



Think Inside the Triangle™

NOTICE OF SPECIAL MEETING

Pursuant to Section 54956 of the Government Code of the State of California, a Special meeting of the **Tracy City Council** is hereby called for:

Date/Time: **Tuesday, January 16, 2024, 5:00 p.m.**
(or as soon thereafter as possible)

Location: **Tracy City Hall**
333 Civic Center Plaza, Tracy, CA.

Government Code Section 54954.3 states that every public meeting shall provide an opportunity for the public to address the Tracy City Council on any item, before or during consideration of the item, however no action shall be taken on any item not on the agenda.

This meeting will be open to the public for in-person and remote participation pursuant to Government Code Section 54953(e)

For Remote Public Comment:

During the Items from the Audience, 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: 2557 340 2591** and **Event Password: TracyCC**
 - ***If you would like to participate in the public comment anonymously***, you may submit your comment via phone or in WebEx by typing “Anonymous” when prompted to provide a First and Last Name and inserting Anonymous@example.com when prompted to provide an email address.
 - Join by phone by dialing +1-408-418-9388, enter 25573402591#8722922# Press *3 to raise the hand icon to speak on an item

- *Protocols for commenting via WebEx:*
 - *If you wish to comment under “Items from the Audience/Public Comment” portion of the agenda:*
 - *Listen for the Mayor to open “Items from the Audience/Public Comment”, 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 “Items from the Audience/Public Comment” will be accepted until the public comment period is closed.*

1. Call to Order
2. Actions, by Motion, of City Council pursuant to AB 2449, if any
3. Roll Call
4. Items from the audience - *In accordance with Council Meeting Protocols and Rules of Procedure, adopted by Resolution No. 2019-240, and last amended by Resolution No. 2021-049, 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.*
5. Request to Conduct Closed Session
 - 5.A 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.B. CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION
 - i. Significant exposure to litigation pursuant to §54956.9, subd. (d)(2) and (e)(3): (One case).

Attachment A – Government Claims Act claim made available pursuant to (e)(3)
6. Reconvene to Open Session
7. Report of Final Action, if Any
8. Council Items and Comments
9. Adjournment

Posting Date: January 11, 2024

The City of Tracy is in compliance with the Americans with Disabilities Act and will make all reasonable accommodations for the disabled to participate in employment, programs and facilities. Persons requiring assistance or auxiliary aids in order to participate, should contact the City Manager's Office at (209) 831-6000 at least 24 hours prior to the meeting.



**MILLER STARR
REGALIA**



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December 20, 2023

VIA PERSONAL DELIVERY, U.S. MAIL, AND E-MAIL

Adrienne Richardson, City Clerk
City of Tracy
333 Civic Center Plaza
Tracy, CA 95376
E-Mail: cityclerk@cityoftracy.org

Re: **Government Claim and Notice re Claim For Money and Damages
Against City of Tracy**

Dear Ms. Richardson:

This office represents Surland LLC, Surland Communities, LLC, and their affiliates ("Surland") in connection with the above-referenced government claim and project. This letter constitutes a written claim presented pursuant to the Government Claims Act, codified at Government Code section 810 et seq., to apprise the City of Tracy ("City") of claims for money and damages that Surland has against the City arising from the City's violation of Surland's rights under contracts and agreements with the City, as well as Surland's property rights. As required by Government Code section 910, Surland provides the following information:

Claimant And Claimant Address: The claimants are Surland Communities, LLC and Surland, LLC (collectively, "Surland" or "Claimant"). The post office address of Claimant is 1024 N. Central Ave., Tracy CA 95376.

Address To Which Notices Are To Be Sent: The person submitting this claim on Claimant's behalf is its undersigned attorney, Matthew Henderson, and the physical and email addresses to which notices are to be sent are as set forth below:

Matthew Henderson
Miller Starr Regalia
1331 N. California Boulevard, Suite 600
Walnut Creek, CA 94596
Email: matthew.henderson@msrlgal.com
Telephone: (925) 935-9400
Facsimile: (925) 933-4126

Date, Place And Circumstances Giving Rise To Claim: This claim arises from the City's actions with respect to Surland's rights under a variety of agreements and documents with the City. More specifically, on or about April 8, 2013, Surland Communities, LLC and the City entered into an "Amended and Restated Development Agreement" ("Development Agreement" or "DA"). On or about May 3, 2018, the City and Surland Communities, LLC entered into a "Second Amendment to Amended and Restated Development Agreement" ("Second Amended DA") which made certain modifications to the Development Agreement. The Second Amended DA was subsequently invalidated by judicial action.

On or about November 27, 2018, the City and Surland, LLC entered into a Master Program Improvements Credit and Reimbursement Agreement ("Reimbursement Agreement") by which Surland was to be reimbursed for the installation and construction of public improvements that it was not otherwise obligated or required to provide. Discussions between Surland and the City with respect to the Reimbursement Agreement predated the Second Amended DA, and the reimbursement obligations are separate and distinct from those set forth in the Second Amended DA. Nevertheless, the City has taken the position that the invalidation of the Second Amended DA also requires the invalidation of the Reimbursement Agreement. The City has also taken the position that the Reimbursement Agreement was not properly authorized by the City Council, notwithstanding the fact that it was signed by the City Manager, approved as to form by the City Attorney, and attested by the City Clerk. Surland also understands that the City has routinely entered into similar agreements with the signature of the City Manager without formal authorization of the City Council.

Accordingly, as of March of 2023 and continuing since then, the City has represented to Surland that the Reimbursement Agreement is null and void and that Surland would not be entitled to reimbursement for the substantial sums it had expended under the auspices of that agreement. The City has not taken formal efforts to rescind the Reimbursement Agreement, the time for performance under which has not yet ripened, and thus is engaged in an ongoing anticipatory repudiation of the Reimbursement Agreement. Surland has expended substantial sums in constructing public improvements that it was not otherwise obligated or required to provide in reliance on this agreement and the City's representations that Surland would be credited those amounts in fee reimbursements.

The City has also engaged in an ongoing repudiation of its agreement with Surland that amounts expended by Surland to design an aquatic center for the City would count against Surland's \$10 million contribution as called for in the Second Amended DA. Surland expended more than \$1.3 million on design and related costs for the aquatic center, in reasonable reliance on its agreement with the City, costs it would not have incurred had it the City not agreed upon the amended swim center obligations as set forth in the Second Amended DA. Surland expended sums in reliance on the City's assurance that it would be reimbursed as well as the City's review and approval of its expenditures for the aquatic center design.

On or about January 22, 2021, Surland provided the City with a form Irrevocable Offer of Dedication ("IOD") pursuant to the Second Amended DA, which Surland had signed and had notarized. The IOD included a certification for the City to

countersign, indicating its acceptance of the IOD. This was a material term to Surland, because recording the IOD without the acceptance would burden Surland with owning the property covered by the IOD without being able to fully enjoy the benefits of title thereto, as the City could accept the IOD and thus divest Surland of title, while in the interim Surland would still be required to maintain, insure, and pay taxes on the burdened property. However, someone at the City crossed the certification out and inserted a new certification that the IOD was not accepted, thereby causing Surland to fall into the position it had sought to avoid. The City Clerk signed the certification on or about January 28, 2021, and the City wrongfully recorded the IOD the same day.

On or about July 5, 2023, the City wrongfully accepted the improperly modified IOD, in spite of Surland's protestations. The City was acting under the advice and guidance of City Attorney Bijal Patel, who was not licensed to practice law at the time as she had been suspended by the State Bar. The City's position that the Second Amended DA and all actions taken pursuant to it are void ab initio should also render the IOD void ab initio as well.

General Description of Damage/Loss Incurred: The indebtedness, obligation, injury, damage, and/or loss incurred, as far as it is known at this time, includes damages or amounts otherwise recoverable from the City's ongoing anticipatory repudiation and/or breach of the Reimbursement Agreement, which gives rise to claims for breach of contract, quantum meruit and unjust enrichment, estoppel, and declaratory relief to contest that Surland is not entitled to the full financial benefit under the Reimbursement Agreement, including reimbursement for amounts expended in constructing public improvements beyond those required to account for the impacts from Surland's development, as well as attorneys' fees. Said damages and losses are exclusive of other nonmonetary and other claims Surland might and does have against the City, including unlawful taking and/or inverse condemnation, violation of due process, quiet title, declaratory relief, and specific performance or injunctive relief.

The indebtedness, obligation, injury, damage, and/or loss incurred, as far as it is known at this time, also includes damages or amounts otherwise recoverable from the City for its failure to credit the amounts Surland expended on plans, designs, and specifications for the Aquatic Center, including quantum meruit and unjust enrichment and/or estoppel to contest that Surland is not entitled a full credit to its \$10 million obligation for amounts it expended on plans, designs, and specifications for the Aquatic Center, as well as attorneys' fees. Said damages and losses are exclusive of other nonmonetary and other claims Surland might and does have against the City, including unlawful taking and/or inverse condemnation, violation of due process, quiet title, declaratory relief, and injunctive relief.

The indebtedness, obligation, injury, damage, and/or loss incurred, as far as it is known at this time, also includes significant and continuing economic damages and losses of vested property rights suffered by reason of the City's improper acceptance of the improperly altered IOD after said offer had already been signed and notarized by Surland, upon the advice of the City Attorney when the City Attorney was not licensed to practice law in the State of California, thereby depriving

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Surrounding of significant property rights and giving rise to a claim for quiet title to real property.

Name of Public Employees Causing Injury: City of Tracy; City Council of the City of Tracy. The individual members of the City Council are: Mayor Nancy Young, Mayor Pro Tem Eleassia Davis, Mateo Bedolla, Dan Arriola, and Dan Evans. Additional City personnel involved in these claims are Bijal Patel and Brian MacDonald.

Amount Claimed: The estimated amount claimed exceeds \$10,000.00, and is not of an amount that would constitute a limited civil case.

Very truly yours,

MILLER STARR REGALIA

Matthew C. Henderson

Matthew C. Henderson

MCH/mch:klw

cc: client