



TRACY CITY COUNCIL

REGULAR MEETING AGENDA

Tuesday, August 20, 2024, 7:00 P.M.

Tracy City Hall Chambers, 333 Civic Center Plaza, Tracy

Web Site: 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 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: 2556 912 6787** 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 when prompted to provide an email address.
 - **Join by phone by dialing +1-408-418-9388, enter 2556 912 6787 #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:*
 - 1) *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.*
 - 2) *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.*

Date Posted: August 15, 2024

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

Date Posted: August 15, 2024

CALL TO ORDER

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

ROLL CALL AND DECLARATION OF CONFLICTS

PLEDGE OF ALLEGIANCE

INVOCATION

PRESENTATIONS

1. Employee of the Month

ORDER OF BUSINESS

1. CONSENT CALENDAR

- 1.A. Adoption of June 25, 2024 Special Meeting Minutes, July 2, 2024 Regular Meeting Minutes and July 9, 2024 Special Meeting Minutes.
- 1.B. Staff recommends that the City Council adopt a resolution (1) determining that compliance with standard procurement processes is not in the best interest of the City pursuant to Tracy Municipal Code Section 2.20.180(b)(4) and dispensing such requirement for the purchase of specified computer equipment and related services; and (2) approving a Subscriber Services Agreement with the County of San Joaquin to provide certain computer equipment and related services for a total not to exceed amount of \$57,007, for a one year term.
- 1.C. Staff recommends that the City Council adopt a resolution (1) approving a Professional Service Agreement with The Shalleck Collaborative, Inc., of Berkeley, California to provide engineering design services for The Grand Theatre Audio Visual Upgrades Project, for a total not-to-exceed contract amount of \$92,300, and for a term extending from August 20, 2024 to June 30, 2026, and (2) authorizing the City Manager to extend the contract term for one additional year, if needed.
- 1.D. Staff recommends that the City Council adopt a resolution authorizing the City Manager to submit a claim to the San Joaquin Council of Governments for Transportation Development Act funds in the amount of \$6,706,900 for Fiscal Year 2023-2024 and to execute the claim and related documents.
- 1.E. Staff recommends that the City Council waive the second reading and adopt an Ordinance: (1) amending the zone district of the property at 2660 W. Byron Road (Assessor's Parcel Number 238-050-13) from medium density residential to medium density cluster, and (2) determining that the proposed zoning amendment is categorically exempt from the California Environmental Quality Act pursuant to Guidelines Section 15332.
- 1.F Staff recommends that the City Council adopt a Resolution (1) accepting the Federal Aviation Administration's Airport Improvement Program Grant, in the amount of \$126,000; (2) appropriating the full grant amount to a Capital Improvement Project (CIP) 77595 for the Airport Pavement Maintenance Management Plan; and (3) appropriating \$14,000 from the General Fund to CIP 77595, to meet the grant's requisite 10% match requirement.

- 1.G. Receive an informational report regarding the Police Department's response to fireworks complaints and official city events during the July 4th weekend.
- 1.H. Staff recommends that the City Council adopt a resolution approving a Professional Services Agreement with Griffin Structures for project management services for the Clyde Bland Park BMX Pump Track Project for a total not-to-exceed amount of \$235,500.
- 1.I. Staff recommends that City Council adopt a Resolution authorizing the City Manager to request from the San Joaquin Council of Governments Regional Early Action Planning grant funds 2.0 in the amount of \$1,129,000.
- 1.J. Staff recommends that the City Council adopt a resolution (1) accepting Landscape Improvements for Retention Basin, Tracy Hills Phase 1B, Tract 4084, (2) authorizing the City Engineer to accept a One-Year Warranty Bond, and (3) authorizing the City Clerk to file the Notice of Completion with the San Joaquin County Recorder's Office.
- 1.K. Staff recommends that the City Council adopt a resolution: 1) Determining that compliance with the standard procurement processes is not in the best interests of the City pursuant to Tracy Municipal Code 2.20.140(b)(6) and dispensing such requirement for the procurement of janitorial services for the City. (2) Approving a Professional Service Agreement with Madill Enterprises for janitorial services for an initial term of three months and a total not to exceed amount of \$116,717.
- 1.L. Staff recommends that the City Council adopt a resolution (1) accepting construction of the Tracy Hills Zone 5 Pump Station at the John Jones Water Treatment Plant, constructed by Valentine Corporation of San Rafael, California, as complete, (2) authorizing the City Clerk to file the Notice of Completion with the San Joaquin County Recorder's Office, (3) authorizing the City Engineer to release the bonds and retention payment, and (4) authorize the Director of Finance to release the remaining unused project funds to Lennar Homes of California, LLC.
- 1.M. Staff recommends that the City Council adopt a resolution 1) determining that compliance with standard procurement processes are not in the best interest of the City pursuant to Tracy Municipal Code 2.20.140(6) and dispensing such requirement for the actions to be taken here, and 2) approving a Professional Service Agreement with Mark Thomas and Company, Inc. of Sacramento, California, for additional services related to the design and approval effort for the Corral Hollow and Linne Road Intersection Improvements, Capital Improvement Project 72104, for a two year term and for a not-to-exceed agreement amount of \$172,672.
- 1.N. Staff recommends that the City Council adopt a resolution 1) determining that compliance with standard procurement processes is not in the best interest of the City pursuant to Tracy Municipal Code 2.20.140(6) and dispensing such requirement for the actions herein, and 2) approving a Professional Services Agreement with CSG Consultants, Inc. for the Fiscal Year 2020-2021 Pavement Rehabilitation, Capital Improvement Project 73178, for an additional scope of work for the project, for a total not-to-exceed amount of \$73,114, with the term commencing retroactively on March 17, 2023, and ending on March 16, 2025.

2. ITEMS FROM THE AUDIENCE

3. REGULAR AGENDA

3.A. Staff recommends that the City Council receive the annual report by the Measure V Resident Oversight Committee presenting its findings regarding the use of Measure V funds.

3.B. Staff recommends that the City Council receive an informational report on the status of gaming tables and card rooms, including recent State legislation, and provide comments and/or direction to staff.

4. ITEMS FROM THE AUDIENCE

5. STAFF ITEMS

6. COUNCIL ITEMS

7. ADJOURNMENT

TRACY CITY COUNCIL - SPECIAL MEETING MINUTES

June 25 2024, 7:00 p.m.

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

1. Mayor Pro Tem Davis called the meeting to order at 7:00 p.m.
2. There were no actions taken pursuant to AB 2449.
3. Roll call found Council Members Arriola, Bedolla, Evans, Mayor Pro Tem Davis, and Mayor Young present. Mayor Young participated remotely. City Council had no declarations of conflicts.
4. Items from the audience – Robert Shelton, Tracy Hills resident had questions regarding agenda item 5.B. Mayor Pro Tem Davis clarified that they would be able to speak under that item.

Robert Tanner expressed that the business tax item should be revisited, shared that the voters made a mistake and hopefully Measure B can go back to the voters or have the City Council fix it.

Alice English apologized for the comments made regarding the business tax, clarified that this could be a legal issue if Council and staff are not careful, some things should be corrected but there could be issues going against the will of the voters, shared that the Mayor was aware of the agenda item since the prior week.

5. DISCUSSION ITEMS

5.A. Staff recommends that the Tracy City Council take the following actions:

1. conduct a Public Hearing regarding the proposed Fiscal Year (FY) 2024/25 Annual Operating and Capital Budget; and upon conclusion,
2. adopt resolutions(A) approving new positions for an annual aggregate cost of \$966,780 and authorizing the Budget Officer to amend the City's position control roster for FY 2024/25, B) adopting the FY 2024/25 annual operating and capital budget C) approving the allocation of the FY 2024/25 Travel Budget of the City Council Body D) reflecting committed fund balances (Governmental Accounting Standards Board 54) for Fiscal Year ending June 30, 2024 in compliance with statement 54 of the governmental accounting standards board, and E) establishing FY 2024/25 appropriations limit pursuant to Article XIII B of the California State Constitution.

Mayor Pro Tem Davis opened the public hearing.

Sara Cowell, Finance Director and Felicia Galindo, Budget Officer provided the staff report and responded to questions.

Alice English expressed that the nature park is a long time coming and is looking forward to the improvements for Legacy Fields.

Community Member asked how often Measure V audits take place and where can that be found online.

Sara Cowell, Director of Finance provided clarification.

Community Member asked about the funds that were reallocated from Measure V to the aquatic center and asked about the City building a shopping center in Tracy Hills.

Midori Lichtwardt, City Manager provided clarification.

Robert Tanner asked if there will be an increase in the number of Police Officers, when will the substation item be back before Council and shared concerns on the time that it takes officers to get from one end of the City to the other.

Mary Mitracos expressed concerns for the reduction of deferred maintenance for road improvements and objected to \$3 million dollars being pulled from that and expressed discouragement for pulling these funds and thanked Council Member Evans for bringing this issue up and asked that the retirement and CalPERS prefunding should stop immediately.

Council questions and comments followed.

Council Member Evans requested that the CalPERS prefunding and the Retiree Medical prefunding dollars be reallocated to the Road Improvements-Deferred Maintenance and the Parks-Deferred Maintenance. Mayor Pro Tem Davis supported the request.

Council questions and comments continued.

Council Member Bedolla asked to make an amendment that would make the Road Improvements-Deferred Maintenance and the Parks-Deferred Maintenance whole and place the leftover available funds from CalPERS prefunding and the Retiree Medical prefunding and increase City services. Council Member Evans supported.

Mayor Pro Tem Davis closed the public hearing.

ACTION: Motion was made by Council Member Bedolla and seconded by Council Member Arriola to adopt **Resolution 2024-106** approving new positions for an annual aggregate cost of \$966,780 and authorizing the Budget Officer to amend the City's Position Control Roster for Fiscal Year 2024-25. Roll call found all in favor; passed and so ordered.

ACTION: Motion was made by Council Member Bedolla and seconded by Council Member Arriola to adopt **Resolution 2024-107** adopting the City of Tracy Fiscal Year

2024/25 Annual Operating and Capital Budget amended as discussed to suspend the fiscal sustainability recommendations to accommodate for this motion. Roll call found all in favor; passed and so ordered.

ACTION: Motion was made by Council Member Bedolla and seconded by Council Member Arriola to adopt **Resolution 2024-108** approving the allocation of the Fiscal Year 2024-25 Travel Budget of the City Council Body. Roll call found all in favor; passed and so ordered.

ACTION: Motion was made by Council Member Bedolla and seconded by Council Member Arriola to adopt **Resolution 2024-109** approving the Committed Fund Balances for Fiscal Year ending June 30, 2024 in compliance with Statement 54 of the Governmental Accounting Standards Board. Roll call found all in favor; passed and so ordered.

ACTION: Motion was made by Council Member Bedolla and seconded by Council Member Arriola to adopt **Resolution 2024-110** establishing Fiscal Year 2024/25 Appropriations Limit (Gann) pursuant to Article XIII B of the California State Constitution. Roll call found all in favor; passed and so ordered.

5.B. Informational Report on the Corral Fire and the Status of Emergency Plans and Access for the Tracy Hills Neighborhood

Forrest Ebbs, Director of Community and Economic Development provided the staff report.

Council questions and comments followed.

Community member asked about the traffic triggers and if those numbers can be amended, expressed concerns about not receiving messages due to the reliance on internet and lack of cell service, self-evacuated during the fire due to visual observation that they made.

Community Member asked if the City has considered the expansion of the Police Department and Fire Department and asked if on the west side of 580, are those homes in the Tracy jurisdiction and what is the accessibility for evacuation if needed.

Robert Sultan stated that he was signed up for SJReady.com and received nothing regarding the fire and shared that the Red Cross Plan says that there are two exits needed and at this time that is not an option due to the gates being locked and the plan is contradictory.

Community Member asked if the trip count trigger times are not an accurate representation that is needed for the traffic trigger considering the peak traffic times are different from what the City is presenting and requested to do a model that better represents the community's needs.

Community Member asked if there is another community within the City of Tracy that has one exit, if there are evacuations done in that community, and requested quarterly updates from the City on the status of the road construction.

Community Member shared that Council should consider the lives impacted when making these decisions.

Community Member stated that the road to Tracy Hills is very narrow and not sufficient, and shared concerns regarding insurance denials and requested a study that stated that Tracy Hills is a safe community so they can submit that to insurance.

Community Member expressed frustration on the width of the road and the turnouts, trip count trigger times are not an accurate representation that is needed for the traffic trigger considering the peak traffic times.

Community Member requested information on the model that is being used to consider trip count trigger times and frustration that the City does not have accurate numbers to present, and if staff will be answering all the questions being asked by the community.

Community Member shared that considering that the new school is opening and that will impact traffic with only one road for the entire development.

Stephanie expressed concerns that there is no thought into the future and that a road is needed to get to basic resources, Tracy Hills is a food desert, and the inconvenience of travelling to access necessities and medical services.

Community Member asked what the proposed plan for the road expansion is, what are the state requirements, and when will this be completed.

Community Member stated one exit is very problematic requested that Council revisit the plan considering that Tracy Hills is still growing.

Community Member asked if the trip count plan can be adjusted to consider a 2-lane road until the count is met for the 4-lane road.

Community Member expressed frustration regarding the commute issues that the residents of Tracy Hills face.

Marisela a Tracy Hills Community Member thanked Council for visiting, expressed frustration regarding what they were told by the salesperson and lack of communication from the HOA and no real timeline on the infrastructure.

Community Member expressed frustration on the amount of time it takes to get from Tracy Hills to other parts of the City.

Community Member shared concerns on the potential time that it would take for emergency services or ambulance services to arrive, commuting frustrations and the need to leave for groceries.

Community Member expressed frustrations regarding commuting and the inaccessibility for services such as Door Dash, Uber, or other taxi services due to distance from amenities.

Community Member asked about additional emergency roads and if there are any plans to open those in the future.

Alice English shared that the day of the fire traffic was terrible and believes that the traffic study is not accurate considering that traffic gets worse during school pick-up, drop-off, and requested that the traffic study be revisited.

Community Member asked for clarification on the map that was presented.

Community Member requested that the City take security measures to prevent people from stealing packages.

Andrew shared that the planning of Tracy Hills lacked foresight in building the homes before having an emergency plan and infrastructure in place especially since the hills burn every year, and it seems that the residents were not made aware of that issue.

Staff responded to the questions from members of the public.

Mayor Pro Tem Davis reopened public comment.

Maricela stated that her question was pertaining to the HOA and their communication with the residents of Tracy Hills.

Mike Souza, Project Manager for Tracy Hills expanded on the communications process from the HOA to the residents.

Marisela stated that the practice that Mr. Souza described is what is happening now and asked what they can do to make communications better.

Mike Souza, Project Manager for Tracy Hills stated that work will be done to improve on the way the HOA communicates with the residents of Tracy Hills.

Community Member stated that his question regarding the maps was not answered, requested clarification.

John Palmer, representative from Tracy Hills provided clarification.

Community Member requested that the fire and police departments perform fire drills and when will that take place.

Fire Chief Bradley, South San Joaquin County Fire Authority provided clarification.

Community Member requested to view the fire plan for Phase II and how it ties into Phase I.

Fire Chief Bradley provided clarification.

Community Member asked when will the 2-lane road open from South Lammers.

Mayor Pro Tem Davis provided clarification.

Community Member requested to please make the 2-lane road.

Community Member requested that Council provide guidance to his family on buying a home in Tracy Hills and what Phase is best.

Community Member asked how he can get the actual model that Kimley Horn uses for the roads and asked if it is computer models.

Forrest Ebbs, Director of Community and Economic Development responded.

Community Member asked if the models account for the number of homes and population.

Forrest Ebbs, Director of Community and Economic Development responded.

Community Member shared that the traffic study model is not transparent or accurate.

Community Member shared concerns over the potential increase in traffic once the school opens.

ACTION: City Council received the informational report on the June 1, 2024, Corral Fire and the status of emergency plans and access for the Tracy Hills Development located within the Tracy Hills Specific Plan Area.

6. Council Items and Comments – Council Member Bedolla requested clarification on the evacuation plan for Tracy Hills and that Tracy Hills cannot be connected until Phase II maps are approved and PG&E can do their improvements, and requested that staff communicate any information that the HOA should have, that they communicate with Integral, Sea Breeze Management, and the developer and if there are any issues in working with state or federal agencies please reach out to the state or federal reps that can bridge the gaps in communications.

Council Member Evans thanked everyone for their hard work and efforts.

Mayor Pro Tem Davis thanked Tracy Hills residents for sharing comments and concerns, thanked staff for their hard work and patience, wished everyone a Happy 4th of July and reminded the community that the Chamber of Commerce will be hosting fireworks show on July 4 and TCCA will be having the 4th of July parade downtown.

7. Adjournment – Time: 10:45 p.m.

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

The above agenda was posted at the Tracy City Hall on June 21, 2024. The above are action minutes. A recording is available at the office of the City Clerk.

ATTEST:

Mayor

City Clerk

July 2, 2024, 7:00 p.m.

City Hall, 333 Civic Center Plaza, Tracy

Web Site: www.cityoftracy.org

Mayor Young called the meeting to order at 7:00 p.m.

There were no actions taken pursuant to AB 2449.

Mayor Young led the Pledge of Allegiance.

Midori Lichtwardt, City Manager presented Employee of the Month Award for July to Sophia Martinez, Finance Department.

Mayor Young presented a Proclamation for Parks and Recreation Month to Brian MacDonald, Interim Public Works Director.

Mayor Young presented a Certificate of Appointment to Renu Miles as the City of Tracy representative on the San Joaquin County Mosquito & Vector Control District Board.

Roll call found Council Members Arriola, Bedolla, Evans, Mayor Pro Tem Davis and Mayor Young present. Council Member Arriola and Mayor Young had no declarations of conflict.

Council Member Bedolla announced as to Agenda Item 1.N, in the matter *Nicolaou v. City of Tracy et al.*, he recused himself from any discussion and action involving the Resolution approving the updated Scope Letter and Conflicts Waiver due to a conflict of interest.

Council Member Evans announced as to Agenda Item 1.N, in the matter *Nicolaou v. City of Tracy et al.*, he recused himself from any discussion and action involving the Resolution approving the updated Scope Letter and Conflicts Waiver due to a conflict of interest.

Mayor Pro Tem Davis announced as to Agenda Item 1.N, in the matter *Nicolaou v. City of Tracy et al.*, she recused herself from any discussion and action involving the Resolution approving the updated Scope Letter and Conflicts Waiver due to a conflict of interest.

1. CONSENT CALENDAR – Following the removal of Consent Items 1.D and 1.E by Mayor Pro Tem Davis and 1.N by Council Member Arriola, Dan Randall, and Robert Tanner motion was made by Council Member Arriola and seconded by Council Member Evans to adopt the Consent Calendar. Roll call found all in favor; passed and so ordered.
 - 1.A. Adoption of June 18, 2024 Closed Session, Special Meeting and Regular Meeting Minutes. – **Minutes were adopted.**
 - 1.B. Staff recommends that the City Council adopt a resolution authorizing the (1) acceptance of the Call4AllAnimals grant award of \$10,000, (2) appropriation of the full grant funds to the Police Department (Animal Services) operational budget for Fiscal Year 2024/25. – **Resolution 2024-111** accepted the grant and appropriated funds.

- 1.C. Staff recommends that the City Council adopt a resolution (1) accepting the public improvements for Raymond P. Morelos Jr. Park, also known as Hillview Public Park, constructed by Lennar Homes of California, LLC, and assuming all future operations and maintenance, (2) authorizing the City Clerk to file a Notice of Completion for Raymond P. Morelos Jr. Park with the San Joaquin County Recorder's Office, and (3) authorizing the City Engineer to release the Raymond P. Morelos Jr. Park improvement security in accordance with the terms of the Subdivision Improvement Agreement. – **Resolution 2024-112** accepted the improvements.
- 1.F. Staff recommends that the City Council adopt a resolution approving the City of Tracy's commitment to participate in the governance and operation of the San Joaquin Regional Housing Fund. – **Resolution 2024-113** approved the City of Tracy's commitment to participate in the governance and operation of the San Joaquin Regional Housing Fund.
- 1.G. Staff recommends that the City Council adopt a Resolution: authorizing the execution of a modified gross lease between the City of Tracy and Tracy Office Plaza, LLC, for the lease of Suites B1 and B2 at 324 East 11th Street, with an initial term of three years, an administrative option to extend for two one-year terms, with a monthly base rent of \$3,675.60, adjusted each year by 2.5%. – **Resolution 2024-114** authorized the execution of the gross lease agreement with Tracy Office Plaza, LLC.
- 1.H. Staff recommends that the City Council adopt a Resolution approving Amendment No. 1 to the Lease Agreement between the City of Tracy and Riya Enterprises, LLC (Lessee) for Fixed Base Operation Facilities at the Tracy Municipal Airport, to add lender protections in connection with a small business loan secured by Lessee using its business assets as collateral. – **Resolution 2024-115** approved Amendment No. 1 to the Lease Agreement with Riya Enterprises, LLC.
- 1.I. The Tracy Homelessness Advisory Committee recommend that the City Council adopt a resolution approving Amendment No. 1 to the Purchase Agreement for Goods, Commodities, and Ancillary Services with Linked Equipment, LLC. an Arizona Limited Liability Corporation, to increase the total compensation by \$12,527, for a Not-To-Exceed amount of \$563,027, for premanufactured customized containers for the Temporary Emergency Housing Facility, Phase II Site Improvements. – **Resolution 2024-116** approved Amendment No. 1 to the Purchase Agreement with Linked Equipment, LLC.
- 1.J. Staff recommends that the City Council adopt a resolution approving a Professional Service Agreement with Dewberry Engineers, Inc. of Manteca, California, to provide construction management services for the Interstate 580/Patterson Pass Road/International Parkway Diverging Diamond Interchange Improvements Project for an initial term of nineteen (19) months, with an administrative option to extend for one additional year, and a total not-to-exceed contract amount of \$4,298,958. – **Resolution 2024-117** approved a Professional Services Agreement with Dewberry Engineers, Inc.

- 1.K. Staff recommends that the City Council adopt a resolution approving an Offsite Improvement Agreement between the City and Wright Family Holdings, LLC for offsite improvements to Detention Basin 2A, required for the Golden State Fire Project that was approved by Development Review Permit (D22-0033). – **Resolution 2024-118** approved an Offsite Improvement Agreement with Wright Family Holdings, LLC.
- 1.L. Staff recommends that the City Council adopt a resolution (1) accepting public improvements as complete for Vela View Apartments, constructed by Valpico Tracy Apartments, LLC (Developer), (2) authorizing the City Clerk to file the Notice of Completion with the Office of the San Joaquin County Recorder, (3) authorizing the City Engineer to release bonds in accordance with agreements and law, (4) accepting land dedications from the Developer, and (5) approving a Conditional Offsite Improvement Agreement with the Developer for future improvements. – **Resolution 2024-119** accepted public improvements as complete for Vela View Apartments constructed by Valpico Tracy Apartments, LLC.
- 1.M Staff recommends that the City Council adopt (A) a resolution approving and authorizing the recordation of (i) seven (7) Final Subdivision Maps (Tracts 4132 through 4138) located within the Tracy Hills Specific Plan Area; (ii) related Subdivision Improvement Agreements and Conditional Subdivision Improvement Agreements; (iii) related Offsite Improvement Agreements and Conditional Offsite Improvement Agreements; (iv) related irrevocable offers of dedication and grant(s) of easements; and (B) resolution(s) accepting a related grant of access and public utility easement and an offer of dedication of a water tank site. – **Resolution 2024-120** approved the recordation of 7 Subdivision Maps (Tract 4132 through 4138) within Tracy Hills Specific Plan Area, Subdivision Improvement Agreements and 3 Conditional Subdivision Improvement Agreements, 4 Offsite Improvement Agreements, and 4 Conditional Offsite Improvement Agreements, 7 Irrevocable Offers of Dedication of Fee and Easement Interests. **Resolution 2024-121** accepted a Grant of Access and Public Utility Easement and an Offer of Dedication for a related water tank site.
- 1.D. The Tracy Homelessness Advisory Committee recommends that the City Council adopt a resolution by a four-fifths vote (1) making a determination that compliance with standard procurement process is not in the best interest of the City and dispense the bidding requirements for the purchase of a high tension membrane structure from Sprung Instant Structures, Inc., pursuant to California Public Contract Code Section 22050 and Tracy Municipal Code Section 2.20.270(a); and (2) rescinding the approval, given pursuant to Resolution 2022-098, of a Purchase Agreement with Sprung Instant Structures, Inc. for a high-tension membrane structure in the amount of \$455,000; and (3) approving, instead, a Purchase Agreement with Sprung Instant Structures, Inc., for such structure at the Not-To-Exceed amount of \$481,275.

Mayor Pro Tem Davis pulled the item to state due to the Supreme Court ruling earlier this week she is still in favor of supporting the item but requested a conversation with the Tracy Homelessness Advisory Committee regarding the changes in the ruling impacts the way it impacts in how we take next steps.

Will support this item with a caveat that she would like to get support later on to reevaluate where we are with next steps in light of the Supreme Court ruling.

There was no public comment.

ACTION: Motion was made by Council Member Bedolla and seconded by Mayor Pro Tem Davis to adopt **Resolution 2024-122** (1) Making a determination that compliance with standard procurement process is not in the best interest of the City and dispense the bidding requirements for the purchase of a high-tension membrane structure from Sprung Instant Structures, Inc., pursuant to California Public Contract Code Section 22050 and Tracy Municipal Code Section 2.20.279(a) and: (2) Rescinding Resolution 2022-098, dated July 5, 2022, approving a Purchase Agreement with Sprung Instant Structures, Inc., a Utah Corporation in the amount of \$455,000.00 and (3) Approving a Purchase Agreement with Sprung Instant Structures, Inc., for such a structure, at the not-to-exceed amount of \$481,275. Roll call found all in favor; passed and so ordered.

- 1.E. The Tracy Homelessness Advisory Committee recommends that the City Council adopt a resolution (1) awarding a construction contract to Quiring General, LLC., Pleasanton, California, in the amount of \$9,349,630 for construction of the Phase II Site Improvements of the Temporary Emergency Housing Facility Project, at 370 W. Arbor Avenue, and (2) authorizing the City Manager to approve change orders up to the contingency amount of \$934,963, pursuant to Tracy Municipal Code Section 2.20.090(b).

Mayor Pro Tem Davis pulled the item to state she stands committed to this recommendation with the caveat that she would like to bring back Council item regarding the City's approach to homelessness due to the Supreme Court's ruling.

There was no public comment.

ACTION: Motion was made by Council Member Bedolla and seconded by Mayor Pro Tem Davis to adopt **Resolution 2024-123** (1) Awarding a Construction Contract to Quiring General, LLC. of Pleasanton, California, in the amount of \$9,349,630 for the Phase II site improvement of the Temporary Emergency Housing Facility (TEHF), and (2) Authorizing the City Manager to approve Construction Contract change orders up to the contingency amount of \$934,963, pursuant to Tracy Municipal Code Section 2.20.090(b). Roll call found all in favor; passed and so ordered.

- 1.N In the matter, Nicolaou v. City of Tracy et al., Case No. STK-CV-UWH-2024-5436, the City Council to approve, each by separate action, the following Resolutions approving:
1. Updated Scope Letter and Conflicts Waiver for Mayor Pro Tem Davis;
 2. Updated Scope Letter and Conflicts Waiver for Councilmember Bedolla;
 3. Updated Scope Letter and Conflicts Waiver for Councilmember Evans;
- and
4. New representation agreement with Levin Oldfather LLP for City Attorney Patel

Jenica Maldonado, outside Counsel from Atkinson, Andelson, Loya, Ruud & Romo provided the staff report and answered questions.

Council Member Arriola pulled the item to break the resolutions up into separate motions. In light of the findings from the Civil Grand Jury Report and previous conduct observed it is his opinion that grounds may exist to refuse to provide for defense per statutory exemptions in Gov. Code 995.2. At this time, he would be supporting resolutions for colleagues but cannot support the resolution for the City Attorney.

Council comments followed.

Dan Randall asked for a break down on cost per defendant, cost that has happened, any accrued unpaid expenses, total projected cost, and related costs for the City Attorney in terms of her representation and what costs are compared to Council who are also defendants Mr. Randall asked should the City Attorney be on an administrative leave and have independent counsel when talking about these issues. If Council is recusing themselves, they should not be talking about it. Have a common bond with City Attorney and that is a conflict.

Midori Lichtwardt, City Manager stated the request is more appropriate in a public records request and we do have a public records request working through the system that has a bulk of what Mr. Randall is asking for and will be posted on our website.

Robert Tanner stated people are asking about the potential cost of lawsuits. Three members of Council already said they have a conflict of interest on this item which leaves only two and asked if the item can be voted on.

ACTION: Motion was made by Council Member Arriola and seconded by Mayor Young that in the matter of Nicolaou v. City of Tracy et al., Case No. STK-CV-UWH-2024-5436 to adopt **Resolution 2024-124** approving updated Scope Letter and Conflicts Waiver for Mayor Pro Tem Davis. Roll call found Council Members Arriola, Bedolla, Evans, and Mayor Young in favor; passed and so ordered. Mayor Pro Tem Davis recused herself from voting on this resolution.

ACTION: Motion was made by Council Member Arriola and seconded by Mayor Pro Tem Davis that in the matter of Nicolaou v. City of Tracy et al., Case No. STK-CV-UWH-2024-5436 to adopt **Resolution 2024-125** approving updated Scope Letter and Conflicts Waiver for Council Member Bedolla. Roll call found Council Members Arriola, Evans, Mayor Pro Tem Davis, and Mayor Young in favor; passed and so ordered. Council Member Bedolla recused himself from voting on this resolution.

ACTION: Motion was made by Council Member Arriola and seconded by Council Member Bedolla that in the matter of Nicolaou v. City of Tracy et al., Case No. STK-CV-UWH-2024-5436 to adopt **Resolution 2024-126** approving updated Scope Letter and Conflicts Waiver for Council Member Evans. Roll call found Council Members Arriola, Bedolla, Mayor Pro Tem Davis and Mayor Young in favor; passed and so ordered. Council Member Evans recused himself from voting on this resolution.

ACTION: Motion was made by Council Member Bedolla and seconded by Council Member Evans that in the matter of Nicolaou v. City of Tracy et al., Case No. STK-CV-UWH-2024-5436 to adopt **Resolution 2024-127** approving new Engagement Agreement with Levin Oldfather LLP, for City Attorney Patel. Roll call found Council Members Bedolla, Evans and Mayor Pro Tem Davis in favor; passed and so ordered. Council Member Arriola and Mayor Young opposed.

2. ITEMS FROM THE AUDIENCE – A resident stated he is representing shelter guests and watched the last Tracy Homelessness Advisory Committee meeting and stated things that are being told to the Council are not true, shared concerns regarding conditions at the temporary shelter, and guest happiness. Spoke about a bad odor at the shelter. All Council should visit the shelter to see what is going on. Shelter guests are not being asked about conditions and they have no voice. Showers are disgusting, no cold water in showers, bathrooms not cleaned and there are health risks. There are unleashed dogs at the shelter that are allowed to run around. Dogs should be put away for a period of time to allow cats to be let out.

Mayor Pro Tem Davis, Council Member Evans and Council Member Bedolla clarified they have been to the Temporary Homeless Shelter several times.

Cynthia Camacho shared concerns about how things are going at the shelter. Have heard shelter guests would like to speak to Council alone, do not want staff there so they can speak freely. Have asked for an itemized report on how the funding is being spent at the shelter and have been waiting for two months. Still have not received it.

Mayor Pro Tem Davis and Council Member Bedolla provided their phone numbers for anyone to reach out to them to share their perspectives regarding the shelter.

Dan Randall spoke about the Grand Jury Report of June 21, 2024, and read segments from the Grand Jury Report regarding the City Attorney. Reason we have been stalled in terms of the City's strategic plans those last few years is because of things like this.

Robert Tanner spoke about the Grand Jury Report stating the Council is in disarray and causing problems and the City Attorney is causing problems. There were nine findings about City Council and five findings against the City Attorney. Shared concerns regarding the Council's potential salary increase. Mr. Nicolaou's lawsuit does have some merit, looked up the State rules and he is right, cannot do retroactive pay.

3. REGULAR AGENDA

- 3.A Staff Recommends that the City Council: (1) Continue the public hearing from May 21, 2024, pursuant to Tracy Municipal Code Section 4.12.320, to consider assessment of costs for the abatement of weeds, rubbish, refuse, and flammable materials on the following three parcels: 280 W. Mount Diablo Road, 302 W. Mount Diablo Road, 2480 W. Byron Road, and upon its conclusion, and by separate motion, approve the final assessment of abatement costs on each of the three parcels, and if necessary, authorize any reduction of assessed costs to be funded by the General Fund

Mayor Young opened the public hearing.

Tim Spears, Fire Marshal provided the staff report.

One of the property owners of 302 W. Mount Diablo Road asked for clarification on the fine for the abatement. Would like to ensure working with the Fire Department and being more proactive clearing the space.

Fire Marshal Spears clarified the cost to the property owners for the abatement would be \$2,110 per property totaling \$6,330.

Arturo Sanchez, Assistant City Manager confirmed the cost to the City would be \$10,626.

Mayor Young closed the public hearing.

ACTION: Motion was made by Council Member Arriola and seconded by Council Member Evans to approve the final assessment of abatement costs for the abatement of weeds, rubbish, refuse, and flammable materials on the following three parcels: 280 W. Mount Diablo Road, 302 W. Mount Diablo Road, 2480 W. Byron Road, and authorize a reduction of assessed costs to be funded by the General Fund as was discussed by staff. Roll call found all in favor; passed and so ordered.

3.B The Planning Commission recommends that, for the real property located at 2660 W. Byron Road, Assessor's Parcel Number 238-050-13 (Property), the City Council conduct a public hearing and upon conclusion: (1) Introduce an Ordinance (R22-0004) approving a rezone of the Property from Medium Density Residential to Medium Density Cluster; (2) Adopt a Resolution approving a Tentative Subdivision Map (TSM22-0003) of the Property for the creation of 38 single-family lots; and (3) Determine that this project is categorically exempt from the California Environmental Quality Act pursuant to Guidelines Section 15332.

Mayor Young opened the public hearing.

Forrest Ebbs, Director of Community and Economic Development provided the staff report and responded to questions.

Council questions and comments followed.

Dylan Wooten, representing applicant Schack and Company and owner of the property stated they have not had discussions regarding making units affordable.

Property owner stated they do not have any plans for medium and low-income houses and confirmed he would not be open to discussing it and there are no ADU's in the development.

John Gallagher, owner of a lot in the area near development asked if the neighbors can be involved in the architectural part at Planning Commission. All in housing element to be upgraded from medium density to high density and asked how that is going to affect them.

Cynthia Camacho asked for clarification on State law regarding developers being required to build 20% to be low income.

Council comments and questions continued.

Mayor Young closed the public hearing.

Adrienne Richardson, City Clerk read the title of the proposed ordinance.

ACTION: Motion was made by Council Member Evans and seconded by Council Member Arriola to waive the reading of the text and introduce an ordinance (1) amending the Zone District of the property at 2660 W. Byron Road (Assessor's Parcel Number 238-050-13) from medium density residential to medium density cluster, and (2) Determining that the zoning amendment is categorically exempt from the California Environmental Quality Act pursuant to Guidelines Section 15332. Roll call found all in favor; passed and so ordered.

ACTION: Motion was made by Council Member Bedolla and seconded by Mayor Pro Tem Davis to adopt **Resolution 2024-128** (1) Approving a Tentative Subdivision Map (TSM22-0003) for the creation of 38 single-family lots at 2660 W. Byron Road, Assessor's Parcel Number 238-050-13; and (2) Determining that this project is categorically exempt from the California Environmental Quality Act pursuant to Guidelines Section 15332. Roll call found all in favor; passed and so ordered.

3.C The City Council to discuss and provide direction, by motion, to its delegates on the South San Joaquin County Fire Authority (SSJCFA) Board of Directors whether they should approve, on behalf of the City, SSJCFA's implementation of a surge ambulance in Zone-26, resulting in a City commitment to fund an estimated annual net cost of \$412,863 for such service.

Arturo Sanchez, Assistant City Manager introduced the item.

Mayor Pro Tem Davis as Council representative of the South San Joaquin County Fire Authority spoke about the item and requested support for the item.

Randall Bradley, Fire Chief provided the staff report and responded to questions.

There was no public comment.

Council questions and comments followed.

ACTION: Motion was made by Mayor Pro Tem Davis and seconded by Council Member Evans to approve the Council delegates on the South San Joaquin County Fire Authority (SSJCFA) Board of Directors the authority to approve, on behalf of the City, SSJCFA's implementation of a surge ambulance in Zone-26, resulting in a City commitment to fund an estimated annual net cost of \$412,863 for such service. Roll call found all in favor; passed and so ordered.

3.D Staff recommends that the City Council receive an informational update on the Economic Development Division's efforts to implement strategic goals and priorities related to the adopted Economic Development Strategic Plan.

Jorge Barrera, Economic Development Manager provided the staff report.

Forrest Ebbs, Director of Community and Economic Development responded to questions.

Council questions and comments followed.

Tim Silva stated businesses do not come to Tracy, shared concerns regarding businesses leaving town, the condition of the mall, and people not going to businesses. How are we going to get people to our shopping areas. Tracy is an industrial and bedroom community.

Council questions and comments continued.

ACTION: Motion was made by Council Member Bedolla and seconded by Mayor Pro Tem Davis to receive the informational update on economic development efforts to implement strategic goals and priorities related to the adopted Economic Development Strategic Plan. Roll call found all in favor; passed and so ordered.

3.E Discuss building additional kennels and other alternatives to address capacity and kennel space at the Tracy Animal Shelter, and upon conclusion of such discussion, by motion, either (1) direct staff to proceed with a specific solution or (2) determine to take no further actions at this time.

Brittany Pasquale, Animal Services Supervisor provided the staff report and responded to questions.

Beth Lyons-McCarthy, Police Support Operations Manager responded to questions.

Council questions and comments followed.

There was no public comment.

Arturo Sanchez, Assistant City Manager responded to questions and clarified the suggestion to reevaluate Phase II and III and look at it as a whole.

ACTION: Motion was made by Mayor Pro Tem Davis and seconded by Council Member Arriola to direct staff to proceed with solution #2 (in staff report) which is reevaluating Phase II and Phase III of the Animal Shelter. Roll call found all in favor; passed and so ordered.

Mayor Pro Tem Davis confirmed with Ms. Pasquale that that is what she was seeking.

4. ITEMS FROM THE AUDIENCE – None

5. STAFF ITEMS – Midori Lichtwardt, City Manager announced the following: The July 4 events: From 6:00 a.m. to 9:00 a.m. on July 4 there will be a pancake breakfast and hot air balloon launch sponsored by the Chamber of Commerce at Lincoln Park. The parade downtown will begin at 10:00 a.m. The fireworks at Legacy Fields – gates open at 6:30 p.m. and need to have prepaid tickets.

Check out the City of Tracy website, Facebook and Instagram to find out about the cooling centers.

6. COUNCIL ITEMS – Mayor Pro Tem Davis asked for support to bring back an agenda item to the next Tracy Homelessness Advisory Committee meeting regarding the impacts of the Supreme Court ruling on encampments and the City’s ability to enforce its local law and what those impacts might mean for Tracy. Reevaluation and reassessing next steps and staff to do some analysis. Council Member Evans supported the request.

Mayor Pro Tem Davis congratulated Mountain House on becoming the 483rd City in the State of California, attended the event, was an historic moment and congratulated the City of Mountain House and new Council on such a momentous moment.

Council Member Evans stated he was looking forward to seeing everyone at the 4th of July parade and wished everyone a wonderful and safe July 4 celebration of our nations independence. He attended the swearing in and ribbon cutting for the new City of Mountain House and congratulated their City Council, Mayor and residents. Looking forward to finding ways to partner with them.

Council Member Arriola congratulated Mountain House, the youngest city in the nation. Council Member Arriola stated he and Council Member Bedolla attended the Young Elected Officials Network in Washington D.C. and reported on the trip.

Council Member Arriola stated have had a Civil Grand Jury Report and have a certain amount of time to respond to that and asked if we have independent Counsel retained to prepare the responses to the Civil Grand Jury Report. Mayor Young and Council Member Bedolla supported the request.

Bijal Patel, City Attorney responded that is not a practice she has ever seen, and the City Manager confirmed in the past it was done through the City Manager and City Attorney’s Office.

Council Member Arriola stated he was concerned because the office of the City Attorney was named within the findings.

Ms. Patel responded that is not unusual. It is the office that is best suited to answer those questions. It is no different than the City Manager’s Office. The City Attorney’s Office works with the independent departments who are responsible for addressing those findings. Ms. Patel stated she is happy to engage a separate counsel to do a peer review but they would not have the factual information to respond to those specific findings.

Council Member Arriola still asked for an independent counsel for a peer review, requested a second for that.

Ms. Patel added the responses are also related to a lot of things related to the City Council so will be working with all of Council to get input as this is related to Council as a body. An independent counsel would not have some of that information that you may want to provide. It is best to collaborate through peer review rather than independent counsel to prepare this as they are not prepared to do this.

Council Member Arriola asked what Ms. Patel means by peer review.

Ms. Patel clarified an external counsel to do a peer review of all the drafts that we prepare and compile.

Council Member Arriola responded that would be his ask. Mayor Young and Council Member Bedolla supported the request.

Midori Lichtwardt, City Manager stated staff will come back with an action item and shared her plan was to, similar to how it was handled last time the City of Tracy had a City Council Grand Jury Report, staff prepared the responses and brought it before Council and Council word smithed it from the dais. All responses are approved by the Council.

Council Member Arriola wished everyone a happy 4th of July.

Ms. Lichtwardt responded to Mayor Young's question stating the Council will weigh in on the responses and approve the responses being sent back to the Grand Jury.

Mayor Young asked if we would also be responding to the other Grand Jury Report received.

Ms. Patel stated she has not received a copy and will follow up accordingly and make sure that if the City needs to respond we will. If the City is named, we don't get to respond unless the legislative body approves it.

Mayor Young stated she went to the NARC Conference and left City Manager a brochure as it includes Nancy Young as moderator. Was a wonderful experience, and if interested can check online with SJCOG. Wished everyone a happy 4th of July and to be safe. There will be a special meeting on Tuesday, July 9, 2024, at 6:00 p.m.

7. ADJOURNMENT – Time: 11:49 p.m.

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

The above agenda was posted at the Tracy City Hall on June 28, 2024. The above are action minutes. A recording is available at the office of the City Clerk.

Mayor

ATTEST:

City Clerk

TRACY CITY COUNCIL - SPECIAL MEETING MINUTES

July 9, 2024, 6:00 p.m.

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

1. Mayor Young called the meeting to order at 6:01 p.m.
2. There were no actions taken pursuant to AB 2449.
3. Roll call found Council Members Arriola, Evans, Mayor Pro Tem Davis and Mayor Young present. City Council had no declaration of conflict.

Council Member Bedolla arrived at 6:02 p.m. and had no declaration of conflict.

4. ITEMS FROM THE AUDIENCE – Gabriela Machuca stated over the last two years she has experienced red tape and hurdles regarding relocating her business downtown. People who are attempting to open businesses in Tracy are experiencing red tape and hardship. The culture in Tracy is being unfriendly to businesses and shared an experience of a business attempting to open in Tracy. The Downtown Specific Plan needs to be updated, and shared concerns regarding the CUP process.

Emmanuel Macalino, co-owner for Stars Casino spoke about the improvements and investments on the property and wants to expand gaming tables. Revenue is lower since operating a full restaurant and bar at the new location and requested to be given priority to be on agenda.

Robert Tanner shared concerns regarding the City Attorney's license lapsing, Council not honoring the contract with the City, and kept the City Attorney on and gave her an increase.

Council Member Bedolla stated it was not a suspension per the State Bar of California.

Alice English spoke about the Grand Jury not doing the investigation properly, before all this issue with the City Attorney back in November 2022 the City Manager at that time and Nancy Young were seeking how to fire the City Attorney which the Grand Jury did not reveal. Grand Jury did not reveal how much was paid to the City Manager when he resigned. Ms. English stated that the Mayor knew there was a letter already that Surland was going to sue. Lot of things happened prior to the City Attorney license situation.

Mayor Young and Council Member Arriola objected to Ms. English's characterization.

5. REGULAR AGENDA

5.A. Conduct a Public Hearing, and upon conclusion, adopt an Urgency Ordinance making findings and extending for ten months and fifteen days, pursuant to Government Code 65858, the temporary moratorium on the processing of Business Tax under Chapter 6.04 of the Tracy Municipal Code, to take effect immediately upon adoption.

Mayor Young opened the public hearing.

Arturo Sanchez, Assistant City Manager provided the staff report and responded to questions.

Council comments followed.

Bijal Patel, City Attorney, Midori Lichtwardt, City Manager and Sara Cowell, Finance Director responded to questions.

Emmanuel Macalino stated he serves on the Gaming Policy Advisory Committee and went through the same issues that related to the stakeholders in the gaming industry. They overtaxed the stakeholders and they had to go back and make adjustments. Need to quantify the tax on the businesses versus the benefits to the City. Want to pay fair dues but not at the expense of businesses suffering to the point where they cannot function and agreed with extending the moratorium.

Robert Tanner stated the City needs to extend the moratorium. Some business owners told him they are being taxed three times on their revenue – State, Federal and now business tax. Mr. Tanner shared concerns regarding reduced revenues and businesses leaving. The residents were misled, and calculations were in error. Need to correct this sooner than later.

Alice English stated she spoke to some of the merchants, and they all agree on the moratorium. Hope it does not take that long to do it and suggested a town hall meeting earlier than August 13, told the merchants not to spend the money until it gets resolved and asked if it going to be retroactive.

Maria Ayala, Tracy Chamber of Commerce stated due to an unforeseen circumstance the Chamber had to cancel the July 3 meeting with staff and they are working with staff to reschedule that meeting in order to have a town hall meeting.

Gabriela Machuca stated if Council does not make adjustments businesses will go away. Utility payments for businesses has increased also. Ms. Machuca hoped the City will take that into consideration and suggested staff provide memo updates to Council.

Council comments continued.

Mayor Young closed the public hearing.

Mayor Young announced she would not be available for the September 3, 2024, Council meeting.

Adrienne Richardson, City Clerk read the title of the proposed Urgency Ordinance.

ACTION: Motion was made by Council Member Arriola and seconded by Council Member Evans to waive the reading of the full text and adopt **Urgency Ordinance 1346** making findings and extending for ten months and fifteen days, pursuant to Government Code 65858, the temporary moratorium on the processing of business tax under Chapter 6.04 of the Tracy Municipal Code, to take effect immediately upon adoption. Roll call found Council Members Arriola, Evans, Mayor Pro Tem Davis and Mayor Young in favor; passed and so ordered. Council Member Bedolla opposed.

6. COUNCIL ITEMS – Council Member Bedolla asked when a discussion will be coming to Council that includes inclusionary zoning and housing.

Midori Lichtwardt, City Manager responded she did not have a date but would get that information to him in an email.

Council Member Arriola asked when the Stars Casino item would be coming to Council.

Staff confirmed it is currently scheduled on the August 20, 2024, agenda.

Council Member Arriola stated it seemed that Mr. Macalino was not aware of the date so would have staff confirm with him and if otherwise requested a second so the item can proceed. Council Member Bedolla seconded the request. Council Member Arriola wished everyone a happy and safe summer.

Mayor Pro Tem Davis stated there are election rules we have to abide by and she received a call from a polling place and it was full of disinformation negatively skewed towards three Council Members and she asked the person who paid for the survey and that person said they would get back to her with that information. Mayor Pro Tem Davis asked if she finds information related to unfair political practices what is the process for dealing with that appropriately because she sees it as a code of ethics issue and is determined to find out who that information comes from. Mayor Pro Tem Davis asked about the process for investigating at a City level or whatever level she is supposed to as this needs to stop.

Bijal Patel, City Attorney responded the regulatory law for the elections law is the FPPC where a complaint would have to be filed. There is separate regulatory enforcement agencies which is the FBI which has an election law unit also. There are regions in the state for the FBI and a chapter in San Joaquin County. They are monitoring federal election law. State elections laws are regulated by the FPPC, and Federal is FBI. At the City level we do not monitor elections law issues, but Council has adopted a Code of Conduct and that is something to evaluate. Council can consult with her and determine whether or not there is a potential violation under the Code of Conduct. If that is the case it would come back to the Council body to determine if there is a violation of the Code of Conduct.

Mayor Young asked for clarification regarding when asking the City Attorney for an opinion that is being requested, the full body receives the full answer before anything would come as an item as it is important the Council is given the same information.

Ms. Patel responded if there is an interpretation under the Code of Conduct, it is the role of the City Attorney to look at your adopted policies, to the extent there is a question that is

posed and if it is applicable to all Council she would send a confidential communication to all Council saying this is the question posed and this is her interpretation and go from there.

Mayor Young stated there are people running for offices that sit on our commissions and asked if they are on the same Code of Conduct, so is limited to those currently on Council and currently on commissions. Not sure how the FPPC handles those running for office.

Ms. Patel confirmed the Code of Conduct also applies to members who are currently appointed on City boards and commissions or serving on the City Council. The FPPC is monitoring State Election Law and that is a separate issue to analyze, and the City does not have jurisdiction over that.

Mayor Pro Tem Davis asked if a Council Member or Board or Commissioner is acting as a resident versus their official capacity, how do those laws apply.

Ms. Patel responded when individuals are an elected or appointed official it is hard to take that hat off and it is very rare to say they are acting in their personal capacity. That rule is strong for elected officials. Members of Council are representing the Council. There are members of the public that are participating on a commission like Planning Commission or Arts Commission, more boxes can be created around those roles as they can take their hat off because their roles are narrower. The Planning Commission has only a finite box under which they get to review items. They can't get involved on budgetary issues as it is not in their purview. They could comment on budget adoption issues, but they cannot speak on things that would come before their commission such as the Housing Element. That is how to navigate through which hat to wear.

Mayor Young responded whatever the standard for code is still held if someone on a City of Tracy commission is sending out lies about a current Council Member, she wanted to make sure the same rule book is being used when looking at those things.

7. ADJOURNMENT – Time: 7:26 p.m.

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

The above agenda was posted at the Tracy City Hall on July 3, 2024. The above are action minutes. A recording is available at the office of the City Clerk.

ATTEST:

Mayor

City Clerk

Agenda Item 1.B

RECOMMENDATION

Staff recommends that the City Council adopt a resolution (1) determining that compliance with standard procurement processes is not in the best interest of the City pursuant to Tracy Municipal Code Section 2.20.180(b)(4) and dispensing such requirement for the purchase of specified computer equipment and related services; and (2) approving a Subscriber Services Agreement with the County of San Joaquin to provide certain computer equipment and related services for a total not to exceed amount of \$57,007, for a one year term.

EXECUTIVE SUMMARY

This agenda item seeks approval of a Subscriber Services Agreement between the City of Tracy (City) and County of San Joaquin (County) to provide computer equipment, information services, and maintenance of the Tracy Police Department's Automated Message Switch System Access, and the Law and Justice System Access. These services are necessary to maintain access to the California Law Enforcement Telecommunications System (CLETS), Criminal Justice Information System (CJIS), and local county law and warrant systems.

BACKGROUND AND LEGISLATIVE HISTORY

CLETS is the computerized telecommunications system in the State of California that is used by public agencies of law enforcement and criminal justice for accessing law enforcement information and sending law enforcement messages. The CLETS will provide all law enforcement and criminal justice user agencies with the capability of obtaining information directly from federal and state computerized information files. The message switch computer is the portion of the hardware and software solely designed to switch transactions to and from the CLETS. As published in the California Law Enforcement Telecommunications System Polices, Practices, Procedures and Statutes manual, "Pursuant to GC § 15151, the California Law Enforcement Telecommunications System (CLETS) is an efficient law enforcement communications network available to all public agencies of law enforcement within the state."

"Pursuant to GC § 15161 through § 15163, the CA DOJ shall provide central switching equipment and sufficient circuitry from the switching center to one location in each county to handle law enforcement message traffic. Circuitry and terminal equipment to extend beyond, or other than, the CLETS termination point in each county will be provided by client agencies at their own expense."

Additionally, GC § 15163 states "The Sheriff's Office will serve as the County Control Agency unless the CA DOJ, in consultation with the CAC, indicates another law enforcement agency in the county is better qualified. The single point of entry into each county will be funded by the CA DOJ. Any additional points of entry to the County Control Agency will be at the agency's expense."

Tracy Police Department currently contracts with Commsys, Inc. as its primary vendor for connecting to the CLETS; however, to avoid disruption of service during any services outages or failures, Tracy Police Department uses San Joaquin County as its back up system for CLETS.

San Joaquin County is the County Control Agency/Direct Interface System Host and they are required to inform its subscribing agencies, such as Tracy Police Department, of the type of circuitry and equipment necessary for access, the type of services that they will provide in addition to CLETS access, and all fees that will be charged for the CLETS service, equipment rental, line costs, and any additional services.

The County Control Agency is responsible for providing the CLETS service via its message switching computer to all qualified CLETS subscribing agencies within their respective county. The cost of the service to subscribing agencies should not reflect more than the actual costs attributed to the message switching computer's functionality, including any and all hardware, software, interface modules and costs incurred by the County Control Agency.

ANALYSIS

Tracy Municipal Code 2.20.180(b)(4) allows the dispensation of compliance with standard competitive procurement processes, when, in the determination of the City Council, compliance with such processes is not in the best interest of the City for those commodities, equipment or general services the costs of which equal or exceed Fifty Thousand and no/100ths (\$50,000.00) Dollars. The Tracy Police Department is dependent on County of San Joaquin as its secondary and back up provider for the CLETS Automated Message Switch System Access. Additionally, the Tracy Police Department is dependent on San Joaquin County's local Law and Justice System Access which provides connections to local criminal history, warrant, and probation information. This information is paramount for officer safety, and without these connections, officers are unable to receive information needed during their contacts and interactions.

The Police Department and City have executed these annual agreements for many years at the department and City Manager levels; however, the current agreement's fees have increased above \$50,000, thus requiring City Council approval.

FISCAL IMPACT

This agreement encounters increases each year as the cost is affected by San Joaquin County's increased salary and personnel costs required to maintain these systems.

This 12-month agreement is the first to have met the threshold requiring City Council approval.

The 12-month agreement of \$57,007 is funded through the Police Department's operating budget in the General Fund.

PUBLIC OUTREACH/INTEREST

This is an operational item for the Police Department. No public outreach was conducted.

COORDINATION

This is an operational item between the City and County of San Joaquin. No additional coordination is needed with any other city department.

CEQA DETERMINATION

This is not a CEQA project.

STRATEGIC PLAN

This agenda item is related to Council's strategic priority for Public Safety.

ACTION REQUESTED OF THE CITY COUNCIL

Staff recommends that the City Council adopt a resolution (1) determining that compliance with standard procurement processes is not in the best interest of the City pursuant to Tracy Municipal Code Section 2.20.180(b)(4) and dispensing such requirement for the purchase of specified computer equipment and related services; and (2) approving a Subscriber Services Agreement with the County of San Joaquin to provide certain computer equipment and related services for a total not to exceed amount of \$57,007, for a one year term.

Prepared by: Beth Lyons-McCarthy, Support Division Manager

Reviewed by: Sekou Millington, Chief of Police
Sara Castro, Director of Finance
Karin Schnaider, Assistant City Manager

Approved by: Midori Lichtwardt, City Manager

Attachments:

Attachment A: Agreement City of Tracy and San Joaquin County



SAN JOAQUIN
— COUNTY —
Greatness grows here.

Information Systems Division

Mark Thomas, Director

Rodney Baker, Assistant Director

Kenneth Hoach, Assistant Director (SJGH)

May 31, 2024

City of Tracy Police Department
Sekou Millington, Chief of Police
1000 Civic Center Drive
Tracy, CA 95376

Dear Chief Millington,

Enclosed is the San Joaquin County Technology Services Agreement for fiscal year 2024-2025. This agreement defines the services that San Joaquin County Information Systems Division will provide to your agency during this fiscal year. The services include, but are not limited to, Automated Message Switching System access and Criminal Justice Information System (CJIS) access.

Please review, sign, and return one copy of the agreement to me by June 30, 2024. Should you have any questions, please contact me at (209) 468-9903.

Sincerely,

Harspreet Kaur
Business Analyst II
Information Systems Division | San Joaquin County
T (209) 468-9903 | E hpkaus@sjgov.org

Enclosure

Agreement for Computer Services between San Joaquin County and City of Tracy

THIS AGREEMENT, made and entered into this 1st day of July, 2024, by and between the **COUNTY OF SAN JOAQUIN**, a political subdivision of the State of California, through its Information Systems Division, hereinafter referred to as "**COUNTY**" and **CITY OF TRACY**, hereinafter referred to as "**AGENCY**".

WHEREAS, **COUNTY** provides services and/or equipment listed in Attachment "A" hereinafter referred to as "**COMPUTER SERVICES**" to **AGENCY**; and

WHEREAS, **COUNTY** has certain computer equipment and is able to provide information services which **AGENCY** desires to use in its operations; and,

WHEREAS, **COUNTY'S** Information Systems Division services offered to **AGENCY** under this Agreement differs from that provided in previous years and it is necessary to set out the understanding of the parties as to the extent of services and liability for provision of access to the **COMPUTER SERVICES** for information.

IT IS HEREBY AGREED between the parties as follows:

1. **COMPUTER SERVICES FOR ACCESS TO NON-REDUNDANT, NON-FAULT TOLERANT COMPUTER SYSTEMS**

The **COUNTY** shall provide to **AGENCY** the **COMPUTER SERVICES** of **COUNTY'S** Information Systems Division. The parties expressly acknowledge that the Information Systems Division computer systems are non-fault tolerant, non-redundant systems which do not provide continuous access seven (7) days a week and twenty-four (24) hours a day. The computer systems may go down and be unable to provide **COMPUTER SERVICES** at any time of day or night for undeterminable periods of time and also must be scheduled to be taken down for maintenance and repairs from time to time. Therefore, **COUNTY** does not represent that the **COMPUTER SERVICES** provided under this Agreement will enable **AGENCY** to receive information from the computer systems within any specific time period. **AGENCY** has considered the express limitations set forth in this Agreement of the **COMPUTER SERVICES**, together with the needs of **AGENCY**, and has determined that **AGENCY'S** business operations require the use of the services set out in this Agreement.

2. **COMPENSATION**

- a. **COUNTY** will provide the **COMPUTER SERVICES** for the estimated annual amount of compensation as shown in Attachment "A". **COUNTY** shall bill **AGENCY** for **COMPUTER SERVICES** provided, one month after **COMPUTER SERVICES** are provided. **AGENCY** shall provide full payment to **COUNTY** of the billed amount by the fifteenth day of the date of billing. In the event payment is not timely made, **COUNTY** may, at its option, terminate this Agreement in accordance with the provisions of Clause 5.

- b. In the event that the AGENCY's estimated annual cost, as indicated in Attachment "A", is exceeded for any reason, COUNTY may evaluate and, if necessary, increase the amount indicated in Attachment "A". COUNTY will notify AGENCY, in writing, no less than thirty (30) calendar days in advance of any intended increase of estimated annual amount of compensation. AGENCY shall be allowed the option to terminate this Agreement in accordance with the provisions of Paragraph 5 in the event of an increase in the estimated annual amount of compensation.
- c. In the event that COUNTY'S cost of COMPUTER SERVICES are increased due to any reason, COUNTY may increase the rate of compensation, as indicated in Attachment "A", which may also result in the estimated annual amount of compensation provided herein to be increased. COUNTY will notify AGENCY, in writing, no less than thirty (30) calendar days in advance of any intended increase of estimated annual amount of compensation. AGENCY shall be allowed the option to terminate this Agreement in accordance with the provisions of Paragraph 5 in the event of an increase in the estimated annual amount of compensation.
- d. If AGENCY fails to timely compensate COUNTY as provided in this Agreement, AGENCY shall be held liable for the reasonable cost of collecting such compensation including attorney's fees and court costs incurred by COUNTY. In no event shall COUNTY be liable for reimbursing AGENCY for the costs to procure alternative services to those services provided under this Agreement regardless of whether AGENCY or COUNTY initiates termination of the Agreement.

3. OPTIONAL SERVICE AND EQUIPMENT

COMPUTER SERVICES under this Agreement are limited solely to the ongoing services, systems, and equipment listed in Attachment "A" which are in operation on the effective date of this Agreement. Services and/or equipment not covered in this Agreement may be provided to AGENCY at COUNTY'S option subject to the following conditions:

- a. AGENCY must submit a written request for the additional services and/or equipment which has been signed by the appropriate AGENCY official, and
- b. Additional services, and/or equipment shall be provided at the current rates of compensation and shall be billed as additional items over and beyond the total estimated annual amount compensation designated in this Agreement.

Maintenance in connection with the equipment provided under this Agreement is included in the rate of compensation for equipment and will not be billed as an additional charge to AGENCY.

All rental equipment in the possession of AGENCY shall be returned to COUNTY in the same condition as it was delivered to AGENCY, less normal wear and tear. COUNTY shall be compensated by AGENCY for all loss or damage to said equipment which is not the result of a willful or negligent act by COUNTY and which does not constitute normal wear and tear.

4. TERM

The term of this contract shall start July 1, 2024, and ending June 30, 2025.

5. TERMINATION

This contract may be terminated by either party upon thirty (30) calendar days advance written

notice to the other party. Notwithstanding such termination, AGENCY shall compensate COUNTY for the actual COMPUTER SERVICES provided through the date the termination of the Agreement is effective.

6. INDEMNIFICATION AND HOLD HARMLESS

The AGENCY agrees that it shall indemnify, defend and hold harmless the COUNTY, the members of its Board of Supervisors, its officers, agents, and employees, from and against all demands, claims, damages, losses, expenses, and costs including attorneys' fees and court costs arising out of and/or resulting from the performance of the activities and services contemplated by this Agreement, except for demands, claims, damages, losses, expenses, and costs resulting from the sole and exclusive negligence of the COUNTY, or its agents, or those brought by employees or agents of COUNTY concerning their employment or agency relationship.

7. LIMITATIONS OF LIABILITY

In no event shall COUNTY be responsible for any damage, compensatory, consequential, punitive, or special in the event that the AGENCY is unable to access and/or obtain information from COMPUTER SERVICES of COUNTY. This Agreement shall not be construed to be either a representation or a warranty to AGENCY that it will be able to access and obtain information from the COMPUTER SERVICES at any particular time or within any particular response time. COUNTY does not grant any warranty as to the validity, completeness or usefulness of any information received by AGENCY from the COMPUTER SERVICES. COUNTY shall not be responsible nor liable for the costs to AGENCY to procure alternative services to the services provided for under this Agreement or upon termination of this Agreement by either party.

In the event of errors in COMPUTER SERVICES due to the failure of COUNTY'S equipment, software, circumstances beyond the control of COUNTY, or the failure of COUNTY'S employee(s) to operate the equipment in accordance with COUNTY'S standard operating procedures, or COUNTY'S inability to provide COMPUTER SERVICES due to circumstances beyond its control, COUNTY'S liability shall be limited to either subparagraph (a) or (b) below, either of which will be considered to be AGENCY exclusive remedy:

- a. The correction of errors of which COUNTY has received written notice and proof or the performance of the service, whichever is the situation; or
- b. Where such correction or performance of service is not practicable, AGENCY shall be entitled to an equitable credit, not to exceed the charges invoiced to AGENCY for that portion of the service which produced the erroneous result or for that portion of the service which could not be performed, whichever is the situation.

COUNTY shall be liable for the loss, destruction or damage to AGENCY supplied materials only if such loss, destruction, or damages was due to the negligence of COUNTY and AGENCY'S sole remedy shall be COUNTY restoring the same, provided such restoration can be reasonably performed by COUNTY and provided that AGENCY provides COUNTY with all source data necessary for such restoration in similar form to that normally presented to COUNTY under this Agreement.

8. INDEPENDENT CONTRACTOR

The AGENCY, and the agents and employees of AGENCY, in the performance of this Agreement, shall act in an independent capacity and not as officers or employees or agents of COUNTY.

9. ASSIGNMENT

Without the written consent of COUNTY, this Agreement is not assignable by AGENCY either in whole or in part.

10. TIME OF THE ESSENCE

Time is the essence of this Agreement.

11. MODIFICATIONS

Notwithstanding the COUNTY'S right to increase the estimated annual cost, as indicated in Attachment "A" pursuant to provisions 2b and 2c herein, no alteration, variation, or modification of the terms of this contract shall be valid unless made in writing prior to the effective date and signed by the parties hereto, and no oral understanding or agreement not incorporated herein, shall be binding on any of the parties hereto.

12. COMPLIANCE WITH LAWS

AGENCY shall not discriminate because of race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, marital status, national origin, ancestry, mental and physical disability, medical condition, genetic information, military or veteran status, age, pregnancy, denial of medical and family care leave, or pregnancy disability leave (California Government Code sections 12940, 12945, 12945.2). AGENCY shall not retaliate against any person for protesting illegal discrimination related to one of these categories, or for reporting patient abuse in tax supported institutions.

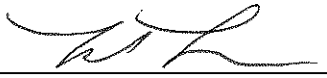
This Agreement may, at the option of COUNTY, be terminated or suspended in whole or in part in the event AGENCY fails to comply with the nondiscrimination clause of the contract. In the event of termination under this clause, COUNTY shall be compensated for goods and services provided to the date of termination. Termination or suspension shall be effective upon receipt of written notice thereof.

13. CONFIDENTIALITY

AGENCY, its employees, officers, and agents shall protect and keep all information and materials obtained through the services of this agreement confidential and from unauthorized use and disclosure. This clause shall not apply to that information which is or becomes a public record subject to the disclosure requirements of the Public Records Act.

IN WITNESS WHEREOF the parties hereto have executed this agreement the day and year first written above.

COUNTY OF SAN JOAQUIN, a
political subdivision of the State of
California

By 
MARK THOMAS
Information Systems Director

"COUNTY"

CITY OF TRACY

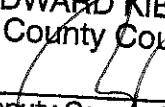
By _____

Title _____

APPROVED AS TO FORM:

"AGENCY"

By _____
EDWARD J. KIERNAN
Deputy COUNTY Counsel

Approved as to Form
EDWARD KIERNAN
County Counsel
By 
Deputy County Counsel

**Rate Schedule
Fiscal Year 2024-25**

Computer Services

Automated Message Switching System Access

Service	Estimated Quantity	Type	Estimated Rate		Estimated Annual Cost	Estimated Total
Special Processing Request	0	Hours	\$ 174.49	*	\$ -	
Law & Justice System Access	12	Months	\$ 4,750.58	**	\$ 57,007.00	
Total Estimated Annual Cost						\$ 57,007.00

* Special Processing Requests require written authorization specifying work to be performed.

**The estimated monthly rate of \$4,750.58, which results in the estimated annual cost, may be subject to increase pursuant to paragraphs 2b and 2c of the Agreement.

CITY ATTORNEY'S OFFICE

TRACY CITY COUNCIL

RESOLUTION NO. _____

(1) DETERMINING THAT COMPLIANCE WITH STANDARD PROCUREMENT PROCESSES IS NOT IN THE BEST INTEREST OF THE CITY PURSUANT TO TRACY MUNICIPAL CODE SECTION 2.20.180(B)(4) AND DISPENSING SUCH REQUIREMENT FOR THE PURCHASE OF THE SPECIFIED COMPUTER EQUIPMENT AND RELATED SERVICES; AND (2) APPROVING A SUBSCRIBER SERVICES AGREEMENT WITH THE COUNTY OF SAN JOAQUIN TO PROVIDE CERTAIN COMPUTER EQUIPMENT AND RELATED SERVICES FOR A TOTAL NOT TO EXCEED AMOUNT OF \$57,007, FOR A ONE YEAR TERM

WHEREAS, California Law Enforcement Telecommunications System (CLETS) is the computerized telecommunications system in the State of California that is used by public agencies of law enforcement and criminal justice for accessing law enforcement information and sending law enforcement messages; and

WHEREAS, Pursuant to Government Code §15151, CLETS is an efficient law enforcement communications network available to all public agencies of law enforcement within the state; and

WHEREAS, CLETS will provide all law enforcement and criminal justice user agencies with the capability of obtaining information directly from federal and state computerized information files; and

WHEREAS, Tracy Police Department has a contract with Commsys, Inc., as its primary vendor for connecting to the CLETS; however, to avoid disruption of service during any services outages or failures, Tracy Police Department uses San Joaquin County as its back up system for CLETS; and

WHEREAS, Under State law, each County Control Agency is responsible for providing the CLETS service via its message switching computer to all qualified CLETS subscribing agencies within its respective county, and the subscription should not reflect more than the actual costs attributed to the message switching computer's functionality, including any and all hardware, software, interface modules and costs incurred by the County Control Agency; and

WHEREAS, The San Joaquin County Technology Services Department is the County Control Agency for San Joaquin County and issues an annual subscriber agreement to provide computer equipment, information services, and maintenance of the Tracy Police Department's Automated Message Switch System Access, and the Law and Justice System Access; and

WHEREAS, These services are necessary to maintain access to the CLETS, Criminal Justice Information System (CJIS), and local county law and warrant systems; and

WHEREAS, Compliance with the City’s competitive bidding procedures is not in the best interest of the City because the City needs a secondary vendor as a backup for an uninterrupted maintenance and service of its communication equipment to carry out its law enforcement obligations; and

WHEREAS, San Joaquin County is the only agency delegated under State law with the ability to provide these services when needed by the City; and

WHEREAS, The proposed Subscriber Services Agreement with County of San Joaquin, attached hereto as Exhibit 1, is a 12-month agreement with a not to exceed budget of \$57,007 and is funded through the Police Department’s operating budget in the General Fund.

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 finds that, pursuant to Tracy Municipal Code Section 2.20.180(b)(4), compliance with competitive procurement processes is not in the best interest of the City and dispenses such requirement for the actions authorized in this Resolution; and be it

FURTHER RESOLVED: That the City Council does hereby approve the Subscriber Services Agreement with County of San Joaquin attached as Exhibit 1, to provide the specified services, for a total not to exceed amount of \$57,007 for a one-year term.

* * * * *

The foregoing Resolution 2024-_____ was adopted by the Tracy City Council on August 20, 2024 by the following vote:

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

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

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

Agenda Item 1.C

RECOMMENDATION

Staff recommends that the City Council adopt a resolution (1) approving a Professional Service Agreement with The Shalleck Collaborative, Inc., of Berkeley, California to provide engineering design services for The Grand Theatre Audio Visual Upgrades Project, for a total not-to-exceed contract amount of \$92,300, and for a term extending from August 20, 2024 to June 30, 2026, and (2) authorizing the City Manager to extend the contract term for one additional year, if needed.

EXECUTIVE

This agenda item seeks approval of a Professional Services Agreement (PSA) with The Shalleck Collaborative, Inc., (Consultant) to provide professional engineering design services, which includes the preparation of plans, specifications, and cost estimates for The Grand Theatre Audio Visual Upgrades for the Eleni Kounalakis (EK) Theatre Project Fiscal Year 2023-2024, Capital Improvement Project (CIP) 71119 (Project). The City conducted a Request for Proposals (RFP) process and received four proposals. City's selection committee has carefully evaluated all four proposals received in response to the RFP and has determined that The Shalleck Collaborative, Inc. best demonstrated the competence and professional qualifications necessary for the satisfactory performance of the required services.

BACKGROUND AND LEGISLATIVE HISTORY

This Project is an approved CIP to upgrade the outdated audio visual (AV) system and lighting in the EK Theatre. The location for this Project is The Grand Theatre Center for the Arts on Central Avenue in downtown Tracy. The original AV system was installed in 2008 when The Grand Theatre Center was constructed. Most of the original system that remains is outdated and not functioning to full capacity.

On January 29, 2024, City staff prepared and issued an RFP for project management, coordination, pre-design research, final design, and construction documents for a new state-of-the-art AV system and lighting upgrades needed at the EK Theatre. A future process will occur for procurement and installation of the equipment once the Project has been designed.

ANALYSIS

On March 12, 2024, the City received a total of four proposals in response to the RFP. The City's consultant selection committee has carefully evaluated all the received proposals based on the criteria described in the RFP. The selection committee has determined that The Shalleck Collaborative, Inc. possesses the skills, experience, and certifications required to provide the requested services and has determined that The Shalleck Collaborative, Inc. demonstrated the competence and professional qualifications necessary for the satisfactory performance of the required services.

The Shalleck Collaborative, Inc. has successfully designed and completed several similar projects for other public agencies. Staff negotiated with The Shalleck Collaborative, Inc. to provide engineering design services for this Project on a time and material basis for an amount

not to exceed \$92,300, which is reasonable and competitive.

FISCAL IMPACT

The Grand Theatre Audio Visual Upgrades Project, CIP 71119, is an approved Capital Improvement Project with a not-to-exceed budget of \$800,000. There are sufficient funds in the Project for the PSA not-to-exceed amount of \$92,300. The Project is funded through the General Fund and the current budget is as follows:

<u>Funding Source</u>	<u>Budget</u>	<u>Expenses</u>	<u>Balance</u>
301 - General Projects	\$ 800,000	\$ 5,003	\$ 794,997
<u>Current Budget</u>	<u>\$ 800,000</u>	<u>\$ 5,003</u>	<u>\$ 794,997</u>

PUBLIC OUTREACH / INTEREST

Not Applicable

COORDINATION

Coordination between the Engineering Division and The Grand Theatre staff was conducted.

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

The Project is categorically exempt from California Environmental Quality Act (CEQA) under Class 1 of Section 15301 (a) for existing facilities. Class 1 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.

STRATEGIC PLAN

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

ACTION REQUESTED OF THE CITY COUNCIL

Staff recommends that the City Council, by resolution 1) approve a Professional Service Agreement with The Shalleck Collaborative, Inc., of Berkeley, California to provide engineering design services for The Grand Theatre Audio Visual Upgrades Project, for a total not-to-exceed contract amount of \$92,300, and for a term extending from August 20, 2024 to June 30, 2026, and (2) authorize the City Manager to extend the contract term for one additional year, if needed.

Prepared by: D'Evelyn Spekner, Associate Engineer
Sharat Bandugula, PE, Senior Civil Engineer

Reviewed by: Koosun Kim, PE, City Engineer
Sara Castro, Finance Director
Bijal M. Patel, City Attorney
Karin Schnaider, Assistant City Manager

Approved by: Midori Lichtwardt, City Manager

ATTACHMENTS

Attachment A - Professional Services Agreement - Shalleck Collaborative, Inc. (CIP 71119)

**CITY OF TRACY
PROFESSIONAL SERVICES AGREEMENT WITH
THE SHALLECK COLLABORATIVE INC., A CALIFORNIA S CORPORATION,
FOR THE GRAND THEATRE CENTER FOR THE ARTS AUDIO-VISUAL UPGRADES FOR
THE EK THEATRE FY23-24, CIP 71119 (PROJECT)**

This Professional Services Agreement ("Agreement") is entered into between the City of Tracy, a municipal corporation ("City"), and **THE SHALLECK COLLABORATIVE INC.**, a California S Corporation ("Consultant"). City and Consultant are referred to individually as "Party" and collectively as "Parties."

Recitals

- A.** City desires to retain the professional services of Consultant to provide project management, coordination, pre-design research, and final design of the proposed audio-visual upgrades for the **Grand Theatre Center for the Arts Audio-Visual Upgrades for the EK Theatre FY23-24, CIP 71119**. This work will include coordinating a complete set of plans, specifications, and an engineer's estimate (PS&E) as further described herein and in Exhibit A.
- B.** On January 29, 2024, the City issued a Request for Proposals (RFP) for the Scope of Work defined below. On March 12, 2024, Consultant submitted its proposal for the Scope of Work to the City. Pursuant to Tracy Municipal Code Sections 2.20.140(a)(2) and 2.20.130, the City has determined that Consultant demonstrated that it was the best qualified and most responsible proposer and best fits the City's needs for competence and professional qualifications necessary for the satisfactory performance of the Scope of Work defined below.
- C.** After negotiations between the City and Consultant, the Parties have reached an agreement for Consultant's professional services as set forth in this Agreement.
- D.** This Agreement was approved on [DATE] pursuant to Tracy Municipal Code Section 2.20.140(3) and City Council Resolution No. _____].

NOW THEREFORE, for good and valuable consideration the sufficiency of which the Parties hereby acknowledge, the Parties mutually agree as follows:

- 1. Scope of Work.** Consultant shall perform the professional services, tasks, and Scope of work described in Exhibit A attached hereto and incorporated herein by this reference ("Scope of Work"). The Scope of Work shall be performed by, or under the direct supervision of, Consultant's "Authorized Representative": Ian Hunter, Principal, 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 the City's prior written consent. The City may terminate this Agreement if Consultant makes any such change or uses or replaces any such subcontractor or subconsultant. Unless otherwise stated on Exhibit A, Consultant shall furnish, at its own expense, the materials, equipment, supplies, and other resources necessary to perform the Scope of Work. The City reserves the right to contract with other firms and/or consultants during the term of this Agreement to provide the City with the same or similar Scope of Work as described in Exhibit A.
- 2. Time of Performance.** Time is of the essence in the performance of the Scope of Work under this Agreement and the timing requirements set forth herein shall be strictly adhered to unless otherwise modified in writing in accordance with this Agreement. If dates for performance are set out in

Exhibit A, Consultant shall begin performance, and shall complete all required Scope of Work no later than the dates set forth in Exhibit A. 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. If Exhibit A indicates that Scope of Work shall only be performed upon request, or if the City otherwise communicates the same to Consultant, Consultant shall not perform said Scope of Work until the City requests such performance. Consultant shall submit all requests for time extensions to the City in writing no later than ten (10) days after the start of the condition which purportedly caused the delay, and not later than the date on which performance is due. The City may grant or deny such requests in its sole and absolute discretion.

2.1 Term. The term of this Agreement shall commence on August 20, 2024, and expire and terminate automatically on June 30, 2026, or earlier by termination pursuant to Section 6 of this Agreement ("Term"). Subject to the Not-To-Exceed Amount defined in Section 3.1, the Term of this Agreement may be extended with express written amendment incorporating this Agreement signed by both Parties and one of the following City approvals: (a) City Council approval or (b) City Manager approval. An administrative extension of this Agreement by City Manager shall be limited to an additional term of One year(s) and require written determination by the City Manager that Consultant has satisfactorily met all the requirements of this Agreement.

3. Compensation. City shall pay Consultant on a time and expense basis for Scope of Work performed under this Agreement at the billing rates set forth in Exhibit B, which is attached hereto and incorporated herein by this reference.

3.1 Not to Exceed Amount. Consultant's total compensation under this Agreement shall not exceed \$92,300, [ninety-two thousand and three hundred] Dollars. Notwithstanding the foregoing, the payment of any funds under this Agreement shall be subject to the City of Tracy appropriation of funds for the Scope of Work. This Agreement shall automatically terminate in the event that such funds are not appropriated. Unless specifically stated otherwise or agreed to in writing and approved by City Council, the fees proposed by Consultant, as set forth in Exhibit B hereto, shall remain unchanged for the entire term of this Agreement and any extensions of this Agreement. It is understood and agreed that Consultant may not receive compensation up to the Not-to-Exceed Amount (or any other amount), and Consultant's total compensation under this Agreement will depend on the Scope of Work requested and approved by the City. 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" provided in this section without the City's prior written approval.

3.1.1 City Budget Limitations. This Agreement will terminate without penalty, liability or expense of any kind to City at the end of any fiscal year if funds are not appropriated for the next succeeding fiscal year for this Agreement. If funds are appropriated for a portion of the fiscal year, this Agreement will automatically terminate, without penalty, liability or expense of any kind at the end of the term for which funds are appropriated. City has no obligation to make appropriations for this Agreement in lieu of appropriations for new or other agreements. City budget decisions are subject to the discretion of the City Council. Consultant's assumption of risk of possible non-appropriation is part of the consideration for this Agreement.

3.2 Invoices. Consultant shall submit monthly invoice(s) to the City that describe in detail satisfactory to the City: the services performed, the times and dates of performance, and the names of the person(s) performing the Scope of Work.

3.2.1 If Consultant is providing the Scope of Work 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 this Section may result in the City rejecting said invoice(s) and thereby delaying payment to Consultant.

3.2.3 Consultant shall submit invoices no later than 90 days after completion of a portion of the Scope of Work. City has no obligation to pay invoices delivered greater than 90 days after the date of performance of the Scope of Work.

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 and portions of Scope of Work described on the invoice(s) and approved by the City.

3.4 **Final Payment.** The acceptance by Consultant of the final payment made under this Agreement shall constitute a release of City from all claims and liabilities for compensation to Consultant for anything completed, finished or relating to Consultant's services or performance of the Scope of Work. Consultant agrees that payment by City shall not constitute nor be deemed a release of the responsibility and liability of Consultant or its employees, subcontractors, agents and subconsultants 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 Consultant, its employees, subcontractors, agents and subconsultants.

3.5 **Books and Accounts.** Consultant agrees to maintain books, accounts, payroll records and other information relating to the performance of Consultant's obligations under the Agreement, which shall adequately and correctly reflect the expenses incurred by the Consultant in the performance of Consultant'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.** 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, and reimburse the City for, any and all liabilities, obligations, losses, damages, injunctions, suits, actions, fines, penalties, claims, demands, administrative and judicial proceedings and order, judgments, remedial action requirements, costs and expenses of every kind or nature, and all costs and expenses incurred in connection therewith, including, without limitation, reasonable attorneys' fees and court costs ("**Claims**") arising directly or indirectly from or out of (including any and all related costs and expenses), relating or pertaining to or resulting from, in whole or in part, this Agreement; any act, omission, or event relating in any way to Consultant's obligations under this Agreement; and/or Consultant's breach of this Agreement, except to the extent such Claim is caused solely by the active negligence or willful misconduct of the City. In this Section 4, "City" means the City, its officials, officers, agents, employees and volunteers; "Consultant" means the Consultant, its employees, agents and subcontractors.

In the event there is a finding and/or determination that Consultant 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), Consultant shall, to the fullest extent permitted

by law, indemnify, defend, and hold harmless the City from and against any and all Claims relating to or in connection with such a finding and/or determination.

The provisions of this section survive the expiration 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 the Scope of Work 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 in 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 and, in any event, within five (5) days of such request.

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

7. 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 Scope of Work, upon termination of this Agreement, or within five (5) days of any 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.

8. 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. Consultant shall be solely responsible for, and shall save the City harmless from, all matters relating to the payment of Consultant's employees, agents, subcontractors and subconsultants, including compliance with social security requirements, federal and state income tax withholding and all other regulations governing employer-employee relations.

9. 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. The Consultant represents that it is familiar with the local and state conflict of interest laws and agrees to comply with those laws in performing this Agreement. The Consultant represents and warrants that the representations made by the Consultant concerning unfair competitive advantage and conflicts of interest in connection with its submissions in response to the City's procurement for this Agreement were true and accurate both when made and as of the date of this Agreement. Consultant represents and warrants that it has not and shall not offer or deliver any City officer, public official, or employee any gifts or donations in violation of Federal, State and/or local law.

10. 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 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; or 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.

11. 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 the City:

City of Tracy
Koosun Kim, PE, City Engineer
333 Civic Center Plaza
Tracy, CA 95376

To Consultant:

The Shalleck Collaborative, Inc.
Ian Hunter, CTS-D, Principal
1553 Martin Luther King Jr. Way
Berkeley, CA 94709

With a copy to:

City Attorney
333 Civic Center Plaza
Tracy, CA 95376

12. General Provisions.

12.1 Standard of Care. Unless otherwise specified in this Agreement, the standard of care applicable to Consultant's performance of the Scope of Work 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.

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

12.3 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.

12.4 Assignment and Delegation. Consultant may not assign, transfer or delegate this Agreement or any portion of it without the City's advance 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.

12.5 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.

12.6 Compliance with the Law. Consultant shall comply with all applicable local, state, and federal laws, including, without limitation, those identified below, whether or not such laws are expressly stated in this Agreement.

12.6.1 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.

12.6.2 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.).

12.7 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 authorized to do business in California, in good standing with the Secretary of State, and in good standing with all agencies having jurisdiction over Consultant (including any licensing agencies). If Consultant is a suspended entity at the time it enters into this Agreement, City may take steps to have this Agreement declared voidable.

12.8 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.

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

12.10 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.

12.11 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.

12.12 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.

12.13 Entire Agreement. This Agreement and the attached Exhibits comprise the entire integrated understanding between the Parties concerning the services to be performed and the matters contemplated herein. This Agreement supersedes all prior negotiations, representations or agreements

(in each case, whether oral or in writing). All exhibits attached hereto are incorporated by reference herein.

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

12.15 Expenses for Enforcement. Consultant 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.

13. 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.

[Signature Page to Follow]

As of the date of last signature below, the undersigned Parties agree to the full performance of the terms set forth in this Agreement and have caused this Agreement to be duly executed.

City of Tracy, a Municipal Corporation

By: _____

Nancy Young

Title: Mayor

Date: _____

Attest:

Adrienne Richardson, City Clerk

Approved as to form:

Bijal M. Patel, City Attorney

The Shalleck Collaborative, a California S Corporation

By:  _____

Adam Shalleck

Title: Founder & President

Date: 6/11/2024

Federal Employer Tax ID No.

13-4263640

Exhibits:

- A Scope of Work
- B Compensation

EXHIBIT A - Scope of Work

Project Team

Consultant: The Shalleck Collaborative:

Ian Hunter, CTS-D	Principal AV Consultant
Ben Strange	Senior AV Consultant/Project Manager

Subconsultants:

O'Mahony & Myer, Inc. – Electrical Engineers & Lighting Design

Pieter Colenbrander, PE	Principal Electrical Engineer
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Murphy Burr Curry, Inc. – Consulting Structural Engineers

Zach Kardon, PE	Principal Structural Engineer
Barry Wenger, SE	Associate Structural Engineer

General

Scope of work includes upgrades to the existing main EK Theatre audio reinforcement systems, as well as upgrades to the existing 70-Volt program and paging systems and directly related engineering accommodations as outlined in the project scope.

AV Systems Scope

- New loudspeaker systems, including chain motor rigging and controls.
- New audio consoles and signal distribution systems.
- Cabling infrastructure upgrades as needed.
- 70-Volt program and paging system upgrades and additions.
- Integration with existing systems.

Electrical Scope

- Add power and control lines for chain motors and control system.
- Add receptacles for powered speakers at catwalk or at amplifier racks (depending on which speaker system is selected).

Structural Scope - Option A

- Evaluate existing rigging points at catwalk level.

Structural Scope - Option B

- Evaluate existing and/or add new rigging points at catwalk level to support new line array speakers and subwoofers suspended from chain motors.
- Evaluate existing and/or add new bracing to support escutcheon plates where the chains go through the plaster ceiling.

Related Services Limits

Work not included in this Scope of work: architectural services, acoustics, noise isolation, telecom/IT, ADA compliance or architectural lighting.

Needs Assessment/ Programming

Consultant shall conduct a Needs Assessment for the project and shall deliver the results of the Needs Assessment through meetings, written memoranda, sketches, document review and comment coordination.

Meetings: Meetings and related travel during the needs assessment phase of the project are limited to:

- One partial day on-site
- Virtual meetings as needed.

Design Phase

Based on the resolution of the Needs Assessment/Programming phase, and as directed by the City, Consultant shall provide the following services during the Design Phase of the project:

Design: Consultant shall develop a design in the areas described in this Scope of work. Consultant shall work within the context of the project to determine the best use of available resources with the intent of maximizing production functionality and aesthetic impact. Consultant shall review and make professional recommendations in meetings as outlined below and the results of these meetings shall be issued in the form of written memoranda and sketches as required.

Engineering: Consultant shall provide structural and electrical engineering design accommodations as needed to suit the system design within this Scope of work. Consultant shall review and make professional recommendations in meetings as outlined below and the results of these meetings shall be issued in the form of sketches, written reports and memoranda as required.

Systems Narrative: Consultant shall provide a narrative that outlines the design approach.

Budget Recommendations: Consultant shall provide a budget recommendation report and Engineering Cost Estimate.

AV Systems Documentation: Consultant shall provide (3) milestone drawings and specification packages. Deliverables shall include Contract Documents - plans, specifications, and Engineer's Cost Estimate (PS&E). Contract Documents shall set forth in detail the systems within Consultants scope of work and field of responsibility, sufficient to bid and construct the systems, and to be used for coordination with other Consultants.

The City shall deliver electronic building background models from which Consultant can produce 2D AutoCAD compatible files

Review: Consultant shall provide a thorough review of each milestone to aid in the overall coordination and development of the Contract Documents. Consultant shall make recommendations in a written report and/or marked-up drawings.

Meetings: Meetings and related travel during the Design phase of the project within this proposal are limited to:

- One partial day on-site
- Virtual meetings as needed.

Agency Review/Bidding Phase

Agency Review: Consultant shall be available by telephone to answer questions from the Building Agency within Consultants scope of work and field of responsibility. Building Agency meetings or exhaustive code analysis will be considered an additional service.

Bidding: Consultant shall assist the City in answering bid questions, reviewing bids, if requested, and advising the City as to the completeness of the bids in relation to the Contract Bid Documents.

Pre-Bid Meeting: Meetings and related travel during the Bidding phase of the project within this proposal are limited to:

- One pre-bid meeting on-site

Redesign: In the event the City receives bids for construction that exceed the Consultant's proposal and engineer's cost estimate for the project as designed, the Consultant will undertake a redesign of the plans and specifications at no additional costs. However, any redesign efforts resulting from factors beyond the Consultant's control or revisions in criteria or scope as directed by City Representatives will be deemed as additional services and may incur supplementary charges.

Construction Administration Phase

Based upon the successful award of the contract for construction and authorization to proceed, Consultant shall provide construction administration services as outlined herein within Consultant's field of responsibility when requested by the City.

RFI's, bulletins and change orders: Consultant shall respond to issues that arise within Consultant's field of responsibility when requested by the City.

Shop Drawings: Within 10 business days after receipt, Consultant shall review and stamp up to two submissions of shop drawings for each specification section Consultant authored in the Contract Bid Documents. Consultant shall review shop drawings of systems directly related or adjacent to the AV system function such as structural and sprinkler layouts in AV spaces, mechanical and related electrical systems. For areas outside of Consultant's field of expertise, Consultant shall provide a letter of comments and/or mark-ups, but the Consultant shall not stamp them.

Intermediate Site Visits: Upon request by the City, the Consultant shall visit the site during construction at times appropriate to observe the work in progress in conformance with the design intent of the Contract Bid Documents and to discuss and assist in coordinating solutions. Upon request by the City, the Consultant shall provide a written report after each visit. Intermediate site visits and related travel within this Scope of work will be limited to:

- Two partial personnel-day visits

Final Checkouts: Based upon written notice from the City that the work within Consultant's field is complete, Consultant shall provide a preliminary and a final checkout of installed AV systems

within the project scope. Consultant shall provide a written punch-list of all outstanding items related to the project scope of work. Further back-check of systems will be considered an additional service. Consultant shall include language in the project specifications that state that if the Consultant is requested to review systems that are incomplete in actuality, the Contractor will be back-charged for a repeat checkout. Checkout time will be limited to:

- Four personnel-days of checkout sessions

Record Documents Phase

At the completion of the project, Consultant shall provide record documents per this Scope of work.

Project Schedule

This proposal assumes the following schedule:

- **Needs Assessment** 4-6 weeks
- **Design Phase** 8-10 weeks
- **Bidding & Agency Review** TBD by City Regulations
- **Construction Administration** 9 months

Should this schedule be extended due to causes other than by the Consultant team's efforts, Consultant, fees will be equitably adjusted and billed at the rates set forth in Exhibit B.

EXHIBIT B - Compensation

Fees

Compensation for the services outlined herein will be billed on a fixed fee basis. Fees will be as follows. Expenses *are* included in these fees.

Phase	Shalleck (AV)	OMM (Elec)	MBC (opt. A) (Struct)	MBC (opt. B) (Struct)
Needs Assessment	\$3,950			
Design	\$23,700	\$5,250	\$4,500	\$14,500
Bidding/Review	\$1,975			
Construction	\$8,375	\$1,750		\$7,500
Record Docs	\$1,500		\$2,500	\$2,500
<i>SUBTOTALS</i>	<i>\$39,500</i>	<i>\$7,000</i>	<i>\$7,000</i>	<i>\$24,500</i>

Total Not-To-Exceed fee (w/ structural option A): \$53,500

Total Not-To-Exceed fee (w/ structural option B): \$71,000

The Shalleck Collaborative's hourly rates for 2024 are as follows:

Employee Rate

- Principal \$235-\$325
- Project Manager and Systems Designer \$195
- Draftsperson \$150

Hourly rates above will be used on any work outside the flat fees described in this Scope of Work and outlined in the table above. These rates may be adjusted annually in accordance with the Engineering News-Record (ENR) as of January 1 of each year. Invoices will be issued monthly and are due within 30 days.

Reimbursable Expenses

Reimbursable expenses *are* included in the fee limits quoted above. Expenses will be billed at cost plus a 10% mark-up. Expenses typically include:

- Travel to meetings and the project site
- Meals during meetings or site visits
- Exchange or cancellation fees for canceled or rescheduled meetings
- Printing/plotting costs and delivery charges

Expenses beyond of the number of printings or meetings/site visits as outlined in the project scope above shall be billed as an additional service at the hourly rates outlined above.

CITY ATTORNEY'S OFFICE

TRACY CITY COUNCIL

RESOLUTION NO. 2024-_____

-
- (1) **APPROVING A PROFESSIONAL SERVICE AGREEMENT WITH THE SHALLECK COLLABORATIVE, INC., OF BERKELEY, CALIFORNIA TO PROVIDE ENGINEERING DESIGN SERVICES FOR THE GRAND THEATRE AUDIO VISUAL UPGRADES PROJECT, FOR A TOTAL NOT-TO-EXCEED CONTRACT AMOUNT OF \$92,300, AND FOR A TERM EXTENDING FROM AUGUST 20, 2024 TO JUNE 30, 2026, AND,**
- (2) **AUTHORIZING THE CITY MANAGER TO EXTEND THE CONTRACT TERM FOR ONE ADDITIONAL YEAR, IF NEEDED.**

WHEREAS, The Grand Theatre Audio Visual Upgrades for the Eleni Kounalakis (EK) Theatre Project Fiscal Year 2023-2024 is an approved Capital Improvement Project (CIP), CIP 71119 (Project); and

WHEREAS, the location for this Project is at The Grand Theatre Center for the Arts on Central Avenue in downtown Tracy; and

WHEREAS, the Project scope entails project management and professional engineering design services, which includes the preparation of plans, specifications, and cost estimates to upgrade the outdated audio visual (AV) system and lighting in the EK Theatre; and

WHEREAS, on January 29, 2024, the City prepared and issued a Request for Proposals (RFP) for project management, coordination, pre-design research, and final design and construction documents for a new state-of-the art AV system and lighting upgrades needed at the EK Theatre; and

WHEREAS, on March 12, 2024, the City received a total of four proposals in response to the RFP; and

WHEREAS, the City's selection committee carefully evaluated all the proposals based upon the criteria described in the RFP, and has determined that The Shalleck Collaborative, Inc., best possesses the skills, experience, and certifications required to provide the services; and

WHEREAS, staff negotiated with The Shalleck Collaborative, Inc., to provide engineering design services for this Project on a time and material basis, for an amount not-to-exceed \$92,300, which is reasonable and competitive; and

WHEREAS, the City seeks to enter into a Professional Services Agreement (PSA) with The Shalleck Collaborative, Inc. for a term extending from August 20, 2024 to June 30, 2026,

with an option for the City Manager to extend the contract term for one additional year, and for a total not-to-exceed amount of \$92,300, which PSA is attached hereto as Exhibit 1; and

WHEREAS, this Project is funded through the General Fund and there are sufficient funds in CIP 71119 to award this Project for design services in the amount of \$92,300; and now therefore, be it

RESOLVED: That the City Council of the City of Tracy hereby, approves a Professional Service Agreement attached as Exhibit 1, with The Shalleck Collaborative Inc., for a term extending from August 20, 2024 to June 30, 2026, for a not-to-exceed amount of \$92,300; and be it

FURTHER RESOLVED: That the City Council for the City of Tracy authorizes the City Manager to extend the contract term for one additional year if needed; and be it

FURTHER RESOLVED: That the City Council for the City of Tracy hereby finds the actions approved by this resolution categorically exempt from California Environmental Quality Act (CEQA) per section 15301 (a) for existing facilities.

The foregoing Resolution 2024-_____ was adopted by the Tracy City Council on the 20th day of August 2024, by the following vote:

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

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

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

Agenda Item 1.D

REQUEST

Staff recommends that the City Council adopt a resolution authorizing the City Manager to submit a claim to the San Joaquin Council of Governments for Transportation Development Act funds in the amount of \$6,706,900 for Fiscal Year 2023-2024 and to execute the claim and related documents.

EXECUTIVE SUMMARY

The City of Tracy (City) receives funds from the Transportation Development Act (TDA) that allow the City to provide transportation services throughout the community. The annual claim is necessary for the City to continue to receive TDA funding from the State of California (State) through the San Joaquin Council of Governments (SJCOG). The amount the City will claim for Fiscal Year (FY) 2023-2024 from the Local Transportation Fund (LTF) and the State Transit Assistance Fund (STA) is \$6,706,900.

TDA funds are used for City TRACER operations and capital acquisitions, and pedestrian and bike paths. Staff recommends that the City Council approve the claim for TDA funds for FY 2023-2024 and authorize the City Manager to execute the claim and any other related documents.

BACKGROUND AND LEGISLATIVE HISTORY

The Mills-Alquist-Deddeh Act (Senate Bill 325) was enacted by the California Legislature to improve existing public transportation services and encourage regional transportation coordination. Known as the Transportation Development Act (TDA) of 1971, this law provides funding to be allocated to transit and non-transit related purposes that comply with regional transportation plans.

Under the provisions of the TDA, the City is required to make an annual claim for funds apportioned to the City under the LTF and the STA. This claim is made to the State through the San Joaquin Council of Governments.

TDA funds are used to support the operations of the City's TRACER bus system, streets and road maintenance, and pedestrian and bike paths. Money for this claim is primarily being used for operational expenses that are not covered by Federal grants, as a funding source for the purchase of new buses, and to fund bikeways maintenance in various parts of Tracy.

ANALYSIS

The total claim for FY 2023-2024 for LTF is \$6,689,722. The total claim for FY 2023-2024 for STA is \$17,178. The available TDA funding for FY 2023-24 for the City of Tracy to claim under the LTF and STA is \$7,357,439. The remaining balance of \$650,539 will be available to claim in future years for additional transit projects.

The following table illustrates a breakdown of the various TDA claim amounts and purposes for this year's claim. Submission of this claim is needed in order to receive the necessary funding for continued public transit operations within the City of Tracy.

CITY OF TRACY FISCAL YEAR 2023-2024 TDA CLAIM AMOUNTS AND PURPOSES		
Fund	Amount	Purpose
LTF	\$1,813,816	Article 8 Contractor Operating (PUC 99400(c))
LTF	\$1,400,000	Article 8 Contractor Operating (PUC 99400(c)) Previous Year's Unclaimed
LTF	\$0	Article 8 Contractor Operating (PUC 99400(c)) Previous Year's Unclaimed. (Transit Set-Aside)
LTF	\$0	Article 8 Contractor Operating (PUC 99400(c)) Unexpended Carryover
LTF	\$3,342,011	Article 8 Contractor Capital (99400(e))
LTF	\$0	Article 8 Contractor Capital (99400(e)) Unexpended Carryover
LTF	\$133,895	Pedestrian and Bicycle: Article 3 (PUC 99234)
LTF	\$0	Pedestrian and Bicycle: Article 3 (PUC 99234) Unexpended Carryover
LTF	\$0	Roads & Streets: Article 8 (99400(a))
LTF	\$0	Roads & Streets: Article 8 (99400(a)) Unexpended Carryover
STA	\$17,178	CCR Section 6730(a)
STA	\$0	CCR Section 6730(a) Previous Year's Unclaimed
Total:	\$6,706,900	Total LTF/STA claimed.
Less:	<u>(\$0)</u>	Unexpended Carryover
	<u>\$6,706,900</u>	Net LTF funds to be disbursed to City of Tracy

FISCAL IMPACT

Authorization to submit the claim is necessary for the City to continue to receive TDA funding. Such funding is budgeted for FY 2023-2024 for the transit program and to support various bike/pedestrian and street programs.

STRATEGIC PLAN

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

ACTION REQUESTED OF THE CITY COUNCIL

Staff recommends that the City Council adopt a resolution authorizing the City Manager to submit a claim to the San Joaquin Council of Governments for Transportation Development Act funds in the amount of \$6,706,900 for Fiscal Year 2023-2024 and to execute the claim and related documents.

Prepared by: Ed Lovell, Transit Manager

Reviewed by: Brian MacDonald, Interim Public Works Director
Sara Castro, Finance Director
Bijal Patel, City Attorney
Karin Schnaider, Assistant City Manager

Approved by: Midori Lichtwardt, City Manager

CITY ATTORNEY'S OFFICE

TRACY CITY COUNCIL

RESOLUTION NO. _____

AUTHORIZING THE CITY MANAGER TO SUBMIT A CLAIM TO THE SAN JOAQUIN COUNCIL OF GOVERNMENTS FOR TRANSPORTATION DEVELOPMENT ACT FUNDS IN THE AMOUNT OF \$6,706,900 FOR FISCAL YEAR 2023-2024 AND TO EXECUTE THE CLAIM AND RELATED DOCUMENTS

WHEREAS, under the provisions of the Transportation Development Act (TDA), the City of Tracy (City) is required to make an annual claim to the San Joaquin Council of Governments (SJCOG) for funds apportioned to the City under the Local Transportation Fund (LTF) and the State Transit Assistance Fund (STA); and

WHEREAS, unclaimed amounts are carried forward to the next fiscal year for reimbursement in that time period; and

WHEREAS, as set forth in the chart below, the City's Fiscal Year (FY) 2023-2024 claim under the Local Transportation Fund and the State Transit Assistance Fund totals \$6,706,900, and the total disbursement will be \$6,706,900:

CITY OF TRACY FISCAL YEAR 2023-2024 TDA CLAIM AMOUNTS AND PURPOSES		
Fund	Amount	Purpose
LTF	\$1,813,816	Article 8 Contractor Operating (PUC 99400(c))
LTF	\$1,400,000	Article 8 Contractor Operating (PUC 99400(c)) Previous Year's Unclaimed
LTF	\$0	Article 8 Contractor Operating (PUC 99400(c)) Previous Year's Unclaimed. (Transit Set-Aside)
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LTF	\$0	Roads & Streets: Article 8 (99400(a))

LTF	\$0	Roads & Streets: Article 8 (99400(a)) Unexpended Carryover
STA	\$17,178	CCR Section 6730(a)
STA	\$0	CCR Section 6730(a) Previous Year's Unclaimed
Total:	\$6,706,900	Total LTF/STA claimed.
Less:	<u>(\$0)</u>	Unexpended Carryover
	<u>\$6,706,900</u>	Net LTF funds to be disbursed to City of Tracy

WHEREAS, such funds will be used to support the operations of the City's TRACER bus system, streets and road maintenance, and pedestrian and bike paths; and

WHEREAS, money for this claim will primarily be used for operational expenses that are not covered by federal grants, as a funding source for the purchase of new buses, and to fund bikeways maintenance in various parts of the City; 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 authorizes the City Manager to submit a claim to SJCOG for TDA funds in the amount of \$6,706,900 for FY 2023-2024; and be it

FURTHER RESOLVED: That the City Council authorizes the City Manager to execute the claim and other related documents, and further authorizes the City Manager to take any and all actions that may be necessary or advisable to effectuate the purposes of this Resolution.

* * * * *

The foregoing Resolution 2024-_____ was adopted by the Tracy City Council on August 20, 2024, by the following vote:

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

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

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

Agenda Item 1.E

RECOMMENDATION

Staff recommends that the City Council waive the second reading and adopt an Ordinance:

(1) amending the zone district of the property at 2660 W. Byron Road (Assessor's Parcel Number 238-050-13) from medium density residential to medium density cluster, and

(2) determining that the proposed zoning amendment is categorically exempt from the California Environmental Quality Act pursuant to Guidelines Section 15332.

EXECUTIVE SUMMARY

Through this item, staff and the Planning Commission recommend that the City Council approve the following two entitlements for the proposed project: 1) a rezone at 2660 W. Byron Road, Assessor's Parcel Number 238-050-13 (Property/Project Site) from Medium Density Residential (MDR) to Medium Density Cluster (MDC), through an ordinance; and 2) a tentative subdivision map (Byron Estates) for the Property for the creation of 38 single-family lots consistent with the Medium Density Cluster Zone, through a resolution.

On May 8, 2024, the Planning Commission considered this item and, after deliberation and based on staff's recommendation, the Commission recommended that City Council approve the project. On July 2, 2024 the City Council conducted a first reading of the proposed ordinance and approved the tentative subdivision map. This agenda item is to waive the second reading and adopt the proposed ordinance.

The applicant is Schack & Company, INC. and the property owners are Sai Pratap Naidu, Saradadevi Naidu, Krishna M. Kathika, Sarala S. Kathika, Srinivasa R. Sakhamuri, Kranti Nelluri, Manoj Kumar Potturu, Jyotsna Sri Vemula, Kiran Srinivasa Tallam, and Pallavi Venkata Tallam.

BACKGROUND AND LEGISLATIVE HISTORY

The Project Site is a 5-acre site located at 2660 W. Byron Road that was annexed into the City of Tracy on January 16, 1995, and designated Residential Medium (RM) in the Tracy General Plan and zoned MDR. The surrounding parcels primarily consist of large-lot ranch-style residential property that was developed prior to annexation into the City of Tracy.

The project site contains a single-family home and three accessory structures that are to be demolished. On September 14, 2019, the City of Tracy approved a 60-unit residential project on the site (Byron Apartments, Development Review Permit Application Number D19-0010), but it was not constructed.

On July 8, 2022, the applicant applied for a new project on the site (Byron Estates) consisting of a rezoning from MDR to MDC and a tentative subdivision map to subdivide the property into 40 residential lots, which was later revised to current proposal of 38 lots, with public roadways.

ANALYSIS

In accordance with Tracy Municipal Code (TMC) Title 10, Article 29, the Planning Commission shall consider rezoning requests and make a recommendation to the City Council.

In accordance with TMC Chapter 12.16, the Planning Commission shall approve, conditionally approve, or deny proposed tentative subdivision maps based on the findings provided further in this staff report below. However, the project requires a zoning amendment, which only can be approved by the City Council and this rezoning is prerequisite for the subdivision of the Property. To ensure that the project approvals are bundled as one action, the Planning Commission will be acting as a recommending body to the City Council, which will be the approval body for all project entitlements.

FISCAL IMPACT

This agenda item does not request any expenditure of funds. The applicant paid the application processing fees established by the City Council.

CEQA DETERMINATION

The project is exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines section 15332 because the project is characterized as in-fill development and (1) is consistent with the General Plan designation of Residential Medium and all applicable General Plan policies, as well as consistent with the applicable zoning designation and regulations because the rezoning from Medium Density Residential to Medium Density Cluster is not a material change since both zoning districts conform with the Residential Medium General Plan Designation including the density range of 5.9 to 12 dwelling units per gross acre, (2) occurs within City limits on a project site of no more than five acres substantially surrounded by urban uses (3) has no value as habitat for endangered, rare or threatened species, (4) would not result in any significant effects relating to traffic, noise, air quality, or water quality, and (5) can be adequately served by all required utilities and public services. Therefore, no further environmental review is necessary.

STRATEGIC PLAN

This agenda item is not related to any City Council Strategic Priorities.

ACTION REQUESTED OF THE CITY COUNCIL

Staff recommends that the City Council waive the second reading and adopt an Ordinance approving:

(1) amending the zone district of the property at 2660 W. Byron Road (Assessor's Parcel Number 238-050-13) from medium density residential to medium density cluster, and

(2) determining that the proposed zoning amendment is categorically exempt from the California Environmental Quality Act pursuant to Guidelines Section 15332.

Prepared by: Necy Lopez, Deputy City Clerk

Reviewed by: Arturo Sanchez, Assistant City Manager
Bijal M. Patel, City Attorney

Approved by: Midori Lichtwardt, City Manager

Attachments:

- A. Proposed Ordinance
- B. Map Demonstrating Zoning Amendment from Medium Density Residential to Medium Density Cluster

CITY ATTORNEY'S OFFICE

TRACY CITY COUNCIL

ORDINANCE NO. _____

-
- (1) **AMENDING THE ZONE DISTRICT OF THE PROPERTY AT 2660 W. BYRON ROAD (ASSESSOR'S PARCEL NUMBER 238-050-13) FROM MEDIUM DENSITY RESIDENTIAL TO MEDIUM DENSITY CLUSTER, AND**
 - (2) **DETERMINING THAT THE ZONING AMENDMENT IS CATEGORICALLY EXEMPT FROM THE CALIFORNIA ENVIRONMENTAL QUALITY ACT PURSUANT TO GUIDELINES SECTION 15332**

WHEREAS, The subject property is less than five acres and is located at 2660 W. Byron Road (Assessor's Parcel Number 238-050-13) (Site); and

WHEREAS, The Site is designated as Residential Medium on the City's General Plan Map and zoned Medium Density Residential; and

WHEREAS, On July 8, 2022, an application was filed for the rezoning of the Site from Medium Density Residential (MDR) to Medium Density Cluster (MDC) (Application Number R22-0004); and

WHEREAS, The applicant is Schack & Company, Inc. and the Site owners are Sai Pratap Naidu, Saradadevi Naidu, Krishna M. Kathika, Sarala S. Kathika, Srinivasa R. Sakhamuri, Kranti Nelluri, Manoj Kumar Potturu, Jyotsna Sri Vemula, Kiran Srinivasa Tallam, and Pallavi Venkata Tallam; and

WHEREAS, The applicant has concurrently filed an application for a tentative subdivision map (Byron Estates) for the Site for the creation of 38 single-family lots consistent with the MDC Zone, which application is being separately considered by the City Council through adoption of a Resolution; and

WHEREAS, The MDC Zone is consistent with the land use, density, and other provisions of the Residential Medium General Plan designation; and

WHEREAS, The proposed zoning amendment is categorically exempt from the California Environmental Quality Act (CEQA) based on Guidelines Section 15332, which pertains to certain in-fill development projects, based on the following: The project is consistent with the General Plan and Zoning because the rezoning from Medium Density Residential to Medium Density Cluster is not a material change since both zoning districts conform with the Residential Medium General Plan Designation including the density range of 5.9 to 12 dwelling units per gross acre;

occurs within City limits on a project site of no more than five acres substantially surrounded by urban uses; has no value as habitat for endangered, rare or threatened species; would not result in any significant effects relating to traffic, noise, air quality, or water quality; and can be adequately served by all required utilities and public services; and therefore, no further environmental assessment is necessary; and

WHEREAS, In accordance with Tracy Municipal Code (TMC) Title 10, Article 29, the Planning Commission shall consider rezoning requests and make a recommendation to the City Council; and

WHEREAS, The Planning Commission conducted a properly noticed public hearing to review the proposed rezoning during their regular meeting of May 8, 2024 and recommended that the City Council adopt this ordinance amending the Site's zone district to MDC; and

WHEREAS, The City Council conducted a properly noticed public hearing to review and consider the proposed rezoning on June 18, 2024.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF TRACY DOES ORDAIN AS FOLLOWS:

SECTION 1. Incorporation of Recitals and Findings. The City Council of the City of Tracy hereby finds and determines the foregoing recitals are true and correct and are hereby incorporated herein in support of the findings and determinations of the City.

SECTION 2. CEQA Determination. The City Council finds and determines this Ordinance is categorically exempt from CEQA pursuant to CEQA Guidelines section 15332.

SECTION 3. Zoning Map Amendment. The Zoning Map of the City of Tracy is hereby amended to reclassify the following property from Medium Density Residential (MDR) to Medium Density Cluster (MDC):

Approximately five acres located at 2660 W. Byron Road (Assessor's Parcel Number 238-050-13), as indicated on Exhibit 1 of this Ordinance.

SECTION 4. Severability. If any section, subsection, sentence, clause, or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the Ordinance. The City Council hereby declares that it would have passed this Ordinance and each section, subsection, clause, or phrase thereof irrespective of the fact that one or more other sections, subsections, clauses or phrases may be declared invalid or unconstitutional.

SECTION 5. Effective Date. This Ordinance shall become effective upon the thirtieth (30th) day after final adoption.

SECTION 6. Publication. The City Clerk is directed to publish this Ordinance in a manner required by law.

SECTION 8. Codification. This Ordinance shall be codified in the Tracy Municipal Code.

The foregoing Ordinance 2024-_____ was introduced at a regular meeting of the Tracy City Council on the 18th day of June 2024, and finally adopted on the ____ day of _____ 2024, 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

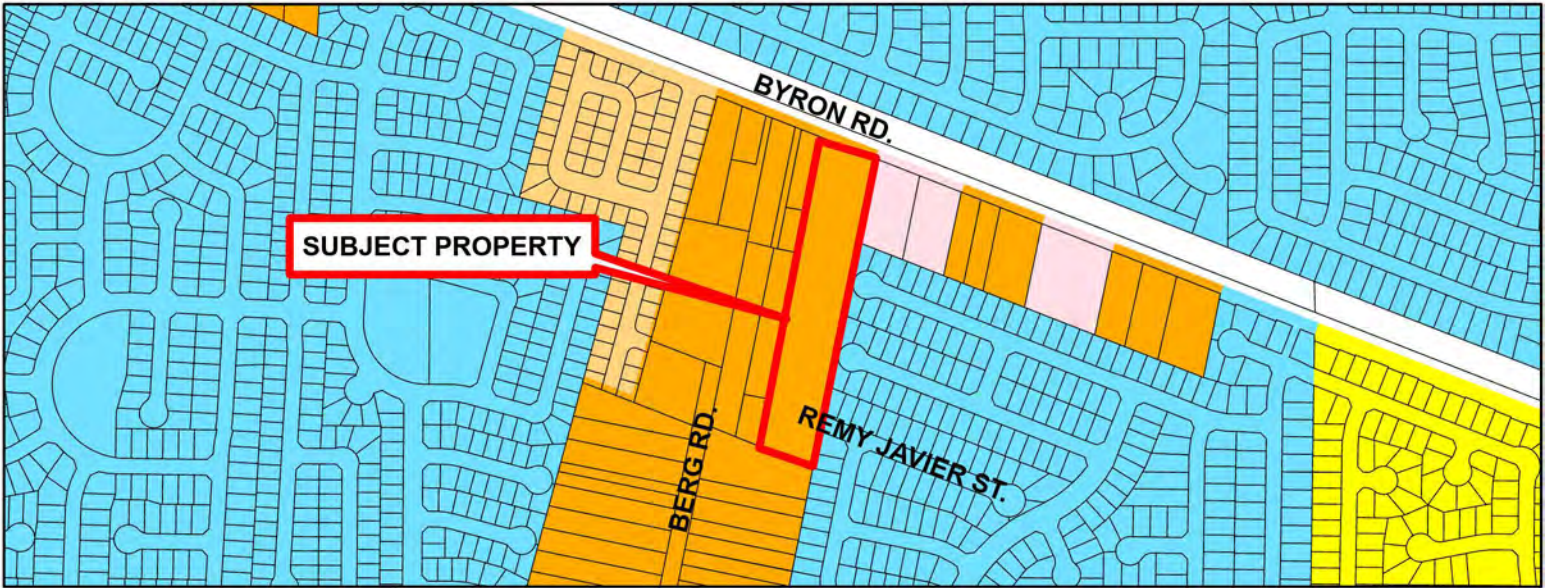
Date of Attestation: _____

Attachments:

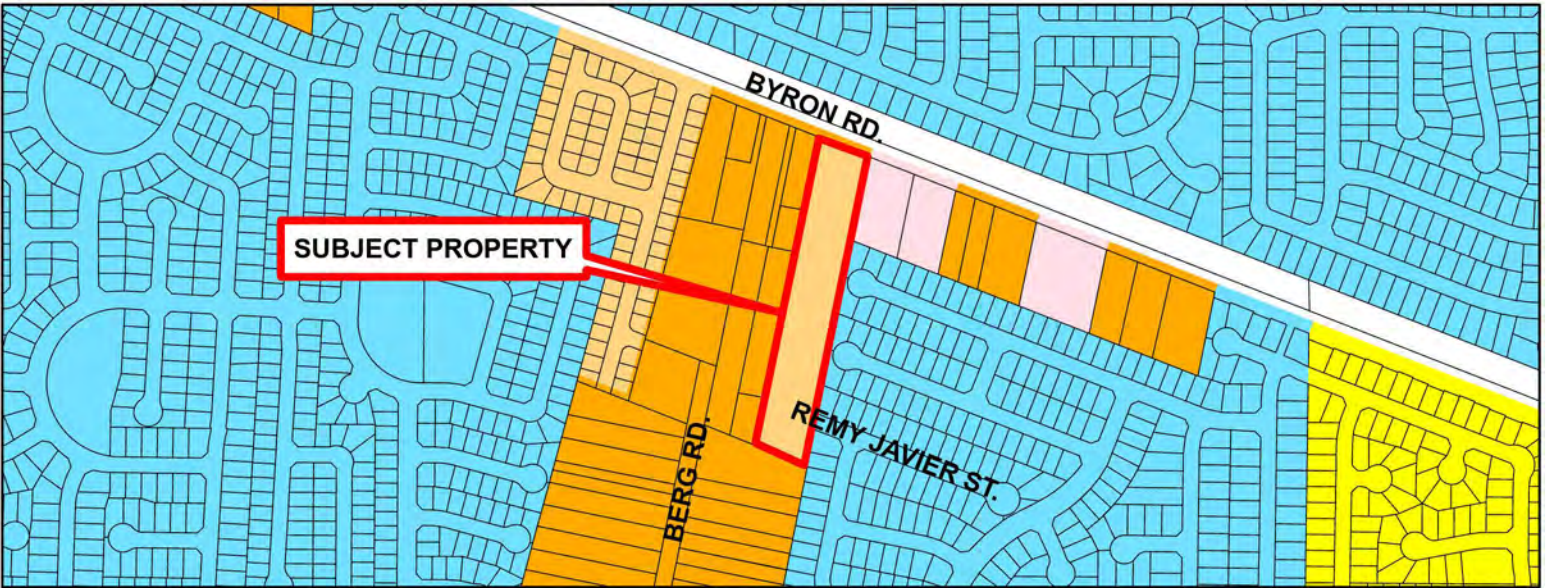
Exhibit 1 – Map Demonstrating Zoning Amendment from Medium Density Residential to Medium Density Cluster

Zoning Districts

Existing

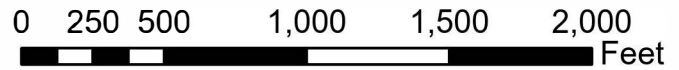


Proposed



ZONING DISTRICTS

- Low Density Residential (LDR)
- Medium Density Residential (MDR)
- Medium Density Cluster (MDC)
- Planned Unit Development (PUD)
- General Highway Commercial (GHC)



Agenda Item 1.F

RECOMMENDATION

Staff recommends that the City Council adopt a Resolution (1) accepting the Federal Aviation Administration's Airport Improvement Program Grant, in the amount of \$126,000; (2) appropriating the full grant amount to a Capital Improvement Project (CIP) 77595 for the Airport Pavement Maintenance Management Plan; and (3) appropriating \$14,000 from the General Fund to CIP 77595, to meet the grant's requisite 10% match requirement.

EXECUTIVE SUMMARY

This agenda item seeks acceptance of a grant in the amount of \$126,000 from the Federal Aviation Administration (FAA) for the Tracy Municipal Airport Pavement Maintenance Management Plan (PMMP), which is part of Capital Improvement Project (CIP) 77595. The total project cost is \$140,000. As the grant has a 10% match requirement, the agenda item also requests an approval for appropriating \$14,000 from General Fund to CIP 77595 to meet this requirement.

BACKGROUND AND LEGISLATIVE HISTORY

The Tracy Municipal Airport is subject to FAA jurisdiction. The FAA has a requirement that Airport Sponsors update their PMMP every five (5) to ten (10) years to remain eligible for federal funding. The last PMMP was updated and accepted by the City Council in 2013.

To meet FAA requirements, staff submitted grant applications to the FAA. The City will be awarded a grant from the FAA to complete the project. The FAA will fund 90% (\$126,000) of grant eligible project costs through the Airport Improvement Program (AIP). The City will need to appropriate General Fund dollars to meet the 10% match, equaling \$14,000, to fulfill its sponsor obligations.

Capital Improvement Projects are approved by the City Council in June of each year. Each CIP must be funded at that time. Due to the nature of FAA grant timelines, the Airport CIP projects do not become funded until an FAA grant is received in late August to early September.

Upon acceptance of an FAA grant offer by the sponsor, grant assurances are incorporated in and become part of the Grant Agreement. These assurances must be complied with in the performance of grant agreements for airport development, airport planning, and noise compatibility program grants for airport sponsors. Specific assurances required to be included in grant agreements are incorporated by reference into the respective Grant Agreements.

Pavement Preventive Maintenance Management is a specific assurance found within the grant assurances. With respect to a project approved after January 1, 1995, for the replacement or reconstruction of pavement at an airport, the airport sponsor 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. Approximately ninety (90) percent of the pavement at Tracy Municipal Airport has been replaced or reconstructed since January 1, 1995.

ANALYSIS

Accepting this grant will allow the City to fund CIP 77595 for the PMMP. This is a planning project that encompasses two parts. The first is a pavement condition index (PCI) survey that establishes the current condition of the airport pavement. The second part is the creation of a pavement maintenance program. This addresses how the pavement will be maintained or kept to acceptable PCI levels. A PMMP provides an opportunity to ascertain how to extend the lifetime of the existing pavement on the airport through scheduled preventative maintenance.

The total estimated cost of this project is as follows:

Project Costs	
Engineering Cost	\$135,000
Administration	\$5,000
Total Project Costs	\$140,000
Funding Sources	
FAA Participation- Entitlement/Discretionary	\$126,000
Sponsor Local Match	\$14,000
Total Funding Sources	\$140,000

FISCAL IMPACT

The Airport Pavement Maintenance Management Plan (CIP 77595) was a deferred project proposed for the FY2024-25 Operating and Capital Budget. The total estimated project cost is \$140,000. Of that amount, 90% of the project will be funded by an FAA AIP grant of \$126,000. An appropriation of \$14,000 is needed from the General Fund for the remaining cost for the City's 10% match.

A Capital Improvement Project (CIP) request was submitted with a budget of \$140,000 for Fiscal Year (FY) 2024-25 for the Airport Pavement Maintenance Management Plan. This was based upon an estimated FAA Airport Improvement Program grant of \$126,000 that the City anticipates receiving and the Sponsor match obligation of \$14,000 appropriated from funds in CIP 77588. If the City does not receive the FAA grant monies, then the City anticipates using additional funds in CIP 77588 to advance this necessary CIP.

COORDINATION

Engineering staff coordinated with the Operations and Utilities Department and the Airport Engineering consultant firm during the application phase of the project.

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) accepting the Federal Aviation Administration's Airport Improvement Program Grant, in the amount of \$126,000; (2) appropriating the full grant amount to Capital Improvement Project (CIP) 77595 for the Airport Pavement Maintenance Management Plan; and (3) appropriating \$14,000 from the General Fund to CIP 77595, to meet the grant's requisite 10% match requirement.

Prepared by: Paula Jessup, Airport Manager

Reviewed by: Sara Castro, Director of Finance
Bijal Patel, City Attorney
Karin Schnaider, Assistant City Manager

Approved by: Midori Lichtwardt, City Manager

TRACY CITY COUNCIL

RESOLUTION NO. _____

(1) ACCEPTING THE FEDERAL AVIATION ADMINISTRATION'S AIRPORT IMPROVEMENT PROGRAM GRANT, IN THE AMOUNT OF \$126,000; (2) APPROPRIATING THE FULL GRANT AMOUNT TO CAPITAL IMPROVEMENT PROJECT 77595 FOR THE AIRPORT PAVEMENT MAINTENANCE MANAGEMENT PLAN; AND (3) APPROPRIATING \$14,000 FROM THE GENERAL FUND TO CIP 77595, TO MEET THE GRANT'S REQUISITE 10% MATCH REQUIREMENT.

WHEREAS, the Federal Aviation Administration (FAA) has a requirement that Airport Sponsors update their Pavement Maintenance Management Plan every five (5) to ten (10) years to remain eligible for Federal funding; and

WHEREAS, the Tracy Municipal Airport is subject to FAA jurisdiction; and

WHEREAS, the last Airport Pavement Maintenance Management Plan (PMMP) for the Tracy Municipal Airport was updated and accepted by the City Council in 2013; and

WHEREAS, the total project cost for a new PMMP is \$140,000, and staff submitted applications to the FAA for a grant; and

WHEREAS, the total amount funded by the FAA grant is \$126,000 and City is obliged to match 10% of the total cost (which is \$14,000) to fulfill the grant obligation; and

WHEREAS, the Capital Improvement Project has an approved budget of \$140,000, based on anticipated FAA grant monies that the City expects to receive and a \$14,000 appropriation from the General Fund; 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 authorizes the acceptance of the Federal Aviation Administration's Airport Improvement Program Grant award in the amount of \$126,000 for the completion of a comprehensive Pavement Maintenance Management Plan for the Tracy Municipal Airport; and be it

FURTHER RESOLVED: That the City Council hereby appropriates the full grant amount to CIP 77595 Pavement Maintenance Management Plan; and be it

FURTHER RESOLVED: That the City Council of the City of Tracy authorizes the appropriation of \$14,000 from the General Fund to CIP 77595, to meet the grant's requisite 10% match requirement; and be it

FURTHER RESOLVED: That the City Council determines that this action is exempt from the California Environmental Quality Act pursuant to Guideline Section 15301 (Existing Facilities) .

* * * * *

The foregoing Resolution 2024-_____ was adopted by the Tracy City Council on August 20, 2024, by the following vote:

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

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

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

Agenda Item 1.G

RECOMMENDATION

Receive an informational report regarding the Police Department's response to fireworks complaints and official city events during the July 4th weekend.

EXECUTIVE SUMMARY

Building on lessons learned from prior years, the Tracy Police Department developed an operational plan for the July 1st-4th, 2024, operating period. This plan included responses to fireworks complaints and staffing City of Tracy events. This report outlines the new strategies employed this year compared to the previous year.

BACKGROUND AND LEGISLATIVE HISTORY

In response to a request by City Council members, this report provides an update on the deployment of Tracy Police Department (TPD) personnel and resources during the July 4, 2024 holiday, specifically related to fireworks complaints.

The operational plan was built on responses from prior years. One of the key improvements from 2023 was the enhanced uniformed police presence and video monitoring during the downtown parade, in response to the increase in large-crowd violence on the national level. The parade proved to be a safe family event. In addition, TPD communications center operated on two separate channels: one designated for calls for service assisting assigned patrol officers and a second specifically dedicated to fireworks enforcement teams and drone operators to handle complaints and broadcast fireworks-related incidents at specific addresses.

For 2024, TPD experienced changes to both the venue and the type of aerial fireworks display hosted by the Tracy Chamber of Commerce in partnership with the City of Tracy. With an early pancake breakfast at Lincoln Park, a downtown parade, and an aerial fireworks event at Legacy Fields, TPD was uncertain of the number of community members who would gather throughout the day and evening. For these events, TPD collaborated with several city departments and community stakeholders like Tracy City Center Association (TCCA) and Tracy Chamber of Commerce to ensure the safety of attendees and to manage logistics to the events including traffic flow, preventing any negative impact on residents and businesses in the area.

The challenges this year included sponsored events throughout the July 4th holiday, priority calls for service, and the unknown number of spectators at the new location for the evening fireworks show along with an extended heat wave. There was a large attendance of community members at the downtown parade, and it was estimated that 2,400 to 3,000 people attended the aerial fireworks show at Legacy Fields that evening.

For 2024, TPD utilized uniformed officers in marked and unmarked cars along with drones to better identify violators engaging in the use of illegal fireworks. TPD also used its social media platforms before the 4th of July to remind the community of the "social host" ordinance and the associated fines (\$750 for first-time violations and \$1,000 for subsequent violations).

ANALYSIS

Details of the deployment model and results

This year, TPD had a maximum deployment of officers for the July 4th holiday is the highest staffing of any single pre-planned day of the year. In addition to the three patrol teams, the department deployed four additional teams throughout the day for this event. This included a dayshift parade and Lincoln Park team, a swing shift team for Legacy Fields, and two teams for the evening city-wide fireworks enforcement detail. Drone technology was used in the evening and proved beneficial in locating illegal fireworks violations. Code Enforcement, professional staff, and an additional communications channel were used to support the fireworks enforcement teams. In total, 65 personnel were deployed on July 4th.

In the days leading up to the 4th of July, an additional team was deployed during the evening hours on July 1st, 2nd, and 3rd.

In the days leading up to the July 4th holiday operational, TPD received 16 fireworks-related calls. These calls resulted in two citations, one misdemeanor arrest, and two pro-active felony arrests by the Special Investigations Unit for the possession and seizure of 96 pounds of illegal fireworks. In the majority of responses, officers were either unable to locate the responsible parties or the parties had left by the time officers arrived.

On July 4th, TPD communications received 157 fireworks-specific related calls. TPD issued approximately 57 administrative citations for fireworks violations, an increase from 2023. This rise was due to the use of drones, covert and overt officer approaches, and data analytics identifying high-complaint areas. TPD also utilized a second communication channel to broadcast specific locations of illegal fireworks to enforcement teams and drone operators, streamlining responses instead of dispatching officers individually to each fireworks call.

In the days following the holiday (July 5th-10th), TPD communications received 523 calls for service, with 47 fireworks-related calls for service, resulting in two additional citations. Many of the responses resulted in officers not being able to locate the alleged violators. TPD continues to respond to fireworks calls for service, though the number of calls has been steadily decreasing.

During the operational period from July 1st to July 10th, during the high call volume hours between 1800 hours and 0300 hours, TPD communications answered 82.09% of calls within 10 seconds, 97.9% within 15 seconds, 99.32% within 20 seconds, and 100% within 40 seconds, exceeding the 911 call answering standards set by the National Emergency Number Association in all but one category (90% within 10 seconds).

From a law enforcement perspective, the 2024 Fourth of July Operational period was an overall success with great feedback from many. There were no reported injuries, arrests, or major problems at any of the sponsored events. Debrief meetings have taken place with appropriate stakeholders and after actions reports are being completed as TPD staff continue to assess and address quality of life issues for City residents.

FISCAL IMPACT

The fiscal impact for this 4th of July holiday celebration to cover additional staffing duties, presence, and enforcement was a combination of payback hours (TPOA), adjusted shifts, and overtime for both sworn and professional staff. There was a financial impact of approximately \$28,084 for this operation period of July 1st- July 4th.

STRATEGIC PLAN

This agenda item relates to the Council's Strategic Plan in the area of Public Safety, specifically Goal #3: Strengthen community safety through crime prevention reduction activities.

ACTION REQUESTED OF THE CITY COUNCIL

Staff recommends that the City Council receive the informational report regarding the police department's response to fireworks complaints and official City events during the July 4th weekend.

Prepared by: Mike Roehl, Police Lieutenant

Reviewed by: Sekou Millington, Chief of Police
Sara Castro, Director of Finance
Karin Schnaider, Assistant City Manager

Approved by: Midori Lichtwardt, City Manager

Agenda Item 1.H

RECOMMENDATION

Staff recommends that the City Council adopt a resolution approving a Professional Services Agreement with Griffin Structures for project management services for the Clyde Bland Park BMX Pump Track Project for a total not-to-exceed amount of \$235,500.

EXECUTIVE SUMMARY

This agenda item seeks adoption of a resolution by the City Council approving a Professional Service Agreement (PSA) with Griffin Structures, Inc. (Griffin) for project management services for The Clyde Bland Park BMX Pump Track Capital Improvement Project (CIP) 78190 (Project). The consultant is selected from an on-call list approved by City Council pursuant to Resolution #2022-175. Staff completed a detailed review of the proposal received and determined that Griffin Structures met the needs of the City and demonstrated the competence and professional qualifications necessary for the satisfactory performance of the required services.

BACKGROUND AND LEGISLATIVE HISTORY

The Clyde Bland Park BMX Pump Track (CIP 78190) has been an active project in the Parks, Recreation & Community Services Capital Improvement Program since Fiscal Year 2022/2023. Due to limited capacity of staff because of other major capital improvement projects in various stages of development, staff is recommending the City hire a dedicated project manager for this Project.

Recently, staff engaged an on-call consultant, Griffin Structures, Inc., that specializes in project delivery of unique and specialized public infrastructure. Staff completed a detailed review of the proposal received and determined that Griffin Structures met the needs of the City and demonstrated the competence and professional qualifications necessary for the satisfactory performance of the required services. The scope of services entails pre-construction, construction, and close out services for a total not-to-exceed amount of \$235,500.

This project was previously approved by the City Council as CIP 78190 with a project budget of \$1,000,000. The costs contemplated by this staff report are covered by funds already appropriated and available to the Project.

The consultant was selected from an on-call professional services list approved by the City Council.

Staff recommends that the City Council adopt a resolution approving a Professional Services Agreement with Griffin for a total not-to-exceed amount of \$235,500 for project management services for the Clyde Bland Park BMX Pump Track Project (CIP 78190).

A BMX pump track has been identified as a community need in the City of Tracy park system including being identified in the Citywide Parks, Recreation and Trails Master Plan (PRTMP) as a recommendation to diversify our recreational offerings. The City does not currently offer a pump track and the PRTMP has set of goal of three pump tracks by 2040 to meet the growing demands of recreation.

As a part of the Fiscal Year 2022/2023 budget process, the City Council approved creation of Clyde Bland Park BMX Pump Track CIP 78190 and allocated \$1,000,000 in funding to the Project.

In February 2023, City staff conducted two public outreach meetings soliciting feedback on the idea of constructing the BMX pump track amenity at Clyde Bland Park and to also gain consensus on the preferred material that the track should be constructed out of.

At the March 2, 2023, Parks & Community Services Commission meeting staff presented the recommendation to construct the track at Clyde Bland Park in which the Commission made a formal recommendation to the City Council to do so. The Project location was codified by the City Council through the annual budget process for Fiscal Year 2023/2024.

On November 15, 2022, the City Council approved an on-call professional services list for various services including project management services (Resolution 2022-175). Griffin Structures is on the approved on-call list to provide these services.

ANALYSIS

The City has been working diligently to fill vacant positions over the last several years for various positions responsible for managing Parks CIP projects like this. Current staff have limited capacity to work on new projects due to the workload of current projects in various stages of design and construction.

Based on the limited capacity of staff, coupled with regular requests from stakeholders to deliver this community amenity, staff's recommendation is to hire a project management consultant that can assist the City in delivering this unique amenity successfully. Furthermore, staff recommends hiring a project manager with an extensive background in project delivery to assist the City in delivering this unique and highly specialized public facility that will act as an owner representative from project initiation through completion.

In March of 2024, staff engaged Griffin from an on-call list of consultants to provide professional project management services related to the development of a BMX pump track facility with a total project budget of \$1,000,000. Griffin has successfully managed a variety of capital improvement program projects valued at over \$1.5 billion and they are currently under contract with the City to project manage the Aquatic Center project.

Griffin submitted a responsive proposal and staff has negotiated a Professional Services Agreement (Attachment A) with Griffin. The "Not to Exceed" fee for this scope of work is \$235,500. The scope of work entails a series of pre-construction, construction, and close-out services:

- Pre-construction services include design management, constructability review, overseeing plan check & permitting, development of bid documents, and participation in outreach meetings.
- Construction & Closeout services include attend all construction related meetings, lead all meetings from pre-construction to final closeout, maintain project files/documents, supervise construction observation/inspection, prepare daily reports, construction coordination activities, review progress payments, review potential change orders, manage final walk-through inspection, generate punch list, coordinate labor compliance, and permit coordination.

Staff is planning to issue a task order to another on-call consultant currently under contract with the City to provide design services for the Project with which Griffin will be working directly through the duration of the Project.

This scope of work includes a preliminary approach to the project schedule as follows:

Description	Time Frame
Task 1 – Pre-Construction	7 months
Task 2 – Construction & Closeout	7 months

CEQA DETERMINATION

This action is for approval of a project manager and not implementation of the Project itself. Additional discretionary actions are necessary to effectuate design and construction of the Project. As such, any additional environmental review required under the California Environmental Quality Act will be conducted prior to any critical discretionary approvals that are required to be taken in order to implement the Project.

FISCAL IMPACT

This Project was previously approved by the City Council as CIP 78190 with a budget of \$1 million. The cost of this contract is covered by funds already allocated to the Project for project and construction management.

STRATEGIC PLAN

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

ACTION REQUESTED OF THE CITY COUNCIL

Staff recommends that the City Council adopt a resolution approving a Professional Services Agreement with Griffin Structures for project management services for the Clyde Bland Park BMX Pump Track Project for a total not-to-exceed amount of \$235,500.

Prepared by: Richard Joaquin, Acting Assistant Director of Parks, Recreation & Community Services

Reviewed by: Brian MacDonald, Director of Parks, Recreation & Community Services
Sara Castro, Director of Finance
Bijal Patel, City Attorney
Arturo Sanchez, Assistant City Manager

Approved by: Midori Lichtwardt, City Manager

Attachments:

- A – Professional Services Agreement with Griffin Structures, Inc.

CITY OF TRACY
PROFESSIONAL SERVICES AGREEMENT WITH
Griffin Structures, Inc., a California Corporation

This Professional Services Agreement ("Agreement") is entered into between the City of Tracy, a municipal corporation ("City"), and Griffin Structures, Inc., a California Corporation ("Consultant"). City and Consultant are referred to individually as "Party" and collectively as "Parties."

Recitals

- A. City desires to retain the professional services of Consultant to provide Project/Construction Management Services for the Clyde Bland BMX Pump Track Project CIP 78190 as further described herein and in Exhibit A.
- B. On September 9, 2022, the City issued a Request for Proposals (RFP) for On-Call Landscape Architectural, Landscape Plan Check, Landscape Inspection, and Project Management Services (including Construction Management Services), in which proposers had the ability to select which specific services they were interested in provided. On October 12, 2022, ten proposals were submitted to the City for this RFP.
- C. On November 15, 2022, pursuant to Resolution No. 2022-175, the City Council approved on-call professional services list of consultants to provide the above services, which included Griffin Structures, Inc.
- D. After negotiations between the City and Consultant, the Parties have reached an agreement for Consultant's professional services as set forth in this Agreement.
- E. This Agreement was approved on August 20, 2024 pursuant to Tracy Municipal Code Section 2.20.140(3), and City Council Resolution No. _____.

NOW THEREFORE, for good and valuable consideration the sufficiency of which the Parties hereby acknowledge, the Parties mutually agree as follows:

1. **Scope of Work**. Consultant shall perform the professional services, tasks, and scope of work described in Exhibit A attached hereto and incorporated herein by this reference ("Scope of Work"). The Scope of Work shall be performed by, or under the direct supervision of, Consultant's "Authorized Representative": Robert Godfrey, Principal-In-Charge. 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 the City's prior written consent. The City may terminate this Agreement if Consultant makes any such change or uses or replaces any such subcontractor or subconsultant. Unless otherwise stated on Exhibit A, Consultant shall furnish, at its own expense, the materials, equipment, supplies, and other resources necessary to perform the Scope of Work. The City reserves the right to contract with other firms and/or consultants during the term of this Agreement to provide the City with the same or similar Scope of Work as described in Exhibit A.
2. **Time of Performance**. Time is of the essence in the performance of the Scope of Work under this Agreement and the timing requirements set forth herein shall be strictly adhered to unless otherwise modified in writing in accordance with this Agreement. If dates for performance are set out in Exhibit A, Consultant shall begin performance, and shall complete all required Scope of Work no later

than the dates set forth in Exhibit A. 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. If Exhibit A indicates that Scope of Work shall only be performed upon request, or if the City otherwise communicates the same to Consultant, Consultant shall not perform said Scope of Work until the City requests such performance. Consultant shall submit all requests for time extensions to the City in writing no later than ten (10) days after the start of the condition which purportedly caused the delay, and not later than the date on which performance is due. The City may grant or deny such requests in its sole and absolute discretion.

2.1 Term. The term of this Agreement shall commence on the date this agreement is executed and terminate once the City confirms that all services were performed to the City's satisfaction or earlier by termination pursuant to Section 6 of this Agreement ("Term"). Subject to the Not-To-Exceed Amount defined in Section 3.1, the Term of this Agreement may be extended with express written amendment incorporating this Agreement signed by both Parties and one of the following City approvals: (a) City Council approval or (b) City Manager approval. An administrative extension of this Agreement by City Manager shall be limited to an additional term of 1 year and require written determination by the City Manager that Consultant has satisfactorily met all the requirements of this Agreement.

3. Compensation. City shall pay Consultant on a time and expense basis for Scope of Work performed under this Agreement at the billing rates set forth in Exhibit B, which is attached hereto and incorporated herein by this reference.

3.1 Not to Exceed Amount. Consultant's total compensation under this Agreement shall not exceed \$235,500 [Two-hundred, thirty-five thousand, five hundred] Dollars. Notwithstanding the foregoing, the payment of any funds under this Agreement shall be subject to the City of Tracy appropriation of funds for the Scope of Work. This Agreement shall automatically terminate in the event that such funds are not appropriated. Unless specifically stated otherwise or agreed to in writing and approved by City Council, the fees proposed by Consultant, as set forth in Exhibit B hereto, shall remain unchanged for the entire term of this Agreement and any extensions of this Agreement. It is understood and agreed that Consultant may not receive compensation up to the Not-to-Exceed Amount (or any other amount), and Consultant's total compensation under this Agreement will depend on the Scope of Work requested and approved by the City. 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" provided in this section without the City's prior written approval.

3.1.1 City Budget Limitations. This Agreement will terminate without penalty, liability or expense of any kind to City at the end of any fiscal year if funds are not appropriated for the next succeeding fiscal year for this Agreement. If funds are appropriated for a portion of the fiscal year, this Agreement will automatically terminate, without penalty, liability or expense of any kind at the end of the term for which funds are appropriated. City has no obligation to make appropriations for this Agreement in lieu of appropriations for new or other agreements. City budget decisions are subject to the discretion of the City Council. Consultant's assumption of risk of possible non-appropriation is part of the consideration for this Agreement.

3.2 Invoices. Consultant shall submit monthly invoice(s) to the City that describe in detail satisfactory to the City: the services performed, the times and dates of performance, and the names of the person(s) performing the Scope of Work.

3.2.1 If Consultant is providing the Scope of Work 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 this Section may result in the City rejecting said invoice(s) and thereby delaying payment to Consultant.

3.2.3 Consultant shall submit invoices no later than 90 days after completion of a portion of the Scope of Work. City has no obligation to pay invoices delivered greater than 90 days after the date of performance of the Scope of Work.

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 and portions of Scope of Work described on the invoice(s) and approved by the City.

3.4 **Final Payment.** The acceptance by Consultant of the final payment made under this Agreement shall constitute a release of City from all claims and liabilities for compensation to Consultant for anything completed, finished or relating to Consultant's services or performance of the Scope of Work. Consultant agrees that payment by City shall not constitute nor be deemed a release of the responsibility and liability of Consultant or its employees, subcontractors, agents and subconsultants 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 Consultant, its employees, subcontractors, agents and subconsultants.

3.5 **Books and Accounts.** Consultant agrees to maintain books, accounts, payroll records and other information relating to the performance of Consultant's obligations under the Agreement, which shall adequately and correctly reflect the expenses incurred by the Consultant in the performance of Consultant'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. 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, 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 the event there is a finding and/or determination that Consultant 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), Consultant shall, to the fullest extent permitted by law, indemnify, defend, and hold harmless the City from and against any and 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; "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.)

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 the Scope of Work 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 in 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 and, in any event, within five (5) days of such request.

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

7. 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 Scope of Work, upon termination of this Agreement, or within five (5) days of any 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.

8. 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. Consultant shall be solely responsible for, and shall save the City harmless from, all matters relating to the payment of Consultant's employees, agents, subcontractors and subconsultants, including compliance with social security requirements, federal and state income tax withholding and all other regulations governing employer-employee relations.

9. 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. The Consultant represents that it is familiar with the local and state conflict of interest laws, and agrees to comply with those laws in performing this Agreement. The Consultant represents and warrants that the representations made by the Consultant concerning unfair competitive advantage and conflicts of interest in connection with its submissions in response to the City's procurement for this Agreement were true and accurate both when made and as of the date of this Agreement. Consultant represents and warrants that it has not and shall not offer or deliver any City officer, public official, or employee any gifts or donations in violation of Federal, State and/or local law.

10. 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 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; or 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.

11. 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 the City:
City of Tracy
Attn: Richard Joaquin, Parks Planning &
Development Manager
333 Civic Center Plaza
Tracy, CA 95376

To Consultant:
Griffin Structures, Inc.
Attn: Jon Hughes, President
1 Technology Drive Suite 1829
Irvine, CA 92618

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

12. **General Provisions.**

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

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

12.3 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.

12.4 Assignment and Delegation. Consultant may not assign, transfer or delegate this Agreement or any portion of it without the City's advance 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.

12.5 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.

12.6 Compliance with the Law. Consultant shall comply with all applicable local, state, and federal laws, including, without limitation, those identified below, whether or not such laws are expressly stated in this Agreement.

12.6.1 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.

12.6.2 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.).

12.7 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 authorized to do business in California, in good standing with the Secretary of State, and in good standing with all agencies having jurisdiction over Consultant (including any licensing agencies). If Consultant is a suspended entity at the time it enters into this Agreement, City may take steps to have this Agreement declared voidable.

12.8 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.

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

12.10 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.

12.11 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.

12.12 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.

12.13 Entire Agreement. This Agreement and the attached Exhibits comprise the entire integrated understanding between the Parties concerning the services to be performed and the matters contemplated herein. This Agreement supersedes all prior negotiations, representations or agreements (in each case, whether oral or in writing). All exhibits attached hereto are incorporated by reference herein.

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

12.15 Expenses for Enforcement. Consultant 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.

13. 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.

[Signature Page to Follow]

As of the date of last signature below, the undersigned Parties agree to the full performance of the terms set forth in this Agreement and have caused this Agreement to be duly executed.

City of Tracy, a Municipal Corporation

By: _____
Nancy D. Young
Title: Mayor
Date: _____

Attest:

Adrienne Richardson, City Clerk

Approved as to form:

Bijal M. Patel, City Attorney

Griffin Structures, Inc., a California Corporation

By: _____
Jon Hughes
Title: President
Date: 08/01/2024

Federal Employer Tax ID No. 33-0756139

By: _____
Mark Hoglund

Title: Chief Financial Officer
Date: 8/1/2024

Exhibits:

- A Scope of Work
- B Compensation

EXHIBIT A - Scope of Work

Tracy Clyde Bland Park BMX Pump Track

Griffin Structures' Fee Proposal is based on all reasonable costs necessary to perform Pre-Construction and Construction Management Services for the City of Tracy's BMX Pump Track project. For these requisite services Griffin Structures proposes the following Not-to-Exceed Fee based on hourly rates:

Project/Construction Management Services:	\$ 225,880
Reimbursable Expenses:	\$ 9,620
Total	\$ 235,500

Item No.	PROJECT PHASE	PROJECT EXECUTIVE	SR. CONSTRUCTION MANAGER	SR. CONSTRUCTION MANAGER
		Robert Godfrey \$260/HR	Robert Echavarria \$225/HR	Hernan Munayco \$225/HR
1	PRE-CONSTRUCTION	28	183	123
1.1	Coordinate pump track design	Incl	Incl	Incl
1.2	Perform constructability review of design package	Incl	Incl	Incl
1.3	Oversee plan check & permitting	Incl	Incl	Incl
1.4	Develop bid documents	Incl	Incl	Incl
1.5	Team Meetings (Virtual: Bi-weekly)	Incl	Incl	Incl
1.6	Meetings with Parks Commission & City Council	Incl	Incl	Incl
1.7	Master Budget Development and Updates	Incl	Incl	Incl
2	CONSTRUCTION & CLOSEOUT	28	56	602
2.1	Attend all construction related meetings (Virtual & In-person)	Incl	Incl	Incl
2.2	Lead all meetings during the construction from pre-construction to final closeout.	Incl	Incl	Incl
2.3	Maintain project files/documents per City template.	Incl	Incl	Incl
2.4	Supervise construction observation/inspection	Incl	Incl	Incl
2.5	Prepare construction observation reports based on site visits.	Incl	Incl	Incl
2.6	Prepare a weekly working day statement	Incl	Incl	Incl
2.7	Coordinate with the City's Project Manager, utility companies, and others, as necessary.	Incl	Incl	Incl
2.8	Review and make recommendation for contractor progress payments.	Incl	Incl	Incl
2.9	Review and make recommendations regarding the contractor's request for a contract change order and/or request for clarification/information.	Incl	Incl	Incl
2.10	Assure contractor to maintain a set of as-built plans.	Incl	Incl	Incl
2.11	Schedule the final walk-through inspection and prepare a "punch-list".	Incl	Incl	Incl
2.12	Coordinate labor compliance with City's consultant's staff.	Incl	Incl	Incl
2.13	Assure contractor obtains all necessary permits.	Incl	Incl	Incl
		56	239	725
		\$14,480	\$53,900	\$157,500
				\$225,880
5	REIMBURSABLE COSTS			\$9,620
5.1	Insurance			\$2,259
5.2	Misc. Expenses (Printing, Parking, etc.)			\$2,741
5.3	Submittal Exchange (12 months minimum)			\$4,620
	GRAND TOTAL			\$235,500

All proposed hourly rates are fully burdened and include overhead profit, taxes, and benefits. Hourly rates are based on those approved in our On-Call agreement. The hours identified for each individual employee and task are estimates only and are not to be construed as not to exceed hours for any individual task, phase, or time period. We reserve the right to reallocate hours between staff members and tasks, in consultation with the City's Project Manager, to accomplish the overall objectives and requirements of the project.

Services are based on an assumption of a fourteen (14) month schedule. Any extension of the schedule may result in additional fee, in good faith negotiation with the City.

Griffin understands the City has obtained an existing topography map, including known easements and any known as-built conditions for the site. The City will select the design team from the current on-call list and the City intends to utilize a pre-selected specialty contractor for the pump track section of the design and construction. Griffin will work with City to coordinate design team and selection of the contractor.

APPROACH TO PROJECT SCHEDULE

This proposal assumes the following durations by phase and is illustrated in the Resource Allocation Schedule attached:

1. **Pre-construction (7 months)**
2. **Construction & Closeout (7 months)**

APPROACH TO STAFFING & PROJECT TEAM

To bring the highest level of efficiency and value to the City of Tracy, Griffin Structures has assembled following team:

Robert Godfrey will serve as Principal-In-Charge for the duration of the project. For this level of service, we have allocated a total of 56 hours of Robert's time.

Robert Echavarria will serve as a Senior Construction Manager with emphasis on pre-construction. For these services, we have allocated 239 hours of Robert's time.

Hernan Munayco will serve as a Sr. Construction Manager during construction. For these services, we have allocated 786 hours of Hernan's time.

QUALIFICATIONS & EXCLUSIONS

1. Insurance costs are included as a reimbursable expense and will be billed monthly at the rate of \$10 per \$1,000.
2. On-site trailer rental, furniture, utilities, and sanitary facilities for our field staff (Project Management team) are excluded. We assume that offices will be provided as part of the construction site trailer(s) being provided by the City's contractor or by the City.
3. Costs for all permits required for the project are excluded. It is assumed that the Agency will pay for all permitting fees, assessments, easements, school fees, and other agency or governmental fees or costs to support the design and construction the project. We have not included any permit related fees within our fee proposal. Permits will be pulled by others.
4. At no cost to the Owner, and subject to Internal Revenue Code 179D, (Deduction for Energy Efficient Commercial Buildings) Owner agrees to allocate any applicable tax deductions to construction manager (Griffin Structures) as may be relevant to 'public entity' projects.
5. Costs for construction staking, environmental and hazardous materials surveys, and all environmental and hazardous materials transportation and remediation costs are excluded.
6. Software licenses or user fees and all software training costs for specific project management software being required by either the City or their contractor(s) is excluded.

7. Cost of bulk blueprinting for plans and specifications for use by the contractors and subcontractors is excluded. Funds included in reimbursable expenses are for Griffin printing costs alone.
8. Independent or third-party testing companies such as Roofing, Peer Reviews, LEED, or other specialized third-party oversight services other than those listed herein are excluded.
9. No FF&E or OS&E procurement is included in this proposal.
10. Construction Site Security is excluded.
11. This proposal does not include a formal independent Inspector of Record (IOR); it is assumed that any Building Department inspections will be performed by the City's Building Department inspections staff.
12. Construction Manager will review all RFI's, Submittals, and Substitutions only for completeness. Approvals shall be executed by the designer of record.
13. Construction Cost Estimates, when provided, are based on standard industry practice, professional experience, and knowledge of market conditions. Griffin has no control over material and labor costs, contractor's methods of establishing prices or the market and bidding conditions at the time of bid. Therefore, Griffin does not guarantee that bids received will not vary from the cost estimate provided and Griffin is not liable for any costs, liabilities, or damages incurred by the Agency arising from Griffin's opinion of cost, the actual project cost to the Agency, delays caused by events outside the control of Griffin, or any labor or material cost increases.
14. Griffin is not responsible for, and the City will hold Griffin harmless from, any schedule delays and/or any losses, damages, or liabilities resulting therefrom that are caused by (1) events or conditions that are outside of Griffin's control or (2) the acts or omissions of parties for whom Griffin is not legally liable (collectively, "Non-Consultant Delays"). The schedule for completion will be extended for any Non-Consultant Delays. If Griffin incurs additional costs or expenses due to Non-Consultant Delays, then Griffin's fee compensation will be equitably adjusted to cover such additional costs or expenses.
15. For document tracking control, Griffin has included the use of "Submittal Exchange" for managing construction documentation, and based the hours allocated in this proposal accordingly. The cost of "Submittal Exchange" is included here as a reimbursable expense.
16. Dry utility design consultation services are not included.
17. This proposal shall remain valid and in full force and effect for a period of 120 days from date of issuance, after which time it shall be deemed null and void.

EXHIBIT B - Compensation

Robert Godfrey (Project Executive)	\$260/hour
Robert Echavarria (Sr. Construction Manager)	\$225/hour
Hernan Munayco (Sr. Construction Manager)	\$225/hour

CITY ATTORNEY'S OFFICE

TRACY CITY COUNCIL

RESOLUTION NO. _____

APPROVING A PROFESSIONAL SERVICES AGREEMENT WITH GRIFFIN STRUCTURES FOR PROJECT MANAGEMENT SERVICES FOR THE CLYDE BLAND PARK BMX PUMP TRACK PROJECT FOR A TOTAL NOT-TO-EXCEED AMOUNT OF \$235,500.

WHEREAS, a BMX pump track has been identified as a community need in the City of Tracy park system including being identified in the Citywide Parks, Recreation and Trails Master Plan (PRTMP) as a recommendation to diversify recreational offerings; and

WHEREAS, as a part of the Fiscal Year 2022/2023 budget process, the City Council approved the creation of Clyde Bland Park BMX Pump Track Capital Improvement Project (CIP) 78190 (Project) and allocated \$1,000,000 in funding to the Project; and

WHEREAS, on November 15, 2022, pursuant to Resolution 2022-175, the City Council approved an on-call professional services list for landscape architectural, plan check, inspection, and project management services; and

WHEREAS, due to limited capacity of staff, coupled with regular requests from stakeholders to deliver this community amenity, staff is recommending hiring a professional project management consultant to implement the Project; and

WHEREAS, in March of 2023, staff engaged in discussions with Griffin Structures, Inc. (Griffin) from the approved on-call list of consultants to provide professional project management services related to the development of the Project; and

WHEREAS, staff completed a detailed review of the proposal received and determined that Griffin met the needs of the City and demonstrated the competence and professional qualifications necessary for the satisfactory performance of the required services; and

WHEREAS, the scope of work entails pre-construction, construction, and close out services for a total not-to-exceed amount of \$235,500; and now, therefore, be it

RESOLVED: That the City Council of the City of Tracy hereby finds and determines that the foregoing recitals are true and correct; and be it

FURTHER RESOLVED: That the City Council approves a Professional Services Agreement with Griffin Structures for Project Management Services for the Clyde Bland Park BMX Pump Track Project (CIP 78190) for a total not-to-exceed amount of \$235,500; and be it

FURTHER RESOLVED: That the City Council finds this action is for approval of a project manager and not implementation of the Project itself; additional discretionary

actions are necessary to effectuate design and construction of the Project; and any additional environmental review required under the California Environmental Quality Act will be conducted prior to any critical discretionary approvals that are required to be taken in order to implement the Project.

* * * * *

The foregoing Resolution 2024-_____ was adopted by the Tracy City Council on August 20, 2024, by the following vote:

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

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

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

Agenda Item 1.1

RECOMMENDATION

Staff recommends that City Council adopt a Resolution authorizing the City Manager to request from the San Joaquin Council of Governments Regional Early Action Planning grant funds 2.0 in the amount of \$1,129,000.

EXECUTIVE SUMMARY

The State Department of Housing and Community Development is providing Regional Early Action Planning (REAP) Grant 2.0 funds, through the San Joaquin Council of Governments (SJCOG), to plan and accelerate housing production throughout the region. The City of Tracy (City) is eligible to receive up to an estimated amount of \$1,129,000. The REAP grant will help pay the costs of the City's efforts to accelerate infill development that facilitate housing supply, choice, and affordability. This agenda item is to adopt a City Council resolution authorizing the pursuit of this funding from SJCOG.

BACKGROUND AND LEGISLATIVE HISTORY, AND ANALYSIS

The SJCOG previously received REAP grant funds from the State Department of Housing and Community Development for regional planning activities to accelerate housing production in San Joaquin County in 2023. SJCOG allocated a portion of the grant funds for San Joaquin County and the cities within the County to perform specified planning activities that would accelerate housing production. Based on population, the City of Tracy received \$187,075 in a non-competitive application process. The City has utilized these REAP monies to help fund the 2023-2031 Housing Element Update and the preparation of the Downtown visioning effort to support transit-oriented development.

The State of California continues to make housing a priority and funding opportunities are available to accelerate infill development that facilitates housing supply. In 2021, SJCOG applied for REAP 2.0 funds from the State on behalf of SJCOG participating jurisdictions. That funding has recently been provided as part of the current State budget. SJCOG is requesting resolutions from cities to request their allotment. The City may request up to \$1,129,000 to help fund our efforts to plan for and accelerate housing.

The City continues to work on efforts to certify the 2023–2031 Housing Element, along with the implementation measures and programs required by the State to be incorporated into the Housing Element. These activities include General Plan amendments and rezonings, downtown planning, evaluation of workforce/affordable housing policy and zoning amendments currently underway.

SJCOG is requesting a resolution adopted by the City Council formally requesting the REAP 2.0 grant monies at this time. SJCOG staff and City staff will then prepare a work program for activities and potential projects that will comply with the grant guidelines. REAP 2.0 funds must be expended and invoiced by December 2025.

To pursue this new round of funding, City staff is recommending that the City Council approve a resolution authorizing the submission of an application for REAP 2.0 funds from SJCOG. SJCOG is not requiring a work program for these funds at this time. Grant funds will most likely

be applied to pay for continued efforts to certify the Housing Element, hire professional consultant(s) to help develop future proposed planning programs and implementation programs, and potentially help fund housing projects.

FISCAL IMPACT

If awarded, this agenda item will allow the City to apply and receive approximately \$1,129,000 in grant funding to procure professional planning services and cover City consultant costs. The grant does not require a match from the City or elsewhere. Staff time associated with managing the projects and completing grant reporting is not expected to require additional staff hours beyond the normal budgeted scope of duties. Staff will return to Council upon grant award for acceptance and appropriation of funds.

PUBLIC OUTREACH / INTEREST

No public outreach required for this item.

COORDINATION

No coordination with other departments or outside parties required for this item.

CEQA DETERMINATION

The proposed request for REAP 2.0 Grant funding is not a project under the California Environmental Quality Act. Subsequent housing programs, studies and projects would need to complete environmental review. Pursuant to CEQA Guidelines Section 15061(b)(3), there is no possibility that the request for REAP 2.0 Grant funding will have an effect on the environment.

STRATEGIC PRIORITY

This agenda item is related to a City Council Strategic Priority: Quality of Life, Goal #4 – Facilitate the development of affordable housing via affordable housing-focused policies and incentives. Pursue, encourage and incentivize non-profit affordable housing developers to build in Tracy.

ACTION REQUESTED OF THE CITY COUNCIL

That City Council adopt a Resolution authorizing the City Manager to request from the San Joaquin Council of Governments Regional Early Action Planning grant funds 2.0 in the amount of \$1,129,000.

Prepared By: Craig Hoffman, Senior Planner

Reviewed by: Scott Claar, Acting Planning Manager
Forrest Ebbs, Director of Community and Economic Development
Sara Castro, Director of Finance
Bijal M. Patel, City Attorney
Karin Schnaider, Assistant City Manager

Approved by: Midori Lichtwardt, City Manager

TRACY CITY COUNCIL

RESOLUTION 2024-_____

AUTHORIZING THE CITY MANAGER TO REQUEST FROM THE SAN JOAQUIN COUNCIL OF GOVERNMENTS REGIONAL EARLY ACTION PLANNING GRANT FUNDS 2.0 IN THE AMOUNT OF \$1,129,000.

WHEREAS, the California Housing and Community Development Department (HCD) has provided funds for the Regional Early Action Planning (REAP) 2.0 Grant program; and

WHEREAS, San Joaquin Council of Governments (SJCOG) has been delegated the responsibility for the administration of the REAP 2.0 grant allocation, establishing necessary procedures; and

WHEREAS, HCD awarded the allocation to SJCOG on behalf of San Joaquin County Member Agencies (City of Escalon, City of Lathrop, City of Lodi, City of Manteca, City of Ripon, City of Stockton, City of Tracy, and County of San Joaquin); and

WHEREAS, SJCOG and participating member agencies will conduct planning activities that will accelerate housing production and housing-relative initiatives; and

WHEREAS, the City of Tracy (City) is eligible to receive up to \$1,129,000 in REAP 2.0 funds from SJCOG; and

WHEREAS, if awarded such funds, the City will use the monies to conduct activities consistent with the grant requirements; commits to providing documentation of work completed and other deliverables consistent with the grant requirements; and

WHEREAS, to apply for the REAP 2.0 funds, SJCOG is requesting a resolution adopted by the City Council formally requesting the REAP 2.0 grant monies at this time; and

WHEREAS, the REAP 2.0 grant funding is consistent with City Council Strategic Priority: Quality of Life, Goal #4 – Facilitate the development of affordable housing via affordable housing-focused policies and incentives. Pursue, encourage and incentivize non-profit affordable housing developers to build in Tracy; now, therefore, be it

RESOLVED: That the City Council of the City of Tracy hereby authorizes the City Manager to requests from the San Joaquin Council of Governments Regional Early Action Planning grant funds 2.0 in the amount of \$1,129,000; and be it

FURTHER RESOLVED, That the proposed request for REAP 2.0 grant funding is not a project under the California Environmental Quality Act (CEQA); subsequent housing programs, studies and projects would need to complete environmental review; and pursuant to CEQA

Guidelines Section 15061(b)(3), there is no possibility that the request for REAP 2.0 grant funding will have an effect on the environment.

The foregoing Resolution 2024-_____ was adopted by the Tracy City Council on the 20th day of August 2024, by the following vote:

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

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

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

Agenda Item 1.J

RECOMMENDATION

Staff recommends that the City Council adopt a resolution (1) accepting Landscape Improvements for Retention Basin, Tracy Hills Phase 1B, Tract 4084, (2) authorizing the City Engineer to accept a One-Year Warranty Bond, and (3) authorizing the City Clerk to file the Notice of Completion with the San Joaquin County Recorder's Office.

EXECUTIVE SUMMARY

This agenda item seeks approval of a resolution accepting the completion of Landscape Improvements for Retention Basin, Tracy Hills Phase 1B, Tract 4084, by Tracy Phase I, LLC, a Delaware Limited Liability Company (Developer). This would authorize the City Engineer to accept a One-Year Warranty Bond for the improvements. This agenda item also requests an authorization for the City Clerk to file the Notice of Completion with the San Joaquin County Recorder's Office.

BACKGROUND AND LEGISLATIVE HISTORY

Developer has completed the landscape improvements for the Phase 1B Retention Basin in Tracy Hills in accordance with project plans and specifications ("Work") and the City Engineer has determined the Work to be acceptable.

On November 10, 2020, the Tracy City Council (City Council) adopted the Tracy Hills Specific Plan Amendment for Tracy Hills Phase 1B/1C and approved various related land use entitlements, including that certain Small-Lot Vesting Tentative Subdivision Map for Tracy Hills Phase 1B, Tract 4004, processed under Application No. TSM18-0006 and approved by Resolution No. 2020-188 (Tentative Map). The Tentative Map includes 432 single-family residential lots, park parcels, Homeowners Association (HOA) recreation area parcel, retention basin parcel, and other parcels to be owned and maintained by the HOA, Developer, or the City on approximately 309.9 acres located in the Tracy Hills Specific Plan Area, west of Tracy Hills Phase 1A in the vicinity of Tracy Hills Drive.

On October 19, 2021, the City Council approved the Tract 4084 Tracy Hills Village 9B Final Map (Final Map) which included dedication in fee of Parcel K for the of construction of a Bioretention Basin, drainage, park, and utility purposes by Resolution 2021-149. The Final Map was filed on November 17, 2021, in Book 44 of Maps and Plats Pg. 2 Recorder's Series No. 2021-191726 by the San Joaquin County Recorder's Office. The Final Map also included an acceptance by the City Clerk, subject to the satisfactory completion of the Work.

A Rough Grading Permit for Tracy Hills Phase 1B was issued to the Developer's grading contractor by the City on October 17, 2021. Under this permit, work included, in part, construction of the Phase 1B Retention Basin. All work required under the Rough Grading Permit was completed and approved by the City on August 17, 2021.

On September 19, 2023, the City Council approved a Subdivision Improvement Agreement with the Developer for the Phase 1B Neighborhood Park pursuant to Resolution No. 2023-196.

On April 4, 2023, the City Engineer approved landscaping plans for the Phase 1B Retention Basin and the Phase 1B Neighborhood Park (“Park”). Completed improvements for the Park were accepted by the City Council on June 18, 2024, by Resolution No. 2024-092. A separate agreement was not executed between the City and the Developer for the public improvements at the 1B Retention Basin. These remaining improvements, consisting of the landscape, hardscape, and irrigation improvements on the Phase 1B Retention Basin, are now complete.

ANALYSIS

The landscaping improvements for the retention basin were designed by FORMA of Costa Mesa, California, and included eighteen (18) sheets of plans entitled “Landscape Construction Drawings for Tracy Hills Phase 1B Retention Basin, Tract 4004, Phase 1B Tracy, California”. The Work included landscaping, irrigation, and split rail fencing around the retention basin. Plans were signed by the City Engineer on April 4, 2023.

The City Engineer has inspected the completed Work and recommends its acceptance, as the Work has been completed in accordance with the approved plans and specifications. The required 90-day maintenance period is now finished.

Public improvements are valued as follows:

Landscaping	\$248,094
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In accordance with Tracy Municipal Code Section 12.36.080(b)(3) and Section 66499 *et seq.* of the Subdivision Map Act, Developer has furnished a one-year Warranty Bond in the form of a letter of credit in the amount of \$24,809, ten percent (10%), of construction cost, effective on the date of the City Council acceptance of this Work.

A total of 266,460 square feet (6.12 acres) was dedicated as a public parcel (Parcel K) on Tract No. 4084 – Village 9B. The parcel was accepted by the City subject to the satisfactory completion of the retention basin, the Work, that is the subject of this item.

Filing of the Notice of Completion will commemorate the satisfactory completion of the Work, and, in accordance with the acceptance of the Final Map, authorize the City Clerk to accept the dedication of Parcel K as the conditions of acceptance have now been met.

FISCAL IMPACT

All Work was completed by the Developer in accordance with the City approved plans and specifications and there is no fiscal impact associated with this action. Ongoing maintenance of the improvements will be completed by the City and is financed by the Tracy Hills Community Facility District.

COORDINATION

Project design and construction activities were coordinated with the Parks and Recreation Department and the Urban Forestry Division of Public Works.

CEQA DETERMINATION

Prior to commencement of construction, the work was determined to be consistent with the Environmental Impact Report (EIR) for the Tracy Hills Specific Plan certified by the City Council on April 5, 2016. Pursuant to California Environmental Quality Act Guidelines Section 15183, no additional environmental documentation was required. An analysis of the Work showed that there were no significant on-site or off-site impacts which were not already discussed in the existing EIR. This action is an acceptance of the completed Work that was analyzed and does not raise any new unforeseen physical impacts.

STRATEGIC PLAN

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

ACTION REQUESTED OF THE CITY COUNCIL

Staff recommends that the City Council, by resolution, (1) accept Landscape Improvements for Retention Basin, Tracy Hills Phase 1B, Tract 4084, (2) authorize the City Engineer to accept a One-Year Warranty Bond, and (3) authorize the City Clerk to file the Notice of Completion with the San Joaquin County Recorder's Office.

Prepared by: Miguel Hernandez, Construction Project Manager

Reviewed by: Koosun Kim, PE, City Engineer
Sara Castro, Finance Director
Bijal M. Patel, City Attorney
Karin Schnaider, Assistant City Manager

Approved by: Midori Lichtwardt, City Manager

CITY ATTORNEY'S OFFICE

TRACY CITY COUNCIL

RESOLUTION 2024-_____

(1) ACCEPTING LANDSCAPE IMPROVEMENTS FOR RETENTION BASIN, TRACY HILLS PHASE 1B, TRACT 4084, (2) AUTHORIZING THE CITY ENGINEER TO ACCEPT A ONE-YEAR WARRANTY BOND, AND (3) AUTHORIZING THE CITY CLERK TO FILE THE NOTICE OF COMPLETION WITH THE SAN JOAQUIN COUNTY RECORDER'S OFFICE.

WHEREAS, on November 10, 2016, the City Council approved a Small -Lot Vesting Tentative Subdivision Map by Resolution No. 2020-188 with Tracy Phase I, LLC, a Delaware Limited Liability Company (Developer) within Phase 1 of the Tracy Hills development; and

WHEREAS, on October 19, 2021, the City Council approved the Tract 4084 Village 9B Final Map by Resolution No. 2021-149 which included the dedication of, among several other dedications, Parcel K for the purposes of constructing a Retention Basin, the subject of this item; and

WHEREAS, a total of 266,460 square feet (6.12 acres) was dedicated as a public parcel (Parcel K) for retention basin purposes on the Final Map, Tract 4084, recorded on the 17th Day of November 2021 in Book 44 of Maps and Plat, at Page 2, San Joaquin County Records, and the parcel was accepted by the City subject to the satisfactory completion of improvements; and

WHEREAS, on October 17, 2021, a Rough Grading Permit was issued by the City, allowing construction of the Tracy Hills Phase 1B Retention Basin to proceed, work was completed and approved by the City on August 17, 2021; and

WHEREAS, on April 4, 2023, the City Engineer approved landscaping plans for the Phase 1B Retention Basin and the Phase 1B Neighborhood Park (Park) and on September 19, 2023, the City Council approved a Subdivision Improvement Agreement with the Developer for the Park pursuant to Resolution No. 2023-196; and

WHEREAS, completed improvements for the Park were accepted by the City Council on June 18, 2024, by Resolution No. 2024-092; and

WHEREAS, a separate agreement was not executed between the City and the Developer for the public improvements at the 1B Retention Basin; and

WHEREAS, the Developer has completed construction of the remaining work, consisting of the landscaping, irrigation, and post and cable fencing around the Phase 1B Retention Basin (collectively, the Work); and

WHEREAS, the City Engineer has inspected the completed Work and recommends acceptance of all the improvements completed in accordance with the approved plans; and

WHEREAS, the Public improvements are valued as follows:

Landscaping \$248,094

; and

WHEREAS, in accordance with Tracy Municipal Code Section 12.36.080(b)(3) and Section 66499 *et seq.* of the Subdivision Map Act, Developer has furnished a one-year Warranty Bond in the form of a letter of credit in the amount of \$24,809, ten percent (10%) of construction cost, effective on the date of the City Council acceptance of this Work; and

WHEREAS, prior to commencement of construction, the City determined the Work was within the scope of the development evaluated by the existing Environmental Impact Report (EIR) for the Tracy Hills Specific Plan certified by the City Council on April 5, 2016, and did not raise any new unforeseen physical impacts so no further environmental review was required for the project under California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15183; now, therefore, be it

RESOLVED: That the City Council for the City of Tracy determines that the actions taken herein comply with CEQA pursuant to CEQA Guidelines Section 15183, because they are consistent with the existing EIR for the Tracy Hills Specific Plan certified by the City Council on April 5, 2016, and the action requested does not raise any new unforeseen physical impacts; and be it

FURTHER RESOLVED: That the City Council hereby accepts the Work for Retention Basin, Tracy Hills Phase 1B, Tract 4084, in accordance with the approved plans and specifications; and be it

FURTHER RESOLVED: That the City Council authorizes the City Engineer to accept the one-year Warranty Bond for the Work, pursuant to Tracy Municipal Code Section 12.36.080(b)(3) and Section 66499 *et seq.* of the Subdivision Map Act, in the form of a letter of credit in the amount of \$24,809, effective as of the date of this Resolution; and be it

FURTHER RESOLVED: That the City Council authorizes the City Clerk to file a Notice of Completion with San Joaquin County Recorder’s Office.

The foregoing Resolution 2024-_____ was adopted by the Tracy City Council on the 20th day of August 2024, by the following vote:

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

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

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

Agenda Item 1.K

RECOMMENDATION

Staff recommends that the City Council adopt a resolution:

1) Determining that compliance with the standard procurement processes is not in the best interests of the City pursuant to Tracy Municipal Code 2.20.140(b)(6) and dispensing such requirement for the procurement of janitorial services for the City.

(2) Approving a Professional Service Agreement with Madill Enterprises for janitorial services for an initial term of three months and a total not to exceed amount of \$116,717.

EXECUTIVE SUMMARY

This agenda item seeks City Council approval of a Professional Services Agreement (PSA) with Madill Enterprises, Inc., DBA Advanced Property Services (Contractor) to provide janitorial services from September 1, 2024, to November 30, 2024 with a total not-to-exceed amount of \$116,717. Contractor currently provides janitorial services for the City and the current PSA is due to expire on August 31, 2024. This agreement is needed to facilitate uninterrupted janitorial services for the City during the time the City is evaluating various proposals received in the Request for Proposals (RFP) issued on June 12, 2024.

BACKGROUND AND LEGISLATIVE HISTORY

The City of Tracy has approximately 211,683 square feet of office and multi-use space that require janitorial services to properly maintain each facility. The facilities being serviced are as follows:

FACILITY	SQUARE FOOTAGE
City Hall & Council Chambers	40,700
Police Department	27,616
Police Annex Facility	10,817
Police Gun Range	1,000
Community Center	9,030
Lolly Hansen Senior Center	5,224
Support Service Building	11,116
Fire Administration Building	9,646
Tracy Animal Shelter (offices)	1,000
Tracy Library	17,058
Tracy Museum	9,654
Lammersville Schoolhouse	1,032
Boyd Service Center Admin.	6,000
Tracy Transit Annex	768
BSC Modular Trailer 1	2,160
BSC Modular Trailer 2	1,440
BSC Shop Restrooms	1,000
Central Garage Office	180
Joe Wilson Pool	2,000

Grand Theatre	39,000
Old Jail House	1,077
Tracy Transit Station	6,000
Sports Complex Meeting Room	1,100
John Jones Water Treatment Plant	2,509
Wastewater Treatment Plant	4,556
Total	211,683

On June 11, 2018, the City issued an RFP for the janitorial services for the above noted City facilities. All proposals were submitted to the Department of Public Works on June 21, 2018. Madill Enterprise, Inc., DBA Advanced Property Services was selected as the most qualified Contractor. After negotiations between the City and Contractor, the parties reached an agreement for the performance of services from September 1, 2018, to August 31, 2020 with an option to extend for another four (4) years, not to exceed six (6) years total. On October 1, 2020, the parties agreed to extend the Agreement to August 31, 2024.

Since the Agreement will expire on August 31, 2024, a new RFP was issued on June 12, 2024, for janitorial services for the noted City facilities. On July 5, 2024, the City received thirteen (13) proposals in response to the RFP. Due to the number of proposals received, staff needs more time to adequately review these proposals. To ensure there is no interruption in services, staff is requesting authority to enter into an interim agreement with the current Contractor to allow staff the time needed to finalize a recommendation from the bidder pool.

Compliance with the formal competitive bidding procedures set out in Tracy Municipal Code (TMC) 2.20.140(b)(6) is not in the best interest of the City for this interim agreement. The reasons are as follows:

- Delay in the selection of a Contractor for the new janitorial services agreement since City staff needs additional time to evaluate the thirteen proposals that were submitted on July 5, 2024;
- Disruption of janitorial services, which will negatively affect the City staff and citizens' health and safety due to bacteria, potential illness, and accidents as well as maintaining our facilities' positive image for all our guests; and
- With no contracted janitorial services, the City currently has limited staff that may be assigned to these duties without affecting their daily responsibilities and the smooth operation of the City.

ANALYSIS

On June 12, 2024, in accordance with TMC 2.20.180, the City issued an RFP for the proposed services and published it on the City's website. A total of thirteen (13) proposals were received prior to the deadline. Due to the amount of information and cost comparisons needing to be performed, staff is requesting the City Council authorization to enter into an interim agreement with the current Contractor to allow staff to properly complete the decision process and a transition plan, if a new vendor is selected.

Staff has negotiated and reached terms for an interim agreement with Madill Enterprises, Inc., DBA Advanced Property Services, from September 1, 2024, to November 30, 2024, with the same scope of services as the current agreement. This extension will provide additional time for staff to evaluate the proposals, allow for proper noticing to the current provider as well as notice and ramp up time for a potentially new service provider.

CEQA DETERMINATION

The action is for services only and does not involve any construction. As such, this action is not a “project” under the California Environmental Quality

STRATEGIC PLAN

This agenda item is consistent with the City’s Quality of Life Strategy and meets the goals to ensure physical infrastructure and systems necessary for the health and safety of the Tracy community and Staff.

FISCAL IMPACT

The cost of the goods and services provided by the vendor in the amount of \$116,717 will be accounted for in the adopted FY24-25 annual Building Maintenance budget.

The City has been contracted with Madill Enterprises, Inc., dba Advanced Property Services since April 1, 2007, to current. In the most recent PSA from September 1, 2018, through August 31, 2024, Contractor’s fee is Not to Exceed \$477,817 annually. The actual expenses are below for fiscal years 2017-2024:

Fiscal Year	Total Expenses
2023-2024	\$314,676.10
2022-2023	\$441,234.12
2021-2022	\$454,138.93
2020-2021	\$366,157.20
2019-2020	\$366,371.33
2018-2019	\$350,125.96
2017-2018	\$301,432.17
Total	\$2,594,135.81

ACTION REQUESTED OF THE CITY COUNCIL

Staff recommends that the City Council adopt a resolution:

1) Determining that compliance with the standard procurement processes is not in the best interests of the City pursuant to Tracy Municipal Code 2.20.140(b)(6) and dispensing such requirement for the procurement of janitorial services for the City; and

(2) Approving a Professional Service Agreement with Madill Enterprises for janitorial services for an initial term of three months and a total not to exceed amount of \$116,717.

Prepared by: Jim Thompson, Operations Superintendent

Reviewed by: David Murphy, Assistant Director of Utilities
Sara Castro, Director of Finance
Bijal Patel, City Attorney
Karin Schnaider, Assistant City Manager

Approved by: Midori Lichtwardt, City Manager

Attachment A: Professional Services Agreement with Madill Enterprises

CITY OF TRACY
PROFESSIONAL SERVICES AGREEMENT WITH
Madill Enterprises, Inc., DBA Advanced Property Services, a California corporation

This Professional Services Agreement ("Agreement") is entered into between the City of Tracy, a municipal corporation ("City"), and Madill Enterprises, Inc., DBA Advanced Property Services, a California corporation ("Contractor"). City and Contractor are referred to individually as "Party" and collectively as "Parties."

Recitals

- A. City desires to retain the professional services of Contractor to provide janitorial services to various City facilities as further described herein and in Exhibit A.
- B. City currently has a Professional Services Agreement (PSA) with Madill Enterprises, Inc., DBA Advanced Property Services from September 1, 2018, to August 31, 2024.
- C. On June 12, 2024, City has issued a new Request for Proposal (RFP) for Janitorial Services for various City Facilities 2024-2026. On July 5, 2024, thirteen (13) qualified contractors submitted their proposals.
- D. This agreement is executed pursuant to Tracy Municipal Code Section 2.20.140(b)(6) because compliance with the procedures is not in the best interest of the City. This interim agreement is required so that City can continue to receive janitorial services while reviewing and evaluating the thirteen (13) qualified proposals in the RFP issuance on June 12, 2024.
- E. This interim Agreement is being executed pursuant to Resolution No. 2024-____ approved by the City of Tracy City Council on August 20, 2024.

NOW THEREFORE, for good and valuable consideration the sufficiency of which the Parties hereby acknowledge, the Parties mutually agree as follows:

1. **Scope of Work.** Contractor shall perform the professional services, tasks, and scope of work described in Exhibit A attached hereto and incorporated herein by this reference ("Scope of Work"). The Scope of Work shall be performed by, or under the direct supervision of, Contractor's "Authorized Representative": Scott Madill, President. Contractor shall not replace its Authorized Representative, nor shall Contractor replace any of the personnel listed in Exhibit A, nor shall Contractor use or replace any subcontractor or subconsultant, without the City's prior written consent. The City may terminate this Agreement if Contractor makes any such change or uses or replaces any such subcontractor or subconsultant. Unless otherwise stated on Exhibit A, Contractor shall furnish, at its own expense, the materials, equipment, supplies, and other resources necessary to perform the Scope of Work. The City reserves the right to contract with other firms and/or contractors during the term of this Agreement to provide the City with the same or similar Scope of Work as described in Exhibit A.
2. **Time of Performance.** Time is of the essence in the performance of the Scope of Work under this Agreement and the timing requirements set forth herein shall be strictly adhered to unless otherwise modified in writing in accordance with this Agreement. If dates for performance are set out in Exhibit A, Contractor shall begin performance, and shall complete all required Scope of Work no later than the dates set forth in Exhibit A. 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. If Exhibit A indicates that Scope of Work shall only be performed upon request, or if the City otherwise communicates the same to Contractor, Contractor shall not perform said Scope of Work until the City requests such performance. Contractor shall submit all requests for time extensions to the City in writing no later than ten (10) days after the start of the condition which purportedly caused the delay, and not later than the date on which performance is due. The City may grant or deny such requests in its sole and absolute discretion.

2.1 Term. The term of this interim Agreement shall commence on September 1, 2024, and it shall be end on November 30, 2024.

3. Compensation. City shall pay Contractor on a time and expense basis for Scope of Work performed under this Agreement at the billing rates set forth in Exhibit B, which is attached hereto and incorporated herein by this reference.

3.1 Not to Exceed Amount. Contractor's total compensation under this Agreement shall not exceed \$116,717 (one hundred sixteen thousand seven hundred seventeen) Dollars total. Notwithstanding the foregoing, the payment of any funds under this Agreement shall be subject to the City of Tracy appropriation of funds for the Scope of Work. This Agreement shall automatically terminate in the event that such funds are not appropriated. Unless specifically stated otherwise or agreed to in writing and approved by City Council, the fees proposed by Contractor, as set forth in Exhibit B hereto, shall remain unchanged for the entire term of this Agreement and any extensions of this Agreement. It is understood and agreed that Contractor may not receive compensation up to the Not-to-Exceed Amount (or any other amount), and Contractor's total compensation under this Agreement will depend on the Scope of Work requested and approved by the City. 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 "Not-to-Exceed Amount" provided in this section without the City's prior written approval.

3.1.1 City Budget Limitations. This Agreement will terminate without penalty, liability or expense of any kind to City at the end of any fiscal year if funds are not appropriated for the next succeeding fiscal year for this Agreement. If funds are appropriated for a portion of the fiscal year, this Agreement will automatically terminate, without penalty, liability or expense of any kind at the end of the term for which funds are appropriated. City has no obligation to make appropriations for this Agreement in lieu of appropriations for new or other agreements. City budget decisions are subject to the discretion of the City Council. Contractor's assumption of risk of possible non-appropriation is part of the consideration for this Agreement.

3.2 Invoices. Contractor shall submit monthly invoice(s) to the City that describe in detail satisfactory to the City: the services performed, the times and dates of performance, and the names of the person(s) performing the Scope of Work.

3.2.1 If Contractor is providing the Scope of Work 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 Contractor's failure to submit invoice(s) in accordance with this Section may result in the City rejecting said invoice(s) and thereby delaying payment to Contractor.

3.2.3 Contractor shall submit invoices no later than 90 days after completion of a portion of the Scope of Work. City has no obligation to pay invoices delivered greater than 90 days after the date of performance of the Scope of Work.

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

3.4 Final Payment. 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 or performance of the Scope of Work. 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 subconsultants 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 subconsultants.

3.5 Books and Accounts. 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, and reimburse the City for, any and all liabilities, obligations, losses, damages, injunctions, suits, actions, fines, penalties, claims, demands, administrative and judicial proceedings and order, judgments, remedial action requirements, costs and expenses of every kind or nature, and all costs and expenses incurred in connection therewith, including, without limitation, reasonable attorneys' fees and court costs ("**Claims**") arising directly or indirectly from or out of (including any and all related costs and expenses), relating or pertaining to or resulting from, in whole or in part, this Agreement; any act, omission, or event relating in any way to Contractor's obligations under this Agreement; and/or Contractor's breach of this Agreement, except to the extent such Claim is caused solely by the active negligence or willful misconduct of the City. In this Section 4, "City" means the City, its officials, officers, agents, employees and volunteers; "Contractor" means the Contractor, its employees, agents and subcontractors.

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 and all Claims relating to or in connection with such a finding and/or determination.

The provisions of this section survive the expiration 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 the Scope of Work 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 Contractor in an amount not less than \$1,000,000 per claim.

5.5 Endorsements. Contractor 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, Contractor's coverage shall be primary insurance with respect to the City. Any insurance maintained by the City shall be in excess of the Contractor's insurance and shall not contribute with it.

5.6 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.

5.7 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.

5.8 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 and, in any event, within five (5) days of such request.

5.9 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.

5.10 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, without cause, by giving ten (10) days' written notice to Contractor. Within five (5) days of such a termination, Contractor shall return and deliver to City all original documents relating to the Scope of Work 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 the termination notice is given.

7. 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 Scope of Work, upon termination of this Agreement, or within five (5) days of any 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.

8. 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, subcontractors and subconsultants, including compliance with social security requirements, federal and state income tax withholding and all other regulations governing employer-employee relations.

9. Conflicts of Interest. Contractor (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 Contractor maintains or acquires such a conflicting interest, the City may terminate any contract (including this Agreement) involving Contractor's conflicting interest. The Contractor represents that it is familiar with the local and state conflict of interest laws, and agrees to comply with those laws in performing this Agreement. The Contractor represents and warrants that the representations made by the Contractor concerning unfair competitive advantage and conflicts of interest in connection with its submissions in response to the City's procurement for this Agreement were true and accurate both when made and as of the date of this Agreement. Contractor represents and warrants that it has not and shall not offer or deliver any City officer, public official, or employee any gifts or donations in violation of Federal, State and/or local law.

10. 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; or 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.

11. 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 the City:

City of Tracy
Attn: David Murphy, Operations Assistant Director
333 Civic Center Plaza
Tracy, CA 95376

To Contractor:

Madill Enterprises, Inc.,
DBA Advanced Property Services
Attn: Scott Madill, President
3045 65th Street #8
Sacramento, CA 95820

With a copy to:

City Attorney
333 Civic Center Plaza
Tracy, CA 95376

12. General Provisions.

12.1 Standard of Care. Unless otherwise specified in this Agreement, the standard of care applicable to Contractor's performance of the Scope of Work 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.

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

12.3 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.

12.4 Assignment and Delegation. Contractor may not assign, transfer or delegate this Agreement or any portion of it without the City's advance 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.

12.5 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.

12.6 Compliance with the Law. Contractor shall comply with all applicable local, state, and federal laws, including, without limitation, those identified below, whether or not such laws are expressly stated in this Agreement.

12.6.1 Prevailing Wage Laws. Contractor 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, Contractor 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>. Contractor 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.

12.6.2 Non-discrimination. Contractor 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. 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.).

12.7 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 authorized to do business in California, in good standing with the Secretary of State, and in good standing with all agencies having jurisdiction over Contractor (including any licensing agencies). If Contractor is a suspended entity at the time it enters into this Agreement, City may take steps to have this Agreement declared voidable.

12.8 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.

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

12.10 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.

12.11 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.

12.12 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.

12.13 Entire Agreement. This Agreement and the attached Exhibits comprise the entire integrated understanding between the Parties concerning the services to be performed and the matters contemplated herein. This Agreement supersedes all prior negotiations, representations or agreements (in each case, whether oral or in writing). All exhibits attached hereto are incorporated by reference herein.

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

12.15 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.

13. 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.

[Signature Page to Follow]

As of the date of last signature below, the undersigned Parties agree to the full performance of the terms set forth in this Agreement and have caused this Agreement to be duly executed.

City of Tracy, a Municipal Corporation

Madill Enterprise, Inc., DBA Advanced Property Services, A California corporation

By: _____
Nancy D. Young
Title: Mayor
Date: _____

By: Scott Madill
Scott Madill
Title: President
Date: 7-23-2024

Attest:

Federal Employer Tax ID No. 68-0412101

Adrienne Richardson, City Clerk

Approved as to form:

Bijal M. Patel, City Attorney

Exhibits:

- A Scope of Work
- B Compensation

EXHIBIT A - Scope of Work

For

JANITORIAL SERVICES AT VARIOUS CITY FACILITIES

CITY OF TRACY, A MUNICIPAL CORPORATION

OF SAN JOAQUIN COUNTY, CALIFORNIA

* * * * *

1. DESCRIPTION OF WORK:

The intent and purpose of these specifications are to provide for complete janitorial services for the various City Facilities as described in these Specifications in a neat and workmanlike manner.

2. SCOPE OF SERVICES:

- A. **EQUIPMENT AND SUPPLIES:** Contractor shall provide and maintain all janitorial equipment required to perform janitorial services as well as all cleaning agents, chemicals, floor finishes, disinfectants, and plastic trash bags. **Note: all cleaning supplies must be "Green" environmentally preferred products approved the City.** Paper products and hand soaps will be furnished by the City of Tracy.
- B. **EMPLOYEES/STAFF OF CONTRACTOR:** Contractor shall provide all names, addresses, social security numbers, and driver's license numbers of employees prior to any such employees working within the City premises. Employees must be directly employed by the Contractor. No employees may be hired through a third party. No employee will be allowed to work under this Agreement until City of Tracy Police Department background checks and fingerprinting have been performed. Any change in personnel must be reported to the Public Works Superintendent in writing as soon as possible. Upon CITY's request, Contractor's employees must furnish documentation of paperwork authorizing employment in the State of California.

Contractor is responsible for the actions of its employees while such employees are on/in City premises. Contractor must comply with the statutory requirements relating to payroll records, including maintenance of the records, their certification, and their availability for inspection (Labor Code section 1776).

C. PROPER DRESS AND CONDUCT:

- 1. All employees of selected vendor must wear a standard uniform with selected vendor logo or emblem and full-length pants approved by Contractor and City.
- 2. Employees may not wear any clothing that is suggestive or carries any message, slogan or phrases that may be perceived as offensive.
- 3. Under no circumstances is profanity permitted.
- 4. Smoking is not permitted while working.
- 5. Radios are not permitted during business hours.
- 6. Guests are not permitted on jobsite; children are not permitted on jobsite.
- 7. Every effort will be made to respect the privacy of the staff or citizens in the building.

D. SUPERVISOR:

Contractor's supervisors shall be thoroughly familiar with all phases of the contract work and shall possess a minimum of two (2) years of supervisory experience managing janitorial crews and overseeing janitorial services. The CITY shall review each supervisor's qualifications, and should a supervisor lack the necessary qualifications, the Contractor shall replace such supervisor with a more qualified person. Supervisors shall be well qualified to operate all equipment under their charge and be able to train the Contractor's employees in its operation. The City's Public Works Superintendent needs to be made aware, in writing, when any change occurs.

E. EMERGENCY SERVICES AND EXTRA WORK:

CONTRACTOR agrees to provide emergency janitorial services with a 24-hour per day emergency phone number and two-hour physical response time. Emergency services will be billed as agreed upon. Contractor also agrees to perform extra janitorial work as requested at a rate to be specified separate from the scheduled rates. Additional facilities or square footages added by the CITY, due to new construction or acquisition will be negotiated in accordance with the Agreement. No extra or additional work will be considered unless a separate estimate is given in writing and approved in writing by the City.

NIGHTLY GENERAL JANITORIAL SERVICES:

Nightly Services: Monday through Friday

1. Secure all locks each visit. Lock front and all exterior doors and stairwell doors. Set alarms where applicable.
2. Vacuum all carpets.
3. Sweep and mop all lobby and stairway tile work, including tile from front doors to sidewalks.
4. Dust mop all non-carpeted floors with dust mop. Damp-mop to remove spills and water stains treat as required.
5. Dust all cleared desks, office furniture and other horizontal services with treated dust cloths.
6. Empty all exterior ashtrays and urns, clean and sanitize as needed.
7. Empty all wastebaskets, trash containers, and containers for recyclables. Replace liners as needed, including for exterior trash containers.
8. Remove all trash and recycled paper containers from floors to the designated trash disposal areas. Boxes marked trash are to be thrown away and/or recycled.
9. Remove fingerprints, dirt smudges, graffiti, etc. from all doors, frames, glass partitions, all windows, light switches, elevator doorjamb, and elevated interiors.
10. Return chairs and wastebaskets to their proper positions.
11. Sweep, mop, and clean marks from walls and baseboards.
12. Clean, sanitize, and polish drinking fountains and sinks.
13. Dust and remove debris from all metal door thresholds.
14. Wipe clean smudged bright-work and glass cases.
15. Clean resilient, composition, tiled, and cement floors as required and per manufacturer's cleaning recommendations.
16. Steam clean carpeting **minimum once per year or as required to maintain a clean look.**
17. In computer rooms, anti-static sprays to be applied to carpeting upon request.
18. Council Chamber must be cleaned by 5:00 p.m.
19. Clean stairwells each night.
20. Keep all custodial closets in neat and clean order.

21. Remove and dispose of all litter around exterior of each facility.

Note: Recycled goods – paper – must be disposed of in the correct bins.

Weekly Services:

1. Dust all low reach areas, including chair rugs, structural and furniture ledges, baseboards, window sills, door louvers and other ventilation louvers, wood paneling, molding, etc.
2. Dust inside all door jams.
3. Wipe clean and polish all metal and bright work.
4. Edge vacuum all carpeted areas.
5. Dust and/or wash all directory boards and display glass.
6. Dust in place all picture frames, charts, graphs, and similar wall hangings.
7. Vacuum and dust vault area upon request.
8. Bi-Weekly buff all Terrazzo floors, using high speed buffer (with hardening agent).

Monthly Service:

1. Dust all high reach areas, including tops of door frames, structural and furniture edges, air conditioning diffusers, louvers, tops of partitions, picture frames, blinds, and other areas not reached in nightly or weekly services.

Quarterly Services:

1. Clean interior mats and pads.
2. Clean all vertical and horizontal blinds.

Semi-Annual Services:

1. Strip and wax all resilient, composition, tiled and/or cement floors as required.
2. Shampoo all carpeted areas.
3. Wash and clean all interior glass surfaces.

ALL RESTROOM SERVICES:

Nightly Services:

1. Restock all restrooms with supplies from specified stock, including paper towels, toilet tissue, seat covers, and hand soap as necessary.
2. Restock all sanitary napkin and tampon dispensers from specified stock as needed.
3. Wash and polish all mirrors, dispensers, sinks, faucets, flushometers, and bright-work with non-abrasive disinfectant cleaners.
4. Wash and sanitize all toilets, toilet seats, urinals and sinks.
5. Remove stains, de-scale toilets, urinals, and sinks, as needed.
6. Mop all restroom floors with disinfectant germicidal solution.
7. Empty and sanitize all waste and sanitary napkin and tampon receptacles.
8. Remove restroom trash.
9. Clean fingerprints, marks and graffiti from walls, partitions, glass aluminum, and light switches.
10. Maintain floor traps free of odor.

Weekly Services:

1. Dust all low and high reach areas, including structural ledges, mirror tops, partition tops and edges, air conditioning diffusers, and return air grills.
2. In all restrooms, keep floor drains filled with water and/or deodorizer.

Monthly Service:

1. Wipe down all walls and metal partitions.
2. Clean all ventilation louvers, vents and light fixtures.
3. Clean all doors and door jams as needed to maintain clean condition.
4. Scrub and wash floors as needed to maintain clean condition.

ALL WINDOW WASHING:

The outer windows will be washed **two (2) times per year**. The inside windows will be washed once per year. All glass partitions inside the building will be spot cleaned as listed above but will be washed completely once per year (at the same time the inside windows are cleaned). Special care must be provided on the outside windowsill areas at City Hall.

ALL PASSENGER ELEVATORS CLEANING:

Nightly Services:

1. Polish rails on elevator walls.
2. Clean cab walls and interior doors.
3. Clean outside surfaces of all elevator doors and frames.
4. Vacuum and edge all cab floor carpeting thoroughly.
5. Vacuum all elevator thresholds.

Weekly Services:

1. Thoroughly clean entire interior stainless-steel surfaces of all doors and frames, and outside surfaces of all doors and frames.
2. Thoroughly clean all thresholds.
3. Clean interior cab walls.
4. Wipe clean all elevator cab light diffusers.
5. Wipe clean entire cab ceiling.

ALL TRASH AND SERVICE ENTRANCE AREAS:

Nightly Services:

1. Place all miscellaneous trash and debris in the building trash receptacles, compactors, or balers.
2. Sweep entire area.

ALL SERVICE CORRIDORS & STAIRWELLS:

Nightly Services:

1. Remove trash from all above areas.
2. Maintain, in orderly manner, all janitorial supplies and paper products in the storage rooms and service sink closets.
3. Maintain an inventory control sheet of supplies.
4. Maintain an orderly arrangement of all equipment.

Weekly Services:

1. Damp-mop all composition floors in storerooms.
2. Clean and disinfect service sinks.
3. Sweep storeroom floors.
4. Sweep stairwells and dust accordingly.

SPECIAL NOTE ON CITY HALL CLEANING:

City Council Meetings are held on the 1st and 3rd Tuesdays of each month. On these evenings, the City Hall Lobby/Restroom Area will remain open until the close of the meeting. Various other night meetings are held in the Council Chambers on a regular basis (copy of schedule to be given to Contractor). The janitorial service is required prior to each meeting and the Lobby/Restroom area is to remain open during these meetings.

<u>7. CITY FACILITIES</u>	<u>ADDRESS</u>	<u>SQUARE FEET</u>
City Hall & Council Chambers	333 Civic Center Plaza	40,700
Police Department	1000 Civic Center Drive	27,616
Police Annex Facility	400 E. 10th Street	10,817
Police Gun Range	7299 S. Tracy Blvd.	1000
Community Center	900 East Street	9,030
Lolly Hansen Senior Center	375 E. 9 th Street	5,224
Support Services Building	325 Civic Center Plaza	9,116
Fire Administration Building	835 Central Ave	9,646
Tracy Animal Shelter (offices)	2375 Paradise Rd.	1,000
Tracy Library	20 E. Eaton Ave	17,058
Tracy Museum	1141 Adams Street	9,654
Lammersville Schoolhouse	1753 Blanford Lane	1032
Boyd Service Center Admin.	520 Tracy Blvd.	6,000
Tracy Transit Annex	520 Tracy Blvd.	768
Modular Trailer 1	520 Tracy Blvd.	2160
Modular Trailer 2	520 Tracy Blvd.	1440
BSC Shop Restrooms	520 Tracy Blvd.	1000
Central Garage Office	520 Tracy Blvd.	180
Joe Wilson Pool	900 W. Lowell Ave	2000
Grand Theatre	715 Central Ave	39,000
Old Jail House	25 W. 7 th Street	1,077
Tracy Transit Station	50 E. Sixth St.	6000
Sports Complex Meeting Room	955 Crossroads	1100

EXHIBIT B - Compensation

Compensation shall not exceed \$116,717 (one hundred sixteen thousand seven hundred seventeen) dollars total.

TRACY CITY COUNCIL

RESOLUTION NO. 2024-_____

1) DETERMINING THAT COMPLIANCE WITH THE STANDARD PROCUREMENT PROCESSES IS NOT IN THE BEST INTERESTS OF THE CITY PURSUANT TO TRACY MUNICIPAL CODE 2.20.140(B)(6) AND DISPENSING SUCH REQUIREMENT FOR THE PROCUREMENT OF JANITORIAL SERVICES FOR THE CITY.

2) APPROVING A PROFESSIONAL SERVICE AGREEMENT WITH MADILL ENTERPRISES FOR JANITORIAL SERVICES FOR AN INITIAL TERM OF THREE MONTHS AND A TOTAL NOT TO EXCEED AMOUNT OF \$116,717.

WHEREAS, the City of Tracy (City) has twenty-five (25) facilities and over 211,683 square feet of office and multi-use space that require janitorial services to properly maintain each facility; and

WHEREAS, the City requires a contractor to provide janitorial services throughout the City; and

WHEREAS, the City currently has a contract with Madill Enterprise (Madill) for janitorial services that expires on August 31, 2024; and

WHEREAS, the City issued a Request for Proposals on June 12, 2024, to perform such services, and received thirteen (13) qualified proposals before the deadline; and

WHEREAS, due to the amount of information and cost comparisons needing to be evaluated, staff requests that the City Council authorize an interim agreement with Madill to allow for the decision process to be adequately completed and a transition plan from Madill to a new contractor be developed, if needed; and

WHEREAS, staff has negotiated and reached terms for an interim Professional Services Agreement with Madill Enterprises, Inc., DBA Advanced Property Services to perform janitorial services starting September 1, 2024, to November 30, 2024, in a not-to-exceed amount of \$116,717 total; and

WHEREAS, an interim agreement is needed to facilitate uninterrupted janitorial services for the City during the time City is evaluating various proposals received for the Request for Proposals issued on June 12, 2024; and

WHEREAS, compliance to the procurement requirement pursuant to Tracy Municipal Code Section 2.20.140(b)(6) for this interim agreement is not in the best interest of the City; now, therefore, be it

RESOLVED: That the City Council of the City of Tracy hereby approves the interim Professional Services Agreement with Madill Enterprises, Inc., DBA Advanced Property Services attached as Attachment A, to provide janitorial services to various City facilities from September 1, 2024, to November 30, 2024, with a total not to exceed amount of \$116,717; and be it

FURTHER RESOLVED: That the City Council hereby dispenses with the procurement requirements for this interim agreement pursuant to Tracy Municipal Code Section 2.20.140(b)(6).

* * * * *

The foregoing Resolution 2024-_____ was adopted by the Tracy City Council on August 20, 2024, 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

Attachment A: Professional Services Agreement with Madill Enterprises for Janitorial Services
Sept. – Nov. 2024

Agenda Item 1.L

RECOMMENDATION

Staff recommends that the City Council adopt a resolution (1) accepting construction of the Tracy Hills Zone 5 Pump Station at the John Jones Water Treatment Plant, constructed by Valentine Corporation of San Rafael, California, as complete, (2) authorizing the City Clerk to file the Notice of Completion with the San Joaquin County Recorder's Office, (3) authorizing the City Engineer to release the bonds and retention payment, and (4) authorize the Director of Finance to release the remaining unused project funds to Lennar Homes of California, LLC.

EXECUTIVE SUMMARY

This agenda item seeks approval of a resolution accepting construction of the Tracy Hills Zone 5 Pump Station (Project) at the John Jones Water Treatment Plant (JJWTP) constructed by Valentine Corporation of San Rafael (Contractor) as complete and authorize the City Clerk to file a Notice of Completion with the San Joaquin County's Recorder's Office. The agenda item further seeks authorization for the City Engineer to release the bonds and retention payment and an authorization for the Director of Finance to release the remaining project funds to Lennar Homes of California, LLC (Developer), on whose behalf the Contractor performed the work. The Developer was required to construct the Project in order to provide potable water to the Tracy Hills Phase 2 Development and signed a Funding Agreement with the City to fund the construction of this Project (see Attachment A)

BACKGROUND AND LEGISLATIVE HISTORY

In order to provide potable water to the Tracy Hills Phase 2 Development area, the Developer was required to fund the construction of the Zone 5 Pump Station, at the City's JJWTP. As the Project is on a sensitive infrastructure asset in which access is restricted, the City created a CIP to control the construction of the Project. To fund the construction of the Project, on March 29, 2022, pursuant to Resolution 2022-033, the City entered into a Funding Agreement with Developer. The Developer provided a total of \$4,154,211 to the City for the cost of construction, associated improvements, and soft costs, including inspection and construction management services, per the terms of the Funding Agreement.

The Project includes the construction of a 5.2 million gallon per day booster pump station equipped with three 1,205 gallon per minute pumps, a surge tank, and various other appurtenances at the JJWTP to serve the Tracy Hills Phase 2 Development area, in Zone 5 of the City water distribution system. The Zone 5 Pump Station was constructed adjacent to the Zone 4 Pump Station at the City's JJWTP.

The Project improvement plans, specifications, and cost estimates (PSE) were prepared by West Yost and Associates, and the Project was advertised for construction bids on May 10, 2022. Valentine Corporation was the lowest bidder and the construction contract in the amount of \$3,323,369 was awarded to Valentine Corporation on May 17, 2022, pursuant to Resolution 2022-059.

ANALYSIS

Based on inspections by City staff and West Yost & Associates, as of July 11, 2024, the Contractor has completed all work required in accordance with the plans and specifications. City staff is requesting acceptance of the Project. Although the new equipment and pumps have been tested, the final startup testing of the pump station cannot be completed until construction of the potable water transmission main to Zone 5 in the Tracy Hills Phase 2 development is complete. Any deficiencies discovered during final start up testing or over the next year, will be addressed as warranty work. Notwithstanding the startup testing, City staff is recommending acceptance of the Tracy Hills Zone 5 Pump Station at the JJWTP, CIP 75163, so that the City can assume operational control of this critical infrastructure. Until acceptance, Developer continues to operate the pump station.

The Contractor provided a one-year Warranty Bond, a Payment Bond, and a Performance Bond. Once the Project has been accepted by the City Council, the City Engineer will release the Payment Bond and Performance Bond in accordance with State law. The City Engineer will release the Warranty Bond when the warranty period expires one year after Project acceptance, in accordance with State law.

FISCAL IMPACT

The Tracy Hills Zone 5 Pump Station at the City's JJWTP Project, CIP 75163, was established as a capital improvement project, fully funded by the Developer, with an approved budget of \$4,154,211. The total construction contract amount with change orders was \$3,359,136 (Final Contract Price). The Final Project Cost is \$3,448,198 and the remaining balance of \$706,013 will be released back to Developer, per the terms of the Funding Agreement.

The Final Project costs were within budget as follows:

Original Construction Contract	\$ 3,323,369
Reduction for unneeded contract item	(\$32,000)
Approved Change Orders	\$ 67,767
<hr/>	
Final Contract Price	\$ 3,359,136
Design, construction management, inspection, testing & associated project management expenses	\$ 89,062
<hr/>	
Final Project Cost	\$ 3,448,198
Total Budget Amount	\$ 4,154,211
Budget Remaining	\$ 706,013

PUBLIC OUTREACH / INTEREST

No Public outreach was conducted or required for this Project.

COORDINATION

Coordination between the Engineering Division and the Public Works, Water Operations Division was conducted.

CEQA DETERMINATION

Prior to commencement of construction, the Project was determined to be exempt, pursuant to categorical exemptions per CEQA Guidelines §15301(b), Class 1 which pertains to the operation of existing publicly owned water utilities.

STRATEGIC PLAN

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

ACTION REQUESTED OF THE CITY COUNCIL

Staff recommends that the City Council adopt a resolution (1) accepting construction of the Tracy Hills Zone 5 Pump Station at the John Jones Water Treatment Plant, constructed by Valentine Corporation of San Rafael, California as complete, (2) authorizing the City Clerk to file the Notice of Completion with the San Joaquin County Recorder's Office, (3) authorizing the City Engineer to release the bonds and retention payment, and (4) authorizing the Director of Finance to release the remaining unused project funds to Lennar Homes of California, LLC

Prepared by: Ilene Macintire, PE, Senior Civil Engineer, Utilities Division

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

Approved by: Midori Lichtwardt, City Manager

Attachments:

Exhibit A – Resolution and Funding Agreement with Lennar Homes of California, LLC

RESOLUTION 2022-033

APPROVE A FUNDING AGREEMENT WITH LENNAR HOMES OF CALIFORNIA, LLC TO FUND CONSTRUCTION OF TRACY HILLS ZONE 5 PUMP STATION AND ASSOCIATED IMPROVEMENTS (CIP 75163) AT THE JOHN JONES WATER TREATMENT PLANT (JJWTP)

WHEREAS, construction of a Zone 5 Water Pump Station in the City's JJWTP is needed to serve Tracy Hills Phase 2 developments, and

WHEREAS, the project is an approved CIP 75163 and the project design and construction documents have already been completed, and

WHEREAS, Lennar Homes of California, LLC have signed the agreement to fund construction of this project, and

WHEREAS, approval of funding agreement will expedite the bidding and award of construction contract of this project, and

WHEREAS, the cost of construction of CIP 75163, associated improvements, and soft costs including inspection and construction management services will be paid to the City through the attached funding agreement, and

NOW, THEREFORE, BE IT RESOLVED, that the City Council of the City of Tracy, by resolution, approve the Tracy Hills Zone 5 Pump Station Funding Agreement with Lennar Homes of California, LLC.

The foregoing Resolution 2022-033 was adopted by the City of Tracy City Council on the 29th day of March 2022, by the following vote:

AYES: COUNCIL MEMBERS: ARRIOLA, BEDOLLA, DAVIS, VARGAS, YOUNG


NOES: COUNCIL MEMBERS: NONE

ABSENT: COUNCIL MEMBERS: NONE

ABSTAIN: COUNCIL MEMBERS: NONE

ATTEST

CITY CLERK


MAYOR

**City of Tracy
Tracy Hills Zone 5 Water Pump Station
Funding Agreement**

This Funding Agreement ("Agreement") is entered into and effective on the date of the last signature, between the City of Tracy ("City") and Lennar Homes of California, LLC a California limited liability company ("Owner"). City and Owner may each be referred to as a "Party" and may together be referred to as the "Parties."

Recitals

A. The City has approved a Vesting Tentative Subdivision Map, Application Number TSM 20-0003 ("VTSM"), submitted by Owner relating to the project known as Tracy Hills Phase 2 (the "Project").

B. In order to serve the development of VTSM, completion of the Tracy Hills Zone 5 Booster Pump Station at John Jones Water Treatment Plant ("JJWTP") is required. This pump station and associated work (collectively "JJWTP Improvements") are depicted in the Improvement Plans titled "Tracy Hills Zone 5 Pump Station" prepared by West Yost Associates and approved by the City on October 2021 ("JJWTP Improvement Plans").

C. This Agreement provides for the timing and procedures for funding the JJWTP Improvements.

NOW, THEREFORE, the Parties agree as follows:

1. Purpose.

The purpose of this Agreement is to provide for deposits by Owner to City of certain costs incurred by the City related to construction of the JJWTP Improvements.

2. Allocation of Costs.

Attached as Exhibit A is the Engineer's Opinion of Probable Cost relating to the construction of the JJWTP Improvements. The parties recognize that the costs listed in Exhibit A are estimates. The actual construction costs shall be determined through a bidding process conducted by the City pursuant to the Public Contract Code and other applicable provisions of law. Responsibility for funding the actual costs of constructing the JJWTP Improvements as identified in Exhibit A are allocated between the Owner and City as follows:

a. Owner is responsible for 100% of the actual costs of constructing the improvements identified in line items 1,2, and 3 in Exhibit A, Table 1 – Engineer's Opinion of Probable Cost by Bid Item.

b. Owner is responsible for 100% of the costs of constructing, installing, and/or modifying the relevant appurtenances, electrical and instrumentation improvements, by PG&E to serve the Tracy Hills Zone 5 Water Pump Station. The actual scope of work and cost estimate for this work will be prepared by PG&E after City files an application with PG&E.

c. The line item entitled "Additive Bid Item 1", which involves the installation of the fourth pump in the existing Zone 4 pump station including all associated appurtenances, equipment, and electrical wiring, shall be put out to bid along with the two above-noted work items

as an additive bid item. Owner has the right, in its sole discretion, to determine whether or not the improvements identified as Additive Bid Item 1 shall actually be constructed, unless the costs of said improvements are to be funded by parties other than Owner. If these improvements are funded exclusively by parties other than Owner, then City has the sole discretion to determine whether or not the improvements will be constructed.

d. If Owner decides and requests the City to construct the additive bid item, the Owner will be responsible for 100% of the actual costs of constructing the improvements as identified in the Engineer's Opinion of Probable Cost for the additive bid item. Depending upon the Owners request and the City's decision to award the additive bid item for construction, the payment schedule listed in Item 3 of this agreement will include the additive bid amount accordingly and the same requirements shall apply for the hard and soft costs for the additive bid item. Owner may opt to pursue, separately, the recovery of the cost of the additive bid item from other developments benefitting from the additive bid item improvements through benefit district or other mechanisms.

The City shall advertise for bids not later than ten (10) days after the effective date of this Agreement. Construction shall commence within fourteen (14) days after execution of construction agreement by City and the successful bidder.

3. Payment Schedule.

Construction costs associated with the JJWTP Improvements are designated as either "Hard Costs" or "Soft Costs." "Hard Costs" are the construction costs paid to the construction contractor by the City pursuant to the construction contract entered into as a result of the public bidding process. "Soft Costs" are the construction management and inspection costs of the City and a contingency amount. The amount of estimated Soft Costs to be deposited by Owner shall equal 25% of the amount of the Hard Costs, which includes a 15% contingency amount and a 10% construction management amount (including inspection, staff time, and design support). Unused Soft or Hard Costs shall be returned to Owner as provided herein below.

a. Owner shall deposit with City 100% of the Hard Costs that it is responsible for funding within ten (10) business days prior to City's award of construction contract, by resolution of the City Council, of the construction bid from the lowest responsible and responsive bidder for the JJWTP Improvements. City's execution of the construction contract shall be contingent upon City's receipt of such funds from Owner.

b. Soft Costs shall be deposited by Owner to City as follows:

i) Within ten (10) business days after City awards the bid for construction of the JJWTP Improvements, Owner shall deposit with City an amount equal to 25% of the Soft Costs that Owner is responsible for funding.

ii) Within five (5) business days after City informs Owner, in writing, that the construction work is 25% complete, Owner shall deposit with City an additional amount equal to 25% of the Soft Costs which Owner is responsible for funding.

iii) Within five (5) business days after City informs Owner, in writing, that the construction work is 50% complete, Owner shall deposit with City an additional amount equal to 25% of the Soft Costs which Owner is responsible for funding.

iv) Within five (5) business days after City informs Owner, in writing, that the construction work is 75% complete, Owner shall deposit with City an additional amount equal to 25% of the Soft Costs which Owner is responsible for funding.

c. Within five (5) days after the construction contractor for the JJWTP Improvements acknowledges full and complete payment, City will return to Owner any unused funds that have been deposited by Owner.

4. Project Management.

a. Representatives of the City and Owner shall meet in person or by telephone on as needed basis but at least once a month during the course of construction to discuss any relevant issues regarding work progress. Subject to Owner's compliance with the deposit provisions of Section 3 above, City shall use diligent and good faith efforts to complete the JJWTP Improvements not later than December 31, 2022, and in the event, City reasonably believes there will be a delay of completion of the JJWTP Improvements of more than 30 days, it will immediately advise Owner of the delay and the cause thereof and will use its best efforts to reduce any such delay to the maximum extent practicable.

b. Any change orders relating to construction of the JJWTP Improvements that would increase the Hard Costs of the JJWTP Improvements by more than five percent (5%) must be approved in writing by Owner. The Parties intend that change orders should be funded by contingency funds that have already been deposited with the City at the time of the change order pursuant to Section 3 above, provided that sufficient contingency funds are available as reasonably determined by the City.

c. If, at any time prior to completion of the JJWTP Improvements, the City reasonably determines that the actual costs to the City of constructing those JJWTP Improvements which Owner is responsible for funding will exceed the total of Owner's deposits of Hard Costs and Soft Costs required under Section 3 above, City may notify Owner of the amount of the anticipated exceedance. Upon such notice from the City, Owner shall, within five (5) business days, make an additional deposit with the City in an amount equal to one hundred twenty-five percent (125%) of the anticipated exceedance in estimated Hard Costs, to satisfy Owner's Hard Cost and Soft Cost deposit obligations under Section 3 above.

5. Miscellaneous.

a. No Agency, Partnership or Joint Venture. No agency, partnership or joint venture relationship is intended to be created by this Agreement. Owner solely is funding a portion of the City's project and has no control over the work or how the work is to be performed.

b. Attorneys' Fees. If legal action is commenced to enforce this Agreement, the prevailing party is entitled to reasonable attorneys' fees, costs and expenses incurred.

a. Counterparts. This Agreement may be signed in counterparts and when signed by all parties constitutes a binding agreement. Counterparts which are transmitted electronically shall be as effective as originals.

b. Modifications. This Agreement may be modified only in writing signed by both parties.

c. Waivers. Waiver of a breach or default under this Agreement does not constitute a continuing waiver, or the waiver of a subsequent breach.

d. Jurisdiction. This Agreement shall be governed by the laws of the State of California. Any legal proceeding related to the Agreement shall be filed and heard in a court in San Joaquin County.

e. Entire agreement. This Agreement comprises the entire, integrated understanding of the parties and supersedes prior negotiations, representations or agreements.

f. Notices. Notices required to be given under this Agreement shall be in writing and may be served either personally or by first class mail to:

City of Tracy

Director of Utilities
3900 Holly Drive
Tracy, CA 95304

with a copy to:

City Attorney
City of Tracy
333 Civic Center Plaza
Tracy, CA 95376

Owner

Lennar Homes of California, LLC,
a California limited liability
company
2603 Camino Ramon, Suite 525
San Ramon, CA 94583
Attn: Bridgit Koller

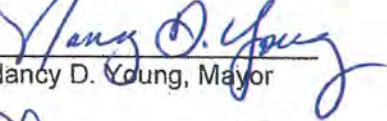
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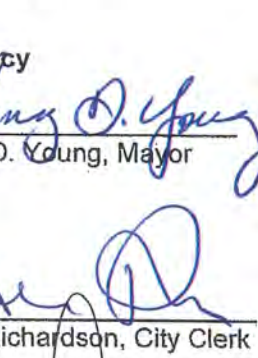
Hans Van Ligten, Esq.
Rutan & Tucker, LLP
611 Anton Blvd., Suite 1400 Costa
Mesa, CA 92626

[SIGNATURE PAGE FOLLOWS]

2. Signatures.

City of Tracy

By: 
Nancy D. Young, Mayor

Attest: 
Adrienne Richardson, City Clerk

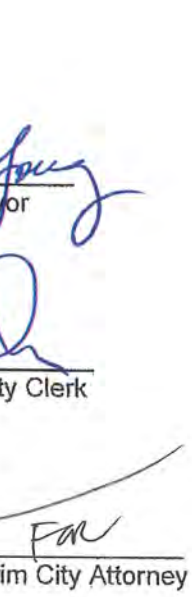
Approved as to form: 
Gregory J. Rubens, Interim City Attorney

Exhibit: A – Engineer's Estimate

Owner

Lennar Homes of California, LLC, a
California limited liability company

By:
Brigit Koller

Its: VP

Date: 2/7/22

Table 1. Engineer's Opinion of Probable Cost for Base Bid	
Item	Estimated Cost, dollars
Item 1: Tracy Hills Zone 5 Pump Station ^(b)	2,540,400
Item 2: Over-excavation of Unsuitable Materials ^{(a)(b)}	6,000
Item 3: Sheet piling, Shoring, and Bracing ^(b)	256,800
Total Base Bid	\$2,803,200
Construction Contingency, 15 percent	420,480
Construction Subtotal	\$3,223,680
Construction Management, Program Administration, and Other Costs, 10 percent	280,320
Total Estimated Cost	\$3,504,000
(a) Assumes 100 cubic yards of unsuitable material.	
(b) Costs include a 20% bid contingency.	

Table 2. Engineer's Opinion of Probable Cost for Additive Bid Item	
Item	Estimated Cost, dollars
Additive Bid Item 1: Tracy Hills Zone 4 Pump ^(a)	258,000
Total Additive Bid	\$258,000
Construction Contingency, 15 percent	38,700
Construction Subtotal	\$296,700
Construction Management, Program Administration, and Other Costs, 10 percent	25,800
Total Estimated Cost	\$322,500
(a) Cost includes a 20% bid contingency.	

CITY ATTORNEY'S OFFICE

TRACY CITY COUNCIL

RESOLUTION NO. _____

1) ACCEPTING CONSTRUCTION OF THE TRACY HILLS ZONE 5 PUMP STATION AT THE JOHN JONES WATER TREATMENT PLANT, CONSTRUCTED BY VALENTINE CORPORATION, OF SAN RAFAEL, CALIFORNIA AS COMPLETE,

(2) AUTHORIZING THE CITY CLERK TO FILE THE NOTICE OF COMPLETION WITH THE SAN JOAQUIN COUNTY RECORDER'S OFFICE,

(3) AUTHORIZING THE CITY ENGINEER TO RELEASE THE BONDS AND RETENTION PAYMENT, AND

(4) AUTHORIZING THE DIRECTOR OF FINANCE TO RELEASE THE REMAINING UNUSED PROJECT FUNDS TO LENNAR HOMES OF CALIFORNIA, LLC

WHEREAS, in order to provide potable water to the Tracy Hills Phase 2 Development area, Lennar Homes of California, LLC (Developer) was required to fund the construction of the Tracy Hills Zone 5 Pump Station (Project) at the City's John Jones Water Treatment Plant (JJWTP); and

WHEREAS, as the Project is on a sensitive infrastructure asset in which access is restricted, the City created a Capital Improvement Project (CIP) 75163 to control the construction of the Project; and

WHEREAS, on March 29, 2022, pursuant to Resolution 2022-033, the City entered into a Funding Agreement with Developer to fund the construction of Project at the JJWTP and associated improvements, and soft costs, including inspection and construction management services; and

WHEREAS, the Project improvement plans, specifications, and cost estimates (PSE) were prepared by West Yost Associates, Inc.; an Invitation for Bids was advertised on May 10, 2022; and bids were received and opened on September 26, 2022; and

WHEREAS, on May 17, 2022, pursuant to Resolution 2022-059, the contract was awarded to Valentine Corporation (Contractor) in the amount of \$3,323,369; and

WHEREAS, five (5) change orders were issued during construction activities, totaling \$67,767.39, which is two (2) percent of the total contract amount; and

WHEREAS, the final contract price was \$3,359,136; and

WHEREAS, City staff and West Yost and Associates, Inc., has inspected all work, and as of July 11, 2024, and determined that the Contractor has completed all work required in accordance with the plans and specifications; and

WHEREAS, the Contractor provided a one-year Warranty Bond, Payment Bond, and a Performance Bond; and

WHEREAS, the final Project costs were within budget as follows:

Original Construction Contract	\$ 3,323,369
Reduction for unneeded contract item	(\$32,000)
Approved Change Orders	\$ 67,767
<hr/>	
Final Contract Price	\$ 3,359,136
Design, construction management, inspection, testing & associated project management expenses	\$ 89,062
<hr/>	
<u>Final Project Cost</u>	<u>\$ 3,448,198</u>
Total Budget Amount	\$ 4,154,211
Budget Remaining	\$ 706,013

; now therefore, be it

RESOLVED: That the City Council for the City of Tracy, hereby accepts the construction work completed by Valentine Corporation, of San Rafael, California, for the Tracy Hills Zone 5 Pump Station at the John Jones Water Treatment Plant , Capital Improvement Project 75163; and be it

FURTHER RESOLVED: That the City Council authorizes the City Clerk to file the Notice of Completion with the San Joaquin County Recorder's Office; and be it

FURTHER RESOLVED: That the City Council authorizes the City Engineer to release the bonds and retention payment in accordance with State law; and be it

FURTHER RESOLVED: That the City Council authorizes the Director of Finance to release the remaining unused project funds to Lennar Homes of California, LLC.; and be it

FURTHER RESOLVED: That, prior to the commencement of construction, the City determined that the Project was categorically exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines §15301(b), Class 1 which pertains to the operation of existing publicly owned water utilities.

The foregoing Resolution 2024-_____ was adopted by the Tracy City Council on August 20, 2024, by the following vote:

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

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

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

Agenda Item 1.M

RECOMMENDATION

Staff recommends that the City Council adopt a resolution 1) determining that compliance with standard procurement processes are not in the best interest of the City pursuant to Tracy Municipal Code 2.20.140(6) and dispensing such requirement for the actions to be taken here, and 2) approving a Professional Service Agreement with Mark Thomas and Company, Inc. of Sacramento, California, for additional services related to the design and approval effort for the Corral Hollow and Linne Road Intersection Improvements, Capital Improvement Project 72104, for a two year term and for a not-to-exceed agreement amount of \$172,672.

EXECUTIVE SUMMARY

This agenda item seeks the adoption of a resolution by the City Council approving a Professional Services Agreement (PSA) with Mark Thomas and Company, Inc. (Consultant) of Sacramento, California. This would authorize the Consultant to perform additional services related to the design and approval effort of the Corral Hollow and Linne Road Intersection Improvements, Capital Improvement Project (CIP) 72104 (Project), for a not-to-exceed total agreement amount of \$172,672. The City entered into a PSA with this Consultant which was excuted pursuant to Resolution 2021-040 to provide these services but the agreement expired on April 15, 2023. The additional services are needed because of the delays caused due to the complex nature of the Project and additional coordination efforts with the utility companies and adjacent developments that have gone well beyond the scope of the original PSA. The additional design scope has delayed Project design completion and exhausted the approved PSA budget. The Project is currently at the 90% design stage, and replacing the existing consultant would result in additional Project costs. Engineering staff recommends retaining the existing Consultant at this stage of the Project as it is in the best interest of the City to avoid delays in design and the ultimate construction benefit to the community.

BACKGROUND AND LEGISLATIVE HISTORY

The Roadway Improvements and Traffic Signal Installation at Corral Hollow Road and Linne Road Intersection, Capital Improvement Project (CIP) 72104 (Project), is approved under Resolution No. 2019-116, which adopted the Fiscal Year 2019-2020 budget. The Project is needed to mitigate the growing demands of vehicular traffic and improve the level of service at the intersection to address the overall growth and development in this region.

Currently, both Corral Hollow Road and Linne Road are one lane in each direction at this intersection. This Project entails the widening of Corral Hollow Road in Tracy, California, from just north of the Union Pacific Railroad (UPRR) right-of-way at W. Linne Road to approximately 500' south of W. Linne Road. The road will be widened to accommodate two lanes in each direction on Corral Hollow Road at the Linne Road intersection, with appropriate lane transitions. The Project limits will not extend beyond the Delta Mendota Canal (DMC) to the south on Corral Hollow Road. The number of lanes on Linne Road will depend upon a subsequent traffic analysis and the right-of-way acquisition process.

Proposed improvements consist of the replacement of the existing two-lane roadway on Corral Hollow Road, construction of new travel lanes, median, curbs, sidewalks, and installation of new signage and striping. Significant improvements will be required within UPRR right-of-way on the railroad tracks. An appropriate drainage system will be designed to accommodate the run-off from this intersection improvement.

The proposed improvements also require new traffic signals at the intersection, a pre-signal for southbound traffic on Corral Hollow Road before the UPRR railroad tracks, streetlights, and coordination/relocation of affected existing franchise utilities. The Project will also entail right-of-way acquisitions to accommodate the necessary widening at the intersection.

On August 17, 2020, the City issued a Request for Proposals (RFP) seeking qualified consultants to complete the design services for this Project. On September 29, 2020, the City received a total of three (3) proposals. The City selected Mark Thomas & Company, Inc., of Sacramento, California. The PSA with Mark Thomas & Company, Inc. was executed pursuant to Resolution No. 2021-040 approved by the City Council on April 6, 2021. The term of the PSA started on April 15, 2021, and ended on April 15, 2023. The Consultant has performed no work on the Project since the expiration of the original PSA.

ANALYSIS

The Project's complex nature has resulted in numerous design delays and additional coordination efforts with UPRR, California Public Utilities Commission (CPUC), and adjacent developments that have gone well beyond the scope of the original PSA. The additional design scope has delayed project design completion and exhausted the approved PSA budget. Additional coordination and design services are required to complete the Project design and advertise the Project for public bid.

Due to these added services being a part of the ongoing Project, engineering staff recommends retaining the current Consultant to provide these services. The Project is currently at the 90% design stage, and replacing the existing consultant would result in additional Project costs. These costs would include familiarizing a new consultant design team with the project's history, delaying active coordination with Union Pacific Railroad (UPRR), and right-of-way acquisitions necessary for the Project. Changing the consultant would result in delays to final design completion and, ultimately, delaying the construction of the improvements for the community. Engineering staff recommends retaining the existing Consultant at this stage of the Project, based on the provided justifications, as it is in the best interest of the City. The previous PSA with the Consultant expired on April 15, 2023, and as it has expired, it can no longer be amended. Thus, engineering staff suggests creating a new agreement with Consultant for the additional design services.

On November 27, 2023, the City requested a proposal from the Consultant for the time and materials required to complete the additional tasks. On December 19, 2023, the Consultant submitted its proposal to the City. After negotiations between staff and Consultant, the parties have reached a tentative agreement for the performance of these additional services for a not-to-exceed amount of \$172,672.

Additional services include project management, utilities coordination, property owner coordination, UPRR/CPUC design revisions, revising 90% of Plans, Specifications and

Estimates, and construction design support. The term of the PSA shall commence on August 20, 2024 and shall expire automatically on August 19, 2026, or earlier by termination, pursuant to Section 6 of the PSA.

FISCAL IMPACT

The Corral Hollow and Linne Road Intersection Improvements Project, CIP 72104, is an approved Capital Improvement Project with a budget of \$1,025,000. There are sufficient funds available in the Project for the PSA with Mark Thomas and Company, Inc. for the not-to-exceed total contract amount of \$172,672. The Project budget is as follows:

Funding Source	Budget	Expenses	Balance
242 - Measure K	\$ 430,000	\$ 154,985	\$ 275,015
331 - Ellis Area Impact Fees	\$ 300,000	\$ 294,077	\$ 5,923
363 - Tracy Master Plan Traffic Fees	\$ 295,000	\$ 288,375	\$ 6,625
Current Budget	\$ 1,025,000	\$ 737,437	\$ 287,563

STRATEGIC PLAN

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

CEQA DETERMINATION

This action is for engineering design services only and therefore not subject to environmental review under the California Environmental Quality Act (CEQA). Notwithstanding, the Draft Initial Study/Mitigated Negative Declaration (IS/MND) for the full implementation of the Project was available for public review and comment on the City's website from November 4, 2022 to December 15, 2022. It was published in the Tracy Press on November 14, 2022. In accordance with CEQA Section 15074, a public hearing was conducted during the City Council meeting on November 7, 2023, and it was adopted through Resolution No. 2023-227.

ACTION REQUESTED OF THE CITY COUNCIL

Staff recommends that the City Council by resolution 1) determine that compliance with standard procurement processes are not in the best interest of the City pursuant to Tracy Municipal Code 2.20.140(6) and dispense such requirement for the actions to be taken here, and 2) approve a Professional Service Agreement with Mark Thomas and Company, Inc. of Sacramento, California, for additional services related to the design and approval effort for the Corral Hollow and Linne Road Intersection Improvements, Capital Improvement Project 72104, for a two year term and for a not-to-exceed agreement amount of \$172,672.

Prepared by: Habibullah Habib, PE, Associate Civil Engineer

Reviewed by: Sharat Bandugula, PE, Senior Civil Engineer
Koosun Kim, PE, City Engineer
Sara Castro, Finance Director
Bijal M. Patel, City Attorney
Karin Schnaider, Assistant City Manager

Approved by: Midori Lichtwardt, City Manager

ATTACHMENTS

Attachment A – PSA with Mark Thomas & Company, Inc.

**CITY OF TRACY
PROFESSIONAL SERVICES AGREEMENT WITH**

Mark Thomas & Company, Inc. for
Additional Services for Corral Hollow & Linne Road Intersection Improvement CIP 72104.

This Professional Services Agreement (“Agreement”) is entered into between the City of Tracy, a municipal corporation (“City”), and Mark Thomas & Company, Inc. a California Corporation (“Consultant”). City and Consultant are referred to individually as “Party” and collectively as “Parties.”

Recitals

- A. City desires to retain the professional services of Consultant to provide additional services related to the design and approval effort for the Corral Hollow and Linne Road Intersection Improvement CIP 72104 as further described herein and in Exhibit A.
- B. On November 27, 2023, the City requested a proposal from the Consultant for the time and materials required to complete the Scope of Work defined below. On December 19, 2023, Consultant submitted its proposal for the Scope of Work to the City. Pursuant to Tracy Municipal Code Sections 2.20.140(a)(2) and 2.20.130, the City has determined that Consultant demonstrated that it was the best qualified and most responsible proposer, and best fits the City’s needs for competence and professional qualifications necessary for the satisfactory performance of the Scope of Work defined below.
- C. After negotiations between the City and Consultant, the Parties have reached an agreement for Consultant’s professional services as set forth in this Agreement.
- D. This Agreement was approved on [] pursuant to Tracy Municipal Code Section 2.20.140. [and City Council Resolution No. _____].

NOW THEREFORE, for good and valuable consideration the sufficiency of which the Parties hereby acknowledge, the Parties mutually agree as follows:

- 1. **Scope of Work.** Consultant shall perform the professional services, tasks, and scope of work described in Exhibit A attached hereto and incorporated herein by this reference (“Scope of Work”). The Scope of Work shall be performed by, or under the direct supervision of, Consultant’s “Authorized Representative”: Matt Brogan, PE, Principal, and President. 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 the City’s prior written consent. The City may terminate this Agreement if Consultant makes any such change or uses or replaces any such subcontractor or subconsultant. Unless otherwise stated on Exhibit A, Consultant shall furnish, at its own expense, the materials, equipment, supplies, and other resources necessary to perform the Scope of Work. The City reserves the right to contract with other firms and/or consultants during the term of this Agreement to provide the City with the same or similar Scope of Work as described in Exhibit A.
- 2. **Time of Performance.** Time is of the essence in the performance of the Scope of Work under this Agreement and the timing requirements set forth herein shall be strictly adhered to unless otherwise modified in writing in accordance with this Agreement. If dates for performance are set out in Exhibit A, Consultant shall begin performance, and shall complete all required Scope of Work no later than the dates set forth in Exhibit A. 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. If Exhibit A indicates that Scope of Work shall only be performed upon request, or if the City otherwise communicates the same to Consultant, Consultant shall not perform said Scope of Work until the City requests such performance. Consultant shall submit all requests for time extensions to the City in writing no later than ten (10) days after the start of the condition which purportedly caused the delay, and not later than the date on which performance is due. The City may grant or deny such requests in its sole and absolute discretion.

2.1 Term. The term of this Agreement shall commence on August 20, 2024 and expire and terminate automatically on August 19, 2026, or earlier by termination pursuant to Section 6 of this Agreement (“Term”). Subject to the Not-To-Exceed Amount defined in Section 3.1.

3. Compensation. City shall pay Consultant on a time and expense basis for Scope of Work performed under this Agreement at the billing rates set forth in Exhibit B, which is attached hereto and incorporated herein by this reference.

3.1 Not to Exceed Amount. Consultant’s total compensation under this Agreement shall not exceed \$172,672.00 [One hundred seventy-two thousand and six hundred seventy-two] Dollars. Notwithstanding the foregoing, the payment of any funds under this Agreement shall be subject to the City of Tracy appropriation of funds for the Scope of Work. This Agreement shall automatically terminate in the event that such funds are not appropriated. Unless specifically stated otherwise or agreed to in writing and approved by City Council, the fees proposed by Consultant, as set forth in Exhibit B hereto, shall remain unchanged for the entire term of this Agreement and any extensions of this Agreement. It is understood and agreed that Consultant may not receive compensation up to the Not-to-Exceed Amount (or any other amount), and Consultant’s total compensation under this Agreement will depend on the Scope of Work requested and approved by the City. 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” provided in this section without the City’s prior written approval.

3.1.1 City Budget Limitations. This Agreement will terminate without penalty, liability or expense of any kind to City at the end of any fiscal year if funds are not appropriated for the next succeeding fiscal year for this Agreement. If funds are appropriated for a portion of the fiscal year, this Agreement will automatically terminate, without penalty, liability or expense of any kind at the end of the term for which funds are appropriated. City has no obligation to make appropriations for this Agreement in lieu of appropriations for new or other agreements. City budget decisions are subject to the discretion of the City Council. Consultant’s assumption of risk of possible non-appropriation is part of the consideration for this Agreement.

3.2 Invoices. Consultant shall submit monthly invoice(s) to the City that describe in detail satisfactory to the City: the services performed, the times and dates of performance, and the names of the person(s) performing the Scope of Work.

3.2.1 If Consultant is providing the Scope of Work 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 this Section may result in the City rejecting said invoice(s) and thereby delaying payment to Consultant.

3.2.3 Consultant shall submit invoices no later than 90 days after completion of a portion of the Scope of Work. City has no obligation to pay invoices delivered greater than 90 days after the date of performance of the Scope of Work.

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 and portions of Scope of Work described on the invoice(s) and approved by the City.

3.4 Final Payment. The acceptance by Consultant of the final payment made under this Agreement shall constitute a release of City from all claims and liabilities for compensation to Consultant for anything completed, finished or relating to Consultant's services or performance of the Scope of Work. Consultant agrees that payment by City shall not constitute nor be deemed a release of the responsibility and liability of Consultant or its employees, subcontractors, agents and subconsultants 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 Consultant, its employees, subcontractors, agents and subconsultants.

3.5 Books and Accounts. Consultant agrees to maintain books, accounts, payroll records and other information relating to the performance of Consultant's obligations under the Agreement, which shall adequately and correctly reflect the expenses incurred by the Consultant in the performance of Consultant'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. 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, and reimburse the City for, any and all liabilities, obligations, losses, damages, injunctions, suits, actions, fines, penalties, claims, demands, administrative and judicial proceedings and order, judgments, remedial action requirements, costs and expenses of every kind or nature, and all costs and expenses incurred in connection therewith, including, without limitation, reasonable attorneys' fees and court costs ("**Claims**") arising directly or indirectly from or out of (including any and all related costs and expenses), relating or pertaining to or resulting from, in whole or in part, this Agreement; any act, omission, or event relating in any way to Consultant's obligations under this Agreement; and/or Consultant's breach of this Agreement, except to the extent such Claim is caused solely by the active negligence or willful misconduct of the City. In this Section 4, "City" means the City, its officials, officers, agents, employees and volunteers; "Consultant" means the Consultant, its employees, agents and subcontractors.

In the event there is a finding and/or determination that Consultant 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), Consultant shall, to the fullest extent permitted by law, indemnify, defend, and hold harmless the City from and against any and all Claims relating to or in connection with such a finding and/or determination.

The provisions of this section survive the expiration 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 the Scope of Work 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 in 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 and, in any event, within five (5) days of such request.

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

7. 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 Scope of Work, upon termination of this Agreement, or within five (5) days of any 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.

8. 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. Consultant shall be solely responsible for, and shall save the City harmless from, all matters relating to the payment of Consultant's employees, agents, subcontractors and subconsultants, including compliance with social security requirements, federal and state income tax withholding and all other regulations governing employer-employee relations.

9. 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. The Consultant represents that it is familiar with the local and state conflict of interest laws, and agrees to comply with those laws in performing this Agreement. The Consultant represents and warrants that the representations made by the Consultant concerning unfair competitive advantage and conflicts of interest in connection with its submissions in response to the City's procurement for this Agreement were true and accurate both when made and as of the date of this Agreement. Consultant represents and warrants that it has not and shall not offer or deliver any City officer, public official, or employee any gifts or donations in violation of Federal, State and/or local law.

10. 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 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; or 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.

11. 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 the City:
City of Tracy
Attn: Koosun Kim, City Engineer
333 Civic Center Plaza
Tracy, CA 95376

To Consultant:
Mark Thomas & Company, Inc.
Attn: Matt Brogan, Principal and President
701 University Avenue, Suite 200
Sacramento, CA 95825

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

12. General Provisions.

12.1 Standard of Care. Unless otherwise specified in this Agreement, the standard of care applicable to Consultant's performance of the Scope of Work 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.

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

12.3 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.

12.4 Assignment and Delegation. Consultant may not assign, transfer or delegate this Agreement or any portion of it without the City's advance 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.

12.5 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.

12.6 Compliance with the Law. Consultant shall comply with all applicable local, state, and federal laws, including, without limitation, those identified below, whether or not such laws are expressly stated in this Agreement.

12.6.1 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.

12.6.2 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.).

12.7 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 authorized to do business in California, in good standing with the Secretary of State, and in good standing with all agencies having jurisdiction over Consultant (including any licensing agencies). If Consultant is a suspended entity at the time it enters into this Agreement, City may take steps to have this Agreement declared voidable.

12.8 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.

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

12.10 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.

12.11 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.

12.12 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.

12.13 Entire Agreement. This Agreement and the attached Exhibits comprise the entire integrated understanding between the Parties concerning the services to be performed and the matters contemplated herein. This Agreement supersedes all prior negotiations, representations or agreements (in each case, whether oral or in writing). All exhibits attached hereto are incorporated by reference herein.

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

12.15 Expenses for Enforcement. Consultant 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.

13. 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.

[Signature Page to Follow]

As of the date of last signature below, the undersigned Parties agree to the full performance of the terms set forth in this Agreement and have caused this Agreement to be duly executed.

City of Tracy, a Municipal Corporation

By: _____
Nancy Young
Title: Mayor
Date: _____

Mark Thomas & Company, Inc., California Corporation

By: R.M. Brogan
Matt Brogan, PE
Title: Principle and President
Date: 7/12/24

Attest:

Adrienne Richardson, City Clerk

Federal Employer Tax ID No. 94-1451490

By: Kimberly Post
Kimberly Post

Approved as to form:

Bijal M. Patel, City Attorney

Title: Chief Financial Officer
Date: 7/12/24

Exhibits:

- A Scope of Work
- B Compensation

EXHIBIT A - Scope of Work

Additional Services Related to the Design and Approval Effort for the Corral Hollow and Linne Road Intersection Improvement CIP 72104.

Task 1.0 Project Management

1.1 Project Management & Meetings

1.2

This task includes project management time to manage the scope tasks below. Consultant will continue coordination of the project with outside stakeholders. This includes Caltrans for right of way certification and Construction RFA, UPRR and CPUC for at-grade crossing modification approval, and utility coordination. This task includes performing ongoing general project management with the client, subconsultants and stakeholders including preparing contract paperwork, monthly status reports, memos, letters, and email, making phone calls and maintaining project files. This additional scope request includes an additional sixteen (16) meetings for project coordination based on the latest project schedule timeline.

Task 1.0 Deliverables

- Meeting Agendas and Minutes (16 meetings)

Task 2.0 Utility Coordination

2.1 Utility Relocation Coordination

The consultant will continue to coordinate with PG&E on their pole relocation for the project. Additional coordination is anticipated with existing underground utility owners on the project to ensure their facilities are not in conflict. These conflicts are pending the pothole field investigation that is currently being performed.

2.2 Property Owner Coordination

The consultant will provide support to ARWS in property owner coordination during the appraisal and acquisition process. It is anticipated that property owner field meetings may be required to discuss the project. Consultant will support up to 2 field meetings for this task.

Task 3.0 UPRR and CPUC Coordination

3.1 Diagnostic Team Meetings

This task includes additional time needed for preparing and leading Diagnostic Team Meetings. These meetings include all stakeholders associated with the crossing modifications, which are the City, CPUC, and UPRR. These meetings will be used to resolve outstanding comments and concerns from both parties on the civil and electrical improvements. It is anticipated six (6) additional Diagnostic Team Meetings are required to complete up coordination.

3.2 UPRR/CPUC Design Revisions

This task includes addressing the multiple rounds of revisions the design team has had to incorporate from the CPUC and UPRR. Consultant has already prepared and submitted three revisions and at least one more is anticipated. The team will continue addressing UPRR and CPUC comments until all have been resolved. The consultant will coordinate the delivery of the C&M agreement. Changes made to the plans will be reflected in the GO88B form required by the CPUC for at-grade modifications.

Task 3.0 Deliverables

- Meeting Agendas and Minutes (6 meetings)

Task 4.0 REVISED 90% PS&E

4.1 Revised 90% Plans

The consultant will update the 90% plans based on the UPRR and CPUC revisions in the prior task. These changes will be reflected in the next PS&E submittal package delivery.

Task 4.0 Deliverables

- Revised 90% Plans and Estimate

Task 5.0 Construction Support

5.1 Construction Design Support


Consultant will provide assistance to the City during construction of the project. The work may include responding to Requests for Information (RFIs) by the contractor, providing consultation and interpretation of the contract documents, preparing Contract Change Orders (CCOs), reviewing shop drawings, and attending construction meetings and field meetings. Consultant has provided a “budget” amount to be used on a time and materials basis. Any time spent beyond this budget will require an additional amendment.

Key Personnel:

Matt Brogan, PE, Principal and President
Jonathan Hernandez, PE, Project Manager

EXHIBIT B – Compensation

COST PROPOSAL FOR PROJECT SCOPE: Tracy-Corral Hollow Rd & Linne Rd INT

								Subs	TOTAL COST	
		Principal \$500	Project Manager \$293	Civil Engineering Designer \$215	Design Engineer II \$180	Sr. Project Coordinator \$173	Total Hours	Total MT Cost		Kimley-Horn
1.0 PROJECT MANAGEMENT										
1.1	Project Management & Meetings	16	60			24	100	\$29,702	-	\$29,702
Subtotal Phase 1		16	60	0	0	24	100	\$29,702	\$0	\$29,702
2.0 UTILITY COORDINATION										
2.1	Utility Relocation Coordination		8	60			68	\$15,240	-	\$15,240
2.2	Property Owner Coordination		16	16			32	\$8,120	-	\$8,120
Subtotal Phase 2		0	24	76	0	0	100	\$23,360	\$0	\$23,360
3.0 UPRR & CPUC COORDINATION										
3.1	Diagnostic Team Meetings	8	16	8			32	\$10,400	-	\$10,400
3.2	UPRR/CPUC Design Revisions		40	60	160		260	\$53,400	4,460	\$57,860
Subtotal Phase 3		8	56	68	160	0	292	\$63,800	\$4,460	\$68,260
4.0 REVISED 90% PS&E										
4.1	Revised 90% Plans		16	24	80		120	\$24,240	9,850	\$34,090
Subtotal Phase 4		0	16	24	80	0	120	\$24,240	\$9,850	\$34,090
5.0 CONSTRUCTION SUPPORT										
5.1	Construction Design Support		32		40		72	\$16,560	-	\$16,560
Subtotal Phase 5		0	32	0	40	0	72	\$16,560	\$0	\$16,560
TOTAL HOURS		24	188	168	280	24	684			
OTHER DIRECT COSTS								\$700	\$0	\$700
TOTAL COST		\$12,000	\$54,990	\$36,120	\$50,400	\$4,152		\$158,362	\$14,310	\$172,672



MARK THOMAS & COMPANY, INC. RATE SCHEDULE

EXPIRES JUNE 30, 2025

Engineering

Intern	\$65 - \$110
Technician	\$95 - \$135
Design Engineer I	\$125 - \$175
Design Engineer II	\$140 - \$220
Sr. Technician	\$160 - \$215
Civil Engineering Designer	\$170 - \$260
Project Engineer	\$170 - \$240
Sr. Project Engineer	\$210 - \$300
Sr. Technical Engineer	\$220 - \$245
Technical Lead	\$245 - \$300
Sr. Technical Lead	\$285 - \$355
Design Manager	\$365 - \$405
Engineering Manager	\$365 - \$405
Sr. Engineering Manager	\$370 - \$495

Construction Management

Office Engineer	\$170 - \$270
* Asst. Resident Engineer	\$240 - \$270
* Inspector - CM	\$195 - \$275
Resident Engineer	\$310 - \$345
Sr. Resident Engineer	\$350 - \$385
Area Manager - CM	\$270 - \$305

Planning

Planner I	\$110 - \$140
Planner II	\$155 - \$175
Sr. Planner	\$170 - \$235

Landscape Architecture/Urban Design

Landscape Intern	\$90 - \$105
Landscape Designer I	\$115 - \$130
Landscape Designer II	\$135 - \$170
Landscape Architect	\$160 - \$195
Sr. Landscape Architect	\$185 - \$210

Grant Writing

Funding Specialist	\$140 - \$255
Sr. Funding Specialist	\$260 - \$305
Funding Manager	\$335 - \$390

Surveying

Survey Technician I-III	\$65 - \$185
Lead Survey Technician	\$145 - \$165
Survey Specialist I-III	\$135 - \$280
Asst Surveyor I-III	\$140 - \$200
Project Surveyor I-III	\$200 - \$305
* Chief of Party	\$205 - \$255
* Instrumentperson	\$205 - \$230
* Chainperson	\$205 - \$215
* Apprentice	\$130 - \$185
* 2-Person Crew	\$375 - \$455
* 3-Person Crew	\$570 - \$675
* Utility Locator	\$190 - \$250
Drone	\$275

Project Management & Oversight

Project Manager	\$250 - \$335
Sr. Project Manager	\$280 - \$380
Survey Manager I-II	\$240 - \$410
SUE Program Manager	\$285 - \$315
Division Manager	\$290 - \$420
Principal	\$480 - \$520

Project Support

Technical/Sr. Technical Writer	\$120 - \$160
Project/Sr. Project Assistant	\$85 - \$175
Project/Sr. Project Coordinator	\$130 - \$215
Graphic/Sr. Graphic Designer	\$135 - \$235
Project Accountant	\$125 - \$195
Sr. Graphic Manager	\$215 - \$275
Project Accountant Manager	\$225 - \$255

District Management

* Inspector - Apprentice	\$95 - \$110
* Inspector/Sr. Inspector	\$110 - \$195
Assistant/Associate Sanitary Engineer	\$160 - \$235
Sanitary/Sr. Sanitary Project Engineer	\$210 - \$300
Operations/Deputy District Manager	\$270 - \$385
District Manager-Engineer	\$395 - \$440

Special Services

Expert Witness	\$520
Strategic Consulting	\$520

Reimbursables including, but not limited to; reproductions, delivery and filing fees; outside consultant fees; and survey field expenses will be billed at *Cost Plus 5%*. **Mileage** will be billed per *current IRS Rate*.

Additional promotional steps exist within various rate categories.

This rate schedule expires June 30, 2025; rates are subject to escalation with new hourly rate schedule as of July 1, 2025.

** These charge rates are subject to Prevailing Wage laws and Union contract.*

CITY ATTORNEY'S OFFICE

TRACY CITY COUNCIL

RESOLUTION NO. _____

1) DETERMINING THAT COMPLIANCE WITH STANDARD PROCUREMENT PROCESSES ARE NOT IN THE BEST INTEREST OF THE CITY PURSUANT TO TRACY MUNICIPAL CODE 2.20.140(6) AND DISPENSING SUCH REQUIREMENT FOR THE ACTIONS TO BE TAKEN HERE, AND

2) APPROVING A PROFESSIONAL SERVICE AGREEMENT WITH MARK THOMAS AND COMPANY, INC. OF SACRAMENTO, CALIFORNIA, FOR ADDITIONAL SERVICES RELATED TO THE DESIGN AND APPROVAL EFFORT FOR THE CORRAL HOLLOW AND LINNE ROAD INTERSECTION IMPROVEMENTS, CAPITAL IMPROVEMENT PROJECT 72104, FOR A TWO YEAR TERM AND FOR A NOT-TO-EXCEED AGREEMENT AMOUNT OF \$172,672.

WHEREAS, the Roadway Improvements and Traffic Signal Installation at Corral Hollow Road and Linne Road Intersection, Capital Improvement Project (CIP) 72104 (Project), is approved under Resolution No. 2019-116, which adopted the FY 2019-2020 budget; and

WHEREAS, the Project is needed to mitigate the growing demands of vehicular traffic and improve the level of service at the intersection to address the overall growth and development in this region; and

WHEREAS, currently, both Corral Hollow Road and Linne Road are one lane in each direction at this intersection; and

WHEREAS, this Project entails the widening of Corral Hollow Road in Tracy, California, from just north of the Union Pacific Railroad (UPRR) right-of-way at W. Linne Road to approximately 500' south of W. Linne Road; and

WHEREAS, the road will be widened to accommodate two lanes in each direction on Corral Hollow Road at the Linne Road intersection, with appropriate lane transitions; and

WHEREAS, the Project limits will not extend beyond the Delta Mendota Canal (DMC) to the south on Corral Hollow Road and the number of lanes on Linne Road will depend upon a subsequent traffic analysis and the right-of-way acquisition process; and

WHEREAS, proposed improvements consist of the replacement of the existing two-lane roadway on Corral Hollow Road, construction of new travel lanes, median, curbs, sidewalks, and installation of new signage and striping; and

WHEREAS, significant improvements will be required within UPRR right-of-way on the railroad tracks and an appropriate drainage system will be designed to accommodate the run-off from this intersection improvement; and

WHEREAS, the proposed improvements also require new traffic signals at the intersection, a pre-signal for southbound traffic on Corral Hollow Road before the UPRR railroad tracks, streetlights, and coordination/relocation of affected existing franchise utilities and the Project will also entail right-of-way acquisitions to accommodate the necessary widening at the intersection; and

WHEREAS, on August 17, 2020, the City issued a Request for Proposals (RFP) seeking qualified consultants to complete the design services for this Project. On September 29, 2020, the City received a total of three (3) proposals and City selected Mark Thomas & Company, Inc., of Sacramento, California; and

WHEREAS, a Professional Services Agreement (PSA) with Mark Thomas & Company, Inc. was executed pursuant to Resolution No. 2021-040 approved by the City Council on April 6, 2021; and

WHEREAS, the PSA with Mark Thomas expired on April 15, 2023; and

WHEREAS, the Project's complex nature has resulted in numerous design delays and additional coordination efforts with the Union Pacific Railroad (UPRR), California Public Utilities Commission (CPUC), and adjacent developments that have gone well beyond the scope of the original Agreement; and

WHEREAS, Engineering staff recommends retaining the same Consultant at this stage of the Project, because changing consultants at this stage of the Project is not in the best interests of the City and would result in additional Project costs. These costs would include familiarizing a new consultant design team with the project's history, delaying active coordination with Union Pacific Railroad (UPRR), and right-of-way acquisitions necessary for the Project. Changing consultant would also result in delays to final design completion and, ultimately, delaying the construction of the improvements for the community; and

WHEREAS, on November 27, 2023, the City requested a proposal from the Consultant for the time and materials required to complete the additional tasks and after negotiations between staff and Consultant, the parties have reached a tentative agreement for the performance of these additional services for a not-to-exceed amount of \$172,672; and

WHEREAS, additional services include project management, utilities coordination, Property Owner coordination, UPRR/CPUC design revisions, revising 90% of Plans, Specifications and Estimates, and construction design support; and

WHEREAS, the term of the new PSA shall commence on August 20, 2024 and expire automatically on August 19, 2026, or earlier, by termination pursuant to Section 6 of the PSA; and

WHEREAS, the Project has sufficient funds available for the PSA in the not-to-exceed total contract amount of \$172,672; and

WHEREAS, this action is for engineering design services only and therefore not subject to environmental review under the California Environmental Quality Act (CEQA); notwithstanding, the Draft Initial Study/Mitigated Negative Declaration (IS/MND) for the full implementation of the Project was available for public review and comment on the City's website from November 4, 2022 to December 15, 2022 and it was published in the Tracy Press on November 14, 2022; and

WHEREAS, in accordance with CEQA Section 15074, a public hearing was conducted during the City Council meeting on November 7, 2023, and IS/MND was adopted through Resolution No. 2023-227; and

WHEREAS, this agenda item supports the City of Tracy's Quality of Life Strategic Priority, which is to provide an outstanding quality of life by enhancing the City's amenities, business mix and services and cultivating connections to promote positive change and progress in our community; now, therefore, be it

RESOLVED: That the City Council of the City of Tracy hereby determines that compliance with standard procurement procedures is not in the best interest of the City pursuant to Tracy Municipal Code Section 2.20.140(6) and dispenses such requirement for procurement of Project design services related to CIP 72104; and be it

FURTHER RESOLVED: That the City Council approves a Professional Service Agreement with Mark Thomas and Company, Inc. of Sacramento, California, for additional services related to the design and approval effort for the Corral Hollow and Linne Road Intersection Improvements, Capital Improvement Project 72104, for a two year term and for a not-to-exceed agreement amount of \$172,672; and be it

FURTHER RESOLVED: That this action is for engineering design services only and therefore not subject to environmental review under the California Environmental Quality Act (CEQA). Notwithstanding, the Draft Initial Study/Mitigated Negative Declaration (IS/MND) for the full implementation of the Project was available for public review and comment on the City's website from November 4, 2022 to December 15, 2022. It was published in the Tracy Press on November 14, 2022. In accordance with CEQA Section 15074, a public hearing was conducted during the City Council meeting on November 7, 2023, and it was adopted through Resolution No. 2023-227.

The foregoing Resolution 2024-_____ was adopted by the Tracy City Council on the 20th day of August 2024 by the following vote:

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

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

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

Agenda Item 1.N

RECOMMENDATION

Staff recommends that the City Council adopt a resolution 1) determining that compliance with standard procurement processes is not in the best interest of the City pursuant to Tracy Municipal Code 2.20.140(6) and dispensing such requirement for the actions herein, and 2) approving a Professional Services Agreement with CSG Consultants, Inc. for the Fiscal Year 2020-2021 Pavement Rehabilitation, Capital Improvement Project 73178, for an additional scope of work for the project, for a total not-to-exceed amount of \$73,114, with the term commencing retroactively on March 17, 2023, and ending on March 16, 2025.

EXECUTIVE SUMMARY

This agenda item seeks approval of a Professional Services Agreement (PSA) with CSG Consultants, Inc. (Consultant), with a retroactive term, for the Fiscal Year 2020-2021 (FY20-21) Pavement Rehabilitation Capital Improvement Project (CIP) 73178 (Project) in a not-to-exceed amount of \$73,114. The City and Consultant entered into a PSA (see Attachment A) for design engineering services that included the preparation of plans, specifications, and cost estimates for the Project on March 16, 2021, under Resolution No. 2021-025. That PSA had a two year term that expired on March 16, 2023. Although the contract had expired, staff continued to use Consultant's services for the Project. The original staff person managing the Project left the City earlier this year. Current staff managing the Project is now requesting an approval of a new PSA for a total not-to-exceed amount of \$73,114, with a term retroactively commencing on March 17, 2023, and ending on March 16, 2025. Staff recommends retaining the same Consultant because changing consultants at this stage of the Project is not in the best interest of the City.

BACKGROUND AND LEGISLATIVE HISTORY

The City and Consultant entered into a PSA for design engineering services of the City's Pavement Rehabilitation FY20-21 Project, CIP 73178, on March 16, 2021, pursuant to Resolution No. 2021-025. The PSA was for a not-to-exceed amount of \$206,615.

This Project is part of the City's annual street improvement program. It consists of pavement rehabilitation of (1) Lowell Avenue between Orchard Parkway and Tracy Boulevard and (2) Lincoln Boulevard between Lowell Avenue and 11th Street. The Project scope includes pavement rehabilitation, road dieting, upgrades to Americans with Disabilities Act (ADA) accessible curb ramps, enhanced crosswalk installation, signal loop replacements, pedestrian push button installations, tree removal and replacement, Class II and Class III bike lane improvements, signage, and striping. The Project seeks to implement complete streets along both these corridors by enhancing bike accessibility and movement for the community along with safe access for all pedestrians and motorists.

During the design process, staff requested the Consultant to prepare two separate bid sets for Lincoln Boulevard and Lowell Avenue roadway rehabilitation for better utilization of grant funds. Once the design was completed in August of 2022, it was identified that the scope of work needed to be amended to include an additional task due to road diet adoption within the project limit. Road dieting would reduce the through lanes with the addition of bike lanes. It would

provide a continuous and safe corridor for bicyclists and pedestrians, connecting residents to community destinations such as schools, parks, transit stops, grocery stores, places of worship, transit, and other recreational activities. The Consultant was asked to perform this additional work in addition to the original scope which was incorporated into the existing PSA budget.

ANALYSIS

The Project was initially programmed under a Surface Transportation Block Group/Regional Surface Transportation Program (STBG/RSTP) grant, which extended the funding availability timeline. Due to this design change, it was identified that the Project funding needed to be changed to meet the Project timeline. An additional scope of work was requested from the Consultant to combine Lincoln Boulevard and Lowell Avenue roadway rehabilitation bid sets into one package for bidding advertisement. It was identified that the project would require additional construction support from the design consultant once the construction contract was awarded. Staff requested an additional scope to perform these tasks to be finalized with the construction of the Project.

As noted above, this original PSA expired in March 2023. However, as the construction contract for the Project has been awarded, staff is requesting approval of a new PSA (see Attachment B) to allow the Consultant to complete the remaining design tasks started under the original PSA and accommodate design support during construction. Due to these added services being a part of the ongoing Project, staff recommends retaining the current Consultant, as changing Consultants would be too costly and burdensome.

FISCAL IMPACT

The FY20-21 Pavement Rehabilitation Project, CIP 73178, is an approved Capital Improvement Project with a budget of \$5,142,699. There are sufficient funds available for this new contract with the Consultant in the amount of \$73,114. The Project budget is as follows:

Funding Source	Budget	Expenses	Balance
242 - Measure K	\$ 590,000	\$ 413,459	\$ 176,541
245 - Gas Tax	\$ 585,000	\$ 578,199	\$ 6,801
248 - SB1 RMRA - Gas Tax	\$ 3,252,699	\$ 3,247,648	\$ 5,051
301 - General Projects	\$ 715,000	\$ 715,000	\$ -
Current Balance	\$ 5,142,699	\$ 4,954,306	\$ 188,393

PUBLIC OUTREACH / INTEREST

Since the Project involved road dieting which reduces the through lanes where it is deemed acceptable and the addition of new bike lanes, staff created an informational pamphlet about the Project and mailed it out to all residents, schools, and businesses within 300 feet of the project limits in December 2022. Staff also created a survey link for the residents to provide their feedback. The feedback was reviewed in collaboration with City traffic consultants to develop the optimum design plans for this Project.

COORDINATION

The City's Engineering staff coordinated with the Operations and Utilities Divisions and Tracy Unified School District.

CEQA DETERMINATION

The action is for design services only and therefore not subject to review under the California Environmental Quality Act (CEQA). However, full implementation of the Project is categorically exempt from CEQA, per 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.

STRATEGIC PLAN

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

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

ACTION REQUESTED OF THE CITY COUNCIL

Staff recommends that the City Council by resolution 1) determine that compliance with standard procurement processes is not in the best interest of the City pursuant to Tracy Municipal Code 2.20.140(6) and dispensing such requirement for the actions herein, and 2) approve a Professional Services Agreement with CSG Consultants, Inc. for the Fiscal Year 2020-2021 Pavement Rehabilitation, Capital Improvement Project 73178, for an additional scope of work for the Project, for a total not-to-exceed amount of \$73,114, with the term commencing retroactively on March 17, 2023, and ending on March 16, 2025.

Prepared by: Selvi Sivaraj, Associate Engineer

Reviewed by: Koosun Kim, PE, City Engineer
Sara Castro, Finance Director
Bijal M. Patel, City Attorney
Karin Schnaider, Assistant City Manager

Approved by: Midori Lichtwardt, City Manager

ATTACHMENTS

Attachment A – 2021 PSA CSG Consultants
Attachment B – 2024 PSA CSG Consultants

**CITY OF TRACY
PROFESSIONAL SERVICES AGREEMENT WITH
CSG CONSULTANTS, INC. FOR THE PAVEMENT REHABILITATION PROJECT FY20-21,
CIP 73178**

This Professional Services Agreement (**Agreement**) is entered into between the City of Tracy, a municipal corporation (**City**), and CSG Consultants, a California corporation (**Consultant**). City and Consultant are referred to individually as "Party" and collectively as "Parties."

Recitals

A. City desires to retain Consultant to perform design services, project management, coordination, pre-design research, and final design of the Pavement Rehabilitation Project FY 20-21, CIP 73178. This work will include coordinating with all necessary agencies, surveying, performing pavement design, and preparing a complete set of plans, specifications, and cost estimates (PS&E) for Pavement Rehabilitation Project FY 20-21, CIP 73178.

B. On October 5, 2020 the City issued a Request for Proposals (RFP) for the design services of the Pavement Rehabilitation Project FY20-21, CIP 73178 (**Project**). On November 10, 2020, Consultant submitted its proposal for the Project to the City. City has determined that Consultant possesses the skills, experience and certification required to provide the services.

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

D. This Agreement is being executed pursuant to Resolution No. ²⁰²¹⁻025 approved by Tracy City Council on March 16, 2021.

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: Michael Fisher, PE. 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. Consultant shall begin performance, and shall complete all required services no later than the dates set forth in Exhibit "A." 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 March 16, 2021 and end on March 16, 2023, unless terminated in accordance with Section 6. This Agreement may be extended for an

additional one year by the City Manager following a written determination that Consultant has satisfactorily met all requirements of this Agreement.

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

3.1 Not to Exceed Amount. Consultant's total compensation under this Agreement shall not exceed \$206,615.00. 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:

Robert Armijo, P.E.
City Engineer
333 Civic Center Plaza
Tracy, CA 95376

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

To Consultant:

Cyrus Kianpour
CSG Consultants, Inc.
3875 Hopyard Road, Suite 141
Pleasanton, CA 94588

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.

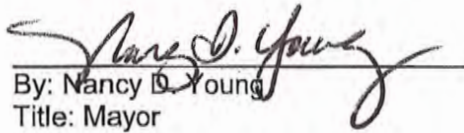
13.13 Entire Agreement. This Agreement and the attached Exhibits comprise the entire integrated understanding between the Parties concerning the services to be performed. This Agreement supersedes all prior negotiations, representations or agreements. All exhibits attached hereto are incorporated by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

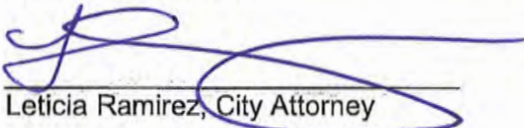
City of Tracy


By: Nancy D. Young
Title: Mayor

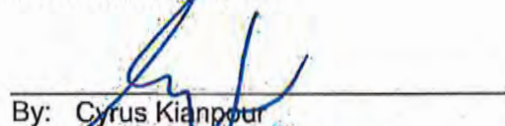
Date: 4-6-2021

Attest: 
Adrienne Richardson, City Clerk

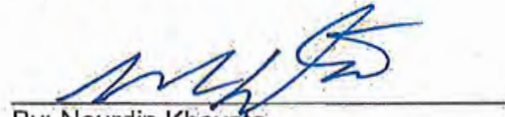
Approved as to form:


Leticia Ramirez, City Attorney

Consultant
CSG Consultants, Inc.


By: Cyrus Kianpour
Title: President
Date: 2/10/21

Federal Employer Tax ID No. 91-2053749


By: Nourdin Khayata
Title: Secretary
Date: 2/10/21

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

Task 1 – Project Management:

This task will include attendance at four (4) virtual meetings, including the kickoff, pavement treatment selection review, 65% review and 100% review meetings. Preparing meeting agendas and meeting minutes are part of this task. Preparation of a detailed project design schedule and preparing updates as the project progresses are also part of this task. The Consultant's Quality Assurance / Quality Control (QA/QC) process is also included. The QA/QC process is detailed earlier in this proposal.

During the project kickoff meeting the Consultant will work with the City to establish common goals and priorities for the project. Many of the proposed streets are in residential areas.

The goals and level of acceptable disruption to residents and stakeholders will then form the basis of discussion with City Staff.

Deliverables:

- Meeting agenda and meeting minutes
- Design Schedule and updates
- QA/QC documentation

Task 2 –Other Coordination

Consultant to coordinate with stakeholders and parties affected such as City staff, sub consultants, utility companies and Caltrans (If required). This task will support many of the other tasks including Project Management and Research and Design.

Task 3 –Research and Design

For this task the Consultant will acquire as-builts from the City for the street sections and all city-owned utilities. The Consultant will request record maps from all private utility companies, PG&E, Division of Water and Wastewater, AT&T, AT&T Broadband, Comcast, Etc. Surface features of all utilities that may be affected by the resurfacing activities (manholes, water valves, monuments, etc.) will be field located and shown on the improvement plans to assist the contractor and inspector in verifying that all street iron has been uncovered after resurfacing work is completed.

Field surveys will be conducted to establish the project horizontal and vertical survey control as needed to perform field surveys. Survey control will be based upon the City of Tracy's horizontal and vertical survey control network as shown on Record of Survey 36 at Page 118 (San Joaquin County Records).

Detailed topographic field surveys will be limited to the immediate areas of curb return ramps and crosswalks designated for replacement. The location of the surveying and mapping covered by this Scope of Services is shown on the attached Planning Exhibit; the surveying and mapping limits are shown in yellow hatch.

The following three intersection locations and sidewalk ramps are planned for surveying and mapping.

- 1) Corral Hollow Road at Lowell Avenue, all 4 corners – ramps and signal poles/push buttons for ADA compliance.
- 2) Lincoln Boulevard at Lowell Avenue, all 4 corners – ramps and signal poles/push buttons for ADA compliance.
- 3) Lincoln Boulevard at 11th Street, 2 corners/North side of intersection – ramps and signal poles/push buttons for ADA compliance.

Below is a more detailed description of the information to be included in the survey.

1) General Curb and Crosswalk

- The survey limits will extend at least 50' from curb returns in all directions.
- All visible surface facilities to include utility covers/lids, pull boxes, traffic signal poles, cabinets, signs, drain inlets, trees (with diameters approximately 4.5' from base), light poles, fences, walls, manholes, valves, monuments, traffic loops, etc.
- Utility USA markings, if available at the time of survey.
- All traffic markings at crosswalks to include lane/limit lines, centerlines, striping, etc.
- Inverts of accessible storm drain, direction of incoming and outgoing pipes, and depth of invert (mains and laterals).

2) Requirement for intersections:

- Within 50' from extension of curb return (applies to both concrete and pavement area)
- Lip of gutter, flowline, top of curb, back of sidewalk, and curb ramp at the concrete joint or 10' max spacing, and up to the City right of way or 5' minimum behind the back of sidewalk.
- Pavement shots in front of the curb ramp and crosswalk at 5' maximum spacing.
- All pull boxes and vaults shall be shot at the corners; All poles shall be shot at the center of pole with diameter indicated.

Final topography mapping will show contours, visible surface features, and spot elevations within the mapping limits. Mapping will be prepared at a horizontal scale of 1"=20' with 1' contours.

As an optional service, the following can be performed:

- Field Surveys: Perform field surveys to locate existing boundary and/or right of way monuments based on records research. The monuments will be referenced to the project survey control and base mapping.
- Pre-Construction Monument Preservation Record of Survey: To comply with section 8771(b) of the California Professional Land Surveyors' Act, the subconsultant KSN will file a pre-construction monument preservation Record of Survey. The monuments located as part of this task will be tied to the project's horizontal survey control system. The sub consultant KSN will then submit and process the pre-construction record of survey through the San Joaquin County Surveyors Office.

The subconsultant BSK Associates will perform a series of pavement coring and investigation tests along the areas preliminarily identified to receive an overlay treatment to determine the structural adequacy of the existing pavement and determine alternative treatment methods for evaluation by the Consultant and the City. The Consultant will perform site visits, visually assess pavement condition, and identify areas that need to receive digout repairs. The digout areas will be marked in the field with paint, summarized in a table and shown on the improvement plans.

Existing curb ramps will be evaluated for conformance with current requirements and they will be identified for either upgrade or replacement, as appropriate. If deficiencies in the adjacent sidewalk or

curbs are found, they will be noted and brought to the City's attention for determination which should be included in the contract documents.

After the utility locating effort is complete the Consultant will perform a topographic survey, focusing on ADA curb ramps where a detailed design of the ramps is required.

Cost Estimate Scenarios

The Consultant will prepare preliminary cost estimates for potential treatments methods to assess the financial viability components of the project measured against the City's allocated budgets.

A meeting will be held with City staff to discuss results from the Pavement Treatment Investigations and the Cost Scenario Estimates.

Deliverables:

- Cost Estimate Scenarios
- Treatment Selection Report

Task 4 --Construction Documents

The Consultant will review the results of their field observations of pavement condition and the results of the PEI testing and provide the City with a summary of resurfacing recommendations, by street segment. Once the recommendations have been finalized and the proper course of resurfacing agreed to, they will provide the foundation for the preparation of the improvement plans.

The Consultant's team to perform complete topo survey for the 40 ADA ramps including topo of curb, flow line of gutter, back of sidewalk, AC pavement conform, AC pavement approach to ramp, and sidewalk extension at least 15' from anticipated new ramp location. Topo to be collected for the 6 Streets proposed to receive pavement treatments and minimal topo as needed to delineate conforms and street slopes. If drainage issues are identified prior to surveying, low points and flow line slopes will be identified by survey topo. General street topo for pavement treatment is not intended to be a comprehensive topo survey of the entire area.

The topographic field survey and map for the Basic ADA Ramp project will include: establishing a GPS-Derived project Benchmark, the setting of at least two semi-permanent control points at or near the Ramp areas. The survey will include the location of Curb/Gutter/Lip, Limits and features of the existing concrete ramps and the connecting sidewalks, ground features and grade breaks; AC/roadway features along conform lines in the street and at sidewalk locations down the returns; lane and crosswalk striping, catch basin w/ invert elevations (as possible), Visible pertinent utilities found within the Survey Limits of the Ramp Sites to include manholes, water valves, hydrants, meters; signs; poles, anchors, streetlights and other pertinent improvements at and around the subject ADA Ramps.

Improvement plans will be prepared on a photographic background at a scale of 1"=20', using Google Earth images as a base. Where appropriate, adjacent buildings will be identified to aid in field orienting the plans to the site. Utility surface features (street iron) will be shown and digout repairs will be identified with a numbered symbol which will relate to a numbered table identifying digout depth and dimensions. Limits and types of resurfacing treatments will be shown as well as locations and limits of ramp and other concrete work.

Project specifications will be prepared using City supplied front end documents and the technical specifications will be in City format.

The opinion of probable construction cost (cost estimate) will be prepared following the format and organization that will be included in the project bid list.

The **60% design submittal** will include all the pavement repair and resurfacing work to be included, the replacement striping layout, and the location and type of ramp and other concrete repairs. Traffic control plans will be developed in sufficient detail to provide to Caltrans for review and comment. The submittal package will be provided to the City, for review and comment.

A design review meeting to review the City's comments and any refinements in direction will be scheduled as soon as the City completes its review. The City notes in the RFP that three weeks should be allowed for City Review, however, given the compressed schedule of the project, expediting the review process would be very beneficial to the project.

The **90% design submittal** will include all the pavement repair and resurfacing work to be included, the replacement striping layout, and the location and type of ramp and other concrete repairs. Traffic control plans will be developed in sufficient detail to provide to Caltrans for review and comment. The submittal package will be provided to the City and Caltrans (If necessary) for review and comment.

A design review meeting to review the City's comments and any refinements in direction will be scheduled as soon as the City completes its review. The City notes in the RFP that three weeks should be allowed for City Review, however, given the compressed schedule of the project, expediting the review process would be very beneficial to the project.

The **100% design submittal** will include all details required to make a complete bid package, with an emphasis on completeness, clarity of presentation, and elimination of ambiguity in the presentation of the intended work.

A design review meeting will review any additional comments from the City. The Consultant and City staff will resolve any variations between the design as presented and the review comments and the Consultant will incorporate them into the final design package.

The **Final Design Submittal** will incorporate all comments received from the City. The final package will include wet-signed plans and specifications camera ready for reproduction by the City for bidding.

Deliverables:

- 60% Design Submittal
- 90% Design Submittal
- 100% Design Submittal
- Final PS&E
- Final Plans in AutoCAD and pdf format
- Specifications in Word and pdf format
- Cost Estimate in excel and pdf format
- Two copies of wet-signed plans and specifications

ADA Ramp Design Fee (Add or Deduct)

The Consultant is well qualified and has significant relevant experience inspecting ADA ramps for compliance and designing compliant ADA ramps. The Consultant will obtain an accurate topo survey of the ramp vicinity and have relevant experience to determine the most feasible and cost-effective design. The Consultant can add or subtract from the estimated total number of ramps (currently estimated at 40 ramps for the project) for the fee shown in the project Resource Allocation Estimate attached.

Task 5 –Bid Period Services

The Consultant will participate in the prebid meeting, prepare responses to bidder's questions and assist with preparation of addenda, if required. The Consultant will evaluate any alternative materials requests from bidders and provide support in evaluation of bids. The Consultant will prepare a conformed set of plans and specifications incorporating all, if any, changes documented through the addenda process.

The Consultant will assist the City in evaluating the bids received, providing input as to any observable irregularities or unbalanced bids.

The Consultant Design team will provide support for the following activities during the construction phase, supplementing the efforts of the construction team, including:

Attend Pre-Construction Meeting

The Consultant will attend the pre-construction meeting.

Attend Construction Progress Meetings

The Consultant design team will attend progress meetings, as required, to resolve design related issues.

Site Visits

Three site visits during construction have been budgeted to discuss possible design revisions that may be required due to unexpected site conditions, revise the design as required, inspect construction progress and assist the City in assembling the punch list.

Review Submittals

Contractor submittals that are forwarded from the inspection team will be reviewed for conformance with design intent and contractor documents.

Prepare Record Drawings

The Consultant will prepare Project Record Drawings following completion of the project construction.

Deliverables:

- Clarifications to bidder's question
- Conformed set of plans and specifications and pdf formats
- Meeting Minutes
- Plan Revisions
- Record Drawings in Mylar

Assumptions:

- Existing ADA ramps with tactile surfaces are not included for replacement in the scope of this project.
- Potholing is not included in this scope and can be performed as additional services.
- Pavement testing will be limited to coring samples, base layer assessment, R Value analysis and visual assessment.
- Deflection testing is not included as part of the base scope and can be performed as additional services

KEY PERSONNEL

- Michael Fisher, PE, QSD/P, Project Manager
- Tom Ruark, PE, QA/QC Review
- David Seto, PE, Civil Design Lead
- Merrill Buck, PE, Pavement Analysis and Constructability Review
- Cristiano Melo, -PE, GE – Geotechnical Services Manager (BSK)
- Kris Nehmer, PLS – Survey Manager (KSN)

PROJECT SCHEDULE

The Consultant will complete this project in accordance with the schedule shown on the following page.

City of Tracy
 Proposal for Pavement Rehabilitation FY 20/21
 Prepared by CSG Consultants (updated 4/23/2021)

ID	Task Name	Number	Start	Finish	Notes
1	AGGREGATE PREPARATION (CONCRETE)	1 day	01/27/21	01/27/21	
2	CONCRETE FORMWORK	1 day	01/27/21	01/27/21	
3	PREPARE FORMWORK	1 day	01/27/21	01/27/21	
4	CONCRETE POUR	1 day	01/27/21	01/27/21	
5	FORMWORK REMOVAL	1 day	01/27/21	01/27/21	
6	CONCRETE FINISH	1 day	01/27/21	01/27/21	
7	CONCRETE CURE	1 day	01/27/21	01/27/21	
8	CONCRETE PATCHING	1 day	01/27/21	01/27/21	
9	CITY REVIEW & APPROVAL	1 day	01/27/21	01/27/21	
10	CONCRETE PATCHING	1 day	01/27/21	01/27/21	
11	CONCRETE PATCHING	1 day	01/27/21	01/27/21	
12	CONCRETE PATCHING	1 day	01/27/21	01/27/21	
13	CONCRETE PATCHING	1 day	01/27/21	01/27/21	
14	CONCRETE PATCHING	1 day	01/27/21	01/27/21	
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30	CONCRETE PATCHING	1 day	01/27/21	01/27/21	
31	CONCRETE PATCHING	1 day	01/27/21	01/27/21	
32	CONCRETE PATCHING	1 day	01/27/21	01/27/21	
33	CONCRETE PATCHING	1 day	01/27/21	01/27/21	
34	CONCRETE PATCHING	1 day	01/27/21	01/27/21	

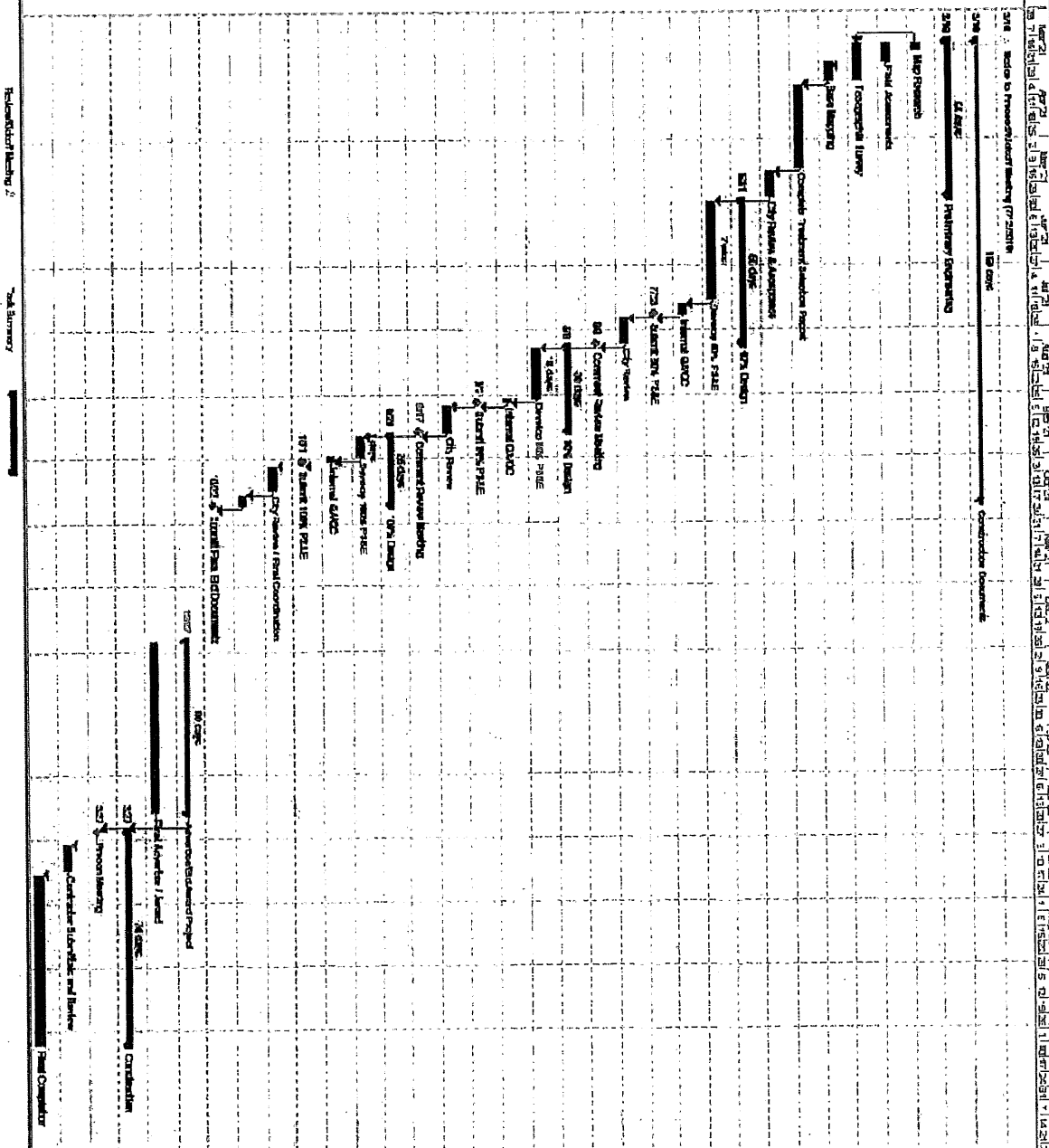


EXHIBIT B - Compensation

Task Description	Principal Engineer	Senior Engineer	Assistant Engineer	CSG	Subconsultant BSK Geotechnical	KSN Surveying	Cost
Category	\$210	\$185	\$135	Hours			
TASK 1 – Project Management							
1.1 Project Coordination & Sub Consultant Management	20	12		32			\$ 6,420
1.2 Project Meetings	16	16		32			\$ 6,320
1.3 QA / QC	8			8			\$ 1,680
Task 1 - Subtotal	44	28	0	72			\$ 14,420
TASK 2 – Other Coordination							
1.4 Gathering Data	2	20	20	42			\$ 6,820
1.5 Utility Research & Coordination	4	20	20	44			\$ 7,240
Task 2 - Subtotal	6	40	40	86			\$ 14,060
TASK 3 – Research & Design							
3.1 Topo Survey	2	16				\$ 16,550	\$ 19,930
3.2 Pavement Failure Evaluation (Digouts)	2	12	12	26			\$ 4,260
3.3 Pavement Treatment Selection Report	4	24	4	32	\$ 26,040		\$ 31,860
3.4 Prepare base mapping		12	60	72			\$ 10,320
3.5 Coordinate with Survey			16	16			\$ 2,160
3.6 Monument research	1	4	8	13			\$ 2,030
3.7 Field marking of Improvements	2	4	4	10			\$ 1,700
Task 3 - Subtotal	11	72	104	169		\$ 16,550	\$ 72,260
TASK 4 – Construction Documents							
4.1 60% Design							
60% Plans	16	80	110	206			\$ 33,010
60% Specifications	1	8	8	17			\$ 2,770
60% Cost Estimate	1	4	8	13			\$ 2,030
4.2 90% Design							
90% Plans	12	80	60	152			\$ 25,420
90% Specifications	1	20	8	29			\$ 4,990
90% Cost Estimate	1	8	8	17			\$ 2,770
4.3 100% PS&E							
100% Plans	8	40	40	88			\$ 14,480
100% Specifications	4	8	4	16			\$ 2,860
100% Cost Estimate	1	4	4	9			\$ 1,490
4.4 Final PS&E	4	24	24	52			\$ 8,520
Task 4 - Subtotal	49	276	274	599			\$ 98,340
TASK 5 – Bid Period Services							
5.1 Bid support / Answer Bid RFI's	2	2					\$ 790
5.2 Attend Pre-construction meetings	2	2					\$ 790
5.3 Attend construction meetings / Site visits	2	2					\$ 790
5.4 Plan Revisions	1	4	4				\$ 1,490
5.5 Conform Set	1	2	16				\$ 2,740
5.6 Record Drawings	1	1	4				\$ 935
Task 5 - Subtotal	9	13	24	0			\$ 7,535
TOTAL PROPOSED FEE / BUDGET (TASKS 1-5)							\$ 206,615

**CITY OF TRACY
PROFESSIONAL SERVICES AGREEMENT WITH
CSG CONSULTANTS, INC. FOR THE PAVEMENT REHABILITATION PROJECT FY20-21,
CIP 73178**

This Professional Services Agreement (“Agreement”) is entered into between the City of Tracy, a municipal corporation (“City”), and CSG Consultants, a California (“Consultant”). City and Consultant are referred to individually as “Party” and collectively as “Parties.”

Recitals

- A. City desires to retain the professional services of Consultant to complete the professional design engineering services for Pavement Rehabilitation Project FY 20-21, CIP 73178 (as further described herein and in Exhibit A) begun under a previously executed Professional Services Agreement (2021 PSA).
- B. On October 5, 2020, the City issued a Request for Proposals (RFP) for the design services, for the Scope of Work defined in Exhibit A. On November 10, 2020, Consultant submitted its proposal for the Scope of Work to the City. Pursuant to Tracy Municipal Code Sections 2.20.140(a)(2) and 2.20.130, the City has determined that Consultant demonstrated that it was the best qualified and most responsible proposer, and best fits the City’s needs for competence and professional qualifications necessary for the satisfactory performance of the Scope of Work defined below.
- C. On March 16, 2021, after negotiations between the City and Consultant, the Parties have reached an agreement for Consultant’s professional services (2021 PSA) pursuant to Resolution 2021-025, for the performance of the services, in a not-to-exceed amount of \$206,615, in accordance with the terms set forth in the 2021 PSA.
- D. After negotiations between the City and Consultant, the City desires to retain the services of the Consultant, to complete the additional remaining design tasks required to complete the project.
- E. This Agreement (2024 PSA) was approved on [] pursuant to Tracy Municipal Code Section 2.20.140, and City Council Resolution No. _____].

NOW THEREFORE, for good and valuable consideration the sufficiency of which the Parties hereby acknowledge, the Parties mutually agree as follows:

1. **Scope of Work.** Consultant shall perform the professional services, tasks, and scope of work described in Exhibit A attached hereto and incorporated herein by this reference (“Scope of Work”). The Scope of Work shall be performed by, or under the direct supervision of, Consultant’s “Authorized Representative”: Michael Fisher, PE., Principal Engineer. 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 the City’s prior written consent. The City may terminate this Agreement if Consultant makes any such change or uses or replaces any such subcontractor or subconsultant. Unless otherwise stated on Exhibit A, Consultant shall furnish, at its own expense, the materials, equipment, supplies, and other resources necessary to perform the Scope of Work. The City reserves the right to contract with other firms and/or consultants during the term of this Agreement to provide the City with the same or similar Scope of Work as described in Exhibit A.

2. Time of Performance. Time is of the essence in the performance of the Scope of Work under this Agreement and the timing requirements set forth herein shall be strictly adhered to unless otherwise modified in writing in accordance with this Agreement. If dates for performance are set out in Exhibit A, Consultant shall begin performance, and shall complete all required Scope of Work no later than the dates set forth in Exhibit A. 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. If Exhibit A indicates that Scope of Work shall only be performed upon request, or if the City otherwise communicates the same to Consultant, Consultant shall not perform said Scope of Work until the City requests such performance. Consultant shall submit all requests for time extensions to the City in writing no later than ten (10) days after the start of the condition which purportedly caused the delay, and not later than the date on which performance is due. The City may grant or deny such requests in its sole and absolute discretion.

2.1 Term. The term of this Agreement shall commence on March 17, 2023 and expire and terminate automatically on March 16, 2025 or earlier by termination pursuant to Section 6 of this Agreement ("Term").

3. Compensation. City shall pay Consultant on a time and expense basis for Scope of Work performed under this Agreement at the billing rates set forth in Exhibit B, which is attached hereto and incorporated herein by this reference.

3.1 Not to Exceed Amount. Consultant's total compensation under this Agreement shall not exceed \$73,114 [Seventy-three thousand and one hundred fourteen] Dollars. Notwithstanding the foregoing, the payment of any funds under this Agreement shall be subject to the City of Tracy appropriation of funds for the Scope of Work. This Agreement shall automatically terminate in the event that such funds are not appropriated. Unless specifically stated otherwise or agreed to in writing and approved by City Council, the fees proposed by Consultant, as set forth in Exhibit B hereto, shall remain unchanged for the entire term of this Agreement and any extensions of this Agreement. It is understood and agreed that Consultant may not receive compensation up to the Not-to-Exceed Amount (or any other amount), and Consultant's total compensation under this Agreement will depend on the Scope of Work requested and approved by the City. 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" provided in this section without the City's prior written approval.

3.1.1 City Budget Limitations. This Agreement will terminate without penalty, liability or expense of any kind to City at the end of any fiscal year if funds are not appropriated for the next succeeding fiscal year for this Agreement. If funds are appropriated for a portion of the fiscal year, this Agreement will automatically terminate, without penalty, liability or expense of any kind at the end of the term for which funds are appropriated. City has no obligation to make appropriations for this Agreement in lieu of appropriations for new or other agreements. City budget decisions are subject to the discretion of the City Council. Consultant's assumption of risk of possible non-appropriation is part of the consideration for this Agreement.

3.2 Invoices. Consultant shall submit monthly invoice(s) to the City that describe in detail satisfactory to the City: the services performed, the times and dates of performance, and the names of the person(s) performing the Scope of Work.

3.2.1 If Consultant is providing the Scope of Work 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 this Section may result in the City rejecting said invoice(s) and thereby delaying payment to Consultant.

3.2.3 Consultant shall submit invoices no later than 90 days after completion of a portion of the Scope of Work. City has no obligation to pay invoices delivered greater than 90 days after the date of performance of the Scope of Work.

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 and portions of Scope of Work described on the invoice(s) and approved by the City.

3.4 Final Payment. The acceptance by Consultant of the final payment made under this Agreement shall constitute a release of City from all claims and liabilities for compensation to Consultant for anything completed, finished or relating to Consultant's services or performance of the Scope of Work. Consultant agrees that payment by City shall not constitute nor be deemed a release of the responsibility and liability of Consultant or its employees, subcontractors, agents and subconsultants 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 Consultant, its employees, subcontractors, agents and subconsultants.

3.5 Books and Accounts. Consultant agrees to maintain books, accounts, payroll records and other information relating to the performance of Consultant's obligations under the Agreement, which shall adequately and correctly reflect the expenses incurred by the Consultant in the performance of Consultant'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. 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, and reimburse the City for, any and all liabilities, obligations, losses, damages, injunctions, suits, actions, fines, penalties, claims, demands, administrative and judicial proceedings and order, judgments, remedial action requirements, costs and expenses of every kind or nature, and all costs and expenses incurred in connection therewith, including, without limitation, reasonable attorneys' fees and court costs ("**Claims**") arising directly or indirectly from or out of (including any and all related costs and expenses), relating or pertaining to or resulting from, in whole or in part, this Agreement; any act, omission, or event relating in any way to Consultant's obligations under this Agreement; and/or Consultant's breach of this Agreement, except to the extent such Claim is caused solely by the active negligence or willful misconduct of the City. In this Section 4, "City" means the City, its officials, officers, agents, employees and volunteers; "Consultant" means the Consultant, its employees, agents and subcontractors.

In the event there is a finding and/or determination that Consultant 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), Consultant shall, to the fullest extent permitted by law, indemnify, defend, and hold harmless the City from and against any and all Claims relating to or in connection with such a finding and/or determination.

The provisions of this section survive the expiration 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 the Scope of Work 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 in 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 and, in any event, within five (5) days of such request.

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

7. 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 Scope of Work, upon termination of this Agreement, or within five (5) days of any 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.

8. 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. Consultant shall be solely responsible for, and shall save the City harmless from, all matters relating to the payment of Consultant's employees, agents, subcontractors and subconsultants, including compliance with social security requirements, federal and state income tax withholding and all other regulations governing employer-employee relations.

9. 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. The Consultant represents that it is familiar with the local and state conflict of interest laws, and agrees to comply with those laws in performing this Agreement. The Consultant represents and warrants that the representations made by the Consultant concerning unfair competitive advantage and conflicts of interest in connection with its submissions in response to the City's procurement for this Agreement were true and accurate both when made and as of the date of this Agreement. Consultant represents and warrants that it has not and shall not offer or deliver any City officer, public official, or employee any gifts or donations in violation of Federal, State and/or local law.

10. 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 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; or 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.

11. 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 the City:
City of Tracy
Attn: Koosun Kim, City Engineer
333 Civic Center Plaza
Tracy, CA 95376

To Consultant:
CSG Consultants, Inc.
Attn: Cyrus Kianpour
3875 Hopyard Road, Suite 141
Pleasanton, CA 94588

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

12. General Provisions.

12.1 Standard of Care. Unless otherwise specified in this Agreement, the standard of care applicable to Consultant's performance of the Scope of Work 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.

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

12.3 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.

12.4 Assignment and Delegation. Consultant may not assign, transfer or delegate this Agreement or any portion of it without the City's advance 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.

12.5 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.

12.6 Compliance with the Law. Consultant shall comply with all applicable local, state, and federal laws, including, without limitation, those identified below, whether or not such laws are expressly stated in this Agreement.

12.6.1 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.

12.6.2 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.).

12.7 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 authorized to do business in California, in good standing with the Secretary of State, and in good standing with all agencies having jurisdiction over Consultant (including any licensing agencies). If Consultant is a suspended entity at the time it enters into this Agreement, City may take steps to have this Agreement declared voidable.

12.8 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.

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

12.10 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.

12.11 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.

12.12 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.

12.13 Entire Agreement. This Agreement and the attached Exhibits comprise the entire integrated understanding between the Parties concerning the services to be performed and the matters contemplated herein. This Agreement supersedes all prior negotiations, representations or agreements (in each case, whether oral or in writing). All exhibits attached hereto are incorporated by reference herein.

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

12.15 Expenses for Enforcement. Consultant 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.

13. 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.

[Signature Page to Follow]

As of the date of last signature below, the undersigned Parties agree to the full performance of the terms set forth in this Agreement and have caused this Agreement to be duly executed.

City of Tracy, a Municipal Corporation

By: _____
Nancy Young
Title: Mayor
Date: _____


Attest:

Adrienne Richardson, City Clerk

Approved as to form:

Bijal M. Patel, City Attorney

CSG Consultants, Inc.

By:  _____
Cyrus Kianpour
Title: President
Date: Aug 13, 2024

Federal Employer Tax ID No. 91-2053749

By:  _____
Nourdin Khayata

Title: Secretary
Date: Aug 13, 2024

Exhibits:

- A Scope of Work
- B Compensation

EXHIBIT A - Scope of Work

Additional Scope of Service 1

Task A – Lane Reduction Exhibits for Public Outreach

Consultant shall prepare exhibits for public outreach efforts. Scope includes meeting with Traffic Consultant to discuss concepts and prepare exhibits for both Lincoln Boulevard and Lowell Avenue segments to include the project limits to match the pavement rehabilitation project. Public Outreach and web site updates to be performed by others.

Task B – Prepare final PS&E with modified striping plans for lane reduction

Consultant shall revise plans, specifications, and estimate for bidding to include the modifications exhibited in Task A above and vetted by the public process.

Additional Scope of Service 2

1. Combine Projects into 1 bid set from 2 Separate Bid Documents

Consultant shall combine originally planned separate bid set documents into one bid set of plan, specification, and cost estimates. Consultant shall meet in the field to discuss additional project scope. Consultant shall modify the plans based on a new round of comments incorporating additional sidewalk and driveways into project plans.

2. Construction Support

Consultant to support the City of Tracy with tasks as needed during the construction phase.

These tasks include the following:

- a. Review and Approve Shop Drawing/Submittal
- b. Response to Request for Information (RFI)
- c. Attend Construction Meeting (2 meeting) and Field Visit/Meeting (2 visit/meeting)
- d. Provide assistance to review Construction Activities (2)
- e. Prepare, review, and recommend for Change Orders (Up to 5 change order)
- f. Prepare As-builts/Record Drawings

3. Preparation of Exhibit

Consultant shall create an exhibit and provide options for rehabilitation of Tracy Blvd between Airport and Linne Road.

EXHIBIT B - Compensation

Compensation for Additional Scope of Service 1

CITY OF TRACY					
Request for Additional Fee for Lane Reduction & Bike Lane - 9/1/2022					
PAVEMENT REHABILITATION 2020-21					
CSG Consultants, Inc.					
Task Description	Principal Engineer	Senior Engineer	Assistant Engineer	CSG	
Category	\$215	\$195	\$140	Hours	Cost
TASK A – Lane Reduction Exhibits for Public Outreach					
1.1 Preliminary Striping Design - Lane drops and bike lanes	2	20	40	62	\$ 9,930
1.2 Prepare exhibit on aerial image	2	4	32	38	\$ 5,690
1.3 Meetings and Coordiantion	2	4	4	10	\$ 1,770
					\$ -
Task A - Subtotal	6	28	76	110	\$ 17,390
TASK B – Prepare final PS&E with modified striping plans for lane reduction					
1.4 Modify plans for Lincoln & Lowell Plans	6	20	20	46	\$ 7,990
1.5 Update Specs & Estimates	2	8	8	18	\$ 3,110
1.6 Submit draft final plans for comments	2	8	4	14	\$ 2,550
1.7 Prepare Final PS&E - 2 documents - with lane reductions	2	4	4	10	\$ 1,770
					\$ -
Task B - Subtotal	12	40	36	88	\$ 15,420
TOTAL PROPOSED FEE / BUDGET (TASKS A&B)					\$ 32,810

Compensation for Additional Scope of Service 2

CITY OF TRACY						
Request for Additional Fee for Lane Reduction & Bike Lane - 2/26/2024						
PAVEMENT REHABILITATION 2020-21						
CSG Consultants, Inc.						
Task Description	Principal Engineer	Senior Engineer	Assistant Engineer	CSG		
Category	\$235	\$210	\$150	Hours	Cost	
TASK A - Combine Projects from 2 Separate Bid Documents						
2.1	Modify plans to combine 2 separate bid documents	2	8	16	26	\$ 4,600
2.2	Modify specs and estimate to combine 2 separate bid documents	2	4	4	10	\$ 1,928
2.3	Additional field visit with Construction Services	2	4	4	10	\$ 1,928
2.4	Additional Design comments for driveway and sidewalk modifications	2	8	8	18	\$ 3,384
						\$ -
	Task A - Subtotal	8	24	32	64	\$ 11,840
TASK B - Construction Support						
1.1	Attend Pre-Construction Meeting (complete)				0	\$ -
1.2	Review and Approve Shop Drawing/Submittal	6	16	12	34	\$ 6,570
1.3	Response to Request for Information (RFI)	2	8		10	\$ 2,150
1.4	Attend Construction Meeting (2 meeting) and Field Visit/Meeting (2 visit/meeting)	6	12		18	\$ 3,930
1.5	Provide Assistance to review Construction Activities (2)	2	8	8	18	\$ 3,350
1.6	Prepare, review and recommend for Change Orders (up to 5 change orders)	4	16	8	28	\$ 5,500
1.7	Prepare As-builts / Record Drawings	4	8	8	20	\$ 3,820
	Task B - Subtotal	24	68	36	128	\$ 25,320
TASK C - Exhibit: Tracy Blvd between the Airport and Linne Road (1.15 miles)						
3.1	Exhibit preparation	1		12	13	\$ 2,060
3.2	Order of Magnitude Options Costs Estimates	1	4		5	\$ 1,084
	Task C - Subtotal	2	4	12	18	\$ 3,144
	TOTAL PROPOSED FEE / BUDGET (TASK A-C)					\$ 40,304

TRACY CITY COUNCIL

RESOLUTION 2024-_____

-
- 1) DETERMINING THAT COMPLIANCE WITH STANDARD PROCUREMENT PROCESSES IS NOT IN THE BEST INTEREST OF THE CITY PURSUANT TO TRACY MUNICIPAL CODE 2.20.140(6) AND DISPENSING SUCH REQUIREMENT FOR THE ACTIONS HEREIN, AND
 - 2) APPROVING A PROFESSIONAL SERVICES AGREEMENT WITH CSG CONSULTANTS, INC. FOR THE FISCAL YEAR 2020-2021 PAVEMENT REHABILITATION, CAPITAL IMPROVEMENT PROJECT 73178, FOR AN ADDITIONAL SCOPE OF WORK FOR THE PROJECT, FOR A TOTAL NOT-TO-EXCEED AMOUNT OF \$73,114, WITH THE TERM COMMENCING RETROACTIVELY ON MARCH 17, 2023, AND ENDING ON MARCH 16, 2025.

WHEREAS, the Fiscal Year 2020-2021 (FY20-21) Pavement Rehabilitation, Capital Improvement Project (CIP) 73178, (Project) is an annual approved maintenance program in the adopted FY20-21; and

WHEREAS, this Project is part of the City's annual street improvement program, consisting of pavement rehabilitation of (1) Lowell Avenue between Orchard Parkway and Tracy Boulevard, (2) Lincoln Boulevard between Lowell Avenue and 11th Street; and

WHEREAS, the Project scope includes pavement rehabilitation, road dieting, upgrades to American Disabilities Act (ADA) accessible curb ramps, enhanced crosswalk installation, signal loop replacements, pedestrian push button installations, tree removal and replacement, Class II and Class III bike lane improvements, signage, and striping; and

WHEREAS, the Project seeks to implement complete streets along both these corridors by enhancing the bike accessibility and movement for the community along with safe access for all pedestrians and motorists; and

WHEREAS, the City and CSG Consultants, Inc. (Consultant) entered into a Professional Services Agreement (PSA) for design engineering services that included the preparation of plans, specifications, and cost estimates for the Project on March 16, 2021, under Resolution No. 2021-025, the term of which PSA expired on March 16, 2023; and

WHEREAS, although the contract had expired, staff continued to use Consultant's services for the Project; and

WHEREAS, the original staff person managing the Project left the City earlier this year; and

WHEREAS, as the construction contract for the Project has been awarded, current staff is now requesting an approval of a new PSA with Consultant (see Exhibit 1) for a total not-to-exceed amount of \$73,114, with a term retroactively commencing from March 17, 2023, and ending March 16, 2025; and

WHEREAS, staff recommends retaining the same Consultant because changing consultants at this stage of the Project is not in the best interests of the City; and

WHEREAS, the Project was initially programmed under a Surface Transportation Block Group grant, which extended the funding availability timeline; and

WHEREAS, the Consultant was asked to perform this additional work in addition to the original scope, which was incorporated into the existing PSA budget; and

WHEREAS, during the design process, staff requested the Consultant to prepare two separate bid sets for Lincoln Boulevard and Lowell Avenue roadway rehabilitation for better utilization of grant funds; and

WHEREAS, it was identified that the Project would require additional construction support from the design consultant once the construction contract was awarded, so staff requested an additional scope to perform these tasks to be finalized with the construction of the Project; and

WHEREAS, the staff requested two separate proposals for the required additional work, and the Consultant provided a proposal for the additional scope and fees, respectively, for an amount not-to-exceed \$73,114, which is reasonable; and

WHEREAS, CIP 73178 has an available project budget of \$188,392, and sufficient funding exists for the new PSA in the amount of \$73,114; now, therefore, be it

RESOLVED: That the City Council of the City of Tracy hereby determines that compliance with standard procurement processes is not in the best interest of the City pursuant to Tracy Municipal Code 2.20.140(6) and dispenses such requirement the actions set forth herein; and be it

FURTHER RESOLVED: That the City Council hereby approves a new Professional Services Agreement with CSG Consultants, Inc. in the form set forth in Exhibit 1, for the FY20-21 Pavement Rehabilitation, Capital Improvement Project 73178, for a total not-to-exceed amount of \$73,114, with the term of the Agreement to retroactively commence on March 17, 2023, and end on March 16, 2025; and be it

FURTHER RESOLVED: That this action is for procurement of design services only and therefore not subject to review under the California Environmental Quality Act; and be it

FURTHER RESOLVED: That 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.

The foregoing Resolution 2024-_____ was adopted by the Tracy City Council on the 20th day of August 2024 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

EXHIBITS

Exhibit 1 - 2024 PSA CSG Consultants

**CITY OF TRACY
PROFESSIONAL SERVICES AGREEMENT WITH
CSG CONSULTANTS, INC. FOR THE PAVEMENT REHABILITATION PROJECT FY20-21,
CIP 73178**

This Professional Services Agreement (“Agreement”) is entered into between the City of Tracy, a municipal corporation (“City”), and CSG Consultants, a California (“Consultant”). City and Consultant are referred to individually as “Party” and collectively as “Parties.”

Recitals

- A. City desires to retain the professional services of Consultant to complete the professional design engineering services for Pavement Rehabilitation Project FY 20-21, CIP 73178 (as further described herein and in Exhibit A) begun under a previously executed Professional Services Agreement (2021 PSA).
- B. On October 5, 2020, the City issued a Request for Proposals (RFP) for the design services, for the Scope of Work defined in Exhibit A. On November 10, 2020, Consultant submitted its proposal for the Scope of Work to the City. Pursuant to Tracy Municipal Code Sections 2.20.140(a)(2) and 2.20.130, the City has determined that Consultant demonstrated that it was the best qualified and most responsible proposer, and best fits the City’s needs for competence and professional qualifications necessary for the satisfactory performance of the Scope of Work defined below.
- C. On March 16, 2021, after negotiations between the City and Consultant, the Parties have reached an agreement for Consultant’s professional services (2021 PSA) pursuant to Resolution 2021-025, for the performance of the services, in a not-to-exceed amount of \$206,615, in accordance with the terms set forth in the 2021 PSA.
- D. After negotiations between the City and Consultant, the City desires to retain the services of the Consultant, to complete the additional remaining design tasks required to complete the project.
- E. This Agreement (2024 PSA) was approved on [] pursuant to Tracy Municipal Code Section 2.20.140, and City Council Resolution No. _____].

NOW THEREFORE, for good and valuable consideration the sufficiency of which the Parties hereby acknowledge, the Parties mutually agree as follows:

- 1. **Scope of Work.** Consultant shall perform the professional services, tasks, and scope of work described in Exhibit A attached hereto and incorporated herein by this reference (“Scope of Work”). The Scope of Work shall be performed by, or under the direct supervision of, Consultant’s “Authorized Representative”: Michael Fisher, PE., Principal Engineer. 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 the City’s prior written consent. The City may terminate this Agreement if Consultant makes any such change or uses or replaces any such subcontractor or subconsultant. Unless otherwise stated on Exhibit A, Consultant shall furnish, at its own expense, the materials, equipment, supplies, and other resources necessary to perform the Scope of Work. The City reserves the right to contract with other firms and/or consultants during the term of this Agreement to provide the City with the same or similar Scope of Work as described in Exhibit A.

2. Time of Performance. Time is of the essence in the performance of the Scope of Work under this Agreement and the timing requirements set forth herein shall be strictly adhered to unless otherwise modified in writing in accordance with this Agreement. If dates for performance are set out in Exhibit A, Consultant shall begin performance, and shall complete all required Scope of Work no later than the dates set forth in Exhibit A. 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. If Exhibit A indicates that Scope of Work shall only be performed upon request, or if the City otherwise communicates the same to Consultant, Consultant shall not perform said Scope of Work until the City requests such performance. Consultant shall submit all requests for time extensions to the City in writing no later than ten (10) days after the start of the condition which purportedly caused the delay, and not later than the date on which performance is due. The City may grant or deny such requests in its sole and absolute discretion.

2.1 Term. The term of this Agreement shall commence on March 17, 2023 and expire and terminate automatically on March 16, 2025 or earlier by termination pursuant to Section 6 of this Agreement ("Term").

3. Compensation. City shall pay Consultant on a time and expense basis for Scope of Work performed under this Agreement at the billing rates set forth in Exhibit B, which is attached hereto and incorporated herein by this reference.

3.1 Not to Exceed Amount. Consultant's total compensation under this Agreement shall not exceed \$73,114 [Seventy-three thousand and one hundred fourteen] Dollars. Notwithstanding the foregoing, the payment of any funds under this Agreement shall be subject to the City of Tracy appropriation of funds for the Scope of Work. This Agreement shall automatically terminate in the event that such funds are not appropriated. Unless specifically stated otherwise or agreed to in writing and approved by City Council, the fees proposed by Consultant, as set forth in Exhibit B hereto, shall remain unchanged for the entire term of this Agreement and any extensions of this Agreement. It is understood and agreed that Consultant may not receive compensation up to the Not-to-Exceed Amount (or any other amount), and Consultant's total compensation under this Agreement will depend on the Scope of Work requested and approved by the City. 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" provided in this section without the City's prior written approval.

3.1.1 City Budget Limitations. This Agreement will terminate without penalty, liability or expense of any kind to City at the end of any fiscal year if funds are not appropriated for the next succeeding fiscal year for this Agreement. If funds are appropriated for a portion of the fiscal year, this Agreement will automatically terminate, without penalty, liability or expense of any kind at the end of the term for which funds are appropriated. City has no obligation to make appropriations for this Agreement in lieu of appropriations for new or other agreements. City budget decisions are subject to the discretion of the City Council. Consultant's assumption of risk of possible non-appropriation is part of the consideration for this Agreement.

3.2 Invoices. Consultant shall submit monthly invoice(s) to the City that describe in detail satisfactory to the City: the services performed, the times and dates of performance, and the names of the person(s) performing the Scope of Work.

3.2.1 If Consultant is providing the Scope of Work 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 this Section may result in the City rejecting said invoice(s) and thereby delaying payment to Consultant.

3.2.3 Consultant shall submit invoices no later than 90 days after completion of a portion of the Scope of Work. City has no obligation to pay invoices delivered greater than 90 days after the date of performance of the Scope of Work.

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 and portions of Scope of Work described on the invoice(s) and approved by the City.

3.4 Final Payment. The acceptance by Consultant of the final payment made under this Agreement shall constitute a release of City from all claims and liabilities for compensation to Consultant for anything completed, finished or relating to Consultant's services or performance of the Scope of Work. Consultant agrees that payment by City shall not constitute nor be deemed a release of the responsibility and liability of Consultant or its employees, subcontractors, agents and subconsultants 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 Consultant, its employees, subcontractors, agents and subconsultants.

3.5 Books and Accounts. Consultant agrees to maintain books, accounts, payroll records and other information relating to the performance of Consultant's obligations under the Agreement, which shall adequately and correctly reflect the expenses incurred by the Consultant in the performance of Consultant'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. 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, and reimburse the City for, any and all liabilities, obligations, losses, damages, injunctions, suits, actions, fines, penalties, claims, demands, administrative and judicial proceedings and order, judgments, remedial action requirements, costs and expenses of every kind or nature, and all costs and expenses incurred in connection therewith, including, without limitation, reasonable attorneys' fees and court costs ("**Claims**") arising directly or indirectly from or out of (including any and all related costs and expenses), relating or pertaining to or resulting from, in whole or in part, this Agreement; any act, omission, or event relating in any way to Consultant's obligations under this Agreement; and/or Consultant's breach of this Agreement, except to the extent such Claim is caused solely by the active negligence or willful misconduct of the City. In this Section 4, "City" means the City, its officials, officers, agents, employees and volunteers; "Consultant" means the Consultant, its employees, agents and subcontractors.

In the event there is a finding and/or determination that Consultant 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), Consultant shall, to the fullest extent permitted by law, indemnify, defend, and hold harmless the City from and against any and all Claims relating to or in connection with such a finding and/or determination.

The provisions of this section survive the expiration 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 the Scope of Work 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 in 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 and, in any event, within five (5) days of such request.

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

7. 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 Scope of Work, upon termination of this Agreement, or within five (5) days of any 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.

8. 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. Consultant shall be solely responsible for, and shall save the City harmless from, all matters relating to the payment of Consultant's employees, agents, subcontractors and subconsultants, including compliance with social security requirements, federal and state income tax withholding and all other regulations governing employer-employee relations.

9. 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. The Consultant represents that it is familiar with the local and state conflict of interest laws, and agrees to comply with those laws in performing this Agreement. The Consultant represents and warrants that the representations made by the Consultant concerning unfair competitive advantage and conflicts of interest in connection with its submissions in response to the City's procurement for this Agreement were true and accurate both when made and as of the date of this Agreement. Consultant represents and warrants that it has not and shall not offer or deliver any City officer, public official, or employee any gifts or donations in violation of Federal, State and/or local law.

10. 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 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; or 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.

11. 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 the City:
City of Tracy
Attn: Koosun Kim, City Engineer
333 Civic Center Plaza
Tracy, CA 95376

To Consultant:
CSG Consultants, Inc.
Attn: Cyrus Kianpour
3875 Hopyard Road, Suite 141
Pleasanton, CA 94588

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

12. General Provisions.

12.1 Standard of Care. Unless otherwise specified in this Agreement, the standard of care applicable to Consultant's performance of the Scope of Work 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.

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

12.3 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.

12.4 Assignment and Delegation. Consultant may not assign, transfer or delegate this Agreement or any portion of it without the City's advance 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.

12.5 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.

12.6 Compliance with the Law. Consultant shall comply with all applicable local, state, and federal laws, including, without limitation, those identified below, whether or not such laws are expressly stated in this Agreement.

12.6.1 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.

12.6.2 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.).

12.7 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 authorized to do business in California, in good standing with the Secretary of State, and in good standing with all agencies having jurisdiction over Consultant (including any licensing agencies). If Consultant is a suspended entity at the time it enters into this Agreement, City may take steps to have this Agreement declared voidable.

12.8 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.

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

12.10 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.

12.11 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.

12.12 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.

12.13 Entire Agreement. This Agreement and the attached Exhibits comprise the entire integrated understanding between the Parties concerning the services to be performed and the matters contemplated herein. This Agreement supersedes all prior negotiations, representations or agreements (in each case, whether oral or in writing). All exhibits attached hereto are incorporated by reference herein.

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

12.15 Expenses for Enforcement. Consultant 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.

13. 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.

[Signature Page to Follow]

As of the date of last signature below, the undersigned Parties agree to the full performance of the terms set forth in this Agreement and have caused this Agreement to be duly executed.

City of Tracy, a Municipal Corporation

By: _____
Nancy Young
Title: Mayor
Date: _____


Attest:

Adrienne Richardson, City Clerk

Approved as to form:

Bijal M. Patel, City Attorney

CSG Consultants, Inc.

By:  _____
Cyrus Kianpour
Title: President
Date: Aug 13, 2024

Federal Employer Tax ID No. 91-2053749

By:  _____
Nourdin Khayata

Title: Secretary
Date: Aug 13, 2024

Exhibits:

- A Scope of Work
- B Compensation

EXHIBIT A - Scope of Work

Additional Scope of Service 1

Task A – Lane Reduction Exhibits for Public Outreach

Consultant shall prepare exhibits for public outreach efforts. Scope includes meeting with Traffic Consultant to discuss concepts and prepare exhibits for both Lincoln Boulevard and Lowell Avenue segments to include the project limits to match the pavement rehabilitation project. Public Outreach and web site updates to be performed by others.

Task B – Prepare final PS&E with modified striping plans for lane reduction

Consultant shall revise plans, specifications, and estimate for bidding to include the modifications exhibited in Task A above and vetted by the public process.

Additional Scope of Service 2

1. Combine Projects into 1 bid set from 2 Separate Bid Documents

Consultant shall combine originally planned separate bid set documents into one bid set of plan, specification, and cost estimates. Consultant shall meet in the field to discuss additional project scope. Consultant shall modify the plans based on a new round of comments incorporating additional sidewalk and driveways into project plans.

2. Construction Support

Consultant to support the City of Tracy with tasks as needed during the construction phase.

These tasks include the following:

- a. Review and Approve Shop Drawing/Submittal
- b. Response to Request for Information (RFI)
- c. Attend Construction Meeting (2 meeting) and Field Visit/Meeting (2 visit/meeting)
- d. Provide assistance to review Construction Activities (2)
- e. Prepare, review, and recommend for Change Orders (Up to 5 change order)
- f. Prepare As-builts/Record Drawings

3. Preparation of Exhibit

Consultant shall create an exhibit and provide options for rehabilitation of Tracy Blvd between Airport and Linne Road.

EXHIBIT B - Compensation

Compensation for Additional Scope of Service 1

CITY OF TRACY					
Request for Additional Fee for Lane Reduction & Bike Lane - 9/1/2022					
PAVEMENT REHABILITATION 2020-21					
CSG Consultants, Inc.					
Task Description	Principal Engineer	Senior Engineer	Assistant Engineer	CSG	
Category	\$215	\$195	\$140	Hours	Cost
TASK A – Lane Reduction Exhibits for Public Outreach					
1.1 Preliminary Striping Design - Lane drops and bike lanes	2	20	40	62	\$ 9,930
1.2 Prepare exhibit on aerial image	2	4	32	38	\$ 5,690
1.3 Meetings and Coordiantion	2	4	4	10	\$ 1,770
					\$ -
Task A - Subtotal	6	28	76	110	\$ 17,390
TASK B – Prepare final PS&E with modified striping plans for lane reduction					
1.4 Modify plans for Lincoln & Lowell Plans	6	20	20	46	\$ 7,990
1.5 Update Specs & Estimates	2	8	8	18	\$ 3,110
1.6 Submit draft final plans for comments	2	8	4	14	\$ 2,550
1.7 Prepare Final PS&E - 2 documents - with lane reductions	2	4	4	10	\$ 1,770
					\$ -
Task B - Subtotal	12	40	36	88	\$ 15,420
TOTAL PROPOSED FEE / BUDGET (TASKS A&B)					\$ 32,810

Compensation for Additional Scope of Service 2

CITY OF TRACY						
Request for Additional Fee for Lane Reduction & Bike Lane - 2/26/2024						
PAVEMENT REHABILITATION 2020-21						
CSG Consultants, Inc.						
Task Description	Principal Engineer	Senior Engineer	Assistant Engineer	CSG		
Category	\$235	\$210	\$150	Hours	Cost	
TASK A - Combine Projects from 2 Separate Bid Documents						
2.1	Modify plans to combine 2 separate bid documents	2	8	16	26	\$ 4,600
2.2	Modify specs and estimate to combine 2 separate bid documents	2	4	4	10	\$ 1,928
2.3	Additional field visit with Construction Services	2	4	4	10	\$ 1,928
2.4	Additional Design comments for driveway and sidewalk modifications	2	8	8	18	\$ 3,384
						\$ -
	Task A - Subtotal	8	24	32	64	\$ 11,840
TASK B - Construction Support						
1.1	Attend Pre-Construction Meeting (complete)				0	\$ -
1.2	Review and Approve Shop Drawing/Submittal	6	16	12	34	\$ 6,570
1.3	Response to Request for Information (RFI)	2	8		10	\$ 2,150
1.4	Attend Construction Meeting (2 meeting) and Field Visit/Meeting (2 visit/meeting)	6	12		18	\$ 3,930
1.5	Provide Assistance to review Construction Activities (2)	2	8	8	18	\$ 3,350
1.6	Prepare, review and recommend for Change Orders (up to 5 change orders)	4	16	8	28	\$ 5,500
1.7	Prepare As-builts / Record Drawings	4	8	8	20	\$ 3,820
	Task B - Subtotal	24	68	36	128	\$ 25,320
TASK C - Exhibit: Tracy Blvd between the Airport and Linne Road (1.15 miles)						
3.1	Exhibit preparation	1		12	13	\$ 2,060
3.2	Order of Magnitude Options Costs Estimates	1	4		5	\$ 1,084
	Task C - Subtotal	2	4	12	18	\$ 3,144
	TOTAL PROPOSED FEE / BUDGET (TASK A-C)					\$ 40,304

Agenda Item 3.A

RECOMMENDATION

Staff recommends that the City Council receive the annual report by the Measure V Resident Oversight Committee presenting its findings regarding the use of Measure V funds.

EXECUTIVE SUMMARY

The Measure V Residents' Oversight Committee (Committee) was created pursuant to Tracy Municipal Code (TMC) section 6.28.170. This section of the TMC was implemented by Ordinance 1223, which became effective when the Tracy electorate approved a one-half cent transactions and use tax measure for twenty years (Measure V) on November 8, 2016. The terms and duties of the Committee are established by resolution of the City Council, which the City Council did through adoption of Committee Bylaws through Resolution 2017-026. Section B of the Committee's Bylaws requires the Committee's findings to be presented annually in a written report to the City Council.

BACKGROUND AND LEGISLATIVE HISTORY

On July 19, 2016, the City Council adopted Resolution 2016-156, authorizing Measure V to be placed on the November 8, 2016, ballot. On August 16, 2016, the Council adopted Ordinance 1223 imposing a transaction and use tax to be administered by the State Board of Equalization if Measure V were approved. On November 8, 2016, Tracy residents approved Measure V with 63.67% of the vote. TMC section 6.28.170 provides that the Council shall establish a five member Residents' Oversight Committee no later than March 1, 2017, to review the expenditure of the revenue generated by, and expenses related to, the transactions and use tax.

On February 7, 2017, the City Council adopted Resolution 2017-026 approving the Bylaws of the Measure V Residents' Oversight Committee. The role of the Oversight Committee is to review the independent financial audit of the City that includes revenue raised by Measure V and other financial reports necessary to advise the City Council of its findings and make recommendations during the term of the Committee. The Committee will present an annual written report documenting its findings to the City Council in August of each year or when reasonably possible thereafter based upon availability of data needed for the annual written report.

The Oversight Committee Member position is a volunteer, non-paid position whose roles and responsibilities include the following:

- To serve in an advisory-only capacity to the City Council;
- To provide oversight of the revenues and expenses pertaining to the portion of the sales tax generated by Measure V;
- To review the annual independent financial audit of the City performed by an independent auditor on sections pertaining to the revenue and expenses related to the portion of the sales tax generated by Measure V;
- To review other City financial reports pertaining to the revenue generated by and

expenses related to the portion of the sales tax generated by Measure V revenue and expenses;

- Providing Council with an annual written report;
- Additional reports to Council can be provided to Council at the committee and/or Council's discretion (all reports must be in writing and appropriately noticed pursuant to the Brown Act).

The Oversight Committee roles and responsibilities do not include the following:

- Oversight on Enterprise and other funds generated independent of Measure V;
- Decision-making on spending priorities;
- Reviewing Enterprise and, except to the extent necessary for the General Fund, other funds generated independently of Measure V.

The City Council retains final authority in decisions for all aspects of the sales tax revenue.

ANALYSIS

The Committee's last report was presented on December 6, 2022, that covered the period ending June 30, 2022. The Committee has elected to provide their annual update after the City has completed its annual audit so that the report aligns with fiscal years. The annual report will be provided as a PowerPoint Presentation, which is attached as Attachment A. The presentation will provide an update covering the last audited fiscal year ending June 30, 2023.

The City of Tracy's Annual Comprehensive Financial Report (ACFR) for the fiscal year ending June 30, 2023 can be located on the City of Tracy Website: [Budget & Financial Documents and Policies](#)

FISCAL IMPACT

Staff costs related to support of the Measure V Residents' Oversight Committee are included in the Finance Department General Fund budget.

STRATEGIC PLAN

This agenda item supports the City's Governance Strategic Priority, with Goal 1: Model Good Governance, Teamwork, and Transparency.

ACTION REQUESTED OF THE CITY COUNCIL

Staff recommends that the City Council receive the annual report as presented by the Measure V Resident Oversight Committee presenting its findings regarding the use of Measure V funds.

Prepared by: Felicia Galindo, Budget Officer

Reviewed by: Sara Cowell, Finance Director
Karin Schnaider, Assistant City Manager
Bijal Patel, City Attorney

Approved by: Midori Lichtwardt, City Manager

Attachments:

- Attachment A - Measure V Oversight Committee Annual Report



2023 Annual Report

Measure V Resident's Oversight Committee

August 20, 2024



Think Inside the Triangle™

- Measure V approved by voters in November 2016 election
 - ½ percent local sales tax measure
 - 20-year duration with sunset in 2037

- Measure V sales tax revenues
 - \$10 M in FY 2023
 - \$70 M since implementation in FY 2017



Think Inside the Triangle™

Commitment of Measure V funds

Completed

- Senior Center \$1M
 - Renovation Completed 2020
- Legacy Fields \$11.9M
 - Phase 1C Completed 2019
 - Phase 1D Completed 2020
- Small Business Relief Grant \$.5M



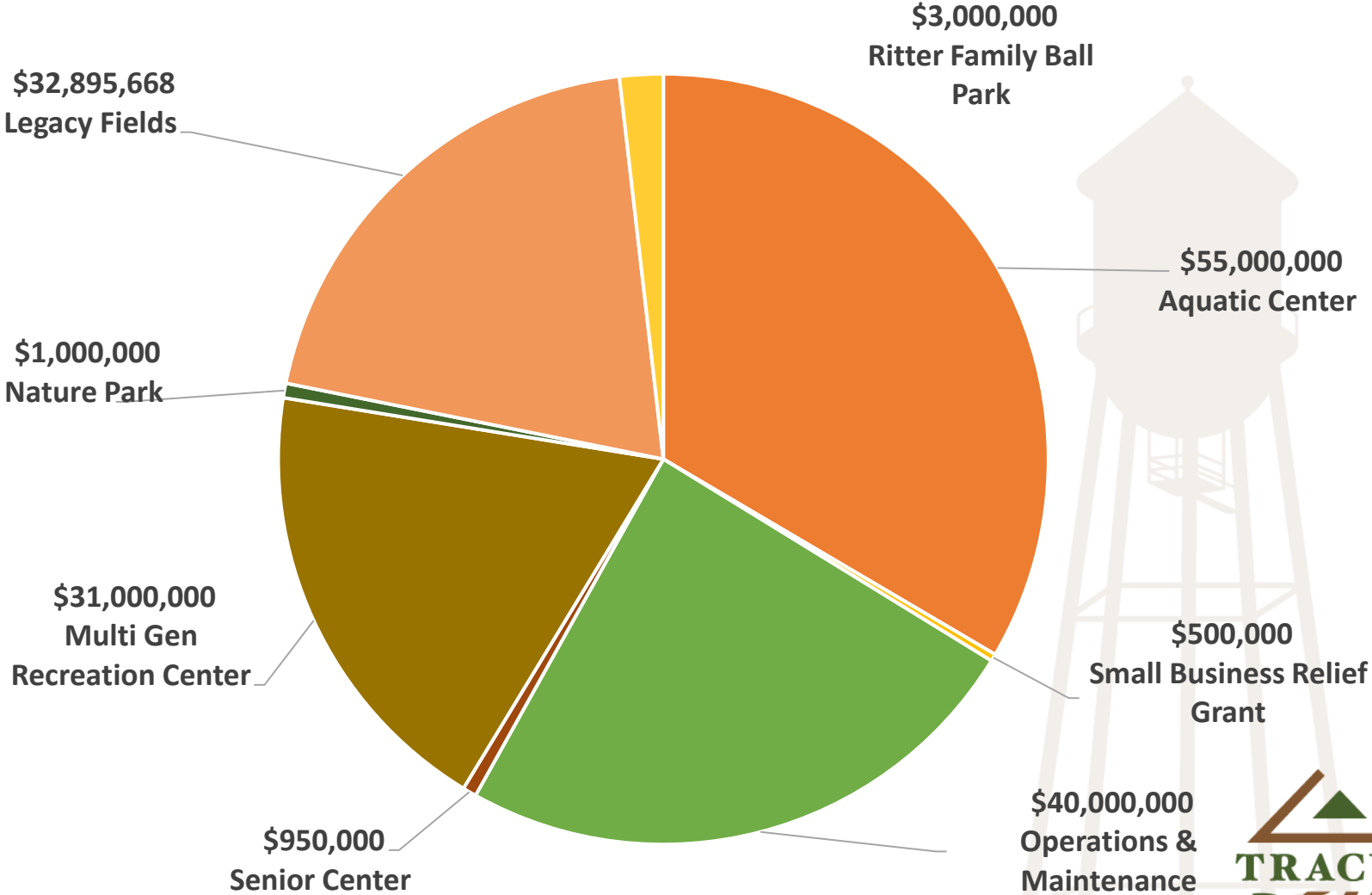
Think Inside the Triangle™

Commitment of Measure V funds

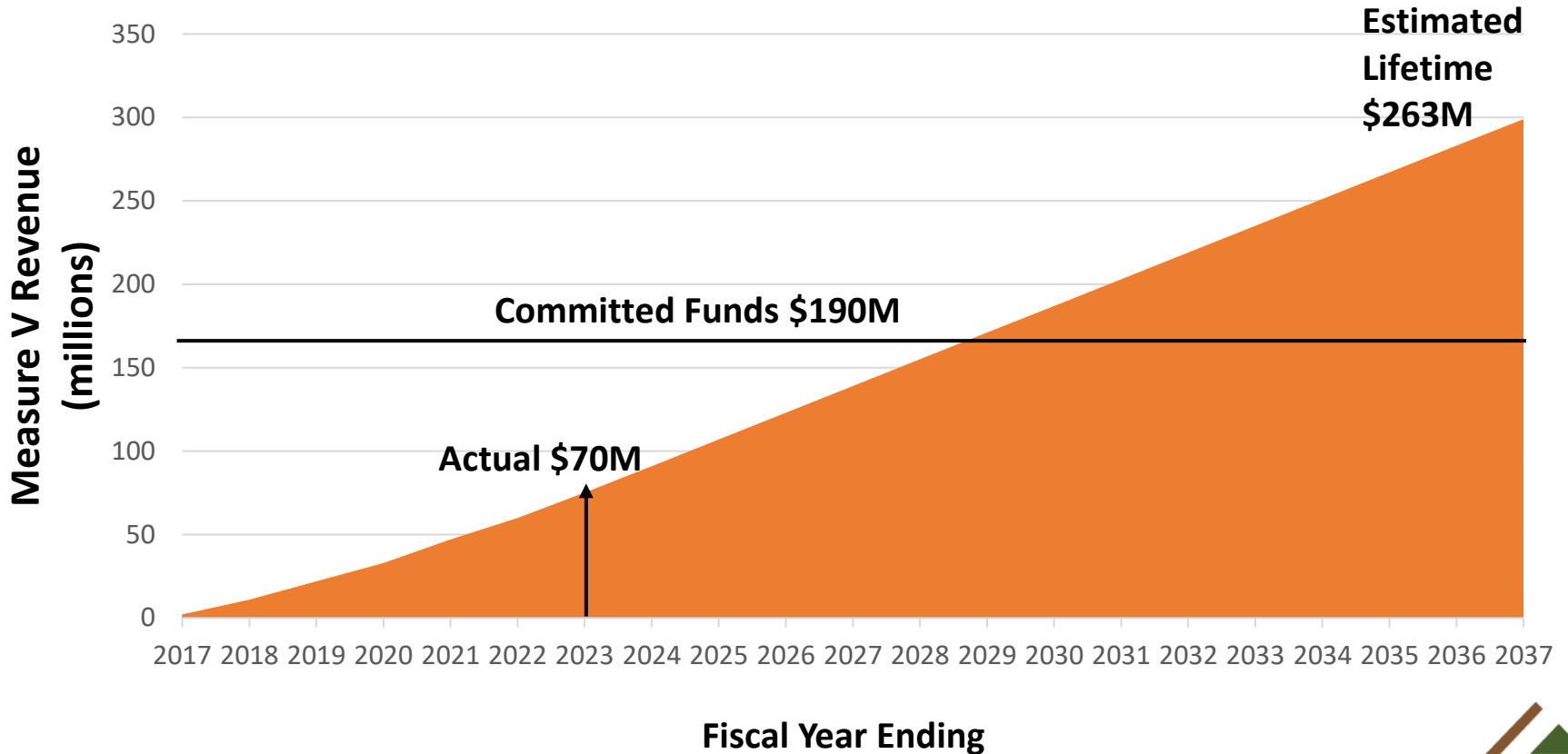
Current & On-Going

- Operations and Maintenance for amenities: \$40M
- Aquatic Center: \$55M
- Multigenerational facility: \$31M
- Legacy Fields Phase 1E: \$21M (Bonds)
- Nature Park: \$1M
- Ritter Family Ball Park \$3M

Committed Funding

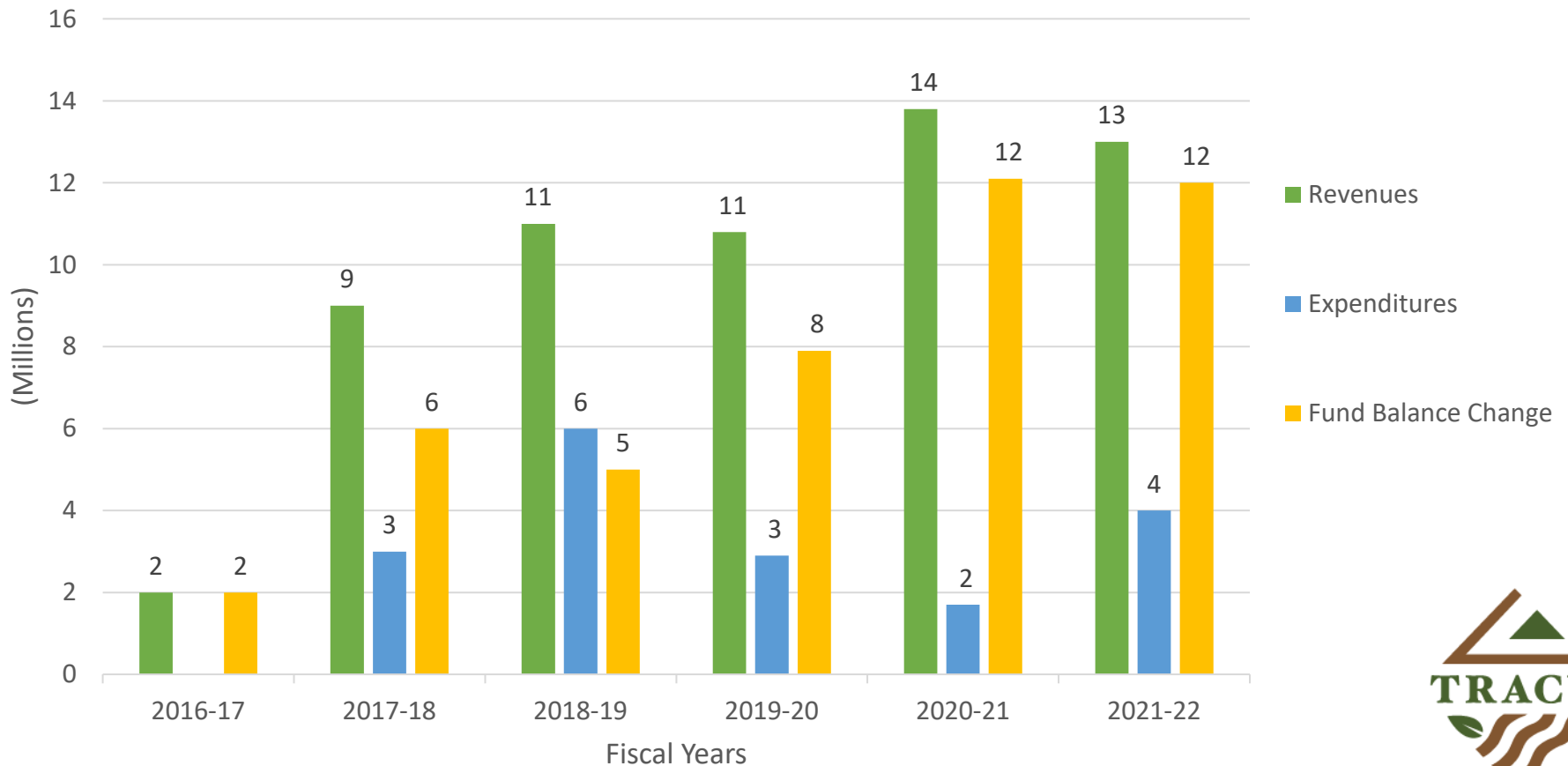


Measure V Residents' Oversight Committee



Measure V Residents' Oversight Committee

Measure V Revenue & Expenditures as of Oct 31, 2023



Think Inside the 'Triangle'

Measure V Residents' Oversight Committee

Recommendations

- Measure V Fund to receive it's share of earnings based on the Treasurers annual fiscal year end true up report.
- Accept Annual Report from the committee

Agenda Item 3.B

RECOMMENDATION

Staff recommends that the City Council receive an informational report on the status of gaming tables and card rooms, including recent State legislation, and provide comments and/or direction to staff.

EXECUTIVE SUMMARY

This agenda item requests the City Council to receive an informational report on the status of gaming tables and card rooms and makes a recommendation to the City Council to direct staff to return with an ordinance increasing the number of permissible gaming tables allowed by the Tracy Municipal Code from nine to nineteen and establish a maximum of ten additional tables, and impose a phasing schedule. The proposal is in response to Assembly Bill 341, effective January 1, 2024, which extended a moratorium on new card rooms while allowing the limited expansion of existing card rooms.

BACKGROUND AND LEGISLATIVE HISTORY

The operation of a card room in the City of Tracy requires both a City of Tracy Card Room License and a State license issued by the Department of Justice Bureau of Gambling Control and the California Gambling Control Commission.

The City Card Room License process is regulated by the Tracy Municipal Code in Article 1 of Chapter 4.04, which is included as Attachment A. The Code establishes the process through which a prospective operator may apply to the City Council, through the Chief of Police, for a Card Room License. Applicants are subject to a list of objective operational and site standards, including the current citywide limit of nine gaming tables. The City of Tracy currently has one licensed card room – Stars Casino, located at 3170 Naglee Road, which operates with nine gambling tables.

Assembly Bill (AB) 341 went into effect on January 1, 2024, and modified the Business and Professions Code. The law's primary purpose was to extend a prior moratorium on card rooms until January 1, 2043. In addition, the law allowed cities to increase the number of gaming tables at certain existing card rooms under a new expansion schedule. Under the new schedule, an existing card room with fewer than 20 tables may increase the number of tables by two the first year and two every four years thereafter, with a maximum of ten additional tables. The full text of AB 341 is included as Attachment B.

ANALYSIS

Should the City Council elect to pursue amendment to the Ordinance to expand the number of gaming tables, it would exclusively benefit the single licensed card room, Stars Casino. An expansion of tables at this location would likely increase revenues for the business. As a result, the City would experience a minor increase in the business license tax revenue from this site. No other community or shared benefit should be anticipated from this action.

The City Council should also consider any public concerns related to expanding a lawful gaming facility in the City. These types of land uses are recognized to have the potential to generate community impacts, as evidenced by the extensive local and State regulations and licensing required. The Tracy Police Department has not found there to be regular calls for service for this business and does not object to the expansion of this single use.

The City Council may direct staff to pursue an amendment of the Tracy Municipal Code to include the new provisions of AB 341. Such an amendment would increase the current limit of nine gaming tables to nineteen tables, with the requisite phasing schedule. The following table demonstrates how the provisions of AB 341 could be applied in the City of Tracy:

Year	2024	2028	2032	2036	2040
Approved Tables	9	11	13	15	17
Additional Tables	2	2	2	2	2
Total Tables	11	13	15	17	19

In each case, an operator would need to apply to the City Council, through the Chief of Police, for a new or amended Card Room License. It would take at least seventeen years to increase the total number by ten tables due to the State-imposed phasing standards.

CEQA DETERMINATION

The recommended discussion is not a project under the California Environmental Quality Act (CEQA). Any future action of the City Council would be subject to the full provisions of CEQA.

FISCAL IMPACT

The discussion will not result in an action and, as such, no fiscal impact is anticipated.

STRATEGIC PRIORITY

A strategic priority is to support business attraction, expansion, and retention. Expanding the number of gaming tables might align with this priority by enabling a business to expand its gaming operations, thereby supporting the city's economic growth and development.

ACTION REQUESTED OF THE CITY COUNCIL

Staff recommends that the City Council receive an informational report on the status of gaming tables and card rooms, including recent State legislation, and provide comments and/or direction to staff.

Prepared By: Forrest Ebbs, Director of Community and Economic Development
Jorge Barrera, Economic Development Manager

Reviewed by: Sara Castro, Director of Finance
Bijal M. Patel, City Attorney
Karin Schnaider, Assistant City Manager

Approved by: Midori Lichtwardt, City Manager

ATTACHMENTS

Attachment A – Tracy Municipal Code Section 4.04.040
Attachment B – Assembly Bill 341 (Full Text)

Article 1. - Card Rooms

Footnotes:

--- (1) ---

Editor's note— Ord. No. 1134, § 1, adopted May 5, 2009, amended art. 1 in its entirety to read as herein set out. Former art. 1, §§ 4.04.010—4.04.130, pertained to similar subject matter and derived from Prior Code §§ 4-1.101—4-1.113; Ord. No. 967 C.S., effective Jan. 15, 1998; Ord. No. 1002, § 1, 1999; Ord. No. 1040, § 5 Exh. E (part), 2002; and Ord. No. 1111, § 4 Exh. A (part), 2007.

4.04.010 - Licenses required; authority.

It is unlawful for any person to engage in, carry on, maintain or conduct any card room in the City without: (a) first having secured a license from the City to do [so] under this article; and (b) complying with each regulation set forth in this article.

Each licensee and operator of a card room shall employ only those persons who have obtained a work permit as set forth in section 4.04.060.

This article is enacted under the authority of the Gambling Control Act, Business and Professions Code section 19800 and following.

(Ord. No. 1134, § 1, 5-5-2009)

4.04.020 - Definitions.

In this article:

Card room means any space, room, or enclosure furnished or equipped with a table used, or intended to be used, as a card table for the playing of cards and similar games and the use of which is available to the public, or any portion of the public. However, this section does not apply to a nonprofit charitable organization.

Card room employees means dealers, overseers, and others directly connected with the operation and supervision of the card tables, excluding waitresses, bartenders, culinary workers, and others not connected with such operation and supervision.

Chief means the Chief of Police of the City or his or her designee.

Nonprofit charitable organization means an organization as defined in Code subsection 4.24.020(b).

(Ord. No. 1134, § 1, 5-5-2009)

4.04.030 - Card room license: application, fee and investigation.

- (a) *Application.* An applicant for a card room license shall submit his/her application to the Chief. The application shall be under oath and shall include the following information for the applicant and for each person financially interested in the business. "Financially interested" includes sharing in the profits of the business on the basis of gross or net revenue.
- 1, The true names and addresses.
 2. The past criminal record, if any.
 3. Fingerprints.
- (b) *Fee.* At the time the application is submitted, the applicant shall pay to the City an application fee as established by resolution of the City Council. This fee is exclusive of any other fees charged by other agencies.
- (c) *Investigation.* The Chief shall investigate the applicant and those financially interested. The Chief of Police shall act as an investigation officer and submit his/her report to the Council stating his/her approval or disapproval for the issuance of such license.

(Ord. No. 1134, § 1, 5-5-2009)

4.04.040 - Card room license; City Council consideration.

The Council shall consider the application and deny any application if the applicant or anyone financially interested:

- (a) Has previously been convicted of a felony or a misdemeanor crime involving moral turpitude;
or
- (b) Has been convicted of a felony or misdemeanor involving crimes of:
 - (1) Force or violence;
 - (2) Fraud;
 - (3) Embezzlement;
 - (4) Theft; or
 - (5) Uniform Controlled Substance Act.

A maximum of nine (9) gambling tables are allowed in the City. The Council shall deny the application if the approval would cause the total number of tables in the City to exceed nine (9).

(Ord. No. 1134, § 1, 5-5-2009; Ord. No. 1315, § 1, 9-21-2021)

4.04.050 - Card room license; annual renewal.

Licenses shall be issued on an annual basis. The annual license fee, payable each fiscal year beginning July 1, shall be established by resolution of the City Council. The fees shall be payable to the City after the Council has approved the issuance of the license but prior to the issuance of the license. The operator of a card room shall pay the license fee set forth in this section regardless of the license fees he/she might pay for other businesses.

(Ord. No. 1134, § 1, 5-5-2009)

4.04.060 - Card room licenses; suspension and revocation.

The Council shall have the right for cause to revoke or suspend (and take possession of) any card room license issued under this article. The Council may take such action based on any ground set forth in subsections 4.04.040(a) or (b), or on the failure of a licensee to comply with this article.

(Ord. No. 1134, § 1, 5-5-2009)

4.04.070 - Card room work permits.

- (a) *Application.* Card room employees shall obtain a work permit from the Chief. Applications for such work permits shall be submitted under oath and contain the name, address, and past criminal record, if any, of the applicant and such other information as may be deemed necessary by the Chief to determine whether the applicant is a proper person to be issued a card room work permit. The application shall be accompanied by the fingerprints of the applicant. The work permit shall be issued only to citizens of the United States who have resided in the State for at least one year immediately preceding the issuance of such work permit.
- (b) *Grounds for denial.* The Chief shall deny a work permit if the applicant has previously been convicted of a felony or a misdemeanor crime involving moral turpitude, or if the applicant has been convicted of a felony or misdemeanor involving:
 - (1) Force or violence;
 - (2) Fraud;
 - (3) Embezzlement;
 - (4) Theft; or
 - (5) Uniform Controlled Substance Act.
- (c) *Fee.* Each application for a work permit shall be accompanied by a nonrefundable fee as established by resolution of the City Council. The work permit shall be valid for a period of one year. Only one such work permit is required each year, even though the permit holder may change his/her place of employment within the City.
- (d)

Temporary permit. A temporary card room work permit may be obtained from the Chief in accordance with the following:

- (1) A completed "card room dealer work permit application" accompanied by the appropriate fees as established by resolution of the City Council;
- (2) Presentation of California Driver's License or Picture Identification card;
- (3) Completion by the Police Department of a local record check and check of the "state wanted person system"; and
- (4) Fingerprints to be taken, submitted to and cleared the Department of Justice.

Upon review of the application, in accordance with the card room work permit provisions set forth in this chapter, the temporary permit may be issued for a period of ninety (90) days. If the fingerprint clearance is not completed within that time, a thirty-day extension may be granted. If the card room work permit is granted in accordance with this section, the one year term shall be from the date of the issuance of the temporary permit.

- (e) *Appeal.* The action of the Chief in denying a work permit on the basis of subsections (a) or (b) of this section is subject to an appeal to the City Manager. An appeal must be filed with the City Clerk within ten (10) days after the denial, after which time the decision of the Chief is final. On appeal, a decision of the City Manager is final.
- (f) An application for a work permit may be denied or revoked based upon the objection of the State Division of Gambling Control.

(Ord. No. 1134, § 1, 5-5-2009)

4.04.080 - Card room work permit; suspension or revocation.

The Chief may revoke or suspend a card room work permit and take possession of the permit based on:
(a) any of the grounds for denial; or (b) the failure of a card holder to comply with this article.

The action of the Chief in this respect is subject to an appeal to the City Manager. The appeal shall be filed with the City Clerk within ten (10) days after the revocation or suspension, after which time the decision of the Chief is final. On appeal, a decision of the City Manager is final.

(Ord. No. 1134, § 1, 5-5-2009)

4.04.090 - Assignment or transfer.

Each person must have his or her own work permit and the permit cannot be assigned or transferred to another person.

A card room license may only be assigned or transferred if the new operator and each person financially interested submits an application and is approved by the City Council under sections [4.04.030](#) and [4.04.040](#).

(Ord. No. 1134, § 1, 5-5-2009)

4.04.100 - Card room regulations.

It is unlawful to operate a card room in violation of any of the following regulations and rules:

- (a) No more than one card room may be located at any one address.
- (b) The operator or his/her employees shall not extend credit to a player, nor shall they accept IOU's or other notes.
- (c) Any card games are permitted unless they are prohibited under State law.
- (d) No more than nine (9) tables are permitted in any card room.
- (e) No more than nine (9) tables are permitted in the entire City.
- (f) No more than ten (10) players are permitted at any one card table.
- (g) No person under the age of twenty-one (21) years of age is permitted in any card room.
- (h) Card rooms may operate seven (7) days a week, 24 hours a day.
- (i) Card rooms shall be open to police inspection during all hours of operation, which includes but is not limited to, police inspection of surveillance cameras, live or recorded.
- (j) Only table stakes are permitted. Table limits and house collections shall be posted clearly for each table before the start of each game.
- (k) Each card table shall have assigned to it a person holding a valid card room work permit, whose duty shall be to supervise and operate the game strictly in accordance with the provisions of this article and within the provisions of the Penal Code of the State.
- (l) If more than two (2) tables are in operation in a card room, there shall be assigned to it a person holding a valid card room permit in addition to the person required by subsection (l) of this section, whose duty shall be to supervise the players and games strictly in accordance with the provision of this article. He/she shall not, however, participate in games. The licensee may act as table operator or supervisor without having a work permit.
- (m) Signs shall be posted in every card room, in letters plainly visible from all parts of the room, stating that no game shall be played other than those expressly permitted under California Penal Code section 330m. Such signs shall also contain such other information relating to the regulations contained in this article as the Chief may require.
- (n) No person who is in a state of intoxication is permitted in any card room.
- (o) The licensee is responsible for the safety and security in and around the gambling establishment.

(Ord. No. 1134, § 1, 5-5-2009; Ord. No. 1315, § 1, 9-21-2021)

4.04.110 - Nonprofit charitable organization.

A nonprofit charitable organization, as defined in subsection 4.24.020(b) of this Code, may be granted a permit without a fee by the Council when the organization complies with the State requirements for an organization fundraiser under Business and Professions Code section 19985 and following.

(Ord. No. 1134, § 1, 5-5-2009)

4.04.120 - State law violations.

The Council hereby declares that it is not the intention of this article to permit the licensing of any card room for the playing of any game prohibited by the laws of the State, including, but not limited to those games enumerated in California Penal Code section 330, which section includes banking and percentage games.

(Ord. No. 1134, § 1, 5-5-2009)

4.04.130 - Violations.

Any person violating a term, requirement, regulation or provision of this article is guilty of a misdemeanor punishable in accordance with section 1.04.030 of this Code.

(Ord. No. 1134, § 1, 5-5-2009)

Assembly Bill No. 341

CHAPTER 8

An act to add Section 19961.07 to, and to add and repeal Sections 19962 and 19963 of, the Business and Professions Code, relating to gambling.

[Approved by Governor May 22, 2023. Filed with Secretary of State May 22, 2023.]

LEGISLATIVE COUNSEL'S DIGEST

AB 341, Ramos. Gambling: local moratorium.

Existing law, the Gambling Control Act, establishes the California Gambling Control Commission, which is responsible for licensing and regulating various gambling activities and establishments. Existing law requires the Department of Justice to investigate any violations of, and to enforce, the act. Under the act, a city, county, or city and county may authorize controlled gambling consistent with state law. Existing law, however, prohibits an ordinance that would result in an expansion of gambling in the city, county, or city and county from being valid unless the amendment is approved by a majority of the voters. Existing law requires an amendment to a city or county ordinance relating to a gambling establishment or the act to be submitted to the department for review and comment before the ordinance is adopted by the city or county.

Prior law, until January 1, 2023, prohibited the commission from issuing a gambling license for a gambling establishment that was not licensed to operate on December 31, 1999, except as specified.

This bill would reenact that prohibition until January 1, 2043, and would prohibit the commission from issuing a gambling license for a gambling establishment that was not licensed to operate on December 31, 2022, and that is pending before the commission as of January 1, 2024. The bill would also invalidate a gambling license for a gambling establishment that was not licensed to operate on December 31, 2022, and that was issued between December 31, 2022, and January 1, 2024.

Prior law, until January 1, 2023, prohibited the governing body or board of electors of a city, county, or city and county that had not authorized legal gambling within its boundaries prior to January 1, 1996, from authorizing legal gambling, and prohibited an ordinance in effect on January 1, 1996, that authorized legal gambling within a city, county, or city and county from being amended to expand gambling in that jurisdiction beyond that permitted on January 1, 1996.

This bill would reenact those prohibitions until January 1, 2043. The bill, notwithstanding those provisions, would authorize a city, county, or city and county to amend its ordinance to increase the number of gambling tables that may be operated in a gambling establishment that operates fewer than

20 tables, by up to 2 additional tables the first year, and up to 2 additional tables every 4 years thereafter, as provided. The bill would require an ordinance that was approved by a majority of the voters in a city, county, or city and county in an election that occurred after November 1, 2020, that authorized an increase in the number of gambling tables at a gambling establishment, and that became operative on January 1, 2023, as the result of the repealed provisions above, to remain operative on and after January 1, 2024. The bill would invalidate an amendment or adoption of an ordinance that occurred on or after January 1, 2023, by a city, county, or city and county resulting in an expansion of gambling that was not authorized or permitted under the act as of December 31, 2022, or that is not authorized or permitted under these provisions.

This bill would state that its provisions are severable.

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

SECTION 1. Section 19961.07 is added to the Business and Professions Code, to read:

19961.07. (a) Notwithstanding Sections 19961 and 19962, and except as provided in subdivision (b), a city, county, or city and county may amend an ordinance to increase the number of gambling tables that may be operated in a gambling establishment as follows:

(1) The ordinance shall apply only to a gambling establishment that operates fewer than 20 gambling tables.

(2) The ordinance shall allow a gambling establishment to increase the number of gambling tables operated at the gambling establishment by up to 2 additional tables within the first year after the ordinance takes effect, and up to 2 additional tables every four years thereafter, not to exceed 10 additional tables above the number of tables operated at the gambling establishment on January 1, 2023. A gambling establishment shall have all permitted gambling tables in operation and remain current in payment on all taxes and other applicable fees before an increase in gambling tables is allowed pursuant to this subdivision.

(b) (1) The authority provided in subdivision (a) shall be in addition to any authorization under any other law in effect on December 31, 2022, for a city, county, or city and county to increase the number of gambling tables that may be operated in a gambling establishment in the city, county, or city and county.

(2) Subdivision (a) does not apply to a city, county, or city and county that increased the number of gambling tables that may be operated in a gambling establishment, as described in paragraph (2) of subdivision (b) of Section 19962.

(c) A city, county, or city and county's jurisdictional limit may expand to accommodate the increase of gambling tables pursuant to this section.

SEC. 2. Section 19962 is added to the Business and Professions Code, to read:

19962. (a) The governing body or the electors of a city, county, or city and county that has not authorized legal gambling within its boundaries prior to January 1, 1996, shall not authorize legal gambling.

(b) (1) An ordinance in effect on January 1, 1996, that authorizes legal gambling within a city, county, or city and county shall not be amended to expand gambling in that jurisdiction beyond that permitted on January 1, 1996.

(2) Notwithstanding paragraph (1), an ordinance that was approved by a majority of the voters in a city, county, or city and county in an election that occurred after November 1, 2020, that authorizes an increase in the number of gambling tables at a gambling establishment, and that became operative on January 1, 2023, as the result of the repeal of former Section 19962, as amended by Chapter 1 of Section 744 of the Statutes of 2018, shall continue to be valid on and after January 1, 2024.

(3) Any amendment to an ordinance or adoption of an ordinance on or after January 1, 2023, by a city, county, or city and county resulting in an expansion of gambling that was not authorized or permitted under this chapter as of December 31, 2022, or that is not authorized or permitted under this section or Section 19961.07 shall be invalid and preempted.

(c) This section shall remain in effect only until January 1, 2043, and as of that date is repealed.

SEC. 3. Section 19963 is added to the Business and Professions Code, to read:

19963. (a) In addition to any other limitation on the expansion of gambling imposed by Section 19962 or any provision in this chapter, the commission shall not issue a gambling license for a gambling establishment that was not licensed to operate on December 31, 1999, unless an application to operate that establishment was on file with the department prior to September 1, 2000.

(b) An application for a gambling license for a gambling establishment that was not licensed to operate on December 31, 2022, that is pending before the commission as of January 1, 2024, shall not be approved by the commission.

(c) A gambling license for a gambling establishment that was not licensed to operate on December 31, 2022, and that was issued between December 31, 2022, and January 1, 2024, shall be invalid.

(d) This section shall remain in effect only until January 1, 2043, and as of that date is repealed.

SEC. 4. The provisions of this bill are severable. If any provision of this bill or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.