT THE TEMPORARY EMERGENCY HOUSING FACILITY, CIP 71112, AT 370 WEST ARBOR AVENUE**

**WHEREAS**, the City of Tracy, like many cities across California, is experiencing a shelter crisis; and

**WHEREAS**, on March 10, 2020, the City Council declared a shelter crisis through the adoption of Resolution 2020-052; and

**WHEREAS**, under the shelter crisis, the City is authorized to provide emergency housing, shelters, bridge housing communities, and other services to the unsheltered; and

**WHEREAS**, on September 1, 2020, the City Council authorized the creation of a Capital Improvement Project for the Temporary Emergency Housing Project on Arbor Avenue, CIP 71112 (Project) to create a safe and dignified facility for residents experiencing homelessness (Facility); and

**WHEREAS**, the City desires to provide interim housing solutions until the completion and opening of the Facility; and

**WHEREAS**, Government Code section 8698.4 exempts the application of the California Environmental Quality Act (CEQA) to various actions taken by public agencies to implement the construction of a homeless shelter in response to a declared shelter crisis; and

**WHEREAS**, a Notice of Exemption was issued on October 16, 2020, for the Temporary Emergency Housing site at 500 Arbor Avenue in accordance with Government Code sections 65660-65662 for Low Barrier Navigation Centers and Section 15269(c) of the CEQA Guidelines (14 Cal. Code Regs. 15269(c) for (Emergency Projects); and

**WHEREAS**, on August 16, 2022, the City Council approved Resolution 2022-121 and directed the City Manager to take immediate and emergency actions necessary to implement interim housing solutions for the City's unsheltered until the completion and opening of the Facility,

including negotiating with potential service providers and identifying potential sites for such interim housing solutions; and

**WHEREAS**, Tracy Municipal Code Section 2.20.180(b)(2), the City may enter into a contract without formal bidding if a contract is for a unique product available from only one source so that competitive bidding would be meaningless. For this exception to apply, the City Council must approve the contract by a resolution which includes findings as to why the product is unique and only one source exists; and

**WHEREAS**, on July 5, 2023, City Council authorized the purchase of eight (8) custom container dormitories, which will provide an additional 38 beds from Linked Equipment under Resolution 2023-140 for installation as part of Phase IV interim facilities; and

**WHEREAS**, Phase IV-Custom Containers do not include permanent bathrooms, which are part of the construction under Phase II-Site Improvements; and

**WHEREAS**, United Site Services of California, Inc. (Consultant) has agreed to provide and maintain the temporary showers and restrooms to the Phase IV-Custom Containers until permanent facilities are available providing safe and sanitary bathroom facilities to those occupants; and

**WHEREAS**, The Tracy Homelessness Advisory Committee heard this item on September 26, 2023 and recommended that the City Council adopt this proposed Resolution; and now, therefore, be it resolved as follows:

**RESOLVED:** That the City Council finds and determines the foregoing recitals to be true and correct and hereby makes them a part of this Resolution; and be it

**FURTHER RESOLVED:** That United Site Services of California, Inc. is a sole source vendor, as set forth in Tracy Municipal Code Section 2.20.180(b)(2); and be it

**FURTHER RESOLVED:** That the City Council hereby approves general services agreement with Consultant (which includes a not-to-exceed amount of \$125,000). After review and approval by the City Attorney's office, City Council authorizes the execution of the General Services Agreement; and be it

**FURTHER RESOLVED:** The City Council finds that no further analysis under the California Environmental Quality Act (CEQA) for the actions authorized herein because: 1) Government Code section 8698.4 exempts the application of the various actions taken by public agencies to implement the construction of a homeless shelter in response to a declared shelter crisis; 2) the interim solutions taken thus far are in furtherance of and related to the permanent solution that will be implemented, referred to as the Temporary Emergency Housing Project on Arbor Avenue (CIP 71112); 3) A Notice of Exemption was issued on October 16, 2020 for the Temporary Emergency Housing site at 500 Arbor Avenue in accordance with Government Code sections 65660-65662 for Low Barrier Navigation Centers and Section 15269(c) of the CEQA Guidelines (14 Cal. Code Regs. 15269(c) for (Emergency Projects); and 4) No environmental impacts beyond those already analyzed for the CIP exist; and be it

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

\*\*\*\*\*

The foregoing Resolution 2023-\_\_\_\_\_ was adopted by the Tracy City Council on October 17, 2023, by the following vote:

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

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

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

Agenda Item 1.F

RECOMMENDATION

**Staff recommends that the City Council adopt the Resolution authorizing the award of a construction contract to Anderson Striping and Construction, Inc. in the not-to-exceed amount of \$269,354, and (2) authorizing a contingency for change orders in the amount of \$26,935.**

EXECUTIVE SUMMARY

The Airport Pavement Maintenance Management Plan (PMMP), accepted by the City of Tracy in 2013, the airport was advised to perform Crack Seal and Slurry Seal, and Minor Pavement Patching Entrance Road and Parking Lot in 2022. In 2023, it was recommended to perform crack repair, seal cracks, and seal coat the Tee Hangar Taxilanes in the North Hangar area.

To meet these maintenance needs, the City submitted grant applications to the Federal Aviation Administration (FAA). Staff requested funding for the following construction projects, Crack Seal and Slurry Seal of the Tee Hangar Taxilanes and Crack Seal and Slurry Seal, and Minor Pavement Patching Entrance Road and Parking Lot, at the Tracy Municipal Airport.

BACKGROUND AND LEGISLATIVE HISTORY

The City Council accepted two grants from the FAA to complete two pavement projects at the Tracy Municipal Airport. On September 5, 2023, an FAA grant for Capital Improvement Project (CIP) 77593 – Slurry Seal of Tee Hangar Taxilanes, was accepted through the FAA's Airport Improvement Program (AIP). On October 3, 2023, an FAA grant for CIP 77589 – Airport Slurry Seal & Pavement Patching Entrance Road and Parking Lot, was accepted through the FAA's Airport Infrastructure Grant (AIG) program. The City Council is also set to approve a State of California Department of Transportation Division of Aeronautics (Division of Aeronautics) matching grant at the October 17, 2023, City Council meeting to offset the City's grant matching requirements. City proceeded with General Fund dollars until these grant monies were received.

The Tee Hangar Taxilanes of the North Hangar Area of the airport were built in two phases, in 1975 and 1985, to accommodate growth at the Tracy Municipal Airport. In 2013, a Pavement Maintenance Management Study of Tracy Municipal Airport was performed by Brandley Engineering through an FAA AIP grant. At that time, the pavement conditions of the existing North Hangar Area Taxilanes were found to be fair to very poor, with Pavement Conditions Indices (PCI) ranging between 24 to 44. The recommendation of the PMMP was to remove and reconstruct existing sections in the North Hangar Area Taxilanes area in 2014, and to perform crack repair, seal cracks, and seal coat the area in 2023. It was recommended to perform Crack Seal and Slurry Seal, and Minor Pavement Patching Entrance Road and Parking Lot in 2022.

Engineering staff worked with Brandley Engineering to prepare the plans and specifications for the following projects:

- Schedule A - Crack Seal and Slurry Seal, and Minor Pavement Patching Entrance Road

and Parking Lot to be funded by an FAA Airport Infrastructure Grant.

- Schedule B - Crack Seal and Slurry Seal of the Tee Hangar Taxilanes to be funded by an FAA Airport Improvement Program Grant.

The project was advertised for competitive bids on March 4 and 31, 2023. Bids were received and publicly opened on April 19, 2023, at 2:00 pm with the following results:

<u>Contractor:</u> Anderson Striping and Construction Inc.	<u>Bid Amounts:</u> Schedule A: \$170,556 Schedule B: \$98,798 <b>Total Bid: \$269,354</b>
VSS International	Schedule A: \$201,501 Schedule B: \$96,464 <b>Total Bid: \$297,965</b>
Pavement Coatings Company	Schedule A: \$222,132 Schedule B: \$94,444 <b>Total Bid: \$316,576</b>

ANALYSIS

Awarding this construction contract will allow the City to complete CIP 77589 - Airport Slurry Seal & Pavement Patching Entrance Road and Parking Lot Project and CIP CIP77593 - Slurry Seal of Tee Hangar Taxilanes Project.

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

Construction Cost	\$269,354
Administration	\$9,000
Preliminary, Engineering Design, Preparation of Plans and Specs	\$50,000
Design Engineering through Bidding and Award	\$8,000
Engineering Design During Construction/ Final Closeout	\$26,000
Residential Engineering, Testing and Inspection	\$63,000
<b>Total Project Cost</b>	<b>\$425,354</b>
FAA Participation- Entitlement/Discretionary	\$382,818
Sponsor Local Match + State Matching Grant	\$42,536

FISCAL IMPACT

CIP 77589 - Airport Slurry Seal & Pavement Patching Entrance Road and Parking Lot Project has an approved budget of \$220,100 from FAA funding. The total estimated project cost is \$244,556. Of that amount, 90% of the project will be funded by an FAA Airport Infrastructure Grant Program. The remaining cost of \$24,456 will be paid from the General Fund.

CIP 77593 - Slurry Seal of the Tee Hangar Taxilanes Project, has an approved budget of \$162,718 from FAA funding. The total estimated project cost is \$180,798. Of that amount, 90% of the percent of the project will be funded by an FAA Airport Improvement Program grant.

The remaining cost will be paid through a State matching grant and the General Fund.

#### COORDINATION

Engineering staff coordinated with the Mobility & Housing Department and the Airport Engineering consultant firm during the application phase of the project.

#### CEQA/NEPA DETERMINATION

On January 26, 2023, the FAA had determined the proposed project is Categorically Excluded pursuant to FAA Order 1050.1F as it relates to the National Environmental Policy Act of 1969, as amended (NEPA). No further federal environmental disclosure documentation for the project is necessary for NEPA purposes.

#### STRATEGIC PLAN

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

#### ACTION REQUESTED OF THE CITY COUNCIL

Staff recommends that the City Council adopt the resolution (1) authorizing the awarding of a construction contract to Anderson Striping and Construction, Inc. in the not-to-exceed amount of \$269,354, and (2) authorizing a contingency for change orders in the amount of \$26,935.

Prepared by: Ilene Macintire, Senior Civil Engineer  
Paula Jessup, Airport Manager

Reviewed by: Sara Cowell, Director of Finance  
Bijal Patel, City Attorney  
Brian MacDonald, Interim Assistant City Manager

Approved by: Midori Lichtwardt, Interim City Manager

APPROVED AS TO FORM AND LEGALITY

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

**TRACY CITY COUNCIL**

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

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**AUTHORIZING (1) THE AWARD OF A CONSTRUCTION CONTRACT TO ANDERSON STRIPING AND CONSTRUCTION, INC. IN THE NOT-TO-EXCEED AMOUNT OF \$269,354, AND (2) A CONTINGENCY FOR CHANGE ORDERS IN THE AMOUNT OF \$26,935**

**WHEREAS**, the Airport Pavement Maintenance Management Plan (PMMP), accepted by the City of Tracy in 2013, advised the airport to perform Crack Seal and Slurry Seal, and Minor Pavement Patching Entrance Road and Parking Lot in 2022; and

**WHEREAS**, in 2023, the PMMP recommended to perform crack repair, seal cracks, and seal coat the Tee Hangar Taxilanes in the North Hangar area; and

**WHEREAS**, the following construction projects, Crack Seal and Slurry Seal of the Tee Hangar Taxilanes and Crack Seal and Slurry Seal, and Minor Pavement Patching Entrance Road and Parking Lot, at the Tracy Municipal Airport are approved FAA projects; and

**WHEREAS**, the City Council accepted two grants from the FAA to complete two pavement projects at the Tracy Municipal Airport: On September 5, 2023, an FAA grant for Capital Improvement Project (CIP) 77593 – Slurry Seal of Tee Hangar Taxilanes, was accepted through the FAA's Airport Improvement Program (AIP), and on October 3, 2023, an FAA grant for CIP 77589 – Airport Slurry Seal & Pavement Patching Entrance Road and Parking Lot, was accepted through the FAA's Airport Infrastructure Grant (AIG) program; and

**WHEREAS**, the City Council is also set to approve a State of California Department of Transportation Division of Aeronautics (Division of Aeronautics) matching grant at the October 17, 2023, City Council meeting to offset the City's grant matching requirements; and

**WHEREAS**, the City has proceeded with General Fund dollars until these grant monies have been received; and

**WHEREAS**, the project was advertised for competitive bids on March 4 and 31, 2023, and bids were received and publicly opened on April 19, 2023; and

**WHEREAS**, Anderson Striping and Construction Inc. was the apparent lowest bidder with a not-to-exceed budget of \$ 269,354; and

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

**NOW, THEREFORE**, be it resolved as follows:

**RESOLVED:** That the above recitals are true and correct; and be it

**FURTHER RESOLVED:** That the City Council of the City of Tracy hereby awards a construction contract to Anderson Striping and Construction Inc. with the Not-to-Exceed budget of \$269,354 for the Crack Seal and Slurry Seal of the Tee Hangar Taxilanes project and the Crack Seal, Slurry Seal and Minor Pavement Patching Entrance Road and Parking Lot project; and be it

**FURTHER RESOLVED:** That the City Council of the City of Tracy authorizes the contingency amount of \$ 26,935 for change orders, if needed, pursuant to Tracy Municipal Code Section 2.20.090(b).

\* \* \* \* \*

The foregoing Resolution 2023-\_\_\_\_\_ was adopted by the Tracy City Council on October 17, 2023, by the following vote:

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

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

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

Agenda Item 3.A

RECOMMENDATION

**Staff recommends that the City Council adopt a Resolution adopting the 2024 Development Fee for the San Joaquin County Multi-Species Habitat Conservation and Open Space Plan.**

EXECUTIVE SUMMARY

In 2001, the City of Tracy (City) began participating in the San Joaquin County Multi-Species Habitat Conservation and Open Space Plan (SJMSCP) established by the San Joaquin Council of Governments (SJCOG). The fees for participation in the plan were established in 2001 and have been updated annually since 2007 based on SJMSCP's five-year financial analysis, land sales comparables, and the Consumer Price Index (CPI). This agenda item asks the City Council to adopt the 2024 SJMSCP Development Fee to continue participation in the SJMSCP. The development fees for year 2024 is an overall 7.4 percent decrease from the fees collected in 2023 in the most impacted categories of Agricultural and Natural habitat classifications.

BACKGROUND AND LEGISLATIVE HISTORY

The SJMSCP acts as a mechanism to streamline compliance with federal and state endangered species acts. The City adopted the SJMSCP on February 6, 2001 (Resolution No. 2001-050) as a means to streamline the development process for projects constructed within the City. While participation is voluntary on behalf of developers, paying a fee to SJCOG and having them administer the SJMSCP (e.g., procure easements, maintain preserves) enables developers and the City to avoid costly and lengthy negotiations with the US and California Fish and Wildlife Service agencies.

On November 6, 2001, the City Council adopted Resolution No. 2001-398 authorizing the collection of a development fee for participation in the SJMSCP. The SJMSCP fee is based on classification of habitat type (Attachment A – City of Tracy Land Category / Pay Zones Map). The methodology for determining the fee is based upon a Financial Analysis Model approved by the SJCOG, which has been subsequently updated in 2006, 2011, 2016, and 2020. The formula for updating the fee is categorized into three distinct components to better calculate an accurate fee per acre [FEE = Category A (acquisition) + Category B (assessment & enhancement) + Category C (management & admin)]. The final mitigation fees reflect true costs in each category and other real costs associated to fulfill the goals of the plan.

ANALYSIS

The Development Fee is updated annually by the SJCOG Board to keep current with the associated costs of implementing the SJMSCP. On August 24, 2023, the SJCOG Board approved the Development Fee for 2024 as shown in the table below and in Attachment B – 2024 Updated Habitat Fees. Each participating local agency must adopt the updated fees to continue participation in the SJMSCP.

*2024 SJMSCP Development Fees*

Habitat Type	Category A	Category B	Category C	Total Fee	Rounded Fee
Other Open Space	\$5,502.00	\$3,019.00	\$396.66	\$8,917.66	<b>\$8,918</b>
Natural/Ag Lands	\$11,003.00	\$6,038.00	\$792.15	\$17,833.15	<b>\$17,833</b>
Vernal Pool Grasslands	\$52,545.00	\$14,906.00	\$1,956.53	\$69,407.53	<b>\$69,408</b>
Vernal Pool Wetted	\$52,748.00	\$123,058.00	\$1,918.14	\$177,724.14	<b>\$177,724</b>

The proposed 2024 SJMSCP development fees were adjusted using the recommended 2020 SJMSCP 5-Year Financial Analysis Model Update for the respective categories. The development fees for year 2024 is an overall 7.4 percent decrease from the fees collected in 2023 in the most impacted categories of Agricultural and Natural habitat classifications. The decrease is due primarily to a dip in the land acquisition component (Category A) for agricultural land price values of comparable sales even though there was an unusually robust rise in the reported CPI for Categories B and C. All of the land within and adjacent to the current City limits are classified as Open Space or AG/Natural, as there are no vernal pools near the City of Tracy.

Category A (acquisition) – Comparable Land Sales

This category is directly related to land valuation based on comparable land sales in San Joaquin County in specific zones of the plan area (Central Zone, Central Southwest Transition Zone and Delta Zone) over a two-year period meeting the established criteria used for comparable land sales. Cost estimates for this category will continue to be evaluated on a yearly basis by taking all qualified fee title comparable sales in each zone to set a weighted cost per acre. Based on a mid-cycle review of the percentage of easement value to fee title value percentage, the percentage used in the fee model for this category dropped slightly from 58% to 55%, which will be incorporated going forward until the next five-year review process.

The fee model update results in a 13.5% decrease in the Agricultural/Natural Habitat types of Category A (Acquisition) component to be \$11,003. The reason for the decrease is the decline in overall comparable fee title land sale values from prior year values.

Category B (assessment & enhancement) - Consumer Price Index w/ Model Data Update

The Category B component of the fee is adjusted using several factors including the California CPI, as reported by the California Department of Finance for the preceding 12-month fiscal year (June 2022 – June 2023) and from the updated model numbers completed annually based on the SJMSCP Annual Report.

The unit cost factors (per acre or per year for some items) are adjusted only by the CPI (the California CPI calculation was an increase of 2.88%). The total cost for Category B is also a function of the SJMSCP Annual Report data updated annually (acres remaining to be acquired and the number of years remaining in the permit term; the fee per acre is a function of those total calculated costs and the land conversion acres remaining). These factors feed into the fee model.

The model update results in a 4.7% increase in the Agricultural/Natural Habitat types of Category B (Assessment and Enhancement) component to be \$6,038.

Category C (management & administration) – Consumer Price Index

Annual cost updates use the CPI, as reported by the California Department of Finance, for the preceding 12-month fiscal year (June 2022 – June 2023) to keep up with inflation on an annual basis.

The model update results in a 2.88% increase in the Agricultural/Natural Habitat types of Category C (Management, Monitoring and Administration) component from prior years to be \$7.92.15.

*Program Participation*

As previously mentioned, participation in the SJMSCP is voluntary. Projects participating under the SJMSCP benefit from pre-determined streamlined processing of the project rather than navigating through a potentially very long, cumbersome, and expensive regulatory process outside the habitat plan. By opting for participation, the project can choose any number of ways to provide mitigation for the impacts of the project through the plan and even control much of the mitigation, costs if desired. The options are:

1. Pay the applicable fee;
2. Redesign the project to avoid/minimize impacts;
3. Provide land in lieu of the SJMSCP fee which the project will negotiate the easement/fee title costs (Category A component); or
4. Any combination of the above options.

Alternatively, the project proponent can choose to not participate in the plan (opt-out) and fulfill mitigation requirements on their own with state and federal permitting agencies independently.

FISCAL IMPACT

Development fees provide funding for SJCOG to mitigate project impacts covered under the SJMSCP permits for the subsequent calendar year beginning January 1, 2024. The City of Tracy does not retain any of these fees.

COORDINATION

This staff report and resolution were prepared in coordination with SJCOG staff.

CEQA DETERMINATION

The proposal is to modify the fees collected for certain new development applications which participate in the SJCOG SJMSCP program. The purpose of the SJMSCP program is to streamline compliance, for projects, with the State and Federal Endangered Species Acts. The program also serves as CEQA mitigation measures for qualified projects, in accordance with California Environmental Quality Act (CEQA) Guidelines, collection and use of the SJMSCP. Following collection of the fees, the City submits the entire fee amount to SJCOG for use in the SJMSCP program. Collection and transmission of the SJMSCP fees is categorically exempt from CEQA pursuant to Guidelines Sections

1. 15308 - Actions by Regulatory Agencies for Protection of the Environment. This

exemption pertains to "...actions taken by regulatory agencies...to assure the maintenance, restoration, enhancement, or protection of the environment where the regulatory process involves procedures for protection of the environment."

2. 15313 - Acquisition of Lands for Wildlife Conservation Purposes, which applies to "the acquisition of lands for fish and wildlife conservation purposes." and
3. 15317 - Open Space Contracts or Easements, which pertains to "the establishment of agricultural preserves...or the acceptance of easements or fee interests in order to maintain the open space character of the area."

Therefore, the project is exempt from CEQA and no additional CEQA documentation is required.

### STRATEGIC PLAN

This agenda item does not relate to any of the Council's Strategic Plans.

### ACTION REQUESTED OF THE CITY COUNCIL

Staff recommends that the City Council adopt a Resolution adopting the 2024 Development Fee for the San Joaquin County Multi-Species Habitat Conservation and Open Space Plan.

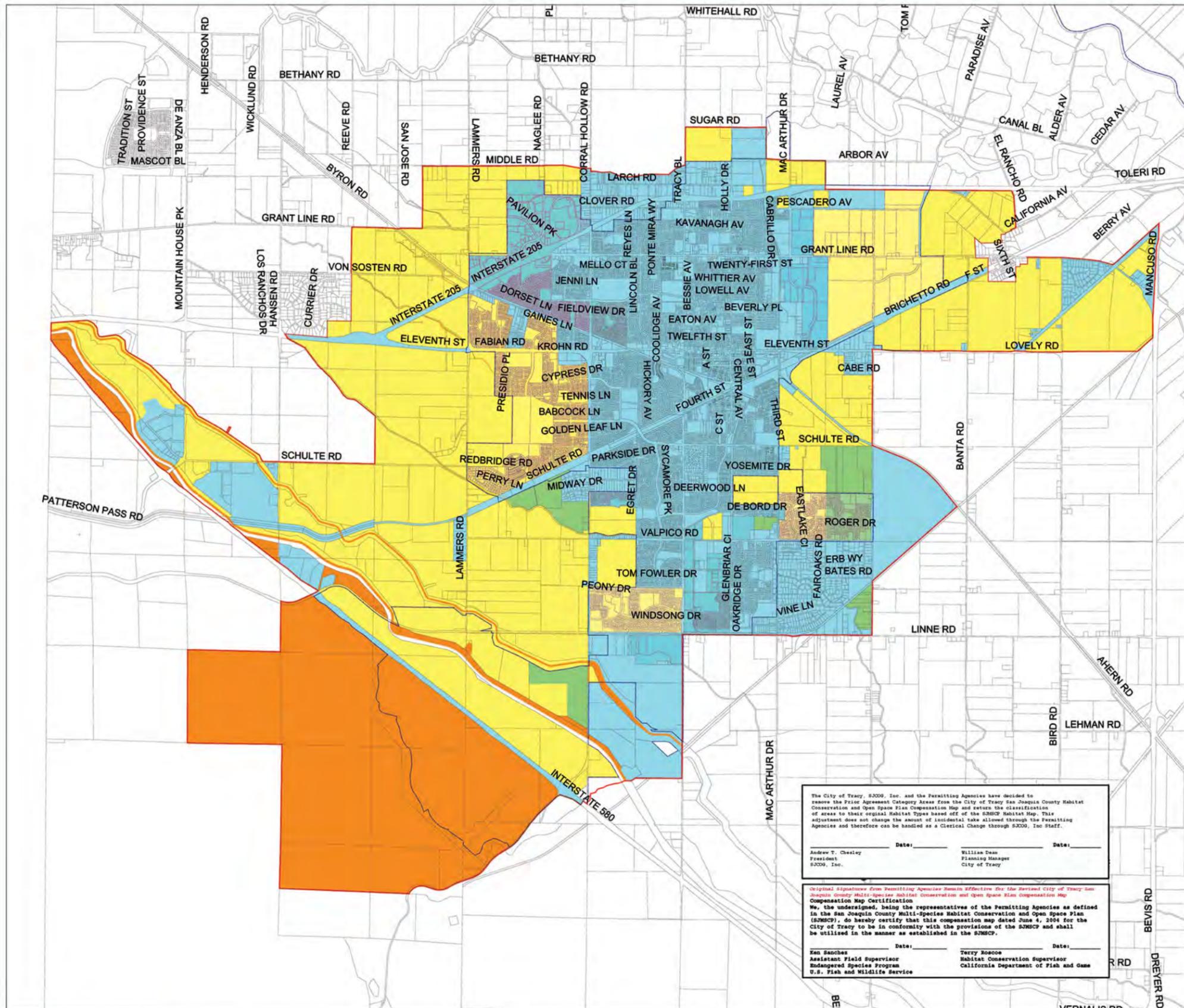
Prepared by: Kimberly Matlock, Associate Planner

Reviewed by: Alan Bell, Senior Planner  
William Dean, Assistant Development Services Director  
Sara Cowell, Finance Director  
Bijal M. Patel, City Attorney  
Karin Schnaider, Assistant City Manager

Approved by: Midori Lichtwardt, Interim City Manager

### ATTACHMENTS

Attachment A – City of Tracy Land Category / Pay Zones Map  
Attachment B – 2024 Updated Habitat Fees



**LAND CATEGORY / PAY ZONES**

- CATEGORY A  
EXEMPT  
NO PAY ZONE
- CATEGORY B  
OTHER OPEN SPACES  
PAY ZONE A
- CATEGORY C  
AG. HABITAT OPEN SPACES  
PAY ZONE B (Agricultural)
- CATEGORY D  
NATURAL LANDS HABITAT  
PAY ZONE B (Natural)
- CATEGORY E  
VERNAL POOLS  
PAY ZONE C

**PLANNING AREA BOUNDARY**

- URBAN EXPANSION AREA
- CITY LIMITS
- PARCEL LINE

# San Joaquin County Multi-Species Habitat Conservation and Open Space Plan

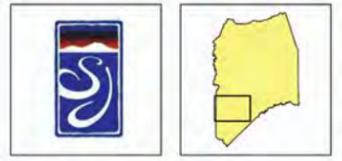
The City of Tracy, 2006, Inc. and the Permitting Agencies have decided to remove the Prior Agreement Category Areas from the City of Tracy San Joaquin County Habitat Conservation and Open Space Plan Compensation Map and return the classification of areas to their original Habitat Types based off of the SJMSCP Habitat Map. This adjustment does not change the amount of incidental take allowed through the Permitting Agencies and therefore can be handled as a Clerical Change through SJ006, Inc Staff.

Date: \_\_\_\_\_ Date: \_\_\_\_\_  
 Andrew T. Chesley, President, SJ006, Inc.      William Dean, Planning Manager, City of Tracy

*Original Signatures from Permitting Agencies Remain Effective for the Revised City of Tracy San Joaquin County Multi-Species Habitat Conservation and Open Space Plan Compensation Map Certification*

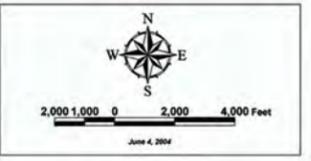
We, the undersigned, being the representatives of the Permitting Agencies as defined in the San Joaquin County Multi-Species Habitat Conservation and Open Space Plan (SJMSCP), do hereby certify that this compensation map dated June 4, 2004 for the City of Tracy to be in conformity with the provisions of the SJMSCP and shall be utilized in the manner as established in the SJMSCP.

Date: \_\_\_\_\_ Date: \_\_\_\_\_  
 Ken Sanchez, Assistant Field Supervisor, Endangered Species Program, U.S. Fish and Wildlife Service      Terry Roscoe, Habitat Conservation Supervisor, California Department of Fish and Game



## CITY OF TRACY COMPENSATION MAP (REVISED MARCH 2006)

San Joaquin Council of Governments  
 555 East Weber Avenue  
 Stockton, CA 95202





SJCOG, Inc.

555 East Weber Avenue • Stockton, CA 95202 • (209) 235-0574 • Email: boyd@sjcog.org

*San Joaquin County Multi-Species Habitat Conservation & Open Space Plan (SJMSCP)*

*David Bellinger*

CHAIR

*Diane Lazard*

VICE CHAIR

*Diane Nguyen*

EXECUTIVE DIRECTOR

*Member Agencies*

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

## 2024 Updated Habitat Fees\*

Habitat Type	Fee Per Acre
Multi-Purpose Open Space	\$8,918
Natural	\$17,833
Agriculture	\$17,833
Vernal Pool - uplands	\$69,408
Vernal Pool - wetted	\$177,724

\* Effective January 1, 2024 – December 31, 2024

## 2024 Endowment Fees with In-lieu Land\*\*

Type of Preserve	Enhancement Cost/acre	Land Management Cost/acre	TOTAL PER ACRE ENDOWMENT
<b>Agricultural Habitat Lands</b>	\$6,038.00	\$792.15	\$6,830.15
<b>Natural Lands</b>	\$6,038.00	\$792.15	\$6,830.15
<b>Vernal Pool Habitat</b>			
<i>Vernal Pool Grasslands</i>	\$14,906.00	\$1,956.53	\$16,862.53
<i>Vernal Pool Wetted</i>	\$123,058.00	\$1,918.14	\$124,976.14

\*\* Effective January 1, 2024 – December 31, 2024 in lieu of fees to be used as the endowment for the dedicated land preserves (Category B + C) based on impacted acres.

## VELB Mitigation

A special fee category shall apply when removal of the Valley Elderberry Long-horned Beetle (VELB) habitat of elderberry shrubs occurs. The fee shall be paid to SJCOG, Inc. or a VELB mitigation bank approved by the Permitting Agencies. The current fee, as established in the VELB Conservation Fund Account managed by the Center for Natural Lands Management, and approved by the USFWS, is \$1,800 per VELB Unit (one unit= one stem over 1" in diameter at ground level which is removed). Fees shall be established by the JPA during preconstruction surveys (i.e., counts of stems to be removed with and without exit holes shall be completed during preconstruction surveys) and shall be paid to the JPA prior to ground disturbance or stem removal, whichever comes first.

TRACY CITY COUNCIL

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

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**ADOPTING THE 2024 DEVELOPMENT FEE FOR THE SAN JOAQUIN COUNTY  
MULTI-SPECIES HABITAT CONSERVATION AND OPEN SPACE PLAN**

**WHEREAS**, the Tracy City Council approved Resolution No. 2001-050 on February 6, 2001 adopting the San Joaquin County Multi-Species Habitat Conservation and Open Space Plan (SJMSCP), established by the San Joaquin Council of Governments (SJCOG), and Resolution No. 2001-398 on November 6, 2001 to establish the authority for collection of a Development Fee for all new developments within the City of Tracy (City) pursuant to the SJMSCP; and

**WHEREAS**, participation in the SJMSCP is voluntary; and

**WHEREAS**, the purpose of the SJMSCP Development Fee is to finance the goals and objectives of the SJMSCP that include, but are not limited to, preserve land acquisition, preserve enhancement, land management, and administration that compensate for such lands lost as a result of future development in the City of Tracy and in San Joaquin County; and

**WHEREAS**, a "Fee Study," dated July 16, 2001, was prepared, which analyzed and identified the costs, funding, and cost-benefit of the SJMSCP; and

**WHEREAS**, after considering the Fee Study and the testimony received at the public hearing, the Tracy City Council approved said report and further found that the future development in the City of Tracy will need to compensate cumulative impacts to threatened, endangered, rare and unlisted SJMSCP Covered Species and other wildlife and compensation for some non-wildlife related impacts to recreation, agriculture, scenic values and other beneficial Open Space uses; and

**WHEREAS**, the SJMSCP Development Fees are divided into three categories: Category A – Acquisition; Category B – Enhancement; and Category C – Land Management/Administration; and

**WHEREAS**, Category A – Acquisition, directly relates to land valuations based on comparable land sales in the San Joaquin County in specific zones of plan areas (Central Zone, Central Southwest Transition Zone and Delta Zone) over a two-year period meeting the established criteria used for comparable land sales; and

**WHEREAS**, Category B – Assessment & Enhancement, is calculated using several factors including California Consumer Price Index (CPI) with updates from model numbers completed annually based on the SJMSCP Annual Report; and

**WHEREAS**, Category C – Management, Monitoring and Administration, uses the California CPI to calculate how much money to allocate to Management, Monitoring and Administration; and

**WHEREAS**, an “Updated Fee Study” was prepared in 2006, 2011, 2016 and 2020 which analyzed and identified the costs and funding of the SJMSCP; and

**WHEREAS**, to ensure that the SJMSCP development fees keep pace with inflation, annual adjustments are made to the fees based on the method previously adopted by the City Council, starting from 2007 (Resolution No. 2007-021), and

**WHEREAS**, the method of annual adjustments was modified in 2011, 2016, and again in 2020; and

**WHEREAS**, on August 24, 2023, the SJCOG Board approved the Development Fee for 2024 as shown in Attachment B to the staff report; and

**WHEREAS**, each local agency must adopt the updated fees to continue participation in the SJMSCP; and

**WHEREAS**, in accordance with the California Environmental Quality Act (CEQA) Guidelines Sections 15308, 15313, and 15317, actions to protect the environment, acquire lands for conservation purposes, and the establishment of agricultural preserves are exempt from CEQA review; and

**WHEREAS**, the City Council conducted a Public Hearing on October 17, 2023, to consider the 2024 Development Fee for the SJMSCP; and

**WHEREAS**, the new fees were available for public inspection and review in the office of the City Clerk for more than 10 days prior to the date of this Public Hearing; now, therefore, be it

**RESOLVED:** That the City Council of the City of Tracy hereby finds and declares that the purposes and uses of the SJMSCP Development Fee and the determination of the reasonable relationship between the fees’ uses and the type of development project on which the fees are imposed are all established in Resolution No. 2001-398 and No. 2007-021 and remain valid, and the City Council therefore adopts such determinations; and be it

**FURTHER RESOLVED:** That the City Council finds and declares that since adoption of Resolution No. 2001-398 and No. 2007-021, the cost of land has changed in San Joaquin County and that in order to maintain the reasonable relationship established by Resolution No. 2001-398 and No. 2007-021, it is necessary to adjust the Development Fee for the San Joaquin County Multi-Species Habitat Conservation and Open Space Plan; and be it

**FURTHER RESOLVED:** Adoption of the 2024 SJMSCP Development Fee is exempt from CEQA pursuant to Guidelines Sections 15308, 15313, and 15317; and be it

**FURTHER RESOLVED:** That the City Council adopts the 2024 Development Fee as set forth in the following table; and be it

**2024 SJMSCP Development Fees**

<b>Habitat Type</b>	<b>Fee Per Acre</b>
<b>Open Space</b>	<b>\$8,918</b>
<b>AG/Natural</b>	<b>\$17,833</b>
<b>Vernal Pool (uplands)</b>	<b>\$69,408</b>
<b>Vernal Pool (wetted)</b>	<b>\$177,724</b>

**FURTHER RESOLVED:** That the 2024 Development Fee provided in this resolution shall be effective on January 1, 2024, which is at least sixty days after the adoption of this resolution, through December 31, 2024.

\*\*\*\*\*

The foregoing Resolution 2023-\_\_\_\_\_ was adopted by the Tracy City Council on the 17<sup>th</sup> day of October 2023, by the following vote:

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

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

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

Agenda Item 3.B

RECOMMENDATION

**Staff recommends that the City Council adopt a Resolution 1) authorizing the issuance and sale of special tax bonds for the purpose of financing authorized facilities and 2) approving and authorizing related documents and actions for Improvement Area No. 2 of the City of Tracy Community Facilities District No. 2016-1.**

EXECUTIVE SUMMARY

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

- City of Tracy Community Facilities District No. 2016-1 (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”),
- City of Tracy Community Facilities District No. 2016-1 (Tracy Hills) (Future Annexation Area) (the “Future Annexation Area”), and
- Improvement Area No. 2 of the City of Tracy Community Facilities District No. 2016-1 (Tracy Hills) (“Improvement Area No. 2”).

All of the property that is currently in the CFD is located in Improvement Area No. 1 and Improvement Area No. 2. The purpose of the Future Annexation Area is to facilitate a streamlined annexation of property into the CFD.

Staff recommends that the City Council adopt the referenced resolution (the “2023 Bond Resolution”) for the purpose of authorizing the issuance of an initial series of bonds on behalf of the CFD with respect to Improvement Area No. 2 and approving related documents and actions.

DISCUSSION

A. LOCAL GOALS AND POLICIES

Section 53312.7(a) of the Mello-Roos Act requires the City to consider and adopt local goals and policies concerning the use of the Mello-Roos Act prior to the initiation of proceedings on or after January 1, 1994 to establish a new community facilities district.

The City adopted “Amended Local Goals and Policies for Community Facilities Districts (CFDs)” on February 4, 2014, by Resolution No. 2014-019 (“Goals and Policies”).

The Goals and Policies provide guidance and conditions for the conduct by the City of proceedings for, and the issuance of bonds secured by special taxes levied in, a community facilities district established under the Mello-Roos Act.

**B. CFD FORMATION PROCESS, APPROVAL OF BONDS AND ANNEXATION OF PROPERTY INTO IMPROVEMENT AREA NO. 2**

Under the Mello-Roos Act, the City previously formed the CFD, Improvement Area No. 1 and a Future Annexation Area for the purpose of financing the public facilities and services described in the City Council's Resolution No. 2016-157 adopted on July 19, 2016 (the "Resolution of Formation").

In the Resolution of Formation, the City Council also provided for the levy of special taxes upon the land within the CFD.

Pursuant to Resolution No. 2016-158, adopted by the City Council on July 19, 2016, the City Council declared the necessity to incur bonded indebtedness and other debt on behalf of the CFD and allocated \$215,000,000 as the maximum principal amount of bonded indebtedness or other debt that could be issued with respect to the Future Annexation Area (the "Non-Improvement Area No. 1 Indebtedness Limit").

Subsequently, the City Council undertook change proceedings and, on August 21, 2018, adopted Resolution No. 2018-169 (the "Resolution of Change") which, among other things, increased the Non-Improvement Area No. 1 Indebtedness Limit to \$305,000,000.

The City Council later received separate Unanimous Approvals executed by Lennar Homes of California, LLC ("Lennar Homes") and AG Essential Housing CA 1, L.P. ("AG Essential", which acts as a land bank entity for Lennar Homes); among other things, the Unanimous Approvals approved the annexation of certain property in the Future Annexation Area into the CFD as "Improvement Area No. 2 of the City of Tracy Community Facilities District No. 2016-1 (Tracy Hills)", approved the levy of special taxes by the City in Improvement Area No. 2 pursuant to the rate and method of apportionment of the special tax (the "Improvement Area No. 2 Rate and Method"), and the issuance of \$50,000,000 of bonds by the City with respect to Improvement Area No. 2. This annexation was confirmed and approved by the City Council in Resolution No. 2022-130, adopted by the City Council on September 6, 2022 (the "Annexation Resolution").

**C. PROPOSED 2023 BONDS**

Staff recommends that the City Council adopt a resolution (the "2023 Bond Resolution") for the following purposes:

- (i) approve the issuance of special tax bonds by the City for and on behalf of the CFD with respect to Improvement Area No. 2 (the "2023 Bonds") in a principal amount not to exceed \$38,000,000,
- (ii) approve the sale of the 2023 Bonds to Piper Sandler & Co. (the "Underwriter"),
- (iii) appoint U.S. Bank National Association as fiscal agent for the 2023 Bonds (the "Fiscal Agent"),
- (iv) approve the documents related to the 2023 Bonds, and
- (v) authorize staff to take all actions necessary related to issuance of the 2023 Bonds.

#### D. TERMS OF THE 2023 BONDS

The 2023 Bonds are a limited obligation of the City, payable only from special taxes levied in Improvement Area No. 2 and moneys in the funds and accounts established under the Fiscal Agent Agreement described below.

Pursuant to the 2023 Bond Resolution, the true interest cost of the 2023 Bonds cannot exceed 7.00% and the principal amount of the 2023 Bonds cannot exceed \$38,000,000.

Government Code Section 5852.1 requires the City to obtain and disclose a good faith estimate of certain information about the 2023, including the estimated true interest cost, financing costs, net proceeds and the total payment amount, and the information is included in Appendix A of the 2023 Bond Resolution. Based upon current market conditions as of September 27, 2023, the 2023 Bonds are estimated to be issued in the amount of \$35,110,000 and carry a true interest cost of approximately 5.73%.

The Goals and Policies require a minimum aggregate value to lien ratio for special tax financings of 3:1 (the value-to-lien calculation compares the market value of the taxable property in Improvement Area No. 2 to the proposed principal amount of the 2023 Bonds and bonds issued by overlapping community facilities districts and assessment districts). Based on the appraisal dated September 22, 2023 (the "Original Appraisal Report") prepared by Integra Realty Resources (the "Appraiser"), the value of the property in Improvement Area No. 2 as of July 19, 2023 has been determined to be not less than \$163,006,149, resulting in an estimated value to lien ratio of approximately 4.64:1 based on the estimated principal amount of the 2023 Bonds of \$35,110,000 (there are no overlapping special tax or assessment bonds). The Appraiser has issued a Bring Forward Letter dated September 26, 2023, in which the Appraiser (1) reported that since the date of value of the Original Appraisal Report (July 19, 2023), a number of homes have been completed and/or sold to individual homeowners, a number of homes have begun construction with building permits and impact fees paid and (2) in the Appraiser's opinion, the cumulative, or aggregate, value derived in the Original Appraisal Report, as of July 19, 2023, in accordance with the assumptions and conditions set forth in the Original Appraisal Report, as of September 21, 2023, is not less than \$163,006,149.

The proposed Resolution authorizes staff to execute a bond purchase agreement with the Underwriter only if the aggregate value to lien ratio based on the final principal amount of the 2023 Bonds will be at least 3:1.

Of the 432 lots in Improvement Area No. 2, as of September 15, 2023:

- 108 are completed homes owned by individual homeowners
- 21 are completed homes owned by Lennar Homes (including model homes)
- 92 are homes under construction owned by Lennar Homes
- 114 are improved lots owned by Lennar Homes
- 97 are improved lots owned by AG Essential, Lennar Homes' land bank entity

However, as of the July 19, 2023 date of value of the Original Appraisal Report, 177 lots would meet a 3:1 value-to-lien ratio on a parcel-by-parcel basis; whereas 255 lots under development are less than 3:1.

The proposed bond financing has been structured to hold \$6 million of the proceeds of the 2023 Bonds with the Fiscal Agent until (a) the Phase 1B Neighborhood Park has been constructed by Lennar Homes, (b) the Phase 1B Neighborhood Park has been inspected by the City, and (c) the City has determined that the Phase 1B Neighborhood Park has been constructed in accordance with approved plans and specifications and all applicable City standards (other than any items identified by the City that need to be addressed before the Phase 1B Neighborhood Park can be deemed complete by the City, and which the City and Lennar Homes estimate to cost no more than \$100,000 in the aggregate). As a result, the value-to-lien ratio of the 255 lots under development are expected to be not less than 2.90:1 based on the value estimated by the Appraiser, and depending on the final principal amount of the 2023 Bonds.

Consistent with this requirement, the Original Appraisal Report and the Bring Forward Letter include a hypothetical condition that the conditions for release of the \$6 million of proceeds of the 2023 Bonds will be met. Lennar Homes has reported to the City that (1) it expects to commence construction on the Phase 1B Neighborhood Park immediately following execution of the plans, which is anticipated to be in the first week of October, 2023 and (2) weather permitting, it expects that it will take approximately 7 months from commencement of construction to complete the Phase 1B Neighborhood Park and another 2-3 months for acceptance by the City Council (“Estimated Park Acceptance Timeline”).

#### E. DOCUMENTS RELATED TO THE 2023 BONDS

The City Council is being asked to approve each of the following:

- Preliminary Official Statement. The Official Statement is the primary disclosure document for investors in the 2023 Bonds. A Preliminary Official Statement will be circulated to potential investors prior to the pricing of the 2023 Bonds. After the 2023 Bonds have been priced, a Final Official Statement will be circulated to investors; the Final Official Statement should be identical to the Preliminary Official Statement except for the addition of pricing information (principal amount, interest rates, redemption terms).

The Preliminary Official Statement describes the special taxes to be levied in Improvement Area No. 2, each of the parcels to be taxed, and, based on information by the developers of property in Improvement Area No. 2, the development plans for the parcels within Improvement Area No. 2. The Preliminary Official Statement will also include the appraisal of the taxable parcels in Improvement Area No. 2.

The Preliminary Official Statement is prepared by Jones Hall, serving the City as Bond Counsel and Disclosure Counsel for this transaction, with the assistance of the remainder of the financing team, including City staff; the property owners in Improvement Area No. 2; CSG Advisors Incorporated, the City’s municipal advisor (“Municipal Advisor”); the Underwriter; and Goodwin Consulting, the City’s special tax consultant (“Special Tax Consultant”).

The Preliminary Official Statement has been reviewed and approved for transmittal to the City Council by the City’s financing team. The distribution of the Preliminary Official Statement by the City is subject to federal securities laws, including the Securities Act of 1933 and the Securities Exchange Act of 1934. These laws require the Preliminary Official Statement to include all facts that would be material to an investor in the 2023 Bonds. Material information is information that there is a substantial likelihood would have actual significance in the deliberations of the

reasonable investor when deciding whether to buy or sell the bonds. If the City Council concludes that the Preliminary Official Statement includes all facts that would be material to an investor in the 2023 Bonds, it must adopt a resolution that authorizes staff to execute a certificate to the effect that the Preliminary Official Statement has been “deemed final.”

The Securities and Exchange Commission (the “SEC”), the agency with regulatory authority over the City’s compliance with the federal securities laws, has issued guidance as to the duties of the City Council with respect to its approval of the Preliminary Official Statement. In its “Report of Investigation in the Matter of County of Orange, California as it Relates to the Conduct of the Members of the Board of Supervisors” (Release No. 36761 / January 24, 1996) (the “Release”), the SEC stated that, if a member of the City Council has knowledge of any facts or circumstances that an investor would want to know about prior to investing in the 2023 Bonds, whether relating to their repayment, tax-exempt status, undisclosed conflicts of interest with interested parties, or otherwise, he or she should endeavor to discover whether such facts are adequately disclosed in the Preliminary Official Statement. In the Release, the SEC stated that the steps that a member of the City Council could take include becoming familiar with the Preliminary Official Statement and questioning staff and consultants about the disclosure of such facts.

The key sections of the Preliminary Official Statement are summarized below:

- “THE 2023 BONDS”: This section summarizes the key terms of the 2023 Bonds, including payment dates and redemption provisions.
- “SECURITY FOR THE BONDS”: This section summarizes key security terms, including the City’s pledge of special tax revenues, its covenant to levy special taxes according to the Improvement Area No. 2 Rate and Method, and its covenant to foreclose on parcels that are delinquent in the payment of special taxes. As described above, the 2023 Bonds are a limited obligation of the City, payable only from special taxes levied in Improvement Area No. 2 and moneys in the funds and accounts established under the Fiscal Agent Agreement.
- “THE DISTRICT AND IMPROVEMENT AREA NO. 2”: This section summarizes certain features of Improvement Area No. 2, including the appraised value of taxable property, overlapping taxes, assessments and debt and anticipated debt service coverage provided by maximum special taxes that may be levied under the RMA.
- “PROPERTY OWNERSHIP AND DEVELOPMENT STATUS”: This section includes information provided by the property owners in Improvement Area No. 2, and describes the proposed development in Improvement Area No. 2 and its current status.
- “BOND OWNERS’ RISK”: This section highlights the primary risks associated with the 2023 Bonds, including failure to complete the proposed development, natural disasters and failure of property owners to pay their special taxes. One of the primary risks associated with the proposed 2023 Bonds is that 341 of the 432 total lots are owned Lennar Homes or AG Essential, which means that payment of the 2023 Bonds is

dependent on Lennar Homes completing construction of homes on those lots and paying special taxes prior to completing construction.

- “LEGAL MATTERS - Tax Exemption”: This section describes the tax-exempt nature of interest on the 2023 Bonds.
- Continuing Disclosure Certificate. Under SEC Rule 15c2-12, the underwriter of the 2023 Bonds may only purchase the 2023 Bonds if it has determined that the City is obligated to provide continuing disclosure, including annual updates of the financial and operating data included in the Official Statement and notices of certain specified events. The developers in Improvement Area No. 2 will also provide continuing disclosure on a semi-annual basis until certain development thresholds have been met.
- Fiscal Agent Agreement. This document governs the 2023 Bonds and the use of special taxes from Improvement Area No. 2 to pay debt service on the 2023 Bonds. The special taxes will be levied on the regular County tax roll and collected by the County from each taxable parcel in Improvement Area No. 2. The County will remit these special taxes to the City. The City will remit them to the Fiscal Agent as provided for in the Fiscal Agent Agreement. The Fiscal Agent will use the revenues to (1) pay administrative costs of the CFD and (2) pay principal of and interest on the 2023 Bonds to the bond owners.
- Bond Purchase Agreement. At the time the 2023 Bonds are sold, the City will enter into a Bond Purchase Agreement with the Underwriter, who will agree to underwrite the 2023 Bonds subject to satisfaction of the conditions described in the Bond Purchase Agreement. The resolution provides the Underwriter’s discount on the purchase of the 2023 Bonds may not exceed 1.25% of the par amount of the 2023 Bonds. The Underwriter was selected as underwriter for the 2023 Bonds through an RFP process, and was chosen based upon the combination of its qualifications and proposed fees.

#### F. PERMIT CONDITION RELATED TO PHASE 1B NEIGHBORHOOD PARK

The development of taxable property in Improvement Area No. 2 is subject to a condition that before final inspection or occupancy of the 180th dwelling unit (whichever occurs first, except for up to fifteen model homes), the Phase 1B Neighborhood Park must be completed and accepted by the City Council. If the Phase 1B Neighborhood Park is not completed and accepted by the City Council before final inspection or occupancy of the 180th dwelling unit (whichever occurs first, except for up to fifteen model homes), no further building permits (except for plumbing only building permits) will be issued until the Phase 1B Neighborhood Park is completed and accepted by the City Council.

The Preliminary Official Statement describes the potential impact of this permit condition, and the differing interpretations of the condition by City staff and Lennar Homes. In connection with the issuance of the 2023 Bonds, the City hired Empire Economics, Inc., to prepare a market absorption study for the homes planned for Improvement Area No. 2 (the “Absorption Study”).

The Absorption Study has been updated to reflect the Estimated Park Acceptance Timeline (described above) under the City's interpretation of the park condition, and it assumes most of the calendar year absorption would occur in the fourth quarter of calendar year 2024.

### STRATEGIC PLAN

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

### FISCAL IMPACT

There is no cost to the General Fund associated with this request. The fees and expenses of the financing team, including Bond Counsel, Disclosure Counsel, Underwriter, Municipal Advisor, Special Tax Consultant and Appraiser are paid from proceeds of the 2023 Bonds or paid through an existing Cost Recovery Agreement with the developer.

### ACTION REQUESTED OF THE CITY COUNCIL

Staff recommends that the City Council adopt a resolution 1) authorizing the issuance and sale of special tax bonds for the purpose of financing authorized facilities and 2) approving and authorizing related documents and actions, for Improvement Area No. 2 of the City of Tracy Community Facilities District No. 2016-1.

Prepared by: Sara Cowell, Director of Finance

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

Approved by: Midori Lichtwardt, Interim City Manager

### ATTACHMENTS

- A. Preliminary Official Statement (including Continuing Disclosure Certificates)
- B. Fiscal Agent Agreement
- C. Bond Purchase Agreement

PRELIMINARY OFFICIAL STATEMENT DATED \_\_\_\_\_, 2023

NEW ISSUE – BOOK-ENTRY ONLY

NOT RATED

*In the opinion of Jones Hall, A Professional Law Corporation, San Francisco, California, Bond Counsel, subject, however to certain qualifications described herein, under existing law, the interest on the 2023 Bonds is excluded from gross income for federal income tax purposes and such interest is not an item of tax preference for purposes of the federal alternative minimum tax. Interest on the 2023 Bonds may be subject to the corporate alternative minimum tax. In the further opinion of Bond Counsel, such interest is exempt from California personal income taxes. See "TAX MATTERS."*

**\$36,000,000\***  
**IMPROVEMENT AREA NO. 2**  
**OF THE CITY OF TRACY**  
**COMMUNITY FACILITIES DISTRICT NO. 2016-1 (TRACY HILLS)**  
**SPECIAL TAX BONDS, SERIES 2023**

Dated: Date of Delivery

Due: September 1, as shown on inside cover.

**Authority for Issuance.** The bonds captioned above (the "2023 Bonds") are being issued by the City of Tracy (the "City") for and on behalf of the City of Tracy Community Facilities District No. 2016-1 (Tracy Hills) (the "District") with respect to its Improvement Area No. 2 ("Improvement Area No. 2") under the Mello-Roos Community Facilities Act of 1982, as amended (the "Act"), the Resolution of Issuance (as defined herein), and a Fiscal Agent Agreement dated as of November 1, 2023 (the "Fiscal Agent Agreement"), by and between the City and U.S. Bank Trust Company, National Association, as fiscal agent (the "Fiscal Agent"). See "THE 2023 BONDS – Authority for Issuance."

**Security and Sources of Payment.** The 2023 Bonds are payable from proceeds of Special Taxes (as defined herein) levied on property within Improvement Area No. 2 according to the rate and method of apportionment of special tax approved by the City Council of the City (the "City Council"), acting as legislative body of the District, and the eligible landowner voters in Improvement Area No. 2. The 2023 Bonds are secured by a first pledge of the revenues derived from the levy of Special Taxes and the moneys on deposit in certain funds held by the Fiscal Agent under the Fiscal Agent Agreement, on a parity with bonds that may be issued in the future, subject to the conditions set forth in the Fiscal Agent Agreement. See "SECURITY FOR THE BONDS."

**Use of Proceeds.** The 2023 Bonds are being issued to (i) finance the acquisition and construction of certain capital improvements necessary for the development of the property in the District, (ii) fund a debt service reserve fund for the 2023 Bonds, and (iii) pay the costs of issuing the 2023 Bonds. See "FINANCING PLAN."

**Bond Terms.** Interest on the 2023 Bonds is payable on each March 1 and September 1, commencing March 1, 2024. The 2023 Bonds will be issued in denominations of \$5,000 or integral multiples of \$5,000. The 2023 Bonds, when delivered, will be initially registered in the name of Cede & Co., as nominee of The Depository Trust Company ("DTC"). DTC will act as securities depository for the 2023 Bonds. See "THE 2023 BONDS – General Bond Terms" and "APPENDIX I – DTC and the Book-Entry Only System."

**Redemption.** The 2023 Bonds are subject to optional redemption, mandatory sinking fund redemption and special redemption from prepaid Special Taxes. See "THE 2023 BONDS - Redemption."

**The 2023 Bonds are not general obligations of the City, but are limited obligations, payable solely from the Special Tax Revenues and the funds pledged therefor under the Fiscal Agent Agreement. Neither the faith and credit nor the taxing power of the City (except to the limited extent set forth in the Fiscal Agent Agreement) or of the State of California (the "State") or any political subdivision thereof is pledged to the payment of the 2023 Bonds.**

#### MATURITY SCHEDULE

(see inside cover)

***This cover page contains certain information for quick reference only. It is not a summary of the issue. Potential investors must read the entire Official Statement to obtain information essential to the making of an informed investment decision. Investment in the 2023 Bonds involves risks which may not be appropriate for some investors. See "BOND OWNERS' RISKS" for a discussion of special risk factors that should be considered in evaluating the investment quality of the 2023 Bonds.***

The 2023 Bonds are offered when, as and if issued and accepted by the Underwriter, subject to approval as to their legality by Jones Hall, A Professional Law Corporation, San Francisco, California, Bond Counsel, and subject to certain other conditions. Jones Hall, A Professional Law Corporation, has served as disclosure counsel to the City. Stradling Yocca Carlson & Rauth, A Professional Corporation, Newport Beach, California, is serving as counsel to the Underwriter, and Holland & Knight LLP, San Francisco, California, is serving as counsel to Lennar Homes of California, LLC. It is anticipated that the 2023 Bonds, in book-entry form, will be available for delivery through the facilities of DTC on or about \_\_\_\_\_, 2023.

[Piper Sandler Logo]

The date of this Official Statement is: \_\_\_\_\_, 2023.

\* Preliminary; subject to change.

## MATURITY SCHEDULE

\$ \_\_\_\_\_ Serial Bonds  
(Base CUSIP†: \_\_\_\_\_)

Maturity (September 1)	Principal Amount	Interest Rate	Yield	Price	CUSIP†
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\$ \_\_\_\_ % Term Bond due September 1, 20\_\_\_\_, Yield: \_\_%, Price: \_\_%  
CUSIP† No. \_\_\_\_

\$ \_\_\_\_ % Term Bond due September 1, 20\_\_\_\_, Yield: \_\_%, Price: \_\_%  
CUSIP† No. \_\_\_\_

\* Preliminary; subject to change.

† CUSIP Global Services (CGS) is managed on behalf of American Bankers Association by FactSet Research Systems Inc. Copyright © 2023 CUSIP Global Services. This data is not intended to create a database and does not serve in any way as a substitute for the CGS database. CUSIP® numbers are provided for convenience of reference only. Neither the City nor the Underwriter or their agents or counsel assume responsibility for the accuracy of such numbers.

## **CITY OF TRACY**

### **CITY COUNCIL**

Nancy Young, *Mayor*  
Eleassia Davis, *Mayor Pro Tem*  
Dan Arriola, *Council Member*  
Mateo Bedolla, *Council Member*  
Dan Evans, *Council Member*

### **CITY STAFF**

Midori Lichtwardt, *Interim City Manager*  
Karin Schnaider, *Assistant City Manager*  
Sara Cowell, *Finance Director*  
Adrienne Richardson, *City Clerk*  
Bijal Patel, *City Attorney*

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### **PROFESSIONAL SERVICES**

#### **BOND COUNSEL and DISCLOSURE COUNSEL**

Jones Hall, A Professional Law Corporation  
*San Francisco, California*

#### **MUNICIPAL ADVISOR**

CSG Advisors Incorporated  
*San Francisco, California*

#### **SPECIAL TAX CONSULTANT**

Goodwin Consulting Group, Inc.  
*Sacramento, California*

#### **APPRAISER**

Integra Realty Resources, Inc.  
*Rocklin, California*

#### **MARKET ABSORPTION CONSULTANT**

Empire Economics, Inc.  
San Juan Capistrano, California

#### **FISCAL AGENT**

U.S. Bank Trust Company, National Association  
*San Francisco, California*

## TABLE OF CONTENTS

<u>Page</u>	<u>Page</u>		
INTRODUCTION .....	2	Acquisition Agreement .....	46
FINANCING PLAN .....	6	Development Plan for Improvement Area No. 2 .....	47
Authorized Facilities .....	6	Lennar Homes .....	47
Estimated Sources and Uses of Funds .....	6	Landbank Arrangement .....	52
THE 2023 BONDS .....	7	Status of Development .....	55
Authority for Issuance .....	7	Home Construction Financing Plan .....	56
General Bond Terms .....	7	BOND OWNERS' RISKS .....	56
Redemption* .....	8	Limited Obligation of the City to Pay Debt Service .....	56
Registration, Transfer and Exchange .....	10	Concentration of Ownership .....	57
DEBT SERVICE SCHEDULE .....	12	Future Property Development .....	57
SECURITY FOR THE BONDS .....	13	Potential Early Redemption of Bonds from Prepayments .....	57
General .....	13	Levy and Collection of the Special Tax .....	57
Limited Obligation .....	13	Property Tax Delinquencies .....	58
Special Taxes .....	13	Risks Related to High Loan to Value Ratios .....	59
Rate and Method .....	15	Payment of Special Tax is not a Personal Obligation of the Property Owners .....	60
Covenant to Foreclose .....	20	Appraised Values .....	60
Special Tax Fund .....	21	Property Values .....	60
Bond Fund .....	23	Other Possible Claims Upon the Value of Taxable Property .....	62
Improvement Fund .....	24	Exempt Properties .....	63
2023 Reserve Fund .....	26	FDIC/Federal Government Interests in Properties .....	63
Investment of Moneys in Funds .....	28	Depletion of 2023 Reserve Fund .....	65
Issuance of Future Parity Bonds for Refunding Only .....	28	Bankruptcy Delays .....	65
THE DISTRICT AND IMPROVEMENT AREA NO. 2 .....	30	Cyber Security .....	66
Formation and Background .....	30	Disclosure to Future Purchasers .....	66
Description and Location .....	30	No Acceleration Provisions .....	66
Authorized Facilities .....	33	Impact of Certain Events on Tax Exemption .....	66
Debt Service Coverage .....	33	IRS Audit of Tax-Exempt Bond Issues .....	67
City of Tracy Growth Management Ordinance (GMO) .....	33	Voter Initiatives .....	67
Market Absorption Study .....	34	Public Health Emergencies .....	68
Environmental Matters .....	35	Secondary Market for Bonds .....	68
Appraised Values .....	36	LEGAL MATTERS .....	69
Fiscal Year 2023-24 Special Tax Levy .....	38	Legal Opinions .....	69
Value-to-Lien Ratios and Share of Fiscal Year 2023-24 Special Taxes .....	38	No Litigation .....	69
Direct and Overlapping Governmental Obligations .....	42	TAX MATTERS .....	69
Potential Consequences of Special Tax Delinquencies .....	43	CONTINUING DISCLOSURE .....	71
PROPERTY OWNERSHIP AND THE DEVELOPMENT .....	44	NO RATING .....	72
The Master Developer and Subsidiaries .....	44	UNDERWRITING .....	72
The Tracy Hills Project .....	45	PROFESSIONAL FEES .....	73
		EXECUTION .....	73

- APPENDIX A – General Information About the City of Tracy and San Joaquin County
- APPENDIX B – Rate and Method of Apportionment of Special Taxes for Improvement Area No. 2 of the City of Tracy Community Facilities District No. 2016-1 (Tracy Hills)
- APPENDIX C – Appraisal Report and Update
- APPENDIX D – Market Absorption Study
- APPENDIX E – Summary of Certain Provisions of the Fiscal Agent Agreement
- APPENDIX F – Form of Opinion of Bond Counsel
- APPENDIX G – Form of Issuer Continuing Disclosure Certificate
- APPENDIX H – Form of Developer Continuing Disclosure Certificate
- APPENDIX I – DTC and the Book-Entry Only System

[INSERT REGIONAL MAP]

## GENERAL INFORMATION ABOUT THIS OFFICIAL STATEMENT

**No Offering May Be Made Except by this Official Statement.** No dealer, broker, salesperson or other person has been authorized to give any information or to make any representations with respect to the 2023 Bonds other than as contained in this Official Statement, and if given or made, such other information or representation must not be relied upon as having been authorized.

**No Unlawful Offers or Solicitations.** This Official Statement does not constitute an offer to sell or the solicitation of an offer to buy in any state in which such offer or solicitation is not authorized or in which the person making such offer or solicitation is not qualified to do so or to any person to whom it is unlawful to make such offer or solicitation.

**Effective Date.** This Official Statement speaks only as of its date, and the information and expressions of opinion contained in this Official Statement are subject to change without notice. Neither the delivery of this Official Statement nor any sale of the 2023 Bonds will, under any circumstances, create any implication that there has been no change in the affairs of the City, the District, any other parties described in this Official Statement, or in the condition of property within Improvement Area No. 2 of the District since the date of this Official Statement.

**Use of this Official Statement.** This Official Statement is submitted in connection with the sale of the 2023 Bonds referred to herein and may not be reproduced or used, in whole or in part, for any other purpose. This Official Statement is not a contract with the purchasers of the 2023 Bonds.

**Preparation of this Official Statement.** The information contained in this Official Statement has been obtained from sources that are believed to be reliable, but this information is not guaranteed as to accuracy or completeness.

The Underwriter has provided the following sentence for inclusion in this Official Statement: The Underwriter has reviewed the information in this Official Statement in accordance with, and as part of, its responsibilities to investors under the federal securities laws as applied to the facts and circumstances of this transaction, but the Underwriter does not guarantee the accuracy or completeness of such information.

**Document References and Summaries.** All references to and summaries of the Fiscal Agent Agreement or other documents contained in this Official Statement are subject to the provisions of those documents and do not purport to be complete statements of those documents.

**Stabilization of and Changes to Offering Prices.** The Underwriter may over allot or take other steps that stabilize or maintain the market prices of the 2023 Bonds at levels above those that might otherwise prevail in the open market. If commenced, the Underwriter may discontinue such market stabilization at any time. The Underwriter may offer and sell the 2023 Bonds to certain securities dealers, dealer banks and banks acting as agent at prices lower than the public offering prices stated on the inside cover page of this Official Statement, and those public offering prices may be changed from time to time by the Underwriter.

**Bonds are Exempt from Securities Laws Registration.** The issuance and sale of the 2023 Bonds have not been registered under the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended, in reliance upon exemptions for the issuance and sale of municipal securities provided under Section 3(a)(2) of the Securities Act of 1933 and Section 3(a)(12) of the Securities Exchange Act of 1934.

**Estimates and Projections.** Certain statements included or incorporated by reference in this Official Statement constitute "forward-looking statements" within the meaning of the United States Private Securities Litigation Reform Act of 1995, Section 21E of the United States Securities Exchange Act of 1934, as amended, and Section 27A of the United States Securities Act of 1933, as amended. Such statements are generally identifiable by the terminology used such as "plan," "expect," "estimate," "budget" or other similar words.

**The achievement of certain results or other expectations contained in such forward-looking statements involve known and unknown risks, uncertainties and other factors which may cause actual results, performance or achievements described to be materially different from any future results, performance or achievements expressed or implied by such forward-looking statements. The District does not plan to issue any updates or revisions to those forward-looking statements if or when its expectations, or events, conditions or circumstances on which such statements are based occur.**

The City maintains an Internet website, but the information on the website is not incorporated in this Official Statement.

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## OFFICIAL STATEMENT

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**\$36,000,000\***  
**IMPROVEMENT AREA NO. 2**  
**OF THE CITY OF TRACY**  
**COMMUNITY FACILITIES DISTRICT NO. 2016-1 (TRACY HILLS)**  
**SPECIAL TAX BONDS, SERIES 2023**

### INTRODUCTION

This Official Statement, including the cover page, inside cover and attached appendices, is provided to furnish information regarding the bonds captioned above (the “**2023 Bonds**”) to be issued by the City of Tracy (the “**City**”) on behalf of the City of Tracy Community Facilities District No. 2016-1 (Tracy Hills) (the “**District**”) with respect to its Improvement Area No. 2 (“**Improvement Area No. 2**”).

*This introduction is not a summary of this Official Statement. It is only a brief description of and guide to, and is qualified by, more complete and detailed information contained in the entire Official Statement, including the cover page, the inside cover and attached appendices, and the documents summarized or described in this Official Statement. A full review should be made of the entire Official Statement. The offering of the 2023 Bonds to potential investors is made only by means of the entire Official Statement. Capitalized terms used but not defined in this Official Statement have the definitions given in the Fiscal Agent Agreement (as defined below).*

**The District and Improvement Area No. 2.** The District (and Improvement Area No. 2) is located west of Corral Hollow Road, south of W. Valpico Road and north of Interstate 580, in the City. The property in Improvement Area No. 2 is part of the larger master-planned community known as “Tracy Hills” (the “**Tracy Hills Project**” or the “**THPO Property**”) being master-planned by The Tracy Hills Project Owner, LLC, a Delaware limited liability company (“**THPO**”). THPO is developing the property through six affiliated owners (the “**THPO Affiliates**”). THPO and the THPO Affiliates were formed as special-purpose entities managed by the principals of Integral Communities.

The District was formed and established by the City Council of the City (the “**City Council**”), as legislative body of the District, under the Mello-Roos Community Facilities Act of 1982, as amended (the “**Act**”), pursuant to a resolution adopted by the City Council following a public hearing and a special landowner election. At the time of establishment of the District, an Improvement Area No. 1 (“**Improvement Area No. 1**”) and a future annexation area (the “**Future Annexation Area**”) were also established for the District.

In September 2022, the City Council, as legislative body of the District, and the landowners in Improvement Area No. 2, by unanimous approval, authorized the annexation of certain property from the Future Annexation Area into the District as Improvement Area No. 2, the incurrence of bonded indebtedness for Improvement Area No. 2 in an aggregate principal amount not to exceed \$50,000,000, and the levy of special taxes within Improvement Area No. 2. See “THE DISTRICT AND IMPROVEMENT AREA NO. 2 – Formation and Background.” Although the bonded indebtedness limit for Improvement Area No. 2 is \$50,000,000, the City covenants in the Fiscal Agent Agreement to issue Parity Bonds only

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\* Preliminary; subject to change.

for refunding purposes. See “SECURITY FOR THE BONDS – Issuance of Future Parity Bonds for Refunding Only”.

Additional parcels may annex into the District in the future from the Future Annexation Area. There is currently no intention for any additional territory to annex into Improvement Area No. 2. Parcels that annex into an improvement area within the District other than Improvement Area No. 2 do not serve as security for the 2023 Bonds.

**Authority for Issuance of the 2023 Bonds.** The 2023 Bonds are issued under the Act and the following:

- a resolution adopted by the City Council on October 17, 2023 (the “**Resolution of Issuance**”), and
- a Fiscal Agent Agreement dated as of November 1, 2023 (the “**Fiscal Agent Agreement**”), by and between the City and U.S. Bank Trust Company, National Association, as fiscal agent (the “**Fiscal Agent**”).

See “THE 2023 BONDS – Authority for Issuance.”

**Purpose of the 2023 Bonds.** Proceeds of the 2023 Bonds will be used primarily to finance the acquisition and construction of certain capital improvements necessary for the development of the property in the District and for the Tracy Hills project as a whole. Proceeds of the 2023 Bonds will also fund a debt service reserve fund for the 2023 Bonds and pay the costs of issuing the 2023 Bonds. See “FINANCING PLAN.”

**Redemption of Bonds before Maturity.** The 2023 Bonds are subject to optional redemption, mandatory sinking fund redemption and special redemption from prepaid Special Taxes (as defined below). See “THE 2023 BONDS – Redemption.”

**Security and Sources of Payment for the 2023 Bonds.** The City Council will annually levy special taxes on the property in Improvement Area No. 2 for the purposes of financing facilities (the “**Special Taxes**”) in accordance with the Rate and Method of Apportionment of Special Taxes for Improvement Area No. 2 (the “**Rate and Method**”). The 2023 Bonds are secured by and payable from a first pledge of the proceeds of the Special Taxes received by the City (as more particularly defined in the Fiscal Agent Agreement, the “**Special Tax Revenues**”), on a parity with any bonds that may be issued in the future (the “**Parity Bonds**”), subject to the conditions set forth in the Fiscal Agent Agreement. The 2023 Bonds will be additionally secured by certain funds and accounts established and held under the Fiscal Agent Agreement. See “SECURITY FOR THE BONDS.”

**Debt Service Reserve Fund.** In order to further secure the payment of principal of and interest on the 2023 Bonds (and any series of Parity Bonds the principal of and interest on which is payable from amounts in the 2023 Reserve Fund), certain proceeds of the 2023 Bonds will be deposited into the 2023 Reserve Fund in an amount equal to the 2023 Reserve Requirement (as defined herein). See “FINANCING PLAN – Estimated Sources and Uses of Funds” and “SECURITY FOR THE BONDS – 2023 Reserve Fund.”

**Covenant to Foreclose.** The City has covenanted in the Fiscal Agent Agreement to cause foreclosure proceedings to be commenced and prosecuted against certain parcels with delinquent installments of the Special Taxes. See “SECURITY FOR THE BONDS – Covenant to Foreclose.”

**Property Ownership and Special Tax Status.** The taxable property in Improvement Area No. 2 is being developed as four villages of single-family detached lots (each a “**Village**” and, collectively, the

“**IA No. 2 Villages**”). Improvement Area No. 2 is projected to be developed into 432 residential units. The property in Improvement Area No. 2 is owned by individual homeowners, Lennar Homes of California, LLC (“**Lennar Homes**”), and AG Essential Housing CA 1, L.P. (the “**Landbank Owner**”) all as further set forth below:

**IA No. 2 Villages  
Status of Development  
(as of September 15, 2023)**

	<u>Amber/ Parklin</u>	<u>Sunhaven/ Opal</u>	<u>Greenwood</u>	<u>Fairgrove</u>	<u>Total</u>
<b>Construction and Sale Status</b>					
Closed to Homeowners	29	33	24	22	108
Completed Unclosed Homes (including 8 models)	6	2	8	5	21
Under Construction <sup>(1)</sup>	27	27	17	21	92
Finished Lots	7	2	101	101	211
Total Projected Units	69	64	150	149	432
<b>Permit Status</b>					
Plumbing-Only Permits Received <sup>(2)</sup>	0	0	94	91	185
Full Building Permits Received <sup>(3)</sup>	69	64	56	58	247
Total Projected Units	69	64	150	149	432

(1) Under construction means that a full building permit has been issued and the trenching for the foundation has begun. Represents homes in various stages of construction.

(2) Under the Growth Management Ordinance, a builder must have an RGA (as defined herein) in order to apply for a building permit on or before September 30th of the year in which the builder was allocated the RGA. If such an application is not made in a timely manner, then the RGA would expire. Pursuant to the First Amendment to the Development Agreement, the City considers the receipt of a plumbing permit as timely receipt of a permit to prevent the expiration of an RGA.

(3) The receipt of a full building permit is also considered a timely receipt of a permit to prevent the expiration of an RGA.

Source: Lennar Homes.

For a description of the current status of development within Improvement Area No. 2, see “PROPERTY OWNERSHIP AND THE DEVELOPMENT – Lennar Homes” and “– Status of Development.”

**Appraised Value of Property in Improvement Area No. 2.** An appraisal of the property within Improvement Area No. 2, dated September 22, 2023, (the “**Original Appraisal**”) and an update to the Original Appraisal dated September 26, 2023 (the “**Update to Original Appraisal**”) and, together with the Original Appraisal, the “**Appraisal**”), was prepared by Integra Realty Resources, Sacramento, California (the “**Appraiser**”) in connection with issuance of the 2023 Bonds. The purpose of the Original Appraisal was to estimate the market value of the fee simple estate, subject to the lien of the Special Taxes and overlapping liens, for all the taxable property within Improvement Area No. 2. Subject to the assumptions contained in the Original Appraisal, the Appraiser estimated that the taxable property within Improvement Area No. 2, subject to the lien of the Special Taxes and overlapping liens, had an estimated value of \$163,006,149 as of a July 19, 2023 date of value.

The Appraiser was requested to ascertain, as of September 21, 2023, whether the cumulative, or aggregate, value of the appraised properties is not less than the cumulative, or aggregate, value estimated as of the original date of value of July 19, 2023. Since the original date of value of July 19,

2023, a number of homes have been completed and/or sold to individual homeowners, a number of homes have begun construction with building permits and impact fees paid. As a result of the Appraiser's analysis, the Appraiser concluded that the cumulative, or aggregate, value, derived in the Original Appraisal, as of July 19, 2023, in accordance with the assumptions and conditions set forth in the Update to Original Appraisal as of September 21, 2023 (the current date of value), is not less than \$163,006,149.

See "THE DISTRICT AND IMPROVEMENT AREA NO. 2 – Appraised Values" for further information on the Appraisal. A complete copy of the Appraisal is attached as APPENDIX C.

**Estimated Value-to-Lien Ratios in Improvement Area No. 2.** Based on the appraised value of the taxable property within Improvement Area No. 2 of \$163,006,149 and an estimated par amount of 2023 Bonds of \$36,000,000,\* the overall value-to-lien ratio of the taxable property within Improvement Area No. 2 is approximately 4.53 to 1.\* This is an overall estimate, however, and the value-to-lien ratios of individual parcels may vary widely from this ratio. See "THE DISTRICT AND IMPROVEMENT AREA NO. 2 – Appraised Values."

**Market Absorption Study.** In connection with the issuance of the 2023 Bonds, the City engaged Empire Economics, Inc., San Juan Capistrano, California (the "**Market Absorption Consultant**") to prepare a market absorption study for the homes planned for Improvement Area No. 2, dated July 10, 2023 and revised September 22, 2023 (the "**Absorption Study**"). The Absorption Study sets forth the forecast of absorption under two scenarios: a benchmark scenario based on expected market conditions in the absence of the effect of a park construction-related condition of development, and a modified scenario that adjusts for the City's development restrictions related to such condition. See "PROPERTY OWNERSHIP AND THE DEVELOPMENT – Lennar Homes – *Conditions of Approval*" for a discussion of the park condition. See "THE DISTRICT AND IMPROVEMENT AREA NO. 2 – Market Absorption Study," and APPENDIX D for further information related to, and a copy of, the Absorption Study.

**Risk Factors Associated with Purchasing the 2023 Bonds.** Investment in the 2023 Bonds involves risks that may not be appropriate for some investors. See "BOND OWNERS' RISKS" for a discussion of certain risk factors which should be considered, in addition to the other matters set forth in this Official Statement, in considering the investment quality of the 2023 Bonds.

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\*Preliminary; subject to change.

## FINANCING PLAN

### Authorized Facilities

The net proceeds of the 2023 Bonds will be used to construct and/or acquire various facilities authorized to be financed by the District, including those that may be financed by the payment of capital improvement fees (collectively, “**Authorized Facilities**”). For a description of the Authorized Facilities, see “THE DISTRICT AND IMPROVEMENT AREA NO. 2 – Authorized Facilities.”

Currently, the City intends to use a portion of the proceeds of the 2023 Bonds to pay a portion of the costs of school fees pursuant to the Joint Powers Agreement with the Jefferson School District and acquiring and/or constructing roads, parks and landscaping, sewer, water, reclaimed water, and storm drain improvements, among other Authorized Facilities.

### Estimated Sources and Uses of Funds

The estimated proceeds from the sale of the 2023 Bonds will be used as follows:

#### SOURCES

Principal Amount of 2023 Bonds	\$
<i>Plus/Less: [Net] Original Issue Premium/Discount</i>	
<i>Total Sources</i>	<hr/> \$

#### USES

Deposit into Improvement Fund	\$
Deposit into 2023 Reserve Fund <sup>(1)</sup>	
Deposit into Administrative Expense Fund	
Costs of Issuance <sup>(2)</sup>	
<i>Total Uses</i>	<hr/> \$

- (1) Equal to the 2023 Reserve Requirement with respect to the 2023 Bonds as of the Closing Date.  
(2) Includes, among other things, the fees and expenses of Bond Counsel and Disclosure Counsel, the Fiscal Agent, the Municipal Advisor, and the Special Tax Consultant; printing the Preliminary and Final Official Statements; and Underwriter's discount.

## THE 2023 BONDS

*This section generally describes the terms of the 2023 Bonds contained in the Fiscal Agent Agreement, which is summarized in more detail in APPENDIX E. Capitalized terms used but not defined in this section are defined in APPENDIX E.*

### Authority for Issuance

The 2023 Bonds are issued under the Act, the Resolution of Issuance and the Fiscal Agent Agreement. Under the Resolution of Issuance, the 2023 Bonds may be issued in a maximum principal amount of \$38,000,000.

### General Bond Terms

**Dated Date, Maturity and Authorized Denominations.** The 2023 Bonds will be dated their date of delivery (the “**Closing Date**”) and will mature in the amounts and on the dates set forth on the inside cover page of this Official Statement. The 2023 Bonds will be issued in fully registered form in denominations of \$5,000 each or any integral multiple of \$5,000.

**Calculation of Interest.** Interest will be calculated on the basis of a 360-day year composed of twelve 30-day months. The 2023 Bonds will bear interest at the annual rates set forth on the inside cover page of this Official Statement, payable semiannually on each March 1 and September 1, commencing March 1, 2024 (each, an “**Interest Payment Date**”).

Each 2023 Bond will bear interest from the Interest Payment Date next preceding its date of authentication unless:

(i) it is authenticated on an Interest Payment Date, in which event it will bear interest from such date of authentication, or

(ii) it is authenticated prior to an Interest Payment Date and after the close of business on the Record Date (as defined below) preceding such Interest Payment Date, in which event it will bear interest from such Interest Payment Date, or

(iii) it is authenticated prior to the Record Date preceding the first Interest Payment Date, in which event it will bear interest from the Closing Date;

provided, however, that if at the time of authentication of a 2023 Bond, interest is in default thereon, such 2023 Bond will bear interest from the Interest Payment Date to which interest has previously been paid or made available for payment thereon.

“**Record Date**” means the 15th day of the calendar month next preceding the applicable Interest Payment Date, whether or not such day is a Business Day.

**DTC and Book-Entry Only System.** DTC will act as securities depository for the 2023 Bonds. The 2023 Bonds will be issued as fully-registered securities registered initially in the name of Cede & Co. (DTC’s partnership nominee). See APPENDIX I – “DTC AND THE BOOK-ENTRY ONLY SYSTEM.”

**Payments of Interest and Principal.** *For so long as DTC is used as depository for the 2023 Bonds, principal of, premium, if any, and interest payments on the 2023 Bonds will be made solely to DTC or its nominee, Cede & Co., as registered owner of the 2023 Bonds, for distribution to the beneficial owners of the 2023 Bonds in accordance with the procedures adopted by DTC.*

Interest on the 2023 Bonds (including the final interest payment upon maturity or earlier redemption), is payable on the applicable Interest Payment Date by check of the Fiscal Agent mailed by first-class mail to the registered Owner thereof at such registered Owner's address as it appears on the registration books maintained by the Fiscal Agent at the close of business on the Record Date preceding the Interest Payment Date, or by wire transfer made on such Interest Payment Date upon written instructions of any Owner of \$1,000,000 or more in aggregate principal amount of 2023 Bonds delivered to the Fiscal Agent prior to the applicable Record Date, which will continue in effect until revoked in writing, or until such 2023 Bonds are transferred to a new Owner.

The principal of the 2023 Bonds and any premium on the 2023 Bonds are payable in lawful money of the United States of America upon surrender of the 2023 Bonds at the Principal Office of the Fiscal Agent.

**Redemption\***

**Optional Redemption.** The 2023 Bonds maturing on or after September 1, 20\_\_, are subject to optional redemption as directed by the City, from sources of funds other than prepayments of Special Taxes, prior to their stated maturity on any date on or after September 1, 20\_\_, as a whole or in part, at the redemption prices (expressed as a percentage of the principal amount of the 2023 Bonds to be redeemed) set forth below, together with accrued interest thereon to the date fixed for redemption:

<u>Redemption Dates</u>	<u>Redemption Price</u>
September 1, ____ through August 31, ____	103%
September 1, ____ through August 31, ____	102
September 1, ____ through August 31, ____	101
September 1, ____ and any date thereafter	100

**Mandatory Sinking Fund Redemption.** The 2023 Bonds maturing on September 1, 20\_\_, September 1, 20\_\_, September 1, 20\_\_, and September 1, 20\_\_ (the "Term Bonds"), will also be subject to mandatory redemption in part by lot, from Sinking Fund Payments made by the City from the Bond Fund, at a redemption price equal to the principal amount thereof to be redeemed, plus accrued interest to the redemption date, without premium, in the aggregate respective principal amounts, as set forth in the tables below; provided, however, if some but not all of the Term Bonds of a given maturity have been redeemed through optional redemption or mandatory prepayment redemption as described herein, the total amount of all future Sinking Fund Payments relating to such maturity will be reduced by the aggregate principal amount of Term Bonds of such maturity so redeemed, to be allocated among such Sinking Fund Payments on a pro rata basis in integral multiples of \$5,000 as determined by the City.

<u>Sinking Fund Redemption Date (September 1)</u>	<u>Sinking Fund Payments</u>
	\$

(maturity)

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\* Preliminary; subject to change.

**Sinking Fund  
Redemption Date  
(September 1)**

**Sinking Fund  
Payments**  
\$

(maturity)

**Sinking Fund  
Redemption Date  
(September 1)**

**Sinking Fund  
Payments**  
\$

(maturity)

**Sinking Fund  
Redemption Date  
(September 1)**

**Sinking Fund  
Payments**  
\$

(maturity)

**Redemption from Special Tax Prepayments.** Special Tax Prepayments and any corresponding transfers from the 2023 Reserve Fund will be used to redeem 2023 Bonds on the next Interest Payment Date for which notice of redemption can timely be given under the Fiscal Agent Agreement, among maturities so as to maintain substantially the same debt service profile for the 2023 Bonds as in effect prior to such redemption and by lot within a maturity, at a redemption price (expressed as a percentage of the principal amount of the 2023 Bonds to be redeemed), as set forth below, together with accrued interest to the date fixed for redemption:

<b><u>Redemption Dates</u></b>	<b><u>Redemption Price</u></b>
Any Interest Payment Date on or before March 1, ____	103%
September 1, ____ and March 1, ____	102%
September 1, ____ and March 1, ____	101%
September 1, ____ and any Interest Payment Date thereafter	100%

Any future Parity Bonds also are required to be redeemed from Special Tax Prepayments among maturities so as to maintain substantially the same debt service profile as in effect prior to such redemption. As a result, any Special Tax Prepayments will be applied to the redemption of all series of Outstanding Bonds on a pro rata basis.

**Purchase in Lieu of Redemption.** In lieu of redemption, moneys in the Bond Fund may be used and withdrawn by the Fiscal Agent for purchase of Outstanding 2023 Bonds, upon the filing with the Fiscal Agent of an Officer's Certificate requesting such purchase, at public or private sale as and when, and at such prices (including brokerage and other charges) as such Officer's Certificate may provide, but in no event may 2023 Bonds be purchased at a price in excess of the principal amount thereof, plus interest accrued to the date of purchase and any premium which would otherwise be due if such 2023 Bonds were to be redeemed in accordance with the Fiscal Agent Agreement.

In lieu of and following distribution of a notice of an optional redemption under the Fiscal Agent Agreement, the City will have the right to purchase or to cause the purchase of all or a portion of the 2023 Bonds in lieu of the optional redemption and to leave such 2023 Bonds outstanding.

**Notice of Redemption.** The Fiscal Agent will cause notice of any redemption to be mailed by first-class mail, postage prepaid, at least 20 days but not more than 60 days prior to the date fixed for redemption, to the Original Purchaser, to the Securities Depositories, and to the respective registered Owners of any 2023 Bonds designated for redemption, at their addresses appearing on the 2023 Bond registration books in the Principal Office of the Fiscal Agent; but such mailing will not be a condition precedent to such redemption and failure to mail or to receive any such notice, or any defect therein, will not affect the validity of the proceedings for the redemption of such 2023 Bonds. In addition, the Fiscal Agent will file each notice of redemption with the MSRB through its EMMA system.

*However, while the 2023 Bonds are subject to DTC's book-entry system, the Fiscal Agent will be required to give notice of redemption only to DTC as provided in the letter of representations executed by the City and received and accepted by DTC. DTC and the Participants will have sole responsibility for providing any such notice of redemption to the Beneficial Owners of the 2023 Bonds to be redeemed. Any failure of DTC to notify any Participant, or any failure of Participants to notify the Beneficial Owner of any 2023 Bonds to be redeemed, of a notice of redemption or its content or effect will not affect the validity of the notice of redemption, or alter the effect of redemption set forth in the Fiscal Agent Agreement.*

**Conditional Redemption Notice; Rescission of Redemption.** Any redemption notice may be conditioned upon the receipt of moneys by the City sufficient to cause such redemption. The City has the right to rescind any notice of the optional redemption of the 2023 Bonds by written notice to the Fiscal Agent on or prior to the date fixed for redemption. Any notice of redemption will be cancelled and annulled if for any reason funds will not be or are not available on the date fixed for redemption for the payment in full of the 2023 Bonds then called for redemption, and such cancellation will not constitute a default under the Fiscal Agent Agreement. The City and the Fiscal Agent have no liability to the Owners or any other party related to or arising from such rescission of redemption. The Fiscal Agent shall mail notice of such rescission of redemption in the same manner as the original notice of redemption was sent under the Fiscal Agent Agreement.

**Selection of 2023 Bonds for Redemption.** Whenever provision is made in the Fiscal Agent Agreement for the redemption of less than all of the 2023 Bonds of any maturity or any given portion thereof, the Fiscal Agent will select the 2023 Bonds to be redeemed by lot in any manner which the Fiscal Agent in its sole discretion deems appropriate.

**Effect of Redemption.** From and after the date fixed for redemption, if funds available for the payment of the principal of, and interest and any premium on, the 2023 Bonds so called for redemption have been deposited in the Bond Fund, such 2023 Bonds so called will cease to be entitled to any benefit under the Fiscal Agent Agreement other than the right to receive payment of the redemption price, and no interest will accrue thereon on or after the redemption date specified in the notice of redemption. All 2023 Bonds redeemed and purchased by the Fiscal Agent under the Fiscal Agent Agreement will be canceled by the Fiscal Agent.

## **Registration, Transfer and Exchange**

*The following provisions regarding the exchange and transfer of the 2023 Bonds apply only during any period in which the 2023 Bonds are not subject to DTC's book-entry system. While the 2023 Bonds are subject to DTC's book-entry system, their exchange and transfer will be effected through DTC and the Participants and will be subject to the procedures, rules and requirements established by DTC. See "APPENDIX I – DTC and the Book-Entry Only System."*

**Registration.** The Fiscal Agent will keep, or cause to be kept, at its Principal Office sufficient books for the registration and transfer of the 2023 Bonds, which will show the series number, date, amount, rate of interest and last known owner of each 2023 Bond and will at all times be open to inspection by the City during regular business hours upon reasonable notice; and, upon presentation for such purpose, the Fiscal Agent will, under such reasonable regulations as it may prescribe, register or transfer or cause to be registered or transferred, on said books, the ownership of the 2023 Bonds as provided in the Fiscal Agent Agreement.

The City and the Fiscal Agent will treat the Owner of any 2023 Bond whose name appears on the Bond register as the absolute Owner of such 2023 Bond for any and all purposes, and the City and the Fiscal Agent will not be affected by any notice to the contrary. The City and the Fiscal Agent may rely on the address of the Bondowner as it appears in the Bond register for any and all purposes.

**Registration of Exchange or Transfer.** Any 2023 Bond may, in accordance with its terms, be transferred, upon the Bond register by the person in whose name it is registered, in person or by such person's duly authorized attorney, upon surrender of such 2023 Bond for cancellation, accompanied by delivery of a duly written instrument of transfer in a form acceptable to the Fiscal Agent.

The 2023 Bonds may be exchanged at the Principal Office of the Fiscal Agent solely for a like aggregate principal amount of 2023 Bonds of authorized denominations and of the same maturity.

The cost for any services rendered or any expenses incurred by the Fiscal Agent in connection with any such transfer or exchange will be paid by the City. The Fiscal Agent will collect from the Owner requesting such transfer or exchange any tax or other governmental charge required to be paid with respect to such transfer or exchange. Whenever any 2023 Bond or 2023 Bonds are surrendered for transfer or exchange, the City will execute and the Fiscal Agent will authenticate and deliver a new 2023 Bond or 2023 Bonds, for a like aggregate principal amount.

No transfers or exchanges of 2023 Bonds will be required to be made (i) 15 days prior to the date established by the Fiscal Agent for selection of 2023 Bonds for redemption or (ii) with respect to a 2023 Bond after such 2023 Bond has been selected for redemption; or (iii) between a Record Date and the succeeding Interest Payment Date.

## DEBT SERVICE SCHEDULE

**Debt Service Schedule.** The following table presents the annual debt service (including mandatory sinking fund payments) on the 2023 Bonds, assuming there are no optional redemptions or special redemptions from Special Tax Prepayments.

Year Ending September 1	2023 Bonds Principal	2023 Bonds Interest	2023 Bonds Total
2024			
2025			
2026			
2027			
2028			
2029			
2030			
2031			
2032			
2033			
2034			
2035			
2036			
2037			
2038			
2039			
2040			
2041			
2042			
2043			
2044			
2045			
2046			
2047			
2048			
2049			
2050			
2051			
2052			
2053			
Total:			

Source: Piper Sandler & Co.

**Debt Service Coverage.** The 2023 Bonds are being sized so that in each fiscal year there is at least 110% annual debt service coverage from Maximum Special Tax revenues, net of estimated Administrative Expenses. For Fiscal Year 2024-25, such projected debt service coverage is 110%. Administrative Expenses are estimated at \$40,000 in Fiscal Year 2023-24, escalating by 2% annually thereafter.

## SECURITY FOR THE BONDS

*This section generally describes the security for the Bonds set forth in the Fiscal Agent Agreement, which is summarized in more detail in APPENDIX E. Capitalized terms used but not defined in the section are defined in APPENDIX E.*

### General

The 2023 Bonds and any Parity Bonds (collectively, the “**Bonds**”) are secured by a first pledge (which will be effected in the manner and to the extent provided in the Fiscal Agent Agreement) of all of the Special Tax Revenues and all moneys deposited in the Bond Fund (including the Special Tax Prepayments Account), and, until disbursed as provided in the Fiscal Agent Agreement, in the Special Tax Fund. Annual Administrative Expenses are funded prior to paying debt service on the Bonds.

“**Special Tax Revenues**” are defined in the Fiscal Agent Agreement as the proceeds of the Special Taxes received by the City, including any scheduled payments thereof and any Special Tax Prepayments, interest thereon and proceeds of the redemption or sale of property sold as a result of foreclosure of the lien of the Special Taxes to the amount of said lien and interest thereon. *However*, Special Tax Revenues do not include any interest in excess of the interest due on the Bonds, or any penalties collected in connection with any such foreclosure.

The Special Tax Revenues and all moneys deposited into such funds (except as otherwise provided in the Fiscal Agent Agreement) are dedicated to the payment of the principal of, and interest and any premium on, the Bonds as provided in the Fiscal Agent Agreement and in the Act until all of the Bonds have been paid and retired or until moneys or Federal Securities have been set aside irrevocably for that purpose under the Fiscal Agent Agreement.

The 2023 Bonds and all Parity Bonds, the principal of and interest on which is payable from amounts in the 2023 Reserve Fund (“**2023 Related Parity Bonds**”), will be secured by a first pledge (which will be effected in the manner and to the extent provided in the Fiscal Agent Agreement) of all moneys deposited in the 2023 Reserve Fund. See “– 2023 Reserve Fund” below.

Amounts in the Improvement Fund (and the accounts therein, including the Remainder Taxes Account), the Administrative Expense Fund and the Costs of Issuance Fund are not pledged to the repayment of the Bonds. The Project is not pledged to the repayment of the Bonds, nor are the proceeds of any condemnation or insurance award received by the City with respect to the Project.

### Limited Obligation

**The Bonds are not general obligations of the City, but are limited obligations, payable solely from the Special Tax Revenues and the funds pledged therefor under the Fiscal Agent Agreement. Neither the faith and credit nor the taxing power of the City (except to the limited extent set forth in the Fiscal Agent Agreement) or of the State or any political subdivision thereof is pledged to the payment of the Bonds.**

### Special Taxes

**Covenant to Levy Special Taxes.** The Finance Director will effect the levy of the Special Taxes each Fiscal Year in accordance with the Ordinance by each August 10 that the Bonds are outstanding, or otherwise such that the computation of the levy is complete before the final date on which Auditor will accept the transmission of the Special Tax amounts for the parcels within Improvement Area No. 2 for inclusion on the next real property tax roll. Upon the completion of the computation of the amounts of the levy, the Finance Director shall prepare or cause to be prepared, and shall transmit to the Auditor,

such data as the Auditor requires to include the levy of the Special Taxes on the next real property tax roll.

**Computation.** The Finance Director will fix and levy the amount of Special Taxes within Improvement Area No. 2 required to pay the following amounts, taking into account the balances in the applicable funds established under the Fiscal Agent Agreement:

(i) the principal of and interest on any outstanding Bonds becoming due and payable during the ensuing calendar year,

(ii) any necessary replenishment or expenditure of the 2023 Reserve Fund and any other reserve account for Parity Bonds that are not 2023 Related Parity Bonds to the extent such replenishment has not been included in the computation of the Special Taxes in a previous Fiscal Year,

(iii) the Administrative Expenses, including amounts necessary to discharge any rebate obligation, during such year,

(iv) an amount to cure delinquencies in the payment of principal or interest on Bonds that occurred in the previous Fiscal Year, and

(v) any Project costs to be paid from Special Taxes to the extent that paying for such costs does not increase the Special Taxes levied on Undeveloped Property (as defined in the Rate and Method).

During the Remainder Taxes Period, the Finance Director will fix and levy the Special Taxes at the Maximum Special Tax rate on Developed Property before considering any Capitalized Interest (as those terms are defined in the Rate and Method).

**“Remainder Taxes Period”** means the period through and including the date that is the earlier of (i) the end of the 20th Fiscal Year during which Special Taxes for facilities have been levied on the property in Improvement Area No. 2 and (ii) the date the City has fully satisfied its reimbursement obligations under the Acquisition Agreement. The first year of the Special Tax levy was Fiscal Year 2023-24.

The Special Taxes so levied shall not exceed the authorized amounts as provided in the proceedings under the Resolution of Formation.

**Manner of Collection.** Except as set forth in the Ordinance, the Fiscal Agent Agreement provides that the Special Taxes will be payable and be collected in the same manner and at the same time and in the same installment as the general taxes on real property are payable, and have the same priority, become delinquent at the same time and in the same proportionate amounts and bear the same proportionate penalties and interest after delinquency as do the *ad valorem* taxes on real property.

*Because the Special Tax levy is limited to the maximum Special Tax rates set forth in the Rate and Method, no assurance can be given that, in the event of Special Tax delinquencies, the receipts of Special Taxes will, in fact, be collected in sufficient amounts in any given year to pay debt service on the Bonds. Further, under no circumstances will the Special Tax levied against any parcel of residential property for which an occupancy permit for private residential use has been issued be increased by more than 10% as a consequence of delinquency or default by the owner of any other parcel within Improvement Area No. 2. In addition, in no event shall Special Taxes for facilities be levied for more than 80 Fiscal Years. See “BOND OWNERS’ RISKS – Property Tax Delinquencies.”*

## Rate and Method

**General.** The Special Taxes will be levied and collected according to the Rate and Method, which provides the means by which the City Council may annually levy the Special Taxes within Improvement Area No. 2, up to the maximum Special Tax rates, and to determine the amount of the Special Taxes that will need to be collected each fiscal year from the “**Taxable Property**” within Improvement Area No. 2. *As used in this Official Statement, Special Tax refers only to the Facilities Special Tax levied under the Rate and Method; although a Services Special Tax is also authorized to be levied under the Rate and Method, the Services Special Tax is not pledged to repay the 2023 Bonds.*

The following is a summary of the provisions of the Rate and Method, which should be read in conjunction with the complete text of the Rate and Method, including its attachments, which is attached as APPENDIX B. Capitalized terms used but not defined in this section have the meanings as set forth in APPENDIX B. *This section provides only a summary of the Rate and Method, and is qualified by more complete and detailed information contained in the entire Rate and Method attached as APPENDIX B.*

**Facilities Special Tax Requirement.** Annually, at the time of levying the Special Tax, the person or firm designated by the City to administer the Special Taxes (the “**Administrator**”) will determine the minimum amount of money to be levied on Taxable Property related to the facilities component of the Rate and Method (the “**Facilities Special Tax Requirement**”), which will be the amount required in any Fiscal Year for the following purposes:

(i) to pay principal and interest on Bonds when due in the calendar year which begins in such Fiscal Year,

(ii) to create or replenish reserve funds to the extent such replenishment has not been included in the computation of the Facilities Special Tax Requirement in a previous Fiscal Year,

(iii) to cure any delinquencies in the payment of principal or interest on Bonds which have occurred in the prior Fiscal Year,

(iv) to pay Administrative Expenses, and

(v) to pay the costs of Authorized Facilities to be funded directly from Facilities Special Tax proceeds to the extent that paying directly for such costs does not increase the Facilities Special Taxes levied on Undeveloped Property.

**Annual Determination of Property Categories for Administration of Special Tax.** Each Fiscal Year, the Administrator will (i) categorize each Parcel of Taxable Property as Developed Property, Undeveloped Property, Taxable 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 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 Special Tax Revenues will be reduced pursuant to a proposed Land Use Change, the Administrator shall apply the steps set forth in the Rate and Method, as described further below.

In any Fiscal Year, if it is determined that:

(i) a parcel map for property in Improvement Area No. 2 was recorded after January 1 of the prior Fiscal Year (or any other date after which the Assessor will not incorporate the newly-created Parcels into the then-current tax roll),

(ii) because of the date the parcel map was recorded, the Assessor does not yet recognize the new Parcels created by the parcel map, and

(iii) one or more of the newly-created Parcels is in a different Development Class than other parcels created by the subdivision,

the Administrator will calculate the Special Tax for the property affected by recordation of the parcel map by determining the Special Tax that applies separately to the property within each Development Class, then applying the sum of the individual Special Taxes to the Parcel that was subdivided by recordation of the parcel map.

**Maximum Facilities Special Tax.** The table 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 the Rate and Method.

Once Special Taxes have been levied on a Parcel of Developed Property, the Maximum Special Taxes applicable to that Parcel will not be reduced in future Fiscal Years regardless of changes in land use on the Parcel, except (i) in the event of a partial prepayment, and (ii) pursuant to Section D of the Rate and Method, which is described below. 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 the Rate and Method.

The Expected Maximum Facilities Special Tax Revenues were calculated based on the Expected Land Uses at the time the Notice of Special Tax Lien affecting the Parcels in Improvement Area No. 2 was recorded in the official records of the County. The Administrator will 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. See the Rate and Method attached as APPENDIX B for additional details.

**Trigger Event.** The term “**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 District 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 will cease to be levied, and the Maximum Services Special Tax for each Parcel will be adjusted pursuant to the Rate and Method.

**Recycled Water Facilities Cost.** The term “**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 District. If, in the future, the City determines that there is a preferred alternative to the recycled water facilities that were expected at the time the

notice of special tax lien was recorded against the parcels in Improvement Area No. 2, the cost of such facilities will qualify as Recycled Water Facilities Costs for purposes of the Rate and Method.

**Fiscal Year 2023-24 Maximum Facilities Special Tax Rates<sup>(1)</sup>**

<b>Special Tax Category</b>	<b>Maximum Facilities Special Tax Prior to Trigger Event Fiscal Year 2023-24</b>	<b>Maximum Facilities Special Tax After Trigger Event Fiscal Year 2023-24</b>
Single Family Residential Property		
Village 9A	\$4,891 per Residential Unit	\$0 per Residential Unit
Village 9B	\$5,961 per Residential Unit	\$0 per Residential Unit
Village 10A	\$5,117 per Residential Unit	\$0 per Residential Unit
Village 10B	\$5,117 per Residential Unit	\$0 per Residential Unit
Village 10C	\$5,117 per Residential Unit	\$0 per Residential Unit
Village 11A	\$4,401 per Residential Unit	\$0 per Residential Unit
Village 11B	\$4,401 per Residential Unit	\$0 per Residential Unit
Other Property	\$47,285 per Acre	\$0 per Acre
Undeveloped Property	\$47,285 per Acre	\$0 per Acre
Taxable HOA Property	\$47,285 per Acre	\$0 per Acre
Taxable Public Property	\$47,285 per Acre	\$0 per Acre
Taxable Welfare Exemption Property	\$47,285 per Acre	\$0 per Acre

(1) Reflects the Maximum Facilities Special Tax rates as calculated per Section D.2 of the Rate and Method. The Maximum Facilities Special Tax per Unit increases each year by 2% of the amount in effect in the prior fiscal year.  
 Source: Goodwin Consulting Group, Inc.

## Expected Land Uses and Expected Maximum Facilities Special Tax Revenues at Buildout

Village	Expected Land Uses <sup>(1)</sup>		Maximum Facilities		Expected Maximum
			Special Tax Prior to Trigger Event		Facilities Special
			Fiscal Year 2023-24		Tax Revenues
					Fiscal Year 2023-24
9A	69	Residential Units	\$4,891	per Residential Unit	\$337,472
9B	64	Residential Units	\$5,961	per Residential Unit	\$381,496
10A	47	Residential Units	\$5,117	per Residential Unit	\$240,515
10B	41	Residential Units	\$5,117	per Residential Unit	\$209,811
10C	62	Residential Units	\$5,117	per Residential Unit	\$317,275
11A	45	Residential Units	\$4,401	per Residential Unit	\$198,059
11B	104	Residential Units	\$4,401	per Residential Unit	\$457,735
Other	0	Acres	\$48,231	per Acre	\$0
<b>Total</b>	<b>432 Residential Units</b>		<b>N/A</b>		<b>\$2,142,363</b>

(1) Based on Attachment 1 of the Rate and Method.  
 Source: Goodwin Consulting Group, Inc.

**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. See APPENDIX B for additional details.

**Method of Special Tax Levy.** Under the Rate and Method, the Administrator will determine the Facilities Special Tax Requirement and levy the Facilities Special Tax as follows:

**Step 1:** In the first 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 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 21st 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 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.

**Exemptions.** Any Parcel that becomes HOA Property, Public Property, or Welfare Exemption Property prior to the first series of Bonds being issued for Improvement Area No. 2 will be exempt from both the Services Special Tax and the Facilities Special Tax; the Administrator will reduce the Expected Maximum Facilities Special Tax Revenues to reflect any such exemption, and the first series of Bonds will 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 series of Bonds are issued for Improvement Area No. 2 will 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 will 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 will remain subject to the Facilities Special Tax levy, unless the first series of Bonds have yet to be issued for Improvement Area No. 2, in which case such property will be categorized as Public Property, and the Administrator will recalculate the Expected Maximum Facilities Special Tax Revenues based on the corresponding loss in revenues.

**Partial Prepayment of Facilities Special Tax.** A property owner may prepay up to 80% of the Facilities Special Tax obligation applicable to a Parcel in Improvement Area No. 2, subject to certain conditions. The Prepayment Amount is calculated based on the Bond Redemption Amount plus Redemption Premium and other costs, all as specified in "APPENDIX B – Rate and Method of Apportionment of Special Tax – Section H."

## **Covenant to Foreclose**

***Sale of Property for Nonpayment of Taxes.*** The Fiscal Agent Agreement provides that the Special Taxes are to be collected in the same manner as ordinary *ad valorem* property taxes are collected and, except as provided in the special covenant for foreclosure described below and in the Act, is to be subject to the same penalties and the same procedure, sale and lien priority in case of delinquency as is provided for *ad valorem* property taxes. Under these procedures, if taxes are unpaid for a period of five years or more, the property is subject to sale by the County.

***Foreclosure Under the Act.*** Under Section 53356.1 of the Act, if any delinquency occurs in the payment of the Special Tax, the City may order the institution of a Superior Court action to foreclose the lien therefor within specified time limits. In such an action, the real property subject to the unpaid amount may be sold at judicial foreclosure sale.

While judicial foreclosure is not mandatory under the Act, the City has covenanted in the Fiscal Agent Agreement that on or about June 30 of each Fiscal Year, the Finance Director will compare the amount of Special Taxes previously levied in Improvement Area No. 2 of the District to the amount of Special Tax Revenues received by the City, and:

***Individual Delinquencies.*** If the Finance Director determines that any single parcel subject to the Special Tax in Improvement Area No. 2 is delinquent in the payment of four installments of Special taxes, then the Finance Director will send or cause to be sent a notice of delinquency (and a demand for immediate payment thereof) to the property owner within 45 days of such determination, and (if the delinquency remains uncured) foreclosure proceedings will be commenced by the City within 90 days of such determination.

Notwithstanding the foregoing, the Finance Director may defer any such actions with respect to a delinquent parcel if (1) Improvement Area No. 2 is then participating in the Alternative Method of Distribution of Tax Levies and Collections described in Revenue & Taxation Code Section 4701 et seq. (referred to herein as the "Teeter Plan"), or an equivalent procedure, (2) the amount in the 2023 Reserve Fund is at least equal to the 2023 Reserve Requirement and (3) the amount in the reserve account for any Parity Bonds that are not 2023 Related Parity Bonds is at least equal to the Parity Reserve Requirement.

***Aggregate Delinquencies.*** If the Finance Director determines that (i) the total amount of delinquent Special Tax for the prior Fiscal Year for the entire Improvement Area No. 2 (including the total of delinquencies above), exceeds 5% of the total Special Tax due and payable for the prior Fiscal Year, determined by reference to the latest available secured property tax roll of the County, the Finance Director shall notify or cause to be notified property owners who are then delinquent in the payment of Special Taxes (and demand immediate payment of the delinquency) within 45 days of such determination, and shall commence foreclosure proceedings within 90 days of such determination against each parcel of land in Improvement Area No. 2 with a Special Tax delinquency.

***Sufficiency of Foreclosure Sale Proceeds; Foreclosure Limitations and Delays.*** No assurances can be given that the real property subject to a judicial foreclosure sale will be sold or, if sold, that the proceeds of sale will be sufficient to pay any delinquent Special Tax installment. The Act does not require the City to purchase or otherwise acquire any lot or parcel of property foreclosed upon if there is no other purchaser at such sale.

Section 53356.6 of the Act requires that property sold pursuant to foreclosure under the Act be sold for not less than the amount of judgment in the foreclosure action, plus post-judgment interest and authorized costs, unless the consent of the owners of 75% of the outstanding Bonds is obtained.

However, under Section 53356.5 of the Act, the City, as judgment creditor, is entitled to purchase any property sold at foreclosure using a “credit bid,” where the City could submit a bid crediting all or part of the amount required to satisfy the judgment for the delinquent amount of the Special Taxes. If the City becomes the purchaser under a credit bid, the City must pay the amount of its credit bid into the redemption fund established for the Bonds, but this payment may be made up to 24 months after the date of the foreclosure sale.

Foreclosure by court action is subject to normal litigation delays, the nature and extent of which are largely dependent on the nature of the defense, if any, put forth by the debtor and the Superior Court calendar. In addition, the ability of the City to foreclose the lien of delinquent unpaid Special Taxes may be limited in certain instances and may require prior consent of the property owner if the property is owned by or in receivership of the Federal Deposit Insurance Corporation (the “**FDIC**”). See “**BOND OWNERS’ RISKS – Bankruptcy Delays.**”

**Special Tax Delinquencies; Teeter Plan.** In 1949, the California Legislature enacted an alternative method for the distribution of property taxes to local agencies. This method, known as the “**Teeter Plan**,” is found in Sections 4701-4717 of the California Revenue and Taxation Code. Upon adoption and implementation of this method by a county board of supervisors, local agencies for which the county collects property taxes and certain other public agencies and taxing areas located in the county receive annually the full amount of their shares of property taxes and other levies collected on the secured roll, including delinquent property taxes which have yet to be collected. While the county bears the risk of loss on unpaid delinquent taxes, it retains the penalties associated with delinquent taxes when they are paid. In turn, the Teeter Plan provides participating local agencies with stable cash flow and the elimination of collection risk.

Once adopted, a county’s Teeter Plan will remain in effect in perpetuity unless the board of supervisors orders its discontinuance or unless, prior to the commencement of a fiscal year, a petition for discontinuance is received and joined in by resolutions of the governing bodies of not less than two-thirds of the participating districts in the county. An electing county may, however, decide to discontinue the Teeter Plan with respect to any levying agency in the county if the board of supervisors, by action taken not later than July 15 of a fiscal year, elects to discontinue the procedure with respect to such levying agency and the rate of secured tax delinquencies in that agency in any year exceeds 3% of the total of all taxes and assessments levied on the secured roll by that agency.

The Board of Supervisors of San Joaquin County adopted the Teeter Plan in Fiscal Year 1994-95. The County has elected to apply its Teeter Plan to the collection of the Special Taxes in Improvement Area No. 2. To the extent that the County’s Teeter Plan continues in existence and is carried out as adopted, and to the extent the County does not discontinue the Teeter Plan with respect to the District, the County’s Teeter Plan may help protect owners of the 2023 Bonds from the risk of delinquencies in the payment of Special Tax.

*There can be no assurance that the County will not modify or eliminate its Teeter Plan, or choose to remove the District from its Teeter Plan, while the 2023 Bonds are outstanding.*

## **Special Tax Fund**

**Deposits.** Under the Fiscal Agent Agreement, the Special Tax Fund is established as a separate fund to be held by the Fiscal Agent, to the credit of which the Fiscal Agent will deposit amounts received from or on behalf of the City consisting of Special Tax Revenues and amounts transferred from the Administrative Expense Fund and the Bond Fund. The City will promptly remit any Special Tax Revenues received by it to the Fiscal Agent for deposit by the Fiscal Agent to the Special Tax Fund.

Notwithstanding the foregoing,

(i) Special Tax Revenues in an amount not to exceed the amount included in the Special Tax levy for such Fiscal Year for Administrative Expenses will be separately identified by the Finance Director and shall be deposited by the Fiscal Agent in the Administrative Expense Fund;

(ii) any Special Tax Revenues constituting the collection of delinquencies in payment of Special Taxes shall be separately identified by the Finance Director and will be disposed of by the Fiscal Agent first, for transfer to the Bond Fund to pay any past due debt service on the Bonds; second, without preference or priority, for transfer to the 2023 Reserve Fund to the extent needed to increase the amount then on deposit in the 2023 Reserve Fund up to the then 2023 Reserve Requirement and for transfer to the reserve account for any Parity Bonds that are not 2023 Related Parity Bonds to the extent needed to increase the amount then on deposit therein to the required level; and third, to be held in the Special Tax Fund for use as described in “–Disbursements” below; and

(iii) any proceeds of Special Tax Prepayments will be separately identified by the Finance Director and will be deposited by the Fiscal Agent as follows (as directed in writing by the Finance Director): (a) that portion of any Special Tax Prepayment constituting a prepayment of construction costs (which otherwise could have been included in the proceeds of Parity Bonds) will be deposited by the Fiscal Agent to the Bond Proceeds Account of the Improvement Fund and (b) the remaining Special Tax Prepayment will be deposited by the Fiscal Agent in the Special Tax Prepayments Account established pursuant to the Fiscal Agent Agreement.

**Disbursements.** At least 7 Business Days prior to each Interest Payment Date, the Fiscal Agent will withdraw from the Special Tax Fund and transfer the following amounts in the following order of priority:

(i) to the Bond Fund an amount, taking into account any amounts then on deposit in the Bond Fund and any expected transfers from the Improvement Fund, the 2023 Reserve Fund, any reserve account for Parity Bonds that are not 2023 Related Parity Bonds, any capitalized interest account for Parity Bonds, and the Special Tax Prepayments Account to the Bond Fund such that the amount in the Bond Fund equals the principal (including any sinking payment), premium, if any, and interest due on the Bonds on such Interest Payment Date and any past due principal or interest on the Bonds not theretofore paid from a transfer described in the Fiscal Agent Agreement,

(ii) without preference or priority (a) to the 2023 Reserve Fund an amount, taking into account amounts then on deposit in the 2023 Reserve Fund, such that the amount in the 2023 Reserve Fund is equal to the 2023 Reserve Requirement, and (b) to the reserve account for any Parity Bonds that are not 2023 Related Parity Bonds, taking into account amounts then on deposit in such reserve account, such that the amount in such reserve account is equal to the amount required to be on deposit therein (and in the event that amounts in the Special Tax Fund are not sufficient for the purposes of this paragraph, such amounts will be applied to the 2023 Reserve Fund and any other reserve accounts ratably based on the then-Outstanding principal amount of each applicable series of Bonds), and

(iii) (A) on each October 1, beginning on October 1, 2024, and continuing through the Remainder Taxes Period, all of the moneys remaining in the Special Tax Fund will be transferred to the Remainder Taxes Account and

(B) on each subsequent October 1 after the end of the Remainder Taxes Period, all or a portion of the moneys remaining in the Special Tax Fund will be transferred to the Remainder Taxes Account as directed by the Finance Director.

Within 15 days after the end of each Bond Year, and after the foregoing transfers have been made, the Fiscal Agent will transfer all amounts remaining on deposit in the Special Tax Fund for any lawful purpose, as directed by the City in an Officer's Certificate.

## **Bond Fund**

**Deposits.** The Fiscal Agent will hold the moneys in the Bond Fund for the benefit of the City and the Owners of the Bonds, and will disburse those funds for the payment of the principal of, and interest and any premium on, the Bonds as described below.

There is also created in the Bond Fund a separate account to be held by the Fiscal Agent, designated the "**Special Tax Prepayments Account**," to the credit of which deposits will be made as provided in the Fiscal Agent Agreement.

**Disbursements.** At least 10 Business Days before each Interest Payment Date, the Fiscal Agent will notify the Finance Director in writing as to the principal and premium, if any, and interest due on the Bonds on the next Interest Payment Date (whether as a result of scheduled principal of and interest on the Bonds, optional redemption of the Bonds or a mandatory sinking fund redemption). On each Interest Payment Date, the Fiscal Agent will withdraw from the Bond Fund and pay to the Owners of the Bonds the principal of, and interest and any premium, due and payable on such Interest Payment Date on the Bonds.

At least 5 Business Days prior to each Interest Payment Date, the Fiscal Agent will determine if the amounts then on deposit in the Bond Fund are sufficient to pay the Debt Service due on the Bonds on the next Interest Payment Date. In the event that amounts in the Bond Fund are insufficient for such purpose, the Fiscal Agent promptly will notify the Finance Director by telephone (and confirm in writing) of the amount of the insufficiency.

If amounts in the Bond Fund are insufficient for the purpose set forth in the preceding paragraph with respect to any Interest Payment Date, the Fiscal Agent will do the following:

(i) Withdraw from the 2023 Reserve Fund, in accordance with the provisions of the Fiscal Agent Agreement, to the extent of any funds or Permitted Investments therein, amounts to cover the amount of such Bond Fund insufficiency related to the 2023 Bonds and any 2023 Related Parity Bonds. Amounts so withdrawn from the 2023 Reserve Fund will be deposited in the Bond Fund and used to pay debt service on the 2023 Bonds and any 2023 Related Parity Bonds.

(iv) Withdraw from the reserve funds, if any, established under a Supplemental Agreement related to Parity Bonds that are not 2023 Related Parity Bonds, to the extent of any funds or Permitted Investments therein, amounts to cover the amount of such Bond Fund insufficiency related to such Parity Bonds. Amounts so withdrawn from any such reserve fund will be deposited in the Bond Fund and used to pay debt service on the Parity Bonds that are not 2023 Related Parity Bonds.

If, after the foregoing transfers, there are insufficient funds in the Bond Fund to make the payments provided for in the second sentence of the first paragraph under "**Bond Fund – Disbursements**" above, the Fiscal Agent will apply the available funds first to the payment of interest on

the Bonds, then to the payment of principal due on the Bonds other than by reason of sinking payments, if any, and then to payment of principal due on the bonds by reason of sinking payments. The available funds in the Bond Fund will be allocated among the series of Outstanding Bonds based on the principal amount of the Outstanding Bonds without regard to the availability of moneys from the 2023 Reserve Fund or another debt service reserve account.

***Disbursements from the Special Tax Prepayments Account.*** Moneys in the Special Tax Prepayments Account will be transferred by the Fiscal Agent to the Bond Fund on the next date for which notice of redemption of Bonds can timely be given under the Fiscal Agent Agreement, and notice to the Fiscal Agent can timely be given under the Fiscal Agent Agreement, and will be used (together with any amounts transferred pursuant to the Fiscal Agent Agreement) to redeem Bonds on the redemption date selected in accordance the Fiscal Agent Agreement.

## **Improvement Fund**

***Deposits.*** Under the Fiscal Agent Agreement, the Improvement Fund is established as a separate fund to be held by the Fiscal Agent, to the credit of which the Fiscal Agent will deposit moneys, including a portion of the proceeds of the 2023 Bond, as provided in the Fiscal Agent Agreement. There are also created in the Improvement Fund the Remainder Taxes Account and the Bond Proceeds Account, to be held by the Fiscal Agent.

Moneys in the Improvement Fund shall be disbursed, except as otherwise provided in the Fiscal Agent Agreement, for the payment or reimbursement of costs of acquisition or construction of the Authorized Facilities.

***Disbursements Generally.*** Disbursements from the Improvement Fund will be made by the Fiscal Agent upon receipt of an officer's certificate in the form attached to the Fiscal Agent Agreement. Disbursements for the payment or reimbursement of costs of acquisition or construction of the Authorized Facilities will be made from the Bond Proceeds Account and the Remainder Taxes Account in the following order:

First: payments or reimbursements will be made from the Bond Proceeds Account so long as there are moneys available therein and such costs can be paid from Bond proceeds without violating the tax covenants set forth in the Fiscal Agent Agreement and

Second: payments or reimbursements will be made from the Remainder Taxes Account (1) even if Bond proceeds remain in the Bond Proceeds Account, if such payment or reimbursement would violate the tax covenants set forth in the Fiscal Agent Agreement and (2) when no Bond proceeds remain in the Bond Proceeds Account.

At the direction of the Finance Director, and so long as such amounts have not been previously approved for payment of a cost of Authorized Facilities, the Fiscal Agent will transfer amounts from the Remainder Taxes Account to the Bond Fund to pay debt service on the Bonds, the Administrative Expense Fund to pay Administrative Expenses, the 2023 Reserve Fund to increase the amount therein to the 2023 Reserve Requirement, and the reserve account for Parity Bonds that are not 2023 Related Parity Bonds that is held by the Fiscal Agent to increase the amount therein to the Parity Reserve Requirement.

***Disbursements Related to Construction of Phase 1B Neighborhood Park.*** Construction of a neighborhood park (the “**Phase 1B Neighborhood Park**”) is one condition of development in Improvement Area No. 2. See “PROPERTY OWNERSHIP AND THE DEVELOPMENT – Lennar Homes – *Conditions of Approval*” for additional information related to the Phase 1B Neighborhood Park. Notwithstanding the process for disbursements from the Improvement Fund described above under “ –

*Disbursements Generally,*” and except as described in the last paragraph of this section, \$6 million of the proceeds of the 2023 Bonds deposited in the Bond Proceeds Account on the Closing Date (the “**Set-Aside Amount**”) may be disbursed from the Bond Proceeds Account upon receipt of an officer’s certificate that includes a representation that either:

(1) (a) the Phase 1B Neighborhood Park has been constructed by Lennar Homes, (b) the Phase 1B Neighborhood Park has been inspected by the City, and (c) the City has determined that the Phase 1B Neighborhood Park has been constructed in accordance with approved plans and specifications and all applicable City standards (other than any items identified by the City that need to be addressed before the Phase 1B Neighborhood Park can be deemed complete by the City, and which the City and Lennar Homes estimate to cost no more than \$100,000 in the aggregate), or

(2) the City has determined that each parcel of Taxable Property (as defined in the Rate and Method) in Improvement Area No. 2 has a Value that is at least three (3) times the sum of: (a) the allocable principal amount of the Bonds then Outstanding, plus (b) the aggregate principal amount of any fixed assessment liens on the parcel, plus (c) the allocable principal amount of any and all Other District Bonds that are payable at least in part from special taxes levied on such parcel.

Upon satisfaction of the condition set forth in clauses (1) or (2) of the preceding paragraph, the City may apply the Set-Aside Amount (including any accrued interest earnings thereon, if any) on deposit in the Bond Proceeds Account for (i) the costs of Facilities described in the Certificate Regarding Use of Proceeds for the 2023 Bonds or (ii) such other costs of Facilities with respect to which the City has received an opinion of Bond Counsel to the effect that such application of the Set-Aside Amount (including any accrued interest earnings thereon, if any), in and of itself, will not adversely impact the exclusion of interest on the 2023 Bonds from gross income of the Owners of the 2023 Bonds for federal income tax purposes, and for which the City has determined such application is consistent with the requirements of the Acquisition Agreement.

For purposes of clause (2) above, “**Value**” means the market value, as of the date of the appraisal described below and/or the date of the most recent County real property tax roll, as applicable, and, with respect to Undeveloped Property (as defined in the Rate and Method) only, not delinquent in the payment of any Special Taxes then due and owing, including with respect to such parcels the value of the then existing improvements and any facilities to be constructed or acquired with any amounts then on deposit in the Improvement Fund, as determined with respect to any parcel by reference to (i) an appraisal performed within ninety (90) days of the date of the Officer’s Certificate or (ii) in the alternative, the assessed value of the parcel and improvements thereon described in clause (i) as shown on the then current County real property tax roll available to the Finance Director. It is expressly acknowledged that, in determining the Value, the City may rely on an appraisal to determine the value of some or all of the parcels and/or the most recent County real property tax roll as to the value of some or all of the parcels. Neither the City nor the Finance Director shall be liable to the Owners or any other person or entity in respect of any appraisal provided for purposes of this definition or by reason of any exercise of discretion made by any Appraiser pursuant to this definition.

If the conditions set forth in clauses (1) or (2) of the third preceding paragraph have not been satisfied by June 1, 2026, then on such date (or as soon thereafter as possible) the City will direct the Fiscal Agent to transfer the Set-Aside Amount (including any accrued interest earnings thereon, if any) on deposit in the Bond Proceeds Account to the Bond Fund and the Fiscal Agent will use such proceeds to redeem 2023 Bonds on the first optional redemption date or to pay scheduled debt service on the 2023 Bonds, as directed by the City. This mandatory transfer applies only to the Set-Aside Amount (and accrued interest) and only if the conditions set forth in clauses (1) or (2) of the third preceding paragraph have not been satisfied.

## 2023 Reserve Fund

**General.** In order to further secure the payment of principal of and interest on the 2023 Bonds and any series of Parity Bonds the principal of and interest on which is payable from amounts in the 2023 Reserve Fund (“**2023 Related Parity Bonds**”), certain proceeds of the 2023 Bonds will be deposited into a reserve fund established for the 2023 Bonds and 2023 Related Parity Bonds (the “**2023 Reserve Fund**”) in an amount equal to the 2023 Reserve Requirement for the 2023 Bonds (as defined below). See “FINANCING PLAN – Estimated Sources and Uses of Funds.”

Moneys in the 2023 Reserve Fund will be held by the Fiscal Agent for the benefit of the Owners of the 2023 Bonds and any 2023 Related Parity Bonds as a reserve for the payment of the principal of, and interest and any premium on, the 2023 Bonds and any 2023 Related Parity Bonds, and will be subject to a lien in favor of the Owners of the 2023 Bonds and any 2023 Related Parity Bonds.

**2023 Reserve Requirement.** The “**2023 Reserve Requirement**” is defined in the Fiscal Agent Agreement to mean the amount as of any date of calculation equal to the least of (a) Maximum Annual Debt Service on the 2023 Bonds and 2023 Related Parity Bonds, if any, (b) 125% of average Annual Debt Service on the 2023 Bonds and 2023 Related Parity Bonds, if any and (c) 10% of the original principal of the 2023 Bonds and 2023 Related Parity Bonds, if any; provided, however:

(A) that with respect to the calculation of clause (c), the issue price of the 2023 Bonds or any 2023 Related Parity Bonds excluding accrued interest will be used rather than the original principal amount, if (i) the net original issue discount or premium of the 2023 Bonds or any 2023 Related Parity Bonds was less than 98% or more than 102% of the original principal amount of the 2023 Bonds or any 2023 Related Parity Bonds and (ii) using the issue price would produce a lower result than using the original principal amount;

(B) that in no event will the amount calculated hereunder exceed the amount on deposit in the 2023 Reserve Fund on the date of issuance of the 2023 Bonds (if they are the only Bonds covered by the 2023 Reserve Fund) or the most recently issued series of 2023 Related Parity Bonds (if any 2023 Related Parity Bonds are covered by the 2023 Reserve Fund) except in connection with any increase associated with the issuance of 2023 Related Parity Bonds; and

(C) that in no event will the amount required to be deposited into the 2023 Reserve Fund in connection with the issuance of a series of 2023 Related Parity Bonds exceed the maximum amount under the Tax Code that can be financed with tax-exempt bonds and invested at an unrestricted yield.

**Disbursements.** Except as otherwise provided in the Fiscal Agent Agreement, all amounts deposited in the 2023 Reserve Fund will be used and withdrawn by the Fiscal Agent solely for the purpose of making transfers to the Bond Fund in the event of any deficiency at any time in the Bond Fund of the amount then required for payment of the principal of, and interest and any premium on, the 2023 Bonds and any 2023 Related Parity Bonds or, in accordance with the Fiscal Agent Agreement, for the purpose of redeeming 2023 Bonds and any 2023 Related Parity Bonds from the Bond Fund. Whenever a transfer is made from the 2023 Reserve Fund to the Bond Fund due to a deficiency in the Bond Fund for payment of the principal of, and interest and any premium on, the 2023 Bonds and any 2023 Related Parity Bonds, the Fiscal Agent will provide written notice thereof to the Finance Director, specifying the amount withdrawn.

**Transfer Upon Special Tax Prepayment.** Whenever Special Taxes are prepaid and 2023 Bonds or any 2023 Related Parity Bonds are to be redeemed with the proceeds of such prepayment pursuant to the Fiscal Agent Agreement or a Supplemental Agreement related to any 2023 Related Parity

Bonds, a proportionate amount in the 2023 Reserve Fund (determined on the basis of the principal of 2023 Bonds and 2023 Related Parity Bonds to be redeemed and the then-Outstanding principal of the 2023 Bonds and 2023 Related Parity Bonds, but in any event not in excess of the amount that will leave the balance in the 2023 Reserve Fund following the proposed redemption equal to the 2023 Reserve Requirement) will be transferred on the Business Day prior to the redemption date by the Fiscal Agent to the Bond Fund to be applied to the redemption of the 2023 Bonds pursuant to the Fiscal Agent Agreement or a Supplemental Agreement related to any 2023 Related Parity Bonds. The Finance Director will deliver to the Fiscal Agent an Officer's Certificate specifying any amount to be so transferred, and the Fiscal Agent may rely on any such Officer's Certificate.

**Qualified Reserve Fund Credit Instruments.** The City will have the right at any time to direct the Fiscal Agent to release funds from the 2023 Reserve Fund, in whole or in part, by tendering to the Fiscal Agent: (i) a Qualified Reserve Account Credit Instrument, and (ii) an opinion of Bond Counsel stating that neither the release of such funds nor the acceptance of such Qualified Reserve Account Credit Instrument will cause interest on the 2023 Bonds or any 2023 Related Parity Bonds the interest on which is excluded from gross income of the owners thereof for federal income tax purposes to become includable in gross income for purposes of federal income taxation.

The Fiscal Agent Agreement defines "**Qualified Reserve Account Credit Instrument**" as an irrevocable standby or direct-pay letter of credit, insurance policy, or surety bond issued by a commercial bank or insurance company and deposited with the Fiscal Agent, provided that all of the following requirements are met at the time of acceptance thereof by the Fiscal Agent: (a) in the case of a commercial bank, the long-term credit rating of such bank at the time of delivery of the irrevocable standby or direct-pay letter of credit is at least "A" from S&P or "A" from Moody's and, in the case of an insurance company, the claims paying ability of such insurance company at the time of delivery of the insurance policy or surety bond is at least "A" from S&P, or "A" from Moody's or, if not rated by S&P or Moody's but is rated by A.M. Best & Company, is rated at the time of delivery in the highest rating category by A.M. Best & Company; (b) such letter of credit, insurance policy or surety bond has a term of at least 12 months; (c) such letter of credit or surety bond has a stated amount at least equal to the portion of the 2023 Reserve Requirement with respect to which funds are proposed to be released; and (d) the Fiscal Agent is authorized pursuant to the terms of such letter of credit, insurance policy or surety bond to draw thereunder an amount equal to any deficiencies which may exist from time to time in the Bond Fund for the purpose of making payments with respect to the 2023 Bonds and any 2023 Related Parity Bonds.

Upon tender of such items to the Fiscal Agent, and upon delivery by the City to the Fiscal Agent of a written calculation of the amount permitted to be released from the 2023 Reserve Fund (upon which the Fiscal Agent may conclusively rely), the Fiscal Agent will transfer such funds from the 2023 Reserve Fund to the Improvement Fund to be used for the purposes thereof.

The Fiscal Agent will comply with all documentation relating to a Qualified Reserve Account Credit Instrument as will be required to maintain such Qualified Reserve Account Credit Instrument in full force and effect and as required to receive payments thereunder in the event and to the extent required to make any payment when and as required under this provision of the Fiscal Agent Agreement.

Upon the scheduled expiration of any Qualified Reserve Account Credit Instrument, the City will either (i) replace such Qualified Reserve Account Credit Instrument with a new Qualified Reserve Account Credit Instrument, or (ii) deposit or cause to be deposited with the Fiscal Agent an amount of funds equal to the 2023 Reserve Requirement, to be derived from the first available Special Tax Revenues.

If the 2023 Reserve Requirement is being maintained partially in cash and partially with a Qualified Reserve Account Credit Instrument, the cash will be first used to meet any deficiency which may exist from time to time in the Bond Fund with respect to the 2023 Bonds and any 2023 Related Parity Bonds.

If the 2023 Reserve Requirement is being maintained with two or more Qualified Reserve Account Credit Instruments, any draw to meet a deficiency which may exist from time to time in the Bond Fund with respect to the 2023 Bonds and any 2023 Related Parity Bonds will be pro-rata with respect to each such instrument.

If a Qualified Reserve Account Credit Instrument is available to be drawn upon for only one or more particular series of Bonds, a separate subaccount in the 2023 Reserve Fund may be established for such series, and the calculation of the 2023 Reserve Requirement with respect to any Bonds will exclude the debt service on such issue of Bonds.

The City will have no obligation to replace a Qualified Reserve Account Credit Instrument or to fund the 2023 Reserve Fund with cash if, at any time that the 2023 Bonds are Outstanding, the Qualified Reserve Account Credit Instrument (or its provider) is downgraded or the provider becomes insolvent, if there is an unscheduled termination of the Qualified Reserve Account Credit Instrument or if for any reason insufficient amounts are available to be drawn upon under the Qualified Reserve Account Credit Instrument; provided, however, that the City will reimburse the provider, in accordance with the terms of the Qualified Reserve Account Credit Instrument, for any draws made thereon.

***Other Terms Relating to 2023 Reserve Fund.*** See APPENDIX E for a complete description of the timing, purpose and manner of disbursements from the 2023 Reserve Fund.

### **Investment of Moneys in Funds**

Moneys in any fund or account created or established by the Fiscal Agent Agreement and held by the Fiscal Agent will be invested by the Fiscal Agent in Permitted Investments, which in any event by their terms mature prior to the date on which such moneys are required to be paid out under the Fiscal Agent Agreement. See APPENDIX E for a definition of "Permitted Investments."

### **Issuance of Future Parity Bonds for Refunding Only**

***Parity Bonds.*** In addition to the 2023 Bonds, the City may issue Refunding Bonds as Parity Bonds, in such principal amount as may be determined by the City, under a Supplemental Agreement entered into by the City and the Fiscal Agent. Any such Parity Bonds will constitute Bonds under the Fiscal Agent Agreement and will be secured by a lien on the Special Tax Revenues and funds pledged for the payment of the Bonds under the Fiscal Agent Agreement on a parity with the 2023 Bonds and all other Bonds Outstanding thereunder.

The City may issue such Parity Bonds subject to the specific conditions precedent set forth in the Fiscal Agent Agreement, including without limitation the following:

Compliance. Following issuance of the Parity Bonds, the City shall be in compliance with all covenants set forth in the Fiscal Agent Agreement and all Supplemental Agreements, and issuance of the Parity Bonds shall not cause the City to exceed the bonded indebtedness limit of Improvement Area No. 2.

Same Payment Dates. The Supplemental Agreement providing for the issuance of such Parity Bonds shall provide that interest thereon shall be payable on the Interest Payment Dates, and principal thereof shall be payable on September 1 (provided that there shall be no requirement that any Parity Bonds pay interest on a current basis).

Debt Service Reserve Fund. The Supplemental Agreement providing for issuance of the Parity Bonds shall provide for (i) a deposit to the 2023 Reserve Fund in an amount necessary such that the amount deposited therein shall equal the 2023 Reserve Requirement following

issuance of the Parity Bonds or (ii) a deposit to a reserve account for the Parity Bonds (and such other series of Parity Bonds identified by the City) so that the amount therein shall equal the Parity Reserve Requirement following the issuance of the Parity Bonds, as long as such Supplemental Agreement expressly declares that the Owners of such Parity Bonds will have no interest in or claim to the 2023 Reserve Fund and that the Owners of the 2023 Bonds covered by the 2023 Reserve Fund will have no interest in or claim to such other reserve account.

**“Refunding Bonds”** means bonds issued by the City for the District with respect to Improvement Area No. 2, the net proceeds of which are used to refund all or a portion of the then-Outstanding Bonds and for other lawful purposes; provided that the principal and interest on the Refunding Bonds to their final maturity date is less than the principal and interest on the Bonds being refunded to their final maturity date, and the final maturity of the Refunding Bonds is not later than the final maturity of the Bonds being refunded.

**Subordinate Bonds.** Nothing in the Fiscal Agent Agreement prohibits the City from issuing any other bonds or otherwise incurring debt secured by a pledge of the Special Tax Revenues subordinate to the pledge thereof under the Fiscal Agent Agreement.

See APPENDIX E for additional details regarding the conditions for issuing Parity Bonds.

## THE DISTRICT AND IMPROVEMENT AREA NO. 2

### Formation and Background

**Formation of the District.** The District was established by the City Council under the Act on July 19, 2016, following a noticed public hearing. At the time of establishment of the District, Improvement Area No. 1 and the Future Annexation Area were also established for the District, and a bonded indebtedness limit of \$285,000,000 was established for the District, allocated as \$70,000,000 to Improvement Area No. 1 and \$215,000,000 to the Future Annexation Area.

**Change Proceedings.** At the request of the property owner, the City completed change proceedings on August 21, 2018, that, among other things increased the bonded indebtedness limit for the Future Annexation Area to \$305,000,000.

**Annexation of Improvement Area No. 2.** On September 6, 2022, pursuant to the Unanimous Approvals of the owners of the property included therein, the City Council, as legislative body for the District, authorized the annexation of certain property from the Future Annexation Area into the District as Improvement Area No. 2 and authorized the incurrence of bonded indebtedness for Improvement Area No. 2 of up to \$50,000,000 to finance the acquisition and construction of the Authorized Facilities, the levy the Special Taxes within Improvement Area No. 2, and the establishment of an appropriations limit for Improvement Area No. 2. See “FINANCING PLAN – Authorized Facilities” above and “–Authorized Facilities” below. Although the bonded indebtedness limit for Improvement Area No. 2 is \$50,000,000, the City has covenanted in the Fiscal Agent Agreement to only issue Parity Bonds for refunding purposes. Thus, after the issuance of the 2023 Bonds, no amount of the remaining bond authorization for Improvement Area No. 2 will be used. See “SECURITY FOR THE BONDS – Issuance of Future Parity Bonds for Refunding Only”.

**Improvement Areas; Annexation Proceedings.** All of the land currently in the District is located within either Improvement Area No. 2 or Improvement Area No. 1. The property in the Future Annexation Area may be annexed into the District in the future as an additional portion of Improvement Area No. 2, in which case it will become subject to the levy of the Special Taxes, or as one or more additional improvement areas, in which case such future improvements area(s) will be separately authorized to issue special tax bonds secured only by special taxes levied within the applicable improvement area. The City does not currently have any plans to annex any parcels within the Future Annexation Area into Improvement Area No. 2.

The 2023 Bonds are secured only by the Special Taxes levied within Improvement Area No. 2. If and to the extent the Future Annexation Area is annexed as one or more additional improvement areas, there will be no cross-collateralization between or among improvement areas. For additional information on what is planned for development with respect to the land in the Future Annexation Area, see “PROPERTY OWNERSHIP AND THE DEVELOPMENT – The Tracy Hills Project.”

### Description and Location

**General.** Improvement Area No. 2 is located in the southern portion of the City, south of the California Aqueduct, north of Interstate 580, and west of South Lammers Road.

See APPENDIX A for demographic and other information regarding the City and the County.

The Tracy Hills Project is part of the larger Tracy Hills Specific Plan, which encompasses approximately 2,732 gross acres, with 1,811 developable acres, and a various land uses, including residential estates, low density residential, medium density residential, high density residential, mixed-use business park, general highway commercial, light industrial and conservation corridors. See

“PROPERTY OWNERSHIP AND THE DEVELOPMENT – The Tracy Hills Project” for further information regarding the Tracy Hill Specific Plan.

**Improvement Area No. 1.** Improvement Area No. 1 of the District (which is Phase 1A of the Tracy Hills Project) was the initial stage of development in Tracy Hills. At full build-out, Improvement Area No. 1 will include 1,203 single family detached homes, 12 acres of public parks, a 14-acre K-8 school site, and open space. Homes in Improvement Area No. 1 are being constructed and sold by Lennar Homes, Shea Homes and Meritage Homes. Home sales in Improvement Area No. 1 began in 2019 and, as of August 1, 2023, 1,147 homes have closed to individual homeowners. Improvement Area No. 2 (which is Phase 1B of the Tracy Hills Project) represents the next stage of development of the Tracy Hills Project. See “PROPERTY OWNERSHIP AND THE DEVELOPMENT – The Tracy Hills Project.” Information regarding Improvement Area No. 1 is presented for reference only. Only the property in Improvement Area No. 2 is subject to the Special Tax that secures payment on the 2023 Bonds.

**Boundary Map.** The map showing the boundaries of Improvement Area No. 2 is set forth on the following page.

[Insert CFD Boundary Map]

## Authorized Facilities

**General.** Under the Resolution of Formation adopted by the City Council, as the legislative body of the District, on July 19, 2016, the District (and each Improvement Area therein including Improvement Area No. 2) is authorized to finance all or a portion of the costs of acquisition, construction and improvement of facilities permitted under the Act and that are required as conditions of development of property in the District, the Future Annexation Area and any other property annexed to the District. The Authorized Facilities include, among others, roadway improvements, wastewater treatment facilities, water facilities, reclaimed water facilities, school facilities, drainage improvements, landscaping, open space improvements, parks and park equipment, public safety improvements, sound walls and improvements financed by various fees.

Any Facility authorized to be financed by the District and each Improvement Area may be financed through the construction and acquisition of the Facility or through the payment of fees for such facility. The Authorized Facilities may be located within or outside the District.

**Status of Construction of Facilities.** For the current status of the construction of Facilities in Improvement Area No. 2, see “PROPERTY OWNERSHIP AND THE DEVELOPMENT.”

## Debt Service Coverage

The Rate and Method is structured to produce annual Special Tax revenues from the Maximum Special Tax, net of Administrative Expenses, which, when applied to the projected debt service on the 2023 Bonds and future Parity Bonds, is anticipated to result in a debt service coverage ratio of at least 110% for the life of the 2023 Bonds and future Parity Bonds. Administrative Expenses are estimated at \$40,000 in Fiscal Year 2023-24, escalating by 2% annually thereafter. See “DEBT SERVICE SCHEDULE – Debt Service Coverage”.

The Fiscal Agent Agreement permits the issuance of future Parity Bonds for refunding purposes only. See “SECURITY FOR THE BONDS – Issuance of Future Parity Bonds for Refunding Only”.

## City of Tracy Growth Management Ordinance (GMO)

On June 16, 1987, the City Council of the City adopted by ordinance a Residential Growth Management Plan, as subsequently amended (the “**Growth Management Ordinance**”). It provides for eligibility requirements and procedures for residential building permits for projects in the City. Under the Growth Management Ordinance, builders must obtain a residential growth allotment (“**RGA**”) in order to secure a residential building permit.

Currently, the Growth Management Ordinance allows RGAs to be issued for 600 to 750 building permits per year. The number of RGAs allowed in each year is based on the average of units absorbed since the year 2000. THPO and the THPO Affiliates currently predict that the annual available building permits will be 750 per year through 2028. The allocation of the RGAs is governed by the Council-approved Growth Management Ordinance guidelines (the “**GMO Guidelines**”), which were last modified in 2014.

The Tracy Hills Project is vested into the 2012 GMO Guidelines which provide that, in years where 750 RGAs may be allocated, The Tracy Hills Project is eligible to receive 406 RGAs, and in years where 600 RGAs may be allocated, The Tracy Hills Project is eligible to receive 325 RGAs. If owners within the Tracy Hills Project apply for less than the number of RGAs described above, the difference between the numbers of RGAs allocated and the numbers of RGAs described above will be reserved for that calendar year. The owners of the Tracy Hills Project may apply for these RGAs no later than the March 31st

deadline set forth in the GMO Guidelines; if application is not made by that date, the RGAs will be made available for other projects. There is no sunset date for the allocation of RGAs in this manner.

As of the date of this Official Statement, all of the RGAs necessary for the planned residential development in Improvement Area No. 2 have been perfected and the Growth Management Ordinance is not expected to limit development in Improvement Area No. 2.

**Market Absorption Study**

In connection with the issuance of the 2023 Bonds, the City hired the Market Absorption Consultant, Empire Economics, Inc., to prepare the Absorption Study for the homes planned for Improvement Area No. 2. The Absorption Study sets forth various factors that may impact the development and sale of homes within Improvement Area No. 2. The Absorption Study also sets forth the forecast of absorption under two scenarios, which are shown in the tables below. The benchmark scenario is based on expected market conditions in the absence of the effect of the Phase 1B Neighborhood Park condition. The modified scenario adjusts for the City’s development restrictions related to the Phase 1B Neighborhood Park condition. See “PROPERTY OWNERSHIP AND THE DEVELOPMENT – Lennar Homes – *Conditions of Approval*”. Generally, the modified scenario assumes (a) occupancy of 179 homes by December 31, 2023, no additional occupancies or construction activity during the January 1, 2024 through June 30, 2024 period, and acceptance of the Phase 1B Neighborhood Park and additional construction and occupancies resuming during the July 1, 2024 through September 30, 2024 period. In both scenarios, the number of occupancies during calendar year 2024 is the same, but in the modified scenario most of those occupancies occur in the fourth quarter of 2024. There can be no guarantee regarding the actual timeline for completion of the Phase 1B Neighborhood Park or that the absorption estimates set forth in the Absorption Study will be realized in light of the Phase 1B Neighborhood Park condition.

**Estimated Absorption Schedule  
(Benchmark Scenario – No Park Condition)**

Year	Actual Through 7/4/2023	Remainder of 2023	2024	2025	2026
Estimated Escrow Closings	84	95	116	105	32
Cumulative	84	179	295	400	432

Source: Empire Economics, Inc.

**Estimated Absorption Schedule  
(Modified Scenario – Park Condition)**

Year	Actual Through 7/4/2023	Remainder of 2023	1/1/2024 - 6/30/2024	7/1/2024 - 9/30/2024	10/1/2024 - 12/31/2024	2025	2026
Estimated Escrow Closings	84	95	0	11	105	105	32
Cumulative	84	179	179	190	295	400	432

Source: Empire Economics, Inc.

*The City is not obligated to make, and has not undertaken to make, an independent verification of the information contained in the Absorption Study and assumes no responsibility for the accuracy or completeness of the Absorption Study.*

A copy of the Absorption Study is set forth in its entirety as APPENDIX D – Market Absorption Study.

## **Environmental Matters**

**Flood Hazard Map Information.** According to the Federal Emergency Management Agency's flood insurance rate maps (Map Panel Number 06077C-0740F, dated October 16, 2009), the developable portions of the property in Improvement Area No. 2 are located within Flood Zone X, described as areas of minimal flooding (outside of the 100 and 500-year floodplains). Property in Improvement Area No. 2 is not subject to the Central Valley Flood Protection Plan.

**Seismic Conditions.** According to the Seismic Safety Commission, Improvement Area No. 2 is located within Zone 3, which is considered to be the lowest risk zone in California. There are only two zones in California: Zone 4, which is assigned to areas near major faults; and Zone 3, which is assigned to all other areas of more moderate seismic activity. In addition, Improvement Area No. 2 is not located within a Fault-Rupture Hazard Zone (formerly referred to as an Alquist-Priolo Special Study Zone), as defined by Special Publication 42 of the California Department of Conservation, Division of Mines and Geology.

**Wetlands.** No wetland mitigation was required for development within Improvement Area No. 2.

**Petroleum Pipeline.** A Phase I environmental site assessment report was prepared for the land in the District by Haley & Aldrich, dated September 2017. The report identifies two recognized environmental conditions on the property within Improvement Area No. 2 associated with the presence of an unpressurized ConocoPhillips 66 pipeline and an unpressurized Shell petroleum pipeline. Haley & Aldrich recommended abandoning the on-site groundwater wells according to local and state regulatory guidelines; one well located within Improvement Area No. 2 has been abandoned, and the other well, which is located in the District but outside of Improvement Area No. 2, remains in use for agricultural purposes. However, no additional assessment consisting of soil, groundwater and soil gas sampling is required for the development of the land in Improvement Area No. 2.

**Explosives Testing.** The Lawrence Livermore National Laboratory (“LLNL”) Experimental Test Site (“**Site 300**”) is a restricted-access facility operated for the U.S. Department of Energy National Nuclear Security Administration (“**DOE/NNSA**”) by Lawrence Livermore National Security, LLC. Site 300 is located approximately 1.33 miles to the west/southwest of the Tracy Hills project. The Site 300 facility is used in the research, development, and testing of non-radioactive explosive materials to support DOE/NNSA stockpile stewardship, counterterrorism and counterproliferation programs. Site 300 has been in operation as an explosive testing and research facility since 1955.

Site 300 conducts explosive testing in both indoor and outdoor facilities. Explosive testing conducted at Site 300 is regulated by the San Joaquin Valley Air Pollution Control District (“**SJVAPCD**”). Currently, Site 300 operates under a SJVAPCD air permit that allows detonations of explosives up to 100 pounds per day and 1,000 pounds per year. To minimize noise impacts to surrounding land uses, adjacent neighbors and other sensitive receptors, Site 300 constructed the Contained Firing Facility in 2000. The concrete, 28,000 square foot facility allows Site 300 to conduct explosive tests indoors. Intermittent outdoor explosive tests (otherwise known as open detonations) are also conducted.

In the Fall of 2017, DOE/NNSA submitted a new SJVAPCD permit application and released a Draft Environmental Assessment proposing to increase the weight of explosives from the current limit of 100 lbs./day to 1,000 lbs./day, and from 1,000 lbs./year to 7,500 lbs./year. The proposed increase would allow larger single detonations and would result in more open detonations. Tracy Hills, the City and the County all submitted comment letters expressing concern and questions in regards to potential increase in noise impacts. To date, the SJVAPCD has not taken any action on the permit application.

**Fire Hazard Zone.** The property in Improvement Area No. 2 is part of a Local Responsibility Area and is included in an area mapped as a Moderate Fire Hazard Severity Zone.

## Appraised Values

**General.** The Original Appraisal was prepared to estimate the market value of the taxable land within Improvement Area No. 2 as of a July 19, 2023, date of value.

The Update to Original Appraisal was prepared to confirm the opinion of the aggregate market value of the fee simple interest in the taxable land within Improvement Area No. 2 as of a September 21, 2023, date of value, taking into account that a number of homes have been completed and/or sold to individual homeowners, a number of homes have begun construction with building permits and impact fees paid.

The properties appraised encompass all of the taxable land in Improvement Area No. 2, which are planned for development as 432 single-family detached homes.

**Value Estimate.** The Appraisal estimates that the cumulative, aggregate value of the appraised properties, as of the date of value, was not less than \$163,006,149. The aggregate value is not the market value of the appraised properties in bulk. Note that the Appraisal assumes that the Phase 1B Neighborhood Park is complete and there is no value deduction for construction of the Phase 1B Neighborhood Park. See "PROPERTY OWNERSHIP AND THE DEVELOPMENT – Lennar Homes – *Conditions of Approval*" for a discussion of the condition related to park construction. See "SECURITY FOR THE BONDS – Improvement Fund – *Disbursements Related to Construction of Phase 1B Neighborhood Park*" for further information about the release of 2023 Bonds proceeds from the Improvement Fund related to construction of the Phase 1B Neighborhood Park.

**Appraisal Methodology.** The appraised property was valued by employing the sales comparison approach to value and land residual analysis, with respect to the Low Density Residential Lots in Villages 9 and 10. In the sales comparison approach to value, the Appraiser analyzed comparable bulk lot sales from the region and adjusted the datum for attributes that varied from the appraised property's various lot size categories. Then, to support the reasonableness of the sales comparison approach conclusions, the Appraiser utilized a land residual analysis. The lot values indicated by each approach were then reconciled into an opinion of market value, subject to the hypothetical condition that the Phase 1B Neighborhood Park has been constructed. The market value as of the July 19, 2023, date of value was estimated by deducting the approximate remaining costs (both in-tract and infrastructure) as well as infrastructure fees to complete the lots to a finished condition. Given the lack of comparable bulk lot sales with typical lot sizes under 4,000 square feet, a sales comparison approach was not performed in the valuation of the smaller benchmark lot category of Medium Density Residential Lots in Village 11; rather, an extraction technique was employed.

The appraised property comprises various sized standard residential lots between 3,500 and 5,500 square feet. The Appraiser concluded that a parcel with approximately 5,500 square feet is an appropriate benchmark parcel for Low Density Residential Lots for use in the sales comparison approach, and that a parcel with approximately 3,500 square feet is an appropriate benchmark parcel for Medium Density Residential Lots for use in the extraction technique.

As part of the sales comparison approach, the Appraiser stated that the market data set consists of various sales that are considered reasonable indicators of market value for the fee simple interest in the single-family residential lot category of the subject property. The Appraiser concluded that the finished lot value for Low Density Residential benchmark parcels is \$241,000.

In addition, the Appraiser undertook a land residual analysis. The Appraisal indicates the land residual analysis is employed as an additional indicator of market value for the subject's lots. This valuation method is used in estimating land value when subdivision and development are the highest and best use of the land being appraised. All direct and indirect costs are deducted from an estimate of the anticipated gross sales price of the improved product; the resultant net sales proceeds are then discounted to present value at an anticipated rate over the development and absorption period to indicate the value of the land. The land residual analysis is conducted on a quarterly basis. As a discounted cash flow analysis, the land residual analysis consists of four primary components: revenue, absorption analysis, expenses and discount rate. Based on the land residual analysis the Appraiser concluded that the finished lot value for Low Density Residential benchmark parcels is also \$241,000.

For the Medium Density Residential Lots, the Appraiser employed the extraction technique as the sole basis of valuation. Next, adjustments were applied to determine values for each lot size category, based upon lot size difference that exist from the benchmark lots. Finally, the remaining intract and infrastructure costs were accounted for. Based on the extraction technique, the Appraiser concluded that the finished lot value for Medium Density Residential parcels is \$206,000.

***Hypothetical Condition.*** A hypothetical condition is a condition contrary to known facts on the effective date of the appraisal, but is supposed for the purposes of analysis. The estimate of market value in the Appraisal is subject to the hypothetical condition that (a) the Phase 1B Neighborhood Park has been constructed by the Developer or its assignee, (b) the Phase 1B Neighborhood Park has been inspected by the City, and (c) the City has determined that the Phase 1B Neighborhood Park has been constructed in accordance with approved plans and specifications and all applicable City standards (other than any items identified by the City that need to be addressed before the Phase 1B Neighborhood Park can be deemed complete by the City, and which the City and the Developer or its assignee estimate to cost no more than \$100,000 in the aggregate). Note, however, that there is no requirement that the proceeds of the 2023 Bonds actually be used to reimburse for costs of the Phase 1B Neighborhood Park. See "SECURITY FOR THE BONDS – Improvement Fund – *Disbursements Related to Construction of Phase 1B Neighborhood Park.*"

***Assumptions and Limiting Conditions.*** In addition to the conditions described above, the market value of the appraised parcels is subject to a number of other assumptions and conditions which affect the estimates as to value, which are set forth in APPENDIX C.

Accordingly, because the Appraiser arrived at an estimate of current market value based upon certain assumptions which may or may not be fulfilled, no assurance can be given that should the parcels become delinquent due to unpaid Special Taxes, and be foreclosed upon and offered for sale for the amount of the delinquency, that any bid would be received for such property or, if a bid is received, that such bid would be sufficient to pay such delinquent Special Taxes.

***Limitations of Appraisal Valuation.*** Property values may not be evenly distributed throughout Improvement Area No. 2; thus, certain parcels may have a greater value than others. This disparity is significant because in the event of nonpayment of the Special Tax, the only remedy is to foreclose against the delinquent parcel. No assurance can be given that the foregoing valuation can or will be maintained during the period of time that the 2023 Bonds are outstanding in that the City has no control over the market value of the property within Improvement Area No. 2 or the amount of additional indebtedness that may be issued in the future by other public agencies, the payment of which, through the levy of a tax or an assessment, may be on a parity with the Special Taxes.

For a description of certain risks that might affect the assumptions made in the Appraisal, see "BOND OWNERS' RISKS" herein.

The description herein of the Appraisal is intended for limited purposes only; the Appraisal should be read in its entirety. The conclusions reached in the Appraisal are subject to certain assumptions, conditions and qualifications which are set forth in the Appraisal. See APPENDIX C for the Appraisal Report.

*Neither the City nor the Underwriter makes any representation as to the accuracy or completeness of the Appraisal.*

**Fiscal Year 2023-24 Special Tax Levy**

The table below shows the actual Fiscal Year 2023-24 Special Tax Levy by ownership.

**Table 1  
Fiscal Year 2023-24 Special Tax Levy**

<b>Property Owner <sup>(1)</sup></b>	<b>Fiscal Year 2023-24 Actual Special Tax Levy</b>	<b>% of Actual Special Tax Levy</b>
Individual Homeowners	\$472,698	22.1%
Lennar Homes	\$1,068,760	49.9%
AG Essential Housing CA 1 LP	\$600,905	28.0%
<b>Total</b>	<b>\$2,142,363</b>	<b>100.0%</b>

(1) Ownership information per the Original Appraisal, as of its July 19, 2023 date of value. As of September 15, 2023, 108 homes have closed to individual homeowners.

Sources: *Integra Realty Resources; Goodwin Consulting Group, Inc.*

**Value-to-Lien Ratios and Share of Fiscal Year 2023-24 Special Taxes**

**General.** Based on the appraised values set forth in the Original Appraisal and the proposed principal amount of the 2023 Bonds, the overall value-to-lien ratio of the land within Improvement Area No. 2 is approximately 4.53:1.\* No other community facilities districts or assessment districts currently have overlapping bonded debt affecting the property in Improvement Area No. 2.

**Value-to-Lien Analysis and by Ownership and Development Status.** The following table shows the approximate value-to-lien ratios allocated to the property owners, based on the appraised values and development status set forth in the Original Appraisal as of the July 19, 2023 date of value and the estimated principal amount of the 2023 Bonds.

*No assurance can be given that the amounts shown in these tables will conform to those ultimately realized in the event of a foreclosure action following delinquency in the payment of the Special Taxes.*

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\* Preliminary; subject to change.

**Table 2**  
**Fiscal Year 2023-24 Special Tax Levy and Appraised Values**  
**By Ownership and Development Status**

Development Status and Property Ownership (1)	Expected Residential Units <sup>(2)</sup>	Actual Fiscal Year 2023-24 Special Tax Levy	% of Actual Fiscal Year 2023-24 Special Tax Levy	Appraised Value (3)	Allocated 2023 Bond Debt (4)*	Average Value-to- Lien*
<u>Developed Property</u>						
Individual Homeowners	91	\$472,698	22.1%	\$75,670,000	\$7,943,151	9.53
Lennar Homes of California, LLC						
Model Homes	8	\$40,741	1.9%	\$6,580,000	\$684,604	9.61
Homes Under Construction	99	\$504,044	23.5%	\$25,254,975	\$8,469,896	2.98
Finished Lots	109	\$523,975	24.5%	\$25,985,761	\$8,804,810	2.95
Subtotal	216	\$1,068,760	49.9%	\$57,820,735	\$17,959,310	3.22
AG Essential Housing CA 1 LP						
Finished Lots	125	\$600,905	28.0%	\$29,515,413	\$10,097,540	2.92
<b>Total</b>	<b>432</b>	<b>\$2,142,363</b>	<b>100.0%</b>	<b>\$163,006,148</b>	<b>\$36,000,000</b>	<b>4.53</b>

\*Preliminary, subject to change.

(1) Based on building permits issued as of June 30, 2023, the cut-off date for Developed Property for Fiscal Year 2023-24 as defined in the Rate and Method. Ownership information per the Original Appraisal, based on the July 19, 2023 date of value.

(2) Lot counts as of the July 19, 2023 date of value of the Original Appraisal. As of September 15, 2023, Lennar Homes has sold and closed an additional 17 units and acquired an additional 28 lots from the Landbank Owner.

(3) Based on the July 19, 2023 date of value of the Original Appraisal. Total appraised value shown in this table differs from the Appraisal by \$1 due to rounding.

(4) Allocated based on the actual Fiscal Year 2023-24 special tax levy.

Source: Integra Realty Resources; Goodwin Consulting Group, Inc

**Value-to-Lien Analysis by Value-to-Lien Category.** The following table shows the approximate value-to-lien ratios in Improvement Area No. 2 allocated by value-to-lien category, based on the appraised values set forth in the Original Appraisal and the estimated principal amount of the 2023 Bonds.

*No assurance can be given that the amounts shown in these tables will conform to those ultimately realized in the event of a foreclosure action following delinquency in the payment of the Special Taxes.*

**Table 3  
Summary of Value-to-Lien Ratios By Value-to-Lien Category\***

<b>Value-to-Lien Category</b>	<b>Number of Parcels</b>	<b>Appraised Value (1)</b>	<b>Fiscal Year 2023-24 Actual Special Tax Levy (2)</b>	<b>Percent of Actual Special Tax Levy</b>	<b>Allocated 2023 Bond Debt (3)*</b>	<b>Average Value-to-Lien Ratios*</b>
Greater than 5:1	99	\$82,250,000	\$513,438	24.0%	\$8,627,755	9.53
3:1 to 5:1	78	\$19,475,833	\$365,750	17.1%	\$6,146,010	3.17
2:1 to 3:1	255	\$61,280,315	\$1,263,175	59.0%	\$21,226,236	2.89
Less than 2:1	0	\$0	\$0	0.0%	\$0	n/a
<b>Total</b>	<b>432</b>	<b>\$163,006,148</b>	<b>\$2,142,363</b>	<b>100.0%</b>	<b>\$36,000,000</b>	<b>4.53</b>

\*Preliminary, subject to change.

(1) Based on the July 19, 2023 date of value of the Original Appraisal. Total appraised value shown in this table differs from the Appraisal by \$1 due to rounding.

(2) Based on building permits issued as of June 30, 2023, the cut-off date for Developed Property for fiscal year 2023-24 as defined in the Rate and Method.

(3) Allocated based on the actual Fiscal Year 2023-24 special tax levy.

Source: *Integra Realty Resources; Piper Sandler & Co.; Goodwin Consulting Group, Inc.*

**Illustrative Tax Bill.** The following table shows an illustrative tax bill for a sample home in each Village in Improvement Area No. 2.

**Table 4  
Fiscal Year 2023-24 Illustrative Tax Bill**

<u>Assumptions</u>		<u>Village 9A</u>	<u>Village 9B</u>	<u>Village 10</u>	<u>Village 11</u>
Average Base Price <sup>(1)</sup>		\$850,380	\$989,380	\$870,630	\$768,658
Homeowner's Exemption		(\$7,000)	(\$7,000)	(\$7,000)	(\$7,000)
<b>Net Assessed Value</b>		<b>\$843,380</b>	<b>\$982,380</b>	<b>\$863,630</b>	<b>\$761,658</b>
<u>Ad Valorem Tax Rate <sup>(2)</sup></u>	<u>Rate</u>				
Base Property Tax	1.00000%	\$8,434	\$9,824	\$8,636	\$7,617
Jefferson Elem 2010 Meas J Bond	0.02410%	\$203	\$237	\$208	\$184
SJ Delta Coll 2004 Meas L Bond	0.01440%	\$121	\$141	\$124	\$110
Tracy USD 2006 Meas E Bond	0.01120%	\$94	\$110	\$97	\$85
<b>Total Ad Valorem Taxes</b>	<b>1.04970%</b>	<b>\$8,853</b>	<b>\$10,312</b>	<b>\$9,066</b>	<b>\$7,995</b>
<u>Direct Charges <sup>(3)</sup></u>					
Tracy Rural Fire		\$80	\$80	\$80	\$80
Water Zone 2		\$2	\$2	\$2	\$2
SJC Mosquito Abatement		\$1	\$1	\$1	\$1
SJC Mosq & Vctr Cont		\$9	\$9	\$9	\$9
CSA No. 53 - Haz Waste		\$4	\$4	\$4	\$4
CFD No. 2021-1 (Maint)		\$612	\$612	\$612	\$612
IA No. 2 CFD No. 2016-1 (Tracy Hills) <sup>(4)</sup>		\$4,891	\$5,961	\$5,117	\$4,401
<b>Total Direct Charges</b>		<b>\$5,598</b>	<b>\$6,668</b>	<b>\$5,825</b>	<b>\$5,109</b>
<b>Total Taxes and Direct Charges</b>		<b>\$14,451</b>	<b>\$16,980</b>	<b>\$14,890</b>	<b>\$13,104</b>
<b>Percentage of Average Base Price</b>		<b>1.71%</b>	<b>1.73%</b>	<b>1.72%</b>	<b>1.72%</b>

(1) Represents the average base price included in the Appraisal.

(2) Based on the Fiscal Year 2022-23 ad valorem tax rates for the tax rate area within the CFD. Ad valorem tax rates are subject to change in future years.

(3) Based on the Fiscal Year 2022-23 charges identified on the San Joaquin County-issued property tax bills. Charges subject to change in future years.

(4) Represents the maximum special tax rate in Fiscal Year 2023-24 for Developed Property.

Source: *Integra Realty Resources; San Joaquin County Tax Collector's Office, Goodwin Consulting Group, Inc.*

## Direct and Overlapping Governmental Obligations

**Overlapping Debt Statement.** Contained within the boundaries of Improvement Area No. 2 are certain overlapping local agencies providing public services. Many of these local agencies have outstanding debt. The direct and overlapping debt affecting Improvement Area No. 2 as of October 1, 2023 is shown in the table below, a direct and overlapping debt report (the “**Debt Report**”) prepared by California Municipal Statistics, Inc. The Debt Report is included for general information purposes only. Neither the City nor the Underwriter has reviewed the Debt Report for completeness or accuracy and neither makes any representation in connection therewith.

The Debt Report generally includes long term obligations sold in the public credit markets by public agencies whose boundaries overlap the boundaries of Improvement Area No. 2 in whole or in part. These long-term obligations are not payable from revenues of Improvement Area No. 2 (except as indicated) nor are they necessarily obligations secured by land within Improvement Area No. 2. In many cases long term obligations issued by a public agency are payable only from the general fund or other revenues of such public agency.

The contents of the Debt Report are as follows: (1) the first column indicates the public agencies that have outstanding debt as of the date of the Debt Report and whose territory overlaps Improvement Area No. 2; (2) the second column shows the percentage of the assessed valuation of the overlapping public agency identified in column 1 which is represented by property located within Improvement Area No. 2; and (3) the third column is an apportionment of the dollar amount of each public agency’s outstanding debt (which amount is not shown in the table) to property in Improvement Area No. 2, as determined by multiplying the total outstanding debt of each agency by the percentage of the public agency’s assessed valuation represented in column 2.

**Table 5**  
**Direct and Overlapping Governmental Obligations**  
**As of October 1, 2023**

2023-24 Assessed Valuation: \$70,963,347 (Land & Improvements)

<u>DIRECT AND OVERLAPPING TAX AND ASSESSMENT DEBT:</u>	<u>% Applicable</u>	<u>Debt 10/1/23</u>	
San Joaquin Delta Community College District General Obligation Bonds	0.061%	\$ 98,418	
Tracy Unified School District General Obligation Bonds	0.384	100,106	
Jefferson School District General Obligation Bonds	1.519	665,769	
<b>City of Tracy Community Facilities District No. 2016-1, I.A. No. 2</b>	<b>100.000</b>	<b>0</b>	(1)
<b>TOTAL DIRECT AND OVERLAPPING TAX AND ASSESSMENT DEBT</b>		<b>\$864,293</b>	

<u>OVERLAPPING GENERAL FUND DEBT:</u>			
San Joaquin County General Fund Obligations	0.065%	\$ 35,947	
City of Tracy General Fund Obligations	0.411	<u>139,260</u>	
<b>TOTAL OVERLAPPING GENERAL FUND DEBT</b>		<b>\$175,207</b>	

**COMBINED TOTAL DEBT** **\$1,039,500** (2)

(1) Excludes issue to be sold.

(2) Excludes tax and revenue anticipation notes, enterprise revenue, mortgage revenue and non-bonded capital lease obligations.

Ratios to 2023-24 Assessed Valuation:

<b>Direct Debt (\$0)</b> .....	<b>0.00%</b>
Total Direct and Overlapping Tax and Assessment Debt .....	1.22%
Combined Total Debt.....	1.46%

Source: California Municipal Statistics, Inc.

## Potential Consequences of Special Tax Delinquencies

**Special Tax Collection History.** Fiscal Year 2023-24 is the first year that the Special Taxes were levied in Improvement Area No. 2, with the first of two installments due on November 10, 2023 and considered delinquent after December 10, 2023. As such, no delinquency information is currently available with respect to Special Taxes for Improvement Area No. 2.

**Consequences of Future Special Tax Delinquencies.** Delinquencies in the payment of property taxes (including the Special Taxes) with respect to property in Improvement Area No. 2 could result in draws on the 2023 Reserve Fund established for the 2023 Bonds, and perhaps, ultimately, a default in the payment on the 2023 Bonds. See “BOND OWNERS’ RISKS.”

The Board of Supervisors of San Joaquin County adopted the Teeter Plan in Fiscal Year 1994-95. The County has elected to apply its Teeter Plan to the collection of the Special Taxes in Improvement Area No. 2. To the extent that the County’s Teeter Plan continues in existence and is carried out as adopted, and to the extent the County does not discontinue the Teeter Plan with respect to the District, the County’s Teeter Plan may help protect owners of the 2023 Bonds from the risk of delinquencies in the payment of Special Tax. *There can be no assurance that the County will not modify or eliminate its Teeter Plan, or choose to remove the District from its Teeter Plan, while the 2023 Bonds are outstanding.* See “SECURITY FOR THE BONDS – Covenant to Foreclose – Special Tax Delinquencies; Teeter Plan” for additional information.

**Special Tax Enforcement and Collection Procedures.** The City could receive additional funds for the payment of debt service through foreclosures sales of delinquent property, but no assurance can be given as to the amount of foreclosure sale proceeds or when foreclosure sale proceeds would be received. The City has covenanted in the Fiscal Agent Agreement to take certain enforcement actions and commence and pursue foreclosure proceedings against delinquent parcels under the terms and conditions described herein. See “SECURITY FOR THE BONDS – Covenant to Foreclose” and “BOND OWNERS’ RISKS.”

Foreclosure actions would include, among other steps, formal City Council action to authorize commencement of foreclosure proceedings, mailing multiple demand letters to the record owners of the delinquent parcels advising them of the consequences of failing to pay the applicable Special Taxes and contacting secured lenders to obtain payment. If these efforts were unsuccessful, they would be followed (as needed) by the filing of an action to foreclose in superior court against each parcel that remained delinquent.

**Limitations on Increases in Special Tax Levy.** If owners are delinquent in the payment of Special Taxes, the City may not increase Special Tax levies to make up for delinquencies for prior Fiscal Years above the Maximum Special Tax rates specified for each category of property within Improvement Area No. 2. See “SECURITY FOR THE BONDS –Rate and Method.” In addition, Section 53321(d) of the Act provides that the special tax levied against any parcel for which an occupancy permit for private residential use has been issued may not be increased as a consequence of delinquency or default by the owner of any other parcel within a community facilities district by more than 10% above the amount that would have been levied in such Fiscal Year had there never been any such delinquencies or defaults. In cases of significant delinquency, these factors may result in defaults in the payment of principal of and interest on the 2023 Bonds. See “BOND OWNERS’ RISKS.”

## PROPERTY OWNERSHIP AND THE DEVELOPMENT

*The information provided in this section has been included because it may be considered relevant to an informed evaluation and analysis of the 2023 Bonds and Improvement Area No. 2. No assurance can be given, however, that the proposed development of the property within the Tracy Hills Project and Improvement Area No. 2 will occur in a timely manner or in the configuration or to the density described herein, or that Lennar Homes, the Landbank Owner, any owners or affiliates thereof, or any other property owner described herein will or will not retain ownership of its respective property within the Tracy Hills Project or Improvement Area No. 2. Neither the 2023 Bonds nor any of the Special Taxes are personal obligations of any property owner within Improvement Area No. 2. The 2023 Bonds are secured solely by the Special Taxes levied on property within Improvement Area No. 2 and amounts on deposit in certain of the funds and accounts maintained by the Fiscal Agent under the Fiscal Agent Agreement.*

### The Master Developer and Subsidiaries

**The Tracy Hills Project Owner.** The property in Improvement Area No. 2 is part of the larger master-planned community known as “Tracy Hills” (the “**Tracy Hills Project**” or the “**THPO Property**”) being master-planned by The Tracy Hills Project Owner, LLC, a Delaware limited liability company (“**THPO**”) and developed by merchant builders. For the property that has not yet been conveyed to merchant builders, THPO holds title to property through various affiliated owners (the “**THPO Affiliates**”).

Each THPO Affiliate is, or will be, a Delaware limited liability company, whose sole member is Tracy Hills Holding Company, LLC (“**Tracy Hills Holding Company**”). Tracy Hills Holding Company is a Delaware limited liability company whose sole member is THHC Manager, LLC (“**THHC Manager**”). THHC Manager is a Delaware limited liability company whose sole member is THPO.

**Integral Communities.** THPO, the THPO Affiliates, Tracy Hills Holding Company and THHC Manager are entities managed by the principals of Integral Communities. The principals of Integral Communities have over 150 years of combined experience in the real estate development business. Many of the principals spent more than a decade growing Western Pacific Housing into a successful western states home building and development company. Recognized as the 12th-largest homebuilder in the country at one time, Western Pacific was later sold to D.R. Horton for in excess of \$1 billion in market capitalization. Following the sale to D.R. Horton, the five principals formed Integral Communities.

Integral Communities creates new opportunities from underutilized or undeveloped parcels of land through value-added land planning, with projects that include for-sale, apartment, mixed-use and residential multi-family opportunities. Previous projects of Integral Communities include, among others, the following:

- Gateway Station - Newark, CA (580 residential units sold to Lennar Homes).
- Dublin Ranch Sub Area 3 - Dublin, CA (437 residential units sold to Lennar Homes).
- Dublin Ranch Lot 3 - Dublin, CA (123 residential units sold to Lennar Homes).
- Centre Pointe - Milpitas, CA (241 residential units sold to D.R. Horton).
- Houret - Milpitas, CA (114 residential units sold to The New Home Company).
- Riverdale – Long Beach, CA (131 residential units as a joint venture with Brandywine Homes).
- Torian – Newark, CA (547 residential units sold to William Lyon Homes).
- Palmilla - Brentwood, CA (400 residential units sold to Pulte and William Lyon Homes).
- Montecito Vista - San Jose, CA (284 residential units sold to Taylor Morrison and Lennar Homes).
- The Fields - Milpitas, CA (1,185 for-sale and for-rent multifamily residential units as a joint venture with Lyon Living).

Further information regarding Integral Communities is available from its website at [integralcommunities.com](http://integralcommunities.com). *This internet address is included for reference only, and the information on the internet site is not a part of this Official Statement and is not incorporated by reference into this Official Statement.*

## **The Tracy Hills Project**

The Tracy Hills Project is part of the larger Tracy Hills Specific Plan (“**TH Specific Plan**”). The TH Specific Plan, which encompasses approximately 2,732 gross acres, with 1,811 developable acres, approved the development of various land uses, including residential estates, low density residential, medium density residential, high density residential, mixed-use business park, general highway commercial, light industrial and conservation corridors.

The TH Specific Plan land assemblage began in the mid-1980s by a local land broker. As the project was processed through the City of Tracy, additional properties were added to create the current boundaries of the TH Specific Plan.

The TH Specific Plan was added to the City of Tracy’s General Plan in 1993. The original TH Specific Plan and EIR were approved and annexed into the City of Tracy in 1998. The Growth Management Ordinance effectively placed a moratorium on residential development in the TH Specific Plan until 2012. See “THE DISTRICT AND IMPROVEMENT AREA NO. 2 – City of Tracy Growth Management Ordinance (GMO).”

THPO purchased the THPO Property – a portion of the TH Specific Plan - in late 2012. Due to the passage of time, the TH Specific Plan needed to be updated and modernized, and a Subsequent Environmental Impact Report was prepared. This culminated with City of Tracy approval of a new Tracy Hills Specific Plan (the “**Revised TH Specific Plan**”), a Subsequent Environmental Impact Report, a Development Agreement covering the THPO Property (as amended, the “**Development Agreement**”), and a large lot and small lot tentative subdivision map in April of 2016.

The THPO Property (including the land in Improvement Area No. 2) is composed of approximately 1,853 gross acres of the Revised TH Specific Plan.

THPO has conveyed all of the THPO Property to THPO Affiliates, and, in some cases, the THPO Affiliates have conveyed the THPO Property to merchant builders. THPO and the THPO Affiliates intend to sell the Tracy Hills Project in six phases, as described below:

**Phase 1A:** Phase 1A (the residential portion of which is in Improvement Area No. 1 of the District) is to be developed as 1,203 single family detached units, 50 acres of Mixed Use Business Park, 12 acres of public parks, a 14-acre K-8 school site, and open space. All of the residential portion of Phase 1A was conveyed to merchant builders. As of August 1, 2023, merchant builders have constructed, sold, and closed on 1,147 homes in Phase 1A. The Mixed-Use Business Park (which is not part of the District but is identified as future annexation area) is still owned by a THPO Affiliate and is anticipated to be sold to commercial/multifamily developers in the future.

**Phase 1B:** Phase 1B is expected to be developed as 432 single family detached units, 5 acres of public parks, 135.6 acres of Mixed Use Business Park, 9.2 acres of high density residential (125 units), 29 acres of general highway commercial, and open space. The residential portion of Phase 1B was annexed to the District as Improvement Area No. 2. See “–Development Plan for Improvement Area No. 2” below for more information.

**Phase 1C:** Phase 1C is expected to be developed as 291 single family detached units, 2.35 acres of public park, and open space. All of Phase 1C is either owned by or under contract

with Lennar Homes. Lots and housing commencement are subject to the housing market. Phase 1C is identified as future annexation area for the District, but has not yet been annexed to the District.

Phase 2: Phase 2 is expected to be developed as 1,466 units of single family detached units, 3.87 acres of general highway commercial, a 15-acre school site, 32 acres of public park, and open space. All of Phase 2 is either owned by or under contract with Lennar Homes. Phase 2 will be sold to Lennar Homes in phases, with Phase 2A having already closed to Lennar Homes. Lots and housing commencement are subject to the housing market. Phase 2 is identified as future annexation area for the District, but has not yet been annexed to the District.

Phase 3: Phase 3 is expected to be developed as 1,230 units of single family detached units, a 19-acre school site, 31 acres of public park, and open space. All of Phase 3 is under contract to be acquired by Lennar Homes. Phase 3 will be sold to Lennar Homes in phases. Lots and housing commencement are subject to the housing market. Phase 3 is identified as future annexation area for the District, but has not yet been annexed to the District.

Phase 4: Phase 4 is expected to be developed as 329 units of single family detached units, 4 acres of public park, 29 acres of mixed use business park, and open space. All of Phase 4 is under contract to be acquired by Lennar Homes. Lots and housing commencement are subject to the housing market. Phase 4 is identified as future annexation area for the District, but has not yet been annexed to the District.

***Only the single-family residential portion of Phase 1B was annexed into the District as Improvement Area No. 2 and only the property in Improvement Area No. 2 (i.e., the single-family residential portion of Phase 1B) is subject to the Special Tax that secures payment on the 2023 Bonds.***

***The property that is anticipated to be developed as the high density and Mixed-Use Business Park portion of Phase 1B and Phases 1A, 1C, 2, 3, and 4, are not subject to the lien of Special Tax and will not be subject to a Special Tax securing the 2023 Bonds or any Parity Bonds in the future (unless annexed to Improvement Area No. 2, which is not currently contemplated by THPO).***

## **Acquisition Agreement**

In connection with the formation of the District, THPO entered into the Master Acquisition Agreement dated July 19, 2016, by and between THPO and the City (the “**Acquisition Agreement**”). The Acquisition Agreement authorized the financing of various infrastructure improvements and capital improvement fees for the entirety of the District.

Under the Acquisition Agreement, THPO may assign the Acquisition Agreement in part to the applicable THPO Affiliate or a merchant builder in connection with the development of the applicable phase. On May 24, 2023, THPO assigned the Acquisition Agreement to Lennar Homes as to Improvement Area No. 2 in recognition that Lennar Homes will be constructing all of the improvements associated with the development of Improvement Area No. 2.

The Rate and Method provides that the funding of improvement costs can also be made from collections of the Special Tax available as the “pay-as-you-go” component of Special Taxes, also described herein as the Remainder Taxes. The Remainder Taxes will provide for funding of the cost of the authorized improvements. Under the Acquisition Agreements and the Rate and Method, Remainder Taxes collected in years 1-14 and in years 16-20 from Improvement Area No. 2 are available to fund

Authorized Facilities. Remainder Taxes collected in year 15 are available to fund Authorized Facilities or Authorized Services at the discretion of the City.

## **Development Plan for Improvement Area No. 2**

**General.** The taxable property in Improvement Area No. 2 is projected to be developed as 432 residential units. Improvement Area No. 2 also includes a neighborhood park, open space, and HOA property.

Improvement Area No. 2 is being developed in four villages (each a “**Village**” and collectively the “**IA No. 2 Villages**”) of single-family detached lots: Village 9A (69 units); Village 9B (64 units); Village 10 (150 units); and Village 11 (149 units).

The entirety of Improvement Area No. 2 has been sold to Lennar Homes of California, LLC (“**Lennar Homes**”). On December 23, 2020, Tracy Phase IB, LLC and Lennar Homes entered into a Purchase and Sale Agreement and Joint Escrow Instructions (as amended from time to time, the “**Lennar PSA**”) for the purchase of the IA No. 2 Villages. On December 29, 2020, Lennar Homes closed on the purchase of the IA No. 2 Villages.

Lennar Homes will build all the off-site and in-tract improvements required to develop Improvement Area No. 2.

## **Lennar Homes**

**General.** The IA No. 2 Villages will be developed by Lennar Homes, which is based in Irvine, California. Lennar Homes has been in the business of developing residential real estate communities in California since 1996. Lennar Homes is wholly-owned by U.S. Home, LLC, a Delaware limited liability company (“**U.S. Home**”). U.S. Home is wholly-owned by Lennar Corporation, which is based in Miami, Florida. Founded in 1954, Lennar Corporation completed its initial public offering in 1971 and listed its common stock on the New York Stock Exchange in 1972. Lennar Corporation’s Class A and Class B common stock are listed on the New York Stock Exchange under the symbols “LEN” and “LEN.B.” respectively. Lennar Corporation is one of the largest homebuilders in the United States based on home sales revenues and net earnings, and operates under a number of brand names, including Lennar Homes and U.S. Home. Lennar Corporation primarily develops residential communities both within the Lennar family of builders and through consolidated and unconsolidated partnerships in which Lennar Corporation maintains an interest.

Lennar Corporation is subject to the informational requirements of the Exchange Act and in accordance therewith files reports, proxy statements and other information with the SEC. Such filings, particularly the Annual Report on Form 10-K and its most recent Quarterly Report on Form 10-Q, set forth, among other things, certain data relative to the consolidated results of operations and financial position of Lennar Corporation and its consolidated subsidiaries, including Lennar Homes, as of such dates.

The SEC maintains a website that contains reports, proxy and other information statements and other information regarding registrants that file electronically with the SEC, including Lennar Corporation. The address of such website is [www.sec.gov](http://www.sec.gov). All documents filed by Lennar Corporation pursuant to the requirements of the Exchange Act after the date of this Official Statement will be available for inspection in such manner as the SEC prescribes.

Copies of Lennar Corporation’s Annual Report and related financial statements, prepared in accordance with generally accepted accounting standards, are available from Lennar Corporation’s website at [www.lennar.com](http://www.lennar.com).

*The internet addresses referenced in the paragraphs above are included for reference purposes only and the information on these internet sites are not a part of this Official Statement and are not incorporated by reference into this Official Statement. No representation is made in this Official Statement as to the accuracy or adequacy of the information contained on these internet sites.*

**Backbone and In-Tract Improvements.** Lennar Homes is required to construct all backbone and in-tract improvements required in connection with the development of the property in Improvement Area No. 2. Lennar Homes has retained ICGC, LLC, a Delaware limited liability company, as the general contractor to construct all necessary backbone and in-tract improvements. All of the backbone and in-tract improvements are complete except for the Phase 1B Neighborhood Park, the HOA facility (pool and restrooms), and last phase of the Lammers Road connection to Corral Hollow Road (consisting of retaining walls and last lift of asphalt).

**Conditions of Approval.** Certain facilities required as conditions of developing Improvement Area No. 2 are further described below:

A. *Phase 1B Neighborhood Park.*

Completion and Acceptance Condition. Before final inspection or occupancy of the 180th dwelling unit (whichever occurs first, except for up to fifteen model homes), the Phase 1B Neighborhood Park must be completed and accepted by the City Council. If the Phase 1B Neighborhood Park is not completed and accepted by the City Council before final inspection or occupancy of the 180th dwelling unit (whichever occurs first, except for up to fifteen model homes), no further building permits (except for plumbing only building permits) will be issued until the Phase 1B Neighborhood Park is completed and accepted by the City Council.

Current Construction Timeline. The improvement plans for the Phase 1B Neighborhood Park were approved by the City Council on September 19, 2023. Accordingly, Lennar Homes expects to commence construction on the Phase 1B Neighborhood Park immediately following execution of the plans, which is anticipated to be in the first week of October, 2023. Weather permitting, Lennar Homes expects that it will take approximately 7 months from commencement of construction to complete the Phase 1B Neighborhood Park and another 2-3 months for acceptance by the City Council (the “**Estimated Park Acceptance Timeline**”).

Timing Implications for Development in Improvement Area No. 2. As of September 15, 2023, there have been final inspections on 122 non-model dwelling units and more than 247 full building permits issued. Lennar Homes projects that it will reach the 179th final inspection of non-model units by late November or early December 2023 (herein, the “**Park Condition Date**”). Lennar Homes and the City have different interpretations of the park condition and how it will impact development of the homes in Improvement Area No. 2. The City interprets the condition described above to mean that construction of remaining units—even on a unit for which a building permit has already been received prior to the Park Condition Date—must be halted after the 179th unit until the Phase 1B Neighborhood Park is completed and accepted by the City Council. On the other hand, Lennar Homes believes that if the Phase 1B Neighborhood Park is not accepted by the Park Condition Date, the City has the authority not to issue any additional building permits until the Phase 1B Neighborhood Park has been completed and accepted by the City Council, but that the City remains obligated to continue inspections and approvals for any units that had previously received building permits. Lennar Homes and the City will meet and confer on the interpretation of the condition. Lennar Homes may request a modification to the condition, such as increasing the number of units that trigger the condition, or some other change, but there can be no guarantee that such relief would be granted.

Although Lennar Homes hopes to reach agreement with the City on the park condition prior to the Park Condition Date, Lennar Homes intends to diligently construct the Phase 1B Neighborhood Park and continue construction on homes to the extent allowed during the construction of the Phase 1B Neighborhood Park. Lennar Homes understands that the Absorption Study includes a modified estimate of the project absorption that accounts for the Estimated Park Acceptance Timeline under the City's interpretation of the park condition. Lennar Homes further understands that, based on this modified estimate, even if there is an interruption in completing homes during park construction, the calendar year absorption estimates of homes as estimated by the Market Absorption Consultant both with and without any delays is the same, although the Market Absorption Consultant reports that, under the modified scenario, most of the calendar year 2024 occupancies would occur in the fourth quarter of calendar year 2024.

There can be no guarantee regarding the actual timeline for completion of the Phase 1B Neighborhood Park or that the absorption estimates set forth in the Absorption Study will be realized in light of the Phase 1B Neighborhood Park condition.

See "SECURITY FOR THE BONDS – Improvement Fund – *Disbursements Related to Construction of Phase 1B Neighborhood Park*" for further information about the release of 2023 Bonds proceeds from the Improvement Fund related to construction of the Phase 1B Neighborhood Park.

B. *Trees Adjacent to I-580.* Before the issuance of the 300th building permit, Lennar Homes must plant trees in the easement adjacent to Highway I-580. As of the date of this Official Statement, this obligation has been completed.

C. *School Facilities.* Certificates of compliance from each of the Jefferson School District ("JSD") and the Tracy Unified School District ("TUSD") are required as a condition of receipt of a building permit. The certificates of compliance are issued if the mitigation payments under the respective agreements with JSD and TUSD are paid. As of the date of this Official Statement, certificates of compliance have been provided for all 432 lots in Improvement Area No. 2.

D. *Fair Share of Repaving Costs.* The amount of \$50,000 is due for the first 144 homes constructed in Improvement Area No. 2. As of the date of this Official Statement, this amount has been paid.

E. *Subdivision Improvement Agreements and Bonding.* Lennar Homes was required to post bonds and collateral with the City, and execute any applicable Subdivision Improvement Agreements in connection with the final approval of the tract maps for the IA No. 2 Villages. As of the date of this Official Statement, this obligation has been completed.

**Buyer RGAs.** As of September 14, 2023, Lennar Homes has received RGAs for all 432 units and has perfected all RGAs with plumbing-only or full building permits for all 432 units in the Improvement Area.

**Tract Map Status.** Final maps creating all 432 residential lots for the IA No. 2 Villages have been recorded, as shown below:

**Tract Map Status for the IA No. 2 Villages in Improvement Area No. 2  
(as of September 15, 2023)**

<b>Village</b>	<b>Tract Map</b>	<b>Projected Number of Units</b>	<b>Date of Recordation</b>
Village 9A	4083	69	November 17, 2021
Village 9B	4084	64	November 17, 2021 (as amended February 10, 2023)
Village 10	4085	62	April 26, 2022
	4112	88	April 13, 2023
Village 11	4086	45	May 6, 2022
	4114	104	April 13, 2023
Totals:		<u>432</u>	

Details of each IA No. 2 Village are as follows. The projected sales prices shown in the tables below are as of September 15, 2023, and may differ from the projected sales prices shown in the Absorption Study, which was based on information provided in early July. Sales prices are subject to change, are all inclusive, and exclude any incentives and selling concessions or price reductions which may be offered.

**Village 9A – Amber/Parklin  
(Tract No. 4083)  
(as of September 15, 2023)  
50 x 90 Typical Lot Size**

<b>Floor Plan</b>	<b>Square Footage</b>	<b>Total Number of Planned Units<sup>(1)</sup></b>	<b>Base Sales Price</b>
Plan 1	2,173	17	\$799,880
Plan 2	2,278	17	\$827,880
Plan 3	2,476	17	\$876,880
Plan 4	2,688	18	\$896,880
Totals		<u>69</u>	

(1) Lennar Homes has completed construction of two Village 9A model homes located in this Village.

**Village 9B – Sunhaven/Opal  
(Tract No. 4084)  
(as of September 15, 2023)  
50 x 100 Typical Lot Size**

<b>Floor Plan</b>	<b>Square Footage</b>	<b>Total Number of Planned Units<sup>(1)</sup></b>	<b>Base Sales Price</b>
Plan 1	2,502	16	\$891,880
Plan 2	3,196	16	\$989,880
Plan 3	3,269	16	\$1,014,880
Plan 4	3,543	16	\$1,070,880
<b>Totals</b>		<b>64</b>	

(1) Lennar Homes has completed construction of two Village 9B model homes located in this Village.

**Village 10 - Greenwood  
(Tract Nos. 4085 and 4112)  
(as of September 15, 2023)  
50 x 80 Typical Lot Size**

<b>Floor Plan</b>	<b>Square Footage</b>	<b>Total Number of Planned Units<sup>(1)</sup></b>	<b>Base Sales Price</b>
Plan 1	2,452	38	\$834,880
Plan 2	2,580	37	\$863,880
Plan 3	2,700	38	\$881,880
Plan 4	2,869	37	\$901,880
<b>Totals</b>		<b>150</b>	

(1) Lennar Homes has completed construction of two Village 10 model homes located in this Village.

**Village 11 - Fairgrove  
(Tract Nos. 4086 and 4114)  
(as of September 15, 2023)  
40 x 70 Typical Lot Size**

<b>Floor Plan</b>	<b>Square Footage</b>	<b>Total Number of Planned Units<sup>(1)</sup></b>	<b>Base Sales Price</b>
Plan 1	1,945	37	\$714,880
Plan 2	2,140	37	\$764,880
Plan 3	2,287	38	\$789,880
Plan 4	2,416	37	\$809,880
<b>Totals</b>		<b>149</b>	

(1) Lennar Homes has completed construction of two Village 11 model homes located in this Village.

## Landbank Arrangement

Lennar Homes sold 365 of the 432 lots located in Improvement Area No. 2 (the “**Improvement Area No. 2 Lots**”) to AG Essential Housing CA 4, L.P., a Delaware limited partnership (“**AG4**”) in order to set up a land banking structure.

To facilitate the land banking structure for the Improvement Area No. 2 Lots, as well as for an additional 346 lots in several other projects (the “**Non-Improvement Area No. 2 Lots**”), Lennar Homes and AG4 entered into that certain Option Agreement, dated February 26, 2021 (the “**Lennar Option Agreement**”) whereby Lennar Homes has the option, but not the obligation, to purchase the 365 Improvement Area No. 2 Lots (as well as the 346 Non-Improvement Area No. 2 Lots) from AG4 pursuant to a takedown schedule agreed upon between Lennar Homes and AG4.

Lennar Homes and AG4 further memorialized their rights and obligations under the Lennar Option Agreement by recording that certain Memorandum of Option Agreement in the Official Records of San Joaquin County on February 26, 2021, as Instrument No. 2021-036899 (the “**Original Memo of Lennar Option**”).

In addition to the Option Agreement, Lennar Homes and AG4 entered into a Construction Agreement (“**Lennar Construction Agreement**”) granting Lennar Homes the right to enter upon the Improvement Area No. 2 Lots (and the Non-Improvement Area No. 2 Lots) for the purpose of, among other things, constructing model homes, dwelling units and related subdivision improvements on the Improvement Area No. 2 Lots (and Non-Improvement Area No. 2 Lots) before Lennar Homes acquires the Improvement Area No. 2 Lots (and Non-Improvement Area No. 2 Lots) from AG4.

On September 23, 2021, AG4 conveyed the Improvement Area No. 2 Lots and the Non-Improvement Area No. 2 Lots that had not yet been conveyed to Lennar Homes to AG Essential Housing CA 1, L.P., a Delaware limited partnership (the “**Landbank Owner**”). Further, AG4 assigned, and the Landbank Owner assumed, all of AG4’s obligations under the Lennar Option Agreement and the Lennar Construction Agreement. In connection therewith, Lennar Homes and the Landbank Owner memorialized their rights and obligations under the Lennar Option Agreement by recording that certain Amended and Restated Memorandum of Option Agreement in the Official Records of San Joaquin County on September 24, 2021, as Instrument No. 2021-160747 (the “**Amended Memo of Lennar Option**”).

Lennar Homes’ planned development of the Improvement Area No. 2 Lots includes the construction of 365 single-family residential homes and the sale of such homes to individual homebuyers. Pursuant to the terms and conditions of the Lennar Option Agreement, Lennar Homes is required to, among other things, cause the completion and satisfaction of the certain on-site and offsite improvements to the Improvement Area No. 2 Lots. During the term of the Lennar Option Agreement, Lennar Homes is obligated to pay all taxes on the Improvement Area No. 2 Lots (and Non-Improvement Area No. 2 Lots), including the Special Taxes.

Under the terms of the Lennar Option Agreement, the Landbank Owner agreed to provide Lennar Homes the exclusive right and option to purchase the Improvement Area No. 2 Lots and the Non-Improvement Area No. 2 Lots in consideration for (a) an initial option payment, which payment has been made to the Landbank Owner; (b) the covenants of Lennar Homes to timely pay the option payments under the Lennar Option Agreement on a monthly basis in arrears; and (c) upon exercise of the option, the payment of the purchase price for each set of lots acquired.

The Improvement Area No. 2 Lots and the Non-Improvement Area No. 2 Lots must be purchased in certain groups and in a specified order, although Lennar Homes may acquire more lots than scheduled and at earlier times so long as the identified lots are acquired by the applicable takedown date. In addition, pursuant to the Lennar Option Agreement and the Lennar Construction Agreement and with some

limitations, the Landbank Owner has granted Lennar Homes a license to enter upon the property to construct homes before it acquires the lots from the Landbank Owner. It is Lennar Homes' intention to substantially complete all horizontal and vertical development on the lots it acquires prior to the applicable takedown.

The failure to acquire the lots in the specified order will result in the payment of a premium in addition to the purchase price. Under the Lennar Option Agreement, the Improvement Area No. 2 Lots must be acquired pursuant to the following schedule, although the Lennar Option Agreement contains provision allowing for one-month extensions on acquisition of lots subject to the payment of an extension fee and other conditions:

**Takedown Schedule  
Under Lennar Option Agreement  
(Improvement Area No. 2 Lots Only)  
(as of September 15, 2023)**

<b>Acquisition Date</b>	<b>Village 9A</b>	<b>Village 9B</b>	<b>Village 10</b>	<b>Village 11</b>	<b>Cumulative Number of Lots Acquired</b>	<b>Status as of September 15, 2023</b>
4/10/22	4	4	4	4	16	Acquired
5/10/22	0	0	0	0	16	Acquired
6/10/22	4	4	4	4	32	Acquired
7/10/22	4	4	4	4	48	Acquired
8/10/22	4	4	4	4	64	Acquired
9/10/22	4	4	4	4	80	Acquired
10/10/22	4	4	4	4	96	Acquired
11/10/22	4	4	4	4	112	Acquired
12/10/22	4	4	4	4	128	Acquired
1/10/23	4	4	4	4	144	Acquired
2/10/23	4	4	4	4	160	Acquired
3/10/23	4	4	4	4	176	Acquired
4/10/23	4	4	4	4	192	Acquired
5/10/23	4	4	4	4	208	Acquired
6/10/23	4	4	4	4	224	Acquired
7/10/23	4	4	4	4	240	Acquired
8/10/23	4	4	4	4	256	Acquired
9/10/23	4	--	4	4	268	Acquired
10/10/23	1	--	4	4	277	
11/10/23	--	--	4	4	285	
12/10/23	--	--	4	4	293	
1/10/24	--	--	4	4	301	
2/10/24	--	--	4	4	309	
3/10/24	--	--	4	4	317	
4/10/24	--	--	4	4	325	
5/10/24	--	--	4	4	333	
6/10/24	--	--	16	16	365	
	69	64	116	116	365 <sup>(1)</sup>	

(1) Only 365 of the planned 432 lots are subject to the land banking arrangement.

The option under the Lennar Option Agreement expires on the earlier of (i) the last date permitted for the final takedown specified on the takedown schedule (for both the Improvement Area No. 2 Lots and the non-Improvement Area No. 2 Lots) and the expiration of any applicable cure period, or (ii) the date Lennar Homes has acquired all of the Improvement Area No. 2 Lots and Non-Improvement Area No. 2 Lots in accordance with the Lennar Option Agreement. The failure to timely acquire lots could result

in the termination of the option and Lennar Homes will no longer have a right to purchase any of the remaining units under the Lennar Option Agreement.

The Lennar Option Agreement covers both the Improvement Area No. 2 Lots and the Non-Improvement Area No. 2 Lots, and the failure by Lennar Homes to acquire the Non-Improvement Area No. 2 Lots in a timely manner could result in a termination of the entirety of the Option Agreement, including the right to acquire the Improvement Area No. 2 Lots. In the event that Lennar Homes does not exercise its option on the Improvement Area No. 2 Lots or the right to purchase the Improvement Area No. 2 Lots expires or is terminated, the Landbank Owner being an investor only and not a homebuilder, would likely attempt to sell such Improvement Area No. 2 Lots to another merchant builder.

Under the Lennar Construction Agreement, Lennar Homes has agreed to use commercially reasonable efforts to construct all of the on-site and off-site improvements and obtain the requisite governmental permits and approvals necessary to create finished lots on the Improvement Area No. 2 Lots and the Non-Improvement Area No. 2 Lots. The Lennar Construction Agreement contains various dates for completion of work in phases.

During the term of the Lennar Option Agreement and the Lennar Construction Agreement, Lennar Homes is obligated to pay all taxes on the Improvement Area No. 2 Lots and the Non-Improvement Area No. 2 Lots.

## Status of Development

Lennar Homes held a grand opening for Amber/Parklin and Sunhaven/Opal on September 17, 2022 and for Greenwood and Fairgrove on January 14, 2023. Set forth below is the status of construction of the units in each of the product lines being developed by Lennar Homes, as of September 15, 2023:

### IA No. 2 Villages Status of Development (as of September 15, 2023)

	Amber/ Parklin	Sunhaven/ Opal	Greenwood	Fairgrove	Total
<b>Construction and Sale Status</b>					
Closed to Homeowners	29	33	24	22	108
Completed Unclosed Homes (including 8 models)	6	2	8	5	21
Under Construction <sup>(1)</sup>	27	27	17	21	92
Finished Lots	7	2	101	101	211
Total Projected Units	69	64	150	149	432
<b>Permit Status</b>					
Plumbing-Only Permits Received <sup>(2)</sup>	0	0	94	91	185
Full Building Permits Received <sup>(3)</sup>	69	64	56	58	247
Total Projected Units	69	64	150	149	432

(1) Under construction means that a full building permit has been issued and the trenching for the foundation has begun. Represents homes in various stages of construction.

(2) Under the Growth Management Ordinance, a builder must have an RGA in order to apply for a building permit on or before September 30th of the year in which the builder was allocated the RGA. If such an application is not made in a timely manner, then the RGA would expire. Pursuant to the First Amendment to the Development Agreement, the City considers the receipt of a plumbing permit as timely receipt of a permit to prevent the expiration of an RGA.

(3) The receipt of a full building permit is also considered a timely receipt of a permit to prevent the expiration of an RGA. For purposes of the Rate and Method, a parcel is considered Developed Property if it has a full building permit, not a plumbing permit or a foundation-only building permit.

Source: Lennar Homes.

In addition to the 108 homes closed to individual homeowners as of September 15, 2023, 36 homes were under contract to be sold to homeowners as of such date.

Lennar Homes anticipates buildout of the IA No. 2 Villages according to the following schedule:

- Village 9A: August 2024
- Village 9B: June 2024
- Village 10: May 2026
- Village 11: June 2026

The anticipated buildout shown above is subject to change, and there can be no guarantee that the IA No. 2 Villages will be developed according to that schedule.

## Home Construction Financing Plan

Lennar intends to finance the development of the IA No. 2 Villages using internal sources (equity and home sales proceeds). Through September 1, 2023, Lennar Homes has expended approximately \$189,935,182 on the development of the IA No. 2 Villages, including land acquisition, site development, home building, marketing, and sales. Lennar anticipates expending an additional \$113,452,695 to complete the development of the IA No. 2 Villages. A summary of the costs incurred and anticipated are set forth in the table below:

	<b>Total Budget</b>	<b>Costs Incurred Through September 1, 2023</b>	<b>September 2, 2023 through Buildout</b>
Land <sup>(1)</sup>	\$90,635,579	\$66,396,655	\$24,238,924
Site Construction	\$65,091,103	\$56,311,234	\$8,779,869
Direct Home Construction	\$134,250,535	\$64,985,023	\$69,265,512
Sales and Marketing	<u>\$13,410,659</u>	<u>\$2,242,270</u>	<u>\$11,168,390</u>
<b>Total Projected Costs</b>	<b>\$303,387,876</b>	<b>\$189,935,182</b>	<b>\$113,452,695</b>

(1) Represents anticipated payments to the Landbank Owner for the purchase of the Improvement Area No. 2 Lots pursuant to the Option Agreement.

Although Lennar Homes expects to have sufficient funds available to complete its development in Improvement Area No. 2 in accordance with the development schedule described in this Official Statement, there can be no assurance that amounts necessary to finance the remaining development costs will be available from Lennar Homes or any other source when needed. Neither Lennar Homes, nor any of its related entities are under any legal obligation of any kind to expend funds for the development of and construction of homes on its property in Improvement Area No. 2. Any contributions by Lennar Homes to fund the costs of such development are entirely voluntary.

If and to the extent that internal funding, including but not limited to home sales revenues, are inadequate to pay the costs to complete the planned development by Lennar Homes within Improvement Area No. 2 and other financing by Lennar Homes is not put into place, there could be a shortfall in the funds required to complete the planned development by Lennar Homes in Improvement Area No. 2.

## BOND OWNERS' RISKS

*The purchase of the 2023 Bonds described in this Official Statement involves a degree of risk that may not be appropriate for some investors. The following includes a discussion of some of the risks which should be considered before making an investment decision. This discussion does not purport to be comprehensive or definitive and does not purport to be a complete statement of all factors which may be considered as risks in evaluating the credit quality of the 2023 Bonds.*

### Limited Obligation of the City to Pay Debt Service

The City has no obligation to pay principal of and interest on the 2023 Bonds if Special Tax collections are delinquent or insufficient, other than from amounts, if any, on deposit in the 2023 Reserve Fund or funds derived from the tax sale or foreclosure and sale of parcels for Special Tax delinquencies. The City is not obligated to advance funds to pay debt service on the 2023 Bonds.

## **Concentration of Ownership**

As of the July 19, 2023 date of value of the Original Appraisal, Lennar Homes (including through its contractual agreements with the Landbank Owner) is responsible for approximately 77.9% of the Fiscal Year 2023-24 Special Tax levy. See “THE DISTRICT AND IMPROVEMENT AREA NO. 2 – Value-to-Lien Ratios and Share of Fiscal Year 2023-24 Special Taxes” and “PROPERTY OWNERSHIP AND THE DEVELOPMENT – Status of Development.”

The owners of property in Improvement Area No. 2 are not personally obligated to pay the Special Tax attributable to their property. Rather, the Special Tax is an obligation only against the parcel of property, secured by the amount which could be realized in a foreclosure proceeding against the property, and not by any promise of the owner to pay. If the value of the property is not sufficient, taking into account other obligations also constituting a lien against the property, the City, Fiscal Agent and owners of the 2023 Bonds have no recourse against the owner, such as filing a lawsuit to collect money.

Failure of Lennar Homes or any future merchant builder or future owner of significant property subject to the Special Taxes in Improvement Area No. 2 to pay installments of Special Taxes when due could cause the depletion of the 2023 Reserve Funds prior to reimbursement from the resale of foreclosed property or payment of the delinquent Special Tax and, consequently, result in the delinquency rate reaching a level that would cause an insufficiency in collection of the Special Tax for the City to pay debt service with respect to the 2023 Bonds.

## **Future Property Development**

Continuing development of the parcels in Improvement Area No. 2 may be adversely affected by changes in general or local economic conditions, fluctuations in or a deterioration of the real estate market, increased construction costs, development, financing and marketing capabilities of the developer, water or electricity shortages, discovery on the undeveloped property of any plants or animals in their habitat that have been listed as endangered species, changes in laws, and other factors outside the control of the owners of land in Improvement Area No. 2. Development in Improvement Area No. 2 may also be affected by development in surrounding areas, which may compete with the property in Improvement Area No. 2.

## **Potential Early Redemption of Bonds from Prepayments**

Property owners within Improvement Area No. 2, including Lennar Homes and individual homeowners, are permitted to prepay up to 80% of the Special Tax obligation applicable to a Parcel in Improvement Area No. 2, subject to certain conditions. Such prepayments will result in a redemption of the 2023 Bonds on the interest payment date for which timely notice may be given under the Fiscal Agent Agreement following the receipt of the prepayment. The resulting redemption of 2023 Bonds that were purchased at a price greater than par could reduce the otherwise expected yield on such 2023 Bonds.

## **Levy and Collection of the Special Tax**

**General.** The principal source of payment of principal of and interest on the 2023 Bonds is the proceeds of the annual levy and collection of the Special Tax against property within Improvement Area No. 2.

**Limitation on Maximum Special Tax Rate.** The annual levy of the Special Tax is subject to the maximum annual Special Tax rate authorized in the Rate and Method. The levy cannot be made at a higher rate even if the failure to do so means that the estimated proceeds of the levy and collection of the Special Tax, together with other available funds, will not be sufficient to pay debt service on the 2023 Bonds.

**No Relationship Between Property Value and Special Tax Levy.** Because the Special Tax formula set forth in the Rate and Method is not based on property value, the levy of the Special Tax will rarely, if ever, result in a uniform relationship between the value of particular parcels of Taxable Property and the amount of the levy of the Special Tax against those parcels. Thus, there will rarely, if ever, be a uniform relationship between the value of the parcels of Taxable Property and their proportionate share of debt service on the 2023 Bonds, and certainly not a direct relationship.

**Factors that Could Lead to Special Tax Deficiencies.** The following are some of the factors that might cause the levy of the Special Tax on any particular parcel of Taxable Property to vary from the Special Tax that might otherwise be expected:

*Transfers to Governmental Entities.* The number of parcels of Taxable Property could be reduced through the acquisition of Taxable Property by a governmental entity and failure of the government to pay the Special Tax based upon a claim of exemption or, in the case of the federal government or an agency thereof, immunity from taxation, thereby resulting in an increased tax burden on the remaining taxed parcels. See “–Exempt Properties” below.

*Property Tax Delinquencies.* Failure of the owners of Taxable Property to pay property taxes (and, consequently, the Special Tax), or delays in the collection of or inability to collect the Special Tax by tax sale or foreclosure and sale of the delinquent parcels, could result in a deficiency in the collection of Special Tax revenues. See “–Property Tax Delinquencies” below.

**Delays Following Special Tax Delinquencies and Foreclosure Sales.** The Fiscal Agent Agreement generally provides that the Special Tax is to be collected in the same manner as ordinary *ad valorem* property taxes are collected and, except as provided in the special covenant for foreclosure described in “SECURITY FOR THE BONDS – Covenant to Foreclose” and in the Act, is subject to the same penalties and the same procedure, sale and lien priority in case of delinquency as is provided for ordinary *ad valorem* property taxes. Under these procedures, if taxes are unpaid for a period of five years or more, the property is deeded to the State and then is subject to sale by the County.

If sales or foreclosures of property are necessary, there could be a delay in payments to owners of the 2023 Bonds pending such sales or the prosecution of foreclosure proceedings and receipt by the City of the proceeds of sale if the 2023 Reserve Fund is depleted. See “SECURITY FOR THE BONDS – Covenant to Foreclose.”

The ability of the City to collect interest and penalties specified by State law and to foreclose against properties having delinquent Special Tax installments may be limited in certain respects with regard to properties in which a federal governmental agency has or obtains an interest. See “ – FDIC/Federal Government Interests in Properties” below.

Other laws generally affecting creditors’ rights or relating to judicial foreclosure may affect the ability to enforce payment of Special Taxes or the timing of enforcement of Special Taxes. For example, the Soldiers and Sailors Civil Relief Act of 1940 affords protections such as a stay in enforcement of the foreclosure covenant, a six-month period after termination of such military service to redeem property sold to enforce the collection of a tax or assessment, and a limitation on the interest rate on the delinquent tax or assessment to persons in military service if the court concludes the ability to pay such taxes or assessments is materially affected by reason of such service.

## **Property Tax Delinquencies**

**General.** Delinquencies in the payment of property taxes and, consequently, the Special Taxes, can occur because the owners of delinquent parcels may not have received property tax bills from the

County in a timely manner, including situations in which the County initially sent property tax bills to the property developer or merchant builder at a time when the parcels in question had already been sold to individual homeowners. Delinquencies can also reflect economic difficulties and duress by the property owner.

Numerous future delinquencies by the owners of Taxable Property in Improvement Area No. 2 in the payment of property taxes (and, consequently, the Special Taxes, which are collected on the ordinary property tax bills) when due could result in a deficiency in Special Tax revenues necessary to pay debt service on the 2023 Bonds, which could in turn result in the depletion of the 2023 Reserve Fund, prior to reimbursement from the resale of foreclosed property or payment of the delinquent Special Tax. In that event, there could be a delay or failure in payments of the principal of and interest on the 2023 Bonds. See “SECURITY FOR THE BONDS – 2023 Reserve Fund,” and “THE DISTRICT AND IMPROVEMENT AREA NO. 2 – Potential Consequences of Special Tax Delinquencies.”

**Measures to Mitigate Consequences of Continuing Delinquencies.** The City intends to take certain actions designed to mitigate the impact of future delinquencies, including: enforcing the lien of the Special Taxes through collection procedures that will include foreclosure actions under certain circumstances (see “SECURITY FOR THE 2023 BONDS – Covenant to Foreclose”); and increasing the levy of Special Taxes against non-delinquent property owners in Improvement Area No. 2 to the extent permitted under the Rate and Method and the Act, and to the extent the Special Taxes are not already being levied at the maximum Special Tax rate. See “THE DISTRICT AND IMPROVEMENT AREA NO. 2 – Potential Consequences of Special Tax Delinquencies.”

**Limitations on Increases in Special Tax Levy.** If property owners are delinquent in the payment of the Special Tax, the City may not increase Special Tax levies to make up for delinquencies for prior fiscal years above the maximum annual Special Tax rates specified in the Rate and Method.

In addition, the City’s ability to increase Special Tax levies on residential property to make up for delinquencies for prior Fiscal Years is limited by Section 53321(d) of the Act, which provides that the special tax levied against any parcel for which an occupancy permit for private residential use has been issued may not be increased as a consequence of delinquency or default by the owner of any other parcel by more than 10% above the amount that would have been levied in such Fiscal Year had there never been any such delinquencies or defaults.

In cases of significant delinquency, these factors may result in defaults in the payment of principal of and interest on the 2023 Bonds.

### **Risks Related to High Loan to Value Ratios**

Once homes have been constructed in Improvement Area No. 2, future decline in home values could result in property owner unwillingness or inability to pay mortgage payments, as well as *ad valorem* property taxes and Special Taxes, when due. Under such circumstances, bankruptcies are likely to increase. Bankruptcy by homeowners with delinquent Special Taxes would delay the commencement and completion of foreclosure proceedings to collect delinquent Special Taxes.

It is possible that laws could be enacted in the future to assist homeowners in default in the payment of mortgages and property taxes. It is further possible that federal laws could be enacted that would adversely impact the ability of the City to foreclose on parcels with delinquent Special Taxes. No assurance can be given that any such laws will be enacted, or if enacted will be effective in assisting affected homeowners.

## **Payment of Special Tax is not a Personal Obligation of the Property Owners**

An owner of Taxable Property is not personally obligated to pay the Special Taxes. Rather, the Special Taxes are an obligation running only against the parcels of Taxable Property. If, after a default in the payment of the Special Tax and a foreclosure sale by the City, the resulting proceeds are insufficient, taking into account other obligations also constituting a lien against the affected parcels of Taxable Property, the City has no recourse against the owner.

## **Appraised Values**

The Appraisal summarized in APPENDIX C estimates the market value of the property that is currently taxable property within Improvement Area No. 2. This market value is merely the opinion of the Appraiser as of the date of value set forth in the Appraisal, and is subject to the assumptions and limiting conditions stated in the Appraisal. The City has not sought an updated opinion of value by the Appraiser subsequent to the date of value of the Appraisal, or an opinion of the value of the Taxable Property by any other appraiser. A different opinion of value might be rendered by a different appraiser.

The opinion of value assumes a sale by a willing seller to a willing buyer, each having similar information and neither being forced by other circumstances to sell or to buy. Consequently, the opinion is of limited use in predicting the selling price at a foreclosure sale, because the sale is forced and the buyer may not have the benefit of full information.

In addition, the opinion of value is made as of the date of value set forth in the Appraisal, based upon facts and circumstances existing as of the date of value. Differing facts and circumstances may lead to differing opinions of value. The appraised value is not evidence of future value because future facts and circumstances may differ significantly from the facts and circumstances at the time the Appraisal was prepared.

No assurance can be given that any of the taxable property in Improvement Area No. 2 could be sold for the estimated market value contained in the Appraisal if that property should become delinquent in the payment of Special Taxes and be foreclosed upon.

## **Property Values**

The value of taxable property within Improvement Area No. 2 is a critical factor in determining the investment quality of the 2023 Bonds. If a property owner defaults in the payment of the Special Tax, the City's only remedy is to foreclose on the delinquent property in an attempt to obtain funds with which to pay the delinquent Special Tax. Land values could be adversely affected by economic and other factors beyond the City's control, such as a general economic downturn, relocation of employers out of the area, shortages of water, electricity, natural gas or other utilities, destruction of property caused by earthquake, flood, landslides, wildfires, or other natural disasters, environmental pollution or contamination, or unfavorable economic conditions.

The following is a discussion of specific risk factors that could affect the value of property in Improvement Area No. 2.

***Prolonged Economic Downturn.*** Land values are affected by economic conditions and to the extent that an economic downturn is prolonged, property values could decline or remain flat for an indefinite period. Declines in home values in Improvement Area No. 2 could also result in property owner unwillingness or inability to pay mortgage payments, as well as *ad valorem* property taxes and Special Taxes, when due. Under such circumstances, bankruptcies are likely to increase. Bankruptcy by homeowners with delinquent Special Taxes would delay the commencement and completion of foreclosure proceedings.

**Natural Disasters.** The value of the taxable property in the future can be adversely affected by a variety of natural occurrences, particularly those that may affect infrastructure and other public improvements and private improvements on the taxable property and the continued habitability and enjoyment of such private improvements.

The areas in and surrounding Improvement Area No. 2, like those in much of California, may be subject to unpredictable seismic activity, including earthquakes and landslides. Other natural disasters could include, without limitation, floods, landslides, wildfires, droughts or tornadoes. One or more natural disasters could occur and could result in damage to improvements of varying seriousness. The damage may entail significant repair or replacement costs and that repair or replacement may never occur either because of the cost, or because repair or replacement will not facilitate habitability or other use, or because other considerations preclude such repair or replacement. Under any of these circumstances there could be significant delinquencies in the payment of Special Taxes, and the value of the Taxable Property may well depreciate or disappear. See “THE DISTRICT AND IMPROVEMENT AREA NO. 2 – Environmental Matters” for additional details on certain environmental matters.

Drought. With respect to droughts specifically, California has a history of suffering periodic drought conditions. Most recently, on May 10, 2021, the governor proclaimed a State of Emergency for 41 of the State’s 58 counties (including San Joaquin County, where the District is located), citing above-average temperatures and dry conditions. In April 2022, the governor extended the State of Emergency to all counties in the State and asked all Californians to voluntarily reduce water usage by 15%. While some drought-related water restrictions were eased in May 2023, no assurance can be given that drought conditions will not continue in future years or, subside only to return in the future, potentially impacting the development of property in Improvement Area No. 2, the value of Taxable Property within Improvement Area No. 2, or economic activity within Improvement Area No. 2.

Wildfire. In recent years, drought conditions in the State (see “– Drought above”) have led to increased risk of wildfire. In particular, certain electrical operators in the State have seen their distribution/transmission lines cause billions of dollars in property damage and the loss of lives. Although the land in Improvement Area No. 2 is not in a high-risk area (or a special fire hazard severity zone) for wildfires, landslides, floods, or tornadoes, natural disasters such as these are unpredictable and may occur anywhere throughout the State, with devastating consequences, including resulting in significant delinquencies in the payment of Special Taxes, and reduction in the value of the parcels. No assurance can be given that wildfires will not erupt in the developments being undertaken in Improvement Area No. 2 and negatively impact development of property in the Improvement Area No. 2 in the future.

**Legal Requirements.** Other events that may affect the value of taxable property include changes in the law or application of the law. Such changes may include, without limitation, local growth control initiatives (to the extent not prohibited from being applicable to the Tracy Hills project through the Development Agreement), local utility connection moratoriums and local application of statewide tax and governmental spending limitation measures.

**Hazardous Substances.** One of the most serious risks in terms of the potential reduction in the value of Taxable Property is a claim with regard to a hazardous substance. In general, the owners and operators of Taxable Property may be required by law to remedy conditions of the parcel relating to releases or threatened releases of hazardous substances. The federal Comprehensive Environmental Response, Compensation and Liability Act of 1980, sometimes referred to as “CERCLA” or the “Superfund Act,” is the most well-known and widely applicable of these laws, but California laws with regard to hazardous substances are also stringent and similar.

Under many of these laws, the owner or operator is obligated to remedy a hazardous substance condition of property whether or not the owner or operator has anything to do with creating or handling the hazardous substance. The effect, therefore, should any of the Taxable Property be affected by a hazardous substance, is to reduce the marketability and value of the parcel by the costs of remedying the condition, because the purchaser, upon becoming owner, will become obligated to remedy the condition just as is the seller.

The property values set forth in this Official Statement do not take into account the possible reduction in marketability and value of any of the Taxable Property by reason of the possible liability of the owner or operator for the remedy of a hazardous substance condition of the parcel. Although the City is not aware that the owner or operator of any of the Taxable Property has such a current liability with respect to any of the Taxable Property, it is possible that such liabilities do currently exist and that the City is not aware of them.

Further, it is possible that liabilities may arise in the future with respect to any of the Taxable Property resulting from the existence, currently, on the parcel of a substance presently classified as hazardous but that has not been released or the release of which is not presently threatened, or may arise in the future resulting from the existence, currently on the parcel of a substance not presently classified as hazardous but that may in the future be so classified. Further, such liabilities may arise not simply from the existence of a hazardous substance but from the method of handling it. All of these possibilities could significantly affect the value of Taxable Property that is realizable upon a delinquency.

For particular environmental matters that may impact the value of land within Improvement Area No. 2, including the presence of a petroleum pipeline, which is unpressurized, within Improvement Area No. 2 and the District's proximity to Site 300, see "THE DISTRICT AND IMPROVEMENT AREA NO. 2 – Environmental Matters."

***Increasing Mortgage Interest Rates.*** Between approximately November 2021 and September 2023, mortgage interest rates for 30-year mortgage loans have increased from approximately 3.1% to over 7.0%. Increases in mortgage interest rates could have a negative impact on the estimated absorption rates of the residential units in Improvement Area No. 2 described herein. With respect to entry-level households, increased mortgage interest rates may adversely impact the affordability of homes and may increase mortgage payment levels for owning a lower-priced home relative to renting a residence, thereby making purchasing less attractive. With respect to move-up households, higher mortgage interest rates may impact the desire of current homeowners to move from their present home due to the fact that their present home likely has a relatively low mortgage interest rate. In addition, in such instances, a new home would likely have a higher interest rate on a new mortgage loan as well as a higher purchase price and property taxes. Such considerations may decrease the desire for move-up households to purchase a new home. The foregoing factors could reduce demand for and/or the ability to achieve the sales prices of the planned for-sale homes within Improvement Area No. 2 as described herein.

***Other Factors.*** Other factors that could adversely affect property values in Improvement Area No. 2 include, among others, relocation of employers out of the area, shortages of water, electricity, natural gas or other utilities, and destruction of property caused by man-made disasters.

### **Other Possible Claims Upon the Value of Taxable Property**

While the Special Taxes are secured by the taxable property, the security only extends to the value of such Taxable Property that is not subject to priority and parity liens and similar claims.

The tables in the sections entitled “THE DISTRICT AND IMPROVEMENT AREA NO. 2 – Direct and Overlapping Governmental Obligations” and “– Illustrative Tax Bill,” show the presently outstanding amount of governmental obligations, the tax or assessment for which is or may become an obligation of one or more of the parcels of Taxable Property. The tables do not specifically identify which of the governmental obligations are secured by liens on one or more of the parcels of Taxable Property.

In addition, other governmental obligations may be authorized and undertaken or issued in the future, the tax, assessment or charge for which may become an obligation of one or more of the parcels of Taxable Property and may be secured by a lien on a parity with the lien of the Special Tax securing the 2023 Bonds.

The principal of and interest on the 2023 Bonds are payable from the Special Tax authorized to be collected within Improvement Area No. 2, and payment of the Special Tax is secured by a lien on taxable real property within Improvement Area No. 2. Such lien is co-equal to and independent of the lien for general taxes and any other liens imposed under the Act, regardless of when they are imposed on the property in Improvement Area No. 2. The imposition of additional special taxes, assessments and general property taxes will increase the amount of independent and co-equal liens which must be satisfied in foreclosure if unpaid. The City, the County and certain other public agencies are authorized by the Act to form other community facilities districts and improvement areas and, under other provisions of State law, to form special assessment districts, either or both of which could include all or a portion of the land within Improvement Area No. 2. Finally, although the Special Taxes will generally have priority over non-governmental liens on a parcel of property in Improvement Area No. 2, regardless of whether the non-governmental liens were in existence at the time of the levy of the Special Tax or not, this result may not apply in the case of bankruptcy. See “BOND OWNERS’ RISKS– Bankruptcy Delays” below.

### **Exempt Properties**

Certain properties are exempt from the Special Tax in accordance with the Rate and Method and the Act, which provides that properties or entities of the state, federal or local government are exempt from the Special Tax; provided, however, that property within Improvement Area No. 2 acquired by a public entity through a negotiated transaction or by gift or devise, which is not otherwise exempt from the Special Tax, will continue to be subject to the Special Tax. See “SECURITY FOR THE BONDS – Rate and Method.”

In addition, although the Act provides that if property subject to the Special Tax is acquired by a public entity through eminent domain proceedings, the obligation to pay the Special Tax with respect to that property is to be treated as if it were a special assessment, the constitutionality and operation of these provisions of the Act have not been tested, meaning that such property could become exempt from the Special Tax. The Act further provides that no other properties or entities are exempt from the Special Tax unless the properties or entities are expressly exempted in a resolution of consideration to levy a new special tax or to alter the rate or method of apportionment of an existing special tax.

### **FDIC/Federal Government Interests in Properties**

**General.** The ability of the City to foreclose the lien of delinquent unpaid Special Tax installments may be limited with regard to properties in which the FDIC, the Federal National Mortgage Association, the Drug Enforcement Agency, the Internal Revenue Service, or other federal agency has or obtains an interest.

Federal courts have held that, based on the supremacy clause of the United States Constitution, in the absence of Congressional intent to the contrary, a state or local agency cannot foreclose to collect delinquent taxes or assessments if foreclosure would impair the federal government interest.

The supremacy clause of the United States Constitution reads as follows: “This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the contrary notwithstanding.”

This means that, unless Congress has otherwise provided, if a federal governmental entity owns a parcel that is subject to Special Taxes but does not pay taxes and assessments levied on the parcel (including Special Taxes), the applicable state and local governments cannot foreclose on the parcel to collect the delinquent taxes and assessments.

Moreover, unless Congress has otherwise provided, if the federal government has a mortgage interest in the parcel and the City wishes to foreclose on the parcel as a result of delinquent Special Taxes, the property cannot be sold at a foreclosure sale unless it can be sold for an amount sufficient to pay delinquent taxes and assessments on a parity with the Special Taxes and preserve the federal government’s mortgage interest. In *Rust v. Johnson* (9th Circuit; 1979) 597 F.2d 174, the United States Court of Appeal, Ninth Circuit held that the Federal National Mortgage Association (“**FNMA**”) is a federal instrumentality for purposes of this doctrine, and not a private entity, and that, as a result, an exercise of state power over a mortgage interest held by FNMA constitutes an exercise of state power over property of the United States.

The City has not undertaken to determine whether any federal governmental entity currently has, or is likely to acquire, any interest (including a mortgage interest) in any of the parcels subject to the Special Taxes, and therefore expresses no view concerning the likelihood that the risks described above will materialize while the 2023 Bonds are outstanding.

**FDIC.** In the event that any financial institution making any loan which is secured by real property within Improvement Area No. 2 is taken over by the FDIC, and prior thereto or thereafter the loan or loans go into default, resulting in ownership of the property by the FDIC, then the ability of the City to collect interest and penalties specified by State law and to foreclose the lien of delinquent unpaid Special Taxes may be limited.

The FDIC’s policy statement regarding the payment of state and local real property taxes (the “**Policy Statement**”) provides that property owned by the FDIC is subject to state and local real property taxes only if those taxes are assessed according to the property’s value, and that the FDIC is immune from real property taxes assessed on any basis other than property value. According to the Policy Statement, the FDIC will pay its property tax obligations when they become due and payable and will pay claims for delinquent property taxes as promptly as is consistent with sound business practice and the orderly administration of the institution’s affairs, unless abandonment of the FDIC’s interest in the property is appropriate. The FDIC will pay claims for interest on delinquent property taxes owed at the rate provided under state law, to the extent the interest payment obligation is secured by a valid lien. The FDIC will not pay any amounts in the nature of fines or penalties and will not pay nor recognize liens for such amounts. If any property taxes (including interest) on FDIC-owned property are secured by a valid lien (in effect before the property became owned by the FDIC), the FDIC will pay those claims. The Policy Statement further provides that no property of the FDIC is subject to levy, attachment, garnishment, foreclosure or sale without the FDIC’s consent. In addition, the FDIC will not permit a lien or security interest held by the FDIC to be eliminated by foreclosure without the FDIC’s consent.

The Policy Statement states that the FDIC generally will not pay non-ad valorem taxes, including special assessments, on property in which it has a fee interest unless the amount of tax is fixed at the time that the FDIC acquires its fee interest in the property, nor will it recognize the validity of any lien to the extent it purports to secure the payment of any such amounts. Special taxes imposed under the Act

and a special tax formula which determines the special tax due each year are specifically identified in the Policy Statement as being imposed each year and therefore covered by the FDIC's federal immunity. The Ninth Circuit has issued a ruling on August 28, 2001 in which it determined that the FDIC, as a federal agency, is exempt from Mello-Roos special taxes.

The City is unable to predict what effect the application of the Policy Statement would have in the event of a delinquency in the payment of Special Taxes on a parcel within Improvement Area No. 2 in which the FDIC has or obtains an interest, although prohibiting the lien of the Special Taxes to be foreclosed out at a judicial foreclosure sale could reduce or eliminate the number of persons willing to purchase a parcel at a foreclosure sale. Such an outcome could cause a draw on the 2023 Reserve Fund and perhaps, ultimately, if enough property were to become owned by the FDIC, a default in payment on the 2023 Bonds.

### **Depletion of 2023 Reserve Fund**

The 2023 Reserve Fund is to be maintained at an amount equal to the 2023 Reserve Requirement. See "SECURITY FOR THE BONDS – 2023 Reserve Fund." The 2023 Reserve Fund will be used to pay principal of and interest on the 2023 Bonds (and any 2023 Related Parity Bonds) if insufficient funds are available from the proceeds of the levy and collection of the Special Tax against property within Improvement Area No. 2. If the 2023 Reserve Fund is depleted, it can be replenished from the proceeds of the levy and collection of the Special Taxes that exceed the amounts to be paid to the owners of the 2023 Bonds (and any 2023 Related Parity Bonds) under the Fiscal Agent Agreement. However, because the Special Tax levy is limited to the maximum annual Special Tax rates, it is possible that no replenishment would be possible if the Special Tax proceeds, together with other available funds, remain insufficient to pay all such amounts. Thus, it is possible that the 2023 Reserve Fund will be depleted and not be replenished by the levy and collection of the Special Taxes.

### **Bankruptcy Delays**

The payment of the Special Tax and the ability of the City to foreclose the lien of a delinquent unpaid Special Tax, as discussed in "SECURITY FOR THE BONDS," may be limited by bankruptcy, insolvency or other laws generally affecting creditors' rights or by the laws of the State of California relating to judicial foreclosure. The various legal opinions to be delivered concurrently with the delivery of the 2023 Bonds (including Bond Counsel's approving legal opinion) will be qualified as to the enforceability of the various legal instruments by bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting creditors' rights, by the application of equitable principles and by the exercise of judicial discretion in appropriate cases.

Although bankruptcy proceedings would not cause the Special Taxes to become extinguished, bankruptcy of a property owner or any other person claiming an interest in the property could result in a delay in superior court foreclosure proceedings and could result in the possibility of Special Tax installments not being paid in part or in full. Such a delay would increase the likelihood of a delay or default in payment of the principal of and interest on the 2023 Bonds.

In addition, the amount of any lien on property securing the payment of delinquent Special Taxes could be reduced if the value of the property were determined by the bankruptcy court to have become less than the amount of the lien, and the amount of the delinquent Special Taxes in excess of the reduced lien could then be treated as an unsecured claim by the court. Any such stay of the enforcement of the lien for the Special Tax, or any such delay or non-payment, would increase the likelihood of a delay or default in payment of the principal of and interest on the 2023 Bonds and the possibility of delinquent Special Taxes not being paid in full.

The chances are increased that the 2023 Reserve Fund established for the 2023 Bonds could be fully depleted during any such delay in obtaining payment of delinquent Special Taxes. As a result, sufficient moneys would not be available in the 2023 Reserve Fund to make up shortfalls resulting from delinquent payments of the Special Tax and thereby to pay principal of and interest on the 2023 Bonds on a timely basis.

## **Cyber Security**

The City, like many other public and private entities, relies on computer and other digital networks and systems to conduct its operations. As a recipient and provider of personal, private or other sensitive electronic information, the City is potentially subject to multiple cyber threats, including without limitation hacking, viruses, ransomware, malware and other attacks. No assurance can be given that the City's efforts to manage cyber threats and attacks will be successful in all cases, or that any such attack will not materially impact the operations or finances of the City or the District, or the administration of the 2023 Bonds. The City is also reliant on other entities and service providers in connection with the administration of the 2023 Bonds, including without limitation the County tax collector for the levy and collection of Special Taxes, the Fiscal Agent, and the Dissemination Agent. No assurance can be given that the City, the District and these other entities will not be affected by cyber threats and attacks in a manner that may affect the Bond owners.

## **Disclosure to Future Purchasers**

The City has recorded a notice of the Special Tax lien in the Office of the County Recorder. While title companies normally refer to such notices in title reports, there can be no guarantee that such reference will be made or, if made, that a prospective purchaser or lender will consider such special tax obligation in the purchase of a parcel of land or a home in Improvement Area No. 2 or the lending of money secured by property in Improvement Area No. 2. The Act requires the subdivider of a subdivision (or its agent or representative) to notify a prospective purchaser or long-term lessor of any lot, parcel, or unit subject to a Mello-Roos special tax of the existence and maximum amount of such special tax using a statutorily prescribed form. California Civil Code Section 1102.6b requires that in the case of transfers other than those covered by the above requirement, the seller must at least make a good faith effort to notify the prospective purchaser of the special tax lien in a format prescribed by statute. Failure by an owner of the property to comply with these requirements, or failure by a purchaser or lessor to consider or understand the nature and existence of the Special Tax, could adversely affect the willingness and ability of the purchaser or lessor to pay the Special Tax when due.

## **No Acceleration Provisions**

The 2023 Bonds do not contain a provision allowing for their acceleration in the event of a payment default or other default under the terms of the 2023 Bonds or the Fiscal Agent Agreement. Under the Fiscal Agent Agreement, a Bondholder is given the right for the equal benefit and protection of all Bondholders similarly situated to pursue certain remedies. See "APPENDIX E – Summary of Certain Provisions of the Fiscal Agent Agreement." So long as the 2023 Bonds are in book-entry form, DTC will be the sole bondholder and will be entitled to exercise all rights and remedies of bondholders.

## **Impact of Certain Events on Tax Exemption**

As discussed under the caption "TAX MATTERS," interest on the 2023 Bonds might become includable in gross income for purposes of federal income taxation retroactive to the date the 2023 Bonds were issued as a result of future acts or omissions of the City in violation of its covenants in the Fiscal Agent Agreement. The Fiscal Agent Agreement does not contain a special redemption feature triggered by the occurrence of an event of taxability. As a result, if interest on the 2023 Bonds were to become includable in gross income for purposes of federal income taxation, the 2023 Bonds would continue to

remain outstanding until maturity unless earlier redeemed pursuant to optional or mandatory redemption or redemption upon prepayment of the Special Taxes. See “THE 2023 BONDS – Redemption.”

Future legislative proposals, if enacted into law, clarification of the Tax Code (defined herein) or court decisions may cause interest on the 2023 Bonds to be subject, directly or indirectly, to federal income taxation or to be subject to or exempted from state income taxation, or otherwise prevent Bondowners from realizing the full current benefit of the tax status of such interest.

### **IRS Audit of Tax-Exempt Bond Issues**

The Internal Revenue Service (the “**IRS**”) has initiated an expanded program for the auditing of tax-exempt bond issues, including both random and targeted audits. It is possible that the 2023 Bonds will be selected for audit by the IRS. It is also possible that the market value of such 2023 Bonds might be affected as a result of such an audit of such 2023 Bonds (or by an audit of similar bonds or securities).

### **Voter Initiatives**

Under the California Constitution, the power of initiative is reserved to the voters for the purpose of enacting statutes and constitutional amendments. Since 1978, the voters have exercised this power through the adoption of Proposition 13 and similar measures, including Proposition 218, which was approved in the general election held on November 5, 1996, and Proposition 26, which was approved on November 2, 2010.

Any such initiative may affect the collection of fees, taxes and other types of revenue by local agencies such as the City. Subject to overriding federal constitutional principles, such collection may be materially and adversely affected by voter-approved initiatives, possibly to the extent of creating cash-flow problems in the payment of outstanding obligations such as the 2023 Bonds.

Proposition 218—Voter Approval for Local Government Taxes—Limitation on Fees, Assessments, and Charges—Initiative Constitutional Amendment, added Articles XIII C and XIII D to the California Constitution, imposing certain vote requirements and other limitations on the imposition of new or increased taxes, assessments and property-related fees and charges.

On November 2, 2010, California voters approved Proposition 26, entitled the “Supermajority Vote to Pass New Taxes and Fees Act”. Section 1 of Proposition 26 declares that Proposition 26 is intended to limit the ability of the State Legislature and local government to circumvent existing restrictions on increasing taxes by defining the new or expanded taxes as “fees.” Proposition 26 amended Articles XIII A and XIII C of the State Constitution. The amendments to Article XIII A limit the ability of the State Legislature to impose higher taxes (as defined in Proposition 26) without a two-thirds vote of the Legislature. Article XIII C requires that all new local taxes be submitted to the electorate before they become effective. Taxes for general governmental purposes require a majority vote and taxes for specific purposes (“special taxes”) require a two-thirds vote.

The Special Taxes and the 2023 Bonds were each authorized by not less than a two-thirds vote of the landowners within Improvement Area No. 2 who constituted the qualified electors at the time of such voted authorization. The City believes, therefore, that issuance of the 2023 Bonds does not require the conduct of further proceedings under the Act, Proposition 218 or Proposition 26.

Like their antecedents, Proposition 218 and Proposition 26 are likely to undergo both judicial and legislative scrutiny before the impact on the City and its obligations can be determined. Certain provisions of Proposition 218 and Proposition 26 may be examined by the courts for their constitutionality under both State and federal constitutional law, the outcome of which cannot be predicted.

For example, in August 2014, in *City of San Diego. v. Melvin Shapiro*, an Appellate Court invalidated an election held by the City of San Diego to authorize the levying of special taxes on hotels city-wide pursuant to a city charter ordinance creating a convention center facilities district which specifically defined the electorate to consist solely of (1) the owners of real property in the city on which a hotel is located, and (2) the lessees of real property owned by a governmental entity on which a hotel is located. The court held that such landowners and lessees are neither “qualified electors” of the city for purposes of Articles XIII A, Section 4 of the California Constitution, nor a proper “electorate” under Article XIII C, Section 2(d) of the California Constitution. The court specifically noted that the decision did not require the Court to consider the distinct question of whether landowner voting to impose special taxes under Section 53326(b) of the Act (which was the nature of the voter approval through which the District and Improvement Area No. 2 were formed) violates the California Constitution in districts that lack sufficient registered voters to conduct an election among registered voters. Accordingly, this case should have no effect on the levy of the Special Taxes by the City.

The City cannot predict the ultimate outcome or effect of any such judicial scrutiny, legislative actions, or future initiatives. These initiatives, and any future initiatives, may affect the collection of fees, taxes and other types of revenue by local agencies such as the City. Subject to overriding federal constitutional principles, such collection may be materially and adversely affected by voter-approved initiatives, possibly to the extent of creating cash-flow problems in the payment of outstanding obligations such as the 2023 Bonds.

### **Public Health Emergencies**

In recent years, public health authorities have warned of threats posed by outbreaks of disease and other public health threats. Pandemic diseases arising in the future could have significant adverse health and financial impacts throughout the world, leading to loss of jobs and personal financial hardships, and/or actions by federal, State and local governmental authorities to contain or mitigate the effects of an outbreak.

Taxpayer assistance measures may include deferral of due dates of property taxes, which was an assistance program during the COVID-19 pandemic, and with or without a deferral some taxpayers may be unable to make their property and Special Tax payments. No assurance can be given that the property tax payment dates will not be deferred in the future, which may cause a delay in the receipt of Special Taxes. In addition, home values may be affected by a reduction in demand stemming from personal finances, or general widespread economic circumstances resulting from pandemic diseases.

### **Secondary Market for Bonds**

There can be no guarantee that there will be a secondary market for the 2023 Bonds or, if a secondary market exists, that any 2023 Bonds can be sold for any particular price. Prices of bond issues for which a market is being made will depend upon then-prevailing circumstances. Such prices could be substantially different from the original purchase price.

No assurance can be given that the market price for the 2023 Bonds will not be affected by the introduction or enactment of any future legislation (including without limitation amendments to the Internal Revenue Code), or changes in interpretation of the Internal Revenue Code, or any action of the Internal Revenue Service, including but not limited to the publication of proposed or final regulations, the issuance of rulings, the selection of the 2023 Bonds for audit examination, or the course or result of any Internal Revenue Service audit or examination of the 2023 Bonds or obligations that present similar tax issues as the 2023 Bonds.

## LEGAL MATTERS

### Legal Opinions

The legal opinion of Jones Hall, A Professional Law Corporation, San Francisco, California, Bond Counsel, approving the validity of the 2023 Bonds will be made available to purchasers at the time of original delivery and is attached in substantially final form as APPENDIX F.

Jones Hall, A Professional Law Corporation, San Francisco, California, has served as Bond Counsel and Disclosure Counsel to the City. Stradling Yocca Carlson & Rauth, A Professional Corporation, Newport Beach, California, is serving as counsel to the Underwriter.

### No Litigation

At the time of delivery of the 2023 Bonds, the City will certify that there is no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, public board or body, pending with respect to which the City has been served with process or threatened, which:

- in any way questions the powers of the City Council, City or District (including Improvement Area No. 2 therein), or
- in any way questions the validity of any proceeding taken by the City Council in connection with the issuance of the 2023 Bonds, or
- wherein an unfavorable decision, ruling or finding could materially adversely affect the transactions contemplated by the purchase contract with respect to the 2023 Bonds, or
- which, in any way, could adversely affect the validity or enforceability of the resolutions of the City Council adopted in connection with the formation of the District and Improvement Area No. 2 or the issuance of the 2023 Bonds, the Fiscal Agent Agreement, the Continuing Disclosure Certificate or the purchase contract with respect to the 2023 Bonds, or
- to the knowledge of the City, which in any way questions the exclusion from gross income of the recipients thereof of the interest on the 2023 Bonds for federal income tax purposes, or
- in any other way questions the status of the 2023 Bonds under State tax laws or regulations.

## TAX MATTERS

***Federal Tax Status.*** In the opinion of Jones Hall, A Professional Law Corporation, San Francisco, California, Bond Counsel, subject, however to the qualifications set forth below, under existing law, the interest on the 2023 Bonds is excluded from gross income for federal income tax purposes and such interest is not an item of tax preference for purposes of the federal alternative minimum tax. Interest on the 2023 Bonds may be subject to the corporate alternative minimum tax.

The opinions set forth in the preceding paragraph are subject to the condition that the City comply with all requirements of the Internal Revenue Code of 1986, as amended (the "**Tax Code**") that must be satisfied subsequent to the issuance of the 2023 Bonds in order that the interest thereon be, and continue to be, excludable from gross income for federal income tax purposes. The City has made certain representations and covenants in order to comply with each such requirement. Inaccuracy of those representations, or failure to comply with certain of those covenants, may cause the inclusion of such

interest in gross income for federal income tax purposes, which may be retroactive to the date of issuance of the 2023 Bonds.

***Tax Treatment of Original Issue Discount and Premium.*** If the initial offering price to the public at which a 2023 Bond is sold is less than the amount payable at maturity thereof, then such difference constitutes “original issue discount” for purposes of federal income taxes and State of California personal income taxes. If the initial offering price to the public at which a 2023 Bond is sold is greater than the amount payable at maturity thereof, then such difference constitutes “bond premium” for purposes of federal income taxes and State of California personal income taxes.

Under the Tax Code, original issue discount is treated as interest excluded from federal gross income and exempt from State of California personal income taxes to the extent properly allocable to each owner thereof subject to the limitations described in the first paragraph of this section. The original issue discount accrues over the term to maturity of the Bond on the basis of a constant interest rate compounded on each interest or principal payment date (with straight-line interpolations between compounding dates). The amount of original issue discount accruing during each period is added to the adjusted basis of such 2023 Bonds to determine taxable gain upon disposition (including sale, redemption, or payment on maturity) of such 2023 Bond. The Tax Code contains certain provisions relating to the accrual of original issue discount in the case of purchasers of the 2023 Bonds who purchase the 2023 Bonds after the initial offering of a substantial amount of such maturity. Owners of such 2023 Bonds should consult their own tax advisors with respect to the tax consequences of ownership of 2023 Bonds with original issue discount, including the treatment of purchasers who do not purchase in the original offering to the public at the first price at which a substantial amount of such 2023 Bonds is sold to the public.

Under the Tax Code, bond premium is amortized on an annual basis over the term of the Bond (said term being the shorter of the 2023 Bond’s maturity date or its call date). The amount of bond premium amortized each year reduces the adjusted basis of the owner of the 2023 Bond for purposes of determining taxable gain or loss upon disposition. The amount of bond premium on a 2023 Bond is amortized each year over the term to maturity of the 2023 Bond on the basis of a constant interest rate compounded on each interest or principal payment date (with straight-line interpolations between compounding dates). Amortized 2023 Bond premium is not deductible for federal income tax purposes. Owners of premium 2023 Bonds, including purchasers who do not purchase in the original offering, should consult their own tax advisors with respect to State of California personal income tax and federal income tax consequences of owning such 2023 Bonds.

***California Tax Status.*** In the further opinion of Bond Counsel, interest on the 2023 Bonds is exempt from California personal income taxes.

***Other Tax Considerations.*** Current and future legislative proposals, if enacted into law, clarification of the Tax Code or court decisions may cause interest on the 2023 Bonds to be subject, directly or indirectly, to federal income taxation or to be subject to or exempted from state income taxation, or otherwise prevent beneficial owners from realizing the full current benefit of the tax status of such interest. The introduction or enactment of any such legislative proposals, clarification of the Tax Code or court decisions may also affect the market price for, or marketability of, the 2023 Bonds. It cannot be predicted whether or in what form any such proposal might be enacted or whether, if enacted, such legislation would apply to bonds issued prior to enactment.

The opinions expressed by Bond Counsel are based upon existing legislation and regulations as interpreted by relevant judicial and regulatory authorities as of the date of such opinion, and Bond Counsel has expressed no opinion with respect to any proposed legislation or as to the tax treatment of interest on the 2023 Bonds, or as to the consequences of owning or receiving interest on the 2023 Bonds, as of any future date. Prospective purchasers of the 2023 Bonds should consult their own tax advisors

regarding any pending or proposed federal or state tax legislation, regulations or litigation, as to which Bond Counsel expresses no opinion.

Owners of the 2023 Bonds should also be aware that the ownership or disposition of, or the accrual or receipt of interest on, the 2023 Bonds may have federal or state tax consequences other than as described above. Other than as expressly described above, Bond Counsel expresses no opinion regarding other federal or state tax consequences arising with respect to the 2023 Bonds, the ownership, sale or disposition of the 2023 Bonds, or the amount, accrual or receipt of interest on the 2023 Bonds.

## CONTINUING DISCLOSURE

***City Continuing Disclosure.*** The City will covenant for the benefit of owners of the 2023 Bonds to provide certain financial information and operating data relating to Improvement Area No. 2 and the 2023 Bonds by not later than nine months after the end of the City's fiscal year (currently March 31 based on the City's fiscal year end of June 30) (the "**Annual Report**") and to provide notices of the occurrence of certain listed events.

These covenants have been made in order to assist the Underwriter in complying with Securities Exchange Commission Rule 15c2-12(b)(5) (the "**Rule**"). The specific nature of the information to be contained in the Annual Report or the notices of listed events is set forth in APPENDIX G.

The City, on its own behalf and on behalf of related entities, has entered into a number of prior continuing disclosure undertakings under the Rule in connection with the issuance of long-term obligations, and has provided annual financial information and event notices in accordance with those undertakings. During the past five years, the City or its related entities have failed to comply with prior undertakings as follows:

- The audited financial statements for Fiscal Years 2017-18, 2018-19, 2019-20, 2020-21, and 2021-22 were filed up to approximately 3 months late; and
- Certain operating and financial data for Fiscal Years 2017-18, 2018-19, 2019-20, and 2020-21 were filed up to approximately 75 days late.
- Certain information was omitted from the operating and financial data filed for Fiscal Years 2017-18 and 2019-20 because it was unavailable at the time the filing was due, but that information was subsequently filed when it became available.

***Lennar Homes Continuing Disclosure.*** The Underwriter does not consider Lennar Homes to be an "obligated person" with respect to the Bonds for purposes of the Rule. Notwithstanding the foregoing, to provide updated information with respect to the development within Improvement Area No. 2, Lennar Homes will execute a continuing disclosure certificate, the form of which is set forth in APPENDIX H (the "**Developer Continuing Disclosure Certificate**"), pursuant to which it will covenant to provide semiannual reports until satisfaction of certain conditions set forth in the Developer Continuing Disclosure Certificate. The semiannual reports to be provided by Lennar Homes will contain updates regarding the development within the District as outlined in Section 4 of the Developer Continuing Disclosure Certificate. In addition to its semiannual reports, Lennar Homes will agree to provide notices of certain events set forth in the Developer Continuing Disclosure Certificate.

Lennar Homes' obligations under the Developer Continuing Disclosure Certificate will terminate upon the earliest to occur of: (a) the legal defeasance, prior redemption, or payment in full of all the 2023 Bonds; or (b) at such time the property in Improvement Area No. 2 subject to the Developer Continuing

Disclosure Certificate is fewer than 185 residential lots (or property that will be subdivided into fewer than 185 residential lots).

To the actual knowledge of Lennar Homes, other than as disclosed in this Official Statement, in the last five years, Lennar Homes has not failed to comply in any material respects with its previous continuing disclosure undertakings, specifically regarding its requirement to provide developer periodic reports or to provide notice of occurrence of enumerated events. However, (i) in connection with a continuing disclosure obligation entered into with respect to the \$12,850,000 County of El Dorado District No. 2014-1 (Carson Creek) Special Tax Bonds Series 2016, Lennar Homes was late in filing the periodic reports due on April 1, 2017 and October 1, 2017; the oversight was discovered in late January, 2018, and Lennar Homes promptly filed a curative report on February 1, 2018; (ii) in connection with the \$16,780,000 California Municipal Finance Authority Special Tax Revenue Bonds BOLD Program Series 2020B, Lennar Homes inadvertently failed to file the initial semi-annual report by the due date of May 1, 2021, but filed a curative report on May 21, 2021; and (iii) in connection with the \$5,795,000 City of Rancho Cordova Grantline 208 Community Facilities District No. 2018-1 Special Tax Bonds, Series 2021B, Lennar Homes inadvertently failed to file the initial annual report by the due date of April 1, 2022, but filed a curative report on September 21, 2022.

### **NO RATING**

The City has not obtained a credit rating on the 2023 Bonds. Nothing should be assumed from any credit rating that the City may obtain for other purposes. Prospective purchasers of the 2023 Bonds are required to make independent determinations as to the credit quality of the 2023 Bonds and their appropriateness as an investment.

### **UNDERWRITING**

The 2023 Bonds are being purchased by Piper Sandler & Co. (the “**Underwriter**”), at a purchase price of \$\_\_\_\_\_ (which represents the aggregate principal amount of the 2023 Bonds (\$\_\_\_\_\_), plus an original issue premium/less an original issue discount of \$\_\_\_\_\_, less an Underwriter’s discount of \$\_\_\_\_\_).

The purchase agreement relating to the 2023 Bonds provides that the Underwriter will purchase all of the 2023 Bonds, if any are purchased, the obligation to make such purchase being subject to certain terms and conditions set forth in such purchase agreement.

The Underwriter may offer and sell the 2023 Bonds to certain dealers and others at prices lower than the offering prices stated on the inside cover page hereof. The offering prices may be changed from time to time by the Underwriter.

**PROFESSIONAL FEES**

In connection with the issuance of the 2023 Bonds, fees or compensation payable to certain professionals are contingent upon the issuance and delivery of the 2023 Bonds. Those professionals include:

- the Underwriter;
- Jones Hall, A Professional Law Corporation, as Bond Counsel and Disclosure Counsel;
- Stradling Yocca Carlson & Rauth, A Professional Corporation, as Underwriter’s Counsel;
- A portion of the fees of CSG Advisors Incorporated, as municipal advisor;
- A portion of the fees of Goodwin Consulting Group, Inc., as special tax consultant; and
- U.S. Bank Trust Company, National Association, as Fiscal Agent.

**EXECUTION**

The execution and delivery of the Official Statement has been duly authorized by the City Council, acting as the legislative body of the District.

CITY OF TRACY

By: \_\_\_\_\_  
Finance Director

**APPENDIX A**

**GENERAL INFORMATION ABOUT THE CITY OF TRACY  
AND SAN JOAQUIN COUNTY**

*The following information concerning the City of Tracy (the “City”) and San Joaquin County (the “County”) are included only for the purpose of supplying general information regarding the community. The 2023 Bonds are not a debt of the City, the County, the State of California (the “State”) or any of its political subdivisions, and neither the City, the County, the State nor any of its political subdivisions is liable therefor.*

**Population**

Population figures for the City, the County and the State for the last five years are shown in the following table.

**CITY OF TRACY, SAN JOAQUIN COUNTY AND THE STATE OF CALIFORNIA  
Population Estimates  
Calendar Years 2019 through 2023 as of January 1**

<b><u>Calendar Year</u></b>	<b><u>City of Tracy</u></b>	<b><u>San Joaquin County</u></b>	<b><u>State of California</u></b>
2019	94,326	764,373	39,605,361
2020	95,861	773,505	39,648,938
2021	93,837	780,515	39,286,510
2022	94,830	782,811	39,286,510
2023	95,615	786,145	38,940,231

*Source: State Department of Finance estimates.*

## Employment and Industry

The City is included in the Stockton Metropolitan Statistical Area (“**MSA**”), which includes all of the County. The unemployment rate in the County was 6.4% in June 2023, up from a revised 6.0% in May 2023, and above the year-ago estimate of 5.1%. This compares with an unadjusted unemployment rate of 4.9% for California and 3.8% for the nation during the same period.

Set forth below is data from calendar years 2018 to 2022 reflecting the County’s civilian labor force, employment and unemployment. These figures are county-wide statistics and may not necessarily accurately reflect employment trends in the City.

**STOCKTON-LODI MSA  
(San Joaquin County)  
Annual Average Labor Force and Employment by Industry  
Calendar Years 2018 through 2022  
(March 2022 Benchmark)**

	<u>2018</u>	<u>2019</u>	<u>2020</u>	<u>2021</u>	<u>2022</u>
Civilian Labor Force <sup>(1)</sup>	324,100	327,100	335,400	336,900	344,400
Employment	304,300	307,700	296,900	308,000	326,400
Unemployment	19,800	19,500	38,500	28,900	18,100
Unemployment Rate	6.1%	5.9%	11.5%	8.6%	5.2%
<u>Wage and Salary Employment: <sup>(2)</sup></u>					
Agriculture	15,600	15,400	14,600	14,200	13,700
Mining and Logging	100	100	100	100	0
Construction	12,800	13,100	13,000	13,900	15,100
Manufacturing	20,600	20,600	20,300	21,400	22,600
Wholesale Trade	11,800	11,700	10,600	10,800	11,400
Retail Trade	26,700	26,200	24,600	26,200	26,900
Transportation, Warehousing and Utilities	28,400	31,300	38,800	43,000	48,800
Information	1,800	1,600	1,200	1,200	1,200
Finance and Insurance	4,800	4,700	4,600	4,700	4,600
Professional and Business Services	19,600	20,200	21,300	22,500	24,100
Educational and Health Services	38,800	39,100	37,300	38,000	39,800
Leisure and Hospitality	22,000	22,600	18,500	21,300	24,500
Other Services	7,600	7,800	6,800	7,300	8,000
Federal Government	3,100	3,200	3,300	3,100	3,100
State Government	6,700	6,800	6,800	6,000	5,500
Local Government	33,700	34,900	33,000	32,900	34,100
Total, All Industries <sup>(3)</sup>	257,000	262,500	257,800	269,900	286,900

(1) Labor force data is by place of residence; includes self-employed individuals, unpaid family workers, household domestic workers, and workers on strike.

(2) Industry employment is by place of work; excludes self-employed individuals, unpaid family workers, household domestic workers, and workers on strike.

(3) Totals may not add due to rounding.

Source: State of California Employment Development Department.

## Largest Employers

The following table lists the major employers within the County, listed in alphabetical order without regard to the number of employees, as of August 2023.

### SAN JOAQUIN COUNTY Major Employers As of August 2023

<u>Employer Name</u>	<u>Location</u>	<u>Industry</u>
A Sambado & Sons Inc	Linden	Nuts-Edible
Adventist Health Lodi Memorial	Lodi	Hospitals
Amazon Fulfillment Ctr	Stockton	Mail Order Fulfillment Service
Ashley Lane LP	Stockton	Real Estate
Blue Shield of California	Lodi	Insurance
Dameron Hospital	Stockton	Hospitals
Deuel Vocational Instn Fire	Tracy	Fire Departments
Foster Care Svc	Stockton	Government Offices-County
Leprino Foods Co	Tracy	Cheese Processors (mfrs)
Lodi Health Home Health Agency	Lodi	Home Health Service
NA Chaderjian Youth	Stockton	State Govt-Correctional Institutions
Pacific Coast Producers	Lodi	Canning (mfrs)
Prima Frutta Packing Inc	Linden	Fruit & Produce Packers
Safeway Distribution Ctr	Tracy	Distribution Centers (whls)
San Joaquin County CA Pubc	Stockton	Government Offices-County
San Joaquin County Human Svc	Stockton	Government Offices-County
San Joaquin County Sch	Stockton	School Districts
San Joaquin General Hospital	French Camp	Hospitals
San Joaquin Sheriff's Office	French Camp	Government Offices-County
Sjgov	Stockton	Government Offices-County
St Joseph's Regional Health	Stockton	Health Services
Stockton Police Dept	Stockton	Police Departments
Stockton Unified School Dist	Stockton	School Districts
Walmart Supercenter	Stockton	Department Stores
Waste Management-Lodi Transfer	Lodi	Consultants-Business NEC

*Source: State of California Employment Development Department, extracted from The America's Labor Market Information System (ALMIS) Employer Database, 2023 2nd Edition.*

The following table lists the twenty-five principal employers within the City, by number of employees, as of June 30, 2022.

**CITY OF TRACY  
Principal Employers  
As of June 30, 2022**

<u>Employer Name</u>	<u>Number of Employees</u>
Amazon.com Services LLC	4,332
FedEx Ground Package System, Inc	1,607
Amazon.com Services LLC	1,297
Amazon.com Services LLC	1,043
Taylor Farms Pacific Inc	748
The Home Depot #5641	700
Medline Industries LP	668
Walmart #2025	410
Leprino Foods	341
DHL Supply Chain	293
Costco Wholesale #658	252
DHL Supply Chain	226
The Home Depot #1020	225
Pacific Medical Inc	208
Crate & Barrel	201
International Paper	192
Texas Roadhouse	171
Target Stores T738	163
Zinus Inc	155
Glassfab Tempering	145
The Permanente Medical	145
Winco Foods #103	140
Restoration Hardware #903	134
Y R C	131
Crate & Barrel	129

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*Source: City of Tracy Annual Comprehensive Financial Report for fiscal year ended June 30, 2022.*

## Commercial Activity

Summaries of historic taxable sales within the City and the County during the past five years in which data is available are shown in the following tables.

Total taxable sales during the first quarter of calendar year 2023 in the City were \$1,309,475,633, a 9.04% decrease over the total taxable sales of \$1,439,686,491 reported during the first quarter of calendar year 2022.

**CITY OF TRACY**  
**Taxable Retail Sales**  
**Number of Permits and Valuation of Taxable Transactions**  
**(Dollars in Thousands)**

	Retail Stores		Total All Outlets	
	Number of Permits	Taxable Transactions	Number of Permits	Taxable Transactions
2018	1,192	\$1,489,764	1,921	\$2,319,543
2019	1,224	1,473,584	2,000	2,694,120
2020	1,395	1,479,810	2,284	2,854,012
2021	1,238	4,160,817	2,082	5,868,567
2022	1,251	4,289,057	2,128	6,088,638

*Source: State Department of Tax and Fee Administration.*

Total taxable sales during the first quarter of calendar year 2023 in the County were \$4,998,299,326, a 8.78% decrease over the total taxable sales of \$5,479,470,571 reported during the first quarter of calendar year 2022.

**SAN JOAQUIN COUNTY**  
**Taxable Retail Sales**  
**Number of Permits and Valuation of Taxable Transactions**  
**(Dollars in Thousands)**

	Retail Stores		Total All Outlets	
	Number of Permits	Taxable Transactions	Number of Permits	Taxable Transactions
2018	9,660	\$8,855,169	15,437	\$13,457,721
2019	9,978	9,073,238	16,144	14,383,854
2020	11,188	10,215,896	18,358	15,752,225
2021	10,642	15,153,915	17,665	22,306,576
2022	10,884	15,321,466	18,100	23,424,941

*Source: State Department of Tax and Fee Administration.*

## Effective Buying Income

“Effective Buying Income” is defined as personal income less personal tax and nontax payments, a number often referred to as “disposable” or “after-tax” income. Personal income is the aggregate of wages and salaries, other labor-related income (such as employer contributions to private pension funds), proprietor’s income, rental income (which includes imputed rental income of owner-occupants of non-farm dwellings), dividends paid by corporations, interest income from all sources, and transfer payments (such as pensions and welfare assistance). Deducted from this total are personal taxes (federal, state and local), nontax payments (fines, fees, penalties, etc.) and personal contributions to social insurance. According to U.S. government definitions, the resultant figure is commonly known as “disposable personal income.”

The following table summarizes the median household effective buying income for the City, the County, the State and the United States for the period 2019 through 2023.

### CITY OF TRACY AND SAN JOAQUIN COUNTY Median Household Effective Buying Income 2019 through 2023

	<b>2019</b>	<b>2020</b>	<b>2021</b>	<b>2022</b>	<b>2023</b>
City of Tracy	\$73,172	\$76,142	\$78,492	\$89,938	\$90,240
San Joaquin County	55,534	58,141	59,914	68,971	68,912
California	62,637	65,870	67,956	77,058	77,175
United States	52,841	55,303	56,790	64,448	65,326

Source: Claritas, LLC.

## Building Activity

The tables below summarize building activity in the City and the County for the past five available years.

**CITY OF TRACY**  
**Building Permit Activity**  
**For Calendar Years 2018 through 2022**  
**(Dollars in Thousands)**

	<u>2018</u>	<u>2019</u>	<u>2020</u>	<u>2021</u>	<u>2022</u>
<u>Permit Valuation</u>					
New Single-family	\$214,928.9	\$223,795.2	\$239,658.3	\$244,205.8	\$213,664.4
New Multi-family	84,832.3	0.0	0.0	945.7	3,015.3
Res. Alterations/Additions	<u>6,058.5</u>	<u>9,178.8</u>	<u>4,504.7</u>	<u>4,558.9</u>	<u>5,413.8</u>
Total Residential	\$305,819.7	\$232,974.0	\$244,163.0	\$249,710.4	\$222,093.5
New Commercial	\$331,633.7	\$189,205.1	\$168,307.4	\$105,916.9	\$122,513.0
New Industrial	74,814.4	13,881.6	526,301.0	60.8	0.0
New Other	8,265.5	7,006.5	4,828.5	9,099.3	13,843.7
Com. Alterations/Additions	<u>60,479.7</u>	<u>60,676.8</u>	<u>62,904.6</u>	<u>80,618.6</u>	<u>84,684.1</u>
Total Nonresidential	\$475,193.3	\$270,770.0	\$762,341.5	\$195,695.6	\$221,040.8
<u>New Dwelling Units</u>					
Single Family	534	551	692	670	502
Multiple Family	<u>507</u>	<u>0</u>	<u>0</u>	<u>2</u>	<u>23</u>
TOTAL	1,041	551	692	672	525

Source: Construction Industry Research Board, Building Permit Summary.

**SAN JOAQUIN COUNTY**  
**Building Permit Activity**  
**For Calendar Years 2018 through 2022**  
**(Dollars in Thousands)**

	<u>2018</u>	<u>2019</u>	<u>2020</u>	<u>2021</u>	<u>2022</u>
<u>Permit Valuation</u>					
New Single-family	\$883,071.1	\$843,700.9	\$870,859.6	\$1,179,358.0	\$1,281,631.4
New Multi-family	99,601.4	57,271.1	38,411.8	69,775.2	88,457.7
Res. Alterations/Additions	<u>95,073.4</u>	<u>98,681.9</u>	<u>40,144.4</u>	<u>108,647.1</u>	<u>182,338.5</u>
Total Residential	\$1,077,745.9	\$999,654.0	\$949,415.8	\$1,357,780.3	\$1,552,427.6
New Commercial	\$498,359.0	\$380,383.3	\$255,761.2	\$272,617.0	\$641,696.7
New Industrial	240,073.7	120,003.8	534,199.5	43,401.3	249,724.2
New Other	31,904.4	61,991.7	33,112.3	58,264.9	107,863.0
Com. Alterations/Additions	<u>249,142.4</u>	<u>363,840.9</u>	<u>135,285.4</u>	<u>272,064.7</u>	<u>450,649.8</u>
Total Nonresidential	\$1,019,479.5	\$926,219.7	\$958,358.4	\$646,347.9	\$1,449,933.7
<u>New Dwelling Units</u>					
Single Family	2,765	2,564	2,843	3,665	3,168
Multiple Family	<u>293</u>	<u>461</u>	<u>245</u>	<u>178</u>	<u>338</u>
TOTAL	2,594	3,025	3,088	3,843	3,506

Source: Construction Industry Research Board, Building Permit Summary.

**APPENDIX B**

**RATE AND METHOD OF APPORTIONMENT OF SPECIAL TAXES  
FOR IMPROVEMENT AREA NO. 2  
OF THE CITY OF TRACY  
COMMUNITY FACILITIES DISTRICT NO. 2016-1  
(TRACY HILLS)**

**APPENDIX C**  
**APPRAISAL REPORT AND UPDATE**

**APPENDIX D**  
**MARKET ABSORPTION STUDY**

**APPENDIX E**

**SUMMARY OF CERTAIN PROVISIONS OF THE FISCAL AGENT AGREEMENT**

**APPENDIX F**

**FORM OF OPINION OF BOND COUNSEL**

\_\_\_\_\_, 2023

City Council  
City of Tracy  
333 Civic Center Plaza  
Tracy, California 95376

**OPINION:**     \$\_\_\_\_\_ Improvement Area No. 2 of the City of Tracy Community Facilities  
District No. 2016-1 (Tracy Hills) Special Tax Bonds, Series 2023

Members of the Council:

We have acted as bond counsel to the City of Tracy (the "City") in connection with the issuance by the City of the special tax bonds captioned above, dated as of the date first written above (the "Bonds"). In such capacity, we have examined such law and such certified proceedings, certifications, opinions and other documents as we have deemed necessary to render this opinion.

The Bonds are issued pursuant to the Mello-Roos Community Facilities Act of 1982, as amended, being sections 53311 et seq. of the California Government Code (the "Act"), a resolution of the City Council adopted on \_\_\_\_\_, 2023 (the "Resolution"), and a Fiscal Agent Agreement dated as of \_\_\_\_\_ 1, 2023, (the "Fiscal Agent Agreement"), between the City and U.S. Bank Trust Company, National Association, as Fiscal Agent (the "Fiscal Agent").

Under the Fiscal Agent Agreement, the City has pledged certain revenues ("Special Tax Revenues") for the payment of principal, premium (if any) and interest on the Bonds when due.

Regarding questions of fact material to our opinion, we have relied on representations of the City contained in the Fiscal Agent Agreement, and on the certified proceedings and other certifications of public officials furnished to us, without undertaking to verify the same by independent investigation. Regarding certain questions of law material to our opinion, we have assumed the correctness of certain legal conclusions contained in the written opinions of the City Attorney, and others, without undertaking to verify the same by independent investigation.

Based on the foregoing, we are of the opinion that, under existing law:

1.     The City is a duly created and validly existing municipal corporation and general law city with the power to adopt the Resolution, enter into the Fiscal Agent Agreement and perform the agreements on its part contained therein, and issue the Bonds.

2.     The Fiscal Agent Agreement has been duly authorized, executed and delivered by the City, and constitutes a valid and binding obligation of the City, enforceable against the City.

3. The Fiscal Agent Agreement creates a valid lien on the Special Tax Revenues and other funds pledged by the Fiscal Agent Agreement for the security of the Bonds, on a parity with other bonds (if any) issued or to be issued in accordance with the Fiscal Agent Agreement.

4. The Bonds have been duly authorized and executed by the City and are valid and binding limited obligations of the City, payable solely from the Special Tax Revenues and other funds provided therefor in the Fiscal Agent Agreement.

5. The interest on the Bonds is excluded from gross income for federal income tax purposes and is not an item of tax preference for purposes of the federal alternative minimum tax. It should be noted however that interest on the Bonds may be subject to the corporate alternative minimum tax. The opinions set forth in the preceding sentences are subject to the condition that the City comply with all requirements of the Internal Revenue Code of 1986, as amended, that must be satisfied subsequent to the issuance of the Bonds in order that the interest thereon be, and continue to be, excludable from gross income for federal income tax purposes. The City has made certain representations and covenants in order to comply with each such requirement. Inaccuracy of those representations, or failure to comply with certain of those covenants, may cause the inclusion of such interest in gross income for federal income tax purposes, which may be retroactive to the date of issuance of the Bonds.

6. The interest on the Bonds is exempt from personal income taxation imposed by the State of California.

We express no opinion regarding any other tax consequences arising with respect to the ownership, sale or disposition of, or the amount, accrual or receipt of interest on, the Bonds.

The rights of the owners of the Bonds and the enforceability of the Bonds and the Fiscal Agent Agreement are limited by bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting creditors' rights generally, and by equitable principles, whether considered at law or in equity.

This opinion is given as of the date hereof, and we assume no obligation to revise or supplement this opinion to reflect any facts or circumstances that may hereafter come to our attention, or any changes in law that may hereafter occur. Moreover, our opinions are not a guarantee of a particular result, and are not binding on the Internal Revenue Service or the courts; rather, our opinions represent our legal judgment based upon our review of existing law that we deem relevant to such opinions and in reliance upon the representations, covenants and opinions referenced above. Our engagement with respect to this matter has terminated as of the date hereof.

Respectfully submitted,

A Professional Law Corporation

APPENDIX G

FORM OF ISSUER CONTINUING DISCLOSURE CERTIFICATE

CONTINUING DISCLOSURE CERTIFICATE

\$ \_\_\_\_\_  
IMPROVEMENT AREA NO. 2  
OF THE CITY OF TRACY  
COMMUNITY FACILITIES DISTRICT NO. 2016-1 (TRACY HILLS)  
SPECIAL TAX BONDS, SERIES 2023

This Continuing Disclosure Certificate (this “**Disclosure Certificate**”) is executed and delivered by the City of Tracy (the “**City**”) in connection with the issuance of the bonds captioned above (the “**2023 Bonds**”). The 2023 Bonds are being issued pursuant to a Fiscal Agent Agreement dated as of \_\_\_\_\_ 1, 2023 (the “**Fiscal Agent Agreement**”), by and between the City and U.S. Bank Trust Company, National Association, as fiscal agent (the “**Fiscal Agent**”). The City hereby covenants and agrees as follows:

Section 1. Purpose of the Disclosure Certificate. This Disclosure Certificate is being executed and delivered by the City for the benefit of the holders and beneficial owners of the 2023 Bonds and in order to assist the Participating Underwriter in complying with S.E.C. Rule 15c2-12(b)(5).

Section 2. Definitions. In addition to the definitions set forth above and in the Fiscal Agent Agreement, which apply to any capitalized term used in this Disclosure Certificate unless otherwise defined in this Section, the following capitalized terms shall have the following meanings:

“*Annual Report*” means any Annual Report provided by the City pursuant to, and as described in, Sections 3 and 4 of this Disclosure Certificate.

“*Annual Report Date*” means the date that is nine months after the end of the City’s fiscal year (currently March 31 based on the City’s fiscal year end of June 30).

“*Dissemination Agent*” means Goodwin Consulting Group, Inc., or any successor Dissemination Agent designated in writing by the District and which has filed with the District a written acceptance of such designation.

“*District*” means the City of Tracy Community Facilities District No. 2016-1 (Tracy Hills).

“*Improvement Area No. 2*” means Improvement Area No. 2 of the District.

“*Listed Events*” means any of the events listed in Section 5(a) of this Disclosure Certificate.

“*MSRB*” means the Municipal Securities Rulemaking Board, which has been designated by the Securities and Exchange Commission as the sole repository of disclosure information for purposes of the Rule.

“*Official Statement*” means the final official statement dated \_\_\_\_\_, 2023, executed by the District in connection with the issuance of the 2023 Bonds.

“*Participating Underwriter*” means Piper Sandler & Co., the original underwriter of the 2023 Bonds required to comply with the Rule in connection with offering of the 2023 Bonds.

“*Rule*” means Rule 15c2-12(b)(5) adopted by the Securities and Exchange Commission under the Securities Exchange Act of 1934, as it may be amended from time to time.

Section 3. Provision of Annual Reports.

(a) The City shall, or shall cause the Dissemination Agent to, not later than the Annual Report Date, commencing March 31, 2024, with the report for the 2022-23 fiscal year (provided that such initial Annual Report due March 31, 2024 need consist only of a copy of the Official Statement for the Bonds), provide to the MSRB, in an electronic format as prescribed by the MSRB, an Annual Report that is consistent with the requirements of Section 4 of this Disclosure Certificate. Not later than 15 Business Days prior to the Annual Report Date, the City shall provide the Annual Report to the Dissemination Agent (if other than the City). If by the Annual Report Date the Dissemination Agent (if other than the City) has not received a copy of the Annual Report, the Dissemination Agent shall contact the City to determine if the City is in compliance with the previous sentence. The Annual Report may be submitted as a single document or as separate documents comprising a package, and may include by reference other information as provided in Section 4 of this Disclosure Certificate; provided that the audited financial statements of the City may be submitted separately from the balance of the Annual Report, and later than the Annual Report Date, if not available by that date. If the City’s fiscal year changes, it shall give notice of such change in the same manner as for a Listed Event under Section 5(c).

(b) If the City does not provide, or cause the Dissemination Agent to provide, an Annual Report by the Annual Report Date as required in subsection (a) above, the Dissemination Agent shall provide a notice to the MSRB, in a timely manner, in an electronic format as prescribed by the MSRB.

(c) The Dissemination Agent shall:

(i) determine each year prior to the Annual Report Date the then-applicable rules and electronic format prescribed by the MSRB for the filing of annual continuing disclosure reports; and

(ii) if the Dissemination Agent is other than the City, file a report with the City and the Participating Underwriter certifying that the Annual Report has been provided pursuant to this Disclosure Certificate, and stating the date it was provided.

Section 4. Content of Annual Reports. The City’s Annual Report shall contain or incorporate by reference the following documents and information:

(a) The City’s audited financial statements for the most recently completed fiscal year, prepared in accordance with Generally Accepted Accounting Principles as promulgated to apply to governmental entities from time to time by the Governmental Accounting Standards Board, together with the following statement:

THE CITY’S ANNUAL FINANCIAL STATEMENT IS PROVIDED SOLELY TO COMPLY WITH THE SECURITIES EXCHANGE COMMISSION STAFF’S INTERPRETATION OF RULE 15c2-12. NO FUNDS OR ASSETS OF THE CITY, OTHER THAN SPECIAL TAX REVENUES, ARE REQUIRED TO BE USED TO PAY DEBT SERVICE ON THE 2023 BONDS, AND THE CITY IS NOT OBLIGATED TO ADVANCE AVAILABLE FUNDS TO COVER ANY DELINQUENCIES.

INVESTORS SHOULD NOT RELY ON THE FINANCIAL CONDITION OF THE CITY IN EVALUATING WHETHER TO BUY, HOLD OR SELL THE 2023 BONDS.

If the City's audited financial statements are not available by the time the Annual Report is required to be filed, the audited financial statements shall be filed in the same manner as the Annual Report when they become available.

(b) To the extent not included in the audited financial statements, the following information:

(i) Total assessed value (per the San Joaquin County Assessor's records) of all parcels currently subject to the Special Tax within Improvement Area No. 2, showing the total secured assessed valuation for all property subject to the Special Tax.

(ii) Tables showing (1) the top 10 Special Tax payers within Improvement Area No. 2 for the current Fiscal Year, including for each Special Tax payer the maximum annual Special Tax, actual Special Tax levy, assessed value and assessed value-to-lien ratio, and (2) assessed value-to-lien ratios for Developed Property owned by individual homeowners in the aggregate (based on assessed values (per the San Joaquin County Assessor's records)), Developed Property owned by developers/merchant builders, and Undeveloped Property (as those terms are defined in the rate and method of apportionment for the District).

(iii) The amount of prepayments of the Special Tax for the prior Fiscal Year.

(iv) A table showing a history of special tax collections and delinquencies within Improvement Area No. 2.

(v) Any change to the County's Teeter Plan affecting Improvement Area No. 2.

(vi) The principal amount of the 2023 Bonds outstanding and the balance in the 2023 Reserve Fund (along with a statement of the 2023 Reserve Requirement) as of the September 30 next preceding the Annual Report Date, including the issuance date and principal amount of any additional bonds or obligations issued under the Fiscal Agent Agreement on a parity with the 2023 Bonds.

(vii) Any changes to the Rate and Method of Apportionment of Special Tax for Improvement Area No. 2.

(c) In addition to any of the information expressly required to be provided under paragraph (b) above, the City shall provide such further information, if any, as may be necessary to make the specifically required statements, in the light of the circumstances under which they are made, not misleading.

(d) Any or all of the items listed above may be included by specific reference to other documents, including official statements of debt issues of the City or related public entities, which are available to the public on the MSRB's Internet web site or filed with the Securities and Exchange Commission. The District shall clearly identify each such other document so included by reference.

Section 5. Reporting of Listed Events.

(a) The City shall give, or cause to be given, notice of the occurrence of any of the following Listed Events with respect to the 2023 Bonds:

- (1) Principal and interest payment delinquencies.
- (2) Non-payment related defaults, if material.
- (3) Unscheduled draws on debt service reserves reflecting financial difficulties.
- (4) Unscheduled draws on credit enhancements reflecting financial difficulties.
- (5) Substitution of credit or liquidity providers, or their failure to perform.
- (6) Adverse tax opinions, the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB) or other material notices or determinations with respect to the tax status of the 2023 Bonds, or other material events affecting the tax status of the 2023 Bonds.
- (7) Modifications to rights of security holders, if material.
- (8) Bond calls, if material, and tender offers.
- (9) Defeasances.
- (10) Release, substitution, or sale of property securing repayment of the securities, if material.
- (11) Rating changes.
- (12) Bankruptcy, insolvency, receivership or similar event of the City.
- (13) The consummation of a merger, consolidation, or acquisition involving the City, or the sale of all or substantially all of the assets of the City (other than in the ordinary course of business), the entry into a definitive agreement to undertake such an action, or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material.
- (14) Appointment of a successor or additional Fiscal Agent or the change of name of the Fiscal Agent, if material.
- (15) Incurrence of a financial obligation of the obligated person, if material, or agreement to covenants, events of default, remedies, priority rights, or other similar terms of a financial obligation of the City, any of which affect security holders, if material.
- (16) default, event of acceleration, termination event, modification of terms, or other similar events under the terms of a financial obligation of the City, any of which reflect financial difficulties.

(b) Upon the occurrence of a Listed Event, the City shall, or shall cause the Dissemination Agent (if not the City) to, file a notice of such occurrence with the MSRB, in an electronic format as prescribed by the MSRB, in a timely manner not in excess of 10 business days after the occurrence of the Listed Event. Notwithstanding the foregoing, notice of Listed Events described in subsection (a)(8) above need not be given under this subsection any earlier than the notice (if any) of the underlying event is given to holders of affected bonds under the Fiscal Agent Agreement.

(c) The City acknowledges that the events described in subparagraphs (a)(2), (a)(7), (a)(8) (if the event is a bond call), (a)(10), (a)(13), (a)(14), and (a)(15) of this Section 5 contain the qualifier “if material” and that subparagraph (a)(6) also contains the qualifier “material” with respect to certain notices, determinations or other events affecting the tax status of the 2023 Bonds. The City shall cause a notice to be filed as set forth in paragraph (b) above with respect to any such event only to the extent that it determines the event’s occurrence is material for purposes of U.S. federal securities law. Upon occurrence of any of these Listed Events, the City will as soon as possible determine if such event would be material under applicable federal securities law. If such event is determined to be material, the City will cause a notice to be filed as set forth in paragraph (b) above.

(d) For purposes of this Disclosure Certificate, any event described in paragraph (a)(12) above is considered to occur when any of the following occur: the appointment of a receiver, fiscal agent, or similar officer for the City in a proceeding under the United States Bankruptcy Code or in any other proceeding under state or federal law in which a court or governmental authority has assumed jurisdiction over substantially all of the assets or business of the City, or if such jurisdiction has been assumed by leaving the existing governing body and officials or officers in possession but subject to the supervision and orders of a court or governmental authority, or the entry of an order confirming a plan of reorganization, arrangement, or liquidation by a court or governmental authority having supervision or jurisdiction over substantially all of the assets or business of the City.

(e) For purposes of Section 5(a)(15) and (16), “financial obligation” means a (i) debt obligation; (ii) derivative instrument entered into in connection with, or pledged as security or a source of payment for, an existing or planned debt obligation; or (iii) guarantee of (i) or (ii). The term financial obligation shall not include municipal securities as to which a final official statement has been provided to the Municipal Securities Rulemaking Board consistent with the Rule.

Section 6. Identifying Information for Filings with the MSRB. All documents provided to the MSRB under the Disclosure Certificate shall be accompanied by identifying information as prescribed by the MSRB.

Section 7. Termination of Reporting Obligation. The City ‘s obligations under this Disclosure Certificate shall terminate upon the legal defeasance, prior redemption or payment in full of all of the 2023 Bonds. If such termination occurs prior to the final maturity of the 2023 Bonds, the City shall give notice of such termination in the same manner as for a Listed Event under Section 5(c).

Section 8. Dissemination Agent. The City may, from time to time, appoint or engage a Dissemination Agent to assist it in carrying out its obligations under this Disclosure Certificate, and may discharge any such Agent, with or without appointing a successor Dissemination Agent.

Section 9. Amendment; Waiver. Notwithstanding any other provision of this Disclosure Certificate, the City may amend this Disclosure Certificate, and any provision of this Disclosure Certificate may be waived, provided that the following conditions are satisfied:

(a) if the amendment or waiver relates to the provisions of Sections 3(a), 4 or 5(a), it may only be made in connection with a change in circumstances that arises from a change in legal requirements, change in law, or change in the identity, nature, or status of an obligated person with respect to the 2023 Bonds, or type of business conducted;

(b) the undertakings herein, as proposed to be amended or waived, would, in the opinion of nationally recognized bond counsel, have complied with the requirements of the Rule at the time of the primary offering of the 2023 Bonds, after taking into account any amendments or interpretations of the Rule, as well as any change in circumstances; and

(c) the proposed amendment or waiver either (i) is approved by holders of the 2023 Bonds in the manner provided in the Fiscal Agent Agreement for amendments to the Fiscal Agent Agreement with the consent of holders, or (ii) does not, in the opinion of the Fiscal Agent or nationally recognized bond counsel, materially impair the interests of the holders or beneficial owners of the 2023 Bonds.

If the annual financial information or operating data to be provided in the Annual Report is amended pursuant to the provisions hereof, the first annual financial information filed pursuant hereto containing the amended operating data or financial information shall explain, in narrative form, the reasons for the amendment and the impact of the change in the type of operating data or financial information being provided.

If an amendment is made to the undertaking specifying the accounting principles to be followed in preparing financial statements, the annual financial information for the year in which the change is made shall present a comparison between the financial statements or information prepared on the basis of the new accounting principles and those prepared on the basis of the former accounting principles. The comparison shall include a qualitative discussion of the differences in the accounting principles and the impact of the change in the accounting principles on the presentation of the financial information, in order to provide information to investors to enable them to evaluate the ability of the City to meet its obligations. To the extent reasonably feasible, the comparison shall be quantitative. A notice of the change in the accounting principles shall be filed in the same manner as for a Listed Event under Section 5(c).

Section 10. Additional Information. Nothing in this Disclosure Certificate shall be deemed to prevent the City from disseminating any other information, using the means of dissemination set forth in this Disclosure Certificate or any other means of communication, or including any other information in any Annual Report or notice of occurrence of a Listed Event, in addition to that which is required by this Disclosure Certificate. If the City chooses to include any information in any Annual Report or notice of occurrence of a Listed Event in addition to that which is specifically required by this Disclosure Certificate, the City shall have no obligation under this Disclosure Certificate to update such information or include it in any future Annual Report or notice of occurrence of a Listed Event.

Section 11. Default. In the event of a failure of the City to comply with any provision of this Disclosure Certificate, the Participating Underwriter or any holder or beneficial owner of the 2023 Bonds may take such actions as may be necessary and appropriate, including seeking mandate or specific performance by court order, to cause the City to comply with its obligations under this Disclosure Certificate. A default under this Disclosure Certificate shall not be deemed an Event of Default under the Fiscal Agent Agreement, and the sole remedy under this Disclosure Certificate in the event of any failure of the City to comply with this Disclosure Certificate shall be an action to compel performance.

Section 12. Duties, Immunities and Liabilities of Dissemination Agent. The Dissemination Agent shall have only such duties as are specifically set forth in this Disclosure Certificate, and the City agrees

to indemnify and save the Dissemination Agent, its officers, directors, employees and agents, harmless against any loss, expense and liabilities which it may incur arising out of or in the exercise or performance of its powers and duties hereunder, including the costs and expenses (including attorneys' fees) of defending against any claim of liability, but excluding liabilities due to the Dissemination Agent's negligence or willful misconduct. The Dissemination Agent shall have no duty or obligation to review any information provided to it hereunder and shall not be deemed to be acting in any fiduciary capacity for the City, the Property Owner, the Fiscal Agent, the 2023 Bond owners or any other party. The obligations of the City under this Section shall survive resignation or removal of the Dissemination Agent and payment of the 2023 Bonds.

Section 13. Beneficiaries. This Disclosure Certificate shall inure solely to the benefit of the City, the Fiscal Agent, the Dissemination Agent, the Participating Underwriter and holders and beneficial owners from time to time of the 2023 Bonds, and shall create no rights in any other person or entity.

Section 14. Counterparts. This Disclosure Certificate may be executed in several counterparts, each of which shall be regarded as an original, and all of which shall constitute one and the same instrument.

Date: \_\_\_\_\_, 2023

CITY OF TRACY

By: \_\_\_\_\_  
Sara Cowell,  
Finance Director

AGREED AND ACCEPTED:  
Goodwin Consulting Group, Inc.,  
as Dissemination Agent

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

APPENDIX H

FORM OF DEVELOPER CONTINUING DISCLOSURE CERTIFICATE

CONTINUING DISCLOSURE CERTIFICATE  
(Lennar Homes)

\$ \_\_\_\_\_  
IMPROVEMENT AREA NO. 2  
OF THE CITY OF TRACY  
COMMUNITY FACILITIES DISTRICT NO. 2016-1 (TRACY HILLS)  
SPECIAL TAX BONDS, SERIES 2023

Dated: \_\_\_\_\_, 2023

This Continuing Disclosure Certificate (Lennar Homes) (this “Disclosure Certificate”) is executed and delivered by Lennar Homes of California, LLC, a California limited liability company (the “Developer”), in connection with the issuance by the City of Tracy (the “City”) of the bonds captioned above (the “2023 Bonds”). The 2023 Bonds are being issued under a Fiscal Agent Agreement dated as of November 1, 2023 (the “Fiscal Agent Agreement”), by and between the City and U.S. Bank Trust Company, National Association, as fiscal agent (the “Fiscal Agent”). The Developer covenants and agrees as follows:

Section 1. Purpose of the Disclosure Certificate. This Disclosure Certificate is being executed and delivered by the Developer for the benefit of the holders and beneficial owners of the 2023 Bonds.

Section 2. Definitions. In addition to the definitions set forth above and in the Fiscal Agent Agreement, which apply to any capitalized term used in this Disclosure Certificate unless otherwise defined in this Section, the following capitalized terms shall have the following meanings:

“*Affiliate*” means any person presently directly (or indirectly through one or more intermediaries) under managerial control of the Developer, and about whom information could be material to potential investors in their investment decision regarding the 2023 Bonds (including without limitation information relevant to the proposed development of the Property or to the Developer’s ability to pay the Special Taxes levied on the Property prior to delinquency).

“*Assumption Agreement*” means an undertaking of a Major Owner, for the benefit of the holders and beneficial owners of the 2023 Bonds, containing terms substantially similar to this Disclosure Certificate (as modified for such Major Owner’s development and financing plans with respect to the District), whereby such Major Owner agrees to provide semi-annual reports and notices of significant events, setting forth the information described in sections 4 and 5 hereof, respectively, with respect to the portion of the property in Improvement Area No. 2 owned by such Major Owner and agrees to indemnify the Dissemination Agent (if any) pursuant to a provision substantially in the form of Section 12 hereof.

“*Dissemination Agent*” means the Property Owner, or any successor Dissemination Agent designated in writing by the Developer, with the written consent of the City, and which has filed with the Developer and the City a written acceptance of such designation, and which is experienced in providing dissemination agent services such as those required under this Disclosure Certificate.

“*District*” means the City of Tracy Community Facilities District No. 2016-1 (Tracy Hills).

“*Improvement Area No. 2*” means Improvement Area No. 2 of the District.

“*Landbank Owner*” means AG Essential Housing CA 1, L.P., a Delaware limited partnership, the landbank for the Developer pursuant to the Option Agreement.

“*Listed Events*” means any of the events listed in Section 5(a) of this Disclosure Certificate.

“*Major Owner*” means, as of any Report Date, a Person that, together with the Person’s Affiliates, owns 185 or more residential lots (or property intended to be subdivided into 185 or more residential lots) in Improvement Area No. 2.

“*MSRB*” means the Municipal Securities Rulemaking Board, which has been designated by the Securities and Exchange Commission as the sole repository of disclosure information.

“*Official Statement*” means the final Official Statement dated \_\_\_\_\_, 2023, executed by the City in connection with the issuance of the 2023 Bonds.

“*Option Agreement*” means the Option Agreement dated February 26, 2021, between the Developer and the Landbank Owner (as the assignee of the original party).

“*Participating Underwriter*” means Piper Sandler & Co., the original underwriter of the 2023 Bonds.

“*Person*” means an individual, a corporation, a partnership, a limited liability company, an association, a joint stock company, a trust, any unincorporated organization or a government or political subdivision thereof.

“*Property*” means (i) the property owned by the Developer in Improvement Area No. 2 as of the Report Date, (ii) during the term of the Option Agreement, the property owned by the Landbank Owner as of the Report Date, and (iii) the property in Improvement Area No. 2 that the Developer sold to a Major Owner who has not assumed the undertakings of this Disclosure Certificate under Section 7(b) that is owned by such Major Owner.

“*Report Date*” means (a) September 30 of each year, and (b) March 31 of each year.

“*Semi-Annual Report*” means any Semi-Annual Report provided by the Developer pursuant to, and as described in, Sections 3 and 4 of this Disclosure Certificate.

“*Special Taxes*” means the special taxes for facilities levied by the City on the Property.

### Section 3. Provision of Semi-Annual Reports.

(a) The Developer shall, or upon written direction of the Developer the Dissemination Agent shall, not later than the Report Date, commencing March 31, 2024, provide to the MSRB, in an electronic format as prescribed by the MSRB, a Semi-Annual Report which is consistent with the requirements of Section 4 of this Disclosure Certificate with a copy to the Participating Underwriter and the City. Not later than 15 calendar days prior to the Report Date, the Developer shall provide the Semi-Annual Report to the Dissemination Agent (if different from the Developer). The Developer shall provide a written certification with (or included as a part of) each Semi-Annual Report furnished to the Dissemination Agent (if different from the Developer), Participating Underwriter and the City to the effect that such Semi-Annual

Report constitutes the Semi-Annual Report required to be furnished by it under this Disclosure Certificate. The Dissemination Agent, the Participating Underwriter and the City may conclusively rely upon such certification of the Developer and shall have no duty or obligation to review the Semi-Annual Report. The Semi-Annual Report may be submitted as a single document or as separate documents comprising a package, and may incorporate by reference other information as provided in Section 4 of this Disclosure Certificate.

(b) If the Dissemination Agent does not receive a Semi-Annual Report by 15 calendar days prior to the Report Date, the Dissemination Agent shall send a reminder notice to the Developer that the Semi-Annual Report has not been provided as required under Section 3(a) above. The reminder notice shall instruct the Developer to determine whether its obligations under this Disclosure Certificate have terminated (pursuant to Section 7 below) and, if so, to provide the Dissemination Agent with a notice of such termination in the same manner as for a Listed Event (pursuant to Section 5 below). If the Developer does not provide, or cause the Dissemination Agent to provide, a Semi-Annual Report to the MSRB by the Report Date as required in subsection (a) above, the Dissemination Agent shall provide a notice to the MSRB, in an electronic format as prescribed by the MSRB.

(c) The Dissemination Agent shall:

(i) determine prior to each Report Date the then-applicable rules and electronic format prescribed by the MSRB for the filing of continuing disclosure reports; and;

(ii) to the extent the Semi-Annual Report has been furnished to it, file a report with the Developer (if the Dissemination Agent is other than the Developer), the City and the Participating Underwriter certifying that the Semi-Annual Report has been provided pursuant to this Disclosure Certificate, and stating the date it was provided.

Section 4. Content of Semi-Annual Reports. The Developer's Semi-Annual Report shall contain or incorporate by reference the information set forth in Exhibit A, any or all of which may be included by specific reference to other documents, including official statements of debt issues of the Developer or related public entities, which are available to the public on the MSRB's Internet web site or filed with the Securities and Exchange Commission. The Developer shall clearly identify each such other document so included by reference.

In addition to any of the information expressly required to be provided in Exhibit A, each Semi-Annual Report shall include such further information, if any, as may be necessary to make the specifically required statements, in the light of the circumstances under which they are made, not misleading.

Section 5. Reporting of Significant Events.

(a) So long as the Developer's obligations under this Disclosure Certificate have not been terminated pursuant to Section 7 herein, the Developer shall give, or cause to be given, notice of the occurrence of any of the following Listed Events with respect to itself or the Property, if material:

(i) bankruptcy or insolvency proceedings commenced by or against the Developer and, if known, any bankruptcy or insolvency proceedings commenced by or against any Affiliate of the Developer;

(ii) failure to pay any taxes, special taxes (including the Special Taxes) or assessments due with respect to the Property prior to the delinquency date, to the extent such failure is not promptly cured by the Developer upon discovery thereof;

(iii) filing of a lawsuit against the Developer or, if known, an Affiliate of the Developer, seeking damages which, if successful, could have a material and adverse impact on the Developer's ability to pay Special Taxes prior to delinquency or to sell or develop the Property;

(iv) material damage to or destruction of any of the improvements on the Property; and

(v) any payment default or other material default by the Developer that continues to exist beyond any applicable notice and cure periods on any loan with respect to the construction of improvements on the Property.

(b) Whenever the Developer obtains knowledge of the occurrence of a Listed Event, the Developer shall as soon as possible determine if such event would be material under applicable Federal securities law.

(c) If the Developer determines that knowledge of the occurrence of a Listed Event would be material under applicable Federal securities law, the Developer shall, or shall cause the Dissemination Agent to, promptly file a notice of such occurrence with the MSRB, in an electronic format as prescribed by the MSRB, with a copy to the City and the Participating Underwriter.

Section 6. Identifying Information for Filings with the MSRB. All documents provided to the MSRB under the Disclosure Certificate shall be accompanied by identifying information as prescribed by the MSRB.

Section 7. Duration of Reporting Obligation.

(a) All of the Developer's obligations hereunder shall commence on the date hereof and shall terminate (except as provided in Section 12) on the earliest to occur of the following:

(i) upon the legal defeasance, prior redemption or payment in full of all the 2023 Bonds, or

(ii) when the Property is fewer than 185 residential lots (or property that will be subdivided into fewer than 185 residential lots), or

(iii) the date on which the Developer prepays in full all of the Special Taxes attributable to the Property.

The Developer shall give notice of the termination of its obligations under this Disclosure Certificate in the same manner as for a Listed Event under Section 5.

(b) If a portion of the Property is conveyed to a person or entity that, upon such conveyance, will be a Major Owner, the obligations of the Developer hereunder with respect to the property conveyed to such Major Owner may be assumed by such Major Owner and the Developer's obligations hereunder with respect to the property conveyed will be terminated. In order to effect such assumption, such Major Owner shall enter into an Assumption Agreement in form and substance equivalent to this Disclosure Certificate or as otherwise satisfactory to the City and the Participating Underwriter. However, a Major Owner shall not be required to enter

into an Assumption Agreement if such Major Owner is already a party to a continuing disclosure certificate in form and substance similar to this Disclosure Certificate with respect to the 2023 Bonds, and under which the property conveyed to such Major Owner will become subject to future Semi-Annual Reports.

Section 8. Dissemination Agent. The Developer may, from time to time, with the written consent of the City, appoint or engage a Dissemination Agent to assist the Developer in carrying out its obligations under this Disclosure Certificate, and may discharge any such Dissemination Agent, with the written consent of the City, with or without appointing a successor Dissemination Agent. The Dissemination Agent may resign by providing 30 days' written notice to the City and the Developer.

Section 9. Amendment; Waiver. Notwithstanding any other provision of this Disclosure Certificate, the Developer may amend this Disclosure Certificate, and any provision of this Disclosure Certificate may be waived, provided that the following conditions are satisfied (provided, however, that the Dissemination Agent shall not be obligated under any such amendment that modifies or increases its duties or obligations hereunder without its written consent thereto):

(a) if the amendment or waiver relates to the provisions of sections 3(a), 4 or 5(a), it may only be made in connection with a change in circumstances that arises from a change in legal requirements, or change in law;

(b) the proposed amendment or waiver either (i) is approved by holders of the 2023 Bonds in the manner provided in the Fiscal Agent Agreement with the consent of holders, or (ii) does not, in the opinion of nationally recognized bond counsel, materially impair the interests of the holders or beneficial owners of the 2023 Bonds.

Section 10. Additional Information. Nothing in this Disclosure Certificate shall be deemed to prevent the Developer from disseminating any other information, using the means of dissemination set forth in this Disclosure Certificate or any other means of communication, or including any other information in any Semi-Annual Report or notice of occurrence of a Listed Event, in addition to that which is required by this Disclosure Certificate. If the Developer chooses to include any information in any Semi-Annual Report or notice of occurrence of a Listed Event in addition to that which is specifically required by this Disclosure Certificate, the Developer shall have no obligation under this Disclosure Certificate to update such information or include it in any future Semi-Annual Report or notice of occurrence of a Listed Event.

Section 11. Default. In the event of a failure of the Developer to comply with any provision of this Disclosure Certificate, the Fiscal Agent shall (upon written direction and only to the extent indemnified to its satisfaction from any liability, cost or expense, including fees and expenses of its attorneys), and the Participating Underwriter and any holder or beneficial owner of the 2023 Bonds may, take such actions as may be necessary and appropriate, including seeking mandate or specific performance by court order, to cause the Developer to comply with its obligations under this Disclosure Certificate. A default under this Disclosure Certificate shall not be deemed an Event of Default under the Fiscal Agent Agreement, and the sole remedy under this Disclosure Certificate in the event of any failure of the Developer to comply with this Disclosure Certificate shall be an action to compel performance.

Section 12. Duties, Immunities and Liabilities of Dissemination Agent. The Dissemination Agent shall have only such duties as are specifically set forth in this Disclosure Certificate, and the Developer agrees to indemnify and save the Dissemination Agent, its officers, directors, employees and agents, harmless against any loss, expense and liabilities which it may incur arising out of or in the exercise or performance of its powers and duties hereunder, including the reasonable costs and expenses (including

attorneys' fees) of defending against any claim of liability, but excluding (i) losses, expenses and liabilities due to the Dissemination Agent's, and its officers, directors, employees, and agents' negligence or willful misconduct, or failure to perform its duties hereunder, and (ii) losses, expenses and liabilities due to the failure of the City to pay the fees and expenses of the Dissemination Agent. The Dissemination Agent shall be paid compensation for its services provided hereunder from the Administrative Expense Fund established under the Fiscal Agent Agreement in accordance with the Dissemination Agent's schedule of fees as amended from time to time, which schedule, as amended, shall be reasonably acceptable, and all reasonable expenses, reasonable legal fees and advances made or incurred by the Dissemination Agent in the performance of its duties hereunder. The Dissemination Agent shall have no duty or obligation to review any information provided to it hereunder and shall not be deemed to be acting in any fiduciary capacity for the City, the Developer, the Fiscal Agent, the 2023 Bond owners, or any other party. The obligations of the Developer under this Section shall survive resignation or removal of the Dissemination Agent and payment of the 2023 Bonds, but shall be assumed by a Major Owner from and after the date of such assumption when property is sold to a Major Owner and such Major Owner enters into an assumption agreement.

Section 13. Notices. Any notice or communications to be among any of the parties to this Disclosure Certificate may be given by electronic, overnight, or regular mail as follows:

To the Issuer: City of Tracy  
333 Civic Plaza  
Tracy, CA 95376  
Email: [financedept@cityoftracy.org](mailto:financedept@cityoftracy.org)

To the Participating Underwriter: Piper Sandler & Co.  
2321 Rosecrans Avenue  
El Segundo, California 90245  
Email: [dennis.j.mcguire@psc.com](mailto:dennis.j.mcguire@psc.com)

To the Developer: Lennar Homes of California, LLC  
2603 Camino Ramon, Suite 525  
San Ramon, California 94583  
Attn: Chad Kiltz  
Email: [chad.kiltz@lennar.com](mailto:chad.kiltz@lennar.com)  
[Bridgit.Koller@lennar.com](mailto:Bridgit.Koller@lennar.com)

Any person may, by written notice to the other persons listed above, designate a different address or telephone number(s) to which subsequent notices or communications should be sent.

Section 14. Beneficiaries. This Disclosure Certificate shall inure solely to the benefit of the City, the Developer (its successors and assigns), the Fiscal Agent, the Dissemination Agent, the Participating Underwriter and holders and beneficial owners from time to time of the 2023 Bonds, and shall create no rights in any other person or entity. All obligations of the Developer hereunder shall be assumed by any legal successor to the obligations of the Developer as a result of a sale, merger, consolidation or other reorganization.

Section 15. Counterparts. This Disclosure Certificate may be executed in several counterparts, each of which shall be regarded as an original, and all of which shall constitute one and the same instrument.

LENNAR HOMES OF CALIFORNIA, LLC,  
A California limited liability company

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

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

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

**EXHIBIT A**

**SEMI-ANNUAL REPORT**

**[MARCH 31, \_\_\_\_ / SEPTEMBER 30, \_\_\_\_]**

**\$\_\_\_\_\_**

**IMPROVEMENT AREA NO. 2  
OF THE CITY OF TRACY  
COMMUNITY FACILITIES DISTRICT NO. 2016-1 (TRACY HILLS)  
SPECIAL TAX BONDS, SERIES 2023**

This Semi-Annual Report is hereby submitted under Section 4 of the Continuing Disclosure Certificate (Lennar Homes) (the "Disclosure Certificate") dated as of [closing date], 2023, executed by the undersigned (the "Developer") in connection with the issuance by the City of Tracy (the "City") of the bonds captioned above (the "2023 Bonds") for Improvement Area No. 2 ("Improvement Area No. 2") of the City of Tracy Community Facilities District No. 2016-1 (Tracy Hills) (the "District").

Capitalized terms used in this Semi-Annual Report but not otherwise defined have the meanings given to them in the Disclosure Certificate.

**I. Property Ownership and Development**

The information in this section is provided as of \_\_\_\_\_ (this date must be not more than 60 days before the date of this Semi-Annual Report).

A. Description of the Property currently owned by the Developer in Improvement Area No. 2 of the District (the "Property"), in substance and form similar to such information in the Official Statement for the 2023 Bonds:

\_\_\_\_\_  
\_\_\_\_\_

B. Updated information regarding land development and home construction activities with respect to the Property described in the Official Statement for the 2023 Bonds or the Semi-Annual Report last filed in accordance with the Disclosure Certificate:

\_\_\_\_\_  
\_\_\_\_\_

C. Status of building permits and any material changes to the description of land use or development entitlements for the Property described in the Official Statement for the 2023 Bonds or the Semi-Annual Report last filed in accordance with the Disclosure Certificate:

\_\_\_\_\_  
\_\_\_\_\_

D. Status of any land purchase contracts with regard to the Property, whether acquisition of land in Improvement Area No. 2 by the Developer or sales of land to other property owners (other than individual homeowners).

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**II. Legal and Financial Status of Developer**

Unless such information has previously been included or incorporated by reference in a Semi-Annual Report, describe any material change in the legal structure of the Developer or the financial condition and financing plan of the Developer that would materially and adversely interfere with its ability to complete the development plan with respect to the Property described in the Official Statement. To the extent that the ownership of the Developer has changed, describe all material terms of the new ownership structure.

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**III. Change in Development or Financing Plans**

Unless such information has previously been included or incorporated by reference in a Semi-Annual Report, describe any development plans or financing plans relating to the Property *that are materially different from* the proposed development and financing plan for the Property described in the Official Statement or in a previous Semi-Annual Report.

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**IV. Official Statement Updates**

Unless such information has previously been included or incorporated by reference in a Semi-Annual Report, describe any other significant changes in the information relating to the Developer or the Property contained in the Official Statement under the headings “THE DISTRICT AND IMPROVEMENT AREA NO. 2 – Environmental Matters”, “PROPERTY OWNERSHIP AND THE DEVELOPMENT – Lennar Homes”, “– Landbank Arrangement”, “– Status of Development”, or “– Home Construction Financing Plan” that would materially and adversely interfere with the Developer’s ability to develop and sell the Property as described in the Official Statement.

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**V. Status of Tax Payments**

Describe status of payment of taxes, special taxes (including the Special Taxes) or assessments due with respect to the Property owned by the Developer and its Affiliates.

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**VI. Other Material Information**

In addition to any of the information expressly required above, provide such further information, if any, with respect to the Property and the Developer as may be necessary to make the specifically required statements, in the light of the circumstances under which they are made, not misleading.

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**Certification**

On behalf of the Developer, the undersigned Authorized Representative, based on actual knowledge after reasonable inquiry of employees of Developer and its affiliates, hereby certifies that this Semi-Annual Report constitutes the Semi-Annual Report required to be furnished by the Developer under the Disclosure Certificate.

ANY OTHER STATEMENTS REGARDING THE DEVELOPER, THE DEVELOPMENT OF THE PROPERTY, THE DEVELOPER'S FINANCING PLAN OR FINANCIAL CONDITION, OR THE 2023 BONDS, OTHER THAN STATEMENTS MADE BY THE DEVELOPER IN AN OFFICIAL RELEASE, OR FILED WITH THE MUNICIPAL SECURITIES RULEMAKING BOARD, ARE NOT AUTHORIZED BY THE DEVELOPER. THE DEVELOPER IS NOT RESPONSIBLE FOR THE ACCURACY, COMPLETENESS OR FAIRNESS OF ANY SUCH UNAUTHORIZED STATEMENTS.

THE DEVELOPER HAS NO OBLIGATION TO UPDATE THIS SEMI-ANNUAL REPORT OTHER THAN AS EXPRESSLY PROVIDED IN THE DISCLOSURE CERTIFICATE.

Dated: \_\_\_\_\_

LENNAR HOMES OF CALIFORNIA, LLC,  
A California limited liability company

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

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

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

## APPENDIX I

### DTC AND THE BOOK-ENTRY ONLY SYSTEM

*The following description of the Depository Trust Company (“DTC”), the procedures and record keeping with respect to beneficial ownership interests in the 2023 Bonds, payment of principal, interest and other payments on the 2023 Bonds (herein, the “Securities”) to DTC Participants or Beneficial Owners, confirmation and transfer of beneficial ownership interest in the Securities and other related transactions by and between DTC, the DTC Participants and the Beneficial Owners is based solely on information provided by DTC. Accordingly, no representations can be made concerning these matters and neither the DTC Participants nor the Beneficial Owners should rely on the foregoing information with respect to such matters, but should instead confirm the same with DTC or the DTC Participants, as the case may be.*

*Neither the issuer of the Securities (the “Issuer”) nor the trustee, fiscal agent or paying agent appointed with respect to the Securities (the “Agent”) takes any responsibility for the information contained in this Appendix.*

*No assurances can be given that DTC, DTC Participants or Indirect Participants will distribute to the Beneficial Owners (a) payments of interest, principal or premium, if any, with respect to the Securities, (b) certificates representing ownership interest in or other confirmation or ownership interest in the Securities, or (c) redemption or other notices sent to DTC or Cede & Co., its nominee, as the registered owner of the Securities, or that they will so do on a timely basis, or that DTC, DTC Participants or DTC Indirect Participants will act in the manner described in this Appendix. The current “Rules” applicable to DTC are on file with the Securities and Exchange Commission and the current “Procedures” of DTC to be followed in dealing with DTC Participants are on file with DTC.*

1. The Depository Trust Company (“DTC”) will act as securities depository for the securities (the “Securities”). The Securities will be issued as fully-registered securities registered in the name of Cede & Co. (DTC’s partnership nominee) or such other name as may be requested by an authorized representative of DTC. One fully-registered Security certificate will be issued for each issue of the Securities, each in the aggregate principal amount of such issue, and will be deposited with DTC. If, however, the aggregate principal amount of any issue exceeds \$500 million, one certificate will be issued with respect to each \$500 million of principal amount, and an additional certificate will be issued with respect to any remaining principal amount of such issue.

2. DTC, the world’s largest securities depository, is a limited-purpose trust company organized under the New York Banking Law, a “banking organization” within the meaning of the New York Banking Law, a member of the Federal Reserve System, a “clearing corporation” within the meaning of the New York Uniform Commercial Code, and a “clearing agency” registered pursuant to the provisions of Section 17A of the Securities Exchange Act of 1934. DTC holds and provides asset servicing for over 3.5 million issues of U.S. and non-U.S. equity issues, corporate and municipal debt issues, and money market instruments (from over 100 countries) that DTC’s participants (“Direct Participants”) deposit with DTC. DTC also facilitates the post-trade settlement among Direct Participants of sales and other securities transactions in deposited securities, through electronic computerized book-entry transfers and pledges between Direct Participants’ accounts. This eliminates the need for physical movement of securities certificates. Direct Participants include both U.S. and non-U.S. securities brokers and dealers, banks, trust companies, clearing corporations, and certain other organizations. DTC is a wholly-owned subsidiary of The Depository Trust & Clearing Corporation (“DTCC”). DTCC is the holding company for DTC, National Securities Clearing Corporation and Fixed Income Clearing Corporation, all of which are

registered clearing agencies. DTCC is owned by the users of its regulated subsidiaries. Access to the DTC system is also available to others such as both U.S. and non-U.S. securities brokers and dealers, banks, trust companies, and clearing corporations that clear through or maintain a custodial relationship with a Direct Participant, either directly or indirectly (“Indirect Participants”). DTC has a Standard & Poor’s rating of AA+. The DTC Rules applicable to its Participants are on file with the Securities and Exchange Commission. More information about DTC can be found at [www.dtcc.com](http://www.dtcc.com). *The information contained on this Internet site is not incorporated herein by reference.*

3. Purchases of Securities under the DTC system must be made by or through Direct Participants, which will receive a credit for the Securities on DTC’s records. The ownership interest of each actual purchaser of each Security (“Beneficial Owner”) is in turn to be recorded on the Direct and Indirect Participants’ records. Beneficial Owners will not receive written confirmation from DTC of their purchase. Beneficial Owners are, however, expected to receive written confirmations providing details of the transaction, as well as periodic statements of their holdings, from the Direct or Indirect Participant through which the Beneficial Owner entered into the transaction. Transfers of ownership interests in the Securities are to be accomplished by entries made on the books of Direct and Indirect Participants acting on behalf of Beneficial Owners. Beneficial Owners will not receive certificates representing their ownership interests in Securities, except in the event that use of the book-entry system for the Securities is discontinued.

4. To facilitate subsequent transfers, all Securities deposited by Direct Participants with DTC are registered in the name of DTC’s partnership nominee, Cede & Co., or such other name as may be requested by an authorized representative of DTC. The deposit of Securities with DTC and their registration in the name of Cede & Co. or such other DTC nominee do not effect any change in beneficial ownership. DTC has no knowledge of the actual Beneficial Owners of the Securities; DTC’s records reflect only the identity of the Direct Participants to whose accounts such Securities are credited, which may or may not be the Beneficial Owners. The Direct and Indirect Participants will remain responsible for keeping account of their holdings on behalf of their customers.

5. Conveyance of notices and other communications by DTC to Direct Participants, by Direct Participants to Indirect Participants, and by Direct Participants and Indirect Participants to Beneficial Owners will be governed by arrangements among them, subject to any statutory or regulatory requirements as may be in effect from time to time. Beneficial Owners of Securities may wish to take certain steps to augment the transmission to them of notices of significant events with respect to the Securities, such as redemptions, tenders, defaults, and proposed amendments to the Security documents. For example, Beneficial Owners of Securities may wish to ascertain that the nominee holding the Securities for their benefit has agreed to obtain and transmit notices to Beneficial Owners. In the alternative, Beneficial Owners may wish to provide their names and addresses to the registrar and request that copies of notices be provided directly to them.

6. Redemption notices shall be sent to DTC. If less than all of the Securities within an issue are being redeemed, DTC’s practice is to determine by lot the amount of the interest of each Direct Participant in such issue to be redeemed.

7. Neither DTC nor Cede & Co. (nor any other DTC nominee) will consent or vote with respect to Securities unless authorized by a Direct Participant in accordance with DTC’s MMI Procedures. Under its usual procedures, DTC mails an Omnibus Proxy to Issuer as soon as possible after the record date. The Omnibus Proxy assigns Cede & Co.’s consenting or voting rights to those Direct Participants to whose accounts Securities are credited on the record date (identified in a listing attached to the Omnibus Proxy).

8. Redemption proceeds, distributions, and dividend payments on the Securities will be made to Cede & Co., or such other nominee as may be requested by an authorized representative of DTC. DTC's practice is to credit Direct Participants' accounts upon DTC's receipt of funds and corresponding detail information from Issuer or Agent, on payable date in accordance with their respective holdings shown on DTC's records. Payments by Participants to Beneficial Owners will be governed by standing instructions and customary practices, as is the case with securities held for the accounts of customers in bearer form or registered in "street name," and will be the responsibility of such Participant and not of DTC, Agent, or Issuer, subject to any statutory or regulatory requirements as may be in effect from time to time. Payment of redemption proceeds, distributions, and dividend payments to Cede & Co. (or such other nominee as may be requested by an authorized representative of DTC) is the responsibility of Issuer or Agent, disbursement of such payments to Direct Participants will be the responsibility of DTC, and disbursement of such payments to the Beneficial Owners will be the responsibility of Direct and Indirect Participants.

9. DTC may discontinue providing its services as depository with respect to the Securities at any time by giving reasonable notice to Issuer or Agent. Under such circumstances, in the event that a successor depository is not obtained, Security certificates are required to be printed and delivered.

10. Issuer may decide to discontinue use of the system of book-entry-only transfers through DTC (or a successor securities depository). In that event, Security certificates will be printed and delivered to DTC.

11. The information in this section concerning DTC and DTC's book-entry system has been obtained from sources that Issuer believes to be reliable, but Issuer takes no responsibility for the accuracy thereof.

**FISCAL AGENT AGREEMENT**

by and between the

**CITY OF TRACY**

and

**U.S. BANK TRUST COMPANY, NATIONAL ASSOCIATION  
as Fiscal Agent**

**Dated as of October 1, 2023**

**Relating to:**

**\$ \_\_\_\_\_  
Improvement Area No. 2 of the  
City of Tracy  
Community Facilities District No. 2016-1 (Tracy Hills)  
Special Tax Bonds, Series 2023**

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# TABLE OF CONTENTS

## ARTICLE I AUTHORITY AND DEFINITIONS

Section 1.01. Authority for this Agreement .....	2
Section 1.02. Agreement for Benefit of Owners of the Bonds .....	2
Section 1.03. Definitions .....	2

## ARTICLE II THE BONDS

Section 2.01. Principal Amount; Designation .....	13
Section 2.02. Terms of Bonds .....	13
Section 2.03. Redemption .....	14
Section 2.04. Form of Bonds .....	18
Section 2.05. Execution and Authentication of Bonds .....	18
Section 2.06. Transfer or Exchange of Bonds .....	18
Section 2.07. Bond Register .....	19
Section 2.08. Temporary Bonds .....	19
Section 2.09. Bonds Mutilated, Lost, Destroyed or Stolen .....	19
Section 2.10. Book-Entry Only System .....	20

## ARTICLE III ISSUANCE OF BONDS

Section 3.01. Issuance and Delivery of 2023 Bonds .....	22
Section 3.02. Pledge of Special Tax Revenues .....	22
Section 3.03. Limited Obligation .....	22
Section 3.04. No Acceleration .....	22
Section 3.05. Validity of Bonds .....	23
Section 3.06. Parity Bonds .....	23

## ARTICLE IV PROCEEDS, FUNDS AND ACCOUNTS

Section 4.01. Application of 2023 Bond Proceeds .....	24
Section 4.02. Costs of Issuance Fund .....	24
Section 4.03. 2023 Reserve Fund .....	25
Section 4.04. Bond Fund .....	27
Section 4.05. Special Tax Fund .....	29
Section 4.06. Administrative Expense Fund .....	31
Section 4.07. Improvement Fund .....	31

## ARTICLE V COVENANTS

Section 5.01. Collection of Special Tax Revenues .....	35
Section 5.02. Covenant to Foreclose .....	36
Section 5.03. Punctual Payment .....	37
Section 5.04. Extension of Time for Payment .....	37
Section 5.05. Against Encumbrances .....	37
Section 5.06. Books and Records .....	37
Section 5.07. Protection of Security and Rights of Owners .....	38
Section 5.08. Further Assurances .....	38
Section 5.09. Private Activity Bond Limitations .....	38
Section 5.10. Federal Guarantee Prohibition .....	38
Section 5.11. Rebate Requirement .....	38
Section 5.12. No Arbitrage .....	38
Section 5.13. Yield of the 2023 Bonds .....	38
Section 5.14. Maintenance of Tax-Exemption; Record Retention; Compliance with Tax Certificates .....	39
Section 5.15. Continuing Disclosure .....	39
Section 5.16. Limits on Special Tax Waivers and Bond Tenders .....	39

Section 5.17. City Bid at Foreclosure Sale .....	39
Section 5.18. Amendment of Rate and Method .....	39
Section 5.19. Determination of Required Coverage .....	40

**ARTICLE VI**

**INVESTMENTS; LIABILITY OF THE CITY**

Section 6.01. Deposit and Investment of Moneys in Funds .....	41
Section 6.02. Liability of City .....	42
Section 6.03. Employment of Agents by City .....	43

**ARTICLE VII**

**THE FISCAL AGENT**

Section 7.01. The Fiscal Agent .....	44
Section 7.02. Liability of Fiscal Agent .....	45
Section 7.03. Information; Books and Accounts .....	46
Section 7.04. Notice to Fiscal Agent .....	46
Section 7.05. Compensation, Indemnification .....	47

**ARTICLE VIII**

**MODIFICATION OR AMENDMENT**

Section 8.01. Amendments Permitted .....	49
Section 8.02. Owners' Meetings .....	50
Section 8.03. Procedure for Amendment with Written Consent of Owners .....	50
Section 8.04. Disqualified Bonds .....	50
Section 8.05. Effect of Supplemental Agreement .....	51
Section 8.06. Endorsement or Replacement of Bonds Issued After Amendments .....	51
Section 8.07. Amendatory Endorsement of Bonds .....	51

**ARTICLE IX**

**MISCELLANEOUS**

Section 9.01. Benefits of Agreement Limited to Parties .....	52
Section 9.02. Successor and Predecessor .....	52
Section 9.03. Discharge of Agreement .....	52
Section 9.04. Execution of Documents and Proof of Ownership by Owners .....	53
Section 9.05. Waiver of Personal Liability .....	53
Section 9.06. Notices to and Demands on the City and Fiscal Agent .....	54
Section 9.07. Partial Invalidity .....	54
Section 9.08. Unclaimed Moneys .....	54
Section 9.09. Applicable Law .....	54
Section 9.10. Conflict with Act .....	54
Section 9.11. Conclusive Evidence of Regularity .....	54
Section 9.12. Payment on Business Day .....	55
Section 9.13. State Reporting Requirements .....	55
Section 9.14. Counterparts .....	56

EXHIBIT A:	FORM OF 2023 BOND
EXHIBIT B:	OFFICER'S CERTIFICATE REQUESTING DISBURSEMENT FROM IMPROVEMENT FUND
EXHIBIT C:	OFFICER'S CERTIFICATE REQUESTING DISBURSEMENT FROM COSTS OF ISSUANCE FUND
EXHIBIT D:	OFFICER'S CERTIFICATE REQUESTING DISBURSEMENT FROM ADMINISTRATIVE EXPENSE FUND

## **FISCAL AGENT AGREEMENT**

**THIS FISCAL AGENT AGREEMENT** (the "Agreement") is made, entered into and dated as of October 1, 2023, by and between the CITY OF TRACY, a municipal corporation and general law city organized and existing under the laws of the State of California (the "City") for and on behalf of the "City of Tracy Community Facilities District No. 2016-1 (Tracy Hills)" (the "CFD") with respect to its "Improvement Area No. 2 of the City of Tracy Community Facilities District No. 2016-1 (Tracy Hills)" ("Improvement Area No. 2"), and U.S. BANK TRUST COMPANY, NATIONAL ASSOCIATION, a national banking association duly organized and existing under the laws of the United States of America with a corporate trust office located in San Francisco, California, as fiscal agent (the "Fiscal Agent").

### **WITNESSETH:**

**WHEREAS**, the City Council of the City has formed the CFD, including Improvement Area No. 2, under the provisions of the Mello-Roos Community Facilities Act of 1982, as amended (section 53311 *et seq.* of the California Government Code) (the "Act"); and

**WHEREAS**, the City Council, as the legislative body with respect to the CFD, is authorized under the Act to levy special taxes within Improvement Area No. 2 to pay for the costs of facilities and to authorize the issuance of bonds secured by said special taxes under the Act; and

**WHEREAS**, on \_\_\_\_\_, 2023, the City Council adopted Resolution No. 2023-\_\_\_\_ (the "Resolution") authorizing the issuance of special tax bonds (the "2023 Bonds") on behalf of the CFD with respect to Improvement Area No. 2; and

**WHEREAS**, it is in the public interest and for the benefit of the City, the CFD, Improvement Area No. 2 and the persons responsible for the payment of special taxes that the City enter into this Agreement to provide for the issuance of the Bonds (as defined below) hereunder to finance the acquisition and construction of facilities for the City and to provide for the disbursement of proceeds of the Bonds, the disposition of the special taxes securing the Bonds and the administration and payment of the Bonds; and

**WHEREAS**, the City has determined that all things necessary to cause the 2023 Bonds, when authenticated by the Fiscal Agent and issued as provided in the Act, the Resolution and this Agreement, to be legal, valid, binding and limited obligations in accordance with their terms, and all things necessary to cause the creation, authorization, execution and delivery of this Agreement and the creation, authorization, execution and issuance of the Bonds, subject to the terms hereof, have in all respects been duly authorized.

**NOW, THEREFORE**, in consideration of the covenants and provisions herein set forth and for other valuable consideration the receipt and sufficiency of which is hereby acknowledged, the parties hereto do hereby agree as follows:

## ARTICLE I

### AUTHORITY AND DEFINITIONS

**Section 1.01. Authority for this Agreement.** This Agreement is entered into pursuant to the Act (as herein defined) and the Resolution.

**Section 1.02. Agreement for Benefit of Owners of the Bonds.** The provisions, covenants and agreements herein set forth to be performed by or on behalf of the City shall be for the equal benefit, protection and security of the Owners of the Bonds. All of the Bonds, without regard to the time or times of their issuance or maturity, shall be of equal rank without preference, priority or distinction of any of the Bonds over any other thereof, except as expressly provided in or permitted by this Agreement.

**Section 1.03. Definitions.** Unless the context otherwise requires, the terms defined in this Section 1.03 shall, for all purposes of this Agreement, of any Supplemental Agreement, and of any certificate, opinion or other document herein mentioned, have the meanings herein specified. All references herein to “Articles,” “Sections” and other subdivisions are to the corresponding Articles, Sections or subdivisions of this Agreement, and the words “herein,” “hereof,” “hereunder” and other words of similar import refer to this Agreement as a whole and not to any particular Article, Section or subdivision hereof.

“Acquisition Agreement” means that certain Master Acquisition Agreement Relating to: City of Tracy Community Facilities District No. 2016-1 (Tracy Hills), dated as of July 19, 2016, by and between the City and The Tracy Hills Project Owner, LLC, as assigned pursuant to an Assignment and Assumption Agreement, dated as of May 24, 2023, by and between The Tracy Hills Project Owner, LLC and the Developer.

“Act” means the Mello-Roos Community Facilities Act of 1982, as amended, being sections 53311 *et seq.* of the California Government Code.

“Administrative Expenses” means costs directly related to the administration of the CFD consisting of: the actual costs of computing the Special Taxes and preparing the annual Special Tax collection schedules (whether by a City employee or consultant or both) and the actual costs of collecting the Special Taxes (whether by the County or otherwise); the actual costs of remitting the Special Taxes to the Fiscal Agent; actual costs of the Fiscal Agent (including its legal counsel) in the discharge of its duties under this Agreement; the actual costs of the City or its designee of complying with the disclosure provisions of the Act and this Agreement, including those related to public inquiries regarding the Special Tax and disclosures to Owners of the Bonds and the Original Purchaser; costs of the dissemination agent, whether for the City or another party that has undertaken to provide continuing disclosure; the actual costs of the City or its designee related to an appeal of the Special Tax; any amounts required to be rebated to the federal government; an allocable share of the salaries of the City staff directly related to the foregoing and a proportionate amount of City general administrative overhead related thereto. Administrative Expenses shall also include amounts advanced by the City for any administrative purpose of the CFD, including costs related to prepayments of Special Taxes, recordings related to such prepayments and satisfaction of Special Taxes, amounts advanced to ensure maintenance of tax exemption, and the costs of prosecuting foreclosure of delinquent Special Taxes, which amounts advanced are subject to reimbursement from other sources, including proceeds of foreclosure.

“Administrative Expense Fund” means the fund designated the “Improvement Area No. 2 of the City of Tracy Community Facilities District No. 2016-1 (Tracy Hills) Administrative Expense Fund” established and administered under Section 4.06.

“Agreement” means this Fiscal Agent Agreement, as it may be amended or supplemented from time to time by any Supplemental Agreement adopted pursuant to the provisions hereof.

“Annexation Resolution” means Resolution No. 2022-130, adopted by the City Council on September 6, 2022, approving the annexation of property to the CFD and designating the property as Improvement Area No. 2 of the City of Tracy Community Facilities District No. 2016-1 (Tracy Hills).

“Annual Debt Service” means, for each Bond Year, the sum of (i) the interest due on the Outstanding Bonds in such Bond Year, assuming that the Outstanding Bonds are retired as scheduled, and (ii) the principal amount of the Outstanding Bonds due in such Bond Year (including any mandatory sinking payment due in such Bond Year).

“Auditor” means the auditor/controller of the County, or such other official at the County who is responsible for preparing property tax bills.

“Authorized Officer” means the Mayor, City Manager, Assistant City Manager, Finance Director, City Clerk or any other officer or employee authorized by the City Council of the City or by an Authorized Officer to undertake the action referenced in this Agreement as required to be undertaken by an Authorized Officer.

“Bond” or “Bonds” means the 2023 Bonds and, if the context requires, any Parity Bonds, at any time Outstanding under this Agreement or any Supplemental Agreement.

“Bond Counsel” means Jones Hall, A Professional Law Corporation or any other attorney or firm of attorneys acceptable to the City and nationally recognized for expertise in rendering opinions as to the legality and tax-exempt status of securities issued by public entities.

“Bond Fund” means the fund designated the “Improvement Area No. 2 of the City of Tracy, Community Facilities District No. 2016-1 (Tracy Hills) Special Tax Bonds, Bond Fund” established and administered under Section 4.04.

“Bond Proceeds Account” means the account of that name within the Improvement Fund to be established and administered by the Fiscal Agent under Section 4.07.

“Bond Year” means the one-year period beginning on September 2nd in each year and ending on September 1 in the following year, except that the first Bond Year shall begin on the Closing Date and shall end on September 1, 2024.

“Business Day” means any day other than (i) a Saturday or a Sunday or (ii) a day on which banking institutions in the state in which the Fiscal Agent has its principal corporate trust office are authorized or obligated by law or executive order to be closed.

“CDIAC” means the California Debt and Investment Advisory Commission of the Office of the State Treasurer, or any successor agency, board or commission.

“CFD” means the "City of Tracy Community Facilities District No. 2016-1 (Tracy Hills)" formed under the Resolution of Formation.

“City” means the City of Tracy, and any successor thereto.

“City Attorney” means any attorney or firm of attorneys employed by the City in the capacity of general counsel.

“City Council” means the City Council of the City, in its capacity as the legislative body of the CFD.

“Closing Date” means the date upon which there is a physical delivery of the applicable series of Bonds in exchange for the amount representing the purchase price of such Bonds by the Original Purchaser.

“Continuing Disclosure Certificate” means that certain Continuing Disclosure Certificate executed by the City and dated the date of issuance and delivery of the 2023 Bonds, as originally executed and as it may be amended from time to time in accordance with the terms thereof.

“Costs of Issuance” means items of expense payable or reimbursable directly or indirectly by the City and related to the authorization, sale, delivery and issuance of the Bonds, which items of expense shall include, but not be limited to, printing costs, costs of reproducing and binding documents, closing costs, appraisal costs, filing and recording fees, fees and expenses of counsel to the City, initial fees and charges of the Fiscal Agent including its first annual administration fees and its legal fees and charges, including the allocated costs of in-house attorneys, expenses incurred by the City in connection with the issuance of the Bonds, Bond (underwriter’s) discount, legal fees and charges, including bond counsel, and counsel to any financial consultant, financial consultant’s fees, charges for execution, authentication, transportation and safekeeping of the Bonds and other costs, charges and fees in connection with the foregoing.

“Costs of Issuance Fund” means the fund designated the “Improvement Area No. 2 of the City of Tracy, Community Facilities District No. 2016-1 (Tracy Hills) Special Tax Bonds, Costs of Issuance Fund” established and administered under Section 4.02.

“County” means the County of San Joaquin, California.

“Dated Date” means \_\_\_\_\_, 2023, the dated date of the 2023 Bonds, which is the Closing Date for the 2023 Bonds.

“Debt Service” means the scheduled amount of interest and amortization of principal payable on the 2023 Bonds under Sections 2.02 and 2.03 and the scheduled amount of interest and amortization of principal payable on any Parity Bonds during the period of computation, in each case excluding amounts scheduled during such period which relate to principal which has been retired before the beginning of such period.

“Depository” means (a) initially, DTC, and (b) any other Securities Depository acting as Depository for book-entry under Section 2.10.

“Developer” means Lennar Homes of California, LLC, a California limited liability company, and its successors and assigns.

“DTC” means The Depository Trust Company, New York, New York, and its successors and assigns.

“Fair Market Value” means with respect to the Bonds the price at which a willing buyer would purchase the investment from a willing seller in a bona fide, arm’s length transaction (determined as of the date the contract to purchase or sell the investment becomes binding) if the investment is traded on an established securities market (within the meaning of section 1273 of the Tax Code) and, otherwise, the term “Fair Market Value” means the acquisition price in a bona fide arm’s length transaction (as referenced above) if (i) the investment is a certificate of deposit that is acquired in accordance with applicable regulations under the Tax Code, (ii) the investment is an agreement with specifically negotiated withdrawal or reinvestment provisions and a specifically negotiated interest rate (for example, a guaranteed investment contract, a forward supply contract or other investment agreement) that is acquired in accordance with applicable regulations under the Tax Code, (iii) the investment is a United States Treasury Security—State and Local Government Series that is acquired in accordance with applicable regulations of the United States Bureau of Public Debt, or (iv) any commingled investment fund in which the City and related parties do not own more than a 10% beneficial interest if the return paid by such fund is without regard to the source of the investment.

“Federal Securities” means: (a) any direct general obligations of the United States of America (including obligations issued or held in book entry form on the books of the Department of the Treasury of the United States of America), the payment of principal of and interest on which are unconditionally and fully guaranteed by the United States of America; and (b) any obligations the principal of and interest on which are unconditionally guaranteed by the United States of America.

“Finance Director” means the official of the City, or such official's designee, who acts in the capacity as the chief financial officer of the City, including the controller or other financial officer.

“Fiscal Agent” means U.S. Bank Trust Company, National Association, the Fiscal Agent appointed by the City and acting as an independent fiscal agent with the duties and powers herein provided, its successors and assigns, and any other corporation or association which may at any time be substituted in its place, as provided in Section 7.01.

“Fiscal Year” means the twelve-month period extending from July 1 in a calendar year to June 30 of the succeeding year, both dates inclusive.

“Improvement Area No. 2” means “Improvement Area No. 2 of the City of Tracy Community Facilities District No. 2016-1 (Tracy Hills)” designated by the City Council pursuant to the Annexation Resolution.

“Improvement Fund” means the fund designated “Improvement Area No. 2 of the City of Tracy, Community Facilities District No. 2016-1 (Tracy Hills), Special Tax Bonds, Improvement Fund,” established under Section 4.07.

“Independent Financial Consultant” means any consultant or firm of such consultants appointed by the City or the Treasurer, and who, or each of whom:

(i) is judged by the Treasurer to have experience in matters relating to the issuance and/or administration of bonds under the Act;

(ii) is in fact independent and not under the domination of the City;

(iii) does not have any substantial interest, direct or indirect, with or in the City, or any owner of real property in Improvement Area No. 2, or any real property in Improvement Area No. 2; and

(iv) is not connected with the City as an officer or employee of the City, but who may be regularly retained to make reports to the City.

“Interest Payment Date” means each March 1 and September 1 of every calendar year, commencing with March 1, 2024.

“Maximum Annual Debt Service” means the largest Annual Debt Service for any Bond Year after the calculation is made through the final maturity date of any Outstanding Bonds.

“Moody’s” means Moody’s Investors Service, Inc., and its successors.

“MSRB” means the Municipal Securities Rulemaking Board, through its EMMA system, and, in accordance with then current guidelines of the Securities and Exchange Commission, such other addresses and/or such services providing information with respect to called bonds as the City may designate in an Officer’s Certificate delivered to the Fiscal Agent.

“Officer’s Certificate” means a written certificate of the City signed by an Authorized Officer of the City.

“Ordinance” means any ordinance of the City Council of the City levying the Special Taxes, including but not limited to Ordinance No. 1260 introduced by the City Council on August 21, 2018, and adopted by the City Council on September 4, 2018.

“Original Purchaser” means Piper Sandler & Co., the first purchaser of the 2023 Bonds from the City.

“Other District Bonds” has the meaning given that term in Section 3.06.

“Outstanding” when used as of any particular time with reference to Bonds, means (subject to the provisions of Section 8.04) all Bonds except (i) Bonds theretofore canceled by the Fiscal Agent or surrendered to the Fiscal Agent for cancellation; (ii) Bonds paid or deemed to have been paid within the meaning of Section 9.03; and (iii) Bonds in lieu of or in substitution for which other Bonds shall have been authorized, executed, issued and delivered by the City under this Agreement or any Supplemental Agreement.

“Owner” or “Bondowner” means any person who shall be the registered owner of any Outstanding Bond.

“Parity Bonds” means additional bonds issued and payable on a parity with the Bonds under Section 3.06.

“Parity Reserve Requirement” means the amount as of any date of calculation equal to the least of (a) Maximum Annual Debt Service on any Parity Bonds that are covered by the reserve account for the Parity Bonds, (b) 125% of average Annual Debt Service on any Parity

Bonds that are covered by the reserve account for the Parity Bonds, and (c) 10% of the outstanding principal of any Parity Bonds that are covered by the reserve account for the Parity Bonds; provided, however:

(A) that with respect to the calculation of clause (c), the issue price of any Parity Bonds that are covered by the reserve account for the Parity Bonds excluding accrued interest shall be used rather than the outstanding principal amount, if (i) the net original issue discount or premium of any such Parity Bonds was less than 98% or more than 102% of the original principal amount of any such Parity Bonds and (ii) using the issue price would produce a lower result than using the outstanding principal amount;

(B) that in no event shall the amount calculated hereunder exceed the amount on deposit in the reserve account for the Parity Bonds on the date of issuance of the most recently issued series of Parity Bonds that are covered by the reserve account for the Parity Bonds except in connection with any increase associated with the issuance of Parity Bonds that will be covered by the reserve account for the Parity Bonds; and

(C) that in no event shall the amount required to be deposited into the reserve account for the Parity Bonds in connection with the issuance of a series of Parity Bonds exceed the maximum amount under the Tax Code that can be financed with tax-exempt bonds and invested an unrestricted yield.

“Participating Underwriter” shall have the meaning ascribed thereto in the Continuing Disclosure Certificate.

“Permitted Investments” means the following, but only to the extent that the same are acquired at Fair Market Value:

(a) Federal Securities.

(b) any of the following direct or indirect obligations of the following agencies of the United States of America: (i) direct obligations of the Export-Import Bank; (ii) certificates of beneficial ownership issued by the Farmers Home Administration; (iii) participation certificates issued by the General Services Administration; (iv) mortgage-backed bonds or pass-through obligations issued and guaranteed by the Government National Mortgage Association, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation or the Federal Housing Administration; (v) project notes issued by the United States Department of Housing and Urban Development; and (vi) public housing notes and bonds guaranteed by the United States of America;

(c) interest-bearing demand or time deposits (including certificates of deposit), including those placed by a third party pursuant to a separate agreement between the City and the Fiscal Agent, banking deposit products, trust funds, trust accounts, overnight bank deposits, interest bearing deposits, interest bearing money market accounts or deposit accounts in federal or state chartered savings and loan associations or in federal or State of California banks (including the Fiscal Agent, its parent, if any, and affiliates), provided that (i) the unsecured short-term obligations of such commercial bank or savings and loan association shall be rated in the highest short-term rating category by any Rating Agency, or (ii) such demand

or time deposits shall be fully insured by the Federal Deposit Insurance Corporation;

(d) commercial paper rated at the time of purchase in the highest short-term rating category by any Rating Agency, issued by corporations which are organized and operating within the United States of America, and which matures not more than 180 days following the date of investment therein;

(e) bankers acceptances, consisting of bills of exchange or time drafts drawn on and accepted by a commercial bank, including its parent (if any), affiliates and subsidiaries, whose short-term obligations are rated in the highest short-term rating category by any Rating Agency, or whose long-term obligations are rated A or better by any Rating Agency, which mature not more than 270 days following the date of investment therein;

(f) obligations the interest on which is excludable from gross income pursuant to Section 103 of the Tax Code and which are either (a) rated A or better by any Rating Agency, or (b) fully secured as to the payment of principal and interest by Federal Securities;

(g) obligations issued by any corporation organized and operating within the United States of America having assets in excess of \$500,000,000, which obligations are rated A or better by any Rating Agency;

(h) money market mutual funds (including money market funds for which the Fiscal Agent, its affiliates or subsidiaries provide investment advisory, transfer agency, custodial or other management services for which it receives and retains a fee for such services to the fund) which invest in Federal Securities or which are rated in the highest short-term rating category by any Rating Agency including those funds for which the Fiscal Agent or an affiliate receives and retains a fee for services provided to the fund, whether as a custodian, transfer agent, investment advisor or otherwise; and

(i) any investment agreement representing general unsecured obligations of a financial institution rated A or better by any Rating Agency, by the terms of which the Fiscal Agent is permitted to withdraw all amounts invested therein in the event any such rating falls below A.

(j) the Local Agency Investment Fund established pursuant to Section 16429.1 of the Government Code of the State of California, *provided, however*, that the Fiscal Agent shall be permitted to make investments and withdrawals in its own name and the Fiscal Agent may restrict investments in the such fund if necessary to keep moneys available for the purposes of this Fiscal Agent Agreement.

(k) the California Asset Management Program.

“Principal Office” means such corporate trust office of the Fiscal Agent as may be designated from time to time by written notice from the Fiscal Agent to the City, initially being at the address set forth in Section 9.06, or such other office designated by the Fiscal Agent from time to time.

“Proceeds” when used with reference to the Bonds, means the face amount of the Bonds, plus any accrued interest and premium, less any original issue and/or underwriter’s discount.

“Project” means those items described as the “Facilities” in the Resolution of Formation.

“Qualified Reserve Account Credit Instrument” means an irrevocable standby or direct-pay letter of credit, insurance policy, or surety bond issued by a commercial bank or insurance company and deposited with the Fiscal Agent, provided that all of the following requirements are met at the time of acceptance thereof by the Fiscal Agent: (a) in the case of a commercial bank, the long-term credit rating of such bank at the time of delivery of the irrevocable standby or direct-pay letter of credit is at least "A" from S&P or "A" from Moody’s and, in the case of an insurance company, the claims paying ability of such insurance company at the time of delivery of the insurance policy or surety bond is at least "A" from S&P, or "A" from Moody’s or, if not rated by S&P or Moody’s but is rated by A.M. Best & Company, is rated at the time of delivery in the highest rating category by A.M. Best & Company; (b) such letter of credit, insurance policy or surety bond has a term of at least 12 months; (c) such letter of credit or surety bond has a stated amount at least equal to the portion of the 2023 Reserve Requirement with respect to which funds are proposed to be released; and (d) the Fiscal Agent is authorized pursuant to the terms of such letter of credit, insurance policy or surety bond to draw thereunder an amount equal to any deficiencies which may exist from time to time in the Bond Fund for the purpose of making payments with respect to the 2023 Bonds and any 2023 Related Parity Bonds.

“Rate and Method” means the Rate and Method of Apportionment of Special Taxes for Improvement Area No. 2 set forth in the Annexation Resolution.

“Record Date” means the fifteenth day of the calendar month next preceding the applicable Interest Payment Date, whether or not such day is a Business Day.

“Refunding Bonds” means bonds issued by the City for the CFD with respect to Improvement Area No. 2, the net proceeds of which are used to refund all or a portion of the then-Outstanding Bonds and for other lawful purposes; provided that the principal and interest on the Refunding Bonds to their final maturity date is less than the principal and interest on the Bonds being refunded to their final maturity date, and the final maturity of the Refunding Bonds is not later than the final maturity of the Bonds being refunded.

“Regulations” means temporary and permanent regulations promulgated under the Tax Code.

“Remainder Taxes” means the Special Taxes available for disbursement pursuant to Section 4.05(B)(iii).

“Remainder Taxes Account” means the account of that name within the Improvement Fund to be established and administered by the Fiscal Agent under Section 4.07.

“Remainder Taxes Period” means the period through and including the date that is the earlier of (i) the end of the 20th Fiscal Year during which Special Taxes have been levied on the property in Improvement Area No. 2 and (ii) the date the City has fully satisfied its reimbursement obligations under the Acquisition Agreement.

“Resolution” or “Resolution of Issuance” has the meaning given that term in the recitals hereof.

“Resolution of Change” means Resolution No. 2018-169, adopted by the City Council on August 21, 2018, confirming certain changes to the proceedings for the CFD.

“Resolution of Formation” means Resolution No. 2016-157, adopted by the City Council on July 19, 2016, forming the CFD, as amended by the Resolution of Change.

“Resolution of Intention” means Resolution No. 2016-111 adopted by the City Council on June 7, 2016, indicating the intention of the City to form the CFD.

“Resolution of Necessity” means Resolution No. 2016-158 adopted by the City Council on July 19, 2016, as amended by the Resolution of Change.

“S&P” means S&P Global, a division of McGraw-Hill, and its successors and assigns.

“Securities Depositories” means DTC and, in accordance with then current guidelines of the Securities and Exchange Commission, such other securities depositories as the City may designate in an Officer’s Certificate delivered to the Fiscal Agent.

“Set-Aside Amount” means the amount of \$6,000,000 of the Proceeds of the 2023 Bonds deposited in the Bond Proceeds Account on the Closing Date.

“Special Tax Fund” means the special fund designated “Improvement Area No. 2 of the City of Tracy, Community Facilities District No. 2016-1 (Tracy Hills), Special Tax Fund” established and administered under Section 4.05.

“Special Tax Prepayments” means the proceeds of any Special Tax prepayments received by the City, as calculated pursuant to the Rate and Method, less any administrative fees or penalties collected as part of any such prepayment.

“Special Tax Prepayments Account” means the account by that name established within the Bond Fund under Section 4.04(A).

“Special Tax Revenues” means the proceeds of the Special Taxes received by the City, including any scheduled payments thereof and any Special Tax Prepayments, interest thereon and proceeds of the redemption or sale of property sold as a result of foreclosure of the lien of the Special Taxes to the amount of said lien and interest thereon, but shall not include any interest in excess of the interest due on the Bonds or any penalties collected in connection with any such foreclosure.

“Special Taxes” means the Facilities Special Tax levied by the City Council within Improvement Area No. 2 under the Act, the Rate and Method, the Ordinance and this Agreement.

“State” means the State of California.

“Supplemental Agreement” means an agreement the execution of which is authorized by a resolution which has been duly adopted by the City under the Act and which agreement is amendatory of or supplemental to this Agreement, but only if and to the extent that such agreement is specifically authorized hereunder.

“Tax Code” means the Internal Revenue Code of 1986 as in effect on the date of issuance of the Bonds or (except as otherwise referenced herein) as it may be amended to apply to obligations issued on the date of issuance of the Bonds, together with applicable temporary and final regulations promulgated, and applicable official public guidance published, under the Tax Code.

“Tax Consultant” means an independent financial or tax consultant retained by the City for the purpose of computing the Special Taxes.

“Term Bonds” means the (i) 2023 Bonds maturing on September 1, 202\_\_, (ii) the 2023 Bonds maturing on September 1, 20\_\_, (iii) the 2023 Bonds maturing on September 1, 20\_\_, (iv) the 2023 Bonds maturing on September 1, 20\_\_ and (v) any Bonds designated as term bonds in a Supplemental Agreement.

“2023 Bonds” means the Bonds so designated and authorized to be issued under Section 2.01 hereof.

“2023 Related Parity Bonds” means any series of Parity Bonds for which (i) the Proceeds are deposited into the 2023 Reserve Fund so that the balance therein is equal to the 2023 Reserve Requirement following issuance of such Parity Bonds and (ii) the related Supplemental Agreement specifies that the 2023 Reserve Fund shall act as a reserve for the payment of the principal of, and interest and any premium on, such series of Parity Bonds.

“2023 Reserve Fund” means the fund designated the “Improvement Area No. 2 of the City of Tracy, Community Facilities District No. 2016-1 (Tracy Hills), Special Tax Bonds, Reserve Fund” established and administered under Section 4.03.

“2023 Reserve Requirement” means the amount as of any date of calculation equal to the least of (a) Maximum Annual Debt Service on the 2023 Bonds and 2023 Related Parity Bonds, if any, (b) 125% of average Annual Debt Service on the 2023 Bonds and 2023 Related Parity Bonds, if any and (c) 10% of the original principal of the 2023 Bonds and 2023 Related Parity Bonds, if any; provided, however:

(A) that with respect to the calculation of clause (c), the issue price of the 2023 Bonds or any 2023 Related Parity Bonds excluding accrued interest shall be used rather than the original principal amount, if (i) the net original issue discount or premium of the 2023 Bonds or any 2023 Related Parity Bonds was less than 98% or more than 102% of the original principal amount of the 2023 Bonds or any 2023 Related Parity Bonds and (ii) using the issue price would produce a lower result than using the original principal amount;

(B) that in no event shall the amount calculated hereunder exceed the amount on deposit in the 2023 Reserve Fund on the date of issuance of the 2023 Bonds (if they are the only Bonds covered by the 2023 Reserve Fund) or the most recently issued series of 2023 Related Parity Bonds (if any 2023 Related Parity Bonds are covered by the 2023 Reserve Fund) except in connection with any increase associated with the issuance of 2023 Related Parity Bonds; and

(C) that in no event shall the amount required to be deposited into the 2023 Reserve Fund in connection with the issuance of a series of 2023 Related Parity Bonds

exceed the maximum amount under the Tax Code that can be financed with tax-exempt bonds and invested at an unrestricted yield.

**ARTICLE II**  
**THE BONDS**

**Section 2.01. Principal Amount; Designation.** Bonds in the aggregate principal amount of \$50,000,000 are hereby authorized to be issued by the City for the CFD with respect to Improvement Area No. 2 under and subject to the terms of the Act, the Annexation Resolution, the Resolution, this Agreement and other applicable laws of the State of California. For the avoidance of doubt, Refunding Bonds shall not count against the limit set forth in the previous sentence.

The 2023 Bonds shall be designated as the "Improvement Area No. 2 of the City of Tracy Community Facilities District No. 2016-1 (Tracy Hills) Special Tax Bonds, Series 2023," and shall be in the initial principal amount of \$\_\_\_\_\_.

**Section 2.02. Terms of the 2023 Bonds.**

**(A) Form; Denominations.** The 2023 Bonds shall be issued as fully registered Bonds without coupons. The 2023 Bonds shall be lettered and numbered in a customary manner as determined by the City. The 2023 Bonds shall be issued in the denominations of \$5,000 or any integral multiple of \$5,000 in excess thereof.

**(B) Date of 2023 Bonds.** The 2023 Bonds shall be dated the Closing Date.

**(C) CUSIP Identification Numbers.** "CUSIP" identification numbers may, at the election of the Original Purchaser of the Bonds, be imprinted on the Bonds, but such numbers shall not constitute a part of the contract evidenced by the Bonds and any error or omission with respect thereto shall not constitute cause for refusal of any purchaser to accept delivery of and pay for the Bonds. In addition, failure on the part of the City or the Fiscal Agent to use such CUSIP numbers in any notice to Owners shall not constitute an event of default or any violation of the City's contract with such Owners and shall not impair the effectiveness of any such notice.

**(D) Maturities; Interest Rates.** The 2023 Bonds shall mature and become payable on each September 1, and shall bear interest at the rates per annum indicated in the below table.

Maturity (September 1)	Principal Amount	Interest Rate
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\_\_\_\_\_  
\* Term Bond

**(E) Interest.** The 2023 Bonds shall bear interest at the rates set forth above payable on the Interest Payment Dates in each year. Interest on all Bonds shall be calculated on the basis of a 360-day year composed of twelve 30-day months. Each Bond shall bear interest from the Interest Payment Date next preceding the date of authentication thereof unless

(i) it is authenticated on an Interest Payment Date, in which event it shall bear interest from such date of authentication, or

(ii) it is authenticated prior to an Interest Payment Date and after the close of business on the Record Date preceding such Interest Payment Date, in which event it shall bear interest from such Interest Payment Date, or

(iii) it is authenticated on or before the Record Date preceding the first Interest Payment Date, in which event it shall bear interest from the Dated Date;

provided, however, that if at the time of authentication of a Bond, interest is in default thereon, such Bond shall bear interest from the Interest Payment Date to which interest has previously been paid or made available for payment thereon.

**(F) Method of Payment.** Interest on the Bonds (including the final interest payment upon maturity or earlier redemption), is payable on the applicable Interest Payment Date by check of the Fiscal Agent mailed by first class mail to the registered Owner thereof at such registered Owner's address as it appears on the registration books maintained by the Fiscal Agent at the close of business on the Record Date preceding the Interest Payment Date, or by wire transfer to an account located in the United States made on such Interest Payment Date upon written instructions of any Owner of \$1,000,000 or more in aggregate principal amount of Bonds delivered to the Fiscal Agent prior to the applicable Record Date, which shall continue in effect until revoked in writing, or until such Bonds are transferred to a new Owner.

The principal of the Bonds and any premium on the Bonds are payable in lawful money of the United States of America upon surrender of the Bonds at the Principal Office of the Fiscal Agent. All Bonds paid by the Fiscal Agent pursuant to this Section shall be canceled by the Fiscal Agent. The Fiscal Agent shall destroy the canceled Bonds and, upon request of the City, issue a certificate of destruction of such Bonds to the City.

**Section 2.03. Redemption.**

**(A) Redemption Provisions.**

(i) **Optional Redemption.** The 2023 Bonds maturing on or after September 1, 20\_\_ are subject to optional redemption as directed by the City, from sources of funds other than prepayments of Special Taxes, prior to their stated maturity on any date on or after September 1, 20\_\_, as a whole or in part, at a redemption price (expressed as a percentage of the principal amount of the 2023 Bonds to be redeemed), as set forth below, together with accrued interest thereon to the date fixed for redemption:

<u>Redemption Dates</u>	<u>Redemption Price</u>
September 1, 20__ through August 31, 20__	103%
September 1, 20__ through August 31, 20__	102
September 1, 20__ through August 31, 20__	101
September 1, 20__ and any date thereafter	100

(ii) **Mandatory Sinking Fund Redemption.** The Term Bond maturing on September 1, 20\_\_, is subject to mandatory redemption in part by lot, from sinking fund payments made by the City from the Bond Fund, at a redemption price equal to the

principal amount thereof to be redeemed, plus accrued interest to the redemption date, without premium, in the aggregate respective principal amounts all as set forth in the following table:

Sinking Fund Redemption Date (September 1)	Sinking Fund Payments
20__	\$
20__	
20__ (maturity)	

The Term Bond maturing on September 1, 20\_\_, is subject to mandatory redemption in part by lot, from sinking fund payments made by the City from the Bond Fund, at a redemption price equal to the principal amount thereof to be redeemed, plus accrued interest to the redemption date, without premium, in the aggregate respective principal amounts all as set forth in the following table:

Sinking Fund Redemption Date (September 1)	Sinking Fund Payments
20__	\$
20__	
20__	
20__	
20__ (maturity)	

The Term Bond maturing on September 1, 20\_\_, is subject to mandatory redemption in part by lot, from sinking fund payments made by the City from the Bond Fund, at a redemption price equal to the principal amount thereof to be redeemed, plus accrued interest to the redemption date, without premium, in the aggregate respective principal amounts all as set forth in the following table:

Sinking Fund Redemption Date (September 1)	Sinking Fund Payments
20__	\$
20__	
20__	
20__	
20__ (maturity)	

The Term Bond maturing on September 1, 20\_\_, is subject to mandatory redemption in part by lot, from sinking fund payments made by the City from the Bond Fund, at a redemption price equal to the principal amount thereof to be redeemed, plus accrued interest to the redemption date, without premium, in the aggregate respective principal amounts all as set forth in the following table:

Sinking Fund Redemption Date <u>(September 1)</u>	Sinking Fund <u>Payments</u>
20__	\$
20__	
20__	
20__	
20__ (maturity)	

The Term Bond maturing on September 1, 20\_\_, is subject to mandatory redemption in part by lot, from sinking fund payments made by the City from the Bond Fund, at a redemption price equal to the principal amount thereof to be redeemed, plus accrued interest to the redemption date, without premium, in the aggregate respective principal amounts all as set forth in the following table:

Sinking Fund Redemption Date <u>(September 1)</u>	Sinking Fund <u>Payments</u>
20__	\$
20__	
20__	
20__	
20__ (maturity)	

Provided, however, if some but not all of the Term Bonds of a given maturity have been redeemed under subsection (i) above or subsection (iii) below, the total amount of all future Sinking Fund Payments relating to such maturity shall be reduced by the aggregate principal amount of Term Bonds of such maturity so redeemed, to be allocated among such Sinking Fund Payments on a pro rata basis in integral multiples of \$5,000 as determined by the City, notice of which shall be given by the City to the Fiscal Agent and the notice shall include a revised sinking fund schedule.

(iii) **Redemption from Special Tax Prepayments.** Special Tax Prepayments and any corresponding transfers from the 2023 Reserve Fund pursuant to Section 4.03(F) shall be used to redeem 2023 Bonds on the next Interest Payment Date for which notice of redemption can timely be given under Section 2.03(D), among series and maturities so as to maintain substantially the same debt service profile for the Bonds as in effect prior to such redemption and by lot within a maturity, at a redemption price (expressed as a percentage of the principal amount of the 2023 Bonds to be redeemed), as set forth below, together with accrued interest to the date fixed for redemption:

<u>Redemption Dates</u>	<u>Redemption Price</u>
Any Interest Payment Date on or before March 1, 20__	103%
September 1, 20__ and March 1, 20__	102
September 1, 20__ and March 1, 20__	101
September 1, 20__ and any Interest Payment Date thereafter	100

**(B) Notice to Fiscal Agent.** The City shall give the Fiscal Agent written notice of its intention to redeem Bonds under subsection (A)(i) and (A)(iii) not less than 45 days prior to the

applicable redemption date or such lesser number of days as shall be acceptable to the Fiscal Agent.

**(C) Purchase of Bonds in Lieu of Redemption.** In lieu of redemption under Section 2.03(A), moneys in the Bond Fund may be used and withdrawn by the Fiscal Agent for purchase of Outstanding 2023 Bonds, upon the filing with the Fiscal Agent of an Officer's Certificate requesting such purchase, at public or private sale as and when, and at such prices (including brokerage and other charges) as such Officer's Certificate may provide, but in no event may 2023 Bonds be purchased at a price in excess of the principal amount thereof, plus interest accrued to the date of purchase and any premium which would otherwise be due if such 2023 Bonds were to be redeemed in accordance with this Agreement.

**(D) Redemption Procedure by Fiscal Agent.**

(i) **Notices.** The Fiscal Agent shall cause notice of any redemption to be mailed by first class mail, postage prepaid, or posted, at least twenty (20) days but not more than sixty (60) days prior to the date fixed for redemption, to the Securities Depositories and to the respective registered Owners of any Bonds designated for redemption, at their addresses appearing on the Bond registration books in the Principal Office of the Fiscal Agent; but such mailing shall not be a condition precedent to such redemption and failure to mail or to receive any such notice, or any defect therein, shall not affect the validity of the proceedings for the redemption of such Bonds. In addition, the Fiscal Agent shall file each notice of redemption with the MSRB through its EMMA system.

(ii) **Contents of Notices.** Such notice shall state the redemption date and the redemption price and, if less than all of the then Outstanding Bonds are to be called for redemption shall state as to any Bond called in part the principal amount thereof to be redeemed, and shall require that such Bonds be then surrendered at the Principal Office of the Fiscal Agent for redemption at the said redemption price, and shall state that further interest on such Bonds will not accrue from and after the redemption date. The cost of mailing any such redemption notice and any expenses incurred by the Fiscal Agent in connection therewith shall be paid by the City.

Any redemption notice may be conditioned upon the receipt of moneys by the City sufficient to cause such redemption. The City has the right to rescind any notice of the optional redemption of Bonds by written notice to the Fiscal Agent on or prior to the date fixed for redemption. Any notice of redemption shall be cancelled and annulled if for any reason funds will not be or are not available on the date fixed for redemption for the payment in full of the Bonds then called for redemption, and such cancellation shall not constitute a default under this Agreement. The City and the Fiscal Agent have no liability to the Owners or any other party related to or arising from such rescission of redemption. The Fiscal Agent shall mail notice of such rescission of redemption in the same manner as the original notice of redemption was sent under this Section.

(iii) **Selection of Bonds for Redemption.** Whenever provision is made in this Agreement for the redemption of less than all of the Bonds of any maturity or any given portion thereof, the Fiscal Agent shall select the Bonds to be redeemed by lot in any manner which the Fiscal Agent in its sole discretion deems appropriate.

(iv) **New Bonds.** Upon surrender of Bonds redeemed in part only, the City shall execute and the Fiscal Agent shall authenticate and deliver to the registered Owner, at

the expense of the City, a new Bond or Bonds, of the same series and maturity, of authorized denominations in aggregate principal amount equal to the unredeemed portion of the Bond or Bonds of such registered Owner.

**(E) Effect of Redemption.** From and after the date fixed for redemption, if funds available for the payment of the principal of, and interest and any premium on, the Bonds so called for redemption shall have been deposited in the Bond Fund, such Bonds so called shall cease to be entitled to any benefit under this Agreement other than the right to receive payment of the redemption price, and no interest shall accrue thereon on or after the redemption date specified in the notice of redemption. All Bonds redeemed and purchased by the Fiscal Agent under this Section 2.03 shall be canceled by the Fiscal Agent. The Fiscal Agent shall destroy the canceled Bonds in accordance with the Fiscal Agent's retention policy then in effect.

**Section 2.04. Form of Bonds.** The 2023 Bonds, the Fiscal Agent's certificate of authentication and the assignment, to appear thereon, shall be substantially in the forms, respectively, set forth in Exhibit A attached hereto and by this reference incorporated herein, with necessary or appropriate variations, omissions and insertions, as permitted or required by this Agreement, the Resolution and the Act.

**Section 2.05. Execution and Authentication of Bonds.**

**(A) Execution.** The Bonds shall be executed on behalf of the City by the manual or facsimile signatures of its Mayor and its City Clerk who are in office on the date of execution of this Agreement or at any time thereafter. If any officer whose signature appears on any Bond ceases to be such officer before delivery of the Bonds to the Owner, such signature shall nevertheless be as effective as if the officer had remained in office until the delivery of the Bonds to the Owner. Any Bond may be signed and attested on behalf of the City by such persons as at the actual date of the execution of such Bond shall be the proper officers of the City although at the nominal date of such Bond any such person shall not have been such officer of the City.

**(B) Authentication.** Only such Bonds as shall bear thereon a certificate of authentication in substantially the form set forth in Exhibit A, executed and dated by the Fiscal Agent, shall be valid or obligatory for any purpose or entitled to the benefits of this Agreement, and such certificate of authentication of the Fiscal Agent shall be conclusive evidence that the Bonds registered hereunder have been duly authenticated, registered and delivered hereunder and are entitled to the benefits of this Agreement.

**Section 2.06. Transfer or Exchange of Bonds.** Any Bond may, in accordance with its terms, be transferred, upon the books required to be kept under the provisions of Section 2.07 by the person in whose name it is registered, in person or by such person's duly authorized attorney, upon surrender of such Bond for cancellation, accompanied by delivery of a duly written instrument of transfer in a form acceptable to the Fiscal Agent. Bonds may be exchanged at the Principal Office of the Fiscal Agent solely for a like aggregate principal amount of Bonds of authorized denominations and of the same maturity. The cost for any services rendered or any expenses incurred by the Fiscal Agent in connection with any such transfer or exchange shall be paid by the City. The Fiscal Agent shall collect from the Owner requesting such transfer or exchange any tax or other governmental charge required to be paid with respect to such transfer or exchange. Whenever any Bond or Bonds shall be surrendered for transfer or exchange, the City shall execute and the Fiscal Agent shall authenticate and deliver a new Bond or Bonds, for a like aggregate principal amount. No transfers or exchanges of Bonds shall be required to be made (i) fifteen days prior to the date established by the Fiscal Agent for selection of Bonds for

redemption or (ii) with respect to a Bond after such Bond has been selected for redemption; or (iii) between a Record Date and the succeeding Interest Payment Date.

**Section 2.07. Bond Register.** The Fiscal Agent will keep, or cause to be kept, at its Principal Office sufficient books for the registration and transfer of the Bonds which books shall show the series number, date, amount, rate of interest and last known owner of each Bond and shall at all times be open to inspection by the City during regular business hours upon reasonable notice; and, upon presentation for such purpose, the Fiscal Agent shall, under such reasonable regulations as it may prescribe, register or transfer or cause to be registered or transferred, on said books, the ownership of the Bonds as hereinbefore provided. The City and the Fiscal Agent will treat the Owner of any Bond whose name appears on the Bond register as the absolute Owner of such Bond for any and all purposes, and the City and the Fiscal Agent shall not be affected by any notice to the contrary. The City and the Fiscal Agent may rely on the address of the Owner as it appears in the Bond register for any and all purposes.

**Section 2.08. Temporary Bonds.** The Bonds may be initially issued in temporary form exchangeable for definitive Bonds when ready for delivery. The temporary Bonds may be printed, lithographed or typewritten, shall be of such authorized denominations as may be determined by the City, and may contain such reference to any of the provisions of this Agreement as may be appropriate. Every temporary Bond shall be executed by the City upon the same conditions and in substantially the same manner as the definitive Bonds. If the City issues temporary Bonds, it will execute and furnish definitive Bonds without delay and thereupon the temporary Bonds shall be surrendered, for cancellation, in exchange for the definitive Bonds at the Principal Office of the Fiscal Agent or at such other location as the Fiscal Agent shall designate, and the Fiscal Agent shall authenticate and deliver in exchange for such temporary Bonds an equal aggregate principal amount of definitive Bonds of authorized denominations. Until so exchanged, the temporary Bonds shall be entitled to the same benefits under this Agreement as definitive Bonds authenticated and delivered hereunder.

**Section 2.09. Bonds Mutilated, Lost, Destroyed or Stolen.**

**(A) Mutilated.** If any Bond shall become mutilated, at the expense of the Owner of such Bond, the City shall execute and the Fiscal Agent shall authenticate and deliver a replacement Bond of like tenor and principal amount in exchange and substitution for the Bond so mutilated, but only upon surrender to the Fiscal Agent of the Bond so mutilated. Every mutilated Bond so surrendered to the Fiscal Agent shall be canceled by it and destroyed by the Fiscal Agent, in accordance with the Fiscal Agent's retention policy then in effect.

**(B) Destroyed or Stolen.** If any Bond shall be lost, destroyed or stolen, the City shall execute and the Fiscal Agent shall authenticate and deliver a replacement Bond of like tenor and principal amount in lieu of and in substitution for the Bond so lost, destroyed or stolen, at the expense of the Owner, but only following provision by the Owner to the Fiscal Agent of indemnity for the City and the Fiscal Agent satisfactory to the Fiscal Agent and the City. The City may require payment of a sum not exceeding the actual cost of preparing each a replacement Bond delivered under this Section and the City and the Fiscal Agent may require payment of the expenses which may be incurred by the City and the Fiscal Agent for the preparation, execution, authentication and delivery thereof. Any Bond delivered under the provisions of this Section in lieu of any Bond alleged to be lost, destroyed or stolen shall constitute an original additional contractual obligation on the part of the City whether or not the Bond so alleged to be lost, destroyed or stolen is at any time enforceable by anyone, and shall be equally and proportionately entitled to the benefits of this Agreement with all other Bonds issued under this Agreement.

**(C) Additional Stock.** If the Fiscal Agent has an insufficient stock of unauthenticated printed Bonds for such purpose, it shall communicate with the Finance Director with respect to the printing of an additional stock of Bonds, in such quantities and as otherwise approved in writing by the Finance Director.

**Section 2.10. Book-Entry Only System.** DTC shall act as the initial Depository for the Bonds. One Bond for each maturity of the Bonds shall be initially executed, authenticated, and delivered as set forth herein with a separate fully registered certificate (in print or typewritten form). Upon initial execution, authentication, and delivery, the ownership of the Bonds shall be registered in the Bond register kept by the Fiscal Agent for the Bonds in the name of Cede & Co., as nominee of DTC or such nominee as DTC shall appoint in writing.

The Authorized Officers of the City and the Fiscal Agent are hereby authorized to take any and all actions as may be necessary and not inconsistent with this Agreement to qualify the Bonds for the Depository's book-entry system, including the execution of the Depository's required representation letter.

With respect to Bonds registered in the Bond register in the name of Cede & Co., as nominee of DTC, neither the City nor the Agent shall have any responsibility or obligation to any broker-dealer, bank, or other financial institution for which DTC holds Bonds as Depository from time to time (the "DTC Participants") or to any person for which a DTC Participant acquires an interest in the Bonds (the "Beneficial Owners"). Without limiting the immediately preceding sentence, neither the City nor the Fiscal Agent shall have any responsibility or obligation with respect to (i) the accuracy of the records of DTC, Cede & Co., or any DTC Participant with respect to any ownership interest in the Bonds, (ii) the delivery to any DTC Participant, any Beneficial Owner, or any other person, other than DTC, of any notice with respect to the Bonds, including any Bonds to be redeemed in the event the City elects to redeem the Bonds, in part, (iii) the selection by the Depository of the beneficial interests in the Bonds to be redeemed in the event the City elects to redeem the Bonds in part, (iv) the payments to any DTC Participant, any Beneficial Owner, or any person, other than DTC, of any amount with respect to the principal of or interest or premium on the Bonds, or (v) any consent given or other action taken by the Depository as Owner of the Bonds.

Except as set forth above, the City and the Fiscal Agent may treat as and deem DTC to be the absolute Owner of each Bond, for which DTC is acting as Depository for the purpose of payment of the principal of and premium and interest on such Bonds, for the purpose of giving notices of redemption and other matters with respect to such Bonds, for the purpose of registering transfers with respect to such Bonds, and for all purposes whatsoever. The Fiscal Agent on behalf of the City shall pay all principal of and premium and interest on the Bonds only to or upon the order of the Owners as shown on the Bond register, and all such payments shall be valid and effective to fully satisfy and discharge all obligations with respect to the principal of and premium and interest on the Bonds to the extent of the sums or sums so paid.

No person other than an Owner, as shown on the Bond register, shall receive a physical Bond. Upon delivery by DTC to the City and the Fiscal Agent of written notice to the effect that DTC has determined to substitute a new nominee in place of Cede & Co., and subject to the transfer provisions in Section 2.06 hereof, references to "Cede & Co." in this Section 2.10 shall refer to such new nominee of DTC.

DTC may determine to discontinue providing its services with respect to the Bonds at any time by giving written notice to the City and to the Fiscal Agent during any time that the Bonds are Outstanding, and discharging its responsibilities with respect thereto under applicable law. The City may terminate the services of DTC with respect to the Bonds if it determines that DTC is unable to discharge its responsibilities with respect to the Bonds or that continuation of the system of book-entry transfer through DTC is not in the best interest of the Beneficial Owners, and the City shall mail notice of such termination to the Fiscal Agent.

Upon termination of the services of DTC as provided in the previous paragraph, and if no substitute Depository willing to undertake the functions hereunder can be found which is willing to undertake such functions upon reasonable or customary terms, or if the City determines that it is in the best interest of the Beneficial Owners of the Bonds that they be able to obtain certified Bonds, the Bonds shall no longer be restricted to being registered in the Bond register of the Fiscal Agent in the name of Cede & Co., as nominee of DTC, but may be registered in whatever name or names the Owners shall designate at that time, in accordance with Section 2.06.

To the extent that the Beneficial Owners are designated as the transferee by the Owners, in accordance with Section 2.06, the Bonds will be delivered to such Beneficial Owners.

## ARTICLE III

### ISSUANCE OF BONDS

**Section 3.01. Issuance and Delivery of 2023 Bonds.** At any time after the execution of this Agreement, the City may issue the 2023 Bonds for the CFD with respect to Improvement Area No. 2 in the aggregate principal amount set forth in Section 2.01 and deliver the 2023 Bonds to the Fiscal Agent for authentication and delivery to the Original Purchaser. The Authorized Officers of the City are hereby authorized and directed to execute and deliver any and all documents and instruments necessary to cause the issuance of the 2023 Bonds in accordance with the provisions of the Act, the Resolution and this Agreement, to authorize the payment of Costs of Issuance and costs of the Project by the Fiscal Agent from the proceeds of the 2023 Bonds and to do and cause to be done any and all acts and things necessary or convenient for the timely delivery of the 2023 Bonds to the Original Purchaser. The Fiscal Agent is hereby authorized and directed to authenticate the 2023 Bonds and deliver them to the Original Purchaser, upon receipt of the purchase price for the 2023 Bonds.

**Section 3.02. Pledge of Special Tax Revenues.** The Bonds shall be secured by a first pledge (which pledge shall be effected in the manner and to the extent herein provided) of all of the Special Tax Revenues and all moneys deposited in the Bond Fund (including the Special Tax Prepayments Account), and, until disbursed as provided herein, in the Special Tax Fund. The Special Tax Revenues and all moneys deposited into such funds (except as otherwise provided herein) are hereby dedicated to the payment of the principal of, and interest and any premium on, the Bonds as provided herein and in the Act until all of the Bonds have been paid and retired or until moneys or Federal Securities have been set aside irrevocably for that purpose under Section 9.03.

The 2023 Bonds and all 2023 Related Parity Bonds shall be secured by a first pledge (which pledge shall be effected in the manner and to the extent herein provided) of all moneys deposited in the 2023 Reserve Fund. The moneys in the 2023 Reserve Fund (except as otherwise provided herein) are hereby dedicated to the payment of the principal of, and interest and any premium on, the 2023 Bonds and all 2023 Related Parity Bonds as provided herein and in the Act until all of the 2023 Bonds and all 2023 Related Parity Bonds have been paid and retired or until moneys or Federal Securities have been set aside irrevocably for that purpose under Section 9.03.

Amounts in the Improvement Fund (and the accounts therein), the Administrative Expense Fund and the Costs of Issuance Fund are not pledged to the repayment of the Bonds. The Project is not pledged to the repayment of the Bonds, nor are the proceeds of any condemnation or insurance award received by the City with respect to the Project.

**Section 3.03. Limited Obligation.** All obligations of the City under this Agreement and the Bonds shall not be general obligations of the City, but shall be limited obligations, payable solely from the Special Tax Revenues and the funds pledged therefor hereunder. Neither the faith and credit nor the taxing power of the City (except to the limited extent set forth herein) or of the State of California or any political subdivision thereof is pledged to the payment of the Bonds.

**Section 3.04. No Acceleration.** The principal of the Bonds shall not be subject to acceleration hereunder. Nothing in this Section shall in any way prohibit the redemption of Bonds

under Section 2.03, or the defeasance of the Bonds and discharge of this Agreement under Section 9.03.

**Section 3.05. Validity of Bonds.** The validity of the authorization and issuance of the Bonds shall not be dependent upon the completion of the acquisition of the Project or upon the performance by any person of his obligation with respect to the Project.

**Section 3.06. Parity Bonds.** In addition to the 2023 Bonds, the City may issue Refunding Bonds as Parity Bonds in such principal amount as shall be determined by the City, under a Supplemental Agreement entered into by the City and the Fiscal Agent. Any such Parity Bonds shall constitute Bonds hereunder and shall be secured by a lien on the Special Tax Revenues and funds pledged for the payment of the Bonds hereunder on a parity with all other Bonds Outstanding hereunder. The City may issue such Parity Bonds subject to the following specific conditions precedent:

**(A) Compliance.** Following issuance of the Parity Bonds, the City shall be in compliance with all covenants set forth in this Agreement and all Supplemental Agreements, and issuance of the Parity Bonds shall not cause the City to exceed the bonded indebtedness limit of Improvement Area No. 2.

**(B) Same Payment Dates.** The Supplemental Agreement providing for the issuance of such Parity Bonds shall provide that interest thereon shall be payable on the Interest Payment Dates, and principal thereof shall be payable on September 1 (provided that there shall be no requirement that any Parity Bonds pay interest on a current basis).

**(C) Debt Service Reserve Fund.** The Supplemental Agreement providing for issuance of the Parity Bonds shall provide for either of the following:

(i) a deposit to the 2023 Reserve Fund in an amount necessary such that the amount deposited therein shall equal the 2023 Reserve Requirement following issuance of the Parity Bonds or

(ii) a deposit to a reserve account for the Parity Bonds (and such other series of Parity Bonds identified by the City) so that the amount therein shall equal the Parity Reserve Requirement following the issuance of the Parity Bonds, as long as such Supplemental Agreement expressly declares that the Owners of such Parity Bonds will have no interest in or claim to the 2023 Reserve Fund and that the Owners of the Bonds covered by the 2023 Reserve Fund will have no interest in or claim to such other reserve account.

**(D) Certificates.** The City shall deliver to the Fiscal Agent an Officer's Certificate certifying that the conditions precedent to the issuance of such Parity Bonds set forth in subsections (A), (B) and (C) of this Section 3.06 have been satisfied.

Nothing in this Section 3.06 shall prohibit the City from issuing any other bonds or otherwise incurring debt secured by a pledge of the Special Tax Revenues subordinate to the pledge thereof under Section 3.02 of this Agreement.

## ARTICLE IV

### PROCEEDS, FUNDS AND ACCOUNTS

**Section 4.01. Application of 2023 Bond Proceeds.** The Proceeds of the 2023 Bonds received from the Original Purchaser in the amount of \$\_\_\_\_\_ (which is equal to the initial principal amount of the 2023 Bonds, *plus* an original issue premium of \$\_\_\_\_\_, *less* an underwriter's discount in the amount of \$\_\_\_\_\_) shall be paid to the Fiscal Agent, which shall deposit the Proceeds on the Closing Date as follows:

- (i) \$\_\_\_\_\_ into the Costs of Issuance Fund;
- (ii) \$\_\_\_\_\_ into the 2023 Reserve Fund equaling the initial 2023 Reserve Requirement;
- (iii) \$\_\_\_\_\_ into the Bond Proceeds Account of the Improvement Fund; and
- (iv) \$\_\_\_\_\_ into the Administrative Expense Fund

The Fiscal Agent may, in its discretion, establish a temporary fund or account to facilitate the foregoing deposits.

#### **Section 4.02. Costs of Issuance Fund.**

**(A) Establishment of Costs of Issuance Fund.** The Costs of Issuance Fund is hereby established as a separate fund to be held by the Fiscal Agent, to the credit of which a deposit shall be made as required by Section 4.01. Moneys in the Costs of Issuance Fund shall be held by the Fiscal Agent for the benefit of the City and shall be disbursed as provided in subsection (B) of this Section for the payment or reimbursement of Costs of Issuance.

**(B) Disbursement.** Amounts in the Costs of Issuance Fund shall be disbursed from time to time to pay Costs of Issuance, as set forth in a requisition substantially in the form of Exhibit C hereto, executed by the Finance Director, containing respective amounts to be paid to the designated payees and delivered to the Fiscal Agent. Each such requisition shall be sufficient evidence to the Fiscal Agent of the facts stated therein and the Fiscal Agent shall have no duty to confirm the accuracy of such facts.

**(C) Investment.** Moneys in the Costs of Issuance Fund shall be invested and deposited by the Fiscal Agent under Section 6.01. Interest earnings and profits resulting from such investment shall be retained by the Fiscal Agent in the Costs of Issuance Fund to be used for the purposes of such fund.

**(D) Closing of Fund.** The Fiscal Agent shall maintain the Costs of Issuance Fund for a period of 90 days from the Closing Date and then the Fiscal Agent shall transfer any moneys remaining therein, including any investment

earnings thereon, to the Bond Proceeds Account of the Improvement Fund and used for the purposes thereof.

**Section 4.03. 2023 Reserve Fund.**

**(A) Establishment of Fund.** The 2023 Reserve Fund is hereby established as a separate fund to be held by the Fiscal Agent to the credit of which a deposit shall be made as required by Section 4.01, which deposit, as of the Closing Date, is equal to the initial 2023 Reserve Requirement with respect to the 2023 Bonds, and deposits shall be made as provided in Sections 3.06(C) and 4.05(A) and (B). Moneys in the 2023 Reserve Fund shall be held by the Fiscal Agent for the benefit of the Owners of the 2023 Bonds and any 2023 Related Parity Bonds as a reserve for the payment of the principal of, and interest and any premium on, the 2023 Bonds and any 2023 Related Parity Bonds and shall be subject to a lien in favor of the Owners of the 2023 Bonds and any 2023 Related Parity Bonds.

**(B) Use of 2023 Reserve Fund.** Except as otherwise provided in this Section, all amounts deposited in the 2023 Reserve Fund shall be used and withdrawn by the Fiscal Agent solely for the purpose of making transfers to the Bond Fund in the event of any deficiency at any time in the Bond Fund of the amount then required for payment of the principal of, and interest and any premium on, the 2023 Bonds and any 2023 Related Parity Bonds or, in accordance with the provisions of this Section, for the purpose of redeeming 2023 Bonds and any 2023 Related Parity Bonds from the Bond Fund. Whenever a transfer is made from the 2023 Reserve Fund to the Bond Fund due to a deficiency in the Bond Fund for payment of the principal of, and interest and any premium on, the 2023 Bonds and any 2023 Related Parity Bonds, the Fiscal Agent shall provide written notice thereof to the Finance Director, specifying the amount withdrawn.

**(C) Transfer of Excess of 2023 Reserve Requirement.** Whenever, on or before any Interest Payment Date, or on any other date at the request of the Finance Director, the amount in the 2023 Reserve Fund exceeds the 2023 Reserve Requirement, the Fiscal Agent shall transfer an amount equal to the excess from the 2023 Reserve Fund to the Bond Fund, to be used to pay interest on the 2023 Bonds and any 2023 Related Parity Bonds on the next Interest Payment Date.

**(D) Transfer for Rebate Purposes.** Amounts in the 2023 Reserve Fund shall be withdrawn for purposes of making payment to the federal government to comply with Section 5.11, upon receipt by the Fiscal Agent of an Officer's Certificate specifying the amount to be withdrawn and to the effect that such amount is needed for rebate purposes; *provided, however*, that no amounts in the 2023 Reserve Fund shall be used for rebate unless the amount in the 2023 Reserve Fund following such withdrawal equals the 2023 Reserve Requirement.

**(E) Transfer When Balance Exceeds Outstanding Bonds.** Whenever the balance in the 2023 Reserve Fund exceeds the amount required to redeem or pay the Outstanding 2023 Bonds and all Outstanding 2023 Related Parity Bonds, including interest accrued to the date of payment or redemption and premium, if any, due upon redemption, the Fiscal Agent shall, upon the written

request of the Finance Director, transfer any cash or Permitted Investments in the 2023 Reserve Fund to the Bond Fund to be applied, on the redemption date to the payment and redemption, in accordance with Section 4.04 or 2.03 and the provisions of the Supplemental Agreement related to the 2023 Related Parity Bonds, as applicable, of all of the Outstanding 2023 Bonds and Outstanding 2023 Related Parity Bonds. In the event that the amount so transferred from the 2023 Reserve Fund to the Bond Fund exceeds the amount required to pay and redeem the Outstanding 2023 Bonds and Outstanding 2023 Related Parity Bonds, the balance in the 2023 Reserve Fund shall be transferred to the Finance Director to be used by the City for any lawful purpose.

Notwithstanding the provisions of the first paragraph of this Section 4.03(E), no amounts shall be transferred from the 2023 Reserve Fund under this Section 4.03(E) until after: (i) the calculation of any amounts due to the federal government under Section 5.11 and withdrawal of any such amount under Section 4.03(D) for purposes of making such payment to the federal government; and (ii) payment of any fees and expenses due to the Fiscal Agent.

**(F) Transfer Upon Special Tax Prepayment.** Whenever Special Taxes are prepaid and 2023 Bonds or any 2023 Related Parity Bonds are to be redeemed with the proceeds of such prepayment pursuant to Section 2.03(A)(iii) or a Supplemental Agreement related to any 2023 Related Parity Bonds, any resulting reduction in the 2023 Reserve Requirement shall be transferred on the Business Day prior to the redemption date by the Fiscal Agent to the Bond Fund to be applied to the redemption of the 2023 Bonds pursuant to Section 2.03(A)(iii) or a Supplemental Agreement related to any 2023 Related Parity Bonds. The Finance Director shall deliver to the Fiscal Agent an Officer's Certificate specifying any amount to be so transferred, and the Fiscal Agent may rely on any such Officer's Certificate.

**(G) Investment.** Moneys in the 2023 Reserve Fund shall be invested by the Fiscal Agent under Section 6.01.

**(H) Qualified Reserve Account Credit Instruments.** The City shall have the right at any time to direct the Fiscal Agent to release funds from the 2023 Reserve Fund, in whole or in part, by tendering to the Fiscal Agent: (i) a Qualified Reserve Account Credit Instrument, and (ii) an opinion of Bond Counsel stating that neither the release of such funds nor the acceptance of such Qualified Reserve Account Credit Instrument will cause interest on the 2023 Bonds or any 2023 Related Parity Bonds the interest on which is excluded from gross income of the owners thereof for federal income tax purposes to become includable in gross income for purposes of federal income taxation. Upon tender of such items to the Fiscal Agent, and upon delivery by the City to the Fiscal Agent of a written calculation of the amount permitted to be released from the 2023 Reserve Fund (upon which calculation the Fiscal Agent may conclusively rely), the Fiscal Agent shall transfer such funds from the 2023 Reserve Fund to the Bond Proceeds Account of the Improvement Fund to be used for the purposes thereof. The Fiscal Agent shall comply with all documentation relating to a Qualified Reserve Account Credit Instrument as shall be required to maintain such Qualified Reserve Account Credit Instrument in full force and effect and as shall be required to receive payments thereunder in the event and to the extent required to make any payment

when and as required under this Section. Upon the scheduled expiration of any Qualified Reserve Account Credit Instrument, the City shall either (i) replace such Qualified Reserve Account Credit Instrument with a new Qualified Reserve Account Credit Instrument, or (ii) deposit or cause to be deposited with the Fiscal Agent an amount of funds equal to the 2023 Reserve Requirement, to be derived from the first available Special Tax Revenues. If the 2023 Reserve Requirement is being maintained partially in cash and partially with a Qualified Reserve Account Credit Instrument, the cash shall be first used to meet any deficiency which may exist from time to time in the Bond Fund with respect to the 2023 Bonds and any Related Parity Bonds. If the 2023 Reserve Requirement is being maintained with two or more Qualified Reserve Account Credit Instruments, any draw to meet a deficiency which may exist from time to time in the Bond Fund with respect to the 2023 Bonds and any 2023 Related Parity Bonds shall be pro-rata with respect to each such instrument.

In the event that a Qualified Reserve Account Credit Instrument is available to be drawn upon for only one or more particular series of Bonds, a separate subaccount in the 2023 Reserve Fund may be established for such series, and the calculation of the 2023 Reserve Requirement with respect to any Bonds shall exclude the debt service on such issue of Bonds.

The City will have no obligation to replace a Qualified Reserve Account Credit Instrument or to fund the 2023 Reserve Fund with cash if, at any time that the 2023 Bonds are Outstanding, the Qualified Reserve Account Credit Instrument (or its provider) is downgraded or the provider becomes insolvent, if there is an unscheduled termination of the Qualified Reserve Account or if for any reason insufficient amounts are available to be drawn upon under the Qualified Reserve Account Credit Instrument; provided, however, that the City shall reimburse the provider, in accordance with the terms of the Qualified Reserve Account Credit Instrument, for any draws made thereon.

The City and the Fiscal Agent shall comply with the terms of the Qualified Reserve Account Credit Instrument as shall be required to receive payments thereunder in the event and to the extent required under this Section.

#### **Section 4.04. Bond Fund.**

**(A) Establishment of Bond Fund.** The Bond Fund is hereby established as a separate fund to be held by the Fiscal Agent to the credit of which deposits shall be made as required by Section 4.01, Section 4.07 and Section 4.03 and as otherwise set forth in this Agreement. Moneys in the Bond Fund shall be held by the Fiscal Agent for the benefit of the City and the Owners of the Bonds, and shall be disbursed for the payment of the principal of, and interest and any premium on, the Bonds as provided below.

There is also hereby created in the Bond Fund a separate account to be held by the Fiscal Agent, designated the "Special Tax Prepayments Account," to the credit of which deposits shall be made as provided in clause (iii) of the second paragraph of Section 4.05(A).

**(B) Disbursements.** At least 10 Business Days before each Interest Payment Date, the Fiscal Agent shall notify the Finance Director in writing as to the principal and premium, if any, and interest due on the Bonds on the next Interest Payment Date (whether as a result of scheduled principal of and interest on the Bonds, optional redemption of the Bonds or a mandatory sinking fund redemption). On each Interest Payment Date, the Fiscal Agent shall withdraw from the Bond Fund and pay to the Owners of the Bonds the principal of, and interest and any premium, due and payable on such Interest Payment Date on the Bonds.

At least 5 Business Days prior to each Interest Payment Date, the Fiscal Agent shall determine if the amounts then on deposit in the Bond Fund are sufficient to pay the Debt Service due on the Bonds on the next Interest Payment Date. In the event that amounts in the Bond Fund are insufficient for such purpose, the Fiscal Agent promptly shall notify the Finance Director by telephone (and confirm in writing) of the amount of the insufficiency.

In the event that amounts in the Bond Fund are insufficient for the purpose set forth in the preceding paragraph with respect to any Interest Payment Date, the Fiscal Agent shall do the following:

(i) Withdraw from the 2023 Reserve Fund, in accordance with the provisions of Section 4.03, to the extent of any funds or Permitted Investments therein, amounts to cover the amount of such Bond Fund insufficiency related to the 2023 Bonds and any 2023 Related Parity Bonds. Amounts so withdrawn from the 2023 Reserve Fund shall be deposited in the Bond Fund.

(ii) Withdraw from the reserve funds, if any, established under a Supplemental Agreement related to Parity Bonds that are not 2023 Related Parity Bonds, to the extent of any funds or Permitted Investments therein, amounts to cover the amount of such Bond Fund insufficiency related to such Parity Bonds. Amounts so withdrawn from any such reserve fund shall be deposited in the Bond Fund.

If, after the foregoing transfers, there are insufficient funds in the Bond Fund to make the payments provided for in the second sentence of the first paragraph of this Section 4.04(B), the Fiscal Agent shall apply the available funds first to the payment of interest on the Bonds, then to the payment of principal due on the Bonds other than by reason of sinking payments, if any, and then to payment of principal due on the Bonds by reason of sinking payments. The available funds in the Bond Fund shall be allocated among the series of Outstanding Bonds based on the principal amount of the Outstanding Bonds without regard to the availability of moneys from the 2023 Reserve Fund or another debt service reserve account.

**(C) Disbursements from the Special Tax Prepayments Account.** Moneys in the Special Tax Prepayments Account shall be transferred by the Fiscal Agent to the Bond Fund on the next date for which notice of redemption of Bonds can timely be given under Section 2.03(A)(iii), and notice to the Fiscal Agent can timely be given under Section 2.03(B), and shall be used (together with any

amounts transferred pursuant to Section 4.03(F)) to redeem Bonds on the redemption date selected in accordance with Section 2.03.

**(D) Investment.** Moneys in the Bond Fund and the Special Tax Prepayments Account shall be invested under Section 6.01. Interest earnings and profits resulting from such investment shall be retained in the Bond Fund.

**(E) Deficiency.** If at any time it appears to the Fiscal Agent that there is a danger of deficiency in the Bond Fund and that the Fiscal Agent may be unable to pay Debt Service on the Bonds in a timely manner, the Fiscal Agent shall report to the Finance Director such fact. The City covenants to increase the levy of the Special Taxes in the next Fiscal Year (subject to the maximum amount authorized by the Resolution of Formation) in accordance with the procedures set forth in the Act for the purpose of curing Bond Fund deficiencies.

**(F) Excess.** Any excess moneys remaining in the Bond Fund following the payment of Debt Service on the Bonds on any September 1, shall be transferred to the Special Tax Fund.

#### **Section 4.05. Special Tax Fund.**

**(A) Establishment of Special Tax Fund.** The Special Tax Fund is hereby established as a separate fund to be held by the Fiscal Agent, to the credit of which the Fiscal Agent shall deposit amounts received from or on behalf of the City consisting of Special Tax Revenues and amounts transferred from the Administrative Expense Fund and the Bond Fund. The City shall promptly remit any Special Tax Revenues received by it to the Fiscal Agent for deposit by the Fiscal Agent to the Special Tax Fund.

Notwithstanding the foregoing,

(i) Special Tax Revenues in an amount not to exceed the amount included in the Special Tax levy for such Fiscal Year for Administrative Expenses shall be separately identified by the Finance Director and shall be deposited by the Fiscal Agent in the Administrative Expense Fund;

(ii) any Special Tax Revenues constituting the collection of delinquencies in payment of Special Taxes shall be separately identified by the Finance Director and shall be disposed of by the Fiscal Agent first, for transfer to the Bond Fund to pay any past due Debt Service on the Bonds; second, without preference or priority, for transfer to the 2023 Reserve Fund to the extent needed to increase the amount then on deposit in the 2023 Reserve Fund up to the then 2023 Reserve Requirement and for transfer to the reserve account for any Parity Bonds that are not 2023 Related Parity Bonds to the extent needed to increase the amount then on deposit therein to the required level; and third, to be held in the Special Tax Fund for use as described in Section 4.05(B) below; and

(iii) any proceeds of Special Tax Prepayments shall be separately identified by the Finance Director and shall be deposited by the Fiscal Agent as follows (as directed in writing by the Finance Director): (a) that

portion of any Special Tax Prepayment constituting a prepayment of construction costs (which otherwise could have been included in the proceeds of Parity Bonds) shall be deposited by the Fiscal Agent to the Bond Proceeds Account of the Improvement Fund and (b) the remaining Special Tax Prepayment shall be deposited by the Fiscal Agent in the Special Tax Prepayments Account established pursuant to Section 4.04(A).

**(B) Disbursements.** At least 7 Business Days prior to each Interest Payment Date, the Fiscal Agent shall withdraw from the Special Tax Fund and transfer the following amounts in the following order of priority:

(i) to the Bond Fund an amount, taking into account any amounts then on deposit in the Bond Fund and any expected transfers from the Improvement Fund, the 2023 Reserve Fund, any reserve account for Parity Bonds that are not 2023 Related Parity Bonds, any capitalized interest account for Parity Bonds, and the Special Tax Prepayments Account to the Bond Fund such that the amount in the Bond Fund equals the principal (including any sinking payment), premium, if any, and interest due on the Bonds on such Interest Payment Date and any past due principal or interest on the Bonds not theretofore paid from a transfer described in subparagraph (ii) of the second paragraph of Section 4.05(A),

(ii) without preference or priority (a) to the 2023 Reserve Fund an amount, taking into account amounts then on deposit in the 2023 Reserve Fund, such that the amount in the 2023 Reserve Fund is equal to the 2023 Reserve Requirement, and (b) to the reserve account for any Parity Bonds that are not 2023 Related Parity Bonds, taking into account amounts then on deposit in the such reserve account, such that the amount in such reserve account is equal to the amount required to be on deposit therein (and in the event that amounts in the Special Tax Fund are not sufficient for the purposes of this paragraph, such amounts shall be applied to the 2023 Reserve Fund and any other reserve accounts ratably based on the then Outstanding principal amount of the Bonds), and

(iii) (A) on each October 1, beginning on October 1, 2024, and continuing through the Remainder Taxes Period, all of the moneys remaining in the Special Tax Fund shall be transferred to the Remainder Taxes Account and (B) on each subsequent October 1 after the end of the Remainder Taxes Period, all or a portion of the moneys remaining in the Special Tax Fund shall be transferred to the Remainder Taxes Account as directed by the Finance Director.

Within 15 days after the end of each Bond Year after the Remainder Taxes Account is closed pursuant to Section 4.07, and after the foregoing transfers have been made, the Fiscal Agent shall transfer all amounts remaining on deposit in the Special Tax Fund for any lawful purpose, as directed by the City in an Officer's Certificate.

**(C) Investment.** Moneys in the Special Tax Fund shall be invested and deposited by the Fiscal Agent under Section 6.01. Interest earnings and profits

resulting from such investment and deposit shall be retained in the Special Tax Fund to be used for the purposes thereof.

**Section 4.06. Administrative Expense Fund.**

**(A) Establishment of Administrative Expense Fund.** The Administrative Expense Fund is hereby established as a separate fund to be held by the Fiscal Agent, to the credit of which deposits shall be made as required by Section 4.01 and Section 4.05(A). Moneys in the Administrative Expense Fund shall be held by the Fiscal Agent for the benefit of the City, and shall be disbursed as provided below.

**(B) Disbursement.** Amounts in the Administrative Expense Fund shall be withdrawn by the Fiscal Agent and paid to the City or its order upon receipt by the Fiscal Agent of an Officer's Certificate, in substantially the form of Exhibit D hereto, stating the amount to be withdrawn, that such amount is to be used to pay an Administrative Expense or a Cost of Issuance and the nature of such Administrative Expense or such Cost of Issuance.

Annually, on the last day of each Fiscal Year, the Fiscal Agent shall withdraw from the Administrative Expense Fund and transfer to the Special Tax Fund any amount in excess of that which is needed to pay any Administrative Expenses incurred but not yet paid, and which are not otherwise encumbered, as identified by the Finance Director in an Officer's Certificate.

Proceeds of the 2023 Bonds deposited into the Administrative Expense Fund shall be spent before any other moneys in the Administrative Expense Fund.

**(C) Investment.** Moneys in the Administrative Expense Fund shall be invested by the Fiscal Agent under Section 6.01. Interest earnings and profits resulting from such investment shall be retained by the Fiscal Agent in the Administrative Expense Fund to be used for the purposes of such fund.

**Section 4.07. Improvement Fund.**

**(A) Establishment of Improvement Fund.** The Improvement Fund is hereby established as a separate fund to be held by the Fiscal Agent and to the credit of which fund deposits shall be made as required by Sections 4.01, 4.02(D) and 4.05(A). The Remainder Taxes Account and the Bond Proceeds Account are hereby established as separate accounts within the Improvement Fund to be held by the Fiscal Agent.

Moneys in the Improvement Fund shall be disbursed, except as otherwise provided in subsections (B) and (D) of this Section, for the payment or reimbursement of costs of the Project.

**(B) Procedure for Disbursement.** Disbursements from the Improvement Fund shall be made by the Fiscal Agent upon receipt of an Officer's Certificate substantially in the form of Exhibit B attached hereto which shall:

(i) set forth the amount required to be disbursed, the purpose for which the disbursement is to be made (which shall be for payment of a Project cost or to reimburse expenditures of the City or any other party for Project costs previously paid), and the person to which the disbursement is to be paid; and

(ii) certify that no portion of the amount then being requested to be disbursed was set forth in any Officers Certificate previously filed requesting disbursement.

Each such requisition shall be sufficient evidence to the Fiscal Agent of the facts stated therein and the Fiscal Agent shall have no duty to confirm the accuracy of such facts.

Disbursements for the payment or reimbursement of costs of the Project shall be made from the Bond Proceeds Account and the Remainder Taxes Account in the following order:

First: payments or reimbursements shall be made from the Bond Proceeds Account so long as there are moneys available therein and such costs can be paid from Bond proceeds without violating the covenants set forth in Sections 5.09-5.14 and

Second: payments or reimbursements shall be made from the Remainder Taxes Account (1) even if Bond proceeds remain in the Bond Proceeds Account, if such payment or reimbursement would violate the covenants set forth in Sections 5.09-5.14 and (2) when no Bond proceeds remain in the Bond Proceeds Account.

At the direction of the Finance Director, and so long as such amounts have not been previously approved for payment of a Project cost, the Fiscal Agent shall transfer amounts from the Remainder Taxes Account to the Bond Fund to pay Debt Service on the Bonds, the Administrative Expense Fund to pay Administrative Expenses, the 2023 Reserve Fund to increase the amount therein to the 2023 Reserve Requirement, and the reserve account for Parity Bonds that are not 2023 Related Parity Bonds that is held by the Fiscal Agent to increase the amount therein to the Parity Reserve Requirement.

Notwithstanding the foregoing, and except as provided in the final paragraph of this Section 4.07(B), the Set-Aside Amount may be disbursed from the Bond Proceeds Account upon receipt of an Officer's Certificate that includes a representation that either:

(1) (a) the Phase 1B City Park has been constructed by the Developer, (b) the Phase 1B City Park has been inspected by the City, and (c) the City has determined that the Phase 1B City Park has been constructed in accordance with approved plans and specifications and all applicable City standards (other than any items identified by the City that need to be addressed before the Phase 1B City Park can be deemed complete by the City, and which the City and the Developer estimate to cost no more than \$100,000 in the aggregate), or

(2) the City has determined that each parcel of Taxable Property (as defined in the Rate and Method) in Improvement Area No. 2 has a Value that is at least three (3) times the sum of: (a) the allocable principal amount of the Bonds then Outstanding, plus (b) the

aggregate principal amount of any fixed assessment liens on the parcel, plus (c) the allocable principal amount of any and all Other District Bonds that are payable at least in part from special taxes levied on such parcel.

Upon satisfaction of the condition set forth in clauses (1) or (2) of the preceding paragraph, the City may apply the Set-Aside Amount (including any accrued interest earnings thereon, if any) on deposit in the Bond Proceeds Account for (i) the costs of Facilities described in the Certificate Regarding Use of Proceeds for the 2023 Bonds or (ii) such other costs of Facilities with respect to which the City has received an opinion of Bond Counsel to the effect that such application of the Set-Aside Amount (including any accrued interest earnings thereon, if any) for such other costs of Facilities, in and of itself, will not adversely impact the exclusion of interest on the 2023 Bonds from gross income of the Owners of the 2023 Bonds for federal income tax purposes, and for which the City has determined such application is consistent with the requirements of the Acquisition Agreement.

For purposes of clause (2) of the second preceding paragraph, “Value” means the market value, as of the date of the appraisal described below and/or the date of the most recent County real property tax roll, as applicable, and, with respect to Undeveloped Property (as defined in the Rate and Method) only, not delinquent in the payment of any Special Taxes then due and owing, including with respect to such parcels the value of the then existing improvements and any facilities to be constructed or acquired with any amounts then on deposit in the Improvement Fund, as determined with respect to any parcel by reference to (i) an appraisal performed within ninety (90) days of the date of the Officer’s Certificate or (ii) in the alternative, the assessed value of the parcel and improvements thereon described in clause (i) as shown on the then current County real property tax roll available to the Finance Director. It is expressly acknowledged that, in determining the Value, the City may rely on an appraisal to determine the value of some or all of the parcels and/or the most recent County real property tax roll as to the value of some or all of the parcels. Neither the City nor the Finance Director shall be liable to the Owners or any other person or entity in respect of any appraisal provided for purposes of this definition or by reason of any exercise of discretion made by any Appraiser pursuant to this definition.

If the condition set forth in clauses (1) or (2) of the third preceding paragraph have not been satisfied by June 1, 2026, then on such date (or as soon thereafter as possible) the City shall direct the Fiscal Agent to transfer the Set-Aside Amount (including any accrued interest earnings thereon, if any) on deposit in the Bond Proceeds Account to the Bond Fund and the Fiscal Agent shall use such proceeds to redeem 2023 Bonds on the first optional redemption date or to pay scheduled debt service on the 2023 Bonds, as directed by the City. This mandatory transfer applies only to the Set-Aside Amount (and accrued interest) and only if the conditions set forth in clauses (1) or (2) of the third preceding paragraph have not been satisfied.

**(C) Investment.** Moneys in the Improvement Fund shall be invested in accordance with Section 6.01. Interest earnings and profits from such investment shall be retained in the Improvement Fund to be used for the purpose of such fund.

**(D) Closing of Fund.** When the City believes that the Project has been completed, it shall provide a written notice to the Developer that the City believes the Project has been completed and that the Improvement Fund, Bond Proceeds

Account and Remainder Taxes Account should be closed. The Developer shall have 30 days after receipt of such notice to dispute the City's finding or to concur that the Project is complete. If the Developer concurs that the Project is complete, or fails to respond to the notice by the end of the 30-day period, the City may file an Officer's Certificate directing the Fiscal Agent to close the Improvement Fund, Bond Proceeds Account and Remainder Taxes Account.

Upon the filing of an Officer's Certificate stating that the Project has been completed and that all costs of the Project have been paid or are not required to be paid from the Improvement Fund, Bond Proceeds Account and Remainder Taxes Account, the Fiscal Agent shall transfer the amount, if any, remaining in the Improvement Fund, Bond Proceeds Account and Remainder Taxes Account to the Bond Fund for application to Debt Service payments due on the next succeeding Interest Payment Date and the Improvement Fund, Bond Proceeds Account and Remainder Taxes Account shall be closed. Moneys transferred from the Improvement Fund to the Bond Fund shall be used to pay Debt Service on the Bonds in the manner specified by the City in an Officer's Certificate.

**ARTICLE V**  
**COVENANTS**

**Section 5.01. Collection of Special Tax Revenues.** The City shall comply with all requirements of the Act so as to assure the timely collection of Special Tax Revenues, including without limitation, the enforcement of delinquent Special Taxes.

**(A) Processing.** On or within five (5) Business Days of each June 1, the Fiscal Agent shall provide the Finance Director with a notice stating (i) the amount then on deposit in the Bond Fund, the 2023 Reserve Fund and any reserve account for Parity Bonds that are not 2023 Related Parity Bonds that is held by the Fiscal Agent, and (ii) if the amount in the 2023 Reserve Fund is less than the 2023 Reserve Requirement or the amount in such other reserve account held by the Fiscal Agent is less than the Parity Reserve Requirement, informing the City that replenishment of the 2023 Reserve Fund or reserve account is necessary. The receipt of or failure to receive such notice by the Finance Director shall in no way affect the obligations of the Finance Director under the following two paragraphs and the Fiscal Agent shall not be liable for failure to provide such notices to the Finance Director. Upon receipt of such notice, the Finance Director shall communicate with the Auditor to ascertain the relevant parcels on which the Special Taxes are to be levied, taking into account any parcel splits or combinations during the preceding and then current year.

**(B) Levy.** The Finance Director shall effect the levy of the Special Taxes each Fiscal Year in accordance with the Ordinance by each August 1 that the Bonds are outstanding, or otherwise such that the computation of the levy is complete before the final date on which Auditor will accept the transmission of the Special Tax amounts for the parcels within Improvement Area No. 2 for inclusion on the next real property tax roll. Upon the completion of the computation of the amounts of the levy, the Finance Director shall prepare or cause to be prepared, and shall transmit to the Auditor, such data as the Auditor requires to include the levy of the Special Taxes on the next real property tax roll.

**(C) Computation.** The Finance Director shall fix and levy the amount of Special Taxes within Improvement Area No. 2 required to pay the following amounts, taking into account the balances in the applicable funds established under this Agreement: (i) the principal of and interest on any outstanding Bonds of the CFD with respect to Improvement Area No. 2 becoming due and payable during the ensuing calendar year, (ii) any necessary replenishment or expenditure of the 2023 Reserve Fund and any other reserve account for Parity Bonds that are not 2023 Related Parity Bonds to the extent such replenishment has not been included in the computation of the Special Taxes in a previous Fiscal Year, (iii) the Administrative Expenses, including amounts necessary to discharge any rebate obligation, during such year, (iv) an amount to cure delinquencies in the payment of principal or interest on Bonds that occurred in the previous Fiscal Year, and (v) any Project costs to be paid from Special Taxes to the extent that paying for such costs does not increase the Special Taxes levied on Undeveloped Property (as defined in the Rate and Method). During the Remainder Taxes Period, the Finance

Director shall fix and levy the Special Taxes at the Maximum Special Tax rate on Developed Property before considering any Capitalized Interest (as those terms are defined in the Rate and Method). The Special Taxes so levied shall not exceed the authorized amounts as provided in the proceedings under the Resolution of Formation.

**(D) Collection.** Except as set forth in the Ordinance, Special Taxes shall be payable and be collected in the same manner and at the same time and in the same installment as the general taxes on real property are payable, and have the same priority, become delinquent at the same time and in the same proportionate amounts and bear the same proportionate penalties and interest after delinquency as do the ad valorem taxes on real property.

**Section 5.02. Covenant to Foreclose.** Under the Act, the City hereby covenants with and for the benefit of the Owners of the Bonds that it will order, and cause to be commenced as hereinafter provided, and thereafter diligently prosecute to judgment (unless such delinquency is theretofore brought current), an action in the superior court to foreclose the lien of any Special Tax or installment thereof not paid when due as provided in the following two paragraphs. The Finance Director shall notify the City Attorney of any such delinquency of which the Finance Director is aware, and the City Attorney shall commence, or cause to be commenced, such proceedings.

On or about June 30 of each Fiscal Year, the Finance Director shall compare the amount of Special Taxes theretofore levied in Improvement Area No. 2 to the amount of Special Tax Revenues theretofore received by the City, and:

**(A) Individual Delinquencies.** If the Finance Director determines that any single parcel subject to the Special Tax in Improvement Area No. 2 is delinquent in the payment of four installments of Special Taxes, then the Finance Director shall send or cause to be sent a notice of delinquency (and a demand for immediate payment thereof) to the property owner within 45 days of such determination, and (if the delinquency remains uncured) foreclosure proceedings shall be commenced by the City within 90 days of such determination. Notwithstanding the foregoing, the Finance Director may defer any such actions with respect to a delinquent parcel if (1) Improvement Area No. 2 is then participating in the Alternative Method of Distribution of Tax Levies and Collections described in Revenue & Taxation Code Section 4701 et seq., or an equivalent procedure, (2) the amount in the 2023 Reserve Fund is at least equal to the 2023 Reserve Requirement and (3) the amount in the reserve account for any Parity Bonds that are not 2023 Related Parity Bonds is at least equal to the Parity Reserve Requirement.

**(B) Aggregate Delinquencies.** If the Finance Director determines that (i) the total amount of delinquent Special Tax for the prior Fiscal Year for the entire Improvement Area No. 2 (including the total of delinquencies under subsection (A) above), exceeds 5% of the total Special Tax due and payable for the prior Fiscal Year, determined by reference to the latest available secured property tax roll of the County, the Finance Director shall notify or cause to be notified property owners who are then delinquent in the payment of Special Taxes (and demand immediate payment of the delinquency) within 45 days of such determination, and shall commence foreclosure proceedings within 90 days of such determination

against each parcel of land in Improvement Area No. 2 with a Special Tax delinquency.

The Finance Director and the City Attorney, as applicable, are hereby authorized to employ counsel to conduct any such foreclosure proceedings. The fees and expenses of any such counsel (including a charge for City staff time) in conducting foreclosure proceedings shall be an Administrative Expense hereunder.

**Section 5.03. Punctual Payment.** The City will punctually pay or cause to be paid the principal of, and interest and any premium on, the Bonds when and as due in strict conformity with the terms of this Agreement and any Supplemental Agreement, and it will faithfully observe and perform all of the conditions covenants and requirements of this Agreement and all Supplemental Agreements and of the Bonds.

**Section 5.04. Extension of Time for Payment.** In order to prevent any accumulation of claims for interest after maturity, the City shall not, directly or indirectly, extend or consent to the extension of the time for the payment of any claim for interest on any of the Bonds and shall not, directly or indirectly, be a party to the approval of any such arrangement by purchasing or funding said claims for interest or in any other manner. In case any such claim for interest shall be extended or funded, whether or not with the consent of the City, such claim for interest so extended or funded shall not be entitled, in case of default hereunder, to the benefits of this Agreement, except subject to the prior payment in full of the principal of all of the Bonds then Outstanding and of all claims for interest which shall not have been so extended or funded.

**Section 5.05. Against Encumbrances.** The City will not encumber, pledge or place any charge or lien upon any of the Special Tax Revenues or other amounts pledged to the Bonds superior to or on a parity with the pledge and lien herein created for the benefit of the Bonds, or their Owners, except as permitted by this Agreement.

**Section 5.06. Books and Records.**

**(A) City.** The City will keep, or cause to be kept, proper books of record and accounts, separate from all other records and accounts of the City, in which complete and correct entries shall be made of all transactions relating to the Special Tax Revenues. Such books of record and accounts shall at all times during business hours be subject to the inspection of the Fiscal Agent (who shall have no duty to inspect) and the Owners of not less than 10% of the principal amount of the Bonds then Outstanding, or their representatives duly authorized in writing.

**(B) Fiscal Agent.** The Fiscal Agent will keep, or cause to be kept, proper books of record and accounts, separate from all other records and accounts of the Fiscal Agent, in which complete and correct entries shall be made of all transactions made by it relating to the expenditure of amounts disbursed from the funds, and, if any, accounts in such funds held by the Fiscal Agent hereunder. Such books of record and accounts shall at all times during business hours be subject to the inspection of the City and the Owners of not less than 10% of the principal amount of the Bonds then Outstanding, or their representatives duly authorized in writing upon reasonable prior notice.

**Section 5.07. Protection of Security and Rights of Owners.** The City will preserve and protect the security of the Bonds and the rights of the Owners, and will warrant and defend their rights against all claims and demands of all persons. From and after the delivery of any of the Bonds by the City, the Bonds shall be incontestable by the City.

**Section 5.08. Further Assurances.** The City will adopt, make, execute and deliver any and all such further resolutions, instruments and assurances as may be reasonably necessary or proper to carry out the intention or to facilitate the performance of this Agreement, and for the better assuring and confirming unto the Owners of the rights and benefits provided in this Agreement.

**Section 5.09. Private Activity Bond Limitations.** The City shall assure that the proceeds of the 2023 Bonds are not so used as to cause the 2023 Bonds to satisfy the private business tests of section 141(b) of the Tax Code or the private loan financing test of section 141(c) of the Code.

**Section 5.10. Federal Guarantee Prohibition.** The City shall not take any action or permit or suffer any action to be taken if the result of the same would be to cause the 2023 Bonds to be “federally guaranteed” within the meaning of Section 149(b) of the Tax Code.

**Section 5.11. Rebate Requirement.** The City shall take any and all actions necessary to assure compliance with section 148(f) of the Tax Code, relating to the rebate of excess investment earnings, if any, to the federal government, to the extent that such section is applicable to the 2023 Bonds. The Finance Director shall take note of any investment of monies hereunder in excess of the yield on the 2023 Bonds, and shall take such actions as are necessary to ensure compliance with this Section 5.11, such as increasing the portion of the Special Tax levy for Administrative Expenses as appropriate to have funds available in the Administrative Expense Fund to satisfy any rebate liability under this Section. If necessary to satisfy its obligations under this Section 5.11, the City may use:

- (A) Amounts in the 2023 Reserve Fund if the amount on deposit in the 2023 Reserve Fund, following the proposed transfer, is at least equal to the 2023 Reserve Requirement, and amounts in any other reserve account for Parity Bonds that are not 2023 Related Parity Bonds to the extent permitted by the Supplemental Agreement;
- (B) Amounts on deposit in the Administrative Expense Fund; and
- (C) Any other funds available to the City, including amounts advanced by the City, in its sole discretion, to be repaid as soon as practicable from amounts described in the preceding clauses (A) and (B).

**Section 5.12. No Arbitrage.** The City shall not take, or permit or suffer to be taken by the Fiscal Agent or otherwise, any action with respect to the proceeds of the 2023 Bonds which, if such action had been reasonably expected to have been taken, or had been deliberately and intentionally taken, on the date of issuance of the 2023 Bonds would have caused the 2023 Bonds to be “arbitrage bonds” within the meaning of section 148 of the Tax Code.

**Section 5.13. Yield of the 2023 Bonds.** In determining the yield of the 2023 Bonds to comply with Sections 5.11 and 5.12, the City will take into account redemption (including premium, if any) in advance of maturity based on the reasonable expectations of the City, as of the Closing

Date, regarding prepayments of Special Taxes and use of prepayments for redemption of the 2023 Bonds, without regard to whether or not prepayments are received or 2023 Bonds redeemed.

**Section 5.14. Maintenance of Tax-Exemption; Record Retention; Compliance with Tax Certificates.** The City shall take all actions necessary to assure the exclusion of interest on the 2023 Bonds from the gross income of the Owners of the 2023 Bonds to the same extent as such interest is permitted to be excluded from gross income under the Tax Code as in effect on the date of issuance of the 2023 Bonds.

The City will retain its records of all accounting and monitoring it carries out with respect to the 2023 Bonds for at least 3 years after the 2023 Bonds mature or are redeemed (whichever is earlier); however, if the 2023 Bonds are redeemed and refunded, the City will retain its records of accounting and monitoring at least 3 years after the earlier of the maturity or redemption of the obligations that refunded the 2023 Bonds.

The City will comply with the provisions of the Certificate as to Arbitrage and the Certificate Regarding Use of Proceeds with respect to the 2023 Bonds. The covenants of this paragraph will survive payment in full or defeasance of the 2023 Bonds.

**Section 5.15. Continuing Disclosure.** The City hereby covenants and agrees that it will comply with and carry out all of the provisions of the Continuing Disclosure Certificate. Notwithstanding any other provision of this Agreement, failure of the City to comply with the Continuing Disclosure Certificate shall not be considered an event of default for the purposes of this Agreement. However, any Owner or Beneficial Owner of the 2023 Bonds may take such actions as may be necessary and appropriate to compel performance, including seeking mandate or specific performance by court order.

One or more owners of the real property in Improvement Area No. 2 as of the Closing Date may also have executed a continuing disclosure agreement for the benefit of the Bondowners and Beneficial Owners of the 2023 Bonds. Any Participating Underwriter or Bondowner or Beneficial Owner may take such actions as may be necessary and appropriate directly against any such landowner to compel performance by it of its obligations thereunder, including seeking mandate or specific performance by court order; however the City shall have no obligation whatsoever to enforce any obligations under any such agreement.

**Section 5.16. Limits on Special Tax Waivers and Bond Tenders.** The City covenants not to exercise its rights under the Act to waive delinquency and redemption penalties related to the Special Taxes or to declare a Special Tax penalties amnesty program if to do so would materially and adversely affect the interests of the Owners of the Bonds and further covenants not to permit the tender of Bonds in payment of any Special Taxes except upon receipt of a certificate of an Independent Financial Consultant that to accept such tender will not result in the City having insufficient Special Tax Revenues to pay the principal of and interest on the Bonds and any Parity Bonds remaining Outstanding following such tender.

**Section 5.17. City Bid at Foreclosure Sale.** The City will not bid at a foreclosure sale of property in respect of delinquent Special Taxes, unless it expressly agrees to take the property subject to the lien for Special Taxes imposed by the City and that the Special Taxes levied on the property are payable while the City owns the property.

**Section 5.18. Amendment of Rate and Method.**

**(A) General.** The City shall not initiate proceedings under the Act to modify the Rate and Method if such modification would adversely affect the security for the Bonds. If an initiative is adopted that purports to modify the Rate and Method in a manner that would adversely affect the security for the Bonds, the City shall, to the extent permitted by law, commence and pursue reasonable legal actions to prevent the modification of the Rate and Method in a manner that would adversely affect the security for the Bonds.

**(B) Exception.** Notwithstanding clause (A) of this section, the City may initiate proceedings to reduce the maximum Special Tax rates under the Rate and Method, if, in connection therewith: (i) the City receives a certificate from one or more Independent Financial Consultants which, when taken together, certify that, on the basis of the parcels of land and improvements existing in Improvement Area No. 2 as of the July 1 preceding the reduction, the maximum amount of the Special Tax which may be levied on then-existing Taxable Property (as such term is defined in the Rate and Method) in each Bond Year for any Bonds and Parity Bonds Outstanding will equal at least the sum of the estimated Administrative Expenses and 110% of the Debt Service in each Bond Year on all Bonds and Parity Bonds to remain Outstanding after the reduction is approved; (ii) the reduction does not adversely affect the financing of the Project and (iii) the City is not delinquent in the payment of the principal of or interest on the Bonds or any Parity Bonds. For purposes of estimating Administrative Expenses for the foregoing calculation, the Independent Financial Consultants will compute the Administrative Expenses for the current Fiscal Year and escalate such amounts by 2% in each subsequent Fiscal Year.

**Section 5.19. Determination of Required Coverage.** The City hereby determines that Required Coverage (as that term is defined in the Rate and Method) for each Fiscal Year is 110% of (A) the total Annual Debt Service of the then Outstanding Bonds for the Bond Year that commences in such Fiscal Year and (B) estimated Administrative Expenses for such Fiscal Year.

## ARTICLE VI

### INVESTMENTS; LIABILITY OF THE CITY

#### Section 6.01. Deposit and Investment of Moneys in Funds.

**(A) General.** Moneys in any fund or account created or established by this Agreement and held by the Fiscal Agent shall be invested by the Fiscal Agent in Permitted Investments, which in any event by their terms mature prior to the date on which such moneys are required to be paid out hereunder, as directed pursuant to an Officer's Certificate filed with the Fiscal Agent at least two Business Days in advance of the making of such investments. In the absence of any such Officer's Certificate, the Fiscal Agent shall hold such funds uninvested. The Finance Director shall make note of any investment of funds hereunder in excess of the yield on the Bonds so that appropriate actions can be taken to assure compliance with Section 5.11. Interest earnings on moneys invested in each fund or account created or established by this Agreement shall be credited to such fund or account, unless otherwise required by this Agreement.

**(B) Moneys in Funds.** Moneys in any fund or account created or established by this Agreement and held by the Finance Director shall be invested by the Finance Director in any Permitted Investment or in any other lawful investment for City funds, which in any event by its terms matures prior to the date on which such moneys are required to be paid out hereunder. Obligations purchased as an investment of moneys in any fund shall be deemed to be part of such fund or account, subject, however, to the requirements of this Agreement for transfer of interest earnings and profits resulting from investment of amounts in funds and accounts. Whenever in this Agreement any moneys are required to be transferred by the City to the Fiscal Agent, such transfer may be accomplished by transferring a like amount of Permitted Investments.

**(C) Actions of Officials.** The Fiscal Agent and its affiliates or the Finance Director may act as sponsor, advisor, depository, principal or agent in the acquisition or disposition of any investment. Neither the Fiscal Agent nor the Finance Director shall incur any liability for losses arising from any investments made pursuant to this Section. The Fiscal Agent shall not be required to determine the legality of any investments.

**(D) Valuation of Investments.** Except as otherwise provided in the next sentence, all investments of amounts deposited in any fund or account created by or pursuant to this Agreement, or otherwise containing gross proceeds of the Bonds (within the meaning of section 148 of the Tax Code) shall be acquired, disposed of, and valued (as of the date that valuation is required by this Agreement or the Tax Code) at Fair Market Value. Investments in funds or accounts (or portions thereof) that are subject to a yield restriction under the applicable provisions of the Tax Code and (unless valuation is undertaken at least annually) investments in the subaccounts within the 2023 Reserve Fund and any other reserve account held by the Fiscal Agent shall be valued at their present value (within the meaning of section 148 of the Tax Code). The Fiscal Agent shall not be liable for verification of the application of such sections of the Tax Code or for any determination of Fair Market Value or present value and may conclusively rely upon an Officer's Certificate as to such valuations.

**(E) Commingled Money.** Investments in any and all funds and accounts may be commingled in a separate fund or funds for purposes of making, holding and disposing of investments, notwithstanding provisions herein for transfer to or holding in or to the credit of

particular funds or accounts of amounts received or held by the Fiscal Agent or the Finance Director hereunder, provided that the Fiscal Agent or the Finance Director, as applicable, shall at all times account for such investments strictly in accordance with the funds and accounts to which they are credited and otherwise as provided in this Agreement.

**(F) Confirmations Waiver.** The City acknowledges that to the extent regulations of the Comptroller of the Currency or other applicable regulatory entity grant the City the right to receive brokerage confirmations of security transactions as they occur, the City specifically waives receipt of such confirmations to the extent permitted by law. The Fiscal Agent will furnish the City periodic cash transaction statements which shall include detail for all investment transactions made by the Fiscal Agent hereunder.

**(G) Sale of Investments.** The Fiscal Agent or the Finance Director, as applicable, shall sell at Fair Market Value, or present for redemption, any investment security whenever it shall be necessary to provide moneys to meet any required payment, transfer, withdrawal or disbursement from the fund or account to which such investment security is credited and neither the Fiscal Agent nor the Finance Director shall be liable or responsible for any loss resulting from the acquisition or disposition of such investment security in accordance herewith.

#### **Section 6.02. Liability of City.**

**(A) General.** The City shall not incur any responsibility or liability in respect of the Bonds or this Agreement other than in connection with the duties or obligations explicitly herein or in the Bonds assigned to or imposed upon it. The City shall not be liable in connection with the performance of its duties hereunder, except for its own negligence or willful default. The City shall not be bound to ascertain or inquire as to the performance or observance of any of the terms, conditions, covenants or agreements of the Fiscal Agent herein or of any of the documents executed by the Fiscal Agent in connection with the Bonds, or as to the existence of a default or event of default thereunder.

**(B) Reliance.** In the absence of bad faith, the City, including the Finance Director, may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon certificates or opinions furnished to the City by the Fiscal Agent or an Independent Financial Consultant and conforming to the requirements of this Agreement. The City, including the Finance Director, shall not be liable for any error of judgment made in good faith unless it shall be proved that it was negligent in ascertaining the pertinent facts. The City may rely and shall be protected in acting or refraining from acting upon any notice, resolution, request, consent, order, certificate, report, warrant, bond or other paper or document believed by it to be genuine and to have been signed or presented by the proper party or proper parties. The City may consult with counsel, who may be the City Attorney, with regard to legal questions, and the opinion of such counsel shall be full and complete authorization and protection in respect of any action taken or suffered by it hereunder in good faith and in accordance therewith.

**(C) No General Liability.** No provision of this Agreement shall require the City to expend or risk its own general funds or otherwise incur any financial liability (other than with respect to the Special Tax Revenues) in the performance of any of its obligations hereunder, or in the exercise of any of its rights or powers, if it shall have reasonable grounds for believing that repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to it.

**(D) Owner of Bonds.** The City shall not be bound to recognize any person as the Owner of a Bond unless and until such Bond is submitted for inspection, if required, and his title thereto satisfactorily established, if disputed.

**Section 6.03. Employment of Agents by City.** In order to perform its duties and obligations hereunder, the City may employ such persons or entities as it deems necessary or advisable. The City shall not be liable for any of the acts or omissions of such persons or entities employed by it in good faith hereunder, and shall be entitled to rely, and shall be fully protected in doing so, upon the opinions, calculations, determinations and directions of such persons or entities.

## ARTICLE VII

### THE FISCAL AGENT

#### Section 7.01. The Fiscal Agent.

**(A) Appointment.** The Fiscal Agent is hereby appointed as the fiscal, authentication, paying and transfer agent hereunder for the Bonds. The Fiscal Agent undertakes to perform such duties, and only such duties, as are specifically set forth in this Agreement, and no implied duties, covenants or obligations shall be read into this Agreement against the Fiscal Agent.

**(B) Merger.** Any company into which the Fiscal Agent may be merged or converted or with which it may be consolidated or any company resulting from any merger, conversion or consolidation to which it shall be a party or any company to which the Fiscal Agent may sell or transfer all or substantially all of its corporate trust business, provided such company shall be eligible under the following paragraph of this Section 7.01 shall be the successor to such Fiscal Agent without the execution or filing of any paper or any further act, anything herein to the contrary notwithstanding. The Fiscal Agent shall give the Finance Director written notice of any such succession hereunder.

**(C) Removal.** Upon 30 days written notice, the City may remove the Fiscal Agent initially appointed, and any successor thereto, and may appoint a successor or successors thereto, but any such successor shall be a bank, national banking association or trust company having a combined capital (exclusive of borrowed capital) and surplus of at least \$50,000,000, and subject to supervision or examination by federal or state authority. If such bank, national banking association or trust company publishes a report of condition at least annually, pursuant to law or to the requirements of any supervising or examining authority above referred to, then for the purposes of this Section 7.01, combined capital and surplus of such bank, national banking association or trust company shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published.

**(D) Resignation.** The Fiscal Agent may at any time resign by giving written notice to the City by certified mail return receipt requested, and by giving to the Owners notice by mail of such resignation. Upon receiving notice of such resignation, the City shall promptly appoint a successor Fiscal Agent by an instrument in writing. Any resignation or removal of the Fiscal Agent shall become effective upon acceptance of appointment by the successor Fiscal Agent.

**(E) No Successor.** If no appointment of a successor Fiscal Agent shall be made pursuant to the foregoing provisions of this Section 7.01 within 45 days after the Fiscal Agent shall have given to the City written notice or after a vacancy in the office of the Fiscal Agent shall have occurred by reason of its inability to act, the Fiscal Agent, at the expense of the City, or any Owner may apply to any court of competent jurisdiction to appoint a successor Fiscal Agent. Said court may thereupon, after such notice, if any, as such court may deem proper, appoint a successor Fiscal Agent.

**(F) Court Order.** If, by reason of the judgment of any court, the Fiscal Agent is rendered unable to perform its duties hereunder, all such duties and all of the rights and powers of the Fiscal Agent hereunder shall be assumed by and vest in the Finance Director of the City in trust for the benefit of the Owners. The City covenants for the direct benefit of the Owners that its

Finance Director in such case shall be vested with all of the rights and powers of the Fiscal Agent hereunder, and shall assume all of the responsibilities and perform all of the duties of the Fiscal Agent hereunder, in trust for the benefit of the Owners of the Bonds.

### **Section 7.02. Liability of Fiscal Agent.**

**(A) General.** The recitals of facts, covenants and agreements herein and in the Bonds contained shall be taken as statements, covenants and agreements of the City, and the Fiscal Agent assumes no responsibility for the correctness of the same, nor makes any representations as to the validity or sufficiency of this Agreement or of the Bonds, nor shall the Fiscal Agent incur any responsibility in respect thereof, other than in connection with the duties or obligations herein or in the Bonds assigned to or imposed upon it. The Fiscal Agent shall not be liable in connection with the performance of its duties hereunder, except for its own negligence or willful misconduct. The Fiscal Agent assumes no responsibility or liability for any information, statement or recital in any offering memorandum or other disclosure material prepared or distributed with respect to the issuance of the Bonds. All indemnifications and releases from liability granted to the Fiscal Agent hereunder shall extend to the directors, officers and employees of the Fiscal Agent.

The Fiscal Agent shall not be considered in breach of or in default in its obligations hereunder or progress in respect thereto in the event of enforced delay (“unavailable delay”) in the performance of such obligations due to unforeseeable causes beyond its control and without its fault or negligence, including, but not limited to, Acts of God or of the public enemy or terrorists, acts of a government, acts of the other party, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, earthquakes, explosion, mob violence, riot, inability to procure or general sabotage or rationing of labor, equipment, facilities, sources of energy, material or supplies in the open market, litigation or arbitration involving a party or others relating to zoning or other governmental action or inaction pertaining to the project, malicious mischief, condemnation, and unusually severe weather or delays of suppliers or subcontractors due to such causes or any similar event and/or occurrences beyond the control of the Fiscal Agent.

**(B) Reliance.** The Fiscal Agent may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon certificates, documents, written instructions or opinions furnished to the Fiscal Agent and conforming to the requirements of this Agreement; but in the case of any such certificates, documents, written instructions or opinions by which any provision hereof are specifically required to be furnished to the Fiscal Agent, the Fiscal Agent shall be under a duty to examine the same to determine whether or not they conform to the requirements of this Agreement. Except as provided above in this paragraph, the Fiscal Agent shall be protected and shall incur no liability in acting or proceeding, or in not acting or not proceeding, in accordance with the terms of this Agreement, upon any resolution, order, notice, request, consent or waiver, certificate, statement, affidavit, facsimile transmission, electronic mail, or other paper or document which it shall reasonably believe to be genuine and to have been adopted or signed by the proper person or to have been prepared and furnished pursuant to any provision of this Agreement, and the Fiscal Agent shall not be under any duty to make any investigation or inquiry as to any statements contained or matters referred to in any such instrument.

**(C) No Duty to Inquire.** The Fiscal Agent shall not be bound to ascertain or inquire as to the performance or observance of any of the terms, conditions, covenants or agreements of the City or the CFD herein or of any of the documents executed by the City or the CFD in connection with the Bonds, or as to the existence of a default or event of default thereunder.

**(D) Errors in Judgment.** The Fiscal Agent shall not be liable for any error of judgment made in good faith by a responsible officer of the Fiscal Agent unless it shall be proved that the Fiscal Agent was negligent in ascertaining the pertinent facts.

**(E) No Expenditures.** No provision of this Agreement shall require the Fiscal Agent to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers.

**(F) No Action.** The Fiscal Agent shall be under no obligation to exercise any of the rights or powers vested in it by this Agreement at the request or direction of any of the Owners under this Agreement unless such Owners shall have offered to the Fiscal Agent reasonable security or indemnity satisfactory to the Fiscal Agent against the costs, expenses and liabilities which might be incurred by it in compliance with such request or direction.

**(G) Owner of Bonds.** The Fiscal Agent may become the owner of the Bonds with the same rights it would have if it were not the Fiscal Agent.

**Section 7.03. Information; Books and Accounts.** The Fiscal Agent shall provide to the City such information relating to the Bonds and the funds and accounts maintained by the Fiscal Agent hereunder as the City shall reasonably request, including but not limited to monthly statements reporting funds held and transactions by the Fiscal Agent, including the value of any investments held by the Fiscal Agent. The Fiscal Agent will keep, or cause to be kept, proper books of record and accounts, separate from all other records and accounts of the Fiscal Agent, in which complete and correct entries shall be made of all transactions relating to the expenditure of amounts disbursed from the Bond Fund, the Special Tax Fund, the 2023 Reserve Fund, any other reserve account held by the Fiscal Agent, the Improvement Fund and the Cost of Issuance Fund. Such books of record and accounts shall, upon reasonable notice, during business hours be subject to the inspection of the City and the Owners of not less than 10% of the principal amount of the Bonds then Outstanding, or their representatives duly authorized in writing.

**Section 7.04. Notice to Fiscal Agent.** The Fiscal Agent may rely and shall be protected in acting or refraining from acting upon any notice, resolution, request, consent, order, certificate, facsimile transmission, electronic mail, written instructions, report, warrant, bond or other paper or document believed by it to be genuine and to have been signed or presented by the proper party or proper parties. The Fiscal Agent may consult with counsel, who may be the City Attorney, with regard to legal questions, and the opinion of such counsel shall be full and complete authorization and protection in respect of any action taken, suffered or omitted by it hereunder in accordance therewith.

The Fiscal Agent shall not be bound to recognize any person as the Owner of a Bond unless and until such Bond is submitted for inspection, if required, and his title thereto satisfactorily established, if disputed.

Whenever in the administration of its duties under this Agreement the Fiscal Agent shall deem it necessary or desirable that a matter be proved or established prior to taking or suffering any action hereunder, such matter (unless other evidence in respect thereof be herein specifically prescribed) may, in the absence of willful misconduct on the part of the Fiscal Agent, be deemed to be conclusively proved and established by an Officer's Certificate of the City, and such certificate shall be full warrant to the Fiscal Agent for any action taken or suffered under the provisions of this Agreement or any Supplemental Agreement upon the faith thereof, but in its

discretion the Fiscal Agent may, in lieu thereof, accept other evidence of such matter or may require such additional evidence as to it may seem reasonable.

The Fiscal Agent shall have the right to accept and act upon instructions, including funds transfer instructions ("Instructions") given pursuant to this Agreement and delivered using Electronic Means ("Electronic Means" shall mean the following communications methods: e-mail, facsimile transmission, secure electronic transmission containing applicable authorization codes, passwords and/or authentication keys issued by the Fiscal Agent, or another method or system specified by the Fiscal Agent as available for use in connection with its services hereunder); provided, however, that the City shall provide to the Fiscal Agent an incumbency certificate listing officers with the authority to provide such Instructions ("Authorized Officers") and containing specimen signatures of such Authorized Officers, which incumbency certificate shall be amended by the City whenever a person is to be added or deleted from the listing. If the City elects to give the Fiscal Agent Instructions using Electronic Means and the Fiscal Agent in its discretion elects to act upon such Instructions, the Fiscal Agent's understanding of such Instructions shall be deemed controlling. The City understands and agrees that the Fiscal Agent cannot determine the identity of the actual sender of such Instructions and that the Fiscal Agent shall conclusively presume that directions that purport to have been sent by an Authorized Officer listed on the incumbency certificate provided to the Fiscal Agent have been sent by such Authorized Officer. The City shall be responsible for ensuring that only Authorized Officers transmit such Instructions to the Fiscal Agent and that the City and all Authorized Officers are solely responsible to safeguard the use and confidentiality of applicable user and authorization codes, passwords and/or authentication keys upon receipt by the City. The Fiscal Agent shall not be liable for any losses, costs or expenses arising directly or indirectly from the Fiscal Agent's reliance upon and compliance with such Instructions notwithstanding such directions conflict or are inconsistent with a subsequent written instruction. The City agrees: (i) to assume all risks arising out of the use of Electronic Means to submit Instructions to the Fiscal Agent, including without limitation the risk of the Fiscal Agent acting on unauthorized Instructions, and the risk of interception and misuse by third parties; (ii) that it is fully informed of the protections and risks associated with the various methods of transmitting Instructions to the Fiscal Agent and that there may be more secure methods of transmitting Instructions than the method(s) selected by the City; (iii) that the security procedures (if any) to be followed in connection with its transmission of Instructions provide to it a commercially reasonable degree of protection in light of its particular needs and circumstances; and (iv) to notify the Fiscal Agent immediately upon learning of any compromise or unauthorized use of the security procedures.

The Fiscal Agent shall not be concerned with or accountable to anyone for the subsequent use or application of any moneys which shall be released or withdrawn in accordance with the provisions hereof.

The Fiscal Agent may execute any of the duties or powers hereof and perform the duties required of it hereunder either directly or by or through attorneys or agents, and shall be entitled to rely on advice of counsel concerning all matters of its duty hereunder.

The permissive right of the Fiscal Agent to do things enumerated in this Agreement shall not be construed as a duty and it shall not be answerable for such actions other than as a result of its negligence or willful misconduct.

**Section 7.05. Compensation, Indemnification.** The City shall pay to the Fiscal Agent from time to time reasonable compensation for all services rendered as Fiscal Agent under this Agreement, and also all reasonable expenses, charges, counsel fees and other disbursements,

including those of its attorneys (including the allocated costs of in-house attorneys), agents and employees, incurred in and about the performance of their powers and duties under this Agreement, but the Fiscal Agent shall not have a lien therefor on any funds at any time held by it under this Agreement. The City further agrees, to the extent permitted by applicable law, to indemnify and save the Fiscal Agent, its officers, employees, directors and agents harmless against any liabilities, costs, claims or expenses, including fees and expenses of its attorneys, which it may incur in the exercise and performance of its powers and duties hereunder which are not due to its negligence or willful misconduct. The obligations of the City under this Section shall survive resignation or removal of the Fiscal Agent under this Agreement, and payment of the Bonds and discharge of this Agreement, but any monetary obligation of the City arising under this Section shall be limited solely to amounts on deposit in the Administrative Expense Fund.

## ARTICLE VIII

### MODIFICATION OR AMENDMENT

#### Section 8.01. Amendments Permitted.

**(A) With Consent.** This Agreement and the rights and obligations of the City and of the Owners of the Bonds may be modified or amended at any time by a Supplemental Agreement pursuant to the affirmative vote at a meeting of Owners, or with the written consent without a meeting, of the Owners of at least 60% in aggregate principal amount of the Bonds then Outstanding, exclusive of Bonds disqualified as provided in Section 8.04. No such modification or amendment shall (i) extend the maturity of any Bond or reduce the interest rate thereon, or otherwise alter or impair the obligation of the City to pay the principal of, and the interest and any premium on, any Bond, without the express consent of the Owner of such Bond, or (ii) permit the creation by the City of any pledge or lien upon the Special Taxes superior to or on a parity with the pledge and lien created for the benefit of the Bonds (except as otherwise permitted by the Act, the laws of the State of California or this Agreement), or reduce the percentage of Bonds required for the amendment hereof.

**(B) Without Consent.** This Agreement and the rights and obligations of the City and of the Owners may also be modified or amended at any time by a Supplemental Agreement, without the consent of any Owners, only to the extent permitted by law and only for any one or more of the following purposes:

(i) to add to the covenants and agreements of the City herein, other covenants and agreements thereafter to be observed, or to limit or surrender any right or power herein reserved to or conferred upon the City;

(ii) to make modifications not adversely affecting any Outstanding Bonds in any material respect;

(iii) to make such provisions for the purpose of curing any ambiguity, or of curing, correcting or supplementing any defective provision contained in this Agreement, or in regard to questions arising under this Agreement, as the City and the Fiscal Agent may deem necessary or desirable and not inconsistent with this Agreement, and which shall not adversely affect the rights of the Owners of the Bonds;

(iv) to make such additions, deletions or modifications as may be necessary or desirable to assure exclusion from gross income for federal income tax purposes of interest on the Bonds;

(v) in connection with the issuance of any Parity Bonds under and pursuant to Section 3.06; and

(vi) to amend the provisions related to the use of Remainder Taxes.

**(C) Fiscal Agent's Consent.** Any amendment of this Agreement may not modify any of the rights or obligations of the Fiscal Agent without its written consent. The Fiscal Agent shall be furnished an opinion of counsel that any such Supplemental Agreement entered into by the

City and the Fiscal Agent complies with the provisions of this Section 8.01 and the Fiscal Agent may conclusively rely on such opinion and shall be absolutely protected in so relying.

**Section 8.02. Owners' Meetings.** The City may at any time call a meeting of the Owners. In such event the City is authorized to fix the time and place of said meeting and to provide for the giving of notice thereof and to fix and adopt rules and regulations for the conduct of said meeting.

**Section 8.03. Procedure for Amendment with Written Consent of Owners.** The City and the Fiscal Agent may at any time adopt a Supplemental Agreement amending the provisions of the Bonds or of this Agreement or any Supplemental Agreement, to the extent that such amendment is permitted by Section 8.01(A), to take effect when and as provided in this Section 8.03. A copy of such Supplemental Agreement, together with a request to Owners for their consent thereto, shall be mailed by first class mail, by the Fiscal Agent, at the expense of the City, to each Owner of Bonds Outstanding, but failure to mail copies of such Supplemental Agreement and request shall not affect the validity of the Supplemental Agreement when assented to as in this Section 8.03 provided.

Such Supplemental Agreement shall not become effective unless there shall be filed with the Fiscal Agent the written consents of the Owners of at least 60% in aggregate principal amount of the Bonds then Outstanding (exclusive of Bonds disqualified as provided in Section 8.04) and a notice shall have been mailed as hereinafter in this Section 8.03 provided. Each such consent shall be effective only if accompanied by proof of ownership of the Bonds for which such consent is given, which proof shall be such as is permitted by Section 9.04. Any such consent shall be binding upon the Owner of the Bonds giving such consent and on any subsequent Owner (whether or not such subsequent Owner has notice thereof) unless such consent is revoked in writing by the Owner giving such consent or a subsequent Owner by filing such revocation with the Fiscal Agent prior to the date when the notice hereinafter in this Section 8.03 provided for has been mailed.

After the Owners of the required percentage of Bonds shall have filed their consents to the Supplemental Agreement, the City shall mail a notice to the Owners in the manner hereinbefore provided in this Section 8.03 for the mailing of the Supplemental Agreement, stating in substance that the Supplemental Agreement has been consented to by the Owners of the required percentage of Bonds and will be effective as provided in this Section 8.03 (but failure to mail copies of said notice shall not affect the validity of the Supplemental Agreement or consents thereto). Proof of the mailing of such notice shall be filed with the Fiscal Agent. A record, consisting of the papers required by this Section 8.03 to be filed with the Fiscal Agent, shall be proof of the matters therein stated until the contrary is proved. The Supplemental Agreement shall become effective upon the filing with the Fiscal Agent of the proof of mailing of such notice, and the Supplemental Agreement shall be deemed conclusively binding (except as otherwise hereinabove specifically provided in this Article) upon the City and the Owners of all Bonds at the expiration of 60 days after such filing, except in the event of a final decree of a court of competent jurisdiction setting aside such consent in a legal action or equitable proceeding for such purpose commenced within such 60-day period.

**Section 8.04. Disqualified Bonds.** Bonds owned or held for the account of the City, excepting any pension or retirement fund, shall not be deemed Outstanding for the purpose of any vote, consent or other action or any calculation of Outstanding Bonds provided for in this Article VIII, and shall not be entitled to vote upon, consent to, or take any other action provided for in this Article VIII. Upon request of the Fiscal Agent, the City shall specify in a certificate to the

Fiscal Agent those Bonds disqualified pursuant to this Section and the Fiscal Agent may conclusively rely on such certificate.

**Section 8.05. Effect of Supplemental Agreement.** From and after the time any Supplemental Agreement becomes effective under this Article VIII, this Agreement shall be deemed to be modified and amended in accordance therewith, the respective rights, duties and obligations under this Agreement of the City, the Fiscal Agent and all Owners of Bonds Outstanding shall thereafter be determined, exercised and enforced hereunder subject in all respects to such modifications and amendments, and all the terms and conditions of any such Supplemental Agreement shall be deemed to be part of the terms and conditions of this Agreement for any and all purposes.

**Section 8.06. Endorsement or Replacement of Bonds Issued After Amendments.** The City may determine that Bonds issued and delivered after the effective date of any action taken as provided in this Article VIII shall bear a notation, by endorsement or otherwise, in form approved by the City, as to such action. In that case, upon demand of the Owner of any Bond Outstanding at such effective date and upon presentation of his Bond for that purpose at the Principal Office of the Fiscal Agent or at such other office as the City may select and designate for that purpose, a suitable notation shall be made on such Bond. The City may determine that new Bonds, so modified as in the opinion of the City is necessary to conform to such Owners' action, shall be prepared, executed and delivered. In that case, upon demand of the Owner of any Bonds then Outstanding, such new Bonds shall be exchanged at the Principal Office of the Fiscal Agent without cost to any Owner, for Bonds then Outstanding, upon surrender of such Bonds.

**Section 8.07. Amendatory Endorsement of Bonds.** The provisions of this Article VIII shall not prevent any Owner from accepting any amendment as to the particular Bonds held by him, provided that due notation thereof is made on such Bonds.

## ARTICLE IX

### MISCELLANEOUS

**Section 9.01. Benefits of Agreement Limited to Parties.** Nothing in this Agreement, expressed or implied, is intended to give to any person other than the City, the Fiscal Agent and the Owners, any right, remedy, claim under or by reason of this Agreement. Any covenants, stipulations, promises or agreements in this Agreement contained by and on behalf of the City shall be for the sole and exclusive benefit of the Owners and the Fiscal Agent.

**Section 9.02. Successor and Predecessor.** Whenever in this Agreement or any Supplemental Agreement either the City or the Fiscal Agent is named or referred to, such reference shall be deemed to include the successors or assigns thereof, and all the covenants and agreements in this Agreement contained by or on behalf of the City or the Fiscal Agent shall bind and inure to the benefit of the respective successors and assigns thereof whether so expressed or not.

**Section 9.03. Discharge of Agreement.** The City may pay and discharge the entire indebtedness on all or a portion of the Bonds Outstanding in any one or more of the following ways:

(A) by paying or causing to be paid the principal of, and interest and any premium on, all such Bonds Outstanding, as and when the same become due and payable;

(B) by depositing with the Fiscal Agent at or before maturity, money which, together with the amounts then on deposit in the funds and accounts provided for in the Bond Fund, the 2023 Reserve Fund and any other reserve account held by the Fiscal Agent hereof, is fully sufficient to pay all such Bonds Outstanding, including all principal, interest and redemption premiums; or

(C) by irrevocably depositing with the Fiscal Agent, in trust, cash and/or Federal Securities in such amount as the City shall determine, as confirmed by an independent certified public accountant, will, together with the interest to accrue thereon and moneys then on deposit in the fund and accounts provided for in the Bond Fund, the 2023 Reserve Fund and any other reserve account held by the Fiscal Agent (to the extent invested in Federal Securities), be fully sufficient to pay and discharge the indebtedness on all such Bonds (including all principal, interest and redemption premiums) at or before their respective maturity dates.

If the City shall have taken any of the actions specified in (A), (B) or (C) above, and if such Bonds are to be redeemed prior to the maturity thereof and notice of such redemption shall have been given as in this Agreement provided or provision satisfactory to the Fiscal Agent shall have been made for the giving of such notice, then, at the election of the City, and notwithstanding that any such Bonds shall not have been surrendered for payment, the pledge of the Special Taxes and other funds provided for in this Agreement and all other obligations of the City under this Agreement with respect to such Bonds Outstanding shall cease and terminate. Notice of such election shall be filed with the Fiscal Agent.

Notwithstanding the foregoing, the following obligations and pledges of the City shall continue in any event: (i) the obligation of the City to pay or cause to be paid to the Owners of such Bonds not so surrendered and paid all sums due thereon, (ii) the obligation of the City to pay amounts owing to the Fiscal Agent pursuant to Section 7.05, and (iii) the obligation of the City to assure that no action is taken or failed to be taken if such action or failure adversely affects the exclusion of interest on such Bonds from gross income for federal income tax purposes.

Upon compliance by the City with the foregoing with respect to all such Bonds Outstanding, any funds held by the Fiscal Agent after payment of all fees and expenses of the Fiscal Agent, which are not required for the purposes of the preceding paragraph, shall be paid over to the City and any Special Taxes thereafter received by the City shall not be remitted to the Fiscal Agent but shall be retained by the City to be used for any purpose permitted under the Act and the Resolution of Formation and the Annexation Resolution.

**Section 9.04. Execution of Documents and Proof of Ownership by Owners.** Any request, declaration, consent or other instrument which this Agreement may require or permit to be executed by Owners may be in one or more instruments of similar tenor, and shall be executed by Owners in person or by their attorneys appointed in writing.

Except as otherwise herein expressly provided, the fact and date of the execution by any Owner or his attorney of such request, declaration, consent or other instrument, or of such writing appointing such attorney, may be proved by the certificate of any notary public or other officer authorized to take acknowledgments of deeds to be recorded in the state in which he purports to act, that the person signing such request, declaration or other instrument or writing acknowledged to him the execution thereof, or by an affidavit of a witness of such execution, duly sworn to before such notary public or other officer.

Except as otherwise herein expressly provided, the ownership of registered Bonds and the amount, maturity, number and date of holding the same shall be proved by the registration books maintained by the Fiscal Agent under Section 2.07.

Any request, declaration, consent or other instrument or writing of the Owner of any Bond shall bind all future Owners of such Bond in respect of anything done or suffered to be done by the City or the Fiscal Agent in good faith and in accordance therewith.

**Section 9.05. Waiver of Personal Liability.** No member, officer, agent or employee of the City shall be individually or personally liable for the payment of the principal of or interest or any premium on the Bonds; but nothing herein contained shall relieve any such member, officer, agent or employee from the performance of any official duty provided by law.

**Section 9.06. Notices to and Demands on City and Fiscal Agent.** Any notice or demand which by any provision of this Agreement is required or permitted to be given or served by the Fiscal Agent to or on the City may be given or served by facsimile transmission receipt of which has been confirmed or by being deposited postage prepaid in a post office letter box addressed (until another address is filed by the City with the Fiscal Agent) as follows:

City of Tracy  
333 Civic Center Plaza  
Tracy, CA 95376  
Fax: (209) 835-1113  
Attention: Finance Director

Any notice or demand which by any provision of this Agreement is required or permitted to be given or served by the City to or on the Fiscal Agent may be given or served by facsimile transmission receipt of which has been confirmed or by being deposited postage prepaid in a post office letter box addressed (until another address is filed by the Fiscal Agent with the City) as follows:

U.S. Bank Trust Company, National Association  
One California Street, Suite 1000  
San Francisco, CA 94111  
Attn: Global Corporate Trust Services

**Section 9.07. Partial Invalidity.** If any Section, paragraph, sentence, clause or phrase of this Agreement shall for any reason be held by a court of competent jurisdiction to be illegal or unenforceable, such holding shall not affect the validity of the remaining portions of this Agreement.

**Section 9.08. Unclaimed Moneys.** Anything contained herein to the contrary notwithstanding, any moneys held by the Fiscal Agent in trust for the payment and discharge of the principal of, and the interest and any premium on, the Bonds which remains unclaimed for two (2) years after the date when the payment of such principal, interest and premium have become payable, if such moneys were held by the Fiscal Agent at such date, shall be repaid by the Fiscal Agent to the City as its absolute property free from any trust, and the Fiscal Agent shall thereupon be released and discharged with respect thereto and the Owners of such Bonds shall look only to the City for the payment of the principal of, and interest and any premium on, such Bonds. Any right of any Owner to look to the City for such payment shall survive only so long as required under applicable law.

**Section 9.09. Applicable Law.** This Agreement shall be governed by and enforced in accordance with the laws of the State applicable to contracts made and performed in the State.

**Section 9.10. Conflict with Act.** In the event of a conflict between any provision of this Agreement with any provision of the Act as in effect on the Closing Date, the provision of the Act shall prevail over the conflicting provision of this Agreement.

**Section 9.11. Conclusive Evidence of Regularity.** Bonds issued under this Agreement shall constitute conclusive evidence of the regularity of all proceedings under the Act relative to their issuance and the levy of the Special Taxes.

**Section 9.12. Payment on Business Day.** In any case where the date of the maturity of interest or of principal (and premium, if any) of the Bonds, or the date fixed for redemption of any Bonds, or the date any action is to be taken under this Agreement, is other than a Business Day, the payment of interest or principal (and premium, if any) or the action shall be made on the next succeeding day which is a Business Day with the same force and effect as if made on the date required and no interest shall accrue for the period from and after such date.

**Section 9.13. State Reporting Requirements.** In addition to Section 5.15, the following requirements shall apply to the Bonds:

**(A) Annual Reporting.** Not later than October 30 of each calendar year, beginning with the October 30 first succeeding the date of the 2023 Bonds, and in each calendar year thereafter until the October 30 following the final maturity of the Bonds, the Finance Director shall cause the information required by California Government Code Section 53359.5(b) to be supplied to CDIAC. The annual reporting shall be made using such form or forms as may be prescribed by CDIAC.

**(B) Other Reporting.** If at any time the Fiscal Agent fails to pay principal and interest due on any scheduled payment date for the Bonds due to insufficiency of funds on deposit in the Bond Fund, or if funds are withdrawn from the 2023 Reserve Fund to pay principal and interest on the Bonds so as to reduce the amount in the 2023 Reserve Fund to less than the 2023 Reserve Requirement, or if funds are withdrawn from such other reserve account held by the Fiscal Agent to pay principal and interest on Parity Bonds that are not the 2023 Bonds or 2023 Related Parity Bonds so as to reduce the amount in such reserve account to less than the Parity Reserve Requirement, the Fiscal Agent shall notify the Finance Director of such failure or withdrawal in writing. The Finance Director shall notify CDIAC and the Original Purchasers of such failure or withdrawal within 10 days of such failure or withdrawal.

**(C) Special Tax Reporting.** The Finance Director shall file a report with the City no later than January 1, 2024, and at least once a year thereafter, which annual report shall contain: (i) the amount of Special Taxes collected and expended with respect to the CFD, (ii) the amount of Bond proceeds collected and expended with respect to the CFD, and (iii) the status of the Project. It is acknowledged that the Special Tax Fund and the Special Tax Prepayments Account are the accounts into which Special Taxes collected on the City will be deposited for purposes of Section 50075.1(c) of the California Government Code, and the funds and accounts listed in Section 4.01 are the funds and accounts into which Bond proceeds will be deposited for purposes of Section 53410(c) of the California Government Code, and the annual report described in the preceding sentence is intended to satisfy the requirements of Sections 50075.1(d), 50075.3(d) and 53411 of the California Government Code.

**(D) Compliance with Section 53343.2.** The City shall comply with the provisions of California Government Code Section 53343.2, which require the City, within seven months after the last day of each fiscal year of the CFD, to display prominently on its Internet Web site all of the following information:

(a) A copy of an annual report for that fiscal year if requested pursuant to Section 53343.1.

(b) A copy of the report provided to the California Debt and Investment Advisory Commission pursuant to Section 53359.5.

(c) A copy of the report provided to the Controller's office pursuant to Section 12463.2.

**(E) Amendment.** The reporting requirements of this Section 9.13 shall be amended from time to time, without action by the City or the Fiscal Agent (i) with respect to subparagraphs (A) and (B) above, to reflect any amendments to Section 53359.5(b) or Section 53359.5(c) of the Act, (ii) with respect to subparagraph (C) above, to reflect any amendments to Section 50075.1, 50075.3, 53410 or 53411 of the California Government Code and (iii) with respect to subparagraph (D) above, to reflect any amendments to Section 53343.2. Notwithstanding the foregoing, any such amendment shall not, in itself, affect the City's obligations under the Continuing Disclosure Certificate. The City shall notify the Fiscal Agent in writing of any such amendments which affect the reporting obligations of the Fiscal Agent under this Agreement.

**(E) No Liability.** None of the City and its officers, agents and employees, the Finance Director or the Fiscal Agent shall be liable for any inadvertent error in reporting the information required by this Section 9.13.

The Finance Director shall provide copies of any such reports to any Bondowner upon the written request of a Bondowner and payment by the person requesting the information of the cost of the City to photocopy and pay any postage or other delivery cost to provide the same, as determined by the Finance Director. The term "Bondowner" for purposes of this Section 9.13 shall include any Beneficial Owner of the Bonds as described in Section 2.10.

**Section 9.14. Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original.

\* \* \* \* \*

**IN WITNESS WHEREOF**, the City and the Fiscal Agent have caused this Agreement to be executed as of the date first written above.

CITY OF TRACY,  
for and on behalf of  
CITY OF TRACY COMMUNITY FACILITIES  
DISTRICT NO. 2016-1 (TRACY HILLS)

By: \_\_\_\_\_  
Finance Director

U.S. BANK TRUST COMPANY, NATIONAL  
ASSOCIATION,  
*as Fiscal Agent*

By: \_\_\_\_\_  
Authorized Officer

**EXHIBIT A**

**FORM OF 2023 BOND**

No. \_\_\_\_

\*\*\*\$ \_\_\_\_\_\*\*\*

**UNITED STATES OF AMERICA  
STATE OF CALIFORNIA  
COUNTY OF SAN JOAQUIN**

**IMPROVEMENT AREA NO. 2 OF THE  
CITY OF TRACY  
Community Facilities District No. 2016-1  
(Tracy Hills)  
Special Tax Bond, Series 2023**

<b>INTEREST RATE</b>	<b>MATURITY DATE</b>	<b>DATED DATE</b>	<b>CUSIP</b>
_____%	September 1, _____	_____, 2023	_____

REGISTERED OWNER:

PRINCIPAL AMOUNT: \*\*\*\*\*DOLLARS

The City of Tracy (the "City") for and on behalf of the "City of Tracy Community Facilities District No. 2016-1 (Tracy Hills)" (the "CFD") with respect to its "Improvement Area No. 2 of the City of Tracy Community Facilities District No. 2016-1 (Tracy Hills)" ("Improvement Area No. 2"), for value received, hereby promises to pay solely from the Special Tax Revenues (as defined in the hereinafter defined Agreement) to be collected in Improvement Area No. 2 or amounts in certain funds and accounts held under the Agreement (as hereinafter defined), to the registered owner named above, or registered assigns, on the maturity date set forth above, unless redeemed prior thereto as hereinafter provided, the principal amount set forth above, and to pay interest on such principal amount from the Dated Date set forth above, or from the most recent Interest Payment Date (as hereinafter defined) to which interest has been paid or duly provided for (unless this Bond is authenticated on or before an Interest Payment Date and after the close of business on the Record Date preceding such Interest Payment Date, in which event it shall bear interest from such Interest Payment Date, or unless this Bond is authenticated on or prior to February 15, 2024, in which event it shall bear interest from the Dated Date identified above, payable semiannually on each March 1 and September 1, commencing March 1, 2024 (each an "Interest Payment Date"), at the interest rate set forth above, until the principal amount hereof is paid or made available for payment provided, however, that if at the time of authentication of this Bond, interest is in default on this Bond, this Bond shall bear interest from the Interest Payment Date to which interest has previously been paid or made available for payment.

Principal of and interest on the Bonds (including the final interest payment upon maturity or earlier redemption), is payable on the applicable Interest Payment Date by check of the Fiscal Agent (defined below) mailed by first class mail to the registered Owner thereof at such registered Owner's address as it appears on the registration books maintained by the Fiscal Agent at the close of business on the Record Date preceding the Interest Payment Date, or by wire transfer

made on such Interest Payment Date upon written instructions of any Owner of \$1,000,000 or more in aggregate principal amount of Bonds delivered to the Fiscal Agent prior to the applicable Record Date. The principal of the Bonds and any premium on the Bonds are payable in lawful money of the United States of America upon surrender of the Bonds at the Principal Office of the Fiscal Agent or such other place designated by the Fiscal Agent.

This Bond is one of a duly authorized issue of bonds in the aggregate principal amount of \$\_\_\_\_\_ approved by resolution of the City Council of the City adopted on \_\_\_\_\_, 2023 (together, the "Resolution"), under the Mello-Roos Community Facilities Act of 1982, as amended, sections 53311, *et seq.*, of the California Government Code (the "Act") for the purpose of funding certain facilities for the City, and is one of the series of bonds designated "Improvement Area No. 2 of the City of Tracy Community Facilities District No. 2016-1 (Tracy Hills) Special Tax Bonds, Series 2023" (the "Bonds"). The issuance of the Bonds and the terms and conditions thereof are provided for by a Fiscal Agent Agreement, dated as of October 1, 2023 (the "Agreement"), between the City and U.S. Bank Trust Company, National Association (the "Fiscal Agent") and this reference incorporates the Agreement herein, and by acceptance hereof the owner of this Bond assents to said terms and conditions. The Agreement is authorized under, this Bond is issued under and both are to be construed in accordance with, the laws of the State of California.

Pursuant to the Act, the Resolution and the Agreement, the principal of and interest on this Bond are payable solely from the annual special tax authorized under the Act to be collected within Improvement Area No. 2 (the "Special Tax") and certain funds held under the Agreement. Any tax for the payment hereof shall be limited to the Special Tax, except to the extent that provision for payment has been made by the City, as may be permitted by law. The Bonds do not constitute obligations of the City for which the City is obligated to levy or pledge, or has levied or pledged, general or special taxation other than described hereinabove. Neither the faith and credit nor the taxing power of the City (except to the limited extent set forth in the Agreement) or the State of California or any political subdivision thereof is pledged to the payment of the Bonds.

Optional Redemption. The Bonds maturing on or after September 1, 20\_\_ are subject to optional redemption as directed by the City, from sources of funds other than prepayments of Special Taxes, prior to their stated maturity on any date on or after September 1, 20\_\_, as a whole or in part, at a redemption price (expressed as a percentage of the principal amount of the Bonds to be redeemed), as set forth below, together with accrued interest thereon to the date fixed for redemption:

<u>Redemption Dates</u>	<u>Redemption Price</u>
September 1, 20__ through August 31, 20__	103%
September 1, 20__ through August 31, 20__	102
September 1, 20__ through August 31, 20__	101
September 1, 20__ and any date thereafter	100

Mandatory Sinking Fund Redemption. The Term Bond maturing on September 1, 20\_\_, is subject to mandatory redemption in part by lot, from sinking fund payments made by the City from the Bond Fund, at a redemption price equal to the principal amount thereof to be redeemed, plus accrued interest to the redemption date, without premium, in the aggregate respective principal amounts all as set forth in the following table:

Sinking Fund Redemption Date (September 1)	Sinking Fund Payments
20__	\$
20__	
20__ (maturity)	

The Term Bond maturing on September 1, 20\_\_, is subject to mandatory redemption in part by lot, from sinking fund payments made by the City from the Bond Fund, at a redemption price equal to the principal amount thereof to be redeemed, plus accrued interest to the redemption date, without premium, in the aggregate respective principal amounts all as set forth in the following table:

Sinking Fund Redemption Date (September 1)	Sinking Fund Payments
20__	\$
20__	
20__	
20__	
20__ (maturity)	

The Term Bond maturing on September 1, 20\_\_, is subject to mandatory redemption in part by lot, from sinking fund payments made by the City from the Bond Fund, at a redemption price equal to the principal amount thereof to be redeemed, plus accrued interest to the redemption date, without premium, in the aggregate respective principal amounts all as set forth in the following table:

Sinking Fund Redemption Date (September 1)	Sinking Fund Payments
20__	\$
20__	
20__	
20__	
20__ (maturity)	

The Term Bond maturing on September 1, 20\_\_, is subject to mandatory redemption in part by lot, from sinking fund payments made by the City from the Bond Fund, at a redemption price equal to the principal amount thereof to be redeemed, plus accrued interest to the redemption date, without premium, in the aggregate respective principal amounts all as set forth in the following table:

Sinking Fund Redemption Date (September 1)	Sinking Fund Payments
20__	\$
20__	
20__	
20__	
20__ (maturity)	

The Term Bond maturing on September 1, 20\_\_, is subject to mandatory redemption in part by lot, from sinking fund payments made by the City from the Bond Fund, at a redemption price equal to the principal amount thereof to be redeemed, plus accrued interest to the redemption date, without premium, in the aggregate respective principal amounts all as set forth in the following table:

Sinking Fund Redemption Date (September 1)	Sinking Fund Payments
20__	\$
20__	
20__	
20__	
20__ (maturity)	

Provided, however, if some but not all of the Term Bonds of a given maturity have been redeemed as a result of an optional redemption or a redemption from Special Tax Prepayments, the total amount of all future Sinking Fund Payments relating to such maturity shall be reduced by the aggregate principal amount of Term Bonds of such maturity so redeemed, to be allocated among such Sinking Fund Payments on a pro rata basis in integral multiples of \$5,000 as determined by the City, notice of which determination shall be given by the City to the Fiscal Agent.

Redemption From Special Tax Prepayments. Special Tax Prepayments and any corresponding transfers from the 2023 Reserve Fund shall be used to redeem Bonds on the next Interest Payment Date for which notice of redemption can timely be given under the Fiscal Agent Agreement, among series and maturities so as to maintain substantially the same Debt Service profile for the Bonds as in effect prior to such redemption and by lot within a maturity, at a redemption price (expressed as a percentage of the principal amount of the Bonds to be redeemed), as set forth below, together with accrued interest to the date fixed for redemption:

<u>Redemption Dates</u>	<u>Redemption Price</u>
Any Interest Payment Date on or before March 1, 20__	103%
September 1, 20__ and March 1, 20__	102
September 1, 20__ and March 1, 20__	101
September 1, 20__ and any Interest Payment Date thereafter	100

Notice of redemption with respect to the Bonds to be redeemed shall be given to the registered owners thereof, in the manner, to the extent and subject to the provisions of the Agreement.

This Bond shall be registered in the name of the owner hereof, as to both principal and interest. Each registration and transfer of registration of this Bond shall be entered by the Fiscal Agent in books kept by it for this purpose and authenticated by its manual signature upon the certificate of authentication endorsed hereon.

No transfer or exchange hereof shall be valid for any purpose unless made by the registered owner, by execution of the form of assignment endorsed hereon, and authenticated as herein provided, and the principal hereof, interest hereon and any redemption premium shall be payable only to the registered owner or to such owner's order. The Fiscal Agent shall require the registered owner requesting transfer or exchange to pay any tax or other governmental charge required to be paid with respect to such transfer or exchange. No transfer or exchange hereof shall be required to be made (i) fifteen days prior to the date established by the Fiscal Agent for selection of Bonds for redemption or (ii) with respect to a Bond after such Bond has been selected for redemption.

The Agreement and the rights and obligations of the City thereunder may be modified or amended as set forth therein. The principal of the Bonds is not subject to acceleration upon a default under the Agreement or any other document.

This Bond shall not become valid or obligatory for any purpose until the certificate of authentication and registration hereon endorsed shall have been dated and signed by the Fiscal Agent.

IT IS HEREBY CERTIFIED, RECITED AND DECLARED by the City that all acts, conditions and things required by law to exist, happen and be performed precedent to and in the issuance of this Bond have existed, happened and been performed in due time, form and manner as required by law, and that the amount of this Bond, together with all other indebtedness of the City, does not exceed any debt limit prescribed by the laws or Constitution of the State of California.

Unless this Bond is presented by an authorized representative of The Depository Trust Company, a New York corporation ("DTC"), to the Fiscal Agent for registration of transfer, exchange, or payment, and any Bond issued is registered in the name of Cede & Co. or in such other name as is requested by an authorized representative of DTC (and any payment is made to Cede & Co. or to such other entity as is requested by an authorized representative of DTC), ANY TRANSFER, PLEDGE, OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL inasmuch as the registered owner hereof, Cede & Co., has an interest herein.

IN WITNESS WHEREOF, City of Tracy has caused this Bond to be to be signed by the facsimile signature of its Mayor and countersigned by the facsimile signature of the City Clerk.

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

\_\_\_\_\_  
Mayor

[FORM OF FISCAL AGENT'S CERTIFICATE OF AUTHENTICATION AND REGISTRATION]

This is one of the Bonds described in the Agreement which has been authenticated on \_\_\_\_\_, 2023.

U.S. BANK TRUST COMPANY, NATIONAL  
ASSOCIATION,  
*as Fiscal Agent*

By: \_\_\_\_\_  
Authorized Signatory

FORM OF ASSIGNMENT

For value received, the undersigned do(es) hereby sell, assign and transfer unto

\_\_\_\_\_  
\_\_\_\_\_

(Name, Address and Tax Identification or Social Security Number of Assignee)

the within Bond and do(es) hereby irrevocably constitute and appoint \_\_\_\_\_  
\_\_\_\_\_, attorney, to transfer the same on the registration books of the Fiscal Agent, with  
full power of substitution in the premises.

Dated: \_\_\_\_\_

Signature Guaranteed:

\_\_\_\_\_  
NOTICE: Signature(s) must be guaranteed  
by an eligible guarantor.

NOTICE: Signature guarantee shall be made  
by a guarantor institution participating in the  
Securities Transfer Agents Medallion  
Program or in such other guarantee program  
acceptable to the Fiscal Agent

**EXHIBIT B**

**IMPROVEMENT AREA NO. 2 OF THE  
CITY OF TRACY  
Community Facilities District No. 2016-1  
(Tracy Hills)  
Special Tax Bonds, Series 2023**

**OFFICER’S CERTIFICATE REQUESTING DISBURSEMENT FROM IMPROVEMENT  
FUND**

**REQUISITION NO. \_\_\_\_\_**

The undersigned hereby states and certifies that:

(i) I am the duly appointed, qualified and acting Finance Director of the City of Tracy, a general law city duly organized and existing under the laws of the State of California (the “City”) and as such, am familiar with the facts herein certified and am authorized to certify the same;

(ii) I am an “Authorized Officer,” as such term is defined in that certain Fiscal Agent Agreement, dated as of October 1, 2023 (the “Fiscal Agent Agreement”), by and between the City and U.S. Bank Trust Company, National Association, as fiscal agent (the “Fiscal Agent”);

(iii) under Section 4.07(B) of the Fiscal Agent Agreement, the undersigned hereby requests and authorizes the Fiscal Agent to disburse from the Bond Proceeds Account established under the Fiscal Agent Agreement to each payee designated on Schedule A attached hereto and by this reference incorporated herein, the amount set forth opposite such payee, for payment or reimbursement of previous payment of a Project cost (as Project is defined in the Fiscal Agent Agreement) as described on attached Schedule A;

(iv) under Section 4.07(B) of the Fiscal Agent Agreement, the undersigned hereby requests and authorizes the Fiscal Agent to disburse from the Remainder Taxes Account established under the Fiscal Agent Agreement to each payee designated on Schedule A attached hereto and by this reference incorporated herein, the amount set forth opposite such payee, for payment or reimbursement of previous payment of a Project cost (as Project is defined in the Fiscal Agent Agreement) as described on attached Schedule A;

(v) under Section 4.07(B) of the Fiscal Agent Agreement, the undersigned hereby requests and authorizes the Fiscal Agent to transfer \$\_\_\_\_\_ from the Remainder Taxes Account established under the Fiscal Agent Agreement to [the Bond Fund] [the Administrative Expense Fund] [the 2023 Reserve Fund][other reserve account];

(vi) the disbursements described on the attached Schedule A are properly chargeable to the Improvement Fund; and

(vii) [for any disbursement of the Set-Aside Amount (select one as applicable)]:  
(1) (a) the Phase 1B City Park has been constructed by the Developer, (b) the Phase 1B City Park has been inspected by the City, and (c) the City has determined that the Phase 1B City Park has been constructed in accordance with approved plans and specifications and all applicable City standards (other than any items identified by the City that need to be addressed before the Phase 1B City Park can be deemed complete by the City, and which the City and the Developer estimate to cost no more than \$100,000 in the aggregate), or

(2) the City has determined that each parcel of Taxable Property (as defined in the Rate and Method) in Improvement Area No. 2 has a Value that is at least three (3) times the sum of: (a) the allocable principal amount of the Bonds then Outstanding, plus (b) the aggregate principal amount of any fixed assessment liens on the parcel, plus (c) the allocable principal amount of any and all Other District Bonds that are payable at least in part from special taxes levied on such parcel; or

(3) the City has determined that the authority to spend the Set-Aside Amount on Facilities has not been satisfied before June 1, 2026, and \$\_\_\_\_\_ (which does not exceed the Set-Aside Amount (plus accrued interest earnings thereon)) shall be transferred to the Bond Fund [to redeem the 2023 Bonds on the first optional redemption date] [to pay scheduled debt service on the 2023 Bonds]; and]

(vii/viii) no portion of the amount herein requested to be disbursed was set forth in any Officers Certificate previously filed requesting disbursement.

Capitalized terms used herein but not defined herein have the meanings ascribed to them in the Fiscal Agent Agreement.

Dated: \_\_\_\_\_

CITY OF TRACY

By: \_\_\_\_\_  
Finance Director

## SCHEDULE A

<b>Payee Name and Address</b>	<b>Purpose of Obligation [*]</b>	<b>Amount</b>	<b>Account from which Amounts should be paid</b>

[\* For any disbursement of the Set-Aside Amount (plus accrued interest) in the Bond Proceeds Account pursuant to clause (1) or (2) of paragraph \*vii] The requested amount represents the costs of Facilities described in the Certificate Regarding Use of Proceeds for the 2023 Bonds or such other costs of Facilities with respect to which the City has received an opinion of Bond Counsel to the effect that such application of the Set-Aside Amount (plus accrued interest), in and of itself, will not adversely impact the exclusion of interest on the 2023 Bonds from gross income of the Owners of the 2023 Bonds for federal income tax purposes.]

**EXHIBIT C**

**IMPROVEMENT AREA NO. 2 OF THE  
CITY OF TRACY  
Community Facilities District No. 2016-1 (Tracy Hills)  
Special Tax Bonds, Series 2023**

**OFFICER’S CERTIFICATE REQUESTING DISBURSEMENT  
FROM COSTS OF ISSUANCE FUND**

**REQUISITION NO. \_\_\_\_\_**

The undersigned hereby states and certifies that:

(i) I am the duly appointed, qualified and acting Finance Director of the City of Tracy, a general law city duly organized and existing under the laws of the State of California (the “City”) and as such, am familiar with the facts herein certified and am authorized to certify the same;

(ii) I am an “Authorized Officer,” as such term is defined in that certain Fiscal Agent Agreement, dated as of October 1, 2023 (the “Fiscal Agent Agreement”), by and between the City and U.S. Bank Trust Company, National Association, as fiscal agent (the “Fiscal Agent”);

(iii) under Section 4.02(B) of the Fiscal Agent Agreement, the undersigned hereby requests and authorizes the Fiscal Agent to disburse from the Costs of Issuance Fund established under the Fiscal Agent Agreement to each payee designated on Schedule A attached hereto and by this reference incorporated herein, the amount set forth opposite such payee, for payment or reimbursement of previous payment of Costs of Issuance (as that term is defined in the Fiscal Agent Agreement) as described on attached Schedule A; and

(iv) the disbursements described on the attached Schedule A constitute Costs of Issuance, and are properly chargeable to the Costs of Issuance Fund.

Dated: \_\_\_\_\_

CITY OF TRACY

By: \_\_\_\_\_  
Finance Director

**SCHEDULE A**

Payee Name and Address

Purpose of Obligation

Amount

**EXHIBIT D**

**IMPROVEMENT AREA NO. 2 OF THE  
CITY OF TRACY  
Community Facilities District No. 2016-1 (Tracy Hills)  
Special Tax Bonds, Series 2023**

**OFFICER'S CERTIFICATE REQUESTING DISBURSEMENT  
FROM ADMINISTRATIVE EXPENSE FUND**

**REQUISITION NO. \_\_\_\_\_**

The undersigned hereby states and certifies that:

(i) I am the duly appointed, qualified and acting Finance Director of the City of Tracy, a general law city duly organized and existing under the laws of the State of California (the "City") and as such, am familiar with the facts herein certified and am authorized to certify the same;

(ii) I am an "Authorized Officer," as such term is defined in that certain Fiscal Agent Agreement, dated as of October 1, 2023 (the "Fiscal Agent Agreement"), by and between the City and U.S. Bank Trust Company, National Association, as fiscal agent (the "Fiscal Agent");

(iii) under Section 4.06(B) of the Fiscal Agent Agreement, the undersigned hereby requests and authorizes the Fiscal Agent to disburse from the Administrative Expense Fund established under the Fiscal Agent Agreement to each payee designated on Schedule A attached hereto and by this reference incorporated herein, the amount set forth opposite such payee, for payment or reimbursement of previous payment of an Administrative Expense or Costs of Issuance (as those terms are defined in the Fiscal Agent Agreement) as described on attached Schedule A;

(iv) the disbursements described on the attached Schedule A constitute Administrative Expenses or Costs of Issuance, and are properly chargeable to the Administrative Expense Fund; and

(v) any proceeds of the 2023 Bonds in the Administrative Expense Fund shall be disbursed before any other moneys in the Administrative Expense Fund.

Dated: \_\_\_\_\_

CITY OF TRACY

By: \_\_\_\_\_  
Finance Director

**SCHEDULE A**

Payee Name and Address

Purpose of Obligation

Amount

\$ \_\_\_\_\_  
**IMPROVEMENT AREA NO. 2 OF THE CITY OF TRACY  
COMMUNITY FACILITIES DISTRICT NO. 2016-1 (TRACY HILLS)  
SPECIAL TAX BONDS, SERIES 2023**

**BOND PURCHASE AGREEMENT**

\_\_\_\_\_, 2023

City of Tracy  
333 Civic Center Plaza  
Tracy, California 95376

Ladies and Gentlemen:

Piper Sandler & Co., as underwriter (the “**Underwriter**”), acting not as a fiduciary or agent for you, but on behalf of itself, offers to enter into this Bond Purchase Agreement (this “Purchase Agreement”) with the City of Tracy (the “**City**”), which upon acceptance will be binding upon the Underwriter and the City. This offer is made subject to the City’s acceptance by the execution of this Purchase Agreement and its delivery to the Underwriter at or before 8:00 P.M., California time, on the date hereof, and, if not so accepted, will be subject to withdrawal by the Underwriter upon notice delivered to the City at any time prior to the acceptance hereof by the City. All capitalized terms used herein, which are not otherwise defined, shall have the meaning provided for such terms in the Fiscal Agent Agreement (the “**Fiscal Agent Agreement**”), dated as of \_\_\_\_ 1, 2023, by and between the City and U.S. Bank Trust Company, National Association, as fiscal agent (the “**Fiscal Agent**”).

**1. Purchase, Sale and Delivery of the Bonds.**

A. Subject to the terms and conditions and in reliance upon the representations, warranties and agreements set forth herein, the Underwriter hereby agrees to purchase from the City and the City hereby agrees to sell to the Underwriter all (but not less than all) of the \$ \_\_\_\_\_ aggregate principal amount of the Improvement Area No. 2 of the City of Tracy Community Facilities District No. 2016-1 (Tracy Hills) Special Tax Bonds, Series 2023 (the “**Bonds**”), dated the Closing Date (as hereinafter defined), bearing interest at the rates and maturing on the dates and in the principal amounts set forth in Exhibit A hereto. The purchase price for the Bonds shall be \$ \_\_\_\_\_ (being 100% of the aggregate principal amount thereof [plus/less] [net] original issue [premium/discount] of \$ \_\_\_\_\_ and less an Underwriter’s discount of \$ \_\_\_\_\_).

The Bonds shall be substantially in the form described in, shall be issued and secured under the provisions of, and shall be payable from the Special Tax Revenues, as provided in the Fiscal Agent Agreement, the Preliminary Official Statement (as hereinafter defined), and the Mello-Roos Community Facilities Act of 1982, as amended, being Chapter 2.5 of Part 1 of Division 2 of Title 5 (commencing with Section 53311) of the Government Code of the State of California (the “**Act**”). The issuance of the Bonds has been duly authorized by the City pursuant to Resolution No. \_\_\_\_\_, adopted on \_\_\_\_\_, 2023 (the “**Approving Resolution**”).

The net proceeds of the Bonds will be used, as indicated in the Fiscal Agent Agreement, to (i) finance the acquisition and construction of certain capital improvements necessary for the development of the property in the City of Tracy Community Facilities District No. 2016-1 (Tracy Hills) (the “**Community Facilities District**”), (ii) fund a debt service reserve fund for the 2023 Bonds, (iii) [pay a portion of the interest on the Bonds coming due on March 1, 2024 and September 1, 2024], and (iv) pay the costs of issuing the Bonds.

Prior to the acceptance of this Purchase Agreement by the City, the City shall have caused to be delivered to the Underwriter (i) a Letter of Representations duly executed by Tracy Phase IB, LLC, a Delaware limited liability company (“**Tracy Phase IB, LLC**”) in substantially the form set forth in Exhibit C hereto, with only such changes thereto as shall have been accepted by the Underwriter, (ii) a Letter of Representations duly executed by Lennar Homes of California, LLC, a California limited liability company (“**Lennar Homes**”) in substantially the form set forth in Exhibit D hereto, with only such changes thereto as shall have been accepted by the Underwriter, and (iii) a Letter of Representations duly executed by AG Essential Housing CA 1, L.P, a Delaware limited partnership (the “**Landbank**”) in substantially the form set forth in Exhibit E hereto, with only such changes thereto as shall have been accepted by the Underwriter.

B. The City acknowledges that the Underwriter is entering into this Purchase Agreement in reliance on the representations and agreements made by the City herein, and the City shall take all action necessary to enforce its rights hereunder for the benefit of the Underwriter and shall immediately notify the Underwriter if it becomes aware that any representation or agreement made by the City herein is incorrect in any material respect.

The City acknowledges and agrees that: (i) the purchase and sale of the Bonds pursuant to this Purchase Agreement is an arm’s-length commercial transaction between the City and the Underwriter; (ii) in connection therewith and with the discussions, undertakings and procedures leading up to the consummation of such transaction, the Underwriter is and has been acting solely as principal and is not acting as a Municipal Advisor (as defined in Section 15B of the Securities Exchange Act of 1934, as amended); (iii) the Underwriter has not assumed an advisory or fiduciary responsibility in favor of the City with respect to the offering contemplated hereby or the discussions, undertakings and procedures leading thereto (irrespective of whether the Underwriter has provided other services or is currently providing other services to the City on other matters); and (iv) the City has consulted its own legal, financial and other advisors to the extent that the City has deemed appropriate.

C. Pursuant to the authorization of the City, the Underwriter has distributed copies of the Preliminary Official Statement dated \_\_\_\_\_, 2023, relating to the Bonds, which, together with the cover page, inside cover page and appendices thereto is herein called the “**Preliminary Official Statement**.” By its acceptance of this Purchase Agreement, the City hereby ratifies the use by the Underwriter of the Preliminary Official Statement and the preparation and distribution of the final Official Statement (together with any supplements thereto, the “**Official Statement**”) consisting of the Preliminary Official Statement with such changes as are noted thereon and as may be made thereto, with the approval of Jones Hall, A Professional Law Corporation, the City’s Bond Counsel (“**Bond Counsel**”) and Disclosure Counsel (“**Disclosure Counsel**”) and the Underwriter. The City agrees to execute the Official Statement and to provide a copy thereof to the Underwriter as set forth in Section 5.E.1. hereof. The City hereby authorizes and requires the Underwriter to use and promptly distribute, in connection with the offer and sale of the Bonds, the Preliminary Official Statement, the Official Statement and any supplement or amendment thereto. The City further authorizes the

Underwriter to use and distribute, in connection with the offer and sale of the Bonds, the Fiscal Agent Agreement, this Purchase Agreement and all information contained herein, and all other documents, certificates and statements furnished by or on behalf of the City to the Underwriter in connection with the transactions contemplated by this Purchase Agreement.

D. To assist the Underwriter in complying with Securities and Exchange Commission Rule 15c2-12(b)(5) (the “**Rule**”), the City will undertake pursuant to the Continuing Disclosure Certificate, in the form attached to the Official Statement as Appendix G (the “**Continuing Disclosure Certificate**”), to provide annual reports and notices of certain enumerated events. A description of this undertaking is set forth in the Preliminary Official Statement and will also be set forth in the Official Statement.

E. Except as the Underwriter and the City may otherwise agree, the City will deliver to the Underwriter, at the offices of Bond Counsel in San Francisco, California, or at such other location as may be mutually agreed upon by the Underwriter and the City, the documents hereinafter mentioned; and the City will deliver to the Underwriter through the facilities of The Depository Trust Company (“**DTC**”) in New York, New York, the Bonds, in definitive form (all Bonds bearing CUSIP numbers), duly executed by the City and authenticated by the Fiscal Agent in the manner provided for in the Fiscal Agent Agreement and the Act at 8:00 a.m. California time, on \_\_\_\_\_, 2023 (the “**Closing Date**”), and the Underwriter will accept such delivery and pay the purchase price of the Bonds as set forth in paragraph (A) of this Section by wire transfer, payable in federal or other immediately available funds (such delivery and payment being herein referred to as the “**Closing**”). The Bonds shall be in fully registered book-entry form (which may be typewritten) and shall be registered in the name of Cede & Co., as nominee of DTC.

## 2. **Public Offering and Establishment of Issue Price.**

A. The Underwriter agrees to make a bona fide public offering of all of the Bonds initially at the public offering prices (or yields) set forth in Exhibit A attached hereto and incorporated herein by reference. Subsequent to the initial public offering, the Underwriter reserves the right to change the public offering prices (or yields) as it deems necessary in connection with the marketing of the Bonds, provided that the Underwriter shall not change the interest rates set forth in Exhibit A. The Bonds may be offered and sold to certain dealers at prices lower than such initial offering prices.

B. The Underwriter agrees to assist the City in establishing the issue price of the Bonds and shall execute and deliver to the City at Closing an “issue price” or similar certificate, together with the supporting pricing wires or equivalent communications, substantially in the form attached hereto as Exhibit B, with such modifications as may be appropriate or necessary, in the reasonable judgment of the Underwriter, the City and Bond Counsel, to accurately reflect, as applicable, the sales price or prices or the initial offering price or prices to the public of the Bonds. All actions to be taken by the City under this section to establish the issue price of the Bonds may be taken on behalf of the City by CSG Advisors Incorporated (the “**Municipal Advisor**”) and any notice or report to be provided to the City may be provided to the Municipal Advisor.

C. Except as otherwise set forth in Exhibit A, the City will treat the first price at which 10% of each maturity of the Bonds (the “**10% test**”) is sold to the public as the issue price of that maturity (if different interest rates apply within a maturity, each separate CUSIP number within that maturity will be subject to the 10% test). At or promptly after the execution of this Purchase Agreement, the Underwriter shall report to the City the price or prices at which it has sold to the public

each maturity of the Bonds. If at that time the 10% test has not been satisfied as to any maturity of the Bonds, the Underwriter agrees to promptly report to the City the prices at which it sells the unsold Bonds of that maturity to the public. That reporting obligation shall continue, whether or not the Closing Date has occurred, until the 10% test has been satisfied as to the Bonds of that maturity or until all Bonds of that maturity have been sold to the public.

D. The Underwriter confirms that it has offered the Bonds to the public on or before the date of this Purchase Agreement at the offering price or prices (the “**initial offering price**”), or at the corresponding yield or yields, set forth in Exhibit A, except as otherwise set forth therein. Exhibit A also sets forth, identified under the column “Hold the Offering Price Rule Used,” as of the date of this Purchase Agreement, the maturities, if any, of the Bonds for which the 10% test has not been satisfied and for which the City and the Underwriter agree that the restrictions set forth in the next sentence shall apply, which will allow the City to treat the initial offering price to the public of each such maturity as of the sale date as the issue price of that maturity (the “**hold-the-offering-price rule**”). So long as the hold-the-offering-price rule remains applicable to any maturity of the Bonds, the Underwriter will neither offer nor sell unsold Bonds of that maturity to any person at a price that is higher than the initial offering price to the public during the period starting on the sale date and ending on the earlier of the following:

1. the close of the fifth (5th) business day after the sale date; or
2. the date on which the Underwriter has sold at least 10% of that maturity of the Bonds to the public at a price that is no higher than the initial offering price to the public.

The Underwriter shall promptly advise the City when it has sold 10% of that maturity of the Bonds to the public at a price that is no higher than the initial offering price to the public, if that occurs prior to the close of the fifth (5th) business day after the sale date.

E. The Underwriter confirms that any selling group agreement and any retail distribution agreement relating to the initial sale of the Bonds to the public, together with the related pricing wires, contains or will contain language obligating each dealer who is a member of the selling group and each broker-dealer that is a party to such retail distribution agreement, as applicable, to: (1) report the prices at which it sells to the public the unsold Bonds of each maturity allotted to it until it is notified by the Underwriter that either the 10% test has been satisfied as to the Bonds of that maturity or all Bonds of that maturity have been sold to the public; and (2) comply with the hold-the-offering-price rule, if applicable, in each case if and for so long as directed by the Underwriter. The City acknowledges that, in making the representation set forth in this subsection, the Underwriter will rely on: (A) in the event that a selling group has been created in connection with the initial sale of the Bonds to the public, the agreement of each dealer who is a member of the selling group to comply with the hold-the-offering-price rule, if applicable, as set forth in a selling group agreement and the related pricing wires; and (B) in the event that a retail distribution agreement was employed in connection with the initial sale of the Bonds to the public, the agreement of each broker-dealer that is a party to such agreement to comply with the hold-the-offering-price rule, if applicable, as set forth in the retail distribution agreement and the related pricing wires. The City further acknowledges that the Underwriter shall not be liable for the failure of any dealer who is a member of a selling group, or of any broker-dealer that is a party to a retail distribution agreement, to comply with its corresponding agreement regarding the hold-the-offering-price rule as applicable to the Bonds.

F. The Underwriter acknowledges that sales of any Bonds to any person that is a related party to the Underwriter shall not constitute sales to the public for purposes of this section. Further, for purposes of this section:

1. “**public**” means any person other than an underwriter or a related party;
2. “**underwriter**” means: (A) any person that agrees pursuant to a written contract with the City (or with the lead underwriter to form an underwriting syndicate) to participate in the initial sale of the Bonds to the public; and (B) any person that agrees pursuant to a written contract directly or indirectly with a person described in clause (A) to participate in the initial sale of the Bonds to the public (including a member of a selling group or a party to a retail distribution agreement participating in the initial sale of the Bonds to the public);
3. a purchaser of any of the Bonds is a “**related party**” to an underwriter if the underwriter and the purchaser are subject, directly or indirectly, to: (A) at least 50% common ownership of the voting power or the total value of their stock, if both entities are corporations (including direct ownership by one corporation of another); (B) more than 50% common ownership of their capital interests or profits interests, if both entities are partnerships (including direct ownership by one partnership of another); or (C) more than 50% common ownership of the value of the outstanding stock of the corporation or the capital interests or profit interests of the partnership, as applicable, if one entity is a corporation and the other entity is a partnership (including direct ownership of the applicable stock or interests by one entity of the other); and
4. “**sale date**” means the date of execution of this Purchase Agreement by all parties.

3. **Representations and Covenants of the City.** The City represents and covenants to the Underwriter that:

A. The City is duly organized and validly existing as a municipal corporation under the Constitution and laws of the State of California, and has duly authorized the formation of the Community Facilities District and Improvement Area No. 2 therein (“**Improvement Area No. 2**”) pursuant to resolutions and an ordinance duly adopted by the City Council (collectively, the “**Community Facilities District Formation Resolution**” and, together with the Approving Resolution, the “**City Resolutions**”), Unanimous Approvals of the owners of property within Improvement Area No. 2 at the time Improvement Area No. 2 was annexed in to the Community Facilities District (the “**Unanimous Approvals**”) and the Act. The City Council, as the legislative body of the City and the Community Facilities District, (i) has duly adopted the City Resolutions, (ii) has duly adopted Ordinance No. 1260 of the City on September 4, 2018, levying special taxes within the Community Facilities District (the “**Ordinance**”), and (iii) has caused to be recorded in the real property records of San Joaquin County a notice of special tax lien for Improvement Area No. 2 (the “**Notice of Special Tax Lien**”) (the Community Facilities District Formation Resolution, the Unanimous Approvals, the Ordinance, the Rate and Method, and the Notice of Special Tax Lien are collectively referred to herein as the “**Formation Documents**”). Each of the Formation Documents remains in full force and effect as of the date hereof and has not been amended, except to the extent set forth therein. The Community Facilities District is duly organized and validly existing as a Community Facilities District under the laws of the State of California. The City has, and at the Closing Date will have, as the case may be, full legal right, power and authority: (i) to execute, deliver and perform its obligations under the Fiscal Agent Agreement and this Purchase Agreement, and to

carry out all transactions contemplated by each of such agreements; (ii) to issue, sell and deliver its Bonds to the Underwriter; (iii) to enter into the Continuing Disclosure Certificate; and (iv) to carry out, give effect to and consummate the transactions contemplated by the Formation Documents, the Fiscal Agent Agreement, the Continuing Disclosure Certificate, this Purchase Agreement, the Bonds and the Official Statement.

This Purchase Agreement, the Fiscal Agent Agreement, the Bonds and the Continuing Disclosure Certificate are collectively referred to herein as the “**City Documents.**”

B. The City has complied, and will at the Closing Date be in compliance in all material respects, with the Formation Documents and the City Documents, and any immaterial noncompliance by the City, if any, will not impair the ability of the City to carry out, give effect to or consummate the transactions contemplated by the foregoing. From and after the date of issuance of the Bonds, the City will continue to comply with the covenants of the City contained in the City Documents.

C. Except as described in the Preliminary Official Statement, the City is not, in any respect material to the transactions referred to herein or contemplated hereby, in breach of or in default under, any law or administrative rule or regulation of the State of California, the United States of America, or of any department, division, agency or instrumentality of either thereof, or under any applicable court or administrative decree or order, or under any loan agreement, note, resolution, indenture, contract, agreement or other instrument to which the City is a party or is otherwise subject or bound, and the execution and delivery and the performance of its obligations under the City Documents and compliance with the provisions of each thereof, or the performance of the conditions precedent to be performed by the City pursuant to the City Documents, will not conflict with or constitute a breach of or default under any applicable law or administrative rule or regulation of the State, the United States of America, or of any department, division, agency or instrumentality of either thereof, or under any applicable court or administrative decree or order, or under any loan agreement, note, resolution, indenture, contract, agreement or other instrument to which the City is a party or is otherwise subject or bound, in any manner that would materially and adversely affect the performance by the City of its obligations under the City Documents or the performance of the conditions precedent to be performed by the City pursuant to the City Documents.

D. Except as may be required under the “blue sky” or other securities laws of any jurisdiction, all approvals, consents, authorizations, elections and orders of, or filings or registrations with, any governmental authority, board, agency or commission having jurisdiction which would constitute a condition precedent to, or the absence of which would materially adversely affect, the performance by the City of its obligations under the City Documents, have been or will be obtained at the Closing Date and are or will be in full force and effect at the Closing Date.

E. The City Documents conform as to form and tenor to the descriptions thereof contained in the Official Statement.

F. The Bonds are payable from the Special Tax Revenues generated by the levy of special taxes in Improvement Area No. 2 (the “**Special Taxes**”), as set forth in the Fiscal Agent Agreement. The levy of the Special Taxes has been duly and validly authorized pursuant to the Act and, subject to the maximum rate of Special Taxes in the Rate and Method and the application of the Special Tax Revenues as set forth in the Fiscal Agent Agreement, the levy of the Special Taxes within Improvement Area No. 2 will be fixed and levied in an amount which, together with other available

funds, is required for the payment of the principal of, and interest on, the 2018 Bonds, the 2019 Bonds and the Bonds when due and payable, all as provided in the Fiscal Agent Agreement. The City has covenanted in the Fiscal Agent Agreement to cause the Special Taxes to be levied and collected at the same time and in the same manner as ordinary *ad valorem* property taxes.

G. The Fiscal Agent Agreement creates a valid pledge of, first lien upon and security interest in, the Special Tax Revenues, and in the moneys in the Special Tax Fund established pursuant to the Fiscal Agent Agreement, on the terms and conditions set forth in the Fiscal Agent Agreement.

H. Except as disclosed in the Preliminary Official Statement, there are, to the best of the City's knowledge, no entities with outstanding assessment liens against any of the properties within Improvement Area No. 2 or which are senior to or on a parity with the Special Taxes referred to in paragraph (G) hereof.

I. The information contained in the Preliminary Official Statement and in the Official Statement (other than statements therein pertaining to DTC and its book-entry system and under the caption "PROPERTY OWNERSHIP AND THE DEVELOPMENT" as to which no view is expressed) does not and shall not contain any untrue or misleading statement of a material fact or omit to state any material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading; and, upon delivery and up to and including 25 days after the End of the Underwriting Period (as defined in paragraph (J) below), the Official Statement will be amended and supplemented so as to contain no misstatement of any material fact or omission of any statement necessary to make the statements contained therein, in the light of the circumstances in which such statements were made, not misleading.

J. Up to and including 25 days after the End of the Underwriting Period, the City will advise the Underwriter promptly of any proposal to amend or supplement the Official Statement and will not effect or consent to any such amendment or supplement without the consent of the Underwriter, which consent will not be unreasonably withheld. The City will advise the Underwriter promptly of the institution of any proceedings known to it by any governmental agency prohibiting or otherwise materially affecting the use of the Official Statement in connection with the offering, sale or distribution of the Bonds. As used herein, the term "End of the Underwriting Period" means the later of such time as: (i) the Bonds are delivered to the Underwriter; or (ii) the Underwriter does not retain, directly or as a member of an underwriting syndicate, an unsold balance of the Bonds for sale to the public. Unless the Underwriter gives notice to the contrary, the End of the Underwriting Period shall be deemed to be the Closing Date. Any notice delivered pursuant to this provision shall be a written notice delivered to the City at or prior to the Closing Date, and shall specify a date (other than the Closing Date) to be deemed the "End of the Underwriting Period."

K. At the time of acceptance hereof there is and as of the Closing there will be no action pending (notice of which has been served on the City) or to the best knowledge of the City threatened, in which any such action: (i) in any way questions the existence of the Community Facilities District or the titles of the officers of the City to their respective offices; (ii) affects, contests or seeks to prohibit, restrain or enjoin the issuance or delivery of the Bonds or the payment or collection of Special Tax Revenues or any amounts pledged or to be pledged to pay the principal of and interest on the Bonds, or in any way contests or affects the validity of the City Documents or the consummation of the transactions on the part of the City contemplated thereby; (iii) contests the exemption of interest on the Bonds from federal or State income taxation or contests the powers of the City or the Community

Facilities District which may result in any material adverse change relating to the financial condition of the Community Facilities District; or (iv) contests the completeness or accuracy of the Preliminary Official Statement or the Official Statement or any supplement or amendment thereto or asserts that the Preliminary Official Statement or the Official Statement contained any untrue statement of a material fact or omitted to state any material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading; and as of the time of acceptance hereof there is and, as of the Closing Date, there will be no basis for any action, suit, proceeding, inquiry or investigation of the nature described in clauses (i) through (iv) of this sentence.

L. Any certificate signed on behalf of the City by any officer or employee of the City authorized to do so shall be deemed a representation by the City to the Underwriter as to the statements made therein.

M. At or prior to the Closing, the City will have duly authorized, executed and delivered the Continuing Disclosure Certificate in substantially the form attached as Appendix G to the Official Statement. Except as disclosed in the Preliminary Official Statement, the City has not failed to comply in all respects with any previous undertakings with regard to the Rule to provide annual reports or notices of material events in the last five years.

N. The City will apply the proceeds of its Bonds in accordance with the Fiscal Agent Agreement.

O. Between the date of the Purchase Agreement and the date of Closing, the City will not offer or issue any bonds, notes or other obligations for borrowed money payable or secured by Special Taxes, except as previously disclosed to the Underwriter.

The execution and delivery of this Purchase Agreement by the City shall constitute a representation to the Underwriter that the representations contained in this Section 3 are true as of the date hereof.

4. **Conditions to the Obligations of the Underwriter.** The obligation of the Underwriter to accept delivery of and pay for the Bonds on the Closing Date shall be subject, at the option of the Underwriter, to the accuracy in all material respects of the representations on the part of the City contained herein, to the accuracy in all material respects of the statements of the officers and other officials of the City made in any certificates or other documents furnished pursuant to the provisions hereof, to the performance by the City of its obligations to be performed hereunder at or prior to the Closing Date and, to the following additional conditions:

A. At the Closing Date, the City Resolutions, the Formation Documents, and the City Documents shall be in full force and effect, and shall not have been amended, modified or supplemented, except as may have been agreed to in writing by the Underwriter, and there shall have been taken in connection therewith, with the issuance of the Bonds, and with the transactions contemplated thereby, and by this Purchase Agreement, all such actions as, in the opinion of Bond Counsel, shall be necessary and appropriate.

B. At the Closing Date, except as was described in the Official Statement, the City shall not be, in any respect material to the transactions referred to herein or contemplated hereby, in breach of or in default under, any law or administrative rule or regulation of the State of California,

the United States of America, or of any department, division, agency or instrumentality of either thereof, or under any applicable court or administrative decree or order, or under any loan agreement, note, resolution, indenture, contract, agreement or other instrument to which the City is a party or is otherwise subject or bound, and the execution and delivery and the performance by the City of its obligations under the City Documents, the City Resolutions and any other instruments contemplated by any of such documents, and compliance with the provisions of each thereof, will not conflict with or constitute a breach of or default under any applicable law or administrative rule or regulation of the State of California, the United States of America, or of any department, division, agency or instrumentality of either thereof, or under any applicable court or administrative decree or order, or under any loan agreement, note, resolution, indenture, contract, agreement or other instrument to which the City is a party or is otherwise subject or bound, in any manner that would materially and adversely affect the performance by the City of its obligations under the City Documents or the City Resolutions.

C. The information contained in the Official Statement is, as of the Closing Date and as of the date of any supplement or amendment thereto pursuant hereto, true and correct in all material respects and does not, as of the Closing Date or as of the date of any supplement or amendment thereto, contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading.

D. Between the date hereof and the Closing Date, the market price or marketability, at the initial offering prices set forth on the inside cover page of the Official Statement, of the Bonds shall not have been materially adversely affected, in the judgment of the Underwriter (evidenced by a written notice to the City terminating the obligation of the Underwriter to accept delivery of and pay for the Bonds), by reason of any of the following:

1. Legislation introduced in or enacted (or resolution passed) by the Congress of the United States of America or recommended to the Congress by the President of the United States, the Department of the Treasury, the Internal Revenue Service, or any member of Congress, or favorably reported for passage to either House of Congress by any committee of such House to which such legislation had been referred for consideration, or a decision rendered by a court established under Article III of the Constitution of the United States of America or by the Tax Court of the United States of America, or an order, ruling, regulation (final, temporary or proposed), press release or other form of notice issued or made by or on behalf of the Treasury Department of the United States of America or the Internal Revenue Service, with the purpose or effect, directly or indirectly, of imposing federal income taxation upon such interest as would be received by any owners of the Bonds beyond the extent to which such interest is subject to taxation as of the date hereof;

2. Legislation introduced in or enacted (or resolution passed) by the Congress or an order, decree or injunction issued by any court of competent jurisdiction, or an order, ruling, regulation (final, temporary or proposed), press release or other form of notice issued or made by or on behalf of the Securities and Exchange Commission, or any other governmental agency having jurisdiction of the subject matter, to the effect that obligations of the general character of the Bonds, including any or all underlying arrangements, are not exempt from registration under or other requirements of the Securities Act of 1933, as amended, or that the Fiscal Agent Agreement are not exempt from qualification under or other requirements of the Trust Indenture Act of 1939, as amended, or that the issuance, offering or sale of obligations of the general character of the Bonds, including any or all underlying arrangements, as contemplated hereby or by the Official Statement or otherwise is or would be in violation of the federal securities laws as amended and then in effect;

3. A general suspension of trading in securities on the New York Stock Exchange, or a general banking moratorium declared by Federal, State of New York or State of California officials authorized to do so;

4. The introduction, proposal or enactment of any amendment to the Federal or California Constitutions or any action by any Federal or California court, legislative body, regulatory body or other authority materially adversely affecting the tax status of the City, its property, income, securities (or interest thereon), or the validity or enforceability of Special Taxes as contemplated by the Official Statement;

5. Any event occurring, or information becoming known which, in the judgment of the Underwriter, makes untrue in any material respect any statement or information contained in the Preliminary Official Statement or in the Official Statement, or has the effect that the Preliminary Official Statement or the Official Statement contains any untrue statement of a material fact or omits to state a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading;

6. Any national securities exchange, the Comptroller of the Currency, or any other governmental authority, shall impose as to the Bonds or obligations of the general character of the Bonds, any material restrictions not now in force, or increase materially those now in force, with respect to the extension of credit by, or the charge to the net capital requirements of, the Underwriter;

7. There shall have occurred any material outbreak or escalation of hostilities or other calamity or crisis the effect of which on the financial markets of the United States is such as to make it impracticable, in the judgment of the Underwriter, following consultation with the City, to sell the Bonds;

8. The filing or threat of an Action described Section 3.K hereof; or

9. Any proceeding shall have been commenced or be threatened in writing by the Securities and Exchange Commission against the City.

E. At or prior to the Closing Date, the Underwriter shall have received a counterpart original or certified copy of the following documents, in each case satisfactory in form and substance to the Underwriter:

1. The Official Statement, executed on behalf of the City by its Finance Director or other authorized officer;

2. The City Documents, duly executed and delivered by all parties thereto;

3. The City Resolutions, together with a certificate dated as of the Closing Date of the City Clerk to the effect that the City Resolutions are true, correct and complete copies of the City Resolutions duly adopted by the City Council;

4. The Formation Documents, together with a certificate dated as of the Closing Date of the City Clerk to the effect that the Formation Documents are true, correct and complete copies of the Formation Documents duly adopted by the City Council;

5. An unqualified approving opinion for the Bonds, dated the Closing Date and addressed to the City, of Bond Counsel, in substantially the form included as Appendix F to the Official Statement;

6. A supplemental opinion or opinions, dated the Closing Date and addressed to the Underwriter, of Bond Counsel, to the effect that: (i) the Purchase Agreement has been duly authorized, executed and delivered by the City, and, assuming that the Purchase Agreement constitutes the valid and binding obligation of the Underwriter, constitutes the legally valid and binding obligations of the City enforceable in accordance with their terms, except as enforcement may be limited by bankruptcy, moratorium, insolvency or other laws affecting creditors' rights or remedies and general principles of equity (regardless of whether such enforceability is considered in equity or at law); (ii) the Bonds are not subject to the registration requirements of the Securities Act of 1933, as amended, and the Fiscal Agent Agreement is exempt from qualification under the Trust Indenture Act of 1939, as amended; and (iii) the information contained in the Official Statement on the cover and under the captions "INTRODUCTION," "THE 2023 BONDS," "SECURITY FOR THE BONDS," "TAX MATTERS" and Appendices E and F thereof (except that no opinion or belief is expressed as to any financial or statistical data contained therein), insofar as it purports to summarize certain provisions of the Act, the Bonds, the Fiscal Agent Agreement and the exclusion from gross income for federal income tax purposes and exemption from State personal income taxes of interest on the Bonds, presents a fair and accurate summary of such provisions.

7. A letter of Disclosure Counsel addressed to the Underwriter, to the effect that, no facts have come to attention of Disclosure Counsel that have caused such counsel to believe that the Preliminary Official Statement, as of its date, or the Official Statement, as of its date and as of the Closing Date (except for the following items, which are expressly excluded from the scope of this sentence: any financial, statistical and demographic data or forecasts, numbers, charts, estimates, projections, assumptions or expressions of opinion, the appraisal, and information regarding DTC and its book-entry only system, that is contained or incorporated by reference in the Official Statement and the appendices to the Official Statement) as of its date or the Closing Date contained or contains any untrue statement of a material fact or omitted or omits to state any material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading;

8. A certificate dated the Closing Date and signed by an authorized representative of the City or an authorized designee, on behalf of the City to the effect that: (i) the representations made by the City contained in this Purchase Agreement are true and correct in all material respects on and as of the Closing Date with the same effect as if made on the Closing Date, provided that any references as to the Preliminary Official Statement shall be deemed to be to the Official Statement; (ii) to the best knowledge of such officer, no event has occurred since the date of the Official Statement which should be disclosed in the Official Statement for the purpose for which it is to be used or which it is necessary to disclose therein in order to make the statements and information therein not misleading in any material respect; and (iii) the City has complied with all the agreements and satisfied all the conditions on its part to be satisfied under the City Documents prior to the Closing Date;

9. An opinion of the City Attorney of the City, dated the date of Closing and addressed to the Underwriter and the City, to the effect that:

(i) The City is a municipal corporation, corporate and politic, duly organized and existing under the Constitution and laws of the State of California;

(ii) The City Resolutions and the Formation Documents have been duly adopted at a meeting of the City Council, which was called and held pursuant to law and with all public notice required by law and at which a quorum was present and acting throughout, and the City Resolutions and the Formation Documents are in full force and effect and have not been modified, amended, rescinded or repealed since the date of their adoption;

(iii) The City Documents and the Official Statement have been duly authorized, executed and delivered by the City and the City Documents constitute the legal, valid and binding obligations of the City enforceable against the City in accordance with their terms, subject to bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting creditors' rights, to the application of equitable principles where equitable remedies are sought and to the exercise of judicial discretion in appropriate cases;

(iv) To the best knowledge of such counsel, the execution and delivery of the City Documents and the Official Statement and compliance with the provisions thereof under the circumstances contemplated thereby: (a) do not in any material respect conflict with or constitute on the part of the City a breach of or default under any agreement or other instrument to which the City is a party or by which it is bound; and (b) do not and will not in any material respect or constitute on the part of the City a violation, breach of or default under any court order or consent decree to which the City is subject;

(v) Except as may be stated in the Official Statement, there is no action, suit, proceeding or investigation before or by any court, public board or body pending (notice of which has been served on the City) or, to such counsel's knowledge, threatened wherein an unfavorable decision, ruling or finding would: (a) affect the creation, organization, existence or powers of the City or the Community Facilities District, or the titles of its members and officers to their respective offices; or (b) affect the validity of the City Documents, the City Resolutions or the Formation Documents, or restrain or enjoin the repayment of the Bonds or in any way contest or affect the validity of the City Documents, the City Resolutions or the Formation Documents, or contest the authority of the City to enter into or perform its obligations under any of the City Documents, the City Resolutions or the Formation Documents, or under which a determination adverse to the City would have a material adverse effect upon the financial condition or the revenues of the City or the Community Facilities District, questions the right of the City to use Special Tax Revenues for the repayment of the Bonds or affects in any manner the right or ability of the City to collect or pledge the Special Taxes levied within Improvement Area No. 2 for the repayment of the Bonds;

10. A transcript of all proceedings relating to the authorization, issuance, sale and delivery of the Bonds, including certified copies of the Fiscal Agent Agreement and all resolutions of the City relating thereto;

11. A certificate dated the Closing Date from Goodwin Consulting Group, Inc. addressed to the City and the Underwriter to the effect that: (i) the Special Taxes (after payment of estimated Administrative Expenses) if collected in the maximum amounts permitted pursuant to the

Rate and Method as of the Closing Date would generate at least 110% of the annual debt service payable on the Bonds in each year, based on such assumptions and qualifications as shall be acceptable to the Underwriter; and (ii) the statements in the Official Statement provided by Goodwin Consulting Group, Inc. concerning the Special Taxes and the Rate and Method and all information supplied by it for use in the Official Statement as of the date of the Official Statement and as of the Closing Date did not and do not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading.

12. Certified copies of the general resolution of the Fiscal Agent authorizing the execution and delivery of certain documents by certain officers of the Fiscal Agent, which resolution authorizes the execution of the Fiscal Agent Agreement and the authentication of the Bonds;

13. A certificate of the Fiscal Agent, addressed to the Underwriter and the City dated the Closing Date, to the effect that: (i) the Fiscal Agent is authorized to carry out corporate trust powers, and have full power and authority to perform its duties under the Fiscal Agent Agreement; (ii) the Fiscal Agent is duly authorized to execute and deliver the Fiscal Agent Agreement, to accept the obligations created by the Fiscal Agent Agreement and to authenticate the Bonds pursuant to the terms of the Fiscal Agent Agreement; (iii) no consent, approval, authorization or other action by any governmental or regulatory authority having jurisdiction over the Fiscal Agent that has not been obtained is or will be required for the authentication of the Bonds or the consummation by the Fiscal Agent of the other transactions contemplated to be performed by the Fiscal Agent in connection with the authentication of the Bonds and the acceptance and performance of the obligations created by the Fiscal Agent Agreement; and (iv) to the best of its knowledge, compliance with the terms of the Fiscal Agent Agreement will not conflict with, or result in a violation or breach of, or constitute a default under, any loan agreement, trust agreement, bond, note, resolution or any other agreement or instrument to which the Fiscal Agent is a party or by which it is bound, or any law or any rule, regulation, order or decree of any court or governmental agency or body having jurisdiction over the Fiscal Agent or any of its activities or properties;

14. An opinion of counsel to the Fiscal Agent, dated the Closing Date, addressed to the Underwriter and the City to the effect that the Fiscal Agent is a national banking association duly organized and validly existing under the laws of the United States having full power and being qualified to enter into, accept and agree to the provisions of the Fiscal Agent Agreement, and that the Fiscal Agent Agreement has been duly authorized, executed and delivered by the Fiscal Agent and, assuming due execution and delivery by the other parties thereto, constitutes the legal, valid and binding obligation of the Fiscal Agent enforceable in accordance with its terms, subject to bankruptcy, insolvency, reorganization, moratorium and other laws affecting the enforcement of creditors' rights in general and except as such enforceability may be limited by the application of equitable principles if equitable remedies are sought;

15. A certificate of the City dated the Closing Date, in a form acceptable to Bond Counsel and the Underwriter, that the Bonds are not arbitrage bonds within the meaning of Section 148 of the Internal Revenue Code of 1986, as amended;

16. An opinion of Stradling Yocca Carlson & Rauth, a Professional Corporation, counsel to the Underwriter ("**Underwriter's Counsel**"), dated the date of Closing and addressed to the Underwriter in form and substance acceptable to the Underwriter;

17. A closing certificate of Tracy Phase IB, LLC dated the Closing Date, substantially in the form attached as Exhibit F hereto;

18. A letter from counsel to Tracy Phase IB, LLC, in form and substance acceptable to the Underwriter, dated the Closing Date and addressed to the Underwriter, regarding negative assurance with respect to the Preliminary Official Statement and Official Statement;

19. A closing certificate of Lennar Homes dated the Closing Date, substantially in the form attached as Exhibit G hereto;

20. A continuing disclosure certificate executed and delivered by Lennar Homes, dated as of the Closing Date in the form attached as Appendix H to the Official Statement (the **“Lennar Homes Continuing Disclosure Certificate”**);

21. A letter or letters from counsel to Lennar Homes, in form and substance acceptable to the Underwriter, dated the Closing Date and addressed to the Underwriter, regarding: (i) negative assurance with respect to the information in the Preliminary Official Statement and Official Statement relating to Lennar Homes and the property being developed by Lennar Homes under the captions “PROPERTY OWNERSHIP AND THE DEVELOPMENT—Acquisition Agreement,” “—Development Plan for Improvement Area No. 2,” “—Lennar Homes,” “—Landbank Arrangement,” “—Status of Development,” and “—Home Construction Financing Plan,” and “CONTINUING DISCLOSURE—Lennar Homes Continuing Disclosure”; and (ii) the validity and enforceability of the Lennar Homes Continuing Disclosure Certificate;

22. A closing certificate of the Landbank dated the Closing Date, substantially in the form attached as Exhibit H hereto;

23. A Certificate of the Appraiser, substantially in the form attached hereto as Exhibit I;

24. A Certificate of the Market Absorption Consultant, substantially in the form attached hereto as Exhibit J;

25. Such additional legal opinions, certificates, instruments and other documents as the Underwriter may reasonably request to evidence the truth and accuracy, as of the date hereof and as of the Closing Date, of the material representations of the City contained herein, and of the statements and information contained in the Official Statement and the due performance or satisfaction by the City at or prior to the Closing of all agreements then to be performed and all conditions then to be satisfied by the City in connection with the transactions contemplated hereby and by the Fiscal Agent Agreement and the Official Statement.

If the City shall be unable to satisfy the conditions to the obligations of the Underwriter to purchase, accept delivery of and pay for the Bonds contained in this Purchase Agreement, or if the obligations of the Underwriter to purchase, accept delivery of and pay for the Bonds shall be terminated for any reason permitted by this Purchase Agreement, this Purchase Agreement shall terminate and neither the City nor the Underwriter shall be under any further obligation hereunder, except that the respective obligations of the Underwriter and the City set forth in Section 6 hereof shall continue in full force and effect.

5. **Conditions to the Obligations of the City.** The obligations of the City shall be subject to the satisfaction of the conditions contained in Section 4 of this Purchase Agreement.

6. **Expenses.** Whether or not the transactions contemplated by this Purchase Agreement are consummated, the Underwriter shall be under no obligation to pay, and the City shall pay only from the proceeds of the Bonds or any other legally available funds of the City or the Community Facilities District, but only as the City and such other party providing such services may agree, all expenses and costs of the City incident to the performance of its obligations in connection with the authorization, execution, sale and delivery of the Bonds to the Underwriter, including, without limitation, printing costs, initial fees of the Fiscal Agent, including fees and disbursements of their counsel, if any, fees and disbursements of Bond Counsel, Disclosure Counsel and other professional advisors employed by the City, costs of preparation, printing, signing, transportation, delivery and safekeeping of the Bonds and for expenses (included in the expense component of the spread) incurred by the Underwriter on behalf of the City's employees which are incidental to implementing this Purchase Agreement, including, but not limited to, meals, transportation and lodging of those employees. The Underwriter shall pay all out-of-pocket expenses of the Underwriter, including, without limitation, advertising expenses, the California Debt and Investment Advisory Commission fee, CUSIP Services Bureau charges, regulatory fees imposed on new securities issuers and any and all other expenses incurred by the Underwriter in connection with the public offering and distribution of the Bonds, including fees of its counsel.

7. **Notices.** Any notice of other communication to be given to the City under this Purchase Agreement may be given by delivering the same in writing to the City of Tracy, 333 Civic Center Plaza, Tracy, California 95376, Attention: Assistant City Manager; any notice or other communication to be given to the Underwriter under this Purchase Agreement may be given by delivering the same in writing to Piper Sandler & Co, 3626 Fair Oaks Boulevard, Suite 100, Sacramento, CA 95864, Attention: Dennis McGuire.

8. **Parties In Interest.** This Purchase Agreement is made solely for the benefit of the City and the Underwriter (including any successors or assignees of the Underwriter) and no other person shall acquire or have any right hereunder or by virtue hereof.

9. **Survival of Representations.** The representations of the City under this Purchase Agreement shall not be deemed to have been discharged, satisfied or otherwise rendered void by reason of the Closing and regardless of any investigations made by or on behalf of the Underwriter (or statements as to the results of such investigations) concerning such representations and statements of the City and regardless of delivery of and payment for the Bonds.

10. **Execution in Counterparts.** This Purchase Agreement may be executed by the parties hereto in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument.

11. **Effective.** This Purchase Agreement shall become effective and binding upon the respective parties hereto upon the execution of the acceptance hereof by the City and shall be valid and enforceable as of the time of such acceptance.

12. **No Prior Agreements.** This Purchase Agreement supersedes and replaces all prior negotiations, agreements and understanding among the parties hereto in relation to the sale of the Bonds by the City.

13. **Governing Law.** This Purchase Agreement shall be governed by the laws of the State of California.

14. **Effective Date.** This Purchase Agreement shall become effective and binding upon the respective parties hereto upon the execution of the acceptance hereof by the City and shall be valid and enforceable as of the time of such acceptance.

Very truly yours,

PIPER SANDLER & CO.

By: \_\_\_\_\_  
Its: Authorized Officer

Time of Execution: \_\_\_\_\_

CITY OF TRACY

By: \_\_\_\_\_  
Karin Schnaider, Assistant City  
Manager

**EXHIBIT A**

\$ \_\_\_\_\_

**IMPROVEMENT AREA NO. 2 OF THE CITY OF TRACY  
COMMUNITY FACILITIES DISTRICT NO. 2016-1 (TRACY HILLS)  
SPECIAL TAX BONDS, SERIES 2023**

**Schedule of Bond Maturities, Principal Amounts, Interest Rates, Yields  
and Initial Offering Prices**

<i>Maturity Date (September 1)</i>	<i>Principal Amount</i>	<i>Interest Rate</i>	<i>Yield</i>	<i>Initial Offering Price</i>	<i>10% Test Used</i>	<i>Hold the Price Offering Rule Used</i>
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<sup>T</sup> Term Bonds.

<sup>C</sup> Priced to the optional redemption date of September 1, 20\_\_ at \_\_.

<sup>CC</sup> Priced to the optional redemption date of September 1, 20\_\_ at \_\_.

**Optional Redemption.** The Bonds maturing on or after September 1, 20\_\_, are subject to optional redemption as directed by the City, from sources of funds other than prepayments of Special Taxes, prior to their stated maturity on any date on or after September 1, 20\_\_, as a whole or in part, at the redemption prices (expressed as a percentage of the principal amount of the Bonds to be redeemed) set forth below, together with accrued interest thereon to the date fixed for redemption:

**Redemption Dates**

**Redemption  
Price**

**Mandatory Sinking Fund Redemption.** The Bonds maturing on September 1, 20\_\_ (the “20\_\_ Term Bonds”), will also be subject to mandatory redemption in part by lot, from Sinking Fund Payments made by the City from the Bond Fund, at a redemption price equal to the principal amount

thereof to be redeemed, without premium, in the aggregate respective principal amounts, as set forth in the table below; provided, however, if some but not all of the 20\_\_ Term Bonds of a given maturity have been redeemed through optional redemption or mandatory prepayment redemption as described above and below, the total amount of all future Sinking Fund Payments relating to such maturity will be reduced by the aggregate principal amount of 20\_\_ Term Bonds of such maturity so redeemed, to be allocated among such Sinking Fund Payments as directed by the City.

<b>Sinking Fund Redemption Date (September 1)</b>	<b><u>Sinking Fund Payments</u></b>
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(maturity)

***Redemption from Special Tax Prepayments.*** Special Tax Prepayments and any corresponding transfers from the 2023 Reserve Fund will be used to redeem Bonds on the next Interest Payment Date for which notice of redemption can timely be given under the Fiscal Agent Agreement, among maturities so as to maintain substantially the same debt service profile for the Bonds as in effect prior to such redemption and by lot within a maturity, at a redemption price (expressed as a percentage of the principal amount of the Bonds to be redeemed), as set forth below, together with accrued interest to the date fixed for redemption:

<b><u>Redemption Dates</u></b>	<b><u>Redemption Price</u></b>
Any Interest Payment Date on or before March 1, 20__	103%
September 1, 20__ and March 1, 20__	102
September 1, 20__ and March 1, 20__	101
September 1, 20__ and any Interest Payment Date thereafter	100

**EXHIBIT B**

\$ \_\_\_\_\_

**IMPROVEMENT AREA NO. 2 OF THE CITY OF TRACY  
COMMUNITY FACILITIES DISTRICT NO. 2016-1 (TRACY HILLS)  
SPECIAL TAX BONDS, SERIES 2023**

**FORM OF ISSUE PRICE CERTIFICATE**

The undersigned, on behalf of Piper Sandler & Co. (the “PSC”), hereby certifies as set forth below with respect to the sale and issuance of the above-captioned bonds (the “Bonds”).

1. ***Sale of the General Rule Maturities.*** As of the date of this certificate, for each Maturity of the General Rule Maturities, the first price at which at least 10% of such Maturity was sold to the Public is the respective price listed in Schedule A.

2. ***Initial Offering Price of the Hold-the-Offering-Price Maturities.***

(a) PSC offered the Hold-the-Offering-Price Maturities to the Public for purchase at the respective initial offering prices listed in Schedule I (the “**Initial Offering Prices**”) on or before the Sale Date. A copy of the pricing wire or equivalent communication for the Bonds is attached to this certificate as Schedule II.

(b) As set forth in the Bond Purchase Agreement, dated \_\_\_\_\_, 2023, by and between PSC and the Issuer, PSC has agreed in writing that: (i) for each Maturity of the Hold-the-Offering-Price Maturities, it would neither offer nor sell any of the Bonds of such Maturity to any person at a price that is higher than the Initial Offering Price for such Maturity during the Holding Period for such Maturity (the “**hold-the-offering-price rule**”); and (ii) any selling group agreement shall contain the agreement of each dealer who is a member of the selling group, and any retail distribution agreement shall contain the agreement of each broker-dealer who is a party to the retail distribution agreement, to comply with the hold-the-offering-price rule. Pursuant to such agreement, no Underwriter (as defined below) has offered or sold any Maturity of the Hold-the-Offering-Price Maturities at a price that is higher than the respective Initial Offering Price for that Maturity of the Bonds during the Holding Period.

3. ***Defined Terms.***

(a) ***General Rule Maturities*** means those Maturities of the Bonds listed in Schedule I hereto as the “General Rule Maturities.”

(b) ***Hold-the-Offering-Price Maturities*** means those Maturities of the Bonds listed in Schedule I hereto as the “Hold-the-Offering-Price Maturities.”

(c) ***Holding Period*** means, with respect to a Hold-the-Offering-Price Maturity, the period starting on the Sale Date and ending on the earlier of (i) the close of the fifth business day after \_\_\_\_\_, 2023 (the Sale Date), or (ii) the date on which the Underwriter has sold at least 10% of such Hold-the-Offering-Price Maturity to the Public at prices that are no higher than the Initial Offering Price for such Hold-the-Offering-Price Maturity.

(d) *Issuer* means the City of Tracy.

(e) *Maturity* means Bonds with the same credit and payment terms. Bonds with different maturity dates, or Bonds with the same maturity date but different stated interest rates, are treated as separate maturities.

(f) *Public* means any person (including an individual, trust, estate, partnership, association, company, or corporation) other than an Underwriter or a related party to an Underwriter. The term “related party” for purposes of this certificate generally means any two or more persons who have greater than 50 percent common ownership, directly or indirectly.

(g) *Sale Date* means the first day on which there is a binding contract in writing for the sale of a Maturity of the Bonds. The Sale Date of the Bonds is \_\_\_\_\_, 2023.

(h) *Underwriter* means: (i) any person that agrees pursuant to a written contract with the Issuer (or with the lead underwriter to form an underwriting syndicate) to participate in the initial sale of the Bonds to the Public; and (ii) any person that agrees pursuant to a written contract directly or indirectly with a person described in clause (i) of this paragraph to participate in the initial sale of the Bonds to the Public (including a member of a selling group or a party to a retail distribution agreement participating in the initial sale of the Bonds to the Public).

The representations set forth in this certificate are limited to factual matters only. Nothing in this certificate represents PSC’s interpretation of any laws, including specifically Sections 103 and 148 of the Internal Revenue Code of 1986, as amended, and the Treasury Regulations thereunder. The undersigned understands that the foregoing information will be relied upon by the Issuer with respect to certain of the representations set forth in the Tax Certificate and with respect to compliance with the federal income tax rules affecting the Bonds, and by Jones Hall, a Professional Law Corporation, in connection with rendering its opinion that the interest on the Bonds is excluded from gross income for federal income tax purposes, the preparation of the Internal Revenue Service Form 8038-G, and other federal income tax advice that it may give to the Issuer from time to time relating to the Bonds.

PIPER SANDLER & CO.

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

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

Dated: \_\_\_\_\_, 2023

**SCHEDULE A**

**SALE PRICES OF THE GENERAL RULE MATURITIES**

*(Attached)*

**SCHEDULE B**

**PRICING WIRE OR EQUIVALENT COMMUNICATION**

*(Attached)*

**EXHIBIT C**

**IMPROVEMENT AREA NO. 2 OF THE CITY OF TRACY  
COMMUNITY FACILITIES DISTRICT NO. 2016-1 (TRACY HILLS)  
SPECIAL TAX BONDS, SERIES 2023**

**LETTER OF REPRESENTATIONS OF TRACY PHASE IB, LLC**

\_\_\_\_\_, 2023

City of Tracy  
333 Civic Center Plaza  
Tracy, California 95376

Piper Sandler & Co.  
3626 Fair Oaks Boulevard, Suite 100  
Sacramento, California 95864

Ladies and Gentlemen:

Reference is made to the Improvement Area No. 2 of the City of Tracy Community Facilities District No. 2016-1 (Tracy Hills) Special Tax Bonds, Series 2023 (the “**Bonds**”) and to the Bond Purchase Agreement to be entered into in connection therewith (the “**Purchase Agreement**”). This Letter of Representations of Tracy Phase IB, LLC (the “**Letter of Representations**”) is delivered pursuant to the Purchase Agreement. Capitalized terms used and not otherwise defined herein have the meanings ascribed to them in the Purchase Agreement.

The undersigned certifies that he or she is familiar with the facts herein certified and is authorized and qualified to certify the same as an authorized officer or representative of Tracy Phase IB, LLC, a Delaware limited liability company (the “**Developer**”), and the undersigned, on behalf of the Developer, further certifies as follows:

1. The Developer is a limited liability company validly existing and in good standing as a limited liability company under the laws of the State of Delaware and is duly registered to transact intrastate business in the State of California as a foreign limited liability company and is in good standing in the State of California and has all requisite limited liability company right, power and authority: (i) to execute and deliver this Letter of Representations; and (ii) to undertake all of the transactions on its part described in the Preliminary Official Statement.

2. Except as set forth in the Preliminary Official Statement, no action, suit, proceeding, inquiry, or investigation at law or in equity, before or by any court, regulatory agency, public board, or body is pending against the Developer (with proper service of process to the Developer having been accomplished) or, to the Actual Knowledge of the Undersigned, is pending against any current Affiliate (with proper service of process to such Affiliate having been accomplished) or to the Actual Knowledge of the Undersigned is overtly threatened in writing against the Developer or any such Affiliate which is reasonably likely to materially and adversely affect the Developer’s or its Affiliates’

ability to develop the remainder of the Tracy Hills Project as described in the Preliminary Official Statement.

3. As of the date thereof, the Preliminary Official Statement, solely with respect to information contained therein with respect to the Developer, its Affiliates, and the remainder of the Tracy Hills Project as set forth under the captions “PROPERTY OWNERSHIP AND THE DEVELOPMENT—The Master Developer and Subsidiaries,” and “—The Tracy Hills Project” (but excluding any information cited as coming from a source other than the Developer) is true and correct in all material respects and did not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading.

4. The Developer covenants that, while the Bonds or any refunding obligations related thereto are outstanding, the Developer and its Affiliates which it controls will not bring any action, suit, proceeding, inquiry, or investigation at law or in equity, before any court, regulatory agency, public board, or body, that in any way seeks to challenge or overturn the formation of the City of Tracy Community Facilities District No. 2016-1 (Tracy Hills) (the “**Community Facilities District**”) or Improvement Area No. 2, to challenge the adoption of the ordinance(s) of the City levying Special Taxes within Improvement Area No. 2, to invalidate the Community Facilities District or any of the Bonds or any refunding bonds related thereto, or to invalidate the special tax liens imposed under Section 3115.5 of the Streets and Highways Code based on recordation of the notice of special tax lien relating thereto. The foregoing covenant shall not prevent the Developer in any way from bringing any action, suit, proceeding, inquiry, or investigation at law or in equity, before any court, regulatory agency, public board, or body including, without limitation, (a) an action or suit contending that the Special Taxes have not been levied in accordance with the methodologies contained in the Rate and Method of Apportionment of Special Taxes pursuant to which the Special Taxes are levied, (b) an action or suit with respect to the application or use of the Special Taxes levied and collected or the proceeds of the Bonds, or (c) the enforcement of the obligations of the City or the Community Facilities District under the Fiscal Agent Agreement or any agreements between the Developer and the City or the Community Facilities District or under which the Developer is a party or beneficiary.

5. If between the date hereof and the Closing Date any event relating to or affecting the Developer, its Affiliates, and the remainder of the Tracy Hills Project shall occur of which the Developer has actual knowledge which would cause the information under the captions of the Preliminary Official Statement that are described in Paragraph 3 (and subject to the limitations and exclusions contained in Paragraph 3) hereof to contain an untrue statement of a material fact or to omit to state a material fact that is necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading, the Developer shall notify the City and the Underwriter. If in the reasonable opinion of counsel to the City or the Underwriter such event requires the preparation and publication of a supplement or amendment to the Preliminary Official Statement, the Developer shall reasonably cooperate with the City in the preparation of an amendment or supplement to the Preliminary Official Statement in form and substance that is reasonably satisfactory to counsel to the City and to the Underwriter.

6. To the Actual Knowledge of the Undersigned, the Developer is able to pay its bills as they become due and no legal proceedings are pending against the Developer (with proper service of process to the Developer having been accomplished) or, to the Actual Knowledge of the Undersigned, threatened in writing in which the Developer may be adjudicated as bankrupt or discharged from any and all of its debts or obligations, or granted an extension of time to pay its debts or obligations, or be

allowed to reorganize or readjust its debts, or be subject to control or supervision of the Federal Deposit Insurance Corporation.

7. The Developer agrees to deliver a Closing Certificate dated the date of issuance of the Bonds at the time of issuance of the Bonds in substantially the form attached to the Purchase Agreement as Exhibit F.

8. As used in this Letter of Representations, the term “**Actual Knowledge of the Undersigned**” means the actual (as opposed to constructive) knowledge that the undersigned currently has or has obtained through (i) interviews with such current officers and responsible employees of the Developer as the undersigned has reasonably determined are likely, in the ordinary course of their respective duties, to have knowledge of the matters set forth in this Letter of Representations including the chief financial officer of the Developer or, if the Developer does not have a chief financial officer, the person who performs the functions usually associated with such officer (unless the undersigned is the chief financial officer or such person), and (ii) reviews of documents reasonably available to the undersigned and which the undersigned reasonably deemed necessary for the undersigned to execute this Letter of Representations. The undersigned has not conducted any extraordinary inspection or inquiry other than such inspections or inquiries as are prudent and customary in connection with the ordinary course of the Developer’s current business and operations. The undersigned has not contacted any individuals who are no longer employed by, or associated with, the Developer.

9. As used in this Letter of Representations, the term “**Affiliate**” of the Developer means any person directly (or indirectly through one or more intermediaries) that exercises managerial control over the Developer or that is under managerial control of the Developer, and about whom information could be material to potential investors in their investment decision regarding the Bonds, but excludes Lennar Homes of California, LLC and its affiliates.

10. On behalf of the Developer, I have reviewed the contents of this Letter of Representations and have met with counsel to the Developer for the purpose of discussing the meaning of its contents.

The undersigned has executed this Letter of Representations solely in his or her capacity as an authorized officer or representative of Developer and he or she will have no personal liability arising from or relating to this Letter of Representations.

**TRACY PHASE IB, LLC,**  
a Delaware limited liability company

By: \_\_\_\_\_  
Authorized Representative

**EXHIBIT D**

**IMPROVEMENT AREA NO. 2 OF THE CITY OF TRACY  
COMMUNITY FACILITIES DISTRICT NO. 2016-1 (TRACY HILLS)  
SPECIAL TAX BONDS, SERIES 2023**

**LETTER OF REPRESENTATIONS OF LENNAR HOMES OF CALIFORNIA, LLC**

\_\_\_\_\_, 2023

City of Tracy  
333 Civic Center Plaza  
Tracy, California 95376

Piper Sandler & Co.  
3626 Fair Oaks Boulevard, Suite 100  
Sacramento, California 95864

Ladies and Gentlemen:

Reference is made to the Improvement Area No. 2 of the City of Tracy Community Facilities District No. 2016-1 (Tracy Hills) Special Tax Bonds, Series 2023 (the “**Bonds**”) and to the Bond Purchase Agreement to be entered into in connection therewith (the “**Purchase Agreement**”). This Letter of Representations of Lennar Homes of California, LLC (the “**Letter of Representations**”) is delivered pursuant to the Purchase Agreement. Capitalized terms used and not otherwise defined herein have the meanings ascribed to them in the Purchase Agreement.

The undersigned certifies that he or she is familiar with the facts herein certified and is authorized and qualified to certify the same as an authorized officer or representative of Lennar Homes of California, LLC, a California limited liability company (“**Lennar Homes**”), and the undersigned, on behalf of Lennar Homes, further certifies as follows:

1. Lennar Homes is a limited liability company validly existing and in good standing as a limited liability company under the laws of the State of California and has all requisite right, power and authority: (i) to execute and deliver this Letter of Representations; and (ii) to undertake all of the transactions on its part described in the Preliminary Official Statement, including but not limited to Lennar Homes’ obligations under the Master Acquisition Agreement dated July 19, 2016 and assigned to Lennar Homes with respect to Improvement Area No. 2 only on May 24, 2023.

2. As set forth in the Preliminary Official Statement, Lennar Homes owns or has under option certain property within Improvement Area No. 2 (“**Improvement Area No. 2**”) of the City of Tracy Community Facilities District No. 2016-1 (Tracy Hills) (herein the “**Property**”). The undersigned, on behalf of Lennar Homes, makes the representations herein with respect to all such Property.

3. Except as disclosed in the Preliminary Official Statement, to the Actual Knowledge of the Undersigned (defined below), (a) Lennar Homes and its Affiliates are not in breach of or in default under any applicable judgment or decree or any loan agreement, option agreement, development agreement, indenture, fiscal agent agreement, bond, or note (collectively, the “**Material Agreements**”) to which Lennar Homes and its Affiliates are a party or otherwise subject, which breach or default could reasonably be expected to materially and adversely affect Lennar Homes’ ability to complete the development of the Property as described in the Preliminary Official Statement or to pay the Special Taxes on the Property (to the extent the responsibility of Lennar Homes) prior to delinquency, and (b) no event has occurred and is continuing that with the passage of time or giving of notice, or both, would constitute such a breach or default.

4. To the Actual Knowledge of the Undersigned, neither Lennar Homes nor any of its Affiliates, is in default on any obligation to repay borrowed money, which default is reasonably likely to materially and adversely affect Lennar Homes’ ability complete the development of the Property as described in the Preliminary Official Statement or to pay the Special Taxes on the Property (to the extent the responsibility of Lennar Homes) prior to delinquency.

5. Except as set forth in the Preliminary Official Statement, no action, suit, proceeding, inquiry or investigation at law or in equity, before or by any court, regulatory agency, public board, or body is pending against Lennar Homes (with proper service of process to Lennar Homes having been accomplished) or, to the Actual Knowledge of the Undersigned, is pending against any current Affiliate (with proper service of process to such Affiliate having been accomplished) or to the Actual Knowledge of the Undersigned is threatened in writing against Lennar Homes or any such Affiliate which if successful, is reasonably likely to materially and adversely affect Lennar Homes’ ability to complete the development of the Property as described in the Preliminary Official Statement or to pay the Special Taxes on the Property (to the extent the responsibility of Lennar Homes) prior to delinquency.

6. As of the date thereof, information set forth in the Preliminary Official Statement under the captions “PROPERTY OWNERSHIP AND THE DEVELOPMENT—Acquisition Agreement,” “—Development Plan for Improvement Area No. 2,” “—Lennar Homes,” “—Landbank Arrangement,” “—Status of Development,” and “—Home Construction Financing Plan,” and “CONTINUING DISCLOSURE—Lennar Homes Continuing Disclosure” but solely as such information pertains to Lennar Homes, its Affiliates (defined below), the Property, Lennar Homes’ development of the Property and Lennar Homes’ contractual arrangements with respect thereto contained any untrue statement of a material fact or omitted to state a material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading.

7. Lennar Homes covenants that, while the Bonds or any refunding obligations related thereto are outstanding, Lennar Homes and its Affiliates which it controls will not bring any action, suit, proceeding, inquiry, or investigation at law or in equity, before any court, regulatory agency, public board, or body, that in any way seeks to challenge or overturn the formation of the City of Tracy Community Facilities District No. 2016-1 (Tracy Hills) (the “**Community Facilities District**”) or Improvement Area No. 2, to challenge the adoption of the ordinance(s) of the City levying Special Taxes within Improvement Area No. 2, to invalidate the Community Facilities District or any of the Bonds or any refunding bonds related thereto, or to invalidate the special tax liens imposed under Section 3115.5 of the Streets and Highways Code based on recordation of the notice of special tax lien relating thereto. The foregoing covenant shall not prevent Lennar Homes in any way from bringing any action, suit, proceeding, inquiry, or investigation at law or in equity, before any court, regulatory

agency, public board, or body including, without limitation, (a) an action or suit contending that the Special Taxes have not been levied in accordance with the methodologies contained in the Rate and Method of Apportionment of Special Taxes pursuant to which the Special Taxes are levied, (b) an action or suit with respect to the application or use of the Special Taxes levied and collected or the proceeds of the Bonds, or (c) the enforcement of the obligations of the City or the Community Facilities District under the Fiscal Agent Agreement or any agreements between Lennar Homes and the City or the Community Facilities District or under which Lennar Homes is a party or beneficiary.

8. To the Actual Knowledge of the Undersigned, in the last five years, neither Lennar Homes nor any Affiliate has been delinquent to any material extent in the payment of any *ad valorem* property tax, special assessment or special tax on property owned by Lennar Homes or any Affiliate within the boundaries of a community facilities district or an assessment district within California that (a) would have caused a draw on a reserve fund relating to such assessment district or community facilities district financing or (b) resulted in a foreclosure action being commenced in a court of law against Lennar Homes or any such Affiliate.

9. To the Actual Knowledge of the Undersigned, Lennar Homes is able to pay its bills as they become due and no legal proceedings are pending against Lennar Homes (with proper service of process to Lennar Homes having been accomplished) or, to the Actual Knowledge of the Undersigned, threatened in writing in which Lennar Homes may be adjudicated as bankrupt or discharged from any and all of its debts or obligations, or granted an extension of time to pay its debts or obligations, or be allowed to reorganize or readjust its debts, or be subject to control or supervision of the Federal Deposit Insurance Corporation.

10. To the Actual Knowledge of the Undersigned, Affiliates of Lennar Homes are able to pay their bills as they become due and no legal proceedings are pending against any Affiliates of Lennar Homes (with proper service of process to such Affiliate having been accomplished) or to the Actual Knowledge of the Undersigned, threatened in writing in which the Affiliates of Lennar Homes may be adjudicated as bankrupt or discharged from any or all of their debts or obligations, or granted an extension of time to pay their debts or obligations, or be allowed to reorganize or readjust their debts or obligations, or be subject to control or supervision of the Federal Deposit Insurance Corporation.

11. If between the date hereof and the Closing Date any event relating to or affecting Lennar Homes, its Affiliates (defined below), the Property, Lennar Homes' development of the Property and Lennar Homes' contractual arrangements with respect thereto shall occur of which the undersigned has actual knowledge and which the undersigned believes would cause the information under the sections of the Preliminary Official Statement indicated in Paragraph 6 hereof (and subject to the limitations and exclusions contained in Paragraph 6), to contain an untrue statement of a material fact or to omit to state a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading in any material respect, the undersigned shall notify the City and the Underwriter and if in the opinion of counsel to the City or the Underwriter such event requires the preparation and publication of a supplement or amendment to the Preliminary Official Statement, Lennar Homes shall reasonably cooperate with the City in the preparation of an amendment or supplement to the Preliminary Official Statement in form and substance reasonably satisfactory to counsel to the City and to the Underwriter.

12. Lennar Homes agrees to deliver a Closing Certificate dated the date of issuance of the Bonds at the time of issuance of the Bonds in substantially the form attached to the Purchase Agreement as Exhibit G.

13. As used in this Letter of Representations, the term “**Actual Knowledge of the Undersigned**” means the actual (as opposed to constructive) knowledge that the undersigned currently has or has obtained through (i) interviews with such current officers and responsible employees of Lennar Homes as the undersigned has reasonably determined are likely, in the ordinary course of their respective duties, to have knowledge of the matters set forth in this Letter of Representations including the chief financial officer of Lennar Homes or, if Lennar Homes does not have a chief financial officer, the person who performs the functions usually associated with such officer (unless the undersigned is the chief financial officer or such person), and (ii) reviews of documents reasonably available to the undersigned and which the undersigned reasonably deemed necessary for the undersigned to execute this Letter of Representations. The undersigned has not conducted any extraordinary inspection or inquiry other than such inspections or inquiries as are prudent and customary in connection with the ordinary course of Lennar Homes’ current business and operations. The undersigned has not contacted any individuals who are no longer employed by, or associated with, Lennar Homes.

14. As used in this Letter of Representations, the term “**Affiliate**” of Lennar Homes means any person directly (or indirectly through one or more intermediaries) under managerial control of Lennar Homes, and about whom information could be material to potential investors in their investment decision regarding the Bonds (including, without limitation, information relevant to the proposed development of the Property, or to Lennar Homes’ ability to pay the Special Taxes on the Property (to the extent the responsibility of Lennar Homes) prior to delinquency). For purposes of this Letter of Representations, The Tracy Hills Project Owner, LLC, and its direct and indirect subsidiaries including Tracy Phase IB, LLC, shall not be considered an “Affiliate” of Lennar Homes. In addition, AG Essential Housing CA 1, L.P., a Delaware limited partnership (“**AG Essential**”), the land bank under an option agreement with Lennar Homes, is not an Affiliate of Lennar Homes.

15. On behalf of Lennar Homes, I have reviewed the contents of this Letter of Representations and have met with counsel to Lennar Homes for the purpose of discussing the meaning of its contents.

The undersigned has executed this Letter of Representations solely in his or her capacity as an authorized officer or representative of Lennar Homes and he or she will have no personal liability arising from or relating to this Letter of Representations.

**LENNAR HOMES OF CALIFORNIA, LLC,**  
a California limited liability company

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

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

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

**EXHIBIT E**

**IMPROVEMENT AREA NO. 2 OF THE CITY OF TRACY  
COMMUNITY FACILITIES DISTRICT NO. 2016-1 (TRACY HILLS)  
SPECIAL TAX BONDS, SERIES 2023**

**LETTER OF REPRESENTATIONS OF AG ESSENTIAL HOUSING CA 1, L.P.**

\_\_\_\_\_, 2023

City of Tracy  
333 Civic Center Plaza  
Tracy, California 95376

Piper Sandler & Co.  
3626 Fair Oaks Boulevard, Suite 100  
Sacramento, California 95864

Ladies and Gentlemen:

Reference is made to the Improvement Area No. 2 of the City of Tracy Community Facilities District No. 2016-1 (Tracy Hills) Special Tax Bonds, Series 2023 (the “**Bonds**”) and to the Bond Purchase Agreement to be entered into in connection therewith (the “**Purchase Agreement**”). This Letter of Representations of AG Essential Housing CA 1 L.P. (the “**Letter of Representations**”) is delivered pursuant to the Purchase Agreement. Capitalized terms used and not otherwise defined herein have the meanings ascribed to them in the Purchase Agreement.

The undersigned certifies that he or she is familiar with the facts herein certified and is authorized and qualified to certify the same as an authorized officer or representative of AG Essential Housing CA 1, L.P., a Delaware limited partnership (the “**Landbank**”), and the undersigned, on behalf of the Landbank, further certifies as follows:

1. The Landbank is a limited partnership validly existing and in good standing as a limited partnership under the laws of the State of Delaware and is duly registered to transact business in the State of California as a foreign limited partnership and is in good standing in the State of California and has all requisite right, power and authority: (i) to execute and deliver this Letter of Representations; and (ii) to undertake all of the transactions on its part described in the Preliminary Official Statement.

2. As set forth in the Preliminary Official Statement, the Landbank owns certain property within Improvement Area No. 2 (“**Improvement Area No. 2**”) of the City of Tracy Community Facilities District No. 2016-1 (Tracy Hills) (herein the “**Property**”). The undersigned, on behalf of the Landbank, makes the representations herein with respect to all such Property owned by Landbank.

3. As of the date thereof, the Preliminary Official Statement, solely with respect to information contained therein with respect to the Landbank and ownership of the Property by

Landbank as set forth under the caption “PROPERTY OWNERSHIP AND THE DEVELOPMENT—Landbank Arrangement” is true and correct in all material respects and did not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading.

4. The Landbank covenants that, while the Bonds or any refunding obligations related thereto are outstanding, the Landbank will not bring any action, suit, proceeding, inquiry, or investigation at law or in equity, before any court, regulatory agency, public board, or body, that in any way seeks to challenge or overturn the formation of the City of Tracy Community Facilities District No. 2016-1 (Tracy Hills) (the “**Community Facilities District**”) or Improvement Area No. 2 therein, to challenge the adoption of the ordinances of the City levying Special Taxes within Improvement Area No. 2, to invalidate the Community Facilities District or Improvement Area No. 2 therein or any of the Bonds or any refunding bonds related thereto, or to invalidate the special tax liens imposed under Section 3115.5 of the Streets and Highways Code based on recordation of the notice of special tax lien relating thereto. The foregoing covenant shall not prevent the Landbank in any way from bringing any other action, suit, proceeding, inquiry, or investigation at law or in equity, before any court, regulatory agency, public board, or body including, without limitation, (a) an action or suit contending that the Special Taxes have not been levied in accordance with the methodologies contained in Improvement Area No. 2’s Rate and Method of Apportionment of Special Taxes pursuant to which the Special Taxes are levied, (b) an action or suit with respect to the application or use of the Special Taxes levied and collected or the proceeds of the Bonds, or (c) an action or suit to enforce the obligations of the City and/or the Community Facilities District under the Resolutions and Ordinance, the Indenture, or any other agreements among the Landbank, the City, and/or the Community Facilities District or to which the Landbank is a party or beneficiary.

5. To the actual knowledge of the undersigned, there is no action, suit, proceeding, inquiry or investigation at law or in equity, before or by any court, regulatory agency, public board or body pending against the Landbank (with proper service of process to the Landbank having been accomplished) or to the actual knowledge of the undersigned is threatened in writing against the Landbank which is reasonably likely to materially and adversely affect the Landbank’s ability to sell the Property as described in the Preliminary Official Statement.

6. To the actual knowledge of the undersigned, the Landbank is able to pay its bills as they become due and no legal proceedings are pending against the Landbank (with proper service of process having been accomplished) or, to the actual knowledge of the undersigned, threatened in writing in which the Landbank may be adjudicated as bankrupt or discharged from any and all of its debts or obligations, or granted an extension of time to pay its debts or obligations, or be allowed to reorganize or readjust its debts, or be subject to control or supervision of the Federal Deposit Insurance Corporation.

7. If between the date hereof and the Closing Date any event relating to or affecting the Landbank and ownership of the Property by Landbank shall occur of which the undersigned has actual knowledge and which the undersigned believes would cause the information under the section of the Preliminary Official Statement indicated in Paragraph 3 hereof (and subject to the limitations and exclusions contained in Paragraph 3), to contain an untrue statement of a material fact or to omit to state a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading in any material respect, the undersigned shall notify the City and the Underwriter and if in the opinion of counsel to the City or the Underwriter such event requires the preparation and publication of a supplement or amendment to the Preliminary Official Statement,

the Landbank shall reasonably cooperate with the City in the preparation of an amendment or supplement to the Preliminary Official Statement in form and substance reasonably satisfactory to counsel to the City and to the Underwriter.

8. The Landbank agrees to deliver a Closing Certificate dated the date of issuance of the Bonds at the time of issuance of the Bonds in substantially the form attached to the Purchase Agreement as Exhibit H.

9. To the undersigned's actual knowledge, in the last five years, the Landbank has not been delinquent to any material extent in the payment of any *ad valorem* property tax, special assessment, or special tax on property owned by the Landbank within the boundaries of a community facilities district or an assessment district within California that (a) would have caused a draw on a reserve fund relating to such assessment district or community facilities district financing or (b) resulted in a foreclosure action being commenced in a court of law against the Landbank.

The undersigned has executed this Letter of Representations solely in his or her capacity as an authorized officer or representative of the Landbank and he or she will have no personal liability arising from or relating to this Letter of Representations.

**AG ESSENTIAL HOUSING CA 1, L.P.,**  
a Delaware limited partnership

By: \_\_\_\_\_  
Authorized Representative

**EXHIBIT F**

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**IMPROVEMENT AREA NO. 2 OF THE CITY OF TRACY  
COMMUNITY FACILITIES DISTRICT NO. 2016-1 (TRACY HILLS)  
SPECIAL TAX BONDS, SERIES 2023**

**CLOSING CERTIFICATE OF TRACY PHASE IB, LLC**

\_\_\_\_\_, 2023

City of Tracy  
333 Civic Center Plaza  
Tracy, California 95376

Piper Sandler & Co.  
3626 Fair Oaks Boulevard, Suite 100  
Sacramento, California 95864

Ladies and Gentlemen:

Reference is made to the Improvement Area No. 2 of the City of Tracy Community Facilities District No. 2016-1 (Tracy Hills) Special Tax Bonds, Series 2023 (the “**Bonds**”) and to the Bond Purchase Agreement, dated \_\_\_\_\_, 2023 (the “**Purchase Agreement**”), entered into in connection therewith. This Closing Certificate of Tracy Phase IB, LLC (the “**Closing Certificate**”) is delivered by Tracy Phase IB, LLC, a Delaware limited liability company (the “**Developer**”) pursuant to the Purchase Agreement. Capitalized terms used herein and not otherwise defined have the meanings ascribed to such terms in the Letter of Representations of Tracy Phase IB, LLC, dated \_\_\_\_\_, 2023 (the “**Letter of Representations**”) or the Purchase Agreement.

The undersigned certifies that he or she is familiar with the facts herein certified and is authorized and qualified to certify the same as an authorized officer or representative of the Developer, and the undersigned, on behalf of the Developer, further certifies as follows:

1. The Developer has received the final Official Statement relating to the Bonds. Each statement, representation and warranty made in the Letter of Representations is true and correct in all material respects on and as of the date hereof with the same effect as if made on the date hereof, except that all references therein to the Preliminary Official Statement shall be deemed to be references to the final Official Statement.

2. To the Actual Knowledge of the Undersigned, no event has occurred since the date of the Preliminary Official Statement affecting the statements and information described in Paragraph 3 of the Letter of Representations (and subject to the limitations and exclusions contained in Paragraph 3 of the Letter of Representations) relating to the Developer, its Affiliates, and the remainder of the Tracy Hills Project which should be disclosed in the Official Statement for the purposes for which it is to be used in order to make such statements and information contained in the Official Statement not misleading in any material respect.

3. For the period through 25 days after the “**End of the Underwriter Period**” as defined in the Purchase Agreement to mean the Closing Date unless otherwise notified in writing by the Underwriter, if any event relating to or affecting the Developer, its Affiliates, and the remainder of the Tracy Hills Project shall occur as a result of which it is necessary, in the opinion of the Underwriter or counsel to the City, to amend or supplement the statements and information in the Official Statement described in Paragraph 3 of the Letter of Representations (and subject to the limitations and exclusions contained in Paragraph 3 of the Letter of Representations) in order to make the Official Statement not misleading in any material respect in the light of the circumstances under which they were made, the Developer shall reasonably cooperate with the City and the Underwriter in the preparation of an amendment or supplement to the Official Statement in form and substance reasonably satisfactory to the Underwriter and Disclosure Counsel which will amend or supplement the Official Statement so that it will not contain an untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances in which they were made, not misleading in any material respect.

4. The undersigned has executed this Closing Certificate solely in his or her capacity as an officer of Developer and he or she will have no personal liability arising from or relating to this Closing Certificate.

**TRACY PHASE IB, LLC,**  
a Delaware limited liability company

By: \_\_\_\_\_  
Authorized Representative

**EXHIBIT G**

\$ \_\_\_\_\_

**IMPROVEMENT AREA NO. 2 OF THE CITY OF TRACY  
COMMUNITY FACILITIES DISTRICT NO. 2016-1 (TRACY HILLS)  
SPECIAL TAX BONDS, SERIES 2023**

**CLOSING CERTIFICATE OF LENNAR HOMES OF CALIFORNIA, LLC**

\_\_\_\_\_, 2023

City of Tracy  
333 Civic Center Plaza  
Tracy, California 95376

Piper Sandler & Co.  
3626 Fair Oaks Boulevard, Suite 100  
Sacramento, California 95864

Ladies and Gentlemen:

Reference is made to the Improvement Area No. 2 of the City of Tracy Community Facilities District No. 2016-1 (Tracy Hills) Special Tax Bonds, Series 2023 (the “**Bonds**”) and to the Bond Purchase Agreement, dated \_\_\_\_\_, 2023 (the “**Purchase Agreement**”), entered into in connection therewith. This Closing Certificate of Lennar Homes of California, LLC is delivered by Lennar Homes of California, LLC, a California limited liability company (“**Lennar Homes**”) pursuant to the Purchase Agreement. Capitalized terms used herein and not otherwise defined have the meanings ascribed to such terms in the Letter of Representations of Lennar Homes of California, LLC, dated \_\_\_\_\_, 2023 (the “**Letter of Representations**”) or the Purchase Agreement.

The undersigned certifies that he or she is familiar with the facts herein certified and is authorized and qualified to certify the same as an authorized officer or representative of Lennar Homes, and the undersigned, on behalf of Lennar Homes, further certifies as follows:

1. Lennar Homes has received the final Official Statement relating to the Bonds. Each statement, representation and warranty made in the Letter of Representations is true and correct in all material respects on and as of the date hereof with the same effect as if made on the date hereof, except that all references therein to the Preliminary Official Statement shall be deemed to be references to the final Official Statement.

2. To the Actual Knowledge of the Undersigned, no event has occurred since the date of the Preliminary Official Statement affecting the statements and information described in Paragraph 6 of the Letter of Representations (and subject to the limitations and exclusions contained in Paragraph 6 of the Letter of Representations) relating to Lennar Homes, its Affiliates, the Property, Lennar Homes’ development of the Property and Lennar Homes’ contractual arrangements with respect thereto which should be disclosed in the Official Statement for the purposes for which it is to be used in order to make such statements and information contained in the Official Statement not misleading in any material respect.

3. For the period through 25 days after the “**End of the Underwriter Period**” as defined in the Purchase Agreement to mean the Closing Date unless otherwise notified in writing by the Underwriter, if any event relating to or affecting Lennar Homes, its Affiliates, the Property, Lennar Homes’ development of the Property and Lennar Homes’ contractual arrangements with respect thereto shall occur as a result of which it is necessary, in the opinion of the Underwriter or counsel to the City, to amend or supplement the statements and information in the Official Statement described in Paragraph 6 of the Letter of Representations (and subject to the limitations and exclusions contained in Paragraph 6 of the Letter of Representations) in order to make the Official Statement not misleading in any material respect in the light of the circumstances under which they were made, Lennar Homes shall reasonably cooperate with the City and the Underwriter in the preparation of an amendment or supplement to the Official Statement in form and substance reasonably satisfactory to the Underwriter and Disclosure Counsel which will amend or supplement the Official Statement so that it will not contain an untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading in any material respect.

4. The undersigned has executed this Closing Certificate solely in his or her capacity as an officer of Lennar Homes and he or she will have no personal liability arising from or relating to this Closing Certificate.

**LENNAR HOMES OF CALIFORNIA, LLC,**  
a California limited liability company

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

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

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

**EXHIBIT H**

\$ \_\_\_\_\_  
**IMPROVEMENT AREA NO. 2 OF THE CITY OF TRACY  
COMMUNITY FACILITIES DISTRICT NO. 2016-1 (TRACY HILLS)  
SPECIAL TAX BONDS, SERIES 2023**

**CLOSING CERTIFICATE OF AG ESSENTIAL HOUSING CA 1, L.P.**

\_\_\_\_\_, 2023

City of Tracy  
333 Civic Center Plaza  
Tracy, California 95376

Piper Sandler & Co.  
3626 Fair Oaks Boulevard, Suite 100  
Sacramento, California 95864

Ladies and Gentlemen:

Reference is made to the Improvement Area No. 2 of the City of Tracy Community Facilities District No. 2016-1 (Tracy Hills) Special Tax Bonds, Series 2023 (the “**Bonds**”) and to the Bond Purchase Agreement, dated \_\_\_\_\_, 2023 (the “**Purchase Agreement**”), entered into in connection therewith. This Closing Certificate of AG Essential Housing CA 1, L.P. (the “**Closing Certificate**”) is delivered by AG Essential Housing CA 1, L.P. a Delaware limited partnership (the “**Landbank**”) pursuant to the Purchase Agreement. Capitalized terms used herein and not otherwise defined have the meanings ascribed to such terms in the Letter of Representations of AG Essential Housing CA 1, L.P., dated \_\_\_\_\_, 2023 (the “**Letter of Representations**”) or the Purchase Agreement.

The undersigned certifies that he or she is familiar with the facts herein certified and is authorized and qualified to certify the same as an authorized officer or representative of the Landbank, and the undersigned, on behalf of the Landbank, further certifies as follows:

1. The Landbank has received the final Official Statement relating to the Bonds. Each statement, representation and warranty made in the Letter of Representations is true and correct in all material respects on and as of the date hereof with the same effect as if made on the date hereof, except that all references therein to the Preliminary Official Statement shall be deemed to be references to the final Official Statement.

2. To the undersigned’s actual knowledge, and other than as disclosed in the Preliminary Official Statement, no event has occurred since the date of the Preliminary Official Statement affecting the statements and information described in Paragraph 3 of the Letter of Representations (and subject to the limitations and exclusions contained in Paragraph 3 of the Letter of Representations) relating to the Landbank and ownership of the Property by the Landbank which should be disclosed in the Official

Statement for the purposes for which it is to be used in order to make such statements and information contained in the Official Statement not misleading in any material respect.

3. For the period through 25 days after the “**End of the Underwriter Period**” as defined in the Purchase Agreement, if any event relating to or affecting the Landbank or the ownership of the Property by the Landbank shall occur as a result of which it is necessary, in the opinion of the Underwriter or counsel to the City, to amend or supplement the statements and information in the Official Statement described in Paragraph 3 of the Letter of Representations (and subject to the limitations and exclusions contained in Paragraph 3 of the Letter of Representations) in order to make the Official Statement not misleading in any material respect in the light of the circumstances under which they were made, the Landbank shall reasonably cooperate with the City and the Underwriter in the preparation of an amendment or supplement to the Official Statement in form and substance reasonably satisfactory to the Underwriter and Disclosure Counsel which will amend or supplement the Official Statement so that it will not contain an untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading in any material respect.

4. The undersigned has executed this Certificate solely in his or her capacity as an authorized officer or representative of the Landbank and he or she will have no personal liability arising from or relating to this Certificate.

**AG ESSENTIAL HOUSING CA 1, L.P.,**  
a Delaware limited partnership

By: \_\_\_\_\_  
Authorized Representative

**EXHIBIT I**

\$ \_\_\_\_\_

**IMPROVEMENT AREA NO. 2 OF THE CITY OF TRACY  
COMMUNITY FACILITIES DISTRICT NO. 2016-1 (TRACY HILLS)  
SPECIAL TAX BONDS, SERIES 2023**

**CERTIFICATE OF APPRAISER**

\_\_\_\_\_, 2023

City of Tracy  
333 Civic Center Plaza  
Tracy, California 95376

Piper Sandler & Co.  
3626 Fair Oaks Boulevard, Suite 100  
Sacramento, California 95864

The undersigned hereby states and certifies:

1. That he is an authorized principal of Integra Realty Resources (the “Appraiser”) and as such is familiar with the facts herein certified and is authorized and qualified to certify the same.

2. That the Appraiser has prepared an appraisal report, dated \_\_\_\_\_, 2023 (the “**Appraisal Report**”), on behalf of the City of Tracy (the “**City**”) in connection with the Preliminary Official Statement, dated \_\_\_\_\_, 2023 (the “**Preliminary Official Statement**”) and the Official Statement dated \_\_\_\_\_, 2023 (“**Official Statement**”), for the Improvement Area No. 2 of the City of Tracy Community Facilities District No. 2016-1 (Tracy Hills) Special Tax Bonds, Series 2023 (the “**Bonds**”).

3. That the Appraiser hereby consents to the reproduction and use of the Appraisal Report appended to the Preliminary Official Statement and the Official Statement. The Appraiser also consents to the references to the Appraiser and the Appraisal Report made in the Preliminary Official Statement and the Official Statement.

4. In the opinion of the Appraiser the assumptions made in the Appraisal Report are reasonable. Since the date of value of the Appraisal Report, the Appraiser is not aware of any facts that would cause its opinion of value of the taxable property in the Improvement Area No. 2 of the City of Tracy Community Facilities District No. 2016-1 (Tracy Hills) (the “**Improvement Area**”) to be lower than the value in the Appraisal.

5. Each of the parcels appraised by the Appraiser is encompassed within the Improvement Area as set forth in the boundary map of the Improvement Area.

6. That, as of the date of the Official Statement and as of the date hereof, the Appraisal Report appended to the Official Statement, to the best of my knowledge and belief, and subject to all of the Assumptions and Limiting Conditions set forth in the Appraisal Report, does not contain any

untrue statement of a material fact or omit to state a material fact necessary in order to make the statements contained therein, in the light of the circumstances under which they were made, not misleading, and no events or occurrences have been ascertained by us or have come to our attention that would substantially change the estimated values stated in the Appraisal Report. However, we have not performed any procedures since the date of the Appraisal Report to obtain knowledge of such events or occurrences nor are we obligated to do so in the future.

7. The City and the Underwriter, Piper Sandler & Co., are entitled to rely on the Certificate.

INTEGRA REALTY RESOURCES

By: \_\_\_\_\_  
Authorized Representative

**EXHIBIT J**

\$ \_\_\_\_\_  
**IMPROVEMENT AREA NO. 2 OF THE CITY OF TRACY  
COMMUNITY FACILITIES DISTRICT NO. 2016-1 (TRACY HILLS)  
SPECIAL TAX BONDS, SERIES 2023**

**CERTIFICATE OF MARKET ABSORPTION CONSULTANT**

\_\_\_\_\_, 2023

City of Tracy  
333 Civic Center Plaza  
Tracy, California 95376

Piper Sandler & Co.  
3626 Fair Oaks Boulevard, Suite 100  
Sacramento, California 95864

The undersigned hereby states and certifies:

1. That he is an authorized principal of Empire Economics, Inc. (the “**Market Absorption Consultant**”) and as such is familiar with the facts herein certified and is authorized and qualified to certify the same.

2. That the Market Absorption Consultant has prepared an Market report, dated \_\_\_\_\_, 2023 (the “**Market Report**”), on behalf of the City of Tracy (the “City”) in connection with the Preliminary Official Statement, \_\_\_\_\_, 2023 (the “**Preliminary Official Statement**”) and the Official Statement dated \_\_\_\_\_, 2023 (“**Official Statement**”), for the Improvement Area No. 2 of the City of Tracy Community Facilities District No. 2016-1 (Tracy Hills) Special Tax Bonds, Series 2023 (the “**Bonds**”).

3. That the Market Absorption Consultant hereby consents to the reproduction and use of the Market Report appended to the Preliminary Official Statement and the Official Statement. The Market Absorption Consultant also consents to the references to the Market Absorption Consultant and the Market Report made in the Preliminary Official Statement and the Official Statement.

4. In the opinion of the Market Absorption Consultant the assumptions made in the Market Report are reasonable. Since the date of the Market Report, the Market Absorption Consultant is not aware of any facts that would cause its opinion as to the timing of home sales in Improvement Area No. 2 of the City of Tracy Community Facilities District No. 2016-1 (Tracy Hills) to be different than the Market Report.

5. That, as of the date of the Official Statement and as of the date hereof, the Market Report appended to the Official Statement, to the best of my knowledge and belief, and subject to all of the limiting conditions and major assumptions set forth in the Market Report, does not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the

statements contained therein, in the light of the circumstances under which they were made, not misleading, and no events or occurrences have been ascertained by us or have come to our attention that would substantially change the estimated timing of home sales stated in the Market Report. However, we have not performed any procedures since the date of the Market Report to obtain knowledge of such events or occurrences nor are we obligated to do so in the future.

6. The City and the Underwriter, Piper Sandler & Co., are entitled to rely on the Certificate.

EMPIRE ECONOMICS

By: \_\_\_\_\_  
Authorized Representative

APPROVED AS TO FORM AND LEGALITY

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

**TRACY CITY COUNCIL**

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

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**AUTHORIZING THE ISSUANCE AND SALE OF SPECIAL TAX BONDS FOR THE PURPOSE OF FINANCING AUTHORIZED FACILITIES, AND APPROVING AND AUTHORIZING RELATED DOCUMENTS AND ACTIONS FOR CITY OF TRACY COMMUNITY FACILITIES DISTRICT NO. 2016-1 (TRACY HILLS) WITH RESPECT TO IMPROVEMENT AREA NO. 2 OF THE CITY OF TRACY COMMUNITY FACILITIES DISTRICT NO. 2016-1 (TRACY HILLS)**

**WHEREAS**, the Council previously conducted proceedings under and pursuant to the Mello-Roos Community Facilities Act of 1982, as amended, Chapter 2.5 of Part 1 of Division 2 of Title 5 (commencing with Section 53311) of the California Government Code (the "Act"), to establish (i) "City of Tracy Community Facilities District No. 2016-1 (Tracy Hills)" (the "CFD"), (ii) an initial improvement area in the CFD designated "Improvement Area No. 1 of the City of Tracy Community Facilities District No. 2016-1 (Tracy Hills)" ("Improvement Area No. 1"), and (iii) a future annexation area of the CFD (the "Future Annexation Area"); and

**WHEREAS**, pursuant to Resolution No. 2016-157, adopted by the Council on July 19, 2016 (the "Resolution of Formation"), the Council provided for, among other things, (i) the financing of certain public facilities (the "Facilities") by the CFD, (ii) the annexation of parcels in the Future Annexation Area to the CFD pursuant to a unanimous approval (a "Unanimous Approval") of the owner or owners of such parcels and (iii) in any such Unanimous Approval, the designation as a new improvement area (each, a "Future Improvement Area") of any territory annexing to the CFD and the identification and approval of the maximum amount of bonded indebtedness and other debt and the rate and method of apportionment of special tax for such Future Improvement Area; and

**WHEREAS**, pursuant to Resolution No. 2016-158, adopted by the Council on July 19, 2016, the Council declared the necessity to issue and sells bonds and incur other debt to finance the Facilities, including an amount not to exceed \$215,000,000 in those portions of the CFD that are not in Improvement Area No. 1, with such amount to be allocated to Future Improvement Areas as described in the Resolution of Formation; and

**WHEREAS**, subsequently, the 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, among other things, increase the Non-Improvement Area No. 1 Indebtedness Limit to \$305,000,000; and

**WHEREAS**, pursuant to Resolution No. 2022-130, adopted by the Council on September 6, 2022 (the "Annexation Resolution"), the Council acknowledged receipt of a separate Unanimous Approval executed by each of AG Essential Housing CA 1, L.P. and Lennar Homes of California, LLC, who were at that time the two owners (the "Property Owners") of certain property in the Future Annexation Area, as such property is shown in the map attached as Exhibit B to the Annexation Resolution (collectively, the "Annexation Property"), which Unanimous Approvals (i) identified, specified and approved the annexation of the Annexation Property to the CFD as a separate improvement area and other related matters and (ii) confirmed that the Unanimous Approvals constituted the approval and unanimous vote of the Property Owners with respect to the matters addressed in the Unanimous Approvals under the Act and Article XIII A of the California Constitution; and

**WHEREAS**, pursuant to the Annexation Resolution, the Council also, among other things, (i) approved the annexation of the Annexation Property to the CFD and designated the Annexation Property as "Improvement Area No. 2 of the City of Tracy Community Facilities District No. 2016-1 (Tracy Hills)" ("Improvement Area No. 2"), (ii) directed the City Clerk to record notice of the annexation, (iii) directed the City Clerk to record a consolidated boundary map of the CFD to reflect the annexation of the Annexation Property to the CFD, (iv) approved the maximum aggregate principal amount of bonds and other debt for Improvement Area No. 2, as specified in the Unanimous Approval, of \$50,000,000 and (v) approved the rate and method of apportionment of the special tax among the parcels of real property within Improvement Area No. 2, as specified in the Unanimous Approval (the "Improvement Area No. 2 Rate and Method"), which was attached as Exhibit A to the Annexation Resolution; and

**WHEREAS**, the consolidated boundary map for the CFD was recorded in the real property records of San Joaquin County on September 22, 2022, in Book 7 of Maps of Assessment and Community Facilities Districts at page 49, as document number 2022-110954; and

**WHEREAS**, the Notice of Special Tax Lien for Improvement Area No. 2 was recorded in the real property records of San Joaquin County on September 22, 2022, as document number 2022-110955; and

**WHEREAS**, the Council now wishes to provide for an initial series of bonds to be issued by the City, for and on behalf of the CFD with respect to Improvement Area No. 2, to be designated "Improvement Area No. 2 of the City of Tracy Community Facilities District No. 2016-1 (Tracy Hills) Special Tax Bonds, Series 2023 (the "Bonds"), pursuant to a Fiscal Agent Agreement (the "Fiscal Agent Agreement") by and between the City, for and on behalf of the CFD, and U.S. Bank Trust Company, National Association, as fiscal agent (the "Fiscal Agent"); and

**WHEREAS**, there have been submitted to the Council certain documents described below providing for the issuance of the Bonds for the CFD with respect to Improvement Area No. 2 and the use of the proceeds of those Bonds, and the Council with the aid of its staff, has reviewed the documents and found them to be in proper order; and

**WHEREAS**, there has also been submitted to the Council a form of preliminary Official Statement in connection with the marketing of the Bonds, and the Council, with the aid of its staff, has reviewed the preliminary Official Statement (the "Preliminary Official Statement"); and

**WHEREAS**, in accordance with Government Code Section 5852.1, the Council has obtained and disclosed the information set forth in Appendix A hereto; and

**WHEREAS**, all conditions, things and acts required to exist, to have happened and to have been performed precedent to and in the issuance of the Bonds and the levy of the special taxes as contemplated by this resolution and the documents referred to herein exist, have happened and have been performed in due time, form and manner as required by the laws of the State of California, including the Act; now, therefore, be it

**RESOLVED**: That the City Council of the City of Tracy hereby finds that the foregoing recitals are all true and correct; and be it further

**RESOLVED**: Pursuant to the Act, this Resolution and the Fiscal Agent Agreement, the Bonds are hereby authorized to be issued in the principal amount not to exceed Thirty-Eight million dollars (\$38,000,000); and be it further

**RESOLVED**: The Bonds may be issued in one or more series, and the Bonds may be issued as federally taxable bonds or federally tax-exempt bonds, as determined by an Authorized Officer (as defined below); and be it further

**RESOLVED**: The Bonds shall be dated, bear interest at the rates, mature on the dates, be issued in the form, be subject to redemption, and otherwise be issued on the terms and conditions, all as set forth in the Fiscal Agent Agreement and in accordance with this Resolution; provided, however, that the true interest cost shall not exceed seven percent (7.0%); and be it further

**RESOLVED**: The Fiscal Agent, an Authorized Officer (as defined below) and other responsible officers of the City are hereby authorized and directed to take such actions as are required to cause the delivery of the Bonds upon receipt of the purchase price thereof; and be it further

**RESOLVED**: The City Council hereby finds that the issuance of the Bonds is in compliance with the Act, the Fiscal Agent Agreement and the City's "Amended Local Goals and Policies for Community Facilities Districts (CFDs)" adopted by the Council on February 4, 2014, by Resolution No. 2014-019 ("Goals and Policies"), except that the provision requiring property owners to provide continuing disclosure as long as they own property that is responsible for at least 10% of the special taxes in Improvement Area No. 2 is hereby waived so that the threshold can be established for the Bonds at a level acceptable to the Underwriter (as defined below) ; and be it further

**RESOLVED**: The City Council hereby finds that the appraisal described in the Preliminary Official Statement has been prepared consistent with the Goals and Policies; and be it further

**RESOLVED:** The City Council hereby finds that the current draft of the appraisal described in the draft Preliminary Official Statement (the "Appraisal") concludes that the taxable property in Improvement Area No. 2 has a market value (subject to the various assumptions and conditions set forth in the appraisal) that would be at least three times the maximum authorized principal amount of the Bonds approved above and the principal amount of all other bonds outstanding that are secured by a special tax levied pursuant to the Act on property within Improvement Area No. 2 or a special assessment levied on property within the Improvement Area No. 2; and be it further

**RESOLVED:** To the extent permitted by law, the Mayor and City Manager or such other official of the City as may be designated by the City Manager (each, an "Authorized Officer"), acting alone, is hereby authorized and directed to execute and deliver the documents approved herein in substantially the form on file with the City Clerk, together with such additions or changes as are approved by such Authorized Officer, including such additions or changes as are necessary or advisable to permit the timely issuance, sale and delivery of the Bonds, and the City Clerk is hereby authorized and directed to attest thereto; the approval of such additions or changes shall be conclusively evidenced by the execution and delivery by an Authorized Officer of the documents herein specified; and be it further

**RESOLVED:** The Council hereby approves the Fiscal Agent Agreement, in substantially the form on file with the City Clerk. The terms and provisions of the Fiscal Agent Agreement, as executed, are incorporated herein by this reference as if fully set forth herein; and be it further

**RESOLVED:** The Council hereby approves the Preliminary Official Statement prepared in connection with the Bonds in substantially the form on file with the Clerk of the Council, together with any changes therein or additions thereto deemed advisable by an Authorized Officer; and be it further

**RESOLVED:** The Council hereby approves and authorizes the distribution by the underwriter of the Bonds of the Preliminary Official Statement to prospective purchasers of the Bonds, and authorizes and directs an Authorized Officer on behalf of the City to deem the Preliminary Official Statement "final" pursuant to Rule 15c2-12 under the Securities Exchange Act of 1934 (the "Rule") prior to its distribution to prospective purchasers of the Bonds; and be it further

**RESOLVED:** The execution of the final Official Statement, which shall include Bond pricing information, such other changes and additions thereto deemed advisable by an Authorized Officer, and such information permitted to be excluded from the Preliminary Official Statement pursuant to the Rule, shall be conclusive evidence of the approval of the Official Statement by the City; and be it further

**RESOLVED:** The Council hereby approves the form of the Continuing Disclosure Certificate with respect to the Bonds in substantially the form thereof attached to the Official Statement on file with the City Clerk; and be it further

**RESOLVED:** The Bond Purchase Agreement, between the City, for and on behalf of the CFD with respect to Improvement Area No. 2, and Piper Sandler & Co. (the "Underwriter"), in substantially the form on file with the City Clerk and made a part hereof as though set forth in full herein, is hereby approved by the Council; and be it further

**RESOLVED:** An Authorized Officer is hereby authorized and directed to execute and deliver the Bond Purchase Agreement in such form, together with such changes, insertions and omissions that are approved by an Authorized Officer and that are in accordance with the provisions of this Resolution, such execution to be conclusive evidence of such approval; subject to the requirement that the Underwriter's discount on the purchase of the Bonds may not exceed 1.25% of the par amount of the Bonds and the interest rate may not exceed the rate specified above; and be it further

**RESOLVED:** In addition, and pursuant to Section 53345.8 of the Act, the Council hereby finds and determines that an Authorized Officer may not execute and deliver the Bond Purchase Agreement unless the Authorized Officer concludes that the taxable property in Improvement Area No. 2 has a market value based on the Appraisal (subject to the various assumptions and conditions set forth therein) at least three times the principal amount of the Bonds to be sold and the principal amount of all other bonds outstanding that are secured by a special tax levied pursuant to the Act on property within Improvement Area No. 2 or a special assessment levied on property within the Improvement Area No. 2; and be it further

**RESOLVED:** The City Council hereby approves the negotiated sale of the Bonds to the Underwriter pursuant to such Bond Purchase Agreement; the negotiated sale may be on a forward basis, as determined by an Authorized Officer; and be it further

**RESOLVED:** The City Council hereby finds that sale of the Bonds to the Underwriter at a negotiated sale pursuant to the Bond Purchase Agreement will result in a lower overall cost than would be achieved by selling the Bonds at a public sale utilizing competitive bidding; and be it further

**RESOLVED:** The City Council hereby approves, confirms and ratifies all actions heretofore taken by the officers and agents of the City with respect to the establishment of the CFD and the designation of Improvement Area No. 2, the annexation of the Annexation Property to the CFD as Improvement Area No. 2, the approval of the Improvement Area No. 2 Rate and Method, the approval of bonded indebtedness and other debt for the CFD with respect to Improvement Area No. 2, and the sale and issuance of the Bonds; and be it further

**RESOLVED:** The City Council hereby authorizes and directs the appropriate officers of the City to do any and all things and take any and all actions and execute any and all certificates, agreements and other documents, which they, or any of them, may deem necessary or advisable in order to consummate the lawful issuance and delivery of the Bonds in accordance with this resolution, including but not limited to any actions required in connection with issuance of ratings or a municipal bond insurance policy with respect to the Bonds, and any certificate, agreement, and other document described in the documents herein approved; and be it further

**RESOLVED:** The City Council hereby authorizes a designee of an Authorized Officer to take any actions authorized by the City Council to be taken by an Authorized Officer, and such action by the designee of an Authorized Officer shall have the same force and effect as if taken by the Authorized Officer; and be it further

**RESOLVED:** This resolution shall take effect from and after its adoption. The provisions of any previous resolutions in any way inconsistent with the provisions hereof in and for the issuance of the Bonds as herein described are hereby repealed.

\* \* \* \* \*

The foregoing Resolution 2023-\_\_ was adopted by the Tracy City Council on October 17, 2023, by the following vote:

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

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

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

## APPENDIX A

### Government Code Section 5852.1 Disclosure

The good faith estimates set forth herein are provided with respect to the Bonds in accordance with California Government Code Section 5852.1. Such good faith estimates are based on market conditions as of September 27, 2023, and have been provided to the City by CSG Advisors Incorporated, the City's Municipal Advisor in consultation with Piper Sandler & Co., Underwriter of the Bonds.

*Principal Amount.* The Municipal Advisor has informed the City that, based on the CFD financing plan and current market conditions, its good faith estimate of the aggregate principal amount of the Bonds to be sold is **\$35,110,000** (the "Estimated Principal Amount"), which excludes approximately **\$542,000** of net original issue discount estimated to be generated from current market pricing, and therefore results in **\$34,568,000** of net proceeds of the Bonds. Net original issue discount is generated when, on a net aggregate basis for a single issuance, the prices paid for the bonds are lower than the face values of such bonds.

*True Interest Cost of the Bonds.* The Municipal Advisor has informed the City that, assuming that the Estimated Principal Amount of the Bonds is sold, and based on market interest rates prevailing at the time of preparation of such estimate, its good faith estimate of the true interest cost of the Bonds, which means the rate necessary to discount the amounts payable on the respective principal and interest payment dates to the purchase price received for the Bonds, is **5.73%**.

*Finance Charge of the Bonds.* The Municipal Advisor has informed the City that, assuming that the Estimated Principal Amount of the Bonds is sold, and based on market interest rates prevailing at the time of preparation of such estimate, its good faith estimate of the finance charge for the Bonds, which means the sum of all fees and charges paid to third parties (or costs associated with the Bonds), is **\$874,000**. Such fees and charges include fees for bond and disclosure counsel, municipal advisor, appraiser, market absorption consultant, special tax consultant, fiscal agent, city attorney and staff time related to bond issuance, set-aside for Fiscal Year 2023-24 CFD administrative expenses, printing, and underwriting.

*Amount of Proceeds to be Received.* The Municipal Advisor has informed the City that, assuming that the Estimated Principal Amount of the Bonds is sold plus net premium, and based on market interest rates prevailing at the time of preparation of such estimate, its good faith estimate of the amount of proceeds expected to be received on behalf of the CFD and Improvement Area No. 2 for sale of the Bonds, less the finance charge of the Bonds, as estimated above, and any reserves or capitalized interest paid or funded with proceeds of the Bonds, is **\$30,445,000**.

*Total Payment Amount.* The Municipal Advisor has informed the City that, assuming that the Estimated Principal Amount of the Bonds is sold, and based on market interest rates prevailing at the time of preparation of such estimate, its good faith estimate of the total payment amount, which means the sum total of all payments that the Improvement Area No. 2 property owners will make to pay debt service on the Bonds, plus the finance charge for the Bonds, as described

above, not paid with the proceeds of the Bonds, calculated to the final maturity of the Bonds, is **\$77,444,000**.

The foregoing estimates constitute good faith estimates only. The actual principal amount of the Bonds issued and sold, the true interest cost thereof, the finance charges thereof, the amount of proceeds received therefrom and total payment amount with respect thereto may differ from such good faith estimates due to (a) the actual date of the sale of the Bonds being different than the date assumed for purposes of such estimates, (b) the actual principal amount of Bonds sold being different from the Estimated Principal Amount, (c) the actual amortization of the Bonds being different than the amortization assumed for purposes of such estimates, (d) the actual market interest rates at the time of sale of the Bonds being different than those estimated for purposes of such estimates, (e) other market conditions, or (f) alterations in the CFD financing plan, delays in the financing, or a combination of such factors. The actual date of sale of the Bonds and the actual principal amount of Bonds sold will be determined by the City based on the timing of the need for proceeds of the Bonds and other factors. The actual interest rates borne by the Bonds will depend on market interest rates at the time of sale thereof. The actual amortization of the Bonds will also depend, in part, on market interest rates at the time of sale thereof. Market interest rates are affected by economic and other factors beyond the control of the City.

Agenda Item 3.C

RECOMMENDATION

**Staff recommends that the City Council adopt a Resolution: 1) rescinding Resolution 2022-184 that approved the Regular Meeting Calendar of the Tracy City Council for 2023 (Calendar); and 2) approving an amended Regular Meeting Calendar of the Tracy City Council for 2023.**

EXECUTIVE SUMMARY

While Section 2.04.020 of the Tracy Municipal Code establishes the meeting dates and times for City Council meetings, it is best practice to adopt an annual meeting calendar for agenda management and planning purposes. In addition, State law requires that certain legislative actions only occur at regularly scheduled meetings, so having an adopted calendar of regular City Council meetings establishes, with certainty, which meetings are regular scheduled meetings of the City Council. This item requests approval of an amended calendar, reflecting the cancellation of the November 21, 2023 Regular Meeting.

BACKGROUND AND LEGISLATIVE HISTORY

Pursuant to Tracy Municipal Code 2.04.020, regular meetings of the City Council are held at 7:00 p.m. on the first and third Tuesday of each month of the calendar year, in the Council Chambers located at City Hall. Adopting a meeting calendar allows for proper agenda planning and can provide for recess periods, holidays, or election days and also provides certainty of establishing “regularly scheduled meetings” for City Council to consider certain legislative actions which, under State law, may only be heard at such designated meetings.

Historically, the City Council has cancelled certain meetings given conflicts with State and local events of importance, such as general elections and National Night Out (an annual event that occurs on the first Tuesday in August), and during holiday periods to appropriately manage staffing and quorum issues. On December 6, 2022, the City Council adopted Resolution 2022-184, which adopted the 2023 calendar of regular Tracy City Council meetings.

At the October 3, 2023, Council meeting Council Member Bedolla, seconded by Mayor Pro Tem Davis, requested discussion regarding the cancellation of the November 21, 2023, regular Council meeting due to observance of Thanksgiving Holiday on November 23, 2023.

Special meetings and workshops also may be scheduled. Such meetings and workshops may be called by the City Manager, Mayor or by a majority of Council Members as needed, in accordance with the Council Meeting Protocols and Rules of Procedure.

ANALYSIS

The proposed schedule of meetings includes consideration of the cancellation of the November 21, 2023 regular Council meeting due to observance of the Thanksgiving Holiday. This will allow for staff, Council Members and the public to appropriately plan during the Thanksgiving

peak travel week. Should a matter rise to a level of urgency requiring a meeting to be held during the planned recess, a special meeting may be called pursuant to the City Council's Local Rules of Council Procedures.

#### FISCAL IMPACT

This is a routine operational item, and no significant fiscal impact exists. However, any meetings cancelled could save funds related to the broadcasting of meetings.

#### STRATEGIC PLAN

This agenda item is a routine operational item and does not relate to the Council's four strategic priorities.

#### ACTION REQUESTED OF THE CITY COUNCIL

Staff recommends that the City Council adopt a Resolution: 1) rescinding Resolution 2022-184 that approved the Regular Meeting Calendar of the Tracy City Council for 2023 (Calendar); and 2) approving an amended Regular Meeting Calendar of the Tracy City Council for 2023.

Prepared by: Adrienne Richardson, City Clerk

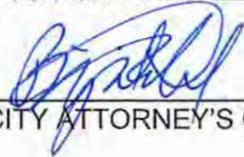
Reviewed by: Bijal Patel, City Attorney  
Karin Schnaider, Assistant City Manager

Approved by: Midori Lichtwardt, Interim City Manager

Attachments:

Attachment A: Resolution 2022-184

APPROVED AS TO FORM AND LEGALITY

  
 CITY ATTORNEY'S OFFICE

**TRACY CITY COUNCIL  
 RESOLUTION NO. 2022-184**

**ADOPTING THE REGULAR MEETING CALENDAR OF THE TRACY CITY COUNCIL FOR CALENDAR YEAR 2023**

**WHEREAS**, In accordance with Tracy Municipal Code 2.04.020, regular meetings of the City Council shall be held at 7:00 p.m. on the first and third Tuesday of each month in Council Chambers; and

**WHEREAS**, It is best practice to adopt an annual calendar of regular meetings for agenda management and planning purposes; and

**WHEREAS**, In addition, State law requires that certain legislative actions only occur at regularly scheduled meetings; and

**WHEREAS**, Special meetings and workshops may be called by the City Manager, Mayor or a majority of Council Members as needed, in accordance with the Council's Meeting Protocols and Rules of Procedure; and

**WHEREAS**, This year's proposed schedule of meetings includes consideration of a summer and winter legislative break is being proposed; and

**WHEREAS**, Many cities "go dark" or recess for purposes of a summer or winter break; and

**WHEREAS**, Staff is recommending that the City Council adopt the following as the City Council's regular meeting calendar for calendar year 2023:

<b>TRACY CITY COUNCIL 2023 REGULAR MEETING CALENDAR</b>			
<b>Date</b>	<b>Type</b>	<b>Date</b>	<b>Type</b>
January 3 – Cancel Regular Meeting (Winter Recess)		July 4	Cancel Regular Meeting (Federal Holiday).
January 17	Regular	July 5	Regular Meeting
February 7	Regular	July 18	Cancel Regular Meeting (Summer Recess)
February 21	Regular	August 1 – Cancel Regular Meeting (National Night Out)	
March 7	Regular	August 15	Regular
March 21	Regular	September 5	Regular
April 4	Regular	September 19	Regular
April 18	Regular	October 3	Regular
May 2	Regular	October 17	Regular
May 16	Regular	November 7	Regular
June 6	Regular	November 21	Regular
June 20	Regular	December 5	Regular
		December 19 - Cancel Regular Meeting (Winter Recess)	

**NOW, THEREFORE, BE IT:**

**RESOLVED:** The City Council of the City of Tracy hereby finds and determines that the foregoing recitals are true and correct and are hereby incorporated herein as findings and determinations of the City; and be it further

**RESOLVED:** That the City Council of the City of Tracy hereby approves the proposed calendar of meetings set forth in this Resolution as the Regular Meeting Calendar of the Tracy City Council for Calendar Year 2023; and be it further

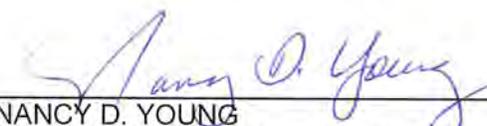
**RESOLVED:** That nothing in this Resolution prevents the City Council from scheduling a special meeting or cancelling a regularly scheduled meeting, otherwise in accordance with local and State law.

\*\*\*\*\*

The foregoing Resolution 2022-184 was adopted by the Tracy City Council on December 6, 2022 by the following vote:

AYES:	COUNCIL MEMBERS: ARRIOLA, BEDOLLA, DAVIS, VARGAS, YOUNG
NOES:	COUNCIL MEMBERS: NONE
ABSENT:	COUNCIL MEMBERS: NONE
ABSTENTION:	COUNCIL MEMBERS: NONE

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

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

**TRACY CITY COUNCIL**

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

**1) RESCINDING RESOLUTION 2022-184 THAT APPROVED THE REGULAR MEETING CALENDAR OF THE TRACY CITY COUNCIL FOR 2023 (CALENDAR); AND 2) APPROVING AN AMENDED REGULAR MEETING CALENDAR OF THE TRACY CITY COUNCIL FOR 2023**

**WHEREAS**, In accordance with Tracy Municipal Code 2.04.020, regular meetings of the City Council shall be held at 7:00 p.m. on the first and third Tuesday of each month in Council Chambers; and

**WHEREAS**, It is best practice to adopt an annual calendar of regular meetings for agenda management and planning purposes; and

**WHEREAS**, In addition, State law requires that certain legislative actions only occur at regularly scheduled meetings; and

**WHEREAS**, Special meetings and workshops may be called by the City Manager, Mayor or a majority of Council Members as needed, in accordance with the Council's Meeting Protocols and Rules of Procedure; and

**WHEREAS**, On December 6, 2022, the City Council adopted Resolution 2022-184 approving the 2023 calendar of regular Tracy City Council meetings; and

**WHEREAS**, Staff is recommending that the City Council adopt an amended 2023 calendar of regular Tracy City Council meetings to reflect the cancellation of the November 21, 2023 regular Council meeting to allow for staff, City Council members and members of the public to plan during the Thanksgiving peak travel week; with the following as the City Council's regular meeting calendar for calendar year 2023 (Amended Calendar):

<b>TRACY CITY COUNCIL 2023 REGULAR MEETING CALENDAR</b>			
<b>Date</b>	<b>Type</b>	<b>Date</b>	<b>Type</b>
January 3 – Cancel Regular Meeting (Winter Recess)		July 4	Cancel Regular Meeting (Federal Holiday).
January 17	Regular	July 5	Regular Meeting
February 7	Regular	July 18	Cancel Regular Meeting (Summer Recess)
February 21	Regular	August 1 – Cancel Regular Meeting (National Night Out)	
March 7	Regular	August 15	Regular
March 21	Regular	September 5	Regular
April 4	Regular	September 19	Regular
April 18	Regular	October 3	Regular
May 2	Regular	October 17	Regular
May 16	Regular	November 7	Regular
June 6	Regular	November 21	Cancel Regular Meeting (Thanksgiving Week)

June 20	Regular	December 5	Regular
		December 19 - Cancel Regular Meeting (Winter Recess)	

**NOW, THEREFORE, BE IT:**

**RESOLVED:** The City Council of the City of Tracy hereby finds and determines that the foregoing recitals are true and correct and are hereby incorporated herein as findings and determinations of the City; and be it further

**RESOLVED:** That the City Council of the City of Tracy hereby rescinds Resolution 2022-184 that approved the Regular Meeting Calendar of the Tracy City Council for 2023; and be it further

**RESOLVED:** That the City Council hereby approves the Amended Regular Meeting Calendar of the Tracy City Council for 2023, as set forth in this Resolution, reflecting the cancellation of the November 21, 2023 Regular Meeting; and be it further

**RESOLVED:** That nothing in this Resolution prevents the City Council from scheduling a special meeting or cancelling a regularly scheduled meeting, otherwise in accordance with local and State law.

\* \* \* \* \*

The foregoing Resolution 2023-\_\_\_\_\_ was adopted by the Tracy City Council on October 17, 2023 by the following vote:

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

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

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