

**Tuesday, September 1, 2020, 7:00 P.M.**

Tracy City Hall, 333 Civic Center Plaza, Tracy

Web Site: [www.cityoftracy.org](http://www.cityoftracy.org)

**THIS REGULAR MEETING WILL BE CONDUCTED PURSUANT TO THE  
PROVISIONS OF THE GOVERNOR'S EXECUTIVE ORDER N-29-20  
WHICH SUSPENDS CERTAIN REQUIREMENTS OF THE RALPH M.  
BROWN ACT**

**RESIDENTS ARE STRONGLY ENCOURAGED TO PARTICIPATE  
REMOTELY AT THE SEPTEMBER 1, 2020 MEETING**

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

*In accordance with the guidelines provided in Executive Order N-29-20 on social distancing measures, the City of Tracy will allow for remote participation at the upcoming City Council meeting on Tuesday, September 1, 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 City's 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."*

*If you only wish to watch the meeting and do not wish to address the Council, the City requests that you stream the meeting through the City's website or watch on Channel 26.*

**Remote Public Comment:**

*Public comment, limited to 250 words or less, submitted via email **will be accepted for agendized items before the start of the Council meeting at 7:00 p.m. Please send an email to [publiccomment@cityoftracy.org](mailto:publiccomment@cityoftracy.org) and Identify the item you wish to comment on in your email's subject line.***

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

- *Comments via:*
  - **Phone** by dialing (209) 831-6010, or
  - **Online** by visiting <https://cityoftracyevents.webex.com> and using the following **Event Number:** 126 270 4172 and **Event Password:** TracyCC
  - **If you would like to participate in the public comment anonymously**, you may submit your comment via phone or in WebEx by typing "Anonymous" when prompted to provide a First and Last Name and inserting [Anonymous@example.com](mailto:Anonymous@example.com) when prompted to provide an email address.

- **Protocols for submitting comments by phone:**
  - *If you wish to discuss an item on the “Consent Calendar” identify the item when calling in. All requests to discuss an item on the “Consent Calendar” must be submitted before the Mayor announces that the time to submit such a request has expired.*
  - *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 commenting via WebEx:**
  - *If you wish to comment on the “Consent Calendar”, “Items from the Audience/Public Comment” or “Regular Agenda” portions of the agenda:*
    - *Listen for the Mayor to open that portion of the agenda for discussion, then raise your hand to speak by clicking on the Hand icon on the Participants panel to the right of your screen.*
    - *If you no longer wish to comment, you may lower your hand by clicking on the Hand icon again.*
  - *Comments for the “Consent Calendar” “Items from the Agenda/Public Comment” or “Regular Agenda” portions of the agenda will be accepted until the public comment for that item is closed.*
- **The total allotted time for public comment will be as follows:**
  - **Consent Calendar: 10 minutes**
  - **Items from the Audience: 15 minutes**
  - **Regular Items: 10 minutes**

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

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

**Addressing the Council on Items on the Agenda** - The Brown Act provides that every regular Council meeting shall provide an opportunity for the public to address the Council on any item within its jurisdiction before or during the Council's consideration of the item, provided no action shall be taken on any item not on the agenda. To facilitate the orderly process of public comment and to assist the Council to conduct its business as efficiently as possible, members of the public wishing to address the Council are requested to, but not required to, hand a speaker card, which includes the speaker's name or other identifying designation and address to the City Clerk prior to the agenda item being called. Generally, once the City Council begins its consideration of an item, no more speaker cards will be accepted. An individual's failure to present a speaker card or state their name shall not preclude the individual from addressing the Council. Each citizen will be allowed a maximum of five minutes for input or testimony. In the event there are 15 or more individuals wishing to speak regarding any agenda item including the “Items from the Audience/Public Comment” portion of the agenda and regular items, the maximum amount of time allowed per speaker will be three minutes. When speaking under a specific agenda item,

each speaker should avoid repetition of the remarks of the prior speakers. To promote time efficiency and an orderly meeting, the Presiding Officer may request that a spokesperson be designated to represent similar views. A designated spokesperson shall have 10 minutes to speak. At the Presiding Officer's discretion, additional time may be granted. The City Clerk shall be the timekeeper.

**Consent Calendar** - All items listed on the Consent Calendar are considered routine and/or consistent with previous City Council direction. One motion, a second, and a roll call vote may enact the items listed on the Consent Calendar. No separate discussion of Consent Calendar items shall take place unless a member of the City Council, City staff or the public request discussion on a specific item.

**Addressing the Council on Items not on the Agenda** – The Brown Act prohibits discussion or action on items not on the posted agenda. The City Council's Meeting Protocols and Rules of Procedure provide that in the interest of allowing Council to have adequate time to address the agendized items of business, "Items from the Audience/Public Comment" following the Consent Calendar will be limited to 15-minutes maximum period. "Items from the Audience/Public Comment" listed near the end of the agenda will not have a maximum time limit. A five-minute maximum time limit per speaker will apply to all individuals speaking during "Items from the Audience/Public Comment". For non-agendized items, Council Members may briefly respond to statements made or questions posed by individuals during public comment; ask questions for clarification; direct the individual to the appropriate staff member; or request that the matter be placed on a future agenda or that staff provide additional information to Council.. When members of the public address the Council, they should be as specific as possible about their concerns. If several members of the public comment on the same issue an effort should be made to avoid repetition of views already expressed.

**Notice** - A 90 day limit is set by law for filing challenges in the Superior Court to certain City administrative decisions and orders when those decisions or orders require: (1) a hearing by law, (2) the receipt of evidence, and (3) the exercise of discretion. The 90 day limit begins on the date the decision is final (Code of Civil Procedure Section 1094.6). Further, if you challenge a City Council action in court, you may be limited, by California law, including but not limited to Government Code Section 65009, to raising only those issues you or someone else raised during the public hearing, or raised in written correspondence delivered to the City Council prior to or at the public hearing.

Full copies of the agenda are available on the City's website: [www.ci.tracy.ca.us](http://www.ci.tracy.ca.us)

CALL TO ORDER  
PLEDGE OF ALLEGIANCE  
INVOCATION  
ROLL CALL

1. CONSENT CALENDAR

- 1.A. APPROVAL OF AUGUST 18 2020 SPECIAL MEETING AND REGULAR MEETING MINUTES AND AUGUST 26, 2020 SPECIAL MEETING MINUTES
- 1.B. AUTHORIZE THE PURCHASE OF EIGHT GENFARE FAST FARE MODEL FARE BOXES FOR TRACER VEHICLES (CIP 77560) IN THE AMOUNT OF \$145,464.22 AND MAKE A BEST INTEREST FINDING TO FOREGO FORMAL BIDDING PROCEDURES

- 1.C. AUTHORIZE THE ACCEPTANCE OF \$11,654 FROM THE 2020 EDWARD BYRNE MEMORIAL JUSTICE ASSISTANCE GRANT (JAG) PROGRAM FOR FUNDING HEALTH AND WELLNESS RELATED TRAINING, SERVICES, EQUIPMENT, AND TECHNOLOGY FOR LAW ENFORCEMENT OFFICERS AND APPROVE THE APPROPRIATION TO THE POLICE DEPARTMENT BUDGET FOR FISCAL YEAR 20/21
- 1.D. AUTHORIZE AMENDMENT OF THE CITY'S POSITION CONTROL ROSTER BY APPROVING THE ADDITION OF A FULL-TIME LIEUTENANT AND DELETING A PART-TIME PROFESSIONAL STANDARDS OFFICER POSITION WITHIN THE POLICE DEPARTMENT AND APPROVING THE ADDITION OF A FULL-TIME BUILDING MAINTENANCE WORKER AND THE DELETION OF A FULL-TIME BUILDING MAINTENANCE ASSISTANT WITHIN THE PUBLIC WORKS DEPARTMENT
- 1.E. AUTHORIZE TRACY POLICE DEPARTMENT TO ACCESS STATE AND FEDERAL LEVEL SUMMARY CRIMINAL HISTORY INFORMATION FOR COMMERCIAL CANNABIS BUSINESS OWNERS, EMPLOYEES, VOLUNTEERS, AND CONTRACTORS PERMITTING AND CERTIFICATION PURPOSES
- 1.F. APPROVE A GENERAL SERVICES AGREEMENT WITH DENALI WATER SOLUTIONS LLC, FOR THE PURPOSES OF LOADING, HAULING AND DISPOSING OF WASTEWATER TREATMENT BIOSOLIDS FOR FISCAL YEAR 2020-21
- 1.G. APPROVE MASTER PROFESSIONAL SERVICES AGREEMENTS WITH VVH CONSULTING ENGINEERS AND KJELDSEN, SINNOCK, NEUDECK CIVIL ENGINEERS AND LAND SURVEYORS, INC. TO PROVIDE LAND SURVEYING SERVICES AND OTHER ENGINEERING SUPPORT SERVICES FOR CAPITAL IMPROVEMENT PROJECTS AND AUTHORIZE THE DEVELOPMENT SERVICES DIRECTOR TO EXECUTE FUTURE TASK ORDERS RELATED TO THE AGREEMENTS, FOR A NOT-TO-EXCEED AMOUNT OF \$200,000 FOR EACH CONSULTANT PER FISCAL YEAR
- 1.H. APPROVE MASTER PROFESSIONAL SERVICES AGREEMENTS WITH WEST YOST & ASSOCIATES, BLACK WATER CONSULTING ENGINEERS, INC., AND BENNETT ENGINEERING SERVICES, INC. TO PROVIDE WATER PRESSURE AND CAPACITY ANALYSES AND ENGINEERING SERVICES FOR LAND DEVELOPMENT PROJECTS, AND AUTHORIZE THE DEVELOPMENT SERVICES DIRECTOR TO ISSUE FUTURE NOTICES TO PROCEED RELATED TO THE AGREEMENTS, FOR A NOT-TO-EXCEED AMOUNT OF \$200,000 FOR EACH CONSULTANT PER CALENDAR YEAR

2. ITEMS FROM THE AUDIENCE

## 3. REGULAR AGENDA

- 3.A. DISCUSS CITY'S RESPONSE TO COVID-19 (VERBAL REPORT)
- 3.B. PUBLIC HEARING TO CONSIDER A VESTING TENTATIVE SUBDIVISION MAP (LARKSPUR ESTATES UNIT 4) TO DIVIDE ONE PARCEL INTO 13 PARCELS ON 1.89 ACRES LOCATED ON THE SOUTH SIDE OF DE BORD DRIVE AND CAIRO COURT, ASSESSOR'S PARCEL NUMBER 246-330-50, AND A DEVELOPMENT REVIEW APPLICATION FOR THE ARCHITECTURE OF 14 SINGLE FAMILY HOMES TO BE PLACED ON THE NEW SUBDIVISION LOTS AS WELL A LOT FORMERLY USED FOR EMERGENCY VEHICLE ACCESS, ASSESSOR'S PARCEL NUMBER 246-310-08
- 3.C. RECEIVE UPDATE FROM THE SOUTH SAN JOAQUIN COUNTY FIRE AUTHORITY ON THE EMPLOYEE TRANSITION PLAN AND PROVIDE DIRECTION TO STAFF
- 3.D. RECEIVE UPDATE CONCERNING THE CITY OF TRACY COMPREHENSIVE EMERGENCY MANAGEMENT PLAN AND PROVIDE DIRECTION TO STAFF
- 3.E. DESIGNATE 500 W ARBOR ROAD AS A TEMPORARY EMERGENCY HOUSING SITE FOR UNSHELTERED INDIVIDUALS IN TRACY; APPROPRIATE FUNDS FOR CONSTRUCTION AND PROVISION OF SERVICES IN THE AMOUNT OF \$690,000 FROM HOUSING ASSET FUNDS, \$100,000 FROM CDBG, \$109,000 CARES ACT; AUTHORIZE STAFF TO SUBMIT GRANT APPLICATIONS; AUTHORIZE STAFF TO ISSUE A REQUEST FOR PROPOSAL FOR A SERVICE PROVIDER TO OPERATE THE FACILITY; AND PROVIDE DIRECTION TO STAFF
- 3.F. DESIGNATE VOTING DELEGATE AND UP TO TWO ALTERNATE VOTING DELEGATES FOR THE LEAGUE OF CALIFORNIA CITIES 2020 ANNUAL CONFERENCE BUSINESS MEETING AND DETERMINE CITY COUNCIL'S POSITION ON THE RESOLUTION TO BE CONSIDERED AT THE ANNUAL CONFERENCE BUSINESS MEETING
4. ITEMS FROM THE AUDIENCE
5. STAFF ITEMS
6. COUNCIL ITEMS
7. ADJOURNMENT

**August 18, 2020, 5:00 p.m.**

Tracy City Hall, 333 Civic Center Plaza, Tracy

Web Site: [www.ci.tracy.ca.us](http://www.ci.tracy.ca.us)

Due to the COVID-19 emergency, the regular meeting was conducted pursuant to the provisions of the Governor's Executive Order N-29-20 which suspends certain requirements of the Ralph M. Brown Act. Residents participated remotely via email, phone and WebEx during the meeting.

1. Mayor Rickman called the meeting to order at 5:00 p.m.
2. Roll call found Council Members Arriola, Ransom, Vargas, Mayor Pro Tem Young, and Mayor Rickman present.

Due to technical difficulties, Mayor Rickman called for a break at 5:08 p.m. and resumed the meeting at 5:17 p.m.

3. ITEMS FROM THE AUDIENCE – There was no public comment.
4. UPDATE ON MEASURE V REVENUE PROJECTIONS AND MEASURE V FUNDED PROJECTS, AUTHORIZE AND PROVIDE STAFF DIRECTION

Brian MacDonald, Parks and Recreation Director provided the staff report.

Karin Schnaider, Finance Director spoke about financial impacts and projections.

Edward Graham supported finishing Legacy Fields and suggested exploring concurrent funding to finish Legacy Fields and start on the Aquatic Center.

Heidi Yee supported funding the Aquatic Center and urged Council to vote for the complete funding of the Aquatic Center as approved in November 2019.

JaRell McIntyre supported finishing Legacy Fields.

Todd Lieberg recommended expediting the Aquatic Center project by phasing the design and construction of certain aquatic elements with funds we have now, but did not believe the City should commit the entire Measure V fund to the Aquatic Center.

Sali Graham supported finishing Legacy Fields.

Lolo Penzar urged Council to use Measure V funds to build the swim center.

Theresa Soto supported finishing Legacy Fields first, then the swim center and later add features to the Aquatic Center.

Eleassia Davis asked Council to consider the benefits of placing Legacy Fields back on the priority list, since it is shovel ready and the potential for revenue to the city upon the completion of the Hilton Hotel.

Richard English supported finishing Legacy Fields, putting the Aquatic Center on list #2, building a 50-meter pool first, and other amenities later.

Brandon Kanner supported funding the Aquatics Center and urged Council to stand by their commitment.

City Clerk announced email comments from Scott Delbridge, Michelle Mavis, Rob Simmons, and Rosalie Gwerder (Tracy Little League Members) and an email with an attachment letter from Paul Zwickey exceeded the word count limit was provided to Council and will be included in the record and provided to Council.

Paul Zwickey spoke in support of finishing Legacy Fields East complex, suggested parsing out funding on several projects using a phased approach to the water theme park.

David Sangree, President of Hotel & Leisure Advisors shared his concerns regarding phasing the Aquatic Center due to lower attendance and lower cost recovery and provided cost recovery comparisons between phasing and not phasing.

Les Serpa expressed support for Legacy Fields but stated that like the Aquatics Center has done, it should go through a process of careful planning and present a master plan so that it can be seen as an entire project rather than a piecemeal project, requested that Council stand by their November resolution approving \$65 million and bring back Legacy Fields.

Michel Bazinet spoke about funding for the Aquatic Center and the Multi-Gen Project.

Stuart Lumsden, President and CEO of Gleeds supported fully funding the Aquatic Center and building to the approved budget. Mr. Lumsden stated that phasing the project will potentially cost more in the long run due to rising construction costs.

Travis Courtney agreed that the competition pool should be built rather than the whole park and expressed support for the completion of Legacy Fields.

Roy Hawkins spoke in support of the Aquatics Center.

Jacob Hunter supported phasing the Aquatic project, building a 50-meter pool, completing Legacy Fields, and urged Council to caution funding the Multi-Gen center. Mr. Hunter spoke about Surland not controlling the project and asked about the \$10 million committed by Surland.

Robert Tanner expressed support for the completion of Legacy Fields and putting other projects on hold until the city knows where it stands with the pandemic.

Lisa Roth encouraged Council to manage the City's financial status including emergency preparedness, suggested not committing to building a \$65 million Aquatics Center, and encouraged the land swap.

Sandy Taylor spoke in support of the Aquatics Center.

Mateo Bedolla suggested waiting on the Aquatic Center rather than spending \$65 million during the pandemic, staff could do the project at a more reasonable cost, developer pay a larger share, and requested that the project not be piecemealed as it will be more costly.

Marsha McCray spoke about costs already spent on Legacy Fields, support of the Aquatic Center, and requested that the project not be piecemealed because of potential cost increases.

Todd Lieberg recommended collecting the \$8 million from Surland and use \$18 million of Measure V funds to begin building a pool immediately, and continue to build the Aquatic Center in phases. Mr. Lieberg supported the construction of Legacy Fields.

Raquel Fairchild supported the building of the Aquatic Center but not at the expense of other projects not being completed and requested that the Council figure out how to complete a project that people need.

Alice English recommended keeping Legacy Fields as priority one and then continue with Aquatic Center.

City Council comments followed.

Mayor Rickman recessed the special meeting to the regular meeting at 7:05 p.m.

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

**SPECIAL MEETING RECONVENED** - Mayor Rickman reconvened the special meeting at 8:04 p.m.

City Council questions and discussion continued regarding special meeting agenda item 4.

Council Member Arriola referred to slide 12 of the presentation and asked to add to project the amount that went toward Senior Center and anything that would potentially go toward the land swap/nature park. Notating on timeline the allocation that was proposed tonight which is the \$1.8 million and demonstrate it is going toward an amenity. Council Member Vargas supported the request. Council Member Arriola asked that on the timeline – change to remainder (Legacy Fields) to be funded and add section for completely funded which will be the Senior Center.

Council Member Arriola requested support of completing Legacy Fields Phase 1E after the aquatics project and the Multi-Gen center are complete, and is open to changing that timeframe after the discussion on phasing. Council Member Ransom and Mayor Pro Tem Young supported the request.

Council Member Ransom suggested putting on the legend money spent already on Senior Center and things like that, as it is a good visual. Mayor Pro Tem Young supported the request.

Mayor Pro Tem Young asked for 3 columns – Completed (Senior Center and whatever has been done at Legacy Field), Committed (balance of Legacy Fields would go under committed) and Other Projects should have dollars next to them also (projects talked about) to be clear for future Councils.

Jenny Haruyama, City Manager summarized the following Council consensus:

- Continue with direction to allocate all Measure V funds toward the Aquatic Center project with an estimated opening of 2026 or later, understanding that there will be no available funds for any unplanned needs and/or other Measure V priorities.
- Expedite Aquatic Center project by phasing the design and construction of certain aquatic elements. Phasing plan to be brought back to Council.
- Support of the concept of exploring public-private partnerships to meet the community's recreational needs while maximizing Measure V funds for other key priorities.
- Fund the Legacy Fields land swap as of June 30, 2020.

Mayor Pro Tem Young requested staff bring back an item about Legacy Fields use, operations, and history and revisit the scope of Multi-Gen. Council Member Ransom supported the request.

5. COUNCIL ITEMS AND COMMENTS – None

6. ADJOURNMENT – Time: 10:15 p.m.

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

The above agenda was posted at the Tracy City Hall on August 13, 2020. The above are action minutes. A recording is available at the office of the City Clerk.

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Mayor

ATTEST:

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City Clerk

August 18, 2020, 7:00 p.m.

City Hall, 333 Civic Center Plaza, Tracy

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Due to the COVID-19 emergency, the regular meeting was conducted pursuant to the provisions of the Governor's Executive Order N-29-20, which suspends certain requirements of the Ralph M. Brown Act. Residents participated remotely via email, phone and WebEx during the meeting.

Mayor Rickman called the meeting to order at 7:05 p.m.

Mayor Rickman led the Pledge of Allegiance.

Pastor Tim Heinrich, Crossroads Baptist Church offered the invocation.

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

Mayor Rickman announced items 3.B and 3.D will be heard first.

3.B CONDUCT PUBLIC HEARING FOR TRACER ON-DEMAND PILOT PROGRAM PARAMETERS TO BE EFFECTIVE AUGUST 23, 2020 AND APPROVE RECOMMENDATIONS FOR PROGRAM PARAMETERS

Ed Lovell, Management Analyst II provided the staff report.

Mayor Rickman opened the public hearing.

Cindy Gustafson requested Council keep the price at \$2.00 per ride for the On Demand Service, so low-income seniors and disabled can afford to use the service.

William Muetzenberg spoke about allowing a monthly rider option; expanding services to nearby areas such as county community center on Larch, and Mountain House, expanding ridership through Tracer reduces parking needs and helps integrate the city's public transit with regional transit.

Robert Tanner supported the Tracer On Demand Sunday operation, and early morning and late evenings Monday through Saturday, and asked for the number to call for Tracer Plus.

Jacob Hunter stated it will be an important pilot to figure out the level of service needed and hoped Council will vote yes on the item.

Mayor Rickman closed the public hearing.

City Council questions and comments followed.

**ACTION:** Motion was made by Council Member Vargas and seconded by Council Member Arriola to adopt a **Resolution 2020-139** approving the Tracer On-Demand Pilot

Program parameters effective August 23, 2020. Roll call vote found all in favor, passed and so ordered.

**3.D APPROVE FUNDING USES FOR CORONAVIRUS RELIEF FUNDS, APPROVE APPROPRIATION OF FUNDS FROM THE CARES ACT ALLOCATION, AND RECEIVE A CARES ACT FUNDING UPDATE**

Robert Harmon, Senior Accountant provided the staff report.

There was no public comment.

City Council questions and comments followed.

**ACTION:** Motion was made by Council Member Vargas and seconded by Council Member Ransom to adopt a **Resolution 2020-140** approving the use of Corona Virus Relief Funds and approving an appropriation of funds from the State's Cares Act Corona Virus Relief Funding allocation to the City of Tracy. Roll call found all in favor, passed and so ordered.

**REGULAR MEETING RECESSED** - Mayor Rickman recessed the regular meeting back to the special meeting at 8:04 p.m.

**ACTION:** Motion was made by Council Member Arriola and seconded by Council Vargas to recess back to the special meeting. Roll call found all in favor; passed and so ordered.

**REGULAR MEETING RECONVENED** - Mayor Rickman reconvened the regular meeting at 10:30 p.m.

1. CONSENT CALENDAR – Following the removal of Consent item 1.L by Council Member Vargas, and 1.P by Robert Tanner motion was made 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 ADOPTION OF JULY 7, 2020 CLOSED SESSION, SPECIAL MEETING AND REGULAR MEETING MINUTES; JULY 21, 2020 CLOSED SESSION, SPECIAL MEETING AND REGULAR MEETING MINUTES; JULY 28, 2020 SPECIAL MEETING MINUTES; AUGUST 4, 2020 SPECIAL MEETING MINUTES - Minutes were adopted.**

**1.B AUTHORIZE THE PURCHASE OF FOUR 29-FOOT LOW FLOOR BUSES FOR TRACER FIXED ROUTE SERVICE FROM GILLIG, LLC UNDER A COOPERATIVE PURCHASING AGREEMENT WITH THE COMMONWEALTH OF VIRGINIA CONTRACT E194-75548, AND APPROVE A CONTINGENCY AMOUNT OF \$100,000 FOR ANY CHANGE ORDERS NEEDED DURING PRODUCTION – Resolution 2020-141 authorized the purchase of four 29-foot low floor buses.**

**1.C ACCEPT THE CONSTRUCTION OF THE TRACY RECYCLED WATER TRANSMISSION MAINS PHASE 2 – CIP 74091, COMPLETED BY MOUNTAIN CASCADE INC., AUTHORIZE THE CITY CLERK TO FILE A NOTICE OF COMPLETION WITH THE SAN JOAQUIN COUNTY RECORDER AND AUTHORIZE THE UTILITIES DIRECTOR TO RELEASE THE BONDS AND**

RETENTION PAYMENTS – **Resolution 2020-142** accepted the project completed by Mountain Cascade Inc.

- 1.D WAIVE SECOND READING AND ADOPT ORDINANCE 1294, AN ORDINANCE OF THE CITY OF TRACY APPROVING AN AMENDMENT TO THE TRACY HILLS SPECIFIC PLAN REGARDING SINGLE-FAMILY DWELLINGS WITH THREE-CAR GARAGES APPLICATION NUMBER SPA20-0002 – Ordinance 1294 was adopted
- 1.E WAIVE SECOND READING AND ADOPT ORDINANCE 1295, AN ORDINANCE OF THE CITY OF TRACY AMENDING SECTION 2.08.080 OF CHAPTER 2.08 OF, AND ADDING CHAPTER 2.10 TO, TITLE 2 “ADMINISTRATION” OF THE TRACY MUNICIPAL CODE REGARDING TENURE OF THE CITY MANAGER AND THE CITY ATTORNEY – Ordinance 1295 was adopted
- 1.F APPROVE AMENDMENT No. 3 TO THE PROFESSIONAL SERVICES AGREEMENT WITH PENNINO MANAGEMENT GROUP FOR ADDITIONAL GRANT, RESEARCH, AND FUNDING PROGRAM SERVICES – Resolution 2020-143 approved Amendment No. 3 to the Professional Services Agreement with Pennino Management Group.
- 1.G APPROVE REVOCABLE ACCESS AND UTILITY EASEMENTS TO GARY L. PATTERSON, et al., FOR MAGNON COMPANIES, ON THE NORTH SIDE OF EAST PESCADERO AVENUE – Resolution 2020-144 approve Revocable Access and Utility Easements to Gary L. Patterson, et al, for Magnon Companies.
- 1.H APPROVE A PROFESSIONAL SERVICES AGREEMENT WITH SEROLOGICAL RESEARCH INSTITUTE, A CALIFORNIA CORPORATION FROM JULY 1, 2020 TO JUNE 30, 2025, NOT TO EXCEED \$400,000 OR \$80,000 ANNUALLY FOR EXPEDITED FORENSIC DNA AND EVIDENCE TESTING – Resolution 2020-145 approved a Professional Services Agreement with Serological Research Institute.
- 1.I AUTHORIZE THE PURCHASE OF MULTIPLE VEHICLES AND EQUIPMENT IN THE AMOUNT OF \$526,913 – Resolution 2020-146 authorized the purchase of multiple vehicles and equipment.
- 1.J AUTHORIZE THE APPROPRIATION OF \$102,843 FROM THE CITIZENS’ OPTION FOR PUBLIC SAFETY (COPS) GRANT PROGRAM FUNDING FOR THE PURCHASE OF ESSENTIAL SAFETY EQUIPMENT FOR FRONTLINE LAW ENFORCEMENT – Resolution 2020-147 authorized the appropriation from COPS for purchase of safety equipment.
- 1.K. APPROVE A GENERAL SERVICES AGREEMENT WITH PETROLEUM SOLIDS, LLC FOR CENTRIFUGE EQUIPMENT AT THE WASTEWATER TREATMENT PLANT WITH OPTION TO PURCHASE AT END OF TERM FOR A NOT TO EXCEED AMOUNT OF \$171,600 ANNUALLY OR \$346,000 WITH PURCHASE OPTION – Resolution 2020-148 approved a General Services Agreement with Petroleum Solids, LLC for centrifuge equipment.

1.M. AWARD A CONSTRUCTION CONTRACT TO SWIERSTOK ENTERPRISE, INC., OF ORANGEVALE, CALIFORNIA, DOING BUSINESS AS PRO BUILDERS, OF ORANGEVALE, CALIFORNIA, IN THE AMOUNT OF \$739,090 FOR THE TRACY MUNICIPAL AIRPORT RDA IMPROVEMENT PROJECT, CIP 77582, WITH A NOT-TO-EXCEED BUDGET OF \$960,820, AUTHORIZE AN APPROPRIATION OF \$511,717 FROM FUND 317, AND AUTHORIZE THE CITY MANAGER TO APPROVE CHANGE ORDERS UP TO THE CONTINGENCY AMOUNT OF \$73,930, IF NEEDED – Resolution 2020-149  
awarded the contract to Swierstok Enterprise, Inc. dba Pro Builders for the Tracy Municipal Airport RDA Improvement Project.

1.N. APPROVE PROPOSALS AND RATES FROM MULTIPLE VENDORS FOR THE SUPPLY OF VARIOUS CHEMICALS FOR THE TREATMENT OF WATER AND WASTEWATER FOR FISCAL YEAR 2020-2021 – Resolution 2020-150  
approved proposals and rates from multiple vendors for supply of various chemicals.

1.O. APPROVE MASTER PROFESSIONAL SERVICES AGREEMENTS WITH RJR ENGINEERING & CONSULTING, INC., WEST YOST & ASSOCIATES, AND WOOD RODGERS, INC., TO PROVIDE STORM DRAINAGE ENGINEERING SERVICES FOR LAND DEVELOPMENT PROJECTS, AND AUTHORIZE THE DEVELOPMENT SERVICES DIRECTOR TO EXECUTE NOTICES TO PROCEED TO THE AGREEMENTS, FOR A NOT-TO-EXCEED AMOUNT OF \$200,000 FOR EACH CONSULTANT PER YEAR – Resolution 2020-151  
approved the Master Professional Services Agreement with RJR Engineering & Consulting, Inc., West Yost & Associates, and Wood Rodgers, Inc.

1.L. AUTHORIZE THE ASSISTANT CITY MANAGER/DIRECTOR OF DEVELOPMENT SERVICES TO EXECUTE AND SUBMIT THE CYCLE ONE MEASURE K (F242) BICYCLE, PEDESTRIAN AND SAFE ROUTES TO SCHOOL NON-COMPETITIVE PROGRAM FUNDS CLAIM OF \$310,581, AUTHORIZE THE ASSISTANT CITY MANAGER TO EXECUTE AND SUBMIT ALL FUTURE SUCH CLAIMS, AUTHORIZE THE ESTABLISHMENT OF A CIP (73181) FOR THE INSTALLATION OF ASPHALT CONCRETE PEDESTRIAN PATH ON LAMMERS ROAD, CLAIM AN APPORTIONMENT OF \$80,581 FOR THIS NEW CIP, AND CLAIM THE REMAINING \$230,000 FOR THE CIP 72116

Council Member Vargas pulled the item to thank staff for looking into the grants and opportunity to continue the sidewalk work and safe routes for children to get to school.

No one from the public wished to speak.

There were no further comments from City Council.

**ACTION:** Motion was made by Council Member Vargas and seconded by Mayor Pro Tem Young to adopt a **Resolution 2020-152** authorizing the Assistant City Manager/Director of Development Services to execute and submit the Cycle One Measure K (F242) bicycle, pedestrian and safe routes to school non-competitive program funds claim of \$310,581, authorizing the Assistant City Manager to execute and submit all future such claims, authorizing the establishment of a CIP (73181) for the installation of asphalt concrete pedestrian path on Lammers

Road, claiming an apportionment of \$80,581 for this new CIP, and claiming the remaining \$230,000 for the CIP 72116. Roll call found all in favor, passed and so ordered.

1.P **CONSIDER APPROVAL OF EQUITY AND EMPOWERMENT INITIATIVE AND PROPOSED WORK PLAN**

Robert Tanner asked about the City not authorizing three new police hires and is this the beginning of reducing or defunding Police.

Jenny Haruyama, City Manager responded to Mr. Tanner's comments.

City Council questions and comments followed.

**ACTION:** Motion was made by Mayor Pro Tem Young and seconded by Council Member Vargas to adopt **Resolution 2020-153** approving the Tracy Equity and Empowerment Initiative and Implementation Work Plan. Roll call found all in favor, passed and so ordered.

2. ITEMS FROM THE AUDIENCE – Alice English spoke about the following: support for completion of Legacy Fields, Council Members taking Legacy Fields off the priority list in November 2019, Surland extending their Development Agreement, and the increase in cost for Aquatic Center.

Council Member Arriola objected to the commentary made by Alice English.

Jass Sangha spoke about the need for Legacy Fields to be completed and the revenue it will create for the City.

3. **REGULAR AGENDA**

3.A **DISCUSS CITY'S RESPONSE TO COVID-19 (VERBAL REPORT)** – **Item was moved to September 1, 2020**

3.C **CONSIDER ADOPTING A RESOLUTION APPROVING THE AQUATIC CENTER FINAL CONCEPTUAL PLAN WITH A NOT-TO-EXCEED BUDGET OF \$65 MILLION, INCLUDING CONTINGENCY AND SOFT COSTS**

Richard Joaquin, Parks Planning and Development Manager provided the staff report.

Chris Long, Surland Companies spoke about the Aquatic Center project.

Steve Auterman, Urban Design Associates provided a powerpoint presentation regarding the Aquatic Center final conceptual plan.

David Sangree, Hotel and Leisure Advisors provided information about the project.

Stuart Lumsden, Gleeds USA spoke about the cash flow of the project.

Les Serpa, Surland Communities spoke about the project.

Brandon Kanner shared support for building the Aquatic Center the way it was envisioned and voted on.

Heidi Yee shared her support for the Aquatics Center and urged Council to adopt a resolution approving the Aquatics Center Conceptual Plan.

Mom requested Council not spend a dime that is not absolutely necessary.

Lolo Penzar urged Council to follow through on the project as approved by Council.

City Clerk announced an email comment from Todd Lieberg that exceeded the word count limit would be included in the record and was provided to Council.

Michel Bazinet stated the concept presented is pool and recreational and recreational pays for total concept. Mr. Bazinet suggested to minimize the operating costs, approve the project as proposed for \$65 million.

Robert Tanner stated the \$5.2 million cost of the play structure wet deck should not be part of the initial elements to be built. Mr. Tanner added every time the developer is before Council they ask for more money, cut it off.

Mary Mitracos commented on the following: City not having \$65 million to spend on the Aquatic Center, irresponsible if not phased, project consultant costs, social equity issues when spending \$65 million in a subdivision and not putting swimming pools in other areas, and was not in favor of the project.

Marsha McCray provided history on the Aquatic Center project, stated it was unfair to subsidize only a pool, shared her support for the project and urged Council to approve the conceptual plan.

Cliff Hudson stated the Aquatic Center conceptual plans are beautiful, but do we need it at \$65 million and could that money be used in other places. Citizens asked for competition pool and he supported that. Mr. Hudson agreed with finishing Legacy Fields providing another phase is not added.

Alice English stated it is irresponsible to spend \$65 million and shared her concerns about lack of parking for RV's for those competing, no staging area, and cost of using pool, and cost of pool.

Travis Courtney, Tracy Little League President asked why spend \$65 million as a community on water theme park that is going to cost an exorbitant amount of money to get into. Mr. Courtney spoke about finishing Legacy Fields and phasing the water park.

City Council questions and discussion ensued.

Council Member Vargas left the dais at 12:32 a.m.

Council Member Vargas rejoined the meeting at 12:37 a.m.

**ACTION:** Motion was made by Mayor Pro Tem Young and seconded by Council Member Arriola to adopt **Resolution 2020-154** approving the final Aquatic Center Conceptual Plan with a not-to-exceed budget of \$65 million, including contingency and soft costs.

Council Member Vargas made a friendly amendment to include staff to return to Council after they have talked to the developer about phasing options.

Roll call vote found all in favor; passed and so ordered.

3.E RECEIVE UPDATE FROM THE SOUTH SAN JOAQUIN COUNTY FIRE AUTHORITY ON THE EMPLOYEE TRANSITION PLAN AND PROVIDE DIRECTION TO STAFF – Item moved to September 1, 2020

3.F DESIGNATE VOTING DELEGATE AND UP TO TWO ALTERNATE VOTING DELEGATES FOR THE LEAGUE OF CALIFORNIA CITIES 2020 ANNUAL CONFERENCE BUSINESS MEETING – Item moved to September 1, 2020

4. ITEMS FROM THE AUDIENCE – None.
5. STAFF ITEMS – None.
6. COUNCIL ITEMS – None.
7. ADJOURNMENT – Time: 12:43 a.m. Date: Wednesday, August 19, 2020

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

The above agenda was posted at the Tracy City Hall on August 13, 2020. The above are action minutes. A recording is available at the office of the City Clerk.

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Mayor

ATTEST:

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City Clerk

August 26, 2020, 6:00 p.m.

Tracy City Hall, 333 Civic Center Plaza, Tracy

Web Site: [www.ci.tracy.ca.us](http://www.ci.tracy.ca.us)

Due to the COVID-19 emergency, the regular meeting was conducted pursuant to the provisions of the Governor's Executive Order N-29-20 which suspends certain requirements of the Ralph M. Brown Act. Residents participated remotely via email, phone and WebEx during the meeting.

1. Mayor Rickman called the meeting to order at 6:07 p.m.
2. Roll call found Council Members Arriola, Ransom, Vargas, Mayor Pro Tem Young, and Mayor Rickman present.

Pastor Doug Diestler, Mission City Church provided the invocation.

3. ITEMS FROM THE AUDIENCE – Robert Tanner shared his concerns regarding Council not finishing one amenity for the City, and stated that Legacy Fields needs to be completed.
4. CONDUCT COUNCIL WORKSHOP ON RACIAL INJUSTICE, POLICING, AND IMPACTS TO LOCAL YOUTH AND PROVIDE DIRECTION TO STAFF

Allyn Brown, former Bay Area Police Chief as workshop facilitator introduced the panelists: Council Member Arriola, Council Member Ransom, Council Member Vargas, Mayor Pro Tem Young, Mayor Rickman, Police Chief Sekou Millington, Pastor Doug Diestler – Mission City Church, Brian Stephens – Superintendent Tracy Unified School District, Ray Morelos – President of South Side Community.

The panelists responded to questions provided by Mr. Brown related to the topic.

The panelists responded to questions received from members of the public via Webex Q&A.

Mr. Brown summarized the comments and questions made by the public and the panel during the meeting.

Panel closing comments followed.

5. COUNCIL ITEMS AND COMMENTS - None
6. Adjournment – Time: 8:04 p.m.

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

The above agenda was posted at the Tracy City Hall on August 21, 2020. The above are action minutes. A recording is available at the office of the City Clerk.

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Mayor

ATTEST:

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City Clerk

September 1, 2020

AGENDA ITEM 1.B

REQUEST

**AUTHORIZE THE PURCHASE OF EIGHT GENFARE FAST FARE MODEL FARE BOXES FOR TRACER VEHICLES (CIP 77560) IN THE AMOUNT OF \$145,464.22 AND MAKE A BEST INTEREST FINDING TO FOREGO FORMAL BIDDING PROCEDURES**

EXECUTIVE SUMMARY

The City of Tracy is currently purchasing eight (8) transit vehicles to be put into service as approved at the June 16, 2020 City Council meeting. Staff has received a grant to purchase the fare boxes for these vehicles separately. Staff is recommending that the fare boxes purchased match the existing fare boxes already installed in our current fixed route buses.

DISCUSSION

The City of Tracy has received funding through the California Department of Transportation (Caltrans) Public Transportation Modernization, Improvement, and Service Enhancement Account (PTMISEA) program. The funding received is for the purchase of upgraded fare boxes for Tracer vehicles. On June 16, 2020, City Council approved the purchase of eight (8) transit vehicles for Tracer service. The cost of these vehicles did not include the cost of a fare box, as the fare boxes were to be purchased separately through the PTMISEA grant.

Staff recommends purchasing the Genfare Fast Fare model fare box. This model of fare box is currently installed on the Gillig buses that run on the fixed route service. Installation of these fare boxes on the City's new bus purchases will allow for all vehicles providing Tracer service to utilize the same type of fare box, which will enable passengers to transfer more easily between vehicles that are in service.

The City has already invested a significant amount of money into this fare box system and already has this type of fare box installed on several of its existing vehicles. In purchasing these fare boxes, staff recommends that the Council find that it is in the best interest of the City to allow an exception to bidding under section 2.20.180 of the Tracy Municipal Code (TMC) and forego the formal bidding procedures.

The fare boxes, once ordered will take approximately 90 days to arrive. The City's operations and maintenance contractor, MTM, will install the fare boxes on the new vehicles once they arrive.

STRATEGIC PLAN

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

**FISCAL IMPACT**

The quoted price for eight fare boxes is \$145,464.22, including tax and freight. There is a total of \$205,000 in PTMISEA grant funding currently available to pay for the purchase of the fare boxes in CIP 77560.

**RECOMMENDATION**

That City Council, by resolution, authorize the purchase of eight Genfare Fast Fare model fare boxes in an amount of \$145,464.22 for the Tracer Vehicles CIP 77560.

Prepared by: Ed Lovell, Management Analyst II

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

Approved by: Jenny Haruyama, City Manager

RESOLUTION \_\_\_\_\_

AUTHORIZING THE PURCHASE OF EIGHT GENFARE FAST FARE MODEL FARE BOXES  
FOR TRACER VEHICLES (CIP 77560) IN THE AMOUNT OF \$145,464.22 AND MAKING A  
BEST INTEREST FINDING TO FOREGO FORMAL BIDDING PROCEDURES

WHEREAS, The City has previously received grant award funding through the California Department of Transportation (Caltrans) Public Transportation Modernization, Improvement, and Service Enhancement Account (PTMISEA) program for the purchase of upgraded fare boxes, and

WHEREAS, The current fare boxes in use on other Tracer fixed route buses is the Genfare Fast Fare model fare box, and

WHEREAS, There is only one manufacturer of that model of fare box, and

WHEREAS, It is in the best interest of the City to forego formal contract procedures for bidding per Tracy Municipal Code Section 2.20.180 due to the preceding information regarding the model of fare box, and

WHEREAS, The City has PTMISEA funding available in the amount of \$205,000 for the purchase of the fare boxes in CIP 77560;

NOW, THEREFORE, BE IT RESOLVED, That the City Council hereby:

- (1) Authorizes the purchase of eight Genfare Fast Fare model fare boxes in an amount of \$145,464.22 for the Tracer Vehicles CIP 77560; and
- (2) Makes a best interest finding to forego formal bidding procedures.

\* \* \* \* \*

The foregoing Resolution \_\_\_\_\_ was adopted by the Tracy City Council on the 1<sup>st</sup> day of September 2020, by the following vote:

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

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MAYOR

ATTEST:

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CITY CLERK

AGENDA ITEM 1.C

REQUEST

**AUTHORIZE THE ACCEPTANCE OF \$11,654 FROM THE 2020 EDWARD BYRNE MEMORIAL JUSTICE ASSISTANCE GRANT (JAG) PROGRAM FOR FUNDING HEALTH AND WELLNESS RELATED TRAINING, SERVICES, EQUIPMENT, AND TECHNOLOGY FOR LAW ENFORCEMENT OFFICERS AND APPROVE THE APPROPRIATION TO THE POLICE DEPARTMENT BUDGET FOR FISCAL YEAR 20/21**

EXECUTIVE SUMMARY

The City of Tracy has been awarded \$11,654 from the Federal Justice Assistance Grant (JAG) Program for funding officers safety, health and wellness related training, services, and equipment for law enforcement officers. This report recommends that the City of Tracy accept the grant and authorize an appropriation of \$11,654 to the Police Department budget for FY 20/21.

DISCUSSION

The Edward Byrne Justice Assistance Grant (JAG) Program (42 U.S.C. 3751(a)) is the primary provider of Federal criminal justice funding to State and local jurisdictions. JAG funds support all components of the criminal justice system by improving the effectiveness and efficiency of criminal justice systems, processes and procedures.

Agencies are allowed to use this grant to support Officer Safety and Wellness to assist with keeping officers physically and mentally well in order to perform, survive, and be resilient in the face of the demanding duties of the profession.

The 2015 Final Report of the President's Task Force on 21<sup>st</sup> Century Policing Pillar Six-Officer Wellness and Safety states, "A large portion of officer injuries and deaths are not the result of interaction with criminal offenders but the outcome of poor physical health due to poor nutrition, lack of exercise, sleep deprivation, and substance abuse."

The Pillar advises that agencies should "focus on strategies in several areas: physical, mental, and emotional health...."

It further states, "The officers who protect us must also be protected —against incapacitating physical, mental, and emotional health problems as well as against the hazards of their job. Their wellness and safety are crucial for them, and their agencies, as well as the well-being of the community they serve."

Based on the recommendations within the report, Tracy Police Department has placed an emphasis on the health, wellness, and physical fitness of its law enforcement officers. In 2016, the department opened an on-site fitness center. In 2018, the department facilitated full scale health physicals for officers which provided reports and feedback to officers regarding their overall health. In addition, the department implemented an on-

duty workout program for sworn personnel. In 2019, the department initiated a contract for Psychological Services and Peer Support Training for its personnel, and acquired a personalized Employee Assistance Program, Psychological and well-being mobile application through Cordico, Inc.

To continue efforts, the Tracy Police Department will utilize \$11,304 of the Edward Byrne Memorial Justice Assistance to purchase fitness equipment to enhance and improve the department's fitness center.

In addition, per the requirements set forth by the JAG program, 3% (\$350) of the award will be set aside and dedicated to the department achieving National Incident Based Reporting System compliance by 2021. Currently, Tracy Police Department reports crime statistics to the FBI using the Uniform Crime Reporting (UCR) reporting system; however by 2021 all agencies must comply and transition to the National Incident Based Reporting System (NIBRS).

Proposed JAG Grant Expenses	
<b>Officer Safety, Health, and Wellness Equipment and Technology</b>	<b>Cost</b>
FreeMotion –t.10.9 Interval Reflex Treadmill	\$7,838
Hoist RC IT Selectorized Abdominal Machine	\$3,466
JAG Grant requirement – 3% set aside for NIBRS compliance.	\$350
<b>Total</b>	<b>\$11,654</b>

## STRATEGIC PLAN

This agenda item relates to the Council's Strategic Plan in the area of Public Safety.

## FISCAL IMPACT

The City of Tracy will receive \$11,654 from the 2020 Federal JAG Program. There is no negative impact to the current fiscal budget as no City match is required. Accepting this grant funding requires the funds to be appropriated from the Federal JAG Program and \$11,654 added to the Police Department's Operating Budget.

## RECOMMENDATION

That City Council adopt a resolution to authorize the acceptance of the 2020 Edward Byrne Memorial Justice Assistance Grant (JAG) in the amount of \$11,654 for funding health and wellness related training, services, equipment, and technology for law enforcement officers and approve the appropriation of \$11,654 to the Police Department's Operating Budget for FY 20/21 .

Prepared by: Grace Segura, Police Support Services Technician  
Reviewed by: Beth Lyons-McCarthy, Support Operations Manager  
Sekou Millington, Chief of Police  
Karin Schnaider, Finance Director

Approved by: Jenny Haruyama, City Manager

RESOLUTION 2020-

AUTHORIZING THE ACCEPTANCE OF \$11,654 FROM THE 2020 EDWARD BYRNE MEMORIAL JUSTICE ASSISTANCE GRANT (JAG) PROGRAM FOR FUNDING HEALTH AND WELLNESS RELATED TRAINING, SERVICES, EQUIPMENT, AND TECHNOLOGY FOR LAW ENFORCEMENT OFFICERS AND APPROVING THE APPROPRIATION TO THE POLICE DEPARTMENT BUDGET FOR FISCAL YEAR 20/21

WHEREAS, The United States Department of Justice, Office of Justice Programs, Bureau of Justice Assistance coordinates the annual Edward Byrne Justice Assistance Grant (JAG) Program that makes available federal public safety funds to local jurisdictions, and

WHEREAS, The City of Tracy is eligible to receive \$11,654 for calendar year 2020 under a pre-designated grant formula, and

WHEREAS, The Tracy Police Department intends to use the appropriation of \$11,654 to acquire fitness equipment to continue efforts focused on officer health and well-being, and set aside 3% of awarded funds dedicated to achieving National Incident Based Reporting System compliance, and

WHEREAS, Staff recommends City Council accept the Edward Byrne Memorial Justice Grant.

NOW, THEREFORE, BE IT RESOLVED, That the City Council of the City of Tracy hereby accepts the \$11,654 grant award from the 2020 Edward Byrne Memorial Justice Assistance Grant (JAG) Program for the funding of health and wellness related training, services, equipment, and technology for law enforcement officers and authorizes the appropriation of \$11,654 to the Police Department budget for fiscal year 20/21.

\* \* \* \* \*

The foregoing Resolution \_\_\_\_\_ was passed and adopted by the Tracy City Council on the 1st day of September, 2020, by the following vote:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

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MAYOR

ATTEST:

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CITY CLERK

September 1, 2020

AGENDA ITEM 1.D

REQUEST

**AUTHORIZE AMENDMENT OF THE CITY'S POSITION CONTROL ROSTER BY APPROVING THE ADDITION OF A FULL-TIME LIEUTENANT AND DELETING A PART-TIME PROFESSIONAL STANDARDS OFFICER POSITION WITHIN THE POLICE DEPARTMENT AND APPROVING THE ADDITION OF A FULL-TIME BUILDING MAINTENANCE WORKER AND THE DELETION OF A FULL-TIME BUILDING MAINTENANCE ASSISTANT WITHIN THE PUBLIC WORKS DEPARTMENT**

EXECUTIVE SUMMARY

This report recommends amending the position control roster to reflect recent reorganizations within Police and Public Works departments. In Police, the department is adding a Lieutenant position and deleting a part-time non-sworn position. In Public Works, the department is adding a full-time Building Maintenance Worker and deleting a full-time Building Maintenance Assistant.

DISCUSSION

As part of the course of evaluating their departments when vacancies occur, the Police and Public Works departments utilized recent attrition to reorganize two positions to best meet the needs of their respective departments, the City, and its residents. Both departments have worked with the Finance and Human Resources departments to review these requests. Staff is recommending the following positions be added to the position control roster with funding coming from the deletion of the two vacant positions.

*Police Lieutenant*

Due to recent reorganization within Police, the department has identified the need for a higher ranking sworn member to oversee a new division to include oversight over administrative investigations, personnel training, range operations, police canines, defensive tactics, and technology. The Administrative Lieutenant will be assigned to the Office of the Chief and report directly to the Chief of Police. The Department has determined this internal reorganization to best suit the needs of its operations, has a positive impact as a promotional opportunity for the sworn personnel, ensures credibility/accountability for administrative investigations and delivers cost savings to both the Police Department and the City of Tracy. The Department has identified a vacant part-time non-sworn position whose funds can be reallocated to partially offset the costs of the full-time position. The remaining costs will be absorbed within the department's appropriated budget.

*Building Maintenance Worker*

Due to the growth in City facilities and the complexity of the facility's infrastructure and systems, the Public Works Department has identified the need for a higher skilled position than the current assistant-level allocation. The requested Building Maintenance Worker will provide added skill level, technical knowledge, and flexibility to the position.

Previously, the Building Maintenance Assistant position was created when in-house custodial services were contracted out and the position reflected the needs in the Building Maintenance Division at that time. Through attrition, the Public Works department had the opportunity to evaluate the skill set needed in the division and requested a position that can perform the higher skilled tasks. The cost differential between the two positions is de minimis and will be absorbed within the department's operating budget of the Building Maintenance Internal Services Fund.

### STRATEGIC PLAN

This agenda item supports the City of Tracy's Governance Strategic Priority, which is to enhance fiscal stability, retain and attract new talent, improve the use of technology, and enhance transparency for the betterment of the Tracy community.

### FISCAL IMPACT

The fiscal impact for approving these changes is estimated in the Police Department to be less than \$75,000 and will be absorbed within the department's General Fund budget. The fiscal impact of approving these changes is estimated to be de minimis in the Public Work's Building Maintenance (ISC) fund.

### RECOMMENDATION

That the City Council, by resolution, authorize the Finance Director to amend the City's position control roster to add a full-time Lieutenant and delete a part-time Professional Standards Officer within Police and to add a full-time Building Maintenance Worker and delete a full-time Building Maintenance Assistant within Public Works.

Prepared by: Karin Schnaider, Finance Director

Reviewed by: Midori Lichtwardt, Assistant City Manager

Approved by: Jenny Haruyama, City Manager

RESOLUTION \_\_\_\_\_

AUTHORIZING AMENDMENT OF THE CITY'S POSITION CONTROL ROSTER BY APPROVING THE ADDITION OF A FULL-TIME LIEUTENANT AND DELETING A PART-TIME PROFESSIONAL STANDARDS OFFICER POSITION WITHIN THE POLICE DEPARTMENT AND APPROVING THE ADDITION OF A FULL-TIME BUILDING MAINTENANCE WORKER AND THE DELETION OF A FULL-TIME BUILDING MAINTENANCE ASSISTANT WITHIN THE PUBLIC WORKS DEPARTMENT

WHEREAS, The City Council approves the position control roster for budgeted positions, and

WHEREAS, The Police and Public Works Departments have assessed their departments and have requested a staffing allocation change to better meet the needs of their respective departments, the City and its residents, and

WHEREAS, The fiscal impact for will be absorbed within each department's operating budget and no additional appropriations is requested;

NOW, THEREFORE, BE IT RESOLVED, that the City Council of the City of Tracy hereby authorizes the Finance Director to amend the City's Position Control Roster as follows:

- a) Addition of full-time Police Lieutenant in Police Department
- b) Deletion of part-time Professional Standards Officer in Police Department
- c) Addition of full-time Building Maintenance Worker in Public Works
- d) Deletion of full-time Building Maintenance Assistant in Public Works

\* \* \* \* \*

The foregoing Resolution \_\_\_\_\_ was adopted by the Tracy City Council on the 1st day of September, 2020 by the following votes:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

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MAYOR

ATTEST:

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CITY CLERK

September 1, 2020

AGENDA ITEM 1.E

REQUEST

**AUTHORIZE TRACY POLICE DEPARTMENT TO ACCESS STATE AND FEDERAL LEVEL SUMMARY CRIMINAL HISTORY INFORMATION FOR COMMERCIAL CANNABIS BUSINESS OWNERS, EMPLOYEES, VOLUNTEERS, AND CONTRACTORS PERMITTING AND CERTIFICATION PURPOSES**

EXECUTIVE SUMMARY

Chapter 6.36 of the Tracy Municipal Code (“TMC”) contains regulations for commercial cannabis activities in Tracy (the “Regulatory Ordinance”), including a requirement for criminal background investigations of commercial cannabis business owners applying for a cannabis business permit to operate in the City of Tracy and for permitting of prospective employees (including volunteers and contract employees) of commercial cannabis businesses.

State law requires that a governing body of a city or county authorize access to summary criminal history for employment, licensing, or certification purposes. This item requests that the City Council adopt a resolution that authorizes the Tracy Police Department to access state and federal level summary criminal history information through the U.S. Department of Justice for background investigation purposes for all commercial cannabis business owners to operate all types of cannabis business permits in the City of Tracy, and for permitting of prospective employees (including volunteers and contract employees) of commercial cannabis businesses.

DISCUSSION

The Regulatory Ordinance requires all commercial cannabis business owners applying for cannabis business permits to operate in the City of Tracy, and for all prospective employees of commercial cannabis businesses (including volunteers and contract employees) seeking permits to undergo criminal background investigations.

The criminal background investigation process involves Live Scan, an electronic means of capturing fingerprints in a digitized format. The record check and summary report are prepared by the U.S. Department of Justice and transmitted to the Police Department.

California Penal Code Sections 11105(b)(11) and 13300(b)(11) authorize cities and counties to access state and federal level summary criminal history information for purposes of employment, licensing or certification purposes. The Police Department will file an application with the U.S. Department of Justice to receive access to the summary criminal history information for criminal background investigation purposes for all commercial cannabis business owners to operate all types of cannabis business permits in the City of Tracy, and for permitting of prospective employees (including volunteers and contract employees) of commercial cannabis businesses. This application process requires authorization by the City Council via resolution. The City Council has previously adopted a similar resolution authorizing the Human Resources Department to access summary criminal history information for City employment purposes. The information

accessed by the Tracy Police Department will remain confidential and will not be disseminated with third parties.

### STRATEGIC PLAN

This agenda item supports the City of Tracy's Public Safety and Quality of Life Strategic Priorities, which are to enhance community safety by promoting a responsive public safety system that includes civic engagement and partnerships, prevention, intervention, and suppression services that meet the needs of Tracy residents, and to provide an outstanding quality of life by enhancing the City's business mix and services.

### FISCAL IMPACT

All applicants are required to pay a fee for background investigations and the Live Scan fee in advance to cover the costs of these services.

### RECOMMENDATION

That the City Council adopt a resolution that authorizes the Tracy Police Department to access the state and federal level summary criminal history information through the U.S. Department of Justice for background investigation purposes for all commercial cannabis business owners to operate all types of cannabis business permits in the City of Tracy, and for permitting of prospective employees (including volunteers and contract employees) of commercial cannabis businesses.

Prepared by: Bianca Rodriguez, Assistant City Attorney

Reviewed by: Alex Neicu, Police Captain  
Karin Schnaider, Finance Director  
Midori Lichtwardt, Assistant City Manager

Approved by: Jenny Haruyama, City Manager

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

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF TRACY AUTHORIZING THE TRACY POLICE DEPARTMENT TO ACCESS STATE AND FEDERAL LEVEL SUMMARY CRIMINAL HISTORY INFORMATION FOR EMPLOYMENT, VOLUNTEERS, AND CONTRACTORS, LICENSING OR CERTIFICATION PURPOSES

WHEREAS, Penal Code Sections 11105(b)(11) and 13300(b)(11) authorize cities, counties, districts, and joint powers authorities to access state and local summary criminal history information for employment, licensing, or certification purposes, and

WHEREAS, Penal Code Section 11105(b)(11) authorizes cities, counties, districts, and joint powers authorities to access federal level criminal history information by transmitting fingerprint images and related information to the California Department of Justice to be transmitted to the Federal Bureau of Investigation, and

WHEREAS, Penal Code Sections 11105(b)(11) and 13300(b)(11) require that there be a requirement or exclusion from employment, licensing, or certification based on specific criminal conduct on the part of the subject or record, and

WHEREAS, Penal Code Sections 11105(b)(11) and 13300(b)(11) require the City Council, Board of Supervisors, governing body of a city, county, or district or joint powers authority to specifically authorize access to summary criminal history information for employment, licensing, or certification purposes;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Tracy that the Tracy Police Department is hereby authorized to access state and federal level summary criminal history information for commercial cannabis business employment, including volunteers and contract employees, and for licensing and certification of commercial cannabis business applicants to operate all types of commercial cannabis businesses, including retail, cultivation, distribution, testing, and manufacturing, and may not disseminate the information to a private entity.

\* \* \* \* \*

The foregoing resolution 2020- \_\_\_\_\_ was adopted by the Tracy City Council the 1st day of September 2020, by the following vote:

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

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MAYOR

ATTEST:

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CITY CLERK

September 1, 2020

AGENDA ITEM 1.F

REQUEST

**APPROVE A GENERAL SERVICES AGREEMENT WITH DENALI WATER  
SOLUTIONS LLC, FOR THE PURPOSES OF LOADING, HAULING AND DISPOSING  
OF WASTEWATER TREATMENT BIOSOLIDS FOR FISCAL YEAR 2020-21**

EXECUTIVE SUMMARY

The City of Tracy generates municipal biosolids, a nutrient rich organic material, at the Wastewater Treatment Plant as a by-product of wastewater treatment. The City engages the services of qualified haulers (vendors) to remove and dispose of this material out of San Joaquin County annually in accordance with all applicable Federal, State and local regulations. This agenda item requests authorization to enter into a General Services Agreement with the lowest monetary proposer Denali Water Solutions LLC, to provide such services for a not to exceed amount of \$160,000 at a rate of \$62.50 per ton.

DISCUSSION

The City engages the services of qualified haulers to remove, load, haul and dispose biosolids from the drying beds stockpiled at the Wastewater Treatment Plant located at 3900 Holly Drive. These biosolids are a by-product of wastewater treatment. The biosolids are disposed of outside of San Joaquin County in accordance with the local, state and federal requirements. Such services are acquired every year from qualified entities to complete this work in a cost effective manner. The scope of work also requires the qualified entity to provide certified mobile scales to weigh the trucks before leaving the plant site to determine the tonnage of biosolids hauled, or each truck may be weighed at a certified scale. The work is completed in accordance with all applicable laws, rules, and regulations.

On May 15, 2020, a Request for Proposals with relevant requirements was posted on the City's website. Various experienced vendors and transporters were also contacted to submit proposals. Two proposals were received and opened at 2:00 p.m. on June 16, 2020, as follows:

<u>Vendor Name</u>	<u>Price/Ton</u>
Denali Water Solutions	\$62.50/ton
Environmental Logistics	\$98.00/ton

Denali Water Solutions LLC, is the qualified proposer with the lowest cost, has good references, and has completed such work with other agencies in a satisfactory manner.

A total of \$200,000 is available and estimated to be used in the Utilities wastewater operating budget for this service in FY 2020-21. However, this amount may vary

depending upon the sewer strength and tons of biosolids available for disposal.  
Additional funding will be appropriated if needed.

### STRATEGIC PLAN

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

### FISCAL IMPACT

A total of \$200,000 is budgeted in the Utilities – Wastewater Fund (F521) operating budget for the removal of biosolids in Fiscal Year 2020-21. This amount will vary based upon the sewer strength and tons of biosolids generated in the treatment plant for disposal. Funding for the disposal of the wastewater treatment biosolids is collected through the wastewater rates charged to customers of the wastewater enterprise.

### RECOMMENDATION

That the City Council, by resolution, approve a General Services Agreement with Denali Water Solutions LLC, for the purposes of Loading, Hauling, and Disposing of Wastewater Treatment Biosolids for a not to exceed amount of \$160,000 for Fiscal Year 2020-21.

Prepared by: Kuldeep Sharma, Utilities Director

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

Approved by: Jenny Haruyama, City Manager

### ATTACHMENTS

Attachment A: General Services Agreement Denali Water Solutions LLC

**CITY OF TRACY**  
**GENERAL SERVICES AGREEMENT WITH**  
*Denali Water Solutions LLC*  
*Loading, Hauling, and Disposal of Wastewater Treatment Plant Biosolids*

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

**Recitals**

- A. City desires to retain Contractor to provide loading, hauling, and disposal of wastewater treatment plant biosolids services; and
- B. On May 15, 2020, the City issued a Request for Proposals (RFP) for the Biosolids Loading, Hauling, and Disposal (**Project**). On June 15, 2020, Contractor submitted its proposal for the Project to the City. City has determined that Contractor possesses 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. 2020-\_\_\_\_ approved by Tracy City Council on August 18, 2020.

**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: Chris Marks. Contractor shall not replace its Authorized Representative, ~~nor~~ 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 on August 18, 2020 and end on November 1, 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 \$160,000. 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:

Kul Sharma  
Utilities Director  
3900 Holly Drive  
Tracy, CA 95304

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

To Contractor:

Chris Marks  
Denali Water Solutions, LLC  
3031 Franklin Avenue  
Riverside, CA 92507

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

**14.3 Waivers.** Waiver of a breach or default under this Agreement shall not constitute a continuing waiver or a waiver of a subsequent breach of the same or any other provision of this Agreement.

**14.4 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.

**14.5 Jurisdiction and Venue.** The interpretation, validity, and enforcement of the Agreement shall be governed by and construed under the laws of the State of California. Any suit, claim, or legal proceeding of any kind related to this Agreement shall be filed and heard in a court of competent jurisdiction in the County of San Joaquin.

**14.6 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.

**14.6.1 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.

**14.6.2 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.).

**14.7 Business Entity Status.** Contractor is responsible for filing all required documents and/or forms with the California Secretary of State and meeting all requirements of the Franchise Tax Board, to the extent such requirements apply to Contractor. By entering into this Agreement, Contractor represents that it is 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**

By: Robert Rickman

Title: Mayor

Date: \_\_\_\_\_

Attest:

Adrienne Richardson, City Clerk

Approved as to form:

Leticia Ramirez, City Attorney

**Contractor**

Denali Water Solutions, LLC a Delaware limited  
liability company

By: Chris Marks

Title: Manager

Date: 8/04/20

Federal Employer Tax ID No. 26-1751745

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Exhibits:

- A      Scope of Work
- B      Compensation

## **EXHIBIT A**

The work to be done includes removing approximately 2,000 tons of biosolids that are currently stockpiled in or near the drying beds at the Wastewater Treatment Plant by loading, hauling, and disposing of the material to the acceptable site(s). The contractor shall provide certified mobile scales and weigh the trucks before leaving the plant site to determine the tonnage of biosolids hauled, or the contractor may have each truck weighed at a certified scale. The contractor shall conform to all applicable laws, rules, and regulations in performing this work. Care shall be taken not to damage any site improvements at the Wastewater Treatment Plant during the operation. Any damage shall be the Contractor's responsibility to repair. The biosolids will be in multiple piles. The City shall rank from first to last the order piles will be removed.

**EXHIBIT B**  
**COMPENSATION**

2,000 Wet Tons Biosolids Loading, Hauling and Disposal	\$62.50 per ton
Not to Exceed	\$160,000

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

APPROVING A GENERAL SERVICES AGREEMENT WITH DENALI WATER  
SOLUTIONS LLC, FOR THE PURPOSES OF LOADING, HAULING AND DISPOSING  
OF WASTEWATER TREATMENT BIOSOLIDS FOR FISCAL YEAR 2020-21

WHEREAS, The City of Tracy generates municipal biosolids, a nutrient rich organic material, at the Wastewater Treatment Plant as a by-product of the wastewater treatment, and

WHEREAS, The City engages the services of qualified haulers (vendors) to remove and dispose of this material out of San Joaquin County annually in accordance with all applicable Federal, State and local regulations, and

WHEREAS, On May 15, 2020, a Request for Proposals with relevant requirements was posted on the City's website. Various experienced vendors, transporters were also contacted to submit proposals, and

WHEREAS, Two proposals were received and opened at 2:00 p.m. on June 16, 2020, as follows:

<u>Vendor Name</u>	<u>Price/Ton</u>
Denali Water Solutions	\$62.50/ton
Environmental Logistics	\$98.00/ton

WHEREAS, Denali Water Solutions LLC, is the qualified proposer with the lowest cost and has good references and has completed such work with other agencies in a satisfactory manner, and

WHEREAS, A total of \$200,000 is available and estimated to be used in the Utilities wastewater operating budget for this service in FY 2020-21;

NOW, THEREFORE, BE IT RESOLVED, That the City Council of the City of Tracy hereby approves a General Services Agreement with Denali Water Solutions LLC, for the purposes of Loading, Hauling, and Disposing of Wastewater Treatment Biosolids for a not to exceed amount of \$160,000 at a rate of \$62.50 per ton for Fiscal Year 2020-21.

\* \* \* \* \*

The foregoing Resolution 2020-\_\_\_\_\_ was adopted by Tracy City Council on the 1<sup>st</sup> day of September, 2020, by the following vote:

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

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MAYOR

ATTEST:

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CITY CLERK

September 1, 2020

## AGENDA ITEM 1.G

### REQUEST

**APPROVE MASTER PROFESSIONAL SERVICES AGREEMENTS WITH VVH CONSULTING ENGINEERS AND KJELDSEN, SINNOCK, NEUDECK CIVIL ENGINEERS AND LAND SURVEYORS, INC. TO PROVIDE LAND SURVEYING SERVICES AND OTHER ENGINEERING SUPPORT SERVICES FOR CAPITAL IMPROVEMENT PROJECTS AND AUTHORIZE THE DEVELOPMENT SERVICES DIRECTOR TO EXECUTE FUTURE TASK ORDERS RELATED TO THE AGREEMENTS, FOR A NOT-TO-EXCEED AMOUNT OF \$200,000 FOR EACH CONSULTANT PER FISCAL YEAR**

### EXECUTIVE SUMMARY

This agenda item, with City Council approval, would approve Master Professional Services Agreements (MPSAs) with VVH Consulting Engineers and Kjeldsen, Sinnock, Neudeck (KSN) Civil Engineers and Land Surveyors, to retain each consultant for Land Surveying and other Engineering Support Services for the City's Capital Improvement Projects for a not-to-exceed amount of \$200,000 for each consultant per fiscal year.

### DISCUSSION

The City is working on several large Capital Improvement Projects (CIPs) that require surveying and engineering support services. Some of the projects include Sixth Street West of Tracy Boulevard Overlay, Lammers 20" Water Main, I-205 Lammers Road / Eleventh Street New Interchange, and the Detention 2B Stormwater Basin. These projects require land surveying services, which include topographic, construction and boundary surveying. The City of Tracy does not have the necessary staff or equipment to perform these tasks in-house and is recommending that the City contract out these services.

In accordance with the Tracy Municipal Code, Section 2.20.140, a Request for Proposals for Land Surveying Services Notice Inviting Proposals was posted on the City of Tracy's website on May 13, 2020.

Proposals were received from the following consultants:

R.E.Y. Engineers, Folsom, CA  
MacKay & Somps Engineers, Pleasanton, CA  
Mark Thomas, Sacramento, CA  
GDR Engineering, Ceres, CA  
VVH Consulting Engineers, Modesto, CA  
KSN Civil Engineers and Land Surveyors, Stockton, CA

Staff determined that the proposals by VVH Consulting Engineers and KSN Civil Engineers and Land Surveyors, Inc. were the most responsive to the City's needs.

City staff seeks the services of these Consultants to provide Right of Way Survey, Right of Way Calculations, pre-construction Records of Survey, Right of Way exhibits and Legal Descriptions, and post construction Monumentation and Records of Survey for approved CIP projects. The term of the MPSA is set to expire on June 30, 2021, with two (2) optional one (1) year extensions by the City Manager following a written determination that Consultants have satisfactorily met all the requirements of this Agreement.

### STRATEGIC PLAN

This agenda item supports the City of Tracy's Governance Strategic Priority, which is to provide an outstanding quality of life by enhancing the City's fiscal stability, retain and attract new talent, improve the use of technology, and enhance transparency for the betterment of the Tracy community.

### FISCAL IMPACT

Cost of required services for each Task Order issued under these MPSAs, will be paid from the Capital Improvement Projects Fund associated with the respective Project. For example, CIP 73175, funding for the Project came from Fund 242 and Fund 301. As part of the approved Project Design budget, Land Surveying services would be procured. These services may be required for a variety of projects that require base mapping or other surveying services. Projects that could typically require surveying services include roadway, water, sewer, drainage and/or for building construction projects. The Agreement is for a not-to-exceed amount of \$200,000 per consultant per fiscal year.

### RECOMMENDATION

Staff recommends that the City Council approve, by resolution, Master Professional Services Agreements with VVH Consulting Engineers and Kjeldsen, Sinnock, Neudeck Civil Engineers and Land Surveyors, Inc. for Land Surveying and other engineering support services for Capital Improvement Projects, and authorize the Development Services Director to execute future task orders related to the Agreements, for a not-to-exceed amount of \$200,000 for each consultant per fiscal year.

Prepared by: Ilene Macintire, PE, 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 – Master Professional Services Agreement with VVH Consulting Engineers  
Attachment B – Master Professional Services Agreement with KSN Civil Engineers and Land Surveyors

**CITY OF TRACY  
MASTER PROFESSIONAL SERVICES AGREEMENT WITH  
VVH CONSULTING ENGINEERS FOR LAND SURVEYING SERVICES FOR CAPITAL  
IMPROVEMENT PROJECTS (JULY 1, 2020 TO JUNE 30, 2021)**

This Master Professional Services Agreement (**Agreement**) is entered into between the City of Tracy, a municipal corporation (**City**), and VH Design Group, Inc., dba VVH Consulting Engineers, a California corporation (**Consultant**). City and Consultant are referred to individually as "Party" and collectively as "Parties."

**Recitals**

- A.** City desires to retain Consultant to perform Land Surveying Services and other Engineering Support Services for the period of July 1, 2020 to June 30, 2021.
- B.** On May 20, 2020, the City issued a Request for Proposals (RFP) for Land Surveying Services for Capital Improvement Projects (July 1, 2020 to June 30, 2023) (**Project**). On June 16, 2020, Consultant submitted its proposal for the Project to the City. City has determined that Consultant possesses the skills, experience and certification required to provide the services.
- C.** After negotiations between the City and Consultant, the Parties have reached an agreement for the performance of services in accordance with the terms set forth in this Agreement.
- D.** This Agreement is being executed pursuant to Resolution No. \_\_\_\_ approved by Tracy City Council on September 1, 2020.

**Now therefore, the Parties mutually agree as follows:**

**1. Scope of Work.** Consultant shall perform the services generally described in Exhibit "A" attached, and incorporated by reference, as directed by written Notice to Proceed by the City's City Engineer/ Assistant Development Services Director. The services shall be performed by, or under the direct supervision of, Consultant's Authorized Representative: **Ryan L Vance**, Consultant shall not replace its Authorized Representative, nor shall Consultant replace any of the personnel listed in Exhibit "A," nor shall Consultant use or replace any subcontractor or subconsultant, without City's prior written consent. A failure to obtain the City's prior written consent for any change or replacement in personnel or subcontractor/subconsultant may result in the termination of this Agreement.

**1.1 Non-Exclusive Agreement.** The City reserves the right to contract with other consultants providing the same or similar scope of services described above during the term of this Agreement. The City further reserves the right to, assign work, at its sole discretion, to consultants other than Consultant based on City's budget, experience, and skills of consultants based on the City's specific needs.

**2. Time of Performance.** Time is of the essence in the performance of services under this Agreement and the timing requirements set forth shall be strictly adhered to unless otherwise modified in writing in accordance with this Agreement. Consultant shall begin performance, and shall complete all required services no later than the dates set forth in each individual Notice to Proceed. Any services for which times for performance are not specified in each individual Notice to Proceed shall be started and completed by Consultant in a reasonably prompt and timely manner based upon the circumstances and direction communicated by the City to the Consultant. Consultant shall submit all requests for time extensions to the City in writing no later than ten days after the start of the condition which purportedly

caused the delay, and not later than the date on which performance is due. City shall grant or deny such requests at its sole discretion.

**2.1 Term.** The term of this Agreement shall begin on July 1, 2020 and end on June 30, 2021, unless terminated for any reason, including a lack of appropriated funds to compensate services provided under this Agreement, in accordance with Section 6. Any such termination of this Agreement due to failure of the City of Tracy Council to appropriate funds for payment for services under this Agreement shall not be a breach of the Agreement.

**2.1.1 Option to Extend.** This Agreement may be extended for an additional two (2) terms of one (1) years each by the City Manager following a written determination that Consultant has satisfactorily met all the requirements of this Agreement.

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

**3.1 Not to Exceed Amount.** Consultant's total compensation under this Agreement shall not exceed \$200,000 per fiscal year. For services performed by Consultant under this Agreement, City shall pay Consultant on a time and expense basis, at the billing rates set forth in Exhibit "B," attached and incorporated by reference. Billing rates may be adjusted in an amount not to exceed three (3.0%) percent per year, upon City's receipt of written notice from the Consultant. Consultant's billing rates shall cover all costs and expenses for Consultant's performance of this Agreement. No work shall be performed by Consultant in excess of the total compensation amount provided in this section without the City's prior written approval.

**3.2 Invoices.** Consultant shall submit monthly invoice(s) to the City that describe the services performed, including times, dates, and names of persons performing the services.

**3.2.1** If Consultant is providing services in response to a development application, separate invoice(s) must be issued for each application and each invoice shall contain the City's designated development application number.

**3.2.2** Consultant's failure to submit invoice(s) in accordance with these requirements may result in the City rejecting said invoice(s) and thereby delaying payment to Consultant.

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

**4. Indemnification.** Consultant shall, to the fullest extent permitted by law, indemnify, defend (with independent counsel approved by the City), and hold harmless the City from and against any claims arising out of Consultant's performance or failure to comply with obligations under this Agreement, except to the extent caused by the sole, active negligence or willful misconduct of the City.

In this section, "City" means the City, its officials, officers, agents, employees and volunteers; "Consultant" means the Consultant, its employees, agents and subcontractors; "Claims" includes claims, demands, actions, losses, damages, injuries, and liability, direct or indirect (including any and all related costs and expenses) and any allegations of these; and "Arising out of" includes "pertaining to" and "relating to".

(The duty of a "design professional" to indemnify and defend the City is limited to claims that arise out of, pertain to, or relate to the negligence, recklessness or willful misconduct of the design professional, under Civ. Code § 2782.8.)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

To City:

City of Tracy  
Ilene Macintire, Associate Civil Engineer  
333 Civic Center Plaza  
Tracy, CA 95376

To Consultant:

VVH Consulting Engineers  
Ryan L. Vance  
430 Tenth Street  
Modesto, CA 95354

With a copy to:

City Attorney  
333 Civic Center Plaza  
Tracy, CA 95376

**13. Miscellaneous.**

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

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

**13.3 Waivers.** Waiver of a breach or default under this Agreement shall not constitute a continuing waiver or a waiver of a subsequent breach of the same or any other provision of this Agreement.

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**13.5 Jurisdiction and Venue.** The interpretation, validity, and enforcement of the Agreement shall be governed by and construed under the laws of the State of California. Any suit, claim, or legal proceeding of any kind related to this Agreement shall be filed and heard in a court of competent jurisdiction in the County of San Joaquin.

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

**13.6.1 Prevailing Wage Laws.** Consultant is aware of the requirements of California Labor Code Section 1720, et seq., and 1770, et seq., as well as California Code of Regulations, Title 8, Section 16000, et seq., ("Prevailing Wage Laws"), which require the payment of prevailing wage rates; employment of apprentices (§ 1777.5), certified payroll records (§1776), hours of labor (§1813 and §1815), debarment of contractors and subcontractors (§1777.1) and the performance of other requirements on "public works" and "maintenance" projects. If the services being performed under this Agreement are part of a "public works" or "maintenance" project, as defined in the Prevailing Wage Laws, and if the total compensation is \$1,000 or more, Consultant agrees to fully comply with such Prevailing Wage Laws. These prevailing rates are on file with the City and are available online at <http://www.dir.ca.gov/DLSR>. Consultant shall defend, indemnify and hold the City, its officials, officers, employees and agents, harmless from any and all claims, costs, penalties, or interests arising out of any failure or alleged failure to comply with the Prevailing Wage Laws.

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

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

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

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

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

**[SIGNATURES ON FOLLOWING PAGE]**

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

**City of Tracy**

By: Robert Rickman

Title: Mayor

Date: \_\_\_\_\_

Attest:

Adrienne Richardson, City Clerk

Approved as to form:

Leticia M. Ramirez, City Attorney

**Consultant**

VH Design Group, Inc.

dba VVH Consulting Engineers, a

California corporation



By: Chris T. Vierra

Title: President

Date: 8-20-2020

Federal Employer Tax ID No. 27-2604454



By: Ryan Vance

Title: Treasurer

Date: 8/20/2020

**Exhibits:**

- A Scope of Work, including personnel and time of performance (See Agreement sections 1 and 2.)
- B Compensation (See Agreement section 3.)

**EXHIBIT "A"**  
**SCOPE OF SERVICES**

The general scope of services represents an outline of the services which the City anticipates to be performed in the Exhibit, but the precise Scope of Services to be incorporated into the Master Professional Services Agreement shall be more particularly described in each individual Notice to Proceed and shall be negotiated between the City and the Consultant.

**GENERAL SCOPE OF SERVICES**

**A. Right of Way Survey**

Consultant will perform a right of way survey for different Capital Improvement Projects. The survey will locate the Section Line, Right Way monuments and property boundary monuments of those parcels involved in right of way acquisition. Coordinates shall be based upon the City of Tracy Geodetic Control Network, California State Plane Coordinated System, Zone 3, NAD 83 (Epoch 2004.0)

**B. Right of Way Calculations**

Consultant will utilize preliminary title reports on the proposed parcels (furnished by the City of Tracy), as well as road design information research record maps, city and County right of way records, and individual property deeds. Consultant will prepare the existing conditions right of way mapping and indicate discrepancies between surveys and record information and identify areas of right of way takes, including and temporary construction easements, to be acquired.

**C. Pre-Construction Record of Survey**

In consideration of monument preservation, Consultant will prepare and file a Record of Survey (or Corner Record) identifying the location of such property corners and other survey monuments that have the potential to be disturbed or destroyed by construction.

**D. Right of Way Exhibits**

Consultant will prepare Legal Descriptions (marked as Exhibit "A") and Right of Way Plat Maps (marked as Exhibit "B") for each parcel involved in right of way acquisition. Exhibits shall be used for attachment to acquisition documents prepared by others and suitable for recording with the County Recorder.

**E. Right of Way Monumentation/Record of Survey**

Upon completion of construction, Consultant will place right of way monuments to perpetuate the location of acquired right of way, and prepare and file a Record of Survey of such monumentation.

**PERSONNEL**

Chris Vierra, P.E.	Principal Engineer
Ryan Vance, PLS	Principal Surveyor
Kaiser Shahbaz, PLS	Senior Land Surveyor
Casey Barkman	Project Manager
Aaron Casados, QSP	Survey Party Chief
Matt Tornquist	Survey Party Chief
Rick DeCamera, QSP	Survey Party Chief, Survey Technician

**Exhibit “B”**

**Billing Rates**  
(Effective January 1, 2020)

**ENGINEERING:**

Principal	\$180.00
Senior Project Manager	\$165.00
Project Manager	\$145.00
Senior Civil Engineer	\$165.00
Civil Engineer	\$145.00
Senior Land Surveyor	\$165.00
Land Surveyor	\$145.00
Senior Designer	\$135.00
Designer	\$125.00
Drafter	\$ 95.00
Administrative / Clerical	\$ 80.00
1-Person Survey Crew	\$135.00
2-Person Survey Crew	\$190.00
3-Person Survey Crew	\$250.00
Investigative / Expert Witness*	\$400.00
Professional Consultation*	\$400.00

**EXPENSE ITEM:**

Additional Bond Plot, Black & White	\$0.30 / sf
Additional Bond Plot, Color	\$0.50 / sf
Additional Vellum Plot, Black & White	\$1.00 / sf
Additional Mylar Plot, Black & White	\$5.00 / sf
U.S. Mail Transmittal	No Fee
FedEx, UPS, or Other Courier Transmittal	Cost + 15%
Vehicle Mileage (excludes survey crews)	Current IRS Standard Rate + 15%

\*Fees for investigative services, expert witness, and professional consultation are generally not applicable to projects involving the preparation of plans or specifications for construction projects.

**CITY OF TRACY**  
**MASTER PROFESSIONAL SERVICES AGREEMENT WITH**  
**KJELDSEN, SINNOCK & NEUDECK, INC., FOR LAND SURVEYING SERVICES FOR CAPITAL**  
**IMPROVEMENT PROJECTS**  
**(JULY 1, 2020 TO JUNE 30, 2021)**

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

**Recitals**

- A. City desires to retain Consultant to perform Land Surveying Services and other Engineering Support Services for the period of July 1, 2020 to June 30, 2021; and
- B. On May 20, 2020, the City issued a Request for Proposals (RFP) for Land Surveying Services for Capital Improvement Projects (July 1, 2020 to June 30, 2021) (Project). On June 16, 2020, Consultant submitted its proposal for the Project to the City. City has determined that Consultant possesses the skills, experience and certification required to provide the services."]
- C. After negotiations between the City and Consultant, the Parties have reached an agreement for the performance of services in accordance with the terms set forth in this Agreement.
- D. This Agreement is being executed pursuant to Resolution No. \_\_\_\_ approved by Tracy City Council on Sept 1, 2020.

**Now therefore, the Parties mutually agree as follows:**

**1. Scope of Work.** Consultant shall perform the services generally described in Exhibit "A" attached, and incorporated by reference, as directed by written Notice to Proceed by the City's City Engineer/Assistant Development Services Director. The services shall be performed by, or under the direct supervision of, Consultant's Authorized Representative: **Stephen K. Sinnock**, Consultant shall not replace its Authorized Representative, nor shall Consultant replace any of the personnel listed in Exhibit "A," nor shall Consultant use or replace any subcontractor or subconsultant, without City's prior written consent. A failure to obtain the City's prior written consent for any change or replacement in personnel or subcontractor/subconsultant may result in the termination of this Agreement.

**1.1 Non-Exclusive Agreement.** The City reserves the right to contract with other consultants providing the same or similar scope of services described above during the term of this Agreement. The City further reserves the right to, assign work, at its sole discretion, to consultants other than Consultant based on City's budget, experience, and skills of consultants based on the City's specific needs.

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

**2.1 Term.** The term of this Agreement shall begin on July 1, 2020 and end on June 30, 2021, unless terminated for any reason, including a lack of appropriated funds to compensate services provided under this Agreement, in accordance with Section 6. Any such termination of this Agreement due to failure of the City of Tracy Council to appropriate funds for payment for services under this Agreement shall not be a breach of the Agreement.

**2.1.1 Option to Extend.** This Agreement may be extended for an additional two (2) terms of one (1) year by the City Manager following a written determination that Consultant has satisfactorily met all the requirements of this Agreement.

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

**3.1 Not to Exceed Amount.** Consultant's total compensation under this Agreement shall not exceed \$200,000 per fiscal year. For services performed by Consultant under this Agreement, City shall pay Consultant on a time and expense basis, at the billing rates set forth in Exhibit "B," attached and incorporated by reference. Billing rates may be adjusted in an amount not to exceed three (3.0%) percent per year, upon City's receipt of written notice from the Consultant. Consultant's billing rates shall cover all costs and expenses for Consultant's performance of this Agreement. No work shall be performed by Consultant in excess of the total compensation amount provided in this section without the City's prior written approval.

**3.2 Invoices.** Consultant shall submit monthly invoice(s) to the City that describe the services performed, including times, dates, and names of persons performing the services.

**3.2.1** If Consultant is providing services in response to a development application, separate invoice(s) must be issued for each application and each invoice shall contain the City's designated development application number.

**3.2.2** Consultant's failure to submit invoice(s) in accordance with these requirements may result in the City rejecting said invoice(s) and thereby delaying payment to Consultant.

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

**4. Indemnification.** Consultant shall, to the fullest extent permitted by law, indemnify, defend (with independent counsel approved by the City), and hold harmless the City from and against any claims arising out of Consultant's performance or failure to comply with obligations under this Agreement, except to the extent caused by the sole, active negligence or willful misconduct of the City.

In this section, "City" means the City, its officials, officers, agents, employees and volunteers; "Consultant" means the Consultant, its employees, agents and subcontractors; "Claims" includes claims, demands, actions, losses, damages, injuries, and liability, direct or indirect (including any and all related costs and expenses) and any allegations of these; and "Arising out of" includes "pertaining to" and "relating to".

(The duty of a "design professional" to indemnify and defend the City is limited to claims that arise out of, pertain to, or relate to the negligence, recklessness or willful misconduct of the design professional, under Civ. Code § 2782.8.)

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

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

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

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To City:

City of Tracy  
Ilene Macintire, Associate Civil Engineer  
333 Civic Center Plaza  
Tracy, CA 95376

To Consultant:

Kjeldsen, Sinnock & Neudeck, Inc.  
Stephen K. Sinnock  
711 N Pershing Avenue  
Stockton, CA 95203

With a copy to:

City Attorney  
333 Civic Center Plaza  
Tracy, CA 95376

### **13. Miscellaneous.**

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

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

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

**[SIGNATURES ON FOLLOWING PAGE]**

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

**City of Tracy**

By: Robert Rickman  
Title: Mayor

Date: \_\_\_\_\_

Attest:

Adrianne Richardson, City Clerk

Approved as to form:

Leticia M. Ramirez, City Attorney

**Exhibits:**

- A      Scope of Work, including personnel and time of performance (See Agreement sections 1 and 2.)
- B      Compensation (See Agreement section 3.)

**Consultant**

Kjeldsen, Sinnock & Neudeck, Inc.  
a California corporation

By: Stephen K Sinnock  
Title: President

Date: 8/7/2020

Federal Employer Tax ID No. 94-2877535



By: Kris F Nehmer  
Title: Project Manager

Date: 8/7/2020

## **EXHIBIT “A” SCOPE OF SERVICES**

The general scope of services represents an outline of the services which the City anticipates to be performed in the Exhibit, but the precise Scope of Services to be incorporated into the Master Professional Services Agreement shall be more particularly described in each individual Task Order and shall be negotiated between the City and the Consultant.

### **GENERAL SCOPE OF SERVICES**

#### **A. Right of Way Survey**

Consultant will perform a right of way survey for different Capital Improvement Projects. The survey will locate the Section Line, Right Way monuments and property boundary monuments of those parcels involved in right of way acquisition. Coordinates shall be based upon the City of Tracy Geodetic Control Network, California State Plane Coordinated System, Zone 3, NAD 83 (Epoch 2004.0)

#### **B. Right of Way Calculations**

Consultant will utilize preliminary title reports on the proposed parcels (furnished by the City of Tracy), as well as road design information research record maps, city and County right of way records, and individual property deeds. Consultant will prepare the existing conditions right of way mapping and indicate discrepancies between surveys and record information and identify areas of right of way takes, including and temporary construction easements, to be acquired.

#### **C. Pre-Construction Record of Survey**

In consideration of monument preservation, Consultant will prepare and file a Record of Survey (or Corner Record) identifying the location of such property corners and other survey monuments that have the potential to be disturbed or destroyed by construction.

#### **D. Right of Way Exhibits**

Consultant will prepare Legal Descriptions (marked as Exhibit “A”) and Right of Way Plat Maps (marked as Exhibit “B”) for each parcel involved in right of way acquisition. Exhibits shall be used for attachment to acquisition documents prepared by others and suitable for recording with the County Recorder.

#### **E. Right of Way Monumentation/Record of Survey**

Upon completion of construction, Consultant will place right of way monuments to perpetuate the location of acquired right of way, and prepare and file a Record of Survey of such monumentation.

### **PERSONNEL**

Stephen Sinnock, P.E.	Principal In Charge/ Contract Manager
Kris Nehmer, PLS	Land Surveying Services Manager
Jeff Kjeldsen, P.E., PLS	Project Surveyor
Brett Setness, PLS	Boundary & ROW Project Manager
Brian Frame	Survey Party Chief
Joseph Pilatti	Assistant Survey Party Chief
Carina Solorio	Engineering Technician Surveying Support

**EXHIBIT “B”  
COMPENSATION**

**2020 / 2021 FEE SCHEDULE PREVAILING  
WAGE PROJECTS Effective July 1, 2020**

<b><u>Position</u></b>	<b><u>Hourly Rate</u></b>
Principal Engineer	\$263.00
Associate Engineer	\$237.00
Senior Engineer	\$211.00
Engineer II	\$191.00
Engineer I	\$180.00
Junior Engineer	\$149.00
Senior Surveyor	\$216.00
Surveyor	\$185.00
Assistant Surveyor	\$155.00
Field Crew-One Man & Vehicle	\$211.00
Field Crew-Two Man & Vehicle	\$319.00
Inspector	\$167.00
Inspector & Vehicle	\$196.00
Senior Project Manager	\$235.00
Project Manager	\$201.00
Assistant Project Manager	\$180.00
Grant Manager	\$155.00
GIS/CAD Technician III	\$149.00
GIS/CAD Technician II	\$129.00
GIS/CAD Technician I	\$ 98.00
Project Accountant	\$140.00
Administrative III	\$108.00
Administrative II	\$ 93.00
Administrative I	\$ 77.00
<b><u>Equipment</u></b>	<b><u>Hourly Rate</u></b>
3D Point Cloud Work Station	\$ 25.00
GPS Receiver-Per Receiver Per Hour	\$ 25.00
Robotic Total Station	\$ 35.00
HDS Scanner	\$150.00
Boat	\$ 55.00
<b><u>Expenses</u></b>	
Auto Mileage per current Federal Rates	
Special Consultants	Cost Plus 10%
Reimbursable Expenses (Printing, Photos, Copies, Travel, Telephone, Fax, Survey Materials, etc.)	Cost Plus 10%

Additional charges may apply for overtime services

Fees are due and payable within 30 days from the date of billing.

Fees past due may be subject to a finance charge computed on the basis of 1 1/2 % of the unpaid balance  
per month .

Hourly rates are subject to review and adjustment July 1st of each year.

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

APPROVING MASTER PROFESSIONAL SERVICES AGREEMENTS VVH CONSULTING  
ENGINEERS AND KJELDSEN, SINNOCK, NEUDECK CIVIL ENGINEERS AND LAND  
SURVEYORS, INC. TO PROVIDE LAND SURVEYING SERVICES AND OTHER  
ENGINEERING SUPPORT SERVICES FOR CAPITAL IMPROVEMENT PROJECTS, AND  
AUTHORIZING THE DEVELOPMENT SERVICES DIRECTOR TO EXECUTE FUTURE TASK  
ORDERS RELATED TO THE AGREEMENTS, FOR A NOT-TO-EXCEED AMOUNT OF  
\$200,000 FOR EACH CONSULTANT PER FISCAL YEAR

WHEREAS, A number of the City's Capital Improvement Projects require Land Surveying and Engineering Support Services, and

WHEREAS, The City of Tracy requires the support of a Professional Land Surveyor to perform these tasks to support City Staff and is recommending that we contract out these services, and

WHEREAS, In accordance with Tracy Municipal Code, Section 2.20, a Request for Proposals for Land Surveying Services Notice Inviting Proposals was posted on the City of Tracy's website on May 13, 2020, and

WHEREAS, The City received six proposals from known firms to provide required services, and after extensive review staff selected two firms to enter into agreements to provide required services, and

WHEREAS, The terms for these agreements are for a period of one year and can be extended for an additional year, two times, by the Development Services Director following a written determination that Consultant has satisfactorily met all the requirements of this Agreement, and

WHEREAS, VVH Consulting Engineers and Kjeldsen, Sinnock, Neudeck Civil Engineers and Land Surveyors, Inc. were found to be the most qualified consultants, and

WHEREAS, Cost of required services will be paid from Capital Improvement Projects;

NOW, THEREFORE, BE IT RESOLVED, That the City Council of the City of Tracy, hereby approves the Master Professional Services Agreements with VVH Engineering Consultants and Kjeldsen, Sinnock, Neudeck Civil Engineers and Land Surveyors, Inc. to provide Land Surveying Services and other Engineering Support Services for Capital Improvement projects, and authorizes the Development Services Director to execute future Task Orders related to the Agreements, with an annual not-to-exceed amount \$200,000 for each consultant per fiscal year.

\*\*\*\*\*

The foregoing Resolution 2020-\_\_\_\_\_ was adopted by the Tracy City Council on the 1<sup>st</sup> day of September, 2020, by the following vote:

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

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MAYOR

ATTEST:

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CITY CLERK

September 1, 2020

## AGENDA ITEM 1.H

### REQUEST

**APPROVE MASTER PROFESSIONAL SERVICES AGREEMENTS WITH WEST YOST & ASSOCIATES, BLACK WATER CONSULTING ENGINEERS, INC., AND BENNETT ENGINEERING SERVICES, INC. TO PROVIDE WATER PRESSURE AND CAPACITY ANALYSES AND ENGINEERING SERVICES FOR LAND DEVELOPMENT PROJECTS, AND AUTHORIZE THE DEVELOPMENT SERVICES DIRECTOR TO ISSUE FUTURE NOTICES TO PROCEED RELATED TO THE AGREEMENTS, FOR A NOT-TO-EXCEED AMOUNT OF \$200,000 FOR EACH CONSULTANT PER CALENDAR YEAR**

### EXECUTIVE SUMMARY

This agenda item, with City Council approval, would approve Master Professional Services Agreements (MPSAs) with West Yost & Associates, Black Water Consulting Engineers, Inc., and Bennett Engineering Services, Inc. to retain each consultant for water pressure and capacity analyses and engineering services for a not-to-exceed amount of \$200,000 for each consultant per calendar year.

### DISCUSSION

The Development Services Department staff is working with various developers on a large number of entitlement applications, most of which include the need for engineering analyses and other engineering assistance. Some examples include on-going development in the Cordes Ranch Specific Plan (aka International Park of Commerce), Northeast Industrial, I-205 Corridor, Tracy Hills, Ellis, Avenues, Tracy Villages, minor subdivisions, and various other development projects. Some proposed projects require water pressure and capacity review.

On July 18, 2019, the City issued a Request for Proposals (RFP) for Water Pressure and Capacity and Engineering Services for Land Development Projects. On August 27, 2019, West Yost & Associates, Black Water Consulting Engineers, Inc., and Bennett Engineering Services, Inc. and five other firms submitted their proposal for this Project to the City. From this RFP, three “on-call” consultants were selected to deliver water pressure and capacity analyses and engineering services to the City. After negotiations between the City and the consultants, the parties reached an agreement for the performance of services and said services are in accordance with the terms set forth in the MPSA, with an annual not-to-exceed amount of \$200,000 per consultant.

City staff seeks the services of these consultants to assist staff in the review of developers' development projects in terms of water pressure and water capacity. Lastly, the terms of the MPSA is set to expire on June 30, 2023, with an optional one-year extension by the City Manager following a written determination that Consultant has satisfactorily met all the requirements of the agreement.

## STRATEGIC PLAN

This agenda item supports the City of Tracy's Governance Strategic Priority, which is to provide an outstanding quality of life by enhancing the City's fiscal stability, retain and attract new talent, improve the use of technology, and enhance transparency for the betterment of the Tracy community.

## FISCAL IMPACT

The cost of the work performed by consultants will be captured through developer contributions. The developer contributions include Cost Recovery Agreements, plan-check fees, and/or other fees per the City's Master Fee Schedule. It should be noted that Cost Recovery Agreements cover the costs of staff time and consultant work related to each project.

## RECOMMENDATION

Staff recommends that the City Council approve, by resolution, Master Professional Services Agreements with West Yost & Associates, Black Water Consulting Engineers, Inc., and Bennett Engineering Services, Inc. for water pressure and capacity analyses and engineering services for land development projects, and authorize the Development Services Director to issue future notices to proceed related to the Agreements, for a not-to-exceed amount of \$200,000 for each consultant per calendar year.

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 – Master Professional Services Agreement with West Yost & Associates

Attachment B – Master Professional Services Agreement with Black Water Consulting Engineers, Inc.

Attachment C – Master Professional Services Agreement with Bennett Engineering Services, Inc.

**CITY OF TRACY**  
**MASTER PROFESSIONAL SERVICES AGREEMENT WITH**  
**WEST YOST & ASSOCIATES, INC. FOR WATER PRESSURE AND CAPACITY ANALYSES,**  
**AND ENGINEERING ASSISTANCE**

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

**Recitals**

- A.** City desires to retain Consultant for water pressure and capacity analyses engineering assistance for land development projects; and
- B.** On July 18, 2019, the City issued a Request for Proposals (RFP) for Water Pressure and Capacity Analyses (Project). On August 27, 2019, Consultant submitted its proposal for the Project to the City. City has determined that Consultant possesses the skills, experience and certification required to provide the services.
- C.** After negotiations between the City and Consultant, the Parties have reached an agreement for the performance of services in accordance with the terms set forth in this Agreement.
- D.** This Agreement is being executed pursuant to Resolution No. \_\_\_\_\_ approved by Tracy City Council on \_\_\_\_\_, 2020.

**Now therefore, the Parties mutually agree as follows:**

- 1. Scope of Work.** Consultant shall perform the services generally described in Exhibit "A" attached, and incorporated by reference, as directed by written Notice to Proceed by the City's Development Services Director. The services shall be performed by, or under the direct supervision of, Consultant's Authorized Representative: Elizabeth T. Drayer, P.E. Consultant shall not replace its Authorized Representative, nor shall Consultant replace any of the personnel listed in Exhibit "A," nor shall Consultant use or replace any subcontractor or subconsultant, without City's prior written consent. A failure to obtain the City's prior written consent for any change or replacement in personnel or subcontractor/subconsultant may result in the termination of this Agreement.

**1.1 Non-Exclusive Agreement.** The City reserves the right to contract with other consultants providing the same or similar scope of services described above during the term of this Agreement. The City further reserves the right to, assign work, at its sole discretion, to consultants other than Consultant based on City's budget, experience, and skills of consultants based on the City's specific needs.

- 2. Time of Performance.** Time is of the essence in the performance of services under this Agreement and the timing requirements set forth shall be strictly adhered to unless otherwise modified in writing in accordance with this Agreement. Consultant shall begin performance, and shall complete all required services no later than the dates set forth in each individual Notice to Proceed. Any services for which times for performance are not specified in each individual Notice to Proceed shall be started and completed by Consultant in a reasonably prompt and timely manner based upon the circumstances and direction communicated by the City to the

Consultant. Consultant shall submit all requests for time extensions to the City in writing no later than ten days after the start of the condition which purportedly caused the delay, and not later than the date on which performance is due. City shall grant or deny such requests at its sole discretion.

**2.1 Term.** The term of this Agreement shall begin on July 1, 2020 and end on June 30, 2023, unless terminated in accordance with Section 6.

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

**3.1 Not to Exceed Amount.** Consultant's total compensation under this Agreement shall not exceed \$200,000 per calendar year. Consultant's billing rates shall cover all costs and expenses for Consultant's performance of this Agreement. Effective January 1, 2021, Consultant's billing rates under this Agreement may be annually increased in January of each year by the lesser of 3% or the annual increase in the Cost of Living Index – All Items, for the Sacramento Metropolitan Region. No work shall be performed by Consultant in excess of the total compensation amount provided in this section without the City's prior written approval.

**3.2 Invoices.** Consultant shall submit monthly invoice(s) to the City that describe the services performed, including times, dates, and names of persons performing the services.

**3.2.1** If Consultant is providing services in response to a development application, separate invoice(s) must be issued for each application and each invoice shall contain the City's designated development application number.

**3.2.2** Consultant's failure to submit invoice(s) in accordance with these requirements may result in the City rejecting said invoice(s) and thereby delaying payment to Consultant.

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

**4. Indemnification.** Consultant shall, to the fullest extent permitted by law, indemnify, defend (with independent counsel approved by the City), and hold harmless the City from and against any claims arising out of Consultant's performance or failure to comply with obligations under this Agreement, except to the extent caused by the sole, active negligence or willful misconduct of the City.

In this section, "City" means the City, its officials, officers, agents, employees and volunteers; "Consultant" means the Consultant, its employees, agents and subcontractors; "Claims" includes claims, demands, actions, losses, damages, injuries, and liability, direct or indirect (including any and all related costs and expenses) and any allegations of these; and "Arising out of" includes "pertaining to" and "relating to".

(The duty of a "design professional" to indemnify and defend the City is limited to claims that arise out of, pertain to, or relate to the negligence, recklessness or willful misconduct of the design professional, under Civ. Code § 2782.8.)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

To City:

To Consultant:

Development Services Department  
Attn: City Engineer  
333 Civic Center Plaza  
Tracy, CA 95337

West Yost & Associates  
Attn: Elizabeth T. Drayer, P.E.  
2020 Research Drive, Suite 100  
Davis CA 95618

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

**13. Miscellaneous.**

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

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

**13.3 Waivers.** Waiver of a breach or default under this Agreement shall not constitute a continuing waiver or a waiver of a subsequent breach of the same or any other provision of this Agreement.

**13.4 Assignment and Delegation.** Consultant may not assign, transfer or delegate this Agreement or any portion of it without the City's written consent. Any attempt to do so will be void. City's consent to one assignment shall not be deemed to be a consent to any subsequent assignment.

**13.5 Jurisdiction and Venue.** The interpretation, validity, and enforcement of the Agreement shall be governed by and construed under the laws of the State of California. Any suit, claim, or legal proceeding of any kind related to this Agreement shall be filed and heard in a court of competent jurisdiction in the County of San Joaquin.

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

**13.6.1 Prevailing Wage Laws.** Consultant is aware of the requirements of California Labor Code Section 1720, et seq., and 1770, et seq., as well as California Code of Regulations, Title 8, Section 16000, et seq., ("Prevailing Wage Laws"), which require the payment of prevailing wage rates; employment of apprentices (§ 1777.5), certified payroll records (§1776), hours of labor (§1813 and §1815), debarment of contractors and subcontractors (§1777.1) and the performance of other requirements on "public works" and "maintenance" projects. If the services being performed under this Agreement are part of a "public works" or "maintenance" project, as defined in the Prevailing Wage Laws, and if the total compensation is \$1,000 or more, Consultant agrees to fully comply with such Prevailing Wage Laws. These prevailing rates are on file with the City and are available online at <http://www.dir.ca.gov/DLSR>. Consultant shall defend, indemnify and hold the City, its officials, officers, employees and agents, harmless from any and all claims, costs, penalties, or interests arising out of any failure or alleged failure to comply with the Prevailing Wage Laws.

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

**13.7 Business Entity Status.** Consultant is responsible for filing all required documents and/or forms with the California Secretary of State and meeting all requirements of the Franchise Tax Board, to the extent such requirements apply to Consultant. By entering into this Agreement, Consultant represents that it is not a suspended corporation. If Consultant is a suspended corporation at the time it enters this Agreement, City may take steps to have this Agreement declared voidable.

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

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

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

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

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

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

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

**[SIGNATURES ON FOLLOWING PAGE]**

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

**City of Tracy**

By: Robert Rickman  
Title: Mayor  
Date: \_\_\_\_\_

Attest:

Adrienne Richardson, City Clerk

Approved as to form:

Leticia M. Ramirez, City Attorney

**Exhibits:**

- A      Scope of Work, including personnel and time of performance (See Agreement sections 1 and 2.)
- B      Compensation (See Agreement section 3.)

**Consultant**  
West Yost & Associates

  
By: Charles T. Duncan  
Title: Chief Executive  
Date: 7.15.2020

Federal Employer Tax ID No. 68-0370826

  
By: John Goodwin  
Title: Assistant Treasurer  
Date: 7-15-20

**EXHIBIT A - Scope of Work**

**MASTER PROFESSIONAL SERVICES AGREEMENT WITH  
WEST YOST AND ASSOCIATES, INC. FOR WATER PRESSURE AND CAPACITY  
ANALYSES, AND ENGINEERING ASSISTANCE**

Consultant shall provide Professional Services for the following:

1. Conduct/perform water pressure and capacity studies, in connection with private land development projects within City limits and its sphere of influence, of off-site water plans, assess a development's water infrastructure impacts on the City's water system, assure adequate pressure and flow for domestic use and fire safety. The Consultant may be tasked to perform the following professional services, among others:
  - a. Conduct/perform water pressure and capacity modeling and calculations. The studies shall conform with the Water System Master Plan, any edition, its Updates, associated Specific Plan, if any, the Urban Water Management Plan, and City of Tracy Design Documents.
  - b. Conduct/perform water supplies studies.
  - c. Conduct/perform the feasibility of a Project's ability to use recycled water infrastructure.
2. Peer-review water pressure and capacity studies including review for technical accuracy of data and analyses methods and proposed mitigations provided by private land development projects against the items cited below. The Consultant may be tasked to perform the following professional services, among others:
  - a. Review water pressure and capacity modeling and calculations. Confirm that the Developer's studies conforms with the Water System Master Plan, any edition, its Updates, associated Specific Plan, if any, the Urban Water Management Plan, and City of Tracy Design Documents.
  - b. Review water supplies studies.
  - c. Review the feasibility of a Project's ability to use recycled water infrastructure.
3. In both conducted/Performed and peer-reviewed studies, Consultant shall identify potential trigger points requiring construction of off-site Water System Master Plan ("Program") capital improvements within the pressure zone and the City and determine project's fair share of such capital improvements.
4. In both conducted/Performed and peer-reviewed studies, Consultant shall identify and recommend Project on-site water pipeline infrastructure sizing and alignment modifications and/or other off-site system modifications to mitigate any Project design deficiencies identified above.

- 5 To properly document the findings of the Project's water pressure and capacity studies, the Consultant will deliver a Technical Memorandum to the CITY summarizing the project, the methodology, document any recommended system modifications, identify potential impacts on drainage infrastructure, and recommend mitigations of those impacts.
- 5 Consultant may have to attend meetings, Public Hearings, Planning Commission, and/or City Council meetings.
- 6 Plan-check developer's improvement plans to confirm compliance with the water pressure and capacity study and required mitigations. Review project plans and specifications for technical accuracy and conformance with the City of Tracy Design Standards, Standard Plans, and Standard Specifications.
- 7 If requested, Consultant may be requested to inspect during construction and after construction.
- 8 Other tasks as assigned.

**Deadlines:**

Responses to Request for Quotes with delivery schedule: seven (7) calendar days  
Submittal of Deliverables: By the delivery date on the Consultant provided delivery schedule. If needed, Consultant will be given a seven (7) calendar day grace period.

**Staff Members:**

Charles Duncan, P.E.  
Elizabeth Drayer, P.E.  
Jim Connell, P.E.  
Amy Kwong, P.E.  
Jeff Wanlass, P.E.  
Jack Harbour, P.E.  
Nathaniel Homan, P.E.  
Roger Chu, P.E.  
Tess Hoang, E.I.T.



# 2020 Billing Rate Schedule

(Effective January 1, 2020 through December 31, 2020) \*

EXHIBIT B -  
Compensation

POSITIONS	LABOR CHARGES (DOLLARS PER HR)
<b>ENGINEERING</b>	
Principal/Vice President	\$298
Engineering/Scientist/Geologist Manager I / II	\$283 / \$295
Principal Engineer/Scientist/Geologist I / II	\$257 / \$272
Senior Engineer/Scientist/Geologist I / II	\$230 / \$241
Associate Engineer/Scientist/Geologist I / II	\$198 / \$212
Engineer/Scientist/Geologist I / II	\$160 / \$185
Engineering Aide	\$92
Administrative I / II / III / IV	\$81 / \$102 / \$123 / \$135
<b>ENGINEERING TECHNOLOGY</b>	
Engineering Tech Manager I / II	\$291 / \$294
Principal Tech Specialist I / II	\$268 / \$279
Senior Tech Specialist I / II	\$245 / \$256
Senior GIS Analyst	\$224
GIS Analyst	\$211
Technical Specialist I / II / III / IV	\$156 / \$178 / \$200 / \$223
Technical Analyst I / II	\$112 / \$134
Technical Analyst Intern	\$90
Cross-Connection Control Specialist I / II / III / IV	\$117 / \$127 / \$143 / \$159
CAD Manager	\$178
CAD Designer I / II	\$138 / \$155
<b>CONSTRUCTION MANAGEMENT</b>	
Senior Construction Manager	\$289
Construction Manager I / II / III / IV	\$174 / \$186 / \$198 / \$251
Resident Inspector (Prevailing Wage Groups 4 / 3 / 2 / 1)	\$152 / \$169 / \$188 / \$196
Apprentice Inspector	\$138
CM Administrative I / II	\$74 / \$99
Field Services	\$196

- Hourly rates include Technology and Communication charges such as general and CAD computer, software, telephone, routine in-house copies/prints, postage, miscellaneous supplies, and other incidental project expenses.
- Outside Services such as vendor reproductions, prints, shipping, and major West Yost reproduction efforts, as well as Engineering Supplies, etc. will be billed at actual cost plus 15%.
- Mileage will be billed at the current Federal Rate and Travel will be billed at cost.
- Subconsultants will be billed at actual cost plus 10%.
- Expert witness, research, technical review, analysis, preparation and meetings billed at 150% of standard hourly rates. Expert witness testimony and depositions billed at 200% of standard hourly rates.
- A Finance Charge of 1.5% per month (an Annual Rate of 18%) on the unpaid balance will be added to invoice amounts if not paid within 45 days from the date of the invoice.



## 2020 Billing Rate Schedule (continued)

(Effective January 1, 2020 through December 31, 2020) \*

### Equipment Charges

EQUIPMENT	BILLING RATES
Gas Detector	\$80/day
Hydrant Pressure Gauge	\$10/day
Hydrant Pressure Recorder, Standard	\$40/day
Hydrant Pressure Recorder, Impulse (Transient)	\$55/day
Trimble GPS – Geo 7x	\$220/day
Vehicle	\$10/hour
Water Flow Probe Meter	\$20/day
Water Quality Multimeter	\$185/day
Well Sounder	\$30/day

**CITY OF TRACY**  
**MASTER PROFESSIONAL SERVICES AGREEMENT WITH**  
**BLACK WATER CONSULTING ENGINEERS, INC. FOR WATER PRESSURE AND CAPACITY**  
**ANALYSES, AND ENGINEERING ASSISTANCE**

This Master Professional Services Agreement (**Agreement**) is entered into between the City of Tracy, a municipal corporation (**City**), and **Black Water Consulting Engineers, Inc.** a California corporation (**Consultant**). City and Consultant are referred to individually as "Party" and collectively as "Parties."

**Recitals**

- A. City desires to retain Consultant for water pressure and capacity analyses engineering assistance for land development projects; and
- B. On July 18, 2019, the City issued a Request for Proposals (RFP) for Water Pressure and Capacity Analyses (**Project**). On August 27, 2019, Consultant submitted its proposal for the Project to the City. City has determined that Consultant possesses the skills, experience and certification required to provide the services.
- C. After negotiations between the City and Consultant, the Parties have reached an agreement for the performance of services in accordance with the terms set forth in this Agreement.
- D. This Agreement is being executed pursuant to Resolution No. \_\_\_\_\_ approved by Tracy City Council on \_\_\_\_\_, 2020.

**Now therefore, the Parties mutually agree as follows:**

**1. Scope of Work.** Consultant shall perform the services generally described in Exhibit "A" attached, and incorporated by reference, as directed by written Notice to Proceed by the City's Development Services Director. The services shall be performed by, or under the direct supervision of, Consultant's Authorized Representative: Jeffrey Madsen Black, P.E.. Consultant shall not replace its Authorized Representative, nor shall Consultant replace any of the personnel listed in Exhibit "A," nor shall Consultant use or replace any subcontractor or subconsultant, without City's prior written consent. A failure to obtain the City's prior written consent for any change or replacement in personnel or subcontractor/subconsultant may result in the termination of this Agreement.

**1.1 Non-Exclusive Agreement.** The City reserves the right to contract with other consultants providing the same or similar scope of services described above during the term of this Agreement. The City further reserves the right to, assign work, at its sole discretion, to consultants other than Consultant based on City's budget, experience, and skills of consultants based on the City's specific needs.

**2. Time of Performance.** Time is of the essence in the performance of services under this Agreement and the timing requirements set forth shall be strictly adhered to unless otherwise modified in writing in accordance with this Agreement. Consultant shall begin performance, and shall complete all required services no later than the dates set forth in each individual Notice to Proceed. Any services for which times for performance are not specified in each individual Notice to Proceed shall be started and completed by Consultant in a reasonably prompt and timely manner based upon the circumstances and direction communicated by the City to the Consultant. Consultant shall submit all requests for time extensions to the City in writing no later than ten days after the start of the condition which purportedly

caused the delay, and not later than the date on which performance is due. City shall grant or deny such requests at its sole discretion.

**2.1 Term.** The term of this Agreement shall begin on July 1, 2020 and end on June 30, 2023, unless terminated in accordance with Section 6.

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

**3.1 Not to Exceed Amount.** Consultant's total compensation under this Agreement shall not exceed \$200,000 per calendar year. Consultant's billing rates shall cover all costs and expenses for Consultant's performance of this Agreement. Effective January 1, 2021, Consultant's billing rates under this Agreement may be annually increased in January of each year by the lesser of 3% or the annual increase in the Cost of Living Index – All Items, for the Sacramento Metropolitan Region. No work shall be performed by Consultant in excess of the total compensation amount provided in this section without the City's prior written approval.

**3.2 Invoices.** Consultant shall submit monthly invoice(s) to the City that describe the services performed, including times, dates, and names of persons performing the services.

**3.2.1** If Consultant is providing services in response to a development application, separate invoice(s) must be issued for each application and each invoice shall contain the City's designated development application number.

**3.2.2** Consultant's failure to submit invoice(s) in accordance with these requirements may result in the City rejecting said invoice(s) and thereby delaying payment to Consultant.

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

**4. Indemnification.** Consultant shall, to the fullest extent permitted by law, indemnify, defend (with independent counsel approved by the City), and hold harmless the City from and against any claims arising out of Consultant's performance or failure to comply with obligations under this Agreement, except to the extent caused by the sole, active negligence or willful misconduct of the City.

In this section, "City" means the City, its officials, officers, agents, employees and volunteers; "Consultant" means the Consultant, its employees, agents and subcontractors; "Claims" includes claims, demands, actions, losses, damages, injuries, and liability, direct or indirect (including any and all related costs and expenses) and any allegations of these; and "Arising out of" includes "pertaining to" and "relating to".

(The duty of a "design professional" to indemnify and defend the City is limited to claims that arise out of, pertain to, or relate to the negligence, recklessness or willful misconduct of the design professional, under Civ. Code § 2782.8.)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**To City:**  
Development Services Department  
Attn: City Engineer  
333 Civic Center Plaza  
Tracy, CA 95337

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

**To Consultant:**  
Black Water Consulting Engineers, INC.  
Attn: Jeffrey Madsen Black, P.E.  
602 Lyell Drive  
Modesto, CA 95356

**13. Miscellaneous.**

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

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

**13.3 Waivers.** Waiver of a breach or default under this Agreement shall not constitute a continuing waiver or a waiver of a subsequent breach of the same or any other provision of this Agreement.

**13.4 Assignment and Delegation.** Consultant may not assign, transfer or delegate this Agreement or any portion of it without the City's written consent. Any attempt to do so will be void. City's consent to one assignment shall not be deemed to be a consent to any subsequent assignment.

**13.5 Jurisdiction and Venue.** The interpretation, validity, and enforcement of the Agreement shall be governed by and construed under the laws of the State of California. Any suit, claim, or legal proceeding of any kind related to this Agreement shall be filed and heard in a court of competent jurisdiction in the County of San Joaquin.

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

**13.6.1 Prevailing Wage Laws.** Consultant is aware of the requirements of California Labor Code Section 1720, et seq., and 1770, et seq., as well as California Code of Regulations, Title 8, Section 16000, et seq., ("Prevailing Wage Laws"), which require the payment of prevailing wage rates; employment of apprentices (§ 1777.5), certified payroll records (§1776), hours of labor (§1813 and §1815), debarment of contractors and subcontractors (§1777.1) and the performance of other requirements on "public works" and "maintenance" projects. If the services being performed under this Agreement are part of a "public works" or "maintenance" project, as defined in the Prevailing Wage Laws, and if the total compensation is \$1,000 or more, Consultant agrees to fully comply with such Prevailing Wage Laws. These prevailing rates are on file with the City and are available online at <http://www.dir.ca.gov/DLSR>. Consultant shall defend, indemnify and hold the City, its officials, officers, employees and agents, harmless from any and all claims, costs, penalties, or interests arising out of any failure or alleged failure to comply with the Prevailing Wage Laws.

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

**13.7 Business Entity Status.** Consultant is responsible for filing all required documents and/or forms with the California Secretary of State and meeting all requirements of the Franchise Tax Board, to the extent such requirements apply to Consultant. By entering into this Agreement, Consultant represents that it is not a suspended corporation. If Consultant is a suspended corporation at the time it enters this Agreement, City may take steps to have this Agreement declared voidable.

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

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

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

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

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

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

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

**[SIGNATURES ON FOLLOWING PAGE]**

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

**City of Tracy**

By: Robert Rickman  
Title: Mayor  
Date: \_\_\_\_\_

Attest:

Adrienne Richardson, City Clerk

Approved as to form:

Leticia M. Ramirez, City Attorney

**Consultant**

Black Water Consulting Engineers, Inc.

*Jeffrey Madsen*

By: Jeffrey Madsen Black, P.E.  
Title: Chief Executive  
Date: 7/28/2020

Federal Employer Tax ID No.  
46-1504431

*Jeffrey Madsen*

By: Jeffrey Madsen Black, P.E.  
Title: Chief Financial Officer  
Date: 7/28/2020

**Exhibits:**

- A Scope of Work, including personnel and time of performance (See Agreement sections 1 and 2.)
- B Compensation (See Agreement section 3.)

**EXHIBIT A**  
**SCOPE OF SERVICES**

**MASTER PROFESSIONAL SERVICES AGREEMENT WITH  
BLACK WATER CONSULTING ENGINEERS, INC., FOR WATER PRESSURE AND CAPACITY  
ANALYSES, AND ENGINEERING ASSISTANCE**

Consultant shall provide Professional Services for the following:

1. Conduct/perform water pressure and capacity studies, in connection with private land development projects within City limits and its sphere of influence, of off-site water plans, assess a development's water infrastructure impacts on the City's water system, assure adequate pressure and flow for domestic use and fire safety. The Consultant may be tasked to perform the following professional services, among others:
  - a. Conduct/perform water pressure and capacity modeling and calculations. The studies shall conform with the Water System Master Plan, any edition, its Updates, associated Specific Plan, if any, the Urban Water Management Plan, and City of Tracy Design Documents.
  - b. Conduct/perform water supplies studies.
  - c. Conduct/perform the feasibility of a Project's ability to use recycled water infrastructure.
2. Peer-review water pressure and capacity studies including review for technical accuracy of data and analyses methods and proposed mitigations provided by private land development projects against the items cited below. The Consultant may be tasked to perform the following professional services, among others:
  - a. Review water pressure and capacity modeling and calculations. Confirm that the Developer's studies conforms with the Water System Master Plan, any edition, its Updates, associated Specific Plan, if any, the Urban Water Management Plan, and City of Tracy Design Documents.
  - b. Review water supplies studies.
  - c. Review the feasibility of a Project's ability to use recycled water infrastructure.
3. In both conducted/Performed and peer-reviewed studies, Consultant shall identify potential trigger points requiring construction of off-site Water System Master Plan ("Program") capital improvements within the pressure zone and the City and determine project's fair share of such capital improvements.
4. In both conducted/Performed and peer-reviewed studies, Consultant shall identify and recommend Project on-site water pipeline infrastructure sizing and alignment modifications and/or other off-site system modifications to mitigate any Project design deficiencies identified above.

**Exhibit A**

**MASTER PROFESSIONAL SERVICES AGREEMENT WITH  
BLACK WATER CONSULTING ENGINEERS, INC. FOR WATER PRESSURE AND CAPACITY  
ANALYSES, AND ENGINEERING ASSISTANCE**

**Page 2 of 2**

- 5 To properly document the findings of the Project's water pressure and capacity studies, the Consultant will deliver a Technical Memorandum to the CITY summarizing the project, the methodology, document any recommended system modifications, identify potential impacts on drainage infrastructure, and recommend mitigations of those impacts.
- 5 Consultant may have to attend meetings, Public Hearings, Planning Commission, and/or City Council meetings.
- 6 Plan-check developer's improvement plans to confirm compliance with the water pressure and capacity study and required mitigations. Review project plans and specifications for technical accuracy and conformance with the City of Tracy Design Standards, Standard Plans, and Standard Specifications.
- 7 If requested, Consultant may be requested to inspect during construction and after construction.
- 8 Other tasks as assigned.

**Deadlines:**

Responses to Request for Quotes with delivery schedule: seven (7) calendar days  
Submittal of Deliverables: By the delivery date on the Consultant provided delivery schedule.  
If needed, Consultant will be given a seven (7) calendar day grace period.

**Staff Members:**

Jeffrey Madsen Black, P.E.

Aja Verburg, P.E.

Bao Cha, E.I.T.

Tyler Lee, E.I.T

Christiana Geidd, E.I.T

Bryce Bondi, E.I.T

Stacy Mason

Krystel Lozares

## Exhibit B



### 2020 Hourly Rate Schedule

**ENGINEERING:**

	<b>Hourly Rate</b>
PRINCIPAL/PROJECT MANAGER	\$189.00
SENIOR ENGINEER	\$172.00
ASSISTANT ENGINEER	\$135.00
ENGINEER TECHNICIAN	\$115.00

**TECHNICAL STAFF:**

SENIOR DESIGNER	\$115.00
DESIGNER	\$105.00
CAD TECHNICIAN	\$95.00

**FIELD SERVICES:**

CONSTRUCTION MANAGER	\$172.00
CONSTRUCTION INSPECTOR	\$120.00

**ADMINISTRATION:**

OFFICE / CLERICAL	\$65.00
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**EXPERT WITNESS:**

\$275.00

**DIRECT COSTS:** COST PLUS 10 PERCENT**SUBCONSULTANTS:** COST PLUS 10 PERCENT**MILEAGE:** IRS RATE

The above rate schedule is effective January 1, 2020 and is subject to adjustment January 1, 2021.

602 LYELL DRIVE, MODESTO, CA 95356

p: (209) 322-1820 f: (209) 222-4088

[www.blackwater-eng.com](http://www.blackwater-eng.com)

**CITY OF TRACY**  
**MASTER PROFESSIONAL SERVICES AGREEMENT WITH**  
**BENNETT ENGINEERING SERVICES, INC. FOR WATER PRESSURE AND CAPACITY**  
**ANALYSES, AND ENGINEERING ASSISTANCE**

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

**Recitals**

- A.** City desires to retain Consultant for water pressure and capacity analyses engineering assistance for land development projects; and
- B.** On July 18, 2019, the City issued a Request for Proposals (RFP) for Water Pressure and Capacity Analyses (**Project**). On August 27, 2019, Consultant submitted its proposal for the Project to the City. City has determined that Consultant possesses the skills, experience and certification required to provide the services.
- C.** After negotiations between the City and Consultant, the Parties have reached an agreement for the performance of services in accordance with the terms set forth in this Agreement.
- D.** This Agreement is being executed pursuant to Resolution No. \_\_\_\_\_ approved by Tracy City Council on \_\_\_\_\_, 2020.

**Now therefore, the Parties mutually agree as follows:**

**1. Scope of Work.** Consultant shall perform the services generally described in Exhibit "A" attached, and incorporated by reference, as directed by written Notice to Proceed by the City's Development Services Director. The services shall be performed by, or under the direct supervision of, Consultant's Authorized Representative: Leo Rubio, P.E. Consultant shall not replace its Authorized Representative, **nor shall Consultant replace any of the personnel listed in Exhibit "A,"** nor shall Consultant use or replace any subcontractor or subconsultant, without City's prior written consent. A failure to obtain the City's prior written consent for any change or replacement in personnel or subcontractor/subconsultant may result in the termination of this Agreement.

**1.1 Non-Exclusive Agreement.** The City reserves the right to contract with other consultants providing the same or similar scope of services described above during the term of this Agreement. The City further reserves the right to, assign work, at its sole discretion, to consultants other than Consultant based on City's budget, experience, and skills of consultants based on the City's specific needs.

**2. Time of Performance.** Time is of the essence in the performance of services under this Agreement and the timing requirements set forth shall be strictly adhered to unless otherwise modified in writing in accordance with this Agreement. Consultant shall begin performance, and shall complete all required services no later than the dates set forth in each individual Notice to Proceed. Any services for which times for performance are not specified in each individual Notice to Proceed shall be started and completed by Consultant in a reasonably prompt and timely manner based upon the circumstances and direction communicated by the City to the Consultant. Consultant shall submit all requests for time extensions to the City in writing no later than ten days after the start of the condition which purportedly

*City of Tracy – Master Professional Services Agreement with Bennett Engineering Services, Inc.*

caused the delay, and not later than the date on which performance is due. City shall grant or deny such requests at its sole discretion.

**2.1 Term.** The term of this Agreement shall begin on July 1, 2020 and end on June 30, 2023, unless terminated in accordance with Section 6.

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

**3.1 Not to Exceed Amount.** Consultant's total compensation under this Agreement shall not exceed \$200,000 per calendar year. Consultant's billing rates shall cover all costs and expenses for Consultant's performance of this Agreement. Effective January 1, 2021, Consultant's billing rates under this Agreement may be annually increased in January of each year by the lesser of 3% or the annual increase in the Cost of Living Index – All Items, for the Sacramento Metropolitan Region. No work shall be performed by Consultant in excess of the total compensation amount provided in this section without the City's prior written approval.

**3.2 Invoices.** Consultant shall submit monthly invoice(s) to the City that describe the services performed, including times, dates, and names of persons performing the services.

**3.2.1** If Consultant is providing services in response to a development application, separate invoice(s) must be issued for each application and each invoice shall contain the City's designated development application number.

**3.2.2** Consultant's failure to submit invoice(s) in accordance with these requirements may result in the City rejecting said invoice(s) and thereby delaying payment to Consultant.

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

**4. Indemnification.** Consultant shall, to the fullest extent permitted by law, indemnify, defend (with independent counsel approved by the City), and hold harmless the City from and against any claims arising out of Consultant's performance or failure to comply with obligations under this Agreement, except to the extent caused by the sole, active negligence or willful misconduct of the City.

In this section, "City" means the City, its officials, officers, agents, employees and volunteers; "Consultant" means the Consultant, its employees, agents and subcontractors; "Claims" includes claims, demands, actions, losses, damages, injuries, and liability, direct or indirect (including any and all related costs and expenses) and any allegations of these; and "Arising out of" includes "pertaining to" and "relating to".

(The duty of a "design professional" to indemnify and defend the City is limited to claims that arise out of, pertain to, or relate to the negligence, recklessness or willful misconduct of the design professional, under Civ. Code § 2782.8.)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

*City of Tracy – Master Professional Services Agreement with Bennett Engineering Services, Inc.*

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

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

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

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

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

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

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

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

**To City:**

Development Services Department  
Attn: City Engineer  
333 Civic Center Plaza  
Tracy, CA 95337

**To Consultant:**

Bennett Engineering Services, Inc.  
Attn: Leo Rubio, P.E.  
1082 Sunrise Avenue, Suite 100  
Roseville, CA 95661

With a copy to:

City Attorney  
333 Civic Center Plaza  
Tracy, CA 95376

**13. Miscellaneous.**

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

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

**13.3 Waivers.** Waiver of a breach or default under this Agreement shall not constitute a continuing waiver or a waiver of a subsequent breach of the same or any other provision of this Agreement.

**13.4 Assignment and Delegation.** Consultant may not assign, transfer or delegate this Agreement or any portion of it without the City's written consent. Any attempt to do so will be void. City's consent to one assignment shall not be deemed to be a consent to any subsequent assignment.

**13.5 Jurisdiction and Venue.** The interpretation, validity, and enforcement of the Agreement shall be governed by and construed under the laws of the State of California. Any suit, claim, or legal proceeding of any kind related to this Agreement shall be filed and heard in a court of competent jurisdiction in the County of San Joaquin.

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

**13.6.1 Prevailing Wage Laws.** Consultant is aware of the requirements of California Labor Code Section 1720, et seq., and 1770, et seq., as well as California Code of Regulations, Title 8, Section 16000, et seq., ("Prevailing Wage Laws"), which require the payment of prevailing wage rates; employment of apprentices (§ 1777.5), certified payroll records (§1776), hours of labor (§1813 and §1815), debarment of contractors and subcontractors (§1777.1) and the performance of other requirements on "public works" and "maintenance" projects. If the services being performed under this Agreement are part of a "public works" or "maintenance" project, as defined in the Prevailing Wage Laws, and if the total compensation is \$1,000 or more, Consultant agrees to fully comply with such Prevailing Wage Laws. These prevailing rates are on file with the City and are available online at <http://www.dir.ca.gov/DLSR>. Consultant shall defend, indemnify and hold the City, its officials, officers, employees and agents, harmless from any and all claims, costs, penalties, or interests arising out of any failure or alleged failure to comply with the Prevailing Wage Laws.

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

**13.7 Business Entity Status.** Consultant is responsible for filing all required documents and/or forms with the California Secretary of State and meeting all requirements of the Franchise Tax Board, to the extent such requirements apply to Consultant. By entering into this Agreement, Consultant represents that it is not a suspended corporation. If Consultant is a suspended corporation at the time it enters this Agreement, City may take steps to have this Agreement declared voidable.

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

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

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

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

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

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

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

**[SIGNATURES ON FOLLOWING PAGE]**

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

## City of Tracy

By: Robert Rickman  
Title: Mayor  
Date: \_\_\_\_\_

Attest:

## Adrienne Richardson, City Clerk

Approved as to form:

Leticia M. Ramirez, City Attorney

## Exhibits:

- A Scope of Work, including personnel and time of performance (See Agreement sections 1 and 2.)
- B Compensation (See Agreement section 3.)

## Consultant

Bennett Engineering Services, Inc.

- DocuSigned by

Leo Rubio

By: Leo Rubio

Title: President

Date: August 21, 2020

Federal Employer Tax ID No. 26-1388516

— DocuSigned by

Jenn Goodwin

By: Jennifer Goodwin

Title: Chief Financial Officer

Date: August 21, 2020

**EXHIBIT A**  
**SCOPE OF SERVICES**

**MASTER PROFESSIONAL SERVICES AGREEMENT WITH  
BENNETT ENGINEERING SERVICES, INC.. FOR WATER PRESSURE AND CAPACITY ANALYSES,  
AND ENGINEERING ASSISTANCE**

Consultant shall provide Professional Services for the following:

- 1 Conduct/perform water pressure and capacity studies, in connection with private land development projects within City limits and its sphere of influence, of off-site water plans, assess a development's water infrastructure impacts on the City's water system, assure adequate pressure and flow for domestic use and fire safety. The Consultant may be tasked to perform the following professional services, among others:
  - a. Conduct/perform water pressure and capacity modeling and calculations. The studies shall conform with the Water System Master Plan, any edition, its Updates, associated Specific Plan, if any, the Urban Water Management Plan, and City of Tracy Design Documents.
  - b. Conduct/perform water supplies studies.
  - c. Conduct/perform the feasibility of a Project's ability to use recycled water infrastructure.
- 2 Peer-review water pressure and capacity studies including review for technical accuracy of data and analyses methods and proposed mitigations provided by private land development projects against the items cited below. The Consultant may be tasked to perform the following professional services, among others:
  - a. Review water pressure and capacity modeling and calculations. Confirm that the Developer's studies conforms with the Water System Master Plan, any edition, its Updates, associated Specific Plan, if any, the Urban Water Management Plan, and City of Tracy Design Documents.
  - b. Review water supplies studies.
  - c. Review the feasibility of a Project's ability to use recycled water infrastructure.
- 3 In both conducted/Performed and peer-reviewed studies, Consultant shall identify potential trigger points requiring construction of off-site Water System Master Plan ("Program") capital improvements within the pressure zone and the City and determine project's fair share of such capital improvements.
- 4 In both conducted/Performed and peer-reviewed studies, Consultant shall identify and recommend Project on-site water pipeline infrastructure sizing and alignment modifications and/or other off-site system modifications to mitigate any Project design deficiencies identified above.
- 5 To properly document the findings of the Project's water pressure and capacity studies, the Consultant will deliver a Technical Memorandum to the CITY summarizing the

**Exhibit A**

**MASTER PROFESSIONAL SERVICES AGREEMENT WITH  
BENNETT ENGINEERING SERVICES, INC. FOR WATER PRESSURE AND CAPACITY ANALYSES,  
AND ENGINEERING ASSISTANCE**

**Page 9 of 2**

project, the methodology, document any recommended system modifications, identify potential impacts on drainage infrastructure, and recommend mitigations of those impacts.

- 5 Consultant may have to attend meetings, Public Hearings, Planning Commission, and/or City Council meetings.
- 6 Plan-check developer's improvement plans to confirm compliance with the water pressure and capacity study and required mitigations. Review project plans and specifications for technical accuracy and conformance with the City of Tracy Design Standards, Standard Plans, and Standard Specifications.
- 7 If requested, Consultant may be requested to inspect during construction and after construction.
- 8 Other tasks as assigned.

**Deadlines:**

Responses to Request for Quotes with delivery schedule: seven (7) calendar days

Submittal of Deliverables: By the delivery date on the Consultant provided delivery schedule. If needed, Consultant will be given a seven (7) calendar day grace period.

**Staff Members:**

Michael Massaro, P.E.

Stacey Lynch, P.E.

Gabriel Rodell, P.E.

Kati, Sethares, E.I.T.

Kris Olof, E.I.T., (Tully & Young, subconsultant)

FOR WATER PRESSURE AND CAPACITY ANALYSES, AND ENGINEERING ASSISTANCE



TRUSTED ENGINEERING ADVISORS

# BENNETT ENGINEERING SERVICES

## RATE SCHEDULE I 2020/2021 FISCAL YEAR

### PROFESSIONAL STAFF

<b>Staff Classification</b>	<b>Hourly Rate</b>	<b>Staff Classification</b>	<b>Hourly Rate</b>
Principal Engineer .....	\$250	Senior Specialist .....	\$180
Project Manager VI .....	\$225	Engineering Tech VI .....	\$162
Project Manager V .....	\$215	Engineering Tech V .....	\$152
Project Manager IV .....	\$204	Engineering Tech IV .....	\$142
Project Manager III .....	\$194	Engineering Tech III .....	\$132
Project Manager II .....	\$183	Engineering Tech II .....	\$122
Project Manager I .....	\$168	Engineering Tech I .....	\$112
Engineer/Surveyor VI .....	\$215	Designer IV .....	\$172
Engineer/Surveyor V .....	\$204	Designer III .....	\$162
Engineer/Surveyor IV .....	\$194	Designer II .....	\$147
Engineer/Surveyor III .....	\$183	Designer I .....	\$132
Engineer/Surveyor II .....	\$168	Inspector III (Field Prevailing Wage Std) .....	\$219
Engineer/Surveyor I .....	\$153	Inspector II (Field Prevailing Wage Std) .....	\$194
Engineering Intern .....	\$80	Inspector I (Field Prevailing Wage Std) .....	\$169
Surveyor IV (Field Prevailing Wage Std) .....	\$243	Labor Compliance Specialist .....	\$110
Surveyor I (Field Prevailing Wage Std) .....	\$191	Project Controls Specialist .....	\$95
Expert Witness .....	\$438	Administrative .....	\$80

### ADDITIONAL RATE INFORMATION

- ▶ Direct expenses (including, but not limited to, mileage, reproduction, postage, online assessor mapping fees, etc.) and subconsultant costs will be billed at cost plus fifteen percent (15%) for administration, coordination, and handling.
- ▶ Standard hourly rates do not apply to a demand to perform work during an overtime period. Work required to be performed during an overtime period (as mandated by California law) will be charged at a 50% premium. Work mandated by Prevailing Wage laws will be charged accordingly.
- ▶ Hourly rates include all compensation for wages, salary-related benefits, overhead, general office administration, and profit. Direct project administrative hours will be billed at the rate shown above.
- ▶ Classifications may be added or removed as-needed without notice.
- ▶ Changes in the requested scope of work or projected schedule may result in the revision of the proposed fees and amendment to the total contract amount.
- ▶ Rates are subject to change annually effective July 1, 2021.

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

APPROVING MASTER PROFESSIONAL SERVICES AGREEMENTS WITH WEST YOST & ASSOCIATES, BLACK WATER CONSULTING ENGINEERS, INC., AND BENNETT ENGINEERING SERVICES, INC. TO PROVIDE WATER PRESSURE AND CAPACITY ANALYSES AND ENGINEERING SERVICES FOR LAND DEVELOPMENT PROJECTS, AND AUTHORIZING THE DEVELOPMENT SERVICES DIRECTOR TO ISSUE FUTURE NOTICES TO PROCEED RELATED TO THE AGREEMENTS, FOR A NOT-TO-EXCEED AMOUNT OF \$200,000 FOR EACH CONSULTANT PER CALENDAR YEAR

WHEREAS, A number of the City's Land Development Projects require water pressure and capacity analyses, and

WHEREAS, The City of Tracy requires the support of a Professional Engineer to perform these tasks to support City Staff and is recommending that we contract out these services, and

WHEREAS, In accordance with Tracy Municipal Code, Section 2.20 a Request For Proposals for water pressure and capacity analyses and engineering services was posted on the City's website, and

WHEREAS, The City received eight proposals from known firms to provide required services, and after extensive review staff selected three firms to enter into agreements to provide required services, and

WHEREAS, The terms for these agreements are for a period of three years and can be extended for an additional year by the City Manager following a written determination that Consultant has satisfactorily met all the requirements of this Agreement, and

WHEREAS, West Yost & Associates, Black Water Consulting Engineers, Inc., and Bennett Engineering Services, Inc., were found to be the most qualified consultants, and

WHEREAS, Cost of required services will be paid from Land Development Projects;

NOW, THEREFORE, BE IT RESOLVED, That the City Council of the City of Tracy, hereby approves the Master Professional Services Agreements with West Yost & Associates, Black Water Consulting Engineers, Inc., and Bennett Engineering Services, Inc., to provide water pressure and capacity analyses and engineering services for Land Development projects, and authorizes the Development Services Director to issue future Notices to Proceed related to the Agreements, with an annual not-to-exceed amount \$200,000 for each consultant per calendar year.

\*\*\*\*\*

The foregoing Resolution 2020-\_\_\_\_\_ was adopted by the Tracy City Council on the 1<sup>st</sup> day of September, 2020, by the following vote:

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

---

MAYOR

ATTEST:

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CITY CLERK

September 1, 2020

AGENDA ITEM 3.B

REQUEST

**PUBLIC HEARING TO CONSIDER A VESTING TENTATIVE SUBDIVISION MAP (LARKSPUR ESTATES UNIT 4) TO DIVIDE ONE PARCEL INTO 13 PARCELS ON 1.89 ACRES LOCATED ON THE SOUTH SIDE OF DE BORD DRIVE AND CAIRO COURT, ASSESSOR'S PARCEL NUMBER 246-330-50, AND A DEVELOPMENT REVIEW APPLICATION FOR THE ARCHITECTURE OF 14 SINGLE FAMILY HOMES TO BE PLACED ON THE NEW SUBDIVISION LOTS AS WELL A LOT FORMERLY USED FOR EMERGENCY VEHICLE ACCESS, ASSESSOR'S PARCEL NUMBER 246-310-08**

EXECUTIVE SUMMARY

Approval of this Vesting Tentative Subdivision Map and Development Review permit for residential architecture would allow for the Larkspur storm drain basin to be subdivided into 13 lots for the proposed floor plans and architectural elevations to be constructed on those lots. The applicant and property owner is Bright Development, a CA Corporation; Application Numbers TSM19-0003 and D20-0005.

BACKGROUND

The property was annexed to the City of Tracy in 1994, and is within the Larkspur Estates subdivision, with a zoning designation of Low Density Residential (LDR), which is consistent with the designation of Residential Low by the General Plan. The subject property is on the south side of De Bord Drive and Cairo Court (Attachment A).

This property was part of the original 180-lot Larkspur Estates Vesting Tentative Subdivision Map, approved in 1995. This parcel is being used as a temporary storm drain retention basin for the remainder of the subdivision. The permanent storm drain basin will be in place for this area soon; therefore the basin will no longer be needed and can be filled and constructed upon. While these lots had already been shown as part of that original subdivision map, so much time has passed that the tentative map expired before this parcel being used as a temporary basin could be final mapped. Therefore, this new map is proposed, and is consistent with the previously approved map.

DISCUSSION

Project Summary, Subdivision Map

The proposal is to divide this 1.89-acre lot into 13 single-family lots along the south side of De Bord Drive and the southeast side of Cairo Court. The lots range in size from 5,608 to 9,470 square feet, and comply with the lot size standards of the LDR zone in which they are located (Attachment B). These new lots proposed would be consistent with the surrounding existing lot sizes and layout.

Most of the public property improvements on De Bord Drive and Cairo Court are already completed, including the streets, curbs, gutters, sidewalks, driveways, streetlight, fire

hydrants and utility connections for the future houses. The remaining public improvements such as street trees will be completed in compliance with City Standards, as conditioned.

The 13-lot map, as proposed is in compliance with all of the requirements of the Tracy Municipal Code and the Subdivision Map Act.

#### Project Summary, Architecture

When the surrounding Larkspur Estates subdivision was constructed mostly in the late 1990's, the houses built were a mix of one and two story floor plans (mostly two-story) and all with three-car garages. Today's Design Goals and Standards, which did not exist at that time, require more variety of floor plans with a design less dominated by garages.

The new proposed architecture would be used on the 13 new lots created by the proposed subdivision map, and on one existing lot at 2110 Bentley Lane. The Bentley Lane lot was created in an earlier phase of the subdivision, but remained vacant because it was reserved as an emergency vehicle access into the subdivision as there was only one main access point from Mac Arthur Drive at the time. Now that the Tiburon Village/Ventana subdivision has been constructed to the south additional access points exist and this emergency access point is no longer necessary.

There are two floor plans, one single-story and one two-story each with two elevation styles proposed, and both with two-car garages (Attachment C). The single-story floor plan is proposed with a Spanish style elevation and a Craftsman elevation. The Spanish elevations feature stucco finishes and accents around windows and posts, shutters, and wrought iron details typical for the simple architectural style. The Craftsman elevation, used on the single-story plan, utilizes porch posts with stone and wood finishes, board and batten siding, and a mix of rich colors that help accent those features. The Cottage elevation, used on the two-story floor plan features wooden porch posts, horizontal siding as an under gable treatment, shutters, and a brick accent at the garage. While most of the decorative features are concentrated on the front elevations, elements true to each design style (such as window trims and siding) are carried to the rear and sides of each elevation as well.

#### Environmental Document

The Project is categorically exempt from the California Environmental Quality Act Pursuant to CEQA Guidelines Section 15332, pertaining to infill projects smaller than five acres surrounded by urban uses that are consistent with the Zoning and General Plan designations and not having any significant environmental effects. An analysis of the Project shows that there will be no significant on-site impacts as a result of this particular Project. There is also no evidence of any significant impacts to occur off-site as a result of the Project, as traffic, air quality, land use and other potential cumulative impacts.

STRATEGIC PLANS

This agenda item does not pertain to any of the strategic plans.

FISCAL IMPACT

This agenda item will not require any expenditure of funds. Application processing fees were collected to fund the staff time required to review the applications.

RECOMMENDATION

Staff and the Planning Commission recommend that City Council, via resolution, approve a 13-lot Vesting Tentative Subdivision Map (Larkspur Estates Unit 4) to divide one parcel into 13 parcels on 1.89 acres located on the south side of De Bord Drive and Cairo Court, Assessor's Parcel Number 246-330-50, Application Number TSM19-0003, and a Development Review Application for the architecture of 14 single family homes to be placed on the new subdivision lots as well a lot formerly used for emergency vehicle access, Assessor's Parcel Number 246-310-08, Application Number D20-0005, subject to the conditions and based on the findings contained in the City Council Resolution dated September 1, 2020.

Prepared by: Victoria Lombardo, Senior Planner

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

Approved by: Jenny Haruyama, City Manager

ATTACHMENTS

Attachment A – Location Map  
Attachment B – Vesting Tentative Subdivision Map  
Attachment C – Architectural floor plans elevations, and development plan

## ATTACHMENT A



# **LOCATION MAP**

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**NO SCALE**

# ATTACHMENT B

TRACKING NO. TSM19 - 0003

## VESTING TENTATIVE SUBDIVISION MAP FOR: SUBDIVISIONS OF SAN JOAQUIN COUNTY LARKSPUR ESTATES, UNIT NO. 4 TRACT NO. 3804

TRACY, CALIFORNIA

OWNER:  
BRIGHT DEVELOPMENT  
1620 N CARPENTER ROAD, SUITE B  
MODESTO, CA 95351  
D.W.B. 05/20/20  
DATE:

SUBDIVIDER:  
BRIGHT DEVELOPMENT  
1620 N CARPENTER ROAD, SUITE B  
MODESTO, CA 95351  
D.W.B. 05/20/20  
DATE:

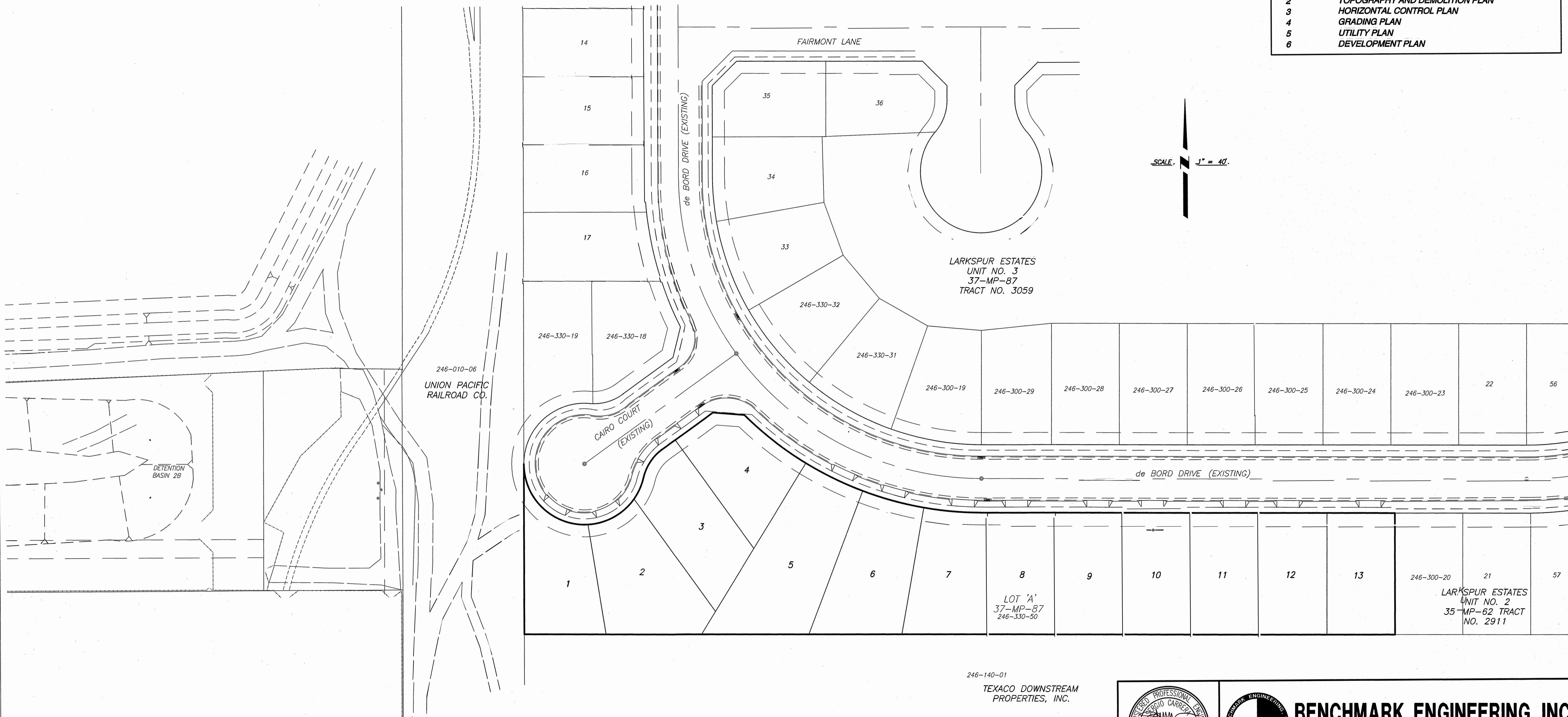
STATEMENT OF SUBDIVIDER

- ASSESSORS PARCEL NO: 246-330-50
- EXISTING ZONING: LOW DENSITY RESIDENTIAL (LDR)
- EXISTING GENERAL PLAN: RESIDENTIAL LOW
- EROSION CONTROL PER CITY OF TRACY ORDINANCES AND STANDARDS
- FRONT YARD DEPTHS AND BUILDING LINES PER CITY OF TRACY ORDINANCES AND STANDARDS
- WATER SUPPLY: BY CITY OF TRACY
- SEWAGE DISPOSAL: BY CITY OF TRACY
- STORM DRAINAGE: BY CITY OF TRACY
- ALL PROPOSED LOTS ARE PROPOSED TO DRAIN ON-SITE

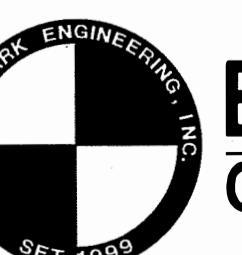
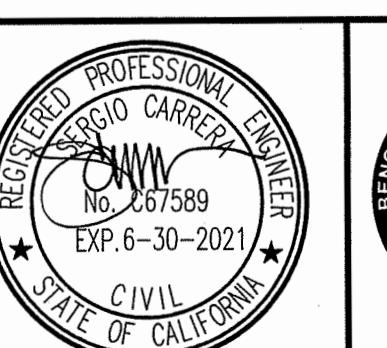
NOTES:

- ALL STREET IMPROVEMENTS AND UTILITIES ARE EXISTING
- NO AREAS ARE SUBJECT TO INUNDATION BY FLOOD WATERS
- TOTAL AREA OF THIS SUBDIVISION IS 1.89 ACRES CONTAINING 13 LOTS
- ALL TREES ON SITE ARE TO BE REMOVED
- EXISTING STORM DRAINAGE BASIN TO BE BACKFILLED FOR USE AS SINGLE FAMILY RESIDENTIAL LOTS
- CITY STORM DRAIN BASIN 2B TO BE EXPANDED AND STORM DRAIN INFRASTRUCTURE TO BE IN COMPLETE PRIOR TO BACKFILLING THE EXISTING STORM DRAIN BASIN

CITY OF TRACY, SAN JOAQUIN COUNTY, CALIFORNIA  
FEBRUARY, 2020

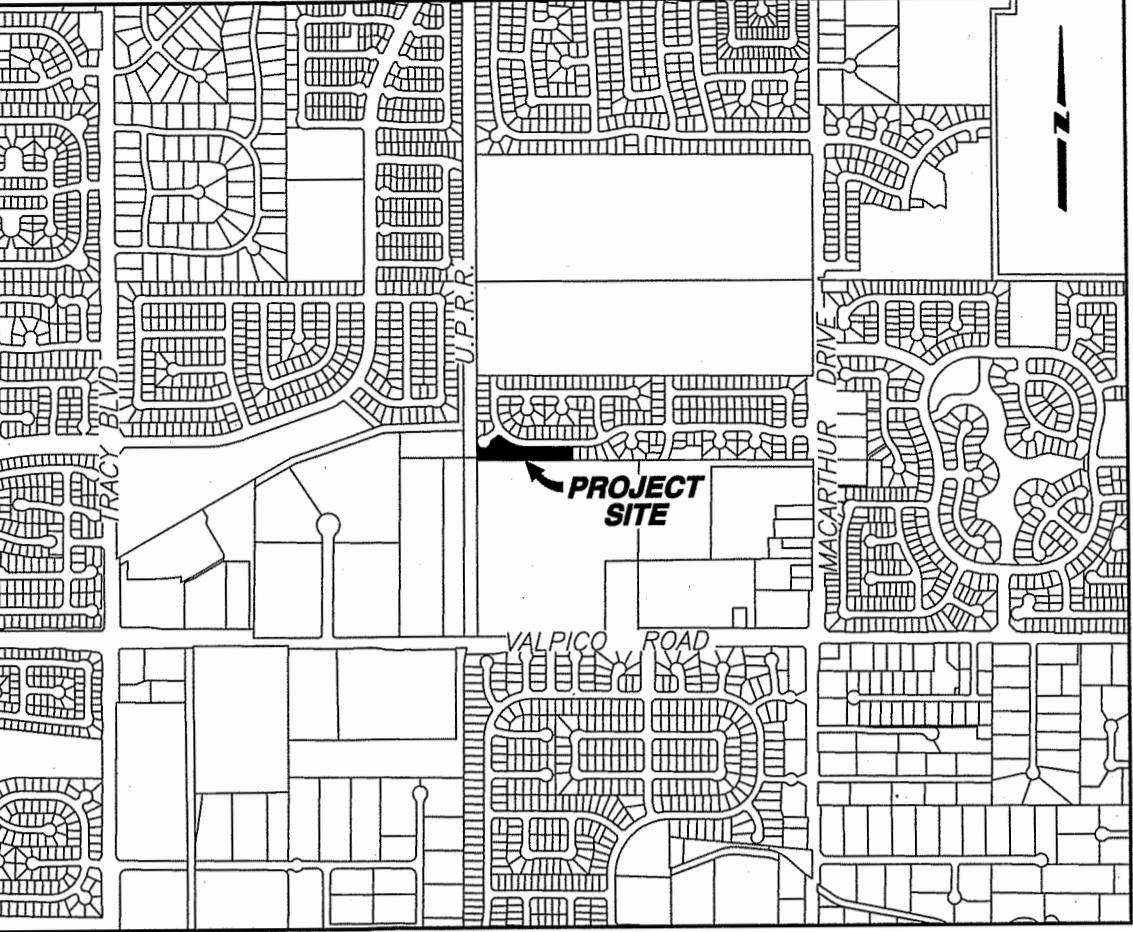


246-140-01  
TEXACO DOWNSTREAM  
PROPERTIES, INC.



**BENCHMARK ENGINEERING, INC.**  
CIVIL ENGINEERING & LAND SURVEYING  
915 17th STREET • MODESTO, CALIFORNIA • 95354  
(209) 548-9300 FAX:(209) 548-9305

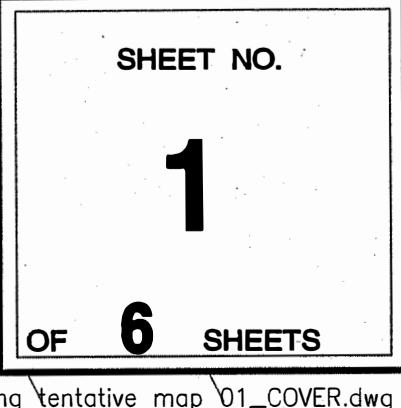
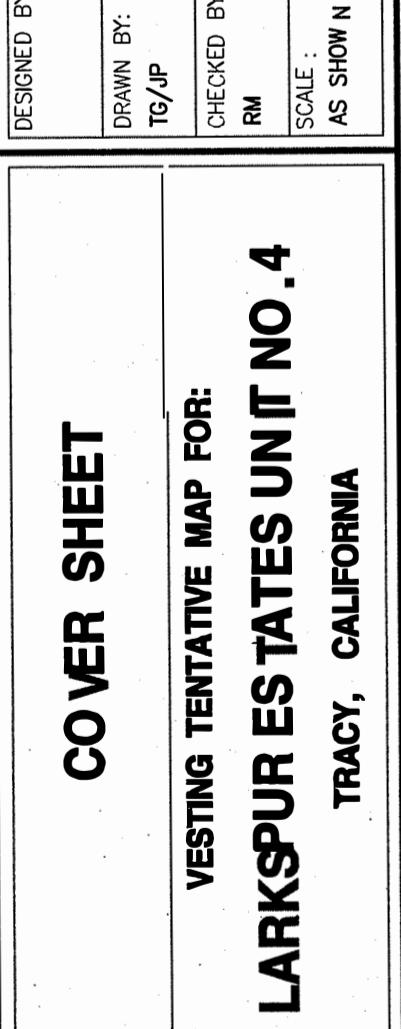
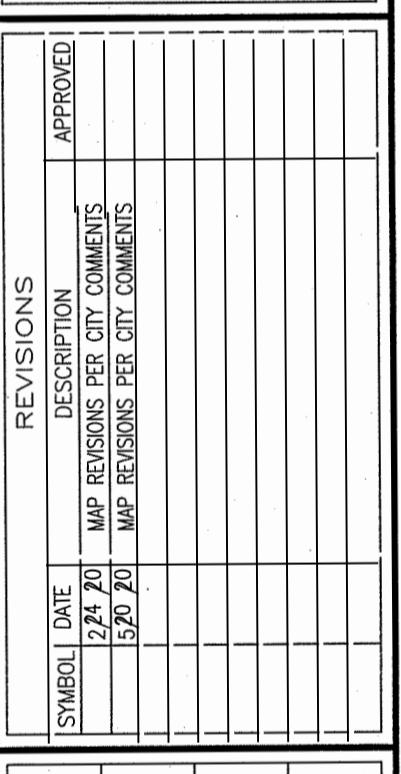
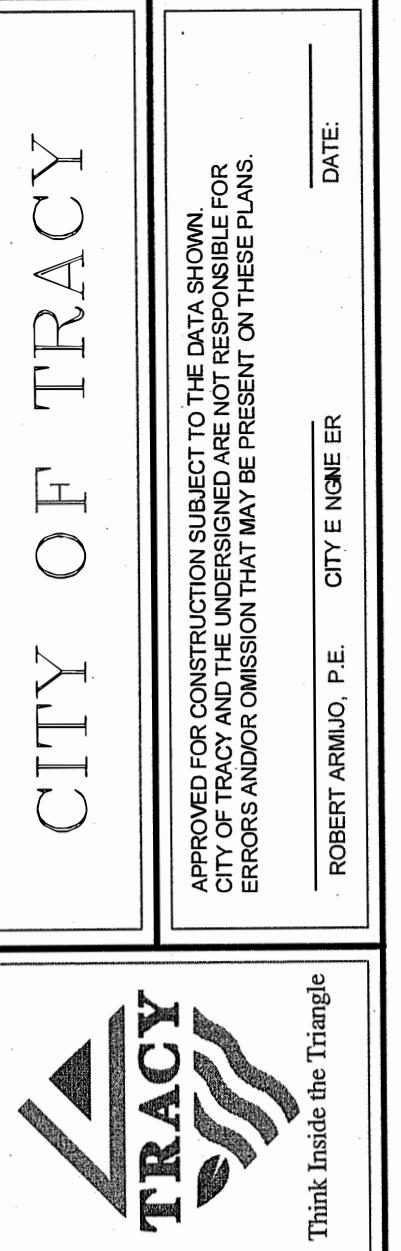
DATE: 5/20/2020 11:14 FILE: K:\212201\Planning\Tentative Map\01\_COVER.dwg

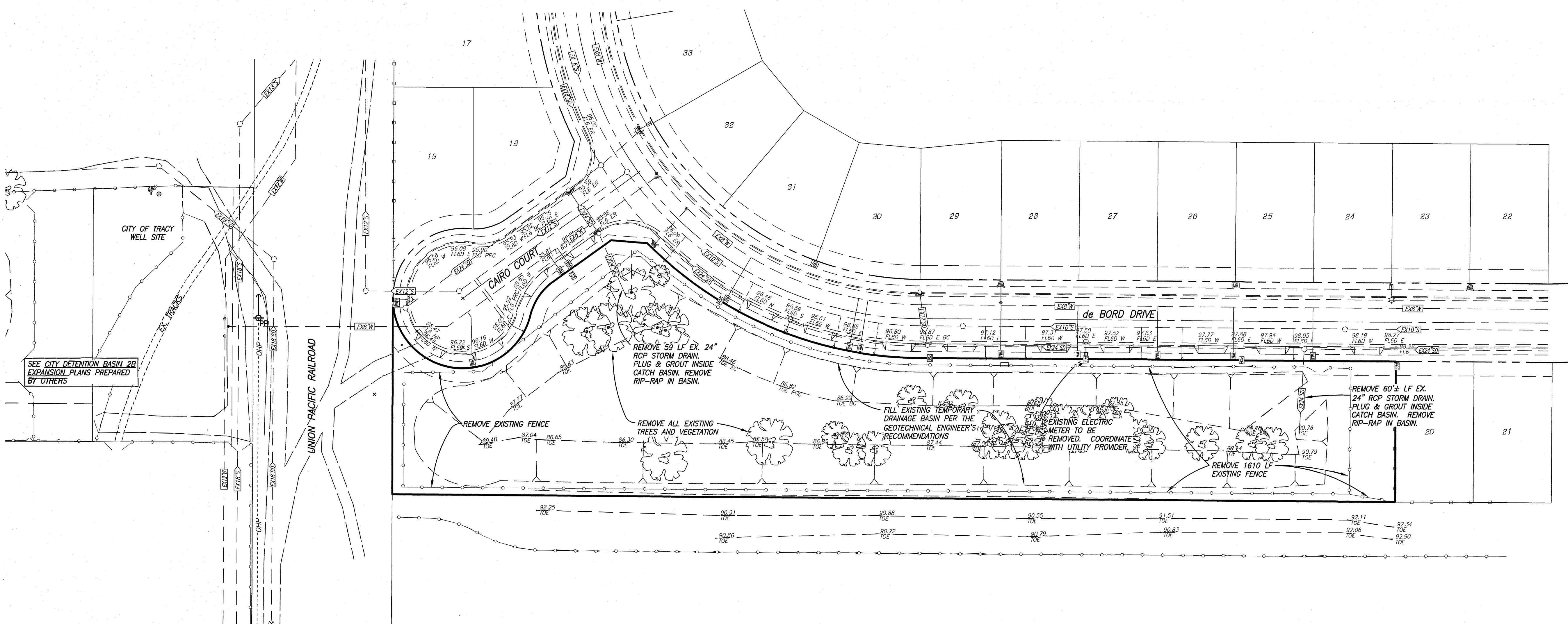


VICINITY MAP  
NOT TO SCALE

INDEX

SHEET NO.	DESCRIPTION
1	COVER SHEET
2	TOPOGRAPHY AND DEMOLITION PLAN
3	HORIZONTAL CONTROL PLAN
4	GRADING PLAN
5	UTILITY PLAN
6	DEVELOPMENT PLAN





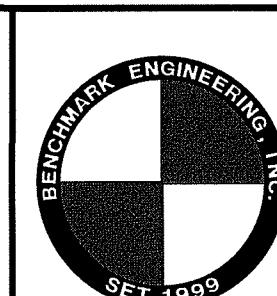
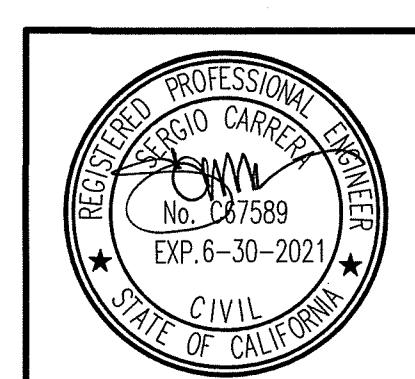
**NOTE:**  
ALL WORK ASSOCIATED WITH THE INSTALLATION OF NEW STORM DRAIN PIPING AND APPURTENANCES, INCLUDING GRADING FOR THE PERMANENT RETENTION/DETENTION BASIN 2B, SHALL BE COMPLETED AND ACCEPTED PRIOR TO ANY GRADING ACTIVITIES IN THE EXISTING RETENTION BASIN. SEE CITY DETENTION BASIN 2B EXPANSION PLANS

SCALE 1" = 40'

REVISIONS	DESCRIPTION	APPROVED
SYMBOL DATE	MAP REVISIONS PER CITY COMMENTS	
5/20/20		

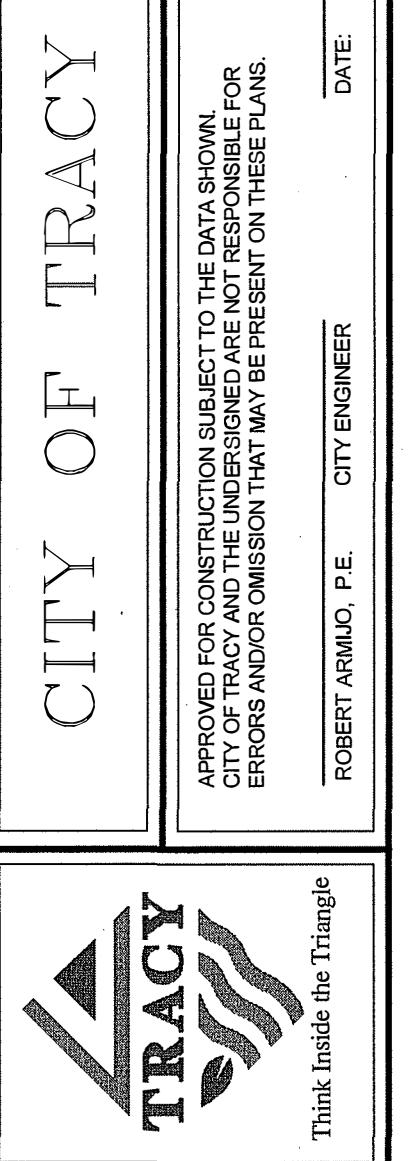
DESIGNED BY:	DRAWN BY:	CHECKED BY:
	TG/AP	RM

TOPOGRAPHY AND DEMOLITION PLAN	
VESTING TENTATIVE MAP FOR: LARKSPUR ESTATES UNIT NO. 4 TRACY, CALIFORNIA	

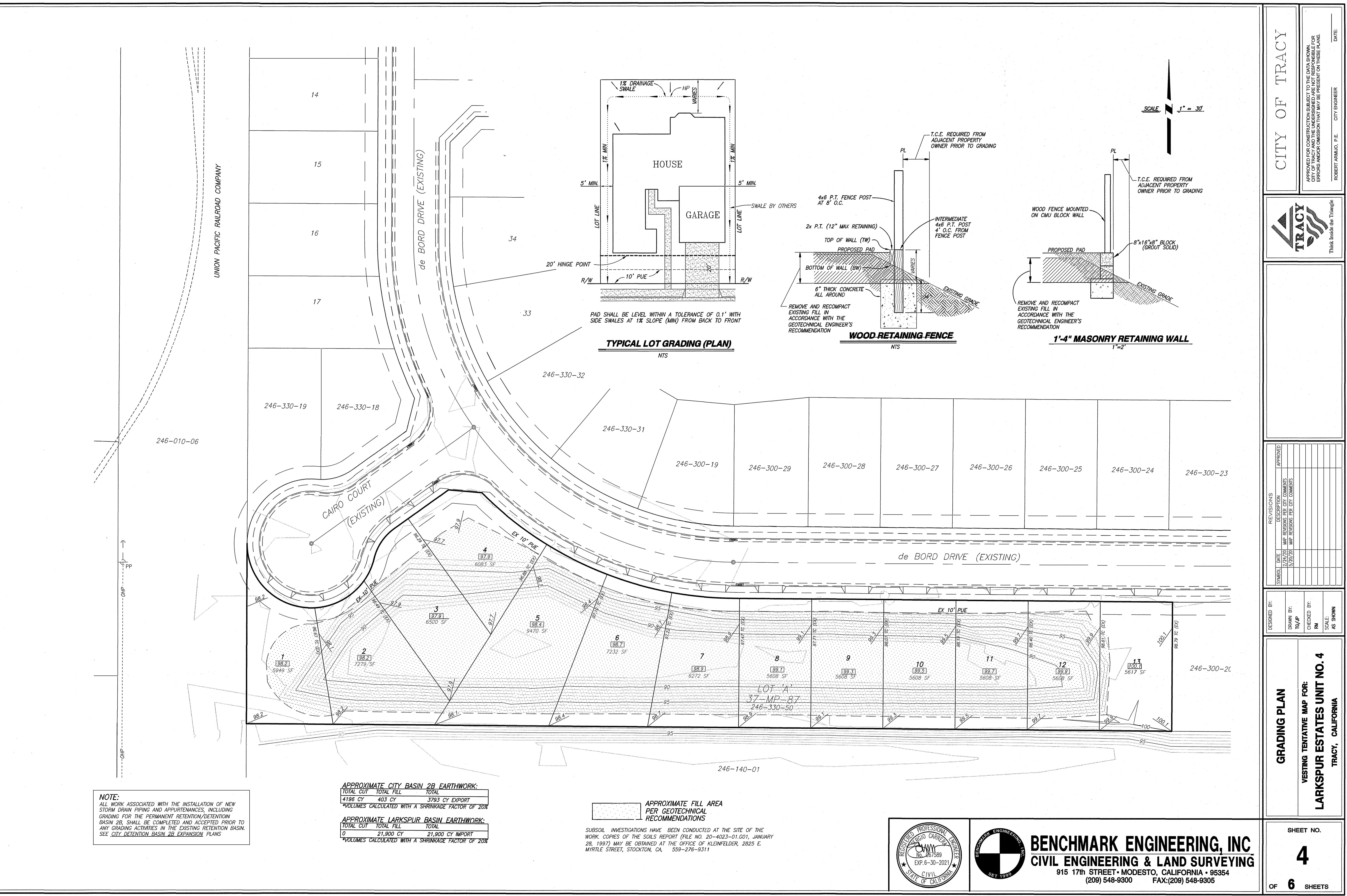


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SHEET NO. 2 OF 6 SHEETS





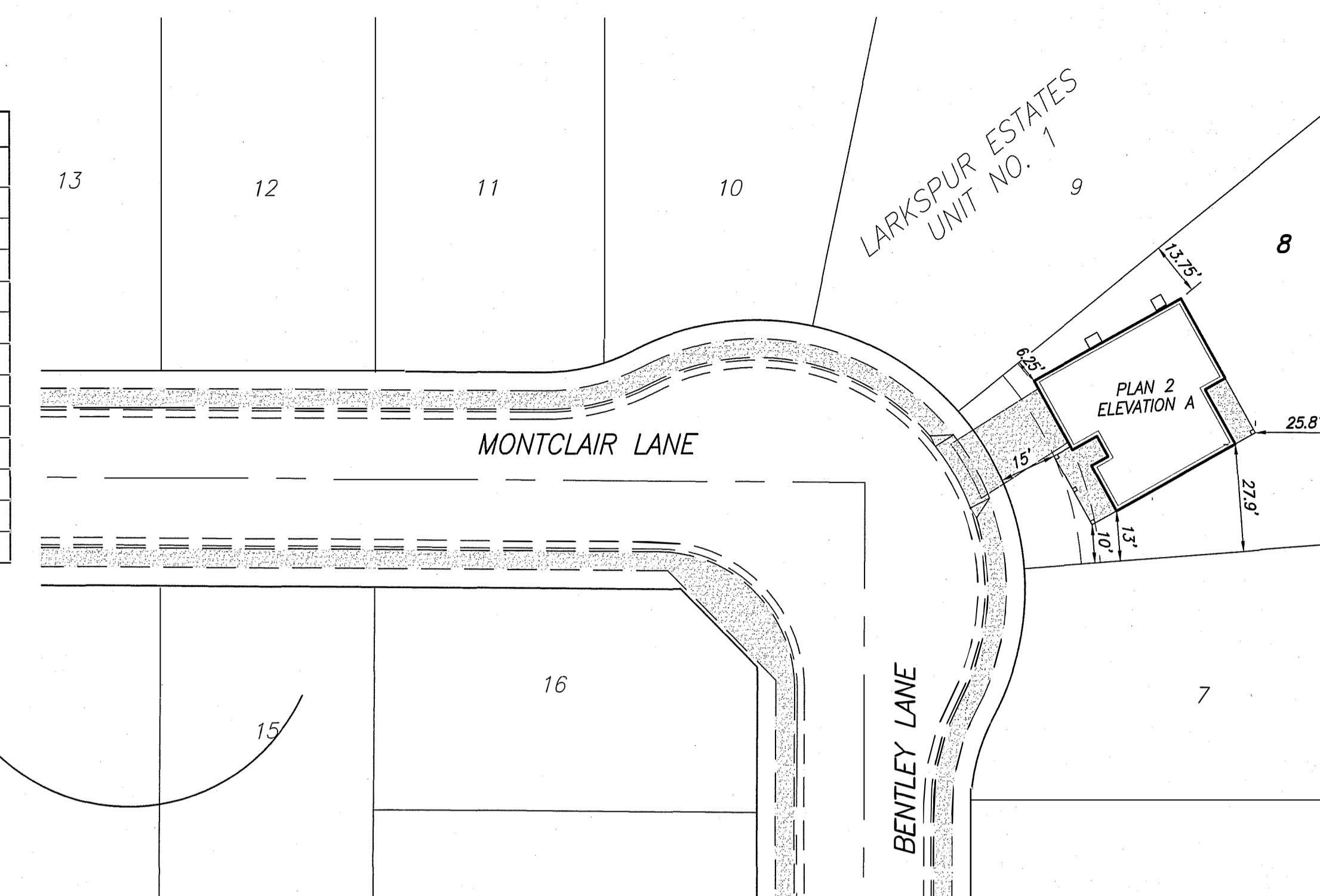




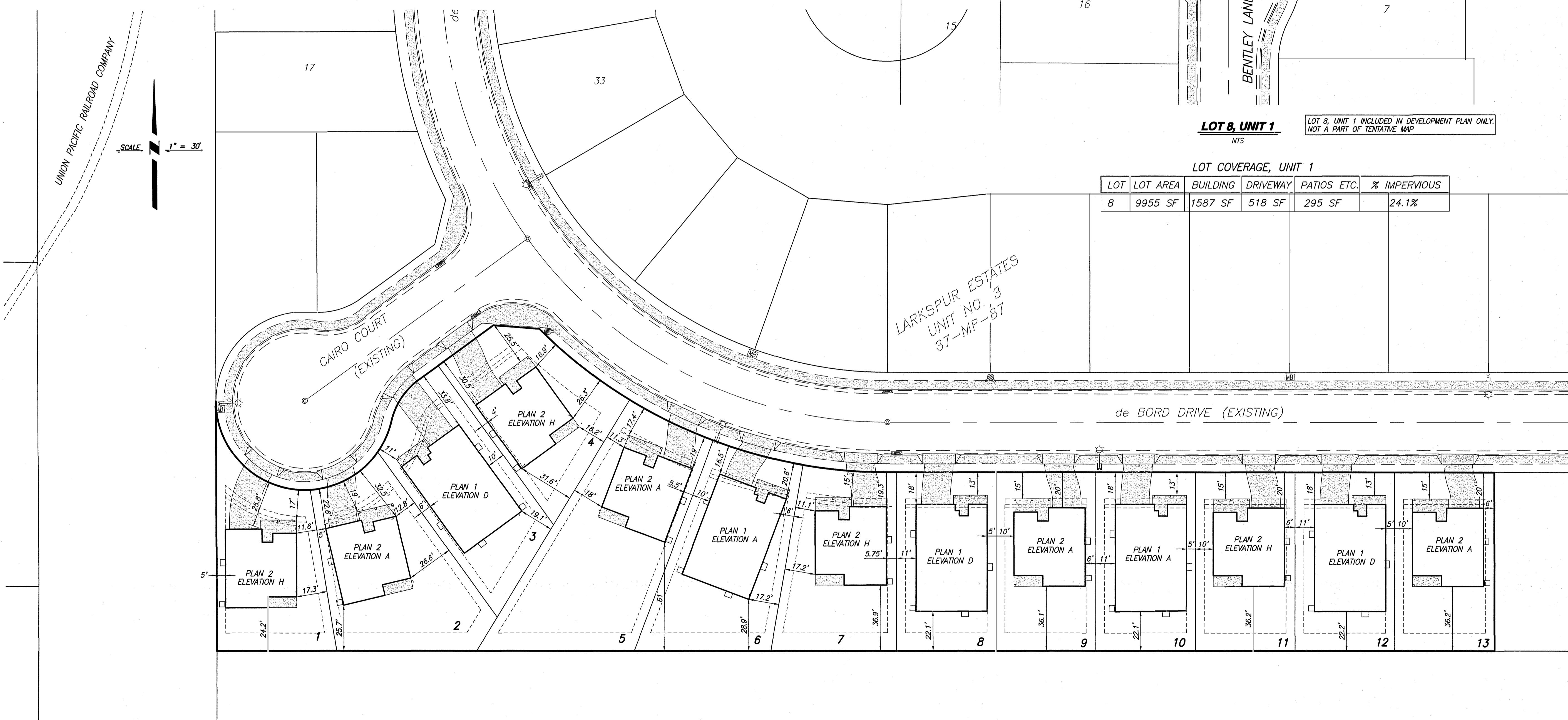
FLOOR PLANS		
PLAN 1	QUANTITY	PERCENTAGE
PLAN 1	5	36%
PLAN 2	9	64%
<b>TOTAL</b>	<b>14</b>	<b>100%</b>

LOT COVERAGE, UNIT 4

LOT	LOT AREA	BUILDING	DRIVEWAY	PATIOS ETC.	% IMPERVIOUS
1	5949 SF	1587 SF	508 SF	295 SF	40.2%
2	7279 SF	1587 SF	557 SF	295 SF	33.5%
3	6500 SF	2359 SF	886 SF	180 SF	52.7%
4	6083 SF	1587 SF	625 SF	295 SF	41.2%
5	9470 SF	1587 SF	498 SF	295 SF	25.1%
6	7232 SF	2359 SF	532 SF	180 SF	42.5%
7	6272 SF	1587 SF	521 SF	295 SF	38.3%
8	5600 SF	2359 SF	480 SF	180 SF	53.9%
9	5600 SF	1587 SF	512 SF	295 SF	42.8%
10	5600 SF	2359 SF	476 SF	180 SF	53.8%
11	5600 SF	1587 SF	498 SF	295 SF	42.5%
12	5600 SF	2359 SF	499 SF	180 SF	54.3%
13	5600 SF	1587 SF	513 SF	295 SF	42.8%

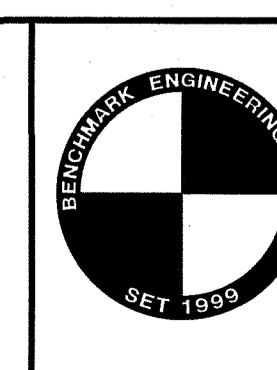
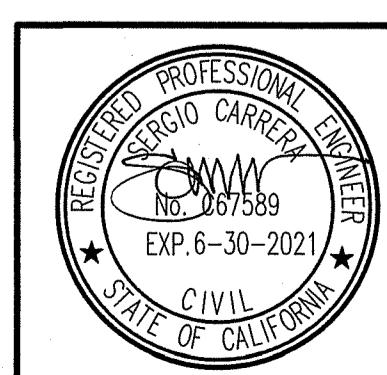


MacARTHUR DRIVE



DEVELOPMENT PLAN  
VESTING TENTATIVE MAP FOR:  
LARKSPUR ESTATES UNIT NO. 4  
TRACY, CALIFORNIA

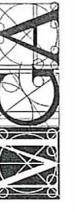
SHEET NO.  
6  
OF 6 SHEETS



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(209) 548-9300 FAX:(209) 548-9305

CITY OF TRACY  
**TRACY**  
Think Inside the Triangle

APPROVED FOR CONSTRUCTION SUBJECT TO THE DATA SHOWN.  
CITY OF TRACY AND THE UNDERSIGNED ARE NOT RESPONSIBLE FOR  
ERROS AND/OR OMISSION THAT MAY BE PRESENT ON THESE PLANS.  
ROBERT ARAMIO, P.E. CITY ENGINEER  
DATE:



Mark Gross & Associates, Inc.  
8881 Research Drive, Irvine, California 92618  
(949) 307-3800 Fax (949) 307-7800  
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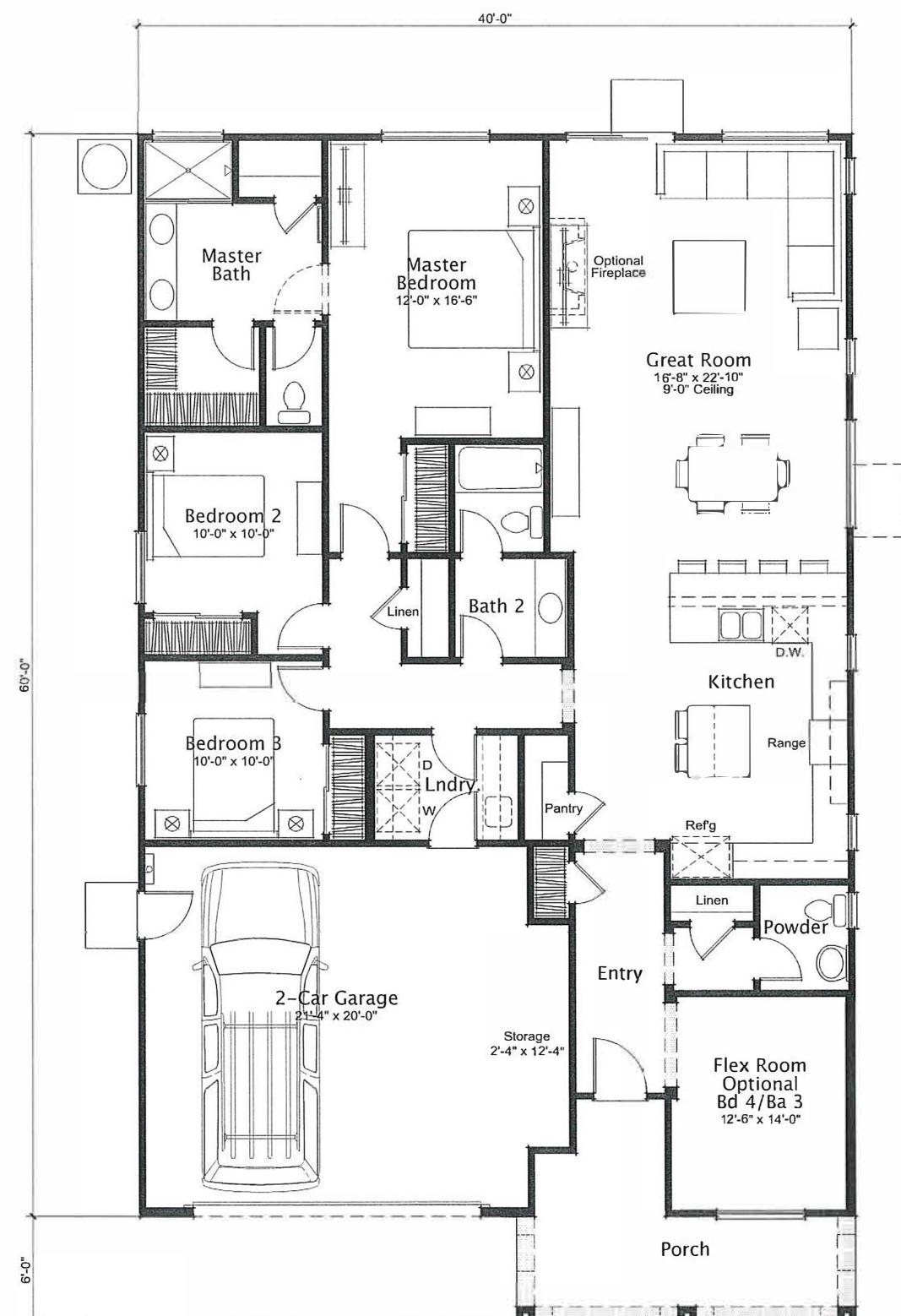
**BRIGHT HOMES**  
Larksprur Estates Unit 4 - Tracy, CA



Title  
Conceptual  
Floor Plan  
Plan 1883

Date  
November 13, 2019  
Project Number  
4433  
Scale  
1/4" = 1'-0"  
Revision  
1-10-2020  
3-2-2020

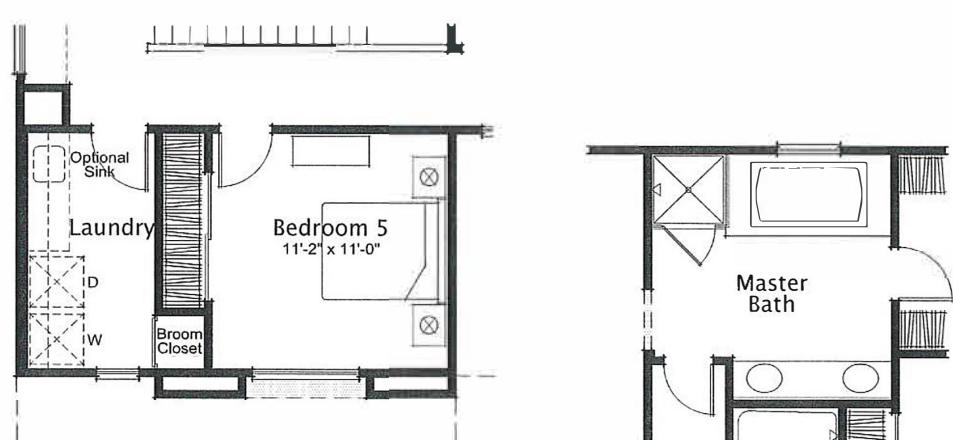
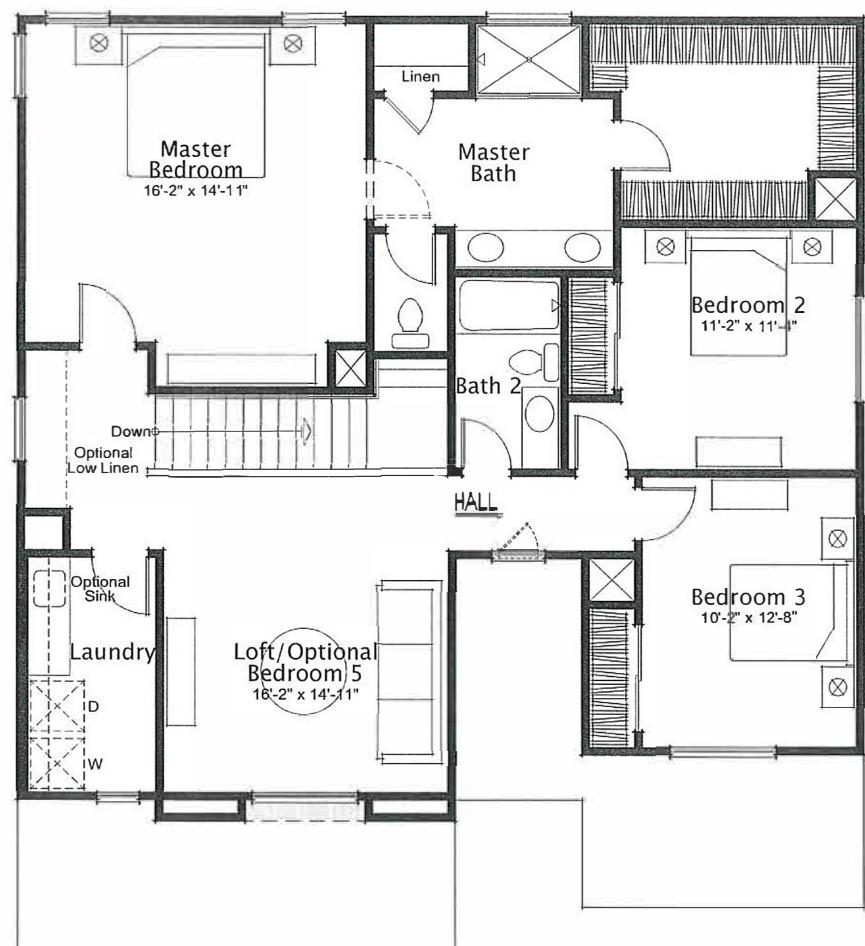
Sheet No.  
1



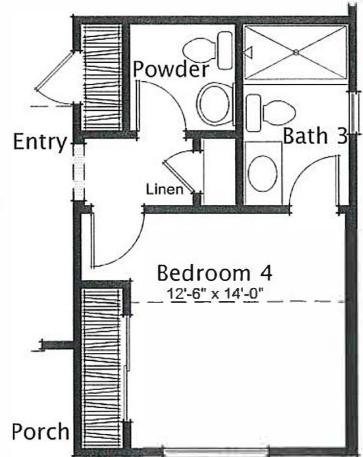
## Floor Plan

Living Area:

Total Living Area = 1,883 sq. ft.  
Garage 476 sq. ft.



Living Area:  
 First Floor 1,127  
 Second Floor 1,314  
 Total Living Area = 2,441 sq. ft.  
 Garage 460



**BRIGHT HOMES**  
 Larkspur Estates Unit 4 - Tracy, CA

Title  
 Conceptual  
 Floor Plan  
 Plan 2441

Date  
 November 13, 2019  
 Project Number  
 4433  
 Scale  
 1/4" = 1'-0"  
 Revision  
 1-10-2020

Sheet No.  
 4



Title  
Conceptual  
Elevation 'A'  
Plan 1883

Date  
November 13, 2019  
Project Number  
4433  
Scale  
No Scale  
Revision  
1-10-2020  
Sheet No.  
3-2-2020



Front Elevation 'A' Spanish  
Scheme 3



Left Elevation 'A'



Rear Elevation 'A'



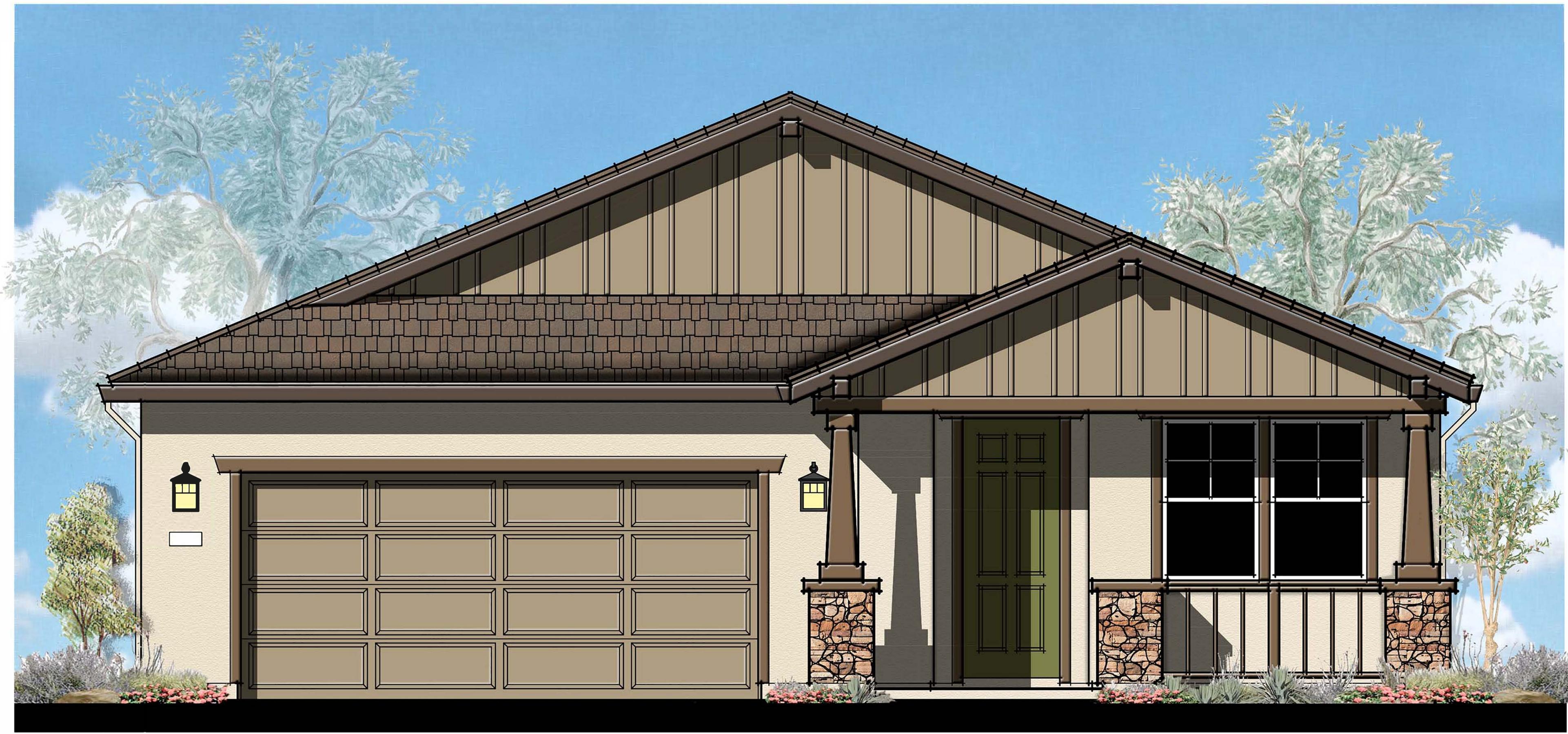
Right Elevation 'A'



Title  
Conceptual  
Elevation 'D'  
Plan 1883

Date  
November 13, 2019  
Project Number  
4433  
Scale  
No Scale  
Revision  
1-10-2020  
3-2-2020

Sheet No.  
3



Front Elevation 'D' Craftsman  
Scheme 6



Left Elevation 'D'



Rear Elevation 'D'



Right Elevation 'D'



Title  
Conceptual  
Elevation 'A'  
Plan 2441

Date  
November 13, 2019  
Project Number  
4433  
Scale  
No Scale  
Revision  
1-10-2020  
3-2-2020

Sheet No.

5



Front Elevation 'A' Spanish  
Scheme 2



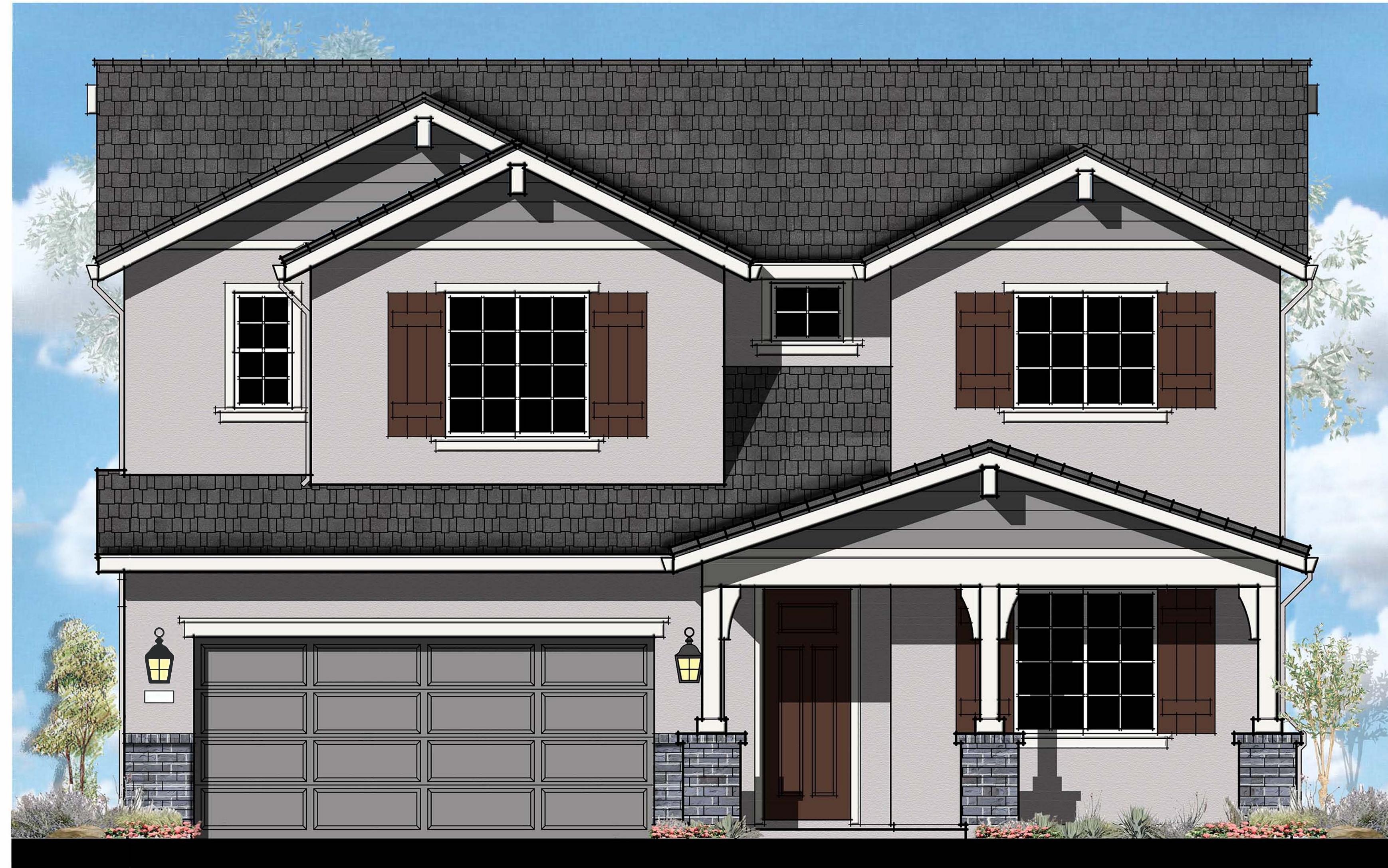
Left Elevation 'A'



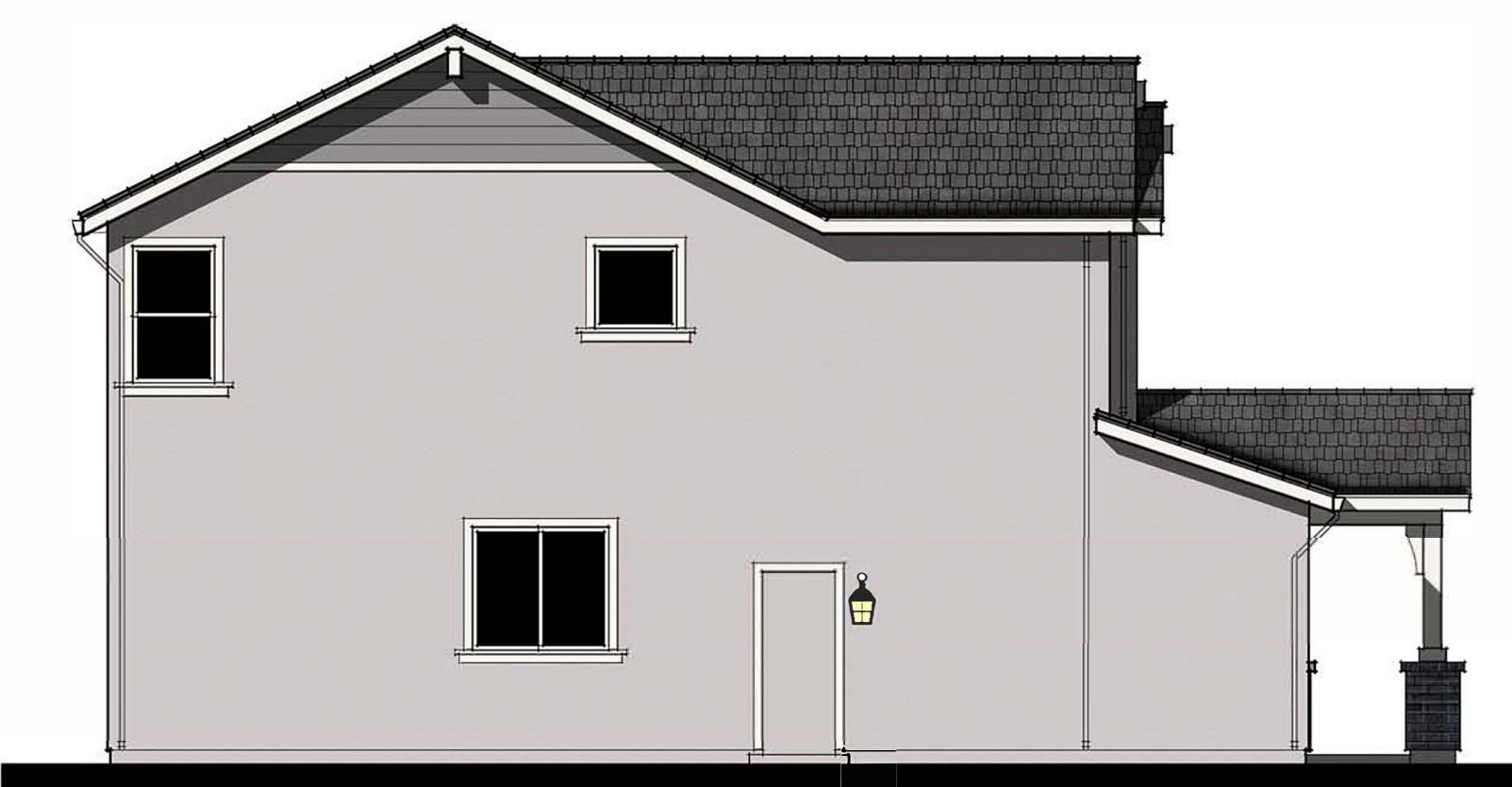
Rear Elevation 'A'



Right Elevation 'A'



Front Elevation 'H' Cottage  
Scheme 12



Left Elevation 'H'



Rear Elevation 'H'



Right Elevation 'H'



**BRIGHT HOMES**

Larkspur Estates Unit 4 - Tracy, CA

Title  
Conceptual  
Elevation 'H'  
Plan 2441

Date  
November 13, 2019  
Project Number  
4433  
Scale  
No Scale

Revision  
1-10-2020  
3-2-2020  
Sheet No.  
6



Plan 2441  
Front Elevation 'A'  
Spanish

Plan 1883  
Front Elevation 'D'  
Craftsman

Plan 2441  
Front Elevation 'H'  
Cottage

Plan 1883  
Front Elevation 'A'  
Spanish

## Larkspur Estates Unit 4 Tract No. 3804 Tracy, California

Bright Development  
1620 N. Carpenter Rd., Suite B  
Modesto, CA 95351  
Ph: 209.526.8242

**BRIGHT HOMES**  
Larkspur Estates Unit 4 - Tracy, CA

Title  
Conceptual  
Street Scene

Date  
November 1, 2019  
Project Number  
44-33  
Scale  
1/4" = 1'-0"  
Revision  
1-10-2020  
3-2-20

## Elevation "A" Spanish

**Scheme 1**



Certainteed Landmark Series  
Burnt Sienna



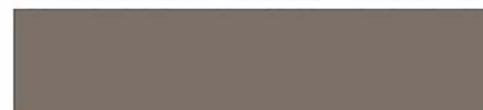
Stucco / Eaves / Rakes  
Kelly Moore Paints - KM4891 - Swan Drive



Window / Door Trim  
Kelly Moore Paints - KM579 Even Evan



Fascia / Barge / Garage Door  
Kelly Moore Paints - KM5795 - Teddy's Taupe



Entry Door / Shutters  
Kelly Moore Paints - KM5800 Sausalito Ridge



Wrought Iron  
Kelly Moore Paints - KMA89 Black Oak

**Scheme 2**



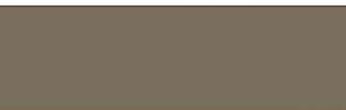
Certainteed Landmark Series  
Heather Blend



Stucco / Eaves / Rakes  
Kelly Moore Paints - KMW14 Garlic Clove



Window / Door Trim  
Kelly Moore Paints - KM5791 Northpointe



Fascia / Barge / Garage Door  
Kelly Moore Paints - KM4603 Grand Avenue



Entry Door / Shutters  
Kelly Moore Paints - KM4925 Wild Truffle

**Scheme 3**



Certainteed Landmark Series  
Weathered Wood



Stucco / Eaves / Rakes  
Kelly Moore Paints - 42 Wise Owl



Window / Door Trim  
Kelly Moore Paints - 232 Toscana



Fascia / Barge / Garage Door  
Kelly Moore Paints - KM5800 Sausalito Ridge



Entry Door / Shutters  
Kelly Moore Paints - KM4505 Thai Teak



Wrought Iron  
Kelly Moore Paints - KMA89 Black Oak

**Scheme 4**



Certainteed Landmark Series  
Burnt Sienna



Stucco / Eaves / Rakes  
Kelly Moore Paints - KM 5774 Whitney Oaks



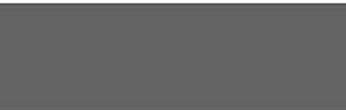
Window / Door Trim  
Kelly Moore Paints - KM5773 Raw Sugar



Fascia / Barge / Garage Door  
Kelly Moore Paints - KM5775 Empire Ranch



Entry Door / Shutters  
Kelly Moore Paints - KM5790 Grapevine Canyon



Wrought Iron  
Kelly Moore Paints - KMA89 Black Oak

## Elevation "D" Craftsman

**Scheme 5**



Certainteed Landmark Series  
Moire Black



Stucco / Eaves / Rakes  
Kelly Moore Paints  
KM4643 Sticks & Stones



Cultured Stone - Stone Veneer  
Country Ledgestone - Aspen



Board & Batten Siding  
Kelly Moore Paints - KM4707 Hidden Cottage



Window & Door Trim / Wood  
Kelly Moore Paints - KM4640 Ostrich Egg



Fascia / Barge  
Kelly Moore Paints - KM4708 Oak Plank



Garage Door  
Kelly Moore Paints - KM4640 Ostrich Egg



Entry Door  
Kelly Moore Paints - KM4708 Oak Plank

**Scheme 6**



Certainteed Landmark Series  
Heather Blend



Stucco / Eaves / Rakes  
Kelly Moore Paints  
KM4646 Magic Shell



Culture Stone - Stone Veneer  
Country Ledgestone - Caramel



Board & Batten Siding  
Kelly Moore Paints - KM5716 Rodeo Roundup



Window & Door Trim / Wood  
Kelly Moore Paints - KM5797 Woodward Park



Fascia / Barge  
Kelly Moore Paints - KMA74 Stagecoach



Garage Door  
Kelly Moore Paints - KM5716 Rodeo Roundup



Entry Door  
Kelly Moore Paints - HLS4271 Grant Drab

**Scheme 7**



Certainteed Landmark Series  
Moire Black



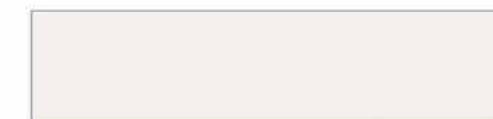
Stucco / Eaves / Rakes  
Kelly Moore Paints  
23 Swiss Coffee



Cultured Stone Veneer  
Country Ledgestone - Echo Ridge



Board & Batten Siding  
Kelly Moore Paints - KM5816 Harrison Gray



Window & Door Trim / Wood  
Kelly Moore Paints - 23 Swiss Coffee



Fascia / Barge  
Kelly Moore Paints - 23 Swiss Coffee



Garage Door  
Kelly Moore Paints - KM4902 Mt. Rushmore



Entry Door  
Kelly Moore Paints - KMA89 Black Oak

**Scheme 8**



Certainteed Landmark Series  
Heather Blend



Stucco / Eaves / Rakes  
Kelly Moore Paints  
KM4747 Knock on Wood



Cultured Stone - Stone Veneer  
Country Ledgestone - Aspen



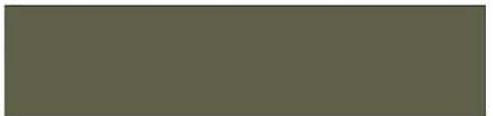
Board & Batten Siding  
Kelly Moore Paints - KM4742 Mysterious Moss



Window & Door Trim / Wood  
Kelly Moore Paints - KM4737 Sassafras Tea



Fascia / Barge  
Kelly Moore Paints - KM4737 Sassafras Tea



Garage Door  
Kelly Moore Paints - KM4819 Forest Floor



Entry Door  
Kelly Moore Paints - KMA49 Fruit Yard

## Elevation "H" Cottage

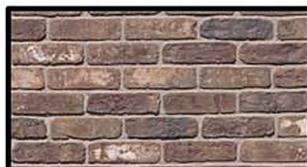
**Scheme 9**



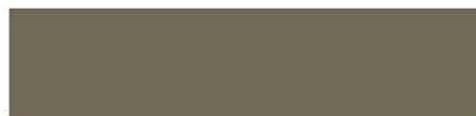
Certainteed Landmark Series  
Moire Black



Stucco / Eaves / Rakes  
Kelly Moore Paints  
KM4647 Pony Tail



McNear Brick  
Sandmold | Embarcadero



Horizontal Siding / Garage Door  
Kelly Moore Paints – KM5772 Palm Lane



Fascia / Barge / Window & Door Trim / Wood  
Kelly Moore Paints – KMW23 Bechamel



Entry Door / Shutters  
Kelly Moore Paints – KM5741 Cricket's Cross

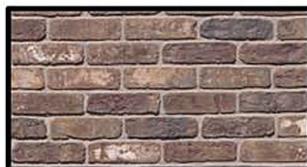
**Scheme 10**



Certainteed Landmark Series  
Weathered Wood



Stucco / Eaves / Rakes  
Kelly Moore Paints  
KM4552 Antique Windmill



McNear Brick  
Sandmold | Cotswold



Horizontal Siding/ Garage Door  
Kelly Moore Paints – KM5796 Even Evan



Fascia / Barge / Window & Door Trim / Wood  
Kelly Moore Paints – KM4510 Bear Hug



Entry Door  
Kelly Moore Paints – KMA35 Willow Blue



Shutters  
Kelly Moore Paints – KMA77 Brown Bear

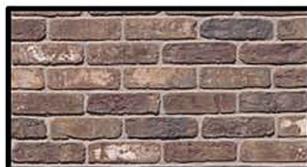
**Scheme 11**



Certainteed Landmark Series  
Moire Black



Stucco / Eaves / Rakes  
Kelly Moore Paints  
KM4642 Birds Nest



McNear Brick  
Sandmold | Tunbridge



Horizontal Siding / Garage Door  
Kelly Moore Paints – KM4546 Appaloosa Spots



Fascia / Barge / Window & Door Trim / Wood  
Kelly Moore Paints – KM5712 Cookie Crumb



Entry Door / Shutters  
Kelly Moore Paints – KM4925 Wild Truffle

**Scheme 12**



Certainteed Landmark Series  
Moire Black



Stucco / Eaves / Rakes  
Kelly Moore Paints  
KM5815 Actor's Star



Muddox Brick  
Klinker



Horizontal Siding / Garage Door  
Kelly Moore Paints – KM4910 Platinum Granite



Fascia / Barge / Window & Door Trim / Wood  
Kelly Moore Paints – KMW46 Picket Fence

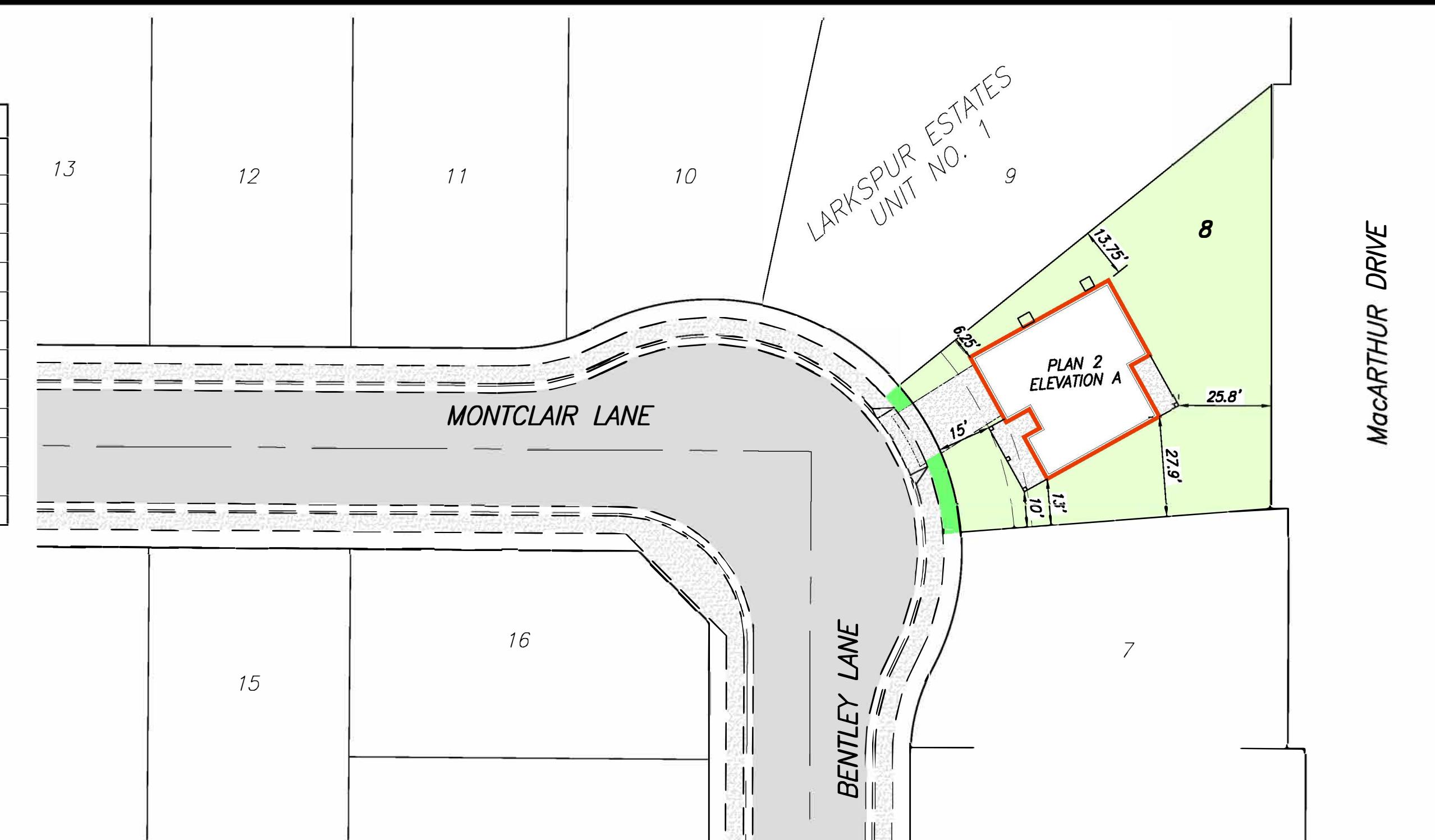


Entry Door / Shutters  
Kelly Moore Paints – KM4918 Split Rock

FLOOR PLANS		
PLAN 1	QUANTITY	PERCENTAGE
PLAN 1	5	36%
PLAN 2	9	64%
<b>TOTAL</b>	<b>14</b>	<b>100%</b>

LOT COVERAGE, UNIT 4

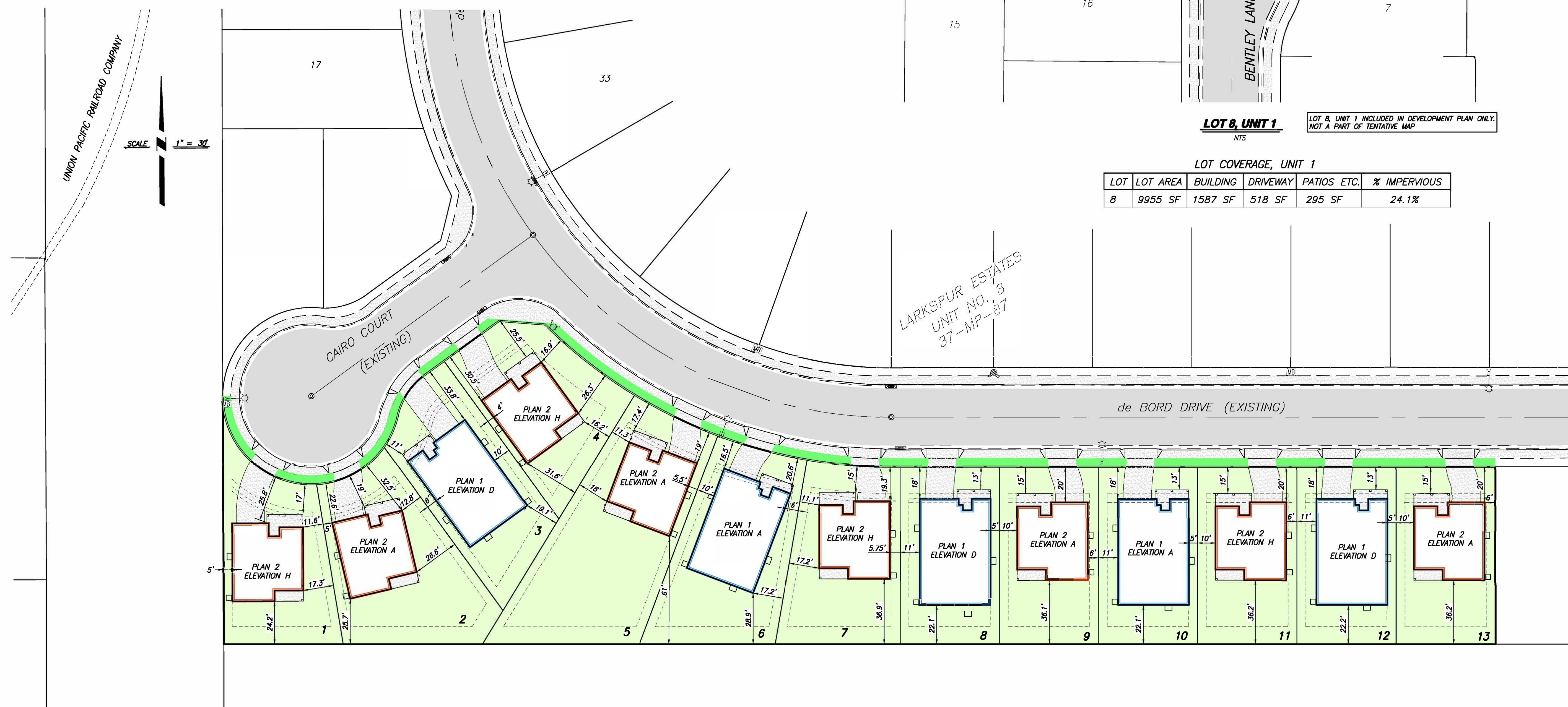
LOT	LOT AREA	BUILDING	DRIVEWAY	PATIOS ETC.	% IMPERVIOUS
1	5949 SF	1587 SF	508 SF	295 SF	40.2%
2	7279 SF	1587 SF	557 SF	295 SF	33.5%
3	6500 SF	2359 SF	886 SF	180 SF	52.7%
4	6083 SF	1587 SF	625 SF	295 SF	41.2%
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10	5600 SF	2359 SF	476 SF	180 SF	53.8%
11	5600 SF	1587 SF	498 SF	295 SF	42.5%
12	5600 SF	2359 SF	499 SF	180 SF	54.3%
13	5600 SF	1587 SF	513 SF	295 SF	42.8%



LOT 8, UNIT 1  
NTS

LOT 8, UNIT 1 INCLUDED IN DEVELOPMENT PLAN ONLY.  
NOT A PART OF TENTATIVE MAP.

LOT	LOT AREA	BUILDING	DRIVEWAY	PATIOS ETC.	% IMPERVIOUS
8	9955 SF	1587 SF	518 SF	295 SF	24.1%



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(209) 548-9300 FAX (209) 548-9305



DEVELOPMENT PLAN

PDF/FDP FOR:

LARKSPUR ESTATES UNIT 4  
TRACY, CALIFORNIA

JOB NO. 212201  
DATE 03/17/20  
DR BY JF/TG  
CK BY TG  
SCALE AS SHOWN

SHEET NUMBER

1

1 OF 1 SHEETS



BRIGHT HOMES



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

APPROVING A VESTING TENTATIVE SUBDIVISION MAP (LARKSPUR ESTATES UNIT 4) TO DIVIDE ONE PARCEL INTO 13 PARCELS ON 1.89 ACRES LOCATED ON THE SOUTH SIDE OF DE BORD DRIVE AND CAIRO COURT, ASSESSOR'S PARCEL NUMBER 246-330-50, AND A DEVELOPMENT REVIEW APPLICATION FOR THE ARCHITECTURE OF 14 SINGLE FAMILY HOMES TO BE PLACED ON THE NEW SUBDIVISION LOTS AS WELL A LOT FORMERLY USED FOR EMERGENCY VEHICLE ACCESS, ASSESSOR'S PARCEL NUMBER 246-310-08

WHEREAS, The subject property was annexed to the City of Tracy in 1994 as a part of a larger subdivision, and has a zoning designation of Low Density Residential, and

WHEREAS, The proposed map is consistent with the General Plan, and Title 12, the Subdivision Ordinance, of the Tracy Municipal Code. The General Plan designation of the property is Residential Low, which provides for a density range of 2.1 to 5.8 dwelling units per acre. The General Plan identifies "conventional single-family dwelling units" as the "likely principal type of housing stock" within the Residential Low land use designation. The Larkspur Estates Unit 4 Project proposes single-family detached homes with an average density of 5.4 dwelling units per gross acre, and

WHEREAS, The site is physically suitable for the type of development, as the site will be virtually flat once the temporary storm drain retention basin is removed as required by the City. The physical qualities of the property make it suitable for residential development in accordance with City standards, and

WHEREAS, The site is physically suitable for the proposed density of development. The 5.4 dwelling units per gross acre proposed is consistent with the allowable density range prescribed by the General Plan. The density is consistent with the residential development adjacent to the subject property. Traffic circulation is designed in accordance with City standards for the proposed density to ensure adequate traffic service levels are met, and

WHEREAS, The design of the subdivision or the proposed improvements will not cause substantial environmental damage or substantially and avoidably injure fish or wildlife or their habitat. The Project site is categorically exempt from California Environmental Quality Act Pursuant to CEQA Guidelines Section 15332, pertaining to infill projects smaller than five acres surrounded by urban uses that are consistent with the Zoning and General Plan designations and not having any significant environmental effects. Significant fish or wildlife or their habitat have not otherwise been identified on the site and no further environmental documentation is required, and

WHEREAS, The design of the subdivision or the type of improvements will not conflict with easements, acquired by the public at large, for access through or use of, property within the proposed subdivision, and

WHEREAS, The Project complies with all other applicable ordinances, regulations and guidelines of the City, including but not limited to, the local floodplain ordinance. The subject property is not located within any floodplain and the Project, with conditions, will meet all applicable City design and improvement standards, and

WHEREAS, All the public facilities necessary to serve the subdivision will be in place prior to the issuance of building permits. All the public facilities necessary to serve the subdivision or mitigate the impacts created by the subdivision will be assured through a subdivision improvement agreement prior to the approval of a final map, and

WHEREAS, The architectural elevations comply with the Article 30 of the Tracy Municipal Code, Development Review, and City's Design Goals and Standards. The proposed elevations will enhance the property once constructed, in a manner consistent with both the current design standards, while complementing the existing surrounding homes, and

WHEREAS, The Planning Commission conducted a public hearing to review and consider the Vesting Tentative Subdivision Map and architecture on July 8, 2020 and recommended City Council approval of the proposed applications;

NOW, THEREFORE, BE IT RESOLVED, That the City Council of the City of Tracy hereby approves a Vesting Tentative Subdivision Map (Larkspur Estates Unit 4) to divide one parcel into 13 parcels on 1.89 acres located on the south side of De Bord Drive and Cairo Court, Assessor's Parcel Number 246-330-50, and a Development Review Application for the architecture of 14 single family homes to be placed on the new subdivision lots as well a lot formerly used for emergency vehicle access, Assessor's Parcel Number 246-310-08, Application Numbers TSM19-0003 and D20-0005, subject to conditions stated in Exhibit 1, attached and made part hereof.

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The foregoing Resolution 2020-\_\_\_\_\_ was adopted by the City Council on the 1st day of September 2020, by the following vote:

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

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MAYOR

ATTEST:

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CITY CLERK

**Conditions of Approval**  
**Larkspur Estates Unit 4 Vesting Tentative Subdivision Map**  
**and Architecture**  
**Application Numbers TSM19-0003 and D20-0005**  
**September 1, 2020**

These Conditions of Approval shall apply to the Larkspur Estates Unit 4 Vesting Tentative Subdivision Map, and residential architecture, located on 1.89 acres on the south side of De Bord Drive and Cairo Court, and at 2110 Bentley Lane (Assessor's Parcel Numbers 246-330-50 and 246-310-08), Application Numbers TSM19-0003 and D20-0005.

A. The following definitions shall apply to these Conditions of Approval:

1. "Applicant" means any person, or other legal entity, defined as a "Developer".
2. "City Engineer" means the City Engineer of the City of Tracy, or any other duly licensed engineer designated by the City Manager, or the Public Works Director, or the City Engineer to perform the duties set forth herein.
3. "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, ordinances, resolutions, policies, procedures, and the City's Design Documents (including the Standard Plans, Standard Specifications, Design Standards, and relevant Public Facility Master Plans).
4. "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.
5. "Conditions of Approval" shall mean the conditions of approval applicable to the Larkspur Estates Unit 4 Vesting Tentative Subdivision Map, and residential architecture, located on 1.89 acres on the south side of De Bord Drive and Cairo Court, and at 2110 Bentley Lane (Assessor's Parcel Numbers 246-330-50 and 246-310-08), Application Numbers TSM19-0003 and D20-0005. The Conditions of Approval shall specifically include all Development Services Department Conditions set forth herein.
6. "Project" means the Larkspur Estates Unit 4 Vesting Tentative Subdivision Map, and residential architecture, located on 1.89 acres on the south side of De Bord Drive and Cairo Court, and at 2110 Bentley Lane (Assessor's Parcel Numbers 246-330-50 and 246-310-08), Application Numbers TSM19-0003 and D20-0005.
7. "Property" means the Larkspur Estates Unit 4 Vesting Tentative Subdivision Map, and residential architecture, located on 1.89 acres on the south side of De Bord Drive and Cairo Court, and at 2110 Bentley Lane (Assessor's Parcel Numbers 246-330-50 and 246-310-08), Application Numbers TSM19-0003 and D20-0005.
8. "Subdivider" 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. "Subdivider" also means the Developer. The term "Subdivider" shall include all successors in interest.

**B. Planning Division Conditions of Approval**

1. 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 15000, et seq., "CEQA Guidelines").
2. Unless specifically modified by these Conditions of Approval, the Project shall comply with all City Regulations.
3. The Project shall document compliance with the development standards that apply to the Low Density Residential Zone, including but not limited to lot size, building setbacks and height.
4. The floor plans and architectural elevations shall be consistent with the renderings received by the Development Services Department on April 7, 2020.
5. To ensure adequate variety within the 14-lot project area, no two identical houses (same floor plan and same elevation) shall be used on adjacent lots. A variety of the floor plans shall be spread throughout the project site to the satisfaction of the Development Services Director.
6. Prior to the issuance of any building permits, the developer shall document compliance with all applicable school mitigation requirements and shall pay all school fees are required to the school district.

**C. 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) NONE

**C.2 Tentative Subdivision Map**

Prior to signature of the Tentative Subdivision Map by the City Engineer, Developer shall comply with the requirements set forth in this section, to the satisfaction of the City Engineer.

- C.2.1 Tentative Subdivision Map shall contain all the appropriate signature blocks.
- C.2.2 Prior to the approval of the Tentative Subdivision Map, Developer shall depict on the Tentative Subdivision Map restricted access to prevent future homeowners from accessing nearby streets:
  - C.2.2.a. Restrict access to De Bord Drive along the north-eastern property line of Lot 4 via “abutter’s rights relinquishment”;
  - C.2.2.b. Restrict access to Union Pacific Railroad Company right-of-way along the western property line of Lot 1 via a one (1) foot wide easement granted to the City; and
  - C.2.2.c. Restrict access to Texaco Downstream Properties along the southern edge for Lots 1, 2, 5, 6, 7, 8, 9, 10, 11, 12, and 13 via a one (1) wide easement granted to the City.
- C.2.5 Prior to the approval of the Tentative Subdivision Map, Developer shall submit one (1) mylar copy of the approved tentative subdivision map for the Project within ten (10) days after Developer’s receipt of a notification of approval of the Tentative Subdivision Map. The owner of the Property must consent to the preparation of the Tentative Subdivision Map, and the proposed subdivision of the Property. Said tentative subdivision map shall conform to the City’s requirements outlined in the Title 12 of the Tracy Municipal Code (TMC).

**C.3 Final Subdivision Map**

Prior to the City Engineer scheduling the Final Subdivision Map for City Council approval, the Developer shall demonstrate, to the satisfaction of the City Engineer, compliance with all required Conditions of Approval, including, the following:

- C.3.1 Developer has completed all the requirements set forth in this section, and Condition C.2, above.
- C.3.2 Prior to the approval of the Final Subdivision Map, Developer shall prepare the Final Subdivision Map in accordance with the applicable requirements of

the TMC, the City Design Standards, and in substantial conformance with the Tentative Subdivision Map for the Project.

- C.3.3 Prior to the approval of the Final Subdivision Map, Developer shall include dedications or offers of dedication of all right(s)-of-way and/or Public Utility Easement(s) required to serve the Project in accordance with City Regulations and these Conditions of Approval. Said Public Utility Easement (P.U.E.) shall be ten (10) feet wide as measured from the right-of-way and shall be continuous along each lot's frontage along every right-of-way.
- C.3.4 RESERVED
- C.3.5 Horizontal and vertical control for the Project shall be based upon the City of Tracy coordinate system and at least three 2nd order Class 1 control points establishing the "Basis of Bearing" and shown as such on the final map. The final map shall also identify surveyed ties from two of the horizontal control points to a minimum of two (2) separate points adjacent to or within the Property described by the Final Map.
- C.3.6 Prior to the approval of the Final Subdivision Map, Developer shall submit to the City a construction cost estimate of subdivision (basin grading removal; and associated underground storm drain pipes) improvements and for all required public facilities, prepared in accordance with City Regulations and to the satisfaction of the City Engineer. Developer shall add ten percent (10%) for construction contingencies.
- C.3.7 Prior to the approval of the Final Subdivision Map, Developer shall execute and notarize, if requested, all the required improvement agreements, shall provide improvement security and insurance documentation, as required by the Subdivision Map Act, the TMC, and these Conditions of Approval. The amounts of improvement security shall be to the satisfaction of the City Engineer and the type and form of improvement security shall be in accordance with the TMC.
- C.3.8 Prior to the approval of the Final Subdivision Map, Developer will include slope, and temporary construction easements, to the satisfaction of the City Engineer, with the final map submittal to address slopes among the lots to address grade differentials, retaining walls, or lots adjacent to slopes.

- C.3.9 Prior to the City Engineer scheduling the Final Subdivision Map for City Council approval, Developer shall provide payment of final map checking fees and all fees required by these Conditions of Approval and City Regulations.
- C.3.10 At the conclusion of the City's review, Developer shall submit one (1) mylar copy of the approved Final Subdivision Map for signature.

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. Prior to the release of the Grading Permit, Developer shall provide 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 affected owner(s) will be required to be submitted to the City prior to the issuance of the Grading Permit.
- C.4.3 Developer has obtained a demolition permit to remove any existing structure located within the project's limits.
- C.4.4 If present, 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.

C.4.6 On-site Grading/Drainage Plans **and Detention 2B** Improvement Plans shall be prepared on a twenty-four (24) inch x thirty-six (36) inch size four (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 of Record 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](mailto: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](mailto: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, paving calculations such as gravel factors, gravel equivalence, etc., 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 at property lines when the grade differential among the in-tract lots exceeds twelve (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.

Minor Retaining along Project Perimeter – Developer shall use reinforced or engineered masonry blocks for retaining soil along the Project boundary and adjacent property(s) when the grade differential exceeds 12-inches. Developer will include construction details for these minor retaining walls with the on-site Grading and Drainage Plan. Developer may use slopes to address the grade differential but said slope shall not exceed a slope gradient of 3 (horizontal) to 1 (vertical). Slope easements may 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 If applicable, 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 storm drain pipes, if any, to the satisfaction of the City Engineer, if the facilities are no longer required for storm drain purposes. If storm drain 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. . The cost of relocating and/or removing storm drain 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 are high voltage power lines along the Project's northerly property line, if any.

- 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/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.4.16 Prior to the release of the Grading Permit, the geotechnical engineer for the Project shall sign and stamp a letter to the satisfaction of the City Engineer that the fill import material was inspected by the geotechnical engineer, that the fill import material conforms to the geotechnical report, and that the fill import material is suitable material for the purposed structures. Developer shall fill the basin in conformance with the geotechnical report.
- C.4.17 Prior to the release of the Grading Permit, the developer shall adhere to the conditions and requirements outlined in Section C.5.

C.5. Improvement Agreements (s)

All construction activity involving public improvements will require a fully executed improvement agreement (Off-site, Subdivision, and/or Inspection). Any construction activity involving public improvements without a fully executed improvement agreement is prohibited. All public improvements shall be performed and completed in accordance with the recommendation(s) of the Project's Registered Civil Engineer of Record. Prior to the City writing any improvement agreement or scheduling any improvement agreement to be approved by City Council 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.5.0 Developer has completed all the requirements set forth in this section, and Condition C.4, above.
- C.5.1. Off-site and/or Public Infrastructure Grading and Detention Basin 2B 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. Drainage calculations for the sizing of the on-site storm drainage system. Improvement Plans to be submitted with the hydrology and storm water.

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 Project's permanent storm drainage connection(s) shall be designed and constructed in accordance with City Regulations. The design of the permanent storm drainage connection shall be shown on the Grading and Drainage Plans with calculations for the sizing of the storm drain pipe(s), and shall comply with the applicable requirements of the City's storm water regulations adopted by the City Council in 2012 and any subsequent amendments.

**Prior to the Developer filling the existing temporary basin, Developer shall first construct Detention Basin 2B and its appurtenances in such a way that it can accept the existing temporary basin's storm water to the satisfaction of the City Engineer. Simultaneous construction of 2B and filling of the existing basin is prohibited.**

If the City does not own the land for Detention Basin 2B in fee title, Developer may elect to purchase the land on behalf of the City.

C.5.1.e. **Sanitary Sewer** – If the Developer needs to remove and construct any portion of the Sanitary Sewer system, this section is applicable. 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.

C.5.1.g. Water Distribution – If the Developer needs to remove and reconstruct any portion of the Water Distribution system, this section is applicable. 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 – 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** – If the Developer needs to remove and reconstruct any portion of the street improvements, this section is applicable. Developer shall construct their frontage improvements. Frontage improvements include but are not limited to the following: curb, gutter, sidewalk, street widening, landscaping, street lighting, undergrounding of overhead utilities and other improvements. 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.

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

C.5.2. If the Developer needs to remove and reconstruct any portion of any improvement within Joint Trench, this section is applicable. Joint Trench Plans and Composite Utility Plans, prepared on a twenty-four (24) inch x thirty-six (36) inch size four (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 twenty-four (24) feet wide to forty-six (46) feet wide [the width varies] PUE 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 ten (10) feet wide PUE 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 On-site Improvements - Prior to the City's approval of the Final Subdivision Map, and prior to the Developer commencing construction of on-site, in-tract public and private improvements, Developer shall possess a fully executed Subdivision Improvement Agreement (SIA). Developer shall also complete all of the following requirements to the satisfaction of the City Engineer:

Developer has received City signed improvement plans.

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

Improvement Security - Developer shall provide improvement security for all public facilities, as required by the Improvement Agreement. 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. Monumentation Bonds shall be seven hundred fifty (\$750.00) dollars multiplied by the total number of street centerline monuments plus one hundred twenty-five (\$125) dollars multiplied by the total number of legal lots that are shown on the Final Map.

Insurance – Developer shall provide written evidence of insurance coverage that meets the terms of the Improvement Agreement.

C.5.9 Off-site Public Improvements - Prior to the Developer commencing construction of off-site public improvements, Developer shall possess a fully executed Off-site Improvement Agreement (OIA). Developer shall also complete all of the following requirements to the satisfaction of the City Engineer:

Developer has received City signed improvement plans.

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

Improvement Security - Developer shall provide improvement security for all public facilities, as required by the Improvement Agreement. 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 the Improvement Agreement.

#### 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.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 satisfactorily 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. Developer shall also provide the Project's CADD files to the City.
- 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 Developer has completed the ninety (90) day public landscaping maintenance period.
- C.7.7 RESERVED

C.7.8 **Release of 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 two (2) inch thick asphalt concrete (AC) overlay with reinforcing fabric at least twenty-five (25) feet from all sides of each utility trench. A two (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.

#### Finance Department Conditions of Approval

1. Prior to recording the Final Map, the applicant shall do one of the following, subject to the approval of the Finance Director:
  - a. CFD or other funding mechanism. The applicant shall enter into an agreement with the City, to be signed by the Finance Director, which shall be recorded against the property, which stipulates that prior to the issuance of the first building permit, the applicant will form or annex into a Community Facilities District (CFD) or establish another lawful funding mechanism that is reasonably acceptable to the City for funding the on-going operational costs of providing Police services, Public Works services and other City services to serve the Project area. Formation of the CFD shall include, but not be limited to, affirmative votes and the recordation of a Notice of Special Tax Lien. The applicant shall be responsible for all costs associated with the formation or annexation proceedings. Upon successful formation, the parcels will be subject to the maximum special tax rates as outlined in the Rate and Method of Apportionment.

Or

- b. Direct funding. The applicant shall enter into an agreement with the City, which shall be recorded against the property, which stipulates that prior to the issuance of the first building permit, the applicant will fund a fiscal impact study to be conducted and approved by the City to determine the long term on-going operational costs of providing Police services, Public Works services and other City services to serve the Project area, and deposit with the City an amount necessary, as reasonably determined by the City, to fund the full costs in perpetuity as identified by the approved study.

If the provisions for adequate funding of the on-going operational costs of providing Police services, Public Works services and other City services are met prior to issuance of the first building permit for the project, subject to the Finance Director's review and approval, the terms of this condition shall be considered to have been met and this condition shall become null and void.

September 1, 2020

AGENDA ITEM 3.C

REQUEST

**RECEIVE UPDATE FROM THE SOUTH SAN JOAQUIN COUNTY FIRE AUTHORITY  
ON THE EMPLOYEE TRANSITION PLAN AND PROVIDE DIRECTION TO STAFF**

EXECUTIVE SUMMARY

The City Council will receive an update on the status to the fire employee transition plan to stand alone with South San Joaquin County Fire Authority (SSJCFA).

DISCUSSION

During the May 19, 2020 Council items, Mayor Rickman requested a status update on the employee transition plan from the South San Joaquin County Fire Authority. This request was seconded by Council Member Ransom. The attached report will be presented by the SSJCFA Fire Chief. The report provides information and action steps taken to date by SSJCFA and provides an update on pending information needed to complete a full assessment of the transition.

STRATEGIC PLAN

This agenda item relates to Council's Public Safety Strategy.

FISCAL IMPACT

The fiscal impacts of the fire transition plan are under review by the City. Further information is anticipated from SSJCFA to determine the short-term and long-term costs associated with the transition.

RECOMMENDATION

Receive a report from Fire Chief Randall Bradley.

Prepared by: Karin Schnaider, Finance Director

Reviewed by: Midori Lichtwardt, Assistant City Manager

Approved by: Jenny Haruyama, City Manager

ATTACHMENTS

A - South San Joaquin County Fire Authority Staff Report



# SOUTH SAN JOAQUIN COUNTY FIRE AUTHORITY

## Fire Administration

In 1999, the City of Tracy (City) and the Tracy Rural Fire Protection District (District) entered into a Joint Powers Agreement (JPA) that formed the South County Fire Authority (SCFA). On the same date SCFA contracted with the City to provide fire protection services within the jurisdictional boundaries of SCFA (City of Tracy and Tracy Rural Fire Protection District). Two Tracy City Council Members and two District Board Members made up the SCFA Board with the Tracy City Manager serving as the Chief Executive Officer for the SCFA. The City of Tracy's Finance Director also served as the Treasurer-Controller of the SCFA. The SCFA was formed to accomplish the following goals:

- To improve fire protection services within the region through improved efficiencies by the elimination of redundant administrative and operational services.
- To limit the impact of annexations to the residents that live in the unincorporated areas.
- To maintain the District ad valorem tax allocation increment (average of approximately 11% of each property tax dollar) and the special fire tax (\$0.03 per square foot) in areas that are annexed into the City.

These goals were accomplished through the following administrative agreements between the City and the District:

- Future City annexations would not detach from the District.
- All employees would work for the City and redundant administrative staff would be eliminated through attrition, increasing efficiencies and overall service levels.
- The City would provide administrative services (Human Resources, Budget/Finance/Risk Management and Legal) to SCFA.
- The City would fund any District financial shortfalls (with a reimbursement agreement) until revenues increased to sustainable funding levels through the annexation and development of land that would remain in the District.

In 1999, the expectation was the City of Tracy would continue to grow and the District and the City of Tracy would benefit by securing fire protection property tax revenues through the non-detachment strategy. Limited growth initiatives and economic downturns slowed growth projections through 2014. In 2014, the City of Tracy began to realize extensive growth in the twelve annexed areas that did not detach from the District. Over 30 million square feet of commercial and industrial facilities and over 8,000 residential units have now been built or are entitled to be built in those annexed areas. With the growth in the annexed areas, the District revenues have seen unparalleled growth since 2014 and are expected to triple their 2014 total within the next five to six years.

With extensive growth, additional responsibility and increased revenues, the District Board of Directors requested that the original JPA be revised to allow the District to have





# SOUTH SAN JOAQUIN COUNTY FIRE AUTHORITY

## Fire Administration

an equal governance footing with the City of Tracy. In 2017, staff completed a study concerning the JPA governance. Staff utilized two previous consultants' studies and developed four different governance options to evaluate. The following were the four options with brief summaries:

1. Dissolving the current JPA and returning to a two-agency model. Under this option revenues would be lost to the County and fire protection efficiencies would be lost and service levels would suffer.
2. The District could contract with the City to provide fire protection services. This option is very similar to the model that was in effect at the time the study was completed. This model was unacceptable to the District due to a lack of budgetary oversight, collective bargaining influence and a desire for responsibilities to be commensurate with their authorities over fire protection within their jurisdictional boundaries.
3. Annex the City into the District for fire protection. The City would be required to enter into a new tax sharing agreement with the County to fund the newly created District. The outcome of the agreement is unknown and therefore a thorough analysis is not possible. Also, because the District has a special tax that was implemented in 1982, it would be difficult to overlay a special tax on City residents without a vote that would require two-thirds approval. Last, the City would give up control and budgetary flexibility over the portion of the City that is not within the Rural District.
4. Create a strong JPA that operates as an autonomous agency.

Option number four was chosen because it addressed the District's concerns while protecting the City's ability to maintain fire protection revenues and continue to influence public policy and prioritization of fire protection services within the City limits. In 2017, the JPA agreement was reevaluated and in March of 2018 (effective date July 1, 2018) a new agreement was adopted by both agencies. Implementation of the new agreement was divided into two phases:

**Phase 1 (complete):** Create a stronger semi-autonomous governance and fire protection organization through the implementation of structural, organizational and financial elements. The following are the Phase 1 elements that were completed upon initiation of the new JPA and the associated dissolution agreement:

- Entered into an agreement with the City of Tracy to continue to serve as the employer of record until the new JPA is able to transition all employees to the new JPA.
- The JPA's Board of Directors was provided oversight responsibility for fire protection within the JPA boundaries based on the service levels determined by the member agencies.





# SOUTH SAN JOAQUIN COUNTY FIRE AUTHORITY

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## Fire Administration

- The Board appointed the Fire Chief who serves as the JPA's Chief Executive Officer at the will of the Board. Prior, the Tracy City Manager served as the JPA's Chief Executive Officer.
- Amendments to the previous JPA were removed and incorporated into the new document. The amendments were difficult to interpret, implement and track. The Supplemental Services Agreement (Amendment 3), Smoothing Agreement, and the Pre-paid Services Agreement (Amendment 4 and 6), were all eliminated and replaced with an intuitive, fair and equitable cost allocation model.
- The JPA appointed a Finance Manager with budgetary responsibility and hired an independent auditor. The JPA is in the process of hiring an independent Controller/Treasurer. Previously, the City of Tracy provided these services on behalf of the JPA.
- The JPA has hired an independent Counsel with responsibility to provide legal advice to the JPA independent of member agencies.
- The proposed JPA is designed to add additional member agencies to improve overall service levels by reducing overhead costs through economies of scale.
- With the corresponding dissolution agreement, the proposed JPA addressed fire station ownership concerns.

**Phase 2:** Transition employees to become employees of the South San Joaquin County Fire Authority (Authority) and the Authority would become a full standalone agency. Phase 2 of the transition plan was codified in Section 1.6 of the new JPA agreement:

*"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 transfers 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".*

For the past 18 months the JPA staff has worked with staff and consultants of the member agencies to develop an employee transition plan. Below is the status and a timeline for implementation of the plan.





# SOUTH SAN JOAQUIN COUNTY FIRE AUTHORITY

Fire Administration

## Transition Plan Timeline

Date	Milestone
August 15, 2020	Provide completed "Draft" transition plans to staff of member agencies for review and comment.
September 15, 2020	Present transition plan to elected bodies of member agencies for consideration of approval.
October 31, 2020	JPA Board reviews and considers ratification of labor contracts, approval of CalPERS contracts, employee benefits and personnel policies and procedures (including EERR)
November 30, 2020	Lease agreements and liability insurance contract approvals
January 1, 2021	Employees transition to South San Joaquin Fire Authority

## Transition Plan Overview

CalPERS Retirement	<p>The Authority submitted an application for a new CalPERS contract on February 1<sup>st</sup>, 2019. A few months after submitting the application the Authority was advised by CalPERS that the joint powers agreement language would need to be amended. Staff worked with legal counsel from both member agencies to make the necessary amendments which were approved by both elected bodies in October of 2019. Once that language was amended CalPERS conducted a thorough CalPERS Financial Analysis of the Authority. The Authority was given the approval to move to the next stage of contract formation from the CalPERS financial team in February of 2020. Where the COVID-19 pandemic has slowed the final stage of actuarial analysis, progress continues to be made, and we are hopeful to have contract formation complete in September of 2020.</p> <p>The new retirement plan will transition to a Public Employee Pension Reform Act (PEPRA) plan. While all current employees that transfer will maintain their current retirement status (classic or PEPRA) future employees hired will all fall under the PEPRA pension status with reduced pension benefits. The new pension contract will begin with no unfunded liabilities. Current pension liabilities will remain with the member agencies. The District will be required to pay their pro-rata share of the</p>
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# SOUTH SAN JOAQUIN COUNTY FIRE AUTHORITY

## Fire Administration

	<p>City's unfunded liabilities that were created during the time that the City acted as the employer of record.</p>
Workers Compensation / General Liability	<p>Staff worked with the Special District Risk Management Association to obtain comprehensive quotes for both workers' compensation and general liability insurance. The quotes will be codified into coverage policies by the JPA Board when the transition agreement has been approved by member agencies.</p>
Employee Health Benefits	<p>A Health Benefits Committee was established and all fire authority employees were invited to participate. The committee initially met in May of 2019. Staff worked with the committee, CalPERS Health, Keenan Insurance Brokerage and Macleod Watts, Inc. actuarial firm to determine the most cost effective and comprehensive benefit packages available. Those plans have been identified and staff is ready to begin enrollment once the transition plan is approved by the member agencies and the JPA Board approves the Health benefit plans.</p>
Payroll	<p>Denali Fund, the Authority's current financial software, offers a comprehensive payroll module which the Authority will utilize as our payroll platform. This platform is utilized by hundreds of public agencies and non-profit organizations. The Authority's staffing software will be utilized for timekeeping and electronically interfaced with the payroll module. Existing staff will manage the payroll module and bi-weekly payroll processing. Payroll and timekeeping modules and interfaces will begin running in parallel with the City payroll and timekeeping systems within the next 60 days.</p>
Human Resources	<p>Staff has completed a comprehensive review and subsequent transfer of all City personnel policies and procedures that are relevant to the Fire Authority. Fire Administration staff has been working with an HR consultant and City Human Resources personnel to facilitate the personnel transition process. It is the intent of the Authority to utilize the City Human Resources Department to continue to support the Authority post-transition and have the Authority continue to pay the City for that service provision. If the City HR elects not to continue to support the Authority post-transition, then staff will work with the HR consultant to bridge the gap utilizing the existing funding paid to the City for HR services. There is no anticipated cost increase or savings for the provision of HR services.</p>





# SOUTH SAN JOAQUIN COUNTY FIRE AUTHORITY

## Fire Administration

Labor Agreements	Staff has undergone significant discussions with two bargaining groups that will be transitioning to the Authority. The Authority has worked with the represented labor groups and a City recommended labor attorney to develop labor agreements that mirrors existing pay and benefits for the employee groups. Non-represented employees will be provided pay and benefits that are equivalent to current pay and benefits. The discussions with the employee groups have been one of mutual respect with a focus on long-term sustainability which has yielded a verbal consensus that can be implemented after approval of the transition. The Authority will create a finance oversight committee that will include the Fire Chief, Authority Finance Manager, City Manager (or designee) and a representative from the District.
Financial Policies and Procedures	The Authority created independent financial policies and practices in 2018 once the standalone JPA was created and implemented (Phase 1). Transitioning employees and payroll processing will be the final step in the Authority operating independently from either of its member agencies. As stated above, a finance oversight committee will be developed that will include the Fire Chief, Authority Finance Manager, City Manager (or designee) and a representative from the District.
City/District Financial Impacts	JPA staff completed an analysis of potential City financial impacts from transitioning employees from the City to the JPA. The City continues to evaluate potential impacts and the JPA will continue to support that process. JPA staff has completed a significant analysis of the long-term sustainability of the District. The analysis confirms that the District will have the resources to support future fire protection requirements in the unincorporated areas and the areas that have been annexed but not detached from the District. That analysis has been provided to the Council.



September 1, 2020

AGENDA ITEM 3.D

REQUEST

**RECEIVE UPDATE CONCERNING THE CITY OF TRACY COMPREHENSIVE  
EMERGENCY MANAGEMENT PLAN AND PROVIDE DIRECTION TO STAFF**

EXECUTIVE SUMMARY

The South San Joaquin County Fire Authority (SSJCFA) on behalf of the City of Tracy is in the process of revising the City's emergency management plan. The City completed a Local Hazard Mitigation Plan (LHMP) that was adopted in March 2020. The LHMP is the "prevention" portion of emergency planning. The City is also in the process of completing a Business Continuity of Operations Plan (BCOP). The BCOP will ensure the critical elements of City government will continue to function during significant emergencies. The final element will be the update to the City Comprehensive Emergency Management Plan (CEMP). The plan will be updated and reformatted to meet the requirements of local, state and federal government. The plan will also address the roles of City Council members, as well as City and SSJCFA employees during emergency events.

DISCUSSION

Enhancing citywide emergency preparedness was identified as a strategic priority as part of the Council's FY 2019-2021 goal setting process. Several key milestones have been met regarding this important goal. First, in October 2019, the City retained a consultant to develop a Business Continuity of Operations Plan (BCOP) and anticipates that the draft plan will be presented to Council within the next couple of months. Once implemented it will serve as the mechanism to ensure the local key elements of our local government continues to function during significant emergency events. Second, in March 2020, the City Council adopted an updated Local Hazard Mitigation Plan (LHMP). The LHMP is a Federal Emergency Management Agency (FEMA) regulatory process that identifies local hazards and develops strategies to eliminate or reduce the hazards. LHMP is the prevention element of an emergency plan.

Last, SSJCFA, on behalf of the City, will update the City of Tracy Comprehensive Emergency Management Plan (CEMP). The CEMP, adopted in 2008, identifies the City's emergency planning, organization, and response policies and procedures. The CEMP provides the framework for response and emergency management system, defines roles and responsibilities of the City's emergency response system and provides triggers for implementation of the CEMP during emergencies which prepares the City to respond effectively when impacted by significant emergencies. The CEMP also addresses the integration and coordination with other governmental agencies, and non-governmental organizations involved in emergency preparedness, response, and recovery operations.

More important, the CEMP encompasses a broad range of emergency including earthquakes, hazardous materials emergencies, flooding, wildfires, and pandemics, given COVID-19. Also included are procedures that may or may not require the full or partial activation of an Emergency Operations Center (EOC). The current CEMP needs to be updated and revised to include an Emergency Operations Plan (EOP) format to comply with the FEMA's Comprehensive Preparedness Guide (CPG) 101, Developing and Maintaining Emergency Operations Plans, and the incorporation of Emergency Support Functions (ESF). Updating the current plan to an EOP is required to maintain compliance with the San Joaquin County's EOP, State's Standardized Emergency Management System (SEMS) and the federal government's National Incident Management System (NIMS) program elements, to maintain eligibility for state and federal disaster assistance and preparedness funding. The updated plan will also fulfill federal and state planning requirements for continued Homeland Security Grant eligibility.

Upcoming the CEMP and converting it to an EOP format will require the services of a specialized consultant. The consultant will also evaluate facilities and equipment and make recommendations based on the complexities of potential emergencies. After the plan is complete, City staff and Council will receive additional emergency management training and participate in drills (training) and exercises (evaluations) that will help evaluate the effectiveness of the revised plan. The new EOP will also identify the roles and responsibilities of elected officials.

It is anticipated that consultant will be identified within the next 60 days and the plan should be updated within twelve months.

## STRATEGIC PLAN

Updating the City's CEMP and converting it to an EOP format is consistent with City Council's Public Safety Goal number four (4): Enhance Emergency Management Capabilities and Objective one (1): Finalize Citywide Emergency Response Plan and Objective three (3): Deliver emergency preparedness training and education programs to staff, elected officials, and the community.

## FISCAL IMPACT

The cost to develop the business continuity plan was approximately \$50,000; it is anticipated that the update of the CEMP will significantly exceed that amount by double. Once a consultant has been identified, a budget appropriation will be brought forward to Council for consideration. Staff has identified the funding source for the contract will be funded from fund balance in the Risk Management Internal Services Fund.

**RECOMMENDATION**

Receive update regarding the City of Tracy Comprehensive Emergency Management Plan and provide direction to staff.

Prepared by: Randall Bradley, Fire Chief

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

Approved by: Jenny Haruyama, City Manager

September 1, 2020

AGENDA ITEM 3.E

REQUEST

**DESIGNATE 500 W ARBOR ROAD AS A TEMPORARY EMERGENCY HOUSING SITE FOR UNSHELTERED INDIVIDUALS IN TRACY; APPROPRIATE FUNDS FOR CONSTRUCTION AND PROVISION OF SERVICES IN THE AMOUNT OF \$690,000 FROM HOUSING ASSET FUNDS, \$100,000 FROM CDBG, \$109,000 CARES ACT; AUTHORIZE STAFF TO SUBMIT GRANT APPLICATIONS; AUTHORIZE STAFF TO ISSUE A REQUEST FOR PROPOSAL FOR A SERVICE PROVIDER TO OPERATE THE FACILITY; AND PROVIDE DIRECTION TO STAFF**

EXECUTIVE SUMMARY

At the May 5, 2020, City Council meeting, Council adopted a Homelessness Strategic Plan (Attachment A) that is specific to the needs of Tracy, while being complimentary to San Joaquin County homelessness efforts. Included in the Plan is a short-term goal for staff to identify a local facility to use as an emergency shelter for short-term, temporary housing for people experiencing homelessness.

This report requests that Council consider:

1. Designating the 500 W Arbor Road property as the location for a temporary emergency housing site for Tracy's unsheltered population;
2. Appropriating funds in the amount of \$690,000 from Housing Asset Funds, \$100,000 from CDBG, \$109,000 CARES Act to fund construction and provide services to establish a new Capital Improvement Project;
3. Authorizing staff to submit grant applications for additional funding;.
4. Authorizing staff to issue a Request for Proposal for a service provider to operate the facility; and
5. Providing direction to staff, as desired.

DISCUSSION

On May 5, 2020 the City Council adopted a Tracy-specific Homelessness Strategic Plan (Attachment A) that aligns with the County's overall efforts to positively impact homelessness in the region. A short-term goal of the Plan called for staff to identify a location to use as a temporary emergency housing solution for the City's unsheltered population. Staff is providing this report consistent with the approved Plan that lists identifying immediate, temporary housing options as a short-term goal.

Staff has identified unimproved City-owned land that can be prepared for the construction of temporary emergency housing located at 500 W Arbor Road. This location can be prepared to erect temporary structures to serve as temporary emergency housing in which to house the unsheltered, most immediately, during the upcoming cold and wet winter months. The City would issue a Request for Proposal (RFP) for a service provider to operate the facility. Successful RFP submissions will demonstrate previous case management experience as well as specific experience working with unsheltered populations.

Staff has prepared preliminary site drawings (Attachment B) which could also be used for bid documents should Council wish to designate this property and authorize staff to move forward with the bidding, construction, and staffing of temporary emergency housing. It is anticipated that the emergency housing could be available as early as December 2020 and be in use for approximately five months while other, more long-term solutions and funding can be identified.

Preliminary estimates indicate that it will cost approximately \$400,000 to prepare the land and install basic infrastructure including grading, installing a pad, repaving the access road to ensure adequate fire access, installation of water pipes and erecting security/safety fencing around a nearby canal and water retention basin. Cost are still being determined for the structure(s), furnishings, and operating cost for a service provider to operate the facility.

The City Council has previously encumbered or committed funding related to Homeless Prevention and Support for Unsheltered Individuals. This includes funds available from the Low and Moderate Income Housing Asset Fund and Coronavirus Relief Funds from the CARES Act grant. Additional one-time funding is available from the Housing Asset fund as well as from CDBG funds.

Below is funding that is currently available and earmarked to provide temporary housing to the City's unsheltered population. Additionally, to help fund construction and operations, the City will be applying for grant funding opportunities including, but not limited to Homeless Housing Assistance Prevention (HAAP).

Funding Source	Available Funding
Housing Asset Funds previously encumbered for Homeless Prevention and Rapid Rehousing Services (\$500,000) Housing Asset Funds available for commitment (\$190,000)	\$690,000
Community Development Block Grant (CDBG)	\$100,000
CARES Act Coronavirus Relief Funds previously committed to Support Unsheltered Individuals	\$109,000
<b>Total Available</b>	<b>\$899,000</b>

#### FISCAL IMPACT

Staff is requesting for City Council to designate City-owned land on which to construct temporary emergency housing and authorize an appropriation of funds for construction and provision of services for a temporary emergency housing site for Tracy's unsheltered population. This project will be funded from an appropriation from the; Housing Asset Funds for \$690,000, CDBG for \$100,000 and CARES Act for \$109,000 and would establish a new CIP 71112.

## STRATEGIC PLAN

This agenda item supports the City's Quality of Life Strategic Priority, specifically within Goal #3, Explore opportunities to provide temporary and/or permanent housing for homeless in Tracy and Public Safety Strategy Priority, specifically Goal #2, Facilitate public safety and community partnerships to proactively address citywide encampments and Identify and pursue resources to enhance our responses to homelessness-related issues

## RECOMMENDATION

That City Council, by resolution,

1. Designate the 500 W Arbor Road property as the location for a temporary emergency housing site for Tracy's unsheltered population.
2. Appropriate funds in the amount of \$690,000 from Housing Asset Funds, \$100,000 from CDBG, \$109,000 CARES Act to fund construction and provide services to establish a new Capital Improvement Project.
3. Authorize staff to submit grant applications for additional funding.
4. Authorize staff to issue a Request for Proposal for a service provider to operate the facility.

By motion, provide direction to staff, as desired.

Prepared by: Midori Lichtwardt, Assistant City Manager Reviewed

by: Karin Schnaider, Finance Director

Reviewed and Approved by: Jenny Haruyama City Manager

Attachments: Attachment A: Tracy Homelessness Strategic Plan  
Attachment B: Sample Preliminary Site Drawings



## CITY OF TRACY

# HOMELESSNESS STRATEGIC PLAN

*As approved and amended May 5, 2020*

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*Last Revised: 05-05-2020*

## EXECUTIVE SUMMARY

This Homelessness Strategic Plan outlines an ongoing comprehensive strategy to make homelessness rare, brief, and non-recurring in the City of Tracy. The direction and goals included in this plan build upon the recent progress the City has made towards ending homelessness while also recognizing new practices, emerging challenges, and opportunities to develop a system that uses all available resources to house people experiencing homelessness.

In response to the growing number of people experiencing homelessness within the City of Tracy, a collaboration of stakeholders, local service providers, community members and elected officials have mobilized to address the challenges related to homelessness. These stakeholders include a collective of various organizations including those with educational, legal, business, and faith-based interests; local homeless service providers; city, county, and state agencies; private businesses and non-profit organizations; as well as private individuals and consumer advocates. This strong collaboration represents one of the greatest tools within the City of Tracy to combat homelessness.

Trends in homelessness in the City of Tracy speak to the need for a comprehensive, coordinated community effort to address the issue. The 2019 biannual point in time count reports that there are 155 unsheltered persons living on the streets, cars, or places not meant for human habitation and 21 sheltered persons within city limits. The number of people experiencing unsheltered homelessness has increased dramatically (520%) since 2011. This large increase is attributable to under counting in previous years. Service providers working in Tracy reported that a change in the count methodology—including the establishment of a homeless outreach project on the day of the count and an increase in the number of volunteers—has helped to produce a more accurate count of people experiencing homelessness in the City.

While conversation and ideas are being discussed within the City of Tracy, the experience of homelessness continues to affect many individuals and families, while others live one pay-check or unforeseeable circumstance away from falling into homelessness, *i.e.* at-risk of homelessness. These realities propel city and county officials, nonprofit service providers, local businesses, faith-based organizations, and other stakeholders to continually strive to address the issue of homelessness.

This plan proposes a series of steps to strategically utilize existing resources and place the City in a position to access new resources. It intentionally builds upon the strengths of the community, namely the City and the San Joaquin County Continuum of Care, and the capacity of its individual stakeholders, to leverage existing resources to address challenges—such as the shortages of affordable housing and permanent supportive housing. However, the first priority of the City must be to create emergency shelter.

Specific strategies are organized under four primary goals:

## STRATEGIC PLAN GOALS

**GOAL 1: Increase Housing Options in Tracy**

**GOAL 2: Increase Access to Coordinated Support Services for People Experiencing Homelessness**

**GOAL 3: Develop Action Plans for Engaging with People Experiencing Homelessness**

**GOAL 4: Enact Specific Strategies for Vulnerable Subpopulations Experiencing Homelessness**

As the City of Tracy embarks on the implementation of this plan, the City must communicate and promote this vision and strategy for implementation; update the plan as needed; continuously identify and seek out resources; and provide the leadership to make mid-course adjustments. The plan identifies outcomes that should be measured to ensure constant and consistent attention to the action steps and to measure success. Success will depend on the willingness and commitment of key stakeholders to embrace innovation and adopt a culture open to change.

## BACKGROUND

In January of 2019, California's Department of Housing and Community Development (HCD) presented the opportunity for Continuums of Care (CoC) and counties across the State of California to request technical assistance in three different areas of focus: capacity building, housing first, and housing stability. Eligible recipients of the technical assistance included those CoCs and counties that were direct recipients or administrators of California's Emergency Solutions Grant Program (ESG) or No Place Like Home funding. In July of 2019, the City of Tracy, as a member of the San Joaquin Continuum of Care, submitted a request for support in developing a strategic plan to end homelessness. HCD approved the City of Tracy's request as an exception—as the only city provided direct assistance—and it did so with the understanding that the City would coordinate with the CoC to compliment efforts.

The Technical Assistance Collaborative (TAC) was retained by HCD to engage with CoCs and Counties that submitted requests for “capacity building” technical assistance. TAC worked with HCD and the City of Tracy to develop a work plan, and engagement began in August of 2019. The goal of the public process was to enhance transparency and help the City of Tracy establish intentional and meaningful strategies to end homelessness, which culminated in a written plan.

Prior to this engagement, much of the planning around homelessness occurred at the CoC and county level. While the City of Tracy is unique in their capacity and needs, the city has expressed a commitment to collaborate efforts with the county to address homelessness within the framework of the San Joaquin CoC. Therefore, the planning process which produced this document focused on a more systemic-level approach to prevent and end homelessness within the city. As such, TAC conducted a thorough document and resource review. In addition to remote planning sessions and communication with the City, TAC facilitated an on-site strategic planning meeting in November 2019. Subsequently, three community forums were held in

December and January to obtain public input and promote transparency. Throughout the process, it was important to include the voice of those with lived experiences by inviting persons currently living on the streets or in places not meant for human habitation in Tracy to the community meetings.

In developing the plan, TAC drafted initial goals and objectives, based on the community planning session and additional feedback from the community workshops. The public comments were incorporated into the plan and, subsequently, the City's Ad Hoc Committee on Homelessness revised the draft goals and objectives. This collaborative effort produced the goals, objectives, and action steps outlined in this plan to end homelessness in the City of Tracy.

## **OVERVIEW OF HOMELESSNESS IN TRACY**

The State of California is in the midst of an unprecedented homelessness and housing crisis. The number of individuals and families experiencing homelessness far exceeds any other state in the country. As of the January 2019 point in time count, the number of persons experiencing homelessness in California was 151,278. Nearly half of all people experiencing homelessness in the country were in three states: California (27% or 151,278 people); New York (16% or 92,091 people); and Florida (5% or 28,328 people). While the highest counts of homelessness exist in some of California's larger metropolitan areas, Tracy is not untouched by the crisis.

## **COST OF HOMELESSNESS IN TRACY**

Nationally, a chronically homeless person costs the tax payer an average of \$35,578 per year. Costs on average are reduced by 49.5% when they are placed in supportive housing. Supportive housing costs on average \$12,800, making the net savings roughly \$4,800 per year.

Key findings from a study in Santa Clara, California found “overall, clients connected to permanent housing showed greater reduction in both emergency department use and charges compared to those who remained homeless or in less stable housing arrangements (a 34% reduction compared to a 12% reduction in emergency department visits, a 31% reduction compared to a 2% reduction in emergency department charges).” “The group connected to housing showed significantly greater reductions in the inpatient charges (a 27% decrease for those connected vs. a 49% increase for those not connected).”

Regarding the specific needs of the City of Tracy, there is a cost to the city as people continue to experience homelessness. The City is working to document the costs of the following services:

- Hospital Emergency Room Services
- Emergency Medical Resources
- Law Enforcement and Prosecution Resources
- County Jail, Court, and Criminal Justice System Resources

Often, these costs are actually higher than the cost of dedicating resources to provide people with permanent housing.

## EXISTING RESOURCES IN TRACY

The strategic planning process requires the identification of existing resources to households experiencing or at-risk of homelessness, as well as any gaps in resources and those that may require strengthening or refining. The effort to prevent and end homelessness in Tracy must also take into considerations the state and federal funding climates and evolving policy priorities. No community can address homelessness by relying solely on dedicated homeless resources, but must access and leverage other more mainstream housing and service resources.

- **HUD RESOURCES**

The San Joaquin CoC has successfully obtained competitive federal homeless assistance funds through the Continuum of Care Program. In Fiscal Year 2018 the CoC received \$4,490,004 and, of that amount, 67% is for permanent supportive housing, 28% is for rapid rehousing, 2% is for the Homeless Management Information System, and 3% is for planning CoC activities. At the time of publication of this report the FY19 CoC Program awards were not fully announced.

- **CALIFORNIA RESOURCES**

The State of California, through inter-state agency partnerships and collaboration, has created and funded programs to complement federal and local/philanthropic funding for county and CoC crisis response systems. **TABLE A** outlines some of the funding opportunities available to support CoCs in California. The San Joaquin CoC currently receives funding through several of these opportunities.

- **TRACY RESOURCES**

There are 28 local service providers that make up the Tracy Community Homeless Task Force. The services offered include shelters; subsidized housing; community meals; food delivery to encampments; food pantries, markets, and produce; and hygiene programs.

## IDENTIFIED GAPS & CHALLENGES

The City of Tracy faces significant challenges in its work to prevent and end homelessness. These difficulties and resource gaps have been identified in an effort to inform the goals and objectives included in this plan. They have been outlined below in four categories.

- **CRISIS RESPONSE**

This resource gap relates to the city's crisis response system and capacity for assisting households at-risk of and currently experiencing homelessness. It is imperative that people understand the risk of homelessness, and the relative fragility of many households' housing situations. Households at risk of homelessness are often one paycheck, utility bill, or medical bill away from an episode of homelessness. Those with

untreated behavioral health needs may be forced to leave housing due to related behaviors and risks. For those households that do enter the homeless crisis response system, the availability and access to safe shelter and outreach services are essential.

#### ➔ CURRENT RESOURCE GAPS AND CHALLENGES RELATED TO CRISIS RESPONSE

- Not enough family shelters
- Lack of low barrier shelters
  - Need to allow families to stay together (without restrictions on the age of children)
  - Need to allow people to shelter with their pets
  - Need to have a place for people to store their possessions
- Need more behavioral health services and quick access to the services while people are in crisis
- Need for access to services after normal business hours/evening and weekends
- **HOUSING**

This resource gap relates to the availability of both public and private housing resources. The City is experiencing a severe lack of affordable housing for households at-risk of and experiencing homelessness, particularly those extremely and very low income households. The long term success in addressing homelessness in the City will involve both increasing the affordable housing stock and obtaining rental subsidies.

#### ➔ CURRENT RESOURCE GAPS AND CHALLENGES RELATED TO HOUSING

- Lack of affordable housing
- No local provider funded to provide permanent supportive housing
- Huge deficit of landlords
- Existing housing stock is limited and unaffordable
- **SUPPORTIVE SERVICES**

This resource gap relates to the availability and access to services and other supports that aid households in their ability to successfully maintain housing. Supportive services are often the key to ensuring that households at-risk of homelessness are able to maintain their housing and avoid the need for crisis services. Similarly, supportive services also serve as the primary mechanism for ensuring that formerly homeless households are able to successfully maintain housing.

#### ➔ CURRENT RESOURCE GAPS AND CHALLENGES RELATED TO SUPPORTIVE SERVICES

- Need for employment services
- Lack of transitional age youth resources
- No South County service center

- **SYSTEM LEVEL**

This resource gap relates to challenges experienced at the systems or community level that likely expand beyond the homeless services system. These challenges may involve systems of care other than the homeless crisis response system, and are likely bigger than any one project or resource.

➔ **CURRENT RESOURCE GAPS AND CHALLENGES RELATED TO SYSTEM LEVEL**

- Need for increased participation in Homeless Management Information System (HMIS) to help inform data-driven systemic level decisions
- Feeding schedules need to be coordinated to reduce waste of resources
- Lack of transportation throughout the City and connections with other cities within San Joaquin County

### **THEMES IDENTIFIED VIA COMMUNITY INPUT**

TAC identified the following themes based on discussions regarding goals from the community planning session and additional feedback from the community workshops. The four identified themes include:

1. Move people who are experiencing homelessness into permanent housing as quickly as possible
2. Increase understanding regarding issues people experiencing homelessness face and/or increase the general understanding of homelessness
3. Strengthen capacity to increase resources for the homeless crisis response system
4. Prevent and divert new households from becoming homeless

## **GOALS & OBJECTIVES**

Homelessness ends with a crisis response system that is able to provide housing and ensure that the root causes of homelessness are rare, brief, and non-reoccurring. These goals and objectives should maximize “housing first” principles. “Housing First” is a best practice and a requirement of many funding sources at both the state and federal levels. This approach should be implemented both at the systemic-level as well as at the local project level.

### **GOAL 1: INCREASE HOUSING OPTIONS IN TRACY**

#### **Objectives for GOAL 1:**

- (1) SHORT-TERM: Identify immediate temporary “Emergency Housing” options and integrate crisis support services.
- (2) MID-TERM: Identify “Transitional Housing” options and integrate wrap-around support services with Navigation Center.
- (3) LONG-TERM: Increase affordable housing stock and assist in securing “Permanent Housing” with continued support services from Case Managers.
- (4) CONTINUOUS: Proactively pursue local, state, and federal funding to support housing options and support services.
- (5) Create property-owner economic initiative to increase the number of private housing options to support housing for people transitioning out of homelessness.

### **GOAL 2: INCREASE ACCESS TO COORDINATED SUPPORT SERVICES FOR PEOPLE EXPERIENCING HOMELESSNESS**

#### **Objectives for GOAL 2:**

- (1) Create a centralized location to serve as a “Navigation Center” where people experiencing homelessness can gain access to appropriate services and resources based on their immediate needs.
- (2) Secure access to addiction, mental health, family reunification, job training, and other appropriate support services at the Navigation Center.
- (3) Enhance coordination between local service providers and county agencies.
- (4) Evaluate effectiveness of current spending and consider reallocating resources, while continuing to pursue other funding options.

**GOAL 3: DEVELOP ACTION PLANS FOR ENGAGING WITH PEOPLE EXPERIENCING HOMELESSNESS**

**Objectives for GOAL 3:**

- (1) Establish “Law Enforcement Protocol” for initiating contact with people experiencing homelessness that complies with the recent *Martin v. Boise* decision.
- (2) Establish “Crisis Response Protocol” for local service providers to render rapid crisis support — including after-hour services for people experiencing or at-risk of homelessness.
- (3) Partner with county agencies (including the District Attorney’s Office and the San Joaquin County Jail) to evaluate opportunities for diversion programs or other alternatives to incarceration for people experiencing homelessness—including a warm “hand off” to service providers to render immediate crisis support services or emergency housing.

**GOAL 4: ENACT SPECIFIC STRATEGIES FOR VULNERABLE SUBPOPULATIONS EXPERIENCING HOMELESSNESS**

**Objectives for GOAL 4:**

- (1) Identify people experiencing or at-risk of homelessness in vulnerable subpopulations within the City of Tracy—including, but not limited to, veterans, youth, the LGBTQ community, victims of crime, and people with behavioral health needs.
- (2) Ensure access to “Case Managers” for vulnerable subpopulations who will educate and provide connections to appropriate support services and housing options.
- (3) Identify and apply for funding opportunities to secure resources that are specifically available to support people from vulnerable subpopulations.
- (4) Develop a targeted initiative program to prevent “new” individuals in vulnerable subpopulations from becoming homeless.

**CONCLUSION**

For a community the size of the City of Tracy, the City must prioritize the need to prevent and end homelessness. While there are significant challenges ahead—due both to local circumstances and national trends—the City is working to meet these challenges, and is fortunate to have a team of committed organizations and agencies.

This Strategic Plan provides a framework to target resources to manage and decrease homelessness. The City of Tracy, with the cooperation of local elected officials and stakeholders, will oversee implementation of this plan.

The following key metrics should be used to evaluate the effectiveness of this Plan:

- Increase in the number of affordable housing units dedicated to people who are experiencing homelessness
- Decrease in homelessness in the community—including in key subpopulations such as families, veterans, and people who are chronically homeless
- Decrease in the number of persons who become homeless for the first time
- Decrease in the average and median length of time persons remain homeless
- Decrease in the percentage of persons who return to homelessness
- Increase in the percentage of adults who gain or increase employment or non-employment cash income over time
- Increase in the percentage of persons who exit to or retain permanent housing

To be successful, this Strategic Plan will require broad community support for expanding data collection, sharing data, and using accurate data as a planning tool. The City of Tracy and its elected officials should continue to sponsor community meetings to build public support, consensus, and commitment to the plan and to create a sense of urgency about these time-sensitive strategies. Since it is a perennial plan, quarterly meetings to report on progress and challenges will keep momentum going and allow for mid-course adjustments as needed. The community's support will be vital in affirming the Strategic Plan so that all stakeholders understand and fulfill their specific roles.

## IMPLEMENTATION PLAN

### GOAL 1: INCREASE HOUSING OPTIONS IN TRACY

OBJECTIVE 1: **[SHORT-TERM]** Identify immediate temporary “Emergency Housing” options and integrate crisis support services.

#### TASKS:

##### EMERGENCY SHELTER

- Identify local facility to use as Emergency Shelter for short-term *temporary* housing option
  - Prioritize low-barrier entry qualifications to Emergency Shelter
  - Access should be 24 hours a day, 7 days per week
  - Facility should include: beds/lofts, bathrooms, showers, heat/air-conditioning
  - Designate goal for number of beds at facility
  - Consider time-restraint to encourage transitioning to more permanent housing options
- Consider re-purposing newly approved “Warming Center” as “Emergency Shelter”
- Identify partners to manage daily operations at Emergency Shelter
- Draft RFP/MOU for organization to manage operations at Emergency Shelter
- Ensure access to local support services at Emergency Shelter
- Evaluate funding options [See *GOAL 1:4*]

##### SAFE PARKING AREA

- Identify local private/public parking lot to use as Safe Parking Area for individuals not amenable to entering Emergency Shelter
  - Prioritize low-barrier entry qualifications to Safe Parking Area
  - Designate time limitations on access to Safe Parking Area (e.g., between 7:00pm and 7:00am)
  - Facility should include: bathroom access, security
- Consider continuing newly approved “Safe Parking Area” through December 2020.
- Draft RFP/MOU for organization to manage operations at Safe Parking Area
- Ensure access to local support services at Safe Parking Area
- Evaluate funding options [See *GOAL 1:4*]

##### CRISIS SUPPORT SERVICES

- Provide access to “Crisis Support” services to individuals experiencing crisis at Emergency Shelter
- Outreach and partner with local hospitals and institutions to collaborate on housing-focused discharge plans from hospitals and medical facilities
- Utilize “Crisis Support Protocol” [*GOAL 3:2*]
- Evaluate funding options [See *GOAL 1:4*]

OBJECTIVE 2: **[MID-TERM]** Identify “Transitional Housing” options and integrate wrap-around support services with the Navigation Center.

#### TASKS:

##### TRANSITIONAL HOUSING OPTIONS

- Identify local facilities to use as “Transitional Housing” for mid-term *transitional* housing option
  - Facilities should include: individual rooms, bathrooms, showers, heat/air-conditioning
    - Designate goal for number of beds at facility

- Designate goal for percentage of people transitioned into permanent housing each year
- Consider time-restraint to encourage transition to permanent housing options
- Consider use of “tiny homes” development and zoning
- Draft RFP/MOU for organization to manage operations at Emergency Shelter
- Ensure access to any previous local “case management” resources
- Ensure access to local support services at Navigation Center
- Evaluate funding options [See *GOAL 1:4*]
  - Consider requiring residents to pay percentage of income towards rent

#### ACCESS TO SUPPORT SERVICES

- Provide access to local support services to residents at Transitional Housing facilities
  - Consider requiring regular check-ins and evaluations with a case manager
  - Provide aftercare services to people experiencing homelessness who have secured housing to ensure they remain housed
  - Ensure that case management from partner organizations includes support for households attempting to leave shelters and enter permanent housing
- Evaluate funding options [See *GOAL 1:4*]

**OBJECTIVE 3: [LONG-TERM]** Increase affordable housing stock and assist in securing “Permanent Housing” with continued support services from Case Managers.

#### TASKS:

##### INCREASE AFFORDABLE HOUSING STOCK

- Increase available “Affording Housing” stock in the City of Tracy
- Consider adopting the “Affordable Housing” strategies reviewed at previous City Council Affordable Housing workshop
- Outreach and partner with a local housing provider) to consider the following opportunities:
  - Identify projects and opportunities that will result in more “Affordable Housing” units
  - Provide treatment-based housing for people with physical and behavioral health needs
  - Creating affordable housing policies that may encourage developers to build units that would support people experiencing or at-risk of homelessness

##### PERMANENT HOUSING

- Identify “Affordable Housing” facilities to use as long-term *permanent* housing option
  - Designate goal for percentage of people transitioned into permanent housing each year
  - Increase the number of “Affordable Housing” units dedicated to people experiencing homelessness
- Ensure access to any previous local “case management” resources
- Ensure access to local support services at Navigation Center

#### ACCESS TO SUPPORT SERVICES

- Provide access to local support services to residents at Transitional Housing facilities
  - Consider requiring regular check-ins and evaluations with a case manager
  - Provide aftercare services to people experiencing homelessness who have secured housing to ensure they remain housed
  - Ensure that case management from partner organizations includes support for households attempting to leave shelters and enter permanent housing
- Evaluate funding options [See *GOAL 1:4*]

**OBJECTIVE 4: [CONTINUOUS]** Proactively pursue local, state, and federal funding to support housing options and support services.

**TASKS:**

**FUNDING OPPORTUNITIES**

- Compile information related to funding opportunities for addressing homelessness
  - Identify local, state, and federal agencies that distribute funding to address homelessness
  - Identify grants that distribute funding to address homelessness
- Create list of funding sources that the City of Tracy may be qualify for to address homelessness
  - Create calendar of dates for applying to funding sources
  - Consider assigning dedicated individual or organization to complete funding applications

**REDISTRIBUTION OF RESOURCES**

- Evaluate current resources spent on homelessness and consider reallocation [See *GOAL 2:4*]

**OBJECTIVE 5:** Create property-owner economic initiative to increase number of private housing options to support housing for transitioning homeless people.

**TASKS:**

**LANDLORD INCENTIVE PROGRAM**

- Create outreach efforts to link landlords with low-income tenants and tenants with rapid re-housing or housing vouchers
- Consider a local funding source to create gap financing to:
  - Make a rapid re-housing and housing voucher support match market rental rates
  - Provide finance support for permanent affordable housing developments
  - Provide eviction prevention services, including rental assistance and landlord mediation

**GOAL 2: INCREASE ACCESS TO COORDINATED SUPPORT SERVICES FOR PEOPLE EXPERIENCING HOMELESSNESS**

**OBJECTIVE 1:** Create a centralized location to serve as a “Navigation Center” where people experiencing homelessness can gain access to appropriate services and resources based on their immediate needs.

**TASKS:**

**NAVIGATION CENTER**

- Identify location and secure facility to serve as a Navigation Center
- Partner with local service providers, non-profit organizations, and faith-based groups to coordinate procurement of services and resources at the Navigation Center
- Retain “Case Managers” to ensure that people experiencing homelessness are supported in accessing addiction, mental health, family reunification, job training, and other appropriate support services
- Ensure that resources and services are available to people who have formerly experienced homelessness to maintain their stable housing

**OBJECTIVE 2:** Secure access to addiction, mental health, family reunification, job training, and other appropriate support services at the Navigation Center.

**TASKS:**

**ACCESS TO SUPPORT SERVICES**

- Identify service providers and county agencies that provide necessary support services for some people experiencing homelessness
  - Identify service providers/agencies for alcohol and narcotics addiction services
  - Identify service providers/agencies for mental and behavioral health services
  - Identify service providers/agencies for family reunification services
  - Identify service providers/agencies for job training services
  - Identify other appropriate service providers/agencies as needed
- Work with providers/agencies to bring access to such services directly at the Navigation Center

**OBJECTIVE 3:** Enhance coordination between local service providers and county agencies.

**TASKS:**

**COORDINATION EFFORTS**

- Invite local service providers, county agencies, non-profit organizations, and faith-based groups to coordinate providing services to people experiencing homelessness at the Navigation Center
- Ensure access to services for people at-risk of homelessness and people exiting homelessness
- Strengthen partnerships between the City, county agencies, and local service providers by coordinating access, collection, analysis of data; using HMIS & CoC data programs; and enhancing data cross-checking
- Partner with other agencies to evaluate how to leverage resources and pursue funding opportunities.
- Commit to actively participating with the Continuum of Care

**OBJECTIVE 4:** Evaluate effectiveness of current spending and consider reallocating resources, while continuing to pursue other funding options.

**TASKS:**

**RESOURCE ASSESSMENT**

- Conduct an audit and create a report that identifies all city resource allocations currently used to address homelessness within the City of Tracy
- Identify opportunities and adopt a plan to effectively reallocate funds that are used on repetitive temporary tasks—such as posting notices for cleaning of encampment debris

**GOAL 3: DEVELOP ACTION PLANS FOR ENGAGING WITH PEOPLE EXPERIENCING HOMELESSNESS**

**OBJECTIVE 1:** Establish “Law Enforcement Protocol” for initiating contact with people experiencing homelessness that complies with the recent *Martin v. Boise* decision.

**TASKS:**

**LAW ENFORCEMENT PROTOCOL**

- Request memorandum defining the requirements of the recent *Martin v. Boise* decision from the Tracy City Attorney
- Direct City Attorney and City Manager to work collaboratively with law enforcement partners to develop protocol for law enforcement officers to utilize while engaging with people experiencing homelessness that considers the strategies and goals of the Tracy Homelessness Strategic Plan
- Develop report for transparency purposes that defines the protocol and the legal compliance required
- Educate law enforcement officers in utilization of the protocol

**OBJECTIVE 2:** Establish “Crisis Response Protocol” for local service providers to render rapid crisis support — including after-hour services for people experiencing or at-risk of homelessness.

**TASKS:**

**CRISIS RESPONSE PROTOCOL**

- Invite local service providers to convene and develop a “Crisis Response Protocol” based on best practices and in consideration of the strategies and goals of the Tracy Homelessness Strategic Plan
- Identify qualified partners to render the crisis support services as identified within the protocol
  - Consider the use of peer support specialist to provide after-hour support services
- Provide access to “Crisis Support” services to individuals experiencing crisis at Emergency Shelter

**OBJECTIVE 3:** Partner with county agencies (including the District Attorney’s Office and the San Joaquin County Jail) to evaluate opportunities for diversion programs or other alternatives to incarceration for people experiencing homelessness — including a warm “hand off” to service providers to render immediate crisis support services or emergency housing.

**TASKS:**

**OPPORTUNITIES WITH COUNTY AGENCIES**

- Invite San Joaquin County agencies (including the District Attorney’s Office, the County Jail, Superior Court, Continuum of Care, Human Services Agency, and Behavior Health) to convene and assess opportunities for serving people experiencing homelessness in the City of Tracy
- Consider opportunities for diversion programs or alternatives to incarceration for people experiencing homelessness that have pending criminal charges
  - Consider programmatic solutions including: LEAD (Law Enforcement Assisted Diversion); Community Prosecution; Collaborative Courts (including Drug Court, Mental Health Court, Homelessness Court, and Veterans Court)
- Consider partnership/MOU with County Agencies to facilities such alternatives

## **GOAL 4: ENACT SPECIFIC STRATEGIES FOR VULNERABLE SUBPOPULATIONS EXPERIENCING HOMELESSNESS**

**OBJECTIVE 1:** Identify people experiencing or at-risk of homelessness in vulnerable subpopulations within the City of Tracy — including, but not limited to, veterans, youth, the LGBTQ community, victims of crime, and people with behavioral health needs.

### **TASKS:**

#### **VULNERABLE SUBPOPULATIONS**

- Invite organizations that serve similar subpopulations to convene together and collaborate with the City of Tracy to support subpopulation-specific needs
- Coordinate with HMIS to track progress of individuals from vulnerable subpopulations

**OBJECTIVE 2:** Ensure access to “Case Managers” for vulnerable subpopulations who will educate and provide connections to appropriate support services and housing options.

### **TASKS:**

#### **CASE MANAGEMENT**

- Ensure that partners’ “Case Management” program includes linkage to navigation, healthcare, and mainstream benefit programs—such as:
  - CalFresh, CalWORKs, General Assistance, Medi-Cal, Supplemental Security Income (SSI), Social Security Disability Income (SSDI), and Veteran’s Benefits
  - Assistance in obtaining important identification documents, including identification cards and birth certificates to ensure that people experiencing homelessness are able to apply for benefits, employment, and housing
  - Education regarding the use of public transportation systems to empower people experiencing homelessness to transport themselves independently
- Ensure that partners have resources to link homeless individuals to primary care, urgent and emergency care, detox, residential and outpatient substance use treatment, and mental health services

**OBJECTIVE 3:** Identify and apply for funding opportunities to secure resources that are specifically available to support people from vulnerable subpopulations.

### **TASKS:**

#### **FUNDING FOR VULNERABLE SUBPOPULATIONS**

- Work with organizations that serve subpopulations to collaborate on funding opportunities with the City of Tracy to support subpopulation-specific needs
- Create a list of opportunities and qualification (such as HEAP, ESG, CDBG) that may be available to specific vulnerable subpopulations

**OBJECTIVE 4:** Develop a targeted initiative program to prevent “new” individuals in vulnerable subpopulations from becoming homeless.

### **TASKS:**

#### **PUBLIC AWARENESS CAMPAIGN**

- Create a public awareness campaign around homelessness issues and available local resources.

- Develop awareness and understanding of the issues that people experiencing homelessness face
- Sponsor a community campaign on literal homelessness, risk of homelessness, and prevention of homelessness
- Distribute information on the risk of homelessness, key indicators of possible risk, and available resources to schools, faith-based organizations, and county agencies frequented by the public

**AMENDMENT 1**  
**To Tracy Homelessness Strategic Plan**  
**Approved May 5, 2020**

*The Tracy Homelessness Strategic Plan was developed and drafted in late 2019 to early 2020, just prior to the emergence of the global COVID-19 pandemic health crisis in the U.S. This section was added to recognize the unique circumstances and potential opportunities presented by the COVID-19 pandemic.*

**IMPLEMENTATION PLAN**

**GOAL 1: INCREASE HOUSING OPTIONS IN TRACY**

**OBJECTIVE 1: [SHORT-TERM]** Identify immediate temporary “Emergency Housing” options and integrate crisis support services.

**TASKS:**

**“PANDEMIC” EMERGENCY SHELTER**

- Consider re-purposing previously approved “Warming Center” as temporary “Pandemic Emergency Shelter” during COVID-19 pandemic
- Communicate information to the public and local organizations to support/access this temporary shelter

**“PROJECT ROOMKEY” HOUSING OPPORTUNITY**

- Investigate whether City of Tracy may access “Project Roomkey” temporary housing resources from State of California for people experiencing homelessness
- If opportunity is unavailable, then evaluate the viability of partnering with local hotels to provide temporary shelter during COVID-19 pandemic

**UNAUTHORIZED SETTLEMENT IN PUBLIC SPACES**

- Identify locations where significant unauthorized settlement is occurring in public spaces
- Provide access to temporary restroom facilities near these unauthorized settlements to reduce spread of COVID-19 during the pandemic
- Provide access to temporary hygiene stations near these unauthorized settlements to reduce spread of COVID-19 during the pandemic
- Provide information for individuals to transition to “Pandemic Emergency Shelter” once established

**DONATION CENTER**

- Identify location/organization for donations of essential items for people experiencing homelessness
  - Including: Sanitizer, Face masks, Soap, Shampoo/Conditioner, Feminine hygiene items
- Communicate information to the public and local organizations to support/access these donations

**OBJECTIVE 4: [CONTINUOUS]** Proactively pursue local, state, and federal funding to support housing options and support services.

**TASKS:**

**CENTRALIZE COMMUNICATIONS RELATED TO HOMELESSNESS**

- Create specific contact resources for communications related to homelessness in the City of Tracy
  - Including: Email, Phone number, Informational webpage, Social media platforms

**“PANDEMIC” FUNDING OPPORTUNITIES**

- Identify local, state, and federal funding opportunities to address homelessness support services during COVID-19 pandemic
- Assign department to evaluate and complete applications for any available funding opportunities specific to COVID-19 pandemic

**REDISTRIBUTION OF RESOURCES**

- Monitor amount of resources spent on COVID-19 pandemic (including staff hours) for potential reimbursement by future funding opportunities
- Evaluate current resources spent on homelessness and consider reallocation to homelessness support services during COVID-19 pandemic

**GOAL 2: INCREASE ACCESS TO COORDINATED SUPPORT SERVICES FOR PEOPLE EXPERIENCING HOMELESSNESS**

**OBJECTIVE 3:** Enhance coordination between local service providers and county agencies.

**TASKS:**

**PRIORITIZE COORDINATION EFFORTS RELATED TO COVID-19 PANDEMIC**

- Partner with other agencies to evaluate how to leverage resources and pursue funding opportunities.
- Commit to actively coordinating support services and funding opportunities with local service providers, and local, state, and federal government agencies.

**GOAL 4: ENACT SPECIFIC STRATEGIES FOR VULNERABLE SUBPOPULATIONS EXPERIENCING HOMELESSNESS**

**OBJECTIVE 1:** Identify people experiencing or at-risk of homelessness in vulnerable subpopulations within the City of Tracy — including, but not limited to, veterans, youth, the LGBTQ community, victims of crime, and people with behavioral health needs.

**TASKS:**

**IDENTIFY VULNERABLE SUBPOPULATIONS DURING COVID-10 PANDEMIC**

- Identify vulnerable subpopulations during COVID-19 pandemic

- Suggested subpopulations include:
  - Veterans of Armed Forces
  - Youth (Aged 17 and below)
  - LGBTQ Community
  - Victims of Crime
  - People with Mental/Behavioral Health Needs
  - People with Disabilities
  - Non-Native English Speakers
  - Undocumented Immigrants

**OBJECTIVE 3:** Identify and apply for funding opportunities to secure resources that are specifically available to support people from vulnerable subpopulations.

**TASKS:**

**IDENTIFY SUPPORT SERVICES DURING COVID-19 PANDEMIC**

- Identify organizations & government agencies that generally provide support to these identified groups

**CONTACT ORGANIZATIONS/AGENCIES FOR SUPPORT DURING COVID-19 PANDEMIC**

- Contact government agencies & organizations that support these identified groups for possible collaboration of services, and information about potential funding opportunities related to the COVID-19 pandemic
- Create a list of funding opportunities that may be available to offer support services for these identified groups during the COVID-19 pandemic
- Apply for available funding opportunities to support identified groups during the COVID-19 pandemic

**TABLE A: California State-Funded Resources**

Program	Eligible uses	Eligible Applicants
<b>Multifamily Housing Program- Supportive Housing (SHMHP)</b>	Provides construction, rehabilitation, or acquisition of permanent supportive housing.	Nonprofits and/or for-profit developers and organizations.
<b>California Emergency Solutions and Housing Program (CESH)</b>	Provides housing relocation and stabilization services (including rental assistance), operating subsidies for permanent housing, flexible housing subsidy funds, operating support for emergency housing interventions, systems support for homelessness services and housing delivery systems, and can support homelessness planning.	Administrative Entities -- local governments, nonprofit organizations, or unified funding agencies -- designated by the Continuum of Care to administer CESH funds in their service area.
<b>Housing for a Healthy California</b>	Provides construction, rehabilitation, or acquisition of affordable housing; operating assistance (including long-term rental assistance and operating costs); administrative costs.	Counties and/or developers.
<b>Emergency Solutions Grant Program (ESG)</b>	Provides street outreach; emergency shelter; homelessness prevention; rapid re-housing; data collection; administrative costs.	Local government and private non-profit organizations.
<b>No Place Like Home (NPLH)</b>	Provides acquisition, design, construction, rehabilitation, or preservation of supportive housing.	Counties and counties in partnership with the development sponsor.
<b>Permanent Local Housing Allocation (PLHA) (SB 2)</b>	70 percent of the proceeds will be allocated to local governments (through both over-the-counter and competitive processes) for specified local projects or programs. Ten percent to assist the development of farmworker housing and five percent HCD to administer a program to incentivize the permitting of affordable housing. Fifteen percent will be allocated to CalHFA to assist mixed-income multifamily developments.	Local governments, eligibility of other entities TBD

Program	Eligible uses	Eligible Applicants
<b>Veterans Housing and Homelessness Prevention Program (VHHP)*</b>  <b>*Also a project with CalVet and CalHFA</b>	Provides acquisition and/or construction or rehabilitation of an Affordable Rental Housing Development or Transitional Housing, or the conversion of an existing structure into one of these housing types.	Counties and nonprofits.
<b>Affordable Housing and Sustainable Communities (AHSC)</b>	Transportation stop required. Offers 3 types of grants, one specifically for rural projects.	Govt. agencies, localities, project sponsors.
<b>Transformative Climate Communities (TCC)</b>	Limited to projects, or planning for projects, that reduces GHG or VMT. Requires reporting of GHG/VMT progress. Offers two types of grants, including a planning option that could lead to future TCC grant approvals.	Businesses, organizations, stakeholders.
<b>Homeless Emergency Aid Program (HEAP)</b>	Provides one-time funding to enable local governments to respond to homelessness through the following eligible activities; emergency housing vouchers, rapid rehousing, emergency shelter construction and use of armories to provide temporary shelters.	City, county or joint power must declare an emergency shelter crisis (waiver processes for smaller cities/counties that do not declare a shelter emergency). CoC must demonstrate collaboration with other city, county or nonprofit partners.
<b>Homeless Housing and Assistance Prevention (HHAP)</b>	Provides one-time block grant funding to local jurisdictions with funds to support regional coordination and expand or develop local capacity to address their immediate homelessness challenges.	Continuums of Care; Largest Cities, with populations of 300,000 or more (as of January 2019); and Counties

# CITY OF TRACY

## ATTACHMENT B

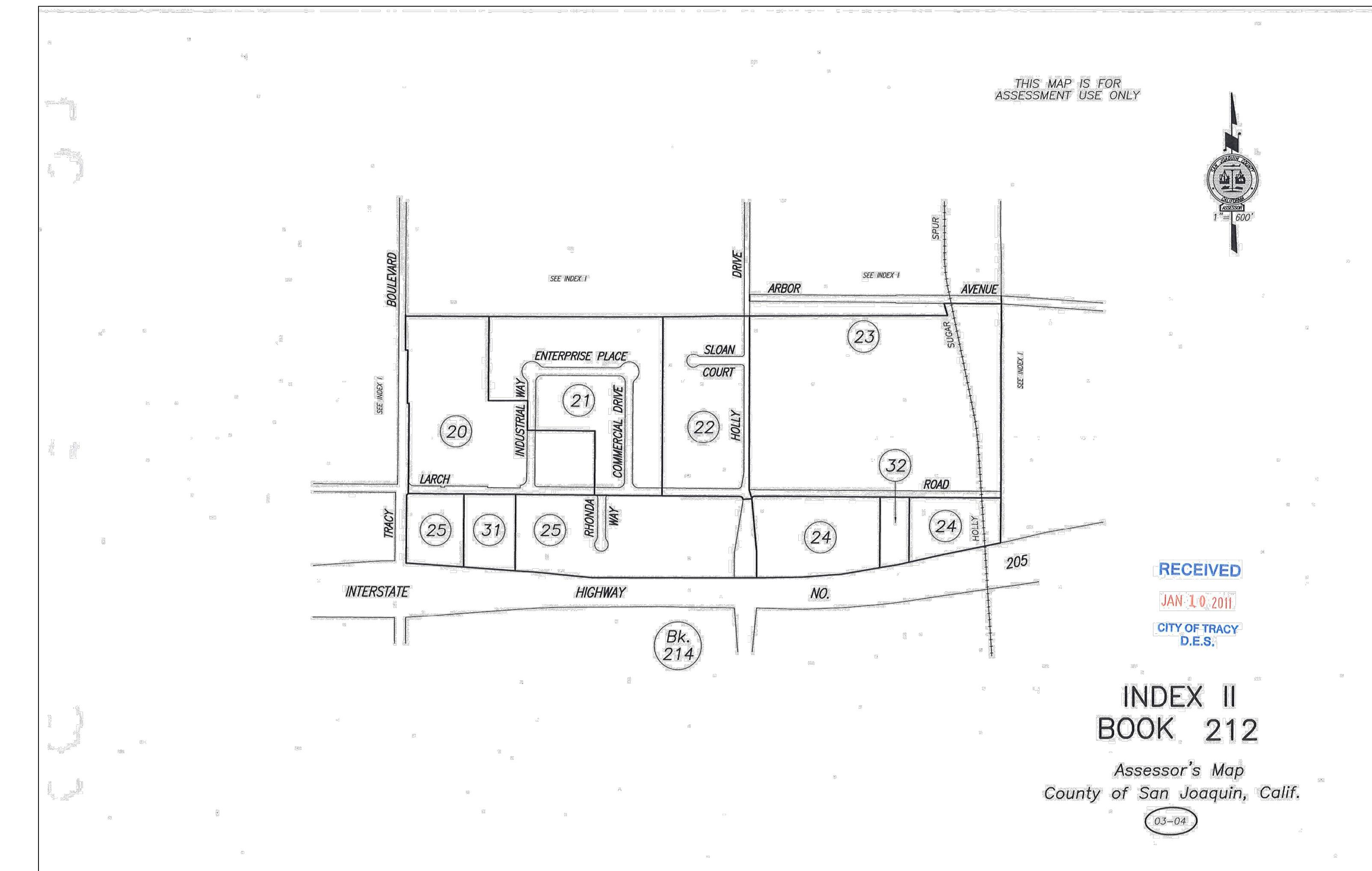
### COVID-19 PROJECT SITE

500 W ARBOR RD, TRACY, CA



PROJECT LOCATION MAP

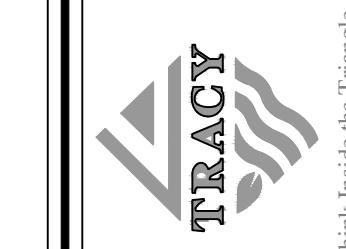
SCALE: 1" = 250'



#### NOTES:

1. ALL TENTS SHALL BE FLAME-RETARDANT IN ACCORDANCE WITH THE FIRE CODE AND TITLE 19. A LABEL SHALL BE AFFIXED TO THE TENT MEETING THE TITLE 19 REQUIREMENTS.
2. ALL GENERATORS OR INTERNAL COMBUSTION ENGINES SHALL BE LOCATED 20 FEET AWAY FROM THE TENTS.
3. USING THE OCCUPANT LOAD FACTOR FOR A DORMITORY, THE OCCUPANT LOAD OF THE TENTS SHALL NOT EXCEED 12. THE TENTS SHALL BE PROVIDED WITH A MINIMUM OF 2 EXITS THAT ARE 72 INCHES IN WIDTH.
4. FIRE EXTINGUISHERS SHALL BE PROVIDED FOR EACH OF THE TENTS AND ANY GENERATOR.
5. WEEDS, COMBUSTIBLE VEGETATION AND OTHER COMBUSTIBLE WASTE SHALL BE REMOVED FROM AND KEPT FREE FROM INSIDE AND WITHIN 30 FEET OF THE TENTS.
6. NO SMOKING SIGNS SHALL BE POSTED IN EACH OF THE TENTS.
7. HEATING AND COOLING EQUIPMENT WHICH PRODUCES SPARKS IS NOT ALLOWED INSIDE OR WITHIN 20 FEET OF THE TENTS.
8. ELECTRICAL EQUIPMENT AND WIRING SHALL BE LISTED AND LABELED FOR OUTDOOR USE.
9. GENERATORS SHALL BE POSITIONED A MINIMUM DISTANCE OF 10 FEET FROM COMBUSTIBLE MATERIALS.
10. COMBUSTIBLE WASTE MATERIAL SHALL NOT BE ALLOWED TO ACCUMULATE ON THE SITE, BE STORED IN APPROVED CONTAINERS AND REMOVED FROM THE SITE DAILY.
11. A FIRE HYDRANT NEEDS TO BE POSITIONED ALONG THE FIRE APPARATUS ROADWAY.

CITY OF TRACY



COVER SHEET

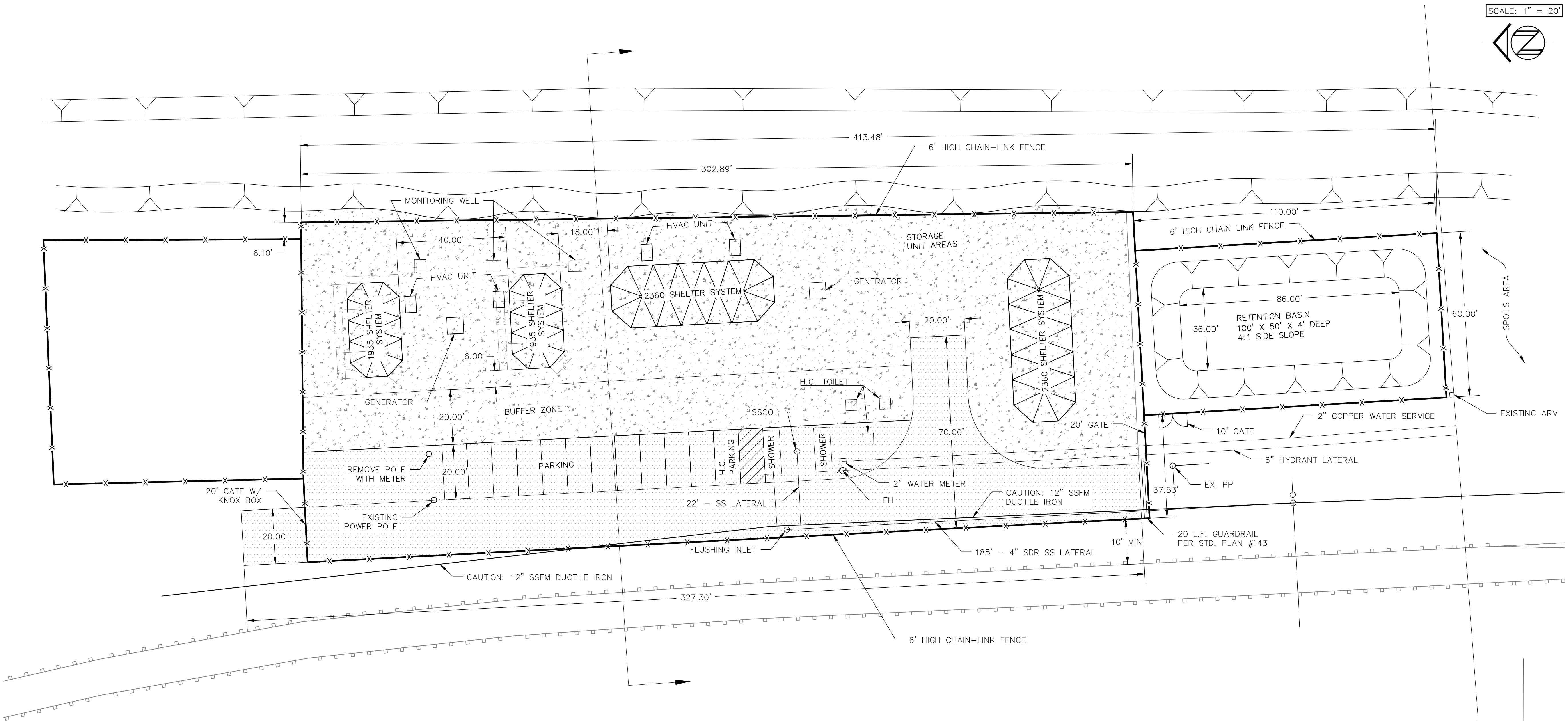
DESIGNED BY:	REVISIONS	APPROVED
SPECIFIC	DATE	DESCRIPTION

DRAWN BY:	CHECKED BY:
ZK	PS

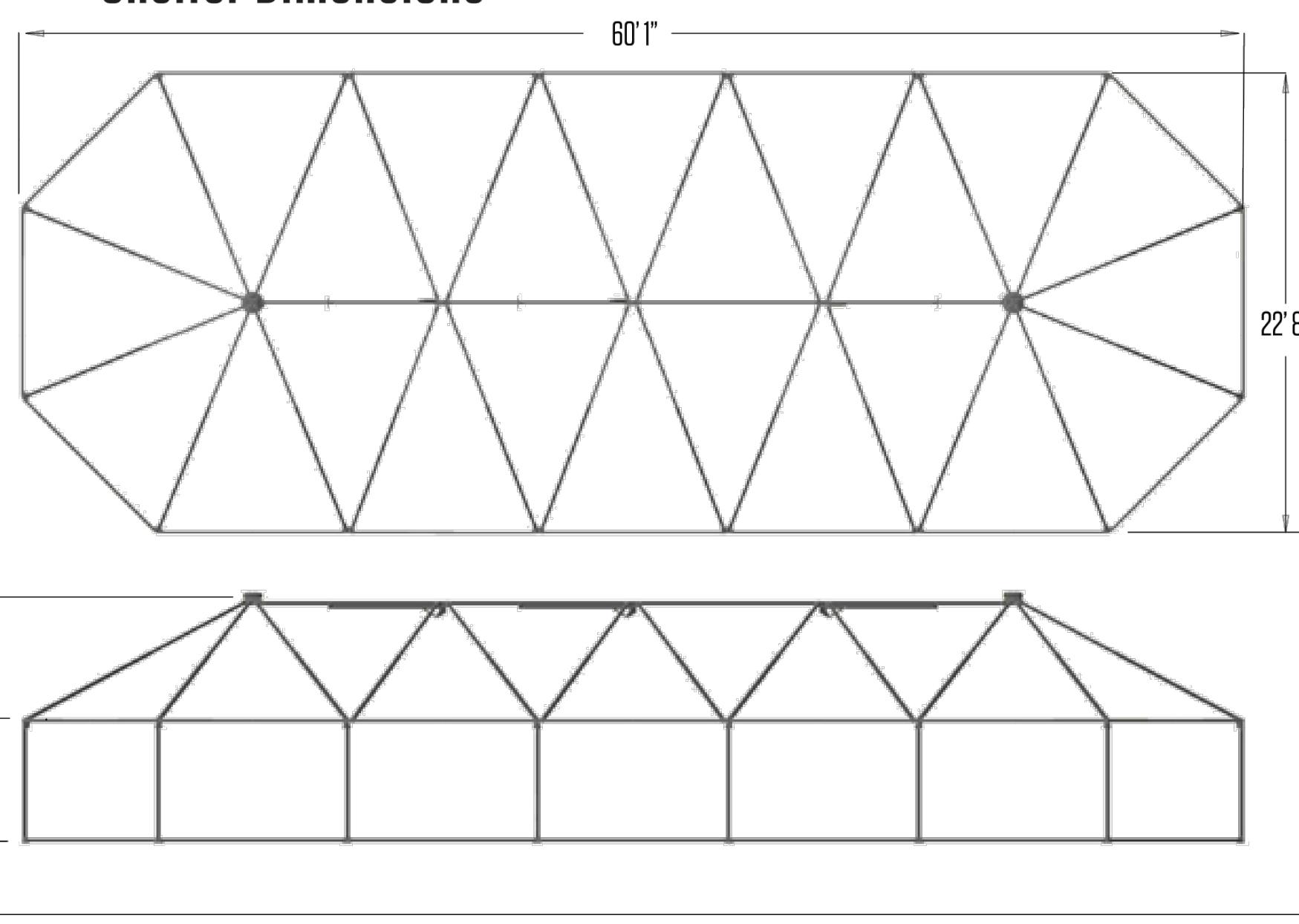
SCALE:
AS SHOWN

CITY OF TRACY - ARBOR ROAD  
500 W ARBOR ROAD

1  
OF 3 SHEETS



## **Shelter Dimensions**

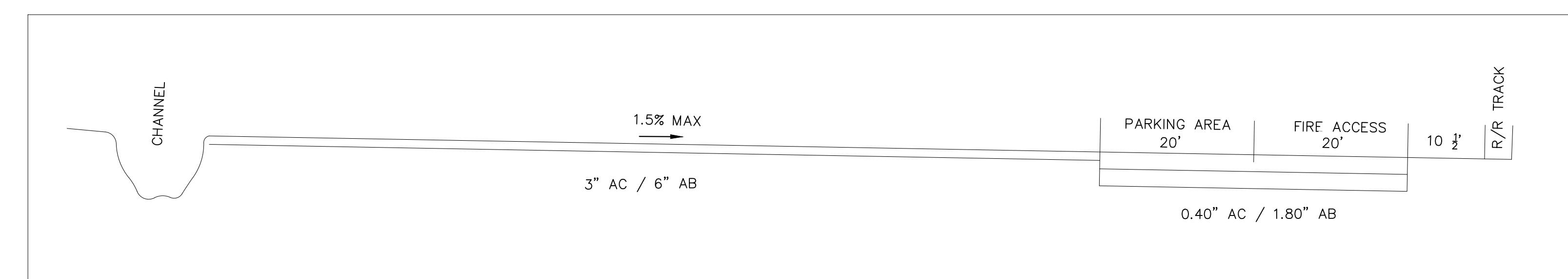


# 2360 SHELTER SYSTEM DETAIL

NO SCALE

COVID-19 ARBOR RD PROJECT SITE

SCALE: 1" = 20'



## CROSS SECTION DETAIL

## NOTES:

- 2" WATER SERVICE PER STANDARD PLAN #404  
LENGTH OF SERVICE APPROX. 212 LF
- 6" FIRE HYDRANT PER STANDARD PLAN #401  
HOT-TAP @ MAIN  
LENGTH OF HYDRANT LATERAL APPROX. 212 LF
- 4" SS LATERAL PER STANDARD PLAN #202  
USE SDR 26  
LENGTH OF LATERAL APPROX. 200 LF  
INSTALL FLUSHING INLET @ DIRECTION CHANGE
- TRENCH BACKFILL PER STANDARD PLAN 500 & 501
- PARKING STALL CURB PER STANDARD PLAN #141  
INSTALL CURB STOPS @ ALL PARKING STALLS
- ACCESSIBLE PARKING STALL (VAN ACCESSIBLE)  
PER STANDARD PLAN 142

## LEGEND

3" A.C. / 6" A.B.

 0.40' A.C. / 1.80' A.B.

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

DESIGNATE 500 W ARBOR ROAD AS A TEMPORARY EMERGENCY HOUSING SITE FOR UNSHELTERED INDIVIDUALS IN TRACY, APPROPRIATE FUNDS FOR CONSTRUCTION AND PROVISION OF SERVICES IN THE AMOUNT OF \$690,000 FROM HOUSING ASSET FUNDS, \$100,000 FROM CDBG, \$109,000 CARES ACT, AUTHORIZE STAFF TO SUBMIT RELATED GRANT APPLICATIONS AND ISSUE A REQUEST FOR PROPOSALS FOR A SERVICE PROVIDER TO OPERATE THE FACILITY

WHEREAS, On May 5, 2020 the City Council adopted a Tracy-specific Homelessness Strategic Plan that aligns with the County's overall efforts to positively impact homelessness in the region, and

WHEREAS, A short term goal of the Plan called for staff to identify a location to use as a temporary emergency housing solution for the City's unsheltered population, and

WHEREAS, Staff has identified unimproved City-owned land that can be prepared for the construction of temporary emergency housing, located at 500 W Arbor Road, and

WHEREAS, The City Council has previously encumbered or committed funding related to Homeless Prevention and Support for Unsheltered Individuals;

NOW, THEREFORE BE IT RESOLVED, That City Council of the City of Tracy hereby, designates 500 W Arbor Road as a temporary emergency housing site for unsheltered individuals in Tracy, approve appropriations of \$690,000 from Housing Asset Funds, \$100,000 from CDBG, \$109,000 from CARES Act to establish a new CIP 71112 and authorize staff to apply for additional grant funding and issuing a Request for Proposal to identify a service provider with appropriate experience and expertise to operate the facility.

\* \* \* \* \*

The foregoing Resolution 2020-\_\_\_\_\_ was adopted by the Tracy City Council on the 1<sup>st</sup> day of September 2020, by the following vote:

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

---

MAYOR

ATTEST:

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CITY CLERK

September 1, 2020

AGENDA ITEM 3.F

REQUEST

**DESIGNATE VOTING DELEGATE AND UP TO TWO ALTERNATE VOTING DELEGATES FOR THE LEAGUE OF CALIFORNIA CITIES 2020 ANNUAL CONFERENCE BUSINESS MEETING AND DETERMINE CITY COUNCIL'S POSITION ON THE RESOLUTION TO BE CONSIDERED AT THE ANNUAL CONFERENCE BUSINESS MEETING**

EXECUTIVE SUMMARY

Staff requests that Council designate a voting delegate and up to two alternate voting delegates for the upcoming League of California Cities Annual Conference Business Meeting, and determine their position on the attached resolution.

DISCUSSION

The League of California Cities Annual Conference is scheduled for Wednesday, October 7th through Friday, October 9th, 2020. Due to COVID-19 the conference will be held virtually.

An important part of the Annual Conference is the League of California Cities Annual Business Meeting held on Friday, October 9, 2020. At this meeting, the League membership considers and takes action on resolutions that establish League policy. In order to expedite the conduct of business at this policy-making meeting, each City Council is required to designate a voting delegate and up to two alternates who will be registered at the conference and present virtually at the Annual Business Meeting. A voting card will be given to the City official designated on the Voting Delegate Form.

The League of California Cities has requested to receive the names of the delegates by Wednesday, September 30, 2020.

Additionally, attached is a packet of information from the League of California Cities, which includes the following resolution being considered at the Annual Business Meeting:

1. A Resolution of the General Assembly of the League of California Cities calling for an amendment of Section 230 of the Communications Decency Act of 1996 to require social media companies to remove materials which promote criminal activities

The attached description of the 2020 annual conference resolution includes the actual resolution and background information on the resolution for Council consideration.

STRATEGIC PLAN

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

FISCAL IMPACT

There is no fiscal impact associated with this discussion item.

**RECOMMENDATION**

That Council designate, by resolution, a voting delegate and up to two alternate voting delegates for the League of California Cities 2020 Annual Conference Business Meeting, and determine their position on the attached resolution.

Prepared by: Adrianne Richardson, City Clerk

Reviewed by: Midori Lichtwardt, Assistant City Manager

Approved by: Jenny Haruyama, City Manager

**ATTACHMENTS**

- A Correspondence from the League of California Cities dated June 30, 2020
- B 2020 Annual Conference Resolutions Packet

**Council Action Advised by August 31, 2020**

June 30, 2020

**TO: Mayors, City Managers and City Clerks**

**RE: DESIGNATION OF VOTING DELEGATES AND ALTERNATES**

**League of California Cities Annual Conference & Expo – October 7 – 9, 2020**

The League's 2020 Annual Conference & Expo is scheduled for October 7 – 9. An important part of the Annual Conference is the Annual Business Meeting (during General Assembly) on Friday, October 9. At this meeting, the League membership considers and takes action on resolutions that establish League policy.

In order to vote at the Annual Business Meeting, your city council must designate a voting delegate. Your city may also appoint up to two alternate voting delegates, one of whom may vote in the event that the designated voting delegate is unable to serve in that capacity.

**Please complete the attached Voting Delegate form and return it to the League's office no later than Wednesday, September 30. This will allow us time to establish voting delegate/alternate records prior to the conference.**

Please note the following procedures are intended to ensure the integrity of the voting process at the Annual Business Meeting. These procedures assume that the conference will be held in-person at the Long Beach Convention Center as planned. Should COVID-19 conditions and restrictions prohibit the League from holding an in-person conference, new procedures will be provided.

- Action by Council Required.** Consistent with League bylaws, a city's voting delegate and up to two alternates must be designated by the city council. When completing the attached Voting Delegate form, please attach either a copy of the council resolution that reflects the council action taken, or have your city clerk or mayor sign the form affirming that the names provided are those selected by the city council. Please note that designating the voting delegate and alternates must be done by city council action and cannot be accomplished by individual action of the mayor or city manager alone.
- Conference Registration Required.** The voting delegate and alternates must be registered to attend the conference. They need not register for the entire conference; they may register for Friday only. Conference registration will open by the end of July at [www.cacities.org](http://www.cacities.org). In order to cast a vote, at least one voter must be present at the Business Meeting and in possession of the voting delegate card. Voting delegates and alternates need to pick up their conference badges before signing in and picking up the voting delegate card at the Voting Delegate Desk. This will enable them to receive the

special sticker on their name badges that will admit them into the voting area during the Business Meeting.

- **Transferring Voting Card to Non-Designated Individuals Not Allowed.** The voting delegate card may be transferred freely between the voting delegate and alternates, but *only* between the voting delegate and alternates. If the voting delegate and alternates find themselves unable to attend the Business Meeting, they may *not* transfer the voting card to another city official.
- **Seating Protocol during General Assembly.** At the Business Meeting, individuals with the voting card will sit in a separate area. Admission to this area will be limited to those individuals with a special sticker on their name badge identifying them as a voting delegate or alternate. If the voting delegate and alternates wish to sit together, they must sign in at the Voting Delegate Desk and obtain the special sticker on their badges.

The Voting Delegate Desk, located in the conference registration area of the Long Beach Convention Center, will be open at the following times: Wednesday, October 7, 8:00 a.m. – 6:00 p.m.; Thursday, October 8, 7:00 a.m. – 4:00 p.m.; and Friday, October 9, 7:30 a.m.–11:30 a.m.. The Voting Delegate Desk will also be open at the Business Meeting on Friday, but will be closed during roll calls and voting.

The voting procedures that will be used at the conference are attached to this memo. Please share these procedures and this memo with your council and especially with the individuals that your council designates as your city's voting delegate and alternates.

Once again, thank you for completing the voting delegate and alternate form and returning it to the League's office by Wednesday, September 30. If you have questions, please call Darla Yacub at (916) 658-8254.

Attachments:

- Annual Conference Voting Procedures
- Voting Delegate/Alternate Form



**CITY:** \_\_\_\_\_

**2020 ANNUAL CONFERENCE  
VOTING DELEGATE/ALTERNATE FORM**

**Please complete this form and return it to the League office by Wednesday, September 30, 2020. Forms not sent by this deadline may be submitted to the Voting Delegate Desk located in the Annual Conference Registration Area. Your city council may designate one voting delegate and up to two alternates.**

In order to vote at the Annual Business Meeting (General Assembly), voting delegates and alternates must be designated by your city council. Please attach the council resolution as proof of designation. As an alternative, the Mayor or City Clerk may sign this form, affirming that the designation reflects the action taken by the council.

**Please note:** Voting delegates and alternates will be seated in a separate area at the Annual Business Meeting. Admission to this designated area will be limited to individuals (voting delegates and alternates) who are identified with a special sticker on their conference badge. This sticker can be obtained only at the Voting Delegate Desk.

**1. VOTING DELEGATE**

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**2. VOTING DELEGATE - ALTERNATE**

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**3. VOTING DELEGATE - ALTERNATE**

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**PLEASE ATTACH COUNCIL RESOLUTION DESIGNATING VOTING DELEGATE AND ALTERNATES.**

**OR**

**ATTEST: I affirm that the information provided reflects action by the city council to designate the voting delegate and alternate(s).**

Name: \_\_\_\_\_

Email: \_\_\_\_\_

Mayor or City Clerk \_\_\_\_\_  
(circle one) \_\_\_\_\_  
(signature) \_\_\_\_\_

Date: \_\_\_\_\_ Phone: \_\_\_\_\_

**Please complete and return by Wednesday, September 30, 2020**

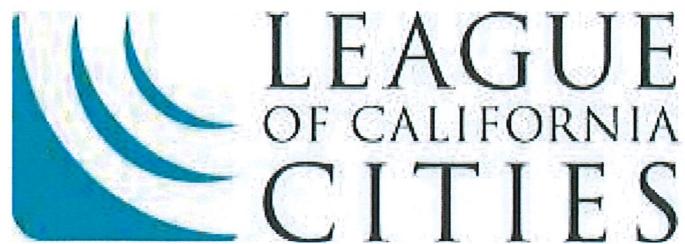
League of California Cities  
**ATTN: Darla Yacub**  
1400 K Street, 4<sup>th</sup> Floor  
Sacramento, CA 95814

**FAX: (916) 658-8240**  
E-mail: [dyacub@cacities.org](mailto:dyacub@cacities.org)  
(916) 658-8254



## Annual Conference Voting Procedures

1. **One City One Vote.** Each member city has a right to cast one vote on matters pertaining to League policy.
2. **Designating a City Voting Representative.** Prior to the Annual Conference, each city council may designate a voting delegate and up to two alternates; these individuals are identified on the Voting Delegate Form provided to the League Credentials Committee.
3. **Registering with the Credentials Committee.** The voting delegate, or alternates, may pick up the city's voting card at the Voting Delegate Desk in the conference registration area. Voting delegates and alternates must sign in at the Voting Delegate Desk. Here they will receive a special sticker on their name badge and thus be admitted to the voting area at the Business Meeting.
4. **Signing Initiated Resolution Petitions.** Only those individuals who are voting delegates (or alternates), and who have picked up their city's voting card by providing a signature to the Credentials Committee at the Voting Delegate Desk, may sign petitions to initiate a resolution.
5. **Voting.** To cast the city's vote, a city official must have in his or her possession the city's voting card and be registered with the Credentials Committee. The voting card may be transferred freely between the voting delegate and alternates, but may not be transferred to another city official who is neither a voting delegate or alternate.
6. **Voting Area at Business Meeting.** At the Business Meeting, individuals with a voting card will sit in a designated area. Admission will be limited to those individuals with a special sticker on their name badge identifying them as a voting delegate or alternate.
7. **Resolving Disputes.** In case of dispute, the Credentials Committee will determine the validity of signatures on petitioned resolutions and the right of a city official to vote at the Business Meeting.



*Annual Conference  
Resolutions Packet*

*2020 Annual Conference Resolutions*



*October 7 – 9, 2020*

## INFORMATION AND PROCEDURES

**RESOLUTIONS CONTAINED IN THIS PACKET:** The League bylaws provide that resolutions shall be referred by the president to an appropriate policy committee for review and recommendation. Resolutions with committee recommendations shall then be considered by the General Resolutions Committee at the Annual Conference.

This year, one resolution has been introduced for consideration at the Annual Conference and referred to League policy committees.

**POLICY COMMITTEES:** Two policy committees will meet virtually at the Annual Conference to consider and take action on the resolution referred to them. The committees are: Governance, Transparency & Labor Relations and Public Safety. These committees will meet virtually on Tuesday, September 29, with the Governance, Transparency and Labor Relations Policy Committee meeting from 9:30 – 11:30 a.m. and the Public Safety Policy Committee meeting from 1:00 – 3:00 p.m. The sponsor of the resolution has been notified of the time and location of the meeting.

**GENERAL RESOLUTIONS COMMITTEE:** This committee will meet virtually at 1:00 p.m. on Thursday, October 8, to consider the reports of the policy committees regarding the resolutions. This committee includes one representative from each of the League's regional divisions, functional departments and standing policy committees, as well as other individuals appointed by the League president.

**GENERAL ASSEMBLY:** This meeting will be held virtually at 11:00 a.m. on Friday, October 9.

**PETITIONED RESOLUTIONS:** For those issues that develop after the normal 60-day deadline, a resolution may be introduced at the Annual Conference with a petition signed by designated voting delegates of 10 percent of all member cities (48 valid signatures required) and presented to the Voting Delegates Desk at least 24 hours prior to the time set for convening the Annual Business Meeting of the General Assembly. This year, that deadline is 12:30 p.m., Thursday, October 8.

Any questions concerning the resolutions procedures may be directed to Meg Desmond at the League office: [mdesmond@cacities.org](mailto:mdesmond@cacities.org) or (916) 658-8224

## **GUIDELINES FOR ANNUAL CONFERENCE RESOLUTIONS**

Policy development is a vital and ongoing process within the League. The principal means for deciding policy on the important issues facing cities is through the League's seven standing policy committees and the board of directors. The process allows for timely consideration of issues in a changing environment and assures city officials the opportunity to both initiate and influence policy decisions.

Annual conference resolutions constitute an additional way to develop League policy. Resolutions should adhere to the following criteria.

### **Guidelines for Annual Conference Resolutions**

1. Only issues that have a direct bearing on municipal affairs should be considered or adopted at the Annual Conference.
2. The issue is not of a purely local or regional concern.
3. The recommended policy should not simply restate existing League policy.
4. The resolution should be directed at achieving one of the following objectives:
  - (a) Focus public or media attention on an issue of major importance to cities.
  - (b) Establish a new direction for League policy by establishing general principals around which more detailed policies may be developed by policy committees and the board of directors.
  - (c) Consider important issues not adequately addressed by the policy committees and board of directors.
  - (d) Amend the League bylaws (requires 2/3 vote at General Assembly).

## KEY TO ACTIONS TAKEN ON RESOLUTIONS

Resolutions have been grouped by policy committees to which they have been assigned.

Number	Key Word Index	Reviewing Body Action
		1      2      3
		1 - Policy Committee Recommendation to General Resolutions Committee
		2 - General Resolutions Committee
		3 - General Assembly

### GOVERNANCE, TRANSPARENCY & LABOR RELATIONS POLICY COMMITTEE

1	Amendment to Section 230 of The Communications Decency Act of 1996	1	2	3

### PUBLIC SAFETY POLICY COMMITTEE

1	Amendment to Section 230 of The Communications Decency Act of 1996	1	2	3

## **KEY TO ACTIONS TAKEN ON RESOLUTIONS (Continued)**

Resolutions have been grouped by policy committees to which they have been assigned.

### **KEY TO REVIEWING BODIES**

1. Policy Committee
2. General Resolutions Committee
3. General Assembly

### **KEY TO ACTIONS TAKEN**

A	Approve
D	Disapprove
N	No Action
R	Refer to appropriate policy committee for study
a	Amend+
Aa	Approve as amended+
Aaa	Approve with additional amendment(s)+
Ra	Refer as amended to appropriate policy committee for study+
Raa	Additional amendments and refer+
Da	Amend (for clarity or brevity) and Disapprove+
Na	Amend (for clarity or brevity) and take No Action+
W	Withdrawn by Sponsor

### **ACTION FOOTNOTES**

\* Subject matter covered in another resolution

\*\* Existing League policy

\*\*\* Local authority presently exists

### **Procedural Note:**

The League of California Cities resolution process at the Annual Conference is guided by the League Bylaws. A helpful explanation of this process can be found on the League's website by clicking on this link: [Resolution Process](#).

**1. A RESOLUTION OF THE GENERAL ASSEMBLY OF THE LEAGUE OF CALIFORNIA CITIES CALLING FOR AN AMENDMENT OF SECTION 230 OF THE COMMUNICATIONS DECENTY ACT OF 1996 TO REQUIRE SOCIAL MEDIA COMPANIES TO REMOVE MATERIALS WHICH PROMOTE CRIMINAL ACTIVITIES**

Source: City of Cerritos

Concurrence of five or more cities/city officials

Cities: City of Hawaiian Gardens, City of Lakewood, City of Ontario, City of Rancho Cucamonga, City of Roseville

Referred to: Governance, Transparency and Labor Relations and Public Safety Policy Committees

**WHEREAS**, local law enforcement agencies seek to protect their communities' residents, businesses, and property owners from crime; and

**WHEREAS**, increasingly, criminals use social media platforms to post notices of places, dates and times for their followers to meet to commit crimes; and

**WHEREAS**, Section 230 of the Communications Decency Act of 1996 currently provides online platforms (including social media platforms) immunity from civil liability based on third-party content and for the removal of content; and

**WHEREAS**, in the 25 years since Section 230's enactment, online platforms no longer function simply as forums for the posting of third-party content but rather use sophisticated algorithms to promote content and to connect users; and

**WHEREAS**, the United States Department of Justice, in its June 2020 report, "Section 230 — Nurturing Innovation or Fostering Unaccountability?," concluded the expansive interpretation courts have given Section 230 has left online platforms immune from a wide array of illicit activity on their services, with little transparency or accountability, noting it "makes little sense" to immunize from civil liability an online platform that purposefully facilitates or solicits third-party content or activity that violates federal criminal law; and

**WHEREAS**, current court precedent interpreting Section 230 also precludes state and local jurisdictions from enforcing criminal laws against such online platforms that, while not actually performing unlawful activities, facilitate them; and

**WHEREAS**, amendment of Section 230 is necessary to clarify that online platforms are not immune from civil liability for promoting criminal activities; and

**NOW, THEREFORE, BE IT RESOLVED** at the League General Assembly, assembled at the League Annual Conference on October 9, 2020 in Long Beach, California, that the League calls upon the U.S. Congress to amend Section 230 of the Communications Decency Act of 1996 to condition immunity from civil liability on the following:

1. Online platforms must establish and implement a reasonable program to identify and take down content which solicits criminal activity; and
2. Online platforms must provide to law enforcement information which will assist in the identification and apprehension of persons who use the services of the platform to solicit and to engage in criminal activity; and
3. An online platform that willfully or negligently fails in either of these duties is not immune from enforcement of state and local laws which impose criminal or civil liability for such failure.

## **Background Information to Resolution**

**Source:** City of Cerritos

### **Background:**

Social media platforms are now used as a primary means of communication, including by criminals who use them to advertise locations, dates, and times where the criminal acts will take place. Such communications, because they occur online, render the online platform immune from any civil liability for the costs incurred by law enforcement agencies that respond under Section 230 of the Communications Decency Act of 1996. Immunity from civil liability extends even to injunctive relief, thus preventing local governments from merely seeking an injunction against the online platform to have such a post removed.

The City of Cerritos supports the rights of free speech and assembly guaranteed under the First Amendment, but believes cities should have the ability to hold social media companies liable for their role in promoting criminal acts. Recently, the City suffered thousands of dollars in damages to respond to online threats that the Cerritos Mall would be looted. Anonymous posts on Instagram.com invited followers to “work together to loot Cerritos [M]all” only several days after the Lakewood Mall had been looted, causing thousands of dollars in damages. The posts were made under the names “cerritosmalllooting” and “cantstopusall,” among others. The City of Cerritos had no choice but to initiate response to protect the Mall and the public from this credible threat.

At the same time local governments face historic shortfalls owing to the economic effects of COVID-19, the nation’s social media platforms are seeing a record rise in profits. The broad immunity provided by Section 230 is completely untenable. Online platforms should be held responsible—and liable—for the direct harm they facilitate. Local governments are in no position to bear the costs of the crimes facilitated by these companies alone.

Congress is currently reviewing antitrust legislation and by extension, Section 230’s immunity provisions. The League urges Congress to amend Section 230 to limit the immunity provided to online platforms when they promote criminal activity to provide local governments some measurable form of relief.

## **League of California Cities Staff Analysis on Resolution No. 1**

Staff: Charles Harvey, Legislative Representative  
Bijan Mehryar, Legislative Representative  
Caroline Cirrincione, Policy Analyst  
Johnnie Piña, Policy Analyst

Committees: Governance, Transparency and Labor Relations  
Public Safety

### **Summary:**

This resolution states that the League of California Cities should urge Congress to amend Section 230 of the federal Communications Decency Act of 1996 (CDA) to limit the immunity provided to online platforms where their forums enable criminal activity to be promoted.

Ultimately, the policy objectives proposed under this resolution, if enacted, would incentivize social media companies to establish and implement a reasonable program to identify and remove content that solicits criminal activity.

### **Background:**

The City of Cerritos is sponsoring this resolution in reaction to events whereby persons, using social media platforms to coordinate locations, dates, and times for their planned criminal activity, have committed acts of looting and vandalism resulting in both actual economic harm for targeted businesses, and pecuniary loss to cities who used resources to prevent such acts from occurring when such plans are discovered.

For example, just days after the Lakewood Mall had been looted, the City of Cerritos uncovered online communications via social media that persons were planning to target the nearby Cerritos Mall. Consequently, the city felt compelled to undertake measures to protect the Cerritos Mall, costing the city thousands of dollars to guard against what officials believed to be a credible threat.

### **Staff Comments:**

#### **Overview:**

While there is certainly an argument to substantiate concerns around censorship, the use of social media as a tool for organizing violence is equally disturbing.

Throughout much of the 2020 Summer, there have been many reports of looting happening across the country during what were otherwise mostly peaceful demonstrations. Combined with the speculation of who is really behind the looting and why, the mayhem has usurped the message of peaceful protestors, causing a great deal of property damage in the process. Likewise, these criminal actions have upended the livelihood of some small business owners, many of whom were already reeling in the wake of the COVID-19 pandemic.

While social media allows people to connect in real time with others all over the world, organized illegal activity using social media is made easier by the anonymous nature of virtual interactions.

Nation's Reaction to the Murder of George Floyd:

Shortly after the senseless killing of George Floyd by law enforcement on May 26, 2020, civil unrest began as local protests in the Minneapolis–Saint Paul metropolitan area of Minnesota before quickly spreading nationwide to more than 2,000 cities and towns across the United States, and in approximately 60 countries in support of the Black Lives Matter movement. Protests unfolded across the country throughout the entire month of June and into July, and persisted in a handful of cities such as Portland and Seattle into the month of August.

Although the majority of protests were peaceful, some demonstrations in cities escalated into riots, looting, and street skirmishes with police. While much of the nation's focus has been on addressing police misconduct, police brutality, and systemic racism, some have used demonstrators' peaceful protests on these topics as opportunities to loot and/or vandalize businesses, almost exclusively under the guise of the "Black Lives Matter" movement. It has been uncovered that these "flash robs"<sup>1</sup> were coordinated through the use of social media. The spontaneity and speed of the attacks enabled by social media make it challenging for the police to stop these criminal events as they are occurring, let alone prevent them from commencing altogether.

As these events started occurring across the country, investigators quickly began combing through Facebook, Twitter, and Instagram seeking to identify potentially violent extremists, looters, and vandals and finding ways to charge them after — and in some cases before — they sow chaos. While this technique has alarmed civil liberties advocates, who argue the strategy could negatively impact online speech, law enforcement officials claim it aligns with investigation strategies employed in the past.

Section 230 and other Constitutional Concerns

At its core, Section 230(c)(1) of the CDA provides immunity from liability for providers and users of an "interactive computer service" who publish information provided by third-party users. Essentially, this protects websites from lawsuits if a user posts something illegal, although there are exceptions for copyright violations, sex work-related material, and violations of federal criminal law.

Protections from Section 230 have come under more recent scrutiny on issues related to hate speech and ideological biases in relation to the influence technology companies can hold on political discussions.

Setting aside Section 230, there are some potential constitutional issues one could raise, should there be an attempt to implement such a resolution into statute.

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<sup>1</sup> The "flash robs" phenomenon—where social media is used to organize groups of teens and young adults to quickly ransack and loot various retail stores—began to occur sporadically throughout the United States over the past ten years.

In the United States, the First Amendment prohibits the government from restricting most forms of speech, which would include many proposals to force tech companies to moderate content. While “illegal” types of speech enjoy limited or no First Amendment protection, the line for delineating between “legal” and “illegal” speech is very difficult to determine. Consequently, one would expect online platforms to push back on whether there is a constitutionally feasible way for them to “identify” protected speech versus unprotected speech, or whether there is a feasible way to define “content which solicits criminal activity.” A law requiring companies to moderate content based on the political viewpoint it expresses, for example, would likely be struck down as unconstitutional.

Nonetheless, private companies can create rules to restrict speech if they so choose. Online platforms sometimes argue they have constitutionally-protected First Amendment rights in their “editorial activity,” and therefore, it violates their constitutional rights to require them to monitor (i.e., “identify and take down”) content that may be protected under the First Amendment. They may also argue, along the same lines, that the government may not condition the granting of a privilege (i.e., immunity) on doing things that amount to a violation of their first amendment rights. This is why Facebook and Twitter ban hate speech and other verifiably false information, for example, even though such speech is permitted under the First Amendment.

With respect to privacy and the Fourth Amendment, online platforms may argue that requiring them to “provide to law enforcement information that will assist in the identification and apprehension of persons who use the services of the platform to solicit and to engage in criminal activity,” turns them into government actors that search users’ accounts without a warrant based on probable cause, in violation of the Fourth Amendment.

#### Industry Perspective

Unsurprisingly, industry stakeholders have strong opinions for what such changes could mean for their respective business models.

For instance, a Facebook spokesperson recently noted in a Fortune article that, “By exposing companies to potential liability for everything that billions of people around the world say, this would penalize companies that choose to allow controversial speech and encourage platforms to censor anything that might offend anyone.”

The article acknowledges that in recent years, both political parties have put social media companies under increased scrutiny, but they are not unified in their stated concerns. While Republicans accuse the companies of unfairly censoring their post, Democrats complain that these companies fail to do enough to block misinformation, violent content, and hate speech.

The article concludes that there is no way companies like Facebook and Twitter could operate without Section 230, and that the removal of this section would thereby “eliminate social media as we know it.”

#### Recent Federal Action on Social Media

The President recently issued an *Executive Order on Preventing Online Censorship*. In it, he notes the following:

“The growth of online platforms in recent years raises important questions about applying the ideals of the First Amendment to modern communications technology. Today, many Americans follow the news, stay in touch with friends and family, and share their views on current events through social media and other online platforms. As a result, these platforms function in many ways as a 21st century equivalent of the public square.

Twitter, Facebook, Instagram, and YouTube wield immense, if not unprecedented, power to shape the interpretation of public events; to censor, delete, or disappear information; and to control what people see or do not see.”

Ultimately the President implores the U.S. Attorney General to develop a proposal for federal legislation that “would be useful to promote the policy objectives of this order.” The President is not subtle in communicating his desire to ultimately see legislation heavily slanted toward the preservation of free speech on social media, which some interpret as a maneuver to preempt Twitter and Facebook from regulating speech they otherwise deem as hateful or demonstrably false.

#### Considerations for Congress

Courts have generally construed Section 230 to grant internet service providers broad immunity for hosting others’ content. Many have claimed that Section 230’s immunity provisions were critical to the development of the modern internet, and some continue to defend Section 230’s broad scope. But simultaneously, a variety of commentators and legislators have questioned whether those immunity provisions should now be narrowed, given that the internet looks much different today than it did in 1996 when Section 230 was first enacted.

One way for Congress to narrow Section 230’s liability shield would be to create additional exceptions, as it did with FOSTA and SESTA<sup>2</sup>. If a lawsuit does not fall into one of the express exceptions contained in Section 230(e)<sup>3</sup>, courts may have to engage in a highly fact-specific inquiry to determine whether Section 230 immunity applies: Section 230(c)(1) immunity will be inapplicable if the provider itself has developed or helped to develop the disputed content, while Section 230(c)(2) immunity may not apply if a service provider’s decision to restrict access to content was not made in good faith.

#### Date Storage and Usage Considerations for Cities

Section 2 of the conditions the resolution applies to civil immunity requires that online platforms provide relevant information to law enforcement to assist in the identification and apprehension of persons who use the services of the platform to solicit and to engage in criminal activity. This section would most likely require the development of new procedures and protocols that govern law enforcement’s usage and retention of such information. Those new policies and procedures would undoubtedly raise privacy concerns depending on how wide the latitude is for law

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<sup>2</sup> The Fight Online Sex Trafficking Act (FOSTA) and the Stop Enabling Sex Traffickers Act (SESTA) create an exception to Section 230 that means website publishers *would* be responsible if third parties are found to be posting ads for prostitution — including consensual sex work — on their platforms.

<sup>3</sup> Section 230(e) says that Section 230 will not apply to: (1) federal criminal laws; (2) intellectual property laws; (3) any state law that is “consistent with” Section 230; (4) the Electronic Communications Privacy Act of 1986; and (5) civil actions or state prosecutions where the underlying conduct violates federal law prohibiting sex trafficking.

enforcement to request such information. In those circumstances cities could end up themselves incurring new liability for the governance of data that could either violate certain privacy rules or increase their data governance costs.

**Fiscal Impact:**

Unlike the costly resources needed to support or oppose a ballot measure, a federal resolution from the League of California Cities that simply urges Congress to undertake certain action should have a negligible fiscal impact, if any monetary impact at all.

Regarding cities, if social media had no immunity for its failure to police content that solicits criminal activity, then an individual city could theoretically save thousands if not millions of dollars, depending on its size and other subjective circumstances. Collectively, cities across the country could potentially save at least hundreds of millions between redress for actual economic harm suffered and/or the cost of preventative measures taken to stop criminal activity from occurring in the first place.

Conversely, if social media platforms were to shut down, due to an inability to comply with a policy requirement to regulate speech on the internet, it is unclear on how cities might be impacted from a fiscal standpoint.

**Existing League Policy:**

**Public Safety:**

***Law Enforcement***

The League supports the promotion of public safety through:

- Stiffer penalties for violent offenders, and
- Protecting state Citizens' Option for Public Safety (COPS) and federal Community Oriented Police Services (COPS) funding and advocating for additional funding for local agencies to recoup the costs of crime and increase community safety.

***Violence***

The League supports the reduction of violence through strategies that address gang violence, domestic violence, and youth access to tools of violence, including but not limited to firearms, knives, etc.

The League supports the use of local, state, and federal collaborative prevention and intervention methods to reduce youth and gang violence.

**Governance, Transparency & Labor Relations:**

***Private Sector Liability***

The League will work closely with private sector representatives to evaluate the potential for League support of civil justice reform measures designed to improve the business climate in California. These measures should be evaluated on a case-by-case basis through the League police process.

**Questions to Consider:**

Many cities obviously believe that creating civil liability for social media platforms—due to their role in providing the communication mediums for those who organize looting attacks—is key to deterring this organized criminal activity.

If such a change was actually passed by Congress, it would force social media to essentially police every conversation on stakeholders' respective platforms, putting immense pressure on the industry to make subjective determinations about what conversations are appropriate and what are unacceptable.

At the end of the day, there are a few questions to consider in assessing this proposed resolution:

- 1) *What would this resolution's impact be on free speech and government censorship?*
- 2) *What are the expectations for cities when they receive information from a social media platform about a potentially credible threat in their respective communities? Does a city become liable for having information from a social media platform and the threat occurs?*
- 3) *What would the costs be to develop and maintain new data governance policies, including data infrastructure, to store this information?*
- 4) *What is the role of the League in engaging in issues relating to someone's privacy?*

**Support:**

The following letters of concurrence were received:

City of Hawaiian Gardens  
City of Lakewood  
City of Ontario  
City of Rancho Cucamonga  
City of Roseville

# **LETTERS OF CONCURRENCE**

## **Resolution No. 1**

Amendment to Section 230 of the Communications  
Decency Act of 1996



# CITY OF HAWAIIAN GARDENS

*"Our Youth - Our Future"*

August 7, 2020

John Dunbar, President  
[jdunbar@vville.com](mailto:jdunbar@vville.com)

League of California Cities  
1400 K Street, Suite 400  
Sacramento, CA 95814

Dear President Dunbar:

On August 3, 2020, the Cerritos City Council approved to sponsor a **Resolution of the City Council of the City of Cerritos Submitting to the League of California Cities General Assembly a Proposed Resolution Regarding Support of Legislation Related to Social Media Platform Accountability for Promotion of Criminal Acts.**

This proposed resolution with the required background information will be submitted to the League of California Cities for consideration by the General Assembly at the Annual Conference on October 9, 2020. (Attachments 1 and 2) The intent of the resolution is to address the use of social medial platforms for posting information that leads followers to meet and commit crimes and to also hold these platforms and the persons who post said information civilly and criminally accountable for all costs incurred by the local jurisdictions where the crimes occurred.

The public safety efforts in the City of Hawaiian Gardens would certainly benefit from such legislation. This letter serves to support the City of Cerritos in their efforts to submit of the above mentioned resolution to the League of California Cities for consideration at the 2020 Annual Conference.

Sincerely,

A handwritten signature in blue ink, appearing to read "Ernie Hernandez".

Ernie Hernandez  
City Manager

cc: Blanca Pacheco, President, LA County Division/League of California Cities - [bpacheco@downeyca.org](mailto:bpacheco@downeyca.org)  
Meg Desmond, League of California Cities - [mdesmond@cacities.org](mailto:mdesmond@cacities.org)  
Kristine Guerrero, LA County Division/League of California Cities - [kguerrero@cacities.org](mailto:kguerrero@cacities.org)  
Kathy Matsumoto, Assistant City Manager, City of Cerritos - [kmatsumoto@cerritos.us](mailto:kmatsumoto@cerritos.us)

Jeff Wood  
Vice Mayor

Steve Craft  
Council Member

Ariel Pe  
Council Member



Todd Rogers  
Mayor

Diane DuBois  
Council Member

August 5, 2020

John Dunbar, President  
[jdunbar@yville.com](mailto:jdunbar@yville.com)  
League of California Cities  
1400 K Street, Suite 400  
Sacramento, CA 95814

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This letter serves to support the City of Cerritos in their efforts to submit the above mentioned resolution to the League of California Cities for consideration at the 2020 Annual Conference.

Sincerely,

A handwritten signature in black ink, appearing to read "Todd Rogers".

Todd Rogers  
Mayor

cc: Blanca Pacheco, President, LA County Division/League of California Cities - [bpacheco@downeyca.org](mailto:bpacheco@downeyca.org)  
Meg Desmond, League of California Cities - [mdesmond@cacities.org](mailto:mdesmond@cacities.org)  
Kristine Guerrero, LA County Division/League of California Cities - [kguerrero@cacities.org](mailto:kguerrero@cacities.org)  
Kathy Matsumoto, Assistant City Manager, City of Cerritos - [kmatsumoto@cerritos.us](mailto:kmatsumoto@cerritos.us)

# Lakewood

# CITY OF

303 EAST "B" STREET, CIVIC CENTER      ONTARIO



# ONTARIO

CALIFORNIA 91764-4105

(909) 395-2000

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PAUL S. LEON  
MAYOR

DEBRA DORST-PORADA  
MAYOR PRO TEM

ALAN D. WAPNER  
JIM W. BOWMAN  
RUBEN VALENCIA  
COUNCIL MEMBERS

August 6, 2020

SCOTT OCHOA  
CITY MANAGER

SHEILA MAUTZ  
CITY CLERK

JAMES R. MILHISER  
TREASURER

John Dunbar, President  
[jdunbar@yville.com](mailto:jdunbar@yville.com)  
League of California Cities  
1400 K Street, Suite 400  
Sacramento, CA 95814

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This letter serves to support the City of Cerritos in their efforts to submit the above-mentioned resolution to the League of California Cities for consideration at the 2020 Annual Conference.

Sincerely,

Alan D. Wapner  
Council Member  
League of California Cities Board Member

c: Blanca Pacheco, President, LA County Division/League of California Cities - [bpacheco@downeyca.org](mailto:bpacheco@downeyca.org)  
Meg Desmond, League of California Cities - [mdesmond@cacities.org](mailto:mdesmond@cacities.org)  
Kristine Guerrero, LA County Division/League of California Cities - [kguerrero@cacities.org](mailto:kguerrero@cacities.org)  
Kathy Matsumoto, Assistant City Manager, City of Cerritos - [kmatsumoto@cerritos.us](mailto:kmatsumoto@cerritos.us)



## CITY OF RANCHO CUCAMONGA

10500 Civic Center Drive | Rancho Cucamonga, CA 91730 | 909.477.2700 | [www.CityofRC.us](http://www.CityofRC.us)

August 6, 2020

John Dunbar, President  
[jdunbar@yville.com](mailto:jdunbar@yville.com)  
League of California Cities  
1400 K Street, Suite 400  
Sacramento, CA 95814

Dear President Dunbar:

On August 3, 2020, the Cerritos City Council approved to sponsor a **Resolution of the City Council of the City of Cerritos Submitting to the League of California Cities General Assembly a Proposed Resolution Regarding Support of Legislation Related to Social Media Platform Accountability for Promotion of Criminal Acts.**

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On behalf of the City of Rancho Cucamonga, this letter serves to support the City of Cerritos in their efforts to submit the above mentioned resolution to the League of California Cities for consideration at the 2020 Annual Conference.

Sincerely,

L. Dennis Michael  
Mayor

cc: Blanca Pacheco, President, LA County Division/League of California Cities - [bpacheco@downeyca.org](mailto:bpacheco@downeyca.org)  
Meg Desmond, League of California Cities - [mdesmond@cacities.org](mailto:mdesmond@cacities.org)  
Kristine Guerrero, LA County Division/League of California Cities - [kguerrero@cacities.org](mailto:kguerrero@cacities.org)  
Kathy Matsumoto, Assistant City Manager, City of Cerritos - [kmatsumoto@cerritos.us](mailto:kmatsumoto@cerritos.us)



**City Council**  
311 Vernon Street  
Roseville, California 95678

August 7, 2020

John Dunbar, President

[jdunbar@yville.com](mailto:jdunbar@yville.com)

League of California Cities  
1400 K Street, Suite 400  
Sacramento, CA 95814

Dear President Dunbar:

On August 3, 2020, the Cerritos City Council approved to sponsor a **Resolution of the City Council of the City of Cerritos Submitting to the League of California Cities General Assembly a Proposed Resolution Regarding Support of Legislation Related to Social Media Platform Accountability for Promotion of Criminal Acts.**

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On behalf of the City of Roseville, this letter serves to support the City of Cerritos in their efforts to submit the above mentioned resolution to the League of California Cities for consideration at the 2020 Annual Conference.

Sincerely,

A handwritten signature in blue ink, appearing to read "John B. Allard II".

John B. Allard II,  
Mayor

Cc: Blanca Pacheco, President, LA County Division/League of California Cities - [bpacheco@downeyca.org](mailto:bpacheco@downeyca.org)  
Meg Desmond, League of California Cities - [mdesmond@cacities.org](mailto:mdesmond@cacities.org)  
Kristine Guerrero, LA County Division/League of California Cities - [kguerrero@cacities.org](mailto:kguerrero@cacities.org)  
Kathy Matsumoto, Assistant City Manager, City of Cerritos - [kmatsumoto@cerritos.us](mailto:kmatsumoto@cerritos.us)  
Jason Gonsalves, Joe A. Gonsalves and Son

RESOLUTION 2020-

DESIGNATING A VOTING DELEGATE AND UP TO TWO ALTERNATE VOTING  
DELEGATES FOR THE LEAGUE OF CALIFORNIA CITIES 2020 ANNUAL  
CONFERENCE BUSINESS MEETING AND DETERMINE CITY COUNCIL'S  
POSITION ON THE RESOLUTION TO BE CONSIDERED AT THE ANNUAL  
CONFERENCE BUSINESS MEETING

WHEREAS, The League of California Cities Annual Conference is scheduled for October 7, through October 9, 2020, and

WHEREAS, An important part of the Annual Conference is the Annual Business Meeting held on October 9, 2020, at which, the League membership takes action on resolutions that establish League policy, and

WHEREAS, In order to expedite the conduct of business at this policy-making meeting, each City Council designates a voting delegate and up to two alternates who will be registered at the conference and present at the Annual Business Meeting, and determine their vote on the resolution to be considered at the Annual Conference Business Meeting.

WHEREAS, At the Annual Business Conference, the League of California Cities will consider adoption of the following Resolution:

1. A Resolution of the General Assembly of the League of California Cities calling for an amendment of Section 230 of the Communications Decency Act of 1996 to require social media companies to remove materials which promote criminal activities

NOW, THEREFORE, BE IT RESOLVED, That City Council hereby designates \_\_\_\_\_ as the voting delegate and \_\_\_\_\_ and \_\_\_\_\_ as the alternate voting delegates for the League of California Cities 2020 Annual Conference Business Meeting, and determine their position as being in support of or against the resolution being considered at the Annual Conference Business Meeting.

\* \* \* \* \*

The foregoing Resolution 2020- was passed and adopted by the Tracy City Council on the 1st day of September 2020, by the following vote:

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

---

MAYOR

ATTEST:

---

CITY CLERK