

TRACY CITY COUNCIL

REGULAR MEETING AGENDA

Tuesday, September 6, 2016, 7:00 p.m.

City Council Chambers, 333 Civic Center Plaza

Web Site: www.ci.tracy.ca.us

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 (209/831-6000) 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. Each citizen will be allowed a maximum of five minutes for input or testimony. At the Mayor'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 Council direction. A motion and roll call vote may enact the entire Consent Calendar. No separate discussion of Consent Calendar items will occur unless members of the City Council, City staff or the public request discussion on a specific item at the beginning of the meeting.

Addressing the Council on Items not on the Agenda – The Brown Act prohibits discussion or action on items not on the posted agenda. Members of the public addressing the Council should state their names and addresses for the record, and for contact information. The City Council's Procedures for the Conduct of Public Meetings provide that "Items from the Audience" following the Consent Calendar will be limited to 15 minutes. "Items from the Audience" listed near the end of the agenda will not have a maximum time limit. Each member of the public will be allowed a maximum of five minutes for public input or testimony. However, a maximum time limit of less than five minutes for public input or testimony may be set for "Items from the Audience" depending upon the number of members of the public wishing to provide public input or testimony. The five minute maximum time limit for each member of the public applies to all "Items from the Audience." Any item not on the agenda, brought up by a member of the public shall automatically be referred to staff. In accordance with Council policy, if staff is not able to resolve the matter satisfactorily, the member of the public may request a Council Member to sponsor the item for discussion at a future meeting. 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.

Presentations to Council - Persons who wish to make presentations which may exceed the time limits are encouraged to submit comments in writing at the earliest possible time to ensure distribution to Council and other interested parties. Requests for letters to be read into the record will be granted only upon approval of the majority of the Council. Power Point (or similar) presentations need to be provided to the City Clerk's office at least 24 hours prior to the meeting. All presentations must comply with the applicable time limits. Prior to the presentation, a hard copy of the Power Point (or similar) presentation will be provided to the City Clerk's office for inclusion in the record of the meeting and copies shall be provided to the Council. Failure to comply will result in the presentation being rejected. Any materials distributed, including those distributed within 72 hours of a regular City Council meeting, to a majority of the Council regarding an item on the agenda shall be made available for public inspection at the City Clerk's office (address above) during regular business hours.

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 at City Hall, 333 Civic Center Plaza, and the Tracy Public Library, 20 East Eaton Avenue, and on the City's website: www.ci.tracy.ca.us

CALL TO ORDER

PLEDGE OF ALLEGIANCE

INVOCATION

ROLL CALL

PRESENTATION – Employee of the Month

- San Joaquin Regional Rail Commission on ACEForward Project - Dan Leavitt

1. CONSENT CALENDAR

- A. Adopt Council Minutes – Regular minutes of May 17, 2016, June 7, 2016, and June 21, 2016
- B. Authorize a Master Subscription Agreement and Service Order with Fuseforward Cloud Services Ltd., a Canadian Corporation, for Wastewater Computerized Maintenance Management System Services and Authorize the Mayor to Execute the Service Order
- C. Award a Construction Contract to Grade Tech, of Castro Valley, California, for the Fabian Road Improvements Project CIP 73141, Authorize a Transfer of \$168,000 from CIP 73138 (Fund 242) to CIP 73141, Authorize the City Manager, if Needed, to Approve Change Orders Up to the Specified Project Contingency Amount of \$71,564, and Authorize the Mayor to Execute the Contract
- D. Award a Construction Contract to Knife River Construction of Stockton, California, for the Larch Road Water Main Replacement Project Between Corral Hollow Road and Tracy Boulevard, CIPs 75117, 75122, 75127, Authorize the Mayor to Execute the Contract, and Transfer \$190,000 from CIP 75136 to CIP 75127
- E. Award a Construction Contract to Rolfe Construction Company, of Atwater, California, for the Beverdor, Highland, 12th and 9th Street Sewer & Storm Drain Replacement Project, CIPs 74098, 74104, 74111, 74116, and 76063, and Authorize the Mayor to Execute the Contract
- F. Award a Construction Contract to Bond Blacktop, of Union City, California, for the Slurry Seal Project FY 2015-16, CIP 73140B, and Authorize the Mayor to Execute the Contract
- G. Approve an Agreement to Toll and Extend the Land Dedication Acceptance Period and the 60 Day Cure Period Regarding the Second Swim Center Payment Under the Amended and Restated Development Agreement by and between the City of Tracy and Surland Communities, LLC
- H. Approve Amendment No. 1 to the Memorandum of Understanding Between the City of Tracy and the South Side Community Organization of Tracy, California, and Authorize the Mayor to Execute the Amendment
- I. Adoption of a Resolution Approving a Memorandum of Understanding with the Tracy Tree Foundation of Tracy, California and Authorizing the Mayor to Execute the Agreement

- J. Approve a Master Professional Services Agreement (MPSA) with SeEVERS, Jordan, Ziegenmeyer to Perform Community Facilities District Appraisals; Authorize the Mayor to Execute the Agreement; and Authorize the Administrative Services Director to Execute Task Orders Under the Agreement
 - K. Submit a Letter to Members of the California State Legislature Urging Passage of AB 2762 Transportation: Altamont Regional Rail Authority
 - L. Adopt Resolution Authorizing the Mayor to Sign Terms and Conditions of Accepting Airport Improvement Program Grants and to Execute Grant Agreement AIP #3-06-0259-017-2016 in the Amount of \$2,923,460 with the Federal Aviation Administration for Reimbursement of Engineering, Design, and Reconstruction of the General Aviation Apron Area; and Appropriate \$292,346 from the General Fund, Fund Balance to CIP 77037
 - M. Award a Construction Contract to Teichert Construction of Stockton, California, for Reconstruction of the Tracy Municipal Airport General Aviation Tie Down Apron, CIP 77037, AIP No. 3-06-0259-17-2016; Approve Task Order No. 5 to Reinard. W. Brandley Master Professional Services Agreement; Appropriate a Contingency Amount of \$374,320 from the General Fund to CIP 77037; Authorize the City Manager to Approve Change Orders up to the Specified Project Contingency Amount if Needed and Authorize the Mayor to Execute Task Order 5 and the Contract
2. ITEMS FROM THE AUDIENCE
 3. DISCUSSION AND DIRECTION REGARDING BOARDED BUILDINGS, WEED ABATEMENT PROCESS, AND COMMUNITY CONCERNS REGARDING VISUAL BLIGHT, AND PROPERTY MAINTENANCE STANDARDS
 4. ITEMS FROM THE AUDIENCE
 5. COUNCIL ITEMS
 6. ADJOURNMENT

May 17, 2016, 7:00 p.m.

Council Chambers, 333 Civic Center Plaza, Tracy

Web Site: www.ci.tracy.ca.us

Mayor Maciel called the City Council meeting to order at 7:00 p.m. and led the Pledge of Allegiance.

Invocation was led by Pastor Tim Heinrich, Crossroads Baptist Church.

Roll call found Council Members Mitracos, Vargas, Young, Mayor Pro Tem Rickman and Mayor Maciel present.

Mayor Maciel recognized the D.A.R.E Graduate students from Lammersville, Jefferson, Saint Bernard's, West Valley, Delta Charter, and New Jerusalem Elementary schools.

Mayor Maciel presented the Bike to Work Week proclamation to Lisa Donahue, Program Specialist, Commute Connection.

Mayor Maciel presented the Lyme Disease Awareness proclamation to Tim Heinrich

Mayor Maciel presented Greg Selna a Certificate of Appointment to the San Joaquin County Mosquito Abatement District for a term beginning May 4, 2016 and ending May 31, 2020.

Mayor Maciel recognized Tracy High School students for their participation in the Bulldog Project.

1. CONSENT CALENDAR

ACTION Following the removal of Item 1B by Trina Anderson, it was moved by Mayor Pro Tem Rickman and seconded by Council Member Vargas to adopt the Consent Calendar. Roll call found all in favor; passed and so ordered. Motion carried 5-0.

- A. Adopt Council Minutes – March 15, 2016 Regular Council Minutes and May 3, 2016 Closed Session Minutes were approved.
- C. Authorizing Submittal of Application for Payment Programs and Related Authorizations for the CalRecycle's Beverage Container Recycling City/County Payment Program – Resolution 2016-083 authorized submittal of application for payment programs and related authorizations.
- D. Waive Second Reading and Adopt an Ordinance of the City of Tracy Repealing and Adopting a New Chapter 9.40, Street Names and Numbering, of the Tracy Municipal Code, and Repealing Resolution 87-041 (Establishing a Policy to Name Streets after Tracy Residents Killed in the Service of their Country) – Ordinance 1216 was adopted.

- E. Approval of Agreements Between the City of Tracy and Two Property Owners to Acquire Permanent and Temporary Construction Easements, for the Construction of the Wastewater Effluent Discharge Pipeline from the Wastewater Treatment Plant (WWTP) to the Old River, CIP 74083, and Authorize the Mayor to Execute these Agreements – Resolution 2016-084 approved an agreement between the City of Tracy and two property owners.
- F. Authorize an Amendment to Task Order CH01-16 with CH2M Hill and Authorize a Professional Services Agreement With CH2M Hill to Provide Services for the Corral Hollow Road Sewer Line Improvement and Widening of the Street Between Lowell Avenue and Grant Line Road and also for Planning and Design of the Recycled Water Project Pump Stations and Associated Work and Authorize the Mayor to Execute the Amendment and the Agreement – Resolution 2016-085 authorized the Amendment to Task Order CH01-16 with CH2M Hill and Resolution 2016-086 authorized the PSA with CH2M Hill.
- G. Approval of a Master Legal Services Agreement with Jones Hall, a Professional Law Corporation to Provide Bond Counsel and Disclosure Counsel in Connection with the Formation of Community Facilities Districts and the Issuance and Sale of Bonds – Resolution 2016-087 approved a Master Legal Services Agreement with Jones Hall.
- H. Approving Consent of an Assignment and Assumption Agreement for the Offsite Improvement Agreement of Tracy Gateway Apartments with Gateway Crossing, LLC, Authorizing the Mayor to Sign the Consent Form, and Authorizing the City Clerk to File the Agreement With the San Joaquin County Recorder – Resolution 2016-088 approved consent of an Assignment and Assumption Agreement.
- I. Approve an Offsite Improvement Agreement with Pescadero Land Holdings, LLC., a Delaware Limited Liability Company, for Roadway and Utility Improvements on Pescadero Avenue and Other Associated Improvements for the Ridgeline Industrial Building and Authorization for the Mayor to Execute the Agreement – Resolution 2016-089 approved an Offsite Improvement Agreement.
- B. Approval of Resolutions: (1) Initiating Proceedings for the Annual Levy for Tracy Consolidated Landscape Maintenance District, (2) Preliminarily Approving the Engineer's Report for the Tracy Consolidated Landscape Maintenance District, (3) Declaring the Intention to Levy Annual Assessments, and (4) Setting the Date for the Public Hearing

Trina Anderson pulled this item and asked if this item was to approve a landscape maintenance district or to set a public hearing on June 21, 2016. Ms. Anderson expressed concern about the strip along Central Ave. and Tracy Blvd. in front of the Sycamore Apartments. Ms. Anderson stated that it has been neglected, weeds are tall, sprinklers have not worked, and nothing has been done to beautify that area.

ACTION Motion was made by Mayor Pro Tem Rickman, and seconded by Council Member Vargas to adopt Resolution 2016-090 Initiating Proceedings, Resolution 2016-091 – Preliminarily approving Engineer’s Report regarding proposed levy and collection of assessment, and Resolution 2016-092 Declaring City’s Intention to levy annual assessments for the TCLMD. Voice vote found all in favor; passed and so ordered.

2. ITEMS FROM THE AUDIENCE – Walter Gouveia requested information from administration related to the investment in the amount of \$228,518,000. Mr. Gouveia expressed an interest in knowing if there is a business plan associated with this amount either for short or long term for the future.

DEVIATION

9. ADOPTION OF RESOLUTION OF INTENTION TO APPROVE AN AMENDMENT TO THE CONTRACT BETWEEN THE CITY OF TRACY AND THE BOARD OF ADMINISTRATION OF THE PUBLIC EMPLOYEES’ RETIREMENT SYSTEM; INTRODUCE AN ORDINANCE AUTHORIZING THE AMENDMENT TO THE CALIFORNIA PUBLIC EMPLOYEES’ RETIREMENT SYSTEM PLAN TO PROVIDE SECTION 20516 (EMPLOYEES SHARING ADDITIONAL COST) OF 3% FOR ALL LOCAL MISCELLANEOUS MEMBERS IN THE CONFIDENTIAL MID-MANAGERS UNIT AND ALL LOCAL POLICE MEMBERS IN THE TRACY POLICE MANAGEMENT ASSOCIATION AND ALL LOCAL FIRE MEMBERS IN THE CONFIDENTIAL MID-MANAGERS UNIT

Judy Carlos, Management Analyst, presented the staff report.

ACTION Motion was made by Mayor Pro Tem Rickman, and seconded by Council Member Vargas to adopt Resolution 2016-093; A Resolution of Intention to approve an amendment to contract between the Board of Administration California Public Employees’ Retirement System and the City Council of the City of Tracy. Voice vote found all in favor; passed and so ordered.

Nora Pimentel, City Clerk read title of proposed ordinance into the record.

ACTION Motion was made by Mayor Pro Tem Rickman, and seconded by Council Member Vargas to waive reading of full text. Voice vote found all in favor; passed and so ordered.

ACTION Motion was made by Mayor Pro Tem Rickman, and seconded by Council Member Vargas to introduce Ordinance 1217. Voice vote found all in favor; passed and so ordered.

7. CONDUCT A PUBLIC HEARING TO ADOPT A RESOLUTION APPROVING THE UPDATED MASTER FEE SCHEDULE

Anne Bell, Management Analyst, Administrative Services presented the staff report. André Pichly, Parks and Community Services Director presented the parades fee portion of the staff report.

Mayor Maciel opened the public hearing.

Bill R. Swenson expressed that the City should be paying for the parades and that it is not appropriate to place the burden on the School District or the student body.

Rosa Junqueiro on behalf of IPFES Portuguese Hall referenced reviewing the agenda and minutes from the Parks and Community Services Commission meeting for the April 7, and May 5, 2016 meetings. The Master Fee Schedule was approved with the exception of the parade fee and was unclear as to why it was being presented to Council without approval from the commission. Ms. Junqueiro asked who defines and determines what a short and long parade is; who defines and determines what benefits to City; and how does an organization enter into an MOU with the City and what is the process. Ms. Junqueiro urged the Council to consider the issues and concerns raised.

City Council questions followed.

Alayna Carter, Activities Director at Tracy High, expressed concern with the potential fee increase. Ms. Carter stated that having the homecoming parades downtown creates exposure to all the downtown businesses. The parade cannot be around the track as it has been suggested.

Richard Hanson, lifetime resident of Tracy, suggested that all those who attend and watch the parade should pay a fee for the parade.

James Enos expressed his contention with the parade fee increasing from \$35 to \$75 and now \$1,000 within the next year. Mr. Enos understands the need to increase fees but not in this manner.

Mary Ramsey Stealle mentioned that there is already a lack of things for the youth to do in the City. Ms. Stealle asked if there are fees related to the alcohol events, the youth are the future and need to be kept engaged and enthusiastic about school and part of that is the homecoming parade experience.

Christina Hansen, expressed concern about how the potential fee increase would impact the students the greatest when they are already doing so much fundraising and it would be a disappointment to see this tradition disappear. Ms. Hansen urged the Council to collaborate with the school sites because the students are a huge benefit to our community

Ireland Enos, sophomore at Kimbal High School, expressed disappointment if the school could not participate in the homecoming parade due to the potential fee increase.

Mayor Maciel closed the public hearing.

City Council discussion ensued.

Motion was made by Council Member Vargas to approve the fee schedule minus parade fee charges for the Tracy Unified School District.

Council Member Vargas withdrew the motion until full discussion was completed.

After Council deliberation it was agreed that discussion and feedback from the School District continue, table the school portion of the parade fees and consider, an MOU with the School District for full cost or partial cost recovery.

Mayor Pro Tem Rickman announced he would abstain from the vote until he receives all information before he makes a decision on increasing fees.

ACTION Motion was made by Mayor Pro Tem Rickman, and seconded by Council Member Vargas to table Tracy Unified District parade fees and keep them the same and table discussion at a later date. Voice vote found all in favor; passed and so ordered.

ACTION Motion was made by Council Member Vargas, and seconded by Council Member Mitracos to adopt Resolution 2016-094 approving the Master Fee Schedule minus the parade fees for the School District as per the earlier motion. Voice vote found Council Member Mitracos, Vargas, Young and Mayor Maciel in favor; Mayor Pro Tem Rickman abstained; passed and so ordered.

Mayor Maciel called a recess at 9:33 p.m.

Mayor Maciel reconvened the meeting at 9:41 p.m.

3. PUBLIC HEARING TO CONSIDER APPROVAL OF A ZONING TEXT AMENDMENT TO THE MEDIUM DENSITY CLUSTER ZONE, APPROVAL OF A REZONE FROM MEDIUM DENSITY RESIDENTIAL ZONE TO MEDIUM DENSITY CLUSTER ZONE, APPROVAL OF A VESTING TENTATIVE SUBDIVISION MAP FOR 71 SINGLE-FAMILY RESIDENTIAL LOTS, AND APPROVAL OF RESIDENTIAL ARCHITECTURE FOR AN APPROXIMATELY 10-ACRE SITE LOCATED AT 2774 W. BYRON ROAD, 2850 W. BYRON ROAD, AND 12920 W. BYRON ROAD. THE APPLICANT IS MANA INVESTMENTS. THE PROPERTY OWNERS ARE MARION WILLIAM COMPANY LLC AND SHAWN D. STEELE. APPLICATION NUMBERS ZA15-0002, R14-0002, TSM14-0003, AND D16-0013

Scott Claar, Associate Planner, Development Services presented the staff report.

Mayor Maciel opened the public hearing.

Fred Musser, Applicant made a brief presentation to Council.

Mark Rutherford, Architect of the project provided a brief powerpoint presentation.

City Council comments and questions followed.

Stephanie Seagraves expressed being in favor of leaving the amendment as medium density residential, it would leave room to build both two story and single story residences.

Trina Anderson expressed concern with not enough single story homes in this development and stated that senior citizens are not the only people interested in single story homes.

Alice English, commented that it's not just seniors who are interested in single story residences, there are handicap people who need single story homes. Ms. English stated that there is a high demand for single story homes.

Steve Nicolaou, commented that the government has the right to regulate as to how homes get built, but there is another force called the market which dictates the demand.

Mayor Maciel closed the public hearing.

City Council discussion ensued.

Nora Pimentel, City Clerk read title of the proposed ordinance into the record.

ACTION Motion was made by Mayor Pro Tem Rickman, and seconded by Council Member Vargas to waive reading of full text of proposed ordinance. Voice vote found all in favor; passed and so ordered.

ACTION Motion was made by Mayor Pro Tem Rickman, and seconded by Council Member Vargas to introduce Ordinance 1218. Voice vote found all in favor; passed and so ordered.

Nora Pimentel, City Clerk read title of the proposed ordinance into the record.

ACTION Motion was made by Mayor Pro Tem Rickman, and seconded by Council Member Vargas to waive reading of full text of proposed ordinance. Voice vote found all in favor; passed and so ordered.

ACTION Motion was made by Mayor Pro Tem Rickman, and seconded by Council Member Vargas to introduce Ordinance 1219. Voice vote found all in favor; passed and so ordered.

ACTION Motion was made by Mayor Pro Tem Rickman, and seconded by Council Member Vargas to adopt Resolution 2016-095 approving a Vesting Tentative Subdivision Map to create 71 single-family residential lots and two other parcels on approximately 10 acres located at 2774 W. Byron Road, 2850 W. Byron Road, and 1290 W. Byron Road (Assessor's Parcel Numbers 238-080-04 , 238-080-03, and 238-050-01) Application Number TSM14-0003 with the amendment to include accessibility of the EVA to include bike and pedestrian and additional embellishments to lots 16, 15, 14, 13, 12, 1, 71, 35, 36, 31, 40, 7, 6, 41, 56 and 55. Voice vote found all in favor; passed and so ordered.

ACTION Motion was made by Mayor Pro Tem Rickman, and seconded by Council Member Vargas to adopt Resolution 2016-096 approving the residential architecture for the Berg Road project, which consists of a 71-lot single-family residential subdivision on approximately 10 acres located at 2774 W. Byron Road, 2850 W. Byron Road and 1290 W. Byron Road (Assessor's Parcel Numbers 238-080-04, 238-080-03, and 238-050-01). Application Number D16-0013 as amended. Voice vote found all in favor; passed and so ordered.

4. PUBLIC HEARING TO CONSIDER APPROVAL OF AN AMENDMENT TO THE CORDES RANCH SPECIFIC PLAN RELATED TO THE LANDSCAPE DESIGN CONCEPTS. THE APPLICANT IS PROLOGIS. APPLICATION NUMBER SPA16-0002

Scott Claar, Associate Planner, Development Services, presented the staff report.

Mayor Maciel opened the public hearing.

David Babcock, Landscape Architect for the project provided a brief powerpoint presentation. Tom Martin, Development Manager for Prologis, provided additional information related to the landscaping design.

Trina Anderson acknowledged the developer for setting drought resistant standards for the industry. Ms. Anderson suggested doing what is done in Las Vegas, use welded metal statues of the environment throughout the rocks to break it up a bit.

Alice English, expressed being in favor of the 250 feet of rock because it will save money and water.

Mayor Maciel closed the public hearing.

City Council comments and questions ensued.

ACTION Motion was made by Mayor Pro Tem Rickman, and seconded by Council Member Young to adopt Resolution 2016-097 approving an amendment to the Cordes Ranch Specific Plan related to the landscape design concepts and return striping as previously approved. Application Number SPA16-0002. Voice vote found Council Member Mitracos, Young, Mayor Pro Tem Rickman and Mayor Maciel in favor; Council Member Vargas opposed; passed and so ordered.

5. PUBLIC HEARING TO CONSIDER APPROVAL OF AN AMENDMENT TO THE ELLIS SPECIFIC PLAN RELATED TO FAÇADE ZONE REQUIREMENTS, SETBACKS, ENCROACHMENTS INTO SETBACKS, UNION PACIFIC RAILROAD EDGE, AND GARAGE REQUIREMENTS. THE APPLICANT IS CAL ATLANTIC HOMES. APPLICATION NUMBER SPA16-0004

Scott Claar, Associate Planner, Development Services presented the staff report.

Mayor Maciel opened the public hearing, there was no testimony to be heard, and Mayor Maciel closed the public hearing.

City Council comments and questions followed.

Chris Long, Surland Companies, and Tony Monterio, Project Manager for Cal Atlantic Homes provided a brief presentation related to the façade zone variance range.

ACTION Motion was made by Mayor Pro Tem Rickman, and seconded by Council Member Vargas to adopt Resolution 2016-098 approving amendment to the Ellis specific plan related to façade zone requirements, setbacks, encroachments into setbacks, Union Pacific Railroad edge and garage requirements and section “A” as amended. The applicant is Cal Atlantic Homes. Application Number SPA 16-0004. Voice vote found all in favor; passed and so ordered.

6. PUBLIC HEARING FOR THE APPROVAL OF THE URBAN WATER MANAGEMENT PLAN UPDATE

Steve Bayley, Project Specialist, presented the staff report.

Mayor Maciel opened the public hearing.

Mr. Basuda, asked if the projection included the new future development for Ellis and Tracy Hills, etc.

Mayor Maciel closed the public hearing.

City Council comments and questions followed.

ACTION Motion was made by Mayor Pro Tem Rickman, and seconded by Council Member Vargas to adopt Resolution 2016-099 approving the Urban Water Management Plan update. Voice vote found all in favor; passed and so ordered.

8. ACCEPTANCE OF THE TRACY POLICE DEPARTMENT'S ANNUAL REPORT FOR 2015 – Upon Council consensus the Council accepted the Police Department's Annual Report for 2015.

Police Chief Larry Esquivel, presented the staff report.

City Council comments and questions followed.

Upon consensus the City Council accepted the Police Department's Annual Report for 2015.

10. ITEMS FROM THE AUDIENCE – There were no speakers.

11. COUNCIL ITEMS

Mayor Pro Tem Rickman announced the following upcoming events: National Police Week from May 15, 2016 to May 21, 2016; May 29, 2016 the Holy Ghost Festa Parade begins at 9:00 a.m.; Memorial Day, May 30, 2016, Latin Rock Block Party, June 3, 2016

from 6:00 p.m. to 9:00 p.m. and Bull Fight at 8:00 p.m.; PD Safety Fair, May 21, 2016 from 12:00 p.m. to 4:00 p.m.

Council Member Young acknowledged the success of the Relay for Life event; Council Member Young announced that her son will be getting married on Saturday and congratulated all upcoming graduates. Council Member Young announced the upcoming Juneteenth event taking place at Lincoln Park on June 4, 2016 from 10:00 a.m. to 5:00 p.m.

Council Member Mitracos announced that she and Council Member Vargas attended the Tracy Crime Stoppers meeting that afternoon and next month the Tracy Crime Stoppers will host a fundraising event at Buffalo Wild Wings.

12. ADJOURNMENT – Time: May 18, 2016, 12:18 a.m.

ACTION Motion was made by Mayor Pro Tem Rickman and seconded by Council Member Vargas to adjourn the meeting. Voice vote found all in favor; passed and so ordered.

The above agenda was posted at the Tracy City Hall on May 10, 2016. The above are action minutes. A recording is available at the Office of the City Clerk.

Mayor

ATTEST:

City Clerk

June 7, 2016, 7:00 p.m.

Council Chambers, 333 Civic Center Plaza, Tracy

Web Site: www.ci.tracy.ca.us

Mayor Maciel called the City Council meeting to order at 7:05 p.m. and led the Pledge of Allegiance.

Invocation was led by Pastor Kevin James, New Creation Bible Fellowship.

Roll call found Council Members Mitracos, Vargas, Young, Mayor Pro Tem Rickman and Mayor Maciel present.

Troy Brown, City Manager presented Employee of the Month Award for June 2016, to Erin Knight, Cultural Arts.

Mayor Maciel presented the National Alzheimer's and Brain Awareness Month Proclamation to Terri Simmons, Volunteer, Alzheimer's Association.

1. CONSENT CALENDAR

ACTION Following the removal of Item 1C by George Riddle, 1H, 1K and 1N by Council Member Vargas, it was moved by Mayor Pro Tem Rickman and seconded by Council Member Vargas to adopt the Consent Calendar. Roll call found all in favor; passed and so ordered. 5:0

- A. Adopt Council Minutes – Special meeting minutes of May 10, 2016 were approved.
- B. Authorization to Submit the Annual Claim to the State of California, Through the San Joaquin County Council of Governments, for Transportation Development Act Funds in the Amount of \$4,563,477 for Fiscal Year 2015-2016, and for the Administrative Services Director to Execute the Claim – Resolution 2016-100 authorized submitting the annual claim to the State of California.
- D. Approval of the San Joaquin Council of Governments (SJCOG) Annual Financial Plan for Fiscal Year 2016-2017 – Resolution 2016-101 approved the SJCOG Annual Financial Plan for FY 2016/2017.
- E. Waive Second Reading and Adopt an Ordinance of the City Council of the City of Tracy Authorizing an Amendment to the Contract Between the City Council of the City of Tracy and the Board of Administration of the California Public Employees' Retirement System – Ordinance 1217 was adopted.

- F. Waive Second Reading and Adopt an Ordinance of the City of Tracy Amending Section 10.08.1310 of the Tracy Municipal Code Relating to Minimum Front and Rear Yards and Rear Yard Open Space Requirements in the Medium Density Cluster (MDC) Zone Application Number ZA15-0002 – Ordinance 1218 was adopted.
- G. Waive Second Reading and Adopt an Ordinance of the City of Tracy Rezoning the Property Located at 2774 W. Byron Road, 2850 W. Byron Road, and 12920 W. Byron Road (Assessor's Parcel Numbers 238-080-04, 238-080-03, and 238-050-01) from Medium Density Residential Zone to Medium Density Cluster Zone Application Number R14-0002 – Ordinance 1219 was adopted.
- I. Approve a Letter Supporting the Fire Department's Application for a Staffing for Adequate Fire and Emergency Response (SAFER) Grant Under the Federal Assistance to Firefighters Grant Program – Letter of support was approved.
- J. Authorize Adoption of a Resolution to Adopt Safe Harbors Under the Patient Protection and Affordable Care Act (ACA) and Delegate Authority to the City Manager or His/Her Designee to Implement the Details of Safe Harbors Through an Administrative Policy – Resolution 2016-102 adopted Safe Harbors Under the Patient Protection and Affordable Care Act.
- L. Authorize Amendment of the City's Classification and Compensation Plans and Position Control Roster by Approving the Establishment of Two (2) New Classification Specifications and Salary Ranges for Media Services Coordinator and Receptionist – Resolution 2016-103 amended the City's Classification and Compensation Plans and Position Control Roster.
- M. Accept Travel Report from City Attorney Regarding Attendance at League of California Cities City Attorneys' Conference – Travel report was accepted.
- O. Adopt Resolutions Regarding the Election Process for the General Municipal Election to be Held on November 8, 2016 – Resolution 2016-104 called to hold a General Municipal Election. Resolution 2016-105 requested the consolidation of the General Municipal Election to be held with the Statewide General Election.
- P. Find it is in the Best Interest of the City to Forego the Formal Request for Proposal Process and Authorize Professional Services Agreement WY-U1 with West Yost and Associates for the Design of an Interim Pump Station for the City's Zone 3 Water System to Serve the Ellis Development and Authorize the Mayor to Execute the Agreement – Resolution 2016-106 authorized a Professional Services Agreement.
- C. Award a Construction Contract to Gems Environmental Management Services, Inc. of Concord, California, in the Amount of \$128,902.88 for Tracy Municipal Airport Fuel System Repairs, CIP 77038, Appropriate an Additional \$63,402 from the General Fund to the CIP, and Authorize the Mayor to Execute the Construction Contract

George Riddle pulled this item and on behalf of the Tracy Airport Association acknowledged staff for boosting the funding for CIP 77038 to cover this item.

ACTION Motion was made by Mayor Pro Tem Rickman and seconded by Council Member Vargas to adopt Resolution 2016-107 awarding a Construction Contract to Gem Environmental Management Services Inc. Voice vote found all in favor; passed and so ordered.

H. Approval to Purchase Motorola Irrigation Field Controllers, Enclosures and Central Irrigation Control Systems from Central Control Systems Ltd. for \$265,123.05 –

Council Member Vargas pulled this item for clarification.

ACTION Motion was made by Mayor Pro Tem Rickman, and seconded by Council Member Vargas to adopt Resolution 2016-108 approving purchase of Motorola Irrigation Field Controllers. Voice vote found all in favor; passed and so ordered.

K. Authorize Amendment Number Two to the Master Professional Services Agreement (MPSA) With Renne Sloan Holtzman Sakai LLP for Special Counsel to Conduct Labor Negotiations and Contract Implementation with Multiple Employee Groups and Authorize the Mayor to Execute the Amendment

Council Member Vargas pulled this item to encourage staff to do in-house labor negotiations for the next cycle in order to save money.

City Council comments and questions followed.

ACTION Motion was made by Mayor Pro Tem Rickman and seconded by Council Member Vargas to adopt Resolution 2016-109 authorizing Amendment Number Two to a Master Professional Services Agreement. Voice vote found all in favor; passed and so ordered.

N. Approve the Tracy Fire Station 95 Acquisition Agreement Between The City Of Tracy and Tracy Hills Project Owner, LLC And Tracy Phase 1, LLC and Authorize the Mayor to Execute the Agreement

Council Member Vargas pulled this item for clarification.

Randall Bradley, Fire Chief, presented the staff report.

City Council comments and questions followed.

ACTION Motion was made by Mayor Pro Tem Rickman and seconded by Council Member Young to adopt Resolution 2016-110 approving the Tracy Fire Station 95 Acquisition Agreement. Voice vote found all in favor; passed and so ordered.

2. ITEMS FROM THE AUDIENCE – Alice English, acknowledged and commended Mr. Harett, new owner of the market on the corner of Tracy Blvd and Linne Road for cleaning and maintaining the market, it is more appealing and attracting customers. Ms. English expressed concern that not many people are aware of the new information related to the water conservation in the City. Ms. English asked if there is literature the City can send out in different languages to get the information disseminated.

Cynthia Camacho, spoke on behalf of a concerned group of neighbors from the Elissagaray subdivision. Ms. Camacho expressed that they have recently been victims of mail theft. The community mailboxes that were placed to save time and money have made it easy for thieves to steal out of multiple mailboxes. Ms. Camacho urged the Council to support them as they petition the postmaster while pursuing their goal to have individual mailboxes at their residences.

3. APPROVAL OF ACTIONS NECESSARY TO INITIATE PROCEEDINGS TO FORM COMMUNITY FACILITIES DISTRICT NO. 2016-1 (TRACY HILLS), IMPROVEMENT AREA NO. 1 AND A FUTURE ANNEXATION AREA; AUTHORIZE RELATED INDEBTEDNESS, AND AUTHORIZE THE CITY MANAGER TO ENTER INTO JOINT FACILITIES AGREEMENTS WITH ANY ENTITY THAT WILL OWN OR OPERATE ANY OF THE FACILITIES

Anne Bell, Management Analyst, Administrative Services presented the staff report.

Council comments and questions followed.

ACTION Motion was made by Mayor Pro Tem Rickman, and seconded by Council Member Young to adopt Resolution 2016-111 initiating proceedings to form Community Facilities District No. 2016-1 (Tracy Hills), Improvement Area No. 1 and a future annexation area; authorize related indebtedness, and authorize the City Manager to enter into joint facilities agreements with an entity that will own or operate any of the facilities within City of Tracy Community Facilities District No. 2016-1 (Tracy Hills). Voice vote found all in favor; passed and so ordered.

4. PUBLIC HEARING OF THE CITY COUNCIL TO CONSIDER ADOPTION OF THE CITY OF TRACY PROPOSED FISCAL YEAR 2016/17 AND 2017/18 ANNUAL CITY BUDGETS, ADOPTION OF THE APPROPRIATIONS LIMIT FOR FISCAL YEAR 2016/17, AUTHORIZE APPROPRIATIONS FOR FISCAL YEAR 2016/17, AND ADOPTION OF THE REVISED BUDGET PRINCIPLES

Troy Brown, City Manager, provided opening remarks to the proposed financial plan.

Rachelle McQuiston, Administrative Services Director, presented the staff report.

Council comments and questions followed.

Mayor Maciel opened the public hearing. There was no testimony to be heard, and Mayor Maciel closed the public hearing. Council discussion ensued.

Council Member Mitracos inquired about fund augmentation for education and training for the Planning and Parks and Recreation Commissioners.

Troy Brown, City Manager stated that staff will bring an item to Council to appropriate sufficient education funding for the entire body.

ACTION Motion was made by Mayor Pro Tem Rickman, and seconded by Council Member Vargas to adopt Resolution 2016-112 approving the annual budget for the City of Tracy for FY 2016-17. Voice vote found all in favor; passed and so ordered.

ACTION Motion was made by Mayor Pro Tem Rickman, and seconded by Council Member Vargas to adopt Resolution 2016-113 establishing the appropriations limit for the City of Tracy for FY 2016-17. Voice vote found all in favor; passed and so ordered.

ACTION Motion was made by Mayor Pro Tem Rickman, and seconded by Council Member Vargas to adopt Resolution 2016-114 approving the City of Tracy budget principles. Voice vote found all in favor; passed and so ordered.

5. REPEAL RESOLUTION 2004-368 AND ADOPT A NEW RESOLUTION TO ESTABLISH REVISED PROCEDURES AND REQUIREMENTS FOR THE CONSIDERATION OF DEVELOPMENT AGREEMENTS

Andrew Malik, Development Services Director, presented the staff report.

Council comments and questions followed.

ACTION Motion was made by Mayor Pro Tem Rickman, and seconded by Council Member Young to adopt Resolution 2016-115 repealing Resolution 2004-368 and establish revised procedures and requirements for the consideration of development agreements. Voice vote found all in favor; passed and so ordered.

6. CONSIDER CANCELLATION OF AUGUST 2, 2016, REGULAR CITY COUNCIL MEETING – Upon a unanimous vote the City Council cancelled the first meeting in August.

Troy Brown, City Manager, presented the staff report.

ACTION Motion was made by Mayor Pro Tem Rickman, and seconded by Council Member Vargas to cancel the August 2, 2016, regular City Council meeting. Voice vote found all in favor, passed and so ordered.

7. INTRODUCTION OF AN ORDINANCE AMENDING SECTION 3.08.580, ARTICLE 12, OF THE TRACY MUNICIPAL CODE WHICH REGULATES THE ESTABLISHMENT OF SPECIAL SPEED ZONES

Ripon Bhatia, Senior Engineer, Development Services, presented the staff report.

Nora Pimentel, City Clerk read text of proposed ordinance into the record.

ACTION Motion was made by Mayor Pro Tem Rickman, and seconded by Council Member Vargas to waive reading of full text of proposed ordinance. Voice vote found all in favor; passed and so ordered.

ACTION Motion was made by Mayor Pro Tem Rickman, and seconded by Council Member Vargas to introduce Ordinance 1220. Voice vote found all in favor; passed and so ordered.

8. ITEMS FROM THE AUDIENCE – Martin Evans shared his observations and concerns related to the medical zone.

9. COUNCIL ITEMS

A. APPOINT FIVE APPLICANTS TO THE BOARD OF APPEALS TO HEAR AN APPEAL ON AN ADMINISTRATIVE DECISION PERTAINING TO ENFORCEMENT RELATED TO REGULATIONS LISTED IN THE TRACY MUNICIPAL CODE

Nora Pimentel, City Clerk presented the staff report.

ACTION Motion was made by Mayor Pro Tem Rickman, seconded by Council Member Vargas to appoint Philip Aubin, Dennis Alegre, Jerry Yerian, James Caling, and John Davis to the Board of Appeals to hear an appeal by a person regarding an administrative decision in the City's application of the California Building and Fire Code. Voice vote found all in favor passed and so ordered.

Council Member Vargas requested an update on the sidewalk construction and asked when that will begin. Council Member Vargas requested that a letter of support from the Council be drafted in support of the Elissagaray Community related to the recent mail theft. Bill Sartor, City Attorney said that staff will return to Council with a staff report.

Council Member Mitracos suggested that it is time for the City to begin thinking about becoming a gigabyte City, providing high speed internet access to the entire City; this could be a utility and generate revenue. Troy Brown, City Manager, stated that staff will provide an update in September related to this request.

Council Member Young announced the upcoming Philippine American Association event on Saturday, June 11, 2016 from 10:30 a.m. to 3:00 p.m.

ADJOURNMENT– Time: 9:15 p.m.

ACTION Motion was made by Mayor Pro Tem Rickman and seconded by Council Member Vargas to adjourn the meeting. Voice vote found all in favor; passed and so ordered.

The above agenda was posted at the Tracy City Hall on June 1, 2016. The above are action minutes. A recording is available at the Office of the City Clerk.

Mayor

ATTEST:

City Clerk

June 21, 2016, 7:00 p.m.

Council Chambers, 333 Civic Center Plaza, Tracy

Web Site: www.ci.tracy.ca.us

Mayor Maciel called the City Council meeting to order at 7:20 p.m. and led the Pledge of Allegiance.

Invocation was led by Deacon Jack Ryan.

Roll call found Council Members Mitracos, Vargas, Young, Mayor Pro Tem Rickman and Mayor Maciel present.

Mayor Maciel presented the Crime Stoppers Month Proclamation to Marshall Rose, President, Tracy Crime Stopper's.

1. CONSENT CALENDAR

ACTION Following the removal of Item 1B, 1D and 1F by Council Member Young, it was moved by Mayor Pro Tem Rickman and seconded by Council Member Vargas to adopt the Consent Calendar. Roll call found all in favor; passed and so ordered. 5:0

- A. Adopt Council Minutes – Regular City Council minutes of April 19, 2016, and May 3, 2016. Special Meeting minutes of May 9, 2016 were approved.
- C. Approve Real Property Purchase Agreements Between the City of Tracy and Three Property Owners for the Reconstruction and Widening of MacArthur Drive Between Schulte Road and Valpico Road, CIP 73126, Federal Project No. STPL-5192 (033) – Resolution 2016-16 approved Real Property Purchase Agreement.
- E. Approve Amendment No. 1 to the Professional Services Agreement with MV Transportation to Extend the Contract for One Month and Authorize the Mayor to Sign the Amendment – Resolution 2016-117 approved amendment No. 1 to Professional Services Agreement.
- G. Waive Second Reading and Adopt Ordinance 1220 an Ordinance of the City of Tracy Amending Section 3.08.580, of Chapter 3.08 (Traffic Regulations) of Title 3 (Public Safety) of the Tracy Municipal Code – Ordinance 1220 was adopted.
- B. Award a Construction Contract for the Frank Hoyt Park Playground Renovation Project, CIP 78148, to the Lowest Responsive Bidder. Authorize an Allocation of \$66,600 from Fund 301 Reserves to CIP 78148, Authorize the Mayor to Execute the Contract, and Authorize the City Manager to Execute Change Orders Up to the Maximum Contingency Amount Budgeted for this Project

Council Member Young pulled this item to inquire if the construction schedule may be accelerated. Robert Armijo, City Engineer, responded that staff would look into that request.

ACTION Motion was made by Mayor Pro Tem Rickman, and seconded by Council Member Vargas to adopt Resolution 2016-18 awarding a Construction Contract for the Frank Hoyt Park Playground. Voice vote found all in favor; passed and so ordered.

- D. Authorize the Submission of a United States Department of Justice Community Oriented Policing Services (COPS) Grant Application for a Projected Amount of \$1,159,900.32 for the Hiring of Three Police Officers for a Three-Year Term, With the COPS Grant Funding of \$125,000 Per Officer (a Total COPS Grant Funding of \$375,000 Over the Three-Year Grant Term), with the Projected City Match Funds of \$784,900.32 (over the Three-Year Grant Term), Approve an Additional \$90,000 for Projected Overtime and Other Costs Not Covered by the Grant Funds; and Approving the Acceptance of the \$375,000 Grant if Awarded

Council Member Young pulled this item for clarification.

Lani Smith, Support Operations Manager, presented the staff report.

Council comments and questions followed.

Robert Tanner inquired if the grant was anticipated in the budget which was recently approved.

ACTION Motion was made by Mayor Pro Tem Rickman, and seconded by Council Member Young to adopt Resolution 2016-119 authorizing the submission of a United States Department of Justice Community Oriented Policing Services Grant Application. Voice vote found all in favor; passed and so ordered.

- F. Approval of a Side Letter of Agreement Between the City of Tracy and the Tracy Mid Managers Bargaining Unit Regarding Amendment to Salary Planned Cost of Living Adjustments and Approval of Resolutions Amending the Compensation and Benefits Plan for the Confidential Managers and Technical and Support Services Units Regarding Cost of Living Adjustments –

Council Member Young pulled this item to have the fiscal impact read into the record for informational purposes. Acting Administrative Director Martha Garcia read the Fiscal Impact into the record.

ACTION Motion was made by Mayor Pro Tem Rickman, and seconded by Council Member Young to adopt Resolution 2016-120 approving the TMMBU side letter; Resolution 2016-121 approving the amendments to CMU Compensation Benefits; and Resolution 2016-122 approving TSSU amendment to Compensation Benefits. Voice vote found all in favor; passed and so ordered.

2. ITEMS FROM THE AUDIENCE – Dinesh Blalla employee of a trucking company in Tracy for the last eleven years, stated that the trucking company holds a business license to do business in Tracy but cannot secure any work instead the company does business in San Francisco and Oakland. Mr. Blalla expressed concern that the City of Tracy is pushing them out and asked if Council could assist.

Troy Brown, City Manager, introduced Fire Chief Bradley to provide an update on the strategies being implemented to reduce the impact of illegal fireworks. Police Chief Esquivel provided an update on the recent arrest related to the confiscation of 100 pounds of illegal fireworks. On the fourth of July Chief Esquivel stated that the Police Department will be supplemented with additional staff to proactively address the use of illegal fireworks in order to keep the community safe and sane.

3. PUBLIC HEARING TO CONSIDER (1) APPROVING THE ENGINEER'S ANNUAL LEVY REPORT; and (2) ORDERING THE LEVY AND COLLECTION OF ASSESSMENTS FOR TRACY CONSOLIDATED LANDSCAPE MAINTENANCE DISTRICT FOR FISCAL YEAR 2016/2017

Brian McDonald, Management Analyst, Parks and Community Services, presented the staff report.

Mayor Maciel opened the public hearing.

Council Member Young disclosed that she lives in zone 3 and that she would recuse herself from any discussion on zone 3 due to a conflict of interest.

Gary Hall expressed concern with the engineer's report for landscape and lighting and urged Council to reconsider when they vote on this item. Mr. Hall referenced the unsightly areas within the Cypress Way Landscape and Lighting Maintenance District.

Stacy Hall followed up with Mr. Hall's previous comments and added that there is a danger with the high weeds which could result in a fire if a match was lit nearby, and the parks are not getting watered or even being weeded. Ms. Hall urged the Council to evaluate the issues raised and expressed concern with paying more for sub standards.

Louise Smith reported that she emailed the City to complain about the Robert Kellogg Park being overwatered seven days a week, when residents are only allowed to water three days out of the week. Ms. Smith expressed concern with rates increasing in her landscaping district.

Mayor Maciel closed the public hearing. Council comments and questions followed.

ACTION Motion was made by Mayor Pro Tem Rickman, and seconded by Council Member Vargas to adopt Resolution 2016-123 approving the Engineer's Report regarding the proposed levy and collection of assessments for the Tracy Consolidated Landscape Maintenance District, Fiscal Year 2016-2017, pursuant to the provisions of the Landscaping and Lighting Act of 1972. Voice vote found all in favor; passed and so ordered. Council Member Young abstained from voting on zone 3 due to a potential conflict of interest.

ACTION Motion was made by Mayor Pro Tem Rickman, and seconded by Council Member Vargas to adopt Resolution 2016-124 ordering the levy and collection of assessments with the Tracy Consolidated Landscape Maintenance District for FY 2016/2017. Voice vote found all in favor; passed and so ordered. Council Member Young abstained from voting on zone 3 due to a potential conflict of interest.

4. CONDUCT A PUBLIC HEARING TO AUTHORIZE THE ACCEPTANCE OF \$11,365 FROM THE 2016 EDWARD BYRNE MEMORIAL JUSTICE ASSISTANCE GRANT PROGRAM AND APPROVE THE APPROPRIATION FOR THE PURCHASE OF EQUIPMENT FOR THE TRACY POLICE DEPARTMENT'S LAW ENFORCEMENT PROGRAMS

Lani Smith, Support Operations Manager, presented the staff report.

Mayor Maciel opened the public hearing, there was no testimony to be heard, and Mayor Maciel closed the public hearing.

ACTION Motion was made by Mayor Pro Tem Rickman, and seconded by Council Member Vargas to adopt Resolution 2016-125 authorizing the acceptance and the appropriation of \$11,365 from the 2016 Edward Byrne Memorial Justice Assistance Grant Program for the purchase of equipment for the Tracy Police Department's Law enforcement Programs. Voice vote found all in favor; passed and so ordered.

5. PUBLIC HEARING TO CONSIDER APPROVAL OF (1) AMENDMENT TO GENERAL PLAN SAFETY ELEMENT CHAPTER 8, SECTION II REGARDING FLOODING, AND (2) INTRODUCTION OF AN ORDINANCE AMENDING SECTIONS 9.52.050 AND 9.52.060 OF TRACY MUNICIPAL CODE CHAPTER 9.52 (FLOODPLAIN REGULATIONS)

Nash Gonzalez, Contract Planner, presented the staff report.

Mayor Maciel opened the public hearing, there was no testimony to be heard, and Mayor Maciel closed the public hearing.

Council comments and questions followed.

ACTION Motion was made by Mayor Pro Tem Rickman, and seconded by Council Member Vargas to adopt Resolution 2016-126 approving an amendment to General Plan Safety Element Chapter 8. Section II regarding flooding. Voice vote found all in favor; passed and so ordered.

Nora Pimentel, City Clerk read title of proposed ordinance into the record.

ACTION Motion was made by Mayor Pro Tem Rickman, and seconded by Council Member Vargas to waive reading of full text of proposed ordinance. Voice vote found all in favor; passed and so ordered.

ACTION Motion was made by Mayor Pro Tem Rickman, and seconded by Council Member Vargas to introduce Ordinance 1221. Voice vote found all in favor; passed and so ordered.

6. AUTHORIZE THE MAYOR TO SIGN A LETTER ON BEHALF OF THE TRACY CITY COUNCIL SUPPORTING THE ELISSAGARAY COMMUNITY'S PETITION TO THE UNITED STATES POSTAL SERVICE REQUESTING MAIL DELIVERY TO INDIVIDUAL ADDRESSES

Stephanie Garrabrant-Sierra, Assistant City Manager presented the staff report.

Joe Sciortino, spoke on behalf of the Elissagaray community and thanked the Council for their support and prompt response.

Council comments and questions followed.

ACTION Motion was made by Mayor Pro Tem Rickman, and seconded by Council Member Vargas authorizing the Mayor to sign a letter supporting the Elissagaray community's petition to the United States Postal Service requesting mail delivery to individual addresses. Voice vote found all in favor; passed and so ordered.

7. RATIFICATION OF THE RESOLUTION OF INTENTION TO INCUR BONDED INDEBTEDNESS FOR PROPOSED CFD NO. 2016-1 (TRACY HILLS) ADOPTED AT THE JUNE 7, 2016 COUNCIL MEETING

Anne Bell, Management Analyst, Administrative Services Department, presented the staff report.

Council comments and questions followed.

ACTION Motion was made by Council Member Young, and seconded by Mayor Pro Tem Rickman to ratify Resolution 2016-127; Resolution of intention to incur bonded indebtedness for proposed Community Facilities District 2016-01 (Tracy Hills) adopted at the June 7, 2016 City Council meeting. Voice vote found Council Member Mitracos, Young, Mayor Pro Tem Rickman and Mayor Maciel in favor; passed and so ordered. Council Member Vargas abstained.

8. ITEMS FROM THE AUDIENCE – There were no speakers.

9. COUNCIL ITEMS

- A. CONSIDER PLACING MEASURES ON THE BALLOT TO MAKE THE TERM OF OFFICE FOR THE MAYOR FOUR YEARS AND TO NOT COUNT PARTIAL TERMS TOWARDS TERM LIMITS FOR MAYOR AND CITY COUNCIL AND PROVIDE DIRECTION TO STAFF

Troy Brown, City Manager introduced this item and turned it over to Mayor and the City Council for discussion.

Mayor Maciel spoke as a proponent on this Council item and explained the reason for bringing this forward.

Robert Tanner agreed with the effective dates moving from 2018 to 2020 if these items moved forward.

Stacy Hall reported that she was one of the original committee members who put forward the term limits initiative in 2006. Ms. Hall stated that a four year limit is equitable. Ms. Hall expressed not being in favor of changing the term limit.

Council comments and questions followed.

After Council deliberation, there was no consensus to place either proposed measure on the November 8, 2016 ballot.

Mayor Pro Tem Rickman wished all a happy Fourth of July. Mayor Pro Tem Rickman requested that no parking hours be posted in front of St. Bernard's Church to accommodate for funeral services parking.

Council Member Young asked when the Boards and Commission information report requested in May would be coming to Council. Troy Brown, City Manager responded that it would be considered at the July 19, 2016 Council meeting.

Council Member Young also requested that a joint Planning Commission meeting be scheduled to clarify what the plan and design standards are so that projects are polished and detailed by the time they reach the City Council for approval. Troy Brown, City Manager responded that staff is preparing a design guidelines meeting and that this would be a good opportunity for a joint meeting.

10. ADJOURNMENT – Time 9:31 p.m.

ACTION Motion was made by Mayor Pro Tem Rickman and seconded by Council Member Vargas to adjourn the meeting. Voice vote found all in favor; passed and so ordered.

The above agenda was posted at the Tracy City Hall on June 14, 2016. The above are action minutes. A recording is available at the Office of the City Clerk.

Mayor

ATTEST:

City Clerk

AGENDA ITEM 1.B

REQUEST

AUTHORIZE A MASTER SUBSCRIPTION AGREEMENT AND SERVICE ORDER WITH FUSEFORWARD CLOUD SERVICES LTD., A CANADIAN CORPORATION, FOR WASTEWATER COMPUTERIZED MAINTENANCE MANAGEMENT SYSTEM SERVICES AND AUTHORIZE THE MAYOR TO EXECUTE THE SERVICE ORDER

EXECUTIVE SUMMARY

The City has a Computerized Maintenance Management System (CMMS) for both preventive maintenance of the Wastewater Treatment Plant (WWTP) and of the Public Works Sanitary Sewer Collection System. A master subscription agreement and service order are necessary for hosting the software and data on a cloud based server.

DISCUSSION

A preventative maintenance program for the City's Wastewater Collection and Sanitary Sewer Collection Systems is required as part of the City's National Pollutant Discharge Elimination System (NPDES) Wastewater Discharge Permit. The Utilities Department needs a similar program to track preventive maintenance services in the WWTP. In 2009, the City obtained proposals for establishing a CMMS program. Four vendors submitted formal proposals and demonstrated their preventative maintenance programs. Fuseforward was selected based on its use of the IBM Maximo program, as this program best meets the City's needs for both the Sanitary Sewer Collection System and the Utilities Wastewater Treatment Plant. The Utilities Department provides maintenance of the WWTP and the Public Works Department maintains the Sanitary Sewer System.

Fuseforward integrates the City's preventative maintenance work orders and schedules into the IBM Maximo program and provides access through their website. Fuseforward "hosts" the CMMS on its servers so the City does not need to purchase computer hardware, software, or software updates.

The Master Subscription Agreement provides for ongoing services. Each year, a Service Order is prepared and executed. The Service Order denotes the services to be provided. The term of the current Service Order is July 1, 2016 through June 30, 2017.

STRATEGIC PLAN

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

FISCAL IMPACT

There is no fiscal impact to the General Fund. The cost for hosting the program on the Fuseforward servers is a total annual cost of \$48,840. Funding is split equally between the Public Works Department and the Utilities Department from the Wastewater

Enterprise Fund and has been included in their respective FY2016-17 operating budgets.

RECOMMENDATION

That the City Council, by resolution, authorize the Master Subscription Agreement and Service Order with Fuseforward Cloud Services Ltd. for Wastewater Computerized Maintenance Management System Services and authorize the Mayor to execute the Service Order.

Prepared by: Kuldeep Sharma, Utilities Director

Reviewed by: Stephanie Garrabrant-Sierra, Assistant City Manager

Approved by: Troy Brown, City Manager

ATTACHMENTS

Attachment A: Master Subscription Agreement and Service Order

SERVICE ORDER SERVICE ORDER

ATTACHMENT A

This Service Order is governed by, is an attachment to, and is, upon execution by the parties, incorporates by reference the Master Subscription Agreement (the "Agreement") by and between Fuseforward Cloud Services Ltd. ("Fuseforward"), and the party designated below.

All the terms used in this Service Order shall retain the same meaning as defined in the Agreement and such definitions are incorporated herein by reference. In the event of any conflict between the provisions of the Agreement and this Service Order, the terms of this Service Order Form shall prevail.

The terms and conditions of this Service Order are applicable solely to the Services described herein and in no way affect or alter the terms of any other Service Order incorporated into the Agreement prior to or after the effective date of this Service Order.

Until this Service Order is signed by the parties, the prices in this Service Order are considered to be a quotation which may be revised at any time and which will expire, unless otherwise noted on this Service Order, thirty (30) days after such prices are provided to Customer or Reseller. The parties intend and agree that a photocopy, facsimile or electronically signed copy of this Service Order shall be treated as an original, and shall be deemed to be as binding, valid, genuine and authentic as an original document for all purposes.

Any Services purchased under the terms of this Service Order will be provided as per the terms of the Agreement and agreed service level agreements or statements of work.

IN WITNESS WHEREOF, the parties have caused this Service Order to be executed by their duly authorized representatives.

City of Tracy

Fuseforward Cloud Services Ltd.

By: _____

DocuSigned by:

By: _____
53D7B567AC454E4...

Printed Name: _____

Printed Name: Mark Damm

Title: _____

Title: President

Date: _____

Date: June 30, 2016

RESELLER INFORMATION			
Name	DIRECT	Partner Number	
Location		Reseller Contract	
END USER INFORMATION			
Legal Name	City of Tracy		
Street Address	333 Civic Center Plaza	Unit	
City	Tracy	State / Province	CA
Country	USA	Postal Code / ZIP	95376
Primary Contact Name	Public Works and Utilities Dept.	Company Phone	209-831-4420
Email Address		Support Phone	
BILLING INFORMATION			
P.O. Number / Dept	Public Works and Utilities Department		
Street Address	333 Civic Center Plaza	Unit	
City	Tracy	State / Province	CA
Country	USA	Postal Code / ZIP	95376
Billing Contact		Contact Phone	
Email Address		Payment Method	
Credit Card No.		CC Type	
Name on Card			

SERVICE DEFINITION		
Service Order Effective Date	June 30, 2016	Enter the date that the service order becomes effective.
Subscription Start Date	July 1, 2016	Enter the date that the subscription starts
Initial Service Term	12	Indicate the initial number of months for the service term.
Cloud Node	N. America	Indicate which cloud node that the subscription will be provided from – N.America, Europe or S.Africa.

SERVICES ORDERED						
Item	Description	UoM	Unit Price	Units	Term (months)	Amount
APEV-RHWS-EV10	Application Environment - Enterprise Value Websphere Redhat	Per Month	\$2,500.00	1	12	\$ 30,000.00
APUS-APPU-EV10	Application User - Value	Per User Per Month	\$5.50	10	12	\$ 660.00
PTR-MXO-STD	MX-EAM Standard User	Per User Per Month	\$260.00	4	12	\$ 12,480.00
PTR-MXO-LTD	MX-EAM Limited User	Per User Per Month	\$120.00	6	12	\$ 8,640.00
		Subtotal				\$ 51,780.00
		Discount		5.7%		\$ 2,940.00
		Subtotal after Discount				\$ 48,840.00
		HST/GST		0%		\$ -
		PST		0%		\$ -
		Total				\$ 48,840.00

SERVICE ORDER SPECIFIC TERMS AND CONDITIONS	
1.	
2.	
3.	
4.	

FUSEFORWARD SERVICE TERMS

Master Subscription Agreement

How this Agreement Works

This Agreement is a master subscription agreement under which you may order Cloud Services including Application Services, Platform Services and Infrastructure Services from time to time through the execution of a Service Order and the applicable Schedules and Attachments, signed by you and Fuseforward. Upon execution of each Service Order by both parties, each such Service Order will be deemed to be incorporated by reference into and governed by this Agreement.

Pursuant to the terms of this Agreement, Fuseforward will provide you with use of the Cloud Services, including a browser interface, data encryption, transmission, access and storage. Your registration for, or use of, the Cloud Services shall be deemed to be your agreement to abide by the terms of this Agreement.

1. Definitions

As used in this Agreement and in any Service Order now or hereafter associated herewith:

“Application Services” means application software and services provided by Fuseforward including its portal, data analytics, business and other application software services provided via online access based on the Fuseforward Technology and third party technology (available solely as part of the Application Services) developed, operated, and maintained by Fuseforward, accessible via <http://cloud.fuseforward.com> or another designated web site or IP address, and any ancillary online or offline products and services provided to you by Fuseforward, to which you are being granted access under this Agreement, including the Fuseforward Technology;

“Cloud Services” means the Application, Platform and Infrastructure Services, including the use of the accompanying embedded software, information technology infrastructure and support services, all pursuant to the terms of this Agreement and the applicable Service Order;

“Content” means the audio and visual information, documents, taxonomies, software, products and services contained or made available to you in the course of using the Cloud Services;

“Customer Data” means any data, information or material provided or submitted by you through the Cloud Services in the course of using the Cloud Services;

“Effective Date” means the earlier of the this Agreement is accepted by selecting the “I Accept” option presented on the screen after the Agreement is displayed, the date you begin to use the Cloud Services, or the signature date on a printed copy of this Agreement or a Service Order;

“Fuseforward” means Fuseforward Cloud Services Ltd., a Canadian federal corporation, having its registered and records office at Suite 2300 – 925 West Georgia Street, Vancouver, BC, Canada, V6C 3L2;

“Fuseforward Technology” means all of Fuseforward’s proprietary technology (including software, hardware, products, processes, algorithms, taxonomies, user interfaces, know-how, techniques, Content, designs and other tangible or intangible technical material or information) made available to you by Fuseforward in the course of providing the Cloud Services;

“Infrastructure Services” means the network, servers both physical and virtual, operating system and monitoring software, access devices (e.g., virtual desktops, network routers, computers) and security services provided by Fuseforward including any offline products, devices and services, the embedded software and services based on Fuseforward Technology and third party technology (available solely as part of the Infrastructure Services) developed, operated and maintained by Fuseforward, that are used to provide and operate Fuseforward’s Platform and Applications services and third party services.

“Intellectual Property Rights” means unpatented inventions, patent applications, patents, design rights, copyrights, trade-marks, service marks, trade names, domain name rights, mask work rights, know-how and other trade secret rights, and all other intellectual property rights, derivatives thereof, and forms of protection of a similar nature anywhere in the world;

“Online Order Center” means Fuseforward’s online application that allows the Subscription Administrator designated by you to, among other things, purchase additional Cloud Services;

“Platform Services” means the cloud platform including the application, data and analytics services provided by Fuseforward including the embedded software based on the Fuseforward Technology and third party technology

(available solely as part of the Platform Services) developed, operated and maintained by Fuseforward, that are used to provide and operate Fuseforward's Application Services and third party applications.

"Service Order" means an online or written form and its Schedules and Attachments evidencing the service subscriptions and any subsequent order forms submitted online or in written form, specifying, among other things, the number of subscriptions and types of Cloud Services contracted for, the applicable fees, the billing period, and other charges as agreed to between the parties, each such Service Order to be incorporated into and to become a part of this Agreement;

"Subscription Administrator(s)" means those Users designated by you who are authorized to purchase service subscriptions online using the Online Order Center or by executing a written Service Order and to create User accounts and otherwise administer your use of the Cloud Services;

"Subscription Term" means each of the annual periods (unless some other time period is specified in the applicable Service Order) during which the you are authorized to use the Cloud Services pursuant to a Service Order; and

"Users" means individuals who are authorized by you including but not limited to your employees, customers, representatives, consultants, contractors, agents and third parties to use the Cloud Services, for whom subscriptions to a Cloud Service have been ordered, and who have been supplied user credentials including user ids and passwords by you (or Fuseforward at your request).

2. Right to Use & Restrictions

Fuseforward hereby grants you a non-exclusive, non-transferable, worldwide right to use the Cloud Services subject to the terms and conditions of this Agreement. All rights not expressly granted to you are reserved by Fuseforward and its licensors.

You shall not:

- (i) license, sublicense, sell, resell, transfer, assign, distribute or otherwise commercially exploit or make available to any third party the Cloud Services or the Fuseforward Technology, including, but not limited to the Content, in any way;
- (ii) modify or make derivative works based upon the Cloud Services or Fuseforward Technology, including, but not limited to, any Content;
- (iii) create Internet "links" to the Cloud Services or "frame" or "mirror" any Fuseforward Technology, including, but not limited to, any Content, on any other server or wireless or Internet-based device; or
- (iv) reverse engineer or access the Cloud Services in order to (a) build a competitive product or service, (b) build a product using similar ideas, features, functions or graphics of the Services, or (c) copy any ideas, features, functions or graphics of the Cloud Services.

Notwithstanding the foregoing, you may create Internet "links" to the Cloud Services and/or "frame" or "mirror" the Cloud Services provided the link, frame or mirror is to Cloud Services or Content specifically available as publically accessible or Content without any user login requirements;

User subscriptions cannot be shared or used by more than one individual User but may be reassigned from time to time to new Users who are replacing former Users who are no longer using the Cloud Services.

You may not access the Cloud Services if you are a direct competitor of Fuseforward, except with Fuseforward's prior written consent. In addition, you may not access the Cloud Services for purposes of monitoring availability, performance or functionality, or for any other benchmarking or competitive purposes.

You shall not:

- (i) send spam or otherwise duplicative or unsolicited messages in violation of applicable laws;
- (ii) send or store infringing, harassing, obscene, threatening, libelous, or otherwise unlawful, objectionable or tortious material, including material harmful to children or violative of third party privacy rights;
- (iii) send or store material containing software viruses, worms, Trojan horses or other harmful computer code, files, scripts, agents or programs;
- (iv) interfere with or disrupt the integrity or performance of the Cloud Services or the data contained therein;
- (v) attempt to gain unauthorized access to the Cloud Services or related systems or networks; or
- (vi) use the Cloud Services for illegal, unethical or inappropriate purposes.

3. Your Responsibilities

You are responsible for all activity occurring under your User accounts and shall abide by all applicable local, provincial, state, national and foreign laws, treaties and regulations in connection with your use of the Cloud Services, including those related to data privacy, international communications and the transmission of technical or personal data.

You and your Users are responsible for maintaining the confidentiality of all passwords at all times and for ensuring that issued passwords are used only by the authorized User(s) and only for authorized purposes. You are entirely responsible for all activities that occur under your account and all charges incurred in connection with the use of the Services accessed using your passwords. You shall:

- (i) notify Fuseforward immediately of any unauthorized use of any password or account or any other known or suspected breach of security;
- (ii) report to Fuseforward immediately and use reasonable efforts to stop immediately any unpermitted copying or distribution of Fuseforward Technology, including but not limited to Content, that is known or suspected by you or your Users; and
- (iii) not impersonate another Fuseforward user or provide false identity information to gain access to or use the Services.

You are responsible for obtaining and maintaining all computer hardware, software and communications equipment needed to access and use the Cloud Services and for paying all third party fees and access charges incurred while using the Services.

4. Privacy; Disclosure

Fuseforward shall maintain appropriate administrative, physical, and technical safeguards for protection of the security, confidentiality and integrity of the Customer Data. Fuseforward's legal agreements and privacy policies may be viewed at <http://www.Fuseforward.com/legal>. Fuseforward reserves the right to modify its privacy policies in its reasonable discretion from time to time. Users, when they initially log in, may be asked whether or not they wish to receive marketing and other non-critical Services-related communications from Fuseforward from time to time. Users may opt out of receiving such communications at that time or at any subsequent time by changing their preferences under Personal Setup. Note that because the Cloud Services are hosted, online applications and services, Fuseforward occasionally may need to notify all Users of the Services (whether or not they have opted out as described above) of important announcements regarding the operation of the Services. You agree that Fuseforward can disclose the fact that you are a customer and the edition of the Services that you are using.

5. Account Information and Data

Fuseforward does not own any data, information or material that you submit to or store via the Cloud Service in the course of using the Cloud Service ("Customer Data"). You, not Fuseforward, shall have sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness, and intellectual property ownership or right to use of all Customer Data.

You represent and warrant that you have the express consent of subject individuals to the collection, use and disclosure of their personal information as part of the Customer Data and in connection with the Cloud Services, or that such collection, use and disclosure of personal information as part of the Customer Data, whether by you or Fuseforward on your behalf, is in compliance with applicable law. Fuseforward assumes no responsibility and shall have no liability, for the deletion, correction, destruction, damage, loss or failure to store any Customer Data.

Fuseforward may access your account and Customer Data from time to time as Fuseforward deems necessary or appropriate for purposes of performing under this Agreement, including without limitation, providing support, performing account administration and generating invoices with respect to your use of the Cloud Services.

Except as permitted in this Agreement, Fuseforward shall not, during the term of this Agreement, disclose the contents of Customer Data unless authorized by you or Fuseforward is required to do so by law or in the good faith belief that such action is necessary to:

- (i) conform with applicable laws or comply with legal process served on Fuseforward;
- (ii) protect and defend the rights or property of Fuseforward and its licensors; or
- (iii) enforce this Agreement or establish any rights hereunder.

In the event this Agreement is terminated (other than by reason of your material breach as described in Section 13 (Termination for Cause)), Fuseforward will make available to you a file of the Customer Data within 30 days of termination if you so request at the time of termination. You agree and acknowledge that Fuseforward has no

obligation to retain the Customer Data, and may delete such Customer Data, at any time after the expiration of the aforementioned 30 day period.

Fuseforward reserves the right to withhold, remove and/or irretrievably delete Customer Data subject to notice for material breach, including, without limitation, your non-payment of any monies due hereunder as described in Section 13 (Termination for Cause). Upon termination for cause, your right to access or use Customer Data immediately ceases, and Fuseforward shall have no obligation to maintain or forward any Customer Data and may, in its discretion, withhold, remove or irretrievably delete such Customer Data.

6. Intellectual Property Ownership

Fuseforward alone (and its licensors, where applicable) shall own all right, title and interest, including all related Intellectual Property Rights, in and to the Fuseforward Technology and all other aspects of the Cloud Services and any suggestions, ideas, enhancement requests, feedback, recommendations or other information provided by you or any other person relating to the Cloud Services.

This Agreement is not a sale and does not convey to you any rights of ownership in or related to the Cloud Services, including, but not limited to, the Fuseforward Technology or the Intellectual Property Rights owned by Fuseforward. The Fuseforward name, the Fuseforward logo and the product names associated with the Cloud Services are trademarks of Fuseforward or third parties, and no right or license is granted to use them.

7. Third Party Interactions

During use of the Cloud Services, you may enter into correspondence with, purchase goods and/or services from, or participate in promotions of advertisers or sponsors showing their goods and/or services through the Cloud Services. Any such activity, and any terms, conditions, warranties or representations associated with such activity, are solely between you and the applicable third-party. Fuseforward and its licensors shall have no liability, obligation or responsibility for any such correspondence, purchase or promotion between you and any such third-party. Fuseforward does not endorse any sites on the Internet that are linked through the Cloud Services. Fuseforward provides these links to you only as a matter of convenience, and in no event shall Fuseforward or its licensors be responsible for any content, products, or other materials on or available from such sites.

Fuseforward provides the Cloud Services to you pursuant to the terms and conditions of this Agreement. You recognize, however, that certain third-party providers of ancillary software, hardware or services may require your agreement to additional or different license or other terms prior to your use of or access to such software, hardware or services.

8. Charges and Payment of Fees

8.1 Application Service Fees

You agree to pay all Application Service fees specified in all Service Orders hereunder. Except as otherwise specified herein or in a Service Order, (i) fees are based on the number of units purchased and not actual usage, (ii) payment obligations are non-cancelable and fees paid are non-refundable, and (iii) the number of subscription units purchased cannot be decreased during the relevant subscription term stated on the Service Order.

8.2 Platform Service Fees

You agree to pay all Platform Service fees specified in all Service Orders hereunder. Except as otherwise specified herein or in a Service Order, (i) fees are based on the number of units purchased and/or usage and/or any combination thereof, (ii) payment obligations are non-cancelable and fees paid are non-refundable, and (iii) the number of subscription units purchased cannot be decreased during the relevant subscription term stated on the Service Order. Usage based fees will be billed on actual usage during a period. Where pre-payment has been provided, actual usage will be reconciled on a monthly basis.

8.3 Infrastructure Service Fees

You agree to pay all Infrastructure Service fees specified in all Service Orders hereunder. Except as otherwise specified herein or in a Service Order, (i) fees are based on the number of units purchased and/or usage and/or any combination thereof, (ii) payment obligations are non-cancelable and fees paid are non-refundable, and (iii) the number of subscription units purchased cannot be decreased during the relevant subscription term stated on the Service Order. Usage based fees will be billed on actual usage during a period. Where pre-payment has been provided, actual usage will be reconciled on a monthly basis.

9. Excess Data Storage Fees

Where applicable, the maximum disk storage space provided to you for your Cloud Services at no additional charge is as identified in the capacity component of the specific Cloud Service subscription offering purchased under the applicable Service Order. Fuseforward will use reasonable efforts to notify you when the average storage used per Cloud Service reaches approximately 90% of the maximum; however, any failure by Fuseforward to so notify you shall not affect your responsibility for such additional storage charges. Fuseforward reserves the right to establish or modify its general practices and limits relating to storage of Customer Data.

10. Billing and Renewal

Fuseforward charges and collects in advance for use of the Cloud Services. All invoices are due upon receipt. Fees for other services will be charged on an as-quoted basis. Fuseforward's fees are exclusive of all taxes, levies, or duties imposed by taxing authorities, and you shall be responsible for payment of all such taxes, levies, or duties, excluding only taxes based solely on Fuseforward's income.

You agree to provide Fuseforward with complete and accurate billing and contact information. This information includes your legal company name, street address, e-mail address, and name and telephone number of an authorized billing contact to act as the Subscription Administrator. You agree to update this information within 30 days of any change to it. If the contact information you have provided is false or fraudulent, Fuseforward reserves the right to terminate your access to the Cloud Services in addition to any other legal remedies.

Unless Fuseforward in its discretion determines otherwise:

- (i) entities with headquarters and a majority of Users resident in Canada will be billed in Canadian dollars and will be subject to Canadian payment terms and pricing structures ("Canadian Customers");
- (ii) entities with headquarters and a majority of Users resident in the United States will be billed in USA dollars and will be subject to USA payment terms and pricing structures ("USA Customers");
- (iii) entities with headquarters and a majority of Users resident in the United Kingdom will be billed in Great Britain pounds and will be subject to UK payment terms and pricing structures ("UK Customers");
- (iv) entities with headquarters and a majority of Users resident in the European Union excluding the United Kingdom will be billed in Euros and will be subject to EU payment terms and pricing structures ("EU Customers"); and
- (iv) all other entities will be billed in USA dollars and will be subject to Rest of World payment terms and pricing structures ("ROW Customers").

If you believe your bill is incorrect, you must contact Fuseforward in writing within sixty (60) days of the invoice date of the invoice containing the amount in question to be eligible to receive an adjustment or credit.

Fuseforward may, at its election, pledge all or any part of Fuseforward's right to payment under this Agreement and any amounts due or to become due pursuant to this Agreement to any assignee. Upon receipt of written notice from Fuseforward of such assignment, you will promptly acknowledge receipt thereof in writing. If you are given written notice by Fuseforward of any such assignment, you agree to pay all amounts due or to become due hereunder, in accordance with the terms of this Agreement applicable to such payments, directly to the applicable assignee or to any other party designated by such assignee. Fuseforward will have no rights to any amounts paid by you to an assignee designated in writing by Fuseforward. You agree not to assert against any such assignee any set-off, defense, recoupment, claim or counterclaim that you may have against Fuseforward or any other person. You also agree to execute and deliver to Fuseforward such documentation as any such assignee shall reasonably request, including, without limitation, an acknowledgement of or consent to the assignment and reaffirmation with respect to your agreement to make payments directly to such assignee as required pursuant to the terms of this Agreement. Each of Fuseforward and you will not be relieved of any obligations under this Agreement as a result of any such assignment by Fuseforward of the right to receive payments from you. Any such assignee will be entitled to rely on your consent to such assignment and your payment obligations related thereto under the terms of this Agreement and shall be considered a third party beneficiary thereof.

11. Non-Payment and Suspension

In addition to any other rights granted to Fuseforward herein, Fuseforward reserves the right to suspend or terminate this Agreement and/or your access to the Cloud Services if your account becomes delinquent (falls into arrears). Delinquent invoices (accounts in arrears) are subject to interest of 1.5% per month (18% per annum) on any outstanding balance, or the maximum permitted by law, whichever is less, plus all expenses of collection. You will continue to be charged for Cloud Service subscriptions during any period of suspension. Fuseforward reserves the right to impose a reconnection fee in the event you are suspended and thereafter request access to the Cloud Services. If you or Fuseforward initiates termination of this Agreement, you will be obligated to pay the balance due

on your account computed in accordance with Section 8 (Charges and Payment of Fees). You agree that Fuseforward may charge such unpaid fees to your credit card or otherwise bill you for such unpaid fees.

12. Term and Termination

This Agreement commences on the Effective Date. Either party may terminate this Agreement or reduce the number of subscriptions, effective upon the expiration of the then-current Subscription Term, by notifying the other party in writing at least thirty (30) days prior to the expiration of the then-current Subscription Term.

13. Termination for Cause

Fuseforward, in its sole discretion, may terminate, at Fuseforward's election, this Agreement (including termination of use of your password, closure of your account and termination of your use of the Cloud Services) if you materially breach or otherwise fail to comply with this Agreement subject to 30 days prior written notice of such material breach by Fuseforward and the opportunity for you to fully cure such material breach during such notice period. Any breach of your payment obligations or unauthorized use of the Fuseforward Technology or Cloud Service will be deemed a material breach of this Agreement. In addition, Fuseforward may terminate a free account at any time in its sole discretion. Any actual or proposed change in control of you that results or would result in a direct competitor of Fuseforward directly or indirectly owning or controlling 50% or more of you shall entitle Fuseforward to terminate this Agreement for cause immediately upon written notice.

14. Representations & Warranties

Each party represents and warrants that it has the legal power and authority to enter into this Agreement. Fuseforward represents and warrants that it will provide the Cloud Services in a manner consistent with general industry standards reasonably applicable to the provision thereof and that the Services will conform substantially to the online Fuseforward help documentation under normal use and circumstances. You represent and warrant that you have not falsely identified yourself nor provided any false information to gain access to the Cloud Services and that your billing information is correct.

15. Mutual Indemnification

You shall indemnify and hold Fuseforward, its licensors and each such party's parent organizations, subsidiaries, affiliates, officers, directors, employees, attorneys and agents harmless from and against any and all claims, costs, damages, losses, liabilities and expenses (including attorneys' fees and costs) arising out of or in connection with:

- (i) a claim alleging that use of the Customer Data infringes the rights of, or has caused harm to, a third party;
- (ii) a claim, which if true, would constitute a violation by you of your representations and warranties; or
- (iii) a claim arising from the breach by you or your Users of this Agreement, provided in any such case that Fuseforward (a) gives written notice of the claim promptly to you; (b) gives you sole control of the defense and settlement of the claim (provided that you may not settle any claim unless, in such settlement, you unconditionally release Fuseforward of all liability and such settlement does not affect Fuseforward's business or Services or require Fuseforward to make any payments or incur any liability); (c) provides to you all available information and assistance; and (d) has not compromised or settled such claim.

Fuseforward shall indemnify and hold you and your parent organizations, subsidiaries, affiliates, officers, directors, employees, attorneys and agents harmless from and against any and all claims, costs, damages, losses, liabilities and expenses (including attorneys' fees and costs) arising out of or in connection with:

- (i) a claim alleging that the Cloud Services directly infringes a copyright, a U.S. patent issued as of the Effective Date, or a trademark of a third party;
- (ii) a claim, which if true, would constitute a violation by Fuseforward of its representations or warranties; or
- (iii) a claim arising from breach of this Agreement by Fuseforward; provided that you (a) promptly give written notice of the claim to Fuseforward; (b) give Fuseforward sole control of the defense and settlement of the claim (provided that Fuseforward may not settle any claim unless such settlement unconditionally releases you of all liability and does not require you to make any payments or incur any liability); (c) provide to Fuseforward all available information and assistance; and (d) have not compromised or settled such claim. Fuseforward shall have no indemnification obligation, and you shall indemnify Fuseforward pursuant to this Agreement, for claims arising from any infringement arising from the combination of the Cloud Services with any of your products, service, hardware or business process(s).

16. Disclaimer of Warranties

FUSEFORWARD AND ITS LICENSORS MAKE NO REPRESENTATION, WARRANTY, CONDITION OR GUARANTY AS TO THE RELIABILITY, TIMELINESS, QUALITY, SUITABILITY, TRUTH, AVAILABILITY, ACCURACY OR COMPLETENESS OF THE CLOUD SERVICES OR ANY FUSEFORWARD TECHNOLOGY. FUSEFORWARD AND ITS LICENSORS DO NOT REPRESENT OR WARRANT THAT (a) THE USE OF THE CLOUD SERVICES AND/OR FUSEFORWARD TECHNOLOGY WILL BE SECURE, TIMELY, UNINTERRUPTED OR ERROR-FREE OR OPERATE IN COMBINATION WITH ANY OTHER HARDWARE, SOFTWARE, SYSTEM OR DATA, (b) THE CLOUD SERVICES AND/OR FUSEFORWARD TECHNOLOGY WILL MEET YOUR REQUIREMENTS OR EXPECTATIONS, (c) ANY STORED DATA WILL BE ACCURATE OR RELIABLE, (d) THE QUALITY OF ANY PRODUCTS, SERVICES, INFORMATION, OR OTHER MATERIAL PURCHASED OR OBTAINED BY YOU THROUGH THE CLOUD SERVICES WILL MEET YOUR REQUIREMENTS OR EXPECTATIONS, (e) ERRORS OR DEFECTS WILL BE CORRECTED, OR (f) THE CLOUD SERVICES AND/OR FUSEFORWARD TECHNOLOGY OR THE SERVER(S) THAT MAKE THE CLOUD SERVICES AVAILABLE ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS. THE CLOUD SERVICES AND ALL FUSEFORWARD TECHNOLOGY IS PROVIDED TO YOU STRICTLY ON AN "AS IS" BASIS EXCEPT AS OTHERWISE SPECIFIED IN THE APPLICABLE SERVICE ORDER. ALL CONDITIONS, REPRESENTATIONS AND WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT OF THIRD PARTY RIGHTS, ARE HEREBY DISCLAIMED TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW BY FUSEFORWARD AND ITS LICENSORS.

17. Internet Delays

FUSEFORWARD'S CLOUD SERVICES MAY BE SUBJECT TO LIMITATIONS, DELAYS, AND OTHER PROBLEMS INHERENT IN THE USE OF THE INTERNET AND ELECTRONIC COMMUNICATIONS. FUSEFORWARD IS NOT RESPONSIBLE FOR ANY DELAYS, DELIVERY FAILURES, OR OTHER DAMAGE RESULTING FROM SUCH PROBLEMS.

18. Limitation of Liability

IN NO EVENT SHALL EITHER PARTY'S AGGREGATE LIABILITY EXCEED THE AMOUNTS ACTUALLY PAID BY AND/OR DUE FROM YOU IN THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO SUCH CLAIM (EVEN IN THE EVENT OF A FUNDAMENTAL BREACH OF THIS AGREEMENT). IN NO EVENT SHALL EITHER PARTY AND/OR ITS LICENSORS BE LIABLE TO ANYONE FOR ANY INDIRECT, PUNITIVE, SPECIAL, EXEMPLARY, INCIDENTAL, CONSEQUENTIAL OR OTHER DAMAGES OF ANY TYPE OR KIND (INCLUDING LOSS OF DATA, REVENUE, PROFITS, USE OR OTHER ECONOMIC ADVANTAGE) ARISING OUT OF, OR IN ANY WAY CONNECTED WITH THE CLOUD SERVICES, INCLUDING BUT NOT LIMITED TO THE USE OR INABILITY TO USE THE CLOUD SERVICES, ANY HARDWARE DEVICE, OR FUSEFORWARD TECHNOLOGY OR INFORMATION OBTAINED FROM OR THROUGH THE CLOUD SERVICES, ANY INTERRUPTION, INACCURACY, ERROR OR OMISSION, REGARDLESS OF CAUSE, IN THE CLOUD SERVICES, EVEN IF THE PARTY FROM WHICH DAMAGES ARE BEING SOUGHT OR SUCH PARTY'S LICENSORS HAVE BEEN PREVIOUSLY ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. (EVEN IN THE EVENT OF A FUNDAMENTAL BREACH OF THIS AGREEMENT.)

19. Local Laws and Export Control

The Cloud Services use information, hardware, software and technology that may be subject to Canadian or United States export control laws. You acknowledge and agree, on your own behalf and on behalf of each of your Users (for which you shall be jointly and severally liable), that the Cloud Services shall not be used, and none of the underlying information, hardware, software, or technology may be transferred or otherwise exported or re-exported to prohibited or restricted countries, to restricted or prohibited persons or entities or for any prohibited or restricted end uses under applicable U.S. or Canadian laws, including any changes to those laws that may be made from time to time. Pursuant to U.S. laws, the lists of prohibited or restricted end-users includes the List of Specially Designated Nationals and Blocked Persons administered by U.S. Department of the Treasury, Office of Foreign Assets Control, the Entity, Unverified and Denied Persons lists administered by the U.S. Department of Commerce, and the Non-Proliferation and Debarred Parties Lists administered by the U.S. Department of State.

By using the Cloud Services, you represent and warrant that you are not located in, under the control of, or a national or resident of any prohibited or restricted country and are not a prohibited or restricted person to which the transfer, export or reexport of the information, hardware, software, technology or Cloud Services is prohibited by U.S. or Canadian laws. You also agree to comply strictly with all applicable Canadian and U.S. export laws, as well as any other applicable export laws, and assume sole responsibility for obtaining licenses to export or re-export as may be required.

None of the information acquired through the use of the Cloud Services or any software, or technology used in the Cloud Services, is or will be used for nuclear activities, chemical or biological weapons, or missile projects, unless specifically authorized by the United States government or appropriate Canadian body for such purposes.

These Cloud Services may use encryption software and/or technology that are subject to licensing or other related requirements under the U.S. Export Administration Regulations, 15 C.F.R. Parts 730-774.

Fuseforward and its licensors make no representation that the Cloud Services are appropriate or available for use in other locations. If you use the Cloud Services from outside Canada or the United States of America, you are solely responsible for compliance with all applicable laws, including without limitation export, import and use regulations of other countries.

Any diversion of the Cloud Services or related hardware, software, technology, or information contrary to Canadian or United States law is prohibited.

20. Notice

Fuseforward may give notice by means of a general notice delivered through the Cloud Services, electronic mail to your e-mail address on record in Fuseforward's account information, or by written communication sent by first class mail or pre-paid post to your address on record in Fuseforward's account information. Such notice shall be deemed to have been given upon the expiration of 48 hours after mailing or posting (if sent by first class mail or pre-paid post) or 12 hours after sending (if sent by email). You may give notice to Fuseforward (such notice shall be deemed given when received by Fuseforward) at any time by any of the following: letter sent by confirmed facsimile to Fuseforward at the following email address: legaldesk@fuseforward.com, fax number: (604) 229-2435; or letter delivered by nationally recognized overnight delivery service or first class postage prepaid mail to Fuseforward at the following address: Fuseforward Cloud Services Ltd., 671J Market Hill, Vancouver, BC, Canada V5Z 4B5: attention of: Chief Financial Officer or Chief Executive Officer.

21. Entire Agreement

This Agreement, including all exhibits and addenda hereto and all Service Orders, constitutes the entire agreement between the parties and supersedes all prior and contemporaneous agreements, proposals or representations, written or oral, concerning its subject matter. No modification, amendment, or waiver of any provision of this Agreement shall be effective unless in writing and either signed or accepted electronically by the party against whom the modification, amendment or waiver is to be asserted. However, to the extent of any conflict or inconsistency between the provisions in the body of this Agreement and any exhibit or addendum hereto or any Service Order, the terms of such exhibit, addendum or Service Order shall prevail. Notwithstanding any language to the contrary therein, no terms or conditions stated in your purchase order or other order documentation (excluding Service Order) shall be incorporated into or form any part of this Agreement, and all such terms or conditions shall be null and void. No waiver of any other provisions of this agreement shall be deemed or shall constitute a waiver of any other provisions (whether or not similar) nor shall the waiver constitute a continuing waiver unless otherwise expressly provided.

22. Assignment; Change in Control

Neither party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the prior written consent of the other party (not to be unreasonably withheld). Notwithstanding the foregoing, either party may assign this Agreement in its entirety (including all Service Orders), without the consent of the other party, to its Affiliates or in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets not involving a direct competitor of the other party. Any purported assignment in violation of this section shall be void.

23. General

With respect to Customers located in the United States, this Agreement shall be governed by Washington State law and controlling United States federal law, without regard to the choice or conflicts of law provisions of any jurisdiction, and any disputes, actions, claims or causes of action arising out of or in connection with this Agreement or the Cloud Service shall be subject to the non-exclusive jurisdiction of the state and federal courts located in Seattle, Washington.

With respect to customers located in Canada and Internationally excluding the United States, this Agreement shall be governed by British Columbia and controlling Canadian law without regard to the choice or conflicts of law provisions of any jurisdiction, and any disputes, actions, claims or causes of action arising out of or in connection with this Agreement or the Cloud Service shall be subject to the non-exclusive jurisdiction of British Columbia, Canada.

If any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, then such provision(s) shall be construed, as nearly as possible, to reflect the intentions of the invalid or unenforceable provision(s), with all other provisions remaining in full force and effect.

No joint venture, partnership, employment, or agency relationship exists between you and Fuseforward as a result of this agreement or use of the Services.

The failure of Fuseforward to enforce any right or provision in this Agreement shall not constitute a waiver of such right or provision unless acknowledged and agreed to by Fuseforward in writing.

The parties agree that each of the Uniform Computer Information Transactions Act (UCITA) and the United Nations Convention for the International Sale of Goods is excluded in its entirety from application to this Agreement.

Certificate Of Completion

Envelope Id: F216F355954D4E0BB95360567FD980D7	Status: Completed
Subject: Please DocuSign: FF Cloud Services - Direct Master Subscription Agreement 2015 Main.docx, FUSEF...	
Source Envelope:	
Document Pages: 12	Signatures: 1
Certificate Pages: 1	Initials: 0
AutoNav: Enabled	Envelope Originator:
Envelopeld Stamping: Disabled	Mark Damm
Time Zone: (UTC-08:00) Pacific Time (US & Canada)	671 J Market Hill
	Vancouver, BC V5Z 4B5
	mark.damm@fuseforward.com
	IP Address: 207.6.51.224

Record Tracking

Status: Original	Holder: Mark Damm	Location: DocuSign
7/7/2016 10:12:03 AM	mark.damm@fuseforward.com	

Signer Events

Mark Damm
 mark.damm@fuseforward.com
 CEO
 Fuseforward Solutions Group Ltd.
 Security Level: Email, Account Authentication (None)
 Electronic Record and Signature Disclosure:
 Not Offered via DocuSign
 ID:

Signature

DocuSigned by:

 53D7B567AC454E4...
 Using IP Address: 207.6.51.224

Timestamp

Sent: 7/7/2016 10:12:38 AM
 Viewed: 7/7/2016 10:12:43 AM
 Signed: 7/7/2016 10:13:26 AM
 Freeform Signing

In Person Signer Events

Signature

Timestamp

Editor Delivery Events

Status

Timestamp

Agent Delivery Events

Status

Timestamp

Intermediary Delivery Events

Status

Timestamp

Certified Delivery Events

Status

Timestamp

Carbon Copy Events

Status

Timestamp

Mark Damm
 mark.damm@fuseforward.com
 CEO
 Fuseforward Solutions Group Ltd.
 Security Level: Email, Account Authentication (None)
 Electronic Record and Signature Disclosure:
 Not Offered via DocuSign
 ID:

COPIED

Sent: 7/7/2016 10:13:28 AM

Notary Events

Timestamp

Envelope Summary Events

Status

Timestamps

Envelope Sent	Hashed/Encrypted	7/7/2016 10:13:28 AM
Certified Delivered	Security Checked	7/7/2016 10:12:43 AM
Signing Complete	Security Checked	7/7/2016 10:13:28 AM
Completed	Security Checked	7/7/2016 10:13:28 AM

RESOLUTION 2016-_____

AUTHORIZING A MASTER SUBSCRIPTION AGREEMENT AND SERVICE ORDER WITH FUSEFORWARD CLOUD SERVICES LTD., A CANADIAN CORPORATION, FOR WASTEWATER COMPUTERIZED MAINTENANCE MANAGEMENT SYSTEM SERVICES AND AUTHORIZING THE MAYOR TO EXECUTE THE SERVICE ORDER

WHEREAS, A preventative maintenance program for the City's wastewater collection system is required as part of the City's NPDES Wastewater Discharge Permit, and

WHEREAS, Fuseforward integrated the City's preventative maintenance work orders and schedules into the IBM Maximo program and provides access through their website, and

WHEREAS, Fuseforward "hosts" the CMMS on its servers so the City did not need to purchase computer hardware, software, or software updates, and

WHEREAS, The Master Subscription Agreement provides for ongoing services. Each year a Service Order is prepared and executed, and

WHEREAS, The Service Order denotes the services to be provided and a term of July 1, 2016 through June 30, 2017, and

WHEREAS, There is no impact to the General Fund; the cost for hosting the program on the Fuseforward servers is \$48,840, and

WHEREAS, Funding is from the Wastewater Enterprise Fund and is included in the respective departments' FY2016-17 operating budgets;

NOW, THEREFORE, BE IT RESOLVED, That the City Council authorizes Master Subscription Agreement and Service Order with Fuseforward Cloud Services, Ltd. for Wastewater Computerized Maintenance Management System services and authorizes the Mayor to execute the Service Order.

The foregoing Resolution _____ was passed and adopted by the Tracy City Council on the 6th day of September, 2016, by the following vote:

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

MAYOR

ATTEST:

CITY CLERK

AGENDA ITEM 1.C

REQUEST

AWARD A CONSTRUCTION CONTRACT TO GRADE TECH, OF CASTRO VALLEY, CALIFORNIA, FOR THE FABIAN ROAD IMPROVEMENTS PROJECT CIP 73141, AUTHORIZE A TRANSFER OF \$168,000 FROM CIP 73138 (FUND 242) TO CIP 73141, AUTHORIZE THE CITY MANAGER, IF NEEDED, TO APPROVE CHANGE ORDERS UP TO THE SPECIFIED PROJECT CONTINGENCY AMOUNT OF \$71,564, AND AUTHORIZE THE MAYOR TO EXECUTE THE CONTRACT

EXECUTIVE SUMMARY

City staff requests that City Council award a construction contract for the Fabian Road Improvements Project between Corral Hollow Road and Tracy Boulevard.

DISCUSSION

The project involves construction of one half mile of asphalt and concrete sidewalks on the north side of Fabian Road between Lammers Road and Mamie Anderson Lane, associated drainage and landscaping improvements, and a “cut through” pedestrian access ramp to Eleventh Street at Berg Avenue.

Engineering staff prepared the plans and specifications and advertised the project for competitive bids on June 23 and 30, 2016.

Bids were received and publicly opened at 2:00 p.m. on Wednesday, July 20, 2016, with the following results:

Contractor	Base Bid
Grade Tech, Castro Valley	\$715,643
T & S Intermodal Maintenance, Linden	\$799,882
O.C. Jones & Sons, Berkeley	\$868,825
McFadden Construction, Stockton	\$902,219

Bid analysis indicates that the lowest monetary bid is responsive and the bidder, Grade Tech, of Castro Valley, California, is responsible. The bidder has the appropriate California contractor’s license in active standing, and has completed similar projects for other public agencies.

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

Construction Contract	\$715,643
Contingency @ 10%	\$71,564
Total Construction Cost	\$787,207
Total Design and Construction Management Cost	\$40,000
Total Project Cost	\$827,207
Available Funds in CIP 73141	\$660,000
Additional Funds Needed	\$168,000

An additional \$168,000 is needed to complete the project, and staff recommends that this amount be transferred from CIP 73138, which was completed under budget.

Tracy Municipal Code Section 2.20.090(b) authorizes the City Manager to approve up to the contingency amount approved by Council. City staff recommends the contingency amount for this project to be \$71,564, which is 10% of the project cost.

STRATEGIC PLAN

The agenda item is a routine operational item and is not related to the Council's Strategic Plans.

FISCAL IMPACT

There is no impact to the General Fund. This item will be funded with Fund 323 and Fund 313 through CIP 73141 for an approximate amount of \$660,000. A transfer of Fund 242, Transportation Sales Tax, in the amount of \$168,000 from CIP 73138 to CIP 73141 is needed to cover the difference between the contract compensation and what remains in CIP 73141.

RECOMMENDATION

That City Council, by resolution, award a construction contract to Grade Tech, of Castro Valley, California, for the Fabian Road Improvements Project, CIP 73141, in the amount of \$715,643, authorize the City Manager, if needed, to approve change orders up to the specified project contingency amount of \$71,564, authorize the transfer of \$168,000 from CIP 73138 (Fund 242) to CIP 73141, and authorize the Mayor to execute the construction contract.

Prepared by: Zabih Zaca, Senior Civil Engineer

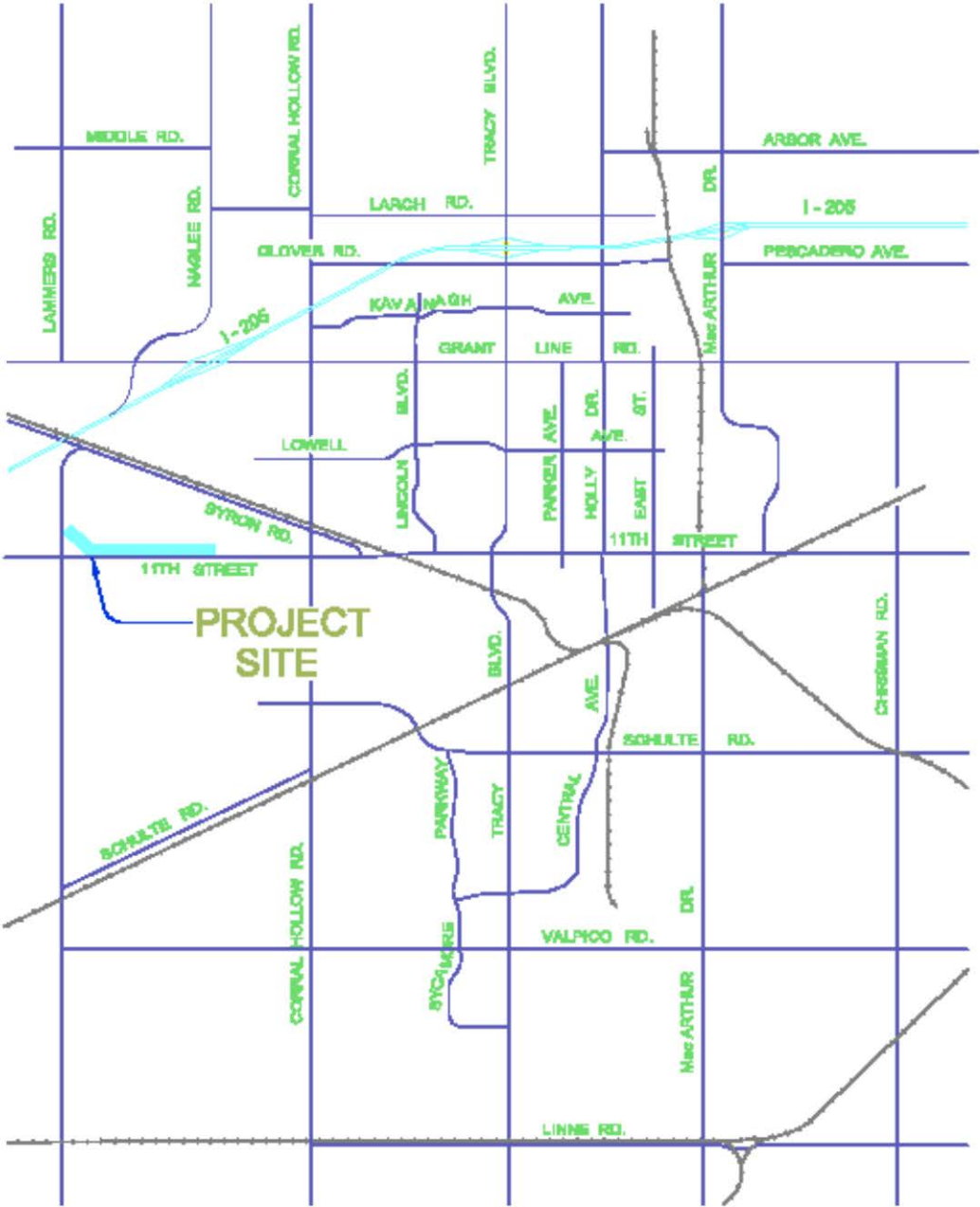
Reviewed by: Robert Armijo, City Engineer/Assistant Director Development Services
Andrew Malik, Development Services Director
Martha Garcia, Interim Administrative Services Director
Stephanie Garrabrant-Sierra, Assistant City Manager

Approved by: Troy Brown, City Manager

ATTACHMENT

Attachment A: Location Map

Attachment A



LOCATION MAP
NOT TO SCALE



RESOLUTION 2016-_____

AWARDING A CONSTRUCTION CONTRACT FOR THE FABIAN ROAD IMPROVEMENTS PROJECT CIP 73141, AUTHORIZING A CONTINGENCY AMOUNT OF \$71,564, AUTHORIZING TRANSFER OF \$168,000 FROM CIP 73138 TO CIP 73141, AND AUTHORIZING THE MAYOR TO EXECUTE THE CONTRACT

WHEREAS, Fabian Road lacks sidewalk between Lammers Road and Mamie Anderson Lane, and

WHEREAS, The project includes sidewalks, associated landscaping, lighting, drainage and access to Eleventh Street, and

WHEREAS, The project was advertised for competitive bids on June 23 and 30, 2016, and bids were received and publicly opened on Wednesday, July 20, 2016, and

WHEREAS, Grade Tech, of Castro Valley, CA, was the lowest monetary bidder, bid analysis indicates their bid is responsive and the bidder is responsible, and

WHEREAS, The anticipated cost for construction of this project, if awarded to Grade Tech, is estimated as follows:

Construction Contract	\$715,643
Contingency (~10%)	\$ 71,564
Design and Construction Management	\$ 40,000
Total Project Cost	\$827,207
Available Budget	\$660,000

WHEREAS, An additional \$168,000 is needed to complete the project, and

WHEREAS, Excess funds are available in CIP 73138 (Fund 242) for transfer to CIP 73141, and

WHEREAS, Tracy Municipal Code Section 2.20.090(b) authorizes the City Manager to approve change orders up to the contingency amount approved by City Council. The recommended contingency amount for this project is \$71,564;

NOW, THEREFORE BE IT RESOLVED, That City Council awards a construction contract to Grade Tech, of Castro Valley, California, for the Fabian Road Improvements Project CIP 73141, in the amount of \$715,643, authorizes transfer of \$168,000 from CIP 73138 to 73141 and authorizes the Mayor to execute the construction contract.

* * * * *

The foregoing Resolution 2016-_____ was adopted by the Tracy City Council on the 6th day of September 2016, by the following vote:

AYES: COUNCIL MEMBERS

NOES: COUNCIL MEMBERS

ABSENT: COUNCIL MEMBERS

ABSTAIN: COUNCIL MEMBERS

MAYOR

ATTEST:

CITY CLERK

AGENDA ITEM 1.D

REQUEST

AWARD A CONSTRUCTION CONTRACT TO KNIFE RIVER CONSTRUCTION OF STOCKTON, CALIFORNIA, FOR THE LARCH ROAD WATER MAIN REPLACEMENT PROJECT BETWEEN CORRAL HOLLOW ROAD AND TRACY BOULEVARD, CIPs 75117, 75122, 75127, AUTHORIZE THE MAYOR TO EXECUTE THE CONTRACT, AND TRANSFER \$190,000 FROM CIP 75136 TO CIP 75127

EXECUTIVE SUMMARY

City staff requests that City Council award a construction contract for the Larch Road Water Main Replacement Project and transfer \$190,000 from the Water Main Replacement Program CIP 75136 to the project.

DISCUSSION

The City owns and operates approximately one mile of water main serving 60 residences, churches and the Holiday Inn Express Suites on Larch Road between Corral Hollow Road and Tracy Boulevard. The 12-inch diameter ductile iron main installed in 1986 requires excessive maintenance due to corrosive soil in this location. The original main was uncoated and unwrapped; the replacement ductile iron main will be protected with zinc/bituminous coatings and wrapped in a polyethylene sleeve.

Engineering staff prepared the plans and specifications and advertised the project for competitive bids on June 23 and 30, 2016.

Bids were received and publicly opened at 2:00 p.m. on Tuesday July 19, 2016, with the following results:

Contractor	Base Bid
Knife River Construction, Stockton	\$873,500
Teichert Construction, Roseville	\$982,890
Rolfe Construction, Atwater	\$1,052,121
Mozingo Construction, Oakdale	\$1,067,240
D.A. Wood Construction, Empire	\$1,100,326
Preston Pipelines, Milpitas	\$1,122,760
California Trenchless, Hayward	\$1,152,680

Bid analysis indicates that the lowest monetary bid is responsive and the bidder, Knife River Construction, of Stockton, California, is responsible. The bidder has the appropriate contractor's license in active standing with the State of California, and has completed similar projects for the City.

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

Construction Contract	\$873,500
Contingency @ 10%	\$87,350
Total Construction Cost	960,850
Total Design and Construction Management Cost	\$40,000
Total Project Cost	\$1,000,850
Available Funds in CIPs 75117, 75122, 75127	\$814,000

Tracy Municipal Code Section 2.20.090(b) authorizes the City Manager to approve change orders up to the contingency amount approved by Council. City staff recommends the contingency amount for this project to be \$87,350, which is 10% of the project cost.

This project combines remaining funds from previous fiscal years' Water Line Replacement Programs, CIPs 75117, 75122, 75127, with a total balance of \$814,000. An additional \$190,000 is needed for the project and staff recommends that this amount be transferred from Water Lines Replacement Program FY 16-17 CIP 75136. The additional funding is needed due to several reasons. The county encroachment permit fee and pavement restoration were higher than for a normal city project (most of the project is within the county). During design it was discovered that more pipeline needed replacement than was originally scoped. Finally, bids came in higher than expected (due to peak season bidding).

STRATEGIC PLAN

The agenda item is a routine operational item and is not related to the Council's Strategic Plans.

FISCAL IMPACT

There is no impact to the General Fund. This item will be funded using Water Capital 513 funds from CIPs 75117, 75122, and 75127 for an approximate amount of \$814,000. A transfer of funds 513 in the amount of \$190,000 from CIP 75136 to CIP 75127 will cover the remaining cost.

RECOMMENDATION

That City Council, by resolution, award a construction contract to Knife River Construction, of Stockton, California, for the Larch Road Water Main Replacement Project between Corral Hollow Road and Tracy Boulevard CIP 75117, 75122, 75127, in the amount of \$873,500, authorize the City Manager to approve change orders up to the specified project contingency amount of \$87,350, if needed, authorize the Mayor to execute the construction contract, and authorize the transfer of \$190,000 from CIP 75136 to CIP 75127.

Prepared by: Binh Nguyen, Senior Civil Engineer

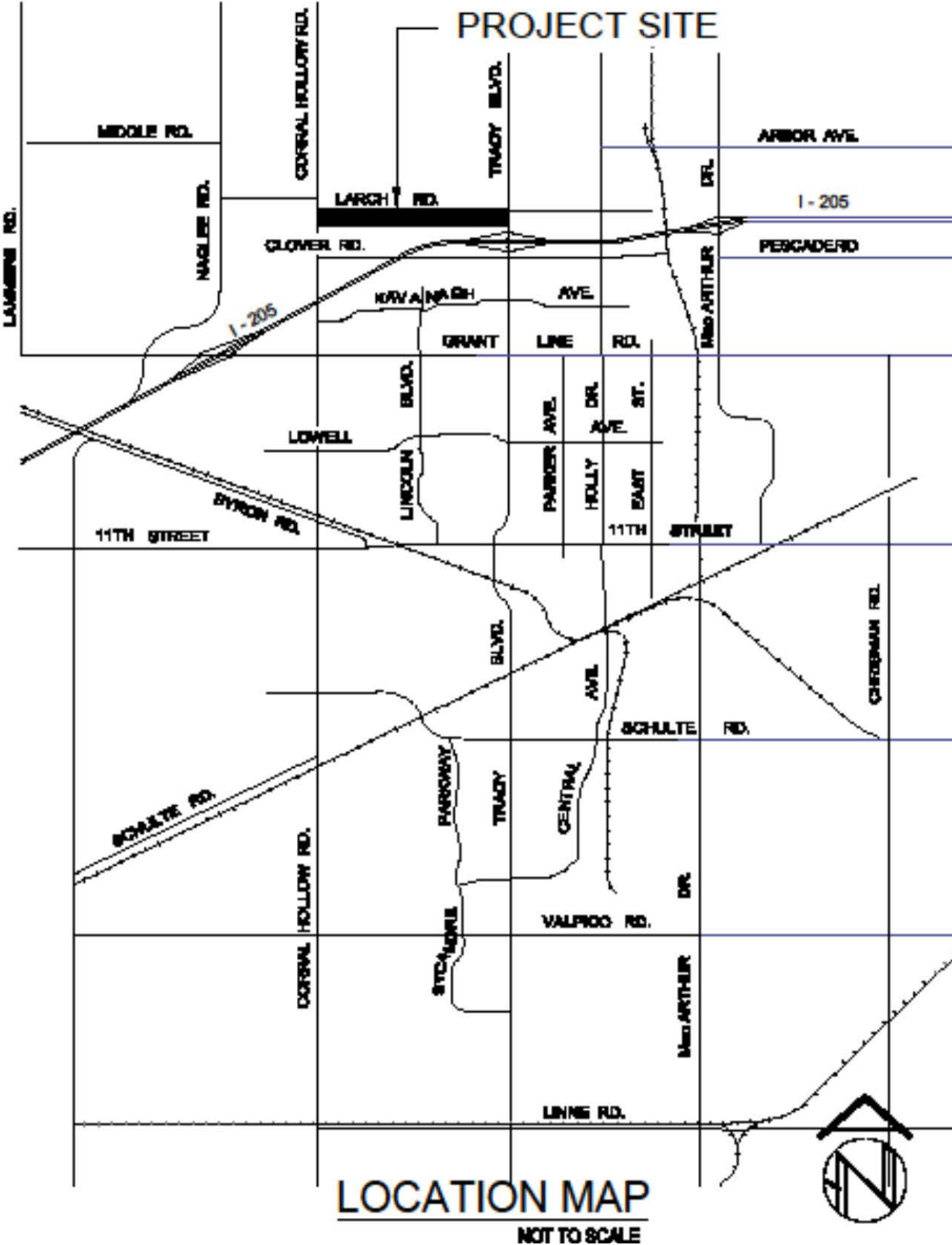
Reviewed by: Robert Armijo, City Engineer/Assistant Director Development Services
Andrew Malik, Development Services Director
Martha Garcia, Interim Administrative Services Director
Stephanie Garrabrant-Sierra, Assistant City Manager

Approved by: Troy Brown, City Manager

ATTACHMENT

Attachment A: Location Map

Attachment A



RESOLUTION 2016-_____

AWARDING A CONSTRUCTION CONTRACT TO KNIFE RIVER CONSTRUCTION, OF STOCKTON, CALIFORNIA, FOR THE LARCH ROAD WATER MAIN REPLACEMENT PROJECT BETWEEN CORRAL HOLLOW ROAD AND TRACY BOULEVARD, CIPs 75117, 75122, 75127, AUTHORIZING A CONTINGENCY AMOUNT OF \$87,350, AUTHORIZING THE MAYOR TO EXECUTE THE CONTRACT, AND AUTHORIZING TRANSFER OF \$190,000 FROM CIP 75136 TO CIP 75127

WHEREAS, Approximately one mile of water main in Larch Road between Corral Hollow Road and Tracy Boulevard is extensively corroded requiring excessive maintenance, and

WHEREAS, The project includes replacement of the main and services, and

WHEREAS, The project was advertised for competitive bids on June 23 and 30, 2016, and bids were received and publicly opened on Tuesday, July 19, 2016, and

WHEREAS, Knife River Construction, of Stockton, California, was the lowest monetary bidder, bid analysis indicates their bid is responsive, and the bidder is responsible, and

WHEREAS, Tracy Municipal Code Section 2.20.090(b) authorizes the City Manager to approve change orders up to the contingency amount approved by City Council, and

WHEREAS, The recommended contingency amount for this project is \$87,350, and

WHEREAS, The anticipated cost for the project, if awarded to Knife River Construction, is as follows:

Construction Contract	\$873,500
Contingency @ 10%	\$87,350
Total Construction Cost	960,850
Total Design and Construction Management Cost	\$40,000
Total Project Cost	\$1,000,850
Available Funds CIPs 75117,75122,75127	\$814,000

WHEREAS, An additional \$190,000 is needed to be transferred from CIP 75136 to complete the project;

NOW, THEREFORE BE IT RESOLVED, That City Council awards a construction contract to Knife River Construction, of Stockton, California, for the Larch Road Water Main Replacement Project between Corral Hollow Road and Tracy Boulevard, CIPs 75117, 75122, 75127, in the amount of \$873,500, authorizes a contingency amount of \$87,350, authorizes the Mayor to execute the construction contract, and authorizes a transfer of \$190,000 from CIP 75136 to CIP 75127.

* * * * *

The foregoing Resolution 2016-_____ was adopted by the Tracy City Council on the 6th day of September 2016, by the following vote:

AYES: COUNCIL MEMBERS

NOES: COUNCIL MEMBERS

ABSENT: COUNCIL MEMBERS

ABSTAIN: COUNCIL MEMBERS

MAYOR

ATTEST:

CITY CLERK

AGENDA ITEM 1.E

REQUEST

AWARD A CONSTRUCTION CONTRACT TO ROLFE CONSTRUCTION COMPANY, OF ATWATER, CALIFORNIA, FOR THE BERVERDOR, HIGHLAND, 12TH AND 9TH STREET SEWER & STORM DRAIN REPLACEMENT PROJECT, CIPs 74098, 74104, 74111, 74116, AND 76063, AND AUTHORIZE THE MAYOR TO EXECUTE THE CONTRACT

EXECUTIVE SUMMARY

City staff requests that City Council award a construction contract for the Berverdor, Highland, 12th and 9th Street Sewer and Storm Drain Replacement Project.

DISCUSSION

The project consists of the replacement of approximately 90 root-damaged sewer laterals on Berverdor, Highland, and 12th Streets between Mae and El Portal Streets, and miscellaneous storm drainage work on 9th Street at Roosevelt Street.

Engineering staff prepared the plans and specifications and advertised the project for competitive bids on June 23 and 30, 2016.

Bids were received and publicly opened at 2:30 p.m. on Wednesday, July 20, 2016, with the following results:

<u>Contractor</u>	<u>Base Bid</u>
Rolfe Construction Company, Atwater	\$423,222
Roto-Rooter Sewer Service, Livermore	\$456,300

Bid analysis indicates that the lowest monetary bid is responsive and the bidder, Rolfe Construction Company, of Atwater, California, is responsible. The bidder has the appropriate contractor's license in active standing with the State of California, and has completed similar projects for other public agencies.

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

Construction Contract	\$423,222
Contingency @ 10%	\$42,322
Total Construction Cost	\$465,554
Total Design and Construction Management Cost	\$42,000
Total Project Cost	\$507,544

Approximately \$615,000 is available in CIPs 74098, 74104, 74111, 74116 and 76063 as follows:

74098	\$33,000
74104	\$127,000
74111	\$187,000
74116	\$260,000
76063	\$8,000

Tracy Municipal Code Section 2.20.090(b) authorizes the City Manager to approve change orders up to the contingency amount approved by Council. City staff recommends the contingency amount for this project to be \$42,322, which is 10% of the construction cost.

STRATEGIC PLAN

The agenda item is a routine operational item and is not related to the Council's Strategic Plans.

FISCAL IMPACT

There is no impact to the General Fund. The contract will be funded using Wastewater Capital 523 funds and Drainage Enterprise 541 funds from CIPs 74098, 74104, 74111, 74116 and 76063 for an approximate amount of \$615,000.

RECOMMENDATION

That City Council, by resolution, award a construction contract to Rolfe Construction Company, of Atwater, California, for the Berverdor, Highland, 12th and 9th Streets Sewer and Storm Drain Replacement Project CIPs 74098, 74104, 74111, 74116, and 76063, in the amount of \$423,222, authorize the City Manager to approve change orders up to the specified project contingency amount of \$42,322, if needed, and authorize the Mayor to execute the construction contract.

Prepared by: Binh Nguyen, Senior Civil Engineer

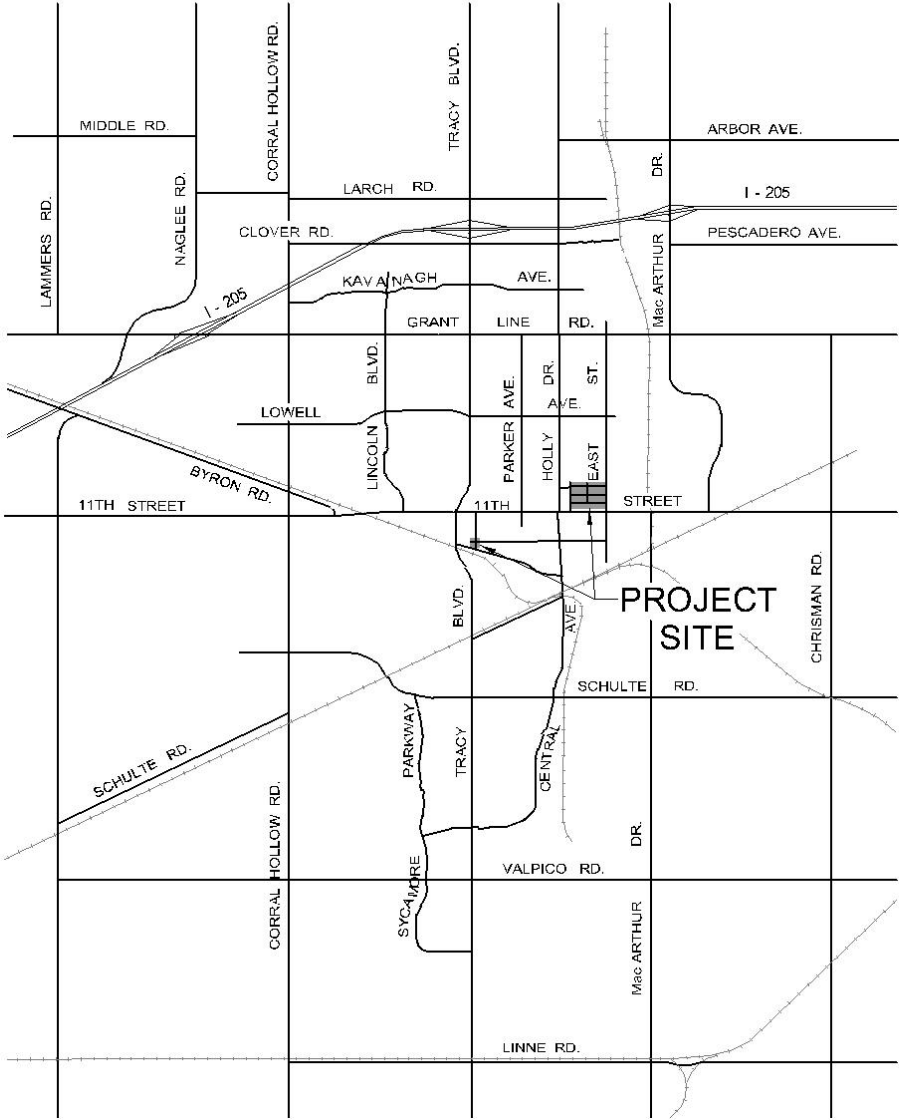
Reviewed by: Robert Armijo, City Engineer/Assistant Director Development Services
Andrew Malik, Development Services Director
Martha Garcia, Interim Administrative Services Director
Stephanie Garrabrant-Sierra, Assistant City Manager

Approved by: Troy Brown, City Manager

ATTACHMENT

Attachment A: Location Map

Attachment A



LOCATION MAP
NOT TO SCALE



RESOLUTION 2016-_____

AWARDING A CONSTRUCTION CONTRACT TO ROLFE CONSTRUCTION COMPANY, OF ATWATER, CALIFORNIA, FOR THE BERVERDOR, HIGHLAND, 12TH AND 9TH STREET SEWER AND STORM DRAIN REPLACEMENT PROJECT CIPs 74098, 74104, 74111, 74116, AND 76063, AUTHORIZING A CONTINGENCY AMOUNT OF \$42,322 AND AUTHORIZING THE MAYOR TO EXECUTE THE CONTRACT

WHEREAS, House laterals on Highland, Berverdor and 12th Streets between Mae and El Portal Streets, and storm drainage on 9th and Roosevelt Streets are deteriorated and in need of replacement, and

WHEREAS, The project includes replacement of 90 house laterals and storm drainage, and

WHEREAS, The project was advertised for competitive bids on June 23 and 30, 2016, and two bids were received and publicly opened on July 20, 2016, and

WHEREAS, Rolfe Construction Company, was the lowest monetary bidder, bid analysis indicates their bid is responsive and the bidder is responsible, and

WHEREAS, Tracy Municipal Code Section 2.20.090(b) authorizes the City Manager to approve change orders up to the contingency amount approved by City Council, and

WHEREAS, The recommended contingency amount for this project is \$42,322, and

WHEREAS, This is an approved Capital Improvement Project. There is no impact to the General Fund;

NOW, THEREFORE BE IT RESOLVED, That City Council awards a construction contract to Rolfe Construction Company of Atwater, California, for the Berverdor, Highland, 12th AND 9th Street Sewer and Storm Drain Replacement Project CIPs 74098, 74104, 74111, 74116, and 76063, in the amount of \$423,222, authorizes a contingency amount of \$42,322, and authorizes the Mayor to execute the construction contract.

* * * * *

The foregoing Resolution 2016-_____ was adopted by the Tracy City Council on the 6th day of September 2016, by the following vote:

AYES: COUNCIL MEMBERS

NOES: COUNCIL MEMBERS

ABSENT: COUNCIL MEMBERS

ABSTAIN: COUNCIL MEMBERS

MAYOR

ATTEST:

CITY CLERK

AGENDA ITEM 1.F

REQUEST

AWARD A CONSTRUCTION CONTRACT TO BOND BLACKTOP, OF UNION CITY, CALIFORNIA, FOR THE SLURRY SEAL PROJECT FY 2015-16, CIP 73140B, AND AUTHORIZE THE MAYOR TO EXECUTE THE CONTRACT

EXECUTIVE SUMMARY

City staff requests that City Council award a construction contract for the Slurry Seal Project FY 2015-16, CIP 73140B.

DISCUSSION

This project is part of the City's annual street improvement program and consists of slurry seal and installation of pavement markings on 37 residential streets and courts in the Muirfield and Quail Run Subdivisions, including Wagtail Way, Steinbeck Way, Cagney Way and Chaplin Way.

Street selections were based on life-cycle and cost-benefit analysis using the City's Pavement Management Program and coordinated with the City's Public Works Department Street Maintenance Division.

Engineering staff prepared the plans and specifications and advertised the project for competitive bids on June 23 and 30, 2016.

Bids were received and publicly opened at 2:30 p.m. on Tuesday, July 19, 2016, with the following results:

<u>Contractor</u>	<u>Base Bid</u>
Bond Blacktop, Union City	\$177,010
American Asphalt, Hayward	\$191,349
VSS International Slurry Seal, Elk Grove	\$193,120
California Pavement Maintenance, Sacramento	\$198,455
Sierra Nevada Construction, Sparks, NV	\$200,007
Pavement Coatings Company, Woodlands	\$202,225
American Pavement Systems, Modesto	\$206,570
Graham Contractors, San Jose	\$210,200
Telfer Pavement Technologies, McClellan	\$223,500
Intermountain Slurry Seal, Elk Grove	\$224,088

Bid analysis indicates that the lowest monetary bid is responsive and the bidder, Bond Blacktop, of Union City, California, is responsible. The bidder has the appropriate contractor's license in active standing with the State of California, and has completed similar projects for other public agencies.

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

Construction Contract	\$177,010
Contingency @ 10%	\$17,701
Total Construction Cost	\$194,711
Total Design and Construction Management Cost	\$10,000
Total Project Cost	\$204,711

Approximately \$392,000 is available in CIP 73140. The excess funds will be transferred to other road maintenance and renovation CIPs.

Tracy Municipal Code Section 2.20.090(b) authorizes the City Manager to approve change orders up to the contingency amount approved by Council. City staff recommends the contingency amount for this project to be \$17,701, which is 10% of the construction contract amount.

STRATEGIC PLAN

The agenda item is a routine operational item and is not related to the Council's Strategic Plans.

FISCAL IMPACT

There is no impact to the General Fund. This item will be funded with CIP 73140 appropriations for an amount not to exceed of \$204,711.

RECOMMENDATION

That City Council, by resolution, award a construction contract to Bond Blacktop, of Union City, California, for the Slurry Seal Project FY 2015-16, CIP 73140B in the amount of \$177,010, authorize the City Manager to approve change orders up to the specified project contingency amount of \$17,701, if needed, and authorize the Mayor to execute the construction contract.

Prepared by: Binh Nguyen, Senior Civil Engineer

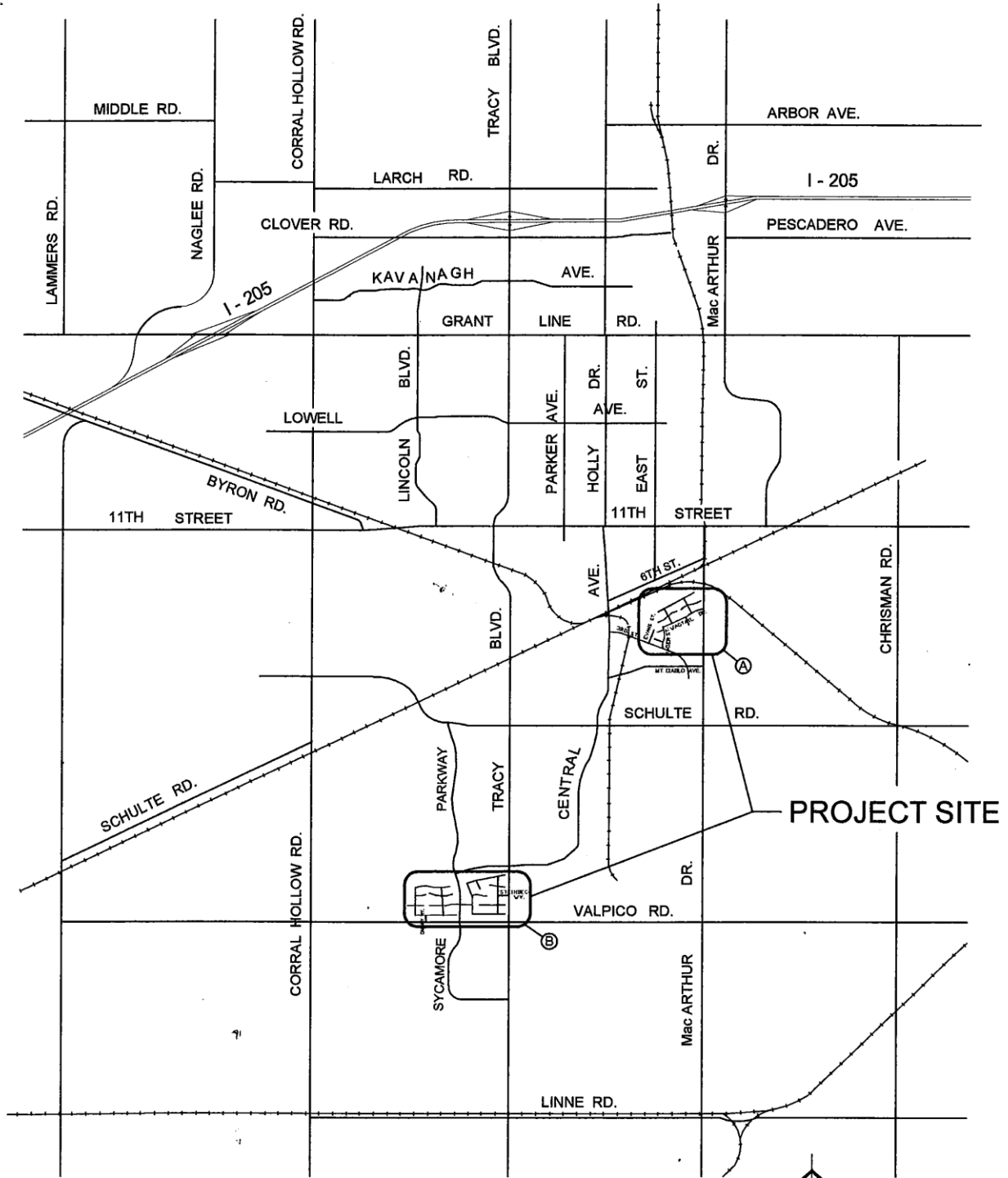
Reviewed by: Robert Armijo, City Engineer/Assistant Director Development Services
Andrew Malik, Development Services Director
Martha Garcia, Interim Administrative Services Director
Stephanie Garrabrant-Sierra, Assistant City Manager

Approved by: Troy Brown, City Manager

ATTACHMENT

Attachment A: Location Map

Attachment A



LOCATION MAP
N.T.S.

RESOLUTION 2016-_____

AWARDING A CONSTRUCTION CONTRACT TO BOND BLACKTOP, OF UNION CITY , CALIFORNIA, FOR THE SLURRY SEAL PROJECT FY 2015-16 CIP 73140B, AUTHORIZING A CONTINGENCY AMOUNT OF \$17,701 AND AUTHORIZING THE MAYOR TO EXECUTE THE CONTRACT

WHEREAS, This project is part of the City's annual street improvement program and consists of the application of slurry seal on 37 residential streets and courts in the Muirfield and Quail Run Subdivisions, including Wagtail Way, Steinbeck Way, Cagney Way and Chaplin Way, and

WHEREAS, Candidate streets were selected based on recommendations from the City's Pavement Management System, and

WHEREAS, The project was advertised for competitive bids on June 23 and 30, 2016, and bids were received and publicly opened at 2:30 p.m., on July 19, 2016, and

WHEREAS, Bond Blacktop is the lowest monetary bidder, bid analysis indicates their bid is "responsive" and the bidder is "responsible", and

WHEREAS, This is an approved Capital Improvement Project for FY 2015-16, funded by the Gas Tax fund, and as such, there will be no impact to the General Fund, and

WHEREAS, Tracy Municipal Code Section 2.20.090(b) authorizes the City Manager to approve change orders up to the contingency amount approved by City Council, and

WHEREAS, The recommended contingency amount for this project is \$17,701, and

WHEREAS, This is an approved Capital Improvement Project. There is no impact to the General Fund;

NOW, THEREFORE BE IT RESOLVED, That City Council awards a construction contract to Bond Blacktop of Union City, California, for the Slurry Seal Project FY 2015-16 CIP 73140B, in the amount of \$177,010, authorizes a contingency amount of \$17,701, and authorizes the Mayor to execute the construction contract.

* * * * *

The foregoing Resolution 2016-_____ was adopted by the Tracy City Council on the 6th day of September 2016, by the following vote:

AYES: COUNCIL MEMBERS

NOES: COUNCIL MEMBERS

ABSENT: COUNCIL MEMBERS

ABSTAIN: COUNCIL MEMBERS

MAYOR

ATTEST:

CITY CLERK

AGENDA ITEM 1.G

REQUEST

APPROVE AN AGREEMENT TO TOLL AND EXTEND THE LAND DEDICATION ACCEPTANCE PERIOD AND THE 60 DAY CURE PERIOD REGARDING THE SECOND SWIM CENTER PAYMENT UNDER THE AMENDED AND RESTATED DEVELOPMENT AGREEMENT BY AND BETWEEN THE CITY OF TRACY AND SURLAND COMMUNITIES, LLC

EXECUTIVE SUMMARY

On August 16, 2016 Council authorized staff to negotiate a Development Agreement amendment with Surland Communities, LLC ("Surland") to extend the time by which Surland would be required to submit their second swim center payment of \$8 million dollars (the "Second Swim Center Payment") to the City. Council also directed staff to bring back an agreement with Surland to toll and extend the land dedication acceptance period and the 60 day cure period regarding the Second Swim Center Payment as authorized by the amended and restated Development Agreement between the City and Surland Communities, LLC. This agenda item implements that Council direction.

DISCUSSION

On April 18, 2013, the City and Surland entered into a Development Agreement for the Ellis project on Corral Hollow Road. The Development Agreement was subsequently amended, taking effect on July 3, 2014 (as amended, the "DA").

Section 1.01(b) of the DA requires Surland to offer to dedicate to the City approximately sixteen (16) acres of land within the Ellis Specific Plan area. Surland was required to offer to dedicate this land no later than September 15, 2014. The City intends to use the dedicated land to develop a public swim center.

On September 15, 2014, Surland submitted an Offer to Dedicate Land to the City (the "Offer"). The City determined that the Offer substantially conformed to the requirements of the DA and recorded that Offer in the official records of San Joaquin County on October 1, 2014. Attachment A to the staff report shows the recorded Offer.

On May 21, 2015, the City received a letter from Surland requesting to extend the time by which the City is required by the DA to accept the Offer (the "Land Dedication Acceptance Period"), to allow Surland and the City to consider a different location for the proposed swim center based on a potential public-private water park concept. On June 16, 2015, the City Council approved a one-year extension of the Land Dedication Acceptance Period to September 15, 2016.

On July 12, 2016, Surland submitted an application (DA 16-0001) to amend the DA for the purposes of extending the Second Swim Center Payment date and further extending the Land Dedication Acceptance Period by up to 12 months for each.

On August 16, 2016 Council authorized staff to negotiate a Development Agreement (DA) amendment with Surland Communities, LLC to extend the time by which Surland would be required to submit their Second Swim Center Payment of \$8 million dollars to the City. Council also directed staff to bring back a tolling agreement (“Agreement”) with Surland to toll and extend the Land Dedication Acceptance Period and the 60 day cure period regarding the Second Swim Center Payment as authorized by the DA. The following represents the main deal points of the proposed Agreement. A copy of the proposed Agreement is attached to this report.

- The Land Dedication Acceptance Period would be extended until November 24, 2017; provided, however, that the City would be precluded from accepting the Offer until September 15, 2017, or 15 days after the requested DA amendment has been approved by the City, whichever comes first.
- The cure period afforded Surland to make the Second Swim Center Payment following notice of failure to do so by the City under Section 2.02 (a) of the Development Agreement would be extended for up to twelve (12) months, until September 5, 2017.
- Surland would be required to deliver to the City a revised land dedication offer, for a site that is mutually agreeable to the Surland and the City, not later than fifteen (15) days after the effective date of the requested DA amendment, or September 15, 2017, or 30 days from notice by the City that the swim center project designs are complete and ready for construction, whichever occurs first; the revised land dedication offer must be in a form acceptable to the City and allowing for the City’s unilateral acceptance thereof at any time after delivery.

Additional Related Considerations Regarding Surland’s Request

At the last City Council meeting, several City Council members and members of the public asked if there was anything else related to this request that was relevant to City Council decision making on this issue. Since the questions were specific, staff could affirmatively answer the questions and clarified that, indeed, the specific negotiations to be conducted to amend the DA would be narrowly focused to the land dedication date, swim center payment date, and additional monies Surland was prepared to contribute in exchange for the revised dates. The DA negotiations will be tailored to those issues only.

STRATEGIC PLAN

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

FISCAL IMPACT

There is no fiscal impact to the General Fund associated with this agenda item.

RECOMMENDATION

Staff recommends that the City Council approve an agreement to toll and extend the land dedication acceptance period and the 60 day cure period regarding the second swim center payment under the Amended and Restated Development Agreement by and between the City of Tracy and Surland Communities, LLC.

Prepared by: Andrew Malik, Development Services Director
Bill Dean, Assistant Development Services Director

Reviewed by: Martha Garcia, Interim Administrative Services Director
Stephanie Garrabrant-Sierra, Assistant City Manager

Approved by: Troy Brown, City Manager

ATTACHMENTS:

Attachment A – Agreement to Extend Time to Accept Land Dedication Offer and the 60-Day Cure Period

AGREEMENT TO TOLL AND EXTEND THE DEDICATION ACCEPTANCE PERIOD AND THE 60-DAY CURE PERIOD RESPECTING THE SECOND SWIM CENTER PAYMENT UNDER AMENDED AND RESTATED DEVELOPMENT AGREEMENT BY AND BETWEEN THE CITY OF TRACY AND SURLAND COMMUNITIES, LLC

This Agreement is entered into by and between the City of Tracy, a municipal corporation ("City") and Surland Communities, LLC, a California limited liability company ("Surland").

RECITALS

A. On April 18, 2013, the City and Surland entered into an Amended and Restated Development Agreement which was amended by that certain First Amendment dated July 3, 2014 (as amended, the "Development Agreement").

B. Section 1.01 of the Development Agreement provides that, not later than September 15, 2014, Surland shall deposit into the Swim Center Funds Account \$2,000,000 for use by the City in the development, construction, operation and maintenance of a swim center (the "Owner's First Swim Center Payment") and not later than two years after that payment, Surland shall make Owner's Second Swim Center Payment of \$8,000,000.

C. Surland made the Owner's First Swim Center Payment of \$2,000,000 on September 5, 2014 and has submitted an application to the City seeking a Second Amendment to the Development Agreement ("Second Amendment") to, among other things, extend the time to make the Owner's Second Swim Center Payment to no later than September 5, 2017 and the City Council has authorized the negotiation of said Second Amendment. Processing of this Second Amendment cannot be accomplished before September 5, 2016, the current due date of the Owner's Second Swim Center Payment.

D. Section 1.01(b)(i) of the Development Agreement requires Surland to offer to dedicate 16 acres of land within the Ellis Specific Plan ("Land Dedication Offer") to the City by September 15, 2014, which the City intends to use for a public swim center, and the City shall have until September 15, 2015 to accept the Land Dedication Offer ("Dedication Acceptance Period") subject to extension of the Dedication Acceptance Period by mutual agreement.

E. Surland has delivered a Land Dedication Offer ("Original Land Dedication Offer") to the City and by mutual agreement the City and Surland have extended the Dedication Acceptance Period to September 15, 2016. Pursuant to Section 1.01(b)(1), the parties wish to further extend the Dedication Acceptance Period until November 24, 2017, partly to allow time to prepare a revised Land Dedication Offer covering an alternate swim center site in a location agreed upon by both parties (the "Revised Land Dedication Offer") which Surland shall deliver to the City within fifteen (15) days of the effective date of the Second Amendment, or September 15, 2017, or within thirty (30) days of Surland's receipt of notice from the City that the swim center designs are complete and ready for construction, whichever date first occurs.

F. Pursuant to Section 2.02 of the Development Agreement, the City has given written notice to Surland of its failure to make the Second Swim Center Payment

and Surland is afforded a sixty day cure period, which period may be extended by mutual agreement.

NOW, THEREFORE, the parties agree as follows:

1. The Dedication Acceptance Period for the Original Land Dedication Offer shall be extended until November 24, 2017; provided, however that the City shall not accept the Original Land Dedication Offer until on or after September 15, 2017.

2. The cure period afforded Surland to make the Owner's Second Swim Center Payment following notice of failure to do so by the City under Section 2.02(a) of the Development Agreement shall be extended for up to twelve (12) months until September 5, 2017.

3. Surland shall deliver an irrevocable Revised Land Dedication Offer, in a form acceptable to the City, within fifteen (15) days of the effective date of the Second Amendment, or within thirty (30) days of Surland's receipt of notice from the City that the swim center designs are complete and ready for construction, or September 15, 2017, whichever occurs first.

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

CITY OF TRACY

SURLAND COMMUNITIES, LLC, a California limited liability company

Mayor
Date: _____

By: _____
Les J. Serpa
Date: _____

Attest:

City Clerk
Date: _____

Approved as to Form:

City Attorney
Date: _____

RESOLUTION 2016-_____

APPROVING AN AGREEMENT TO TOLL AND EXTEND THE LAND DEDICATION ACCEPTANCE PERIOD AND THE 60 DAY CURE PERIOD REGARDING THE SECOND SWIM CENTER PAYMENT UNDER THE AMENDED AND RESTATED DEVELOPMENT AGREEMENT BY AND BETWEEN THE CITY OF TRACY AND SURLAND COMMUNITIES, LLC

WHEREAS, On April 18, 2013, the City and Surland entered into a Development Agreement for the Ellis project, which took effect on July 3, 2014, and

WHEREAS, The agreement requires Surland to offer to dedicate to the City approximately sixteen (16) acres of land as described generally in the City's Ellis Specific Plan and the Specific Plan's Revised Environmental Impact Report, and

WHEREAS, Surland was required to offer to dedicate this area no later than September 15, 2014, and

WHEREAS, On September 15, 2014, Surland submitted an Offer to Dedicate Land to the City, and the City recorded that Offer in the official records of San Joaquin County on October 1, 2014, and

WHEREAS, On June 16, 2015, the City Council approved a one-year extension to the time-frame to accept the land dedication offer, and the new date for acceptance of the offer is currently September 15, 2016, and

WHEREAS, On July 12, 2016, Surland submitted an application to amend the Development Agreement for the purposes of extending the payment date and land dedication acceptance date by up to 12 months, and

WHEREAS, On August 16, 2016 Council authorized staff to negotiate a Development Agreement amendment with Surland Communities, LLC to extend the time by which Surland would be required to submit their second swim center payment of \$8 million dollars to the City, and

WHEREAS, Council also directed staff to bring back an agreement with Surland to toll and extend the land dedication acceptance period and the 60 day cure period regarding the second swim center payment as authorized by the amended and restated DA between the City and Surland Communities, LLC, and

WHEREAS, The Land Dedication Period for the Original Offer of Dedication shall be extended until November 24, 2017; provided, however, that the City shall not accept the Land Dedication Offer until September 15, 2017, or 15 days after the DA amendment has been approved by the City, or 30 days from notice by the City that the project design is complete and ready for construction, whichever comes first, and

WHEREAS, The cure period afforded Surland to make the Owner's Second Swim Center Payment following notice of failure to do so by the City under Section 2.02 (a) of the Development Agreement shall be extended for up to twelve (12) months, until September 5, 2017;

NOW, THEREFORE BE IT RESOLVED, That City Council approves an agreement to toll and extend the land dedication acceptance period and the 60 day cure period regarding the second swim center payment under the amended and Restated Development Agreement by and between the City of Tracy and Surland Communities, LLC., and authorizes the Mayor to execute the Agreement.

* * * * *

The foregoing Resolution 2016-_____ was passed and adopted by the Tracy City Council on the 6th day of September 2016, by the following vote:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

MAYOR

ATTEST:

CITY CLERK

AGENDA ITEM 1.H

REQUEST

APPROVE AMENDMENT NO. 1 TO THE MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF TRACY AND THE SOUTH SIDE COMMUNITY ORGANIZATION OF TRACY, CALIFORNIA, AND AUTHORIZE THE MAYOR TO EXECUTE THE AMENDMENT

EXECUTIVE SUMMARY

On September 2, 2014, the City of Tracy entered into a Memorandum of Understanding (MOU) with the South Side Community Organization of Tracy, California to provide cultural activities to the community which was approved for a two-year term. The amendment extends the term of the MOU as well as clarifies the responsibilities of both the City and SSCO to ensure the success of future events.

DISCUSSION

The South Side Community Organization of Tracy, California (SSCO) was formed in May 2010. Its mission is to evolve to meet the needs of the community and all residents of Tracy and to serve the community's general welfare through education, as well as economic and cultural development.

The City recognizes SSCO as assisting the City by providing services and support throughout the community that celebrate cultural diversity. SSCO sponsors a 16th of September Cultural Celebration and parade. In addition, SSCO operates and maintains the Guadalupe Community Center, where they offer recreational, social and educational programs for the community. The Center is maintained and operated through donations and fundraisers throughout the year.

The agreement outlines a variety of uses at no charge for SSCO's annual 16th September cultural celebration event at Lincoln Park. Key provisions include, but are not limited to, free use of the park and the City's mobile stage. The special event permit application and service fees for the parade and traffic control and safety are waived.

In exchange, SSCO will continue to provide community events that will benefit both the residents of south Tracy and the community.

A summary of the changes and additions to the MOU in this Amendment is as follows:

- Specific facility use application requirements and submission deadlines
- Pre-approved event dates for the 16th September event in 2016 and 2017
- Clarification of specific Channel 26 filming services
- Updated general liability insurance requirements to current industry standard
- Clarification of policy for alcohol consumption requirements, including ABC license with security guards and "beer garden" requirement
- Extension of term of MOU through December 31, 2017

STRATEGIC PLAN

This agenda item supports the City Council Quality of Life Strategic Priority and specifically implements the following goal and objective:

Goal 1: Address City amenities and facility usage with an emphasis on accessibility, streamlined services and cost recovery.

Objective 1: Update Facility Use and Special Event Memorandum of Understanding (MOU) policies.

FISCAL IMPACT

This Amendment No. 1 to the MOU is a budgeted item for FY 2016-17 for services estimated at \$8,000 from the general fund and is within the budgeted amount. There is no additional impact to the general fund. FY 2017-18 estimated service costs will be incorporated into the respective departments' operational budget.

RECOMMENDATION

That City Council, by resolution, approve Amendment No. 1 to the Memorandum of Understanding with the South Side Community Organization of Tracy, California, and authorize the Mayor to execute the Amendment.

Prepared by: Christine Mabry, Management Analyst I

Reviewed by: Ed Lovell, Management Analyst II
André Pichly, Parks & Recreation Director
Martha Garcia, Interim Administrative Services Director
Stephanie Garrabrant-Sierra, Assistant City Manager

Approved by: Troy Brown, City Manager

ATTACHMENTS

Attachment A: Amendment No. 1 to the Memorandum of Understanding between the City of Tracy and South Side Community Organization of Tracy, California

City of Tracy
AMENDMENT NO. 1 TO MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF TRACY AND THE SOUTH SIDE COMMUNITY ORGANIZATION OF TRACY, CALIFORNIA

This Amendment No. 1 (Amendment) to the Memorandum of Understanding Between the City of Tracy and the South Side Community Organization of Tracy, California is entered into between the City of Tracy, a municipal corporation (City), and the South Side Community Organization of Tracy, CA (SSCO), a non-profit public benefit California corporation.

Recitals

- A. The City and SSCO entered into a Memorandum of Understanding (Agreement) for the SSCO 16th September event, which was approved by the City Council on September 2, 2014, under Resolution No. 2014-137.
- B. To ensure the 16th September cultural celebration event continues as an annual event for the benefit of the community, both parties wish to amend the Memorandum of Understanding.

Now therefore, the parties mutually agree as follows:

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

Section III.A.1 is amended in its entirety to read as follows:

“Upon submission of a facility use application and event layout map, provide use of and waive permit application fee, facility use fees, and vehicle access permit fees for reservation of Lincoln Park (entire park and parking lot) on Sunday, September 11, 2016, and Saturday, September 16, 2017, to permit SSCO to conduct their annual 16th September cultural celebration event.”

Section III.A.2 is amended in its entirety to read as follows:

“Upon submission of a Mobile Stage supplemental application, provide use of and waive use fees for the City’s mobile stage on Sunday, September 11, 2016, and Saturday, September 16, 2017, to permit SSCO to conduct their annual 16th September cultural celebration event.”

Section III.A.3 is amended in its entirety to read as follows:

“Provide up to \$2,500 in production services, by Channel 26, based on the video production fees listed within the City of Tracy’s current fiscal year Master Fee Schedule.

- a. Video production services will only apply to the September 16th cultural celebration event.
- b. A single copy of the final video will be provided to the SSCO.
- c. The SSCO shall meet with Channel 26 no less than 3 months prior to the event date to discuss the video production services for this event. Production services are based on staff availability.
- d. Fees will be imposed for additional services outside of the budgeted amount. The list of Channel 26 production services and fees can be found on the City of Tracy Website.”

Section III.A.4 is amended in its entirety to read as follows:

“Subject to schedule availability, provide 11th Street banner hanging for the 16th September event for a maximum of two weeks, and waive associated permit application fee and banner hanging fee. Banner shall adhere to all City specifications.”

Section III.B.1 is amended in its entirety to read as follows:

“Provide an annual 16th September cultural celebration event for the community.”

Section III.B.3 is amended in its entirety to read as follows:

“Hold regular meetings with members, volunteers, and City staff to coordinate event details and shall adhere to the final, City-approved event and parade schedules and layouts.”

Section III.B.7 is amended in its entirety to read as follows:

“Maintain, at all times during the term of this Amendment, the following insurance:

- a. **Commercial General Liability Insurance** (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. The City (including its elected officials, officers, employees, agents, and volunteers) shall be named as an additional ‘insured’.”

Section III.B.8 is added as follows:

“Submit facility use and special event application for the 16th September cultural celebration event a minimum of 90 days in advance of the event date and all additional rental requirements a minimum of 30 days in advance of the event date. Additional rental requirements include, but are not limited to: proof of active non-profit status, current business City of Tracy license, supplemental street closure (parade) and mobile stage applications, accurate event layout map, vendor booth information including tent/canopy and cooking equipment specifications, ABC license, and security guard contract.”

Section III.B.9 is added as follows:

“Adhere to the following requirements when alcohol is served and/or sold at the 16th September cultural celebration event:

- a. Adhere to Tracy Municipal Code 4.16.050(f), which regulates possession and consumption of any alcoholic beverages in City parks.
- b. Obtain an ABC license and shall be required to provide a designated number of private security guards as a condition of the ABC license.
- c. Alcohol sales and consumption shall not exceed six hours total facility use.
- d. Alcohol shall be confined to an enclosed, clearly delineated area in which attendees can consume alcohol, adjacent to the trailer where the alcohol is being sold. SSCO shall provide construction fence or other material to designate this enclosed area.”

Section V is amended in its entirety to read as follows:

“**TERM:** This MOU shall take effect on September 6, 2016, and shall expire on December 31, 2017.”

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

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

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

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

City of Tracy

South Side Community Organization of Tracy,
California, a non-profit public benefit California
corporation

By: _____
Michael Maciel

By: _____
Conrad D. Levoit III

Title: Mayor

Title: President

Date: _____

Date: _____

Attest:

By: _____
Luis Amezquita

By: _____
Nora Pimentel, City Clerk

Title: Facility Manager

Date: _____

Approved as to form

City Business License # 77520

By: _____
Bill Sartor, City Attorney

RESOLUTION 2016-_____

APPROVING AMENDMENT NO. 1 TO THE MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF TRACY AND THE SOUTH SIDE COMMUNITY ORGANIZATION OF TRACY, CALIFORNIA, AND AUTHORIZING THE MAYOR TO EXECUTE THE AMENDMENT

WHEREAS, On September 6, 2014, the City of Tracy entered into an agreement with the South Side Community Organization of Tracy, California, to provide cultural activities to the community, and

WHEREAS, The City and South Side Community Organization of Tracy, California, wishes to continue their partnership to offer the 16th September Cultural Celebration and parade for the benefit of the community, and

WHEREAS, The South Side Community Organization of Tracy, California, Board of Directors approved the amendment to the Memorandum of Understanding with the City at their Board meeting on August 31, 2016, and

WHEREAS, Staff recommended an amendment to the Memorandum of Understanding (MOU) with the South Side Community Organization of Tracy, California, to extend the term of the agreement;

NOW, THEREFORE, BE IT RESOLVED, That City Council approves Amendment 1 to the MOU between the City of Tracy and the South Side Community Organization of Tracy, California and authorizes the Mayor to execute the Amendment.

The foregoing Resolution 2016-_____ was adopted by Tracy City Council on the 6th day of September 2016, by the following vote:

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

MAYOR

CITY CLERK

AGENDA ITEM 1.I

REQUEST

ADOPTION OF A RESOLUTION APPROVING A MEMORANDUM OF UNDERSTANDING WITH THE TRACY TREE FOUNDATION OF TRACY, CALIFORNIA AND AUTHORIZING THE MAYOR TO EXECUTE THE AGREEMENT

EXECUTIVE SUMMARY

On March 15, 2005, City Council adopted guidelines that established a process for non-City organizations to enter into a Memorandum of Understanding (MOU) with the City. Staff met with the Tracy Tree Foundation (TTF), a non-profit organization with the specific purpose of enhancing the area's urban forest through collaborative partnerships and educating the community on the importance of the urban forest, and developed an MOU for Council's consideration.

DISCUSSION

The Tracy Tree Foundation (TTF) was formed in 2015. Its vision is to be a collaborative community leader, enhancing, protecting and sponsoring a healthy and safe urban forest.

The City recognizes TTF as assisting the City by providing services and support that inspire members of the community to understand, appreciate, maintain plant and protect trees in their neighborhoods and business locations through education, celebration, resources and collaborative partnerships.

The main areas of the agency's activities, projects and goals are: Education, outreach, planting trees and preserving Tracy's urban forest.

All activities performed by the organization are performed for the express purpose of benefiting the public in the Tracy community, while enhancing public health and safety and the larger environment of the region.

The attached Memorandum of Understanding (MOU) outlines a variety of uses and support from the City at no charge to the TTF. Key provisions include, but are not limited to, offering outreach materials (brochures, posters, displays), maintaining Tree City USA status, hosting Arbor Day events, and providing print materials not to exceed \$2,000 per year.

In exchange, TTF will assist the City in educating residents and local businesses about the benefits of trees in an urban landscape, provide assistance to City staff in outreach and events, and provide grant writing assistance and collaborative project development for tree-related grants and projects with the City.

STRATEGIC PLAN

This item supports the Council's Quality of Life strategy, Goal #4, Objective 4c. "Partner with local service organizations, community volunteers and residents to enhance the community's urban forest, parks and landscape areas."

FISCAL IMPACT

There is no additional impact to the General Fund. This item is budgeted using General Funds for FY2016-17 for \$2,000 and is within the budget amount.

RECOMMENDATION

That City Council, by resolution, approves the Memorandum of Understanding between the City of Tracy and the Tracy Tree Foundation of Tracy, California and authorizes the Mayor to execute the agreement.

Prepared by: Brian MacDonald, Management Analyst II

Reviewed by: Don Scholl, Director of Public Works

Approved by: Stephanie Garrabrant-Sierra, Assistant City Manager
Troy Brown, City Manager

ATTACHMENT

Attachment: A – Memorandum of Understanding (MOU) between the City of Tracy and the Tracy Tree Foundation of Tracy, California (TTF)

**MEMORANDUM OF UNDERSTANDING
BETWEEN THE CITY OF TRACY
AND TRACY TREE FOUNDATION**

- I. **PARTIES:** This Memorandum of Understanding (hereinafter “MOU”) is entered into by and between the City of Tracy, California, a municipal corporation (hereinafter “CITY”), and Tracy Tree Foundation, a non-profit public benefit California Corporation (hereinafter “TTF”).
- II. **RECITALS:**
- A. TTF was incorporated in the State of California in October 2015, received IRS 501(c)3 status in April 2016, and is organized for public and charitable purposes to benefit the larger Tracy community through its chief focus of preservation and development of Tracy’s urban and community forest.
 - B. As a general definition, “urban or community forest” can be defined as a collection of trees and other vegetation growing within a city, town, community or suburb, in and around residences, parks, schools, and retail centers, and other locations frequented by people in an urban or community setting.
 - C. The specific purpose of TTF includes, but is not limited to, the planting of trees, and outreach & education in the Tracy community about 1) the value of trees, including their economic, environmental, public health, and social benefits, and 2) the selection, planting, and care of trees.
 - D. The CITY is a designated Tree City USA and has tree planting and maintenance policies and budgeted funds committed to a sustainable urban forestry management.
 - E. The CITY’s Public Works Department oversees tree maintenance, planting, pruning, removal, hazard assessment/abatement and other related functions, has a complete tree inventory database, and a budgeted plan to protect and improve upon the CITY’s urban forest.
 - F. TTF was recognized by the City Council in November 2015 as a partner with the CITY’s Public Works Department in their efforts to contribute to the health and well-being of the urban forest of Tracy.
- III. **PURPOSE:** This MOU is established between the CITY and TTF to support and assist each other in accomplishing mutual beneficial goals and objectives:
- A. Generate funds to plant trees that enhance the urban forest’s canopy, are long-lived and sustainable species for the Tracy area, and are preferably drought-tolerant.
 - B. Engage collaboratively in community outreach to increase awareness and understanding of the essential value of trees and their important benefits individually and to the public.

Memorandum of Understanding
City of Tracy / Tracy Tree Foundation

- C. Increase care, appreciation and planting of trees in all neighborhoods especially those designated by CalEnvironScreen 2.0 mapping as “disadvantaged communities” or “DACs.”
- D. Enable both parties to apply for targeted grants to assist in the urban forestry efforts including tree planting, tree care, community outreach and education, and collaborative efforts between the CITY, TTF, and other community partnerships to that end.

IV. **RESPONSIBILITIES:** It is agreed by and between the parties hereto that each party have the following responsibilities:

A. The CITY shall:

- 1. Offer urban forestry outreach materials to the community such as brochures, newsletters, posters, and displays.
- 2. Make urban forestry educational information available to the public at local events and provide space for TTF materials, as applicable.
- 3. Maintain Tree City USA status and annual Arbor Day events and proclamations.
- 4. Coordinate with TTF, as able, on tracking and monitoring resident statistics related to tree requests and concerns, event attendance, and other information helpful to the overall mutual efforts of TTF and the CITY in improving community awareness.
- 5. Provide print materials for TTF as needed for its work on community education, urban forestry research and grant applications, wherein the purpose of such activities directly benefit the City of Tracy’s urban forest and does not exceed two thousand dollars (\$2,000.00) annually.
- 6. Provide information to TTF regarding status of the CITY’s urban forest tree population, open planting sites, and other pertinent information as needed to work in collaboration with TTF on tree-related grant applications, projects and activities.
- 7. Use its V.I.T.A.L. (“Volunteers in Tracy Actively Linked”) or comparable program to provide a support to participate in cooperation with TTF and other volunteers.

B. TTF shall:

- 1. Educate residents about the benefits of trees in the urban landscape for individuals, the community, property owners, and businesses.
- 2. Educate local businesses of the value of trees in attracting and enhancing business.
- 3. Provide grant writing and collaborative project development for tree planting grants and projects with the CITY.
- 4. Work with the CITY on at least two urban forestry events annually, providing volunteer support, brochure development, and booth staffing.

Memorandum of Understanding
City of Tracy / Tracy Tree Foundation

5. Assist the CITY, as able, with outreach to residents in the community related to tree planting activities and education on tree benefits and care.
6. Develop a draft Heritage Tree Ordinance in collaboration with the Public Works Department for the protection of heritage and native trees in the City of Tracy.
7. Carry insurance coverage and provide proof such insurance with endorsements evidencing the following:
 - i. Policy shall name City of Tracy, its officers, agents and employees, volunteers, assignees, licensees and subcontractors as "additional insured" in relation to the activities performed in/on City property.
 - ii. General liability insurance, including personal injury, in the amount of One Million Dollars (\$1,000,000) combined single limit per occurrence, including bodily injury, personal injury and property damage. Evidence of said insurance shall be provided through a certificate of insurance presented to the CITY. TTF shall obtain endorsements to all insurance policies by which each insurer is required to provide thirty (30) days prior written notice to the CITY should the policy be cancelled before the expiration date. For the purpose of these notice requirements, any material change in the policy prior to the expiration shall be considered a cancellation.

C. Both parties shall:

1. Unless otherwise stated within this MOU, use its own staff, volunteers, donated services, supplies, equipment and funds to operate projects within the scope of its budget and plans related to the health and improvement of the CITY's urban forest.
2. Collaborate on fundraising efforts and grant programs to improve and increase the state of Tracy's urban forest tree population.
3. Enlist and train volunteers to plant, monitor, and prune trees, engaging in community education, fundraising, events and other volunteer activities.
4. Collaborate on one or more Arbor Day or tree-related events including planning, materials, staffing and tree planting activities, dates and number of events to be mutually agreed upon annually.
5. This MOU shall be subject to any and all policies, regulations and ordinances of the City of Tracy and TTF.

D. Indemnity, Defense, and Hold Harmless Agreement:

1. TTF shall indemnify, defend, and hold harmless the CITY, including its elected officials, officers, agents, and employees, from and against any and all claims, demands, damages, liabilities, costs, and expenses, including court costs and attorney's fees, resulting from or arising out of the performance of this MOU by TTF or TTF's agents, representatives, contractors, subcontractors, or employees. CITY shall indemnify, defend, and hold harmless TTF, including its elected officials, officers,

Memorandum of Understanding
City of Tracy / Tracy Tree Foundation

agents, and employees, from and against any and all claims, demands, damages, liabilities, costs, and expenses, including court costs and attorney's fees, resulting from or arising out of the performance of this MOU by CITY's agents, representatives, contractors, subcontractors, or employees.

- V. **TERMINATION:** Either party may terminate this MOU by providing prior written notice to the other party of intention to terminate not less than ninety (90) days prior to actual termination.
- VI. **TERM:** This MOU shall take effect on September 6, 2016, for an initial term of two (2) years. The City Manager is authorized to execute an extension, and TTF may extend the initial term of this MOU, if both parties provide written notice of renewal to the other party not less than ninety (90) days prior to expiration of the initial term. The extension may provide for up to three (3) additional years, for a total maximum of five (5) years.
- VII. **AMENDMENTS:** This MOU may be amended in writing and the amendment must be approved by the City Council and TTF.
- VIII. **DESIGNATED REPRESENTATIVES:** For the purposes of administering the MOU, the President of TTF and the Public Works Director for the City of Tracy shall act as representatives for their respective organizations.
- IX. **NOTICES:**

CITY

Don Scholl
Public Works Director
City of Tracy
520 Tracy Blvd
Tracy, CA 95376

Tracy Tree Foundation

Attn: Pete Mitracos, President
1792 Chester Drive
Tracy, CA 95376

With a copy to:

City Attorney
333 Civic Center Plaza
Tracy, CA 95376

- X. **ENTIRE AGREEMENT:** This MOU constitutes the entire agreement between the City and TTF.

Memorandum of Understanding
City of Tracy / Tracy Tree Foundation

XI. **SIGNATURES:** The individuals executing this MOU represent and warrant that they have the right, power, legal capacity, and authority to enter into and to execute this MOU on behalf of the respective legal entities of TTF and the City. This MOU shall inure to the benefit of and be binding upon the parties thereto and their respective successors and assigns

City of Tracy

Michael Maciel
Mayor

Date: _____

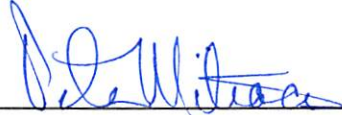
ATTEST:

City Clerk

Date: _____

Tracy Tree Foundation

Pete Mitracos
President



Date: 8/25/16

Kyle Miller
Treasurer



Date: 8/25/16

RESOLUTION _____

APPROVING A MEMORANDUM OF UNDERSTANDING WITH THE TRACY TREE FOUNDATION OF TRACY, CALIFORNIA AND AUTHORIZING THE MAYOR TO EXECUTE THE AGREEMENT

WHEREAS, On March 15, 2005, the City Council adopted "Guidelines: Agreement with External Organizations" which established policies and procedures for local organizations to enter into a Memorandum of Understanding with the City, and

WHEREAS, The Tracy Tree Foundation of Tracy, California (TTF) was formed in 2015, and

WHEREAS, The City Council recognizes TTF as assisting the City by providing services and support that inspire members of the community to understand, appreciate, maintain, plant and protect trees in their neighborhoods and business locations through education, celebration, resources and collaborative partnerships, and

WHEREAS, activities performed by TTF are performed for the express purpose of benefiting the public in the Tracy community, its businesses, residents, public health and safety, and both the local environment and the environment of the region;

NOW, THEREFORE, BE IT RESOLVED, That City Council approves the Memorandum of Understanding (MOU) between the City of Tracy and the Tracy Tree Foundation of Tracy, California and authorizes the Mayor to execute the Agreement.

* * * * *

The foregoing Resolution _____ was adopted by Tracy City Council on the 6th day of September, 2016, by the following vote:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

MAYOR

ATTEST:

CITY CLERK

AGENDA ITEM 1.J

REQUEST

APPROVE A MASTER PROFESSIONAL SERVICES AGREEMENT (MPSA) WITH SEEVERS, JORDAN, ZIEGENMEYER TO PERFORM COMMUNITY FACILITIES DISTRICT APPRAISALS; AUTHORIZE THE MAYOR TO EXECUTE THE AGREEMENT; AND AUTHORIZE THE ADMINISTRATIVE SERVICES DIRECTOR TO EXECUTE TASK ORDERS UNDER THE AGREEMENT

EXECUTIVE SUMMARY

As part of the bond issuance process for Community Facilities Districts (CFDs), appraisals will be needed to estimate the appraised land value for land-secured financings. It is recommended that the City enter into a Master Professional Services Agreement (MPSA) with Seevers, Jordan, and Ziegenmeyer to perform such appraisals as CFDs are formed in preparation of securing bond issuances. The cost, which will be borne by developers through Cost Recovery Agreements or through bond proceeds, will be approximately \$25,000 per each project's separate appraisal. For the MPSA, the requested total not-to-exceed cumulative amount is \$250,000.

DISCUSSION

On July 19, 2016 Council approved the formation of Community Facilities District (CFD) No. 2016-1 (Tracy Hills Improvement Area No. 1) for the purpose of securing bond financing for the City's acquisition of required project infrastructure. In the near future, it is anticipated that other developers may petition Council to form CFDs.

In land-secured financings, investors are particularly concerned about the value of land in the CFD that secures the bonds. It must be determined that the value of the land subject to the special tax is, in theoretical lien-free status (and assuming the presence of the facilities that are going to be provided by the bond proceeds), worth at least three times the amount of all public debt assigned to the land, including the debt represented by the bonds to be sold. In a district where the land is not yet developed, an "as is" valuation by an unbiased expert is particularly important in anticipation of the worst-case scenario: the proposed development cannot be built and sold as proposed.

Because the security for a land-secured bond improves as land in the district is developed and sold, investors of land-secured bonds are concerned with the likelihood that the development will be built and the finished product purchased¹. This information will be included in the appraisal which will be presented to the market/investors as bonds are marketed and sold.

On June 23rd, the City received four qualifications-based proposals to perform appraisal services. Seevers, Jordan, and Ziegenmeyer (SJZ) demonstrated the greatest experience in performing appraisals for the specific purpose of land-secured financing.

¹ A Master Professional Services Agreement for an absorption specialist will be presented to Council at a later date for consideration. The data provided by the absorption specialist will be integrated into the appraiser's report.

Its rates for performance were also competitive. The cost range for proposals received were \$19,000-\$40,000 (SJZ's cost is \$25,000 per appraisal).

STRATEGIC PLAN

These actions do not pertain to Council's Strategic Plan.

FISCAL IMPACT

There will be no impact to the General Fund. Fees for appraisals will be paid for by developers through Cost Recovery Agreements or through bond proceeds.

RECOMMENDATION

That City Council, by resolution, approve a Master Professional Services Agreement with Seevers, Jordan, Ziegenmeyer in an amount not to exceed a cumulative amount of \$250,000 to perform Community Facilities District appraisals; authorize the Mayor to execute the agreement; and authorize the Administrative Services Director to execute Task Orders under the Agreement.

Prepared by: Anne H. Bell, Mgt. Analyst II, Administrative Services Department, Finance Division

Reviewed by: Martha Garcia, Interim Administrative Services Director
Stephanie Garrabrant-Sierra, Assistant City Manager

Approved by: Troy Brown, City Manager

ATTACHMENTS

Attachment A – Master Professional Services Agreement and Sample Task Order

**CITY OF TRACY
MASTER PROFESSIONAL SERVICES AGREEMENT
LAND APPRAISER**

This Master Professional Services Agreement (Agreement) is entered into between the City of Tracy, a municipal corporation (City), and Seevers • Jordan • Ziegenmeyer, a California general partnership, (Consultant).

RECITALS

A. Land-secured bond financing has and continues to be used in the City of Tracy. As part of the bond issuance process it is necessary to have the value of the land securing the financing appraised by a qualified appraiser.

B. On June 9, 2016, the City issued a Request for Proposals (RFP) for an appraiser to perform appraisals for land-secured bond financings. On June 20, 2016, Consultant submitted its proposal for the Project to the City. 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.

Now therefore, the parties mutually agree as follows:

1. Scope of Services. Consultant shall perform the services generally described in Exhibit "A" attached and incorporated by reference. Consultant's specific scope of services shall be more particularly described in individual Task Orders subject to the written approval of the City and Consultant. The terms of this Agreement shall be incorporated by reference into each Task Order. The services shall be performed by, or under the direct supervision of, Consultant's Authorized Representative: Kevin Ziegenmeyer. Consultant shall not replace its Authorized Representative, nor shall Consultant replace any of the personnel listed in Exhibit "A," nor shall Consultant use any subcontractor or subconsultant, without the City's prior written consent.

2. Time of Performance. Time is of the essence in the performance of services under this Agreement and the timing requirements set forth here shall be strictly adhered to unless otherwise modified in writing in accordance with this Agreement. Consultant shall begin performance, and shall complete all required services no later than the dates set forth in each individual Task Order. Any services for which times for performance are not specified in each individual Task Order 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 extensions of time 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.

3. Compensation.

3.1 General. For services performed by Consultant under this Agreement, City shall pay Consultant on a time and expense basis, at the billing rate amounts set forth in Exhibit "B," and Not to Exceed the amount set forth in each individual Task Order. Consultant's billing rates, and Not to Exceed amount, shall cover all costs and expenses for Consultant's performance of this Agreement. No work shall be performed by Consultant in excess of the Not to Exceed amount without City's prior written approval.

3.2 Invoices. Consultant shall submit monthly invoices to the City describing the services performed, including times, dates, and names of persons performing the service.

3.3 Payment. Within 30 days after the City's receipt of invoice, City shall make payment to the Consultant based upon the services described on the invoice 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 in connection therein) 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 contract, and are not limited by the provisions of Section 5 relating to insurance.

5. Insurance.

5.1 General. 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 here.

5.2 Commercial General Liability (with coverage at least as broad as ISO form CG 00 01 01 96) coverage shall be maintained in an amount not less than \$2,000,000 general aggregate and \$1,000,000 per occurrence for general liability, bodily injury, personal injury, and property damage.

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

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

5.5 Professional Liability 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 occurrence.

5.6 Endorsements. Consultant shall obtain endorsements to the automobile and commercial general liability with the following provisions:

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

5.6.2 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.

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

- 5.8 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.
- 5.9 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 Attorney, before the City signs this Agreement.
- 5.10 Substitute Certificates.** No later than 30 days before the policy expiration date of any insurance policy required by this Agreement, Consultant shall provide a substitute certificate of insurance.
- 5.11 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.

6. Independent Contractor Status; Conflicts of Interest. Consultant is an independent contractor and is solely responsible for all acts of its employees, agents, or subconsultants, 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 to Consultant.

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. City may terminate this Agreement if Consultant maintains or acquires such a conflicting interest.

7. 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.

8. Ownership of Work. All original documents prepared by Consultant for this Agreement 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 prior written consent of City.

9. Miscellaneous.

9.1 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 as follows:

To City:
Anne H. Bell, Mgt. Analyst II
ASD, Finance Division
333 Civic Center Plaza
Tracy, CA 95376

To Consultant:
Kevin Ziegenmeyer, MAI
Seevers • Jordan • Ziegenmeyer
3825 Atherton Road
Suite 500
Rocklin, CA 95765

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

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

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

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

9.4 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.

9.5 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.

9.6 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.

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

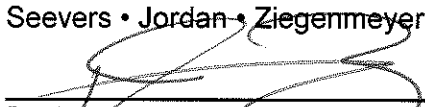
9.8 Business Entity Status. Contractor is responsible for filing all required documents and/or forms with the California Secretary of State and meeting all requirements of the Franchise Tax Board, to the extent such requirements apply to Contractor. City may void this Agreement if Contractor is a suspended corporation, limited liability company or limited partnership at the time it enters into this Contract, City may take steps to have this Agreement declared voidable.

9.9 Business License. Before the City signs this Agreement, Consultant shall obtain a City of Tracy Business License.

9.10 Entire Agreement; Severability. This Agreement comprises the entire integrated understanding between the parties concerning the services to be performed. This Agreement supersedes all prior negotiations, representations or agreements. 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.

10. Signatures. The individuals executing this Agreement represent and warrant that they have the right, power, legal capacity and authority to enter into and to execute this Agreement on behalf of the respective legal entities of the Consultant and the City. This Agreement shall inure to the benefit of and be binding upon the parties and their respective successors and assigns.

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

City of Tracy <hr/> By: Michael Maciel Title: Mayor Date: _____ Approved by City Council on September 6, 2016 by Resolution No. _____ Attest: <hr/> By: Nora Pimentel, City Clerk Approved As To Form: <hr/> By: Bill Sartor, City Attorney	Consultant Seevers • Jordan • Ziegenmeyer  <hr/> By: Kevin Ziegenmeyer, MAI Title: Managing Partner Date: <u>August 25, 2016</u> Federal Employer Tax ID No. 91-1766837
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Exhibits:

- A. Scope of Services, Personnel
- B. Billing rates

Exhibit “A”

STANDARD SCOPE OF WORK

Scope objective: Estimate the market value, by ownership, of the taxable land within the boundaries to be subject to the lien of the special taxes securing the City of Tracy Community Facilities Districts (CFDS) or other bond financing.

- Appraisal assignments will be conducted in accordance with appraisal standards and guidelines found in the current 2016/17 edition of the Uniform Standards of Professional Appraisal Practice (USPAP); the Appraisal Institute Code of Professional Ethics and Standards of Professional Appraisal Practice; and the California Debt and Investment Advisory Commission (CDIAC) Appraisal Standards for Land Secured Financings (2004). An Appraisal Report will be prepared in accordance with the reporting requirements set forth under Standards Rule 2-2(a) of 2016/17 edition of USPAP.
- Valuation processes shall include a description of the region, with particular attention given to the underlying economic factors impacting the supply and demand for the appraised properties.
- Analyses will include a discussion of the local neighborhood and its advantages and disadvantages relative to competitive areas.
- Appraised properties within the District comprising the subject properties shall be described in detail with a focus on their competitive strengths and weaknesses.
- Determinations shall be made of properties’ highest and best use. Legal factors, the physical characteristics of the properties, economic feasibility and the maximum productivity of the properties comprising the Districts shall be considered in arriving at the conclusion of highest and best use which will form the basis for the selection of comparables and application of the approaches to value in the remainder of the reports.
- Appraisals shall focus on the taxable properties (presumably the single-family residential land uses) within the boundaries of CFDS to be subject to Liens of Special Taxes securing Bonds.
- The market values of the taxable properties within the boundaries of the CFDS, to be subject of the Lien of the Special Tax securing the Bonds, will be estimated by employing discounted cash flow analyses (DCF) via the subdivision development method to value.
 - A DCF analysis is a procedure in which a discount rate is applied to projected revenue streams generated from the sale of individual components of a project. In this method of valuation, the appraiser will specify the quantity, variability, timing and duration of the revenue streams and discounts each to its present value at a specified yield rate.
 - The expected revenue, absorption period, expenses and discount rate associated with the development and sell-off of the single-family residential lots will be taken into account.

- The revenue component of the DCF will be estimated by valuing the individual land use components (production-oriented single-family residential lots) using the sales comparison approach, and possibly the land residual analysis to value.
- Assumptions will be made in the discounted cash flow analysis, including the forecast of absorption, or disposition, of the various land use components comprising the subject properties.

Methodology shall include:

1. A physical inspection of the subject properties and all comparable market data. The comparable data will involve properties throughout the market area and/or similar surrounding areas.
2. Verification of public information relating to the subject property's assessments, zoning and utilities.
3. Telephone and personal interviews with persons considered knowledgeable regarding the subject property and similar properties. Interviews and surveys may be conducted with planning, public works and building departments at the City of Tracy. Additional inquiries will be made with local real estate professionals relative to market conditions and trends.
4. An estimate of probable exposure time for the subject property based on sales and listings of similar properties, interviews with local real estate professionals and the results of national surveys.
5. An analysis of local area land use trends, as well as proposed and/or present construction activity. A considerable portion of this item will be completed in conjunction with Item 3 above.
6. Complete a market analysis of the developable, taxable properties within the District, addressing supply and demand factors influencing the subject property.
7. A determination of the highest and best use of the property as vacant, according to the four tests of legal permissibility, physical possibility, financial feasibility and maximum productivity.
8. An estimate of market value of the appraised properties in the District, by ownership, subject to the lien of the Special Tax securing the CFD Bonds. The estimate of value will be subject to the hypothetical condition certain facilities (capital improvements) to be financed by the CFD Bonds are in place and available for use.
9. Distribute a draft appraisal for review and comment to the Finance Team. When authorized, assemble and distribute the final appraisal to the City of Tracy as prescribed.

Primary personnel assigned to City:

Kevin Ziegenmeyer, MAI
Eric Segal, MAI
Sara Gilbertson

Managing Partner
Managing Partner
Staff Appraiser

Exhibit "B"

COST SCHEDULE

COST OF SERVICES

Based on the scope of work outlined on the previous pages, a not-to-exceed fee of **\$25,000** is proposed for each appraisal assignment. Should services be required beyond the scope outlined previously, a proposal will be submitted for approval and the following hourly fee schedule, plus any inordinate expenses, will apply to the various individuals that may be involved in the assignments.

- Partner \$350 / hour
- Senior Appraiser \$250 / hour
- Appraiser \$200 / hour
- Research Analyst \$150 / hour
- Administrative Support \$ 50 / hour

**SAMPLE TASK ORDER
TO MASTER PROFESSIONAL SERVICES AGREEMENT**

City of Tracy
TASK ORDER NO. __ TO
MASTER PROFESSIONAL SERVICES AGREEMENT
[Insert full name and project number.]

This Task Order is entered into between the City of Tracy, a municipal corporation (City), and *[Complete name of legal business entity, and business status, such as a California corporation]*, (Consultant).

Recitals

A. *[Recitals should include a reference to the title and date of the Master Professional Services Agreement, followed by a brief description of the nature of this Task Order.]*

B.

C.

Now therefore, the parties mutually agree as follows:

1. Incorporation of Master Professional Services Agreement. This Task Order incorporates by reference the terms set forth in the Master Professional Services Agreement (“Agreement”) for this project, unless specifically modified by this Task Order.

2. Scope of Services. Consultant shall perform the services described in Exhibit “A” attached and incorporated by reference.

3. Time of Performance. Consultant shall begin performance, and shall complete the required services no later than the dates set forth in Exhibit “A.”

4. Compensation. For services performed by Consultant in accordance with this Task Order, City shall pay Consultant on a time and expense basis, at the billing rates set forth in Exhibit “B” to the Agreement. Consultant’s fee for this Task Order is Not to Exceed \$_____ *[Insert the not-to-exceed amount, if applicable. Or, insert the lump sum, or time and materials basis by reference to rates set forth in Master PSA Exhibit B.]*

[Intentionally Left Blank]

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

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

City of Tracy	Consultant
<p>_____ <i>[Insert name and title of City employee (or Mayor) authorized to sign this particular Agreement. If it will be authorized by Council, add below the date: Approved by City Council on _____ by Resolution No. _____.]</i></p>	<p>_____ <i>[Insert complete legal name of business entity, and business status such as a California corporation, limited liability company, etc.]</i></p>
By: _____	By: _____
Title: _____	Title: _____
Date: _____	Date: _____
Attest:	Federal Employer Tax ID No. _____
By: Nora Pimentel, City Clerk	<p><i>[Note: Depending on type of entity, more than one signature may be required. See Instructions for Agreements §§A.5.c and C.2.b.]</i></p>
Approved As To Form:	By: _____
By: Bill Sartor, City Attorney	Title: _____
	Date: _____

RESOLUTION _____

APPROVING A MASTER PROFESSIONAL SERVICES AGREEMENT
WITH SEEVERS, JORDAN, ZIEGENMEYER TO PERFORM
COMMUNITY FACILITIES DISTRICT APPRAISALS

WHEREAS, on June 23, 2016 responses were received to the City of Tracy's Request for Qualifications and Proposals for a Community Facilities District Appraiser, and

WHEREAS the City received four responses, and Seevers, Jordan, Ziegenmeyer was deemed the most experienced at performing appraisals for land-based financing purposes, and

WHEREAS, the cost of each appraisal will be approximately \$25,000 to be paid for by either a developer's Cost Recovery Agreement or through bond proceeds,

WHEREAS, the City wishes to enter into a Master Professional Services Agreement with Seevers, Jordan, Ziegenmeyer for a total Agreement amount not to exceed \$250,000;

NOW, THEREFORE, BE IT RESOLVED, That City Council does hereby approve a Master Professional Services Agreement with Seevers, Jordan, Ziegenmeyer, authorize the Mayor to execute the Agreement, and authorize the Administrative Services Director to execute Task Orders under the Agreement.

* * * * *

The foregoing Resolution 2016-_____ was adopted by the Tracy City Council on the 6th day of September, 2016, by the following vote:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

MAYOR

ATTEST

CITY CLERK

AGENDA ITEM 1.K

REQUEST

**SUBMIT A LETTER TO MEMBERS OF THE CALIFORNIA STATE LEGISLATURE
URGING PASSAGE OF AB 2762 TRANSPORTATION: ALTAMONT REGIONAL RAIL
AUTHORITY**

EXECUTIVE SUMMARY

At the August 12, 2016 Council meeting, Council Member Vargas, member of the Tri-Valley Regional Rail Advisory Group, requested that staff draft a letter in support of AB 2762 Transportation: Altamont Regional Rail Authority and place it on the September 6, 2016 Council agenda for discussion and approval.

DISCUSSION

Over the last 30 years, many local elected and appointed officials, residents, business groups, potential passengers and other stakeholders have been part of the effort to extend Bay Area Rapid Transit (BART) to Livermore. In the mid-1980s, BART purchased a potential site for a future station near the Isabel Avenue and Interstate 580 interchange. The long-awaited BART extension to Livermore at Isabel Avenue would fill a crucial portion of the current 10-mile gap between the Dublin/Pleasanton BART station and the Altamont Corridor Express (ACE). A direct connection with this BART station and ACE is a logical next step, either through an extension of BART to Greenville Road or an extension of ACE to meet BART at Isabel Avenue in Livermore. Both options would eliminate car trips through the I-580 Altamont Pass, while improving the mobility of goods and people between the Central Valley to the Tri-Valley, and all reaches of the Bay Area.

The connection of BART and ACE directly benefits the Northern California mega-region which expands beyond the Bay Area into the Northern Central Valley. In fact, the economic vitality of the mega-region *depends* on interregional mobility. A connection with BART and ACE in Livermore, as recommended in MTC's Regional Rail Plan in 2007 and in the recent 2016 Bay Area Council Economic Institute's Northern California Mega-region report, has been identified as a critical transportation investment.

Unfortunately, this investment will not be considered by BART's Board until at least the end of 2017, with zero financial commitment thus far to pursue and complete construction until at least 2026. Extending BART service is in conflict with BART's current core mission to enhance the commuter rail system within the heart of the Bay Area. As such, expansion needs to Livermore have not been a priority for BART. However, the recent partnering between BART and the Santa Clara Valley Transportation Authority's BART Silicon Valley Extension demonstrates BART's ability to reach beyond their 9-Bay-Area County service area. This extension, which is near completion, is proof that out-sourcing rail projects to a partner agency for construction can be done successfully and with prudent and efficient use of tax-payer money.

The creation of the Altamont Regional Rail Authority outlined in this bill is a measured and thoughtful solution to deploy new mass transit options for the increasingly overcrowded I-580 corridor. With commute patterns in the Altamont Pass corridor traversing the traditional planning boundaries of the regional Metropolitan Planning Organizations and BART, it makes sense for a more broadly based authority to manage the planning and construction of the last ten mile solution that will link the Bay with the Valley.

The attached letter, expresses support by the Tracy City Council of the creation of the Altamont Regional Rail Authority as outlined in AB 2762 (Baker) for the purpose of assuming the planning and construction of BART rail connection to the Altamont Corridor Express (ACE) in Livermore.

STRATEGIC PLAN

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

FISCAL IMPACT

There is no fiscal impact associated with this discussion item.

RECOMMENDATION

That the City Council sign the attached letter of support urging members of the State Legislature to pass AB 2762 Transportation: Altamont Regional Rail Authority.

Prepared by: Nora Pimentel, City Clerk

Reviewed by: Stephanie Garrabrant-Sierra, Assistant City Manager

Approved by: Troy Brown, City Manager

ATTACHMENTS

A Draft Letter in Support of AB 2762 Transportation: Altamont Regional Rail Authority



September 6, 2016

The Honorable Catharine Baker
Assemblywoman, 16th District
P.O. Box 942849
Sacramento, CA 94249-0016

RE: AB 2762 Transportation: Altamont Regional Rail Authority

Dear Assemblywoman Baker:

The City Council of Tracy is writing to express its support for the creation of the Altamont Regional Rail Authority as outlined in AB 2762 (Baker) for the purpose of assuming the planning and construction of the Bay Area Rapid Transit (BART) rail connection to the Altamont Corridor Express (ACE) in Livermore. Timely delivery of this important project depends on outsourcing the development phases into the hands of an Authority with a single point of focus.

Over the last 30 years many local elected and appointed officials, residents, business groups, potential passengers and other stakeholders have been part of the effort to extend BART to Livermore. In the mid-1980s, BART purchased a potential site for a future station near the Isabel Avenue and Interstate 580 interchange. The long-awaited BART extension to Livermore at Isabel Avenue can fill a portion of the current 10-mile gap between the Dublin/Pleasanton BART station and the Altamont Corridor Express (ACE). A direct connection with BART and ACE is a logical next step, either through an extension of BART to Greenville Road or an extension of ACE to meet BART at Isabel Avenue in Livermore. Both options would eliminate car trips through the I-580 Altamont Pass, while improving the mobility of goods and people between the Central Valley to the Tri-Valley, and all reaches of the Bay Area.

There is precedence for creating a sole focus authority to plan and construct the BART connection to ACE. Metro Gold Line Foothill Extension Construction Authority is a successful example from Los Angeles. The Construction Authority completed the Los Angeles to Pasadena segment which had been suspended by its originating agency, the LA Metro, in just under three years, and the 13.7-mile line opened in 2003 on time and under budget.

The connection of BART and ACE directly benefits the Northern California megaregion which expands beyond the Bay Area into the Northern Central Valley. With commute patterns in the Altamont Pass corridor traversing the traditional planning boundaries of the regional Metropolitan Planning Organizations and BART, it makes sense for a more broadly based authority to manage the planning and construction of the last ten mile solution that will link the Bay with the Valley.

Moreover, the economic vitality of the megaregion depends on interregional mobility. A connection with BART and ACE in Livermore, as recommended in MTC's Regional Rail Plan in

Letter to the Hon. Catharine Baker

September 6, 2016

Page 2 of 2

2007, and in the recent 2016 Bay Area Council Economic Institute's Northern California Megaregion report, has been identified as a critical transportation investment. However, this investment will not be considered by BART's Board until at least the end of 2017, with zero financial commitment thus far to pursue and complete construction until at least 2026.

Extending BART service is in conflict with BART's current core mission to enhance the commuter rail system within the heart of the Bay Area. As such, expansion needs to Livermore have not been a priority for BART. However, the recent partnering between BART and the Santa Clara Valley Transportation Authority's BART Silicon Valley Extension demonstrates BART's ability to reach beyond their 9-Bay-Area County service area. This extension, which is near completion, is proof that out-sourcing rail projects to a partner agency for construction can be done successfully and with prudent and efficient use of tax-payer money.

The creation of the Altamont Regional Rail Authority outlined in your bill is a measured and thoughtful solution to deploy new mass transit options for the increasingly overcrowded I-580 corridor. On behalf of AGENCY, I thank you for authoring forward-looking legislation that will speed the implementation of vital rail expansion in the Bay Area. Your leadership in transportation issues is making a difference in the quality of life for your Tri-Valley constituents and our neighbors in the Central Valley.

Sincerely,

Michael Maciel, Mayor

Mary Mitracos, Council Member

Robert Rickman, Mayor Pro Tem

Veronica Vargas, Council Member

Nancy Young, Council Member

cc: Senator Cathleen Galgiani
Assembly Member Susan Eggman
Altamont Regional Rail Working Group:
Chair, Supervisor Scott Haggerty, County of Alameda
Vice Chair, Supervisor Moises Zapien, County of San Joaquin
Mayor David Haubert, City of Dublin
Mayor John Marchand, City of Livermore
Councilmember Vince Hernandez, City of Manteca
Mayor Jerry Thorne, City of Pleasanton
Councilmember Veronica Vargas, City of Tracy,
Director John McPartland, BART Board of Directors
Councilmember Steve Spedowski, Chair, Livermore Amador Valley Transit Authority
East Bay Leadership Council
Innovation Tri-Valley Leadership Group
San Joaquin Partnership

AGENDA ITEM 1.L

REQUEST

ADOPT RESOLUTION AUTHORIZING THE MAYOR TO SIGN TERMS AND CONDITIONS OF ACCEPTING AIRPORT IMPROVEMENT PROGRAM GRANTS AND TO EXECUTE GRANT AGREEMENT AIP #3-06-0259-017-2016 IN THE AMOUNT OF \$2,923,460 WITH THE FEDERAL AVIATION ADMINISTRATION FOR REIMBURSEMENT OF ENGINEERING, DESIGN, AND RECONSTRUCTION OF THE GENERAL AVIATION APRON AREA; AND APPROPRIATE \$292,346 FROM THE GENERAL FUND, FUND BALANCE TO CIP 77037

EXECUTIVE SUMMARY

The City Council has directed staff to seek funding to address pavement conditions at the Tracy Municipal Airport. Council has previously approved the work on a Pavement Maintenance and Management Plan and the engineering and design of the rehabilitation of all pavements at the airport, as well as an updated Airport Layout Plan. Additionally, the reconstruction of runways 12-30 and 8-26 and reconstruction of taxiways A, B, D and E including runway/taxiway intersections is nearing completion through a previous grant effort. Staff has submitted a grant application to the FAA for funding for the next phase of pavement reconstruction on the General Aviation Apron area.

DISCUSSION

The Federal Aviation Administration (FAA) classifies the City as the “sponsor” of the Tracy Municipal Airport. As an airport sponsor, the City applies for and administers airport grants and contracts. Council has already approved the City’s airport consultant to complete a Pavement Maintenance and Management Plan, the engineering and design work on the airport pavement project, and an updated Airport Layout Plan. Additionally, the reconstruction of runways 12-30 and 8-26, and reconstruction of taxiways A, B, D and E, including runway/taxiway intersections, is nearing completion through a previous grant effort. The next phase in this project is to begin the reconstruction of the General Aviation Apron area.

The FAA Airport Improvement Entitlement Program (AIP), currently funds approved projects at ninety percent on a reimbursable basis. As work is completed by either the City or a contractor, a request is made for reimbursement from the FAA for ninety percent of the funds spent on the work. The City is pursuing the funding in the amount of \$2,923,460 to fund a reimbursement for the engineering and design work as well as the reconstruction of the General Aviation Apron area.

Originally, this phase of the project was bid as two separate phases due to the uncertainty of funds being available from the FAA. The bids received on the project were very favorable and below the engineer’s estimate resulting in the FAA appropriating funding for both phases of the project.

While the FAA will fund ninety percent of the project, the remaining ten percent match must come from the City. A total match amount of \$292,346 is needed to complete this project. Staff will pursue an additional five percent matching funds from Caltrans Division of Aeronautics to help lower the City's match amount needed, but that funding source is not guaranteed. The Airport Fund does not have the required funds in order to provide the matching amount needed. It is requested that the matching funds be appropriated from the General Fund to CIP 77037 in order to accept and execute this grant offer and complete the project.

STRATEGIC PLAN

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

FISCAL IMPACT

This item will result in an appropriation of \$292,346 from the General Fund, fund balance to CIP 77037. Where available, the City will also seek an additional 5% matching funds from Caltrans Division of Aeronautics. This will help to lower the overall matching requirement from the City.

RECOMMENDATION

That the City Council adopt a resolution authorizing the Mayor to sign the Terms and Conditions of Accepting Airport Improvement Program Grants; execute grant agreements AIP No. 3-06-0259-017-2016 in the amount of \$2,923,460 with Federal Aviation Administration for reimbursement for engineering, design, and reconstruction of the General Aviation Apron area, and appropriate \$292,346 from the General Fund, fund balance to CIP 77037.

Prepared by: Ed Lovell, Management Analyst II

Reviewed by: André Pichly, Parks and Community Services Director
Martha Garcia, Interim Administrative Services Director
Stephanie Garrabrant-Sierra, Assistant City Manager

Approved by: Troy Brown, City Manager

RESOLUTION 2016-_____

AUTHORIZING THE MAYOR TO SIGN TERMS AND CONDITIONS OF ACCEPTING AIRPORT IMPROVEMENT PROGRAM GRANTS; EXECUTE GRANT AGREEMENT AIP #3-06-0259-017-2016 IN THE AMOUNT OF \$2,923,460 WITH FEDERAL AVIATION ADMINISTRATION FOR REIMBURSEMENT FOR ENGINEERING AND DESIGN WORK AND RECONSTRUCTION OF THE GENERAL AVIATION APRON AREA; AND APPROPRIATING \$292,346 FROM THE GENERAL FUND, FUND BALANCE TO CIP 77037

WHEREAS, The Federal Aviation Administration of the United States of America (FAA) classifies the City of Tracy (the "City") as the "sponsor" of the Tracy Municipal Airport and as such, the City is responsible for applying for and administering airport grants and contracts, and

WHEREAS, The FAA Airport Improvement Entitlement Program currently funds approved projects at ninety percent, and

WHEREAS, The City is pursuing funding in the amount of \$2,923,460 for reimbursement for engineering and design work on and reconstruction of the General Aviation Apron area, and

WHEREAS, Execution of the above-mentioned grant agreement will result in an obligation of the City to provide matching funds of up to \$292,346;

NOW, THEREFORE, BE IT RESOLVED, That the City Council authorizes the Mayor to sign the Terms and Conditions of Accepting Airport Improvement Grants; executes Grant Agreement AIP#3-06-0259-017-2016 in the amount of \$2,923,460 with Federal Aviation Administration for reimbursement for engineering and design work on reconstruction of the General Aviation Apron area; and appropriates \$292,346 from the General Fund, fund balance to CIP 77037.

* * * * *

The foregoing Resolution 2016-_____ was adopted by City Council on the 6th day of September, 2016, by the following vote:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

MAYOR

ATTEST:

CITY CLERK

AGENDA ITEM 1.M

REQUEST

AWARD A CONSTRUCTION CONTRACT TO TEICHERT CONSTRUCTION OF STOCKTON, CALIFORNIA, FOR RECONSTRUCTION OF THE TRACY MUNICIPAL AIRPORT GENERAL AVIATION TIE DOWN APRON, CIP 77037, AIP NO. 3-06-0259-17-2016; APPROVE TASK ORDER NO. 5 TO REINARD W. BRANDLEY MASTER PROFESSIONAL SERVICES AGREEMENT; APPROPRIATE A CONTINGENCY AMOUNT OF \$374,320 FROM THE GENERAL FUND TO CIP 77037; AUTHORIZE THE CITY MANAGER TO APPROVE CHANGE ORDERS UP TO THE SPECIFIED PROJECT CONTINGENCY AMOUNT IF NEEDED, AND AUTHORIZE THE MAYOR TO EXECUTE TASK ORDER 5 AND THE CONTRACT

EXECUTIVE SUMMARY

City Council is requested to award a construction contract to Teichert Construction for Reconstruction of the Tracy Municipal Airport General Aviation Tie Down Apron. The project generally includes rehabilitation of pavement of the General Aviation Tie Down Apron.

DISCUSSION

In general, work will consist of reconstruction of 448,000 square feet of North General Aviation Apron, as base Bid, and reconstruction of 160,900 square feet of South General Aviation Apron as additive bid, which includes polarizing the existing asphalt and aggregates base, while compacting polarized material in place and resurfacing with new asphalt pavement. This work will also include modification of the drainage system, marking and striping.

The project plans and specifications were prepared by Reinard W. Brandley, the City's Airport Consulting Engineer of Loomis, California. The project was advertised for competitive bids on April 1, and April 8, 2016, and on May 17, 2016, bids were publicly opened with the following results:

<u>Bidder</u>	<u>Base Bid</u>	<u>Base + Add. 1</u>
Teichert	\$1,881,223.60	\$2,495,460.00
General Reed	\$2,229,945.00	\$3,007,560.00

Teichert Construction Company of Stockton, California, is the lowest monetary bidder. A bid analysis indicates the lowest bid is responsive and the bidder is responsible.

Teichert Construction has the appropriate contractor's license in active standing and has completed similar projects for City of Tracy and other public agencies. The submitted bid was valid for a period of 90 days, but due to a delay in receiving a grant award for this project from the Federal Aviation Administration (FAA), the 90 day deadline has passed. A grant offer has now been received from the FAA and Teichert has agreed to extend

the bid, if the City is willing to let the Contractor work on the base bid and additive bid items at the same time, and the city is willing to accept their condition.

Funding for the project will be provided by a Federal Aviation Administration (FAA) grant. The FAA grant provides funding for 90 percent of the project cost including construction costs, engineering costs, and administration costs. The City, (Sponsor), is responsible for 10 percent of the total cost. A Summary of Project Costs is included as part of this report. A grant is concurrently being awarded to the City by the FAA for this project in the amount of \$2,631,114. The City is required to provide a 10% match of \$292,346. Total project cost is \$2,923,460. The FAA does not allow for any contingencies in the original grant, but will issue a grant modification if necessary at the completion of the project to cover any additional costs that are expended due to unforeseen conditions. It is recommended that a 15 percent contingency fund be included in the City's budget. The City's cost of a 15 percent contingency is \$374,320.

The State of California Division of Aeronautics has a grant program whereby, if funds are available, they can provide a grant in the maximum amount of 5% of the FAA grant for any project, which for this project would be \$146,173. The City will apply for the full 5% State matching grant, but it is unknown whether a portion or any of this State grant will be awarded.

Based upon available funds, it is recommended that the construction contract be awarded for the Base Bid phase C-1 and Additive Bid phase C-2 amounts. The total recommended construction cost of this project, if awarded to Teichert Construction Inc., is as follows:

<u>Description</u>	<u>Base Bid</u>
Construction Bid Including Additive Bid Item	\$ 2,495,460
Engineering Costs during Project	70,000
Project Management including Resident Engineering, Testing and Inspection Administration	258,000
	100,000
Contingency (15%)	<u>374,320</u>
Total Construction Cost	\$3,297,780

Tracy Municipal Code Section 2.20.090(b) authorizes the City Manager to approve change orders up to the contingency amount approved by City Council. The recommended contingency amount for this project is \$374,320.

STRATEGIC PLAN

The agenda item is a routine operational item and is not related to the Council's Strategic Plans.

FISCAL IMPACT

This is an approved Capital Improvement Project, CIP 77037, for Fiscal Year 2016-17. A supplemental appropriation of \$374,320 from the General Fund is proposed to cover contingencies not allowed for by the FAA.

RECOMMENDATION

That the City Council, by resolution, award a construction contract to Teichert Construction of Stockton, California, for the reconstruction of the Tracy Municipal Airport General Aviation Tie Down Apron, CIP 77037, AIP No. 3-06-0259-17-2016; approve Task Order No. 5 to Reinard W. Brandley Master Professional Services Agreement; appropriate a contingency amount of \$374,320 from the General Fund to CIP 77037; authorize the City Manager to approve change orders up to the specified project contingency amount if needed, and authorize the Mayor to execute Task Order 5, and the contract.

Prepared by: Zabih Zaca, Senior Civil Engineer
Ed Lovell, Management Analyst II

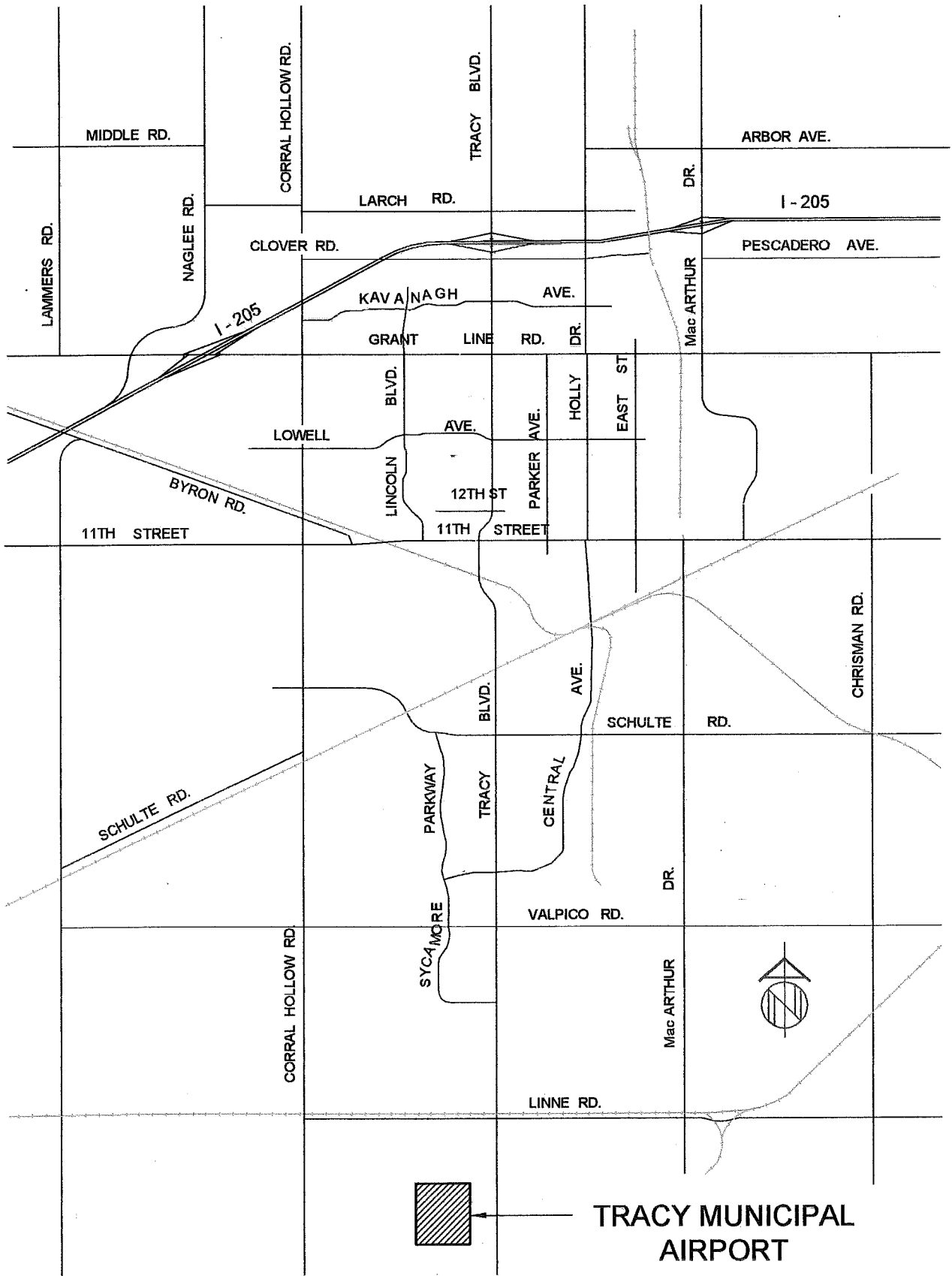
Reviewed by: Robert Armijo, City Engineer
Andrew Malik, Development Services Director
Martha Garcia, Interim Administrative Services Director
Stephanie Garrabrant-Sierra, Assistant City Manager

Approved by: Troy Brown, City Manager

ATTACHMENT

Attachment A: Location Map

Attachment B: Task Order No. 5 To Reinard W. Brandley Master Professional Services Agreement



LOCATION MAP

N.T.S.

**CITY OF TRACY
TASK ORDER NO. 5
TO MASTER PROFESSIONAL SERVICES AGREEMENT
TRACY AIRPORT PAVEMENT IMPROVEMENTS -- CIP 77037**

THIS Task Order is made and entered into by and between the CITY OF TRACY, a municipal corporation (hereinafter "CITY"), and Reinard W. Brandley, (hereinafter "CONSULTANT").

RECITALS

- A. CONSULTANT's services are needed for Engineering Design Services and Construction Monitoring Services, including testing and inspection, during the Reconstruction of Aviation apron for the Tracy Municipal Airport.
- B. CITY, as an Airport Sponsor, followed FAA requirements for the Airport Consultant selection process in accordance with FAA Advisory Circular # AC-150/1500-14C.
- C. CITY and CONSULTANT, after negotiation, have reached an agreement for the performance of services in accordance with the terms set forth in this Task Order.

NOW THEREFORE, THE PARTIES MUTUALLY AGREE AS FOLLOWS:

- 1. **INCORPORATION OF MASTER AGREEMENT.** This Task Order hereby incorporates by reference all terms and conditions set forth in the Master Agreement for this project, unless specifically modified by this Task Order.
- 2. **SCOPE OF SERVICES.** CONSULTANT shall perform the services described in Exhibit "A" attached hereto and incorporated herein by reference.
- 3. **TIME OF PERFORMANCE.** CONSULTANT shall commence performance, and shall complete all required services no later than the dates set forth in Exhibit "A".
- 4. **COMPENSATION.** For services performed by CONSULTANT in accordance with this Task Order, CITY shall pay CONSULTANT, a Not to Exceed amount of \$348,000 as set forth in Exhibit "A".
- 5. **SIGNATURES.** The individuals executing this Task Order represent and warrant that they have the right, power, legal capacity, and authority to enter into and to execute this Task Order on behalf of the respective legal entities of the

**CITY OF TRACY -- TASK ORDER NO. 5
MASTER PROFESSIONAL SERVICES AGREEMENT
TRACY AIRPORT PAVEMENT IMPROVEMENTS, CIP 77037
Page 2 of 2**

CONSULTANT and the CITY. This Task Order shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

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

CITY OF TRACY

CONSULTANT
Reinard W. Brandley

By: Michael Maciel
Title: Mayor

Date: _____

Attest:

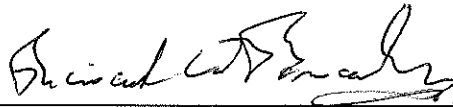
By: Nora Pimentel
Title: City Clerk

Date: _____

Approved As To Form:

By: Bill Sartor
Title: City Attorney

Date: _____



By: Reinard W. Brandley
Title: Owner

Date: June 28, 2010

Fed. Employer ID No. 94-1263809

Exhibit A

SCOPE OF WORK:

1. DESIGN ENGINEERING DURING BIDDING AND CONTRACT AWARD

The engineering design requirements during bidding, contract award, and construction will include the following:

- A. Assist City in printing and distributing final plans and specifications to prospective contractors.
- B. Participate in a pre-bid meeting for all prospective contractors.
- C. Respond to any questions and comments from prospective contractors.
- D. Preparation of required addenda.
- E. Assist City in awarding contract including preparation of Abstract of Bids and evaluation of bids.

The total fee for design engineering services during bidding and contract award will be a lump sum of \$15,000.

2. ENGINEERING DESIGN SERVICES DURING CONSTRUCTION AND FINAL PROJECT CLOSEOUT

The engineering design requirements during construction and project closeout will include the following:

- A. Participate in a pre-construction conference.
- B. Provide engineering surveillance of all construction operations, including attendance at weekly construction meetings, preparation of any change orders required, preparation of contractor pay estimates, preparation of F.A.A. reimbursement requests, review of all contractor submittals, and preparation of final as-constructed drawings and final engineer's report.

The design engineering services during construction will be conducted during the entire construction phase of the work. Final record drawings and engineer's report will be prepared within 30 calendar days of receipt of contractor's final redline drawings.

The total fee for engineering services during construction will be a lump sum of \$55,000.

3. PROJECT MANAGEMENT INCLUDING RESIDENT ENGINEERING, TESTING, AND INSPECTION

Resident Engineering, Testing, and Inspection during construction will include:

- A. Furnish qualified Resident Engineer to review and monitor all construction activities.
- B. Provide all inspection and testing required as included in the quality assurance program including providing technicians and inspectors as required.
- C. Provide surveying services as required.
- D. Provide traffic safety inspectors and Safety Plan implementation.
- E. Review and approve all contractors' quality control testing and inspection.

The resident engineering, testing, and inspection work will be performed during the total time that construction occurs.

The resident engineering, testing, and inspection fee will be at normal hourly rates set forth in Exhibit A for a sum not to exceed \$278,000.

Total Costs of Items 1, 2 & 3 = \$348,000

The total contract amount for this work will not exceed \$348,000 without prior approval of the City. A breakdown of estimated engineering fees is attached as Table No. 1.

Table 1

STANDARD SCHEDULE OF HOURLY RATES

REINARD W. BRANDLEY * CONSULTING AIRPORT ENGINEER

Personnel

Reinard W. Brandley.....	\$250.00/Hour
Senior Engineer/Resident Engineer.....	\$150.00/Hour
Junior Engineer.....	\$100.00/Hour
Senior Drafter/Senior Inspector.....	\$90.00/Hour
Junior Drafter/Junior Inspector.....	\$70.00/Hour
Testing Technician.....	\$85.00/Hour
Project Administrator.....	\$90.00/Hour
Clerical	\$75.00/Hour

Travel and Equipment Rental

Per Diem.....	\$150/Day
Vehicle Rental.....	\$30.00/Day + \$0.40/Mile
Laboratory Rental.....	\$300.00/Month
Survey Equipment Rental.....	\$200.00/Month

Laboratory Tests

Testing Laboratory Services by Outside Laboratory.....	Cost + 10%
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RESOLUTION 2016-_____

AWARDING A CONSTRUCTION CONTRACT TO TEICHERT CONSTRUCTION OF STOCKTON, CALIFORNIA, FOR RECONSTRUCTION OF TRACY MUNICIPAL AIRPORT GENERAL AVIATION TIE DOWN APRON PROJECT CIP 77037, AIP NO. 3-06-0259-17-2016, APPROVING TASK ORDER NO. 5 WITH REINARD W. BRANDLEY, AIRPORT CONSULTING SERVICES, AUTHORIZING AN APPROPRIATION OF FUNDS AND AUTHORIZING THE MAYOR TO EXECUTE THE TASK ORDER AND CONTRACT

WHEREAS, The City acquired the services of Reinard W. Brandley, Airport Consulting Services, to complete a Pavement and Management Plan for the Tracy Municipal Airport, and

WHEREAS, The Federal Aviation Authority reviewed the Plan and authorized the City to start the design of the Apron improvements, and

WHEREAS, The project design, improvement plans, specifications, and cost estimates for the project have been completed, and

WHEREAS, The project was advertised for competitive bids on April 1, and April 8, 2016, and two bids were received, and

WHEREAS, Teichert Construction Company of Stockton, California is the lowest monetary bidder, and the bid analysis indicates the lowest bid is responsive and the bidder is responsible, and

WHEREAS, The total cost of the project, if awarded to the lowest bidder with base bid and one additive bid item is as follows:

<u>Description</u>	<u>Base Bid</u>
Construction Bid Including Additive Bid Item	\$2,495,460
Engineering During Bid and Award	40,000
Engineering During Construction & Project Closeout	40,000
Project Management including Resident Engineering, Testing and Inspection Administration	348,000
	20,000
Contingency	<u>374,190</u>
Total Construction Cost	\$3,317,650

WHEREAS, Services of a consultant will be required during construction of this project to provide inspections, coordination with the FAA, construction management and closure of this project, and

WHEREAS, Task Order No. 5 to the Master Professional Services Agreement with Reinard W. Brandley, Airport Consulting Services, for a not to exceed amount of \$348,000, is added to the project cost, and

WHEREAS, In order to complete construction of the project, an appropriation of \$374,000 is needed from General Project Fund 301 to be transferred to CIP 77037;

NOW, THEREFORE, BE IT RESOLVED, That City Council awards a construction contract to Teichert Construction of Stockton, California, for the reconstruction of General Aviation Tie Down Apron, CIP 77037, AIP NO. 3-06-0259-17-2016, in the amount of \$2,495,460, authorizes a contingency amount of \$374,190 to be executed by the City Manager if needed, approves Task Order No. 5 to the Master Professional Services Agreement with Reinard W. Brandley, Airport Consulting Services, for a not to exceed amount of \$348,000, authorizes an appropriation of \$374,000 from General Project Fund 301, and authorizes the Mayor to execute the task order and the construction contract.

The foregoing Resolution 2016-_____ was adopted by the City Council of the City of Tracy on the 6th day of September, 2016, by the following votes:

AYES: CITY COUNCIL MEMBERS:

NOES: CITY COUNCIL MEMBERS:

ABSENT: CITY COUNCIL MEMBERS:

ABSTAIN: CITY COUNCIL MEMBERS:

MAYOR

ATTEST:

CITY CLERK

AGENDA ITEM 3

REQUEST

DISCUSSION AND DIRECTION REGARDING BOARDED BUILDINGS, WEED ABATEMENT PROCESS, AND COMMUNITY CONCERNS REGARDING VISUAL BLIGHT, AND PROPERTY MAINTENANCE STANDARDS

EXECUTIVE SUMMARY

This agenda item is in response to Council's request for information regarding the City's process in addressing open, unsecured buildings and City codes related to proper securing of these unsecured buildings. This report also provides Council with existing enforcement authority and existing processes for addressing nuisance complaints, such as weeds, garbage and debris, as well as complaints reported but not identified as nuisances in the Tracy Municipal Code.

DISCUSSION

Vacant Buildings / Boarded Buildings in the City of Tracy

Tracy Municipal Code Section 9.60, Boarding of Buildings with Unsecured Openings, addresses vacant buildings with unsecured windows, doors, and/or other openings, which facilitate unsolicited entries. This ordinance also defines what constitutes an unsecure structure, and building permit requirements for securing such a structure.

Vacant, abandoned buildings alone do not constitute a violation; however, these buildings do become problematic if they fail to meet the provisions of the Tracy Municipal Code. Once an unsecured building is boarded and meets the provisions of the Tracy Municipal Code, there are no time limits on how long a building can remain boarded. Currently, there are 49 boarded buildings in the City of Tracy; however, staff believes this number may be higher due to property owners boarding without benefit of the required building permit.

Between February 21, 2012 and March 19, 2013, staff held discussions with Council regarding vacant buildings in the City of Tracy. Code Enforcement staff presented Council with a discussion item regarding the effects of long-term vacant, boarded properties in the City of Tracy and the concepts of:

- Amend the Tracy Municipal Code's (TMC) Boarded Buildings Ordinance to control the length of time vacant boarded buildings in an effort to eliminate decade-long problems of boarded buildings and associated blight.
- Establish a vacant building registry requiring property owners to register vacant buildings with the City. This plan would be fee-based, requiring property owners to submit a maintenance plan outlining security and maintenance schedules to ensure vacant buildings are secured and maintained in accordance with applicable state and local codes.

Time Limits for How Long Boarded Buildings May Remain Boarded

Section 9.60 of the Tracy Municipal Code establishes the criteria for when a vacant building

requires boarding up as well as the permit requirements and standards for securing an open building. The ordinance does not identify the length of time a building can remain boarded. Currently, approximately 49-boarded buildings are in the City of Tracy; however, staff believes this number may be higher due to property owners boarding their buildings without benefit of the required building permit. Boarded buildings require significant oversight by code enforcement personnel as well as police and fire services.

If Council desires that staff bring back an ordinance shortening the time that the buildings can be boarded, some possible alternatives to boarding after expiration of the time period could be that the property owners would be required to replace the boarded windows with recyclable/recycled polycarbonate materials, a product that protects vacant buildings from intrusion, as well as providing the appearance of common glass windows. The downside of such an approach is that the building may become less secure from unauthorized entry which may cause some of the problems listed below.

Typical Problems with Long-term Vacant Buildings

Unlike short-term vacant properties, such as those for rent or for sale, long-term vacant buildings become problematic when a property owner fails to perform routine building maintenance and general oversight of the property. Broken windows, unsecured doors, overgrown weeds, accumulation of garbage and junk, and illegal activities are common characteristics of long-term vacant buildings. Other problems, in some cases, include rodent and vermin infestation, trespassing, illegal dumping, and fire hazards (due to the use of open flame for lighting, cooking and smoking). In some cases, these conditions develop into what is known as an "attractive nuisance," where illicit activity is attracted to the sites. Boarded buildings are also a safety concern for first responders, because they do not have a clear vision into the building prior to entry.

Since the latter part of 2012, staff has repositioned its priorities and has proactively inspected all boarded buildings in Tracy. Following these inspections, staff discovered that, of the 49 boarded buildings in the City, 3 are in a dilapidated state and structurally unsound and therefore qualify for abatement under the Abatement of Dangerous Buildings Code. In addition to these proactive inspections, staff has substantially accelerated its enforcement efforts to address the life safety problems associated with their condition.

Enforcement Measures with Voluntary Compliance as the Goal and When Voluntary Compliance Fails

The City of Tracy has several enforcement mechanisms in place to address blighted properties. These tools include the Tracy Municipal Code, California Buildings and Residential Codes, Uniform Code for the Abatement of Dangerous Buildings, and the Uniform Housing Code. Even with use of these enforcement tools, sometimes the goal of voluntary compliance is not met. When this occurs, violations that may exist on these properties may be addressed by use of the following tools:

- Administrative Citations
- Criminal Penalties
- A combination of both administrative and criminal penalties
- City-initiated abatement proceedings
- City-initiated Receivership

The City Council adopted Resolution 2008-226, attached, authorizing the receivership tool for ensuring seriously troubled properties are repaired or rehabilitated. If a property is not properly maintained, the City has the authority to petition the courts to appoint a receiver to take control of the property. If the City is successful in having the court appoint a receiver, this third party may take control of the property. The receiver can take any step the court authorizes to repair or rehabilitate the property, including financing the work with cash loans from a bank or from the City. If the legal owner of record does not reimburse the receiver's loan and interest, the court may order that the amount owing becomes a lien on the property, which the Court may order be paid back before all other encumbrances on the property, with the exception of taxes. Receivership is used as a last resort when traditional code enforcement is not effective and the dangers associated with the structure are imminent. Receivership is not available to address aesthetic issue and may only be used when significant health and safety concerns are present. The City would have to front the costs of any receivership action filed in San Joaquin County Superior Court and would have to seek court approval to have any of those costs returned to the City.

California Health and Safety Code sections 17980.6 and 17980.7 set forth criteria as to whether a property qualifies for the receivership option. Copies of these code sections are attached to this staff report.

Properties eligible for receivership include properties that show evidence of all the following:

- The building is residential;
- The building is deemed unsafe or dangerous;
- The building is an attractive nuisance (e.g. drug or gang house, transients people are squatting in the building and engaging in unsafe practices, minors are using the building and engaging in unsafe practices, etc.).

To date, Tracy has yet to use this tool in its compliance efforts.

Weed Abatement

The City's Weed Abatement Program is administered by the Tracy Fire Department pursuant to Section 4.12.260 of the Tracy Municipal Code. Code Enforcement staff are also granted enforcement authority for weeds and other nuisances outlined in Section 1.32.030, of the Tracy Municipal Code, attached. Each of these code sections differ in terms of compliance timeframes but both allow for abatement if voluntary compliance is not achieved.

Code Enforcement staff will investigate complaints of weeds when such is part of a larger code enforcement case. For instance, a reported case of garbage, illegal occupancy and weeds at one location will be handled by code enforcement as one complete case. This approach reduces the need to involve Fire personnel to investigate, thereby streamlining the process and eliminating duplicate efforts.

In the process of enforcement, Code Enforcement staff uses this opportunity to inform and educate the public regarding code requirements and civic responsibility of weed abatement. Complaints that involve strictly weed abatement violations are referred to the Fire Department.

When commencing a code enforcement case, including those related to weed abatement, property owners are afforded procedural due process, beginning with the issuance of a

violation notice. The violation notice provides the owner with the violation type, related code section, and deadline to abate. After the abatement deadline noted on the violation notice, a second inspection is performed. If the violation continues to exist after the abatement deadline date, the City continues the enforcement process with issuance of an Order to Abate or Show Cause and a revised compliance deadline, along with opportunity to appeal the order. If non-compliance continues after the deadline date outlined on the Notice and Order and the action was not appealed, the City can move forward with administrative and/or judicial penalties, per Chapter 1.28 of the Tracy Municipal Code, which are cumulative. The enforcement process outlined in Chapter 4.12, used by the Fire Department process differs from the enforcement authority for nuisances followed by Code Enforcement, provided in Section 1.32.010, Nuisance abatement-Scope and authority to adopt procedures, as follows:

Chapter 4.12, Tracy Municipal Code (Fire)

Chapter 1.32, Tracy Municipal Code (Code Enforcement)

Notice to remove and abate nuisances mailed to property owner – 20 days for compliance.

Violation Notice mailed to property owner - 13 days for compliance.

Failure to comply – City Council Public Hearing to Consider Weed Abatement Properties And Hear Community Objections.

Failure to comply results in the issuance of an Order to Abate or Show Cause with an additional 13 days granted for compliance.

After Council approval of weed abatement Properties, City hires a contractor to abate nuisances.

Failure to comply – City issuance of administrative and/or judicial penalties (citations) with appeal rights. If not appealed and the violations continue, the City may continue administering penalties for each day the nuisance continues until the violation is abated.

Finance Department bills property owner or, if not paid, a lien is filed with the San Joaquin County Tax Collector for full cost recovery.

City initiated abatement, if property owner fails to voluntarily comply.

Concerns Regarding Visual Blight and Property Maintenance Standards

The City is currently experiencing a significant spike in the number of community concerns and complaints regarding property maintenance issues – none of which violate state or local laws. The most common issues reported to Code Enforcement include the following:

- Vehicle parking on lawns and in back yards.
- Paving of entire front yards.
- Yard maintenance standards.
- Accumulation of newspapers, circulars, flyers, notices in driveways.
- Outside Storage and Temporary Carports (PODS).
- Abandoned, neglected newspaper racks.
- Neglected building maintenance, unmaintained landscaping, including tall, green, overgrown or dead vegetation, including lawns and landscaping.

Although these conditions do not threaten public health, or safety, they can lead to visual blight, deteriorated neighborhood aesthetics, and reduced property values. Because these complaints do not violate City or State codes, they are not entered into City case management systems and are not formally tracked, so the total number of complaints and inquiries is not quantified. These types of enforcement requests could only be enforced

under an adopted code that sets forth property maintenance standards. Tracy's current codes address limited property maintenance-related issues; however none address visual blight or aesthetics. Based on these community concerns, staff presents the following suggested property maintenance standards for Council's consideration:

- Vehicle parking on lawns and in back yards – This provision would restrict parking of any motor vehicle (including automobiles, trucks, boats, campers, recreational vehicles and motorcycles) on any portion of a front yard or corner lot side yard except on an area that is paved. This or similar language would eliminate dust, mud and debris from being strewn onto city streets as well as eliminating ground contamination due leaking motor vehicle fluid.
- Paving of entire front yards – A Front Setback Paving Ordinance would address the community's concerns about the damaging effect on neighborhood character of paving and parking in front yards. Front yards paved as private parking lots are generally considered inconsistent with good neighborhood, quality yard maintenance standards.
- Outside Storage and Temporary Carports (PODS) – Restrict cargo/shipping containers and other metal storage containers from locating in any residential zone OR require a temporary use permit to allow such a container in a residential zone with a maximum time period of 72 hours.
- Abandoned, neglected newspaper racks and shopping carts – Amend the code to require shopping centers to contract with a shopping cart retrieval services, or to have an approved plan for cart removal prevention. Restricting the placement of newspaper racks on any street, sidewalk or public place within the City and requiring a permit from the City. Such a permit would ensure these racks would not interfere with pedestrians, vehicular traffic, or cause congestion upon any street, sidewalk or place within the City. This permit could further provide maintenance standards and abandonment provisions.
- Neglected building maintenance, unmaintained landscaping, including tall, green, overgrown or dead vegetation, including lawns and landscaping – Add a provision which states that any unreasonable or unlawful condition or use of premises or of a building's exterior which, by reason of its appearance as viewed at ground level from the public right-of-way or from neighboring premises, is detrimental to the surrounding area and the property of others, or is detrimental to the health, safety, and welfare of individuals residing within the community. This provision can also include blighted conditions, which contribute to rat and vermin infestation.

Code violations are generally prioritized to address life safety, health and welfare matters as a priority. Aesthetic issues are important as well, but generally fall into a lower category for prioritization. Amendments to the code would provide for a higher level of enforcement and provide a vital tool for the City to have the ability to address aesthetic-related matters, although life and health safety will always be a priority. Examples of property maintenance standards from the cities of Livermore, Modesto, Manteca and Stockton each contain similar language as what is suggested above, and are attached to this report for Council's review.

STRATEGIC PLAN

The information provided in this report coincides with the City of Tracy's Public Safety Strategy Plan, No. 2, to promote public health, safety, and welfare throughout the community. This effort includes reducing the number of blighted property conditions in the City of Tracy.

FISCAL IMPACT

This report is provided to Council in response to its request; therefore, no fiscal impact is associated with this presentation.

RECOMMENDATION

This information is provided for Council's review. Staff is seeking Council direction in regards to enforcement efforts, vacant building enforcement, and enforcement efforts related to nuisance abatement.

Prepared by: Ana Contreras, Community Preservation Manager

Reviewed by: Bill Dean, Assistant Director, Development Services Department
Andrew Malik, Development Services Director

Approved by: Troy Brown, City Manager

ATTACHMENTS

Attachment A- Section 9.60 of the Tracy Municipal Code

Attachment B- Resolution 2008-226, Authorizing the City Attorney's Office to File Receivership Actions to Abate Vacant Properties That Meet Criteria Set Forth in California Health and Safety Code Sections 17980.6 and 17980.7

Attachment C- Tracy Municipal Code Chapter 1.32, Public Nuisance Abatement

Attachment D- Tracy Municipal Code Section 5.20.400, Public Nuisances

Attachment E- Tracy Municipal Code Section 4.12.260, Weeds, Rubbish, Refuse and Flammable Materials a Public Nuisance

Attachment F- Property Maintenance Standards from the cities of Livermore, Modesto, Manteca and Stockton

Attachment G- Health and Safety Code Section 17980.6 – 17990.7

Chapter 9.60 - BOARDING OF BUILDINGS WITH UNSECURED OPENINGS

Sections:

9.60.010 - Findings and intent.

- (a) The Council finds and declares that vacant buildings which have unsecured windows and doors or other openings allowing entry become an attractive nuisance to children, a harborage for rodents, an invitation to vagrants and criminals as a temporary abode and as a place to engage in illegal conduct, frequently including illegal drug-related activity, and an increased fire hazard; that such buildings contribute to the growth of blight within the City, depress market values of surrounding properties, thereby reducing tax revenues, necessitate additional governmental services, significantly interfere with the use and enjoyment of neighboring properties, create an unsafe condition affecting the public and constitute an unreasonable use of property and a public nuisance.
- (b) Protection of the environment, and the public health, safety and welfare requires the establishment and enforcement of the means by which such nuisance conditions may be prevented.

(Ord. 1090 § 1 (part), 2006)

9.60.020 - Application.

- (a) The provisions of this chapter shall apply generally to all property throughout the City in which any of the conditions, hereinafter specified, are found to exist; provided, however, that the provisions of this chapter shall not apply to buildings or structures in which a person resides or otherwise occupies in such a manner that unauthorized entries to the structure can be promptly observed and reported to the City of Tracy Police Department.
- (b) The provisions of this chapter are to be supplementary and complementary to all of the provisions of the Tracy Municipal Code, State law, and any law cognizable at common law or in equity, and nothing in this chapter shall be read, interpreted or construed in any manner so as to limit any existing right or power of the City to abate any and all nuisances. Any public nuisance set forth in this chapter may be abated by the City under the procedures set forth in chapter 1.32 of this Code.
- (c) Property owners with buildings located within the City that are boarded as of the date of adoption of this chapter will be given a six-month grace period to comply with the provisions of this chapter. The grace period will be considered the same as if an initial boarding permit

was granted by the Building Official. At the end of the six-month period, any such boarded building will be considered a public nuisance unless the property owner has applied for and received a renewal boarding permit. Property owners with boarded buildings which fall under the provisions of this subsection will be notified by mail of the conditions and requirements of this chapter.

- (d) Notwithstanding any provision of this chapter to the contrary, the Building Official shall have the discretion to grant a property owner a grace period of five (5) working days to apply for a permit in emergency situations such as natural disasters or other unforeseen circumstances.
- (e) The applicant shall specify, on the application for the permit, the number and location of each window, door, or other opening to be boarded. Only doors, windows or other openings that are broken or missing, so as to allow access to the interior, must be temporarily boarded and secured. However, should the applicant decide to use boarding for an opening that is not yet broken or missing, such boarding must be shown on the application for the permit and installed in compliance with the standards set forth in section 9.60.040 of this chapter.
- (f) The applicant shall submit a new application, and pay another permit fee, for any additional windows, doors, or other openings to be boarded after the final inspection on the original permit occurs.

(Ord. 1090 § 1 (part), 2006)

9.60.030 - Unsecured building a public nuisance—Boarding permit required.

- (a) It shall be unlawful and a public nuisance for any owner of property in this City to allow to exist on such property any building or structure whose doors, windows or other openings are broken or missing, so as to allow access to the interior; or which is not temporarily boarded and secured in compliance with section 9.60.040 of this chapter within the time set forth by the Building Official in the permit; or which is left in such temporary boarded-up condition after the expiration of any initial or renewed boarding permit.
- (b) It shall be unlawful and a public nuisance for any person, firm, association or corporation to erect, install, place or maintain boards over the doors, windows or other openings of any building or structure or otherwise secure such openings by a means other than the conventional method used in the original construction and design of the building or structure without a valid, current and unexpired boarding permit therefor from the Building Official. No boarding permit shall be issued for a period of greater than six (6) months. Upon an application and a showing of good cause, the Building Official may issue renewals of such permits.

- (c) The fees for the issuance or renewal of a boarding permit shall be set by Council resolution and may be amended from time to time to adjust for the personnel costs upon which the fee is based rising or falling. Upon payment of the required fee, the Building Official shall issue or renew a boarding permit upon the submission of a written application by the property owner or his/her authorized representative or contractor and upon the confirmation by a city building inspector that the boarding or other method of securing the building will or has been done in compliance with this chapter.
- (d) Any person violating or causing the violation of this chapter shall be guilty of an infraction as provided for in section 1.04.030 of this Code, in addition to any other remedies provided for in this Code, including those set forth in section 1.04.010 of this Code, or under other applicable law.

(Ord. 1090 § 1 (part), 2006)

9.60.040 - Standards for securing building.

- (a) The temporary boarding of the doors, windows or other openings of any building or structure or any means of securing such openings, other than by the conventional method used in the original construction and design of the building or structure, shall comply with the following minimum standards:
 - (1) *Windows.* Windows and similar openings shall be boarded with exterior grade plywood of minimum thickness three-fourths ($\frac{3}{4}$ ") (to be consistent with door security standards) inch or its equivalent. Vent holes may be required, as deemed necessary by the Building Official. The plywood shall be secured in place, as a minimum standard, by a set of two (2) Grade No. 2 Douglas Fir two (2) by four (4) or four (4) by four (4) cross members set at two (2') foot on center vertically, secured to the plywood by three-eighths ($\frac{3}{8}$ ") inch plated carriage bolts with large washers at each end and with the cross member turned so that the carriage bolt goes through the larger dimension. Bolts used to secure the cross member shall be threaded to the correct length. A minimum of two (2) sets of such cross members shall be used on each window. Each cross member shall be a continuous piece of lumber, and each must extend at least one foot past the window opening in each direction. Bolts and nuts used to secure the cross members to the plywood must be tightened enough to slightly deflect the wood. Bolt heads must fit tightly against the wood and not give a purchase for pliers or pry bars. The nuts are to be located on the interior side of the structure.

(2)

Exterior doors. The main exterior (required) residential exit door(s) and all commercial exterior exit doors shall be boarded with exterior grade plywood of a minimum thickness of three-fourths ($\frac{3}{4}$) inch or its equivalent, fitted to the entry door jamb with maximum one-eighth inch clearance each edge from the door jambs and threshold. The existing door should be removed. The plywood shall, as a minimum standard, be attached to three (3) Grade No. 2 Douglas Fir horizontal two (2) by four (4) wooden crossbars with two (2) each three-eighths ($\frac{3}{8}$) inch carriage bolts and matching hardware with nuts located on the interior side of the structure. The plywood shall be attached to the door entry with three (3) case hardened strap hinges located at quarter points and the plywood shall be secured by two (2) case hardened steel hasps located at third points on the strike side of the door and minimum two (2) inch case hardened padlock. Fasteners used to attach the door hasp and hinges shall be the nonreversible type that do not give a purchase for pliers or pry bars. All other unsecured residential doors providing exterior access shall be removed and be secured in the same fashion as windows noted above.

- (3) *Painting of boarded openings.* All boarded openings shall be painted with a minimum of one coat of exterior paint which is of a dark gray or similar earth color or a color compatible with the exterior color of the building or structure.
 - (4) *Garages.* Overhead garage doors shall be secured. Nailing the door to the jamb or nailing pieces of two (2) by four (4) to the jamb is not acceptable. The overhead door shall be padlocked with the existing garage lock or a newly installed one. In an attached garage it is acceptable, as a minimum standard, to insert a piece of Grade No. 2 Douglas Fir two (2) by four (4) lumber through the overhead mechanism on the inside of the door. The two (2) by four (4) shall be long enough to go through both sides of the mechanism or shall be nailed in place on the inside so that it cannot fall out. Secondary garage entrances to the outside of the garage shall be secured with strong-backed plywood as described for windows above. Access doors between the house and attached garage need not be boarded. Detached garages shall be secured as a separate structure. Access shall be provided by padlock as described for doors above.
- (b) Alternative methods of securing a building. Notwithstanding subsection (a) of this section, the Building Official may approve alternative methods of securing doors, windows or other openings of any building or structure. In making the determination to approve any alternative method, the Building Official shall consider the aesthetic and other impacts of such method on the immediate neighborhood and the extent to which such method provides adequate and long-term security against the unauthorized entry to the property.

- (c) During all times that persons are inside a boarded structure, all exits and entries under title 9 of this Code shall be made accessible provided that the structure must be again secured when such persons are no longer inside.

(Ord. 1090 § 1 (part), 2006)

RESOLUTION 2008-226

AUTHORIZING A \$1,000 DAILY FINE FOR VIOLATIONS OF CALIFORNIA CIVIL CODE SECTION 2929.3; AUTHORIZING USE OF THE PROCEDURES SET FORTH IN TRACY MUNICIPAL CODE CHAPTER 1.32 TITLED PUBLIC NUISANCE ABATEMENT TO ENFORCE CIVIL CODE SECTION 2929.3; AND AUTHORIZING THE CITY ATTORNEY'S OFFICE TO FILE RECEIVERSHIP ACTIONS TO ABATE VACANT PROPERTIES THAT MEET CRITERIA SET FORTH IN CALIFORNIA HEALTH AND SAFETY CODE SECTIONS 17980.6 AND 17980.7

WHEREAS, A significant number of foreclosure actions have recently occurred, and continue to occur nationwide, and

WHEREAS, California Senate Bill 1137 (SB 1137) recently passed as an urgency measure that provides immediate relief to homeowners and tenants whose properties are in foreclosure, and

WHEREAS, SB 1137 authorizes local agencies to impose fines on property owners if they fail to adequately maintain the foreclosed properties, and

WHEREAS, Including the terms of SB 1137 into the City's existing enforcement efforts will provide staff with an additional tool for addressing the community impacts caused by these vacant properties, and

WHEREAS, Receivership is another powerful tool in the abatement of public nuisances, and

WHEREAS, A receiver's primary goal is to merely abate those nuisance conditions caused by derelict, abandoned and vacant properties, and

WHEREAS, The receivership process also allows the receiver to obtain priority liens on the property, through a court order, to pay for the receiver's services and the costs of abatement, and


WHEREAS, This action will not result in any immediate fiscal impact. The City may recognize some revenues through fines allowed under SB 1137 and may incur staff time costs regarding implementation of the SB 1137 provisions and receivership actions;

NOW, THEREFORE, BE IT RESOLVED, that City Council authorizes a fine in the amount of \$1,000 per day for failing to maintain a property purchased or otherwise obtained through the foreclosure process; authorizes the use of the City's order to abate or show cause process for SB 1137 enforcement provided the notice periods and deadlines of SB 1137 are used; and authorizes the City Attorney's Office to file receivership actions for the purposes of abating vacant properties that meet the criteria set forth in California Health and Safety Code sections 17980.6 and 17980.7.

Resolution 2008-226
October 21, 2008
Page 2

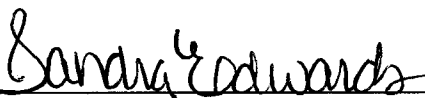
The foregoing Resolution 2008-226 of the City Council was adopted by the City Council on the 21st day of October 2008, by the following vote:

AYES:	COUNCIL MEMBERS:	ABERCROMBIE, SUNDBERG, TOLBERT, TUCKER
NOES:	COUNCIL MEMBERS:	NONE
ABSENT:	COUNCIL MEMBERS:	IVES
ABSTAIN:	COUNCIL MEMBERS:	NONE



MAYOR PRO TEM

ATTEST:



CITY CLERK

Chapter 1.32 - PUBLIC NUISANCE ABATEMENT

Sections:

1.32.010 - Nuisance abatement—Scope and authority to adopt procedures.

- (a) The City may direct a property owner to remove a nuisance on the property, and if the owner fails to do so, to remove the nuisance at the owner's expense.
- (b) The procedure set forth in this chapter for the abatement of a nuisance and the making of the cost of abatement a special assessment against that parcel is adopted under Government Code section 38773.5. The procedure set forth in this chapter for abatement applies to any nuisance which the City declares is a nuisance either under this Code or by another ordinance which the City may adopt.
- (c) The procedure set forth in this chapter is not exclusive and is in addition to the procedure for abatement which is conferred upon the City by Civil Code section 3494, Code of Civil Procedure section 731, Government Code section 38773, or other lawful authority.

(Ord. 1040 § 3 Exh. C (part), 2002)

1.32.020 - Definitions.

In this chapter, the following definitions apply.

"Costs" or "expenses" to abate the nuisance shall include the actual cost of abatement plus all administrative expenses, including direct and indirect personnel costs; costs incurred in documenting the nuisance; the actual expenses and costs of the City in the preparation and dissemination of notices, specifications, and contracts and in inspecting the work; the costs of printing and mailing the required notices, and the costs of imposing a lien, if a lien becomes necessary.

"Enforcement officer" shall mean any City employee or agent of the City with the authority to enforce a provision of this Code.

"Hearing officer" shall mean a person designated by the City Manager to conduct an administrative hearing. The designated hearing officer shall be an impartial person, such as (1) a City employee from a department which has no involvement in Code enforcement, or (2)

someone selected randomly from a panel of law students and/or local attorneys willing to volunteer as a hearing officer, or (3) someone hired from an organization which provides hearing officers, in which case the cost will be shared equally by the City and the person cited.

"Owner" shall mean the person owning property, as shown on the last equalized assessment roll or the supplemental roll (whichever is more current), or as known to the enforcement officer; the lessee, tenant or other person having control or possession of the property; and the mortgagee under a recorded deed of trust.

(Ord. 1040 § 3 Exh. C (part), 2002)

1.32.030 - Initial determination of nuisance—Notice to owner.

- (a) Determination. Whenever the enforcement officer determines that property within the City is being maintained as a nuisance, the enforcement officer shall give written notice to the owner. The notice is referred to as a "Notice to Abate or Show Cause."
- (b) Contents of notice. The notice to abate or show cause shall include the following:
 - (1) A Statement directing the owner to abate the nuisance within a specified period of time or to request an administrative hearing pursuant to section 1.32.040 to show cause why the condition should not be abated;
 - (2) The length of time permitted for voluntary abatement, which shall be at least ten (10) days;
 - (3) The length of time within which the owner must file a written request for a show cause hearing, which shall be at least seven (7) days;
 - (4) The street address, legal description or other description sufficient to identify the property affected;
 - (5) A description of the conditions which constitute the nuisance and the Code section(s) being violated;
 - (6) A Statement of what must be done to eliminate the nuisance; and
 - (7) A Statement that if the owner does not abate the nuisance or request a hearing in a timely manner, the City will enter the property and abate the nuisance, and that the cost of abatement will become a charge against the owner and a lien against the property.
- (c) Manner of giving notice. The notice to abate or show cause shall be given to the owner in person or by regular, first class mail, postage prepaid, to the owner's address as it appears on the last equalized assessment roll or as known to the enforcement officer. Notice is

deemed complete at the time notice is personally delivered or deposited in the mail, although any time limits for compliance in this section shall be extended by three working days for mailed notice. In addition to mailed notice, the enforcement officer shall post conspicuously at least one copy of the notice on the property where the nuisance exists. The failure of a person to receive notice shall not affect the validity of proceedings under this chapter.

- (d) Time periods for compliance. The notice to abate or show cause shall specify the time periods within which the owner must comply. The time for voluntary abatement shall be a reasonable time under the circumstances, and shall be at least ten (10) calendar days. The time for filing a written request for an administrative hearing shall be at least seven (7) calendar days. When preparing the notice, the enforcement officer shall add three (3) days to the minimum time periods if the notice will be given by mail.

(Ord. 1040 § 3 Exh. C (part), 2002)

1.32.040 - Administrative show cause hearing.

- (a) A written request for hearing must be received by the enforcement officer within the time specified in the notice to abate or show cause.
- (b) If a hearing is timely requested, the hearing officer shall set a time and date for hearing and notify the person requesting the hearing of the time, date, and place.
- (c) At the time of the hearing, the hearing officer shall hear and consider all relevant evidence from the owner, enforcement officer and any other interested person. The hearing is an opportunity for the person requesting the hearing to present his or her arguments against the requirement to abate the nuisance. The hearing may be continued from time to time.
- (d) At or after the hearing, the hearing officer shall render a decision either upholding, modifying or denying the requirement of abatement. The decision of the hearing officer shall be in writing, shall include the reasons for the decision, and shall be served by mail to the person requesting the hearing. If the requirement is upheld, the decision shall contain an order to abate and a deadline for abatement. The decision of the hearing officer is final.

(Ord. 1040 § 3 Exh. C (part), 2002)

1.32.050 - Abatement by City.

If the nuisance is not completely abated within the time prescribed by the notice to abate or show cause, or by date set forth in the hearing officer's notice of decision if a hearing is held, the enforcement officer may proceed to abate the nuisance by City personnel or private contractor.

The City personnel and private contractor are expressly authorized to enter upon the property for this purpose. The enforcement officer shall obtain a warrant from the court to enter the property when required to do so by law.

(Ord. 1040 § 3 Exh. C (part), 2002)

1.32.060 - Record of expenses—Notice of expenses.

The enforcement officer shall keep an account of the costs and expenses, and shall prepare a report to the City Council.

At least ten (10) days before the Council meeting at which the cost report is considered, the enforcement officer shall mail the owner a copy, together with a notice of the time and place of the Council meeting at which the report will be considered, and advising the owner that he or she may appear and protest any cost item contained in the report. The report and notice shall also be posted conspicuously on the property. Failure to receive the notice shall not invalidate the proceedings.

(Ord. 1040 § 3 Exh. C (part), 2002)

1.32.070 - Council confirmation hearing.

At the time fixed for hearing on the report of expenses, the Council shall consider the report and protests or objections raised by the person liable to be assessed for the cost of abatement. The Council may revise, correct or modify the report as it considers just. Thereafter, the Council shall by resolution confirm the report and approve the nuisance abatement lien, making the cost of abatement a lien against the property if not paid.

The hearing is limited to the amount of costs and shall not include the validity of the abatement. (See section 1.32.040(d).)

(Ord. 1040 § 3 Exh. C (part), 2002)

1.32.080 - Payment by owner—Nuisance abatement lien.

- (a) The nuisance abatement lien shall specify the amount of the lien, the name and address of the City (on whose behalf the lien is imposed), the date of the abatement order, the street address, legal description and assessor's parcel number of the parcel on which the lien is imposed, and the name and address of the recorded owner of the parcel.

- (b) The City Clerk shall serve a copy of the resolution and the nuisance abatement lien on the owner in accordance with Government Code section 38773.1(b) and Code of Civil Procedure section 415.10 and following.
- (c) If all or any portion of the costs incurred by the City in abating the nuisance remain unpaid after thirty (30) days, the portion that remains unpaid shall constitute a lien on the real property which was the subject of the notice to abate and may be collected as a nuisance abatement lien. The City Clerk shall record a certified copy of the nuisance abatement lien in the San Joaquin County Recorder's Office. From the date of recording, the lien has the force, effect and priority of a judgment lien.

Alternatively, the City may make the cost of abatement a special assessment against the property. The notice of the special assessment shall be recorded. All laws and ordinances applicable to the levy, collection and enforcement of City taxes are hereby made applicable to the special assessment. The assessment may be collected at the same time and in the same manner as ordinary municipal taxes are collected, and shall be subject to the same penalties and the same procedure and sale in case of delinquency as provided for ordinary municipal taxes. (Government Code section 38773.5.)

- (d) If the lien (or assessment) is discharged, released or satisfied, either through payment or foreclosure, the City shall record a notice of that fact in the recorder's office. The notice shall include all of the information set forth in subsection (a) above.
- (e) The validity of an assessment or lien made under this chapter shall not be contested in any action or proceeding unless it is begun within thirty (30) days after the assessment is placed on the assessment roll or the lien is recorded. Such contest shall involve only the amount of assessment or lien and shall not involve any question of the validity of the abatement.

(Ord. 1040 § 3 Exh. C (part), 2002)

1.32.090 - Cost of abatement a personal obligation.

Instead of making the cost of abating a nuisance a lien or assessment upon the real property under section 1.32.080, the City may make the cost the personal obligation of the property owner, tenant, or other person creating, causing, committing, or maintaining the nuisance. In such a case, all of the procedures of this chapter apply except those specially related to assessment of the property.

(Ord. 1040 § 3 Exh. C (part), 2002)

1.32.100 - Emergency procedure.

When the conditions which constitute the nuisance pose an immediate threat to the public peace, health, or safety, the City Council may order the nuisance abated immediately or take immediate steps itself to abate the nuisance after adoption of a resolution declaring the facts which constitute the emergency. The resolution to be effective shall be adopted by a four-fifths vote of the Council. This section shall not limit the City's police power in any manner and is not the exclusive means by which the City may immediately abate a nuisance that poses such an immediate threat.

(Ord. 1040 § 3 Exh. C (part), 2002)

1.32.110 - Alternative means of enforcement.

Nothing in this chapter prevents the City Council from authorizing the commencement of any other available civil or criminal proceeding to abate a public nuisance under applicable provisions of State law.

(Ord. 1040 § 3 Exh. C (part), 2002)

5.20.400 - Public nuisances.

The City Council declares that any breeding place of flies or rodents in the City, when that breeding place exists by reason of any adverse condition or unsanitary use made of land, organic plant, waste, refuse, or any other substances whatsoever, or the deposit or storage thereon which causes the breeding place, it is a public nuisance and dangerous to the public health and safety of the residents of the City.

(Ord. 1058 § 1 (part), 2003)

4.12.260 - Weeds, rubbish, refuse, and flammable materials public nuisances.

It is hereby found and expressly declared that the existence of weeds, rubbish, refuse, and flammable material in, upon, or in front of any vacant lot or other property on any street, parkway, sidewalk, or alley in the City is a public nuisance and dangerous to the public health and safety of the inhabitants of the City.

(Prior code § 4-3.702)

Chapter 15.04 PROPERTY MAINTENANCE CODE

Sections:

- 15.04.010 Title for citation.
- 15.04.020 Documents adopted by reference.
- 15.04.030 Amendments to International Property Maintenance Code.
- 15.04.040 IPMC Chapter 1 amended.
- 15.04.050 IPMC Chapter 2 amended.
- 15.04.060 IPMC Chapter 3 amended.
- 15.04.070 IPMC Chapter 4 amended.
- 15.04.080 IPMC Chapter 5 amended.
- 15.04.090 IPMC Chapter 6 amended.

15.04.010 Title for citation.

This chapter shall be known as the "property maintenance code," may be cited as such and will be referred to in this chapter as "this code." (Ord. 1985 § 3, 2013)

15.04.020 Documents adopted by reference.

The International Property Maintenance Code, published by the International Code Council, as may be amended from time to time, is hereby adopted. Where this chapter is inconsistent with state law then in that instance the provisions of the state law shall prevail. (Ord. 2016 § 1(M), 2015; Ord. 1985 § 3, 2013)

15.04.030 Amendments to International Property Maintenance Code.

The International Property Maintenance Code (IPMC) adopted in this chapter by reference is amended by the following additions, deletions and amendments thereto as set forth in this chapter. (Ord. 1985 § 3, 2013)

15.04.040 IPMC Chapter 1 amended.

Chapter 1 is amended as follows:

Sections 102.3, 102.7, 103, 107.6, 108.4, 108.5, 109.4, 109.5, 109.6, 110 and 111 are deleted.

Each reference to the International Fuel Gas and International Plumbing Codes is replaced by the California Plumbing Code. Each reference to the International Mechanical Code is replaced by the California Mechanical Code. Each reference to the International Zoning Code is replaced by the Livermore Development Code. (Ord. 1985 § 3, 2013)

15.04.050 IPMC Chapter 2 amended.

Chapter 2 is amended as follows:

Each reference to the International Fuel Gas and International Plumbing Codes is replaced by the California Plumbing Code. Each reference to the International Mechanical Code is replaced by the

California Mechanical Code. Each reference to the International Zoning Code is replaced by the Livermore Development Code. (Ord. 1985 § 3, 2013)

15.04.060 IPMC Chapter 3 amended.

Chapter 3 is amended as follows:

Sections 302.4, 302.8, 304.14, 304.18, and 309 are deleted.

Section 303.2 is amended to read:

Every person in possession of land within the city, either as owner, purchaser under contract, lessee, tenant or licensee, upon which is situated a private or public swimming pool or spa, shall at all times maintain an enclosure and safety device in accordance with chapter 31B (public swimming pools) of the California Building Code, specifically Section 3109.4.4.

(Ord. 1985 § 3, 2013)

15.04.070 IPMC Chapter 4 amended.

Chapter 4 is amended as follows:

Sections 404.6 and 404.7 are deleted. (Ord. 1985 § 3, 2013)

15.04.080 IPMC Chapter 5 amended.

Chapter 5 is amended as follows:

Each reference to the International Plumbing Code shall be replaced with the California Plumbing Code.

Section 506.3, Grease interceptors, is amended to read:

Grease interceptors shall comply with section 1014 of the California Plumbing Code.

(Ord. 1985 § 3, 2013)

15.04.090 IPMC Chapter 6 amended.

Chapter 6 is amended as follows:

Each reference to the International Mechanical Code is replaced by the California Mechanical Code.

(Ord. 1985 § 3, 2013)

The Livermore Municipal Code is current through Ordinance 2038, passed July 11, 2016.

Disclaimer: The City Clerk's Office has the official version of the Livermore Municipal Code. Users should contact the City Clerk's Office for ordinances passed subsequent to the ordinance cited above.

15.04.090

Stockton Municipal Code, Charter, and Civil Service Rules							
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[Municipal Code Title 8 HEALTH AND SAFETY](#)

[Chapter 8.36 PROPERTY MAINTENANCE](#)

8.36.040 Property maintenance standards and unlawful conditions.

It is unlawful, and a public nuisance, for any responsible person, to maintain or allow to be maintained, permit or cause the property, including adjacent parkways, sidewalks or streets, to be maintained with any of the following conditions which are visible from the street, sidewalk, or public right-of-way:

A. The exterior accumulation of weeds, dirt, litter, rubbish or debris on the property to such an extent that it constitutes visual blight. This title and Title 15 of this code will continue to apply in situations where weeds and rubbish on private property are not necessarily visible to public view.

B. Neglected or inadequately maintained landscaping, trees, hedges, lawns, shrubs, plants or other vegetation, which:

1. Is dead, decayed, diseased, debris laden, weed infested, overgrown, or dying as a result of neglect, physical damage, disease, pest infestation or lack of water;

2. Is overgrown as to be blighted or likely to harbor rats or vermin;

3. Could create a fire hazard or is otherwise dangerous to the public health, safety and welfare;

4. Interferes with or impedes the flow of traffic, whether vehicular or pedestrian, or obstructs visibility on streets, intersections, sidewalks or other public rights-of-way; or

5. Creates a blighted appearance due to lack of water. Provided, however, that the provision as to dead or dying vegetation due to lack of water shall not be enforced during a drought, as determined by the City. For purposes of this section, a lawn area shall be deemed overgrown if 50 percent or more of its area exceeds six (6) inches in height.

C. The parking of vehicles on lawns, vegetation, dirt, or any other surfaces which are not paved and graded so as to eliminate dust or any mud and drained as to dispose of all surface water per the City's standard specifications on file.

D. The removal or failure to maintain in good condition any fencing required as a condition of any permit or development approval or included in the project plans or application, as approved by the City, including, but not limited to, those fences which abut major thoroughfares, sound walls or those fences required by a use permit. In addition, any required fence must be maintained consistent with and/or match the materials used when the fence was originally constructed.

E. Buildings, windows, doors, walls, fences, trash enclosures, parking areas or other structures, which are:

1. Significantly cracked or broken, fallen, decayed, dry-rotted, warped, deteriorated, defective, defaced, in disrepair or missing components, or which either (a) threaten structural integrity, or (b) results in a dilapidated, decaying, disfigured, or partially ruined appearance to such an extent that they contribute to blight or threaten the public health, safety or welfare;

2. Fences which are leaning or listing more than 15 degrees from perpendicular or are in danger of collapse due to the elements, pest infestation, dry rot, lack of maintenance or other damage;

3. Poorly maintained so as to become so defective, blighted, or in such condition of deterioration or disrepair that the same causes depreciation of the values of surrounding property or is materially detrimental to nearby properties and improvements.

F. The existence of indoor plumbing fixtures, (including but not limited to toilets or sinks) appliances or furniture, excluding lawn and patio furniture.

G. Public nuisances and attractive nuisances including but not limited to:

1. Abandoned, neglected, and broken equipment, vehicles, furniture, appliances or machinery;
2. Improperly fenced, unsanitary or otherwise hazardous pools, ponds and excavations.

H. Lumber which has been present on the property for more than 180 days (excluding stacked firewood or lumber for a construction project on the property with a current valid permit), junk, trash or salvage materials (including, but not limited to, auto parts, scrap metals, tires, concrete, bricks, cans, bottles and plastic materials).

I. Broken windows constituting blighted or hazardous conditions or which invite trespassers and malicious mischief.

J. Property otherwise maintained in such a blighted condition, or in such condition of deterioration or disrepair that the same causes appreciable diminution of the property values of surrounding properties or is materially detrimental to proximal properties and improvements.

In addition to any other remedy provided by law, the provisions of this section may be enforced in accordance with any of the procedures set forth in Title 1 of this code. (Prior code § 5-903)

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ORDINANCE NO. 1584

**AN ORDINANCE OF THE CITY COUNCIL
OF THE CITY OF MANTECA, AMENDING
MANTECA MUNICIPAL CODE TITLE 8,
HEALTH AND SAFETY, CHAPTER 8.17, NUISANCES**

The City Council of the City of Manteca does ordain as follows:

Section I: The Manteca Municipal Code, Chapter 8.17, Nuisances, shall be amended to read as follows:

Chapter 8.17 NUISANCES

8.17.010 Purpose

8.17.020 Definitions

8.17.030 Hazardous substances or wastes

8.17.040 Neglected vacant structure

8.17.050 Non storm water related discharges

8.17.060 Non-permitted land uses in violation of the zoning code

8.17.070 Parking lot striping and disabled space markings

8.17.080 Portable recreational and sporting equipment

8.17.090 Property maintenance standards

8.17.100 Swimming pools, ponds, or other bodies of water

8.17.110 Trees and shrubs

8.17.120 Violations

8.17.010 Purpose.

The City of Manteca has an important interest in setting and enforcing certain standards within the community as a whole in order to better promote property values through improved community aesthetics as well as provide for the general welfare and quality of life of its citizens. The purpose of this chapter is to establish minimum standards and procedures for the maintenance of property in the City of Manteca in order to protect the public's health and safety, as well as aesthetic, economic, and quality of life issues for the residents of the City.

8.17.020 Definitions as used in this section

Attractive nuisance - Any condition which may prove detrimental to children whether in a building, on the premises of a building, or on an unoccupied lot.

Code Enforcement Officer - One who engages in the prevention, detection, investigation and enforcement of violations of statutes or ordinances regulating public health, safety, and welfare, public works, business activities and consumer protection, building standards, land-use, or municipal affairs.

Inoperative vehicle – Any abandoned, dismantled, nonfunctional, unlicensed, or wrecked vehicle or parts thereof, or any vehicle incapable of being safely or legally operated upon a highway, roadway, public street, or waterway.

Neglected vacant structure – Any structure which is vacant and is not maintained in accordance with the provisions of this chapter.

Owner – Any person owning property, as shown on the last equalized county tax assessment roll.

Person – Any natural person, firm, association, business, trust, or any other entity which is recognized by law as the subject for rights or duties.

Property – Any real property or improvements thereon.

Responsible Person – Any person who owns, inhabits, rents, uses, controls, or otherwise has the authority to act on behalf of any real property, building, or structure, which is subject to this Code, and further includes any lender or other financial institution in possession of any property by virtue of any judicial or non-judicial action such as probate or foreclosure, regardless of a new deed transfer being recorded or not.

Vacant Structure - a residential or commercial building which has remained unoccupied for a period of more than thirty (30) days. This also includes manufactured housing or mobile homes located in a mobile home park.

A. A structure is not deemed to be vacant for purposes of this chapter if any of the following circumstances exist:

1. Any unit or portion of the structure is lawfully occupied;
2. Construction or alteration is in progress pursuant to a valid, unexpired building permit.

8.17.030 Hazardous substances or wastes.

It shall be unlawful and a public nuisance for any person owning, leasing, occupying or having charge or possession of any premises or property in the City to permit any hazardous substances which because of their quantity, concentration or physical, chemical or infectious characteristics may either cause or substantially contribute to an increase in mortality or serious illness or pose a significant present or potential hazard to human health or the environment if improperly managed, or if hazardous waste to be unlawfully released, discharged, placed or deposited upon any premises or onto any City property.

8.17.040 Neglected vacant structure.

It shall be unlawful and a public nuisance for any person owning, leasing, occupying or having charge or possession of any premises or property in the City to abandon or vacate, or cause to

be abandoned or vacated, any building or structure, so that it becomes accessible to unauthorized persons including, but not limited to, juveniles and vagrants, for unlawful or hazardous use, or to allow the same to become infested with vermin or rodents, or to become a menace to the health or safety of the public.

A. Appearance.

1. All exterior surfaces, including any boarded windows or doors, shall be covered with sufficient paint, siding, stucco or other finishes, in the same color or similar color as the adjoining areas, to weatherproof the vacant structure and to create a sufficient appearance of repair to deter unauthorized occupation.

B. Security standards.

1. All vacant structures shall be maintained in a way which secures it from any unauthorized entry.
2. The owner, lienholder, or other responsible agent of a vacant structure which has suffered an unauthorized entry must provide security which meets the following minimum standards:
 - a. All windows and sliding doors shall be adequately secured and provide either intact glazing or boarded as set forth in the specifications on file with the Manteca police department;
 - b. Doors and service openings with thresholds located ten feet or less above the grade, stairway, landing, ramp, porch, roof or similarly accessible area shall provide resistance to entry equivalent to or greater than that of a closed single panel or hollow core door one and three-eighths inches thick equipped with a half-inch throw deadbolt or boarded as set forth in the specifications on file with the Manteca police department;
 - c. Exterior doors, if openable, may be closed from the interior of the structure by toe nailing them to the door frame using 10D or 16D galvanized nails;
 - d. There shall be at least one operable door into each structure and into each housing unit. If an existing door is operable, it may be used and secured with a suitable lock such as a hasp and padlock or a one-half inch deadbolt or dead latch;
 - e. All locks shall be kept locked. When a door cannot be made operable, a door shall be constructed of three-quarter inch CDX plywood and shall be equipped with a lock as described above.
 - f. In lieu of requiring the owner, lienholder, or other responsible agent to board a vacant structure as set forth in subsections (a) through (e) of this section, the

Code Enforcement Officer may allow the boarding of the vacant structure in a manner that the Code Enforcement Officer determines to adequately prevent unauthorized entry or vandalism.

A Code Enforcement Officer may require the owner to erect a fence, and to dictate the specifications of said fencing based on the specific situation, on the property where the vacant structure is located. Any fence erected in accordance with this section shall be maintained in a safe condition without tears, breaks, rust, dangerous protrusions, or general dilapidation.

C. Structural and building standards.

All vacant structures shall be maintained in a structurally sound condition and all electrical, natural gas, sanitary and plumbing facilities shall be maintained in a condition which does not create a hazard to public health or safety.

D. Fire safety.

1. All vacant structures shall be maintained in a manner which does not create an unreasonable risk of fire, including the removal of weeds which may constitute a fire hazard.
2. No vacant structure or portion thereof shall be used for the storage of flammable liquids or other materials which would constitute a safety or fire hazard.
3. Heating facilities or heating equipment in vacant structures shall either be removed or maintained in accordance with applicable codes or ordinances. If heating equipment is removed, any fuel supply shall be removed or terminated in accordance with applicable codes and ordinances.

E. Abatement

1. Summary Abatement

- a. Summary abatement shall be executed when the Code Enforcement Officer determines that the public nuisance constitutes an immediate and/or imminent threat to public health, safety or general welfare.
- b. Summary abatement is the abatement of the nuisance by the city, or a contractor on behalf of the city, by removal, demolition, repair or other acts with or without notice to the owner, agent, or occupant of the property. The abatement shall be at the expense of the person causing, committing or maintaining the nuisance or the owner of the property on which it is occurring and shall constitute a lien against the property.

2. Non-emergency Abatement

Nuisances of a non-emergency nature may be abated as set forth in Section 1.10.300 et seq. of this code.

8.17.050 Non storm water related discharges.

It shall be unlawful and a public nuisance for any person owning, leasing, occupying or having charge or possession of any premises or property in the City to permit on any premises or property any of the following to occur:

- A. The discharge of any matter or substance from a private vault, cesspool, septic tank, water closet, privy vault, urinal, pipe, sewer line or any sewage, effluent, slop water, polluted water or any other filthy water, matter or substance to flow or discharge upon the ground or upon any public sidewalk, street or other public place.
- B. Discharges through the municipal storm water system of any material other than storm water are prohibited, including all discharges that are not incidental as defined in the Small Municipal Separate Storm Sewer System (Small MS4) NPDES permit, except where conditionally exempt under an NPDES permit and Chapter 13.28 of this code.
- C. No persons shall sweep into or deposit in any gutter, street or other public place within the city any litter, yard clippings, leaves (except during any annual leaf collection period), etc. from any building or lot or from any public or private sidewalk or driveway. Persons owning or occupying property shall keep the sidewalk in front of their premises free of such materials at all times.

Activities or discharges that may cause or lead to a violation of regulations, policies or Standards established by the City to comply with an NPDES permit are prohibited.

8.17.060 Non-permitted land uses in violation of the zoning code

It shall be unlawful and a public nuisance for any person owning, leasing, occupying or having charge or possession of any premises or property in the City to use that property other than in compliance with the adopted Zoning Code including but not limited to:

- A. Residential property uses such as repair shops, non-permitted home businesses, unlicensed home businesses, unlicensed residential care facilities, unlicensed day care facilities that care for nine (9) or more people or failure to maintain compliance with all conditions or provisions of an approved entitlement such as a planned unit development, development agreement, use permit, site plan, variance, home occupation permit, etc., or occupying any recreational vehicle in violation of Section 17.52.120G or 12.20.030 of this Code.
- B. Nonresidential property uses such as unlawful signs, non-permitted uses, unlicensed businesses, failure to maintain compliance with all conditions or provisions of an entitlement such as a planned unit development, development agreement, use permit, site plan, variance, etc., or occupying any recreational vehicle in violation of Section 12.20.030 of this Code.

8.17.070 Parking lot striping and disabled accessible space markings.

It shall be unlawful and a public nuisance for any person owning, leasing, occupying or having charge or possession of any premises or property in the City to fail to maintain in good condition any parking lot striping as well as disabled accessible space markings and required signage on such premises or property.

8.17.080 Portable recreational and sporting equipment.

It shall be unlawful and a public nuisance for any person to erect a portable basketball hoop, skateboard ramp, tetherball pole, or other portable recreational or sporting equipment on a public right-of-way, street, easement, sidewalk or roadway.

8.17.090 Property maintenance standards.

It shall be unlawful and a public nuisance for any person to maintain, allow to be maintained, permit or cause real property, including adjacent parkways, sidewalks or streets, to be maintained with any of the following conditions, which are visible from the street, sidewalk, public right-of-way, or any other public property:

- A. The accumulation of dirt, rock or gravel, litter, debris, paper, trash, garbage, rubbish, junk, salvage materials (including, but not limited to, auto parts, scrap metals, tires, concrete, bricks, cardboard, cans, bottles, plastic materials, or other similar materials), boxes, bins, containers, drums, barrels, crates, pallets, etc.
- B. Neglected or inadequately maintained landscaping, trees, bushes, hedges, lawns, shrubs, plants or other vegetation, which:
 - 1. Is dead, decayed, diseased, debris laden, weed infested, overgrown, or dying as a result of neglect, physical damage, disease, pest infestation or lack of water;
 - 2. Is overgrown as to be likely to harbor rats or vermin. For purposes of this subsection, a lawn area shall be deemed overgrown if any part exceeds six (6) inches in height;
 - 3. Could create a fire hazard or is otherwise dangerous to the public health, safety and welfare;
 - 4. Interferes with or impedes the flow of traffic, whether vehicular or pedestrian, or obstructs visibility on streets, intersections, sidewalks, or other public rights-of-way;
 - 5. Otherwise creates a blighted appearance.

Provided, however, that the provision as to dead or dying vegetation due to lack of water shall not be enforced during a drought, as determined by the City.

- C. Attractive nuisances including, but not limited to, abandoned, broken or neglected equipment, machinery, refrigerators and freezers, improperly fenced pools, ponds and excavations, structurally unsound fences or structures, etc.
- D. The presence of any refrigerator, washing machine, sink, stove, heater, water heater, or any other household appliance, equipment, machinery or furniture, other than that

designed and intended for normal residential outdoor activities, or any part of any listed item, nor any other personal property such as clothing, electronics (TV's, computers, monitors, etc.), household items, etc. for a period in excess of seventy-two (72) consecutive hours. Any appliance or equipment present during this 72-hour period is to be secured or rendered safe so that it is not a danger to children at any time.

- E. Storage of firewood or lumber, except for a construction project on the property in conjunction with a valid building permit and not to exceed one hundred eighty (180) days.
- F. Inoperative vehicles, vehicle parts, components, etc. Any of the following conditions, but not limited to, may also render a vehicle to be considered inoperative:
 - 1. Having an accumulation of dirt, cobwebs, or debris on the vehicle to the extent that visibility may be limited, or indicating long-term non-use.
 - 2. Having any accumulation of items stored on, around, or in the vehicle.
 - 3. Having an accumulated growth of vegetation adjacent to the vehicle indicating non-use.
 - 4. Having broken or missing windows, missing parts such as lights or body parts, parts hanging or improperly secured, flat tires, or other unsightly conditions.
- G. Vehicles raised off the ground on blocks, jack stands, ramps, etc. when the resident is not in the immediate vicinity of the vehicle and actually performing repair work to the vehicle at that time.
- H. Recreational vehicles such as motorhomes or travel trailers, campers or shells (either mounted or not), boats, personal watercraft, trailers, cars, trucks, or other vehicles parked or stored in violation of Chapter 17.52 of this code.
- I. Parking of vehicles, trailers, etc. on lawns, vegetation, dirt, or any other area that is not surfaced with an approved impervious surface such as concrete, asphalt, brick, etc., as determined by the city, in order to reduce ground contamination, dust, and tracking of mud and is properly drained to dispose of all surface water per the City's standard specifications on file, SWPPP (Storm Water Pollution Prevention Plan), NPDES (National Pollution Discharge Elimination System) permit, and any other State or Federal requirements.
- J. Construction equipment, farm machinery, forklifts, or machinery of any type or description parked or stored on a residential property when it is visible from a public street, except during excavation, construction, or demolition operations covered by an active building permit which are in progress on the subject property or an adjoining property.
- K. Conditions which have a potential to cause the discharge of any known pollutants onto or into the ground.

- L. Any unsightly, abandoned, or deteriorated building or structure, or any building or structure constructed with inappropriate materials, improperly fastened together, or improperly anchored against the forces of nature.
- M. Any structure that has suffered damage due to fire, flood, earthquake, or other natural event that has rendered it uninhabitable or unsafe for its intended use and which a permit for either the repair or demolition has not been obtained within 60 days and repairs or demolition have not begun within 180 days, unless the condition is such that a shorter time frame is necessary for public safety reasons.
- N. Any building or structure where construction was commenced and the building or structure was left unfinished or any building or structure that has been constructed or modified without permits. This shall include any unauthorized work or non-compliant work taking place on private property or in the public right-of-way, with or without a permit, or which is otherwise in violation of City ordinance.
- O. Buildings which are abandoned, boarded up, partially destroyed, or left in a state of partial construction or repair for more than one hundred eighty (180) days and such buildings which are unpainted or where fifty (50) percent or more of the paint on the building exterior is worn off.
- P. The presence of any improvement (including, but not limited to, buildings, garages, carports, fences, stucco or block walls, roofs, or gutters) in which the condition of the stucco, siding, paint, or other exterior coating has become so deteriorated as to permit decay, excessive checking, cracking, peeling or warping so as to render the improvement or property unsightly and in a state of disrepair.
- Q. The presence of any structure or improvement with cracked or broken windows, roofs in disrepair, damaged porches, broken steps, etc.
- R. Property otherwise maintained in such a blighted condition, or in such condition of deterioration or disrepair, that the same causes appreciable diminution of the property values of surrounding properties or is materially detrimental to adjacent properties and improvements.
- S. It is found and expressly declared that the existence of airborne sand, soil or dust traveling from one property to a neighboring property to such a degree as to result in visible deposits on neighboring property is dangerous and injurious to neighboring property and to health and welfare of residents of the vicinity. Therefore, all property within the city shall kept and maintained in such a condition so as to prevent the airborne transportation of sand, soil or dust from their property being deposited in visible quantities on neighboring properties.
- T. Any public nuisance known as common law or in equity jurisprudence.

8.17.100 Swimming pools, ponds, or other bodies of water.

It shall be unlawful and a public nuisance for any person owning, leasing, occupying or having charge or possession of any premises or property in the City to maintain upon any such premises or property any swimming pool, pond, or other body of water which is abandoned,

unattended, unfiltered, or not otherwise maintained resulting in the bottom not being visible, water becoming polluted, and/or providing for mosquito breeding.

8.17.110 Trees and shrubs.

It shall be unlawful and a public nuisance for any person owning, leasing, occupying or having charge or possession of any premises or property in the City to maintain such premises or property in such a manner that has resulted in:

- A. Trees and shrubs with dead or fallen limbs or branches that present a safety hazard or restrict, impede or obstruct the use of a public right-of-way, easement, sidewalk or roadway.
- B. Branches from any tree or shrub not trimmed to the height of eight (8' 0") feet over the public sidewalk and to the height of thirteen (13' 0") feet over the public street, easement, or roadway where such growth restricts, impedes or obstructs pedestrian or vehicular use of said public right-of-way, easement, sidewalk or roadway.
- C. Trees, tree limbs and branches that present a safety hazard or restrict, impede or obstruct street signs, traffic signal lights or street lamps from illuminating the public right-of-way, easement, sidewalk or roadway.

8.17.120 Violation

In addition to any other remedies provided by law, it is unlawful and a misdemeanor for any person or any other entity to violate any provision of this chapter and violations may be prosecuted either criminally or administratively. In addition, all violations of this chapter shall constitute a public nuisance and may also be abated as such in accordance with the provisions of Chapter 1.10 of this code.

Section II: SEVERABILITY

If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance is for any reason held to be unconstitutional or invalid, such a decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have passed each section, subsection subdivision, paragraph, sentence, clause or phrase of this Ordinance irrespective of the unconstitutionality or invalidity of any section, subsection, subdivision, paragraph, sentence, clause or phrase.

Section III: PUBLICATION

Within fifteen (15) days after adoption of this Ordinance, the City Clerk shall cause a copy of this Ordinance to be published once in the Manteca Bulletin, a newspaper of general circulation, along with a notice setting forth the date of adoption and the title of this Ordinance.

Section IV: EFFECTIVE DATE

This Ordinance shall become effective 30 days from adoption.

DATED: May 3, 2016

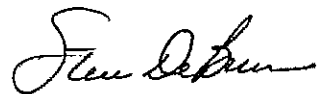
ROLL CALL:

AYES: Councilmembers DeBrum, Hernandez, Morowit and Silverman

NOES: None

ABSTAIN: None

ABSENT: Councilmember Moorhead



STEPHEN F. DEBRUM
MAYOR

ATTEST:



JOSE JASSO, MMC
INTERIM CITY CLERK

CERTIFICATE

I, **JOSE JASSO**, Interim City Clerk of the City of Manteca, do hereby certify that Ordinance No. 1584 was **INTRODUCED** at a regular meeting of the Manteca City Council held the 5th day of April 2016, and was thereafter **PASSED, ADOPTED AND ORDERED TO PRINT** at a regular meeting of the Manteca City Council held the 3rd day of May 2016.



JOSE JASSO, MMC
INTERIM CITY CLERK

Chapter 9 - PROPERTY MAINTENANCE CODE*

*Former history: Former Ch. 9, Housing Code, was added by Ord. 1088-C.S., and amended by Ord. 1366-C.S., Ord. 1544-C.S., Ord. 1609-C.S., Ord. 1695-C.S., Ord. 1768-C.S., Ord. 1969-C.S., Ord. 2240-C.S., Ord. 2825-C.S., Ord. 2974-C.S., and Ord. 3291-C.S. Ord. 3512-C.S., effective June 12, 2009, repealed and reenacted Ch. 9, Property Maintenance Code, as follows.

Article 1. - Designation, Title and Scope

9-9.101 - Title.

This chapter shall be known as the "Property Maintenance Code," may be cited as such, and will be referred to herein as "this chapter."

(Added by Ord. 3512-C.S., § 2, effective 6-12-09)

9-9.102 - Purpose and Intent.

The Council of the City of Modesto finds and determines as follows:

The City has an important interest in setting standards for the improvement of the overall appearance and maintenance of properties in the City because adequate maintenance and appearance promote property values and improve the general welfare and quality of life of its citizens. In adopting this chapter, one of the primary intents is to promote voluntary compliance with the minimum property maintenance standards set forth herein.

The purpose of this chapter is to promote the health, safety, economic, aesthetic and general welfare of the citizens of the City, and to protect neighborhoods against nuisances, blight and deterioration by establishing requirements for all building exteriors, whether residential or nonresidential, or structures of whatever kind, and establishing requirements for the maintenance of all land, whether improved or vacant.

Owners and occupants of some properties within the City permit conditions to exist which are injurious and inimical to the public health, safety and welfare of the residents of the City, and contribute substantially and increasingly to the deterioration of residential neighborhoods and commercial areas. There exists a need for further emphasis than currently exists on property maintenance and sanitation, in that certain conditions, as described herein, proliferate in different locations throughout the City.

The existence of the conditions as described in this Code are injurious and adverse to the public health, safety and welfare of the residents of the City, and contribute substantially and increasingly to the deterioration and blight of residential neighborhoods, commercial areas and industrial areas. Said conditions are declared to be public nuisances and violations of this chapter, and constitute visual blight or result in conditions which are harmful or deleterious to the public health, safety and welfare.

The abatement of certain uses and abuses of property as described in this chapter reasonably relates to the proper exercise of police power to protect the health, safety, and general welfare of the public.

Abatement of these conditions is in the best interest of the health, safety and welfare of the residents of the City because maximum use and enjoyment of properties closely proximate to one another depends upon maintenance of those properties at or above a minimum standard of sightliness. The beneficial effects of maintaining standards of sightliness for property in the City include, but are not limited to,

appreciation of property values, physical improvement and stability of residential and commercial areas, attraction of investors of capital, and maximum use of property for its highest and best use.

In crafting this chapter, it is the intent of the City to impose minimum city-wide standards for property maintenance. These provisions are intended to exist separate and apart from any existing community standards contained in any set of covenants, conditions and restrictions, and are not intended to enforce those standards.

(Added by Ord. 3512-C.S., § 2, effective 6-12-09)

9-9.103 - Applicability.

The provisions of this chapter shall apply to all properties within the City, or portions thereof, whether developed or undeveloped, and without regard to use, date of construction or alterations. This chapter shall also apply to all publicly owned property in the City, including City property, to the extent allowed by law.

(Added by Ord. 3512-C.S., § 2, effective 6-12-09)

9-9.104 - Definitions Used Within this Chapter.

- (a) Building or structure means and includes, but is not limited to, any house, garage, carport, duplex, apartment, condominium, mobile home, storage shed, any commercial establishment, warehouse, fence, wall or other structures affixed to or upon real property, or any assemblage of materials on private property of another for the purpose of human habitation.
- (b) City means the area within the territorial city limits of the City of Modesto and all territory outside of the City over which the City has jurisdiction by virtue of any constitutional or Charter provisions, or any ordinance or law.
- (c) City Manager means the Manager of the City, the Deputy City Manager, or any person or persons designated by the City Manager to act in his/her stead in connection with this chapter.
- (d) Director means and includes each of the directors of the City departments which are now or may in the future be charged with the enforcement of this Code.
- (e) Code Enforcement Officer means any City employee designated by any Director or by the City Manager to enforce the provisions of this Code. Such employees may be employed in any City department.
- (f) Exterior property shall mean the open space on the premises and on adjoining property under the control of owners or operators of such premises.
- (g) Extermination shall mean the control and elimination of insects, rats or other pests by eliminating their harborage places; by removing or making inaccessible materials that serve as their food; by poison spraying, fumigating, trapping or by any other approved pest elimination methods.
- (h) Fire hazard means a fire hazard as determine by the Fire Chief or his/her designee.
- (i) Health hazard means a health hazard as determined by the Health Officer or his/her designee.
- (j) Hearing Officer means any person appointed by the City Manager to preside over administrative enforcement hearings held pursuant to this chapter.
- (k) Inoperable motor vehicle means any vehicle which cannot be driven upon the public streets for reasons including, but not limited to, being unlicensed, wrecked, abandoned, in a state of disrepair, or incapable of being moved under its own power.

- (l) Infestation shall mean the presence, within or contiguous to, a structure or premises of insects, rats, vermin or other pests.
- (m) Junk means any of the following objects or materials upon a property if such object or material is left, placed, kept, exposed, or stored in public view for more than one-half ($\frac{1}{2}$) of any continuous ten (10) day period. Materials described below which are upon the property of a properly zoned business and which constitute lawfully stored or displayed merchandise or services of said business are excluded from article:
 - (1) An accumulation of dirt, soil, rock, gravel, bark, humus, sod, or other similar natural material; providing, however, the accumulation of such material which is an integral part of an organized landscape design, or which is part of an incomplete project, is excluded from this definition if the excess or the residue of such accumulation is completely removed from the property by the completion of the building or landscaping project. A project shall be deemed completed if there is no obvious change to the accumulation or to the project in any thirty (30) day period.
 - (2) Construction or packing material or supplies, including, but not limited to, lumber, dry wall, roofing tile, cement, nails, pallets, plywood, scrap lumber, or other building materials, products, or supplies; electrical, irrigation or plumbing supplies; provided, however, that a reasonable quantity of these materials and supplies is excluded from this definition during active construction upon the subject property. A project shall be deemed active if there is obvious change to the accumulation or to the project in any thirty (30) day period.
 - (3) Firewood greater than thirty-six (36) inches in length and greater than twenty-four (24) inches in diameter; all firewood that is not stacked.
 - (4) An accumulation of aluminum cans, newspaper, plastic bottles, glass, cardboard or cardboard boxes, or an accumulation of other recyclable materials that has been stored in public view for more than one-half ($\frac{1}{2}$) of any continuous ten (10) day period.
 - (5) Any appliance, tool, equipment, furniture, furnishing, or other item of personal property including, but not limited to, any couch, love seat, sofa, sofa bed, recliner, hassock, upholstered chair, mattress, bed springs, box springs, bed frame, headboard, desk, dresser, bureau, cabinet, television, radio, stereo, stove, refrigerator, freezer, dish washer, washing machine, dryer, shopping cart, sinks, toilets, or any similar item, whether or not any such item is broken or abandoned, resting or being stored on the premises in public view for more than one-half ($\frac{1}{2}$) of any continuous ten (10) day period.
 - (6) Any item or items of personal property, of any size and of any quantity, which are littered on or scattered upon or about the property in a random, haphazard, aimless, disarrayed, or disorganized manner, so as to cause a public nuisance for more than one-half ($\frac{1}{2}$) of any continuous ten (10) day period.
 - (7) Any accumulation of parts from any motorized and non-motorized vehicle, equipment, aircraft or cycles, including, but not limited to, tires, wheels, body parts, motors, transitions, upholstery or any similar item, whether or not any such item is broken or abandoned, resting or being stored on the premises in public view for more than one-half ($\frac{1}{2}$) of any continuous ten (10) day period.
- (n) Nuisance vegetation means any of the following:
 - (1) Dry grass, stubble, hay, brush, any dry or dead plant, bush, shrub, tree, or other dry vegetation which present a visual blight upon the area, which may harbor insect or rodent infestations or which may likely become a fire hazard or result in a condition which may threaten the health and safety or the economic welfare of adjacent property owners or occupants. Accumulated vegetative materials which comply with all regulations of the Pruned Refuse Collection Program of the City of Modesto (Sections 4-7.1101 to 4-7.1108 of this Code) are excluded from this definition; or
 - (2) Any plant or grass, whether growing or dormant, which bears downy or winged seeds; or
 - (3) Poison oak (*Rhus diversiloba*) or poison ivy (*Rhus toxicodendron*); or

- (4) Overgrown vegetation, whether living, dormant, dead, cultured or uncultured, which encroaches into the public right-of-way or renders that right-of-way unsafe by blocking vision or can otherwise be hazardous to pedestrian or vehicular traffic or which is capable of harboring insects, rats, mice, or other vermin, or other similar conditions which are dangerous to the public health or welfare or which are hazardous to pedestrian or vehicular traffic. Grass or weeds must not grow to a height or bulk that creates a traffic, pedestrian, or fire hazard or which is a blight on the neighborhood, and in no event taller than twelve (12) inches above ground level; or
- (5) Any tree or other vegetation which is dead, decayed, infected, diseased, infested with or in danger of becoming infested with, objectionable insects, parasites, scale, or fungus, or which is otherwise a hazard to public safety and welfare. Accumulated vegetative materials which comply with all regulations of the pruned refuse collection program of the City (Sections 4-7.1101 to 4-7.1108 of this Code) are excluded from this definition; or
- (6) Any tree, plant, vine, or foliage, whether living, dormant, or dead, that is otherwise noxious, dangerous or injurious to people or to city trees, or that interferes with the maintenance or inspection of a City tree; or
- (7) Tumbleweeds (amaranths) and other similar vegetation which characteristically break away from their roots at maturity and can be blown by the wind to create hazards to pedestrian or vehicular traffic.
- (o) Person means any natural person, firm, association, business, or organization, corporation, partnership, trust, estate, or any other legal entity recognized by law as the subject of legal rights or duties.
- (p) Property means any parcel of land which is identified in the secured roll of the Stanislaus County Assessor, all residential, commercial and other real property, including, but not limited to, front yards, side yards, backyards, driveways, walkways, alleys, sidewalks, and shall include any building or structure whether fixed or moveable, located on such property.
- (q) Property owner means the record owner of real property as listed in the most current equalized assessment roll as maintained by the Stanislaus County Assessor.
- (r) Responsible party means any occupant, lessor, lessee, manager, licensee, or other person having control over a property, including any structure or parcel of land. A responsible party may be a property owner.
- (s) Repair shop means any location at which any type of repair, alteration or modification is performed on any vehicle, equipment, apparatus, machinery, or device of which the owner is not a resident of the property on which such work is being performed.
- (t) Violation means a violation of any provision of this Code by any property owner or any responsible party.
- (u) Visual blight means any unreasonable or unlawful condition or use of premises or of a building exterior which, by reason of its appearance as viewed at ground level from the public right-of-way or from neighboring premises, is detrimental to the surrounding area and the property of others, or is detrimental to the health, safety and welfare of individuals residing within the community.
- (v) Zoning regulations means any provisions of Title 10 of this Code, also known as the land use code.

(Added by Ord. 3512-C.S., § 2, effective 6-12-09)

Article 2. - Remedies for Violations of this Code

9-9.201 - Effect of Pre-Existing Provisions.

The remedy and penalty provisions of City of Modesto Community Preservation Code which were in effect prior to the effective date of this chapter shall continue to apply to all violations where a notice and order or other official notice of violation was sent by the City of Modesto prior to the effective date of this chapter.

(Added by Ord. 3512-C.S., § 2, effective 6-12-09)

9-9.202 - Civil.

- (a) In addition to any other remedy provided by this Code, any provision of this chapter may be enforced by injunction issued by the superior court upon a suit brought by the City.
- (b) As part of a civil action filed to enforce provisions of this chapter, a court may assess a maximum civil penalty of two thousand five hundred dollars (\$2,500.00) per violation of this chapter for each day during which any person commits, continues, allows or maintains a violation of any provision of this chapter.

(Added by Ord. 3512-C.S., § 2, effective 6-12-09)

9-9.203 - Criminal.

It is unlawful for any person to violate any provision or to fail to comply with any of the requirements of this chapter. A violation of any of the provisions or failing to comply with any of the mandatory requirements of this chapter shall constitute a misdemeanor; except that notwithstanding any other provision of this Code, any such violation constituting a misdemeanor under this Code may, in the discretion of the City Attorney, be charged and prosecuted as an infraction.

Any person convicted of a misdemeanor under the provisions of this chapter, unless provision is otherwise herein made, shall be punishable by a fine of not more than one thousand dollars (\$1,000.00) or by imprisonment in the county jail for a period of not more than six (6) months or by both fine and imprisonment.

Any person convicted of an infraction under the provisions of this Code, unless provision is otherwise herein made, shall be punishable by a fine only as follows: Upon a first conviction by a fine not to exceed two hundred fifty dollars (\$250.00), and for a second conviction or any subsequent conviction within a period of one (1) year, by a fine not to exceed five hundred dollars (\$500.00).

Each such person shall be charged with a separate offense for each and every day during any portion of which any violation of any provision of this Code is committed, continued or permitted by such person and shall, upon conviction, be punished accordingly.

(Added by Ord. 3512-C.S., § 2, effective 6-12-09)

9-9.204 - Administrative.

The City may pursue any of the administrative remedies established under the provisions of Article 6 of Title 1 of the Municipal Code for violations of this chapter.

(Added by Ord. 3512-C.S., § 2, effective 6-12-09)

9-9.205 - Severability.

If any section, subsection, sentence, clause, phrase or portion of this chapter is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall

not affect the validity of the remaining portions of article. The City Council declares that it would have adopted such section, subsection, sentence, clause, phrase or portion thereof irrespective of the fact that any one (1) or more sections, subsections, sentences, clauses, phrases or portions be declared invalid or unconstitutional.

(Added by Ord. 3512-C.S., § 2, effective 6-12-09)

Article 3. - Maintenance of Properties

9-9.301 - Duty of Removal.

It is hereby made the duty of every owner of real property in the City to keep said property free and clear of all junk, nuisance vegetation, and any other material prohibited thereon by this Code which from any cause whatsoever has accumulated upon said property. It is hereby made the duty of every property owner to lawfully destroy or remove all such prohibited materials from his or her private property, from the abutting half of the street and/or alley, from the sidewalk space thereupon, and between the sidelines thereof as extended. Failure of any property owner so to do is unlawful and punishable civilly, criminally or administratively and creates a nuisance subject to penalty or abatement as provided in this chapter.

(Added by Ord. 3512-C.S., § 2, effective 6-12-09)

9-9.302 - Alleys.

- (a) It is unlawful for any person who owns, leases, occupies, or has charge, control, or possession of any property in the City to place or allow to remain in any alley abutting said property, from ground level up to a height of twelve (12) feet above the alley surface, any object, material, or growth of any nature except a garbage container, if such is allowed by Section 5-5.109 of the Code. Public utility and cable television equipment, owned or maintained by utilities, is exempt from this section. Accumulated vegetative materials which comply with all regulations of the pruned refuse collection program of the City (Sections 4-7.1101 to 4-7.1108 of this Code) are excluded from this section.
- (b) Any remedy utilized by the City to correct or abate a violation of this section shall, whenever possible, be initially directed to any person who controls, occupies or is in possession of the property in violation. This does not preclude the City from pursuing any remedy available to it against the lessor, manager, or property owner in order to correct or abate the violation.

(Added by Ord. 3512-C.S., § 2, effective 6-12-09)

9-9.303 - Sanitation.

All exterior property and premises shall be maintained in a clean, safe and sanitary condition in accordance with the provisions and requirements set forth in Title 5 of this Code. The occupant shall keep that part of the exterior property, which such occupant occupies or controls in a clean and sanitary condition.

(Added by Ord. 3512-C.S., § 2, effective 6-12-09)

9-9.304 - Grading and Drainage.

All premises shall be graded and maintained to prevent any of the following:

- (a) The erosion of soil;
- (b) The accumulation of stagnant water thereon; and
- (c) The drainage of water onto neighboring properties.

Exception:

Approved retention areas and reservoirs.

(Added by Ord. 3512-C.S., § 2, effective 6-12-09)

9-9.305 - Sidewalks and Driveways.

All sidewalks, walkways, stairs, driveways, parking spaces and similar areas shall be kept unobstructed and in a proper state of repair, and maintained free from hazardous conditions.

(Added by Ord. 3512-C.S., § 2, effective 6-12-09)

9-9.306 - Motor Vehicles.

Except as provided for in Section 4-7.1903 of this Code, "Exclusions" or other regulations, no inoperative or unlicensed motor vehicle shall be parked, kept or stored on any premises, and no vehicle shall at any time be in a state of major disassembly, disrepair, or in the process of being stripped or dismantled. Painting of vehicles is prohibited unless conducted inside an approved spray booth.

Exception:

A vehicle of any type is permitted to undergo major overhaul, including body work, provided that such work is performed inside a structure or similarly enclosed area designed and approved for such purposes.

(Added by Ord. 3512-C.S., § 2, effective 6-12-09)

Article 4. Extermination

9-9.401 - Rodent Harborage.

All exterior property shall be kept free from rodent harborage and infestation. Where rodents are found, they shall be promptly exterminated by approved processes which will not be injurious to human health. After extermination, proper precautions shall be taken to eliminate rodent harborage and prevent reinfestation.

(Added by Ord. 3512-C.S., § 2, effective 6-12-09)

9-9.402 - Infestation of Structures.

All structures shall be kept free from insect and rodent infestation. All structures in which insects or rodents are found shall be promptly exterminated by approved processes that will not be injurious to human health. After extermination proper precautions shall be taken to prevent reinfestation.

(Added by Ord. 3512-C.S., § 2, effective 6-12-09)

9-9.403 - Owner Responsibility.

The owner of any structure shall be responsible for extermination within the structure prior to renting or leasing the structure.

(Added by Ord. 3512-C.S., § 2, effective 6-12-09)

9-9.404 - Single Occupant Responsibility.

The occupant of a one-family dwelling or a single-tenant nonresidential structure shall be responsible for extermination on the premises.

(Added by Ord. 3512-C.S., § 2, effective 6-12-09)

9-9.405 - Multiple Occupancy Responsibility.

The owner of a structure containing two (2) or more dwelling units, a multiple occupancy, a rooming house or a nonresidential structure shall be responsible for extermination in the public or shared areas of the structure and exterior property. If infestation is caused by failure of an occupant to prevent such infestation in the area occupied, the occupant shall be responsible for extermination.

(Added by Ord. 3512-C.S., § 2, effective 6-12-09)

9-9.406 - Ongoing Maintenance—Occupant Responsibility.

The occupant of any structure shall be responsible for the continued rodent and pest-free condition of the structure.

Exception:

Where the infestations are caused by defects in the structure, the owner shall be responsible for extermination.

(Added by Ord. 3512-C.S., § 2, effective 6-12-09)

Article 5. - Nuisance Conditions

9-9.501 - Public Nuisance Defined.

A public nuisance consists of doing any act, or permitting or allowing any condition or thing to exist, occur, or accumulate upon any property within the City that is injurious to health, indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property and endangers the health or safety of others.

(Added by Ord. 3512-C.S., § 2, effective 6-12-09)

9-9.502 - Properties Declared Nuisances.

All properties within the City of Modesto or portions thereof which are determined to be in violation as defined in this chapter, are hereby declared to be public nuisances and shall be abated by cleaning, restoring, desisting the use or violation, board-up, painting, monitoring, fencing or removal in accordance with the procedures set forth in Article 6 of Chapter 6 of Title 1 of the Modesto Municipal Code.

(Added by Ord. 3512-C.S., § 2, effective 6-12-09)

9-9.503 - Sidewalk Encroachment.

It is unlawful, and constitutes a public nuisance to place wires, cables, hoses, including unattended garden hoses, and other objects across or on public sidewalks in such a manner that they may cause a tripping or other hazard for those using the sidewalk, or otherwise substantially impair the public use of the sidewalk.

(Added by Ord. 3512-C.S., § 2, effective 6-12-09)

9-9.504 - Fences and Walls.

It is unlawful, and constitutes a public nuisance, to allow on property in public view within the City, exterior perimeter walls and fences that either are structurally unsound so as to constitute a hazard to persons or property or are partially destroyed or permitted to remain in a state of partial construction for a period of one hundred eighty (180) days or more, and which by reason of such condition are either defective or are in such a condition of deterioration or disrepair that they are considered visual blight.

(Added by Ord. 3512-C.S., § 2, effective 6-12-09)

9-9.505 - Unsecured Buildings.

It is unlawful and constitutes a public nuisance for any responsible party or owner of any property in the City to fail to install, or to fail to use, reasonable security measures to prevent unauthorized entry into any vacant or uninhabited building upon such property. Except when the owner or responsible party is personally upon the property, all exterior openings, such as doors and windows, affording entry into any building upon such property shall be reasonably secured against unauthorized entry into such building in accordance with Section 9-9.605 of this Code.

(Added by Ord. 3512-C.S., § 2, effective 6-12-09)

9-9.506 - Parking Vehicles on Unimproved Surfaces.

It is unlawful and constitutes a public nuisance for any responsible party to park vehicles on unimproved surfaces like dirt or any other surfaces which are in violation of Sections 10-2.2001 and 10-2.2005 of this Code, and will contribute to elicit discharges, in violation of Sections 5-10.102, 5-10.201, 5-10.204 and/or 5-10.205 of this Code. The purpose of this section is to protect and control the pollutants being discharged into the City of Modesto's MS4 system.

(Added by Ord. 3512-C.S., § 2, effective 6-12-09)

9-9.507 - Required Fencing.

It is unlawful and constitutes a public nuisance for any responsible party to fail to install, remove or fail to maintain in good repair any fencing required as a condition of any permit or development approval

or included in the project plans or application, as approved by the City, including, but not limited to, those fences which abut major thoroughfares, sound walls, fences securing a swimming pool or those fences required by a variance, use permit, or plan development. Any required fence must be maintained so as to match the materials used when the fence was originally constructed.

(Added by Ord. 3512-C.S., § 2, effective 6-12-09)

9-9.508 - Conditions Affecting Adjoining Properties.

It is unlawful and constitutes a public nuisance for any responsible party to engage in any land use which causes an unreasonable amount of noise, light, odor, dust, mud, vibration or electrical interference which adversely affects the lawful use of adjoining properties.

(Added by Ord. 3512-C.S., § 2, effective 6-12-09)

9-9.509 - Nuisance Conditions of the Property.

It is unlawful, and a public nuisance, for any responsible party, to maintain or allow to be maintained, permit or cause the property, including adjacent parkways, sidewalks, alleys or streets, to be maintained with any of the following conditions which are visible from the street, sidewalk, alley or public right-of-way:

- (a) The accumulation of weeds, dirt, litter, rubbish or debris on the property to such an extent that it constitutes visual blight.
- (b) Neglected or inadequately maintained landscaping, trees, hedges, lawns, shrubs, plants or other vegetation which:
 - (1) Is dead, decayed, diseased, debris laden, weed infested, overgrown, or dying as a result of neglect, physical damage, disease, pest infestation or lack of water;
 - (2) Is overgrown as to be blighted or likely to harbor rats or vermin;
 - (3) Could create a fire hazard or is otherwise dangerous to the public health, safety, and welfare;
 - (4) Interferes with or impedes the flow of traffic, whether vehicular or pedestrian, or obstructs visibility on streets, intersections, clear vision triangles, sidewalks, alleys or other public rights-of-way or is in violation as defined in Section 10-2.2314 of this Code; or
 - (5) Creates a blighted appearance due to lack of water; provided, however, that the provision as to dead or dying vegetation due to lack of water shall not be enforced during a drought, as determined by the City's Water Contingency Plan. For purposes of this subsection, a lawn area shall be deemed overgrown if any part exceeds twelve (12) inches in height.
- (c) Fences, walls, doors, windows, trash enclosures, parking areas, parking lots or other structures, which are:
 - (1) Significantly cracked or broken, fallen, decayed, dry-rotted, warped, deteriorated, defective, defaced, in disrepair or missing components, or which either (a) threaten structural integrity, or (b) result in a dilapidated, decaying, disfigured, or partially ruined appearance to such an extent that they contribute to blight or threaten the public health, safety or welfare;
 - (2) Leaning or listing more than fifteen (15) degrees from perpendicular or are in danger of collapse due to the elements, pest infestation, dry rot, lack of maintenance or other damage;
 - (3) In a state of partial construction for a period of one hundred eighty (180) days or more; or

- (4) Poorly maintained so as to become so defective, blighted, or in such condition of deterioration or disrepair that the same causes depreciation of the values of surrounding property or is materially detrimental to nearby properties and improvements.
- (d) Accumulated junk, as that term is defined in article.
- (e) Accumulated unsanitary or stagnant water caused by:
 - (1) Hazardous pools, spas, ponds, and excavations; or
 - (2) Improper grading or poor grading maintenance.
- (f) Non-permitted land uses in violation of the zoning code, including, but not limited to:
 - (1) Residential property uses such as repair shops, non-permitted home businesses, unlicensed home businesses, allowing boarders in violation of Section 10-2.502 of this Code, unlicensed residential care facilities, unlicensed day care facilities that cares for nine (9) or more people, failure to comply with all conditions of the planned development, conditional use permits or variances, living in any mobile living quarters in violation of Sections 10-2.2901 and 10-2.2902 of this Code or graffiti on the exterior of any building, fence or other structure.
 - (2) Nonresidential property uses such as unlawful signs, non-permitted uses, unlicensed businesses, failure to comply with all provisions of the planned development, conditional use permits or variances, living in any mobile living quarters in violation of Sections 10-2.2901 and 10-2.2902 of this Code, or graffiti on the exterior of any building, fence, or other structure.
 - (3) Any property failure to comply with all provisions of the planned development or use permits parking or storing of vehicles in violation of Sections 10-2.2001 and 10-2.2005 of this Code, and will contribute to elicit discharges, in violation of Sections 5-10.102, 5-10.201, 5-10.204 and/or 5-10.205 of this Code. The purpose of this section is to protect and control the pollutants being discharged into the City of Modesto's MS4 system.
- (g) Broken windows constituting blighted or hazardous conditions or which invite trespassers and malicious mischief.
- (h) Any article, equipment, or fixture that is offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property.
- (i) Any blighted condition, or condition of deterioration or disrepair that causes appreciable diminution of the property values of surrounding properties or is materially detrimental to proximal properties and improvements.
- (j) The use of buildings, or portions thereof, for living, sleeping, cooking or dining purposes when such buildings, or portions thereof, were not designed or intended to be used for such purposes.
- (k) Any hazardous or unsanitary condition as determined by the Health Officer.
- (l) Any device, apparatus, equipment, combustible waste or vegetation which, in the opinion of the Fire Chief, is in such a condition as to cause a fire or explosion or provide a ready fuel to augment the spread and intensity of fire or explosion arising from any cause also know as fire hazard.
- (m) Any public nuisance known at common law or in equity jurisprudence.
- (n) Any attractive nuisance, which is defined as any condition which may prove detrimental to children whether in a building, on the premises of a building, or on an unoccupied lot. This shall include any abandoned wells, abandoned swimming pools or spas, shafts, basements or excavations, abandoned refrigerators and motor vehicles, and any structurally unsound fences or structures, lumber, trash, fences, debris or vegetation which may prove a hazard for inquisitive minors.

- (o) Conditions which are dangerous to the life, limb, health or safety of the general public or building occupants.
- (p) Inadequate or unsanitary sewage or plumbing hook-ups that have a potential to discharge sewage or any other pollutant onto or into the ground.
- (q) Conditions which have a potential to cause the discharge of any known pollutants onto or into the ground.
- (r) Any building or structure or condition existing on a property which is defined as a public nuisance under this Code.

(Added by Ord. 3512-C.S., § 2, effective 6-12-09)

9-9.510 - Unlawful Conditions Not in Public View.

It is unlawful, and a public nuisance, for any responsible party to maintain or allow to be maintained, permit or cause the property to be maintained with any of the following conditions not in public view.

- (a) The accumulation of weeds, vegetation, junk, organic matter, debris, garbage, offal, rat harborages, stagnant water, combustible materials and similar materials or conditions on a premises constitutes fire, health or safety hazards.
- (b) Any device, apparatus, equipment, combustible waste or vegetation which, in the opinion of the Fire Chief, is in such a condition as to cause a fire or explosion or provide a ready fuel to augment the spread and intensity of fire or explosion arising from any cause.
- (c) Any public nuisance known at common law or in equity jurisprudence.
- (d) Attractive nuisances, which are defined as any condition which may prove detrimental to children whether in a building, on the premises of a building, or on an unoccupied lot. This includes any abandoned wells, abandoned swimming pools or spas, shafts, basements or excavations, abandoned refrigerators and motor vehicles, structurally unsound fences or structures, lumber, trash, fences, debris, or vegetation which may prove a hazard for inquisitive minors.
- (e) Conditions which are dangerous to the life, limb, health or safety of the general public or building occupants.
- (f) Any condition in violation of Section 4-12.1403 of this Code.

(Added by Ord. 3512-C.S., § 2, effective 6-12-09)

Article 6. - Vacant and Boarded Buildings

9-9.601 - Boarded Buildings; Declaration of Purpose.

Boarded buildings are a major cause and source of crime and blight in both residential and nonresidential neighborhoods. In addition, vacant buildings which are boarded and unkempt, and which are vacant for long periods of time, discourage economic development and retard appreciation of property values.

(Added by Ord. 3512-C.S., § 2, effective 6-12-09)

9-9.602 - Vacant Building; Defined.

For the purposes of this chapter, the term "vacant building" means an unoccupied or an illegally occupied structure or an occupied structure without adequate facilities/utilities.

(Added by Ord. 3512-C.S., § 2, effective 6-12-09)

9-9.603 - Boarded Building—Defined.

For the purposes of this chapter, the term "boarded building" means an unoccupied building some or all of whose doors and windows and other openings have been covered with plywood or other approved material for the purpose of preventing entry into the building.

(Added by Ord. 3512-C.S., § 2, effective 6-12-09)

9-9.604 - Violation.

Every owner or responsible person shall maintain their vacant or boarded building in accordance with all of the requirements set forth herein. Failure to do so constitutes a violation of this Code and is a public nuisance.

(Added by Ord. 3512-C.S., § 2, effective 6-12-09)

9-9.605 - Method of Boarding Painting.

All windows, doors and openings shall be secured as per the board-up specifications maintained by the City of Modesto. All wood must be painted to match the paint on the property. If the property is multicolor, the paint should match the predominant color on that wall.

(Added by Ord. 3512-C.S., § 2, effective 6-12-09)

9-9.606 - Boarded or Vacant Building; Time Period Maintenance.

No responsible party shall allow a building to stand vacant for more than sixty (60) days, unless one of the following applies:

- (a) The building is the subject of an active building permit and the owner is progressing diligently to repair the premises for occupancy;
- (b) The building meets all applicable codes in existence at either the time of its construction or at the time of its alteration or modification and is actively being offered for sale, lease, or rent;
- (c) The building is being maintained in a safe and orderly manner and does not contribute to blight conditions;
- (d) Maintenance in a safe and orderly manner shall include:
 - (1) Maintenance of any landscaping and plant materials in good condition,
 - (2) Maintenance of the exterior of the building, including but not limited to paint and finishes, in good condition,
 - (3) Regular removal of all exterior trash, debris and graffiti, and
 - (4) Maintenance of the building in continuing compliance with all applicable codes and regulations.

(Added by Ord. 3512-C.S., § 2, effective 6-12-09)

9-9.607 - Vacant Building Monitoring Fee.

- (a) Fee Imposed. There is hereby imposed upon every owner of a vacant building an annual vacant building monitoring fee in an amount to be set by resolution of the City Council. The fee shall not exceed the estimated reasonable cost of monitoring the vacant building. The fee shall be payable as to any building, residential or nonresidential, which:
 - (1) Is boarded up by voluntary action of the owner or as the result of enforcement activities by the City; or
 - (2) Is vacant for more than sixty (60) days for any reason.
- (b) Fee Waiver. The vacant building monitoring fee may be waived by the Director upon a showing by the owner that:
 - (1) The owner has obtained a building permit and is progressing diligently to repair the premises for occupancy;
 - (2) The building meets all applicable codes and is actively being offered for sale, lease or rent; or
 - (3) Imposition of the fee would impose a substantial economic hardship on the owner or would hinder the rehabilitation of the building.
- (c) Procedure.
 - (1) The vacant building monitoring fee shall be billed to the owner of the property and mailed to the owner's address as set forth on the last equalized assessment roll of the County Assessor.
 - (2) Any owner billed may apply for a waiver on the grounds set forth in subsection (b) of this section by submitting a written statement of the grounds for the waiver, and the owner's daytime telephone number, to the Director within thirty (30) days after the billing is mailed to the owner. The Director shall review the written statement and may contact the owner to discuss the application for waiver. The Director shall prepare a written decision which shall be mailed to the owner.
 - (3) Any owner who disagrees with the decision of the Director may submit a written notice of appeal to the Director within thirty (30) days of receipt of the decision. Failure to timely appeal the decision of the Director relating to a denial of a waiver constitutes a waiver of all rights to an administrative hearing and determination of the matter subject only to review pursuant to Section 1094.5 of the California Code of Civil Procedure.
 - (4) If the fee is not paid within sixty (60) days after billing, or within sixty (60) days after the decision of the Director or after the decision upon appeal by the owner becomes final, the fee may be specially assessed against the property involved and made a personal obligation of the owner. If the fee is to be specially assessed against the property, a hearing officer, as designated by the City Manager, shall confirm the assessment and thereafter said assessment may be collected at the same time and in the same manner as ordinary real property taxes are collected and shall be subject to the same penalties and the same procedure and sale in case of delinquency as provided for ordinary real property taxes. All laws applicable to the levy, collection, and enforcement of real property taxes are applicable to the special assessment.
 - (5) The designated hearing officer may also cause a notice of lien to be recorded. The notice shall, at a minimum, identify the record owner or possessor of the property, set forth the last known address of the record owner or possessor, a description of the real property subject to the lien, and the amount of the fee.

(Added by Ord. 3512-C.S., § 2, effective 6-12-09)

Article 7. - Imposition and Collection of Inspection Fees

9-9.701 - Imposition and Collection of Inspection Fees.

- (a) The City Council has authorized inspection fees for all third (3rd) and subsequent inspections of properties or activities regulated under this chapter when, upon inspections, the City determines the properties or activities previously found not in compliance with the provisions of this chapter continue not to be in compliance.
- (b) Inspection fees shall be charged according to the following schedule:
- (1) Third (3rd) and fourth (4th) inspection:

2006—2007	\$33.00
2007—2008	\$34.00
2008—2009	\$35.00
2009—2010	\$36.00
2010—2011	\$37.00

- (2) Fifth (5th) and all subsequent inspections:

2006—2007	\$101.00
2007—2008	\$104.00
2008—2009	\$107.00
2009—2010	\$110.00
2010—2011	\$114.00

- (c) Where the assessment of inspection fees is authorized under this article, the City shall provide the responsible party with a written notice stating:
- (1) The amount of inspection fees assessed;
- (2) The dates on which all inspections took place; and

- (3) The deadline for payment of such fees.
- (d) Code enforcement fees collected pursuant to this chapter shall not be duplicated by any other action to recover these fees.
 - (e) Failure of the responsible party to receive notice of inspection fees shall not affect the validity of any fees imposed under this chapter.
 - (f) The inspection fee schedule is established and will be revised as necessary by the City Council to reflect current costs incurred for the additional work undertaken by City staff when the responsible party fails to correct code violations identified in this chapter in a timely manner.
 - (g) The City shall collect the assessed inspection fees by the use of appropriate legal means, including but not limited to, referral to the Finance Department for collection or assessment against the property.

(Added by Ord. 3512-C.S., § 2, effective 6-12-09)

HEALTH AND SAFETY CODE

SECTION 17980.6 – 17990.7

17980.6. If any building is maintained in a manner that violates any provisions of this part, the building standards published in the State Building Standards Code relating to the provisions of this part, any other rule or regulation adopted pursuant to the provisions of this part, or any provision in a local ordinance that is similar to a provision in this part, and the violations are so extensive and of such a nature that the health and safety of residents or the public is substantially endangered, the enforcement agency may issue an order or notice to repair or abate pursuant to this part. Any order or notice pursuant to this subdivision shall be provided either by both posting a copy of the order or notice in a conspicuous place on the property and by first-class mail to each affected residential unit, or by posting a copy of the order or notice in a conspicuous place on the property and in a prominent place on each affected residential unit. The order or notice shall include, but is not limited to, all of the following:

- (a) The name, address, and telephone number of the agency that issued the notice or order.
- (b) The date, time, and location of any public hearing or proceeding concerning the order or notice.
- (c) Information that the lessor cannot retaliate against a lessee pursuant to Section 1942.5 of the Civil Code.

17980.7. If the owner fails to comply within a reasonable time with the terms of the order or notice issued pursuant to Section 17980.6, the following provisions shall apply:

(a) The enforcement agency may seek and the court may order imposition of the penalties provided for under Chapter 6 (commencing with Section 17995).

(b) (1) The enforcement agency may seek and the court may order the owner to not claim any deduction with respect to state taxes for interest, taxes, expenses, depreciation, or amortization paid or incurred with respect to the cited structure, in the taxable year of the initial order or notice, in lieu of the enforcement agency processing a violation in accordance with Sections 17274 and 24436.5 of the Revenue and Taxation Code.

(2) If the owner fails to comply with the terms of the order or notice to correct the condition that caused the violation pursuant to Section 17980.6, the court may order the owner to not claim these tax benefits for the following year.

(c) The enforcement agency, tenant, or tenant association or organization may seek and the court may order, the appointment of a receiver for the substandard building pursuant to this subdivision. In its petition to the court, the enforcement agency, tenant, or tenant association or organization shall include proof that notice of

the petition was served not less than three days prior to filing the petition, pursuant to Article 3 (commencing with Section 415.10) of Chapter 4 of Title 5 of Part 2 of the Code of Civil Procedure, to all persons with a recorded interest in the real property upon which the substandard building exists.

(1) In appointing a receiver, the court shall consider whether the owner has been afforded a reasonable opportunity to correct the conditions cited in the notice of violation.

(2) The court shall not appoint any person as a receiver unless the person has demonstrated to the court his or her capacity and expertise to develop and supervise a viable financial and construction plan for the satisfactory rehabilitation of the building. A court may appoint as a receiver a nonprofit organization or community development corporation. In addition to the duties and powers that may be granted pursuant to this section, the nonprofit organization or community development corporation may also apply for grants to assist in the rehabilitation of the building.

(3) If a receiver is appointed, the owner and his or her agent of the substandard building shall be enjoined from collecting rents from the tenants, interfering with the receiver in the operation of the substandard building, and encumbering or transferring the substandard building or real property upon which the building is situated.

(4) Any receiver appointed pursuant to this section shall have all of the following powers and duties in the order of priority listed in this paragraph, unless the court otherwise permits:

(A) To take full and complete control of the substandard property.

(B) To manage the substandard building and pay expenses of the operation of the substandard building and real property upon which the building is located, including taxes, insurance, utilities, general maintenance, and debt secured by an interest in the real property.

(C) To secure a cost estimate and construction plan from a licensed contractor for the repairs necessary to correct the conditions cited in the notice of violation.

(D) To enter into contracts and employ a licensed contractor as necessary to correct the conditions cited in the notice of violation.

(E) To collect all rents and income from the substandard building.

(F) To use all rents and income from the substandard building to pay for the cost of rehabilitation and repairs determined by the court as necessary to correct the conditions cited in the notice of violation.

(G) To borrow funds to pay for repairs necessary to correct the conditions cited in the notice of violation and to borrow funds to pay for any relocation benefits authorized by paragraph (6) and, with court approval, secure that debt and any moneys owed to the receiver for services performed pursuant to this section with a lien on the real property upon which the substandard building is located. The lien shall be recorded in the county recorder's office in the county within which the building is located.

(H) To exercise the powers granted to receivers under Section 568 of the Code of Civil Procedure.

(5) The receiver shall be entitled to the same fees, commissions, and necessary expenses as receivers in actions to foreclose mortgages.

(6) If the conditions of the premises or the repair or rehabilitation thereof significantly affect the safe and sanitary use of the substandard building by any tenant, to the extent that the tenant cannot safely reside in his or her unit, then the receiver shall provide relocation benefits in accordance with subparagraph (A) of paragraph (3) of subdivision (d).

(7) The relocation compensation provided for in this section shall not preempt any local ordinance that provides for greater relocation assistance.

(8) In addition to any reporting required by the court, the receiver shall prepare monthly reports to the state or local enforcement agency which shall contain information on at least the following items:

(A) The total amount of rent payments received.

(B) Nature and amount of contracts negotiated relative to the operation or repair of the property.

(C) Payments made toward the repair of the premises.

(D) Progress of necessary repairs.

(E) Other payments made relative to the operation of the building.

(F) Amount of tenant relocation benefits paid.

(9) The receiver shall be discharged when the conditions cited in the notice of violation have been remedied in accordance with the court order or judgment and a complete accounting of all costs and repairs has been delivered to the court. Upon removal of the condition, the owner, the mortgagee, or any lienor of record may apply for the discharge of all moneys not used by the receiver for removal of the condition and all other costs authorized by this section.

(10) After discharging the receiver, the court may retain jurisdiction for a time period not to exceed 18 consecutive months, and require the owner and the enforcement agency responsible for enforcing Section 17980 to report to the court in accordance with a schedule determined by the court.

(11) The prevailing party in an action pursuant to this section shall be entitled to reasonable attorney's fees and court costs as may be fixed by the court.

(12) The county recorder may charge and collect fees for the recording of all notices and other documents required by this section pursuant to Article 5 (commencing with Section 27360) of Chapter 6 of Division 2 of Title 3 of the Government Code.

(13) This section shall not be construed to limit those rights available to tenants and owners under any other provision of the law.

(14) This section shall not be construed to deprive an owner of a substandard building of all procedural due process rights guaranteed by the California Constitution and the United States Constitution, including, but not limited to, receipt of notice of the violation claimed and an adequate and reasonable period of time to comply with any orders which are issued by the enforcement agency or the court.

(15) Upon the request of a receiver, a court may require the owner of the property to pay all unrecovered costs associated with the receivership in addition to any other remedy authorized by law.

(d) If the court finds that a building is in a condition which substantially endangers the health and safety of residents pursuant to Section 17980.6, upon the entry of any order or judgment, the court shall do all of the following:

(1) Order the owner to pay all reasonable and actual costs of the enforcement agency including, but not limited to, inspection costs, investigation costs, enforcement costs, attorney fees or costs, and all costs of prosecution.

(2) Order that the local enforcement agency shall provide the tenant with notice of the court order or judgment.

(3) (A) Order that if the owner undertakes repairs or rehabilitation as a result of being cited for a notice under this chapter, and if the conditions of the premises or the repair or rehabilitation thereof significantly affect the safe and sanitary use of the premises by any lawful tenant, so that the tenant cannot safely reside in the premises, then the owner shall provide or pay relocation benefits to each lawful tenant. These benefits shall consist of actual reasonable moving and storage costs and relocation compensation. The actual moving and storage costs shall consist of all of the following:

(i) Transportation of the tenant's personal property to the new location. The new location shall be in close proximity to the substandard premises, except where relocation to a new location beyond a close proximity is determined by the court to be justified.

(ii) Packing, crating, unpacking, and uncrating the tenant's personal property.

(iii) Insurance of the tenant's property while in transit.

(iv) The reasonable replacement value of property lost, stolen, or damaged (not through the fault or negligence of the displaced person, his or her agent or employee) in the process of moving, where insurance covering the loss, theft, or damage is not reasonably available.

(v) The cost of disconnecting, dismantling, removing, reassembling, reconnecting, and reinstalling machinery, equipment, or other personal property of the tenant, including connection charges imposed by utility companies for starting utility service.

(B) (i) The relocation compensation shall be an amount equal to the differential between the contract rent and the fair market rental value determined by the federal Department of Housing and Urban Development for a unit of comparable size within the area for the period that the unit is being repaired, not to exceed 120 days.

(ii) If the court finds that a tenant has been substantially responsible for causing or substantially contributing to the substandard conditions, then the relocation benefits of this section shall not be paid to this tenant. Each other tenant on the premises who has been ordered to relocate due to the substandard conditions and who is not substantially responsible for causing or contributing to the conditions shall be paid these benefits and moving costs at

the time that he or she actually relocates.

(4) Determine the date when the tenant is to relocate, and order the tenant to notify the enforcement agency and the owner of the address of the premises to which he or she has relocated within five days after the relocation.

(5) (A) Order that the owner shall offer the first right to occupancy of the premises to each tenant who received benefits pursuant to subparagraph (A) of paragraph (3), before letting the unit for rent to a third party. The owner's offer on the first right to occupancy to the tenant shall be in writing, and sent by first-class certified mail to the address given by the tenant at the time of relocation. If the owner has not been provided the tenant's address by the tenant as prescribed by this section, the owner shall not be required to provide notice under this section or offer the tenant the right to return to occupancy.

(B) The tenant shall notify the owner in writing that he or she will occupy the unit. The notice shall be sent by first-class certified mail no later than 10 days after the notice has been mailed by the owner.

(6) Order that failure to comply with any abatement order under this chapter shall be punishable by civil contempt, penalties under Chapter 6 (commencing with Section 17995), and any other penalties and fines as are available.

(e) The initiation of a proceeding or entry of a judgment pursuant to this section or Section 17980.6 shall be deemed to be a "proceeding" or "judgment" as provided by paragraph (4) or (5) of subdivision (a) of Section 1942.5 of the Civil Code.

(f) The term "owner," for the purposes of this section, shall include the owner, including any public entity that owns residential real property, at the time of the initial notice or order and any successor in interest who had actual or constructive knowledge of the notice, order, or prosecution.

(g) These remedies shall be in addition to those provided by any other law.

(h) This section and Section 17980.6 shall not impair the rights of an owner exercising his or her rights established pursuant to Chapter 12.75 (commencing with Section 7060) of Division 7 of Title 1 of the Government Code.