

## NOTICE OF SPECIAL MEETING

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

**Date/Time:**                    **Monday, March 30, 2020 at 6:00 p.m.**  
(or as soon thereafter as possible)

**Location:**                    **Council Chambers, City Hall**  
**333 Civic Center Plaza, Tracy**

**THIS SPECIAL MEETING WILL BE CONDUCTED PURSUANT TO THE PROVISIONS OF THE GOVERNOR’S EXECUTIVE ORDER N-35-20 WHICH SUSPENDS CERTAIN REQUIREMENTS OF THE RALPH M. BROWN ACT**

**RESIDENTS ARE STRONGLY ENCOURAGED TO PARTICIPATE REMOTELY AT THE MARCH 30, 2020 MEETING**

**Remote Access to City of Tracy Council Meeting:**

*In accordance with the guidelines provided in Executive Order N-35-20 on social distancing measures, the City of Tracy will allow for remote participation at the upcoming City Council meeting on Monday, March 30, 2020.*

*As always, the public may view the City Council meetings live on the City of Tracy’s website at [www.CityofTracy.org](http://www.CityofTracy.org) or on Channel 26. To view from the website, select “Watch Live Council Meetings” from the drop down menu “Select an Online Service” at the top of the City’s homepage. You will be directed to the “Council Meeting Videos” page where you may select the video for the appropriate date under “Upcoming Events.”*

**Remote Public Comment:**

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

- *Send comments via:*
  - *Email to [publiccomment@cityoftracy.org](mailto:publiccomment@cityoftracy.org), or*
  - *By phone by dialing (209) 831-6105, or*
  - *Comment on City of Tracy’s Facebook Live Broadcast.*

***The public is encouraged to submit email and phone comments as early as possible.***

*You do not need to wait to submit your comments until the meeting begins. Emails and voicemails will be accepted from the posting of this Notice through the time periods listed below for each comment period type. Facebook Live comments must be submitted during the broadcast as noted below.*

- *Protocols for submitting comments by email:*
  - *Identify the item you wish to comment on in your email’s subject line. Emailed comments will be accepted for the “Items from the Audience/Public Comment” and “Regular Items” portions of the agenda.*

- *Emailed comments for the “Items from the Audience/Public Comment” portion of the agenda must be received by the time the Mayor opens that portion of the agenda for discussion.*
- *Emailed comments on each “Regular Item” will be accepted until the Mayor announces that public comment for that item is closed.*
- *Protocols for submitting comments by **phone**:*
  - *Identify the item you wish to comment on to staff when calling in. Comments received by phone will be accepted for the “Items from the Audience/Public Comment” and “Regular Items” portions of the agenda.*
  - *Comments received by phone for the “Items from the Audience/Public Comment” portion of the agenda must be received by the time the Mayor opens that portion of the agenda for discussion.*
  - *Comments received by phone on each “Regular Item” will be accepted until the Mayor announces that public comment for that item is closed.*
- *Protocols for submitting comments **via City of Tracy Facebook Live Broadcast**:*
  - *Post your comment when the Mayor opens the portion of the agenda for “Items from the Audience/Public Comment.” Comments will be accepted until the Mayor announces that public comment for that item is closed.*
  - *Post your comment when the Mayor opens the portion of the agenda for “Regular Items.” Comments will be accepted until the Mayor announces that public comment for that item is closed.*
- *Each comment whether received by email, phone, or on Facebook Live, will be read aloud by a City staff member for up to five minutes, and up to the maximum time allotted for public comment.*
- *The total allotted time for public comment to be read aloud by a City staff member will be as follows:*
  - *Items from the Audience: **15 minutes***
  - *Regular Items: **10 minutes***

Comments received by [publiccomment@cityoftracy.org](mailto:publiccomment@cityoftracy.org), phone call, or on Facebook Live outside of the comment periods outlined above will not be included in the record.

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

1. Call to Order
2. Roll Call
3. Items from the Audience - Items from the audience - *In accordance with Council Meeting Protocols and Rules of Procedure, adopted by Resolution 2019-240, a five-minute maximum time limit per speaker will apply to all individuals speaking during “Items from the Audience/Public Comment”. For non-agendized items, Council Members may briefly respond to statements made or questions posed by individuals during public comment; ask questions for clarification; direct the individual to the appropriate staff member; or request that the matter be placed on a future agenda or that staff provide additional information to Council.*

4. CONSENT CALENDAR

- 4.A FIND THAT IT IS IN THE BEST INTEREST OF THE CITY TO FORGO THE FORMAL REQUEST FOR PROPOSAL PROCESS AND APPROVE LEGAL SERVICES AGREEMENT WITH PRICE, POSTEL, & PARMA LLP FOR LEGAL SERVICES RELATED TO THE ACQUISITION OF PROPERTY, INCLUDING EMINENT DOMAIN LITIGATION

5. DISCUSSION ITEM

- 5.A ADOPT AN URGENCY ORDINANCE EXTENDING CERTAIN DEVELOPMENT RELATED DEADLINES AND AUTHORIZING THE CITY MANAGER TO TAKE CERTAIN ACTIONS REGARDING PUBLIC IMPROVEMENT AGREEMENTS, GRANT APPLICATIONS AND PROFESSIONAL AND GENERAL SERVICES AGREEMENTS AND ACCEPTING IMPROVEMENTS DURING THIS LOCAL EMERGENCY

## 6. STAFF ITEMS

## 7. Adjournment



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Mayor

**Posting Date: Friday, March 27, 2020**

The City of Tracy complies with the Americans with Disabilities Act and makes all reasonable accommodations for the disabled to participate in public meetings. Persons requiring assistance or auxiliary aids in order to participate should call City Hall (209-831-6105), at least 24 hours prior to the meeting.

Any materials distributed to the majority of the Tracy City Council regarding any item on this agenda will be made available for public inspection in the City Clerk's office located at 333 Civic Center Plaza, Tracy, during normal business hours.

AGENDA ITEM 4.A

REQUEST

**FIND THAT IT IS IN THE BEST INTEREST OF THE CITY TO FORGO THE FORMAL REQUEST FOR PROPOSAL PROCESS AND APPROVE LEGAL SERVICES AGREEMENT WITH PRICE, POSTEL, & PARMA LLP FOR LEGAL SERVICES RELATED TO THE ACQUISITION OF PROPERTY, INCLUDING EMINENT DOMAIN LITIGATION**

EXECUTIVE SUMMARY

This agenda item, with City Council approval, would authorize the City of Tracy to contract with Price, Postel & Parma, LLP (Price) for legal services related to the acquisition of property, including eminent domain litigation. Price currently serves as the City's outside counsel on various property acquisition matters for capital improvement projects and improvements identified in the City's infrastructure master plans. Some of these projects require additional services that exceed the existing contract amount with Price and are currently pending.

This item requests that Council find that it is in the best interest of the City to forgo the formal request for proposal process given staff's satisfaction with Price's current services and the fact that Price is familiar with these pending projects and provided advice when these negotiations commenced, and approve an agreement with Price for a not-to-exceed amount of \$125,000.

DISCUSSION

The City's infrastructure master plans such as the Storm Drainage Master Plan, Roadways Master Plan and Public Safety Facilities Master Plan identify improvements that are needed to serve existing and new developments. The construction of these improvements often requires that the City acquire property to accommodate these new facilities, including frontage or right-of-way for the expansion of roads and property to construct storm drain detention basins.

Price has been advising the City on eminent domain and property acquisition matters for many years. The City last entered into a legal services agreement with Price in 2017 with a not-to-exceed amount of \$25,000. Given that the City plans on constructing various capital improvement projects and the need for property acquisition to accommodate those improvements, Price's services are still needed.

The Price, Postel & Parma, LLP law firm has extensive knowledge of the City of Tracy's development processes and has been performing similar work for the City with excellent results for the last several years. As such, staff and the City Attorney's Office believes that it is in the best interest of the City to continue its contractual relationship with the firm without conducting the formal Request for Proposal process, as allowed under Tracy Municipal Code section 2.20.140(b)(6). Compensation under this Agreement will not exceed \$125,000. The proposed services will be completely funded by development

impact fee funds and Measure K sales tax funds through capital improvement project budgets.

#### STRATEGIC PLAN

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

#### FISCAL IMPACT

This Agreement will be funded by the individual capital improvement project budgets which are funded by development impact fee funds and Measure K sales tax funds.

#### RECOMMENDATION

Staff recommends that the City Council find it is in the best interest of the City to forgo the formal request for proposals process and approve the Legal Services Agreement, including billing rates with Price, Postel and Parma, LLP.

Prepared by: Leticia Ramirez, City Attorney

Reviewed by: Kul Sharma, Utilities Director  
Karin Schnaider, Finance Director  
Andrew Malik, Assistant City Manager

Approved by: Jenny Haruyama, City Manager

#### ATTACHMENTS

Attachment A — Legal Services Agreement with Price, Postel & Parma with billing rates included

Todd A. Amspoker  
Susan M. Basham  
Kristen M. R. Blabey  
Shannon D. Boyd  
Timothy M. Cary  
Tara L. Christian  
Melissa J. Fassett  
Ian M. Fisher  
Arthur R. Gaudi  
Cameron Goodman  
Emily B. Harrington  
Christopher E. Haskell  
James H. Hurley, Jr.  
Eric P. Hvolbøll  
Mark S. Manion  
Steven K. McGuire



**PRICE, POSTEL & PARMA LLP**

*Counsellors at Law*

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Santa Barbara, CA 93101-2190

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Timothy E. Metzinger  
Shereef Moharram  
Craig A. Parton  
Kenneth J. Pontifex  
Douglas D. Rossi  
Peter D. Slaughter  
David W. Van Horne  
C.E. Chip Wullbrandt  
Ryan D. Zick

CAMERON PARK OFFICE

3330 Cameron Park Drive, Suite 100  
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Our File Number:  
18807-01

March 24, 2020

***Privileged and Confidential  
Attorney-Client Communication***

Leticia M. Ramirez, City Attorney  
City of Tracy  
333 Civic Center Plaza  
Tracy, CA 95376

Re: City of Tracy Legal Services Agreement

Dear Ms. Ramirez:

This letter is intended to set forth the terms of the City of Tracy's engagement of this firm for legal services, and to constitute our contract for such service. We prepare this letter for our new clients as a good business practice and because in many circumstances it is required by Section 6148 of the California Business and Professions Code, a copy of which is attached for your convenience. If at any time you have any questions with regard to this contract or our fees, we encourage you to contact us.

This agreement creates legal obligations between the City and us, and you should read it carefully and fully understand its terms before signing on behalf of the City.

1. General Nature of Legal Services to be Provided

The City has engaged us to provide legal services in connection with the following matters:

Leticia M. Ramirez, City Attorney  
City of Tracy  
March 24, 2020  
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Eminent domain and property acquisition matters, including but not limited to the Corral Hollow Road Project and the Fire Station and Detention Basin 3A Project.

2. Respective Responsibilities of Attorney and Client

The City's and our respective responsibilities in connection with this contract for legal services are in general as follows:

a. Attorney's Responsibilities

We will provide those legal services reasonably required to represent the City's interests in the above referenced matters. We will take reasonable steps to keep you informed of significant developments and to respond to your inquiries. We will represent the City within the bounds of law and consistent with our ethical responsibilities. We do not make any predictions, representations, promises or guarantees as to the outcome of these legal matters, and by signing this agreement the City acknowledges that we have made no such predictions, representations, promises or guarantees to the City. We understand that we have strict duties of confidentiality between us and the City consistent with an attorney/client relationship and pursuant to the California Rules of Professional Responsibility.

b. Client's Responsibilities

Legal representation is effective only when the client actively keeps the attorney fully informed of any and all developments affecting these matters. Matters that may seem inconsequential to you may, in fact, have important legal consequences to the City. By signing this agreement, the City promises to be truthful with us, to clearly communicate the City's goals and expectations, to cooperate, and keep us informed of all matters affecting these matters. The City agrees to respond to our requests for documents and all other information in a timely manner and to respond to telephone calls promptly. The City agrees to abide by the terms of this contract and to pay promptly all our statements for services and costs within 30 days after the billing date.

3. Fees

The amount of our fees will be based upon the time devoted to the matter, based upon our hourly rates in effect. Time is accounted for in minimum increments of one-tenth of an hour. Our current hourly rates are attached. (See Schedule "A.")

Leticia M. Ramirez, City Attorney  
City of Tracy  
March 24, 2020  
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4. Costs and Expenses

In addition to paying our fees, the City will be responsible for payment of all costs and expenses incurred on the City's behalf. This will include all costs disbursed by us for the City's account, including, but not limited to, the following: process server, messenger and delivery fees, jury fees, witness fees, expert and consultant fees, deposition costs, court reporters, investigation expenses, certification fees, transcripts, travel expenses, all costs related to arbitration, fees fixed by law or assessed by courts or other agencies, and any other expenses we may incur on the City's behalf. We will also bill the City for reimbursement of internal costs as set forth in the attached Schedule "B." These costs change from time to time.

Our firm's policy is to request from the client, if time permits, a check in the amount of any costs incurred on the City's behalf in excess of \$1,000. Where time does not permit, we will advance these costs. Although costs are not frequently incurred in excess of \$1,000, the City will be advised of any such cost and may be requested to pay it directly to the third party provider.

The total amount to be paid by the City for legal fees and costs under this Agreement shall not exceed One Hundred and Twenty-Five Thousand Dollars (\$125,000).

5. Billing

Our statements will be rendered and will be payable monthly. Full payment is due upon presentation of the billing statement and is past due thirty (30) days following the billing date. Fees and costs are payable by the City (a) regardless of the outcome of the matter for which we have been engaged, (b) whether or not there is any recovery against any other party, or (c) whether there is an award of fees entered against another party.

6. Discharge and Withdrawal

The City may discharge us at any time by written notice. After receipt of the City's written notice terminating our services, we will provide no further legal services and advance no further costs on the City's behalf, unless specifically agreed to in writing in advance.

We may withdraw with the City's consent or for good cause. Good cause includes any breach of this contract, including failure to cooperate with us, failure to promptly pay our statements and third party costs, failure to pay a requested retainer, refusal to follow our advice on a material matter, or any other fact or circumstance that would render our continued representation unlawful or unethical, or that would permit us to withdraw under the California



Leticia M. Ramirez, City Attorney  
City of Tracy  
March 24, 2020  
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Rules of Professional Conduct. Notwithstanding our withdrawal or the City's discharge of us as attorneys, the City will remain obligated to pay our fees and costs incurred in this matter.

If at the time we request to withdraw as counsel of record on any proceeding on your behalf, the City agrees to promptly execute and deliver to us a substitution of attorney form.

7. Client File

If the City does not request in writing the return of the City's file upon conclusion of the matter, we will retain your file for a period of no more than 5 years, after which we have the City's permission and authorization to have the file destroyed. If the City desires to have its file maintained beyond five years after conclusion of your matter, the file will be sent to the City upon request.

8. Arbitration

If there is an unresolved dispute between the City and us in the future with respect to our fees or costs charged under this contract, we will provide the City with written notice of the City's right to arbitrate under the rules of the California State Bar (Business & Professions Code Section 6200, et seq.). We both may thereafter agree that this arbitration will be binding. The venue for any dispute, including any potential arbitration, will be in San Joaquin County.

9. Insurance

During the term of this engagement, we shall take out and maintain general liability and property damage insurance in amounts not less than \$1,000,000; professional errors and omissions insurance, in amounts not less than \$2,000,000 per occurrence; and \$4,000,000 aggregate, which insurance may not be canceled or reduced in required limits of liability unless at least ten days advance written notice be given to you.

10. Entire Agreement

This agreement contains the entire agreement of the parties. No other agreement, statement or promise made on or before the effective date of this agreement will be binding on the parties.

11. Severability

If any provision of the agreement is held in whole or in part to be unenforceable for any reason, the remainder of that provision and of the entire agreement will be severable and will remain in effect.

Leticia M. Ramirez, City Attorney  
City of Tracy  
March 24, 2020  
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12. Modification

This agreement may be modified by subsequent agreement of the parties only by an instrument, in writing, signed by both of us.

If these provisions are acceptable, kindly indicate your approval in the space provided and return it to us either by email or in the enclosed, self-addressed envelope. This contract will not take effect, and we shall have no obligation to provide legal services, until you have signed and returned a copy of this contract.

Very truly yours,



Todd A. Amspoker  
for PRICE, POSTEL & PARMA LLP

TAA:ks  
Enclosures

The foregoing is agreed to and accepted on \_\_\_\_\_, 2020.

CITY OF TRACY

By: \_\_\_\_\_  
Leticia M. Ramirez  
City Attorney

## BUSINESS AND PROFESSIONS CODE

**§ 6148. Contracts for services in cases not coming within § 6147; bills rendered by attorney; contents; failure to comply**

(a) In any case not coming within Section 6147 in which it is reasonably foreseeable that total expense to a client, including attorney fees, will exceed one thousand dollars (\$1,000), the contract for services in the case shall be in writing. At the time the contract is entered into, the attorney shall provide a duplicate copy of the contract signed by both the attorney and the client, or the client's guardian or representative, to the client or to the client's guardian or representative. The written contract shall contain all of the following:

- (1) Any basis of compensation including, but not limited to, hourly rates, statutory fees or flat fees, and other standard rates, fees, and charges applicable to the case.
- (2) The general nature of the legal services to be provided to the client.
- (3) The respective responsibilities of the attorney and the client as to the performance of the contract.

(b) All bills rendered by an attorney to a client shall clearly state the basis thereof. Bills for the fee portion of the bill shall include the amount, rate, basis for calculation, or other method of determination of the attorney's fees and costs. Bills for the cost and expense portion of the bill shall clearly identify the costs and expenses incurred and the amount of the costs and expenses. Upon request by the client, the attorney shall provide a bill to the client no later than 10 days following the request unless the attorney has provided a bill to the client within 30 days prior to the request, in which case the attorney may provide a bill to the client no later than 31 days following the date the most recent bill was provided. The client is entitled to make similar requests at intervals of no less than 30 days following the initial request. In providing responses to client requests for billing information, the attorney may use billing data that is currently effective on the date of the request, or, if any fees or costs to that date cannot be accurately determined, they shall be described and estimated.

(c) Failure to comply with any provision of this section renders the agreement voidable at the option of the client, and the attorney shall, upon the agreement being voided, be entitled to collect a reasonable fee.

(d) This section shall not apply to any of the following:

- (1) Services rendered in an emergency to avoid foreseeable prejudice to the rights or interests of the client or where a writing is otherwise impractical.
- (2) An arrangement as to the fee implied by the fact that the attorney's services are of the same general kind as previously rendered to and paid for by the client.
- (3) If the client knowingly states in writing, after full disclosure of this section, that a writing concerning fees is not required.
- (4) If the client is a corporation.

(e) This section applies prospectively only to fee agreements following its operative date.

(f) This section shall become operative on January 1, 2000.

(Added by Stats. 1993, c. 982 (S.B. 645), ' 6, operative Jan. 1, 1997. Amended by Stats. 1994, c. 479 (A.B. 3219), ' 5, operative Jan. 1, 1997; Stats. 1996 c. 1104 (A.B. 2787), '11, operative Jan. 1, 2000.)

**PRICE, POSTEL & PARMA LLP**  
**Public Agency – General Counsel**  
**Professional Service Fees**  
**Effective January 1, 2020**

PARTNERS

DDR	Douglas D. Rossi	335
CAP	Craig A. Parton	335
CEW	C.E. Chip Wullbrandt	335
CEH	Christopher E. Haskell	335
TEM	Tim E. Metzinger	335
TAA	Todd A. Amspoker	335
MSM	Mark S. Manion	335
MJF	Melissa Fassett	335
IMF	Ian M. Fisher	335
SM	Shereef Moharram	335
KMRB	Kristen M. R. Blabey	335

OF COUNSEL

ARG	Arthur R. Gaudi	335
JHH	James H. Hurley, Jr.	335
DVH	David W. Van Horne	335
PDS	Peter D. Slaughter	335
EPH	Eric P. Hvolbøll	335
KJP	Kenneth J. Pontifex	335
SMB	Susan M. Basham	335
SKM	Steven K. McGuire	335
TMC	Timothy M. Cary	335

ASSOCIATES

CG	Cameron Goodman	275
SDB	Shannon D. Boyd	275
RDZ	Ryan D. Zick	275
EBH	Emily B. Harrington	250
TLC	Tara L. Christian	250

LAND USE PLANNER

CP	Christopher Price	200
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PARALEGALS

BUSINESS		160
LITIGATION		170

## **PRICE, POSTEL & PARMA LLP**

### **COSTS**

Computerized legal research – Although the Firm maintains a comprehensive on-line library of legal resources, occasionally it is necessary to research materials outside of the Firm library. The costs for such research are charged to the client at the same rate that is charged to the Firm.

Travel expense, including air travel, lodging and meals, parking, car mileage at \$.58 per mile, and miscellaneous expenses.

Secretarial Overtime - actual charges.

RESOLUTION 2020-\_\_\_\_\_

FINDING IT IS IN THE BEST INTEREST OF THE CITY TO FORGO THE FORMAL REQUEST FOR PROPOSAL PROCESS AND APPROVING A LEGAL SERVICES AGREEMENT WITH PRICE, POSTEL & PARMA, LLP FOR LEGAL SERVICES RELATED TO THE ACQUISITION OF PROPERTY, INCLUDING EMINENT DOMAIN LITIGATION

WHEREAS, The City of Tracy's infrastructure master plans such as the Storm Drainage Master Plan, Roadways Master Plan and Public Safety Facilities Master Plan identify improvements that are needed to serve new development, and

WHEREAS, The construction of these improvements often requires that the City acquire property to accommodate these new facilities, including frontage or right-of-way for the expansion of roads and property to construct storm drain detention basins, and

WHEREAS, The law firm of Price, Postel & Parma, LLP (Price) has been advising the City on eminent domain and property acquisition matters for many years and City last entered into a legal services agreement with Price in 2017 with a not-to-exceed amount of \$25,000, and

WHEREAS, Given that the City plans on constructing various capital improvement projects with a need for property acquisition to accommodate those improvements, and Price's services are still needed, and

WHEREAS, Section 2.20.140(b)(6) of the Tracy Municipal Code allows the procurement of professional services without conducting a formal Request for Proposal (RFP) process if the City Council finds that it is in the best interest of the City to forgo that process, and

WHEREAS, The City Attorney, in consultation with staff, believes that it is in the best interest of the City to continue its contractual relationship with Price without conducting the formal Request for Proposal process under Tracy Municipal Code section 2.20.140(b)(6) because Price has extensive knowledge of the City of Tracy's processes and has been performing similar work for the City with excellent results for the last several years. In addition, Price has advised on these pending acquisitions, and

NOW, THEREFORE, BE IT RESOLVED, That the City Council of the City of Tracy finds it is in the best interest of the City to forgo the formal request for proposal process and hereby approves a Legal Services Agreement, including billing rates with Price, Postel & Parma, LLP in the amount not to exceed \$125,000.

\* \* \* \* \*

The foregoing Resolution 2020-\_\_\_\_\_ was adopted by the Tracy City Council on the 30<sup>th</sup> day of March, 2020, by the following vote:

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

\_\_\_\_\_  
MAYOR

ATTEST:

\_\_\_\_\_  
CITY CLERK

AGENDA ITEM 5.A

REQUEST

**ADOPT AN URGENCY ORDINANCE EXTENDING CERTAIN DEVELOPMENT RELATED DEADLINES AND AUTHORIZING THE CITY MANAGER TO TAKE CERTAIN ACTIONS REGARDING PUBLIC IMPROVEMENT AGREEMENTS, GRANT APPLICATIONS AND PROFESSIONAL AND GENERAL SERVICES AGREEMENTS AND ACCEPTING IMPROVEMENTS DURING THIS LOCAL EMERGENCY**

EXECUTIVE SUMMARY

The City of Tracy has declared the existence of a local emergency due to the serious threat to the public health, safety, and welfare of the City posed by the presence and continued transmission of the novel coronavirus (COVID-19). Pursuant to Government Code section 8630 and Tracy Municipal Code Section 3.24.050, the City Council is authorized to make and issue rules and regulations on matters reasonably related to the protection of life and property as affected by such emergency.

On March 19, 2020, the Governor issued an order for all residents in California to stay at home to the maximum extent possible, and the City Council previously issued a directive recommending residents remain at home except to receive or provide essential services on March 18, 2020. The requirements for social distancing have impacted the ability for applicants and the City to process development/land use applications and other types of projects.

The proposed Urgency Ordinance would extend deadlines established by the Tracy Municipal Code or Council Resolution for sixty (60) days so that development project processing and public consideration can occur after the threat of COVID-19 has reduced and social distancing is no longer required. In addition, the Urgency Ordinance would delegate to the City Manager the authority to approve certain public improvement (off-site and construction), general services, and professional services agreements and grant applications currently approved by the City Council, and accept certain public improvements during the period of the emergency.

DISCUSSION

On March 4, 2020, Governor Newsom declared a state of emergency for California associated with the outbreak of COVID-19. In response to the growing health crisis, the City Manager, in her authority as the Director of Emergency Services, proclaimed a local emergency in Tracy on March 12, 2020 due to COVID-19. The City Council ratified that emergency declaration on March 17, 2020.

Public health experts have explained that COVID-19 is easily transmissible from person to person. To slow the spread of the disease, on March 19, 2020, the Governor of California issued Executive Order N-33-20 ordering all individuals within the State of California to stay home or at their place of residence, except as needed to maintain continuity of operation of the federal critical infrastructure sectors, critical government services, schools, childcare, and construction. This Executive Order was very similar to



the Directive adopted by the City Council on March 18 recommending residents remain at home except to receive or provide essential services.

The Tracy Municipal Code establishes various deadlines, including deadlines related to the processing of land use, subdivision and zoning applications. The City's operations have adjusted in response to COVID-19. The regularly scheduled Council meeting on March 17<sup>th</sup> was canceled. In addition, City Hall is currently closed and most City employees are working remotely. Applicants have also had to adjust their operations in response to this public health emergency which has impacted their ability to process their applications.

The proposed Urgency Ordinance will extend all development application deadlines established by the Tracy Municipal Code, by Resolution of the City Council, or by City Policy, for sixty (60) days so that project processing and public consideration can continue as the City and the public mitigates the threat of COVID-19. This Urgency Ordinance would apply to any deadline scheduled to occur before May 31, 2020. Deadlines occurring on or after June 1, 2020 would not be extended by the ordinance. Examples of such deadlines include, but are not limited to:

- March 31 deadline established by the Growth Management Ordinance Guidelines for a proposed development to have submitted a final map for a number of lots equal to the number of Residential Growth Allotments ("RGA") awarded to the project. The ordinance would extend the deadline until May 30;
- Development review permit approval generally lapses two (2) years after the date it became effective unless a building permit has been issued. If a permit is set to expire on May 15, the ordinance will delay the expiration date until July 14;
- Building permits expire unless work is commenced within 180 days. If a permit is set to expire on May 1, the proposed ordinance will delay the expiration date until June 30.

The proposed Urgency Ordinance would not apply to deadlines established by State law, unless such deadlines are waived or extended by the Governor. While the ordinance would only apply to City deadlines occurring before May 31<sup>st</sup>, the City Council can extend that date at a later time once the scope of the impacts from COVID-19 are better known.

In addition to extending deadlines, the Urgency Ordinance would authorize the City Manager to take certain actions regarding improvement and professional services agreements, acceptance of improvements, and grant applications. This delegation is recommended to minimize the need for public meetings regarding non-critical items during this emergency period, while still allowing important economic development projects to proceed. COVID-19 is likely to have significant economic impacts, and the Urgency Ordinance will allow the City to support economic activity while complying with the requirement to stay at home. The City Manager would not be required to take any of these actions and can, within her discretion, continue to refer these actions to the City Council. This will ensure that the City Council continues to make all significant

decisions. Council would delegate to the City Manager the authority to take the following actions:

- Accepting public improvements and releasing related bonds upon approval and consent of the City Engineer;
- Applying for any grant or similar funding without prior Council approval;
- Approving off-site improvement agreements and inspection and improvement agreements, upon approval and consent of the City Engineer, as long as the required security and insurance is provided;
- Approving professional and general services agreements for a not-to-exceed amount of \$100,000. Currently the City Manager's contract authority is limited to \$50,000;
- Awarding public works contracts for a not-to-exceed amount of \$1,000,000, as long as the projects have a secured funding source and will not negatively impact the General Fund. Such contracts shall only be awarded with the consent of the City Engineer and Finance Director.

Prior to taking any action using her delegated authority under the Urgency Ordinance, the City Manager will receive a written report on the proposed action, with input from all relevant departments. The report will closely resemble a staff report that is normally presented to the City Council. The City Manager will also provide periodic updates to the City Council on actions she has taken using her delegated authority. An update will be provided no later than the first City Council meeting after April 30, 2020.

As an Urgency Ordinance, the proposed ordinance must be approved by four-fifths of the City Council to be adopted. If adopted, the proposed Urgency Ordinance would go into effect immediately.

#### STRATEGIC PLAN

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

#### FISCAL IMPACT

There is no direct fiscal impact of adopting the Urgency Ordinance. However, delaying deadlines will likely result in the delayed payment of various fees and charges by applicants.

#### RECOMMENDATION

Staff recommends that the City Council adopt the Urgency Ordinance extending certain deadlines and delegating authority for specific actions to the City Manager in response to this public health emergency.

Prepared by: Leticia Ramirez, City Attorney

Reviewed by: Bill Dean, Assistant Development Services Director

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Robert Armijo, City Engineer  
Karin Schnaider, Finance Director  
Andrew Malik, Assistant City Manager

Approved by: Jenny Haruyama, City Manager

ATTACHMENTS

Attachment A — Proposed Urgency Ordinance

**ORDINANCE NO. \_\_\_\_\_**

**AN URGENCY ORDINANCE OF THE CITY OF TRACY EXTENDING CERTAIN DEADLINES AND AUTHORIZING THE CITY MANAGER TO TAKE CERTAIN ACTIONS REGARDING PUBLIC IMPROVEMENT AGREEMENTS, GRANT APPLICATIONS AND PROFESSIONAL AND GENERAL SERVICES AGREEMENTS AND ACCEPTING IMPROVEMENTS DURING THIS LOCAL EMERGENCY**

WHEREAS, International, national, state, and local health and governmental authorities are responding to an outbreak of respiratory disease caused by a novel coronavirus named “SARS-CoV-2,” and the disease it causes has been named “coronavirus disease 2019,” abbreviated COVID-19 (“COVID-19”); and

WHEREAS, COVID-19 is easily transmissible from person to person, and it has been reported that COVID-19 is spreading to a growing number of California cities and counties; and

WHEREAS, On January 31, 2020, the Secretary of the United States Department of Health and Human Services declared a public health emergency for the entire United States to aid the nation’s healthcare community in responding to COVID-19; and

WHEREAS, On March 4, 2020, the Governor of California proclaimed a state of emergency exists in California regarding COVID-19; and

WHEREAS, On March 11, 2020, the WHO declared COVID-19 a pandemic; and

WHEREAS, On March 13, 2020, the President of the United States of America declared a national state of emergency in response to the spread of COVID-19 within the United States of America; and

WHEREAS, In response to the growing public health crisis, the City Manager, in her authority as the Director of Emergency Services, proclaimed a local emergency in Tracy on March 12, 2020, due to COVID-19 and the City Council ratified that emergency declaration on March 17, 2020 pursuant to Tracy Municipal Code Chapter 3.24; and

WHEREAS, The City Council adopted a directive on March 18, 2020 recommending residents remain at home except to receive or provide essential services; and

WHEREAS, On March 19, 2020, the Governor of California issued Executive Order N-33-20 ordering all individuals within the State of California to stay home or at their place of residence, except as needed to maintain continuity of operation of the federal critical infrastructure sectors, critical government services, schools, childcare, and construction; and

WHEREAS, The regularly scheduled Council meeting on March 17th was canceled in order to attend to the public health emergency, and

WHEREAS, The Tracy Municipal Code establishes various deadlines, including deadlines related to the processing of land use, subdivision and zoning applications; and

WHEREAS, City Hall is currently closed to the public and most City employees are working remotely. In addition, applicants have also had to adjust their operations in response to this public health emergency which has impacted their ability to process their development applications.; and

WHEREAS, The City Council desires to extend by sixty (60) days any deadline established by the Tracy Municipal Code, a Resolution of the City Council, or any City policy regarding development and land use approvals so that project processing and public consideration can occur after the threat of COVID-19 has reduced and social distancing is no longer required; and

WHEREAS, This City Council desires to extend deadlines scheduled to occur before May 31, 2020; and

WHEREAS, The City Council also desires to authorize the City Manager to take certain actions reserved for the City Council by the Tracy Municipal Code in order to minimize the need to public meetings regarding non-critical items during this emergency period, while still allowing important economic development projects to proceed; and

WHEREAS, The City Council does not intend to delegate authority to the City Manager to take any action required by State law to be taken by the City Council or Planning Commission; and

WHEREAS, California Constitution, Article XI, Section 7, provides cities and counties with the authority to enact ordinances to protect the public health, safety, and general welfare, of their citizens; and

WHEREAS, California Government Code Section 36937 authorizes the City Council to introduce and adopt an ordinance it declares to be necessary as an emergency measure to preserve the public peace, health, and safety at one and the same meeting if passed by at least four-fifths affirmative votes; and

WHEREAS, This Ordinance is a temporary moratorium intended to promote stability and fairness by extending deadlines for projects and applicants that would otherwise expire in the interim due the City's compliance with the Governor's executive orders to stay at home; and

WHEREAS, This Ordinance is also necessary to promote social distancing in order to limit the spread of COVID-19 to the maximum extent feasible because failure to adopt this Ordinance would encourage in-person meetings between staff and applicants, as well as public meetings as the City and applicants adjust to working remotely, which would negatively impact public health by forcing persons out of their residences; and

WHEREAS, This Ordinance is intended to minimize the need for public meetings by delegating authority to the City Manager to take certain actions normally taken by the City Council while continuing to allow economic development activities to occur as well as public works projects that serve the public welfare, health and safety; and

WHEREAS, The City continues to spend money on public works projects during this period of emergency and required social distancing to minimize the negative economic impacts of COVID-19 to the maximum extent possible, because such negative impacts can lead to negative health and welfare impacts in the City; and

WHEREAS, This Ordinance is necessary to maintain stability for the economy of the City of Tracy, which otherwise might experience significant negative impacts if projects are terminated or

temporarily shut down because they are unable to meet deadlines or receive necessary approvals during this time of emergency; and

WHEREAS, The negative economic impact of development projects terminating or temporarily stopping would lead to depressed economic activity across a range of industries; and

WHEREAS, These negative economic impacts are likely to include layoffs, decreased tax revenue for the City, and housing instability, all of which threaten the public peace, health, and safety of residents who could face a severe strain on household finances; and

WHEREAS, The construction of housing and public works projects are considered to be part of the Essential Critical Infrastructure Workforce during this COVID-19 public health emergency by the California State Public Health Officer; and WHEREAS, The negative economic impacts from COVID-19 are unknown, but likely to be substantial and the City desires to minimize those impacts to the maximum extent possible; and

WHEREAS, The City Council finds and determines that extending deadlines established by the City and delegating authority to the City Manager to take certain actions is essential to preventing the spread of COVID-19 in the City and to support the local economy, and thereby serve the public peace, health, and safety; and

WHEREAS, The City Council finds and declares that the public interest and necessity demand the immediate expenditure of public money to safeguard life, health, or property to ensure; and

WHEREAS, An urgency ordinance that is effective immediately is necessary to avoid the immediate threat to public peace, health, and safety as failure to adopt this urgency ordinance could result in the avoidable negative economic impacts or exposure to COVID-19 of the City's residents and community members.

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

SECTION 1. Findings. The City Council of the City of Tracy finds that all of the above Recitals are true and correct and incorporated herein by reference. The provisions of the Governor's Executive Order N-28-20, including its recitals, are incorporated herein as if fully set forth.

SECTION 2. Urgency Findings. The City Council of the City of Tracy hereby finds that there is a current and immediate threat to the public health, safety and/or welfare and a need for immediate preservation of the public peace, health, or safety that warrants this urgency ordinance, which finding is based upon the facts stated in the recitals above, and in the staff report dated March 30, 2020, as well any oral and written testimony at the March 30, 2020 City Council meeting. This Ordinance and any actions taken thereunder is declared by the City Council to be an urgency measure necessary for the immediate preservation of the public peace, health or safety. The facts constituting such urgency are all of those certain facts set forth and referenced in this Ordinance and the entirety of the record before the City Council.

SECTION 3. Urgency Ordinance. The City Council hereby makes the findings contained herein and hereby adopts the uncodified Ordinance to read as follows.

"COVID-19 Emergency Extension of Certain Deadlines and Delegation of Authority to City Manager Ordinance

Section 1. Extension of Deadlines During the COVID-19 Emergency

A. All provisions of ordinances, regulations, resolutions, rules, and policies adopted by the City of Tracy, including, but not limited to, provisions contained in the Tracy Municipal Code and the Growth Management Ordinance Guidelines, establishing deemed complete deadlines, review deadlines, approval deadlines, application deadlines and any other type of deadline, including but not limited to permit expiration deadlines, are extended by sixty (60) days, subject to the requirements of this Ordinance.

B. The sixty (60) day deadline extension established by Section 1(A) shall apply to any deadline scheduled to occur on or before May 31, 2020.

C. Nothing in this Section 1 shall be interpreted as extending or otherwise delaying a deadline established by state or federal law.

Section 2. Delegation of Authority to City Manager

A. The City Manager is hereby authorized to grant approval to the following items and subject to the conditions listed below:

- i. Off-site Improvement Agreements and Inspection Improvements Agreements, upon consent of the City Engineer and submittal of the required security and insurance documentation.
- ii. Submission of any grant applications to federal or state agencies including the BUILD Grant.
- iii. Acceptance of public improvements upon consent of the City Engineer and recordation of the Notice of Completion.
- iv. Approval of any professional or general services agreement with a not-to-exceed amount of \$100,000.
- v. Award of public works contracts with a not-to-exceed amount of \$1,000,000, as long as such projects have a secured funding source and will not negatively impact the General Fund. Such contracts shall only be awarded with the consent of the City Engineer and Finance Director.

B. The authority delegated to the City Manager in Section 2(A) shall not apply to any action that is required by state or federal law to be taken by the City Council, or for any action which state law or the Tracy Municipal Code requires a public hearing.

C. The authority delegated to the City Manager in Section 2(A) shall expire upon the termination of the proclamation of a local emergency in the City of Tracy.”

**SECTION 4. Severability.** If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, the remainder of the ordinance, including the application of such part or provision to other persons or circumstances shall not be affected thereby and shall continue in full force and effect. To this end, provisions of this Ordinance are severable. The City Council of the City of Tracy hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections,

subsections, subdivisions, paragraphs, sentences, clauses, or phrases be held unconstitutional, invalid, or unenforceable.

SECTION 5. This Ordinance shall take effect immediately upon its adoption by a four-fifths vote of the City Council.

SECTION 6. This Ordinance shall be published in accordance with Government Code section 36933.

\* \* \* \* \*

The foregoing Ordinance \_\_\_\_\_ was adopted at a regular meeting of the Tracy City Council on the 30<sup>th</sup> of March, 2020, by the following vote, pursuant to Government Code section 65858:

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

\_\_\_\_\_  
Mayor

ATTEST:

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