

Tuesday, October 15, 2019, 7:00 P.M.

City Council Chambers, 333 Civic Center Plaza, Tracy

Web Site: www.cityoftracy.org

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.

CALL TO ORDER
PLEDGE OF ALLEGIANCE
INVOCATION
ROLL CALL
PRESENTATIONS

1. Certificates of Appointment - Planning Commission
2. Proclamation - Make a Difference Day

1. CONSENT CALENDAR

- 1.A. ADOPTION OF MINUTES OCTOBER 1, 2019 CLOSED SESSION, SPECIAL MEETING AND REGULAR MEETING MINUTES
- 1.B. APPROVE AMENDMENTS TO THE COUNCIL POLICY FOR THE DISPLAY OF FLAGS AT CITY FACILITIES
- 1.C. CONSIDER STAFF'S RECOMMENDATION FOR AWARD OF MAYOR'S COMMUNITY YOUTH SUPPORT NETWORK (MCYSN) RECONNECTING OUR YOUTH (ROY) GRANT PROGRAM FUNDS FOR FISCAL YEAR 2019-2020, APPROVE THE FUNDING AGREEMENTS FOR THE PROGRAM, AND AUTHORIZE THE CITY MANAGER TO EXECUTE THE FUNDING AGREEMENTS
- 1.D. APPROVE THE DEFERRED IMPROVEMENT AGREEMENT WITH MLP REALTY LLC, DBA CENTRAL PLASTICS, FOR A TEMPORARY STORM WATER RETENTION BASIN ON PESCADERO AVENUE, AND AUTHORIZE THE CITY CLERK TO FILE THE AGREEMENT WITH THE OFFICE OF THE SAN JOAQUIN COUNTY RECORDER
- 1.E. APPROVE A GENERAL SERVICES AGREEMENT WITH SPECTRATURF, OF CORONA, CA, TO PROVIDE FOR THE REPLACEMENT OF POURED-IN-PLACE RUBBER PLAYGROUND SURFACE (CIP 78156) AT VETERAN'S PARK, 177 GLENHAVEN DRIVE, TRACY, FOR AN AMOUNT NOT TO EXCEED \$62,507, AND AUTHORIZE THE CITY MANAGER TO APPROVE AMENDMENTS TO THE AGREEMENT FOR EXTENSIONS TO THE TERM, IF NEEDED

2. ITEMS FROM THE AUDIENCE

3. REGULAR AGENDA

- 3.A. RECEIVE PUBLIC TESTIMONY FROM PUBLIC HEARING FOR ANNUAL UNMET TRANSIT NEEDS, CITY OF TRACY, FISCAL YEAR 2019-20
- 3.B. PUBLIC HEARING TO INTRODUCE AN ORDINANCE AMENDING TRACY MUNICIPAL CODE SECTION 10.08.3560 REGARDING OFF-STREET PARKING AREA LANDSCAPING REQUIREMENTS
- 3.C. RECEIVE AND ACCEPT THE PRESENTATION OF THE GRAND THEATRE CENTER FOR THE ARTS ANNUAL REPORT

- 3.D. APPROVE AN EMPLOYMENT AGREEMENT BETWEEN LETICIA RAMIREZ AND THE CITY OF TRACY TO SERVE AS CITY ATTORNEY
- 3.E. ACCEPT A REPORT ON SENATE BILL 438, AN ACT TO AMEND SECTION 53110 OF AND TO ADD SECTION 53100.5 TO THE GOVERNMENT CODE, AND TO ADD SECTIONS 1797.223 AND 1798.8 TO THE HEALTH AND SAFETY CODE RELATING TO EMERGENCY SERVICES
- 3.F. APPROVE AMENDMENT NO. 1 TO THE JOINT POWERS AGREEMENT OF THE SOUTH SAN JOAQUIN COUNTY FIRE AUTHORITY
- 3.G. ADOPT PROPOSED CITY OF TRACY CITY COUNCIL CODE OF CONDUCT
- 4. ITEMS FROM THE AUDIENCE
- 5. STAFF ITEMS
- 6. COUNCIL ITEMS
- 7. ADJOURNMENT

TRACY CITY COUNCIL - SPECIAL MEETING MINUTES

October 1, 2019, 5:30 p.m.

Council Chambers, 333 Civic Center Plaza, Tracy

1. CALL TO ORDER – Mayor Rickman called the meeting to order at 5:30 p.m. for the purpose of a closed session to discuss the items outlined below.
2. ROLL CALL – Roll call found Council Member Vargas, Mayor Pro Tem Young, and Mayor Rickman present. Council Members Arriola and Ransom absent.
3. ITEMS FROM THE AUDIENCE – None.
4. CLOSED SESSION
 1. Conference with Legal Counsel – Anticipated Litigation (Gov. Code § 54956.9)

Significant exposure to litigation pursuant to § 54956.9(d)(2). (One case).
 2. Personnel Matter (Gov. Code, § 54957)

Public Employee Appointment, Employment, Evaluation of Performance, Discipline, or Dismissal

Position Title: City Attorney

Interim City Attorney, Leticia Ramirez, requested item number 1, Conference with Legal Counsel– Anticipated Litigation (Gov. Code § 54956.9) be removed from Closed Session.

5. RECESS TO CLOSED SESSION - Motion was made by Council Member Vargas and seconded by Mayor Pro Tem Young to recess the meeting to closed session at 5:30 p.m. Roll call vote found Council Member Vargas, Mayor Pro Tem Young and Mayor Rickman in favor; passed and so ordered. Council Members Arriola and Ransom absent.

Council Member Arriola arrived at 5:31 p.m. after roll call
Council Member Ransom arrived at 5:36 p.m, after roll call
6. RECONVENE TO OPEN SESSION – The meeting reconvened to open session at 5:58 p.m.
7. REPORT OF FINAL ACTION – None
8. ADJOURNMENT – Motion was made by Council Member Vargas and seconded by Council Member Ransom to adjourn. Roll call vote found Council Members Arriola, Ransom, Vargas, Mayor Pro Tem Young, and Mayor Rickman in favor; passed and so ordered. Time: 6:00 p.m.

The agenda was posted at City Hall on September 26, 2019. The above are action minutes.

ATTEST:

Mayor

City Clerk

October 1, 2019, 6:00 p.m.

City Council Chambers, 333 Civic Center Plaza

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

1. Mayor Rickman called the meeting to order at 6:00 p.m.
2. Roll call found Council Members Arriola, Ransom, Vargas, Mayor Pro Tem Young, and Mayor Rickman present.
3. Items from the Audience – None
4. WORKSHOP TO DISCUSS DRAFT REGULATORY ORDINANCE FOR COMMERCIAL CANNABIS ACTIVITY AND PROVIDE DIRECTION TO STAFF

Karin Schnaider, Finance Director provided the staff report and presentation.

Robert Tanner spoke in opposition of a cannabis store in the downtown area and reminded Council that this is still against Federal Law.

Kimberly Cargile thanked Council for moving forward with regulating the industry.

Evert Hunter spoke about the benefits of cannabis, was in favor of stores but agreed there should not be a cannabis store downtown.

Tim Keel spoke in favor of cannabis, and agreed there should not be a cannabis store downtown.

Alex Monceaux spoke in favor of cannabis, and requested a local ownership requirement and higher percent of local ownership.

Dan Schack agreed there should not be a cannabis store downtown, and had questions about conditional use permits.

Andrea Unsworth supported the ordinance, and asked if an employee permit is required, and would it be in addition to the State badge.

Dino Margaros expressed concerns regarding liability, and requested not to have cannabis stores in the downtown area.

City Council questions and comments followed.

Tim Cromartie, HdL consultant responded to Council comments and questions.

Staff to return with update and information on the following:

- Background check and badge process for employee badges
- Priority local ownership/processes to avoid “puppet” ownerships
- Evaluation process in December 2019
- Badge data regarding crime rates

5. ADJOURNMENT – Time: 6:58 p.m.

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

The above agenda was posted at the Tracy City Hall on September 26, 2019. The above are action minutes. A recording is available at the office of the City Clerk.

ATTEST:

Mayor

City Clerk

October 1, 2019, 7:00 p.m.

City Council Chambers, 333 Civic Center Plaza

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

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

Mayor Rickman led the Pledge of Allegiance.

Pastor Doug Diestler, Tracy Mission City Church offered the invocation.

Roll call found Council Members Arriola, Ransom, Vargas, Mayor Pro Tem Young and Mayor Rickman present.

Jenny Haruyama, City Manager presented the Employee of the Month award for October 2019 to Matt Kopinski – Utilities Department.

Mayor Rickman presented a proclamation for Arbor Day to John Newman, Urban Forestry Supervisor, Public Works Department.

Mayor Rickman presented a proclamation for Domestic Violence Awareness Month to Stephanie Player, Director of Programs for Prevention & Intervention Services, Women's Center-Youth & Family Services.

1. CONSENT CALENDAR – Motion was made by Mayor Pro Tem Young and seconded by Council Member Vargas to adopt the Consent Calendar. Roll call vote found all in favor; passed and so ordered.
 - 1.A APPROVAL OF SEPTEMBER 17, 2019, SPECIAL MEETING, CLOSED SESSION AND REGULAR MEETING MINUTES – **Minutes were adopted**
 - 1.B APPROVE AN AGREEMENT WITH SAN JOAQUIN REGIONAL TRANSIT DISTRICT FOR TRANSIT SERVICES AT TRACY TRANSIT STATION AND MOUNTAIN HOUSE FOR A TOTAL COST OF \$46,667 - **Resolution 2019-191** approved the agreement with San Joaquin Regional Transit.
 - 1.C AWARD A CONSTRUCTION CONTRACT TO TOM MAYO CONSTRUCTION, INC. OF STOCKTON, CALIFORNIA, IN THE AMOUNT OF \$128,200 FOR CONSTRUCTION OF SIDEWALK, CURB & GUTTER REPAIRS, CIP 73167; AUTHORIZE THE CITY MANAGER TO APPROVE CHANGE ORDERS UP TO THE CONTINGENCY AMOUNT OF \$19,000, IF NEEDED; AND AUTHORIZE AN APPROPRIATION OF \$20,000 FROM GAS TAX (F245) FOR THIS PROJECT – **Resolution 2019-192** awarded a Construction Contract to Tom Mayo Construction, Inc.
 - 1.D FIND THAT IT IS IN THE BEST INTEREST OF THE CITY TO FORGO THE FORMAL REQUEST FOR PROPOSAL PROCESS AND APPROVE A PROFESSIONAL SERVICES AGREEMENT WITH CH2MHILL INC. FOR REGULATORY PERMITS COMPLIANCE NOT TO EXCEED \$1,368,000 FOR

THE WASTEWATER EFFLUENT OUTFALL PIPELINE PROJECT – CIP 74083 – Resolution 2019-193 approved the agreement with CH2M Hill Inc.

- 1.E AWARD A CONSTRUCTION CONTRACT TO ZIMM INDUSTRIES, INC., OF FRESNO, CALIFORNIA, IN THE AMOUNT OF \$358,680 FOR THE REHABILITATION OF LEWIS MANOR WELL, CIP 75153, WITH A NOT TO EXCEED BUDGET OF \$447,482, AND APPROVE AN AMENDMENT WITH GEI CONSULTANTS FOR DESIGN SUPPORT IN THE AMOUNT OF \$25,000, AND AUTHORIZE THE CITY MANAGER TO APPROVE CHANGE ORDERS UP TO THE CONTINGENCY AMOUNT OF \$53,802, IF NEEDED – Resolution 2019-194 awarded the Construction Contract to Zimm Industries, Inc., and Amendment with GEI Consultants.
- 1.F WAIVE SECOND READING AND ADOPT ORDINANCE 1272, AN ORDINANCE OF THE CITY OF TRACY ELECTING TO IMPLEMENT A COMMUNITY CHOICE AGGREGATION PROGRAM BY AND THROUGH THE EAST BAY COMMUNITY ENERGY AUTHORITY - Ordinance 1272 was adopted
2. ITEMS FROM THE AUDIENCE – Evelyn Will shared her concerns about the Post Office and requested that Council do something about getting a real Post Office in Tracy.

Tim Silva spoke about the traffic dangers on Valpico Road and Glenbriar Drive for bicycle or pedestrian traffic.

Council Member Vargas provided a brief response to Mr. Silva’s comments.

Alice English asked about funding that was allocated for Corral Hollow Road widening.
3. REGULAR AGENDA
- 3.A PUBLIC HEARING TO CONSIDER AN APPEAL OF THE PLANNING COMMISSION'S DECISION TO DENY A DEVELOPMENT REVIEW APPLICATION (D19-0018) FOR A 264-UNIT RESIDENTIAL APARTMENT PROJECT (“VALPICO GLENBRIAR APARTMENTS”), ON APPROXIMATELY 11.62 ACRES LOCATED ON THE NORTH SIDE OF VALPICO ROAD AT GLENBRIAR DRIVE, 501 E. VALPICO ROAD (ALSO KNOWN AS 2605 AND 2795 S. MACARTHUR DRIVE), ASSESSOR'S PARCEL NUMBERS 246-140-13 AND 14. THE APPLICANT IS KATERRA, INC.

Alan Bell, Senior Planner and Andrew Malik, Assistant City Manager provided the staff report.

Frederik Venter, Kimberly-Horn and Associates Consultant provided an overview of the Transportation Master Plan.

Robert Armijo, Senior Engineer provided an update on proactive roadway construction.

Randall Bradley, Fire Chief and Alex Neicu, Interim Police Chief provided information regarding impacts on public safety.

Kristina Covall, Project Manager for Katerra introduced members of the Katerra team, and provided a presentation and information regarding construction of the project.

Greg Kaiser, Landscape Architect and Planner presented the landscaping design for the project.

Mayor Rickman opened the public hearing.

Yubo Kody, John Chen, Victor Chow, Tim Keel, Noel Varela, Robert Tanner, Monty Montgomery, Teresa English Soto (submitted a handout into the record), Bernel Scholl, Andre Ferris, Phillip Kite, Stephanie Payne, Byron Lance, Kathy Bower, Nancy Hernandez, Jass Sangha, Dan (Carpenters Union), Saval Kamal, Evelyn Will, Vivian Johnson, Analyn Sorge, Jamie McKeown, Tim Silva, Rebecca, Jennifer Miller, Allie, Raquel Fairfield, Kyra Ferris, Mr. Ceja, Jerry Sonderman shared a variety of concerns and opposition regarding the project.

Jackie Curtain, and Peter MacDonald spoke in support of the project.

Mayor Rickman called for a recess at 10:02 p.m. due to technical difficulties.

Mayor Rickman reconvened the meeting at 10:12 p.m.

Public comment continued.

Eric Taylor and Dan Schack spoke in support of the project.

Amrik Wander, Alice English, and Joe Cunningham shared a variety of concerns and opposition regarding the project.

Mayor Rickman closed the public hearing.

Ms. Covell and staff responded to comments and questions from the public and Council questions.

Ms. English approached the podium after public comment ended stating Council Member Vargas should not vote on the item due to her attendance at a Planning Commission meeting in August.

Council Member Vargas confirmed with Leticia Ramirez, Interim City Attorney that her attendance at the Planning Commission meeting in August did not create a conflict of interest and would not preclude her from participating in the matter.

City Council questions and comments followed.

It was Council consensus to make the following changes to the Conditions of Approval for the Katterra project.

B-22: Change term of agreement from 10 years to 15 years from building occupancy.

Add Condition B-23: The apartment buildings shall include additional architectural enhancements, including but not limited to movement or variety in materials in the roof line, and may include awnings over windows or balconies, architectural breaks, or use of colors to the satisfaction of the Development Services Director.

Add Condition B-24: Landscaping, particularly along the north property line adjacent to the residential property, shall be designed and maintained to ensure a continuous tree canopy, and shall be maintained in accordance with the approved plans, pursuant to Tracy Municipal Code Section 10.08.3560(n).

ACTION: Motion was made by Mayor Pro Tem Young and seconded by Council Member Ransom to adopt **Resolution 2019-195** reversing the Planning Commission's decision to deny Development Review Application Number D19-0018 and determination regarding off-street parking space reduction for the Glenbriar-Valpico Apartments located on approximately 11.62 acres on the north side of Valpico Road at Glenbriar Drive, Assessor's Parcel Numbers 246-12, 13, and 14, and include the above revisions to the Conditions of Approval. Roll call found Council Members Arriola, Ransom, Vargas, and Mayor Pro Tem Young in favor; passed and so ordered. Mayor Rickman opposed.

3.B PUBLIC HEARING TO CONSIDER ADOPTION OF THE 2019 PUBLIC SAFETY IMPACT FEE UPDATE FOR PUBLIC SAFETY FACILITIES AND UPDATED PUBLIC SAFETY IMPACT FEES FOR DEVELOPMENT PROJECTS WITHIN THE CITYWIDE MASTER PLAN AREA

Robert Armijo, Senior Engineer provided the staff report.

Alison Bouley, Harris and Associates, responded to Council questions.

Mayor Rickman opened the public hearing.

No one from the audience wished to speak.

Mayor Rickman closed the public hearing.

City Council questions and comments followed.

ACTION: Motion was made by Council Member Ransom and seconded by Council Member Arriola to adopt **Resolution 2019-196** approving the 2019 Public Safety Impact Fee Update and Updated Safety Development Impact Fees for the Citywide Master Plan Area. Roll call found Council all in favor; passed and so ordered.

3.C CONSIDER STAFF'S RECOMMENDATION FOR AWARD OF MAYOR'S COMMUNITY YOUTH SUPPORT NETWORK (MCYSN) RECONNECTING OUR YOUTH (ROY) GRANT PROGRAM FUNDS FOR FISCAL YEAR 2019-2020, APPROVE THE FUNDING AGREEMENTS FOR THE PROGRAM, AND AUTHORIZE THE CITY MANAGER TO EXECUTE THE FUNDING AGREEMENTS – Item continued to October 15, 2019

3.D ADOPT PROPOSED CITY OF TRACY CITY COUNCIL CODE OF CONDUCT – Item continued to October 15, 2019

4. ITEMS FROM THE AUDIENCE – None

5. STAFF ITEMS – None

6. COUNCIL ITEMS

6.A DETERMINE THE CITY'S POSITION ON TWO RESOLUTIONS TO BE CONSIDERED AT THE 2019 ANNUAL BUSINESS MEETING OF THE LEAGUE OF CALIFORNIA CITIES

Adrienne Richardson, City Clerk provided the staff report.

No one from the public wished to speak.

City Council questions and comments followed.

ACTION: Motion was made by Council Member Vargas and seconded by Mayor Pro Tem Young to vote in support of the following League of California Cities Resolution. Roll call found Council all in favor; passed and so ordered.

Resolution of the League of California Cities calling on the California Public Utilities Commission to amend Rule 20A to add projects in very high fire hazard severity zones to the list of eligibility criteria and to increase funding allocations for Rule 20A projects

ACTION: Motion was made by Mayor Pro Tem Young and seconded by Council Member Vargas to vote in support of the following League of California Cities Resolution. Roll call found Council Member Arriola, Vargas, Mayor Pro Tem Young and Mayor Rickman in favor; passed and so ordered. Council Member Ransom abstained.

A Resolution calling upon the Federal and State Governments to address the devastating impacts of international transboundary pollution flows into the southernmost regions of California and the Pacific Ocean

6.B APPOINT TWO APPLICANTS TO SERVE ON THE PLANNING COMMISSION

Council Subcommittee members Mayor Rickman and Council Member Ransom provided the report.

No one from the public wished to speak.

ACTION: Motion was made by Council Member Ransom and seconded by Mayor Rickman to approve the subcommittee's recommendation and appoint Maurice Francis to the Planning Commission to serve the remainder of a term beginning October 2, 2019, and ending on March 31, 2022, and appoint Gurtej Atwal to serve the remainder of a vacated term and a new four year term beginning October 2, 2019, and ending March 31, 2024. James Caling was added to a one year eligibility list. Roll call found Council all in favor; passed and so ordered.

Council Member Vargas requested to bring back to Council an update on the Valley Link and discussion for land dedication for operations for the project. Council Member Ransom supported the request.

7. ADJOURNMENT – Time: 12:18 a.m. Wednesday, October 2, 2019.

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

The above agenda was posted at the Tracy City Hall on September 26, 2019. 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

APPROVE AMENDMENTS TO THE COUNCIL POLICY FOR THE DISPLAY OF FLAGS AT CITY FACILITIES

EXECUTIVE SUMMARY

On June 18, 2019, Council adopted a policy on the display of flags at City facilities, including ceremonial or commemorative flags (Flag Policy). On August 20, 2019, Council provided direction regarding proposed amendments to the Flag Policy. This item seeks Council approval of the amendments discussed below.

DISCUSSION

On June 18, 2019, Council adopted a policy via Resolution No. 2019-138 on the display of flags at City facilities, including ceremonial or commemorative flags. The Flag Policy memorialized the City's practice of displaying flags in accordance with the federal and state law and allowed the display of commemorative flags by Council request only. The policy further declared that the City's flagpoles are not intended to serve as a forum for free expression by the public.

On August 20, 2019, Council directed staff to amend the Flag Policy to include the following items:

- Commemorative or ceremonial flags shall be displayed concurrently with the City flag at second position (below the City flag).
- A request to display a commemorative or ceremonial flag must be supported by two Council members in order to be placed on a Council agenda. This would make the Flag Policy consistent with Council's policy on agendizing matters.
- Requests to display commemorative or ceremonial flags must be agendized as a "Regular Item" on the Council's agenda.
- Commemorative or ceremonial flags will be displayed for 24 hours if displayed during the normal City workweek. If the day of commemoration occurs on a weekend or holiday, the flag will be posted on the last working day prior to the weekend or holiday and removed on the next normal City workday. The 24-hour period may also be extended if specified in the approving resolution.
- Requests to display commemorative or ceremonial flags must be considered once a year to allow for sufficient operational and budget planning. Staff recommends that all requests be submitted on or before May 1st of every year.

In addition, Council further directed staff to discuss the possibility of displaying, on a year-round basis, all of the flags of the armed forces at the Tracy Veterans Memorial, located at the Tracy Civic Center Plaza between the Senior Center and the Community Center. The Public Works and Parks and Recreation departments met with the leadership of the Veterans of Foreign Wars (VFW) on September 3, 2019 to discuss this

item. The VFW representatives expressed an interest in supporting this effort. Staff plans to meet with the VFW in October to discuss this and other opportunities for the VFW to assist in honoring the Armed Services and veterans. Staff will update Council on the outcomes of these discussions and will return to Council for further action, if needed.

FISCAL IMPACT

Costs associated with the purchase or storage of ceremonial or commemorative flags will be covered by the City Manager's budget.

STRATEGIC PLAN

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

RECOMMENDATION

That the City Council repeal Resolution No. 2019-138 and approve the amended flag policy.

Prepared by: Leticia Ramirez, Interim City Attorney

Reviewed by: Don Scholl, Public Works Director
Brian MacDonald, Parks and Recreation Director
Karin Schnaider, Finance Director
Midori Lichtwardt, Assistant City Manager

Approved by: Jenny Haruyama, City Manager

ATTACHMENT:

A- Policy for the Display of Flags at City Facilities (with Track Changes)

POLICY FOR THE DISPLAY OF FLAGS AT CITY FACILITIES
(Exhibit "A" to Resolution No. 2019-____)

SECTION 1: PURPOSE

The purpose of this policy is to establish clear guidelines regarding the display of the flags at City facilities.

SECTION 2: POLICY

2.1 Conformance with Federal and State Flag Regulations. Flags shall be displayed in accordance with federal and state regulations, including Title 4, Chapter 1 of the United States Code, and Sections 430 through 439 of the California Government Code.

2.2 The City Manager is authorized to order that the City flag be lowered to half-staff in honor of a City employee killed in the line of duty.

2.3 Ceremonial or Commemorative Flags.

2.3.1 Non-Public Forum. The City's flagpoles are not intended to be a forum for free expression by the public. Ceremonial or commemorative flags shall be displayed as an expression of the City's official sentiments. A request to display a commemorative or ceremonial flag must be supported by two Council members in order to be agendaized for Council consideration. All requests to display commemorative flags must be listed as a "Regular Item" on a Council agenda. Council must present requests to display a commemorative flag by May 1st of every year. A Council resolution authorizing the display of a commemorative flag must be approved by a supermajority vote (four-fifths) of the City Council.

2.3.2. Commemorative flags shall only be displayed at City Hall and on the flagpole designated to display the City's flag. Commemorative or ceremonial flags shall be displayed concurrently with the City flag at second position (below the City flag).

2.3.3 Commemorative or ceremonial flags will be displayed for 24 hours if displayed during the normal City workweek. If the day of commemoration occurs on a weekend or holiday, the flag will be posted on the last working day prior to the weekend or holiday and removed on the next normal City workday. The 24-hour period may also be extended if specified in the approving resolution. Commemorative flags shall be displayed for a period of time authorized by resolution of the City Council.

2.3.4 The City will not display a commemorative or ceremonial flag based on a request from a third party, nor will the City use its flagpoles to sponsor the expression of a third party.

2.4 Implementation of Policy. The Public Works Director is responsible for ensuring the proper implementation of this Policy. The Public Works Director is further authorized to develop standard operating procedures consistent with this Policy.

RESOLUTION 2019-_____

REPEALING RESOLUTION NO 2019-138 AND APPROVING AN AMENDED COUNCIL
POLICY REGARDING THE DISPLAY OF FLAGS AT CITY FACILITIES

WHEREAS, The City of Tracy displays and handles all flags in accordance with Federal and State Law, and

WHEREAS, On June 18, 2019, Council adopted a policy via Resolution No. 2019-138 on the display of flags at City facilities, including ceremonial or commemorative flags (Flag Policy), and

WHEREAS, The City wishes to amend the Flag Policy to address implementation issues and ensure that the policy provides clear guidelines about the display of flags at City facilities that declares that the City's flagpoles are not intended to be a forum for free expression by the public.

NOW, THEREFORE BE IT RESOLVED, that the City Council of the City of Tracy hereby repeals Resolution No. 2019-138 and adopts the amended policy for the display of flags at City Facilities contained in Exhibit A.

The foregoing Resolution 2019-_____ was adopted by the Tracy City Council on the 15th day of October, 2019, 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

CONSIDER STAFF'S RECOMMENDATION FOR AWARD OF MAYOR'S COMMUNITY YOUTH SUPPORT NETWORK (MCYSN) RECONNECTING OUR YOUTH (ROY) GRANT PROGRAM FUNDS FOR FISCAL YEAR 2019-2020, APPROVE THE FUNDING AGREEMENTS FOR THE PROGRAM, AND AUTHORIZE THE CITY MANAGER TO EXECUTE THE FUNDING AGREEMENTS

EXECUTIVE SUMMARY

The City of Tracy's Mayor's Community Youth Support Network is entering its twelfth year of programming, having served thousands of local youth through prevention, intervention and crisis suppression services offered in partnership with local non-profits. The MCYSN ROY Grant Program is a matching grant program and is budgeted pending appropriation and approval by the City Council.

While the future direction of the MCYSN program is still being determined through a reassessment process, Council directed staff to proceed in 2019-2020 with no changes to the existing ROY Grant Program.

Staff is requesting that Council consider and approve the recommendations from the 2019-2020 MCYSN ROY Grant Review Committee and award grant funding in the total amount of \$175,000 to five local non-profits to support youth programs in Tracy.

DISCUSSION

This February, the City of Tracy's Mayor's Community Youth Support Network (MCYSN) marked its 11th year of programming. The MCYSN ROY Grant Program aims at supporting local programs that develop skills and competencies resulting in healthy and thriving youth and families. MCYSN's approach is to prevent and intervene on issues of youth violence via a network of community service providers.

Council received an update of the Council-directed MCYSN program reassessment at its July 16, 2019, regular meeting, and engaged in discussion regarding potential models for the future of the program. At that time, Council directed staff to proceed in 2019-2020 with no changes to the existing Reconnecting Our Youth (ROY) Grant. Staff will return to Council to continue the reassessment process after the 2019-2020 grants have been awarded.

The MCYSN ROY Grant application for FY 2019-2020 was made available on August 15, 2019. A mandatory pre-submittal conference was held on August 19, 2019, and the grant application deadline was September 3, 2019.

Eligible service areas for the ROY grant include: youth outreach and education; substance abuse prevention and intervention; bullying prevention (physical, verbal, cyber); alternative after school and evening activities; gang prevention and intervention

services; family or individual youth case management; behavioral health services (prevention and intervention). MCYSN ROY Grant contracts may be funded up to \$50,000, but may not exceed a \$50,000 contract total. The term of the FY 2019-2020 contracts is from October 14, 2019 through June 30, 2020.

Funding recommendations for the MCYSN ROY Grant are made by an external review committee. Staff held the MCYSN ROY Grant Scoring Committee meeting on September 12, 2019. The scoring committee consisted of four individuals with strong backgrounds in local youth services needs, including: one representative from local non-profit Fix'd, Inc., one representative from First 5 San Joaquin, one Parks and Community Services Commissioner, and one Youth Advisory Commission Adult Commissioner. Per the Request for Proposal (RFP), the Review Committee evaluated each application on the following criteria:

1. The strategy of strengthening and expanding the City's partnerships and service collaborations in providing youth and/or family services.
2. The applicant's past and current experience, expertise, reliability, and capacity in operating high quality, cost-effective programs for youth and/or families exhibiting high risk behaviors including those associated with behavioral health.
3. The development of realistic and measurable client outcomes.
4. The applicant's understanding and history of the City's Mayor's Community Youth Support Network Program, and at-risk youth service needs in the community.
5. Proper completion and submittal of all required proposal documents outlined in the RFP.
6. Staff planning and staffing qualifications.
7. Method(s) of evaluating program fidelity.
8. Cost proposal.

This year's Review Committee members were additionally in consensus that applications should provide data that identifies needs specific to the Tracy community for youth ages 10 to 18, and that program content should be designed to address these local needs and be able to demonstrate improvement.

The City received seven eligible applications for the MCYSN ROY Grant, which are summarized in Attachment A. The quantitative method used to score the applications was determined by the Review Committee, as it was in past years, while the qualitative criteria remained as prescribed in the RFP. After careful review and discussion, each member of the MCYSN Grant Review Committee individually ranked the applications based on the criteria met (1=highest rank, 7 = lowest rank), averaged those numbers to create an overall ranking for each application, and then made the following funding recommendations:

Organization <i>Program Name</i>	Amount Requested by Applicant	Amount Recommended by MCYSN Review Committee (% of ask)	Amount Awarded in 2018/19, if applicable (Award amount expended)	Overall Ranking, averaged (out of 7 total) 1=highest, 7=lowest
Restoration Center <i>Intervention, Prevention & Outreach Program</i>	\$30,750	\$30,750 (100%)	\$27,000 (\$27,000)	2.25
Tracy Chamber of Commerce Foundation <i>Hire Me First Program</i>	\$50,000	\$38,000 (76%)	\$40,000 (\$37,615)	2.25
Give Every Child a Chance <i>T.E.A.C.H. – Tutoring Encourages Achievement, Coaching, & Hard work</i>	\$43,750	\$35,000 (80%)	\$35,000 (\$35,000)	3.5
Boys and Girls Club of Tracy <i>SMART Moves and SMART Girls Program</i>	\$50,000	\$38,000 (76%)	\$38,000 (\$38,000)	3.5
UNeed2, Inc. <i>Youth and Family Technology Training</i>	\$50,000	\$33,250 (66.5%)	\$35,000 (\$35,000)	3.75
Community Partnership for Families of San Joaquin <i>CPFSJ Family Case Management Services</i>	\$16,950	\$0	N/A	6
The Chest of Hope, Inc. <i>Teens Against Dating Violence and Domestic Abuse</i>	\$45,490	\$0	N/A	6.75
TOTAL	\$286,940	\$175,000	\$175,000	28

The MCYSN Grant Review Committee denied funding for Community Partnership for Families of San Joaquin because the application did not provide enough information to distinguish the county-wide program plan and budget from the portion of the program intended to serve Tracy youth. The Committee recommended that Community Partnership tailor future applications toward directly serving Tracy youth and which staff would be assigned to Tracy.

The Review Committee also denied funding for The Chest of Hope because the application left them unclear on the financial stability of the organization and actual content, staffing, and structure of the program. The Committee recommends that The Chest of Hope include, in future applications, information on trends specific to Tracy that would indicate community need for this program and more details about the roles of the contracted organizations providing services to the program.

Staff is requesting that Council consider and approve the recommendations from the MCYSN ROY Grant Scoring Committee, and to award grant funding in the total amount of \$175,000 to the five local non-profits listed above to support youth programs in Tracy.

STRATEGIC PRIORITY

This agenda item supports the City's Quality of Life Strategic Plan and specifically implements the following goal:

Quality of Life Strategy

Goal 2: Promote public health, safety and community welfare throughout the community.

FISCAL IMPACT

The MCYSN program budget has been allocated and approved as part of the Fiscal Year 2019-2020 budget.

RECOMMENDATION

That the City Council consider staff's recommendation for award of MCYSN ROY Grant Program funds for FY 2019-2020, approve the funding agreements for the program, and authorize the City Manager to execute funding agreements.

Prepared by: Christine Mabry, Management Analyst I

Reviewed by: Thien Nguyen, Recreation Services Supervisor
Brian MacDonald, Parks & Recreation Director
Karin Schnaider, Finance Director
Midori Lichtwardt, Assistant City Manager

Approved by: Jenny Haruyama, City Manager

ATTACHMENTS

Attachment A - MCYSN ROY Grant Program Descriptions and Funding Recommendations Summary

MCYSN ROY Grant Program Program Descriptions and Funding Recommendations Summary – Cycle 12

Organization Name	Program Name and Description	# of youth proposing to serve	Funding Request	Recommended Award Amount
Boys and Girls Club of Tracy	<p><i>SMART Moves and SMART Girls Programs</i></p> <p>Youth who participate in the SMART (Skills Mastery and Resistance Training) Moves and SMART Girls programs will increase their self esteem, knowledge of the effects of drugs, alcohol, tobacco, bullying, and early sexual activity.</p>	140	\$50,000	\$38,000
The Chest of Hope	<p><i>Teens Against Dating Violence and Domestic Abuse</i></p> <p>Provides 18-hour Life Coach Training for teens to: increase knowledge and awareness of verbal, Emotional, physical, bullying and sexual abuse; open dialogue for teens to share opinions and experiences; and empower Teen Life Coaches with concrete options to effect change in their respective communities.</p>	54 (3 cycles of 18 teens)	\$45,590	\$0
Community Partnership for Families of San Joaquin	<p><i>CPFSJ Family Case Management Services</i></p> <p>Family case management using the Family Strengthening Model, including well-being, growth and development, civic engagement, and skills development activities.</p>	536	\$16,950	\$0

MCYSN ROY Grant Program Program Descriptions and Funding Recommendations Summary – Cycle 12

Organization Name	Program Name and Description	# of youth proposing to serve	Funding Request	Recommended Award Amount
Give Every Child A Chance	<p align="center"><i>T.E.A.C.H. – Tutoring Encourages Achievement, Coaching & Hard work</i></p> <p>Free after-school mentoring/tutoring to K-12 students who are receiving one or more below average grades in a subject(s), based on their report card, a teacher referral explaining the assistance needed, or any special needs student with an Individual Education Plan (IEP). The focus is for 4th-12th grade; however, all students are welcome to participate.</p>	90-120	\$43,750	\$35,000
Restoration Center	<p align="center"><i>Intervention, Prevention, and Outreach Program</i></p> <p>After school tutoring for at risk youth; youth sports camp designed to improve character, physical development, endurance, self-esteem, teamwork skills, and healthy competition, with instruction from professional athletes; The Parent Project® prevention and intervention workshop.</p>	163	\$30,750	\$30,750
Tracy Chamber of Commerce Foundation	<p align="center"><i>Hire Me First Program</i></p> <p>Job training program that results in more employable youth in our community. Program includes:</p> <ol style="list-style-type: none"> 1. Hire Me First Certification Program 2. Job Readiness Workshops 3. Mock Interviews 4. Internships 5. Job Shadow Day 6. Student Job Fair Day 	1790	\$50,000	\$38,000

MCYSN ROY Grant Program Program Descriptions and Funding Recommendations Summary – Cycle 12

Organization Name	Program Name and Description	# of youth proposing to serve	Funding Request	Recommended Award Amount
Uneed2, Inc.	<p align="center"><i>Youth and Family Technology Training</i></p> <p>Technology training focused on computer hardware and software, conducted after school, during summer and school breaks consisting of 24 hours of instruction: hands-on demonstration, group interaction, group community-service learning, and job readiness training. Upon completion, Uneed2, Inc. will donate a computer to the student, one per household.</p>	125 youth + 100 parents	\$50,000	\$33,250

RESOLUTION 2019-_____

AWARDING THE MAYOR'S COMMUNITY YOUTH SUPPORT NETWORK (MCYSN) RECONNECTING OUR YOUTH (ROY) GRANT PROGRAM FUNDS FOR FISCAL YEAR 2019-2020 AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE FUNDING AGREEMENTS

WHEREAS, The MCYSN ROY Grant Program is a matching grant program that helps fund local youth services, and is budgeted pending appropriation and approval by the City Council, and

WHEREAS, The City of Tracy received seven eligible grant applications, and an external grant scoring committee reviewed the applications and recommended that five be funded based on the MCYSN ROY Grant scoring criteria, for a total award amount of \$175,000, and

NOW, THEREFORE, BE IT RESOLVED, that the City Council of the City of Tracy hereby awards MCYSN ROY Grant funding for fiscal year 2019-2020 to the following awardees:

ORGANIZATION	AWARD AMOUNT
Boys and Girls Club of Tracy	\$38,000
Give Every Child a Chance	\$35,000
Restoration Center	\$30,750
Tracy Chamber of Commerce – Hire Me First	\$38,000
UNeed2, Inc.	\$33,250
Total Funding Award	\$175,000

BE IT FURTHER RESOLVED, That the City Manager is authorized to execute the MCYSN ROY Grant funding agreements for fiscal year 2019-2020.

* * * * *

The foregoing Resolution _____ was passed and adopted by the Tracy City Council on the 15th day of October, 2019, 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

APPROVE THE DEFERRED IMPROVEMENT AGREEMENT WITH MLP REALTY LLC, DBA CENTRAL PLASTICS, FOR A TEMPORARY STORM WATER RETENTION BASIN ON PESCADERO AVENUE, AND AUTHORIZE THE CITY CLERK TO FILE THE AGREEMENT WITH THE OFFICE OF THE SAN JOAQUIN COUNTY RECORDER

EXECUTIVE SUMMARY

The Project located at 1480 East Pescadero Avenue, owned by MLP Realty, L.L.C., d.b.a. Central Plastics (Developer), is master planned by the City to drain into the Northeast Industrial (NEI) storm drain retention basin. The NEI detention basin is not yet fully constructed. Developer has proposed to construct a temporary storm water retention basin (Retention Basin) and defer the final storm drain connection until the NEI Basin is constructed (collectively "Deferred Improvements"). At the same time, the Developer will remove the Retention Basin. The Developer has signed the Deferred Improvement Agreement (DIA) to guarantee completion of the Deferred Improvements.

DISCUSSION

Developer is the owner of real property located inside the City limits located at 1480 East Pescadero Avenue, APN: 213-070-84.

On September 18, 2018, the City of Tracy approved an application by the Developer to construct a new 60,456 square feet industrial building. Per the adopted 2012 Storm Drainage Master Plan, the 1480 East Pescadero Avenue is master planned to drain into the regional Northeast Industrial Specific Plan storm drain detention basin (NEI Basin). The NEI Basin is not yet fully constructed and is not able accept Developer's storm water volume. To address the storm drain issue, Developer purchased an adjacent parcel to construct a temporary storm water retention basin (Retention Basin) and defer the final storm drain connection until the NEI Basin is constructed and able to accept storm water from the Developer. At that time, the Developer will also remove the Retention Basin on the adjacent parcel. The City and Developer agreed to enter into an agreement to ensure the Developer completes the Deferred Improvements.

The Developer has executed the DIA, to guarantee the completion of the above-listed Deferred Improvements.

FISCAL IMPACT

The Developer has paid the applicable engineering review fees, which include the cost of processing the Deferred Improvement Agreement.

STRATEGIC PLAN

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

RECOMMENDATION

That City Council, by resolution, approve the Deferred Improvement Agreement with MLP Realty, L.L.C., d.b.a. Central Plastics, for a temporary storm water retention basin on Pescadero Avenue, and authorize the City Clerk to file the Agreement with the Office of the San Joaquin County Recorder.

Prepared by: Al Gali, Associate Civil Engineer

Reviewed by: Robert Armijo, PE, City Engineer / Assistant Development Services Director
Karin Schnaider, Finance Director
Andrew Malik, Assistant City Manager

Approved by: Jenny Haruyama, City Manager

ATTACHMENTS

Attachment A – Deferred Improvement Agreement

RECORDING REQUESTED BY:
City of Tracy
Development & Engineering Services
333 Civic Center Plaza
Tracy, CA 95376

WHEN RECORDED MAIL TO:
City of Tracy
Office of the City Clerk
333 Civic Center Plaza
Tracy, CA 95376
Attn: Adrienne Richardson

SPACE ABOVE THIS LINE FOR RECORDER'S INFORMATION

**CITY OF TRACY
DEFERRED IMPROVEMENT AGREEMENT
CENTRAL PLASTICS, D18-0023**

This **DEFERRED IMPROVEMENT AGREEMENT** (hereinafter "Agreement") is made and entered into by and between the **CITY OF TRACY**, a municipal corporation (hereinafter "City"), and **MLP REALTY, LLC**, a limited liability company (hereinafter "Developer").

RECITALS

- A. The Developer is the owner of the real property located on 1480 East Pescadero Avenue, Assessor's Parcel Number: 213-070-84 (hereinafter "Property") and more particularly described in Exhibit "A" attached hereto and incorporated herein by reference.
- B. The Development Review Permit (D18-0023) consisting of a 60,194 square-foot warehouse and manufacturing facility, and the building's parking lot on approximately 2.94 acres was approved by the Development Services Director on September 18, 2018 and is on file with the City.
- C. The Development Review Permit includes Conditions of Approval (hereinafter "Conditions"). Said Conditions are described in Exhibit "B", attached hereto, and incorporated herein by reference.
- D. The Conditions require the Developer to design and construct certain on-site and off-site improvements that are necessary to serve the Project. The Developer has requested that construction of certain on-site improvements be deferred to a later date (hereinafter "Deferred Improvements"). The Deferred improvements are described in Exhibit "C", attached hereto, and incorporated herein by reference.

NOW THEREFORE, THE PARTIES MUTUALLY AGREE AS FOLLOWS:

1. **SCOPE OF WORK**. The Developer shall construct, or cause to be constructed, the Deferred Improvements to the satisfaction of the City Engineer, in accordance with the terms and conditions set forth in this Agreement and Tracy Municipal Code. The Deferred Improvements shall be constructed, and all materials and labor shall be

**CITY OF TRACY –DEFERRED IMPROVEMENT AGREEMENT
CENTRAL PLASTIC, D18-0023
PAGE 2 OF 4**

provided, at the Developer's expense, in the manner described in the Plans and Specifications. No change shall be made to the Scope of the Deferred Improvements unless authorized in writing by the City Engineer. The Developer may submit a written request to the City Engineer for a change in the Scope of the Deferred Improvements, as required by Tracy Municipal Code section 12.36.060(f). Developer is subject to any revisions, and/or updates of the City's Design Documents. At the City Engineer's written determination, Developer shall update Exhibit "C" to conform to the current adopted Design Documents

2. **IMPROVEMENT SECURITY.** , Concurrently with Developer's execution of this Agreement, the Developer shall furnish improvement security for the Deferred Improvements, in a form authorized by the Subdivision Map Act (Government Code sections 66499 *et seq.*) and Tracy Municipal Code section 12.36.080, in the following amounts:

2.1 **Faithful Performance** security in the amount of **\$44,000.00** to secure faithful performance of this Agreement (until the date when the City Council accepts the Deferred Improvements as complete).

2.2 **Labor and Material** security in the amount of **\$44,000.00** to secure payment by the Developer to laborers and materialmen (until the date when claims are required to be made by laborers and materialmen)

2.3 **Warranty** security in the amount of **\$4,400.00** to secure faithful performance of this Agreement for one year from the date on which the City Council accepts the Deferred Improvements as complete.

3. **TIME OF PERFORMANCE.** Time is of the essence in the performance of the Deferred Improvements, and the timing requirements set forth herein shall be strictly adhered to unless otherwise modified in writing in accordance with this Agreement. The timing requirements for the Deferred Improvements are set forth in Exhibit "C." The Developer shall submit all requests for extensions of time to the City, in writing, no later than fifteen (15) days after the start of the condition that purportedly caused the delay, and not later than the date on which performance is due.
4. **OBLIGATIONS RUN WITH THE LAND.** All obligations and provisions of this Agreement shall run with the real property described in Exhibit "A," and shall bind the Developer and its respective successors and assigns.

5. **NOTICES.**

- 5.1 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 respective party as follows:

To CITY:

City Engineer
City of Tracy
333 Civic Center Plaza
Tracy, CA 95376

To Developer:

MLP Realty, LLC
1905 N. MacArthur Drive
Suite 100
Tracy, CA 95376

**CITY OF TRACY –DEFERRED IMPROVEMENT AGREEMENT
CENTRAL PLASTIC, D18-0023
PAGE 3 OF 4**

- 5.2 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 following the deposit in the United States Mail of registered or certified mail, sent to the address designated above.
6. **ASSIGNMENT AND DELEGATION.** This Agreement and any portion thereof shall not be assigned or transferred, nor shall any of the Developer's duties be delegated, without the written consent of the City. Any attempt to assign or delegate this Agreement without the written consent of the City shall be void and of no force and effect. A written consent by the City to one assignment shall not be deemed to be the consent to any subsequent assignment.
7. **INDEMNIFICATION.** Developer shall indemnify, defend and hold harmless the City (including its elected officials, officers, agents and employees) from and against any and all claims, demands, liabilities, costs and expenses (including court costs and attorney's fees) resulting from or arising out of the performance of the Deferred Improvements by Developer or Developer's agents, representatives, contractors, subcontractors or employees.
8. **MODIFICATIONS.** This Agreement may not be modified orally or in any manner other than by an agreement in writing signed by both parties.
9. **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.
10. **SEVERABILITY.** In the event, any 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 full force and effect.
11. **JURISDICTION AND VENUE.** The interpretation, validity, and enforcement of the Agreement shall be governed by and construed under the laws of the State of California. Any suit, claim, or legal proceeding of any kind related to this Agreement shall be filed and heard in a court of competent jurisdiction in the County of San Joaquin.
12. **ENTIRE AGREEMENT.** This Agreement comprises the entire integrated understanding between the parties concerning the Deferred Improvements described herein to be constructed for this Project. This Agreement supersedes all prior negotiations, representations, or agreements related to the Deferred Improvements.
13. **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 Developer and the City. This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

**CITY OF TRACY –DEFERRED IMPROVEMENT AGREEMENT
CENTRAL PLASTIC, D18-0023
PAGE 4 OF 4**

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

CITY

CITY OF TRACY,
a municipal corporation

By: Robert Rickman
Title: Mayor
Date: _____

Attest:


By: Adrienne Richardson
Title: City Clerk
Date: _____

Approved As To Form:

By: Leticia Ramirez
Title: Interim City Attorney
Date: _____

DEVELOPER

MLP Realty LLC
1905 N. MacArthur Drive
Suite 100
Tracy, CA 95376


By: Hiron Patel
Title: MANAGER
Date: 8/29/19

See Attached "California Notary Certificate"

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of SAN JOAQUIN }

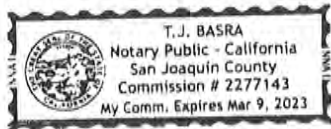
On 8-29-2019 before me, T.J. BASRA, NOTARY PUBLIC
Date Here Insert Name and Title of the Officer

personally appeared HIREN D. PATEL
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Place Notary Seal and/or Stamp Above

Signature TJB
Signature of Notary Public

OPTIONAL

Completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: DEFERRED IMPROVEMENT AGREEMENT

Document Date: 8-29-2019 Number of Pages: 4

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

- Corporate Officer – Title(s): _____
- Partner – Limited General
- Individual Attorney in Fact
- Trustee Guardian of Conservator
- Other: _____

Signer is Representing: _____

Signer's Name: _____

- Corporate Officer – Title(s): _____
- Partner – Limited General
- Individual Attorney in Fact
- Trustee Guardian of Conservator
- Other: _____

Signer is Representing: _____

EXHIBIT A

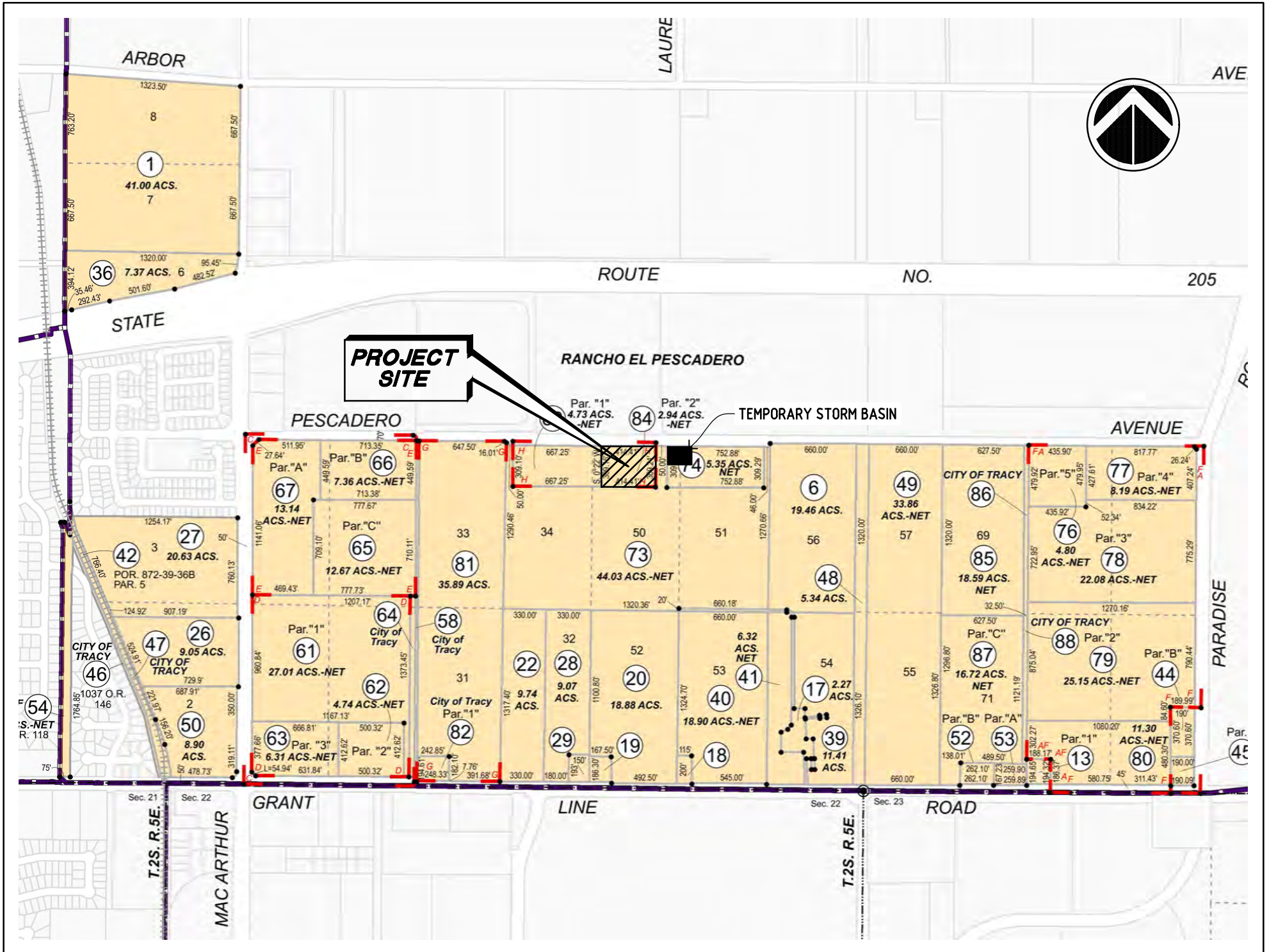


EXHIBIT B

CITY OF TRACY DETERMINATION OF THE DEVELOPMENT SERVICES DIRECTOR

Application Number D18-0010

A determination of the Development Services Director approving a Development Review application for a new 60,456 square foot industrial building with related parking and landscape improvements located on the south side of Pescadero Avenue (Assessor's Parcel Number 213-070-84). The owner is Old Golden Oaks, LLC.

The following considerations were relevant in evaluating this application: Existing and planned infrastructure improvements, such as adjacent roadways, existing site improvements, storm drain systems, the project's visual impact on Pescadero Avenue as well as other adjacent properties, on-site circulation, and landscaping.

Staff has reviewed the application and determined that the following City regulations apply:

TMC Sec 10.08.3920 et seq.: Development Review
TMC Sec 10.08.3440 et seq.: Off-Street Parking Requirements
Northeast Industrial Specific Plan
City of Tracy Design Goals and Standards

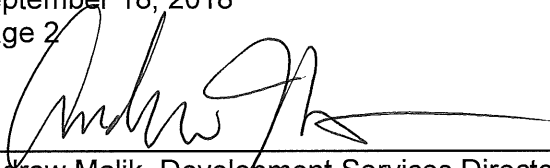
The Development Services Director has determined that the proposed project is exempt from CEQA Guidelines pursuant to Section 15332, In-Fill Development Projects. This exemption pertains to the construction of projects on sites that are less than five acres and substantially surrounded by urban uses.

THE DEVELOPMENT SERVICES DIRECTOR, AFTER CONSIDERING ALL OF THE EVIDENCE PRESENTED, HEREBY APPROVES THE DEVELOPMENT REVIEW APPLICATION AS DESCRIBED IN THE PLANS RECEIVED BY THE DEVELOPMENT SERVICES DEPARTMENT ON MAY 4, 2018, WITH THE REVISED SITE CIRCULATION AND SITE PLAN RECEIVED AUGUST 27, 2018, SUBJECT TO THE ATTACHED CONDITIONS OF APPROVAL (EXHIBIT "1") AND BASED ON THE FOLLOWING FINDINGS:

Development Review Findings:

1. The proposal increases the quality of the project site and enhances the property in a manner that improves the property in relation to the surrounding area and the citizens of Tracy because it will enhance the property with a new, well-designed industrial building and related landscaping.
2. The proposed project, as conditioned, conforms to the regulations of the Northeast Industrial Specific Plan, the Tracy Municipal Code, the City of Tracy General Plan, the Citywide Design Goals and Standards, California Building and Fire Codes, and all other applicable City regulations, including land use, building design, off-street parking and circulation, and landscape design.

Development Services Determination
Central Plastics D18-0010
September 18, 2018
Page 2



Andrew Malik, Development Services Director

9/18/18

Date of Action

Exhibit 1 - Development and Engineering Services Department Conditions of Approval

**Conditions of Approval for Central Plastics
Pescadero Avenue
Application Number D18-0010
September 18, 2018**

A. General Provisions and Definitions

1. These Conditions of Approval shall apply to the real property described as South side of Pescadero Avenue, Assessor's Parcel Number 213-070-84, Application Number D18-0010, a new 60,456 square foot industrial building with related parking and landscaping (hereinafter "Project").
2. The following definitions shall apply to these Conditions of Approval:
 - a. "Applicant" means any person, or other legal entity, defined as a "Developer".
 - b. "City Engineer" means the City Engineer of the City of Tracy, or any other duly licensed engineer designated by the City Manager, or the Development Services Director, or the City Engineer to perform the duties set forth herein.
 - c. "City Regulations" means all written laws, rules, and policies established by the City, including those set forth in the City of Tracy General Plan, the Tracy Municipal Code, Northeast Industrial Concept Development Plan, ordinances, resolutions, policies, procedures, and the City's Design Documents (including the Standard Plans, Standard Specifications, Design Standards, and relevant Public Facility Master Plans).
 - d. "Development Services Director" means the Development Services Director of the City of Tracy, or any other person designated by the City Manager or the Development Services Director to perform the duties set forth herein.
 - e. "Conditions of Approval" shall mean the conditions of approval applicable to the 60,456 square foot industrial building and related improvements. Application Number D18-0010, located on the south side of Pescadero Avenue, Assessor's Parcel Number 213-070-84. The Conditions of Approval shall specifically include all Development Services Department, including Planning Division, Engineering, and Fire Department conditions set forth herein.
 - f. "Project" means the real property located on the south side of Pescadero Avenue, Assessor's Parcel Number 213-070-84.
 - g. "Developer" means any person, or other legal entity, who applies to the City to divide or cause to be divided real property within the Project boundaries, or

who applies to the City to develop or improve any portion of the real property within the Project boundaries. The term "Developer" shall include all successors in interest.

3. The Developer shall comply with all laws (federal, state, and local) related to the development of real property within the Project, including, but not limited to: the Planning and Zoning Law (Government Code sections 65000, et seq.), the Subdivision Map Act (Government Code sections 66410, et seq.), the California Environmental Quality Act (Public Resources Code sections 21000, et seq., "CEQA"), and the Guidelines for California Environmental Quality Act (California Administrative Code, title 14, sections 1500, et seq., "CEQA Guidelines").
4. Unless specifically modified by these Conditions of Approval, the Developer shall comply with all City Regulations.
5. Pursuant to Government Code section 66020, including section 66020(d)(1), the City HEREBY NOTIFIES the Developer that the 90-day approval period (in which the Developer may protest the imposition of any fees, dedications, reservations, or other exactions imposed on this Project by these Conditions of Approval) has begun on the date of the conditional approval of this Project. If the Developer fails to file a protest within this 90-day period, complying with all of the requirements of Government Code section 66020, the Developer will be legally barred from later challenging any such fees, dedications, reservations or other exactions.

B. Planning Division Conditions of Approval

B1. Except as otherwise modified herein, the project shall be developed in accordance with the plans received by the Development Services Department on August 27, 2018. Prior to the issuance of any building permits, any deviations from the approved site plan or elevations shall be evaluated for substantial compliance with the approved plans, to the satisfaction of the Development Services Director. Should any deviations be determined not to be in substantial compliance with the approved plans, they shall be reviewed in a new Development Review application process.

B2. Prior to issuance of a building permit, a detailed landscape and irrigation plan showing the landscaping shall be submitted for approval by the Development Services Director. All landscape and irrigation improvements shall be designed and installed per the requirements of the City of Tracy Off-Street Parking Requirements, the Water Efficient Landscape Guidelines, and all other applicable City standards.

B3. Prior to the issuance of a building permit, an Agreement for Maintenance of Landscape and Irrigation Improvements shall be executed and financial security submitted to the Development Services Department. The Agreement shall ensure maintenance of the on-site landscape and irrigation improvements for a

period of two years. Said security shall be equal to the actual material and labor costs for installation of the on-site landscape and irrigation improvements, or \$2.50 per square foot of on-site landscape area.

B4. All PG&E transformers, phone company boxes, trash enclosures or compactors, Fire Department connections, backflow preventers, irrigation controllers, and other on-site utilities, shall be vaulted or screened from view from any public right-of-way, behind structures or landscaping, to the satisfaction of the Development Services Director.

B5. All vents, gutters, downspouts, flashing, electrical conduit, etc. shall be internal to the buildings when feasible, and otherwise shall be painted to match the color of the adjacent surface or otherwise designed in harmony with the building exterior to the satisfaction of the Development Services Director.

B6. Prior to the issuance of a certificate of occupancy, bicycle parking spaces shall be provided in accordance with Tracy Municipal Code Section 10.08.3510 to the satisfaction of the Development Services Director.

B7. All exterior lighting shall be directed downward, onto the parking and maneuvering surface and away from the public rights-of-way.

B8. All improvements shall be consistent with the Tracy Municipal Code, Northeast Industrial Specific Plan, Standard Plans, and other applicable City Regulations.

B9. Where landscape planters are parallel and adjacent to the side of vehicular parking spaces, a 12" wide concrete curb shall be placed adjacent to the parking space to allow for pedestrian access to vehicles without damage to the landscape areas.

B10. Prior to final inspection of certificate of occupancy, on-site circulation signs shall be installed to the satisfaction of the Development Services Director.

B11. No roof mounted equipment, including, but not limited to, HVAC units, vents, fans, antennas, sky lights and dishes whether proposed as part of this application, potential future equipment, or any portion thereof, shall be visible from Grant Line Road, Pescadero Road, Mac Arthur Drive, I-205 or any other public right-of-way.

Engineering Division Conditions of Approval

C.1. General Conditions

Developer shall comply with the applicable sections of approved documents and/or recommendations of the technical analyses/reports prepared for the Project listed as follows:

- 1) Council adopted Northeast Industrial (NEI) Specific Plan, latest edition;

- 2) Traffic Circulation Analysis Technical Memorandum prepared by Kimley-Horn and Associates dated August 22, 2018;
- 3) Sanitary Sewer Technical Memorandum prepared by Bennett Engineers dated September 17, 2018.

C.2 NOT USED

C.3 NOT USED

C.4. Grading Permit

All grading work (on-site and off-site) shall require a Grading Plan. All grading work shall be performed and completed in accordance with the recommendation(s) of the Project's Registered Geotechnical Engineer. The City will not accept a Grading Permit application for the Project until Developer provides all documents related to said Grading Permit required by the applicable City Regulations and these Conditions of Approval, to the satisfaction of the City Engineer, including, but not limited to, the following:

C.4.1 Developer has completed all requirements set forth in this section.

C.4.2 Developer has obtained the approval (i.e. recorded easements for slopes, drainage, utilities, access, parking, etc.) of all other public agencies and/or private entities with jurisdiction over the required public and/or private facilities and/or property. Written permission from utility companies or affected owner(s) will be required to be submitted to the City prior to the issuance of the Grading Permit.

C.4.3 All existing structures, if any, shall be removed within the project's limits prior to the issuance of the Grading Permit. Developer shall note that any removal of any structure requires a demolition permit from the Building and Safety Division.

C.4.4 All existing on-site water well(s), septic system(s), and leech field(s), if any, shall be abandoned or removed in accordance with the City and San Joaquin County requirements. Developer shall be responsible for all costs associated with the abandonment or removal of the existing well(s), septic system(s), and leech field(s) including the cost of permit(s) and inspection. Developer shall submit a copy of written approval(s) or permit(s) obtained from San Joaquin County regarding the removal and abandonment of any existing well(s), prior to the issuance of the Grading Permit.

C.4.5 The Improvement Plans for all improvements to serve the Project (on-site and off-site) including the Grading and Drainage Plans shall be prepared in accordance with the City's Subdivision Ordinance (TMC Chapter 12.36), City Design Documents as defined in Title 12 of the TMC, and these Conditions of Approval. On-site plans will conform to plans approved at the Project's Public Hearing. No other layout will be accepted for review. The driveway's westerly curb return will have a twenty (20) feet radius and the easterly curb return will have a fifty-five (55) feet radius.

- C.4.6 On-site Grading/Drainage Plans and Improvement Plans shall be prepared on a 24-inch x 36-inch size 4-millimeter thick polyester film (mylar). These plans shall use the City's Title Block. Improvement Plans shall be prepared under the supervision of, stamped and signed by a Registered Civil Engineer and Registered Geotechnical Engineer. Developer shall obtain all applicable signatures by City departments and outside agencies (where applicable) on the mylars including signatures by the Fire Marshal prior to submitting the mylars to Engineering Division for City Engineer's signature. Erosion control measures shall be implemented in accordance with the Improvement Plans approved by the City Engineer for all grading work. All grading work not completed before October 15 may be subject to additional requirements as applicable. Improvement Plans shall specify all proposed erosion control methods and construction details to be employed and specify materials to be used during and after the construction.
- C.4.7 Payment of the applicable Grading Permit fees which include grading plan checking and inspection fees, and other applicable fees as required by these Conditions of Approval.
- C.4.8 For Projects on property larger than one (1) acre: Prior to the issuance of the Grading Permit, Developer shall submit to the Utilities Department (stephanie.hiestand@cityoftracy.org) one (1) electronic copy and one (1) hard copy of the Storm Water Pollution Prevention Plan (SWPPP) as submitted in Stormwater Multiple Applications and Reporting Tracker System (SMARTS) along with either a copy of the Notice of Intent (NOI) with the state-issued Wastewater Discharge Identification number (WDID) or a copy of the receipt for the NOI. After the completion of the Project, the Developer is responsible for filing the Notice of Termination (NOT) required by SWQCB, and shall provide the City, a copy of the completed Notice of Termination. Cost of preparing the SWPPP, NOI and NOT including the annual storm drainage fees and the filing fees of the NOI and NOT shall be paid by the Developer. Developer shall comply with all the requirements of the SWPPP, applicable Best Management Practices (BMPs) and the Stormwater Post-Construction Standards adopted by the City in 2015 and any subsequent amendment(s).

For Projects on property smaller than one (1) acre: Prior to the issuance of the Grading Permit, the Developer shall submit to the Utilities Department (stephanie.hiestand@cityoftracy.org) one (1) electronic copy and 1 hard copy of the City of Tracy Erosion and Sediment Control Plan (ESCP) for approval. Cost of preparing the ESCP including any annual storm drainage fees shall be paid by the Developer. Developer shall comply with all the requirements of the ESCP, applicable BMPs and the Post-Construction Stormwater Standards adopted by the City in 2015 and any subsequent amendment(s).

- C.4.9 Developer shall provide a PDF copy of the Project's Geotechnical Report signed and stamped by a Registered Geotechnical Engineer. The technical report must include relevant information related to soil types and characteristics, soil bearing capacity, compaction recommendations, retaining wall recommendations, if necessary, paving recommendations, slope recommendations, and elevation of the highest observed groundwater level.
- C.4.10 Minor Retaining – Developer shall use reinforced or engineered masonry blocks for retaining soil when the grade differential exceeds 12-inches. Developer will include construction details of these minor retaining walls with the on-site Grading and Drainage Plan. Developer may use slopes among the lots to address the grade differential but said slope shall not exceed a slope gradient of 3 (horizontal) to 1 (vertical) unless a California licensed geotechnical engineer signs and stamps a geotechnical report letter that supports a steeper slope gradient. Slope easements may be required and will be subject to approval by the City Engineer and if adjacent and affected property(s) owner(s) grants said easements.

Slopes are an acceptable option as a substitute to engineered retaining walls, where cuts or fills do not match existing ground or final grade with the adjacent property or public right of way, up to a maximum grade differential of two (2) feet, subject to approval by the City Engineer.

Slope easements will be recorded, prior to the issuance of the Grading Permit. The Developer shall be responsible to obtain and record slope easement(s) on private properties, where it is needed to protect private improvements constructed within and outside the Project, and a copy of the recorded easement document must be provided to the City, prior to the issuance of the Grading Permit.

Walls - Developer shall show proposed retaining walls and masonry walls on the on-site Grading and Drainage Plan. The Developer is required to submit improvement plans, construction details, and structural calculations for retaining walls and masonry walls to Building and Safety. Retaining wall and masonry wall design parameters will be included in the geotechnical report.

- C.4.11 Developer shall provide a copy of the approved Incidental Take Minimization Measures (ITMM) habitat survey [San Joaquin County Multi-Species Habitat Conservation & Open Space Plan (SJMSCP)] from San Joaquin Council of Governments (SJCOG).
- C.4.12 Developer shall provide a copy of the approved Air Impact Assessment (AIA) with an Indirect Source Review (ISR) from San Joaquin Valley Air Pollution Control District (SJVAPCD).
- C.4.13 Developer shall abandon or remove all existing irrigation structures, channels and pipes, if any, as directed by the City after coordination with the irrigation district, if the facilities are no longer required for irrigation purposes. If

irrigation facilities including tile drains, if any, are required to remain to serve existing adjacent agricultural uses, the Developer will design, coordinate and construct required modifications to the facilities to the satisfaction of the affected agency and the City. Written permission from irrigation district or affected owner(s) will be required to be submitted to the City prior to the issuance of the Grading Permit. The cost of relocating and/or removing irrigation facilities and/or tile drains is the sole responsibility of the Developer.

C.4.14 If the Project contains overhead utilities, the Developer shall underground existing overhead utilities such as electric, TV cable, telephone, and others. Each dry utility shall be installed at the location approved by the respective owner(s) of dry utility and the Developer shall coordinate such activities with each utility owner. All costs associated with the undergrounding shall be the sole responsibility of the Developer and no reimbursement will be due from the City. Developer shall submit undergrounding plans. Exempt from this condition is the high voltage power lines along the Project's northerly property line.

C.4.15 If at any point during grading that the Developer, its contractor, its engineers, and their respective officials, employees, subcontractor, and/or subconsultant exposes/encounters/uncovered any archeological, historical, or other paleontological findings, the Developer shall address the findings as required per the General Plan Cultural Resource Policy and General Plan EIR; and subsequent Cultural Resource Policy or mitigation in any applicable environmental document.

C.5. Encroachment Permit

All construction activity involving public improvements will require an Encroachment Permit. Any construction activity involving public improvements without an Encroachment Permit is prohibited. All public improvements shall be performed and completed in accordance with the recommendation(s) of the Project's Registered Civil Engineer. The City will not process any Encroachment Permit Application for the Project until the Developer provides all documents related to said improvements required by the applicable City Regulations and these Conditions of Approval, to the satisfaction of the City Engineer, including, but not limited to, the following:

C.5.1. Off-site and/or Public Infrastructure Improvement Plans prepared on a 24-inch x 36-inch size 4-millimeter thick mylar that incorporate all requirements described in the documents described in these Conditions of Approval, the City's Design Documents as defined in Title 12 of the Tracy Municipal Code. Developer shall use the latest title block and, if necessary, contain a signature block for the Fire Marshal. Improvement Plans shall be prepared under the supervision of, and stamped and signed by a Registered Civil, Traffic, Electrical, Mechanical Engineer, and Registered Landscape Architect for the relevant work. Developer shall obtain all applicable signatures by City departments and outside agencies (where applicable) on the mylars including signatures by Fire Marshal to submitting the mylars to Engineering Division for City Engineer's signature. The improvement plans

shall be prepared to specifically include, but not be limited to, the following items:

- C.5.1.a. All existing and proposed utilities such as domestic water line, irrigation service, fire service line, storm drain, and sanitary sewer, including the size and location of the pipes.
- C.5.1.b. All supporting engineering calculations, materials information or technical specifications, cost estimate, and technical reports. All improvement plans shall contain a note stating that the Developer (or Contractor) will be responsible to preserve and protect all existing survey monuments and other survey markers such as benchmarks.
- C.5.1.c. A PDF copy of the Project's Geotechnical/Soils Report, prepared or signed and stamped by a Registered Geotechnical Engineer. The technical report must include relevant information related to street pavement thickness, materials, compaction and other pertinent information.
- C.5.1.d. Storm Water - The Project's on-site storm water drainage connection to the City's storm water system shall be approved by the City Engineer. The Project's permanent storm drainage connection(s) shall be designed and constructed in accordance with City Regulations. Improvement Plans to be submitted with the hydrology, drainage calculations for sizing of the on-site storm drainage system.

As required by Item No. 15, Section V on page 94 of the 2008 Design Standards, storm drainage release point is a location at the boundary of the Project adjacent public right-of-way where storm water leaves the Property, in a storm event and that the Property's on-site storm drainage system fails to function or it is clogged. Site grading shall be designed such that the Project's storm drainage overland release point will be directly to an adjacent public right-of-way with a functional storm drainage system and the existing storm drainage line has adequate capacity to drain storm water from the Property. The storm drainage release point is recommended to be at least 0.70-feet lower than the building finish floor elevation and shall be designed and improved to the satisfaction of the City Engineer.

The design of the permanent storm drainage connection shall be shown on the Grading and Drainage Plans, and shall comply with the City Council adopted 2012 Storm Drainage Master Plan and any subsequent amendments.

Developer shall not use off-site storm drain basins unless the Developer demonstrates that additional storm water storage

volume is required that cannot be accommodated by on-site subsurface basins. Subsurface connection to the off-site basin will be through an easement granted by Duke Realty. Developer is required to first design and explore the feasibility of the following items (in order of precedence):

- 1) Expanding surface storage via landscaped areas;
- 2) Expanding surface storage via depressing the cul-de-sac and portions of the drive aisle; and
- 3) Installing subsurface drainage.

Developer shall not install private storm drain lines in the public right-of-way for the purposes of storage or connecting to the off-site basin.

- C.5.1.e. Sanitary Sewer - It is the Developer's responsibility to design and construct the Project's permanent on-site sanitary sewer (sewer) improvements including the Project's sewer connection in accordance with the City's Design Standards, City Regulations and Standard Specifications. Sewer improvements shall include but not limited to, replacing asphalt concrete pavement, reconstructing curb, gutter and sidewalk, restoring pavement marking and striping, and other improvements that are disturbed as a result of installing the Project's permanent sewer connection. Developer shall submit improvement plans that include the design of the sewer line from the Property to the point of connection.

Developer is hereby notified that the City will not provide maintenance of the sewer lateral within the public right-of-way unless the sewer cleanout is located and constructed in conformance with Standard Plans. The City's responsibility to maintain on the sewer lateral is from the wye/onsite sewer manhole at the right-of-way line/property line/wye fitting to the point of connection with the sewer main.

Developer is hereby notified that the City has limited wastewater treatment capacity in the City's Wastewater Treatment Plant until current and future expansion capital improvement projects are completed and operational. As of January 2015, the City had an unused capacity of approximately 4,200 EDU's within its wastewater treatment plant available to new development within the City on a first come-first served basis via building permit issuances. These EDU's are currently available to serve the proposed project, but as other development projects within the City come forward and building permits are issued, this remaining capacity will be reduced. Only the issuance of building permits along with receiving a final occupancy will guarantee sewer capacity.

Developer's project shall connect to the sanitary sewer line in Pescadero Avenue.

- C.5.1.g. Water Distribution - Developer shall design and construct domestic and irrigation water service that comply with the City Regulations. Water line sizing, layout and looping requirements for this Project shall comply with City Regulations. During the construction of the Project, the Developer is responsible for providing water infrastructure (temporary or permanent) capable of delivering adequate fire flows and pressure appropriate to the various stages of construction and as approved by the Fire Marshal.

Interruption to the water supply to the existing businesses and other users will not be allowed to facilitate construction of improvements related to the Project. Developer shall be responsible for notifying business owner(s) and users, regarding construction work. The written notice, as approved by the City Engineer, shall be delivered to the affected residents or business owner(s) at least 72 hours before start of work. Prior to starting the work described in this section, the Developer shall submit a Work Plan acceptable to the City that demonstrates no interruptions to the water supply, and Traffic Control Plan to be used during the installation of the off-site water mains and connections.

The Project's water service connections shall use a remote-read (radio-read) master water meter (the water meter to be located within City's right-of-way) and a Reduced Pressure Type back-flow protection device in accordance with City Regulations. The domestic and irrigation water service connection(s) must be completed before the inspection of the building. The location of the meters shall be approved by the City Engineer.

After improvement acceptance, repair and maintenance of the water service from the water meter to the point of connection with the water distribution main in the street shall be the responsibility of the City. Water service repairs after the water meter is the responsibility of the Developer or individual lot owner(s).

Prior to improvement acceptance, repair and maintenance of all on-site water lines, laterals, sub-water meters, valves, fittings, fire hydrant and appurtenances shall be the responsibility of the Developer or the individual lot owner(s).

All costs associated with the installation of the Project's water connection(s) including the cost of removing and replacing asphalt concrete pavement, pavement marking and striping such as crosswalk lines and lane line markings on existing street or parking area(s) that may be disturbed with the installation of the permanent water connection(s), or domestic water service, and other improvements shall be paid by the Developer.

Fire Service Line(s) and Hydrants – Location and construction details of fire service line including fire hydrant(s) that are to serve the Project shall be approved by the Fire Marshal. Prior to the approval of the Improvement Plans by the City Engineer, the Developer shall obtain written approval from the Fire Marshal, for the design, location and construction details of the fire service connection to the Project, and for the location and spacing of fire hydrants that are to be installed or planned to serve the Project.

- C.5.1.h. Streets – All streets and utilities improvements within City right-of-way shall be designed and constructed in accordance with City Regulations, and City's Design Standards including the City's Facilities Master Plan for storm drainage, roadways, wastewater, and water as adopted, amended, and updated by the City, or as otherwise specifically approved by the City.

East Pescadero Avenue's cross section shall have a right-of-way width of eighty-nine (89) feet, excluding the Public Utility Easements. The sidewalk shall be immediately behind the Portland cement concrete curb and gutter. Immediately behind the sidewalk will be the limits of the right-of-way. The Public Utility Easement width will be ten (10) feet on both sides of the East Pescadero Avenue.

Developer shall use existing utility stubs. If the stubs are not present or additional utility connections are required, the pavement restoration shall conform to C.8.1 of these Conditions.

Developer shall protect-in-place the existing driveway that aligns with Duke Realty's easement.

Developer shall not place underground storm drain pipe in the right-of-way for the purpose of conveying private storm drain water.

Developer construct the driveway as outlined in the exhibit dated August 27, 2018.

Developer shall restripe East Pescadero Avenue with the following:

- 1) Ten (10) feet wide shoulder as measured from the curb face.
 - 2) Fifteen (15) feet wide eastbound travel lane.
 - 3) Sixteen (16) feet wide two way left turn lane.
 - 4) Fifteen (15) feet wide westbound travel lane.
 - 5) Ten (10) feet wide shoulder as measured from the curb face.
- The exact lane configuration and lengths will be determined during the plan-check process.

On the south side of Pescadero Avenue, Developer shall landscape and irrigate the existing area as per current adopted

City landscape standards. Landscape and irrigation plans shall be prepared on a 24-inch x 36-inch size 4-millimeter thick mylar that incorporate all requirements described in the documents described in these Conditions of Approval, the City's Design Documents as defined in Title 12 of the Tracy Municipal Code. Developer shall use the latest title block. Said landscape and irrigation plan shall be prepared by a California licensed landscape architect. Developer can either protect-in-place the existing sidewalk and repair any cracked, settled, and/or damaged sidewalk or remove and replace the sidewalk so long as the replacement sidewalk is similar to the current sidewalk, i.e. similar width, meanders, etc. Developer shall also install street trees in the landscaped area between the existing meandering sidewalk and the curb and gutter. On the opposite side of the sidewalk, Developer shall install additional street trees, shrubs, ground cover, and other landscaping as required. The landscaping and irrigation shall conform to MWELo standards. If recommended, Developer shall use structural soil if the street trees' well is narrower than five (5) feet wide. Developer shall also remove existing sign monument and its appurtenances, and any other existing items such as bollards, mailboxes, etc.

Should the Developer elect to maintain the landscaping in the right-of-way, Developer shall obtain written approval from the Public Works Department.

- C.5.2. Joint Trench Plans and Composite Utility Plans, prepared on a 24-inch x 36-inch size 4-millimeter thick mylar for the installation of dry utilities such as electric, gas, TV cable, telephone, and others that will be located within the 10-foot wide P.U.E. to be installed to serve the Project. All private utility services to serve Project must be installed underground or relocated to be underground, and to be installed at the location approved by the respective owner(s) of the utilities from the street or an existing or proposed utility easement to the building(s). If necessary, the Developer shall dedicate 10-foot wide P.U.E. for access to these new utilities for re-installation, replacement, repair, and maintenance work to be performed by the respective utility owner(s) in the future.
- C.5.3. Signed and stamped Engineer's Estimate that summarizes the cost of constructing all the public improvements shown on the Improvement Plans. The cost estimate shall show the cost of designing the public improvements.

Payment of applicable fees required by these Conditions of Approval and City Regulations, including but not limited to, plan checking, grading and encroachment permits and agreement processing, construction inspection, and testing fees. The engineering review fees will be calculated based on the fee rate adopted by the City Council on September 2, 2014, per Resolution 2014-141 and on May 16, 2017, per Resolution 2017-098. Developer shall submit payment in the form of a check for the aforementioned fees.

- C.5.5. Traffic Control Plan - Prior to starting the work for any work within City's right-of-way, the Developer shall submit a Traffic Control Plan (TCP). TCP can be split among the different construction phases. TCP will show the method and type of construction signs to be used for regulating traffic at the work areas within these streets. TCP shall conform to the Manual on Uniform Traffic Control Devices as amended by the State of California, latest edition (MUTCD-CA). TCP shall be prepared under the supervision of, signed and stamped by a Registered Civil Engineer or Registered Traffic Engineer.

Access and Traffic Circulation to Existing Businesses/Residents - Developer shall take all steps necessary to plan and construct site improvements such that construction operations do not impact safety and access (including emergency vehicles) to the existing businesses and residents throughout the duration of construction. Developer shall coordinate with the owners and cooperate to minimize impacts on existing businesses. All costs of measures needed to provide safe and functional access shall be borne by the Developer.

- C.5.6. No street trench shall be left open, uncovered, and/or unprotected during night hours and when the Developer's contractor is not performing construction activities. Appropriate signs and barricades shall be installed on the street and on all trenches during such times. If the Developer or its contractor elects to use steel plates to cover street trenches, said steel plates will be skid-resistance, and shall be ramped on all sides. Ramps will be a minimum two-foot wide and will run the entire length of each side.
- C.5.7. If at any point during utility installation or construction in general that the Developer, its contractor, its engineers, and their respective officials, employees, subcontractor, and/or subconsultant exposes/encounters/uncovers any archeological, historical, or other paleontological findings, the Developer shall address the findings as required per the General Plan Cultural Resource Policy and General Plan EIR; and subsequent Cultural Resource Policy or mitigation in any applicable environmental document.
- C.5.8. Off-site Public Improvements - Prior to the Developer commencing construction of off-site public improvements, Developer shall possess an Encroachment Permit. Developer shall also complete all of the following requirements to the satisfaction of the City Engineer:

Developer has paid all required processing fees including plan check and inspection fees.

Improvement Security – If requested, Developer shall provide improvement security for all public facilities. The form of the improvement security may be a bond, or other form in accordance with the Government Code, and the TMC. The amount of the improvement security shall be in accordance with Title 12 of the TMC.

Insurance – Developer shall provide written evidence of insurance coverage that meets the terms of Title 7 of the TMC.

C.6. Building Permit

No building permit within the Project boundaries will be approved by the City until the Developer demonstrates, to the satisfaction of the City Engineer, compliance with all required Conditions of Approval, including, but not limited to, the following:

- C.6.1 Developer has completed all requirements set forth in Condition C.1, through C.5, above.
- C.6.2 Developer pays the applicable development impact fees as required in the TMC, these Conditions of Approval and City Regulations.
- C.6.3 Developer pays its fair share for the traffic signal located on East Pescadero Avenue and Duke Realty's westerly driveway. Per the traffic memorandum, the Project's fair share is three point four (3.4) percent of the unfunded traffic signal costs.
- C.6.4 Developer shall provide documentation to demonstrate that the Developer and its successor(s) or assign(s) will participate which include payment of the Project's share towards the use, repair and maintenance of the storm drainage retention basin that serves this Property. The Homeowner's association shall be formed prior to the issuance of the first building permit.

C.7 Acceptance of Public Improvements

Public improvements will not be considered for City Council's acceptance until after the Developer demonstrates to the reasonable satisfaction of the City Engineer, completion of the following:

- C.7.1 Developer has satisfied all the requirements set forth in these Conditions of Approval.
- C.7.2 Developer submitted the Storm water Treatment Facilities Maintenance Agreement (STFMA) to the Utilities Department.
- C.7.3 Developer has satisfactory completed construction of all required/conditioned improvements. Unless specifically provided in these Conditions of Approval, or some other applicable City Regulations, the Developer shall use diligent and good faith efforts in taking all actions necessary to construct all public facilities required to serve the Project, and the Developer shall bear all costs related to construction of the public facilities (including all costs of design, construction, construction management, plan check, inspection, land acquisition, program implementation, and contingency).
- C.7.4 Certified "As-Built" Improvement Plans (or Record Drawings). Upon completion of the construction by the Developer, the City, at its sole

discretion, temporarily release the original mylars of the Improvement Plans to the Developer so that the Developer will be able to document revisions to show the "As-Built" configuration of all improvements.

- C.7.5 Developer shall be responsible for any repairs or reconstruction of street pavement, curb, gutter and sidewalk and other public improvements along the frontage of the Project, if determined by the City Engineer to be in poor condition or damaged by construction activities related to the Project.
- C.7.6 Release of Improvement Security – Release of improvement security shall be in accordance with the requirements of Title 12 of the TMC. Monumentation Bond will be released to the Developer after City Council's acceptance of the public improvements and if the Developer meets the terms set in Section 66497(c) of the Subdivision Map Act. All survey monuments shown on the Final Map must be installed. Any altered, damaged, or destroyed survey monuments and/or benchmarks shall be re-established. Developer shall submit centerline tie sheets or a record of survey for the following: new public streets; re-established survey monuments, and/or benchmarks. If the Developer destroyed, altered, and/or reconstructed any existing curb returns, Developer shall also submit corner records. Any survey document will be submitted the City and to the San Joaquin County Surveyor to comply with California Business and Professions Code Section 8771(c). Said work shall be executed by a California licensed Land Surveyor at the Developer's sole expense.

C.8 Special Conditions

- C.8.1 When street cuts are made for the installation of utilities, the Developer shall conform to Section 3.14 of the 2008 Design Standards and is required install a 2-inch thick asphalt concrete (AC) overlay with reinforcing fabric at least 25-feet from all sides of each utility trench. A 2-inch deep grind on the existing AC pavement will be required where the AC overlay will be applied and shall be uniform thickness in order to maintain current pavement grades, cross and longitudinal slopes. This pavement repair requirement is when cuts/trenches are perpendicular and parallel to the street's direction.
- C.8.2 Nothing contained herein shall be construed to permit any violation of relevant ordinances and regulations of the City of Tracy, or other public agency having jurisdiction. This Condition of Approval does not preclude the City from requiring pertinent revisions and additional requirements to the improvement plans, prior to the City Engineer's signature on the improvement plans, and prior to issuance of Grading Permit, Encroachment Permit, Building Permit, if the City Engineer finds it necessary due to public health and safety reasons, and it is in the best interest of the City. The Developer shall bear all the cost for the inclusion, design, and implementations of such additions and requirements, without reimbursement or any payment from the City.

- C.8.3 If water is required for the project, the Developer shall obtain an account for the water service and register the water meter with the Finance Department. Developer shall pay all fees associated with obtaining the account number for the water service.
- C.8.4 Developer shall obtain an account for the water service to the Project and register the water meter with the Finance Department. Developer shall prepare and submit a map depicting the location of the water meter on a 8.5-inch X 11-inch sheet to Finance Department.
- C.8.5 Due to site distance issues, Developer shall consult Kimley Horn's traffic memorandum for monument sign setback and placement.

Fire Prevention Conditions of Approval

- D1. Prior to building permit issuance, applicant shall provide sprinkler plans and hydraulic calculations from a licensed fire protection company.
- D2. Hydrants shall be placed as shown on the plans. One hydrant, not on the private system, shall be provided within 100 feet of the FDS(s).
- D3. Prior to building permit issuance, applicant shall provide the location for the fire control room that shall be accessible from the building exterior, in accordance with Section 509.3 of the 2016 California Fire Code, as amended by the Tracy Municipal Code, Chapter 9.06.060. The location of the FDC and PIV shall be shown. The FDC shall be located on the building. The current location of the sprinkler riser is not acceptable for fire department response. There may need to be two systems based on the size and occupancy of the building. A fire hydrant, not on the private loop, shall be located within the 100 feet of the FDC.
- D4. A fire suppression and fire alarm system are required for this building. Prior to occupancy, an exterior annunciator panel shall be provided at the front of the building and notification device(s) shall be provided within the building to alert occupants of a problem within the building. The location of these devices shall be approved by the Fire Department.
- D5. Prior to building permit issuance, applicant shall provide plans demonstrating that sectional valves will be provided at appropriate points within piping sections such that the number of fire protection connections between sectional valves does not exceed six, per NFPA 24, Section 6.6. Post indicator valves shall be used; they shall be located in readily accessible areas that are protected from vehicle impact.
- D6. Prior to building commissioning, emergency responder radio coverage will be required in accordance with Section 510 of the 2016 California Fire Code. Testing and installation may take place after the building construction but prior to final inspection.
- D7. Prior to building permit issuance, applicant may be required to provide arm bars or gates that are of the swinging or sliding type, in accordance with Appendix D of the 2016 California Fire Code. The arm bars access elements are not of the swinging or sliding type and may need to be replaced with compliant components, such as swinging or sliding types of arm bars.

EXHIBIT C

1. Developer and/or its heirs shall remove the on-site storm drain basin and alter the storm drain lines so that the storm water shall flow into the 30-inch storm drain line on Pescadero Avenue. Developer shall complete the basin's removal and storm drain alternation on or before two-hundred forty (240) calendar days after the Developer and/or its heirs receive a written notice from the City.

RESOLUTION 2019-_____

APPROVING THE DEFERRED IMPROVEMENT AGREEMENT WITH MLP REALTY LLC FOR A TEMPORARY STORM WATER RETENTION BASIN ON PESCADERO AVENUE, AND AUTHORIZING THE CITY CLERK TO FILE THE AGREEMENT WITH THE OFFICE OF THE SAN JOAQUIN COUNTY RECORDER

WHEREAS, On September 18, 2018, the City of Tracy approved an application by Prologis Logistics Services, Incorporated, a Delaware corporation (Developer), to construct a new 60,456 square feet industrial building, and

WHEREAS, Developer is the owner of real property located outside the City limits located at 1480 East Pescadero Avenue, APN: 213-070-84, and

WHEREAS, Per the adopted 2012 Storm Drainage Master Plan, the 1480 East Pescadero Avenue is master planned to drain into the regional North East Industrial Specific Plan storm drain detention basin (NEI Basin). The NEI Basin is not yet fully constructed and is not able accept Developer's storm water volume, and

WHEREAS, Developer purchased an adjacent parcel to construct a temporary storm water retention basin and defer the final storm drain connection until the NEI Basin is constructed and able to accept storm water from the Developer, and

WHEREAS, Developer will remove the Retention Basin on the adjacent parcel, and

WHEREAS, Developer has executed the DIA and has posted the required securities to guarantee completion of the improvements, and

WHEREAS, Developer has paid the applicable engineering review fees, which include the cost of processing the Deferred Improvement Agreement;

NOW, THEREFORE, BE IT RESOLVED, That the City Council of the City of Tracy hereby approves the Deferred Improvement Agreement with MLP Realty LLC for a Temporary Storm Water Retention Basin on Pescadero Avenue, and authorizes the City Clerk to File the Agreement with the office of the San Joaquin County Recorder.

* * * * *

The foregoing Resolution 2019-_____ was passed and adopted by the Tracy City Council on the 15th day of October 2019, 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

APPROVE A GENERAL SERVICES AGREEMENT WITH SPECTRATURF, OF CORONA, CA, TO PROVIDE FOR THE REPLACEMENT OF POURED-IN-PLACE RUBBER PLAYGROUND SURFACE (CIP 78156) AT VETERAN'S PARK, 177 GLENHAVEN DRIVE, TRACY, FOR AN AMOUNT NOT TO EXCEED \$62,507, AND AUTHORIZE THE CITY MANAGER TO APPROVE AMENDMENTS TO THE AGREEMENT FOR EXTENSIONS TO THE TERM, IF NEEDED

EXECUTIVE SUMMARY

Staff is seeking Council approval of a General Service Agreement with SpectraTurf in an amount not to exceed \$62,507, to provide for the replacement of poured-in-place playground surface at two locations at Veteran's Park, 177 Glenhaven Drive, Tracy (CIP 78156).

DISCUSSION

Veteran's Park, located at 177 Glenhaven Drive, has two play areas that have poured-in-place rubber surfacing under the play apparatus; the 2-5 year old play area and the 5-12 year old play area, covering approximately 4,919 square feet in total. Staff inspected the surface and determined that it had exhausted its useful lifespan and needs replacement.

Public Works issued a notice inviting bids to recreation and safety surfacing contractors. One bid was received by SpectraTurf of Corona, CA. Upon review, SpectraTurf met all the requirements and is qualified to perform the repairs to the poured-in-place playground surface (CIP 78156) at Veteran's Park. The agreement is for an amount not to exceed \$62,507 with the work to be completed no later than April 15, 2020.

STRATEGIC PLAN

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

FISCAL IMPACT

This project will be funded through CIP 78156; there are sufficient funds available in the amount of \$75,000 from General Projects Fund (F301).

RECOMMENDATION

Staff recommends Council approve a General Services Agreement with SpectraTurf, of Corona, CA, to provide for the replacement of poured-in-place rubber playground surface (CIP 78156) at Veteran's Park, 177 Glenhaven Drive, Tracy, for an amount not to exceed \$62,507, and authorize the City Manager to approve amendments to the agreement for extensions to the term, if needed.

Agenda Item 1.E
October 15, 2019
Page 2

Prepared by: Todd Rocha, Public Works Superintendent
Nancy Chapman, Management Analyst

Reviewed by: Don Scholl, Public Works Director
Karin Schnaider, Finance Director
Andrew Malik, Assistant City Manager

Approved by: Jennifer D. Haruyama, City Manager

ATTACHMENTS

Attachment A – General Services Agreement

**CITY OF TRACY
GENERAL SERVICES AGREEMENT WITH
SpectraTurf, Veteran’s Park Playground Surface Repair**

This General Services Agreement (**Agreement**) is entered into between the City of Tracy, a municipal corporation (**City**), and SpectraTurf, a corporation (**Contractor**). City and Contractor are referred to individually as “Party” and collectively as “Parties.”

Recitals

A. City desires to retain Contractor to provide for the replacement of Poured-In-Place rubber playground surface according to specifications; and

B. On July 11, 2019, the City issued a Request for Proposals (RFP) for the Veteran’s Park Playground Surface Repair. On July 24, 2019, SpectraTurf submitted its proposal for the Project for the City. The City has determined that the Contractor possess the skills, experience and certification required to provide the services.

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

D. This Agreement is being executed pursuant to Resolution No. 2019-____ approved by Tracy City Council on October 1, 2019.

Now therefore, the Parties mutually agree as follows:

1. Scope of Work. Contractor shall perform the services described in Exhibit “A” attached and incorporated by reference. The services shall be performed by, or under the direct supervision of, Contractor’s Authorized Representative: Adam Vance. Contractor shall not replace its Authorized Representative, nor shall Contractor use or replace any subcontractors or subconsultants, without City’s prior written consent. A failure to obtain the City’s prior written consent for any change or replacement in personnel or subcontractor may result in the termination of this Agreement.

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

2.1 Term. The term of this Agreement shall begin upon October 15, 2019, and end on April 15, 2020, unless terminated in accordance with Section 6.

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

3.1 Not to Exceed Amount. Contractor’s total compensation under this Agreement shall not exceed \$62,507. Contractor’s billing rates shall cover all costs and expenses for Contractor’s

performance of this Agreement. No work shall be performed by Contractor in excess of the total compensation amount provided in this section without the City's prior written approval.

3.2 Invoices. Contractor shall submit monthly invoices to the City that describe the services performed, including times, dates, and names of persons performing the services.

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

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

4. Indemnification. Contractor shall, to the fullest extent permitted by law, indemnify, defend (with independent counsel approved by the City), and hold harmless the City from and against any claims arising out of Contractor's 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; "Contractor" means the Contractor, its employees, agents and subcontractors; "Claims" includes claims, demands, actions, losses, damages, injuries, and liability, direct or indirect (including any and all related costs and expenses) and any allegations of these; and "Arising out of" includes "pertaining to" and "relating to".

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8.1 Rates. These prevailing wage rates are on file with the City and are available online at <http://www.dir.ca.gov/DLSR>. Each Contractor and Subcontractor must pay no less than the specified

rates to all workers employed to perform the services described herein. The schedule of per diem wages is based upon a working day of eight hours. The rate for holiday and overtime work must be at least time and one-half. Contractor assumes all responsibility for such payments and shall defend, indemnify and hold the City harmless from any and all claims made by the State of California, the Department of Industrial Relations, any subcontractor, any worker, or any other third party.

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

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

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

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

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

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

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

To City:

City of Tracy
Attn: Don Scholl
520 Tracy Blvd.
Tracy, CA 95376

To Contractor:

SpectraTurf
Attn: Lisa Anderson
555 S. Promenade Ave #103
Corona, CA 92879

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

14. Miscellaneous.

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

14.2 Warranty. Contractor agrees to repair or replace any or all work that may prove to be defective in its workmanship, materials furnished methods of installation or fail to conform to the specifications within a period of one (1) year from the date of beneficial use, as outlined in the project specifications.

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

14.4 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.

14.5 Assignment and Delegation. Contractor 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.

14.6 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.

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

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

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

14.8 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. By entering into this Agreement, Contractor represents that it is not a suspended corporation. If Contractor is a suspended corporation at the time it enters this Agreement, City may take steps to have this Agreement declared voidable.

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

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

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

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

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

the case of any conflict between the Exhibits hereto and the Contractor's proposal (if any), the Exhibits shall control.

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

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


[SIGNATURES ON FOLLOWING PAGE]

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

City of Tracy

Contractor

By: Robert Rickman
Title: Mayor
Date: _____



By: Lisa Anderson
Title: General Manager
Date: 8-10-19

Federal Employer Tax ID No. 90-0198860

Attest:

Adrienne Richardson, City Clerk

By: _____
Title: _____
Date: _____

Approved as to form:

Leticia Ramirez, Interim City Attorney

Exhibits:

- A. Scope of Work
- B. Compensation (Bid Document)

SPECIFICATIONS
FOR
VETERAN'S PARK PLAYGROUND SURFACE REPAIR
CITY OF TRACY
SAN JOAQUIN COUNTY, CALIFORNIA

1. DESCRIPTION OF WORK:

The intent and purpose of these specifications are to provide for the replacement of Poured-In-Place rubber playground surface as described in these specifications in a neat and workmanlike manner.

2. LOCATION OF WORK:

Veteran's Park, 177 Glenhaven Dr., Tracy, CA 95377

3. MANDATORY PRE-BID SITE VISIT:

A mandatory pre-bid site visit will be held on Tuesday, July 16, 2019, at 10:00 a.m. The pre-bid site visit will be held at Veteran's Park, 177 Glenhaven Dr., Tracy, CA 95377.

4. SCOPE OF WORK:

Furnish all labor, processes, equipment, transportation and services necessary for existing Poured-In-Place rubber playground surface repair work for the City of Tracy and itemized as follows:

- Remove, inspect and repair Base Layer Buffings as needed, including any repair of previously failed areas.
- Provide and install approximately 4,919 sf of a 1.5" cap of SpectraPour, or equivalent, safety surfacing directly over the existing surface material.
- Provide and install SpectraPour Supreme, or equivalent, for star graphics, as noted on Exhibits A and B, and other high-wear areas
- Edges to be cut back and tapered in to maintain a smooth, trip-free transition at access points.
- ½" minimum thickness wear layer to be bright red, blue, gray, beige, and eggshell, mixed with Aliphatic (UV-stable, non-yellowing) Resin.
- Graphics and color mixes as outlined in Exhibits A and B.
- Install and maintain all temporary fencing throughout construction around site.

5. SCHEDULE OF WORK:

Repairs to be started no more than three weeks from award date and must be completed within 5 business days. All work must be scheduled with the Public Works Superintendent or their designee.

6. EMPLOYEE/STAFF OF CONTRACTOR:

Employees must be directly employed by the Contractor. No employees may be hired through a third party. Upon City's request, Contractor's employees must furnish documentation of paperwork authorizing employment in the State of California.

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

Contractor shall furnish sufficient supervisory and working personnel who are properly licensed and capable of promptly accomplishing, to the satisfaction of the Superintendent and on schedule, all Work required under this Contract. Such supervisory personnel must have adequate field experience and technical background to supervise the Work and assure compliance with the Contract.

7. PROPER DRESS AND CONDUCT:

Contractor and its employees shall conduct themselves in a proper and efficient manner at all times and shall cause the least possible inconvenience to the public. Personnel shall be fully clothed in suitable attire that bears the Contractor's name or identifying mark. The Superintendent may require the Contractor to remove from the work site(s) any employee(s) deemed careless, incompetent, or who is an annoyance to the public.

- a. Employees may not wear any clothing that is suggestive or carries any message, slogan or phrase that may be perceived as offensive.
- b. Under no circumstances is profanity permitted
- c. Smoking is not permitted while working.
- d. Radios are not permitted during business hours.
- e. Guests are not permitted on jobsite; children are not permitted on jobsite.
- f. Every effort will be made to respect the privacy of the staff or citizens in the building.

8. SUBCONTRACTORS:

Contractor shall not use subcontractors without the prior written approval of the City of Tracy.

9. BIDDERS EXPERIENCE:

Bidders must have at least five (5) years' experience with Poured-In-Place installation and related maintenance for their bids to be considered responsive.

10. QUALITY OF WORK

It is understood that the Work shall be furnished and installed completely and in place. Workmanship of the first quality is to be used.

11. COMPLIANCE WITH PROVISIONS OF LAW RELATIVE TO PUBLIC CONTRACTS:

City is a public entity of the State of California subject to certain provisions of the Health & Safety Code, Government Code, Public Contract Code, and Labor Code of the State. It is stipulated and agreed that all provisions of the law applicable to the public contracts of a municipality are a part of this Contract to the same extent as though set forth herein and will be complied with. These include but are not limited to the **payment of prevailing wages**, the stipulation that eight (8) hours' labor shall constitute a legal day's work and that no worker shall be permitted to work in excess of eight (8) hours during any one calendar day except as permitted by law.

It shall be mandatory upon the Contractor to whom the Contract is awarded, and upon any subcontractor under such Contractor, to adhere to the prevailing wage rate determinations pursuant to the California Labor Code and to pay not less than the said specified rates to all workers employed by them in the execution of the Contract.

In entering into a public works contract or a subcontract to supply goods, services, or materials pursuant to a public works contract, the contractor or subcontractor offers and agrees to assign to the awarding body all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services, or materials pursuant to the public works contract or the subcontract. This assignment shall be made and become effective at the time the awarding body tenders final payment to the contractor, without further acknowledgment by the parties.

12. CLEANLINESS AND DISPOSAL

Contractor shall, at all times while performing the work, keep the immediate and surrounding service area clean and free of debris. Contractor shall ensure that all tools and equipment will be removed from the service area when work is complete and/or when work will cease for a time-period exceeding one hour.

Contractor's equipment, including vehicles, shall be kept clean and free of debris, which includes, but not limited to, dirt, mud, and loose gravel. In the event debris

falls from Contractor's vehicles; Contractor shall remove said debris immediately. If, however, the City is required to provide labor or equipment to remove said debris, the cost of City-provided labor and equipment will be deducted from Contractor's invoice.

All materials removed shall become the property of the Contractor. Contractor shall not use City's refuse containers to dispose of materials, except air filters, considered to be waste.

Contractor will be allowed to City refuse containers to dispose of air filters. Removal and proper disposal of all chemicals and debris shall comply with all local, state and federal laws concerning toxic waste use and disposal and be done at Contractor's expense. Contractor shall not discharge any pollutants or hazardous materials to the curbs, gutters, inlets or any part of the storm drain system under any circumstances and as stipulated herein.

13. SUBCONTRACTOR'S INSURANCE:

Contractor shall include all subcontractors as insured's under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverage's for subcontractors shall be subject to all the requirements stated herein.

14. PROTECTION OF EXISTING IMPROVEMENTS:

The Contractor shall be responsible for the protection of public and private property from damages and shall exercise due caution to avoid damage to such property. Any damages shall be repaired to the original condition at Contractor's sole expense.

15. PUBLIC CONVENIENCE AND SAFETY:

Contractor shall erect signs, barricades and/or fencing as needed, advising of the work in progress, and shall channelize pedestrian traffic in the vicinity of the work area to insure the safe passage of the public. Use of these methods will in no way relieve the Contract from its responsibility for the safe conduct of pedestrian traffic through its work area.

16. LICENSES:

The Contractor and all subcontractors shall obtain a City of Tracy Business License prior to beginning any work and all other applicable licenses to perform work.

17. BID COMPLIANCE:

Failure on the part of the Contractor to comply with all requirements and conditions of the invitations for bids may subject its bid to rejection. No exception

or deviation from these specifications will be considered unless each exception or deviation is specifically stated by the bidder as an exception and/or deviation.

18. BASIS OF AWARD

Contract award shall be based on the lowest responsive responsible bid on the basis of the Grand Total Bid Amount (BASE BID). All terms and conditions contained in the Contract Specifications shall become part of the "Contract Documents". No bid may be withdrawn for a period of sixty (60) days after the time set for the opening thereof. The Contract shall be awarded within sixty (60) days after the opening of bids if it is in the best interest of City to do so. The City reserves the right, after opening bids, to waive any informality in any bid, to reject any or all bids, to make an award to the lowest responsive responsible bidder as determined by the City and/or reject all other bids as may be in the best interest of the City.

19. WARRANTY:

Contractor shall warrant that materials and work shall be completed in conformance with the Contract Documents and that the materials and work provided will fulfill the requirements of this warranty. Contractor agrees to repair or replace any or all work that may prove to be defective in its workmanship, materials furnished, methods of installation or fail to conform to the Contract Document requirements together with any other work which may be damaged or displaced by so doing within a period of one (1) year from the date of beneficial use or substantial completion of the equipment or portion of the Work in question without any expense whatever to the City, ordinary wear and tear and unusual abuse and neglect excepted. Contractor shall be required to repair promptly or replace defective equipment or materials, at Contractor's option and at Contractor's expense. All costs associated with such corrective actions and testing, including the removal, replacement, and reinstatement of equipment and materials necessary to gain access, shall be the sole responsibility of the Contractor. For any Work so corrected, Contractor's obligation hereunder to correct defective Work shall be reinstated for an additional one (1) year period, commencing with the date of acceptance of such corrected Work. The reinstatement of the one (1) year warranty shall apply only to that portion of work that was corrected. Contractor shall perform such tests as City may require verifying that any corrective actions, including, without limitation, redesign, repairs, and replacements comply with the requirements of the Contract. In the event of Contractor's failure to comply with the above-mentioned conditions within thirty (30) days after being notified in writing of required repairs, to the reasonable satisfaction of the City, the City shall have the right to correct and replace any defective or non-conforming Work and any work damaged by such work or the replacement or correction thereof at Contractor's sole expense. Contractor shall be obligated to fully reimburse the City for any expenses incurred hereunder upon demand.

In addition to the warranty set forth in this section, Contractor shall assign to City any and all manufacturer's or installer's warranties for equipment or materials not

manufactured by Contractor and provided as part of the Work, to the extent that such third-party warranties are assignable and extend beyond the warranty period set forth in this section.

20. BID SUBMITTAL DATE:

Sealed Bids must be submitted in an envelope that clearly reads “**VETERAN’S PARK PLAYGROUND SURFACE REPAIR – DO NOT OPEN WITH GENERAL MAIL**” and must be received at the City of Tracy Public Works Department, Boyd Service Center, 520 Tracy Blvd., Tracy, California, by **11:00 a.m. on Thursday, July 25, 2019**. No bid proposals will be accepted after this time.

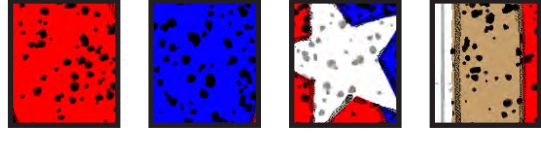
REQUESTS FOR CLARIFICATION. If the Bidder(s) is in doubt as to the meaning of any part of the, Specifications, or finds any error, inconsistency, or ambiguity in the Contract Documents, , the Bidder(s) shall submit to the City an email request for an interpretation or clarification prior to 9:00 a.m. on July 17, 2018. All such requests should be emailed to nancy.chapman@cityoftracy.org. The City shall not be responsible for any explanation or interpretations of the Specifications or Contract Documents other than by attending the mandatory pre-bid meeting or by a written addendum posted to the City’s website no later than 5:00 p.m. on July 17, 2018. No oral interpretations of any provision in the Specifications or Contract Documents will be given.

Attachments:

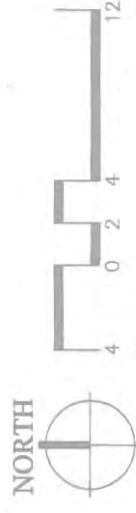
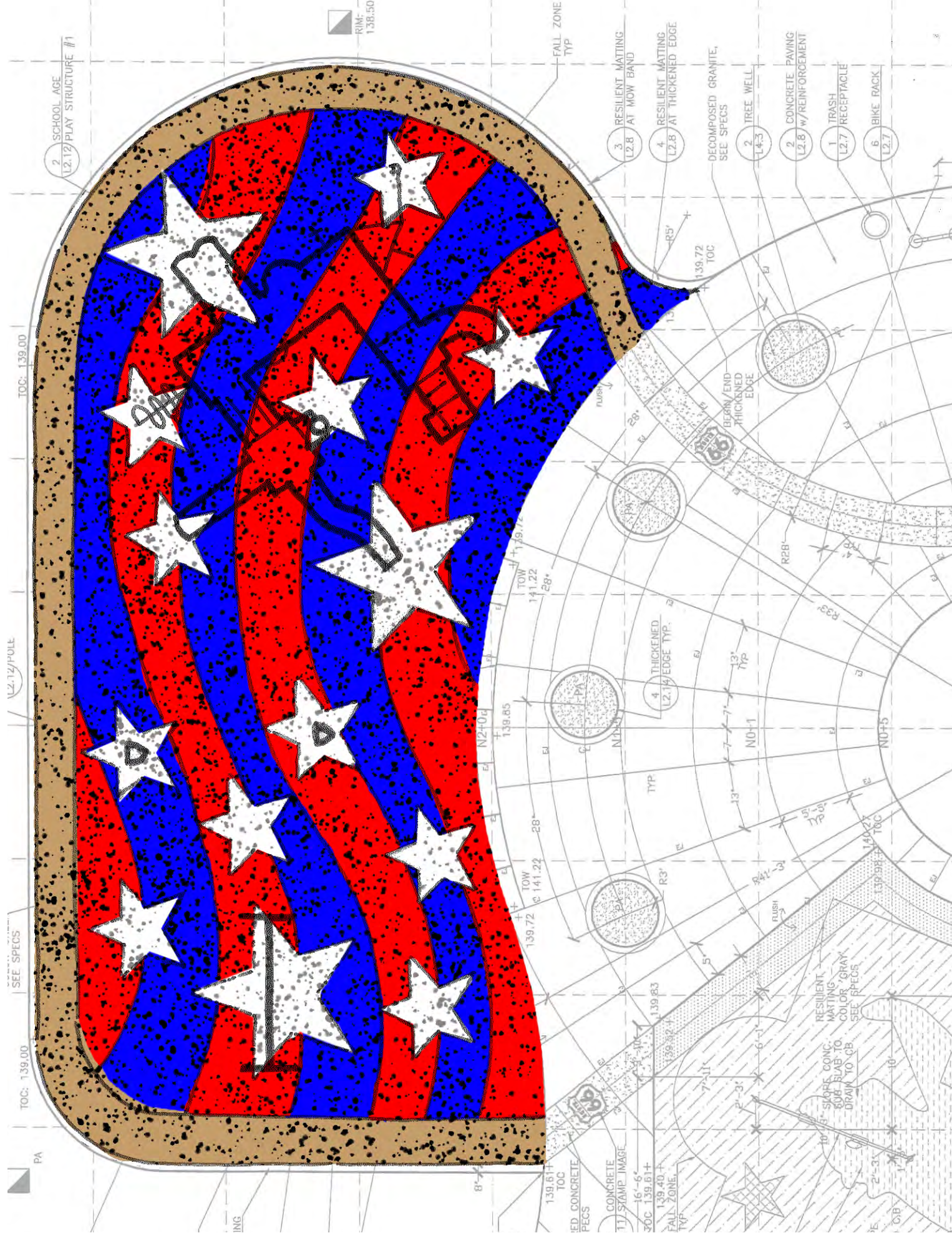
- Exhibit A – Veteran’s Park (5-12 Play Area) Layout
- Exhibit B – Veteran’s Park (2-5 Play Area) Layout

VETERAN'S PARK

LEGEND



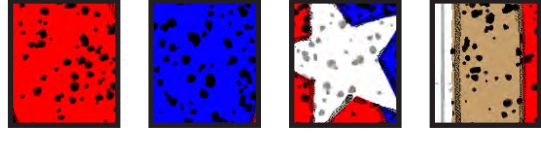
- Red Stripe Areas
 - SpectraPour (1-4mm)
 - 75% Bright Red/25% Black
- Blue Stripe Areas
 - SpectraPour (1-4mm)
 - 75% Blue/25% Black
- Star Areas (Large & Small)
 - SpectraPour Supreme (0.5-1.5mm)
 - 75% Eggshell/25% Grey
- Playful Road Area
 - SpectraPour (1-4mm)
 - 75% Beige/25% Black



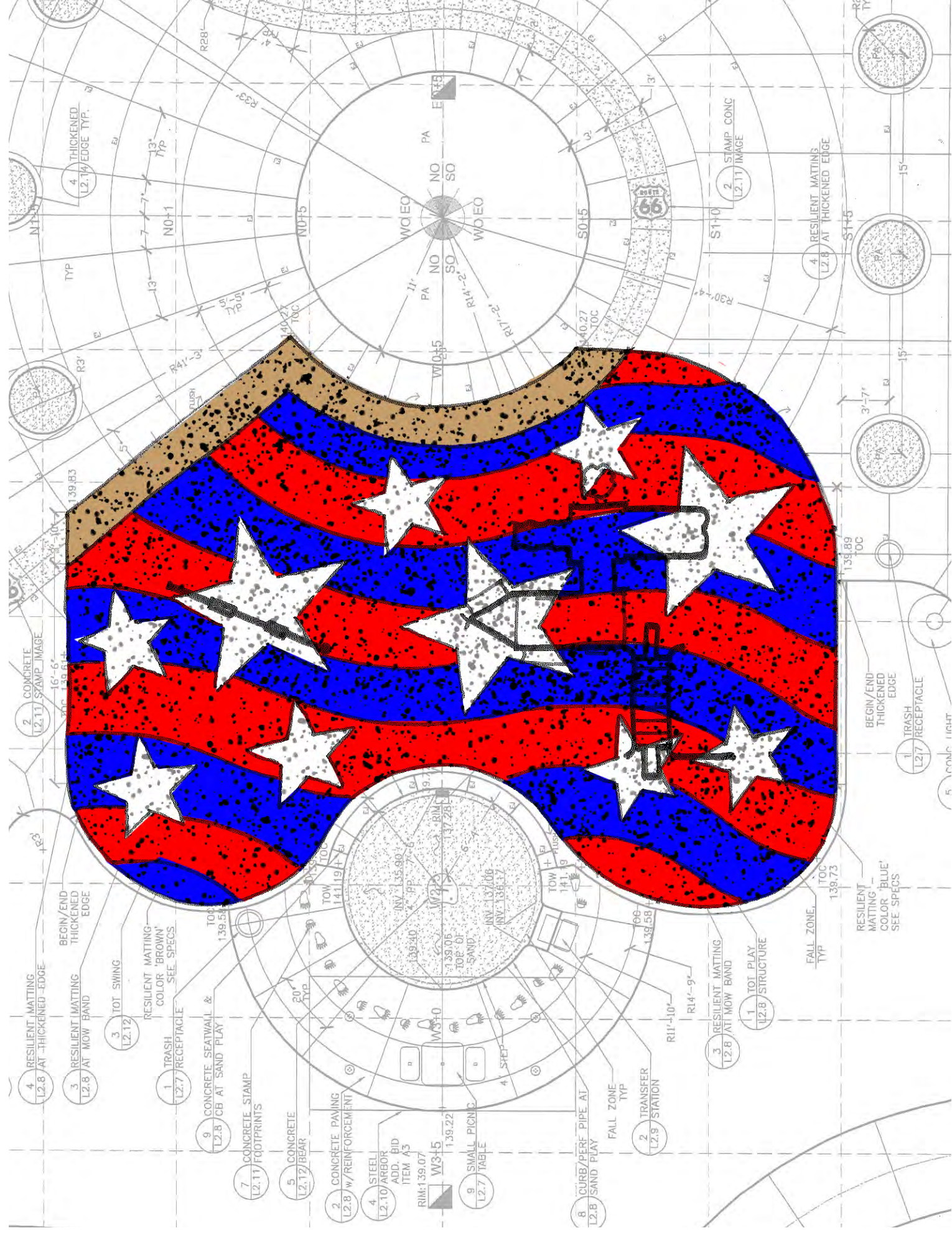
POUR-IN-PLACE RUBBER SURFACING LAYOUT - (5-12 PLAY AREA)

VETERAN'S PARK

LEGEND



- Red Stripe Areas
 - SpectraPour (1-4mm)
 - 75% Bright Red/25% Black
- Blue Stripe Areas
 - SpectraPour (1-4mm)
 - 75% Blue/25% Black
- Star Areas (Large & Small)
 - SpectraPour Supreme (0.5-1.5mm)
 - 75% Eggshell/25% Grey
- Playful Road Area
 - SpectraPour (1-4mm)
 - 75% Beige/25% Black



POUR-IN-PLACE RUBBER SURFACING LAYOUT - (2-5 PLAY AREA)

BID PROPOSAL

to the

CITY OF TRACY, A MUNICIPAL CORPORATION

OF SAN JOAQUIN COUNTY, CALIFORNIA

for

VETERAN'S PARK PLAYGROUND SURFACE REPAIR

Name of Bidder:

SPECTRATURF

Business Address:

555 S. PROMENADE AVE #103

CORONA, CA 92879

Phone:

951-736-3579

The undersigned declares that the only persons or parties interested in this bid proposal as principals are those named herein; that this bid proposal is made without collusion with any other person, firm or corporation; that Bidder has examined the Specifications, read the Notice Inviting Bids and hereby proposes to do all the work in accordance with said Specifications for the unit prices set forth in the enclosed Schedule of Prices.

SCHEDULE OF PRICES

The contractor hereby proposes to furnish all necessary tools and equipment, materials, labor and services (including cost of Worker's Compensation Insurance and all payroll taxes on such labor) in accordance with the Specifications set forth in the bid documents at the prices quoted below.

SCHEDULE OF WORK

WORK	SQ.FT.(approx.)	PRICE PER SQ.FT.	TOTAL COST
Remove, inspect and repair Base Layer Buffings as needed, including any repair of previously failed areas	212 sq.ft.	2.95	625.40
Provide and install 1.5" cap of SpectraPour, or equivalent, safety surfacing directly over the existing surface material	4,919 sq.ft.	12.58	61,881.02
Provide and install SpectraPour Supreme, or equivalent, for star graphics and other high-wear areas			
Edges cut back and tapered in to maintain a smooth, trip-free transition at access points			
1/2" minimum thickness wear layer to be bright red, blue, gray, beige, and eggshell, mixed with Aliphatic (UV-stable, non-yellowing) Resin			
Graphics and color mixes as outlined in specs			

BIDDER'S QUALIFICATIONS

The following statements as to Experience and Financial qualifications of the Bidder must be submitted as part of this Bid Proposal and the truthfulness and accuracy of the information is guaranteed by the Bidder.

BIDDER'S EXPERIENCE

The Bidder's experience in work of a nature similar to that covered in the Bid Proposal extends over a period of 15⁺ years.

WORK REFERENCES

Please list three current work references:

Customer Name CITY OF FREMONT
Contact Name JUAN BARAJAS
Address 3300 CAPITOL AVE
City/State/Zip FREMONT, CA 94538
Phone 408-687-2061

Customer Name WALNUT CREEK USD
Contact Name PHIL ATKINSON
Address 960 YGNACIO VALLEY RD
City/State/Zip WALNUT CREEK, CA 94596
Phone 925-944-6850

Customer Name FIELDTURF/EASYTURF
Contact Name JOHNNY KANE
Address 2750 LA MIRADA DRIVE
City/State/Zip VISTA, CA 92081
Phone 760-505-8486

NON-COLLUSION AFFIDAVIT

Title 23 United States Code Section 112 and
Public Contract Code Section 7106

State of California)
) ss.
County of RIVERSIDE)

ELIZABETH ANDERSON (name of person signing affidavit), being first duly sworn, deposes and says under penalty of perjury under the laws of the State of California, that he or she has the right, power, legal capacity, and authority to execute this Affidavit as GENERAL MANAGER (sole owner, partner, president, secretary, etc) of SPECTRASYSTEMS INC. JDA SPECTRATURF (legal name of Bidder), the Bidder, that the Bid is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation; that the Bid is genuine and not collusive or sham; that the Bidder has not directly or indirectly induced or solicited any other Bidder to put in any false or sham Bid, and has not directly or indirectly colluded, conspired, connived, or agreed with any Bidder or anyone else to put in a sham Bid, or that anyone shall refrain from Bidding; that the Bidder has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the Bid price of the Bidder or any other Bidder, or to fix any overhead, profit, or cost element of the Bid price, or of that of any other Bidder, or to secure any advantage against the public body awarding the Contract or anyone interested in the proposed Contract; that all statements contained in the Bid are true; and, further, that the Bidder has not, directly or indirectly, submitted his Bid price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, or paid, and will not pay, any fee to any corporation, partnership, company association, organization, Bid depository, or to any member or agent thereof to effectuate a collusive or sham Bid.

IN WITNESS WHEREOF, the undersigned, as bidder, represent and warrant that they have the right, power, legal capacity, and authority to enter into and execute this document on behalf of the Bidder, and have executed this document by setting hereto their names, titles and signature.

[Signature]
(Signature of Representative of Bidder)

Subscribed and sworn to before me, a Notary Public in and for the State of California,

County of Riverside, this 24 day of July, 20 19.

Signature of Notary Public: [Signature]

My Commission expires 4/22, 20 21

(Seal)



NOTE: THIS AFFIDAVIT MUST BE COMPLETED AND RETURNED AS PART OF THE CONTRACTOR'S BID PROPOSAL.

SIGNATURE OF BIDDER

Bidder agrees to be bound by its bid proposal and, if awarded the work contemplated by this bid proposal, to enter into a contract with the City of Tracy pursuant to and in accordance with the Specifications set forth in the bid proposal documents.

ELIZABETH ANDERSON
Name of Firm Representative


Signature of Firm Representative

GENERAL MANAGER
Title

6/24/19
Date of Bid Proposal

THIS BID PROPOSAL MUST BE SIGNED BY THE BIDDER

Bid Proposal Name: VETERAN'S PARK PLAYGROUND SURFACE REPAIRS

Local Vendor Affidavit
(Tracy Municipal Code Sections 2.20.030(g) and 2.20.230)

The City of Tracy Local Vendor Preference may be applied to this proposal. If you qualify for this preference, please submit this Local Vendor Affidavit along with your response to this bid proposal.

Definition of Local Vendor:

-NOT APPLICABLE-

Per Tracy Municipal Code 2.20.030(g), "local vendor" means a person or legal entity which has a place of business (other than a PO Box) within the city and a valid, current City of Tracy business license. The local business needs to be operating from a functional office, within the city limits, that is staffed with the company's employees, during normal business hours.

Qualifications:

To qualify as a local vendor, the vendor shall submit with its bid this completed Local Vendor Affidavit to document the following*:

- The business has a facility with a City of Tracy address
- The business will attribute the sales tax from the sale to the City of Tracy
- The business has had a City of Tracy business license for at least one year prior to the opening of the bid

Business Name: _____

Physical Address: _____

Phone: _____ FAX: _____ E-Mail: _____

Tracy Business License No. _____ Date License First Issued: _____

Primary function of this location (i.e., sales, distribution, production, corporate, etc.):

Name of Company Official (typed) Date

Title of Company Official

Signature of Company Official

Submittal of false data will result in disqualification of local vendor preference

*Additional supporting documentation that may be requested by the City to verify qualification includes:

- A copy of current SS2 form (State, Local & district Sales and Use Tax Return Form)
- Copy of current business license
- Proof of current business address

RESOLUTION _____

APPROVING A GENERAL SERVICES AGREEMENT WITH SPECTRATURF, OF CORONA, CA, TO PROVIDE FOR THE REPLACEMENT OF POURED-IN-PLACE RUBBER PLAYGROUND SURFACE (CIP 78516) AT VETERAN'S PARK, 177 GLENHAVEN DRIVE, TRACY, FOR AN AMOUNT NOT TO EXCEED \$62,507, AND AUTHORIZING THE CITY MANAGER TO APPROVE AMENDMENTS TO THE AGREEMENT FOR EXTENSIONS TO THE TERM, IF NEEDED

WHEREAS, The Public Works Department has inspected the poured-in-place rubber playground surface under the play apparatus at Veteran's Park, 177 Glenhaven Drive, Tracy and determined it to be past its useful life, and

WHEREAS, The Public Works Department issued a notice inviting bids to qualified recreation and safety surfacing contractors and a bid was received from one contractor, SpectraTurf, and SpectraTurf met all the requirements and is qualified to perform the repairs to the poured-in-place playground surface, and

WHEREAS, The total cost for material and labor provided by the vendor will not exceed \$62,507, with work to begin following Council approval to be completed no later than April 15, 2020;

NOW, THEREFORE, BE IT RESOLVED, The City Council of the City of Tracy approves a General Services Agreement with SpectraTurf, of Corona, CA, to provide for the replacement of poured-in-place rubber playground surface (CIP 78156) at Veteran's Park, 177 Glenhaven Drive, Tracy, for an amount not to exceed \$62,507, and authorizes the City Manager to approve amendments to the agreement for extensions to the term, if needed.

* * * * *

The foregoing Resolution _____ was passed and adopted by the Tracy City Council on the 15th day of October 2019, by the following vote:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

MAYOR

ATTEST:

CITY CLERK

AGENDA ITEM 3.A

REQUEST

RECEIVE PUBLIC TESTIMONY FROM PUBLIC HEARING FOR ANNUAL UNMET TRANSIT NEEDS, CITY OF TRACY, FISCAL YEAR 2019-20

EXECUTIVE SUMMARY

The City of Tracy (City) annually receives funds from the Transportation Development Act (TDA). Under provisions of the TDA, a local public hearing must be held annually to review any unmet transportation needs prior to allocation of TDA funds. Staff recommends that City Council receive public testimony concerning any unmet transportation needs. Comments will be forwarded to the San Joaquin Council of Governments (SJCOG) to substantiate the validity of any proposed unmet transit needs.

DISCUSSION

Under provisions of the State of California Transportation Development Act (TDA), local public hearings must be held annually to review any unmet transit needs prior to the allocation of TDA funds. The hearings will be held on October 15, 2019, at 10:30 a.m. in the Tracy Transit Station Conference Room 105, and again at 7:00 p.m. in City Hall Council Chambers during the regularly-scheduled City Council meeting.

The TRACER Public Transit System provides Fixed Route and Paratransit Bus services Monday through Friday from 7:00 a.m. until 8:00 p.m., and Saturdays from 9:00 a.m. to 7:00 p.m. The Paratransit Subsidized Taxi service operates during the days and hours that the Paratransit Bus service is not in operation.

The purpose of the public hearing is for the City Council to receive public testimony concerning any unmet transportation needs which may exist for the Tracy community or within San Joaquin County. No decision as to the sufficiency of local transit services is requested from the Council.

The minutes of the public hearings on October 15, 2019, shall be forwarded to the SJCOG, which has the responsibility of determining whether transit needs remain unmet and would be reasonable to meet by the applicable jurisdiction. In addition, any comments received by phone, email, or walk-in prior to this public hearing will also be forwarded on to SCJOG for analysis. Staff members from SJCOG will attend the Tracy public hearings to witness the community responses and to answer specific questions concerning the TDA process.

Attached are copies of the Notice of Public Hearing relative to the Unmet Transit Needs Hearings (Attachment "A") published in Tracy Press newspaper, as well as the circular (Attachment "B") that was posted on the buses, at the Tracy Transit Station, at the Senior Center, on social media, and delivered to various social services/activity agencies within the Tracy community.

STRATEGIC PLAN

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

FISCAL IMPACT

The public hearing does not require any direct expenditure of City funds and will not impact the General Fund.

RECOMMENDATION

That City Council receive public testimony from public hearing for annual unmet transit needs, City of Tracy, Fiscal Year 2019-2020.

Prepared by: Ed Lovell, Management Analyst II

Reviewed by: Brian MacDonald, Parks & Recreation Director
Karin Schnaider, Finance Director
Andrew Malik, Assistant City Manager

Approved by: Jenny Haruyama, City Manager

ATTACHMENTS:

Attachment A – Public Hearing Notice
Attachment B – Circular

NOTICE OF PUBLIC HEARING
CITY OF TRACY

A public hearing will be held on Tuesday, October 15, 2019, at 10:30 a.m. at the Tracy Transit Station, 50 East Sixth Street, Conference Room 105, for the purpose of inviting discussion and statements relative to unmet public transportation needs. Additionally, at 7:00 p.m. on October 16, 2018, or as soon thereafter as possible, the Tracy City Council will hold a public hearing in the Council Chambers, at Tracy City Hall, 333 Civic Center Plaza, to hear statements relative to unmet public transportation needs which can reasonably be met (required by Section 6656, California Administrative Code), prior to allocation of Transportation Development Act (TDA) funds for roads and street purposes.

All interested persons are invited to be present and to submit statements orally or in writing, before or during the meeting.

Information concerning this matter may be obtained at the Tracy Transit Station, 50 E. Sixth Street, Tracy, CA 95376.

Adrienne Richardson
City Clerk
Publish: 9/13, 10/11 2019



Think Inside the Triangle™

UNMET TRANSIT NEEDS HEARING

PUBLIC HEARING

TRACER Fixed Route
SJRTD Bus Service
Ride Sharing
Rail Service / ACE

TRACER Paratransit
Taxi Service
Car Pooling



TUESDAY, OCTOBER 15, 2019

HEARING 1: 10:30 a.m. - 11:30 a.m.
Room # 105
Tracy Transit Station
50 E. Sixth Street

HEARING 2: 7:00 p.m.
City Council Chamber
333 Civic Center Plaza

The City of Tracy & The San Joaquin Council of Governments
would like to know if you have any
Unmet Transit Needs.

You are invited to
comment on any unmet transit needs at the
City of Tracy Unmet Transit Needs Public Hearing.
Your concerns are important to us.

UNMET TRANSIT NEEDS SUGGESTIONS

*If you are unable to attend the public hearing
written comments and statements may be submitted to: Jayne Pramod,
Transportation Coordinator, Tracy Transit Station, 50 E. Sixth Street,
Tracy, CA 95376 or emailed to Jayne.pramod@cityoftracy.org*

For Information contact: City of Tracy Transit Station at (209) 831 4287

AGENDA ITEM 3.B

REQUEST

PUBLIC HEARING TO INTRODUCE AN ORDINANCE AMENDING TRACY MUNICIPAL CODE SECTION 10.08.3560 REGARDING OFF-STREET PARKING AREA LANDSCAPING REQUIREMENTS

EXECUTIVE SUMMARY

This agenda item is a request to amend the Tracy Municipal Code Section 10.08.3560 relating to zoning regulations for landscaping in off-street parking areas. This amendment would allow exemptions to certain landscaping requirements for parking areas covered by photovoltaic carports as well as provide clarity to other landscaping requirements.

DISCUSSION

Background

Tracy Municipal Code (TMC) Title 10, Article 26 establishes landscaping requirements for off-street parking areas, including the quantity, size, and placement of trees. Trees provide multiple benefits, including aesthetics, shading, carbon sequestration, habitats, and reduction of heat island effect. TMC Section 10.08.3560, subsections (c) and (d) read as follows:

(c) Landscaping shall consist of plant materials and shall include a combination of trees, shrubs, and ground cover.

(d) Trees shall be of a type approved by the Director of Community Development. Trees shall be required at the rate of one tree per each five (5) required auto parking spaces. Such trees shall be a minimum fifteen (15) gallons in size. Canopy trees shall be evenly distributed throughout the parking area so that forty (40%) percent of the area shall be shaded at tree maturity. Canopy trees shall be the type that normally achieves a minimum canopy diameter of twenty-five (25') feet, as approved by the Community Development Director.

City staff has been gaining increasing interest from property owners desiring to install photovoltaic array (also known as solar panel) carports over their parking areas. Because the solar panels need to be unobstructed from the sunlight for maximum efficiency, large trees cannot be over or adjacent to these structures. Many existing parking areas would not be able to meet the required minimum canopy tree shading requirement of 40% of the parking area if there are no trees planted near the solar panel carports.

On March 5, 2019, ADM Group, on behalf of Kaiser Foundation, submitted an application (Application Number ZA19-0001) to amend TMC Section 10.08.3560 to allow an exemption from canopy tree shading requirements for parking areas covered by solar panel carports. Should the TMC be amended to provide such an exemption, Kaiser

would then submit a Development Review Permit application to construct solar panel carports over a large portion of their parking area at their site on Grant Line Road.

Proposed Ordinance

Staff worked with the applicant to draft language that would be easy to understand and enforce, as well as comply with the City's Design Goals and Standards for landscape design. The proposed ordinance would exempt the parking areas covered by solar panel carports from the canopy tree shading requirement. This approach is modeled after the City of Sacramento, of which City of Sacramento staff said is working well. The proposed amendment will also clarify that, at planting, landscaping shall adhere to the Citywide Design Goals and Standards and applicable specific plan and clarify that the required rate of one tree per five parking spaces is a minimum requirement.

This proposed amendments to TMC Section 10.08.3560 are contained in Attachment B in strikethrough and underline format. Attachment C contains the text of the proposed ordinance.

The applicant provided information of Kaiser's intent for the size and location of their solar panel carports at their Grant Line Road facility. Their proposed solar panel carports and parking area trees (once all the missing trees are replanted) work with the proposed amended TMC language above. As can be seen in Attachment A, which is an exhibit of Kaiser's parking area, the site would still maintain a substantial number of trees to be primarily located on the perimeter of the parking area.

Planning Commission Recommendation

The Planning Commission reviewed the proposed zoning text amendment on September 11, 2019 at a regularly scheduled public hearing and voted 3:0 to recommend that the City Council amend Tracy Municipal Code Section 10.08.3560, subsections (c) and (d) regarding landscaping requirements for parking areas.

Environmental Document

The proposed amendment is not a project within the meaning of the California Environmental Quality Act (CEQA), because it does not have the potential for causing a significant effect on the environment (CEQA Guidelines, 14 California Code of Regulations, §15061(b)).

STRATEGIC PLAN

This agenda item is not related to any of the Council's Strategic Plans.

FISCAL IMPACT

This agenda item will not require any expenditure of funds. The applicant paid the application processing fees established by the City Council for a zone text amendment.

RECOMMENDATION

Staff and Planning Commission recommend that the City Council introduce and waive the first reading of an ordinance, amending Tracy Municipal Code Section 10.08.3560, subsections (c) and (d) regarding landscaping requirements for off-street parking areas.

Prepared by: Kimberly Matlock, Associate Planner

Reviewed by: Bill Dean, Assistant Development Services Department Director
Karin Schnaider, Finance Director
Andrew Malik, Assistant City Manager

Approved by: Jenny Haruyama, City Manager

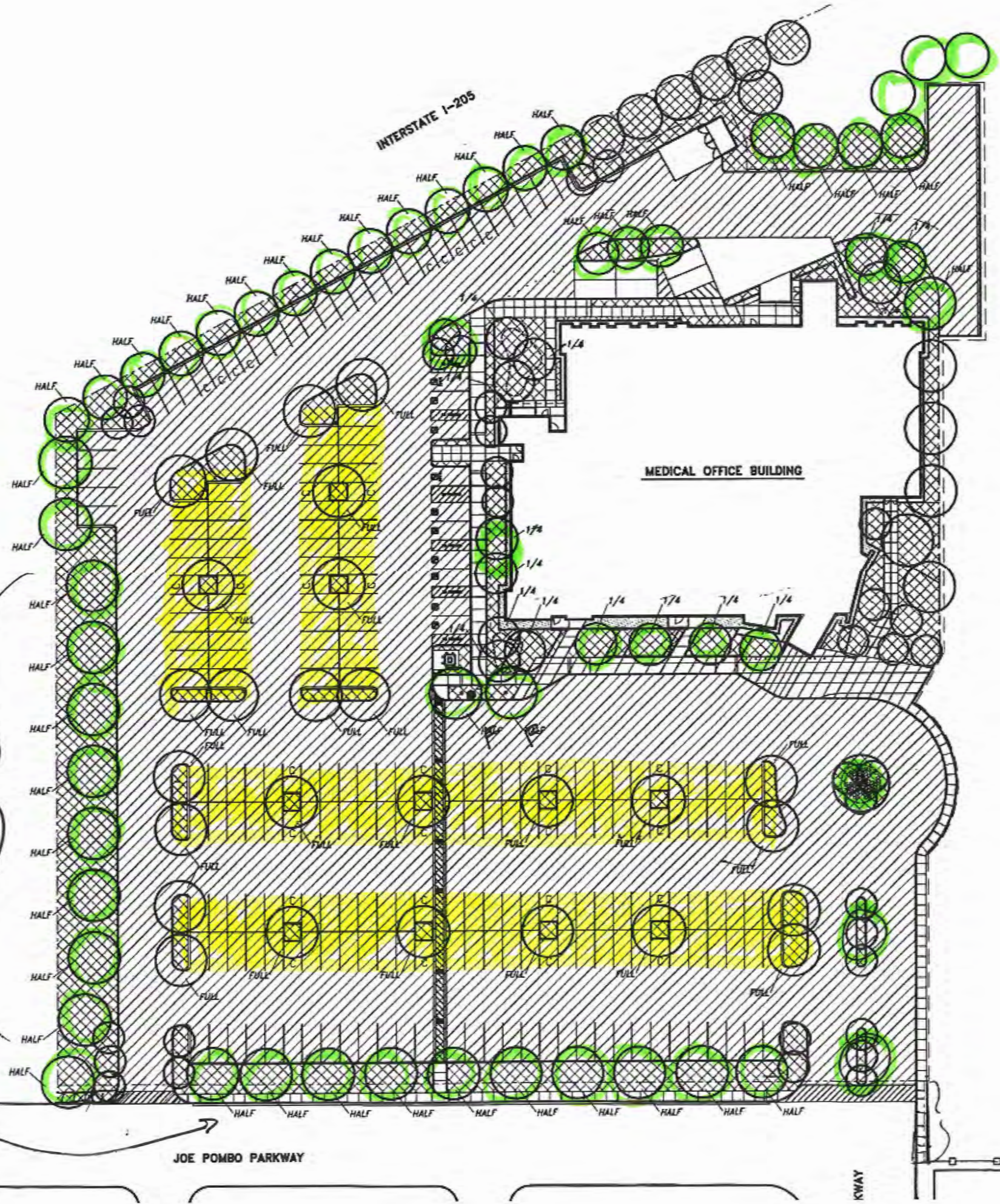
ATTACHMENTS

Attachment A – Kaiser Parking Area Exhibit

Attachment B – Proposed Tracy Municipal Code Revisions in Strikethrough/Underline



Attachment C – Proposed Ordinance

These would get full credit if planted such that canopies are completely on site.



LANDSCAPE/SHADE CALCULATION

PARKING LOT AREA = 111,805 S.F. (- 30,720 = 81,085 sq.)
 LANDSCAPED AREA REQ'D. @ 20% = 22,361 S.F.
 LANDSCAPE AREA PROVIDED = 34,973 S.F.
 SHADED AREA REQ'D. @ 40% = 44,722 S.F. 32,434 sq.
 TREE AREA COVERAGE:
 FULL = 962 SQ. FT.
 THREE-QUARTER = 721 SQ. FT.
 HALF = 481 SQ. FT.
 QUARTER = 240 SQ. FT.
 SHADED AREA PROVIDED = 40,657 sq. 94%
 Trees req'd : 49
 Trees provided : >59

-  = canopy shade tree
-  = PV carport area, exempt from tree canopy shading (trees in this area to be removed)

JOE POMBO PARKWAY

KWAY

Redline Changes to Provisions of Tracy Municipal Code Section 10.08.3560 Regarding Off-Street Parking Area Landscaping Requirements

10.08.3560 – Landscaping requirements for parking areas.

(c) Landscaping shall consist of plant materials and shall include a combination of trees, shrubs, and ground cover. At planting, landscaping shall be of the size established in the Citywide Design Goals and Standards and applicable specific plan.

(d) Trees shall be of a type approved by the Director of ~~Community~~ Development Services and shall be provided as follows:

(1) Trees shall be required planted at the a minimum rate of one tree per each five (5) required auto parking spaces. ~~Such trees shall be a minimum fifteen (15) gallons in size.~~

(2) Canopy trees shall be evenly distributed throughout the parking area so that a minimum of forty (40%) percent of the parking area is shall be shaded at tree maturity. Canopy trees shall be the type that normally achieves a minimum canopy diameter of twenty-five (25') feet, ~~as approved by the Community Development Director.~~

(3) Where photovoltaic array carports are located in the parking area, the portions of the parking area that are directly beneath the footprint of the photovoltaic array carports are exempt from the requirements of subsection (d)(2) of this section.

ORDINANCE _____

AN ORDINANCE OF THE CITY OF TRACY AMENDING SECTION 10.08.3560 OF THE TRACY MUNICIPAL CODE RELATING TO LANDSCAPING REQUIREMENTS FOR PARKING AREAS

WHEREAS, Tracy Municipal Code section 10.08.3560 outlines the landscaping requirements for parking areas in the City, and

WHEREAS, The proposed amendments will exempt from the City's parking area tree shading requirements those portions of parking areas where photovoltaic array carports are located directly overhead, and

WHEREAS, The proposed amendments will also clarify that, at planting, landscaping shall adhere to the Citywide Design Goals and Standards and applicable specific plan and clarify that the required rate of one tree per five parking spaces is a minimum requirement, and

WHEREAS, The proposed amendments are not a project within the meaning of the California Environmental Quality Act because it does not have the potential for causing a significant effect on the environment (CEQA Guidelines, 14 California Code of Regulations, §15061(b)), and

WHEREAS, The Planning Commission considered this matter at a duly noticed public hearing held on September 11, 2019 and recommended that City Council amend the Tracy Municipal Code Section 10.08.3560, subsections (c) and (d) regarding landscaping requirements for parking areas, and

WHEREAS, The City Council held a duly noticed public hearing to consider the ordinance on October 15, 2019;

NOW THEREFORE, The City Council of the City of Tracy hereby ordains as follows:

SECTION 1. Subsections (c) and (d) of Section 10.08.3560, Landscaping Requirements for Parking Areas, of Article 26, Off-Street Parking Requirements, of Chapter 10.08, Zoning Regulations, of Title 10, Planning and Zoning, of the Tracy Municipal Code is amended to read as follows:

“(c) Landscaping shall consist of plant materials and shall include a combination of trees, shrubs, and ground cover. At planting, landscaping shall be of the size established in the Citywide Design Goals and Standards and applicable specific plan.

(d) Trees shall be of a type approved by the Director of Development Services and shall be provided as follows:

(1) Trees planted at a minimum rate of one tree per each five (5) required auto parking spaces.

(2) Canopy trees shall be evenly distributed throughout the parking area so that a minimum of forty (40%) percent of the parking area is shaded at tree maturity. Canopy trees shall be the

type that normally achieves a minimum canopy diameter of twenty-five (25') feet.

(3) Where photovoltaic array carports are located in the parking area, the portions of the parking area that are directly beneath the footprint of the photovoltaic array carports are exempt from the requirements of subsection (d)(2) of this section.”

SECTION 2. Except as herein added or changed, the remaining sections of the Tracy Municipal Code not set forth above, shall remain in full force.

SECTION 3. If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this Ordinance.

SECTION 4. This Ordinance takes effect 30 days after its final passage and adoption.

SECTION 5. This Ordinance shall either (1) be published once in a newspaper of general circulation, within 15 days after its final adoption, or (2) be published in summary form and posted in the City Clerk’s office at least five days before the Ordinance is adopted and within 15 days after adoption, with the names of the Council Members voting for and against the Ordinance. (Gov’t. Code §36933.)

* * * * *

The foregoing Ordinance _____ was introduced at a regular meeting of the Tracy City Council on the 15th day of October 2019, and finally adopted on the _____ day of _____, 2019, by the following vote:

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

MAYOR

ATTEST:

CITY CLERK

AGENDA ITEM 3.C

REQUEST

RECEIVE AND ACCEPT THE PRESENTATION OF THE GRAND THEATRE CENTER FOR THE ARTS ANNUAL REPORT

EXECUTIVE SUMMARY

This presentation discusses the activities of the Grand Theatre Center for the Arts during the 2018-2019 Fiscal Year and the upcoming 2019-2020 Season. The presentation outlines the performance highlights, community programming, arts education, gallery exhibitions and the financial support and community outreach provided by the Grand Foundation.

DISCUSSION

The Grand Theatre Center for the Arts is entering into its thirteenth year of operations. With successful attendance in presentations, arts education programming, gallery exhibitions and special events, the Grand not only brings rich cultural amenities to the residents of Tracy and regional attendees, it also stimulates sales tax by bringing new shoppers and diners to downtown from surrounding communities.

During the 2018-2019 Season, the Grand Theatre hosted and Co-Presented 44 events and performances. There were 65 rentals of which 13 were commercial rentals and the remaining were non-profit rentals, City uses or Grand Foundation uses per their Memorandum of Understanding Agreement with the City.

In the Grand Galleries there were six featured Exhibitions throughout the 2018-2019 Season. The Grand Galleries hosted over 6,000 guests throughout the season and sold 275 pieces of art and items. There were 144 total artists and lenders of which 96 were female and 48 were male artist/lenders.

The Arts Education Program offered 1,710 classes/events and had 7,353 participants throughout the 2018-2019 Season. There were 34 Contract Instructors teaching classes in Arts Education.

The Grand Foundation provides the Grand Theatre with up to \$20,000 annually in program and event support. Should the entire \$20,000 not be requested, the remaining funds are deposited into the Clyde Bland Endowment Fund.

In 2018-2019, the Grand Foundation provided \$16,959 to the Grand Theatre which was designated for children's camps, special needs musical theatre camps, senior classes and events, live performances and plays for school aged children, technical equipment and the retrofitting and letter replacement for the Grand Marque. The remaining funds were distributed to the Clyde Bland Endowment Fund. The Grand Foundation's financial support and community outreach is what makes them such an important fundraising partner for the Grand Theatre Center for the Arts.

The upcoming 2019-2020 Season will be filled with exciting performances, concerts, arts education classes and gallery exhibitions. This year's kick off to the new Season included the Grand Foundation Membership Party, which had record crowds in attendance.

The Grand Theatre Center for the Arts was also able to acquire a set of the original Grand letters that were an original sign in front of the Grand Theatre from a local Tracy family. The letters were installed in the interior of the Grand Lobby and were unveiled at a Community Reception on September 12, 2019.

The 2019-2020 Season will officially begin on September 14, 2019 with the first Season performance and Gallery Opening and Reception.

STRATEGIC PLAN

This agenda item supports the City's Quality of Life Strategic Plan and specifically implements the following goals:

Goal 1: Address City Amenities and Facility Usage with an Emphasis on Community Demand, Accessibility, and Cost Recovery.

Goal 5: Improve current recreational, cultural arts and entertainment programming and services to reflect community interests and demands.

FISCAL IMPACT

The Cultural Arts Division budget has been allocated and approved as part of the Fiscal Year 2019-20 budget.

RECOMMENDATION

That the City Council receive and accept the presentation of the Grand Theatre Center for the Arts Annual Report.

Prepared by: Kim Scarlata, Division Manager II

Reviewed by: Karin Schnaider, Finance Director
Midori Lichtwardt, Assistant City Manager

Approved by: Jenny Haruyama, City Manager

ATTACHMENT

Attachment A – Power Point Presentation-2018-2019 and 2019-2020 Season Overview



Grand Theatre Center for the Arts Annual Report October 15, 2019



2018-2019 Presenting Season

44 Events and Performances

65 Rentals

SEASON OPENER

MONTGOMERY GENTRY



MG

FRIDAY • SEPTEMBER 14 • 8PM
TICKETS: \$67 - \$95

PRESENTING SEASON 2018-19
TICKETS / INFO:
Patron Services at the Box Office
209-831-6858 • atthegrand.org
ADDITIONAL FEES APPLY

Art is everywhere everywhere. Art is Art is everywhere



GRAND THEATRE
CENTER FOR THE ARTS

BIG BAD VOODOO DADDY



WILD AND SWINGIN'
Holiday Party

SUNDAY • DECEMBER 2 • 7PM
TICKETS: \$47 - \$65

PRESENTING SEASON 2018-19
TICKETS / INFO:
Patron Services at the Box Office
209-831-6858 • atthegrand.org
ADDITIONAL FEES APPLY

Art is everywhere everywhere. Art is Art is everywhere



GRAND THEATRE
CENTER FOR THE ARTS

2018-2019 Exhibition Season Highlights

Grand Theatre Center for the Arts presents the 2018-19 Exhibition Season

Different **Directions** Delbert Park Retrospective

✦ Curated by Vicki Park

September 15 – October 27, 2018
GWF Energy & Souza Galleries

Opening Reception: Saturday, September 15, 6 – 8 pm

Gallery Talk: Saturday, October 6, 12 – 2 pm

All of these associated events are free and open to the public!



Delbert Park Retrospective-
Announcement and Portrait
by Tiffanie Heben







Grand Theatre Center for the Arts presents the 2019-20 Exhibition Season

You and Me on a Sunny Day

A Non-Motion Picture by Rocky McCorkle

September 14 – October 26, 2019
GWF Energy & Souza Galleries

Opening Reception
Saturday, September 14, 6 – 8 pm

Gallery Talk
Saturday, October 5, 12 – 2 pm

All of these associated events are free & open to the public!

2019-2020 Exhibition Opening



2018-2019 Arts Education



1,710 Classes/Events
7,353 Participants
34 Contract Instructors







GRAND THEATRE
CENTER FOR THE ARTS

2019 2020 PRESENTING SEASON

Kevin Nealon SEASON OPENER
SAT | SEPT 14 | 8PM
TICKETS: \$35-\$69



PRESENTING SEASON 2019-2020
TICKETS / INFO:
Patron Services at the Box Office
209-831-8858 • atthegrando.org

Fiesta de Muertos
BALLET FOLKLORICO MEXICANO DE CARLOS MORENO
SAT NOV 2 1PM
TICKETS: \$15



PRESENTING SEASON 2019-2020
TICKETS / INFO:
Patron Services at the Box Office
209-831-8858 • atthegrando.org

38 SPECIAL
THURSDAY | NOVEMBER 21 | 8PM
TICKETS: \$60-\$80



PRESENTING SEASON 2019-2020
TICKETS / INFO:
Patron Services at the Box Office
209-831-8858 • atthegrando.org

Robert Cray
FRI NOV 8 8PM
TICKETS: \$35-\$55



PRESENTING SEASON 2019-2020
TICKETS / INFO:
Patron Services at the Box Office
209-831-8858 • atthegrando.org



A Historic Artifact Returns to the Grand!

Join us for the unveiling & celebration of a new attraction in the Grand Lobby.

Thursday, September 12, 2019, from 5 to 6:30 PM

Complimentary Refreshments. Free & Open to the Public!

Beverage hospitality provided courtesy of the Grand Foundation.

Grand Theatre Center for the Arts
715 Central Avenue in downtown Tracy, CA
For more info call Patron Services at the Box Office 209.831.6858



AGENDA ITEM 3.D

REQUEST

APPROVE AN EMPLOYMENT AGREEMENT BETWEEN LETICIA RAMIREZ AND THE CITY OF TRACY TO SERVE AS CITY ATTORNEY

EXECUTIVE SUMMARY

This item is on the agenda to allow the City Council to consider the approval of an at-will Employment Agreement with Leticia Ramirez to serve as City Attorney.

DISCUSSION

Ms. Ramirez has served the City of Tracy as Interim City Attorney since June 2019 and Assistant City Attorney since October 2016. Ms. Ramirez completed her undergraduate degree at Stanford University and completed her Juris Doctor at UCLA School of Law. Prior to joining the City of Tracy, Ms. Ramirez worked for several years at the Meyers Nave Riback Silver and Wilson law firm as a Public Law Associate.

Following careful evaluation of her knowledge, experience, skills, and abilities, Ms. Ramirez has been selected to serve as the City's next City Attorney. Staff recommends that the City Council approve an at-will employment agreement with Leticia Ramirez, to serve in that capacity.

Under the proposed at-will employment agreement, Ms. Ramirez will:

- Begin employment as City Attorney effective October 1, 2019;
- Receive an initial base annual salary of \$225,000; and five percent of base salary paid into a deferred compensation account;
- Receive retirement benefits provided through the California Public Employees' Retirement System ("CalPERS"). The benefit formula will be dependent on hire date and member status in CalPERS;
- Receive the same health, dental, vision, disability and life insurance benefits provided to Department Heads;
- Accrue 96 hours (8 hours per month) of sick leave per year;
- Accrue Management Leave in accordance with the Department Head Compensation and Benefits Plan;
- Accrue all leave, without limit, and compensated for unused accrued vacation at the base rate of pay on the date of separation. Entitled to "buy back" vacation and Management Leave as permitted under the Department Heads Compensation and Benefits Plan.

- Receive the same monthly car allowance as provided in the Department Head Compensation and Benefits Plan;
- Be reimbursed for relocation and moving expenses not to exceed \$3,000 (only if relocating inside City limits); and
- Receive nine (9) month severance unless she voluntarily resigns or retires.

STRATEGIC PLAN

This agenda item supports the City's Governance Strategy and Business Plan, and specifically implements the following goals and objectives:

Governance Strategy

Goal 1: Further develop an organization to attract, motivate, develop and retain a high quality, engaged, high-performing and informed workforce.

FISCAL IMPACT

This action requires no additional fiscal impacts, beyond what has been appropriated in the annual budget adoption process.

RECOMMENDATION

That the City Council, by resolution, approve an Employment Agreement between Leticia Ramirez and the City of Tracy to serve as City Attorney.

Prepared by: Kimberly Murdaugh, Director of Human Resources

Reviewed by: Karin Schnaider, Finance Director
Midori Lichtwardt, Assistant City Attorney

Approved by: Jenny Haruyama, City Manager

Attachments: Exhibit A: Proposed Employment Agreement – Leticia Ramirez

EMPLOYMENT AGREEMENT
BETWEEN
LETICIA RAMIREZ AND THE CITY OF TRACY

This Agreement (hereinafter "Agreement") is made and entered into between the City of Tracy, a municipal corporation ("CITY"), and Leticia Ramirez, an individual ("EMPLOYEE"), both of whom agree as follows:

RECITALS:

- A. EMPLOYEE currently serves as the Interim City Attorney and the City Council has decided to appoint Ramirez to the position of City Attorney.
- B. The City desires to secure and retain the services of EMPLOYEE and to provide inducement for EMPLOYEE to remain in employment, make possible full productivity by assuring EMPLOYEE's morale and peace of mind with respect to future security, and act as a deterrent against malfeasance or dishonesty for personal gain on the part of EMPLOYEE while also providing a just means for terminating EMPLOYEE's services at such time as EMPLOYEE may be unable to fully discharge her duties due to age or disability; or when EMPLOYER may otherwise desire to terminate the EMPLOYEE.
- C. The parties have entered into this Agreement in recognition of the benefits accruing to each party. This Agreement will insure the retention of EMPLOYEE's services as City Attorney and the performance of those duties in a manner which serves the best interests of the CITY, subject to the direction of the City Council.
- D. EMPLOYEE desires employment as the City Attorney of the City of Tracy.

NOW, THEREFORE, in consideration of the faithful performance of the terms and conditions set forth below, the parties agree as follows:

Section 1: Duties.

CITY agrees to employ EMPLOYEE as City Attorney of CITY as of October 1, 2019 as set forth in this Agreement, to perform the functions and duties of City Attorney.

Section 2: Term.

Except as otherwise expressly stated in this Agreement, the term of this Agreement shall be for an indefinite period of time. Separation of employment at a time other than the expiration of this Agreement shall be governed by the provisions outlined in Section 6 of the Agreement. EMPLOYEE may resign at any time from the position with the CITY provided she gives the CITY 30 days written notice in advance and, in which event, she forgoes any right to severance pay.

Section 3: Compensation and Benefits.

A. Base Salary. The CITY agrees to pay EMPLOYEE an annual base salary of \$225,000, payable in accordance with a pre-determined schedule applicable to all CITY employees.

B. Merit Increases in Compensation. CITY may increase the base salary and/or other benefits of EMPLOYEE in the amount and to the extent as the CITY may determine that it is desirable to do so on the basis of an annual performance evaluation and salary review.

C. Health, Disability, and Life Insurance Benefits. Upon commencement of employment, EMPLOYEE is entitled to receive the same health, dental, vision, disability and life insurance benefits provided to other employees covered by the most currently adopted Department Heads Compensation and Benefits Plan.

D. Car Allowance. EMPLOYEE is entitled to receive the same monthly car allowance provided to other employees covered by the most currently adopted Department Heads Compensation and Benefits Plan.

E. Cell Phone Allowance. During the duration of EMPLOYEE's employment with CITY, EMPLOYEE shall be entitled, at EMPLOYEE's option, to either a Cellular Phone allowance of \$660 per year, prorated and allocated per pay period, or use, for City business, of a City-owned and paid for Cellular Phone.

F. Management Benefit Plan. EMPLOYEE is entitled to receive an annual Management Benefit allowance in the amount of \$2,960 per calendar year to be used at EMPLOYEE's discretion for job related expenses or for professional development. The monies will be prorated and allocated per pay period and may be used for a wide variety of job related expenses, training, association memberships, computer hardware and software, conference registration and attendance, and other miscellaneous job expenses or professional development opportunities.

G. Accrual and Use of Leave.

1. Vacation Credit and Accrual. During the duration of employment with CITY, EMPLOYEE shall accrue vacation leave in the same amount as provided to other employees covered by the most currently adopted Department Heads Compensation and Benefits Plan.

2. Sick Leave Credit and Accrual. EMPLOYEE shall accrue sick leave at the rate of eight (8) hours for each month of service.

3. Management Leave. It is recognized that EMPLOYEE must devote a great deal of time outside the normal office hours to business of the CITY, and to that end, EMPLOYEE will be allowed to accrue and use Management Leave as contained in the most currently adopted Department Heads Compensation and Benefits Plan.

4. Use of Leave. EMPLOYEE is entitled to accrue all leave, without limit, and if EMPLOYEE's employment is terminated, either voluntarily or involuntarily, she shall be compensated for all unused accrued vacation leave at the rate of pay on the date of separation. EMPLOYEE shall be entitled to "buy back" vacation and Management Leave in the same manner as permitted for other employees covered by the most currently adopted Department Heads Compensation and Benefits Plan.
- H. Deferred Compensation. CITY shall contribute 5% of EMPLOYEE's baselary to EMPLOYEE's 401 Plan deferred compensation.
- I. CalPERS (California Public Employees' Retirement System). EMPLOYEE shall pay the full employee contribution share under the applicable CalPERS formula.
- J. CITY shall reimburse EMPLOYEE for relocation and moving expenses up to \$3,000 provided that EMPLOYEE relocates within the boundaries of the CITY.

Section 4: Performance Evaluation.

It is mutually agreed that the adopted operating budget for each fiscal year generally contains the goals and objectives developed by the CITY. Within 90 days of the date of this Agreement, or at some other mutually agreeable time, EMPLOYEE and the City Council will meet to discuss and establish performance goals for EMPLOYEE. A facilitator selected by EMPLOYEE and agreeable to the City Council may facilitate the discussion. The fees for the facilitator shall be paid by the CITY. Thereafter, the City Council and EMPLOYEE shall meet on an annual basis to evaluate EMPLOYEE's performance. The City Council shall provide EMPLOYEE with a written performance evaluation in such format as the City Council may determine. If the City Council concludes EMPLOYEE'S job performance warrants a salary increase for merit, the Council may grant a merit adjustment in an amount determined by the Council, to be effective on a date determined by the Council. Such merit adjustments may be granted on one or more occasions during the term of this Agreement.

Section 5: General Business Expenses. CITY agrees to budget for and to pay for professional dues and subscriptions of EMPLOYEE for continuing and full participation in national, regional, state and local associations, and organizations necessary and desirable for EMPLOYEE's continued professional participation, growth, and advancement, and for the good of the CITY. CITY shall review EMPLOYEE's requests for membership, professional development, and attendant travel thereto during the normal budget review process. CITY agrees to pay all bar fees, continuing legal education fees and costs associated with maintaining the California law licenses of EMPLOYEE in good standing.

Section 6: Separation of Employment.

A. EMPLOYEE may voluntarily separate from CITY service by delivering a letter of resignation to the City Council not less than 30 days prior to the effective date of the resignation. This Agreement to provide a 30 day notice of resignation is an additional consideration for various benefits provided herein to EMPLOYEE.

B. This Agreement shall terminate immediately upon the occurrence of any of the following events:

- (i) the death of EMPLOYEE;
- (ii) the loss by EMPLOYEE of legal capacity;
- (iii) conviction of a felony;
- (iv) the willful breach of material duty by the EMPLOYEE in the course of his employment;
- (v) repeated and protracted unexcused absences from the City Attorney's office and duties; or
- (vi) conviction of an illegal act involving personal gain to EMPLOYEE; or
- (vii) is found to have committed an act resulting in disbarment or suspension from the California State Bar Association.

C. In the event of the termination of this Agreement for one of the causes enumerated in Paragraph B of this Section 7, EMPLOYEE is entitled to the compensation earned by her before the date of termination as provided for in this Agreement computed pro rata up to and including that date; EMPLOYEE shall be entitled to no further compensation after the date of termination.

D. EMPLOYEE may not be removed from office within a period of 120 days immediately following a general municipal election held in the City at which a member of the Council is elected.

Section 7: Reimbursement to CITY.

In accordance with Government Code sections 53243, 53243.1 and 53243.2:

A. If EMPLOYEE is placed on paid administrative leave pending an investigation, EMPLOYEE shall reimburse the pay to CITY if she is subsequently convicted of a crime involving the abuse of her office or position;

B. If CITY pays for EMPLOYEE's legal criminal defense, she shall fully reimburse the funds to the CITY if she is subsequently convicted of a crime involving an abuse of her office or position; and

C. If this Agreement is terminated, any cash settlement related to the termination that EMPLOYEE may receive from CITY must be fully reimbursed to CITY if she is subsequently convicted of a crime involving an abuse of her office or position.

Section 8: Severance.

In the event EMPLOYEE involuntarily resigns or is terminated by the City Council for reasons other than those enumerated in Sections 6(A) or (B) above then in that event CITY agrees to pay EMPLOYEE nine (9) month's severance pay provided however that pursuant to State law EMPLOYEE shall not be entitled to any severance pay that would exceed the term of this Agreement. For the purpose of this Agreement, severance shall include salary, health benefits, life insurance, and retirement contributions. Said severance pay shall be paid in a lump sum payment to EMPLOYEE by the CITY within fifteen working days after the effective date of EMPLOYEE's involuntary resignation or termination or as agreed to by CITY and EMPLOYEE. As a prerequisite for CITY paying severance pay, EMPLOYEE shall sign and deliver to CITY a full release and waiver of claims in favor of the City and approved by CITY.

Section 9: General Provisions.

A. Indemnification. CITY shall defend, save harmless, and indemnify EMPLOYEE against any tort, professional liability claim, or demand or other legal action, whether groundless or otherwise, arising out of an alleged act or omission occurring in the performance of EMPLOYEE'S duties as City Attorney. CITY will compromise and settle any such claim or suit and pay the amount of any settlement or judgment rendered. It is expressly understood that the CITY is not responsible for any awards involving punitive damages.

B. Bonding. CITY shall bear the full cost of any fidelity or other bonds required of the EMPLOYEE under Title 2 of the Tracy Municipal Code.

C. Notices. Notices under this Agreement shall be given by deposit in the custody of the United States Postal Service, postage prepaid, addressed as follows:

CITY OF TRACY - EMPLOYER:

Leticia Ramirez -EMPLOYEE:

City Council of the City of Tracy
.Attention: Mayor
333 Civic Center Plaza
Tracy, CA 95376

With a copy to:

City Manager
333 Civic Center Plaza
Tracy, CA 95376

Alternatively, notices required under this Agreement, may be personally served in the same manner as is applicable to civil judicial practice.

D. Entire Agreement. This Agreement sets forth and establishes the entire understanding between the CITY and EMPLOYEE relating to the employment of EMPLOYEE by the CITY. Any prior discussions or representations by or between the parties are merged into this Agreement. Each party to this Agreement acknowledges that no representations, inducements, promises, or agreements, orally or otherwise, have been made by any party, or anyone acting on behalf of any party, which are not embodied herein, and that no other agreement, statement, or promise not contained in this Agreement shall be valid and binding.

E. Amendments. The parties by mutual written agreement may amend any provision of this Agreement during the life of the Agreement. The amendments shall be incorporated and made a part of this Agreement.

F. Heirs. This Agreement is binding upon and inures to the benefit of the heirs at law and executors of EMPLOYEE. If the EMPLOYEE dies prior to the expiration of the term of employment, any monies that may be due her from CITY under this Agreement as of the date of his death shall be paid to his executors, administrators, heirs, personal representatives, successors, and assigns.

G. Severability. If any provision or portion of this Agreement is held unconstitutional, invalid or unenforceable, the remainder of this Agreement shall be deemed severable and shall not be affected, but shall remain in effect.

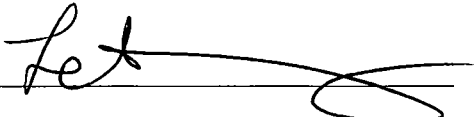
H. Written Materials. All written, printed, and electronic materials used by EMPLOYEE in performing duties for CITY are and shall remain the property of CITY. Upon termination of employment, EMPLOYEE shall return such material to CITY.

I. Waiver. The parties shall not be deemed to have waived any of their respective rights under this Agreement unless the waiver is in writing and signed by such waiving party.

J. Effective Date. This Agreement shall become effective upon execution by both parties, provided however, that EMPLOYEE's first day of employment shall be October 1, 2019.

CITY OF TRACY (EMPLOYER)

LETICIA RAMIREZ (EMPLOYEE)



Robert Rickman, Mayor

Dated: _____

Dated: 10/7/19

ATTEST:

Adrienne Richardson, City Clerk

Dated: _____

APPROVED AS TO FORM:

Bianca Rodriguez, Deputy City Attorney

Dated: _____

RESOLUTION 2019-_____

APPROVING AN EMPLOYMENT AGREEMENT BETWEEN LETICIA RAMIREZ AND THE CITY OF TRACY TO SERVE AS CITY ATTORNEY

WHEREAS, Leticia Ramirez has served as Interim City Attorney for the City of Tracy since June 2019, and

WHEREAS, The City of Tracy has carefully evaluated Leticia Ramirez' knowledge, experience, skills and abilities and has decided to appoint her to the position of City Attorney, and

WHEREAS, Leticia Ramirez and the City of Tracy desire to enter into an employment agreement to specify the duties, responsibilities, salary and benefits related to the City Attorney position;

NOW, THEREFORE, BE IT RESOLVED, hat the City Council approves an Employment Agreement between Leticia Ramirez and the City of Tracy attached to this agenda item.

The Tracy City Council adopted the foregoing Resolution 2019- _____ on the 15th day of October, 2019, by the following votes:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

MAYOR

ATTEST:

CITY CLERK

AGENDA ITEM 3.E

REQUEST

ACCEPT A REPORT ON SENATE BILL 438, AN ACT TO AMEND SECTION 53110 OF AND TO ADD SECTION 53100.5 TO THE GOVERNMENT CODE, AND TO ADD SECTIONS 1797.223 AND 1798.8 TO THE HEALTH AND SAFETY CODE RELATING TO EMERGENCY SERVICES

EXECUTIVE SUMMARY

In 2016, the department had become aware that current policies within San Joaquin County were restricting its ability to respond to all emergencies within its jurisdiction. The San Joaquin County Emergency Medical Services Agency (EMS agency) had implemented Policy 3202, which restricted the fire department from responding to lower level medical emergencies. Staff brought this issue to the attention of City Council at a special workshop on September 28, 2016. In the year that followed and with the support of Council, staff worked through contentious meetings with the County and the EMS agency to secure the fire department's right to respond to all medical incidents within our jurisdiction regardless of the severity of the emergency. Staff secured the ability to respond to all medical emergencies in Tracy, however the provisions of the law and the interpretation of the law has remained in dispute.

In 2017, the City of Tracy and the fire department began the process of attempting to amend the law to ensure local governments maintained control of its resources and fire chiefs could determine what the best use of local resources were for their communities. Staff worked to gain legislative support from the League of California Cities and the California Fire Chief's Association (Cal Chiefs). Both the League and Cal Chiefs supported the proposed legislative changes; however, proposed changes failed to develop into legislation and was not introduced into the 2017-2018 California Legislature for consideration.

The fire service maintained interest in pursuing changes to the law through the legislative process. In 2018, fire department staff worked collaboratively with Cal Chiefs and the California Professional Firefighters (CPF) organizations to garner legislative support. On February 21, 2019, Senator Robert Hertzberg and Principal coauthor Assembly Member Susan Eggman introduced Senate Bill 438 (SB-438) into the 2019-2020 Regular Session of the California Legislature. This bill is commonly identified as Emergency Medical Services: Dispatch and is intended to address the issues first brought to light in 2016 among others. Governor Gavin Newsom signed SB-438 into law on October 1, 2019.

DISCUSSION

Officially, Senate Bill 438 is an act to amend section 53110 of, and to add Section 53100.5 to, the Government Code, and to add Sections 1797.223 and 1798.8 to the Health and Safety Code, relating to emergency services. Functionally, SB-438 addresses emergency medical dispatch and the authority of a public safety agency to receive directly and process "911" emergency requests within its territorial jurisdiction.

The bill specifically establishes the following:

- States the legislature’s intent to affirm and clarify a public agency’s duty, responsibility, and jurisdiction to establish and improve emergency communication procedures and quickly respond to any person calling the telephone number “911” seeking fire, medical, rescue, or other emergency services
- Prohibits a public agency from delegating, assigning, or contracting for “911” emergency call processing services for the dispatch of emergency response resources unless the delegation or assignment is to, or the contract or agreement is with, another public agency with the following exceptions:
 - A joint powers authority that delegated, assigned, or contracted for “911” call processing services on or before January 1, 2019, or
 - A public agency that has delegated, assigned, or contracted for “911” call processing services on or before January 1, 2019, may continue to do so with the concurrence of the public safety agencies that provide prehospital emergency medical services
- Requires a public safety agency that provides “911” call processing services for medical response to make a connection available from the public safety agency dispatch center to an EMS provider’s dispatch center, for the timely transmission of emergency response information
- Requires the local EMS-agency-authorized EMS providers and the EMS system providers within the jurisdiction of the incident, to be simultaneously notified and dispatched at the same response mode.
- Provides that medical control by a local EMS agency medical director, or medical direction and management of an EMS system, shall not be construed to do any of the following, among other things:
 - Limit, supplant, prohibit, or otherwise alter a public safety agency’s authority to directly receive and process emergency requests for assistance originating within the public agency’s territorial jurisdiction through the “911” system
 - Authorize or permit a local EMS agency to delegate, assign, or enter into a contract in contravention of subdivision (b) of Section 53110 of the Government Code
 - Authorize or permit a local EMS agency to unilaterally reduce a public safety agency’s response mode below that of the EMS transport provider, prevent a public safety response, or alter the deployment of public safety emergency response resources within the public safety agency’s territorial jurisdiction

- Authorize or permit a local EMS agency to prevent a public safety agency from providing mutual aid pursuant to the California Emergency Services Act
- A public safety agency's adherence to the policies, procedures, and protocols adopted by a local EMS agency does not constitute a transfer of any of the public safety agency's authorities regarding the administration of emergency medical services

SB-438 Chronology/Status	Date
Chaptered by the Secretary of State	October 1, 2019
Signed by Governor Newsom	October 1, 2019
Enrolled (Governor Newsom's Desk)	September 6, 2019
Passed in Senate	September 4, 2019
Passed in Assembly	September 3, 2019
Amended in Assembly	March 25 – July 11, 2019
Introduced	February 21, 2019

Since its introduction, SB-438 received overwhelming support in the California State Legislature. This legislation has its roots in San Joaquin County but has statewide implications. The state's fire service leaders in both labor and management worked collaboratively with lawmakers to support legislation that provides the ability for local leaders to determine service levels within their communities.

Governor Newsom signed SB-438 into law on October 1, 2019. The bill has been chaptered by the Secretary of State and will become effective January 1, 2020.

Local Impact of SB-438 to Tracy

In the recent past, our local fire department had been restricted by EMS agency policy (Policy 3202) from responding to certain low-level emergencies. That policy resulted in Tracy residents experiencing a medical problem without a response from their local fire department. In these cases, patients would receive a response from a private ambulance company only while a possibly closer fire unit was not called. Now that SB-438 is signed by the Governor, state law will codify the ability of the local government to decide for themselves what incidents they have the capacity to respond to. Further, SB-438 allows local governments to maintain control of the dispatching of their own public safety resources. The decision as to how to best serve the community will rest with those elected officials and public safety professionals charged with serving the community and not a regulatory agency.

STRATEGIC PLAN

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

FISCAL IMPACT

There is no fiscal impact in receiving this report.

RECOMMENDATION

That the City Council accepts the report on SB-438, an act to amend the California Government Code, and the Health and Safety Code relating to emergency services.

Prepared by: David A. Bramell, Fire Division Chief

Reviewed by: Randall Bradley, Fire Chief
Midori Lichtwardt, Assistant City Manager

Approved by: Jenny Haruyama, City Manager

AGENDA ITEM 3.F

REQUEST

APPROVE AMENDMENT NO. 1 TO THE JOINT POWERS AGREEMENT OF THE SOUTH SAN JOAQUIN COUNTY FIRE AUTHORITY

EXECUTIVE SUMMARY

On February 20, 2018, the City of Tracy and the Tracy Rural Fire Protection District entered into a “Joint Powers Agreement of the South San Joaquin County Fire Authority” (Agreement) thereby establishing the South San Joaquin County Fire Authority (“SSJCFA” or “Authority”). This proposed amendment to the Agreement serves to update language to be consistent with legislative changes addressing CalPERS liability relating to joint powers authorities. These legislative changes occurred after the original creation of the SSJCFA and require that member agencies of a joint powers authority agree to be responsible for the retirement liability of the authority equal 100 percent.

DISCUSSION

On February 20, 2018, the City of Tracy and the Tracy Rural Fire Protection District entered into a Joint Powers Agreement establishing the South San Joaquin County Fire Authority. As indicated in the existing agreement and approved by the initial member agencies of the Authority, the parties intend to have the Authority employ its own personnel.

Section 1.6 - Employment of Personnel and Administration of Services of the agreement states:

“The Initial Member agencies desire to transition to having the Authority employ its own personnel to provide any or all of the services the Authority elects to provide. In the event the Authority elects to employ its own personnel, the Chief Executive Officer shall, with the assistance of the staffs and consultants of the Member Agencies, prepare a personnel plan detailing how the Authority would employ its own personnel. The personnel plan shall detail the treatment of matters such as transfer of employees from the Member Agencies to the Authority (and the transfer’s effect on existing collective bargaining agreements, the allocation of pension liabilities and obligations, the treatment of accrued leave, civil service and seniority rights, and other employee benefits and rights), risk management, and other administrative matters required at the start-up of new organizations”.

As the Authority progresses toward employing personnel and implementing a personnel plan per Section 1.6, it is necessary to amend the agreement to facilitate that process. CalPERS has informed the Authority that an amendment to the Agreement is needed in

order for the Authority to proceed with establishing an account with CalPERS. The Authority intends to maintain the current CalPERS defined benefit retirement plan afforded all personnel currently employed by the City of Tracy. Maintaining the current retirement benefit ensures the Authority will continue to attract, recruit, and retain highly skilled employees toward providing services and fulfilling its purpose.

In an effort to address pension liabilities of Joint Powers Authorities and their member agencies, the California legislature introduced and passed Assembly Bill 1912 (AB 1912) in 2018. AB 1912 was signed into law by the Governor on September 29, 2018 effectively amending Sections 6508.1- 6508.2 of the California Government Code. This legislation came into effect after the creation of the Authority in February of 2018.

Section 6508.1 – 6508.2 of the California Government Code was amended to require member agencies of an agency established pursuant to a joint powers agreement that participates in, or contracts with, a public retirement system, prior to filing a notice of termination or upon notice of potential termination by the Board of Administration of the Public Employees' Retirement System, to mutually agree as to the apportionment of the agency's retirement obligations among themselves, provided that the agreement equals 100 percent of the retirement liability of the agency. In short, this requires member agencies of the Authority to share in the retirement liability to equal 100 percent. If member agencies are unable to come to agreement on how to apportion the authority's retirement liability, CalPERS shall "apportion the retirement liability of the agency to each member agency based on the share of service received from the agency, or population of each member agency, such that the apportionment equals 100 percent of the retirement liability of the agency, which shall be reflected in the agreement with the board." (Gov. Code Section 6508.2(a)).

The proposed language change to the Agreement would determine the CalPERS liability by the cost allocation formula defined in Section 5.4 of the Agreement. As presently calculated, the CalPERS liability would be 72 percent to the City of Tracy, and 28 percent to the Tracy Rural Fire Protection District. If additional agencies were to join the Authority in the future, the cost allocation percentage share of all member agencies would split the liability equal to 100 percent.

STRATEGIC PLAN

This agenda item relates to Council's Public Safety Strategy, Goal 2: Align Fire Operations to Match the Needs of the Community.

FISCAL IMPACT

Approving this amendment does not add to the City's existing retirement liability. This amendment will ensure future retirement liability is shared among current and future member agencies of the Authority in concert with the cost allocation formula within the Agreement.

RECOMMENDATION

Staff recommends the City Council, by resolution, approve Amendment No. 1 to the Joint Powers Agreement of the South San Joaquin County Fire Authority.

Prepared by: David A. Bramell, Fire Division Chief

Reviewed by: Randall Bradley, Fire Chief
Karin Schnaider, Finance Director

Approved by: Jenny Haruyama, City Manager

Attachment: Amendment No. 1 to the Joint Powers Agreement of the South San Joaquin County Fire Authority

**AMENDMENT NO. 1 TO THE JOINT POWERS AGREEMENT OF THE SOUTH SAN
JOAQUIN COUNTY FIRE AUTHORITY**

THIS AMENDMENT is entered into by an between the City of Tracy, a municipal corporation (“City”), and the Tracy Rural Fire Protection District, a fire protection district formed pursuant to Health and Safety Code sections 13000 and following (“Fire District”). City and Fire District are collectively referred to as “Member Agencies.”

RECITALS

WHEREAS, City and Fire District entered into a “Joint Powers Agreement of the South San Joaquin County Fire Authority” (the “Agreement”) on February 20, 2018, and

WHEREAS, The parties wish to amend the Agreement to align with requirements of the California Government Code sections 6508.1-6508.2 regarding joint powers agreements that participate in or contract with a public retirement system and the liability of member agencies upon termination.

NOW, THEREFORE, THE PARTIES MUTUALLY AGREE AS FOLLOWS:

1. **Incorporation by Reference.** This Amendment incorporates by reference all terms and conditions set forth in the Agreement, unless specifically modified by this Amendment. All terms and conditions set forth in the Agreement which are not specifically modified by this Amendment shall remain in full force and effect.

2. **Terms of Amendment.**

A. Section 1.7 “Obligations of Authority” of the Agreement is amended to read as follows:

“Section 1.7 Obligations of Authority

The debts, liabilities, and obligations of the Authority shall not be the debts, liabilities, and obligations of any Member Agency unless otherwise specified in Section 2.11 of this agreement.

B. Subsection (b) “Continued Liabilities” of Section 2.11 of the Agreement is amended to read as follows:

“Section 2.11 Termination of Authority; (b) Continued Liabilities.

Upon termination of this Agreement, unless otherwise determined by a court of competent jurisdiction, any continuing obligations of the Authority shall be borne by the Member Agencies in proportion to their total monetary responsibility for costs of maintenance and operations for the life of the Authority, except as otherwise stated herein.

Each Member's Agency's proportionate share of CalPERS liability is determined by the cost allocation formula defined in Section 5.4 and in effect at the time the Authority is dissolved or insolvent. In the event the Authority is dissolved or becomes insolvent, or the agreement with CalPERS is terminated, each Member Agency is responsible for its

Amendment No. 1 to the Joint Powers Agreement of the South San Joaquin County Fire Authority
Page 2 of 2

proportionate share of all other outstanding Authority liabilities and obligations incurred during the Member Agency's membership in the Authority, allocated in accordance with the formula defined in Section 5.4 and in effect at the time of said dissolution or insolvency, so that the Member Agencies together have fiscal responsibility for 100% of the Authority's outstanding liabilities and obligations upon dissolution or insolvency."

3. **Modifications.** This Amendment No. 1 may not be modified orally or in any manner other than by agreement in writing signed by both parties, in accordance with the requirements of the Agreement.
4. **Severability.** In the event 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 full force and effect.
5. **Signatures.** The individuals executing this Amendment No. 1 represent and warrant that they have the right, power, legal capacity, and authority to enter into and to execute this Amendment No. 1 on behalf of the District and the City. This Amendment No. 1 shall inure to the benefit of and be binding upon the parties thereto 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

TRACY RURAL FIRE PROTECTION DISTRICT

By: _____
Robert Rickman
Title: Mayor

By: _____
Title: Board Chairperson

Date: _____

Date: _____

Attest:

Attest:

By: _____
Adrienne Richardson
Title: City Clerk

By: _____
Natalie Bowman
Title: Clerk of the Board

Date: _____

Date: _____

Approved as to form

Approved as to form

By: _____
Leticia Ramirez
Title: Interim City Attorney

By: _____
Mark C. Bowman
Title: Attorney at Law, District Counsel

Date: _____

Date: _____

RESOLUTION 2019-_____

APPROVING AMENDMENT NO. 1 TO THE JOINT POWERS AGREEMENT OF THE SOUTH SAN JOAQUIN COUNTY FIRE AUTHORITY

WHEREAS, On February 20, 2018, the City of Tracy and the Tracy Rural Fire Protection District entered into a Joint Powers Agreement (Agreement) creating the South San Joaquin County Fire Authority (Authority) to provide a full range of fire services within the Authority’s jurisdictional area, and

WHEREAS, The City of Tracy currently serves as the employer of record for the Authority, and

WHEREAS, As stated in the Agreement, the initial member agencies of the Authority desire to have the Authority employ its own personnel, and

WHEREAS, To facilitate the eventual transition of employees to the Authority, the Authority intends to offer the continuation of existing defined benefit retirement through CalPERS, and

WHEREAS, State law which became effective in September 2018 requires parties to joint powers agreements to mutually agree as to the apportionment of the agency’s retirement obligations equal to 100 percent or the retirement liability of the agency, and

WHEREAS, The percentage obligation of all member agencies of the Authority toward retirement liability is determined by the cost allocation defined in Section 5.4 of the Agreement, 2019

WHEREAS, The change in state law occurred after the initial formation of the Authority and an amendment to the agreement is necessary to assign retirement liability to the member agencies as required by CalPERS and state law;

NOW, THEREFORE, BE IT RESOLVED, that the City Council of the City of Tracy hereby approves Amendment No. 1 to the Joint Powers Agreement of the South San Joaquin County Fire Authority.

The foregoing Resolution _____ was passed and adopted by the Tracy City Council on the 15th day of October 2019, by the following vote:

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

MAYOR

ATTEST:

CITY CLERK

AGENDA ITEM 3.G

REQUEST

ADOPT PROPOSED CITY OF TRACY CITY COUNCIL CODE OF CONDUCT

EXECUTIVE SUMMARY

It is a best practice for City Councils to develop governance policies around roles and responsibilities, and norms and behaviors to ensure a shared understanding of the City Manager's role and the Council's expectations to optimize working relationships. These types of policies help to facilitate effective meetings, provide ground rules for healthy debate, promote civility, and serve as a guide for Council conduct, behavior, and effectiveness.

Over the past year, the Council has had several norms and values discussions with the goal of developing an ethics/conduct policy. In June 2019, the San Joaquin County Civil Grand Jury issued a report on its investigation of the Tracy City Council and recommended the Council adopt an ethics policy to guide its conduct. On July 16, 2019, Council unanimously agreed to develop and adopt an ethics/code of conduct policy.

On September 17, 2019, the Council discussed and provided policy direction to staff regarding a proposed Code of Conduct. A revised Code of Conduct is attached for Council consideration and adoption. If adopted, it will comply with the Grand Jury's suggestion timeframe of having a Code of Conduct policy in place on or by October 31, 2019.

DISCUSSION

In response to Council comments received on September 17, 2019, staff has revised the attached Code of Conduct Policy. The revisions were made for clarification purposes and were not substantive. Staff also included minor revisions related to the City Manager and City Attorney appointment processes and staff conduct requirements. The subject matter and location of the changes are noted below:

- City Manager Appointment, Power and Duties (Section 1.3)
- City Attorney Appointment and Responsibilities (Section 1.4)
- City Council Generally (Section 2.1.1)
- Mayor and City Council Powers and Responsibilities (Section 2.2.5)
- Council Actions (Section 2.3.1)
- Financial Interest in Contracts (Section 3.4.9.1)
- Nepotism (Section 3.4.9.2)
- Political Activities Prohibited (Section 3.4.9.4 - #4)
- Council Benefits (Section 6.2.1)
- Norms and Values Statement (#7, #13)

Additionally, Council provided substantive feedback regarding Section 3.6: Code of Conduct Compliance and Enforcement, which focuses on censure. The proposed Code of Conduct includes a provision for censure with sanctions because of Council's desire

to have an enforcement tool. In addition, the San Joaquin County Civil Grand Jury's Report "Tracy City Council: Restore the Public Trust" (2018-19 Case No. 0418) included a recommendation that the Council "develop and implement a written protocol for sanctions or censure of Council members who violate the Tracy Municipal Code by failing to work through the City Manager to conduct City business, by December 31, 2019."

The censure process is typically reserved for serious violations of Council and City policies. A censure process that includes the potential of sanctions implicates the due process rights of the individual subject to censure and therefore requires that notice and an opportunity for a hearing be given to that individual prior to censure. The revised language includes the following elements:

- Censure shall only be used to reprimand conduct that is considered a significant and/or repeated violation of the Code of Conduct.
- A request for censure must be supported by two Council members, referred to as an Initiating Member and Seconding Member.
- A neutral mediator selected by the Presiding Judge of the Superior Court of San Joaquin County will conduct an investigation in response to a censure request and prepare a written report with a recommendation to Council that the matter either be set for a censure hearing and whether censure is warranted or that no further action be taken.
- If the neutral mediator recommends that no further action be taken and Council accepts that recommendation, the Initiating Member may be asked by Council to reimburse the City for costs associated with the neutral mediator's services up to \$2,500 from personal funds (not campaign funds) or forgo a month's Council salary. A report regarding the Initiating Member's compliance with that request will be presented to Council within sixty (60) days.
- Council retains the right to informally address conduct considered not significant or minor violation(s) of the Code by peer-to-peer counseling or providing guidance to an advisory body member.

Should Council approve the revised policy document, the Mayor and Council, and Council advisory bodies will be provided a copy of the policy and asked to sign the Norms and Values Statement. Subsequent training will be provided for all advisory bodies.

STRATEGIC PLAN

This is a routine operational item and is not related to any of the Council Strategic Plans.

FISCAL IMPACT

There is no fiscal impact.

RECOMMENDATION

It is recommended that Council consider and adopt the attached Code of Conduct policy.

Prepared, Reviewed, and Approved by: Jenny Haruyama, City Manager

ATTACHMENT A – Proposed City Council Code of Conduct



**CITY COUNCIL
CODE OF CONDUCT**

October 15, 2019

TABLE OF CONTENTS

CHAPTER 1 - FORM OF GOVERNMENT

- 1.1 Preamble.....X
- 1.2 Form of GovernmentX
- 1.3. City Manager Appointment, Power and Duties
- 1.4 City Attorney Appointment and Responsibilities

CHAPTER 2 - COUNCIL POWERS AND RESPONSIBILITIES

- 2.1 City Council Generally X
- 2.2 Mayor and Vice Mayor-Appointment, Power and Duties..... X
- 2.3 Council Actions..... X
- 2.4 Council Member Committees..... X
- 2.5 Establishment and Appointment of Council Advisory Bodies (Boards, Commissions and Committees).....X

CHAPTER 3 - LEGAL AND ETHICAL STANDARDS

- 3.1 Preamble X
- 3.2 Public Interest..... X
- 3.3 Council Conduct..... X
- 3.4 Conflict of Interest.....X
- 3.5 Code of Conduct Compliance and Enforcement X
- 3.6 AB 1234-Required Ethics Training X

CHAPTER 4 - COMMUNICATIONS

- 4.1 Relationship/Communications with StaffX
- 4.2 Council Relationship/Communication with Council Advisory Bodies X
- 4.3 Handling of Litigation and Other Confidential Information X
- 4.4 Representing an Official City Position X
- 4.5 Quasi-Judicial Role/Ex Parte ContactsX

4.6 No Attorney-Client Relationshipx

CHAPTER 5 - COUNCIL ADVISORY BODIES

5.1 Boards, Commissions and Committees Generally.....x

5.2 Board, Commission and Committee Organization and Conduct..... x

5.3 Board, Commission and Committee Appointmentsx

5.4 Boards, Commissions and Committees - Vacancy of Office x

CHAPTER 6 - COUNCIL FINANCIAL MATTERS

6.1 Compensation..... XX

6.2 Benefits.....XX

6.3 City Council Budget and Expenses XX

APPENDIX

- Tracy Municipal Code (TMC) 2.08.060
- Council Appointed Committees
- City Nepotism Policy
- City Personnel Rule 9.2 (d)
- Resolution No. 2004-152 - Board, Commission, Committee Vacancy, Selection, and
- Ordinance 1094
- Resolution No. 2007-075 – Council Travel Procedures

CHAPTER 1 FORM OF GOVERNMENT

1.1 Preamble

The legal responsibilities of the Tracy City Council are set forth by applicable state and federal laws. In addition, the City Council has adopted regulations, including this Code of Conduct Policy, that hold Council Members to standards of conduct above and beyond what is required by law. This Policy is written with the assumption that Council Members, through training, are aware of their legal and ethical responsibilities as elected officials.

1.2 Form of Government

The City of Tracy operates under a Council-Manager form of government as prescribed by the Tracy Municipal Code ("TMC"). Accordingly, the Mayor and members of the Council are elected at-large, provide legislative direction, set City policy, and ultimately answer to the public.

1.3 City Manager Appointment, Power and Duties

The City Manager is appointed by a majority vote of the Council and serves as the City's chief administrative officer and is responsible for directing the day-to-day operations of the City and implementing policy direction per Section 2.08.060 of the TMC (attached). Specifically, Section 2.08.070 of the TMC prohibits interference by either the City Council or any of its members with the City Manager's execution of their powers or duties:

- The Council nor a member shall interfere with the appointment by the City Manager of any of the department heads or any person to any office or employment.
- Additionally, the Council nor any of its members shall interfere with the City Manager's power to remove any of those persons.
- Neither the Council nor any of its members shall give orders to any subordinate of the City Manager, either publicly or privately.
- The City Council nor any of its members shall interfere with the administration of the City Attorney or give orders to the subordinates of the City Attorney.
- The City Manager and his/her senior staff shall conduct themselves in accordance with the International City Management Association (ICMA) Code of Ethics.

The Council and its members shall deal only with the City Manager with respect to the administrative services or operational matters of the City.

1.4 City Attorney Appointment and Responsibilities

The City Attorney is appointed by a majority vote of the Council. Per Section 12.08.40, the City Attorney is responsible for approving as to form all subdivision improvement agreements and security, deferred improvement agreements, liability agreements and insurance, and all governing documents for a community apartment project, condominium, stock cooperative, or conversion.

- The City Attorney and his/her senior staff shall at all times conduct themselves in accordance with the California Rules of Professional Conduct, established by the California State Bar, and the Ethical Principle for City Attorneys, adopted by the League of California Cities' City Attorneys Department.

CHAPTER 2 COUNCIL POWERS AND RESPONSIBILITIES

2.1 City Council Generally

- 2.1.1 The City Council has the power, in the name of the City, to do and perform all acts and things appropriate to a municipal ~~corporation~~ entity and the general welfare of its inhabitants, which are not specifically prohibited by the constitution, and/or State or Federal laws.
- 2.1.2 The Council acts as a body. Council policy and directives are established by majority vote, unless otherwise required by state law. A decision of the majority binds the Council to a course of action.
- 2.1.3 No Council Member has extraordinary powers beyond those of other members (except as may otherwise be provided in State law). All members, including the Mayor, have equal powers.
- 2.1.4 No member of the Council is permitted to hold any other City office or City employment.
- 2.1.5 Council Members are appointed by the Council body to serve on various committees, including Council standing and ad hoc committees, and third agency member committees.

2.2 Mayor and Mayor Pro Tem - Appointment, Power, and Duties

- 2.2.1 The Mayor is directly elected by the voters to serve a two-year term. The selection of the Mayor Pro Tem occurs every two years in December after the City receives the certified results from the County Registrar of Voters electing a ~~new~~ Mayor.
- 2.2.2 A Mayor Pro Tem is appointed by the Council and can be replaced at any time by a majority vote of the Council.

- 2.2.3 The Mayor is the presiding officer of the City Council. In the Mayor's absence, the Mayor Pro Tem shall perform the duties of the Mayor.
- 2.2.4 The Mayor is the official head of the City for all ceremonial purposes.
- 2.2.5 Per Government Code, the Mayor, with the approval of the City Council, shall (a) execute official documents (Section 40602b) and (b) make appointments to city boards, commissions, and committees unless otherwise specifically provided by statute (Section 40605).
- 2.2.6 The Mayor is authorized to send letters stating the City's official position to appropriate legislators as long as it is consistent with the Council's Legislative Policy.
- 2.2.7 The Mayor may perform other duties consistent with the mayoral office as prescribed by the Tracy Municipal Code, California Government Code, or as determined by the Council.
- 2.2.8 The Mayor does not possess any power of veto.
- 2.2.9 The Mayor coordinates with the City Manager in the development of agendas for meetings of the City Council. Once the agenda is published, the City Manager may withdraw an item. Additionally, the Mayor may rearrange the order of business on the agenda.

2.3 Council Actions

- 2.3.1 Legislative actions by the City Council can be taken by means of ordinance, resolution, or minute action (motion) duly made and passed by the majority (unless otherwise required).
- 2.3.2 Under Council protocols and procedures, an item may be placed on the agenda if requested by two Council Members. The request can be made during open session or outside of a Council meeting.

2.3.3 Public actions of the Council are recorded in the minutes of the City Council meeting. The City Clerk is required to make a record only of business actually passed upon by a vote of the Council and is not required to record any remarks of Council Members, except at the special request of a Council Member and with the consent of the Council.

2.3.4 Actions of the Council concerning confidential property, personnel, and/or legal matters of the City are to be reported consistent with State law.

2.4 Council Member Committees

2.4.1 The City Council may organize itself into standing and/or special/ ad hoc subcommittees to facilitate Council review of policy matters and action.

2.4.2 The Council may create or dissolve standing and/or special/ad hoc sub committees at any time by an affirmative vote of a majority of the Council.

2.4.3 The Council appoints and removes members to standing and ad hoc committees.

2.4.4 The Council also appoints and removes Council Members to third member agencies.

2.4.5 It is a best practice for non-appointed Council Members not to attend Council standing Committees to avoid the appearance of impropriety.

CHAPTER 3

LEGAL AND ETHICAL STANDARDS

3.1 Preamble

The residents and businesses of Tracy are entitled to have fair, ethical, and accountable local government. Such a government requires that public officials:

- Comply with both the letter and the spirit of the laws and policies affecting operations of the government;
- Be independent, impartial, and fair in their judgment and actions;
- Use their public office for the public good, not for personal gain; and
- Conduct public deliberations and processes openly, unless legally confidential, in an atmosphere of respect and civility.

To this end, the Tracy City Council has adopted this Code of Conduct and the Norms and Values Statement (Attachment) to encourage public confidence in the integrity of local government and its fair and effective operation.

3.2 Public Interest

3.2.1 Recognizing that stewardship of the public interest must be their primary concern, Council Members shall work for the common good of the people of Tracy and not for any private or personal interest. Council Members must endeavor to treat all members of the public and issues before them in a fair and equitable manner.

3.2.2 Council Members shall comply with the laws of the nation, the State of California, and the City in the performance of their public duties. These laws include, but are not limited to: the United States and California constitutions; the Tracy Municipal Code; laws pertaining to conflicts of interest, election campaigns, financial disclosures, employer responsibilities, and open processes of government; and City ordinances and policies.

3.3 Conduct

- 3.3.1 Council Members shall refrain from abusive conduct, personal charges, or verbal attacks upon the character or motives of other members of the City Council, boards, commissions, committees, staff, or the public.
- 3.3.2 Council Member duties shall be performed in accordance with the processes and rules of order established by the City Council.
- 3.3.3 Council Members shall inform themselves on public issues, listen attentively to public discussions before the body, and focus on the business at hand.
- 3.3.4 Council decisions shall be based upon the merits and substance of the matter at hand.
- 3.3.5 It is the responsibility of Council Members to publicly share substantive information that is relevant to a matter under consideration that they have received from sources outside of the public decision-making process with all other Council Members and the public prior to taking action on the matter.
- 3.3.6 Council Members shall not attend internal staff meetings or meetings between City staff and third parties unless authorized by the City Manager.
- 3.3.7 Policy Role
 - 3.3.7.1 Council Members shall respect and adhere to the Council-Manager structure of the Tracy City government as provided in State law and Tracy Municipal Code.

3.3.7.2 Council Members shall support the maintenance of a positive and constructive environment for residents, businesses, and City employees.

3.3.8 Implementation

3.3.8.1 This Code of Conduct shall be included in the regular orientations for City Council candidates. Current Council Members, including those entering office upon election shall sign a City Council Norms and Values Statement (**Attachment 1**) affirming they have read and understand this Tracy City Council Code of Conduct.

3.4 Conflict of Interest

3.4.1 In order to assure their independence and impartiality on behalf of the public good, Council Members are prohibited from using their official positions to influence government decisions in which they have a financial interest or where they have an organizational responsibility or a personal relationship that would present a conflict of interest under applicable State law.

3.4.2 In accordance with State law, Council Members must file an annual written disclosure (Form 700) of their economic interests.

3.4.3 Council Members shall not take advantage of services or opportunities for personal gain by virtue of their public office that are not available to the public in general.

3.4.4 Council Members shall respect and preserve the confidentiality of information provided to them concerning the confidential matters of the City. They must neither disclose confidential information without proper legal authorization nor use such information to advance the personal, financial, or private interests of themselves or others.

3.4.5 City Council Members should avoid any action that could be construed as, or create the appearance of, using public office for

personal gain, including use of City stationery or other City resources to obtain or promote personal business or political campaigns.

3.4.6 Public resources not available to the general public (e.g., City staff time, equipment, supplies, or facilities) shall not be used by Council Members for private gain and, personal and political purposes.

3.4.7 In keeping with their role as stewards of the public interest, Council Members shall not appear on behalf of the private interests of a third party before the City Council or any board, commission, or committee or proceeding of the City, except as permitted by law.

3.4.8 To the best of their ability, Council Members shall represent the official policies and positions of the City Council. When presenting their personal opinions or positions publicly, members shall explicitly state they do not represent the Council or the City.

3.4.9 Tracy City Municipal Code Provisions

3.4.9.1 Financial Interests in City Contracts Prohibited.

Section 2.04.050 of the Municipal Code prohibits members of the Council, appointed employees, the City Treasurer and members of City boards and commissions during their term of office, to contract or subcontract with the City.

Section 2.04.050 also requires a City Council Member to recuse (as defined by the Fair Political Practices Commission) themselves from any vote regarding any Memorandum of Understanding between the City and any lawfully recognized bargaining unit in which a City Council member has an immediate family member. [“Immediate family member” is defined as “any and/or all spouses, partners or adult children, whether they live in a single household or not” under this section of the TMC.](#)

3.4.9.2 Nepotism.

The City of Tracy's Nepotism Policy prohibits the initial appointment of an individual [to a position within the City of Tracy](#) who has a marital or familial relationship, [as defined in Section 4 of the Policy](#), with any member the City Council, City Manager, or City Attorney.

3.4.9.3 Use of City Property for Private Purposes by City Official/ Employee.

The use for private gain or advantage of City time, facilities, equipment and supplies, prestige, influence, or information obtained through one's City office or employment. No City-owned facilities, equipment or supplies, including autos, trucks, instruments, tools, supplies, machines, badges, identification cards, or other items which are the property of the City shall be used by an employee for personal or non-City business reasons except upon prior written approval of the City Manager. (City Personnel Rule 9.2 (d))

3.4.9.4 Political Activities Prohibited; Discrimination.

For informational purposes, the following provisions apply to City and contract employees and consultants:

1. No employee shall, while in uniform or during the employee's working hours, take an active part in any municipal or other political campaign.
2. No employee shall, while in uniform or during the employee's work hours, seek or accept contributions for or against a candidate or issue.
3. An employee may not seek or accept signatures to any petition for or against any such candidate or issue during their work hours.

4. No person in the classified service shall be employed, promoted, demoted, or discharged or in any way favored or discriminated against because of political opinions or affiliations or on any other basis protected by state and/or federal law~~because of race or religious belief~~.

3.4.10 California State Law Regarding Conflicts

While not enforceable by the City, there are four key areas of California State law that regulate the ethics of public officials.

3.4.10.1 Constitutional prohibitions

State law strictly forbids elected and appointed public officials from accepting free or discounted travel from transportation companies. The penalty for a violation includes the forfeiture of office.

3.4.10.2 Contractual conflicts of interest

This prohibition, found in Government Code Section 1090, applies to elected and appointed officials as well as other City staff members. It prohibits the City from entering into a contract if one of its members (i.e., a Council Member) is financially interested in the contract. If the bar (or prohibition) applies, the agency is prohibited from entering into the contract whether or not the official with the conflict participates or not. In some limited circumstances, officials are allowed to disqualify themselves from participation and the agency may enter into the contract.

Financial interest has been defined to include employment, stock/ ownership interests, and certain membership on the board of directors of a for-profit or nonprofit corporation,

among others. Violations can be charged as a felony. A person convicted of violating Section 1090 is prohibited from ever holding public office in the State.

3.4.10.3 Political Reform Act - Conflicts of Interest

The Political Reform Act (PRA) was adopted by the voters in 1974 and is the primary expression of the law relative to conflicts of interest (and campaign finance) in California. The Act created the Fair Political Practices Commission (FPPC), a five-member State board which administers the Act.

The Act and the regulations are complex and are continuously subjected to official interpretation. The following synopsis of key parts of the Act will be helpful in spotting issues; however, the FPPC and/or City Attorney should be consulted for further advice and clarification.

With respect to conflicts of interest, the FPPC has promulgated a regulation which establishes an analysis which assists in determining whether a public official is participating in a government decision in which they have a qualifying financial interest and whether it is reasonably foreseeable that the decision will have a material financial effect on the public official's financial interest, which is distinguishable from the effect the decision will have on the public generally.

3.4.10.3.1 Political Reform Act-Enforcement

The FPPC can assess administrative fines and penalties for violation of the Act. The District Attorney and the State Attorney General may prosecute violators as civil or criminal matters. Violators may also be removed from office pursuant to Government Code Section 3060.

3.4.10.4 Common Law Conflicts of Interest

This is the judicial expression of the public policy against public officials using their official position for private benefit. An elected official bears a fiduciary duty to exercise the powers of office for the benefit of the public and is not permitted to use those powers or their office for the benefit of any private interest. This common law doctrine continues to survive the adoption of various statutory expressions of conflict law.

3.4.10.5 Appearance of Impropriety

When participation in action or decision-making as a public official does not implicate the specific statutory criteria for conflicts of interest; however, participation still does not “look” or “feel” right, that public official has probably encountered the appearance of impropriety.

For the public to have faith and confidence that government authority will be implemented in an even-handed and ethical manner, public officials may need to step aside even though no technical conflict exists. An example is where a long-term nonfinancial affiliation exists between the public official and an applicant or the applicant is related by blood or marriage to the official. For the good of the community, members who encounter the appearance of impropriety should step aside.

3.5 AB 1234-Required Ethics Training

AB 1234 requires elected or appointed officials who are compensated for their service or reimbursed for their expenses to take two hours of training in ethics principles and laws every two years. Those who enter office after January 1, 2006 must receive the training within a year of starting their service. They must then receive the training every two years after that.

The training must cover general ethics principles relating to public service and ethics laws including:

- Laws relating to personal financial gain by public officials (including bribery and conflict of interest laws);
- Laws relating to office-holder perks, including gifts and travel restrictions, personal and political use of public resources, and prohibitions against gifts of public funds;
- Governmental transparency laws, including financial disclosure requirements and open government laws (the Brown Act and Public Records Act); Laws relating to fair processes, including fair contracting requirements, common law bias requirements, and due process

NOTE: State laws governing conflicts of interest are written to ensure that actions are taken in the public interest. These laws are very complex. Council Members should consult with the City Attorney, their own attorney, or the Fair Political Practices Commission for guidance in advance.

3.6 Code of Conduct Compliance and Enforcement

Consistent with this oath is the requirement of this Council policy to comply with the laws as well as report violations of the laws and policy of which they become aware.

3.6.1 A request for censure of a member of the Council may be submitted to the City [Clerk-Manager](#) by any member of the Council ([“Initiating Member”](#)), [with the support of another Council member \(“Seconding Member”\)](#). Censure is a formal statement or resolution by the Council officially reprimanding a Council Member [for conduct that may include sanctions. It is the intent of the Council that a request for censure be used only for significant and/or repeated violations of this Code of Conduct and not a means to address politically or personally motivated disagreements amongst Council.](#)

The request shall contain the specific charges on which the proposed censure is based. [The City Manager shall deliver a copy of the request for censure and the charges to each member of the Council at least 72 hours after receipt](#)

of the request. The request for censure shall first be considered by an ad hoc Committee of the Council established by the Mayor which shall consist of the Mayor and another Council Member. A neutral mediator selected by the Presiding Judge of the Superior Court of California of the County of San Joaquin, shall advise the ad hoc Committee by preparing a written analysis of the allegation and their preliminary findings. If the Mayor is the subject of the censure, then the Mayor Pro Tempore shall establish the ad hoc Committee and serve on the ad hoc Committee. The ad hoc Committee shall not include the member making the request or the member who is the subject of the request. The City Clerk shall deliver a copy of the request for censure and the charges to each member of the Council at least 72 hours prior to the first meeting of the ad hoc Committee at which the request will be first considered. The neutral mediator shall conduct an investigation and prepare a written analysis of the allegation and their preliminary findings and recommendation. Said investigation shall, at a minimum, include interviews with the Initiating Member and the member who is the subject of the request. The neutral mediator's recommendation shall be to: (a) set the matter for a censure hearing and whether censure is warranted or (b) no further action should be taken with respect to the request. The neutral mediator shall present its recommendation to the Council for its consideration and action within thirty (30) days of completing their investigation.

3.6.1.1 The Committee shall permit testimony from both the member making the request and the member subject to the request and shall determine whether: (a) further investigation of the charges is required in order to determine if a censure hearing is warranted; or (b) the matter is to be set for censure hearing; or (c) no further action should be taken with respect to the request. The Committee shall present its recommendations to the Council for its consideration and action as provided below. The censure request shall be agendized at the next regular Council meeting following receipt of the neutral mediator's written findings and recommendation. Council shall determine whether or not to accept the neutral mediator's recommendation. If the Council decides to set the matter for a censure hearing, it shall schedule it no sooner than two weeks after its determination to hear the matter. It may not schedule the matter during any previously scheduled excused absence of the subject Council Member. Written notice of the hearing shall be delivered in person to the member of the Council subject to the censure hearing at least ten (10) days in advance of the scheduled hearing. If the Council decides that no further action is required, Council may also request the Initiating Member either reimburse the City the cost of the neutral mediator's services from personal funds (not campaign funds), not to exceed \$2,500, or forgo a month's salary as Council Member. A report regarding the Initiating

Member's compliance with that request shall be presented to Council within sixty (60) days of that request.

~~3.6.1.1~~

~~3.6.1.2 If the ad hoc Committee determines no further action should be taken with respect to the request, the Committee shall report that to the Council at its earliest opportunity. If the Committee determines that further investigation is required, the Committee shall conduct an investigation, arrive at its recommendation, and report its conclusions, findings and a summary of its proceedings to the Council at its earliest opportunity. If the ad hoc Committee does not report its recommendations and findings to the Council within 30 days of the formation of the Committee and receipt of the request for censure, the matter shall automatically be sent to the Council for its consideration. At the censure hearing, the member of the Council who is the subject of the request for censure shall be given the opportunity to make an opening and a closing statement, to call witnesses on their behalf and to question their accusers. The member subject to the charges may be represented by a person or persons of their choice whether or not an attorney at law and may have that representative speak or question witnesses on their behalf. The questioning or cross-questioning of witness may be reasonably limited by the person chairing the hearing.~~

~~3.6.1.3 Upon receipt of the report of the ad hoc Committee, or at the expiration of the time for the ad hoc Committee to report, Council shall place the matter on its agenda to determine whether or not a censure hearing is warranted. If the Council decides to set the matter for a censure hearing, it shall schedule it no sooner than two weeks after its determination to hear the matter. It may not schedule the matter during any previously scheduled excused absence of the subject Council Member. Written notice of the hearing shall be delivered in person to the member of the Council subject to the censure hearing or to the member's City office as least ten (10) days in advance of the scheduled hearing. Testimony shall be taken only from witnesses having direct knowledge of facts or circumstances relevant to the specific charges under consideration. However, the rules of evidence and judicial procedure applicable in courts of law shall not be applied to this hearing, and the procedures shall be generally informal.~~

~~At the censure hearing, the member of the Council who is the subject of the request for censure shall be given the opportunity to make an opening and a closing statement, to call witnesses on their behalf and to question their accusers. The member subject to the charges may be represented by a person or persons of their choice whether or not an attorney at law and may have that representative speak or question witnesses on their behalf. The questioning or cross-~~

~~questioning of witness may be reasonably limited by the person chairing the hearing.~~

~~3.6.1.5 Testimony shall be taken only from witnesses having direct knowledge of facts or circumstances relevant to the specific charges under consideration. However, the rules of evidence and judicial procedure applicable in courts of law shall not be applied to this hearing, and the procedures shall be generally informal.~~

~~3.6.2 These same protocols may be utilized for any suspected violations or alleged violations by a Council advisory body member. In addition to those protocols, the Mayor may also refer the matter to the City Council if further action is needed.~~

~~3.6.3~~ 3.6.2 At the discretion of the Council, ~~additional~~ sanctions may be imposed as a result of a censure. These sanctions may be applied individually or in combination. ~~for violating the Code of Conduct or engaging in other misconduct. These actions may be applied individually or in combination. They include, but are not limited to:~~

~~3.6.3.13~~ 3.6.2.1 Public Admonishment - —A reproof or verbal warning directed to a Council Member about a particular type of behavior that violates City policy.

3.6.2.2 Revocation of Special Privileges —A revocation of a Council Member's Council Committee assignments, such as standing and ad hoc committees, regional boards and commissions, and other board/committee appointments. Other revocations may include temporary suspension of official travel, conference participation, and ceremonial titles.

3.6.3 Nothing in this Section shall limit Council's ability to informally address conduct considered to be not significant or a minor violation of this Code, which may include informal counseling from one Council member to another, and a Council member to a Council advisory body member.

CHAPTER 4 COMMUNICATIONS

4.1 Relationship/Communications with Staff

Staff serves the City Council as a whole, therefore:

- 4.1.1 A Council Member shall not direct staff in person or in writing to initiate any action, change a course of action, or prepare any report. A Council Member shall not initiate any project or study without the approval of the majority of the Council.
- 4.1.2 Requests for information and corresponding responses made by Council Members will be shared with the full Council.
- 4.1.3 Council Members shall not attempt to pressure or influence discussions, recommendations, workloads, schedules, or department priorities without first consulting with the City Manager and obtaining the approval of a majority of the Council.
- 4.1.4 When preparing for Council meetings, Council Members should direct questions ahead of time to the City Manager so that staff can provide the desired information at the Council meeting.
- 4.1.5 Any concerns by a member of the City Council regarding the behavior or work of a City employee should be directed to the City Manager privately to ensure the concern is resolved. Council Members shall not reprimand employees directly nor should they communicate their concerns to anyone other than the City Manager.
- 4.1.6 Council Members may direct routine inquiries to either the City Manager or appropriate department head.
- 4.1.7 Council Members serving on Council committees or as the City's representative to an outside agency may interact directly with City staff assigned to that effort as the City Manager's designee. The City

staff member so designated and assigned will keep the City Manager appropriately informed.

4.2 Council Relationship/Communication with Council Advisory Bodies

4.2.1 Council Members shall not attempt to pressure or influence board, commission, or committee decisions, recommendations, or priorities absent the approval of the majority of the Council.

4.2.2 It is a best practice that Council Members refrain from attending Board, Commission, and/or Committee meetings to avoid the appearance of impropriety.

4.3 Handling of Litigation and Other Confidential Information

4.3.1 All written materials and verbal information provided to Council Members on matters that are confidential and/or privileged under State law shall be kept in complete confidence to ensure that the City's position is not compromised. No disclosure or mention of any information in these materials may be made to anyone other than Council Members, the City Attorney, or City Manager.

4.3.1.1 Confidential materials provided in preparation for and during Closed Sessions shall not be retained and documents must be returned to staff at the conclusion of the Closed Session.

4.3.1.2 Council Members may not request confidential written information from staff that has not been provided to all Council Members.

4.4 Representing an Official City Position

4.4.1 City Council Members may use their title only when conducting official City business, for information purposes, or as an indication of background and expertise, carefully considering whether they are exceeding or appearing to exceed their authority.

- 4.4.2 Once the City Council has taken a position on an issue, all official City correspondence regarding that issue will reflect the Council's adopted position.
- 4.4.3 The Mayor is authorized to send letters on City letterhead stating the City's official position to appropriate legislators as long as it is consistent with the Council's Legislative Policy.
- 4.4.4 City letterhead may be used by Council Members only for official City business and/or to represent a policy action taken by the Council body.
- 4.4.5 If a member of the City Council appears before another governmental agency organization to give a statement on an issue affecting the City, the Council Member should indicate the majority position and opinion of the Council.
- 4.4.6 Personal opinions and comments may be expressed only if the Council Member clarifies that these statements do not reflect the official position of the City Council.

4.5 Quasi-Judicial Role/*Ex Parte* Contacts

The City Council has a number of roles. It legislates and makes administrative and executive decisions. The Council also acts in a quasi-judicial capacity or "like a judge" when it rules on various permits, licenses, and land use entitlements.

In this last capacity, quasi-judicial, the Council holds a hearing, takes evidence, determines what the evidence shows, and exercises its discretion in applying the facts to the law shown by the evidence. It is to these proceedings that the rule relative to *ex parte* contacts applies.

- 4.5.1 *Ex Parte* Contacts/Fair Hearings. The Council shall refrain from receiving information and evidence on any quasi-judicial matter while such matter is pending before the City Council or any agency, board, or commission thereof, except at the public hearing.

As an elected official, it is often impossible to avoid such contacts and exposure to information. Therefore, if any member is exposed to information or evidence about a pending matter outside of the public hearing, through contacts by constituents, the applicant or through site visits, the member shall disclose all such information and/or evidence acquired from such contacts, which is not otherwise included in the written or oral staff report, during the public hearing, and before the public comments period is opened.

Matters are "pending" when an application has been filed. Information and evidence gained by members via their attendance at noticed public hearings before subordinate boards and commissions are not subject to this rule.

4.6 No Attorney-Client Relationship

Council Members who consult the City Attorney, their staff, and/or attorney(s) contracted to work on behalf of the City cannot enjoy or establish an attorney-client relationship with said attorney(s) by consulting with or speaking to same. Any attorney-client relationship established belongs to the City, acting through the City Council, and as may be allowed in State law for purposes of defending the City and/or the City Council in the course of litigation and/or administrative procedures, etc.

CHAPTER 5 COUNCIL ADVISORY BODIES

5.1 Boards, Commissions, and Committees Generally

- 5.1.1 The Tracy Municipal Code establishes a Planning Commission to advise the Council on land use matters (Chapter 10.04) and a Parks and Community Services Commission (Chapter 7.16)
- 5.1.2 The rules of procedure and code of conduct that govern the City Council apply with equal force to all Council advisory boards and commissions.
- 5.1.3 The City Council may also establish by ordinance or resolution, boards, commissions, and committees to assist the Council in making its policy decisions. The City Council has the inherent power to create advisory bodies.
- 5.1.4 City boards, commissions, and committees (collectively "Council advisory bodies") provide policy recommendation to Council; they do not set or establish City policy or provide administrative direction to City staff.
- 5.1.5 City boards, commissions, and committees are advisory in nature and therefore do not represent City's official position on city matters.
- 5.1.6 Appointments to boards, commissions, and committees are made by a majority vote of the Council. Appointees to Council advisory bodies serve at the pleasure of the City Council.
- 5.1.7 The terms "board" and "commission" can be used interchangeably. Boards and commissions typically have broader policy and advisory responsibilities than committees which typically have much more focused advisory roles to the Council.

5.2 Board, Commission, and Committee Organization and Conduct

- 5.2.1 Annually, each board, commission, and committee elects one of their members to serve as the chair (presiding officer) and vice-chair.
- 5.2.2 Boards, commissions, and committees hold regular and special meetings as required. The conduct of board, commission, and committee meetings are governed by the same rules of policy and procedure as the City Council.
- 5.2.3 Boards, commissions, and committees should comply with all applicable open meeting and conflict-of-interest laws of the State.
- 5.2.4 Upon appointment or reappointment, Council advisory body members shall sign a Council Advisory Body Norms and Values statement (**Attachment 2**) affirming they have read and understand this City of Tracy City Council Code of Conduct.

5.3 Board, Commission, and Committee Appointments

- 5.3.1 Resolution No. 2004-152 establishes the board, commission, and committee appointment/selection process and requirements for residency.
- 5.3.2 The term of office for each board, commission, or committee member is 4 years, with the exception of the Measure V Residents' Oversight Committee which is 3 years.
- 5.3.3 The City Clerk provides application forms, maintains a listing of all applications received, and solicits applications when vacancies occur.

5.4 Boards, Commissions, and Committees- Vacancy and Selection/Appointment Processes

- 5.4.1 Resolution No. 2004-152 outlines procedures for filling a board, commission or committee vacancy and selection and appointment process. The Council appoints all City boards, commissions, and committee members.

5.4.2 Resignations may be submitted at any time to the City Council either directly or through the board, commission, or committee chair. Resignations are effective upon submittal.

5.5 Boards, Commissions, and Committees - Removal

A board member, commissioner, or committee member serves at the pleasure of the Council and may be removed at any time. The removal of a planning commission member must comply with TMC Section in accordance with the applicable procedure.

CHAPTER 6 COUNCIL FINANCIAL MATTERS

6.1 Compensation

6.1.1 Pursuant to Ordinance No. 1094, the Tracy Mayor and City Council receive a monthly salary. The amount is the salary limit established by the State Legislature for members of the City Council of general law cities having a population range within which the City of Tracy falls, as specified in California Government Code Section 36516(a).

6.1.2 The salary of the Mayor and City Council should be reviewed every two years.

6.2 Benefits

6.2.1 The California Government Code provides that Council Members may receive [City-funded](#) health, retirement, and other benefits. City-funded medical, dental, and life insurance plan benefits are provided. [The Council Policy Providing City Paid Health Insurance for City Treasurer, City Clerk, and City Council, adopted by Resolution No. 2003-391, states that an elected official is not eligible for City-funded health benefits if the official or the official's spouse has employer-paid health insurance.](#)

6.3 City Council Budget and Expenses

6.3.1 City Council Resolution No. 2007-075 provides policy guidance regarding Council expenditures for equipment, supplies and communications; travel; local expenses; and eligible reimbursements.

CITY OF TRACY CITY COUNCIL
NORMS AND VALUES STATEMENT

PREAMBLE

The residents and businesses of Tracy are entitled to have fair, ethical, and accountable local government. Such a government requires that public officials:

- Comply with both the letter and the spirit of the laws and policies affecting operations of the government.
- Be independent, impartial and fair in their judgment and actions.
- Use their public office for the public good, not for personal gain.
- Conduct public deliberations and processes openly, unless legally confidential, in an atmosphere of respect and civility.

To this end, the Tracy City Council has adopted a Code of Conduct to encourage public confidence in the integrity of local government and its fair and effective operation.

City Council Members shall sign this Norms and Values statement upon assuming office and upon reelection to office as a symbol of each Council Member's continuing commitment to abide by the principles of this code.

1. Act in the Public Interest

Recognizing that stewardship of the public interest must be their primary concern, Council Members shall work for the common good of the people of Tracy and not for any private or personal interest, and they will endeavor to treat all persons, claims, and transactions in a fair and equitable manner.

2. Comply with the Law

Council Members shall comply with the laws of the nation, the State of California, and the City in the performance of their public duties. These laws include, but are not limited to: the United States and California constitutions;

the Tracy City Municipal Code; laws pertaining to Council-Manager form of government, conflicts of interest, election campaigns, financial disclosures, employer responsibilities, and open processes of government; and City ordinances and policies.

3. Conduct of Members

Council Members shall refrain from abusive conduct, personal charges, or verbal attacks upon the character or motives of other members of the City Council, boards, commissions, committees, staff, or the public.

4 Respect for Process

Council Member duties shall be performed in accordance with the processes and rules of order established by the City Council.

5. Conduct of Public Meetings

Council Members shall inform themselves of public issues, listen attentively to public discussions before the body, and focus on the business at hand.

6. Decisions Based on Merit

Council decisions shall be based upon the merits and substance of the matter at hand.

7. Communication

It is the responsibility of Council Members to ~~publicly~~ share substantive information that is relevant to a matter under consideration that they have received from sources outside of the public decision-making process with all other Council Members.

8. Coordination with City Staff

Appropriate City staff should be involved when Council Members meet with officials from other agencies and jurisdictions to ensure proper staff support as needed and to keep staff informed.

9. Disclosure of Corruption

All City officials shall take an oath upon assuming office, pledging to uphold the constitution and laws of the City, the State, and the Federal government. As part of this oath, officials commit to disclosing to the appropriate authorities and/or to the City Council any behavior or activity that may qualify as corruption, abuse, fraud, bribery, or other violation of the law.

10. Conflict of Interest

In order to assure their independence and impartiality on behalf of the public good, Council Members shall not use their official positions to influence government decisions in which they have a financial interest or where they have an organizational responsibility or a personal relationship that would present a conflict of interest under applicable State law.

In accordance with the law, members shall file written disclosures of their economic interests and if they have a conflict of interest regarding a particular decision, refrain from participating in that decision unless otherwise permitted by law.

11. Gifts and Favors

Council Members shall not take advantage of services or opportunities for personal gain by virtue of their public office that are not available to the public in general. They shall refrain from accepting gifts, favors, or promises of future benefits that might compromise their independence of judgment or action or give the appearance of being compromised.

12. Confidential Information

Council Members shall respect and preserve the confidentiality of information provided to them concerning the confidential matters of the City. They shall neither disclose confidential information without proper legal authorization nor use such information to advance their personal, financial, or private interests.

13. Use of Public Resources

Public resources not available to the general public (e.g., City staff time, equipment, supplies, or facilities) shall not be used by Council Members for private gain or personal and/or campaign purposes.

14. Representation of Private Interests

In keeping with their role as stewards of the public trust, Council Members shall not appear on behalf of the private interests of a third-party before the City Council or any board, commission, or committee or proceeding of the City.

15. Advocacy

To the best of their ability, Council Members shall represent the official policies and positions of the City Council. When presenting their personal opinions or positions, members shall explicitly state that they do not represent the Council or the City.

16. Improper Influence

Council Members shall refrain from using their position to improperly influence the deliberations or decisions of City staff, boards, commissions, or committees.

17. Policy Role of Members

Council Members shall respect and adhere to the Council-Manager structure of Tracy City government as provided in State law and the City Municipal Code.

18. Positive Work Environment

Council Members shall support the maintenance of a positive and constructive environment for residents, businesses, and City employees.

19. Implementation

Ethics standards shall be included in the regular orientations for City Council candidates. Council Members entering office shall sign a statement affirming they read and understood the City of Tracy's City Council Code of Conduct.

20. Compliance and Enforcement

Council Members themselves have the primary responsibility to assure that ethical standards are understood and met and that the public can continue to have **full** confidence in the integrity of City government.

This City Council Norms and Values statement shall be considered to be a summary of the longer City Council Code of Conduct document. The City Council Code of Conduct document shall be considered to be the definitive document relating to ethical conduct by Tracy City Council Members.

I affirm that I have read and understand the City of Tracy City Council Norms and Values statement.

Signature

Date

CITY OF TRACY
COUNCIL ADVISORY BODY
NORMS AND VALUES STATEMENT

PREAMBLE

The residents and businesses of Tracy are entitled to have fair, ethical, and accountable local government. Such a government requires that public officials, including Council advisory body members:

- Comply with both the letter and the spirit of the laws and policies affecting operations of the government.
- Be independent, impartial, and fair in their judgment and actions.
- Use their public office for the public good, not for personal gain.
- Conduct public deliberations and processes openly, unless legally confidential, in an atmosphere of respect and civility.

To this end, Council advisory body members are expected to adhere to the Code of Conduct adopted by the Tracy City Council to encourage public confidence in the integrity of local government and its fair and effective operation.

Council advisory body members shall sign this Norms and Values statement at the first meeting of the board, commission, or committee upon assuming office and, if applicable, upon reappointment to the board, commission, or committee as a symbol of each Council advisory body member's commitment to abide by the principles of this code during their term.

1. Act in the Public Interest

Recognizing that stewardship of the public interest must be their primary concern, Council advisory body members shall work for the common good of the people of Tracy and not for any private or personal interest, and they will endeavor to treat all persons, claims, and transactions in a fair and equitable manner.

2. Comply with the Law

Council advisory body members shall comply with the laws of the nation, the State of California, and the City in the performance of their public duties. These laws include, but are not limited to: the United States and California Constitutions; the Tracy City Municipal Code; laws pertaining to the Council-

Manager form of government, conflicts of interest, election campaigns, financial disclosures, employer responsibilities, and open processes of government; and City ordinances and policies.

3. Conduct of Council Advisory Body Members

Council advisory body members shall refrain from abusive conduct, personal charges, or verbal attacks upon the character or motives of Council Members; other members of the Council advisory body; other boards, commissions, or committees; staff; or the public.

4. Respect for Process

Council advisory body member duties shall be performed in accordance with the processes and rules of order established by the City Council.

5. Conduct of Public Meetings

Council advisory body members shall inform themselves of public issues, listen attentively to public discussions before the body, and focus on the business at hand.

6. Decisions Based on Merit

Council advisory body members shall base their decisions upon the merits and substance of the matter at hand.

7. Communication

It is the responsibility of Council advisory body members to ~~publicly~~ share substantive information that is relevant to a matter under consideration that they have received from sources outside of the public decision-making process with all other Council advisory body members.

8. Coordination with City Staff

Appropriate City staff should be involved when Council advisory body members meet with officials from other agencies and jurisdictions to ensure proper staff support, as needed, and to keep staff informed.

9. Disclosure of Corruption

All City officials shall take an oath upon assuming office, pledging to uphold the Constitution and laws of the City, the State, and the Federal government. As part of this oath, officials commit to disclosing to the appropriate authorities and/or to the City Council any behavior or activity that may qualify as corruption, abuse, fraud, bribery, or other violation of the law.

10. Conflict of Interest

In order to assure their independence and impartiality on behalf of the public good, Council advisory body members shall not use their official positions to influence government decisions in which they have a financial interest or where they have an organizational responsibility or a personal relationship that would present a conflict of interest under applicable State law.

In accordance with the law, members shall file written disclosures of their economic interests and if they have a conflict of interest regarding a particular decision, refrain from participating in that decision unless otherwise permitted by law.

11. Gifts and Favors

Council advisory body members shall not take advantage of services or opportunities for personal gain by virtue of their public office that are not available to the public in general. They shall refrain from accepting gifts, favors, or promises of future benefits that might compromise their independence of judgment or action or give the appearance of being compromised.

12. Confidential Information

Council advisory body members shall respect and preserve the confidentiality of information provided to them concerning the confidential matters of the City. They shall neither disclose confidential information without proper legal authorization nor use such information to advance their personal, financial, or private interests.

13. Use of Public Resources

Public resources not available to the general public (e.g., City staff time, equipment, supplies, or facilities) shall not be used by Council advisory body members for private gain or personal and/or campaign purposes.

14. Representation of Private Interests

In keeping with their role as stewards of the public trust, Council advisory body members shall not appear on behalf of the private interests of a third party before the City Council or any board, commission, or committee, or proceeding of the City.

15. Advocacy

To the best of their ability, Council advisory body members shall represent the official policies and positions of the City of Tracy. When presenting their personal opinions or positions, members shall explicitly state that they represent neither the Council advisory body nor the City.

16. Improper Influence

Council advisory body members shall refrain from using their position to improperly influence the deliberations or decisions of City staff, boards, commissions, or committees.

17. Policy Role of Members

Council advisory body members shall respect and adhere to the Council-Manager structure of Tracy City government as provided in State law and the City Municipal Code.

18. Positive Work Environment

Council advisory body members shall support the maintenance of a positive and constructive environment for residents, businesses, and City employees.
Attachment 2 to City Council Code of Conduct

19. Implementation

Ethics standards shall be included in the regular orientations for Council advisory body members. Upon entering office and upon reappointment, Council advisory body members shall sign a statement affirming they read and understood the City of Tracy's City Council Code of Conduct.

20. Compliance and Enforcement

Council advisory body members themselves have the responsibility to assure that ethical standards are understood and met, and that the public can continue to have full confidence in the integrity of City government.

Attachment 2 to City Council
Code of Conduct

The Council Advisory Body Norms and Values statement shall be considered to be a summary of the longer City Council Code of Conduct document. The City Council Code of Conduct document shall be considered to be the definitive document relating to ethical conduct by Tracy City Council advisory body members.

I affirm that I have read and understand the City of Tracy City Council Code of Conduct.

Signature

Date

RESOLUTION 2019-_____

ADOPTING CITY OF TRACY CITY COUNCIL CODE OF CONDUCT

WHEREAS, It is a best practice for City Councils to develop governance policies around roles and responsibilities, and norms and behaviors to ensure a shared understanding of the City Manager's role and Council's expectations to optimize working relationships, and

WHEREAS, Over the past year, the Council has had several norms and values discussions with the goal of developing an ethics/conduct policy, and

WHEREAS, In June 2019, the San Joaquin County Civil Grand Jury issued a report on its investigation of the Tracy City Council and recommended the Council adopt an ethics policy to guide its conduct. The Grand Jury suggested having a Code of Conduct policy in place on or by October 31, 2019, and

WHEREAS, On July 16, 2019, Council unanimously agreed to develop and adopt an ethics/code of conduct policy, and

WHEREAS, On September 17, 2019, the Council discussed and provided policy direction to staff regarding a proposed Code of Conduct;

NOW, THEREFORE, BE IT RESOLVED, That the City Council of the City of Tracy hereby adopts the attached Tracy City Council Code of Conduct.

The foregoing Resolution 2019-_____ was adopted by Tracy City Council on the 15th day of October, 2019, by the following vote:

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

MAYOR

ATTEST:

CITY CLERK